

AGENDA

Hampton Roads Transportation Accountability Commission

Finance Committee Meeting

Meeting by Conference Call*

June 10, 2021

9:00 a.m.

Dial Toll Free Telephone Number to Attend: (855) 735-2639

**In light of the Governor's Declared State of Emergency due to COVID-19, it is impracticable and unsafe for the Committee to assemble in a single location, so the meeting will be held electronically, by telephone, pursuant to the 2021 Appropriation Act. The purpose of the meeting is to discuss or transact the business statutorily required or necessary to continue operations of the Commission and the Committee and the discharge of their lawful purposes, duties, and responsibilities. The public is welcome to use the number above to attend the meeting electronically. The Commission will make available a recording or transcript of the meeting on its website in accordance with the timeframes established in Sections 2.2-3707 and 2.2-3707.1 of the Code of Virginia.*

- 1. Call to Order, Declaration re: Purpose of Meeting, and Roll Call**
- 2. Approval of Agenda**
- 3. Public Comment Period**
 - *Limit 5 minutes per individual*
- 4. Consent Items**
 - *Recommended Action: Approval*
 - A. Minutes of the March 16, 2021 Finance Committee Meeting (Attachment 4A)**
 - B. HRTAC Federal Programs Procedures and HRTAC Accounting Manual Updates (Attachment 4B)**
 - C. HRTAC FY2022 Administrative and Project Development Budget (Attachment 4C)**
 - D. HRTAC FY2022-FY2027 Plan of Finance Update – Six Year Operating and Capital Program of Projects for the Region's High Priority Projects and the Hampton Roads Regional Transit Fund (Attachment 4D)**
 - E. HRTAC 2045 Long Range Plan of Finance Update for the Region's High Priority Projects and the Hampton Roads Regional Transit Fund (Attachment 4E)**
 - F. Trustee Services for Toll Roads System Revenue Bonds (Attachment 4F)**

5. Action Items

- Recommended Action: Discussion/Endorsement/Recommendation/Direction

- A. **HRBT and HRELN Funding Plan of Finance and Debt Management Plan Update (Attachment 5A)** - Executive Director Page and David Miller, Liang Shan PFM Financial Advisors
- B. **2021 HRTF Backed TIFIA Loan and Associated Bond Anticipation Note Authorizations – Resolution 2021-05 (Attachment 5B)** - Executive Director Page, Bond Counselor Ballou and General Counselor Inglima
- C. **2021 Toll Backed TIFIA Loan Authorization – Resolution 2021-06 (Attachment 5C)** - Executive Director Page, Bond Counselor Ballou and General Counselor Inglima
- D. **Master Tolling Agreement Amendment (Attachment 5D)** – Executive Director Page and General Counselor Inglima
- E. **HRELN Toll Integration (System Integrator) Standard Project Agreement (Attachment 5E)** – Executive Director Page and General Counselor Inglima
- F. **Project Agreement for Funding and Administration for the Hampton Roads Bridge Tunnel Project Amendment (Attachment 5F)** – Executive Director Page and General Counselor Inglima
- G. **HRELN Segment 3 (Tolling Infrastructure) Standard Project Agreement (Attachment 5G)** – Executive Director Page and General Counselor Inglima
- H. **2019A TIFIA Loan Refinancing Authorization – Resolution 2021-07 (Attachment 5H)** – Executive Director Page, David Miller PFM Financial Advisors, Bond Counselor Ballou, and General Counselor Inglima

6. Discussion Items

- Recommended Action: Discussion

- A. **HRTAC FY2021 Financial Audit Kick-Off Discussion** – Michael Garber, PB Mares, LLP

7. Information Items

- A. **HRTAC Monthly Financial Report – (Attachment 7A)** – Executive Director Page

8. Adjournment

**Anyone wishing to make a public comment should contact Executive Director Page at kpage@hrtac.org 24 hours in advance of the meeting to register. Please do so by 9:00 a.m. on Wednesday, June 9, 2021.

Agenda Item 4A
Consent Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: March 16, 2021 Meeting Minutes

Recommendation:

The Finance Committee is asked to approve the March 16, 2021 Finance Committee meeting minutes.

Background:

The Finance Committee approves meeting minutes for the permanent record of the Finance Committee.

Fiscal Impact:

There is no fiscal impact in relation to this Consent Item.

Suggested Motion:

Motion is to approve the minutes of the HRTAC Finance Committee meeting on March 16, 2021.



**Hampton Roads Transportation
Accountability Commission (HRTAC)
Summary Minutes of the March 16, 2021 Finance Committee Meeting**

The Hampton Roads Transportation Accountability Commission (HRTAC) Finance Committee Meeting was called to order at 2 p.m. by conference call due to COVID-19, with the following in attendance by telephone:

HRTAC Members in Attendance:

Chair, Supervisor Michael Hipple, JC
Supervisor William McCarty, IW
Mayor McKinley Price, NN

Supervisor Thomas G. Shepperd, YK
Senator Monty Mason, VGA

HRTAC Executive Director:

Kevin Page

Other Participants:

Mayor Donnie Tuck, HA
Eric Ballou, Kaufman and Canoles
Nelson Bush, PFM

David Miller, PFM
Liang Shan, PFM
Tom Inglima, Willcox & Savage

Others Recorded Attending:

Matthew Bowen, Jim Calpin, Scott Detar (Bank of America/Merrill Lynch); Scott Allaire (CDM Smith); Kristen Krug, Sabaa Modi (Citi); Tiffany Smith (HRPDC); Todd Halacy (VDOT); Lynn Coen, Jennifer Hodnett (HRTAC)

Declaration re: Purpose of Meeting, Call to Order and Roll Call

Mr. Thomas Inglima, HRTAC General Counsel, proceeded to read the following declaration for the Members:

In light of the Governor's Declared State of Emergency due to COVID-19, it is impracticable and unsafe for the Committee to assemble in a single location, so the meeting will be held electronically, by telephone, pursuant to the 2020 or 2021 Appropriation Act as applicable. The purpose of the meeting is to discuss or transact the business statutorily required or necessary to continue operations of the Commission and the Committee and the discharge of their lawful purposes, duties, and responsibilities. The public is welcome to use the number provided to attend the meeting electronically. The Commission will make available a recording or transcript of the meeting on its website in accordance with the timeframes established in Sections 2.2-3707 and 2.2-3707.1 of the Code of Virginia.

A roll call vote of all Members was taken in order to confirm a quorum:

Chair Michael Hipple: Present
Supervisor William McCarty: Present
Mayor McKinley Price: Present
Supervisor Thomas Shepperd: Present

Senator Monty Mason: Present

The quorum was confirmed by Mr. Tom Inglima.

Approval of Agenda

Supervisor Thomas Shepperd Moved to approve the agenda; Seconded by Supervisor William McCarty. A roll call vote of the voting Members was taken:

Chair Michael Hipple: Yes
Supervisor William McCarty: Yes
Supervisor Thomas Shepperd: Yes
Mayor McKinley Price: Yes
Senator Monty Mason: Yes

Mr. Tom Inglima confirmed The Motion Carried.

Public Comment Period (limit 5 minutes per individual)

No one from the public requested to make a public comment.

Chair Comments

Chair Hipple welcomed the newly appointed Members of the Finance Committee, Supervisor McCarty and Mayor Price, and thanked them for their willingness to serve on the Committee.

Consent Item

A. Minutes of the January 19, 2021 Finance Committee Meeting

Supervisor Thomas Shepperd Moved to approve the consent agenda item; Seconded by Supervisor William McCarty. A roll call vote of the voting Members was taken:

Chair Michael Hipple: Yes
Supervisor William McCarty: Yes
Supervisor Thomas Shepperd: Yes
Mayor McKinley Price: Abstain
Senator Monty Mason: Abstain

Mr. Tom Inglima confirmed The Motion Carried.

Action Items

A. Executive Director Employment – Closed Session as needed

Supervisor William McCarty Moved that a closed session be held for discussions regarding the performance and salary of the Executive Director of the Commission and potential modifications to the Commission's employment agreement with the Executive Director in accordance with Virginia Code Section 2.2-3711.A.1 for purpose of discussion and

consideration of the assignment, appointment, performance, promotion, demotion, salaries, disciplining, or resignation of specific employees of the Commission and in accordance with Virginia Code Section 2.2-3711.A.29 for the purpose of discussion of the award or modification of a public contract involving the expenditure of public funds and the discussion of the terms or scope of such contract where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the Commission; Seconded by Mayor McKinley Price. A roll call vote was taken:

Chair Michael Hipple: Yes
Supervisor William McCarty: Yes
Supervisor Thomas Shepperd: Yes
Mayor McKinley Price: Yes
Senator Monty Mason: Yes

The Closed Session began at 2:08 p.m. and ended at 2:48 p.m. Mayor Tuck was invited to attend.

Mr. Inglima read the following certification:

The Finance Committee of the Hampton Roads Transportation Accountability Commission hereby certifies that to the best of each Member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (2) only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed, or considered in the closed meeting just concluded. A roll call vote was taken:

Chair Michael Hipple: Yes
Supervisor William McCarty: Yes
Supervisor Thomas Shepperd: Yes
Mayor McKinley Price: Yes
Senator Monty Mason: Yes

Supervisor William McCarty Moved (1) that the Executive Director's salary be increased effective July 1, 2021 to \$260,000 per annum, (2) that the term of his employment agreement be extended to December 31, 2027 under the same terms as presently exist under his current employment agreement, and (3) subject to confirmation that it is permitted under the laws applicable to the HRTAC benefit plan, that the Executive Director and his spouse are eligible to receive the same health retirement benefit that is provided to the TPO executive director; Seconded by Supervisor Thomas Shepperd. A roll call vote was taken:

Chair Michael Hipple: Yes
Supervisor William McCarty: Yes
Supervisor Thomas Shepperd: Yes
Mayor McKinley Price: Yes
Senator Monty Mason: Yes

Mr. Tom Inglima confirmed The Motion Carried.

B. HRTAC FY2022 Administrative and Project Development Budget

Mr. Kevin Page, HRTAC Executive Director, reminded the Committee that the proposed action with respect to Item 6.B was to hold a public hearing regarding the proposed budget. He explained that HRTAC Staff prepares an administrative and project development budget each fiscal year. He indicated that the proposed FY2022 HRTAC Administrative and Project Development Budget takes into account prior year expenditure levels and anticipated debt financing expenses. Mr. Page highlighted the addition of the Hampton Roads Regional Transit Fund (HRRTF) to the Budget and stated that pursuant to Section 33.2-2605 of the Code of Virginia, the administrative expenses for managing the HRRTF would be shared on a pro rata basis with the Hampton Roads Transit Fund (HRTF). Mr. Page explained that the Budget was broken out into direct administrative expenses, general administrative expenses and specific program and project development expenses for each of the HRRTF and the HRTF.

Mr. Page thanked PB Mares, HRTAC's auditor, for working with HRTAC Staff to develop an allocation plan. Mr. Page stated that he had shared the FY2022 HRTAC Administrative and Project Development Budget with Mr. William Harrell and the Hampton Roads Transit team and had received positive feedback from them with respect to the allocation of expenses between the HRRTF and the HRTF. Mr. Page then clarified that because the proposed action currently in front of the Committee was only to hold a public hearing, there would not be a fiscal impact related to this Action Item 6.B but that upon the Commission's approval of the Budget, the fiscal impact would be \$6,702,873.

Discussion ensued regarding the allocation of the items outlined in the proposed FY2022 HRTAC Administrative and Project Development Budget between the HRRTF and the HRTF.

Supervisor William McCarty Moved that the Finance Committee endorses the proposed HRTAC FY2022 Administrative and Project Development Budget, as adjusted to reflect the Committee's recommendation regarding the Executive Director's adjusted compensation, and authorizes the Finance Committee Chair to recommend the proposed Budget to the Commission and request that the Commission authorize the Executive Director to conduct a public hearing on the proposed HRTAC FY2022 Administrative and Project Development Budget; Seconded by Supervisor Thomas Shepperd. A roll call vote was taken:

Chair Michael Hipple: Yes
Supervisor William McCarty: Yes
Supervisor Thomas Shepperd: Yes
Mayor McKinley Price: Yes
Senator Monty Mason: Yes

Mr. Tom Inglima confirmed The Motion Carried.

C. HRTAC FY2022-FY2027 Plan of Finance Update – Six Year Operating and Capital Program of Projects for the Region’s High Priority Projects

Mr. Kevin Page, HRTAC Executive Director, stated that the proposed FY2022-FY2027 Plan of Finance – Six Year Operating and Capital Program of Projects for the Region’s High Priority Projects was updated to provide current direction on project financing, revenue assumptions, and timing that would be used as the Commission’s current financial plan. He explained that the proposed HRTAC FY2022-FY2027 Plan of Finance Update provided additional clarity on the I-64 HRBT Expansion Project financing and included full funding of the Hampton Roads Express Lanes Network (HRELN) and programs funding for the HRRTF. The Committee was shown a graph detailing the regional priority project programs costs, expenses and sources for FY2022-FY2027. Mr. Page highlighted that the cost estimates for the HRELN were less than initially projected.

Mr. Page thanked the General Assembly for the additional \$93.1M allocation for the HRELN. He noted that if the additional \$93.1M in funds are not completely expended, they would be reallocated in the Region for the widening of I-64 between Exit 205 and Exit 234.

The Transit Regional Priority Projects were highlighted for the Committee. Mr. Page stated the first application was submitted by HRT in December 2020. A Six year plan was being developed by HRT, including the assumption of a \$100M reserve.

Mr. Page stated the FY2022-FY2027 Plan of Finance would assist the Hampton Roads Transportation Planning Organization (HRTPO) to fiscally constrain the 2045 Long Range Transportation Plan (LRTP), which would be necessary to continue to receive federal and state funding for transportation initiatives in the Region.

Mr. David Miller, PFM, explained the various HRTF revenues and the HRTF cash flows to the Committee, which correspond with the six-year project funding outlined by Mr. Page. He indicated that the HRTF cash flow was based on projected revenues of the Commonwealth and did not include any debt assumptions.

Mr. Miller noted that the line item for debt payments simply combined all debt service payments for the debt issuances in 2018, 2019 and 2020 and the TIFIA loans that are funding all of the projects. Mr. Miller then explained that not everything would be debt financed and directed the Committee to a graph detailing the toll revenue cash flows for FY2025-FY2027. He noted that debt service payments would not begin until FY2028.

Supervisor William McCarty Moved that the Finance Committee endorses the proposed FY2022-FY2027 Plan of Finance Update – Six Year Operating and Capital Program of Projects for the Region’s High Priority Projects and the Hampton Roads Regional Transit Fund as an update to the HRTAC-adopted 2021-2026 Financial Plan and authorizes the Finance Committee Chair to communicate the action of the Finance Committee and to request the Commission to authorize the Executive Director to conduct a public hearing and report back public comments for consideration in the Commission’s action by no later

than its June 17, 2021 Annual Organizational Meeting; Seconded by Mayor McKinley Price. A roll call vote was taken:

Chair Michael Hipple: Yes
Supervisor William McCarty: Yes
Supervisor Thomas Shepperd: Yes
Mayor McKinley Price: Yes
Senator Monty Mason: Yes

Mr. Tom Inglima confirmed The Motion Carried.

D. HRTAC Proposed 2045 Long Range Plan of Finance Update

Mr. Kevin Page, HRTAC Executive Director, reiterated the importance of the HRTAC Proposed Long Range Plan being incorporated into the HRTPO's Long Range Plan to continue the flow of federal dollars to the region.

Mr. David Miller, PFM, stated the presentation before the Committee included the peninsula widening at the 64/264 Interchange and what has been referred to as the initial six projects, which were expected to be completed next year. He indicated that projects beyond FY2026 completion dates were estimated with the assistance of the Virginia Department of Transportation (VDOT) with a completion cost that included inflation; however, debt financing assumptions were not included. He noted that the implementation of the Hampton Roads Bridge Tunnel (HRBT) Tolls would be a helpful indicator of how debt proceeds could be applied to other projects and that the proposed HRTAC 2045 Long Range Plan of Finance Update included \$552M in Transit Projects.

Supervisor William McCarty Moved that the Finance Committee endorses the proposed HRTAC 2045 Long Range Plan of Finance Update for the HRTAC High Priority Projects to the Commission, and requests that the Commission authorize the Executive Director to hold a public hearing and report back public comments for consideration in the Commission's action at a future meeting to communicate the 2045 Long Range Plan of Finance Update for the HRTAC High Priority Projects to the HRTPO; Seconded by Senator Monty Mason. A roll call vote was taken:

Chair Michael Hipple: Yes
Supervisor William McCarty: Yes
Supervisor Thomas Shepperd: Yes
Mayor McKinley Price: Yes
Senator Monty Mason: Yes

Mr. Tom Inglima confirmed The Motion Carried.

Discussion Item

E. Briefing re: Hampton Roads Bridge Tunnel Project Financing and HRTAC Hampton Roads Express Lanes Network Funding Plan Update

Mr. David Miller, PFM, reminded the Committee of the construction budget for the HRBT project and indicated that bond financing documents would be presented to the Commission in the spring to continue the financing. He stated that the investment plans had been accepted by the rating agencies in regards to indicative credit ratings.

Mr. Miller reminded the Committee of the phases of the HRELN project and reviewed the actions taken to further the project. He noted that the \$93.1 million in additional funding allocated by the General Assembly would allow Phases II and III of the HRELN project to be completed sooner than initially anticipated.

Mr. Miller stated that the business terms for the TIFIA loans continue to be developed, and that the Commission may issue a Request for Proposals to select a trustee for the HRTF debt services. Mr. Miller reminded the Committee of the 2019 issuance of bond anticipation notes (BANs) for interim construction funding, noting that the interest rate on the BANs is much lower than the interest rate on the TIFIA loan. He stated that PFM continues to monitor the interest rates for BANs as possible interim funding for the HRTF TIFIA loan currently being pursued.

Mr. Eric Ballou, Kaufman and Canoles, summarized the next steps in preparation for the issuance of the debt for the projects. He reminded the Committee of the Commission's approval in January of the basic finance documentation and the form of the Toll Revenue Master Trust Indenture. Mr. Ballou noted the two basic financing streams at play, which are the HRTF and the toll revenue financing in connection with the HRELN.

This item was for discussion only, and no action was taken.

Information Item

A. HRTAC Monthly Financial Report

Mr. Kevin Page, HRTAC Executive Director, reviewed the HRTAC Monthly Financial Report with the Committee and highlighted the new format due to the tracking of the two funds, the HRTF and HRRTF.

Adjournment

With no further business to come before the Finance Committee the meeting adjourned at 3:51 p.m.

Michael Hipple
HRTAC Finance Committee Chair

Agenda Item 4B
Consent Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: HRTAC Federal Programs Procedures and HRTAC Accounting Manual Updates

Recommendation:

Staff is requesting that the Finance Committee endorse the HRTAC Federal Programs Procedures and Accounting Manual Updates reflected in the enclosed HRTAC Federal Programs Procedures and HRTAC Accounting Manual documents.

Background:

Now that the Commission has become a recipient of federal TIFIA loan funding as a part of implementing its adopted funding and debt financing plan for its high priority projects, the Commission needs to adopt accounting procedures specific for federal program compliance and incorporate the procedures and their application in the HRTAC Accounting Manual.

Fiscal Impact:

There is no fiscal impact in relation to this Consent Item.

Suggested Motion:

Motion: The Finance Committee endorses the HRTAC Federal Programs Procedures and Accounting Manual Updates and authorizes the Finance Committee Chair to communicate the action of the Finance Committee to the Commission at its June 17, 2021 Annual Organizational meeting.





Federal Programs Manual

Adopted on: [Date of Board Action]

Introductions

This manual sets forth the policies and procedures used by the Hampton Roads Transportation Accountability Commission (the Commission) to administer federal funds and funds provided through federal loan proceeds such as the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program. This manual contains the internal controls and Federal programs standards established under 2CFR 200 and used by the Commission to ensure that all federal funds are lawfully expended. Employees of the Commission are expected to review this manual to gain familiarity and understanding of the Commission's rules and practices.

Conflict of Interest (2CFR 200.112)

The Commission will disclose in writing any potential conflict of interest to the federal awarding agency or pass-through entity in accordance with applicable federal awarding agency policy. A conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Commission may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts

Financial Management System

The Commission maintains a proper financial management system to receive Federal programs proceeds and to expend funds associated with such loan. Certain fiscal controls and procedures must be in place to ensure that all financial management system requirements are met. Failure to meet a requirement may result in actions that could include return of funds or termination of the loan.

Financial Management Standards (2CFR 200.302)

The standards for financial management systems are found in 2CFR 200.302. The required standards include:

- **Identification**

In its accounts the Commission must identify all federal funds received and expended and the federal programs under which they were received. Federal program and loan identification must include, as applicable, the CFDA title and number, federal award identification number and year, name of the federal agency, and the name of the pass-through entity, if applicable.

- **Financial Reporting**

Accurate, current, and complete disclosure of the financial results of each federal loan are made in accordance with the financial reporting requirements set forth in the Government

Accounting Standards Board (GASB) on the Schedule of Expenditures of Federal Awards (SEFA), and in accordance with Generally Accepted Accounting Principles (GAAP).

- **Accounting Records**

The Commission maintains records which adequately identify the source and application of funds provided for federally-assisted activities. These records contain information pertaining to federal loans, authorizations, financial obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation.

- **Internal Controls**

Effective control and accountability must be maintained for all funds, real and personal property, and other assets. The Commission must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

"Internal controls" are tools to help program and financial managers achieve results and safeguard the integrity of their program. Internal controls should be designed to provide reasonable assurance that the following objectives are achieved:

- Effectiveness and efficiency of operations;
- Adequate safeguarding of property;
- Assurance property and money is spent in accordance with the Federal programs agreement and to further the selected objectives; and
- Compliance with applicable laws and regulations.

- **Budget Control**

Actual expenditures or outlays are compared with budgeted amounts for each federal award.

- **Cash Management**

The commission has written procedures in the Accounting Manual to implement the cash management requirements found in 2 CFR 200.302 and 2 CFR 200.305.

- **Allowable Costs**

The Commission has adopted and will adhere to 2 CFR 200, Subpart E – Cost Principles (see attached).

Overview of the Financial Management/Accounting System

The Commission uses Denali fund accounting software. Purchase orders are created and tracked in Word and Excel, respectively. Capital assets are tracked on an Excel spreadsheet. The budget is developed in excel and monitored by the Executive Director. For identifying Federal programs awards, expenditures are identified in Denali by general ledger number and fund.

The Accounting Manager is responsible for compiling the SEFA, which is reviewed by the Senior Accounting Manager.

Accounting Records

The accounts of the Commission are organized on the basis of funds, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts, which comprise of assets, liabilities, fund balances, revenues, and expenditures.

Spending Federal Funds

The Commission has adopted and will adhere to 2 CFR 200, Subpart E – Cost Principles (see attached).

Determining Allowability of Costs

The Commission has adopted and will adhere to 2 CFR 200, Subpart E – Cost Principles (see attached).

Federal Cash Management Policy/Procedures (2CFR 200.305)

The Commission will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by the Commission, in accordance with the Cash Management Improvement Act at 31 CFR Part 205. Generally, the Commission receives Federal programs funds on a reimbursement basis.

However, if the Commission receives an advance in Federal programs funds, then the Commission will remit interest earned on the advanced payment quarterly to the federal agency. The Commission may retain interest amounts up to \$500 per year for administrative expenses. 2CFR 200.305(b)(9)

Payment Methods

Reimbursements: The Commission will initially pay expenditures with nonfederal funds and then request reimbursement from the Federal programs. All reimbursements are based on actual disbursements, not on obligations.

Consistent with state and federal requirements, The Commission will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for review upon request.

Reimbursements of actual expenditures do not require interest calculations.

Timely Obligation of Funds

When Obligations are Made

Obligations are orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the Commission during the same or a future period. 34 CFR 200.71

The following table illustrates when funds are determined to be obligated under federal regulations:

If the obligation is for:	The obligation is made:
Acquisition of property	On the date which the Commission makes a binding written commitment to acquire the property
Personal services by an employee of the Commission	When the services are performed
Personal services by a contractor who is not an employee of the Commission	On the date which the Commission makes a binding written commitment to obtain the services
Public utility services	When the Commission receives the services
Travel	When the travel is taken
Rental of Property	When the Commission uses the property

Period of Performance of Federal Funds

All obligations must occur on or between the beginning and ending dates of the grant project. (2 CFR 200.309) This period of time is known as the period of performance. (2 CFR 200.77) The period of performance is dictated by statute and will be indicated in the Federal programs agreement.

Procurement System

The Commission maintains a Procurement Policy consistent with Virginia Public Procurement Act (VPPA). The following is a recap of the Commission's procurement policy and additional requirements for purchases using TIFIA fund.

Responsibility for Purchasing

For all purchases greater than \$5,000 the Commission requires the usage of a Purchase Order. All purchase orders are maintained and issued by the Procurement Associate. When the Procurement Associate receives the Purchase Approval Form with the Executive Director and Chief Financial Officer's signatures a purchase order will be cut and emailed to the vendor and

requesting person. A copy of the purchase order is sent to accounts payable personnel for when the invoice is received.

For all purchases under \$5,000 approved personnel have the authority to purchase necessary goods and services with the Executive Director's final approval when the invoice is received.

General Procurement Standards (2CFR 200.318)

- (a) The Commission uses its own documented procurement procedures located in the Accounting Manual which reflect applicable state and local regulations, provided that the procurements conform to applicable federal law and the standards identified in this part.
- (b) The Commission maintains oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)(1) No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Commission may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Commission.
- (c)(2) Does not apply. The Commission does not have a parent, affiliate, or subsidiary organization.
- (d) The Commission avoids acquisition of unnecessary or duplicate items. Consideration is given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) When applicable, the Commission will enter into state and local intergovernmental agreements for procurement or use common or shared goods and services. Competition requirements will be met with applied to documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
- (f) The Commission will use federal and state excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) When applicable, the Commission will use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the over lower cost.

(h) Contracts will only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) Sufficient records will be kept to detail the history of the procurement. These records will include, but are not limited to, the following: Rational for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j) The Commission will not use a time-and-materials type contract.

(k) The Commission will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Commission of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgement for that of the Commission unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Competition (2CFR 200.319)

(a) All procurement transactions for the acquisition of property or services required under a federal award will be conducted in a manner providing full and open competition consistent with the standards of this section and 2CFR 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurement. Some of the situations considered to be restrictive of competition include but are not limited to:

- 1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- 2) Requiring unnecessary experience and excessive bonding;
- 3) Noncompetitive pricing practices between firms or between affiliated companies;
- 4) Noncompetitive contracts to consultants that are on retainer contracts;
- 5) Organizational conflicts of interest;
- 6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
- 7) Any arbitrary action in the procurement process.

(c) The Commission will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering services, geographic location may be a selection

criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The Commission has written procedures for procurement transactions. These procedures ensure that all solicitations:

- 1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- 2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The Commission will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the Commission will not preclude potential bidders from qualifying during the solicitation period.

Methods of procurement to be followed (2CFR 200.320)

The Commission will use one of the following methods of procurement:

- (a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$500). To the extent practicable, the Commission must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Commission considers the price to be reasonable.
- (b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (\$100,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.
- (c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in

price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) For sealed bidding to be feasible, the following conditions should be present:

- i. A complete, adequate, and realistic specification or purchase description is available;
- ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
- iii. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- i. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- ii. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services for the bidder to properly respond;
- iii. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- v. Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- 1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- 2) Proposals must be solicited from an adequate number of qualified sources;
- 3) The Commission must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- 4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- 5) The Commission may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is

selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

- (e) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:
 - 1) The item is available only from a single source;
 - 2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - 3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Commission; or
 - 4) After solicitation of several sources, competition is determined inadequate.

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (2CFR 200.321)

- a) The Commission must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- b) Affirmative steps must include:
 - Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 1) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 2) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 3) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 4) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - 5) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Domestic preferences for procurements (2CFR 200.322)

- (a) To the greatest extent practicable under a federal award, the Commission will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under Federal programs.
- (b) For purposes of this section:

- 1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- 2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Procurement of recovered materials (2CFR 200.323)

The Commission is a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Contract cost and price (2CFR 200.324)

(a) The Commission will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Commission will make independent estimates before receiving bids or proposals.

(b) The Commission will negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the Commission under Subpart E—Cost Principles of this part. The Commission may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Federal awarding agency or pass-through entity review (2CFR 200.325)

(a) The Commission will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the Commission desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The Commission will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- 1) The Commission's procurement procedures or operation fails to comply with the procurement standards in this part;
- 2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- 3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- 4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- 5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The Commission is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- 1) The Commission may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- 2) The Commission may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the Commission that it is complying with these standards. The Commission must cite specific policies, procedures, regulations, or standards as following these requirements and have its system available for review.

Bonding requirements (2CFR 200.326)

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the Commission provided that the Federal awarding agency or pass-through entity has decided that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

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POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES

§ 200.344 Post-closeout adjustments and continuing responsibilities.

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) Audit requirements in Subpart F—Audit Requirements of this part.

(4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this part, §§ 200.310 Insurance Coverage through 200.316 Property trust relationship.

(5) Records retention as required in Subpart D—Post Federal Award Requirements of this part, §§ 200.333 Retention requirements for records through 200.337 Restrictions on public access to records.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

COLLECTION OF AMOUNTS DUE

§ 200.345 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the

terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the non-Federal entity; or

(3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Cost Principles

GENERAL PROVISIONS

§ 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

(a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost

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principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See § 200.56 Indirect (facilities & administrative (F&A)) costs.

(f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307 Program income.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.401 Application.

(a) *General.* These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.

(2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.

(3) Fixed amount awards. See also Subpart A—Acronyms and Definitions, §§ 200.45 Fixed amount awards and 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(4) Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles).

(5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.

(b) *Federal Contract.* Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this Subpart E—Cost Principles of this part with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (e.g., CAS 414—48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction), apply rather the allowability provisions of § 200.449 Interest. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles.

Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of this part. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

BASIC CONSIDERATIONS

§ 200.402 Composition of costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.

(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306 Cost sharing or matching paragraph (b).

(g) Be adequately documented. See also §§ 200.300 Statutory and national

policy requirements through 200.309 Period of performance of this part.

§ 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.

(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the Federal award;

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(2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefited projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.439 Equipment and other capital expenditures.

(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 200.436 Depreciation and 200.468 Specialized service facilities, for areas of potential application in the matter of Federal financing of activities.)

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal

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awarding agency in advance of the incurrance of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

- (a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (b) § 200.306 Cost sharing or matching;
- (c) § 200.307 Program income;
- (d) § 200.308 Revision of budget and program plans;
- (e) § 200.311 Real property;
- (f) § 200.313 Equipment;
- (g) § 200.332 Fixed amount subawards;
- (h) § 200.413 Direct costs, paragraph (c);
- (i) § 200.430 Compensation—personal services, paragraph (h);
- (j) § 200.431 Compensation—fringe benefits;
- (k) § 200.438 Entertainment costs;
- (l) § 200.439 Equipment and other capital expenditures;
- (m) § 200.440 Exchange rates;
- (n) § 200.441 Fines, penalties, damages and other settlements;
- (o) § 200.442 Fund raising and investment management costs;
- (p) § 200.445 Goods or services for personal use;
- (q) § 200.447 Insurance and indemnification;
- (r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (s) § 200.455 Organization costs;
- (t) § 200.456 Participant support costs;
- (u) § 200.458 Pre-award costs;
- (v) § 200.462 Rearrangement and re-conversion costs;
- (w) § 200.467 Selling and marketing costs;
- (x) § 200.470 Taxes (including Value Added Tax); and
- (y) § 200.474 Travel costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart, are only applicable to certain types of non-Federal entities, as specified in the following sections:

- (a) Direct and Indirect (F&A) Costs (§§ 200.412 Classification of costs through 200.415 Required certifications) of this subpart;
- (b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 Cost allocation plans and indirect cost proposals and 200.417 Inter-agency service) of this subpart; and
- (c) Special Considerations for Institutions of Higher Education (§§ 200.418 Costs incurred by states and local governments and 200.419 Cost accounting standards and disclosure statement) of this subpart.

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance.

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§ 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (pre-determined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

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DIRECT AND INDIRECT (F&A) COSTS

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§ 200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405 Allocable costs.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct

charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;

(2) Individuals involved can be specifically identified with the project or activity;

(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and

(4) The costs are not also recovered as indirect costs.

(d) *Minor items.* Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

(1) Include the salaries of personnel,

(2) Occupy space, and

(3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454 Memberships, subscriptions, and professional activity costs.

(2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 Memberships, subscriptions, and professional activity costs and 200.450 Lobbying.

(3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 Advertising and public relations and 200.450 Lobbying.

(4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432 Conferences.

(5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also § 200.442 Fund raising and investment management costs.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431 Compensation—fringe benefits.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.414 Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the "Administration" category; for institutions of higher education, they are included in the "Facilities" category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) paragraph C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics

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and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also § 200.306 Cost sharing or matching.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under §200.203 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in §200.331 Re-

quirements for pass-through entities, paragraph (a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III–VII and Appendix IX as follows:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Non-profit Organizations;

(3) Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200—Hospital Cost Principles.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the

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4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

(b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 200.414 Indi-

rect (F&A) costs, paragraph (f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by non-profit organizations as appropriate that they did not meet the definition of a major non-profit organization as defined in § 200.414 Indirect (F&A) costs, paragraph (a).

(d) See also § 200.450 Lobbying for another required certification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect

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costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices IV, V and VI to this part.

§ 200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a prorated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans.

SPECIAL CONSIDERATIONS FOR
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§ 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs, of this subpart;

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(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 200.419 Cost accounting standards and disclosure statement.

(a) An IHE that receives aggregate Federal awards totaling \$50 million or more in Federal awards subject to this part in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

(b) *Disclosure statement.* An IHE that receives aggregate Federal awards totaling \$50 million or more subject to this part during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS–2), which is reproduced in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs). With the approval of the cognizant agency for indirect costs, an IHE may meet the DS–2 submission by submitting the DS–2 for each business unit that received \$50 million or more in Federal awards.

(1) The DS–2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit.

(2) An IHE is responsible for maintaining an accurate DS–2 and complying with disclosed cost accounting practices. An IHE must file amendments to the DS–2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change only if it has not been notified by the Federal cognizant agency for indirect costs that either a longer period will be needed for review or there are concerns with the potential change within the

six months period. Amendments of a DS-2 may be submitted at any time. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.

(3) *Cost and funding adjustments.* Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

(4) *Overpayments.* Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.

(5) *Compliant cost accounting practice changes.* Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.

(6) *Responsibilities.* The cognizant agency for indirect cost must:

(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment

determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.

(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.

(iii) Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

§ 200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II. Basic Considerations of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 Factors affecting allowability of costs must be applied in determining allowability. See also § 200.102 Exceptions.

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television, direct

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mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 200.463 Recruiting costs);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term “public relations” includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 200.432 Conferences), including:

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

§ 200.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See § 200.444 General costs of government, applicable to states, local governments and Indian tribes.

§ 200.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 200.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§ 200.425 Audit services.

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and Subpart F—Audit Requirements of this part have not been conducted or have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and Subpart F—Audit Requirements of this part because its expenditures under Federal awards are less than \$750,000 during the non-Federal entity’s fiscal year.

(b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with Subpart D—Post Federal Award Requirements of this part, §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed Amount Subawards) who are exempted from the requirements of the Single Audit Act and Subpart F—Audit Requirements of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

- (1) Conducted in accordance with GAGAS attestation standards;
- (2) Paid for and arranged by the pass-through entity; and
- (3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§ 200.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 200.428 Collections of improper payments.

§ 200.427 Bonding costs.

(a) Bonding costs arise when the Federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

(c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 200.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 200.305 *Payment*.

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph (B)(9) Student Administration and Services, as student activity costs.

§ 200.430 Compensation—personal services.

(a) *General*. Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431 Compensation—fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies

and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) *Professional activities outside the non-Federal entity.* Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and

(2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) *Unallowable costs.* (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the

amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) *Nonprofit organizations.* For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) *Institutions of higher education (IHEs).* (1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.

(2) *Salary basis.* Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to

IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) *Periods outside the academic year.*

(i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) *Part-time faculty.* Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) *Sabbatical leave costs.* Rules for sabbatical leave are as follow:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members.* Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) *Standards for Documentation of Personnel Expenses* (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated ac-

tivities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a

percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as pro-

vided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal

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Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.431 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are

the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447 Insurance and indemnification); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447 Insurance and indemnification, paragraphs (d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent

that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles*. That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension Plan Costs*. Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or

an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-Retirement Health*. Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go

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method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any

amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) *Severance Pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (a) law, (b) employer-employee agreement, (c) established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or (d) circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the

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customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j)(1) *For IHEs only.* Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated

indirect (F&A) cost rates containing unallowable costs of this subpart;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§ 200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438 Entertainment costs, 200.456 Participant support costs, 200.474 Travel costs, and 200.475 Trustees.

§ 200.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at

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the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of Subpart D of this part and 200.403 Factors affecting allowability of costs); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.

(c) Payments made by the Federal awarding agency to the non-Federal entity's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 Compensation—fringe benefits regarding self-insurance, pensions, severance and post-retirement health costs and 200.447 Insurance and indemnification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and prop-

erty may be used to meet cost sharing or matching requirements (see § 200.306 Cost sharing or matching). Depreciation on donated assets is permitted in accordance with § 200.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306 Cost sharing or matching.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as a part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in § 200.306 Cost sharing or matching.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of subpart D of this part. The value of the donations must be determined in accordance with §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) *Definitions for the purposes of this section.* (1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of nolo contendere.

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts which violate the False Claims Act (31 U.S.C. 3729–3732) or the Anti-kickback Act (41 U.S.C. 1320a–7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs.* (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are notallowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-Federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the Federal awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the Federal awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

(1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and per-

mitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the purpose of computing depreciation, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.437

§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

(1) Where the non-Federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

§ 200.439 Equipment and other capital expenditures.

(a) See §§ 200.13 Capital expenditures, 200.33 Equipment, 200.89 Special purpose equipment, 200.48 General purpose equipment, 200.2 Acquisition cost, and 200.12 Capital assets.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a

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unit cost of \$5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465 Rental costs of real property and equipment.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436 Depreciation.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency

fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the Federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

§ 200.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460 Proposal costs.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413 Direct costs.

§ 200.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 Depreciation and 200.439 Equipment and other capital expenditures.

(2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 200.447 Insurance and indemnification.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with

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§§ 200.310 Insurance Coverage through
200.316 Property trust relationship.

[78 FR 78608, Dec. 26, 2013, as amended at 79
FR 75886, Dec. 19, 2014]

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.474 Travel costs). Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;

(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) (see § 200.64 Local government), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

[78 FR 78608, Dec. 26, 2013, as amended at 79
FR 75886, Dec. 19, 2014]

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless

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of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency.

§ 200.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.

(2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 200.431 Compensation—fringe benefits). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for

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discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

(f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

§ 200.448 Intellectual property.

(a) *Patent costs.* (1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 200.459 Professional service costs).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for use of patents and copyrights.* (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a right or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b)(1) Capital assets is defined as noted in § 200.12 Capital assets. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Conditions for all non-Federal entities.* (1) The non-Federal entity uses the

capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of

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monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHES. For costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after Sep-

tember 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to “full coverage” under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201–2(a). The non-Federal entity’s Federal awards are instead subject to CAS 414 (48 CFR 9904.414), “Cost of Money as an Element of the Cost of Facilities Capital”, and CAS 417 (48 CFR 9904.417), “Cost of Money as an Element of the Cost of Capital Assets Under Construction”.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54409, Sept. 10, 2015]

§ 200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying” published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying” and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHES:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence:

(A) The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a

regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413 Direct costs.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of

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this section have been complied with. (See also § 200.415 Required certifications.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in § 200.302 Financial management with respect to lobbying costs during any particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

§ 200.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or

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any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439 Equipment and other capital expenditures). These costs are only allowable to the extent not paid through rental or other agreements.

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allowable, but not solely dedicated, to the performance of a Federal award.

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(d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also § 200.450 Lobbying.

§ 200.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency.

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.75 Participant support costs are allowable with the prior approval of the Federal awarding agency.

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject

to § 200.439 Equipment and other capital expenditures.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.

§ 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the

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services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

§ 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§ 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.

(b) Page charges for professional journal publications are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(3) The non-Federal entity may charge the Federal award before close-

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out for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award.

§ 200.462 Rearrangement and reversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

§ 200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly

hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also § 200.464 Relocation costs of employees.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

- (1) Be critical and necessary for the conduct of the project;
- (2) Be allowable under the applicable cost principles;
- (3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and
- (4) Meet the definition of "direct cost" as described in the applicable cost principles.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

- (1) The move is for the benefit of the employer.
- (2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.
- (3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

- (1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474 Travel costs, and not this § 200.464 Relocation costs of employees, for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

(d) The following costs related to relocation are unallowable:

- (1) Fees and other costs associated with acquiring a new home.
- (2) A loss on the sale of a former home.

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(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under “less-than-arm’s-length” leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm’s-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

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(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

§ 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

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(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 200.430 Compensation—personal services, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 200.431 Compensation—fringe benefits.

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 200.421 Advertising and public relations.) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraphs (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under § 200.406 Applicable credits.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

§ 200.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where

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the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

(1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(a) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the Federal awarding agency makes available the necessary exemption certificates,

(b) Special assessments on land which represent capital improvements, and

(c) Federal income taxes.

(2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to a non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash

refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency.

§ 200.471 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also § 200.313 Equipment, paragraph (d)), and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see Subpart D—Post Federal Award Requirements of this part, §§ 200.338 Remedies for Non-compliance through 200.342 Effects of Suspension and termination); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414 Indirect (F&A) costs. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

§ 200.472 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 200.473 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

§ 200.474 Travel costs.

(a) *General.* Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or

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mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 200.444 General costs of government, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary to the Federal award; and

(2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)(1) Temporary dependent care costs (as dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432 Conferences.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and

amounts established under 5 U.S.C. 5701–11, (“Travel and Subsistence Expenses; Mileage Allowances”), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205–46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.475 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.474 Travel costs.



ACCOUNTING POLICIES AND PROCEDURES

Amended [Date of Board Action]

Additions are Highlighted in Yellow

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I. Introduction

The purpose of this manual is to describe all accounting policies and procedures currently in use at the Hampton Roads Transportation Accountability Commission (HRTAC) and to ensure that the financial statements conform to generally accepted accounting principles (GAAP); assets are safeguarded; and all finances are managed with accuracy, efficiency, and transparency.

Any HRTAC staff with a role in the management of fiscal and accounting operations is expected to comply with the policies and procedures in this manual.

These policies herein will be reviewed annually and revised as needed by HRTAC staff and approved by the Executive Director and Finance Committee of the Commission.

Adoption, Revisions, and Incorporations

Description	Activity	Date
Interim Policies for Management of Cash, Bank Accounts, and Credit and Debit Cards	Adoption, Revised Incorporation	October 15, 2015 September 19, 2019 October 17, 2019
Procurement of Goods and Services, Including Procedures for Certain Small Purchases	Adoption, Revised, Incorporation	October 15, 2015 [Date of Board Action]
Statement of Investment Policy	Adoption, Revised Revised Incorporation	June 16, 2016 December 13, 2018 June 20, 2019
Hampton Roads Transportation Fund Revenue Bonds Post-Issuance Bond Compliance Policy	Adoption, Incorporation	April 19, 2018
Federal Programs Procedures	Adoption, Incorporation	[Date of Board Action]

II. Division of Responsibilities

The following is a list of personnel who have fiscal and accounting responsibilities:

Commission

1. Reviews and approves annual budget.
2. Reviews annual and periodic financial statements and information.
3. Reviews Executive Director's performance annually and establishes salary.
4. Chair and Co-Chair to be authorized signers on the bank accounts.
5. Reviews and approves all contracts over \$25,000.
6. Reviews and approves all non-budgeted expenditures.

Finance Committee Chair

1. Reviews and approves wire transfers.

Executive Director

1. Reviews and approves all financial reports.
2. Develops for approval and executes an approved annual budget.
3. Reviews and approves all issued checks and/or check signing procedures.
4. Reviews and approves all contracts.
5. Approves all bank transfers and wires prior to Finance Committee Chair approval.
6. Is on-site signatory for all bank accounts.
7. Electronically approves wire and ACH transfers online in absence of Chief Financial Officer
8. Reviews completed monthly bank reconciliations, journal entries and check register.

Chief Financial Officer (CFO)

1. Approves all bank transfers.
2. Approves all wire and ACH transfers, including electronically online transfers.
3. Reviews all financial reports.
4. Is on-site signatory for all bank accounts.
5. Reviews completed monthly bank reconciliations, journal entries and check register.

Accounting Manager

1. Overall responsibility for data entry into accounting system and integrity of accounting system data.
2. Processes invoices and prepares checks for signature.
3. Makes bank deposits.
4. Processes payroll.
5. Processes all wire transfers.
6. Maintains general ledger.
7. Prepares monthly and year-end financial reports.
8. Reconciles all bank accounts.
9. Mails vendor checks.
10. Manages Accounts Receivable.
11. Assists Executive Director with the development of annual and program budgets.

III. Chart of Accounts and General Ledger

HRTAC has designated a Chart of Accounts specific to its operational needs and the needs of its financial statements. The Chart of Accounts is structured so that financial statements can be shown by natural classification (expense type) as well as by functional classification (program vs. fundraising vs. administration). The general ledger is automated and maintained using accounting software, and should be reviewed periodically by HRTAC staff for any unusual transactions.

IV. Cash Receipts

Cash receipts generally arise from Sales and Use Tax and Fuels Tax (Note: bond generated reimbursement revenues are covered in the bond revenue section.)

The principal steps in the cash receipts monthly process are:

1. The HRTAC Staff receives an email from an authorized Virginia Department of Transportation (VDOT) official indicating HRTAC member localities' tax contributions.
2. Simultaneously, VDOT submits a request to Treasury to have the funds transferred to HRTAC.
3. The HRTAC Accounting Manager will receive an email from Virginia Department of Accounts confirming a wire transfer.
4. The HRTAC Accounting Manager reviews the obligation to debt service and follows the steps of the Waterfall detailed in HRTAC's HRTF Series 2018A Master Indenture. (See Section XIII.)
5. The HRTAC Accounting Manager then notifies the HRTAC financial advisor and Executive Director of the remaining balance and any outstanding payments to others and requests to be advised on the best strategy for the deposit of funds into HRTAC's laddered portfolio.
6. The recommendation of the Executive Director is transmitted by the HRTAC Accounting Manager via email to the Chair of the Finance Committee for approval.
7. Upon receipt of approval by the Finance Committee Chair, the funds are deposited into the respective account.

V. Bank Account Transfers

Bank accounts and relationships with investment institutions must be authorized and established pursuant to resolutions adopted from time to time by the Commission.

Fluid cash checking account balances are monitored to assure adequate funds are available to cover the expenses of the Commission. The HRTAC Accounting Manager receives approval of total transfer amount from the Finance Committee chair and recommends to the Executive Director when a transfer should be made. Once all approvals have been obtained a wire transfer sheet is generated and approved by the Executive Director and the CFO. The HRTAC Accounting Manager initiates the electronic bank transfer and it must be approved on line by the CFO or the Executive

Director in the absence of the CFO. A copy of the approvals and wire transfer is retained in the accounting department.

Electronic funds transfers, using the Automated Clearing House (“ACH”) network, such as direct debit payments, may be made from the Commission’s bank accounts, subject to the following:

1. ACH transfers/direct debit payments shall be used solely for the following:
 - Employee payroll
 - Treasury payments of payroll-related taxes
 - Employee expense reimbursements which have been duly approved
 - Recurring monthly payment obligations of the Commission, such as rent and utilities, that are contemplated by the Commission’s operating budget.
2. For the avoidance of doubt, an ACH transfer/direct debit shall not under any circumstance be used to pay any personal charge of any employee.
3. All ACH transfers/direct debit payments must be implemented/effected by the CFO or his or her designee, provided that such person is acting in accordance with written instructions (which may be given electronically) from the Chair (or Vice Chair) of the Finance Committee and the Executive Director.
4. All ACH transfers/direct debit payments will be tracked through the monthly bank statements and reconciled to the accounting system transactions.

VI. Cash Disbursements and Expense Allocations

1. All cash, checks and other payments received by the Commission shall be recorded in the Commission’s books and records and deposited into a Commission bank account, which deposit in the case of cash or checks should be made within 24 business hours of receipt.
2. No cash withdrawals are permitted from any Commission bank account.
3. No Commission check may be made payable to “cash” or “bearer.”
4. Commission checks must be kept in a secure location and executed in accordance with the Commission’s Bylaws and applicable resolutions, which presently require dual signatures. When made, checks shall be copied and recorded in the Commission’s books and records, including its check ledger.

Cash disbursements are generally made for:

1. Payments to vendors for goods and services
2. Taxes/license fees
3. Staff training and development
4. Memberships and subscriptions

5. Meeting expenses
6. Employee reimbursements

Checks are processed monthly and invoices submitted to the HRTAC Accounting Manager by the first of the third week of the month will be processed and paid by Friday of the same week. The HRTAC Accounting Manager will assign the general ledger account code.

Requests for cash disbursements are submitted to Accounting in two ways:

1. Original invoice
2. Employee expense report or reimbursement request

Every employee reimbursement or purchase request must be documented on the approved form with receipts, and business nature before reimbursement approval. Specific documentation for each category is:

Lodging - an itemized receipt from the hotel detailing all charges, the person(s) for whom the lodging was provided, and the specific business purpose.

Meals and Entertainment - a receipt must be provided showing the cost of food, beverage, and gratuities, including the names of every person for whom food or beverage was provided, and the specific business purpose.

Other Expenditures - a receipt from the vendor detailing all goods or services purchased (including the class of service for transportation) and the specific business purpose.

All requests for payment will be reviewed by the designated staff for:

1. Expenditure and amount and appropriate allocation information. Once verified, payment will be processed and will be submitted to the Executive Director for approval and signature. All checks require a second signature from an authorized Commission member or staff member.
2. All documentation will be appropriately filed.

VII. Procurement of Goods and Services, Including Procedures for Certain Small Purchases (Amended **Date of Board Action)**

General

The Virginia Public Procurement Act (“VPPA”) covers contracts made by the Hampton Roads Transportation Accountability Commission (the “Commission” or “HRTAC”) with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction (as those terms are defined in the VPPA). The VPPA seeks, among other things, to enable public bodies in the Commonwealth to obtain high quality goods and services at reasonable costs. This Policy, including its small purchases procedures, is adopted to provide the Commission’s members, officers and employees with direction regarding the VPPA and its implementation.

Under the VPPA, covered contracts must be awarded after competitive sealed bidding, or competitive negotiation, as provided in the VPPA, unless otherwise authorized by law.

Exemptions

Without limiting the exemptions under the VPPA that may be applicable from time to time, neither the competitive sealed bidding nor competitive negotiation procedures apply to: Contracts negotiated and awarded to a source that is determined in writing to be the sole source available for that which is to be procured: in order to use this exemption under Section 2.2-4303(E) of the VPPA, all requirements of the exemption, including the written determination and public notice requirements, must be observed; the written determination may be made by the Commission’s Executive Director if funds for the applicable contract are available under the Commission’s then-applicable operating budget, but copies of such determinations must be given to the Finance Committee within five (5) business days after being made.

Contracts awarded in case of emergency: however, such procurement shall be made with such competition as is practicable under the circumstances. In order to use this exemption under Section 2.2-4303(F) of the VPPA, all requirements of the exemption, including the written determination and public notice requirements must be observed; the written determination may be made by the Commission’s Executive Director if funds for the applicable contract are available under the Commission’s then-applicable operating budget, but copies of such determinations must be given to the Finance Committee within five (5) business days after being made.

Purchases made from another public body’s contract, even if the Commission did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies; however, this exemption under Section 2.2-4304 of the VPPA is subject to the limitations set forth therein.

Single or term contracts for goods and services that fit within the dollar limitations and other parameters set forth in Section 2.2-4303(G) of the VPPA if they are entered into pursuant to small purchases procedures that have been adopted by the Commission in writing; the Commission’s small purchases procedures are set forth in the chart below; these procedures may not be used for single or term contracts for transportation-related construction.

<u>Estimated Cost of Small Purchase</u>	<u>Procedure with Small Purchase</u>
When the aggregate or the sum of all phases is expected to be <u>less than</u> \$500	Purchase may be made upon receipt of one (1) or more written or telephone quotes. As applicable, complete either (a) a Purchase Approval Form (attached hereto as <u>Exhibit A</u>) or (b) a Credit Card Form (attached hereto as <u>Exhibit B</u>), and submit such form to the Executive Director for approval. Once approval is granted, instruct vendor to invoice HRTAC for payment or charge to HRTAC credit card, as applicable.
When the aggregate or the sum of all phases is expected to be <u>between</u> \$500 and \$1,499	Requires at least three (3) attempted telephone, catalog, eVA Quick Quote, or electronic/written quotes to be obtained. Efforts should be made to obtain one or more of those quotes from vendors listed in the Department of Small Business and Supplier Diversity database as being SWaM (Small, Women-owned and Minority-owned Business) certified or DBE (Disadvantaged Business Enterprise) certified. Complete a Purchase Approval Form, attach quotes and submit to the Executive Director for approval. The form will then be submitted to the Chief Financial Officer (“CFO”) and Executive Director for budgetary and final approvals respectively. After CFO and Executive Director approvals have been obtained, order and have vendor invoice directly.
When the aggregate or the sum of all phases is expected to be <u>between</u> \$1,500 and \$4,999	Requires at least three (3) attempted written (which may be electronic) quotes, including eVA Quick Quotes, to be obtained. Efforts should be made to obtain one or more of those quotes from vendors listed in the Department of Small Business and Supplier Diversity database as being SWaM certified or DBE certified. Complete a Purchase Approval Form, attach quotes and forward to the Executive Director for approval. It will then be submitted to the CFO and Executive Director for budgetary and final approvals respectively. After CFO and Executive Director approvals have been obtained, order and have vendor invoice directly.

<p>When the aggregate or the sum of all phases is expected to be <u>between</u> \$5,000 and \$25,000</p>	<p>Requires at least four (4) attempted written (which may be electronic) quotes, including eVA Quick Quotes, to be obtained. Efforts should be made to obtain one or more of those quotes from vendors listed in the Department of Small Business and Supplier Diversity database as being SWaM certified or DBE certified.</p> <p>Complete a Purchase Approval Form and a Requisition Form (attached hereto as <u>Exhibit C</u>), attach quotes, and forward to the Executive Director for approval. It will then be submitted [to the Computer Network Manager (if applicable) and on] to the CFO and Executive Director for budgetary and final approvals respectively. After the CFO and Executive Director have approved the Requisition, it and all attachments (quotes, Purchase Approval Form, etc.) will be submitted to the Procurement Officer who will create a Purchase Order (“PO”), submit the PO to the vendor, send a copy of the PO to appropriate employees involved, and establish the PO in the accounting system.</p>
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NOTE: Re-quotes may be required should none of the research produce prices, quality or quantities desired. Should re-quotes be required, approval by the Executive Director must be obtained before contacting vendors. ALL responding vendors must be contacted for the opportunity to re-quote.

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (2CFR 200.321)

- a) The Commission must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- b) Affirmative steps must include:
 - Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
 - 1) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
 - 2) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
 - 3) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
 - 4) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
 - 5) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Domestic preferences for procurements (2CFR 200.322)

- (a) To the greatest extent practicable under a federal award, the Commission will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under Federal programs.
- (b) For purposes of this section:
 - 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Procurement of recovered materials (2CFR 200.323)

The Commission is a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Contract cost and price (2CFR 200.324)

(a) The Commission will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Commission will make independent estimates before receiving bids or proposals.

(b) The Commission will negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the Commission under Subpart E—Cost Principles of this part. The Commission may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Federal awarding agency or pass-through entity review (2CFR 200.325)

(a) The Commission will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the Commission desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The Commission will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

- 1) The Commission's procurement procedures or operation fails to comply with the procurement standards in this part;
- 2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
- 3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
- 4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
- 5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(c) The Commission is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- 1) The Commission may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards for its syst to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- 2) The Commission may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the Commission that it is complying with these standards. The Commission must cite specific policies, procedures, regulations, or standards as following these requirements and have its system available for review.

EXHIBIT A

Purchase Approval Form

HRTAC PURCHASE APPROVAL FORM

Date of Request: _____

Pursuant to the Small Purchases Procedures included in the HRTAC “Policy Relating to Procurement of Goods and Services, Including Procedures for Certain Small Purchases” (the “Purchasing Policy”) the undersigned purchaser (the “Purchaser”) hereby requests approval to make the following purchase(s):

Description of Item(s)	Proposed Use/ Reason	Expense Code*

* If applicable.

Below please provide a summary of quotes obtained for the above described item(s), and, if applicable, attach written quotes. ***Please see the Purchasing Policy for the required number and form of quotes.***

	Vendor/Supplier	Summary of Quoted Price (If applicable, please provide price per unit and total price.)	SWaM or DBE	Additional Comments
1				
2				
3				
4				

Based on the information above, Purchaser recommends the following vendor/supplier:

Once approval is granted by the Executive Director and, for purchases over \$500, the Chief Financial Officer, Purchaser may make the purchase described above and should instruct the vendor/supplier to invoice HRTAC. Purchaser is responsible for retaining documentation of the purchase and reconciling it to the applicable invoice.

Purchaser:

Print Name: _____

Date

Approved by Executive Director:

Print Name: _____

Date

Approved by Chief Financial Officer:
(Required for purchases over \$500)

Print Name: _____

Date

EXHIBIT B

Credit Card Form

**HRTAC
Credit Card Form
(Relating to Purchases Made with Card)**

Date of Request: _____

Vendor/Supplier: _____

Pursuant to the Small Purchases Procedures included in the HRTAC "Policy Relating to Procurement of Goods and Services, Including Procedures for Certain Small Purchases," the undersigned (the "User") hereby requests approval to use the HRTAC credit card / debit card (**check applicable box**) to make the following purchase(s):

Description of Item	Proposed Use/ Reason	Projected Amount	Expense Code**
		Total:* \$ _____	

*Total may not exceed \$500.00. ** If applicable.

Once approval is granted by the Executive Director (as indicated by his or her signature below), User may use the HRTAC credit card or debit card (as indicated above) to make the purchase(s) described above. User is responsible for retaining documentation of purchases and reconciling them to the monthly credit/debit card statement.

By signing below, User agrees to the following:

The use of Commission issued debit/credit cards (a "Purchase Card") is an important privilege that is intended to facilitate business by the Commission. Adherence to the Commission's Purchase Card Policy is vital in ensuring not only the continuation of this privilege, but also in ensuring that neither you nor the Commission is subjected to financial hardship or public criticism.

I, the undersigned User, have read and understand the Commission's Purchase Card Policy. I agree to abide by all provisions of the Purchase Card Policy, and understand that violations of the Policy could result in legal or disciplinary actions, including termination.

User:

Print Name: _____

_____ Date

Approved by Executive Director:

Print Name: _____

_____ Date

EXHIBIT C

Purchase Requisition Form

Note: Attach copies of the Purchase Approval Form and the quotes obtained.

Once approval is granted by the Executive Director and the Chief Financial Officer, Requestor may make the purchase described above and should instruct the vendor/supplier to invoice HRTAC. Requestor is responsible for retaining documentation of the purchase and reconciling it to the applicable invoice.

Requestor

Print Name: _____

Date

Approved by Executive Director:

Print Name: _____

Date

Approved by Chief Financial Officer:

Print Name: _____

Date

VIII. Credit/Debit Card Policy and Charges

1. This Policy applies to any and all debit cards and credit cards (each, a "Purchase Card") issued in respect of the Commission or its accounts and is adopted to provide the Commission's members, officers and employees direction regarding the authorized uses of such Purchase Cards and the steps that must be followed to issue and monitor them.
2. The Executive Director shall be authorized to obtain one credit card in the name of the Commission, which credit card shall have an aggregate monthly transaction limit of \$15,000, and a single purchase limit of \$2,000. The purpose of obtaining a credit card is to facilitate transactions effected on behalf of the Commission, not to utilize a line of credit.
3. The Executive Director is also authorized to obtain debit cards, provided that there shall not be more than three debit cards issued and outstanding from time to time and the maximum available funds under each such card shall be \$1,000.
4. Purchase Cards (credit and debit) shall be used by authorized Commission officers or employees solely to pay for small purchases made in accordance with the Commission's small purchases procedures. At no time may any Purchase Card be used for any type of personal charge. See below for illustrative "Authorized Uses" and "Unauthorized Uses."
5. Illustrative authorized uses of Purchase Card(s) include the following:
 - a) Travel costs:
 - Airfare
 - Lodging
 - Shuttle service
 - Rental vehicles
 - Gasoline for rental vehicles
 - Gasoline for personal vehicles when used and documented usage is for official Commission business.
 - b) Purchases:
 - Meals
 - Office supplies
 - Express mail service and freight service
6. Illustrative unauthorized uses of Purchase Card(s) include the following:
 - Personal meals
 - Personal telephone usage and movie rentals included in lodging bills associated with official business purposes
 - Cash advances

- Purchases by persons who are not officers, members or employees of the Commission
- Purchases prohibited by the Virginia Public Procurement Act or applicable Commission policies
- Purchases in which one or more users of a Purchase Card break a purchase of the same or related goods or services into multiple purchases to circumvent the usage limits or other limitations described herein or any other applicable Commission policy

7. All charges will be billed directly to the Commission, reconciled and paid, or disputed, monthly. Purchase logs must be maintained as each purchase is made. A new purchase log must be established at the beginning of each new billing cycle. The cardholder is responsible for retaining documentation of purchases and returns and reconciling them, with the aid of the purchasing log, to the monthly charge card statement. At the end of the billing cycle, the cardholder shall deliver the documentation to the CFO together with a written certification that the goods and services identified therein were purchased in accordance with this policy.
8. Prior to issuance and usage of a Purchase Card, each authorized person shall be required to read and sign the statement below regarding the use of a Purchase Card:

The use of Commission issued debit/credit cards (a "Purchase Card") is an important privilege that is intended to facilitate business by the Commission. Adherence to the Commission's Purchase Card Policy is vital in ensuring not only the continuation of this privilege, but also in ensuring that neither you nor the Commission is subjected to financial hardship or public criticism.

I, (Name of Certifying Person), have read and understand the Commission's Purchase Card Policy. I agree to abide by all provisions of the Purchase Card Policy and understand that violations of the Policy could result in legal or disciplinary actions, including termination.

Signature

Date

IX. Accruals

To ensure a timely close of the General Ledger, HRTAC may book accrual entries. Some accruals will be made as recurring entries.

X. Bank Account Reconciliations

1. All bank statements are opened, date stamped and forwarded to the Accounting Manager who prepares the reconciliation and reviews for any unusual activity.
2. A timely reconciliation including: as a comparison of dates and amounts of deposits as shown in the accounting system and on the statement, a comparison of inter-account transfers, an investigation of any rejected items, a comparison of cleared checks with the accounting record including amount, payee, and sequential check numbers.
3. Statements will be verified that voided checks are appropriately defaced, filed, and any checks that are outstanding over six months will be investigated.
4. The completed bank reconciliation is attached to the applicable bank statement, along with all documentation will be retained for filing purposes. Before filing, the reconciliation package is forwarded to the CFO for review and approval. Once approved, it is returned to the Accounting Manager for filing.
5. An internal circulation reconciliation report will be generated and reviewed by the Executive Director and CFO.

XI. Property and Equipment

Property and equipment includes items such as; but are not limited to:

1. Office furniture and equipment
2. Computer hardware
3. Computer software
4. Leasehold improvements

It is the organization's policy to capitalize all items which have a unit cost greater than five thousand dollars (\$5,000). Items purchased with a value or cost less than five thousand dollars (\$5,000) will be expensed in the period purchased.

The depreciation period for capitalized assets is as follows:

Computer Hardware	36 months
Office Equipment	60 months
Office Furniture	60 months

Computer Software
Leasehold improvements

36 months
Length of lease

1. A Fixed Asset Log is maintained by HRTAC staff including date of purchase, asset description, purchase/donation information, cost/fair market value, donor/funding source, identification number, and life of asset.
2. The Log will be reviewed and amended by HRTAC staff when appropriate and all changes to the log shall be made in writing by the Accounting Manager.
3. Annually, a physical inspection and inventory will be taken of all fixed assets and reconciled to the general ledger balances.
4. Depreciation will be recorded no less than annually. Depreciation is computed using the straight-line method over the estimated useful lives of the related assets. Any impaired assets discovered during the inventory will be written down to their actual value.

XII. Payroll Processing

1. Timesheets are to be prepared by all staff on the approved form and submitted semi-monthly no later than 3 days before payday. Should the payday fall on a weekend or holiday, the timesheets are to be submitted the 3rd day prior to the weekend or holiday. Exceptions to the submittal date may occur and will be communicated accordingly.
2. Timesheets are to be kept on a daily basis and completed electronically.
3. Any corrections to timesheets are to be made by making a single line through the error and writing in the correction. Correction fluid and/or tape are not allowable.
4. Timesheets are to be signed and dated by the employee and the employee's supervisor for submission to the designated staff.
5. Payroll will be processed in a timely manner and record vacation time, holiday hours, sick time, and any other information deemed necessary to properly reflect time worked.
6. Paychecks will be distributed on the 15th and last day of the month. If the 15th and/or the last day of the month fall on a weekend or holiday the paychecks will be distributed the day before.
7. All employees will be paid by direct deposit.
8. Federal and State taxes will be paid electronically on the date of the payroll.
9. All quarterly federal and state payroll reports will be prepared and filed appropriately.

10. All W-2 statements are issued to employees prior to January 31st of the following year for the prior calendar year.

XIII. Financial Reports

The HRTAC Accounting Manager will prepare the monthly Hampton Roads Transportation Fund (HRTF) financial report for review by the Executive Director and CFO. The HRTF Report will be included in the HRTAC agendas and include: Totals Sheet, Sales and Use Tax received, Fuels Tax received, Projects Allocation, Projects Expenditures and a Summary Page.

A Cash Balance report is prepared for the Executive Director and Finance Committee Chair.

Periodic and annual financial reports will be submitted to the Finance Committee and Commission for review and approval.

For purposes of development of the annual financial reports of the Commission, a sixty-calendar day period following the closing day of the accounting fiscal year will be utilized as a rule to receive invoices resulting from the closed fiscal year's activities and record them in the previous fiscal year. Special exceptions to this rule may be made and estimated on a case-by-case basis and in coordination with the Commission's auditor.

XIV. Bonds and Post Issuance Bond Policy

Proceeds from Bond Issuance

Once the proceeds are received from commercial close of the bond sale, the underwriter disburses the monies as follows:

- 1) Pay Cost of Issuance Invoices
- 2) Reimburse HRTAC for money paid on Projects covered under Adopted Reimbursement Resolutions
- 3) Invest remaining bond proceeds in SNAP until HRTAC authorizes payments for eligible projects

Revenue Distribution Waterfall Post Bond Issuance

When the monthly HRTF revenues transfer/deposit is received (Sales & Use Tax and Fuels Tax), HRTAC will distribute the funds in accordance with the HRTAC HRTF Series 2018A Master Indenture 'Waterfall' as follows:

- 1) Debt Service Funds
- 2) Debt Service Reserve Funds (if any)
- 3) Rebate Fund (if necessary)
- 4) Interest Payment
- 5) Operating Account
- 6) Operating Reserve Account
- 7) General (remainder)

**HAMPTON ROADS TRANSPORTATION FUND REVENUE
BONDS
POST-ISSUANCE BOND COMPLIANCE POLICY
(Adopted April 19, 2018)**

This policy summarizes the federal law regulatory compliance responsibilities of the Hampton Roads Transportation Accountability Commission (the “Commission”) with regard to its tax-exempt bond issues. These responsibilities consist of compliance with (1) federal income tax regulations relating to the use and investment of bond proceeds, and (2) federal securities regulations relating to continuing disclosure to the market.

This policy is formulated to address, in a summary fashion, the assignment of general categories of responsibilities, and to specify the frequency of review and required duration of recordkeeping for each item. A more specific checklist to be used in connection with each individual bond issue is attached as Exhibit A to this document. Any questions that arise as to non-routine matters should be addressed to bond counsel. Each specific category of tasks should be assigned to one responsible department or individual.

Because most bond issues remain outstanding for long periods of time, and the possibility of IRS audit exists throughout the term of each bond issue, each individual or department with responsibilities under this policy should develop a plan detailing the steps that will be taken to transfer responsibilities and accumulated knowledge to successor personnel. Further, Commission record retention policies should be applied to bond-related materials with the recognition that tax regulations require the retention of most records relating to tax-exempt bond issues for the life of the bonds, including the life of any bonds that refund such bonds, plus 3 years. See “Record Retention,” see Section XVI below, for more detail.

Allocation of Bond Proceeds

The Treasury Regulations set forth detailed allocation and accounting rules relating to the allocation of bond proceeds to expenditures. Allocations should reflect, among other things, compliance with the various rules that qualify uses of funds for temporary periods (i.e., periods during which unspent funds are not subject to yield restriction) and other limitations on expenditures.

Responsibility for this category: Executive Director

<i>Task</i>	<i>Responsible Party</i>	<i>Frequency of Review</i>
Prepare and maintain an expenditure summary showing the date, amount and purpose of each expenditure from bond proceeds, and including copies of all requisitions or advance certificates. (Expenditures should reflect compliance with limitations set forth in issue-specific non-arbitrage certificates in bond transcripts.)	_____	Monthly during draw-down periods
Request that bond counsel prepare reimbursement resolutions for projects to be financed with tax-exempt bond proceeds in the near future.	_____	Issue-specific ¹
If a reimbursement resolution has been adopted, bond proceeds can be used to reimburse expenditures made up to 60 days before the resolution date, and the bonds must be issued and proceeds allocated to each expenditure within 18 months after the later of (i) the date of the first expenditure to be reimbursed or (ii) the placed in service date of the project, but in no event later than three years after the expenditure was paid.	_____	Issue-specific
Bond proceeds for capital projects should be spent consistently with the “3-year temporary period” rule, meaning that (i) the project moves forward with diligence after closing, (ii) the Commission incurs within six months after closing a substantial binding obligation to a third party to expend at least 5 percent of the bond proceeds on the project, and (iii) all bond proceeds are expended on the project within 3 years after the date of issuance of the bonds.	_____	Issue-specific

¹ Also refer to Exhibit A for bond issue-specific items.

Investment of Bond Proceeds

Bond proceeds that are not immediately spent are regarded as “nonpurpose investments” while held in reserve, or until they are spent and allocated to expenditures in the manner described above. The yield on a nonpurpose investment must be restricted unless the type of investment qualifies for a “temporary period” during which such restriction is not required. In order to prevent artificially depressing yield, nonpurpose investments must be purchased at fair market value. In addition, any arbitrage that the Commission in fact earns, even during a temporary period or in a reasonably required reserve fund, must be rebated to the federal government, unless an exception to rebate applies.

Responsibility for this category: Executive Director

<i>Task</i>	<i>Responsible Party</i>	<i>Frequency of Review</i>
Avoid the formal or informal creation of funds reasonably expected to be used to pay debt service on bonds without determining in advance whether such funds must be invested at restricted yield. (Such funds may be deemed to be “replacement proceeds” of the bonds, which are subject to yield restriction requirements.)	_____	Semi-annual
Prepare and maintain a summary of investment transactions in order to assist with arbitrage rebate compliance analysis.	_____	Quarterly
Obtain computation of the “yield” of the bonds and establish a procedure to track the return on invested bond proceeds.	_____	Issue-specific
Monitor compliance with “temporary period” expectations for spending bond proceeds (e.g., three years for a construction fund)	_____	Issue-specific
When required, provide for yield restriction of investments, or “yield reduction payments” if restrictions cannot be met.	_____	Issue-specific
Monitor compliance with 6-month, 18-month, or 24-month spending exceptions to rebate requirement, including percentage milestones required by the Treasury Regulations.	_____	Issue-specific
Engage an outside arbitrage rebate consultant to prepare computations of rebate liability and, if rebate is payable, timely file Form 8038-T and pay the amount of rebate that is due. (Rebate is ordinarily due at 5-year intervals.)	_____	Issue-specific
Maintain the special records required to establish that certain investments (e.g., guaranteed investment contracts, certificates of deposit, defeasance escrows) are purchased at fair market value; this may include the requirement of receiving multiple bids.	_____	Issue-specific

Use of Bond Financed Facilities

Property financed with tax-exempt bond proceeds generally must be used for governmental purposes and not used for, secured or paid by, or leased to any private trade or business. However, a *de minimis* amount of private use (no more than 10%) is allowed in most circumstances, as is use by the general public. In addition, no more than 5% of proceeds of bonds allocated to private use may be used in connection with private business use that is unrelated or disproportionate to the governmental use financed by the issue. Service contracts, management contracts and other arrangements may be maintained with private or federal government entities without implicating private use so long as certain regulatory safe harbors are met or the contract is reviewed and approved by bond counsel.

Responsibility for this category: Executive Director

<i>Task</i>	<i>Responsible Party</i>	<i>Frequency of Review</i>
Establish internal processes for tracking which outstanding bond issues financed which facilities and in what amounts.	_____	Annual
Make periodic reviews to ensure there is no more than 10% in aggregate amount of bond-financed facilities that can be attributed to private use or special legal entitlements (arrangements comparable to the conveyance of priority rights to use bond-financed facilities) involving private entities or federal government users (other than the <i>de minimis</i> allowable amount).	_____	Annual
Consult with bond counsel in making periodic reviews of service, management, and other contracts to ensure continuing compliance with regulatory safe harbors.	_____	Annual
Ensure that no more than 5% of the proceeds of governmental bonds allocated to private use are used in connection with private business use that is unrelated or disproportionate to the government use financed by the issue.		Annual
Promptly consult with bond counsel as to any possible change of use or private use of bond-financed facilities. "Remedial action" for such "change of use" may require redemption or defeasance of bonds or expenditures for other qualified purposes within specified time periods.	_____	As events arise

Changes in Terms

Proposed changes to the terms of tax-exempt bonds must be carefully scrutinized to determine if the changes cause the bonds to be “reissued” for federal income tax purposes. Avoiding a reissuance is often important in order to avoid the application of subsequent, often more restrictive, changes in law and tax-exempt bond eligibility requirements, and the requirements of filing a new IRS Form 8038-G, obtaining an arbitrage rebate report and in some cases obtaining new public approvals.

Responsibility for this category: Executive Director

<i>Task</i>	<i>Responsible Party</i>	<i>Frequency of Review</i>
Consult with bond counsel before engaging in post-issuance credit enhancement transactions or hedging transactions.	_____	Issue-Specific
Identify any post-issuance changes to the terms of the bonds that could be treated as a tax reissuance, such as changes in yield in an amount greater than 25 basis points, material deferral of scheduled debt service payments, including extensions of maturities, and changes in obligor or security that affect payment expectations.	_____	Issue-Specific

Record Retention

Responsibility for this category: Executive Director

<i>Task</i>	<i>Responsible Party</i>	<i>Frequency of Review</i>
Keep all closing transcripts prepared by bond counsel, including a copy of each filed IRS Form 8038-G; and maintain general records relating to each bond issue for the life of the issue (plus any refunding of the issue) plus three years.	_____	Issue- Specific
Maintain all special records required by the safe harbors for investment contracts or defeasance escrows.	_____	Issue-Specific
Maintain records of identification on the Commission’s books and records of any “qualified hedge” contract.	_____	Issue-Specific

Continuing Disclosure Requirements

Securities regulations applying to publicly issued bonds, and in many cases loan covenants in private placements, require continuing disclosure obligations.

Responsibility for this category: Executive Director

<i>Task</i>	<i>Responsible Party</i>	<i>Frequency of Review</i>
<p>Manage preparation and dissemination of required annual disclosures of financial and operational information, including:</p> <ul style="list-style-type: none"> (a) Audited financial statements of the Commission; and (b) Updated operating data of the type described in the Official Statement for the Series 2018A Bonds in (i) Table I: "Historical Hampton Roads Transportation Fund Revenues," (ii) Appendix E, Table 1: "HRTF Revenues Fiscal Year 2014 to Date," (iii) Appendix E, Table 2: "Hampton Roads Transportation Fund (HRTF) Revenues and Expenditures," and (iv) Appendix E, Table 3: "Hampton Roads Transportation Fund (HRTF) Transportation Project Expenditures." 	_____	Annual
<p>Review required event notices list (applicable events must be disclosed on EMMA no more than ten (10) business days after their occurrence):</p> <ul style="list-style-type: none"> (a) Principal and interest payment delinquencies; (b) Non-payment related defaults, if material; (c) Unscheduled draws on any debt service reserves maintained with respect to the bonds, reflecting financial difficulties; (d) Unscheduled draws on any credit enhancement maintained with respect to the bonds, reflecting financial difficulties; (e) Substitution of credit or liquidity providers, or their failure to perform; (f) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the bonds, or other material events affecting the tax status of the bonds; (g) Modifications to rights of bondholders, if material; (h) Bond calls, if material, and tender offers; (i) Defeasance of all or any portion of the bonds; (j) Release, substitution, or sale of property securing repayment of the bonds, if material; (k) Rating changes; (l) Bankruptcy, insolvency, receivership or similar event of the issuer; (m) Consummation of a merger, consolidation, or acquisition involving the issuer or the sale of all or substantially all of the assets of the issuer, other than in the ordinary course of business, or the entry into a definitive agreement to undertake such a transaction; and (n) Appointment of a successor or additional bond trustee or the change of name of a trustee, if material. 	_____	As events arise

Voluntary Disclosure

If the Commission chooses to provide information to the market beyond what is specifically required by its continuing disclosure obligations (discussed above), all releases of information which can be expected to reach the bond market must be in compliance with the anti-fraud rules under the Securities Exchange Act (“Rule 10b-5”) (i.e., the information that is provided must not be materially inaccurate or misleading in the context in which it is provided). In addition, disparities in disclosure by a municipal bond issuer to various investors should be minimized, as such disparities can negatively impact market perception of an issuer and can lead to Rule 10b-5 claims. The best course of action is to take steps to assure uniform dissemination of information to the maximum extent practicable, such as through posting of disclosures on the Electronic Municipal Market Access System (“EMMA”) of the Municipal Securities Rulemaking Board.

Responsibility for this category: Executive Director

<i>Task</i>	<i>Responsible Party</i>	<i>Frequency of Review</i>
Designate a municipal bonds investor-relations specialist, responsible for responding to inquiries from market participants.	_____	Annual
Disclosed information should be periodically reviewed to determine whether inconsistent information is being provided through marketing materials, press kits, or Internet sites.	_____	Quarterly
Maintain a record of all contacts with market participants, including contact information and summaries of the questions presented and responses (if any) given. This record should be periodically reviewed and analyzed as to the need to make public releases (EMMA postings) of information to minimize any instances of selective or inconsistent disclosure.	_____	Monthly
All information prepared for public release shall be reviewed by one or more members of the Commission and by counsel.	_____	Issue-Specific

EXHIBIT A

TRANSACTION CHECKLIST

KEY PARTICIPANTS		
	Responsible Department or Individual:	<u>Executive Director</u>
	Bond Counsel:	<u>Kaufman & Canoles</u>
	Trustee:	<u>Wilmington Trust</u>
	Paying Agent:	<u>Wilmington Trust</u>
	Rebate Specialist:	_____
	Dissemination Agent:	_____
	Other:	_____
	Other:	_____

A. TAX LAW REQUIREMENTS	Document Reference	Responsibility
1. General Matters.		
(a) Proof of filing Form 8038-G.		
(b) Any "Significant modification" to bond documents results in reissuance under Treas. Reg. § 1.1001-3 – proof of filing new Form 8038, etc., plus final rebate calculation on pre-modification bonds.		
2. Use of Proceeds		
(a) No private business use arrangement with private entity (includes federal government) beyond permitted <i>de minimis</i> amount, unless cured by remedial action under Treas. Reg. § 1.141-12.		
(i) Sale of facilities.		
(ii) Lease.		
(iii) Nonqualified management contract. Rev. Proc. 97-13.		
(iv) Nonqualified research contract. Rev. Proc. 97-14.		
(v) "Special legal entitlements" (e.g. any other arrangement comparable to the conveyance of priority rights to the use of bond financed facilities)		
(b) Change of use remedial action may consist generally of redemption or defeasance of bonds (with notice of defeasance to IRS). Where disposition is a cash sale, remedial action may be an alternative qualifying use of proceeds. Alternative use must have proof of filing new Form 8038-G, and other "new money" requirements prior to the sale of original facilities.		

3. Arbitrage.		
(a) Rebate. IRC § 148(f).		
(i) First installment of arbitrage rebate (at least 90% of rebate amount) due on fifth anniversary of bond issuance plus 60 days.		
(ii) Succeeding installments (at least 90% of rebate amount) every five years.		
(iii) Final installment (total rebate amount) 60 days after retirement of last bonds of issue.		
(iv) Monitor expenditures prior to semi-annual target dates for six-month, 18-month, or 24-month spending exception to rebate.		
(b) Monitor expenditures generally against date of issuance expectations for three-year temporary period.		
(c) For advance refunding escrows, confirm that any scheduled purchased of State and Local Government Series (SLGs) U.S. Treasury securities are made on the scheduled date.		
4. Record Retention.		
(a) Maintain general records relating to issue for life of issue plus any refunding plus three years.		
(b) Maintain special records required by safe harbor for investment contracts or defeasance escrows. Treas. Reg. § 1.148-5.		
(c) Maintain record of identification on the Commission’s books and records of “qualified hedge” contract. Treas. Reg. § 1.148-4(h)(2)(viii), § 1.148-11a(i)(3) and § 1.148-4(h)(4).		
5. Bond Proceeds Used for Reimbursement. Make any allocations of bond proceeds for reimbursement not later than 18 months after the later of (a) the date the expenditure is paid or (b) the date the Project is placed in service or abandoned, but in no event more than 3 years after the expenditure is paid. Treas. Reg. § 1.150-2.		
B. DISCLOSURE REQUIREMENTS		
1. SEC Rule 15c2-12 Requirements.		
(a) Determine applicability of continuing disclosure undertaking (“CDU”).		
(b) Identification of the Commission as “obligated person” for purposes of Rule-15c2-12.		
(c) Name of Dissemination Agent, if applicable.		

(d) Periodically determine that required CDU filings have been prepared, sent to and received by EMMA.		
(e) Any information required to be provided to EMMA:		
(i) Annual Reports.		
(1) Audited financial statements.		
(2) Historical HRTF Revenues, HRTF Revenues Last Five FYs to Date, HRTF Revenues and Expenditures, and HRTF Transportation Project Expenditures		
(ii) Other information.		
(1) Change of fiscal year.		
(2) Other information specified in CDU.		
(f) Event Disclosure. Notification by the Commission to EMMA, in timely manner, of any following events with respect to bonds, if event is material within the meaning of the federal securities laws:		
(i) Principal and interest payment delinquencies.		
(ii) Non-payment related defaults, if material.		
(iii) Unscheduled draws on any debt service reserves maintained with respect to the bonds, reflecting financial difficulties.		
(iv) Unscheduled draws on any credit enhancement maintained with respect to the bonds, reflecting financial difficulties.		
(v) Substitution of credit or liquidity providers, or their failure to perform.		
(vi) Adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the bonds, or other material events affecting the tax status of the bonds.		
(vii) Modifications to rights of bondholders, if material.		
(viii) Bond calls, if material, and tender offers.		
(ix) Defeasance of all or any portion of the bonds.		
(x) Release, substitution or sale of property securing repayment of the bonds, if material.		
(xi) Rating changes.		

(xii) Bankruptcy, insolvency, receivership or similar event		
(xiii) Consummation of a merger, consolidation, or acquisition or the sale of all or substantially all of the assets, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such action, other than pursuant to its terms, if material		
(xiv) Appointment of a successor or additional trustee or the change of name of a trustee, if material		
(xv) Failure of the Commission on or before the date required by disclosure agreement to provide annual financial and operating information to the persons and in the manner required by any disclosure agreement		
(g) Failure of the Commission to timely file financial information (including audited financial statements) and operating data with EMMA.		
<p>2. Notification to Underwriters of Bonds.</p> <p>Determination of whether bond purchase agreement requires the Commission to notify underwriters for a specified period of time of any fact of event that might cause the official statement to contain any untrue statement of material fact or omit to state a material fact necessary to make the statements made therein, in light of the circumstances in which they were made, not misleading.</p>		
3. Information Required to be Filed with Other Entities.		
(a) Trustee or Bondholder.		
(b) Rating Agencies.		
(c) Bond Insurer (if any).		
(d) Credit Enhancer (if any).		
(e) Examples:		
(i) Financial records.		
(1) Annual.		
(2) Quarterly.		
(ii) Budgets.		
(iii) Issuance of additional bonds.		
(iv) Events of default.		
(v) Notices of redemption.		
(vi) Amendments to bond documents.		

<p>4. Local Disclosure. Any Virginia and/or local requirements.</p>		
<p>C. MISCELLANEOUS REQUIREMENTS</p>		
<p>1. Investments. Compliance with permitted investments.</p>		
<p>2. Derivatives. Ongoing compliance with derivatives contracts, including any posting of collateral.</p>		

XV. Investment Policy

STATEMENT OF INVESTMENT POLICY

(Adopted June 16, 2016, Revised December 13, 2018 and June 20, 2019)

A. INTRODUCTION

The Hampton Roads Transportation Accountability Commission (“HRTAC” or “Commission”) is a political subdivision of the Commonwealth of Virginia created under §33.2-2601 et seq. of the Code of Virginia. All cash and investment activities shall be conducted in accordance with applicable law, including the Code of Virginia Hampton Roads Transportation Fund (“HRTF”; §33.2-2600 et seq.), Security for Public Deposits Act (“SPDA”; §2.2-4400 et seq.), Investment of Public Funds Act (§2.2-4500 et seq.), and Administration of the Transportation Trust Fund (§33.2-1525), the provisions of any applicable bond resolutions, and this Investment Policy (the “Policy”).

B. SCOPE

This Policy applies to the deposit and investment activities of all HRTAC funds that are eligible for investment except for any funds set aside for post-employment employee benefits. All financial assets of all funds including Hampton Roads Transportation Fund shall be administered in accordance with the provisions of the Policy. Although these funds may be pooled for investment purposes, they may be segregated as necessary for accounting and budgetary reporting purposes. For the purpose of this Policy, these funds are referred to collectively as the “Investment Portfolio”.

C. OBJECTIVES

All investments and deposits will be managed to accomplish the following fundamental goals:

- **Safety of Principal** - The single most important objective is the preservation of principal of those funds within the Investment Portfolio.
- **Maintenance of Liquidity** - The Investment Portfolio will be managed at all times with sufficient liquidity to meet all projected disbursement needs as well as to fund capital projects and other operational requirements which may reasonably be anticipated.
- **Maximizing Return** - The Investment Portfolio shall be managed so as to maximize the return on investments within the context and parameters set forth by the safety and liquidity objectives above.

D. STANDARD OF PRUDENCE

Public funds held and invested by HRTAC shall be held in trust for the citizens of the member jurisdictions and any investment of such funds shall be made with the care, skill, prudence, and diligence under the circumstances then prevailing that a person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

E. DELEGATION OF AUTHORITY

The Commission is responsible for the adoption of the Investment Policy, and must approve any revisions or alterations made to it.

HRTAC's Executive Director shall have responsibility for the operation of the cash management and investment program subject to: the Commission's Policies for the Management of Cash, Bank Accounts, and Credit and Debit Cards; the Commission's Policy Relating to Procurement of Goods and Services, Including Procedures for Small Purchases; this Investment Policy; and other policies adopted by the Commission.

Subject to the approval of the Commission, the Executive Director may engage external investment advisors as defined in this Policy, under Section M. Engagement of Investment Managers, to assist in managing HRTAC's Investment Portfolio and to provide advice on the administration of cash and investment activities.

No member of the Commission, or the Executive Director, or any employee of the Commission acting in accordance with Code of Virginia Section §33.2-1525 shall be personally liable for any loss relating to an investment in the absence of negligence, malfeasance, misfeasance, or nonfeasance.

F. ETHICS AND CONFLICTS OF INTEREST

The Executive Director and any HRTAC staff involved in the cash management and investment processes shall comply with the Code of Virginia Section §2.2-3100 et seq., the State and Local Government Conflict of Interests Act. Specifically, no staff shall:

- a) accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties; or
- b) accept any business or professional opportunity when he knows there is a reasonable likelihood that the opportunity is being afforded to influence him in the performance of his official duties.

The Executive Director and HRTAC staff shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could impair his ability to make impartial decisions.

G. AUTHORIZED INVESTMENTS

Subject to applicable state laws, federal laws, bond resolutions, and in the case of the LGIP, VIP and Virginia SNAP funds, adoption by the Commission of necessary Resolutions, HRTAC's Investment Portfolio may be invested in the following Authorized Investments. The Executive Director may, but shall not be obligated to, impose additional requirements and restrictions to ensure that HRTAC's goals are met.

1. **U.S. Treasury Obligations.** Bills, notes and any other obligation or securities issued by or backed by the full faith and credit of the United States Treasury. The final maturity shall not exceed a period of five (5) years from the time of purchase. For all Authorized Investments the "time of purchase" shall be interpreted as the transaction settlement date.
2. **Federal Agency/Government Sponsored Enterprise Obligations.** Bonds, notes and other obligations of the United States, and securities guaranteed by any federal government agency or instrumentality or government sponsored enterprise, with a rating of at least "AA" (or its equivalent) by at least two NRSROs, one of which will be either Moody's Investors Services, Inc. ("Moody's"), or Standard & Poor's, Inc. ("S&P"). The final maturity shall not exceed a period of five (5) years from the time of purchase. Any investment in mortgage backed securities or collateralized mortgage obligations shall have a weighted average life that does not exceed five (5) years from the time of purchase.
3. **Municipal Obligations.** Bonds, notes and other general obligations of the Commonwealth of Virginia and its agencies, authorities, and political subdivisions upon which there is no default, has a rating of at least "AA" by S&P and "Aa" by Moody's, matures within three (3) years of the date of purchase, and otherwise meets the requirements of Code of Virginia §2.2-4501.
4. **Commercial Paper.** "Prime quality" commercial paper, with a maturity of 270 days or less, issued by domestic corporations (corporations organized and operating under the laws of the United States or any state thereof) provided that the issuing corporation, or its guarantor, has a short-term debt rating of at least two of the following: P-1 by Moody's Investors Service, Inc., A-1 by Standard & Poor's, Inc., F-1 by Fitch Investor's Services, Inc., and D-1, by Duff and Phelps, Inc., and that otherwise meets the requirements of Code of Virginia §2.2-4502.
5. **Bankers' Acceptance.** Issued by domestic banks or a federally chartered office of a foreign bank, which are eligible for purchase by the Federal Reserve System with a maturity of 180 days or less. The issuing corporation, or its guarantor, must have a short-term debt rating of no less than "A-1" by S&P and "P-1" by Moody's.
6. **Corporate Notes.** High quality corporate notes with a rating of at least "A" by S&P and "A" by Moody's. For notes with ratings of A by S&P or Moody's the final maturity shall not exceed a period of three (3) years from the time of purchase. For notes with ratings of at least AA by S&P and Aa by Moody's, the final maturity shall not exceed a period of five (5) years from the time of purchase

7. **Negotiable Certificates of Deposit and Bank Deposit Notes.** Negotiable certificates of deposit and negotiable bank deposit notes of domestic banks and domestic offices of foreign banks with a rating of at least “A-1” by S&P and “P-1” by Moody’s for maturities of one year or less, and a rating of at least “AA” by S&P and “Aa” by Moody’s, for maturities over one (1) year. The final maturity may not exceed a period of five (5) years from the time of purchase.
8. **Bank Deposits and Non-Negotiable Certificates of Deposit.** Demand deposits, time deposits, and other deposits that comply with all aspects of SPDA or with §2.2-4518 with a final maturity no greater than two (2) years.
9. **Repurchase Agreements.** In overnight repurchase agreements provided that the following conditions are met:
 - a. the contract is fully secured by deliverable U.S. Treasury and Federal Agency/Government Sponsored Enterprise obligations as described in paragraphs 1 and 2 above, including the maximum maturity of three (3) years, having a market value at all times of at least one hundred and two percent (102%) of the amount of the contract;
 - b. a Master Repurchase Agreement or specific written Repurchase Agreement governs the transaction;
 - c. the securities are free and clear of any lien and held by an independent third party custodian acting solely as agent for HRTAC, provided such third party is not the seller under the repurchase agreement;
 - d. a perfected first security interest under the Uniform Commercial Code in accordance with book entry procedures prescribed at 31 C.F.R. 306.1 et seq. or 31 C.F.R. 350.0 et seq. in such securities is created for the benefit of the City;
 - e. the counterparty is a:
 - i. primary government securities dealer who reports daily to the Federal Reserve Bank of New York, or
 - ii. a bank, savings and loan association, or diversified securities broker-dealer having at least \$5 billion in assets and \$500 million in capital and subject to regulation of capital standards by any state or federal regulatory agency; and
 - f. the counterparty meets the following criteria:
 - i. a long-term credit rating of at least ‘AA’ or the equivalent from an NRSRO.
 - ii. has been in operation for at least 5 years, and
 - iii. is reputable among market participants.
10. **Money Market Mutual Funds (Open-Ended Investment Funds).** Shares in open-end, no-load investment funds provided such funds are registered under the Investment Company Act of 1940 and provided that the fund is rated at least “AAAm” or the equivalent by an NRSRO. The mutual fund must comply with all requirements of Rule 2(a)-7, or any successor rule, of the United States Securities and Exchange Commission, provided the investments by such funds are restricted to investments otherwise permitted by the Code of Virginia for political sub-divisions.

11. **Local Government Investment Pool (LGIP).** A specialized commingled investment program that operates in compliance with Government Accounting Standards Board’s Statement 79 (“GASB 79) that was created in the 1980 session of the General Assembly (Code of Virginia §2.2-4700 et seq.) designed to offer a convenient and cost-effective investment vehicle for public funds. The LGIP is administered by the Treasury Board of the Commonwealth of Virginia and is rated AAAM by Standard & Poor’s.
12. **Virginia Investment Pool (VIP).** A commingled investment program organized as a local government investment pool with oversight provided by a shareholder elected board of trustees. VIP is designed for the investment of longer-term monies that are not necessary for near term disbursement. VIP has a bond fund rating from Standard and Poor’s of AAf/S1.
13. **Virginia State Non-Arbitrage Program’s (Virginia SNAP) SNAP Fund.** A specialized commingled investment program that operates in compliance with GASB 79 and that was authorized by the Government Non-Arbitrage Act in 1989 (Code of Virginia §2.2-4700 et seq.). Virginia SNAP and the SNAP Fund are administered by the Treasury Board of the Commonwealth of Virginia. Virginia SNAP offers several investment options, including the SNAP Fund, and arbitrage rebate reporting services that are specifically designed for the investment of tax exempt bond proceeds.

H. PORTFOLIO DIVERSIFICATION

The Investment Portfolio shall be diversified by security type and institution. The maximum percentage of the portfolio permitted in each eligible security is as follows:

Permitted Investment	Sector Limit	Issuer Limit
U.S. Treasury Obligations	100%	100%
Federal Agency/GSE Obligations	100%	35%
Municipal Obligations	15%	5%
Commercial Paper	35%	5%
Bankers’ Acceptances	35%	5%
Corporate Notes	25%	5%
Negotiable Certificates of Deposit and Bank Deposit Notes	25%	5%
Bank Deposits and Non-Negotiable Certificates of Deposit	100%	100%
Repurchase Agreements	25%	25%
Money Market Mutual Funds	25%	25%
LGIP	100%	100%
VIP	25%	25%
Virginia SNAP-SNAP Fund (Proceeds of Tax Exempt Bonds Only)	100%	100%

In addition, HRTAC will hold no more than 10% of the outstanding shares of any comingled investment program including but not limited to money market mutual funds, LGIP, VIP, and/or the SNAP Fund.

I. MAXIMUM MATURITY

Maintenance of adequate liquidity to meet HRTAC's cash flow needs is essential. Accordingly, to the extent possible, the Investment Portfolio will be structured in a manner that ensures sufficient cash is available to meet anticipated liquidity needs. Whenever practical, selection of investment maturities will be consistent with known cash requirements in order to minimize the potential for a forced sale of securities in order to provide cash for disbursement needs.

To manage market value volatility, the duration and/or weighted average maturity of the total Investment Portfolio shall not exceed two (2) years.

J. SECURITY DOWNGRADES

In the event that any authorized investment held in the Investment Portfolio is downgraded below the minimum credit rating requirement established in Section G of this policy, the Executive Director shall be notified immediately and the downgraded security shall be liquidated in 30 days unless the Commission authorizes otherwise.

K. INVESTMENT OF BOND PROCEEDS

HRTAC intends to comply with all applicable sections of the Internal Revenue Code relating to Arbitrage Rebate and the investment of bond proceeds. All investment records will be maintained to ensure compliance with all regulations.

L. SELECTION OF BROKER/DEALERS

The Executive Director will maintain a list of broker/dealers that are approved for investment purposes. All broker/dealers who desire to provide investment services will be provided with current copies of the HRTAC's Investment Policy. Before an organization can provide investment services to HRTAC, it must confirm in writing that it has reviewed the Investment Policy and will not recommend or sell to HRTAC any security that is in conflict with the Policy.

At the request of the Executive Director, broker/dealers will supply HRTAC with information sufficient to adequately evaluate their financial capacity and creditworthiness. The following information will be provided:

- 1) Audited financial statements demonstrating compliance with state and federal capital adequacy guidelines;
- 2) Proof of Financial Institution Regulatory Authority ("FINRA") certification
- 3) Proof of state registration;
- 4) Certification of having read and understood and agreeing to comply with the HRTAC's investment policy;

- 5) Evidence of adequate insurance coverage;
- 6) A sworn statement by an authorized representative of the broker/dealer pledging to adhere to “Capital Adequacy Standards” established by the Federal Reserve Board and acknowledging the broker/dealer understands that the HRTAC has relied upon this pledge; and
- 7) any additional information requested by the Executive Director in evaluating the creditworthiness of the institution.

Only firms meeting the following requirements will be eligible to serve as broker/dealers for HRTAC:

- 1) “Primary” dealers and regional dealers that qualify under Securities and Exchange Commission Rule 15C3-1 (uniform net capital rule);
- 2) Capital of at least \$10,000,000;
- 3) Registered as a dealer under the Securities Exchange Act of 1934;
- 4) Member of the Financial Institution Regulatory Authority (“FINRA”);
- 5) Registered to sell securities in the Commonwealth of Virginia; and
- 6) Engaged in the business of effecting transactions in U.S. government and agency obligations for at least five (5) consecutive years.

If an external third-party Investment Manager is engaged, the Executive Director may designate that Investment Manger to maintain a list of approved broker/dealers.

M. ENGAGEMENT OF INVESTMENT MANAGERS

HRTAC may engage one or more qualified firms to provide investment management services. All investment management firms who desire to provide investment services to HRTAC will be provided with current copies of the Investment Policy. Before an organization can provide investment services to HRTAC, it must confirm in writing that it has reviewed the Investment Policy and will not purchase for HRTAC any security that, at the time of purchase, is in conflict with the Policy.

Only firms meeting the following requirements will be eligible to serve as investment manager for HRTAC:

- 1) Registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940;
- 2) Must provide to HRTAC an annual updated copy of Form ADV, Part II;
- 3) Must be registered to conduct business in the Commonwealth of Virginia; and
- 4) Must have proven experience in providing investment management services under Code of Virginia §2.2-4500 et seq.

Any firm engaged by HRTAC to provide investment services shall:

- 1) Maintain a list of approved security brokers/dealers selected by creditworthiness who are authorized to provide investment services in the Commonwealth of Virginia;
- 2) Provide monthly reports of transactions and holdings to the Executive Director;

- 3) Provide quarterly performance reports that display investment performance in comparison to HRTAC's investment benchmarks;
- 4) Upon request must show that it has solicited at least three bids for any security purchased or sold on behalf of HRTAC; and
- 5) Not collect any soft dollar fees from any broker/dealer or other financial firm in relation to services provided to HRTAC.

N. COMPETITIVE SELECTION OF INVESTMENT INSTRUMENTS

All securities purchases and sales will be transacted only with designated broker/dealers through a formal and competitive process requiring the solicitation and evaluation of at least three bids/offers, taking into consideration current market conditions. Electronic bids will be accepted. HRTAC or its Investment Manager will accept the bid which: (a) offers the highest rate of return within the maturity required and (b) optimizes the investment objective of the overall Investment Portfolio, including diversification requirements. When selling a security, the bid will be selected that generates the highest sale price, consistent with the diversification requirements.

O. SAFEKEEPING AND CUSTODY

All investment securities purchased by or for HRTAC shall be held by a third-party custodial agent that may not otherwise be counterparty to the investment transaction. The custodial agent shall annually provide a copy of its most recent Statement on Standards for Attestation Engagements (SSAE) No. 16 report.

All securities in HRTAC's Investment Portfolio will be held in the name of HRTAC and will be free and clear of any lien. Further, all investment transactions will be conducted on a delivery-vs.-payment basis. On a monthly basis, the custodial agent will provide reports that list details of all securities held for HRTAC including CUSIP, original cost, and market value as of month-end.

Original copies of non-negotiable certificates of deposit and confirming copies of all other investment transactions must be delivered to HRTAC or its custodial agent.

P. RECORDS AND REPORTS

The Executive Director will review an investment performance report on at least a quarterly basis as provided by external investment managers and pooled investment programs. The Executive Director shall report investment performance to the Commission on a quarterly basis.

In addition to quarterly performance reports, monthly reports of balances and holdings shall be provided to the Commission. The reports shall consist of a summary of cash and investments by depository and manager and a listing of all investments.

Q. PERFORMANCE STANDARDS

The Investment Portfolio will be designed to obtain at least a market level rate of return, given budgetary and economic cycles, commensurate with HRTAC's risk tolerances and cash flow needs. HRTAC's portfolio management approach will be active, allowing periodic restructuring of the Investment Portfolio to take advantage of current and anticipated interest rate movements.

The returns on the Investment Portfolio will be compared on a quarterly basis to indices of U.S. Treasury securities having similar maturities or to other appropriate benchmarks as selected by the Executive Director. For funds having a weighted average maturity greater than 90 days, performance will be computed on a total return basis.

XVI. Fiscal Policy Statements

1. All cash accounts owned by HRTAC will be held in financial institutions which are insured by the FDIC.
2. All capital expenditures which exceed five thousand dollars (\$5,000) will be capitalized.
3. No salary advances will be made under any circumstances.
4. Reimbursements will be paid upon complete expense reporting and approval using the official HRTAC Reimbursement form. Reimbursements to the Executive Director will be authorized by the Commission Chair.
5. The Executive Director, CFO and two designated Commission members are the signatories on HRTAC's bank accounts. All disbursements require a second signature by an authorized Commission or staff member. Each set of signatures must be either the Executive Director or CFO, AND one of the two Commission members.
6. Bank statements will be reconciled monthly and all statements will be given to the CFO for review.
7. Accounting and personnel records will be kept in locked file cabinets in the finance department or human resources department and only parties with financial and/or HR responsibilities will have access.

XVII. Records Retention

1. **Purpose.** The purpose of this policy is to ensure that the Hampton Roads Transportation Accountability Commission (“HRTAC”) is compliant with federal and state requirements for records retention.
2. **General.** The Virginia Public Records Act (Code of Virginia §§ 42.1-76 et seq.) defines public records: “Public record” or “record” means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.
3. **Specific Requirements of Policy.** HRTAC documents shall be maintained for the periods indicated in the schedules adopted by the Library of Virginia in accordance with the Public Records Act.
4. **Electronic Records.** Electronic records will be handled as if they were paper documents. If there is sufficient reason to keep an email message, the message should be printed in paper copy and kept in the appropriate file or moved to an “archive” computer file folder.
5. **Safekeeping.** The Executive Director shall designate a staff member with responsibility for compliance with this policy. HRTAC documents shall be maintained in a safe, and secure, and accessible manner. Electronic files will be backed up as needed.
6. **Destruction of Documents.** Financial and employee related documents will be destroyed by shredding. Document destruction will be suspended immediately upon any indication of an official investigation or when a lawsuit is filed or appears imminent. Destruction will be reinstated upon conclusion of the investigation.

XVIII. Federal Programs Manual

Introductions

This manual sets forth the policies and procedures used by the Hampton Roads Transportation Accountability Commission (the Commission) to administer federal funds and funds provided through federal loan proceeds such as the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan program. This manual contains the internal controls and Federal programs standards established under 2CFR 200 and used by the Commission to ensure that all federal funds are lawfully expended. Employees of the Commission are expected to review this manual to gain familiarity and understanding of the Commission's rules and practices.

Conflict of Interest (2CFR 200.112)

The Commission will disclose in writing any potential conflict of interest to the federal awarding agency or pass-through entity in accordance with applicable federal awarding agency policy. A conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Commission may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts

Financial Management System

The Commission maintains a proper financial management system to receive Federal programs proceeds and to expend funds associated with such loan. Certain fiscal controls and procedures must be in place to ensure that all financial management system requirements are met. Failure to meet a requirement may result in actions that could include return of funds or termination of the loan.

Financial Management Standards (2CFR 200.302)

The standards for financial management systems are found in 2CFR 200.302. The required standards include:

- **Identification**

In its accounts the Commission must identify all federal funds received and expended and the federal programs under which they were received. Federal program and loan identification must include, as applicable, the CFDA title and number, federal award identification number and year, name of the federal agency, and the name of the pass-through entity, if applicable.

- **Financial Reporting**

Accurate, current, and complete disclosure of the financial results of each federal loan are made in accordance with the financial reporting requirements set forth in the Government

Accounting Standards Board (GASB) on the Schedule of Expenditures of Federal Awards (SEFA), and in accordance with Generally Accepted Accounting Principles (GAAP).

- **Accounting Records**

The Commission maintains records which adequately identify the source and application of funds provided for federally-assisted activities. These records contain information pertaining to federal loans, authorizations, financial obligations, unobligated balances, assets, expenditures, income, and interest and be supported by source documentation.

- **Internal Controls**

Effective control and accountability must be maintained for all funds, real and personal property, and other assets. The Commission must adequately safeguard all such property and must assure that it is used solely for authorized purposes.

"Internal controls" are tools to help program and financial managers achieve results and safeguard the integrity of their program. Internal controls should be designed to provide reasonable assurance that the following objectives are achieved:

- Effectiveness and efficiency of operations;
- Adequate safeguarding of property;
- Assurance property and money is spent in accordance with the Federal programs agreement and to further the selected objectives; and
- Compliance with applicable laws and regulations.

- **Budget Control**

Actual expenditures or outlays are compared with budgeted amounts for each federal award.

- **Cash Management**

The commission has written procedures in the Accounting Manual to implement the cash management requirements found in 2 CFR 200.302 and 2 CFR 200.305.

- **Allowable Costs**

The Commission has adopted and will adhere to 2 CFR 200, Subpart E – Cost Principles (see attached).

Overview of the Financial Management/Accounting System

The Commission uses Denali fund accounting software. Purchase orders are created and tracked in Word and Excel, respectively. Capital assets are tracked on an Excel spreadsheet. The budget is developed in excel and monitored by the Executive Director. For identifying Federal programs awards, expenditures are identified in Denali by general ledger number and fund.

The Accounting Manager is responsible for compiling the SEFA, which is reviewed by the Senior Accounting Manager.

Accounting Records

The accounts of the Commission are organized on the basis of funds, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts, which comprise of assets, liabilities, fund balances, revenues, and expenditures.

Spending Federal Funds

The Commission has adopted and will adhere to 2 CFR 200, Subpart E – Cost Principles (see attached).

Determining Allowability of Costs

The Commission has adopted and will adhere to 2 CFR 200, Subpart E – Cost Principles (see attached).

Federal Cash Management Policy/Procedures (2CFR 200.305)

The Commission will comply with applicable methods and procedures for payment that minimize the time elapsing between the transfer of funds and disbursement by the Commission, in accordance with the Cash Management Improvement Act at 31 CFR Part 205. Generally, the Commission receives Federal programs funds on a reimbursement basis.

However, if the Commission receives an advance in Federal programs funds, then the Commission will remit interest earned on the advanced payment quarterly to the federal agency. The Commission may retain interest amounts up to \$500 per year for administrative expenses. 2CFR 200.305(b)(9)

Payment Methods

Reimbursements: The Commission will initially pay expenditures with nonfederal funds and then request reimbursement from the Federal programs. All reimbursements are based on actual disbursements, not on obligations.

Consistent with state and federal requirements, The Commission will maintain source documentation supporting the federal expenditures (invoices, time sheets, payroll stubs, etc.) and will make such documentation available for review upon request.

Reimbursements of actual expenditures do not require interest calculations.

Timely Obligation of Funds

When Obligations are Made

Obligations are orders placed for property and services, contracts and subawards made, and similar transactions during a given period that require payment by the Commission during the same or a future period. 34 CFR 200.71

The following table illustrates when funds are determined to be obligated under federal regulations:

If the obligation is for:	The obligation is made:
Acquisition of property	On the date which the Commission makes a binding written commitment to acquire the property
Personal services by an employee of the Commission	When the services are performed
Personal services by a contractor who is not an employee of the Commission	On the date which the Commission makes a binding written commitment to obtain the services
Public utility services	When the Commission receives the services
Travel	When the travel is taken
Rental of Property	When the Commission uses the property

Period of Performance of Federal Funds

All obligations must occur on or between the beginning and ending dates of the grant project. (2 CFR 200.309) This period of time is known as the period of performance. (2 CFR 200.77) The period of performance is dictated by statute and will be indicated in the Federal programs agreement.

Procurement System

The Commission maintains a Procurement Policy consistent with Virginia Public Procurement Act (VPPA). The following is a recap of the Commission's procurement policy and additional requirements for purchases using TIFIA fund.

Responsibility for Purchasing

For all purchases greater than \$5,000 the Commission requires the usage of a Purchase Order. All purchase orders are maintained and issued by the Procurement Associate. When the Procurement Associate receives the Purchase Approval Form with the Executive Director and Chief Financial Officer's signatures a purchase order will be cut and emailed to the vendor and requesting person. A copy of the purchase order is sent to accounts payable personnel for when the invoice is received.

For all purchases under \$5,000 approved personnel have the authority to purchase necessary goods and services with the Executive Director's final approval when the invoice is received.

General Procurement Standards (2CFR 200.318)

(a) The Commission uses its own documented procurement procedures located in the Accounting Manual which reflect applicable state and local regulations, provided that the procurements conform to applicable federal law and the standards identified in this part.

(b) The Commission maintains oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(c)(1) No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the Commission may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the Commission.

(c)(2) Does not apply. The Commission does not have a parent, affiliate, or subsidiary organization.

(d) The Commission avoids acquisition of unnecessary or duplicate items. Consideration is given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(e) When applicable, the Commission will enter into state and local intergovernmental agreements for procurement or use common or shared goods and services. Competition requirements will be met with applied to documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.

(f) The Commission will use federal and state excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(g) When applicable, the Commission will use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the over lower cost.

(h) Contracts will only be awarded to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(i) Sufficient records will be kept to detail the history of the procurement. These records will include, but are not limited to, the following: Rational for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(j) The Commission will not use a time-and-materials type contract.

(k) The Commission will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the Commission of any contractual responsibilities under its contracts. The federal awarding agency will not substitute its judgement for that of the Commission unless the matter is primarily a federal concern. Violations of law will be referred to the local, state, or federal authority having proper jurisdiction.

Competition (2CFR 200.319)

(a) All procurement transactions for the acquisition of property or services required under a federal award will be conducted in a manner providing full and open competition consistent with the standards of this section and 2CFR 200.320.

(b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurement. Some of the situations considered to be restrictive of competition include but are not limited to:

- 1) Placing unreasonable requirements on firms in order for them to qualify to do business;
- 2) Requiring unnecessary experience and excessive bonding;
- 3) Noncompetitive pricing practices between firms or between affiliated companies;
- 4) Noncompetitive contracts to consultants that are on retainer contracts;
- 5) Organizational conflicts of interest;
- 6) Specifying only a "brand name" product instead of allowing "an equal" product to be offered and describing the performance or other relevant requirements of the procurement; and
- 7) Any arbitrary action in the procurement process.

(c) The Commission will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(d) The Commission has written procedures for procurement transactions. These procedures ensure that all solicitations:

- 1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equivalent" description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
- 2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) The Commission will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the Commission will not preclude potential bidders from qualifying during the solicitation period.

Methods of procurement to be followed (2CFR 200.320)

The Commission will use one of the following methods of procurement:

(a) Procurement by micro-purchases. Procurement by micro-purchase is the acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (\$500). To the extent practicable, the Commission must distribute micro-purchases equitably among qualified suppliers. Micro-purchases may be awarded without soliciting competitive quotations if the Commission considers the price to be reasonable.

(b) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the Simplified Acquisition Threshold (\$100,000). If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources.

(c) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm fixed price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in paragraph (c)(1) of this section apply.

(1) For sealed bidding to be feasible, the following conditions should be present:

- i. A complete, adequate, and realistic specification or purchase description is available;
- ii. Two or more responsible bidders are willing and able to compete effectively for the business; and
- iii. The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(2) If sealed bids are used, the following requirements apply:

- i. Bids must be solicited from an adequate number of known suppliers, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- ii. The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services for the bidder to properly respond;
- iii. All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- iv. A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine

the low bid when prior experience indicates that such discounts are usually taken advantage of; and

v. Any or all bids may be rejected if there is a sound documented reason.

(d) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

- 1) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals must be considered to the maximum extent practical;
- 2) Proposals must be solicited from an adequate number of qualified sources;
- 3) The Commission must have a written method for conducting technical evaluations of the proposals received and for selecting recipients;
- 4) Contracts must be awarded to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and
- 5) The Commission may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(e) Procurement by noncompetitive proposals. Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source and may be used only when one or more of the following circumstances apply:

- 1) The item is available only from a single source;
- 2) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- 3) The Federal awarding agency or pass-through entity expressly authorizes noncompetitive proposals in response to a written request from the Commission; or
- 4) After solicitation of several sources, competition is determined inadequate.

Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms. (2CFR 200.321)

c) The Commission must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

d) Affirmative steps must include:

Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

- 6) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- 7) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- 8) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
- 9) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- 10) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.

Domestic preferences for procurements (2CFR 200.322)

- (d) To the greatest extent practicable under a federal award, the Commission will provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under Federal programs.
- (e) For purposes of this section:
 - 1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - 2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Procurement of recovered materials (2CFR 200.323)

The Commission is a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

Contract cost and price (2CFR 200.324)

- (a) The Commission will perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The

method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the Commission will make independent estimates before receiving bids or proposals.

(b) The Commission will negotiate profit as a separate element of the price for each contract in which there is no price competition and, in all cases, where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the Commission under Subpart E—Cost Principles of this part. The Commission may reference its own cost principles that comply with the Federal cost principles.

(d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

Federal awarding agency or pass-through entity review (2CFR 200.325)

(a) The Commission will make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the Commission desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(b) The Commission will make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:

6) The Commission's procurement procedures or operation fails to comply with the procurement standards in this part;

7) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;

8) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;

9) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

10) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.

(f) The Commission is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.

- 3) The Commission may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
- 4) The Commission may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the Commission that it is complying with these standards. The Commission must cite specific policies, procedures, regulations, or standards as following these requirements and have its system available for review.

Bonding requirements (2CFR 200.326)

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the Commission provided that the Federal awarding agency or pass-through entity has decided that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**2 CFR 200, Subpart E – Cost Principles Attachment Follows as OMB
Guidance Pages 135-176**

OMB Guidance

§ 200.400

**POST-CLOSEOUT ADJUSTMENTS AND
CONTINUING RESPONSIBILITIES**

**§ 200.344 Post-closeout adjustments
and continuing responsibilities.**

(a) The closeout of a Federal award does not affect any of the following:

(1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

(2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

(3) Audit requirements in Subpart F—Audit Requirements of this part.

(4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this part, §§ 200.310 Insurance Coverage through 200.316 Property trust relationship.

(5) Records retention as required in Subpart D—Post Federal Award Requirements of this part, §§ 200.333 Retention requirements for records through 200.337 Restrictions on public access to records.

(b) After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

COLLECTION OF AMOUNTS DUE

§ 200.345 Collection of amounts due.

(a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the

terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the non-Federal entity; or

(3) Other action permitted by Federal statute.

(b) Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

Subpart E—Cost Principles

GENERAL PROVISIONS

§ 200.400 Policy guide.

The application of these cost principles is based on the fundamental premises that:

(a) The non-Federal entity is responsible for the efficient and effective administration of the Federal award through the application of sound management practices.

(b) The non-Federal entity assumes responsibility for administering Federal funds in a manner consistent with underlying agreements, program objectives, and the terms and conditions of the Federal award.

(c) The non-Federal entity, in recognition of its own unique combination of staff, facilities, and experience, has the primary responsibility for employing whatever form of sound organization and management techniques may be necessary in order to assure proper and efficient administration of the Federal award.

(d) The application of these cost principles should require no significant changes in the internal accounting policies and practices of the non-Federal entity. However, the accounting practices of the non-Federal entity must be consistent with these cost

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principles and support the accumulation of costs as required by the principles, and must provide for adequate documentation to support costs charged to the Federal award.

(e) In reviewing, negotiating and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should generally assure that the non-Federal entity is applying these cost accounting principles on a consistent basis during their review and negotiation of indirect cost proposals. Where wide variations exist in the treatment of a given cost item by the non-Federal entity, the reasonableness and equity of such treatments should be fully considered. See § 200.56 Indirect (facilities & administrative (F&A)) costs.

(f) For non-Federal entities that educate and engage students in research, the dual role of students as both trainees and employees (including pre- and post-doctoral staff) contributing to the completion of Federal awards for research must be recognized in the application of these principles.

(g) The non-Federal entity may not earn or keep any profit resulting from Federal financial assistance, unless explicitly authorized by the terms and conditions of the Federal award. See also § 200.307 Program income.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.401 Application.

(a) *General.* These principles must be used in determining the allowable costs of work performed by the non-Federal entity under Federal awards. These principles also must be used by the non-Federal entity as a guide in the pricing of fixed-price contracts and subcontracts where costs are used in determining the appropriate price. The principles do not apply to:

(1) Arrangements under which Federal financing is in the form of loans, scholarships, fellowships, traineeships, or other fixed amounts based on such items as education allowance or published tuition rates and fees.

(2) For IHEs, capitation awards, which are awards based on case counts or number of beneficiaries according to the terms and conditions of the Federal award.

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(3) Fixed amount awards. See also Subpart A—Acronyms and Definitions, §§ 200.45 Fixed amount awards and 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts.

(4) Federal awards to hospitals (see Appendix IX to Part 200—Hospital Cost Principles).

(5) Other awards under which the non-Federal entity is not required to account to the Federal Government for actual costs incurred.

(b) *Federal Contract.* Where a Federal contract awarded to a non-Federal entity is subject to the Cost Accounting Standards (CAS), it incorporates the applicable CAS clauses, Standards, and CAS administration requirements per the 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). CAS applies directly to the CAS-covered contract and the Cost Accounting Standards at 48 CFR parts 9904 or 9905 takes precedence over the cost principles in this Subpart E—Cost Principles of this part with respect to the allocation of costs. When a contract with a non-Federal entity is subject to full CAS coverage, the allowability of certain costs under the cost principles will be affected by the allocation provisions of the Cost Accounting Standards (e.g., CAS 414—48 CFR 9904.414, Cost of Money as an Element of the Cost of Facilities Capital, and CAS 417—48 CFR 9904.417, Cost of Money as an Element of the Cost of Capital Assets Under Construction), apply rather than the allowability provisions of § 200.449 Interest. In complying with those requirements, the non-Federal entity's application of cost accounting practices for estimating, accumulating, and reporting costs for other Federal awards and other cost objectives under the CAS-covered contract still must be consistent with its cost accounting practices for the CAS-covered contracts. In all cases, only one set of accounting records needs to be maintained for the allocation of costs by the non-Federal entity.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit entities for purpose of applicability of cost principles.

Such nonprofit organizations must operate under Federal cost principles applicable to for-profit entities located at 48 CFR 31.2. A listing of these organizations is contained in Appendix VIII to Part 200—Nonprofit Organizations Exempted From Subpart E—Cost Principles of this part. Other organizations, as approved by the cognizant agency for indirect costs, may be added from time to time.

BASIC CONSIDERATIONS

§ 200.402 Composition of costs.

Total cost. The total cost of a Federal award is the sum of the allowable direct and allocable indirect costs less any applicable credits.

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following general criteria in order to be allowable under Federal awards:

(a) Be necessary and reasonable for the performance of the Federal award and be allocable thereto under these principles.

(b) Conform to any limitations or exclusions set forth in these principles or in the Federal award as to types or amount of cost items.

(c) Be consistent with policies and procedures that apply uniformly to both federally-financed and other activities of the non-Federal entity.

(d) Be accorded consistent treatment. A cost may not be assigned to a Federal award as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated to the Federal award as an indirect cost.

(e) Be determined in accordance with generally accepted accounting principles (GAAP), except, for state and local governments and Indian tribes only, as otherwise provided for in this part.

(f) Not be included as a cost or used to meet cost sharing or matching requirements of any other federally-financed program in either the current or a prior period. See also § 200.306 Cost sharing or matching paragraph (b).

(g) Be adequately documented. See also §§ 200.300 Statutory and national

policy requirements through 200.309 Period of performance of this part.

§ 200.404 Reasonable costs.

A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. The question of reasonableness is particularly important when the non-Federal entity is predominantly federally-funded. In determining reasonableness of a given cost, consideration must be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the non-Federal entity or the proper and efficient performance of the Federal award.

(b) The restraints or requirements imposed by such factors as: sound business practices; arm's-length bargaining; Federal, state, local, tribal, and other laws and regulations; and terms and conditions of the Federal award.

(c) Market prices for comparable goods or services for the geographic area.

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the non-Federal entity, its employees, where applicable its students or membership, the public at large, and the Federal Government.

(e) Whether the non-Federal entity significantly deviates from its established practices and policies regarding the incurrence of costs, which may unjustifiably increase the Federal award's cost.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.405 Allocable costs.

(a) A cost is allocable to a particular Federal award or other cost objective if the goods or services involved are chargeable or assignable to that Federal award or cost objective in accordance with relative benefits received. This standard is met if the cost:

(1) Is incurred specifically for the Federal award;

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(2) Benefits both the Federal award and other work of the non-Federal entity and can be distributed in proportions that may be approximated using reasonable methods; and

(3) Is necessary to the overall operation of the non-Federal entity and is assignable in part to the Federal award in accordance with the principles in this subpart.

(b) All activities which benefit from the non-Federal entity's indirect (F&A) cost, including unallowable activities and donated services by the non-Federal entity or third parties, will receive an appropriate allocation of indirect costs.

(c) Any cost allocable to a particular Federal award under the principles provided for in this part may not be charged to other Federal awards to overcome fund deficiencies, to avoid restrictions imposed by Federal statutes, regulations, or terms and conditions of the Federal awards, or for other reasons. However, this prohibition would not preclude the non-Federal entity from shifting costs that are allowable under two or more Federal awards in accordance with existing Federal statutes, regulations, or the terms and conditions of the Federal awards.

(d) Direct cost allocation principles. If a cost benefits two or more projects or activities in proportions that can be determined without undue effort or cost, the cost must be allocated to the projects based on the proportional benefit. If a cost benefits two or more projects or activities in proportions that cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c) of this section, the costs may be allocated or transferred to benefited projects on any reasonable documented basis. Where the purchase of equipment or other capital asset is specifically authorized under a Federal award, the costs are assignable to the Federal award regardless of the use that may be made of the equipment or other capital asset involved when no longer needed for the purpose for which it was originally required. See also §§ 200.310 Insurance coverage through 200.316 Property trust relationship and 200.439 Equipment and other capital expenditures.

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(e) If the contract is subject to CAS, costs must be allocated to the contract pursuant to the Cost Accounting Standards. To the extent that CAS is applicable, the allocation of costs in accordance with CAS takes precedence over the allocation provisions in this part.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.406 Applicable credits.

(a) Applicable credits refer to those receipts or reduction-of-expenditure-type transactions that offset or reduce expense items allocable to the Federal award as direct or indirect (F&A) costs. Examples of such transactions are: purchase discounts, rebates or allowances, recoveries or indemnities on losses, insurance refunds or rebates, and adjustments of overpayments or erroneous charges. To the extent that such credits accruing to or received by the non-Federal entity relate to allowable costs, they must be credited to the Federal award either as a cost reduction or cash refund, as appropriate.

(b) In some instances, the amounts received from the Federal Government to finance activities or service operations of the non-Federal entity should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing or matching requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. (See §§ 200.436 Depreciation and 200.468 Specialized service facilities, for areas of potential application in the matter of Federal financing of activities.)

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.407 Prior written approval (prior approval).

Under any given Federal award, the reasonableness and allocability of certain items of costs may be difficult to determine. In order to avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the non-Federal entity may seek the prior written approval of the cognizant agency for indirect costs or the Federal

awarding agency in advance of the incurrence of special or unusual costs. Prior written approval should include the timeframe or scope of the agreement. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that element, unless prior approval is specifically required for allowability as described under certain circumstances in the following sections of this part:

- (a) § 200.201 Use of grant agreements (including fixed amount awards), cooperative agreements, and contracts, paragraph (b)(5);
- (b) § 200.306 Cost sharing or matching;
- (c) § 200.307 Program income;
- (d) § 200.308 Revision of budget and program plans;
- (e) § 200.311 Real property;
- (f) § 200.313 Equipment;
- (g) § 200.332 Fixed amount subawards;
- (h) § 200.413 Direct costs, paragraph (c);
- (i) § 200.430 Compensation—personal services, paragraph (h);
- (j) § 200.431 Compensation—fringe benefits;
- (k) § 200.438 Entertainment costs;
- (l) § 200.439 Equipment and other capital expenditures;
- (m) § 200.440 Exchange rates;
- (n) § 200.441 Fines, penalties, damages and other settlements;
- (o) § 200.442 Fund raising and investment management costs;
- (p) § 200.445 Goods or services for personal use;
- (q) § 200.447 Insurance and indemnification;
- (r) § 200.454 Memberships, subscriptions, and professional activity costs, paragraph (c);
- (s) § 200.455 Organization costs;
- (t) § 200.456 Participant support costs;
- (u) § 200.458 Pre-award costs;
- (v) § 200.462 Rearrangement and re-conversion costs;
- (w) § 200.467 Selling and marketing costs;
- (x) § 200.470 Taxes (including Value Added Tax); and
- (y) § 200.474 Travel costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.408 Limitation on allowance of costs.

The Federal award may be subject to statutory requirements that limit the allowability of costs. When the maximum amount allowable under a limitation is less than the total amount determined in accordance with the principles in this part, the amount not recoverable under the Federal award may not be charged to the Federal award.

§ 200.409 Special considerations.

In addition to the basic considerations regarding the allowability of costs highlighted in this subtitle, other subtitles in this part describe special considerations and requirements applicable to states, local governments, Indian tribes, and IHEs. In addition, certain provisions among the items of cost in this subpart, are only applicable to certain types of non-Federal entities, as specified in the following sections:

- (a) Direct and Indirect (F&A) Costs (§§ 200.412 Classification of costs through 200.415 Required certifications) of this subpart;
- (b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 Cost allocation plans and indirect cost proposals and 200.417 Inter-agency service) of this subpart; and
- (c) Special Considerations for Institutions of Higher Education (§§ 200.418 Costs incurred by states and local governments and 200.419 Cost accounting standards and disclosure statement) of this subpart.

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the Federal awarding agency, cognizant agency for indirect costs, or pass-through entity, either as direct or indirect costs, must be refunded (including interest) to the Federal Government in accordance with instructions from the Federal agency that determined the costs are unallowable unless Federal statute or regulation directs otherwise. See also Subpart D—Post Federal Award Requirements of this part, §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance.

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§ 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs.

(a) Negotiated indirect (F&A) cost rates based on a proposal later found to have included costs that:

(1) Are unallowable as specified by Federal statutes, regulations or the terms and conditions of a Federal award; or

(2) Are unallowable because they are not allocable to the Federal award(s), must be adjusted, or a refund must be made, in accordance with the requirements of this section. These adjustments or refunds are designed to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds will be made regardless of the type of rate negotiated (pre-determined, final, fixed, or provisional).

(b) For rates covering a future fiscal year of the non-Federal entity, the unallowable costs will be removed from the indirect (F&A) cost pools and the rates appropriately adjusted.

(c) For rates covering a past period, the Federal share of the unallowable costs will be computed for each year involved and a cash refund (including interest chargeable in accordance with applicable regulations) will be made to the Federal Government. If cash refunds are made for past periods covered by provisional or fixed rates, appropriate adjustments will be made when the rates are finalized to avoid duplicate recovery of the unallowable costs by the Federal Government.

(d) For rates covering the current period, either a rate adjustment or a refund, as described in paragraphs (b) and (c) of this section, must be required by the cognizant agency for indirect costs. The choice of method must be at the discretion of the cognizant agency for indirect costs, based on its judgment as to which method would be most practical.

(e) The amount or proportion of unallowable costs included in each year's rate will be assumed to be the same as the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

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DIRECT AND INDIRECT (F&A) COSTS

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as either direct or indirect (F&A) under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the Federal award or other final cost objective. Therefore, it is essential that each item of cost incurred for the same purpose be treated consistently in like circumstances either as a direct or an indirect (F&A) cost in order to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect (F&A) costs charged to Federal awards are provided in this subpart.

§ 200.413 Direct costs.

(a) *General.* Direct costs are those costs that can be identified specifically with a particular final cost objective, such as a Federal award, or other internally or externally funded activity, or that can be directly assigned to such activities relatively easily with a high degree of accuracy. Costs incurred for the same purpose in like circumstances must be treated consistently as either direct or indirect (F&A) costs. See also § 200.405 Allocable costs.

(b) *Application to Federal awards.* Identification with the Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. Typical costs charged directly to a Federal award are the compensation of employees who work on that award, their related fringe benefit costs, the costs of materials and other items of expense incurred for the Federal award. If directly related to a specific award, certain costs that otherwise would be treated as indirect costs may also include extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations.

(c) The salaries of administrative and clerical staff should normally be treated as indirect (F&A) costs. Direct

charging of these costs may be appropriate only if all of the following conditions are met:

(1) Administrative or clerical services are integral to a project or activity;

(2) Individuals involved can be specifically identified with the project or activity;

(3) Such costs are explicitly included in the budget or have the prior written approval of the Federal awarding agency; and

(4) The costs are not also recovered as indirect costs.

(d) *Minor items.* Any direct cost of minor amount may be treated as an indirect (F&A) cost for reasons of practicality where such accounting treatment for that item of cost is consistently applied to all Federal and non-Federal cost objectives.

(e) The costs of certain activities are not allowable as charges to Federal awards. However, even though these costs are unallowable for purposes of computing charges to Federal awards, they nonetheless must be treated as direct costs for purposes of determining indirect (F&A) cost rates and be allocated their equitable share of the non-Federal entity's indirect costs if they represent activities which:

(1) Include the salaries of personnel,

(2) Occupy space, and

(3) Benefit from the non-Federal entity's indirect (F&A) costs.

(f) For nonprofit organizations, the costs of activities performed by the non-Federal entity primarily as a service to members, clients, or the general public when significant and necessary to the non-Federal entity's mission must be treated as direct costs whether or not allowable, and be allocated an equitable share of indirect (F&A) costs. Some examples of these types of activities include:

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See also § 200.454 Memberships, subscriptions, and professional activity costs.

(2) Providing services and information to members, legislative or administrative bodies, or the public. See also §§ 200.454 Memberships, subscriptions, and professional activity costs and 200.450 Lobbying.

(3) Promotion, lobbying, and other forms of public relations. See also §§ 200.421 Advertising and public relations and 200.450 Lobbying.

(4) Conferences except those held to conduct the general administration of the non-Federal entity. See also § 200.432 Conferences.

(5) Maintenance, protection, and investment of special funds not used in operation of the non-Federal entity. See also § 200.442 Fund raising and investment management costs.

(6) Administration of group benefits on behalf of members or clients, including life and hospital insurance, annuity or retirement plans, and financial aid. See also § 200.431 Compensation—fringe benefits.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

§ 200.414 Indirect (F&A) costs.

(a) *Facilities and Administration Classification.* For major IHEs and major nonprofit organizations, indirect (F&A) costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvement, interest on debt associated with certain buildings, equipment and capital improvements, and operations and maintenance expenses. "Administration" is defined as general administration and general expenses such as the director's office, accounting, personnel and all other types of expenditures not listed specifically under one of the subcategories of "Facilities" (including cross allocations from other pools, where applicable). For nonprofit organizations, library expenses are included in the "Administration" category; for institutions of higher education, they are included in the "Facilities" category. Major IHEs are defined as those required to use the Standard Format for Submission as noted in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs) paragraph C. 11. Major nonprofit organizations are those which receive more than \$10 million dollars in direct Federal funding.

(b) *Diversity of nonprofit organizations.* Because of the diverse characteristics

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and accounting practices of nonprofit organizations, it is not possible to specify the types of cost which may be classified as indirect (F&A) cost in all situations. Identification with a Federal award rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect (F&A) costs of Federal awards. However, typical examples of indirect (F&A) cost for many nonprofit organizations may include depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.

(c) *Federal Agency Acceptance of Negotiated Indirect Cost Rates.* (See also § 200.306 Cost sharing or matching.)

(1) The negotiated rates must be accepted by all Federal awarding agencies. A Federal awarding agency may use a rate different from the negotiated rate for a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by a Federal awarding agency head or delegate based on documented justification as described in paragraph (c)(3) of this section.

(2) The Federal awarding agency head or delegate must notify OMB of any approved deviations.

(3) The Federal awarding agency must implement, and make publicly available, the policies, procedures and general decision making criteria that their programs will follow to seek and justify deviations from negotiated rates.

(4) As required under §200.203 Notices of funding opportunities, the Federal awarding agency must include in the notice of funding opportunity the policies relating to indirect cost rate reimbursement, matching, or cost share as approved under paragraph (e)(1) of this section. As appropriate, the Federal agency should incorporate discussion of these policies into Federal awarding agency outreach activities with non-Federal entities prior to the posting of a notice of funding opportunity.

(d) Pass-through entities are subject to the requirements in §200.331 Re-

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quirements for pass-through entities, paragraph (a)(4).

(e) Requirements for development and submission of indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III- VII and Appendix IX as follows:

(1) Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);

(2) Appendix IV to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Non-profit Organizations;

(3) Appendix V to Part 200—State/Local Governmentwide Central Service Cost Allocation Plans;

(4) Appendix VI to Part 200—Public Assistance Cost Allocation Plans;

(5) Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals; and

(6) Appendix IX to Part 200—Hospital Cost Principles.

(f) In addition to the procedures outlined in the appendices in paragraph (e) of this section, any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Appendix VII to Part 200—States and Local Government and Indian Tribe Indirect Cost Proposals, paragraph D.1.b, may elect to charge a de minimis rate of 10% of modified total direct costs (MTDC) which may be used indefinitely. As described in § 200.403 Factors affecting allowability of costs, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as a non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.

(g) Any non-Federal entity that has a current federally negotiated indirect cost rate may apply for a one-time extension of the rates in that agreement for a period of up to four years. This extension will be subject to the review and approval of the cognizant agency for indirect costs. If an extension is granted the non-Federal entity may not request a rate review until the extension period ends. At the end of the

4-year extension, the non-Federal entity must re-apply to negotiate a rate. Subsequent one-time extensions (up to four years) are permitted if a renegotiation is completed between each extension request.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.415 Required certifications.

Required certifications include:

(a) To assure that expenditures are proper and in accordance with the terms and conditions of the Federal award and approved project budgets, the annual and final fiscal reports or vouchers requesting payment under the agreements must include a certification, signed by an official who is authorized to legally bind the non-Federal entity, which reads as follows: "By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements and cash receipts are for the purposes and objectives set forth in the terms and conditions of the Federal award. I am aware that any false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

(b) Certification of cost allocation plan or indirect (F&A) cost rate proposal. Each cost allocation plan or indirect (F&A) cost rate proposal must comply with the following:

(1) A proposal to establish a cost allocation plan or an indirect (F&A) cost rate, whether submitted to a Federal cognizant agency for indirect costs or maintained on file by the non-Federal entity, must be certified by the non-Federal entity using the Certificate of Cost Allocation Plan or Certificate of Indirect Costs as set forth in Appendices III through VII, and Appendix IX. The certificate must be signed on behalf of the non-Federal entity by an individual at a level no lower than vice president or chief financial officer of the non-Federal entity that submits the proposal.

(2) Unless the non-Federal entity has elected the option under § 200.414 Indi-

rect (F&A) costs, paragraph (f), the Federal Government may either disallow all indirect (F&A) costs or unilaterally establish such a plan or rate when the non-Federal entity fails to submit a certified proposal for establishing such a plan or rate in accordance with the requirements. Such a plan or rate may be based upon audited historical data or such other data that have been furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. When a cost allocation plan or indirect cost rate is unilaterally established by the Federal Government because the non-Federal entity failed to submit a certified proposal, the plan or rate established will be set to ensure that potentially unallowable costs will not be reimbursed.

(c) Certifications by non-profit organizations as appropriate that they did not meet the definition of a major non-profit organization as defined in § 200.414 Indirect (F&A) costs, paragraph (a).

(d) See also § 200.450 Lobbying for another required certification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) For states, local governments and Indian tribes, certain services, such as motor pools, computer centers, purchasing, accounting, etc., are provided to operating agencies on a centralized basis. Since Federal awards are performed within the individual operating agencies, there needs to be a process whereby these central service costs can be identified and assigned to benefitted activities on a reasonable and consistent basis. The central service cost allocation plan provides that process.

(b) Individual operating agencies (governmental department or agency), normally charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate(s) proposal for each operating agency is usually necessary to claim indirect

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costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each department or agency of the governmental unit carrying out Federal awards and

(2) The costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

(c) The requirements for development and submission of cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices IV, V and VI to this part.

§ 200.417 Interagency service.

The cost of services provided by one agency to another within the governmental unit may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost allowance equal to ten percent of the direct salary and wage cost of providing the service (excluding overtime, shift premiums, and fringe benefits) may be used in lieu of determining the actual indirect costs of the service. These services do not include centralized services included in central service cost allocation plans as described in Appendix V to Part 200—State/Local Government and Indian Tribe-Wide Central Service Cost Allocation Plans.

SPECIAL CONSIDERATIONS FOR INSTITUTIONS OF HIGHER EDUCATION

§ 200.418 Costs incurred by states and local governments.

Costs incurred or paid by a state or local government on behalf of its IHEs for fringe benefit programs, such as pension costs and FICA and any other costs specifically incurred on behalf of, and in direct benefit to, the IHEs, are allowable costs of such IHEs whether or not these costs are recorded in the accounting records of the institutions, subject to the following:

(a) The costs meet the requirements of §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs, of this subpart;

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(b) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles in this part; and

(c) The costs are not otherwise borne directly or indirectly by the Federal Government.

§ 200.419 Cost accounting standards and disclosure statement.

(a) An IHE that receives aggregate Federal awards totaling \$50 million or more in Federal awards subject to this part in its most recently completed fiscal year must comply with the Cost Accounting Standards Board's cost accounting standards located at 48 CFR 9905.501, 9905.502, 9905.505, and 9905.506. CAS-covered contracts awarded to the IHEs are subject to the CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

(b) *Disclosure statement.* An IHE that receives aggregate Federal awards totaling \$50 million or more subject to this part during its most recently completed fiscal year must disclose their cost accounting practices by filing a Disclosure Statement (DS-2), which is reproduced in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs). With the approval of the cognizant agency for indirect costs, an IHE may meet the DS-2 submission by submitting the DS-2 for each business unit that received \$50 million or more in Federal awards.

(1) The DS-2 must be submitted to the cognizant agency for indirect costs with a copy to the IHE's cognizant agency for audit.

(2) An IHE is responsible for maintaining an accurate DS-2 and complying with disclosed cost accounting practices. An IHE must file amendments to the DS-2 to the cognizant agency for indirect costs six months in advance of a disclosed practice being changed to comply with a new or modified standard, or when a practice is changed for other reasons. An IHE may proceed with implementing the change only if it has not been notified by the Federal cognizant agency for indirect costs that either a longer period will be needed for review or there are concerns with the potential change within the

six months period. Amendments of a DS-2 may be submitted at any time. Resubmission of a complete, updated DS-2 is discouraged except when there are extensive changes to disclosed practices.

(3) *Cost and funding adjustments.* Cost adjustments must be made by the cognizant agency for indirect costs if an IHE fails to comply with the cost policies in this part or fails to consistently follow its established or disclosed cost accounting practices when estimating, accumulating or reporting the costs of Federal awards, and the aggregate cost impact on Federal awards is material. The cost adjustment must normally be made on an aggregate basis for all affected Federal awards through an adjustment of the IHE's future F&A costs rates or other means considered appropriate by the cognizant agency for indirect costs. Under the terms of CAS covered contracts, adjustments in the amount of funding provided may also be required when the estimated proposal costs were not determined in accordance with established cost accounting practices.

(4) *Overpayments.* Excess amounts paid in the aggregate by the Federal Government under Federal awards due to a noncompliant cost accounting practice used to estimate, accumulate, or report costs must be credited or refunded, as deemed appropriate by the cognizant agency for indirect costs. Interest applicable to the excess amounts paid in the aggregate during the period of noncompliance must also be determined and collected in accordance with applicable Federal agency regulations.

(5) *Compliant cost accounting practice changes.* Changes from one compliant cost accounting practice to another compliant practice that are approved by the cognizant agency for indirect costs may require cost adjustments if the change has a material effect on Federal awards and the changes are deemed appropriate by the cognizant agency for indirect costs.

(6) *Responsibilities.* The cognizant agency for indirect cost must:

(i) Determine cost adjustments for all Federal awards in the aggregate on behalf of the Federal Government. Actions of the cognizant agency for indirect cost in making cost adjustment

determinations must be coordinated with all affected Federal awarding agencies to the extent necessary.

(ii) Prescribe guidelines and establish internal procedures to promptly determine on behalf of the Federal Government that a DS-2 adequately discloses the IHE's cost accounting practices and that the disclosed practices are compliant with applicable CAS and the requirements of this part.

(iii) Distribute to all affected Federal awarding agencies any DS-2 determination of adequacy or noncompliance.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

§ 200.420 Considerations for selected items of cost.

This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to the requirements of Subtitle II. Basic Considerations of this subpart. These principles apply whether or not a particular item of cost is properly treated as direct cost or indirect (F&A) cost. Failure to mention a particular item of cost is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment provided for similar or related items of cost, and based on the principles described in §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated indirect (F&A) cost rates containing unallowable costs. In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs. Criteria outlined in § 200.403 Factors affecting allowability of costs must be applied in determining allowability. See also § 200.102 Exceptions.

§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and collateral administrative costs. Advertising media include magazines, newspapers, radio and television, direct

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mail, exhibits, electronic or computer transmittals, and the like.

(b) The only allowable advertising costs are those which are solely for:

(1) The recruitment of personnel required by the non-Federal entity for performance of a Federal award (See also § 200.463 Recruiting costs);

(2) The procurement of goods and services for the performance of a Federal award;

(3) The disposal of scrap or surplus materials acquired in the performance of a Federal award except when non-Federal entities are reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach and other specific purposes necessary to meet the requirements of the Federal award.

(c) The term “public relations” includes community relations and means those activities dedicated to maintaining the image of the non-Federal entity or maintaining or promoting understanding and favorable relations with the community or public at large or any segment of the public.

(d) The only allowable public relations costs are:

(1) Costs specifically required by the Federal award;

(2) Costs of communicating with the public and press pertaining to specific activities or accomplishments which result from performance of the Federal award (these costs are considered necessary as part of the outreach effort for the Federal award); or

(3) Costs of conducting general liaison with news media and government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern, such as notices of funding opportunities, financial matters, etc.

(e) Unallowable advertising and public relations costs include the following:

(1) All advertising and public relations costs other than as specified in paragraphs (b) and (d) of this section;

(2) Costs of meetings, conventions, convocations, or other events related to other activities of the entity (see also § 200.432 Conferences), including:

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(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings;

(3) Costs of promotional items and memorabilia, including models, gifts, and souvenirs;

(4) Costs of advertising and public relations designed solely to promote the non-Federal entity.

§ 200.422 Advisory councils.

Costs incurred by advisory councils or committees are unallowable unless authorized by statute, the Federal awarding agency or as an indirect cost where allocable to Federal awards. See § 200.444 General costs of government, applicable to states, local governments and Indian tribes.

§ 200.423 Alcoholic beverages.

Costs of alcoholic beverages are unallowable.

§ 200.424 Alumni/ae activities.

Costs incurred by IHEs for, or in support of, alumni/ae activities are unallowable.

§ 200.425 Audit services.

(a) A reasonably proportionate share of the costs of audits required by, and performed in accordance with, the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507), as implemented by requirements of this part, are allowable. However, the following audit costs are unallowable:

(1) Any costs when audits required by the Single Audit Act and Subpart F—Audit Requirements of this part have not been conducted or have been conducted but not in accordance therewith; and

(2) Any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and Subpart F—Audit Requirements of this part because its expenditures under Federal awards are less than \$750,000 during the non-Federal entity’s fiscal year.

(b) The costs of a financial statement audit of a non-Federal entity that does not currently have a Federal award may be included in the indirect cost pool for a cost allocation plan or indirect cost proposal.

(c) Pass-through entities may charge Federal awards for the cost of agreed-upon-procedures engagements to monitor subrecipients (in accordance with Subpart D—Post Federal Award Requirements of this part, §§ 200.330 Subrecipient and contractor determinations through 200.332 Fixed Amount Subawards) who are exempted from the requirements of the Single Audit Act and Subpart F—Audit Requirements of this part. This cost is allowable only if the agreed-upon-procedures engagements are:

- (1) Conducted in accordance with GAGAS attestation standards;
- (2) Paid for and arranged by the pass-through entity; and
- (3) Limited in scope to one or more of the following types of compliance requirements: activities allowed or unallowed; allowable costs/cost principles; eligibility; and reporting.

§ 200.426 Bad debts.

Bad debts (debts which have been determined to be uncollectable), including losses (whether actual or estimated) arising from uncollectable accounts and other claims, are unallowable. Related collection costs, and related legal costs, arising from such debts after they have been determined to be uncollectable are also unallowable. See also § 200.428 Collections of improper payments.

§ 200.427 Bonding costs.

(a) Bonding costs arise when the Federal awarding agency requires assurance against financial loss to itself or others by reason of the act or default of the non-Federal entity. They arise also in instances where the non-Federal entity requires similar assurance, including: bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

(b) Costs of bonding required pursuant to the terms and conditions of the Federal award are allowable.

(c) Costs of bonding required by the non-Federal entity in the general conduct of its operations are allowable as an indirect cost to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

§ 200.428 Collections of improper payments.

The costs incurred by a non-Federal entity to recover improper payments are allowable as either direct or indirect costs, as appropriate. Amounts collected may be used by the non-Federal entity in accordance with cash management standards set forth in § 200.305 *Payment*.

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as provided for in Appendix III to Part 200—Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs), paragraph (B)(9) Student Administration and Services, as student activity costs.

§ 200.430 Compensation—personal services.

(a) *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services of employees rendered during the period of performance under the Federal award, including but not necessarily limited to wages and salaries. Compensation for personal services may also include fringe benefits which are addressed in § 200.431 Compensation—fringe benefits. Costs of compensation are allowable to the extent that they satisfy the specific requirements of this part, and that the total compensation for individual employees:

(1) Is reasonable for the services rendered and conforms to the established written policy of the non-Federal entity consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with a non-Federal entity's laws and/or rules or written policies

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and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (i) of this section, Standards for Documentation of Personnel Expenses, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the non-Federal entity. In cases where the kinds of employees required for Federal awards are not found in the other activities of the non-Federal entity, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the non-Federal entity competes for the kind of employees involved.

(c) *Professional activities outside the non-Federal entity.* Unless an arrangement is specifically authorized by a Federal awarding agency, a non-Federal entity must follow its written non-Federal entity-wide policies and practices concerning the permissible extent of professional services that can be provided outside the non-Federal entity for non-organizational compensation. Where such non-Federal entity-wide written policies do not exist or do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require that the effort of professional staff working on Federal awards be allocated between:

(1) Non-Federal entity activities, and

(2) Non-organizational professional activities. If the Federal awarding agency considers the extent of non-organizational professional effort excessive or inconsistent with the conflicts-of-interest terms and conditions of the Federal award, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

(d) *Unallowable costs.* (1) Costs which are unallowable under other sections of these principles must not be allowable under this section solely on the basis that they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with statute. For the

amount of the ceiling for cost-reimbursement contracts, the covered compensation subject to the ceiling, the covered employees, and other relevant provisions, see 10 U.S.C. 2324(e)(1)(P), and 41 U.S.C. 1127 and 4304(a)(16). For

other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining allowability of compensation will be given to any change in a non-Federal entity's compensation policy resulting in a substantial increase in its employees' level of compensation (particularly when the change was concurrent with an increase in the ratio of Federal awards to other activities) or any change in the treatment of allowability of specific types of compensation due to changes in Federal policy.

(f) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc., is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the non-Federal entity and the employees before the services were rendered, or pursuant to an established plan followed by the non-Federal entity so consistently as to imply, in effect, an agreement to make such payment.

(g) *Nonprofit organizations.* For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, determination must be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs. This may include director's and executive committee member's fees, incentive awards, allowances for off-site pay, incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(h) *Institutions of higher education (IHEs).* (1) Certain conditions require special consideration and possible limitations in determining allowable personnel compensation costs under Federal awards. Among such conditions are the following:

(i) Allowable activities. Charges to Federal awards may include reasonable amounts for activities contributing and directly related to work under an agreement, such as delivering special lectures about specific aspects of the ongoing activity, writing reports and articles, developing and maintaining protocols (human, animals, etc.), managing substances/chemicals, managing and securing project-specific data, coordinating research subjects, participating in appropriate seminars, consulting with colleagues and graduate students, and attending meetings and conferences.

(ii) Incidental activities. Incidental activities for which supplemental compensation is allowable under written institutional policy (at a rate not to exceed institutional base salary) need not be included in the records described in paragraph (i) of this section to directly charge payments of incidental activities, such activities must either be specifically provided for in the Federal award budget or receive prior written approval by the Federal awarding agency.

(2) *Salary basis.* Charges for work performed on Federal awards by faculty members during the academic year are allowable at the IBS rate. Except as noted in paragraph (h)(1)(ii) of this section, in no event will charges to Federal awards, irrespective of the basis of computation, exceed the proportionate share of the IBS for that period. This principle applies to all members of faculty at an institution. IBS is defined as the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, administration, or other activities. IBS excludes any income that an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal awarding agency, charges of a faculty member's salary to a Federal award must not exceed the proportionate share of the IBS for the period during which the faculty member worked on the award.

(3) *Intra-Institution of Higher Education (IHE) consulting.* Intra-IHE consulting by faculty is assumed to be undertaken as an IHE obligation requiring no compensation in addition to

IBS. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the faculty member is in addition to his or her regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are specifically provided for in the Federal award or approved in writing by the Federal awarding agency.

(4) Extra Service Pay normally represents overload compensation, subject to institutional compensation policies for services above and beyond IBS. Where extra service pay is a result of Intra-IHE consulting, it is subject to the same requirements of paragraph (b) above. It is allowable if all of the following conditions are met:

(i) The non-Federal entity establishes consistent written policies which apply uniformly to all faculty members, not just those working on Federal awards.

(ii) The non-Federal entity establishes a consistent written definition of work covered by IBS which is specific enough to determine conclusively when work beyond that level has occurred. This may be described in appointment letters or other documentations.

(iii) The supplementation amount paid is commensurate with the IBS rate of pay and the amount of additional work performed. See paragraph (h)(2) of this section.

(iv) The salaries, as supplemented, fall within the salary structure and pay ranges established by and documented in writing or otherwise applicable to the non-Federal entity.

(v) The total salaries charged to Federal awards including extra service pay are subject to the Standards of Documentation as described in paragraph (i) of this section.

(5) *Periods outside the academic year.*

(i) Except as specified for teaching activity in paragraph (h)(5)(ii) of this section, charges for work performed by faculty members on Federal awards during periods not included in the base salary period will be at a rate not in excess of the IBS.

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(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period will be based on the normal written policy of the IHE governing compensation to faculty members for teaching assignments during such periods.

(6) *Part-time faculty.* Charges for work performed on Federal awards by faculty members having only part-time appointments will be determined at a rate not in excess of that regularly paid for part-time assignments.

(7) *Sabbatical leave costs.* Rules for sabbatical leave are as follows:

(i) Costs of leaves of absence by employees for performance of graduate work or sabbatical study, travel, or research are allowable provided the IHE has a uniform written policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all related activities of the IHE.

(ii) Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the IHE's actual experience under its sabbatical leave policy.

(8) *Salary rates for non-faculty members.* Non-faculty full-time professional personnel may also earn "extra service pay" in accordance with the non-Federal entity's written policy and consistent with paragraph (h)(1)(i) of this section.

(i) *Standards for Documentation of Personnel Expenses* (1) Charges to Federal awards for salaries and wages must be based on records that accurately reflect the work performed. These records must:

(i) Be supported by a system of internal control which provides reasonable assurance that the charges are accurate, allowable, and properly allocated;

(ii) Be incorporated into the official records of the non-Federal entity;

(iii) Reasonably reflect the total activity for which the employee is compensated by the non-Federal entity, not exceeding 100% of compensated ac-

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tivities (for IHE, this per the IHE's definition of IBS);

(iv) Encompass both federally assisted and all other activities compensated by the non-Federal entity on an integrated basis, but may include the use of subsidiary records as defined in the non-Federal entity's written policy;

(v) Comply with the established accounting policies and practices of the non-Federal entity (See paragraph (h)(1)(ii) above for treatment of incidental work for IHEs.); and

(vi) [Reserved]

(vii) Support the distribution of the employee's salary or wages among specific activities or cost objectives if the employee works on more than one Federal award; a Federal award and non-Federal award; an indirect cost activity and a direct cost activity; two or more indirect activities which are allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(viii) Budget estimates (i.e., estimates determined before the services are performed) alone do not qualify as support for charges to Federal awards, but may be used for interim accounting purposes, provided that:

(A) The system for establishing the estimates produces reasonable approximations of the activity actually performed;

(B) Significant changes in the corresponding work activity (as defined by the non-Federal entity's written policies) are identified and entered into the records in a timely manner. Short term (such as one or two months) fluctuation between workload categories need not be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The non-Federal entity's system of internal controls includes processes to review after-the-fact interim charges made to a Federal award based on budget estimates. All necessary adjustment must be made such that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(ix) Because practices vary as to the activity constituting a full workload (for IHEs, IBS), records may reflect categories of activities expressed as a

percentage distribution of total activities.

(x) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. When recording salaries and wages charged to Federal awards for IHEs, a precise assessment of factors that contribute to costs is therefore not always feasible, nor is it expected.

(2) For records which meet the standards required in paragraph (i)(1) of this section, the non-Federal entity will not be required to provide additional support or documentation for the work performed, other than that referenced in paragraph (i)(3) of this section.

(3) In accordance with Department of Labor regulations implementing the Fair Labor Standards Act (FLSA) (29 CFR part 516), charges for the salaries and wages of nonexempt employees, in addition to the supporting documentation described in this section, must also be supported by records indicating the total number of hours worked each day.

(4) Salaries and wages of employees used in meeting cost sharing or matching requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) For states, local governments and Indian tribes, substitute processes or systems for allocating salaries and wages to Federal awards may be used in place of or in addition to the records described in paragraph (1) if approved by the cognizant agency for indirect cost. Such systems may include, but are not limited to, random moment sampling, "rolling" time studies, case counts, or other quantifiable measures of work performed.

(i) Substitute systems which use sampling methods (primarily for Temporary Assistance for Needy Families (TANF), the Supplemental Nutrition Assistance Program (SNAP), Medicaid, and other public assistance programs) must meet acceptable statistical sampling standards including:

(A) The sampling universe must include all of the employees whose salaries and wages are to be allocated based on sample results except as pro-

vided in paragraph (i)(5)(iii) of this section;

(B) The entire time period involved must be covered by the sample; and

(C) The results must be statistically valid and applied to the period being sampled.

(ii) Allocating charges for the sampled employees' supervisors, clerical and support staffs, based on the results of the sampled employees, will be acceptable.

(iii) Less than full compliance with the statistical sampling standards noted in subsection (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts to be allocated to Federal awards will be minimal, or if it concludes that the system proposed by the non-Federal entity will result in lower costs to Federal awards than a system which complies with the standards.

(6) Cognizant agencies for indirect costs are encouraged to approve alternative proposals based on outcomes and milestones for program performance where these are clearly documented. Where approved by the Federal cognizant agency for indirect costs, these plans are acceptable as an alternative to the requirements of paragraph (i)(1) of this section.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a non-Federal entity may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided that such plans are approved in advance by all involved Federal awarding agencies. In these instances, the non-Federal entity must submit a request for waiver of the requirements based on documentation that describes the method of charging costs, relates the charging of costs to the specific activity that is applicable to all fund sources, and is based on quantifiable measures of the activity in relation to time charged.

(8) For a non-Federal entity where the records do not meet the standards described in this section, the Federal

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Government may require personnel activity reports, including prescribed certifications, or equivalent documentation that support the records as required in this section.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.431 Compensation—fringe benefits.

(a) Fringe benefits are allowances and services provided by employers to their employees as compensation in addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave (vacation, family-related, sick or military), employee insurance, pensions, and unemployment benefit plans. Except as provided elsewhere in these principles, the costs of fringe benefits are allowable provided that the benefits are reasonable and are required by law, non-Federal entity-employee agreement, or an established policy of the non-Federal entity.

(b) *Leave.* The cost of fringe benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, family-related leave, sick leave, holidays, court leave, military leave, administrative leave, and other similar benefits, are allowable if all of the following criteria are met:

(1) They are provided under established written leave policies;

(2) The costs are equitably allocated to all related activities, including Federal awards; and,

(3) The accounting basis (cash or accrual) selected for costing each type of leave is consistently followed by the non-Federal entity or specified grouping of employees.

(i) When a non-Federal entity uses the cash basis of accounting, the cost of leave is recognized in the period that the leave is taken and paid for. Payments for unused leave when an employee retires or terminates employment are allowable in the year of payment.

(ii) The accrual basis may be only used for those types of leave for which a liability as defined by GAAP exists when the leave is earned. When a non-Federal entity uses the accrual basis of accounting, allowable leave costs are

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the lesser of the amount accrued or funded.

(c) The cost of fringe benefits in the form of employer contributions or expenses for social security; employee life, health, unemployment, and worker's compensation insurance (except as indicated in § 200.447 Insurance and indemnification); pension plan costs (see paragraph (i) of this section); and other similar benefits are allowable, provided such benefits are granted under established written policies. Such benefits, must be allocated to Federal awards and all other activities in a manner consistent with the pattern of benefits attributable to the individuals or group(s) of employees whose salaries and wages are chargeable to such Federal awards and other activities, and charged as direct or indirect costs in accordance with the non-Federal entity's accounting practices.

(d) Fringe benefits may be assigned to cost objectives by identifying specific benefits to specific individual employees or by allocating on the basis of entity-wide salaries and wages of the employees receiving the benefits. When the allocation method is used, separate allocations must be made to selective groupings of employees, unless the non-Federal entity demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447 Insurance and indemnification, paragraphs (d)(1) and (2).

(1) Provisions for a reserve under a self-insurance program for unemployment compensation or workers' compensation are allowable to the extent that the provisions represent reasonable estimates of the liabilities for such compensation, and the types of coverage, extent of coverage, and rates and premiums would have been allowable had insurance been purchased to cover the risks. However, provisions for self-insured liabilities which do not become payable for more than one year after the provision is made must not exceed the present value of the liability.

(2) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibility are allowable only to the extent

that the insurance represents additional compensation. The costs of such insurance when the non-Federal entity is named as beneficiary are unallowable.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (e.g., post-retirement health benefits), are allowable in the year of payment provided that the non-Federal entity follows a consistent costing policy.

(f) *Automobiles.* That portion of automobile costs furnished by the entity that relates to personal use by employees (including transportation to and from work) is unallowable as fringe benefit or indirect (F&A) costs regardless of whether the cost is reported as taxable income to the employees.

(g) *Pension Plan Costs.* Pension plan costs which are incurred in accordance with the established policies of the non-Federal entity are allowable, provided that:

(1) Such policies meet the test of reasonableness.

(2) The methods of cost allocation are not discriminatory.

(3) For entities using accrual based accounting, the cost assigned to each fiscal year is determined in accordance with GAAP.

(4) The costs assigned to a given fiscal year are funded for all plan participants within six months after the end of that year. However, increases to normal and past service pension costs caused by a delay in funding the actuarial liability beyond 30 calendar days after each quarter of the year to which such costs are assignable are unallowable. Non-Federal entity may elect to follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(5) Pension plan termination insurance premiums paid pursuant to the Employee Retirement Income Security Act (ERISA) of 1974 (29 U.S.C. 1301-1461) are allowable. Late payment charges on such premiums are unallowable. Excise taxes on accumulated funding deficiencies and other penalties imposed under ERISA are unallowable.

(6) Pension plan costs may be computed using a pay-as-you-go method or

an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(i) For pension plans financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(ii) Pension costs calculated using an actuarial cost-based method recognized by GAAP are allowable for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency for indirect costs) are allowable in the year funded. The cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the non-Federal entity's contribution to the pension fund. Adjustments may be made by cash refund or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the pension fund.

(iii) Amounts funded by the non-Federal entity in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity's contribution in future periods.

(iv) When a non-Federal entity converts to an acceptable actuarial cost method, as defined by GAAP, and funds pension costs in accordance with this method, the unfunded liability at the time of conversion is allowable if amortized over a period of years in accordance with GAAP.

(v) The Federal Government must receive an equitable share of any previously allowed pension costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(h) *Post-Retirement Health.* Post-retirement health plans (PRHP) refers to costs of health insurance or health services not included in a pension plan covered by paragraph (g) of this section for retirees and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go

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method or an acceptable actuarial cost method in accordance with established written policies of the non-Federal entity.

(1) For PRHP financed on a pay-as-you-go method, allowable costs will be limited to those representing actual payments to retirees or their beneficiaries.

(2) PRHP costs calculated using an actuarial cost method recognized by GAAP are allowable if they are funded for that year within six months after the end of that year. Costs funded after the six month period (or a later period agreed to by the cognizant agency) are allowable in the year funded. The Federal cognizant agency for indirect costs may agree to an extension of the six month period if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursements and the non-Federal entity's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in current year's PRHP costs, or other equitable procedures to compensate the Federal Government for the time value of Federal reimbursements in excess of contributions to the PRHP fund.

(3) Amounts funded in excess of the actuarially determined amount for a fiscal year may be used as the non-Federal entity contribution in a future period.

(4) When a non-Federal entity converts to an acceptable actuarial cost method and funds PRHP costs in accordance with this method, the initial unfunded liability attributable to prior years is allowable if amortized over a period of years in accordance with GAAP, or, if no such GAAP period exists, over a period negotiated with the cognizant agency for indirect costs.

(5) To be allowable in the current year, the PRHP costs must be paid either to:

(i) An insurer or other benefit provider as current year costs or premiums, or

(ii) An insurer or trustee to maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(6) The Federal Government must receive an equitable share of any

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amounts of previously allowed post-retirement benefit costs (including earnings thereon) which revert or inure to the non-Federal entity in the form of a refund, withdrawal, or other credit.

(i) *Severance Pay.* (1) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by non-Federal entities to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that in each case, it is required by (a) law, (b) employer-employee agreement, (c) established policy that constitutes, in effect, an implied agreement on the non-Federal entity's part, or (d) circumstances of the particular employment.

(2) Costs of severance payments are divided into two categories as follows:

(i) Actual normal turnover severance payments must be allocated to all activities; or, where the non-Federal entity provides for a reserve for normal severances, such method will be acceptable if the charge to current operations is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts charged are allocated to all activities of the non-Federal entity.

(ii) Measurement of costs of abnormal or mass severance pay by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Federal Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Prior approval by the Federal awarding agency or cognizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in certain severance pay packages which are in an amount in excess of the normal severance pay paid by the non-Federal entity to an employee upon termination of employment and are paid to the employee contingent upon a change in management control over, or ownership of, the non-Federal entity's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the non-Federal entity outside the United States, to the extent that the amount exceeds the

customary or prevailing practices for the non-Federal entity in the United States, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(5) Severance payments to foreign nationals employed by the non-Federal entity outside the United States due to the termination of the foreign national as a result of the closing of, or curtailment of activities by, the non-Federal entity in that country, are unallowable, unless they are necessary for the performance of Federal programs and approved by the Federal awarding agency.

(j)(1) *For IHEs only.* Fringe benefits in the form of undergraduate and graduate tuition or remission of tuition for individual employees are allowable, provided such benefits are granted in accordance with established non-Federal entity policies, and are distributed to all non-Federal entity activities on an equitable basis. Tuition benefits for family members other than the employee are unallowable.

(2) Fringe benefits in the form of tuition or remission of tuition for individual employees not employed by IHEs are limited to the tax-free amount allowed per section 127 of the Internal Revenue Code as amended.

(3) IHEs may offer employees tuition waivers or tuition reductions, provided that the benefit does not discriminate in favor of highly compensated employees. Employees can exercise these benefits at other institutions according to institutional policy. See § 200.466 Scholarships and student aid costs, for treatment of tuition remission provided to students.

(k) For IHEs whose costs are paid by state or local governments, fringe benefit programs (such as pension costs and FICA) and any other benefits costs specifically incurred on behalf of, and in direct benefit to, the non-Federal entity, are allowable costs of such non-Federal entities whether or not these costs are recorded in the accounting records of the non-Federal entities, subject to the following:

(1) The costs meet the requirements of Basic Considerations in §§ 200.402 Composition of costs through 200.411 Adjustment of previously negotiated

indirect (F&A) cost rates containing unallowable costs of this subpart;

(2) The costs are properly supported by approved cost allocation plans in accordance with applicable Federal cost accounting principles; and

(3) The costs are not otherwise borne directly or indirectly by the Federal Government.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014; 80 FR 54409, Sept. 10, 2015]

§ 200.432 Conferences.

A conference is defined as a meeting, retreat, seminar, symposium, workshop or event whose primary purpose is the dissemination of technical information beyond the non-Federal entity and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs paid by the non-Federal entity as a sponsor or host of the conference may include rental of facilities, speakers' fees, costs of meals and refreshments, local transportation, and other items incidental to such conferences unless further restricted by the terms and conditions of the Federal award. As needed, the costs of identifying, but not providing, locally available dependent-care resources are allowable. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary and managed in a manner that minimizes costs to the Federal award. The Federal awarding agency may authorize exceptions where appropriate for programs including Indian tribes, children, and the elderly. See also §§ 200.438 Entertainment costs,

200.456 Participant support costs, 200.474 Travel costs, and 200.475 Trustees.

§ 200.433 Contingency provisions.

(a) Contingency is that part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items as approved by the Federal awarding agency) which is associated with possible events or conditions arising from causes the precise outcome of which is indeterminable at

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the time of estimate, and that experience shows will likely result, in aggregate, in additional costs for the approved activity or project. Amounts for major project scope changes, unforeseen risks, or extraordinary events may not be included.

(b) It is permissible for contingency amounts other than those excluded in paragraph (a) of this section to be explicitly included in budget estimates, to the extent they are necessary to improve the precision of those estimates. Amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal awarding agency. As such, contingency amounts are to be included in the Federal award. In order for actual costs incurred to be allowable, they must comply with the cost principles and other requirements in this part (see also

§§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of Subpart D of this part and 200.403 Factors affecting allowability of costs); be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the non-Federal entity's records.

(c) Payments made by the Federal awarding agency to the non-Federal entity's "contingency reserve" or any similar payment made for events the occurrence of which cannot be foretold with certainty as to the time or intensity, or with an assurance of their happening, are unallowable, except as noted in §§ 200.431 Compensation— fringe benefits regarding self-insurance, pensions, severance and post-retirement health costs and 200.447 Insurance and indemnification.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the non-Federal entity to other entities, are unallowable.

(b) The value of services and property donated to the non-Federal entity may not be charged to the Federal award either as a direct or indirect (F&A) cost. The value of donated services and prop-

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erty may be used to meet cost sharing or matching requirements (see § 200.306 Cost sharing or matching). Depreciation on donated assets is permitted in accordance with § 200.436 Depreciation, as long as the donated property is not counted towards cost sharing or matching requirements.

(c) Services donated or volunteered to the non-Federal entity may be furnished to a non-Federal entity by professional and technical personnel, consultants, and other skilled and unskilled labor. The value of these services may not be charged to the Federal award either as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing or matching requirements in accordance with the provisions of § 200.306 Cost sharing or matching.

(d) To the extent feasible, services donated to the non-Federal entity will be supported by the same methods used to support the allocability of regular personnel services.

(e) The following provisions apply to nonprofit organizations. The value of services donated to the nonprofit organization utilized in the performance of a direct cost activity must be considered in the determination of the non-Federal entity's indirect cost rate(s) and, accordingly, must be allocated a proportionate share of applicable indirect costs when the following circumstances exist:

(1) The aggregate value of the services is material;

(2) The services are supported by a significant amount of the indirect costs incurred by the non-Federal entity;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the non-Federal entity and the cognizant agency for indirect costs must negotiate an appropriate allocation of indirect cost to the services.

(ii) Where donated services directly benefit a project supported by the Federal award, the indirect costs allocated to the services will be considered as part of the total costs of the project. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing or matching requirements.

(f) Fair market value of donated services must be computed as described in § 200.306 Cost sharing or matching.

(g) Personal Property and Use of Space.

(1) Donated personal property and use of space may be furnished to a non-Federal entity. The value of the personal property and space may not be charged to the Federal award either as a direct or indirect cost.

(2) The value of the donations may be used to meet cost sharing or matching share requirements under the conditions described in §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance of subpart D of this part. The value of the donations must be determined in accordance with §§ 200.300 Statutory and national policy requirements through 200.309 Period of performance. Where donations are treated as indirect costs, indirect cost rates will separate the value of the donations so that reimbursement will not be made.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(a) *Definitions for the purposes of this section.* (1) *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon verdict or a plea, including a conviction due to a plea of *nolo contendere*.

(2) *Costs* include the services of in-house or private counsel, accountants, consultants, or others engaged to assist the non-Federal entity before, during, and after commencement of a judicial or administrative proceeding, that bear a direct relationship to the proceeding.

(3) *Fraud* means:

(i) Acts of fraud or corruption or attempts to defraud the Federal Government or to corrupt its agents,

(ii) Acts that constitute a cause for debarment or suspension (as specified in agency regulations), and

(iii) Acts which violate the False Claims Act (31 U.S.C. 3729–3732) or the Anti-kickback Act (41 U.S.C. 1320a-7b(b)).

(4) *Penalty* does not include restitution, reimbursement, or compensatory damages.

(5) *Proceeding* includes an investigation.

(b) *Costs.* (1) Except as otherwise described herein, costs incurred in connection with any criminal, civil or administrative proceeding (including filing of a false certification) commenced by the Federal Government, a state, local government, or foreign government, or joined by the Federal Government (including a proceeding under the False Claims Act), against the non-Federal entity, (or commenced by third parties or a current or former employee of the non-Federal entity who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 2409 or 41 U.S.C. 4712), are not allowable if the proceeding:

(i) Relates to a violation of, or failure to comply with, a Federal, state, local or foreign statute, regulation or the terms and conditions of the Federal award, by the non-Federal entity (including its agents and employees); and

(ii) Results in any of the following dispositions:

(A) In a criminal proceeding, a conviction.

(B) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of non-Federal entity liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs or the imposition of a monetary penalty, or an order issued by the Federal awarding agency head or delegate to the non-Federal entity to take corrective action under 10 U.S.C. 2409 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the non-Federal entity, to rescind or void a Federal award, or to terminate a Federal award by reason of a violation or failure to comply with a statute, regulation, or the terms and conditions of the Federal award.

(E) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b)(1)(ii)(A) through (D) of this section.

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(2) If more than one proceeding involves the same alleged misconduct, the costs of all such proceedings are unallowable if any results in one of the dispositions shown in paragraph (b) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement by the non-Federal entity and the Federal Government, then the costs incurred may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a state, local or foreign government, the authorized Federal official may allow the costs incurred if such authorized official determines that the costs were incurred as a result of:

(1) A specific term or condition of the Federal award, or

(2) Specific written direction of an authorized official of the Federal awarding agency.

(e) Costs incurred in connection with proceedings described in paragraph (b) of this section, which are not made unallowable by that subsection, may be allowed but only to the extent that:

(1) The costs are reasonable and necessary in relation to the administration of the Federal award and activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the reasonable, necessary, allocable and otherwise allowable costs incurred is not prohibited by any other provision(s) of the Federal award;

(3) The costs are not recovered from the Federal Government or a third party, either directly as a result of the proceeding or otherwise; and,

(4) An authorized Federal official must determine the percentage of costs allowed considering the complexity of litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States, and such other factors as may be appropriate. Such percentage must not exceed 80 percent. However, if an agreement reached under paragraph (c) of this section has explicitly considered this 80 percent limitation and per-

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mitted a higher percentage, then the full amount of costs resulting from that agreement are allowable.

(f) Costs incurred by the non-Federal entity in connection with the defense of suits brought by its employees or ex-employees under section 2 of the Major Fraud Act of 1988 (18 U.S.C. 1031), including the cost of all relief necessary to make such employee whole, where the non-Federal entity was found liable or settled, are unallowable.

(g) Costs of prosecution of claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) Costs of legal, accounting, and consultant services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the Federal award.

(i) Costs which may be unallowable under this section, including directly associated costs, must be segregated and accounted for separately. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Federal Government must generally withhold payment of such costs. However, if in its best interests, the Federal Government may provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreement to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.436 Depreciation.

(a) Depreciation is the method for allocating the cost of fixed assets to periods benefitting from asset use. The non-Federal entity may be compensated for the use of its buildings, capital improvements, equipment, and software projects capitalized in accordance with GAAP, provided that they are used, needed in the non-Federal entity's activities, and properly allocated to Federal awards. Such compensation must be made by computing depreciation.

(b) The allocation for depreciation must be made in accordance with Appendices III through IX.

(c) Depreciation is computed applying the following rules. The computation of depreciation must be based on the acquisition cost of the assets involved. For an asset donated to the non-Federal entity by a third party, its fair market value at the time of the donation must be considered as the acquisition cost. Such assets may be depreciated or claimed as matching but not both. For the purpose of computing depreciation, the acquisition cost will exclude:

(1) The cost of land;

(2) Any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the non-Federal entity where law or agreement prohibits recovery; and

(4) Any asset acquired solely for the performance of a non-Federal award.

(d) When computing depreciation charges, the following must be observed:

(1) The period of useful service or useful life established in each case for usable capital assets must take into consideration such factors as type of construction, nature of the equipment, technological developments in the particular area, historical data, and the renewal and replacement policies followed for the individual items or classes of assets involved.

(2) The depreciation method used to charge the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. In the absence of clear evidence indicating that the expected consumption of the asset will be significantly greater in the early portions than in the later portions of its useful life, the straight-line method must be presumed to be the appropriate method. Depreciation methods once used may not be changed unless approved in advance by the cognizant agency. The depreciation methods used to calculate the depreciation amounts for indirect (F&A) rate purposes must be the same methods used by the non-Federal entity for its financial statements.

(3) The entire building, including the shell and all components, may be treated as a single asset and depreciated over a single useful life. A building may also be divided into multiple components. Each component item may then be depreciated over its estimated useful life. The building components must be grouped into three general components of a building: building shell (including construction and design costs), building services systems (e.g., elevators, HVAC, plumbing system and heating and air-conditioning system) and fixed equipment (e.g., sterilizers, casework, fume hoods, cold rooms and glassware/washers). In exceptional cases, a cognizant agency may authorize a non-Federal entity to use more than these three groupings. When a non-Federal entity elects to depreciate its buildings by its components, the same depreciation methods must be used for indirect (F&A) purposes and financial statements purposes, as described in paragraphs (d)(1) and (2) of this section.

(4) No depreciation may be allowed on any assets that have outlived their depreciable lives.

(5) Where the depreciation method is introduced to replace the use allowance method, depreciation must be computed as if the asset had been depreciated over its entire life (i.e., from the date the asset was acquired and ready for use to the date of disposal or withdrawal from service). The total amount of use allowance and depreciation for an asset (including imputed depreciation applicable to periods prior to the conversion from the use allowance method as well as depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Charges for depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. Statistical sampling techniques may be used in taking these inventories. In addition, adequate depreciation records showing the amount of depreciation taken each period must also be maintained.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

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§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the non-Federal entity's documented policies for the improvement of working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) Such costs will be equitably apportioned to all activities of the non-Federal entity. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably sent to employee welfare organizations.

(c) Losses resulting from operating food services are allowable only if the non-Federal entity's objective is to operate such services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only:

(1) Where the non-Federal entity can demonstrate unusual circumstances; and

(2) With the approval of the cognizant agency for indirect costs.

§ 200.438 Entertainment costs.

Costs of entertainment, including amusement, diversion, and social activities and any associated costs are unallowable, except where specific costs that might otherwise be considered entertainment have a programmatic purpose and are authorized either in the approved budget for the Federal award or with prior written approval of the Federal awarding agency.

§ 200.439 Equipment and other capital expenditures.

(a) See §§ 200.13 Capital expenditures, 200.33 Equipment, 200.89 Special purpose equipment, 200.48 General purpose equipment, 200.2 Acquisition cost, and 200.12 Capital assets.

(b) The following rules of allowability must apply to equipment and other capital expenditures:

(1) Capital expenditures for general purpose equipment, buildings, and land are unallowable as direct charges, except with the prior written approval of the Federal awarding agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a

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unit cost of \$5,000 or more have the prior written approval of the Federal awarding agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment which materially increase their value or useful life are unallowable as a direct cost except with the prior written approval of the Federal awarding agency, or pass-through entity. See § 200.436 Depreciation, for rules on the allowability of depreciation on buildings, capital improvements, and equipment. See also § 200.465 Rental costs of real property and equipment.

(4) When approved as a direct charge pursuant to paragraphs (b)(1) through (3) of this section, capital expenditures will be charged in the period in which the expenditure is incurred, or as otherwise determined appropriate and negotiated with the Federal awarding agency.

(5) The unamortized portion of any equipment written off as a result of a change in capitalization levels may be recovered by continuing to claim the otherwise allowable depreciation on the equipment, or by amortizing the amount to be written off over a period of years negotiated with the Federal cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the non-Federal entity is instructed by the Federal awarding agency to otherwise dispose of or transfer the equipment the costs of such disposal or transfer are allowable.

(7) Equipment and other capital expenditures are unallowable as indirect costs. See § 200.436 Depreciation.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.440 Exchange rates.

(a) Cost increases for fluctuations in exchange rates are allowable costs subject to the availability of funding. Prior approval of exchange rate fluctuations is required only when the change results in the need for additional Federal funding, or the increased costs result in the need to significantly reduce the scope of the project. The Federal awarding agency must however ensure that adequate funds are available to cover currency

fluctuations in order to avoid a violation of the Anti-Deficiency Act.

(b) The non-Federal entity is required to make reviews of local currency gains to determine the need for additional federal funding before the expiration date of the Federal award. Subsequent adjustments for currency increases may be allowable only when the non-Federal entity provides the Federal awarding agency with adequate source documentation from a commonly used source in effect at the time the expense was made, and to the extent that sufficient Federal funds are available.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from non-Federal entity violations of, alleged violations of, or failure to comply with, Federal, state, tribal, local or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with prior written approval of the Federal awarding agency. See also § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

§ 200.442 Fund raising and investment management costs.

(a) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions are unallowable. Fund raising costs for the purposes of meeting the Federal program objectives are allowable with prior written approval from the Federal awarding agency. Proposal costs are covered in § 200.460 Proposal costs.

(b) Costs of investment counsel and staff and similar expenses incurred to enhance income from investments are unallowable except when associated with investments covering pension, self-insurance, or other funds which include Federal participation allowed by this part.

(c) Costs related to the physical custody and control of monies and securities are allowable.

(d) Both allowable and unallowable fund raising and investment activities must be allocated as an appropriate share of indirect costs under the conditions described in § 200.413 Direct costs.

§ 200.443 Gains and losses on disposition of depreciable assets.

(a) Gains and losses on the sale, retirement, or other disposition of depreciable property must be included in the year in which they occur as credits or charges to the asset cost grouping(s) in which the property was included. The amount of the gain or loss to be included as a credit or charge to the appropriate asset cost grouping(s) is the difference between the amount realized on the property and the undepreciated basis of the property.

(b) Gains and losses from the disposition of depreciable property must not be recognized as a separate credit or charge under the following conditions:

(1) The gain or loss is processed through a depreciation account and is reflected in the depreciation allowable under §§ 200.436 Depreciation and 200.439 Equipment and other capital expenditures.

(2) The property is given in exchange as part of the purchase price of a similar item and the gain or loss is taken into account in determining the depreciation cost basis of the new item.

(3) A loss results from the failure to maintain permissible insurance, except as otherwise provided in § 200.447 Insurance and indemnification.

(4) Compensation for the use of the property was provided through use allowances in lieu of depreciation.

(5) Gains and losses arising from mass or extraordinary sales, retirements, or other dispositions must be considered on a case-by-case basis.

(c) Gains or losses of any nature arising from the sale or exchange of property other than the property covered in paragraph (a) of this section, e.g., land, must be excluded in computing Federal award costs.

(d) When assets acquired with Federal funds, in part or wholly, are disposed of, the distribution of the proceeds must be made in accordance with

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§§ 200.310 Insurance Coverage through
200.316 Property trust relationship.

[78 FR 78608, Dec. 26, 2013, as amended at 79
FR 75886, Dec. 19, 2014]

§ 200.444 General costs of government.

(a) For states, local governments, and Indian Tribes, the general costs of government are unallowable (except as provided in § 200.474 Travel costs). Unallowable costs include:

(1) Salaries and expenses of the Office of the Governor of a state or the chief executive of a local government or the chief executive of an Indian tribe;

(2) Salaries and other expenses of a state legislature, tribal council, or similar local governmental body, such as a county supervisor, city council, school board, etc., whether incurred for purposes of legislation or executive direction;

(3) Costs of the judicial branch of a government;

(4) Costs of prosecutorial activities unless treated as a direct cost to a specific program if authorized by statute or regulation (however, this does not preclude the allowability of other legal activities of the Attorney General as described in § 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements); and

(5) Costs of other general types of government services normally provided to the general public, such as fire and police, unless provided for as a direct cost under a program statute or regulation.

(b) For Indian tribes and Councils of Governments (COGs) (see § 200.64 Local government), up to 50% of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and his or her staff can be included in the indirect cost calculation without documentation.

[78 FR 78608, Dec. 26, 2013, as amended at 79
FR 75886, Dec. 19, 2014]

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for personal use of the non-Federal entity's employees are unallowable regardless

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of whether the cost is reported as taxable income to the employees.

(b) Costs of housing (e.g., depreciation, maintenance, utilities, furnishings, rent), housing allowances and personal living expenses are only allowable as direct costs regardless of whether reported as taxable income to the employees. In addition, to be allowable direct costs must be approved in advance by a Federal awarding agency.

§ 200.446 Idle facilities and idle capacity.

(a) As used in this section the following terms have the meanings set forth in this section:

(1) Facilities means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the non-Federal entity.

(2) Idle facilities means completely unused facilities that are excess to the non-Federal entity's current needs.

(3) Idle capacity means the unused capacity of partially used facilities. It is the difference between:

(i) That which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays and;

(ii) The extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(4) Cost of idle facilities or idle capacity means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, and depreciation. These costs could include the costs of idle public safety emergency facilities, telecommunications, or information technology system capacity that is built to withstand major fluctuations in load, e.g., consolidated data centers.

(b) The costs of idle facilities are unallowable except to the extent that:

(1) They are necessary to meet workload requirements which may fluctuate and are allocated appropriately to all benefiting programs; or

(2) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen. Under the exception stated in this subsection, costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed one year, depending on the initiative taken to use, lease, or dispose of such facilities.

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or indirect cost rates from period to period. Such costs are allowable, provided that the capacity is reasonably anticipated to be necessary to carry out the purpose of the Federal award or was originally reasonable and is not subject to reduction or elimination by use on other Federal awards, subletting, renting, or sale, in accordance with sound business, economic, or security practices. Widespread idle capacity throughout an entire facility or among a group of assets having substantially the same function may be considered idle facilities.

§ 200.447 Insurance and indemnification.

(a) Costs of insurance required or approved and maintained, pursuant to the Federal award, are allowable.

(b) Costs of other insurance in connection with the general conduct of activities are allowable subject to the following limitations:

(1) Types and extent and cost of coverage are in accordance with the non-Federal entity's policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the Federal awarding agency has specifically required or approved such costs.

(3) Costs allowed for business interruption or other similar insurance must exclude coverage of management fees.

(4) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation (see § 200.431 Compensation—fringe benefits). The cost of such insurance when the non-Federal entity is identified as the beneficiary is unallowable.

(5) Insurance against defects. Costs of insurance with respect to any costs incurred to correct defects in the non-Federal entity's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance. Medical liability insurance is an allowable cost of Federal research programs only to the extent that the Federal research programs involve human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and must be assigned to individual projects based on the manner in which the insurer allocates the risk to the population covered by the insurance.

(c) Actual losses which could have been covered by permissible insurance (through a self-insurance program or otherwise) are unallowable, unless expressly provided for in the Federal award. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

(d) Contributions to a reserve for certain self-insurance programs including workers' compensation, unemployment compensation, and severance pay are allowable subject to the following provisions:

(1) The type of coverage and the extent of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, provision for known or reasonably estimated self-insured liabilities, which do not become payable for more than one year after the provision is made, must not exceed the discounted present value of the liability. The rate used for

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discounting the liability must be determined by giving consideration to such factors as the non-Federal entity's settlement rate for those liabilities and its investment rate of return.

(2) Earnings or investment income on reserves must be credited to those reserves.

(3)(i) Contributions to reserves must be based on sound actuarial principles using historical experience and reasonable assumptions. Reserve levels must be analyzed and updated at least biennially for each major risk being insured and take into account any reinsurance, coinsurance, etc. Reserve levels related to employee-related coverages will normally be limited to the value of claims:

(A) Submitted and adjudicated but not paid;

(B) Submitted but not adjudicated; and

(C) Incurred but not submitted.

(ii) Reserve levels in excess of the amounts based on the above must be identified and justified in the cost allocation plan or indirect cost rate proposal.

(4) Accounting records, actuarial studies, and cost allocations (or billings) must recognize any significant differences due to types of insured risk and losses generated by the various insured activities or agencies of the non-Federal entity. If individual departments or agencies of the non-Federal entity experience significantly different levels of claims for a particular risk, those differences are to be recognized by the use of separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (e.g., general fund or unrestricted account), refunds must be made to the Federal Government for its share of funds transferred, including earned or imputed interest from the date of transfer and debt interest, if applicable, chargeable in accordance with applicable Federal cognizant agency for indirect cost, claims collection regulations.

(e) Insurance refunds must be credited against insurance costs in the year the refund is received.

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(f) Indemnification includes securing the non-Federal entity against liabilities to third persons and other losses not compensated by insurance or otherwise. The Federal Government is obligated to indemnify the non-Federal entity only to the extent expressly provided for in the Federal award, except as provided in paragraph (c) of this section.

§ 200.448 Intellectual property.

(a) *Patent costs.* (1) The following costs related to securing patents and copyrights are allowable:

(i) Costs of preparing disclosures, reports, and other documents required by the Federal award, and of searching the art to the extent necessary to make such disclosures;

(ii) Costs of preparing documents and any other patent costs in connection with the filing and prosecution of a United States patent application where title or royalty-free license is required by the Federal Government to be conveyed to the Federal Government; and

(iii) General counseling services relating to patent and copyright matters, such as advice on patent and copyright laws, regulations, clauses, and employee intellectual property agreements (See also § 200.459 Professional service costs).

(2) The following costs related to securing patents and copyrights are unallowable:

(i) Costs of preparing disclosures, reports, and other documents, and of searching the art to make disclosures not required by the Federal award;

(ii) Costs in connection with filing and prosecuting any foreign patent application, or any United States patent application, where the Federal award does not require conveying title or a royalty-free license to the Federal Government.

(b) *Royalties and other costs for use of patents and copyrights.* (1) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent, or rights thereto, necessary for the proper performance of the Federal award are allowable unless:

(i) The Federal Government already has a license or the right to free use of the patent or copyright.

(ii) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid.

(iii) The patent or copyright is considered to be unenforceable.

(iv) The patent or copyright is expired.

(2) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the non-Federal entity.

(ii) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Federal award would be made.

(iii) Royalties paid under an agreement entered into after a Federal award is made to a non-Federal entity.

(3) In any case involving a patent or copyright formerly owned by the non-Federal entity, the amount of royalty allowed must not exceed the cost which would have been allowed had the non-Federal entity retained title thereto.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75886, Dec. 19, 2014]

§ 200.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the non-Federal entity's own funds, however represented, are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the conditions in this section.

(b)(1) Capital assets is defined as noted in § 200.12 Capital assets. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For non-Federal entity fiscal years beginning on or after January 1, 2016, intangible assets include patents and computer software. For software development projects, only interest attributable to the portion of the project costs capitalized in accordance with GAAP is allowable.

(c) *Conditions for all non-Federal entities.* (1) The non-Federal entity uses the

capital assets in support of Federal awards;

(2) The allowable asset costs to acquire facilities and equipment are limited to a fair market value available to the non-Federal entity from an unrelated (arm's length) third party.

(3) The non-Federal entity obtains the financing via an arm's-length transaction (that is, a transaction with an unrelated third party); or claims reimbursement of actual interest cost at a rate available via such a transaction.

(4) The non-Federal entity limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a capital lease may be determined less costly than purchasing through debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The non-Federal entity expenses or capitalizes allowable interest cost in accordance with GAAP.

(6) Earnings generated by the investment of borrowed funds pending their disbursement for the asset costs are used to offset the current period's allowable interest cost, whether that cost is expensed or capitalized. Earnings subject to being reported to the Federal Internal Revenue Service under arbitrage requirements are excludable.

(7) The following conditions must apply to debt arrangements over \$1 million to purchase or construct facilities, unless the non-Federal entity makes an initial equity contribution to the purchase of 25 percent or more. For this purpose, "initial equity contribution" means the amount or value of contributions made by the non-Federal entity for the acquisition of facilities prior to occupancy.

(i) The non-Federal entity must reduce claims for reimbursement of interest cost by an amount equal to imputed interest earnings on excess cash flow attributable to the portion of the facility used for Federal awards.

(ii) The non-Federal entity must impute interest on excess cash flow as follows:

(A) Annually, the non-Federal entity must prepare a cumulative (from the inception of the project) report of

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monthly cash inflows and outflows, regardless of the funding source. For this purpose, inflows consist of Federal reimbursement for depreciation, amortization of capitalized construction interest, and annual interest cost. Outflows consist of initial equity contributions, debt principal payments (less the pro-rata share attributable to the cost of land), and interest payments.

(B) To compute monthly cash inflows and outflows, the non-Federal entity must divide the annual amounts determined in step (i) by the number of months in the year (usually 12) that the building is in service.

(C) For any month in which cumulative cash inflows exceed cumulative outflows, interest must be calculated on the excess inflows for that month and be treated as a reduction to allowable interest cost. The rate of interest to be used must be the three-month Treasury bill closing rate as of the last business day of that month.

(8) Interest attributable to a fully depreciated asset is unallowable.

(d) Additional conditions for states, local governments and Indian tribes. For costs to be allowable, the non-Federal entity must have incurred the interest costs for buildings after October 1, 1980, or for land and equipment after September 1, 1995.

(1) The requirement to offset interest earned on borrowed funds against current allowable interest cost (paragraph (c)(5), above) also applies to earnings on debt service reserve funds.

(2) The non-Federal entity will negotiate the amount of allowable interest cost related to the acquisition of facilities with asset costs of \$1 million or more, as outlined in paragraph (c)(7) of this section. For this purpose, a non-Federal entity must consider only cash inflows and outflows attributable to that portion of the real property used for Federal awards.

(e) Additional conditions for IHEs. For costs to be allowable, the IHE must have incurred the interest costs after July 1, 1982, in connection with acquisitions of capital assets that occurred after that date.

(f) Additional condition for nonprofit organizations. For costs to be allowable, the nonprofit organization incurred the interest costs after Sep-

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tember 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) The interest allowability provisions of this section do not apply to a nonprofit organization subject to “full coverage” under the Cost Accounting Standards (CAS), as defined at 48 CFR 9903.201-2(a). The non-Federal entity’s Federal awards are instead subject to CAS 414 (48 CFR 9904.414), “Cost of Money as an Element of the Cost of Facilities Capital”, and CAS 417 (48 CFR 9904.417), “Cost of Money as an Element of the Cost of Capital Assets Under Construction”.

[78 FR 78608, Dec. 26, 2013, as amended at 80 FR 54409, Sept. 10, 2015]

§ 200.450 Lobbying.

(a) The cost of certain influencing activities associated with obtaining grants, contracts, cooperative agreements, or loans is an unallowable cost. Lobbying with respect to certain grants, contracts, cooperative agreements, and loans is governed by relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying” published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying” and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).

(b) Executive lobbying costs. Costs incurred in attempting to improperly influence either directly or indirectly, an employee or officer of the executive branch of the Federal Government to give consideration or to act regarding a Federal award or a regulatory matter are unallowable. Improper influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

(c) In addition to the above, the following restrictions are applicable to nonprofit organizations and IHEs:

(1) Costs associated with the following activities are unallowable:

(i) Attempts to influence the outcomes of any Federal, state, or local election, referendum, initiative, or similar procedure, through in-kind or cash contributions, endorsements, publicity, or similar activity;

(ii) Establishing, administering, contributing to, or paying the expenses of a political party, campaign, political action committee, or other organization established for the purpose of influencing the outcomes of elections in the United States;

(iii) Any attempt to influence: (A) The introduction of Federal or state legislation;

(B) The enactment or modification of any pending Federal or state legislation through communication with any member or employee of the Congress or state legislature (including efforts to influence state or local officials to engage in similar lobbying activity);

(C) The enactment or modification of any pending Federal or state legislation by preparing, distributing, or using publicity or propaganda, or by urging members of the general public, or any segment thereof, to contribute to or participate in any mass demonstration, march, rally, fund raising drive, lobbying campaign or letter writing or telephone campaign; or

(D) Any government official or employee in connection with a decision to sign or veto enrolled legislation;

(iv) Legislative liaison activities, including attendance at legislative sessions or committee hearings, gathering information regarding legislation, and analyzing the effect of legislation, when such activities are carried on in support of or in knowing preparation for an effort to engage in unallowable lobbying.

(2) The following activities are excepted from the coverage of paragraph (c)(1) of this section:

(i) Technical and factual presentations on topics directly related to the performance of a grant, contract, or other agreement (through hearing testimony, statements, or letters to the Congress or a state legislature, or subdivision, member, or cognizant staff member thereof), in response to a documented request (including a Congressional Record notice requesting testimony or statements for the record at a

regularly scheduled hearing) made by the non-Federal entity's member of congress, legislative body or a subdivision, or a cognizant staff member thereof, provided such information is readily obtainable and can be readily put in deliverable form, and further provided that costs under this section for travel, lodging or meals are unallowable unless incurred to offer testimony at a regularly scheduled Congressional hearing pursuant to a written request for such presentation made by the Chairman or Ranking Minority Member of the Committee or Subcommittee conducting such hearings;

(ii) Any lobbying made unallowable by paragraph (c)(1)(iii) of this section to influence state legislation in order to directly reduce the cost, or to avoid material impairment of the non-Federal entity's authority to perform the grant, contract, or other agreement; or

(iii) Any activity specifically authorized by statute to be undertaken with funds from the Federal award.

(iv) Any activity excepted from the definitions of "lobbying" or "influencing legislation" by the Internal Revenue Code provisions that require nonprofit organizations to limit their participation in direct and "grass roots" lobbying activities in order to retain their charitable deduction status and avoid punitive excise taxes, I.R.C. §§501(c)(3), 501(h), 4911(a), including:

(A) Nonpartisan analysis, study, or research reports;

(B) Examinations and discussions of broad social, economic, and similar problems; and

(C) Information provided upon request by a legislator for technical advice and assistance, as defined by I.R.C. § 4911(d)(2) and 26 CFR 56.4911-2(c)(1)-(c)(3).

(v) When a non-Federal entity seeks reimbursement for indirect (F&A) costs, total lobbying costs must be separately identified in the indirect (F&A) cost rate proposal, and thereafter treated as other unallowable activity costs in accordance with the procedures of § 200.413 Direct costs.

(vi) The non-Federal entity must submit as part of its annual indirect (F&A) cost rate proposal a certification that the requirements and standards of

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this section have been complied with. (See also § 200.415 Required certifications.)

(vii)(A) Time logs, calendars, or similar records are not required to be created for purposes of complying with the record keeping requirements in

§ 200.302 Financial management with respect to lobbying costs during any particular calendar month when:

(1) The employee engages in lobbying (as defined in paragraphs (c)(1) and (c)(2) of this section) 25 percent or less of the employee's compensated hours of employment during that calendar month; and

(2) Within the preceding five-year period, the non-Federal entity has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(B) When conditions in paragraph (c)(2)(vii)(A)(1) and (2) of this section are met, non-Federal entities are not required to establish records to support the allowability of claimed costs in addition to records already required or maintained. Also, when conditions in paragraphs (c)(2)(vii)(A)(1) and (2) of this section are met, the absence of time logs, calendars, or similar records will not serve as a basis for disallowing costs by contesting estimates of lobbying time spent by employees during a calendar month.

(viii) The Federal awarding agency must establish procedures for resolving in advance, in consultation with OMB, any significant questions or disagreements concerning the interpretation or application of this section. Any such advance resolutions must be binding in any subsequent settlements, audits, or investigations with respect to that grant or contract for purposes of interpretation of this part, provided, however, that this must not be construed to prevent a contractor or non-Federal entity from contesting the lawfulness of such a determination.

§ 200.451 Losses on other awards or contracts.

Any excess of costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the non-Federal entity's contributed portion by reason of cost-sharing agreements or

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any under-recoveries through negotiation of flat amounts for indirect (F&A) costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another award or contract is unallowable. All losses are not allowable indirect (F&A) costs and are required to be included in the appropriate indirect cost rate base for allocation of indirect costs.

§ 200.452 Maintenance and repair costs.

Costs incurred for utilities, insurance, security, necessary maintenance, janitorial services, repair, or upkeep of buildings and equipment (including Federal property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable. Costs incurred for improvements which add to the permanent value of the buildings and equipment or appreciably prolong their intended life must be treated as capital expenditures (see § 200.439 Equipment and other capital expenditures). These costs are only allowable to the extent not paid through rental or other agreements.

§ 200.453 Materials and supplies costs, including costs of computing devices.

(a) Costs incurred for materials, supplies, and fabricated parts necessary to carry out a Federal award are allowable.

(b) Purchased materials and supplies must be charged at their actual prices, net of applicable credits. Withdrawals from general stores or stockrooms must be charged at their actual net cost under any recognized method of pricing inventory withdrawals, consistently applied. Incoming transportation charges are a proper part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. In the specific case of computing devices, charging as direct costs is allowable for devices that are essential and allocable, but not solely dedicated, to the performance of a Federal award.

(d) Where federally-donated or furnished materials are used in performing the Federal award, such materials will be used without charge.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the non-Federal entity's membership in business, technical, and professional organizations are allowable.

(b) Costs of the non-Federal entity's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable with prior approval by the Federal awarding agency or pass-through entity.

(d) Costs of membership in any country club or social or dining club or organization are unallowable.

(e) Costs of membership in organizations whose primary purpose is lobbying are unallowable. See also § 200.450 Lobbying.

§ 200.455 Organization costs.

Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselor, whether or not employees of the non-Federal entity in connection with establishment or reorganization of an organization, are unallowable except with prior approval of the Federal awarding agency.

§ 200.456 Participant support costs.

Participant support costs as defined in § 200.75 Participant support costs are allowable with the prior approval of the Federal awarding agency.

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for protection and security of facilities, personnel, and work products are allowable. Such costs include, but are not limited to, wages and uniforms of personnel engaged in security activities; equipment; barriers; protective (non-military) gear, devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject

to § 200.439 Equipment and other capital expenditures.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.458 Pre-award costs.

Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Federal awarding agency.

§ 200.459 Professional service costs.

(a) Costs of professional and consultant services rendered by persons who are members of a particular profession or possess a special skill, and who are not officers or employees of the non-Federal entity, are allowable, subject to paragraphs (b) and (c) when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Federal Government. In addition, legal and related services are limited under

§ 200.435 Defense and prosecution of criminal and civil proceedings, claims, appeals and patent infringements.

(b) In determining the allowability of costs in a particular case, no single factor or any special combination of factors is necessarily determinative. However, the following factors are relevant:

(1) The nature and scope of the service rendered in relation to the service required.

(2) The necessity of contracting for the service, considering the non-Federal entity's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to Federal awards.

(4) The impact of Federal awards on the non-Federal entity's business (i.e., what new problems have arisen).

(5) Whether the proportion of Federal work to the non-Federal entity's total business is such as to influence the non-Federal entity in favor of incurring the cost, particularly where the

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services rendered are not of a continuing nature and have little relationship to work under Federal awards.

(6) Whether the service can be performed more economically by direct employment rather than contracting.

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on non-federally funded activities.

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, and termination provisions).

(c) In addition to the factors in paragraph (b) of this section, to be allowable, retainer fees must be supported by evidence of bona fide services available or rendered.

§ 200.460 Proposal costs.

Proposal costs are the costs of preparing bids, proposals, or applications on potential Federal and non-Federal awards or projects, including the development of data necessary to support the non-Federal entity's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect (F&A) costs and allocated currently to all activities of the non-Federal entity. No proposal costs of past accounting periods will be allocable to the current period.

§ 200.461 Publication and printing costs.

(a) Publication costs for electronic and print media, including distribution, promotion, and general handling are allowable. If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all benefiting activities of the non-Federal entity.

(b) Page charges for professional journal publications are allowable where:

(1) The publications report work supported by the Federal Government; and

(2) The charges are levied impartially on all items published by the journal, whether or not under a Federal award.

(3) The non-Federal entity may charge the Federal award before close-

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out for the costs of publication or sharing of research results if the costs are not incurred during the period of performance of the Federal award.

§ 200.462 Rearrangement and reversion costs.

(a) Costs incurred for ordinary and normal rearrangement and alteration of facilities are allowable as indirect costs. Special arrangements and alterations costs incurred specifically for a Federal award are allowable as a direct cost with the prior approval of the Federal awarding agency or pass-through entity.

(b) Costs incurred in the restoration or rehabilitation of the non-Federal entity's facilities to approximately the same condition existing immediately prior to commencement of Federal awards, less costs related to normal wear and tear, are allowable.

§ 200.463 Recruiting costs.

(a) Subject to paragraphs (b) and (c) of this section, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to the non-Federal entity's standard recruitment program. Where the non-Federal entity uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) Special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel that do not meet the test of reasonableness or do not conform with the established practices of the non-Federal entity, are unallowable.

(c) Where relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part to a Federal award, and the newly

hired employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity will be required to refund or credit the Federal share of such relocation costs to the Federal Government. See also § 200.464 Relocation costs of employees.

(d) Short-term, travel visa costs (as opposed to longer-term, immigration visas) are generally allowable expenses that may be proposed as a direct cost. Since short-term visas are issued for a specific period and purpose, they can be clearly identified as directly connected to work performed on a Federal award. For these costs to be directly charged to a Federal award, they must:

(1) Be critical and necessary for the conduct of the project;

(2) Be allowable under the applicable cost principles;

(3) Be consistent with the non-Federal entity's cost accounting practices and non-Federal entity policy; and

(4) Meet the definition of "direct cost" as described in the applicable cost principles.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or for a stated period of not less than 12 months) of an existing employee or upon recruitment of a new employee. Relocation costs are allowable, subject to the limitations described in paragraphs (b), (c), and (d) of this section, provided that:

(1) The move is for the benefit of the employer.

(2) Reimbursement to the employee is in accordance with an established written policy consistently followed by the employer.

(3) The reimbursement does not exceed the employee's actual (or reasonably estimated) expenses.

(b) Allowable relocation costs for current employees are limited to the following:

(1) The costs of transportation of the employee, members of his or her immediate family and his household, and personal effects to the new location.

(2) The costs of finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period, up to maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incident to the disposition of the employee's former home. These costs, together with those described in (4), are limited to 8 per cent of the sales price of the employee's former home.

(4) The continuing costs of ownership (for up to six months) of the vacant former home after the settlement or lease date of the employee's new permanent home, such as maintenance of buildings and grounds (exclusive of fixing-up expenses), utilities, taxes, and property insurance.

(5) Other necessary and reasonable expenses normally incident to relocation, such as the costs of canceling an unexpired lease, transportation of personal property, and purchasing insurance against loss of or damages to personal property. The cost of canceling an unexpired lease is limited to three times the monthly rental.

(c) Allowable relocation costs for new employees are limited to those described in paragraphs (b)(1) and (2) of this section. When relocation costs incurred incident to the recruitment of new employees have been charged to a Federal award and the employee resigns for reasons within the employee's control within 12 months after hire, the non-Federal entity must refund or credit the Federal Government for its share of the cost. However, the costs of travel to an overseas location must be considered travel costs in accordance with § 200.474 Travel costs, and not this § 200.464 Relocation costs of employees, for the purpose of this paragraph if dependents are not permitted at the location for any reason and the costs do not include costs of transporting household goods.

(d) The following costs related to relocation are unallowable:

(1) Fees and other costs associated with acquiring a new home.

(2) A loss on the sale of a former home.

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(3) Continuing mortgage principal and interest payments on a home being sold.

(4) Income taxes paid by an employee related to reimbursed relocation costs.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.465 Rental costs of real property and equipment.

(a) Subject to the limitations described in paragraphs (b) through (d) of this section, rental costs are allowable to the extent that the rates are reasonable in light of such factors as: rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. Rental arrangements should be reviewed periodically to determine if circumstances have changed and other options are available.

(b) Rental costs under “sale and lease back” arrangements are allowable only up to the amount that would be allowed had the non-Federal entity continued to own the property. This amount would include expenses such as depreciation, maintenance, taxes, and insurance.

(c) Rental costs under “less-than-arm’s-length” leases are allowable only up to the amount (as explained in paragraph (b) of this section). For this purpose, a less-than-arm’s-length lease is one under which one party to the lease agreement is able to control or substantially influence the actions of the other. Such leases include, but are not limited to those between:

(1) Divisions of the non-Federal entity;

(2) The non-Federal entity under common control through common officers, directors, or members; and

(3) The non-Federal entity and a director, trustee, officer, or key employee of the non-Federal entity or an immediate family member, either directly or through corporations, trusts, or similar arrangements in which they hold a controlling interest. For example, the non-Federal entity may establish a separate corporation for the sole purpose of owning property and leasing it back to the non-Federal entity.

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(4) Family members include one party with any of the following relationships to another party:

(i) Spouse, and parents thereof;

(ii) Children, and spouses thereof;

(iii) Parents, and spouses thereof;

(iv) Siblings, and spouses thereof;

(v) Grandparents and grandchildren, and spouses thereof;

(vi) Domestic partner and parents thereof, including domestic partners of any individual in 2 through 5 of this definition; and

(vii) Any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

(5) Rental costs under leases which are required to be treated as capital leases under GAAP are allowable only up to the amount (as explained in paragraph (b) of this section) that would be allowed had the non-Federal entity purchased the property on the date the lease agreement was executed. The provisions of GAAP must be used to determine whether a lease is a capital lease. Interest costs related to capital leases are allowable to the extent they meet the criteria in § 200.449 Interest. Unallowable costs include amounts paid for profit, management fees, and taxes that would not have been incurred had the non-Federal entity purchased the property.

(6) The rental of any property owned by any individuals or entities affiliated with the non-Federal entity, to include commercial or residential real estate, for purposes such as the home office workspace is unallowable.

§ 200.466 Scholarships and student aid costs.

(a) Costs of scholarships, fellowships, and other programs of student aid at IHEs are allowable only when the purpose of the Federal award is to provide training to selected participants and the charge is approved by the Federal awarding agency. However, tuition remission and other forms of compensation paid as, or in lieu of, wages to students performing necessary work are allowable provided that:

(1) The individual is conducting activities necessary to the Federal award;

(2) Tuition remission and other support are provided in accordance with established policy of the IHE and consistently provided in a like manner to students in return for similar activities conducted under Federal awards as well as other activities; and

(3) During the academic period, the student is enrolled in an advanced degree program at a non-Federal entity or affiliated institution and the activities of the student in relation to the Federal award are related to the degree program;

(4) The tuition or other payments are reasonable compensation for the work performed and are conditioned explicitly upon the performance of necessary work; and

(5) It is the IHE's practice to similarly compensate students under Federal awards as well as other activities.

(b) Charges for tuition remission and other forms of compensation paid to students as, or in lieu of, salaries and wages must be subject to the reporting requirements in § 200.430 Compensation—personal services, and must be treated as direct or indirect cost in accordance with the actual work being performed. Tuition remission may be charged on an average rate basis. See also § 200.431 Compensation—fringe benefits.

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the non-Federal entity (unless allowed under § 200.421 Advertising and public relations.) are unallowable, except as direct costs, with prior approval by the Federal awarding agency when necessary for the performance of the Federal award.

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities operated by the non-Federal entity, such as computing facilities, wind tunnels, and reactors are allowable, provided the charges for the services meet the conditions of either paragraphs (b) or (c) of this section, and, in addition, take into account any items of income or Federal financing that qualify as applicable credits under § 200.406 Applicable credits.

(b) The costs of such services, when material, must be charged directly to applicable awards based on actual usage of the services on the basis of a schedule of rates or established methodology that:

(1) Does not discriminate between activities under Federal awards and other activities of the non-Federal entity, including usage by the non-Federal entity for internal purposes, and

(2) Is designed to recover only the aggregate costs of the services. The costs of each service must consist normally of both its direct costs and its allocable share of all indirect (F&A) costs. Rates must be adjusted at least biennially, and must take into consideration over/under applied costs of the previous period(s).

(c) Where the costs incurred for a service are not material, they may be allocated as indirect (F&A) costs.

(d) Under some extraordinary circumstances, where it is in the best interest of the Federal Government and the non-Federal entity to establish alternative costing arrangements, such arrangements may be worked out with the Federal cognizant agency for indirect costs.

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities, are unallowable, unless specifically provided for in the Federal award.

§ 200.470 Taxes (including Value Added Tax).

(a) For states, local governments and Indian tribes:

(1) Taxes that a governmental unit is legally required to pay are allowable, except for self-assessed taxes that disproportionately affect Federal programs or changes in tax policies that disproportionately affect Federal programs.

(2) Gasoline taxes, motor vehicle fees, and other taxes that are in effect user fees for benefits provided to the Federal Government are allowable.

(3) This provision does not restrict the authority of the Federal awarding agency to identify taxes where Federal participation is inappropriate. Where

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the identification of the amount of unallowable taxes would require an inordinate amount of effort, the cognizant agency for indirect costs may accept a reasonable approximation thereof.

(b) For nonprofit organizations and IHEs:

(1) In general, taxes which the non-Federal entity is required to pay and which are paid or accrued in accordance with GAAP, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for:

(a) Taxes from which exemptions are available to the non-Federal entity directly or which are available to the non-Federal entity based on an exemption afforded the Federal Government and, in the latter case, when the Federal awarding agency makes available the necessary exemption certificates,

(b) Special assessments on land which represent capital improvements, and

(c) Federal income taxes.

(2) Any refund of taxes, and any payment to the non-Federal entity of interest thereon, which were allowed as Federal award costs, will be credited either as a cost reduction or cash refund, as appropriate, to the Federal Government. However, any interest actually paid or credited to a non-Federal entity incident to a refund of tax, interest, and penalty will be paid or credited to the Federal Government only to the extent that such interest accrued over the period during which the non-Federal entity has been reimbursed by the Federal Government for the taxes, interest, and penalties.

(c) Value Added Tax (VAT) Foreign taxes charged for the purchase of goods or services that a non-Federal entity is legally required to pay in country is an allowable expense under Federal awards. Foreign tax refunds or applicable credits under Federal awards refer to receipts, or reduction of expenditures, which operate to offset or reduce expense items that are allocable to Federal awards as direct or indirect costs. To the extent that such credits accrued or received by the non-Federal entity relate to allowable cost, these costs must be credited to the Federal awarding agency either as costs or cash

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refunds. If the costs are credited back to the Federal award, the non-Federal entity may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, use the foreign government tax refund for approved activities under the Federal award with prior approval of the Federal awarding agency.

§ 200.471 Termination costs.

Termination of a Federal award generally gives rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the Federal award not been terminated. Cost principles covering these items are set forth in this section. They are to be used in conjunction with the other provisions of this part in termination situations.

(a) The cost of items reasonably usable on the non-Federal entity's other work must not be allowable unless the non-Federal entity submits evidence that it would not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the non-Federal entity, the Federal awarding agency should consider the non-Federal entity's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the non-Federal entity must be regarded as evidence that such items are reasonably usable on the non-Federal entity's other work. Any acceptance of common items as allocable to the terminated portion of the Federal award must be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) If in a particular case, despite all reasonable efforts by the non-Federal entity, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this part, except that any such costs continuing after termination due to the negligent or willful failure of the non-Federal entity to discontinue such costs must be unallowable.

(c) Loss of useful value of special tooling, machinery, and equipment is generally allowable if:

(1) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the non-Federal entity,

(2) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal awarding agency (see also § 200.313 Equipment, paragraph (d), and

(3) The loss of useful value for any one terminated Federal award is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the Federal award bears to the entire terminated Federal award and other Federal awards for which the special tooling, machinery, or equipment was acquired.

(d) Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the Federal award and such further period as may be reasonable, and

(2) The non-Federal entity makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the Federal award, and of reasonable restoration required by the provisions of the lease.

(e) Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for:

(i) The preparation and presentation to the Federal awarding agency of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see Subpart D— Post Federal Award Requirements of this part, §§ 200.338 Remedies for Non-compliance through 200.342 Effects of Suspension and termination); and

(ii) The termination and settlement of subawards.

(2) Reasonable costs for the storage, transportation, protection, and disposition of property provided by the Federal Government or acquired or produced for the Federal award.

(f) Claims under subawards, including the allocable portion of claims which are common to the Federal award and to other work of the non-Federal entity, are generally allowable. An appropriate share of the non-Federal entity's indirect costs may be allocated to the amount of settlements with contractors and/or subrecipients, provided that the amount allocated is otherwise consistent with the basic guidelines contained in § 200.414 Indirect (F&A) costs. The indirect costs so allocated must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

§ 200.472 Training and education costs.

The cost of training and education provided for employee development is allowable.

§ 200.473 Transportation costs.

Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation cost may be charged to the appropriate indirect (F&A) cost accounts if the non-Federal entity follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms and conditions of the Federal award, should be treated as a direct cost.

§ 200.474 Travel costs.

(a) *General.* Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the non-Federal entity. Such costs may be charged on an actual cost basis, on a per diem or

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mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed in like circumstances in the non-Federal entity's non-federally-funded activities and in accordance with non-Federal entity's written travel reimbursement policies. Notwithstanding the provisions of § 200.444 General costs of government, travel costs of officials covered by that section are allowable with the prior written approval of the Federal awarding agency or pass-through entity when they are specifically related to the Federal award.

(b) *Lodging and subsistence.* Costs incurred by employees and officers for travel, including costs of lodging, other subsistence, and incidental expenses, must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the non-Federal entity in its regular operations as the result of the non-Federal entity's written travel policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

(1) Participation of the individual is necessary to the Federal award; and

(2) The costs are reasonable and consistent with non-Federal entity's established travel policy.

(c)(1) Temporary dependent care costs (as defined in 26

U.S.C. 152) above and beyond regular dependent care that directly results from travel to conferences is allowable provided that:

(i) The costs are a direct result of the individual's travel for the Federal award;

(ii) The costs are consistent with the non-Federal entity's documented travel policy for all entity travel; and

(iii) Are only temporary during the travel period.

(2) Travel costs for dependents are unallowable, except for travel of duration of six months or more with prior approval of the Federal awarding agency. See also § 200.432 Conferences.

(d) In the absence of an acceptable, written non-Federal entity policy regarding travel costs, the rates and

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amounts established under 5 U.S.C. 5701–11, ("Travel and Subsistence Expenses; Mileage Allowances"), or by the Administrator of General Services, or by the President (or his or her designee) pursuant to any provisions of such subchapter must apply to travel under Federal awards (48 CFR 31.205–46(a)).

(e) *Commercial air travel.* (1) Airfare costs in excess of the basic least expensive unrestricted accommodations class offered by commercial airlines are unallowable except when such accommodations would:

(i) Require circuitous routing;

(ii) Require travel during unreasonable hours;

(iii) Excessively prolong travel;

(iv) Result in additional costs that would offset the transportation savings; or

(v) Offer accommodations not reasonably adequate for the traveler's medical needs. The non-Federal entity must justify and document these conditions on a case-by-case basis in order for the use of first-class or business-class airfare to be allowable in such cases.

(2) Unless a pattern of avoidance is detected, the Federal Government will generally not question a non-Federal entity's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the non-Federal entity can demonstrate that such airfare was not available in the specific case.

(f) *Air travel by other than commercial carrier.* Costs of travel by non-Federal entity-owned, -leased, or -chartered aircraft include the cost of lease, charter, operation (including personnel costs), maintenance, depreciation, insurance, and other related costs. The portion of such costs that exceeds the cost of airfare as provided for in paragraph (d) of this section, is unallowable.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75887, Dec. 19, 2014]

§ 200.475 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See also § 200.474 Travel costs.

XIX. Glossary of Terms

Bankers' Acceptance: a draft or bill of exchange accepted by a bank or trust company. The accepting institution guarantees payment of the bill, as well as the issuer.

Benchmark: a comparative base for measuring the performance or risk tolerance of the investment portfolio. A benchmark should represent a close correlation to the level of risk and the average duration of the portfolio's investments.

Broker: brings buyers and sellers together for a commission.

Certificate of Deposit (CD): a time deposit with a specific maturity evidenced by a Certificate. Large-denomination CD's are typically negotiable.

Collateral: securities, evidence of deposit or other property, which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

Commercial Paper: An unsecured promissory note with a fixed maturity no longer than 270 days. Public offerings are exempt from SEC regulation.

Corporate Notes: Unsecured promissory notes issued by corporations to raise capital.

Dealer: acts as a principal in all transactions, buying and selling for his own account.

Debenture: a bond secured only by the general credit of the issuer.

Delivery versus Payment: delivery of securities with an exchange of money for the securities. (See also "Delivery versus Receipt")

Delivery versus Receipt: delivery of securities with an exchange of a signed receipt for the securities, also known as "free" delivery. (See also "Delivery versus Payment").

Diversification: allocation investment funds among a variety of securities offering independent returns.

Federal Agency: government sponsored/owned entity created by the U.S. Congress, generally for the purpose of acting as a financial intermediary by borrowing in the marketplace and directing proceeds to specific areas of the economy considered to otherwise have restricted access to credit markets, also referred to as Government Sponsored Enterprises or GSEs. The largest are Ginnie Mae, Fannie Mae, Freddie Mac, Federal Home Loan Banks, Federal Farm Credit Bank, Tennessee Valley Authority.

Federal Funds: funds placed in Federal Reserve Banks by depository institutions in excess of current reserve requirements, and frequently loaned or borrowed on an overnight basis between depository institutions.

Federal Funds Rate: the rate of interest at which Fed funds are traded. This rate is currently pegged by the Federal Reserve through open – market operations.

Liquidity: the ability of ease with which an asset can be converted into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be transacted at those quotes.

Market Value: the price at which a security is trading and could presumably be purchased or sold.

Master Repurchase Agreement: a written contract covering all future transactions between the parties to repurchase—reverse repurchase agreements that establishes each party’s rights in the transactions. A master agreement will often specify, among other things, the right of the buyer-lender to liquidate the underlying securities in the event of default by the seller borrower.

Maturity: the date upon which the principal or stated value of an investment becomes due and payable.

Nationally Recognized Statistical Rating Organization (NRSRO): A credit rating agency which issues credit ratings that the U.S. Securities and Exchange Commission (the “SEC”) permits other financial firms to use for certain regulatory purposes. Several examples include Moody’s Investor Service, Standard & Poor’s and Fitch Ratings.

Portfolio: collection of securities held by an investor.

Primary Dealer: a group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC)-registered securities broker-dealers, banks, and a few unregulated firms.

Rate of Return: the yield obtainable on a security based on its purchase price or its current market price. This may be the amortized yield to maturity on a bond or the current income return.

Repurchase Agreement (RP or REPO): a agreement under which the holder of securities sells these securities to an investor with a commitment to repurchase the securities at a fixed price on a fixed date. The security’s “buyer” in effect lends the “seller” money for the period of the agreement, and the terms of the agreement are structured to compensate him for this.

Safekeeping: a service rendered by banks for a fee whereby securities and valuables of all types and descriptions are held by the bank for protection.

SEC Rule 15C3-1: see “Uniform Net Capital Rule”.

Securities and Exchange Commission (“SEC”): agency created by Congress to protect investors in securities transactions by administering securities legislation.

Treasury Bills: a non-interest bearing discount security issued by the U.S. Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

Treasury Bonds: long-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities of more than 10 years.

Treasury Notes: medium-term coupon-bearing U.S. Treasury securities issued as direct obligations of the U.S. Government and having initial maturities from two to 10 years.

Uniform Net Capital Rule: Securities and Exchange Commission requirement that member firms as well as nonmember broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15 to 1; also called net capital rule and net capital ratio. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

Yield: the rate of annual income return on an investment, expressed as a percentage. Income/current yield is obtained by dividing the current dollar income by the current market price for the security. Net yield or yield to maturity is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: HRTAC FY2022 Administrative and Project Development Budget

Recommendation:

The Finance Committee is asked by Staff to recommend that the Commission approve the Proposed HRTAC FY2022 Administrative and Project Development Budget reflected in the enclosed Budget (the “Proposed HRTAC FY2022 Administrative and Project Development Budget”).

Background:

At its March 18, 2021 Regular Meeting, the Commission endorsed the Proposed HRTAC FY2022 Administrative and Project Development Budget and authorized the Executive Director to conduct a public hearing. The Executive Director conducted a public hearing on May 26, 2021 at 10:00 a.m. There were no oral or written comments received. The proposed budget of \$6,746,539 includes the addition of one full time accounting position and a recommended three percent cost of living increase for certain full time employees. The proposed budget included a two percent cost of living increase for the Commission’s staff reporting to the Executive Director that is recommended by the Executive Director to be increased to three percent to align with a cost of living increase commensurate to the three percent cost of living increase adopted by the HRPDC and HRTPO for FY2022. The total FY2022 cost differential for the cost of living increase from two percent to three percent is \$1,325.11 and will be absorbed within the Personnel line item at no increase to the overall proposed budget amount. Pursuant to §33.2-2605 of the Code of Virginia, the budgeted General Administrative expenses will be paid from the Hampton Roads Transportation Fund and the Hampton Roads Regional Transit Fund on an approximately pro rata basis.

Fiscal Impact:

There is a \$6,746,539 fiscal impact in relation to this Action Item.

Suggested Motion:

Motion: The Finance Committee recommends that the Commission approve the Proposed HRTAC FY2022 Administrative and Project Development Budget, including a cost of living increase of three percent for the staff reporting to the Executive Director, and authorizes the Finance Committee Chair to recommend approval of the proposed budget to the Commission.





Proposed FY2022 Administrative and Project Development Budget

CATEGORY	FY2022 Proposed HRTAC Budget**	FY2022 Proposed HRTF General Administrative **	FY2022 Proposed HRRTF General Administrative **	FY2022 Proposed HRTF Direct Administrative	FY2022 Proposed HRRTF Direct Administrative	FY2022 Proposed HRTF Program/Project Development	FY2022 Proposed HRRTF Program/Project Development
REVENUES							
HRTF Revenues	\$ 6,513,750	\$ 1,275,750	\$ -	\$ 523,000	\$ -	\$ 4,715,000	\$ -
HRRTF Revenues	232,789	-	202,789	-	-	-	30,000
TOTAL REVENUE	\$ 6,746,539	\$ 1,275,750	\$ 202,789	\$ 523,000	\$ -	\$ 4,715,000	\$ 30,000
EXPENDITURES							
PERSONNEL*							
HRTAC Staff/Fringes/Leave Reserve	\$ 707,683	\$ 610,621	\$ 97,062	\$ -	\$ -	\$ -	\$ -
HRTPO/HRPDC Support Staff*	226,685	195,594	31,091	-	-	-	-
SUBTOTAL PERSONNEL	934,368	806,215	128,153	-	-	-	-
PROFESSIONAL SERVICES							
Audit	128,000	51,771	8,229	68,000	-	-	-
Rating Agency Annual Fees	80,000	-	-	80,000	-	-	-
Trustee	20,000	-	-	20,000	-	-	-
Bank Fees & Investment Services	355,000	-	-	355,000	-	-	-
Legal	1,045,000	323,567	51,433	-	-	650,000	20,000
Financial Advisors	605,000	-	-	-	-	595,000	10,000
Insurance - D&O/Liability	10,000	8,628	1,372	-	-	-	-
Recruiting	2,000	1,726	274	-	-	-	-
Bond Issuance Expense/TIFIA/T&R Study	3,465,000	-	-	-	-	3,465,000	-
SUBTOTAL PROFESSIONAL SERVICES	5,710,000	385,692	61,308	523,000	-	4,710,000	30,000
TECHNOLOGY/COMMUNICATION*							
IT/Communications	7,500	6,471	1,029	-	-	-	-
LAN system/ Cloud	10,000	8,628	1,372	-	-	-	-
Website Consultant	2,000	1,726	274	-	-	-	-
SUBTOTAL TECHNOLOGY/COMMUNICATION	19,500	16,825	2,675	-	-	-	-
ADMINISTRATIVE *							
Public Notices/Advertising	3,456	2,982	474	-	-	-	-
Office Space	20,000	17,257	2,743	-	-	-	-
Office Supplies*	6,000	4,314	686	-	-	1,000	-
Furniture	3,000	2,589	411	-	-	-	-
Printing/Copying*	6,000	1,726	274	-	-	4,000	-
Dues/Subscriptions/Computer Licenses	3,000	2,589	411	-	-	-	-
Travel	8,000	6,903	1,097	-	-	-	-
Meeting Expenses*	15,250	13,158	2,092	-	-	-	-
Telephone*	2,465	2,127	338	-	-	-	-
Postage*	500	431	69	-	-	-	-
General Consulting Services*	10,000	8,628	1,372	-	-	-	-
Professional Development	5,000	4,314	686	-	-	-	-
SUBTOTAL ADMINISTRATIVE	82,671	67,018	10,653	-	-	5,000	-
TOTAL EXPENDITURES	\$ 6,746,539	\$ 1,275,750	\$ 202,789	\$ 523,000	\$ -	\$ 4,715,000	\$ 30,000

*Includes items to be reimbursed to HRPDC/HRTPO

** Pursuant to § 33.2-2605 of the Code of Virginia, Administrative expenses shall be paid from the Hampton Roads Transportation Fund and the Hampton Roads Regional Transit Fund on an approximately pro rata basis.

Fund	Estimated FY2022 Revenues Provided by VDOT \$M	% of Tax Revenue by Fund	Administrative Costs Shared	Proposed Direct Administrative	Program Development Costs	Proposed Budget Costs by Fund
HRRTF	32.3	13.72%	\$ 202,788.99	\$ -	\$ 30,000.00	\$ 232,788.99
HRTF	203.2	86.28%	1,275,749.92	523,000.00	4,715,000.00	6,513,749.92
Total	235.5	100.00%	\$ 1,478,538.91	\$ 523,000.00	\$ 4,745,000.00	\$ 6,746,538.91



To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: HRTAC FY2022-FY2027 Plan of Finance Update – Six Year Operating and Capital Program of Projects for the Region’s High Priority Projects and the Hampton Roads Regional Transit Fund

Recommendation:

The Finance Committee is asked by Staff to recommend that the Commission approve the HRTAC FY2022-FY2027 Plan of Finance Update – Six Year Operating and Capital Program of Projects for the Region’s High Priority Projects and the Hampton Roads Regional Transit Fund reflected in the enclosed Plan of Finance Update presentation.

Background:

At the March 18, 2021 Commission meeting, the Commission endorsed the Proposed HRTAC FY2022-FY2027 Plan of Finance Update – Six Year Operating and Capital Program of Projects for the Region’s High Priority Projects and the Hampton Roads Regional Transit Fund as an update to the HRTAC-adopted 2021-2026 Financial Plan and authorized the Executive Director to conduct a public hearing and report back public comments for consideration in the Commission’s action by no later than its June 17, 2021 Annual Organizational meeting. The Executive Director conducted a public hearing on May 26, 2021 at 10:30 a.m. There were no oral or written comments received. The proposed HRTAC FY2022-FY2027 Plan of Finance Update provides clarity to the I-64 HRBT Expansion Project financing, includes full funding of the Hampton Roads Express Lanes Network, and programs funding for the Hampton Roads Regional Transit Fund. The Update also provides for a Plan of Finance for the new Hampton Roads Regional Transit Fund. This update will guide the Commission and inform others through advancing project construction readiness, project finance, bonding, tolling, and environmental planning.

Fiscal Impact:

Once adopted, the proposed HRTAC FY2022-FY2027 Plan of Finance Update – Six Year Operating and Capital Program of Projects updates the funding plan for the Commission to provide \$5,393 million for high priority congestion relief projects and support costs and \$217.4 million for the Hampton Roads Regional Transit Fund projects and support costs from FY2022 through FY2027.



Suggested Motion:

Motion: The Finance Committee recommends that the Commission approve the Proposed HRTAC FY2022-FY2027 Plan of Finance Update – Six Year Operating and Capital Program of Projects for the Region’s High Priority Projects and the Hampton Roads Regional Transit Fund and authorizes the Finance Committee Chair to recommend approval of the proposed HRTAC FY2022-FY2027 Plan of Finance Update – Six Year Operating and Capital Program of Projects for the Region’s High Priority Projects and the Hampton Roads Regional Transit Fund to the Commission at its June 17, 2021 Annual Organizational meeting.



Finance Committee Meeting Agenda Item 4D

**HRTAC FY2022-FY2027 Plan of Finance Update – Six
Year Operating and Capital Program of Projects for the
Region’s High Priority Projects and the Hampton
Roads Regional Transit Fund**

June 10, 2021

Agenda Item 4D:

HRTAC FY2022-FY2027 Plan of Finance Update

- Highway Regional Priority Projects
- Transit Regional Priority Projects
- HRTF Cash Flow
- HRRTF Cash Flow
- Toll Revenue Cash Flow

Highway Regional Priority Projects (in \$MM)

Highway Regional Priority Projects Costs and Expenses											
	Prior Years	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Total	HRTAC Cost Share	VDOT Funds	Other Funds
Admin & Project Development Costs	\$24	\$7	\$7	\$7	\$8	\$8	\$6	\$66	\$66		
I-64 Peninsula Widening	\$531							\$531	\$310	\$221	
I-64/I-264 Interchange Improvement	\$354	\$8						\$362	\$290	\$67	\$5
I-64 Southside/High Rise Bridge	\$527							\$527	\$432	\$95	
Project Development	\$46							\$46	\$46		
HRBT	\$1,570	\$714	\$546	\$532	\$381	\$20		\$3,762	\$3,562	\$200	
HRELN	\$22	\$33	\$182	\$229	\$218	\$122		\$806	\$687	\$119	
Total	\$3,075	\$761	\$735	\$767	\$606	\$150	\$6	\$6,100	\$5,393	\$702	\$5

Funding Sources											
	Prior Years	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Total			
VDOT Funds	\$376	\$8		\$170	\$150			\$702			
Other Funds	\$5							\$5			
HRTAC Cost Share	\$2,694	\$754	\$735	\$598	\$457	\$150	\$6	\$5,393			
Total	\$3,075	\$761	\$735	\$767	\$606	\$150	\$6	\$6,100			

Note:

1. HRELN cost estimates provided by VDOT in January 2021. Including \$26M tolling integration costs and excluding approximately \$20M tolling capex projects for Segment 3.
2. VDOT funds include \$93.1M of the HRELN Project to be determined by HRTAC in coordination with the Commonwealth Transportation Board

Highway Regional Priority Projects (in \$MM)

HRTAC Funding Share

HRTAC Cost Share								
Admin & Project Development Cost Funding								
HRTF - Paygo	\$24	\$7	\$7	\$7	\$8	\$8	\$6	\$66
Project Cost Funding								
HRTF Debt - TIFIA Loans	\$906	\$168	\$211					\$1,285
HRTF Debt - Bonds	\$1,325		\$132	\$162				\$1,619
HRTF Paygo	\$439	\$579	\$385	\$157	\$180	\$71		\$1,811
Toll Revenue - TIFIA Loans				\$272	\$269	\$71		\$612
Sub-Total	\$2,670	\$747	\$728	\$591	\$449	\$142		\$5,327
Total HRTAC Cost Share Funding	\$2,694	\$754	\$735	\$598	\$457	\$150	\$6	\$5,393

Transit Regional Priority Projects (in \$000)

Transit Regional Priority Projects Costs and Expenses

	Prior Years	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Total
Admin & Project Development Costs	\$220	\$233	\$245	\$258	\$271	\$286	\$301	\$1,813
HR Regional Transit System - 757 Express	\$24,880	\$31,067	\$31,355	\$31,742	\$32,129	\$32,214	\$32,199	\$215,587
Total	\$25,100	\$31,300	\$31,600	\$32,000	\$32,400	\$32,500	\$32,500	\$217,400

Funding Sources

	Prior Years	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027	Total
HRTAC HRRTF	\$25,100	\$31,300	\$31,600	\$32,000	\$32,400	\$32,500	\$32,500	\$217,400

Note:

1. No project schedule currently available: HRT 10-Year Funding Plan under development
2. Assume annual revenue receipts, after retaining \$1M for operating budget payments, are completely drawn out for construction

HRTF Cash Flow (in dollars)

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
HRTF Revenues						
HRTF Tax Revenues						
Sales Tax	142,800,000	146,800,000	150,200,000	157,800,000	165,400,000	169,900,000
Fuels Tax	60,400,000	62,200,000	63,500,000	64,300,000	65,500,000	67,200,000
Total	203,200,000	209,000,000	213,700,000	222,100,000	230,900,000	237,100,000
HRTAC Investment Revenues						
HRTF Interest Income	255,262	103,129	216,327	252,307	403,212	437,768
HRTF Investment Income	1,223,007	1,867,368	2,084,249	2,453,867	2,344,428	2,789,089
Total	1,478,269	1,970,497	2,300,576	2,706,174	2,747,640	3,226,857
TOTAL HRTF Revenue Sources	204,678,269	210,970,497	216,000,576	224,806,174	233,647,640	240,326,857
HRTF Revenue Payments						
Admin and Project Development Budget	6,513,750	6,855,722	7,215,647	7,594,469	7,993,178	5,817,390
HRTF Debt Payments						
Total	74,800,025	62,307,571	62,307,571	81,250,150	106,907,851	118,700,885
HRTF Paygo for Construction	578,812,227	384,760,524	156,545,059	180,403,607	71,034,186	0
HRTF Paygo for Financing Reserves						
HRTF TIFIA DSRF	28,675,339	0	0	0	38,489,689	0
Toll TIFIA DSRF	0	0	0	0	37,104,969	0
Toll Revenue Stabilization Fund	0	0	0	0	10,000,000	0
Tolling M&R Reserve	0	0	0	0	8,000,000	0
Sub-Total	28,675,339	0	0	0	93,594,658	0
Total Payments	688,801,341	453,923,817	226,068,277	269,248,226	279,529,874	124,518,275
HRTF Revenues Unobligated						
Annual Deposit(Draws)	-484,123,072	-242,953,320	-10,067,701	-44,442,052	-45,882,234	115,808,582
Beginning Balance	929,651,399	445,528,327	202,575,007	192,507,306	148,065,254	102,183,020
Ending Balance	445,528,327	202,575,007	192,507,306	148,065,254	102,183,020	217,991,602

Note: Negative annual deposits indicate drawing on previous year's cash available balance

HRRTF Cash Flow (in dollars)

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
HRRTF Revenues						
Grantor's Tax	4,900,000	4,900,000	4,900,000	4,900,000	4,900,000	4,900,000
Transient Occupancy Tax	7,400,000	7,700,000	8,100,000	8,500,000	8,600,000	8,600,000
Recordation Tax Transfer	20,000,000	20,000,000	20,000,000	20,000,000	20,000,000	20,000,000
Total	32,300,000	32,600,000	33,000,000	33,400,000	33,500,000	33,500,000
HRRTF Investment Revenues						
HRRTF Interest Income	25,600	38,180	68,735	82,574	134,724	136,898
HRRTF Investment Income	0	25,747	106,820	124,587	199,102	226,166
Sub-Total	25,600	63,927	175,555	207,161	333,826	363,064
TOTAL HRRTF Revenue Sources	32,325,600	32,663,927	33,175,555	33,607,161	33,833,826	33,863,064

HRRTF Revenue Payments						
Admin and Project Development Budget	232,789	245,010	257,873	271,412	285,661	300,658
Paygo for Construction, Capital Equipment, and Operations	31,067,211	31,354,990	31,742,127	32,128,588	32,214,339	32,199,342
Total Payments	31,300,000	31,600,000	32,000,000	32,400,000	32,500,000	32,500,000

HRRTF Revenues Unobligated						
Annual Residual Revenues	1,025,600	1,063,927	1,175,555	1,207,161	1,333,826	1,363,064
Beginning Balance	1,000,000	2,025,600	3,089,527	4,265,082	5,472,243	6,806,069
Ending Balance	2,025,600	3,089,527	4,265,082	5,472,243	6,806,069	8,169,133

Toll Revenue Cash Flow (in dollars)

	FY 2025	FY 2026	FY 2027
Toll Revenues			
Gross Revenues	0	30,166,467	41,186,892
Investment Earnings	0	30,000	606,731
<i>TOTAL Revenue Sources</i>			
Toll Revenue Payments			
Tolling O&M Expenditure	0	23,346,198	15,452,436
Tolling O&M Reserve - Ongoing Deposit	0	0	0
Debt Service Fund	0	0	0
Debt Service Reserve Fund - Ongoing Deposit	0	0	1,091,323
Tolling M&R Reserve - Ongoing Deposit	0	0	1,941,921
Additional Network Cost Payment Fund	0	0	0
VDOT Repayment Fund	0	0	0
HRTAC HRTF Repayment Fund	0	0	0
<i>Total Payments</i>	0	23,346,198	18,485,679
Toll Revenues Unobligated			
Annual Residual Revenues	0	6,820,269	22,701,213
Beginning Balance	0	0	6,820,269
Ending Balance	0	6,820,269	29,521,482

Note:

1. Assume the full HRELN
2. Assume HRTAC Transition Date in FY 2026 upon HRBT opening
3. Assume VDOT contributes \$5.8M initial deposits to the Tolling O&M Reserve and supports operations prior to the Transition Date pursuant to the MTA

HR RTA C

Hampton Roads Transportation Accountability Commission



To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: HRTAC 2045 Long Range Plan of Finance Update

Recommendation:

The Finance Committee is asked by Staff to recommend that the Commission approve the Proposed HRTAC 2045 Long Range Plan of Finance Update as an update to the HRTAC-adopted 2045 Long Range Plan of Finance reflected in the enclosed Proposed HRTAC Long Range Plan of Finance Update presentation.

Background:

At the March 18, 2021 Commission meeting, the Commission endorsed the Proposed HRTAC 2045 Long Range Plan of Finance Update as an update to the HRTAC-adopted 2045 Long Range Plan of Finance and authorized the Executive Director to conduct a public hearing and report back public comments for consideration in the Commission's action by no later than its June 17, 2021 Annual Organizational meeting. The Executive Director conducted a public hearing on May 26, 2021 at 11:00 a.m. There were no oral or written comments received. The purpose of developing the 2045 Long Range Plan of Finance Update for the HRTAC High Priority Projects is to provide current direction on project financing and timing that will be used in the HRTPO's long range transportation plan. The Update also provides for a long range view of the Plan of Finance for the new Hampton Roads Regional Transit Fund. This update will guide the Commission and inform others through advancing project construction readiness, project finance, bonding, tolling, and environmental planning.

Fiscal Impact:

Once adopted, the proposed HRTAC 2045 Long Range Plan of Finance Update represents \$9,550 million in regional congestion relief Highway Projects and \$552 million in Transit Projects.

Suggested Motion:

Motion: The Finance Committee recommends that the Commission approve the Proposed HRTAC 2045 Long Range Plan of Finance Update for the Region's High Priority Projects and the Hampton Roads Regional Transit Fund, and authorizes the Finance Committee Chair to recommend approval of the Proposed HRTAC 2045 Long Range Plan of Finance Update for the Region's High Priority Projects and the Hampton Roads Regional Transit Fund to the Commission.





Finance Committee Meeting Agenda Item 4E

HRTAC 2045 Long Range Plan of Finance Update

June 10, 2021

Agenda Item 4E:

HRTAC Proposed 2045 Long Range Plan of Finance Update

- Highway Regional Priority Projects
- Transit Regional Priority Projects

Highway Regional Priority Projects through FY 2045 (in \$MM)

	Six Initial Projects	HRBT	HRELN	I-64/I-464 Loop Ramps	I-64/I-264 Interchange: Phase IIIA	I-264/Independence Boulevard Interchange	I-664 Widening (including Bowers Hill Interchange)	I-64/Denbigh Boulevard Interchange Project	I-264 Widening	VA-164 Widening	VA-168 Bypass
Inflated Costs (MM)	\$1,420	\$3,762	\$806	\$339	\$510	\$207	\$771	\$219	\$669	\$493	\$355
Fiscally Constrained Construction End Year	2022	2026	2026	2029	2031	2033	2038	2040	2045	2045	2045

Total YOE Cost	\$9,550
Funded by HRTF Debt	\$2,888
Funded by Toll Debt	\$602
Funded by HRTAC Pay-Go	\$4,382
Funded by VDOT and Other Pay-Go*	\$1,678

* Assume

[1] \$588M existing VDOT and other local funding for the Six Initial Projects and HRBT

[2] plus \$93M General Assembly Appropriation for the HRELN Project (to be committed)

[3] plus \$26M VDOT TRFA funding for the HRELN Project's tolling integration costs

[4] plus \$971M SMART SCALE available for new projects after HRELN provided by HRTPO

Transit Regional Priority Projects through FY 2045 (in \$MM)

	Hampton Roads Regional Transit System - 757 Express
Inflated Costs (MM)	\$552
Fiscally Constrained Construction End Year	2045
<hr/>	
Total FV Cost	\$552
Funded by HRRTF Debt	\$0
Funded by HRRTF Pay-Go	\$552

Note:

1. No project schedule currently available: HRT 10-Year Funding Plan under development
2. Assume completion in 2045

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: Trustee Services for Toll Roads System Revenue Bonds

Recommendation:

HRTAC Toll Roads System Revenue Bonds Trustee RFP Evaluation Committee Spokesperson, Danetta Jankosky recommends that the Finance Committee approve the recommendation of a Toll Roads System Revenue Bonds Trustee for the first HRTAC toll backed bond issuance by the Toll Roads System Revenue Bonds Trustee RFP Evaluation Committee and authorize the Finance Committee Chair to communicate the action of the Finance Committee to recommend Commission approval of the Bond Trustee and authorization of the HRTAC Chair to execute the necessary Agreement with the selected HRTAC Toll Roads System Revenue Bonds Trustee that will be engaged during the toll bond issuance process. The recommended Trustee is U.S. Bank National Association.

Background:

Under the authority of Board action to advance preparations for an initial toll backed bond offering, HRTAC issued on March 29, 2021 a Request for Proposal for Trustee Services for Toll Roads System Revenue Bonds (HRTAC 2021-01). To evaluate the toll backed Bond Trustee proposals and make recommendation to the Board, an Ad-Hoc RFP Evaluation Committee was established. The Evaluation Committee received five proposals and met remotely to: discuss the proposals received and scores; to conduct two interviews of the shortlisted proposers; and to select a proposer to advance for use in the HRTAC Toll Roads System Revenue Bonds issuances pursuant to the indenture. The RFP Evaluation Committee finalized its recommendation to the Board for consideration and approval. The selected HRTAC Toll Roads System Revenue Bonds Trustee will be engaged during the bond issuance process. The recommendation of the Toll Roads System Revenue Bonds RFP Evaluation Committee is U.S. Bank National Association.

Fiscal Impact:

There is a fiscal impact in relation to this Action Item that will be further identified during the bond offering process.

Suggested Motion:

Motion is the Finance Committee approves the recommendation of U.S. Bank National Association by the Toll Roads System Revenue Bonds Trustee RFP Evaluation Committee to



award as Trustee for the Toll Roads System Revenue Bonds and authorizes the Finance Committee Chair to communicate the action of the Finance Committee to recommend Commission approval of U.S. Bank National Association as Trustee to be engaged in the inaugural HRTAC Toll Roads System Revenue Bonds Offering and any future Toll Roads System Revenue Bonds issued pursuant to the Indenture.



Finance Committee Meeting Agenda Item 5A, 5B, and 5C

June 10, 2021



Agenda Item 5A:

Debt Management Plan Update
HRBT and HRLLEN Funding Plan of Finance

HRTAC Debt Management Plan Update

- The current Debt Management Plan (DMP) was prepared by staff in May 2020 and approved by the Commission in June 2020. It includes:
 - HRTF Stress Test Revenue (prepared in absence of the COVID-19 impacted revenue projection by the Department of Taxation)
 - Funding impacts on HRBT, HRELN, and Bower's Hill and Ft. Eustis
- Since June 2020, HRTAC's project funding plan has been continually updated to reflect the following major developments:
 - HRTF collections have been well performing; updated projection provided by the Department of Taxation in December 2020
 - Investment Grade T&R Study (non summer weekend) completed in October 2020
 - HRELN cost budgets were refined and reduced
 - Bower's Hill and Ft. Eustis were removed from the HRTAC's 2045 LRTP
- In March 2021, updated funding plans for HRBT and HRELN were presented to the Commission (see page 4-6), and no significant changes have been made to the plans.
- The staff recommends the DMP to be updated to incorporate the latest HRBT and HRELN funding plans (see page 4-6).

HRTAC's Debt Financings

HRTAC Project	HRTAC Debt Funding	Status
Six Initial Projects <i>Draw TIFIA to pay off the BANs</i> 	HRTF Senior Lien 2018A Bonds HRTF Intermediate Lien 2019A Notes HRTF Subordinate Lien 2019 TIFIA Loan	<i>Previously Issued or Executed</i>
HRBT <i>Draw TIFIA to pay off the BANs</i> 	HRTF Senior Lien 2020A Bonds HRTF Senior Lien 2021A Notes (BANs) HRTF Subordinate Lien 2021 TIFIA Loan Toll Revenue Senior Lien 2021 TIFIA Loan	
HRELN	Additional HRTF Bonds Additional Toll Revenue TIFIA Loan	<i>Planned (CY 2022-CY 2023)</i>

Seeking document approvals for HRBT August 2021 financings:

- Debt Authorization Resolutions;
- Toll Debt Trustee award;
- HRTF 2021A Notes underwriter senior manager award;
- Debt Indentures;
- 2021A Notes Preliminary Offering Statement;
- TIFIA Loan Agreements

HRBT Funding Plan

- Base case plan – no changes from what was presented to the Commission in March 2021
- Annual Toll Revenue Stabilization Fund supported by HRTF:
 - Current annual cap - \$10 million
 - However, interest rates have risen such that debt service estimates are higher. To ensure we obtain investment grade ratings, request raising the cap by the amount necessary to offset the impact of potential further interest rate increases at the loan closing (not to exceed \$15 million total).

Construction Budget

(in \$ millions)

Construction Budget	\$3,758
Funds	
VDOT SMART SCALE	\$200
HRTAC Funding	
HRTF Paygo	\$1,710
HRTF Senior 2020A Bonds	\$743
* HRTF 2021 TIFIA Loan	\$760
Toll 2021 TIFIA Loan	\$345
Total	\$3,758

Financing Reserve Budget (Initial Deposits)

	Amount	Sources
Tolling O&M Reserve	\$2.9M	VDOT
Tolling M&R Reserve	\$5.0M	HRTAC HRTF
Toll Revenue Debt Service Reserve Fund	\$22.4M	HRTAC HRTF
Toll Revenue Stabilization Fund	\$10M	HRTAC HRTF
HRTF Debt Service Reserve Fund	\$37.0M	HRTAC HRTF

**Subject to change*

**\$760M construction funding provided by the HRTF 2021A BANs (to be retired by the 2021 TIFIA Loan at its maturity)*

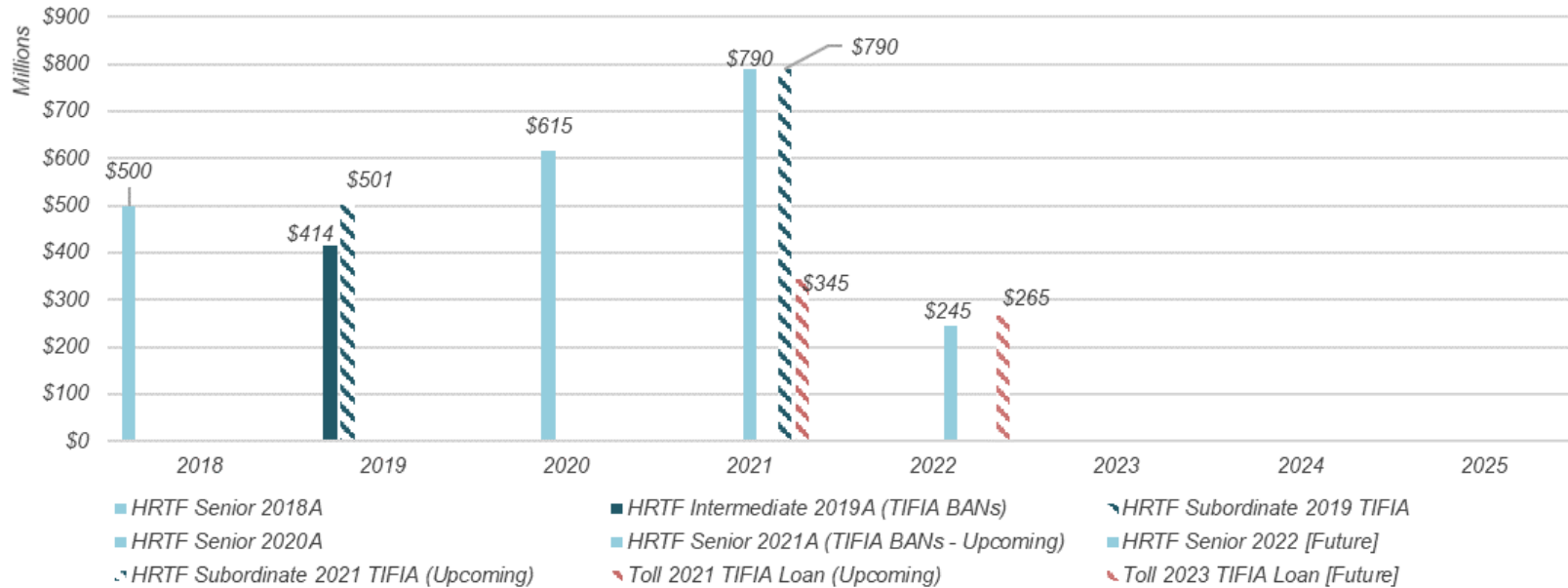
HRELN Funding Plan

- Preliminary funding plan - no changes from what was presented to the Commission in March 2021
- Current activities:
 - VDOT continues to refine total budget and annual spending schedules
 - Summer weekend T&R Study task order in place; work to be completed in Jan-Feb 2022
- The updated T&R Study will impact the amount of the toll revenue debt; the General Assembly Appropriation described below will be adjusted down if possible.

	Costs/Funding	Status
Current Budget		
Cost	\$806,000,000	budget and annual costs to be updated by VDOT
Funding		
HRTAC Funding (for construction)		
HRTF Debt	\$293,815,900	target to issue in CY 2022
HRTF Paygo	\$127,448,779	programmed in HRTAC SYIP
Toll Revenue Debt	\$265,605,321	amount to be updated & target to execute in CY 2023
General Assembly Appropriation	<u>\$93,130,000</u>	amount to be updated & target to approve in CY 2022
Total	\$780,000,000	
VDOT Funding (for tolling integration)	\$26,000,000	VDOT to approve

HRTAC Annual Debt Issuance Plan

Issuance Plan for HRTF and Toll Debt (Par Amount & In Calander Year)



*The HRTF 2019A BANs will be retired by the 2019 TIFIA Loan; the HRTF 2021A BANs would be retired by the 2021 TIFIA Loan.

Future debt issuance can change due to a number of factors, including construction and tolling cost estimates, HRTF and toll revenue projections, interest rates, and TIFIA loan availability.

HRTF Revenue Projection

- In December 2020, the Department of Taxation provided an updated forecast for FY 2021 – FY 2028 which reflect COVID-19 impact and recovery assumptions.

HRTF Projection (December 2021)

	Sales and Uses Tax	Fuels Tax	Total	Change
FY 2020 (actual)	146,200,000	55,000,000	201,200,000	
FY 2021	139,100,000	58,600,000	197,700,000	-1.7%
FY 2022	142,800,000	60,400,000	203,200,000	2.8%
FY 2023	146,800,000	62,200,000	209,000,000	2.9%
FY 2024	150,200,000	63,500,000	213,700,000	2.2%
FY 2025	157,800,000	64,300,000	222,100,000	3.9%
FY 2026	165,400,000	65,500,000	230,900,000	4.0%
FY 2027	169,900,000	67,200,000	237,100,000	2.7%
FY 2028	175,200,000	69,000,000	244,200,000	3.0%

- Growth rates after FY 2028 are computed based on the methodology previously reviewed and accepted by rating agencies and TIFIA.
 - Sales and uses tax: 2.76%
 - Fuels tax: 0.2%

HRTF Revenue Current Performance

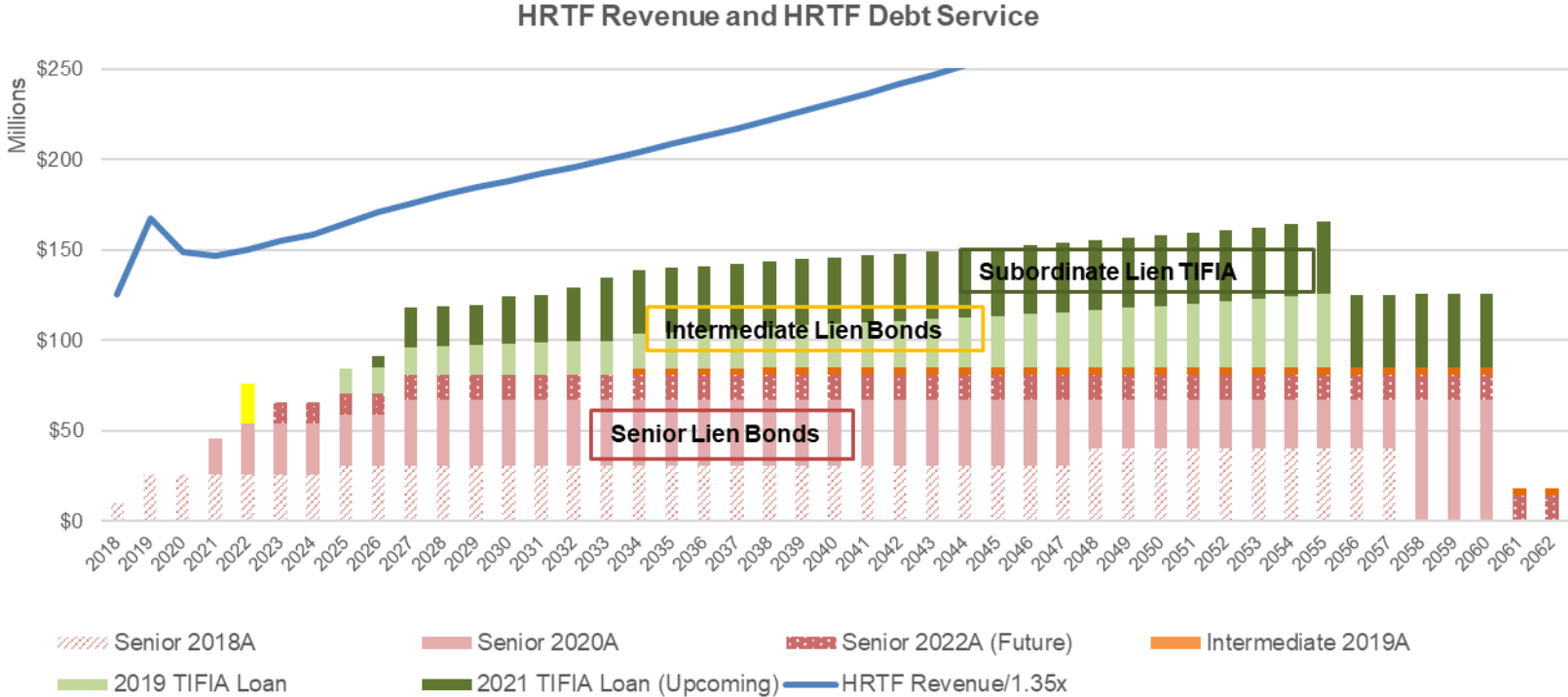
- Through May 31, 2021, HRTAC has received year-to-date Fiscal Year 2021 HRTF Revenues of \$159M, representing nine months of collections of the sales and use tax and eight months of collections of the fuels tax.
- YTD FY 2021 revenues are significantly higher than FY 2020.
- Full FY 2021 revenues are on track to exceed FY 2020 actuals and the FY 2021 projection.

Month of Sales	Sales and Uses Tax					Month of Sales	Fuels Tax				
	FY 2019	FY 2020	FY 2021	2020 vs. 2019	2021 vs. 2020		FY 2019**	FY 2020	FY 2021	2020 vs. 2019	2021 vs. 2020
July	\$12.0	\$13.0	\$13.2	8.2%	2.0%	July	\$4.9	\$5.3	\$4.9		-7.4%
August	\$12.1	\$13.1	\$13.3	8.0%	1.7%	August	\$5.0	\$5.4	\$4.8		-9.4%
September	\$11.1	\$12.1	\$13.4	8.4%	11.0%	September	\$16.9	\$5.0	\$5.0		-1.5%
October	\$11.3	\$12.1	\$13.4	7.4%	10.0%	October	\$6.2	\$5.1	\$4.8	-8.1%	-6.8%
November	\$11.3	\$12.5	\$13.4	10.3%	7.2%	November	\$4.0	\$4.7	\$4.8		0.6%
December	\$13.7	\$14.6	\$16.2	6.9%	11.1%	December	\$7.2	\$5.0	\$4.7		-5.9%
January	\$9.8	\$10.5	\$12.0	7.9%	14.1%	January	\$5.2	\$4.5	\$4.3		-4.6%
February	\$9.5	\$10.0	\$11.6	5.8%	15.5%	February	\$4.6	\$4.3	\$3.7		-14.0%
March	\$11.8	\$11.3	\$15.9	-4.2%	40.8%	March	\$4.9	\$4.5	\$0.0	-7.5%	
April	\$12.2	\$10.5	\$0.0	-13.7%		April	\$5.8	\$4.1	\$0.0	-29.7%	
May*	\$19.2	\$17.8	\$0.0			May	\$4.5	\$3.1	\$0.0	-31.1%	
June*	\$5.2	\$8.6	\$0.0	8.24%*		June	\$4.9	\$3.9	\$0.0	-19.4%	
Total	\$139.2	\$146.2	\$122.4				\$74.0	\$55.0	\$37.0		
July - March Total	\$102.6	\$109.2	\$122.4			July - February †	\$53.9	\$39.4	\$37.0		

*May and June combined

**FY 2019 includes \$11M special assessment

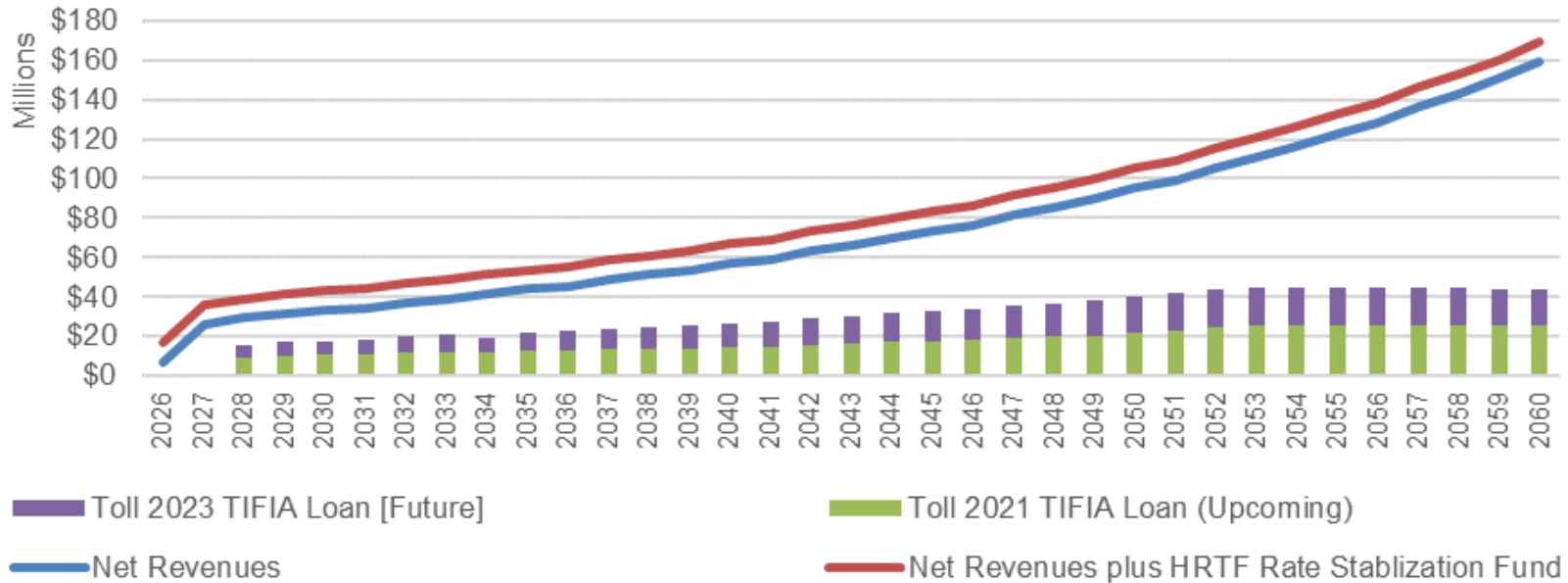
HRTF Revenue Supported Debt Service Illustration



*Excluding 2019A BANs and 2021A BANs' debt service paid by capitalized interest funds

Toll Revenue Supported Debt Service Illustration

HRELN Net Revenues and Toll Revenue Debt Service



Notes:

1. Preliminary, subject to change
2. Base case full-built HRELN (Phase 1-3) gross revenue forecast provided by CDM Smith in December 2020
3. Tolling O&M and M&R cost estimates provided by VDOT in December 2020
4. Assume \$10M HRTF Rate Stabilization Fund annual cap

Next Steps

- To update the Commission's Debt Management Plan, the Executive Director is seeking Finance Committee endorsement and recommendation to the Commission for Approval of the Debt Management Plan Update to incorporate the latest HRBT and HRELN funding plans (see page 4-6) at the June 17, 2021 Annual Organizational Meeting.

Agenda Item 5B:

Debt Authorization:

2021 HRTF TIFIA Loan and Associated 2021A BANs

HRBT TIFIA Financing Status Update

- TIFIA Loans and related BANs are HRTAC's only debt financing for the HRBT Project remaining yet to be completed.
- HRTAC is pursuing a 2021 HRTF TIFIA Loan (\$790M*) and a 2021 Toll TIFIA Loan (\$345M).
- HRTAC has made tremendous progress with the TIFIA program:
 - Reached substantive agreement on key business terms for both loans
 - Two Loan Agreement drafts based on the agreed upon business terms are presented in June for review and approval
 - Expected to be invited to submit a Loan Application in June
 - Target Loan Closing in August
 - Issue HRTF BANs concurrently with the Loan Closing

** Preliminary, based on current pro-forma cash flow estimates that provide \$760M construction funding (net of financing costs), and lower than the maximum value in the Debt Resolution*

2021 HRTF TIFIA Loan Agreement – Draft Overview

- Consistent with the HRTF Master Trust Indenture
- All primary provisions consistent with the 2019 HRTF TIFIA Loan Agreement, including coverage requirements and reserve requirements
- Requested amount consistent with the HRBT Funding Plan
- Final maturity expected in 2060, TBD, which is 35 years after HRBT's substantial completion (maximum term)
- Amortization profile structured in consideration of the overall HRTF debt service profile
- Only key change to the HRTF cash flow is to provide HRTF Transfers from available cash, on a needed basis, to the Toll Revenue Flow of Funds to enhance the creditworthiness of the Toll TIFIA Loan.
 - HRTAC shall use available current period HRTF revenues and the HRTF General Fund balance to make the HRTF Transfers. If HRTAC fails to do so, HRTAC may submit a letter to TIFIA to explain the causes. TIFIA will evaluate on a case by case basis and determine whether it is a default. HRTAC has 6 months to cure; during the 6 months, a default shall not be declared. An event of default, if declared, is only on the HRTF Subordinate Lien debt (assuming bond covenants are being met).

2021 HRTF TIFIA BANs Overview

BAN's Overview Recap

- TIFIA Bond Anticipation Notes (“BANs”) are frequently used for the following reasons:
 - To avoid complications with multiple TIFIA Loan draws
 - To realize interest cost savings – the interest rate on short term BANs (estimated 0.7% as of May 27) is less than the TIFIA Loan rate (weighted average of 2.16%).
 - BAN proceeds can be invested to generate earnings (estimate 0.09%-0.25%), whereas TIFIA Loan proceeds cannot.

	Benchmark Rate	Credit Spreads	Interest Due
TIFIA BAN	Short-term tax exempt	Yes	Accrue on the entire issuance
TIFIA Loan	Long-term taxable	No	Accrue only on drawn amounts

HRTF BANs

- HRTAC utilized the BANs strategy in 2019 – sold \$414,345,000 HRTF 2019A Notes in connection with the 2019 HRTF TIFIA Loan, which generated \$23 million savings.
- The same strategy is suitable for the upcoming 2021 HRTF TIFIA Loan – issue 2021 HRTF BANs in connection with the 2021 HRTF TIFIA Loan.
- The strategy is not yet suitable for the 2021 Toll TIFIA Loan because it will not be drawn on until FY 2024-2025 (i.e. multi-year interest cost carry if issued now); it will be considered in the future.

2021 HRTF TIFIA BANs Economic Benefits – Preliminary Results

- Utilizing the BANs, the projected maximum balance on the TIFIA Loan is reduced to \$788 million - a reduction of almost \$12 million vs. no BANs.
- With a lower balance to pay off, total loan payments are reduced by \$44 million, which results in stronger debt service coverage ratios. The average subordinate coverage ratio through FY 2060 increases from 2.81x to 2.84x.
- Proceeds of the BANs can be invested and earn interest during the construction period and capitalized interest period. It is currently estimated the BANs could generate \$2.3 million in interest income.

	Without BANs	With BANs*	Benefits
Maximum Loan Balance**	801,642,211	788,770,000	12,872,211
Total Loan Payments	1,214,361,138	1,170,431,487	43,929,651
Interest Earnings**	-	2,345,575	2,345,575

*BAN Interest Rate of 0.69%

**TIFIA Interest Rates from 1.38% - 2.25%

***Interest earnings rate of 0.09% through 7/1/2022, and 0.25% thereafter

2021 HRTF TIFIA BANs Economic Benefits – Preliminary Results (cont.)

- Based on market rates as of May 27, 2021, the estimated net present value benefit of the BANs is \$36.3 million.

Analysis Assumptions	
BANs	
Dated Date	8/26/2021
Maturity Date	3/1/2026
Capitalize Interest Through	3/1/2026
Coupon	5.00%
Yield	0.69%
Investment Earnings Rate	
8/26/2021-7/1/2022	0.09%
7/1/2022-3/1/2026	0.25%
TIFIA Loan Rates	1.38% - 2.25%

FY	No BANs		BANs		
	TIFIA DS	PV	TIFIA DS	Interest Earnings	PV
2021					
2022				(1,408,932)	(1,389,840)
2023				(523,087)	(506,537)
2024				(238,274)	(225,480)
2025	8,623,375	7,940,031		(139,678)	(129,418)
2026	17,389,680	15,756,238	5,572,924	(35,604)	4,989,972
2027	20,285,031	17,975,674	19,535,698		17,311,296
2028	20,296,166	17,603,501	19,554,149		16,959,578
2029	20,306,921	17,238,446	19,572,377		16,614,553
2030	24,926,730	20,693,205	24,147,684		20,045,788
2031	25,004,697	20,316,463	24,244,517		19,698,155
2032	28,319,843	22,511,354	27,542,443		21,892,617
2033	33,485,121	26,038,182	32,678,431		25,410,005
2034	33,831,262	25,747,014	33,063,539		25,161,939
2035	34,372,674	25,601,502	33,455,895		24,918,300
2036	34,645,327	25,254,785	33,745,700		24,598,682
2037	34,920,768	24,912,959	34,039,071		24,283,676
2038	35,199,038	24,576,345	34,336,069		23,973,593
2039	35,480,177	24,244,694	34,636,755		23,668,195
2040	35,764,228	23,917,990	34,941,193		23,367,463
2041	36,051,232	23,595,912	35,249,447		23,071,089
2042	36,341,233	23,278,726	35,561,583		22,779,329
2043	36,565,255	22,923,030	35,877,668		22,491,978
2044	36,834,323	22,599,441	36,146,349		22,177,350
2045	37,105,631	22,280,390	36,417,385		21,867,148
2046	37,379,203	21,966,077	36,690,803		21,561,568
2047	37,655,063	21,656,322	36,966,633		21,260,434
2048	37,933,236	21,351,089	37,244,902		20,963,710
2049	38,213,749	21,050,172	37,525,639		20,671,194
2050	38,496,626	20,753,703	37,808,876		20,383,016
2051	38,781,894	20,461,535	38,094,641		20,099,032
2052	38,854,582	20,062,714	38,382,965		19,819,192
2053	39,139,591	19,778,679	38,664,515		19,538,606
2054	39,426,956	19,498,820	38,948,391		19,262,143
2055	39,716,701	19,223,020	39,234,620		18,989,691
2056	40,008,853	18,951,215	39,523,225		18,721,185
2057	40,303,437	18,683,329	39,814,233		18,456,551
2058	40,600,479	18,419,360	40,107,671		18,195,785
2059	40,900,007	18,159,219	40,403,563		17,938,803
2060	41,202,048	17,902,829	40,701,938		17,685,524
Total	1,214,361,139	752,923,965	1,170,431,488	(2,345,575)	716,575,866

PV Benefit

36,348,099

Agenda Item 5C:

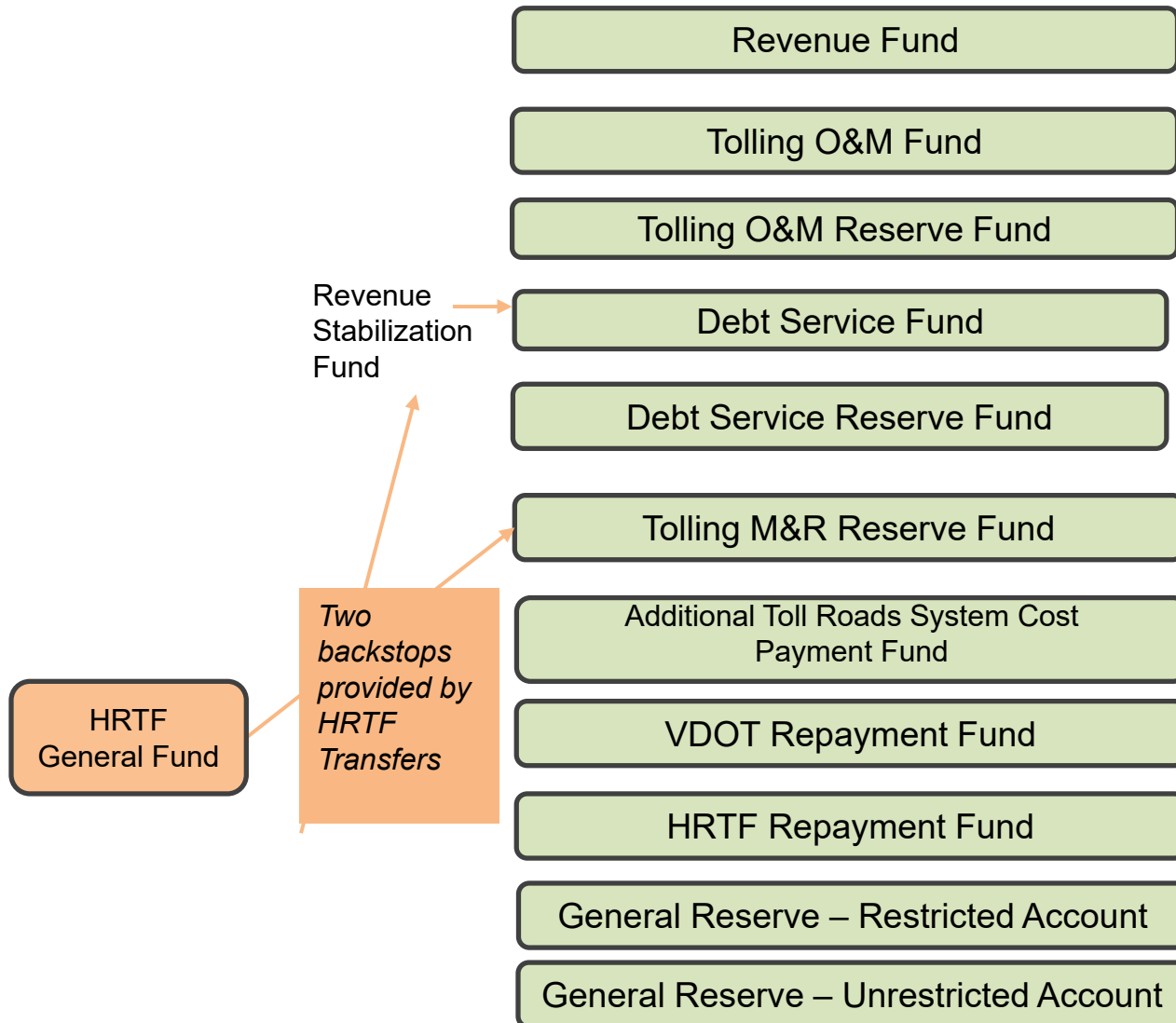
Debt Authorization:
2021 Toll TIFIA Loan

2021 Toll TIFIA Loan Agreement – Draft Overview

- Consistent with the PAFA
- Consistent with the Master Tolling Agreement
- Consistent with industry standards and crafted to obtain minimum investment grade credit ratings
- Requested loan amount - \$345M (in the PAFA)
- Final maturity – 35 years after the current substantial completion date, but extendable if completion is delayed (minimized construction risk and revenue risk)
- Amortization profile sculpted to mirror the base case revenue growth profile and meet rating agencies and TIFIA's revenue sensitivity tests
- Annual payments divided to mandatory and scheduled – unpaid scheduled debt service due to revenue insufficiency is rolled into the loan balance and does not cause a default.
- Revenue Stabilization Fund (i.e. HRTF Transfer) is available for both mandatory (first priority) and scheduled payments.

2021 Toll TIFIA Loan Agreement – Draft Overview (cont.)

Toll Revenue Flow of Funds



2021 Toll TIFIA Loan Agreement – Draft Overview (cont.)

- Restricted Payment Conditions (RPCs)
 - RPCs include Debt Service Commence Date has started, all debt service payments (including scheduled) are current, General Reserve Restricted Account balance > \$20M, DSCR > 1.35x, ACCR >1.1x and Loan Life Coverage Ratio > 1.5x
 - If all RPCs are met, the Additional Toll Roads System Cost Payment Fund, VDOT Payment Fund, HRTF Payment Fund, and the General Reserve Unrestricted Account can receive deposits from current period revenues following the order of the Flow of Funds
- If the General Reserve Unrestricted Account’s balance exceeds \$50M, any further deposit into the Account is subject to 50% revenue sharing with TIFIA
- Funds in the General Reserve Unrestricted Account can be transferred out to cure insufficiencies of any funds higher in the Flow of Funds including the three payment funds.
- Rate Covenant and ABT

Additional Bonds Test		Rate Covenant	
DSCR	ACCR	DSCR	ACCR
1.55x	1.10x	1.35x	1.00x

Net Revenues = Gross Revenues – Tolling O&M Expenditure + Revenue Stabilization Fund

Debt Service Coverage Ratio (DSCR) = Projected Net Revenues/Debt Service

All-in Cost Coverage Ratio (ACCR) = (Projected Net Revenues + General Reserve Restricted Account balance) / (Debt Service + Tolling M&R Reserve Deposits)



Hampton Roads Transportation Accountability Commission



To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: HRBT and HRELN Funding Plan of Finance and Debt Management Plan Update

Recommendation:

The Executive Director recommends that the Commission approve the Proposed HRTAC Hampton Roads Bridge Tunnel and Hampton Roads Express Lanes Network Plan of Finance and Debt Management Plan Update as reflected in the enclosed presentation.

Background:

As Commission staff, financial advisors, and VDOT continue to further refine project readiness and financing options, an update to the approved HRTAC Hampton Roads Bridge Tunnel project and the Hampton Roads Express Lanes Network Plan of Finance and Debt Management Plan is warranted. The proposed update reflects current HRTF revenue projections provided by the Commonwealth, current toll revenues and tolling costs projections, and updated project cost estimates. HRTAC's financial advisors will provide details to the proposed update at the Finance Committee meeting. A copy of the presentation detailing the proposed update is enclosed for reference.

Fiscal Impact:

The fiscal impact to the Hampton Roads Transportation Fund in relation to the HRTAC Proposed Debt Management Plan Update includes further refinement of the Hampton Roads Bridge Tunnel and Hampton Roads Express Lanes Network projects.

Suggested Motion:

Motion: The Finance Committee recommends that the Commission approve Proposed HRTAC Hampton Roads Bridge Tunnel and Hampton Roads Express Lanes Network Plan of Finance and Debt Management Plan Update and authorizes the Finance Committee Chair to recommend approval of the Proposed HRTAC Hampton Roads Bridge Tunnel and Hampton Roads Express Lanes Network Plan of Finance and Debt Management Plan Update to the Commission.

Agenda Item 5B
Action Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

**Re: 2021 HRTF Backed TIFIA Loan and Associated Bond Anticipation Note
Authorizations – Resolution 2021-05**

Recommendation:

The HRTAC Director, financial advisors, and bond counsel recommend that the Finance Committee endorse Resolution 2021-05 for the proposed 2021 HRTF Backed TIFIA issue for up to \$818 million and HRTF Senior Lien Bond Anticipation Notes issue for up to \$818 million and authorize the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.

Background:

The Commission has previously reviewed and approved a debt management plan for the financing and refinancing of the costs of Commission-approved new construction projects for congestion relief in the localities comprising Planning District 23. In February, 2018, the Commission issued \$500 million of Senior Lien Revenue Bonds, Series 2018A under its HRTF Master Indenture, to provide funding in part for the initial six debt-funded projects. The Commission continued the funding of these projects in December, 2019 with the issuance under the Master Indenture of its \$500,789,463 TIFIA Series 2019A Bond (TIFIA – 20201001A); \$414,345,000 Intermediate Lien Bond Anticipation Notes, Series 2019A; and, in order to provide the initial debt funded component of the HRBT Expansion Project, the issuance of its \$614,615,000 Senior Lien Revenue Bonds, Series 2020A. The current financing continues the funding of the HRBT Expansion Project with a similar TIFIA/BAN structure as was employed in 2019, as follows.

In response to the Commission's Letter of Interest for financing through the Transportation and Infrastructure Finance and Innovation Act of 1978, the U.S. DOT, acting through the Federal Highway Administrator, has advanced through creditworthiness review a loan for further HRBT Expansion Project financing. Furthermore, market conditions may make it fiscally advantageous for the Commission to issue bond anticipation notes and utilize the proceeds to fund certain costs on an interim basis, with TIFIA funding being used to repay the principal amount of the BANs upon project completion. A Senior and two Co-Manager Underwriters were chosen from the underwriter pool. Four firms that each had experience with similar TIFIA BANs and similar short-term debt instruments responded to an HRTAC Request for Information (RFI). Three of the



four respondents were chosen: Citi as Senior Underwriter with J.P. Morgan and Wells Fargo as Co-Managers to support Citi. Following a full briefing update, the Finance Committee will be asked for action to endorse Resolution 2021-05 for the issuance of a Subordinate Lien Revenue Bonds issue for up to \$818 million and a Senior Lien Bond Anticipation Notes issue for up to \$818 million, such issuances anticipated to occur during the Third Quarter of CY 2021. As set out in the Resolution, limited support from the HRTF is provided to the toll-backed financing structure for the HRBT Expansion Project and the Hampton Roads Express Lanes. This HRTAC Resolution 2021-05 would authorize the Commission's staff, counsel and financial advisor to move forward with such financings, and finalize the documents and agreements required for the same, all subject to parameters in the Resolution.

Fiscal Impact:

There is a significant fiscal impact in relation to this Action Item as a portion of the Commission's revenues will be devoted to debt service payments while these financings remain outstanding.

Suggested Motion:

Motion: The Finance Committee endorses Resolution 2021-05 and authorizes the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.



HRTAC RESOLUTION 2021 – 05

**RESOLUTION AUTHORIZING THE ISSUANCE OF
UP TO \$818,000,000 IN AGGREGATE PRINCIPAL AMOUNT
OF HAMPTON ROADS TRANSPORTATION FUND
SUBORDINATE LIEN REVENUE BONDS (TIFIA SERIES 2021) AND UP TO
\$818,000,000 OF HAMPTON ROADS TRANSPORTATION FUND
SENIOR LIEN BOND ANTICIPATION NOTES**

WHEREAS, the Hampton Roads Transportation Accountability Commission (the “Commission”) is a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) having the powers set forth in Chapter 26, Title 33.2, of the Code of Virginia of 1950, as amended (the “HRTAC Act”);

WHEREAS, the Commission has previously reviewed and approved a debt management plan for the financing and refinancing of the costs of the Hampton Roads Bridge Tunnel Expansion Project, which constitutes in accordance with the HRTAC Act a construction project for congestion relief on a new or existing highway, bridge, and/or tunnel in the localities comprising Planning District 23 (the “HRBT Expansion Project”), and funding for costs for the HRBT Expansion Project includes the Commission’s previously issued Series 2020A Bonds and certain “TIFIA” funding, each as described below;

WHEREAS, on February 14, 2018, the Commission issued its Senior Lien Revenue Bonds, Series 2018A (the “2018A Bonds”), in the principal amount of \$500,000,000, pursuant to the terms of the HRTAC Act, resolutions approved by the governing body of the Commission on June 16, 2016 and December 14, 2017, and a Master Indenture of Trust (as supplemented and amended from time to time, the “Master Indenture”) as supplemented by a First Supplemental Series Indenture, each between the Commission and Wilmington Trust, National Association (the “Trustee”) and dated as of February 1, 2018;

WHEREAS, the Commission has also issued the following series of obligations under the Master Indenture for the funding of certain Projects:

- \$500,789,463 TIFIA Series 2019A Bond (TIFIA – 20201001A) pursuant to the Master Indenture as supplemented by a Second Supplemental Series Indenture dated as of December 1, 2019;
- \$414,345,000 Intermediate Lien Bond Anticipation Notes, Series 2019A, pursuant to the Master Indenture and a Third Supplemental Series Indenture dated as of December 15, 2019; and
- \$614,615,000 Senior Lien Revenue Bonds, Series 2020A, pursuant to the Master Indenture and a Fourth Supplemental Series Indenture dated as of October 1, 2020;

WHEREAS, obligations issued under the Master Indenture are payable from and secured by the revenues and funds in the Hampton Roads Transportation Fund (as defined in the HRTAC Act) (the “HRTF Bonds”) and the proceeds of such HRTF Bonds are to be used to finance and refinance the costs of new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, the Commission’s Letter of Interest, dated April 29, 2020, for a secured loan (the “TIFIA Loan”) under the Transportation Infrastructure Finance and Innovation Act of 1978, as amended (“TIFIA Act”), to further finance a portion of the costs of the HRBT Expansion Project has been advanced by the United States Department of Transportation (“U.S. DOT”) through creditworthiness review and into negotiation of business terms;

WHEREAS, the Commission has negotiated the terms of the TIFIA Loan, including a form of TIFIA Loan Agreement (the “TIFIA Loan Agreement”) between the Commission and U.S. DOT, acting by and through the Federal Highway Administrator (the “TIFIA Lender”), pursuant to which the TIFIA Lender will agree to extend a secured loan to the Commission to finance a portion of the costs of the HRBT Expansion Project;

WHEREAS, to evidence the obligation of the Commission to repay the loan under the TIFIA Loan Agreement, the Commission desires to authorize the issuance of an additional series of obligations under the Master Indenture in an initial principal amount of up to \$818,000,000, to be designated as the “Subordinate Lien Revenue Bond, TIFIA Series 2021” (the “TIFIA Series 2021 Bond”), the proceeds of which would be used to finance in part the costs of the Eligible Project Costs (as defined in the TIFIA Loan Agreement);

WHEREAS, market conditions may make it fiscally advantageous for the Commission to issue bond anticipation notes and utilize the proceeds thereof to fund certain construction costs of the HRBT Expansion Project on an interim basis before the proceeds of the TIFIA Series 2021 Bond are drawn under the TIFIA Loan Agreement, and for the Commission to utilize a portion of the proceeds of the TIFIA Series 2021 Bond to repay such bond anticipation notes at maturity;

WHEREAS, the Commission therefore desires to authorize the issuance of an additional series of obligations under the Master Indenture in an initial principal amount of up to \$818,000,000, to be designated as the “Senior Lien Bond Anticipation Notes, Series 2021” (the “Series 2021 Notes”), to provide short term funding of the HRBT Expansion Project, such Series 2021 Notes to be retired with proceeds of the TIFIA Series 2021 Bond as stated above, or otherwise from available amounts under the Master Indenture, or by issuing bonds for such purpose under the Master Indenture;

WHEREAS, in furtherance of the foregoing, the Executive Director and the Finance Committee have recommended that the Commission proceed with the issuance of the obligations described above, and with the authorization, execution and delivery of certain financing documents, drafts of which have been presented by the Commission’s Financial Advisor and Bond Counsel to the Finance Committee and to the Commission, including the following (collectively, the “Bond Documents”):

(a) A Fifth Supplemental Series Indenture of Trust between the Commission and the Trustee (the “Fifth Series Supplement”), relating to the issuance of the TIFIA Series 2021 Bond;

(b) The TIFIA Loan Agreement;

(c) The form of the TIFIA Series 2021 Bond, attached as Exhibit B to the Fifth Series Supplement;

(d) A Sixth Supplemental Series Indenture of Trust between the Commission and the Trustee (the “Sixth Series Supplement” together with the Fifth Series Supplement, the “Series Supplements”), relating to the issuance of the Series 2021 Notes;

(e) The form of the Series 2021 Notes, attached as Exhibit B to the Sixth Series Supplement;

(f) A Bond Purchase Agreement between the Commission and the underwriters appointed by the Commission (the “Bond Purchase Agreement”), relating to the sale of the Series 2021 Notes;

(g) A Preliminary Official Statement furnishing information to prospective purchasers of the Series 2021 Notes regarding the Commission, the Series 2021 Notes and the security therefor (the “Preliminary Official Statement”); and

(h) A Continuing Disclosure Undertaking of the Commission, in accordance with Securities Exchange Commission Rule 15c2-12, as amended (the “Municipal Securities Rule”), to periodically provide certain updated disclosures to the municipal securities market regarding the Commission, the Series 2021 Notes and the security therefor;

WHEREAS, the Commission has determined that it would be in the best interests of the Commission to authorize the Executive Director to finalize the terms of the TIFIA Series 2021 Bond, the Series 2021 Notes, and the Bond Documents with the advice of the Financial Advisor, Bond Counsel and the Commission’s general counsel, and to cause the execution and delivery thereof, subject to the limitations and parameters hereinafter provided in this Resolution;

WHEREAS, the Commission desires to authorize the transfer of certain limited amounts from the General Fund established under the Master Indenture (the “HRTF Transfers”) to provide support with respect to certain funds to be established under the Commission’s toll revenue bond indenture;

WHEREAS, the Commission is meeting to discuss and transact the business of the Commission, and the Commission deems it necessary to meet by electronic communications without physical assembly of members of the Commission in accordance with the budget bill of the Commonwealth of Virginia (the “Commonwealth”) for the biennium ending June 30, 2022, as adopted by the Virginia General Assembly, because the Governor of the Commonwealth has issued Executive Order Fifty-One (2020) declaring a state of emergency, which declaration

continues in force and effect, and the nature of such emergency makes it impracticable or unsafe for the Directors of the Commission to assemble in a single location.

NOW, THEREFORE, BE IT RESOLVED BY THE HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION:

1. The Commission authorizes and approves the issuance of the TIFIA Series 2021 Bond, in one or more sub-series, and the Series 2021 Notes, under the Master Indenture.

2. The Commission is authorized to enter into the TIFIA Loan Agreement to obtain a secured loan from the TIFIA Lender in the initial principal amount of up to \$818,000,000, which amount may be increased from time to time, to the extent permitted under the TIFIA Loan Agreement, to reflect the amount of interest on the disbursed amount of the loan that is not currently paid by the Commission.

3. The Commission authorizes and directs the Executive Director or the Chair of the Commission, either of whom may act, to develop, negotiate and finalize, with the advice of the Financial Advisor, Bond Counsel and the Commission's general counsel, the structure, terms and conditions of the TIFIA Series 2021 Bond and the Series 2021 Notes, including, without limitation, their series designations, dated dates, principal amounts, interest rates, maturity dates, redemption and prepayment provisions (if any), sales prices, and principal amounts in each maturity of each series, subject to the following parameters and conditions:

- (i) the TIFIA Series 2021 Bond and the Series 2021 Notes shall be issued in accordance with the form and requirements of the Master Indenture and the applicable Series Supplement (as finalized in accordance with the terms of this Resolution);
- (ii) the original principal amount of the TIFIA Series 2021 Bond shall not exceed \$818,000,000, subject to increase as set forth above;
- (iii) the interest rate on the TIFIA Series 2021 Bond or any sub-series thereof shall not exceed 3.25%, provided that, upon the occurrence and during the continuance of a payment default, the interest rate with respect to any overdue principal amount shall be the applicable default rate specified in the TIFIA Loan Agreement;
- (iv) the TIFIA Series 2021 Bond shall have a final maturity date not later than 40 years from the date of its issuance;
- (v) the principal amount of the Series 2021 Notes shall not exceed \$818,000,000;
- (vi) the Series 2021 Notes shall have a final maturity date not later than five years from their dated date; and
- (vii) the Series 2021 Notes shall bear interest at the interest rate or rates as shall be approved by the Executive Director or the Chair of the Commission, provided that the weighted average yield on the Series 2021 Notes, computed using the stated

interest rate or rates and the stated original offering price or prices on the Series 2021 Notes, cannot exceed the stated TIFIA interest rate as established above in clause (iii), and provided further that the weighted average yield on the Series 2021 Notes, computed using the stated interest rate or rates and the stated original offering price or prices on the Series 2021 Notes, shall not be greater than 3.75%.

4. The Bond Documents are approved; the Chair or Vice Chair of the Commission, either of whom may act (the “HRTAC Representative”), is authorized to execute and deliver the Bond Documents on the Commission’s behalf, with such changes, insertions or omissions (not inconsistent with the parameters in Sections 2 and 3 above) as may be finalized by the Executive Director in accordance with the terms of this Resolution with the advice of the Financial Advisor, Bond Counsel and the Commission’s general counsel. Such authorization and approval shall be evidenced conclusively by the execution and delivery of the finalized Bond Documents by the HRTAC Representative. Each HRTAC Representative and the Executive Director are appointed as the “Borrower’s Authorized Representative” under the TIFIA Loan Agreement. The authorization in this paragraph includes any amendments or modifications to the Commission’s 2019 TIFIA Loan Agreement, entered into in connection with the issuance of the Commission’s \$500,789,463 TIFIA Series 2019A Bond, so as to conform the provisions of such instrument with the provisions of the TIFIA Loan Agreement with respect to the TIFIA Series 2021 Bond, including the amendment and restatement of such 2019 TIFIA Loan Agreement.

5. The Commission hereby appoints Citigroup Global Markets Inc., a member of the Commission’s current underwriting pool, to serve as the senior managing underwriter for the sale of the Series 2021 Notes, together with any co-managers selected by the Executive Director, and authorizes the sale of the Series 2021 Notes to such underwriters by negotiated sale.

6. The Commission authorizes the distribution of the Preliminary Official Statement for the Series 2021 Notes, provided that the HRTAC Representative or the Executive Director, either of whom may act, is authorized to “deem final” such Preliminary Official Statement as of the date of its distribution, subject to the omission of final pricing information as permitted by the Municipal Securities Rule. Such officials are each individually further authorized to approve such completions, omissions, insertions and other changes to the Preliminary Official Statement, specifying the terms of the Series 2021 Notes, together with any other information required by law to reflect the terms of the sale of the Series 2021 Notes, the details thereof and the security therefor, as may be necessary or appropriate to complete it as a final Official Statement with respect to the Series 2021 Notes. The HRTAC Representative or the Executive Director, any of whom may act, is authorized to review, and certify as to the accuracy of, the information set forth in the Official Statement describing the Commission, the Series 2021 Notes or the security therefor. Such officials are each further authorized to execute the final Official Statement and deliver the same to the underwriters, and such execution and delivery shall constitute conclusive evidence that such Official Statement has been deemed a “final official statement” (as defined in the Municipal Securities Rule).

7. In order to provided limited credit support to the Commission’s 2021 TIFIA toll revenue bond (the “2021 TIFIA Toll Revenue Bond”), authorized to be issued under the Commission’s toll revenue master indenture and a first supplemental indenture thereto (together, the

“Toll Indenture”), the Commission authorizes HRTF Transfers from the General Fund as described in the Fifth Series Supplement and subject to their availability for such purpose, as follows:

- (A) For transfer and deposit to the TIFIA debt service reserve account established under the Toll Indenture, the initial funding of the debt service reserve requirement for the 2021 TIFIA Toll Revenue Bond, now estimated to be approximately \$24,000,000, but in no event to exceed \$32,000,000, such transfer and deposit to occur at the later of the substantial completion date of the project financed in part with proceeds of the 2021 TIFIA Toll Revenue Bond, or the date on which the Commission makes the first draw under the 2021 TIFIA Toll Revenue Bond;
- (B) For transfer and deposit to the toll revenue stabilization fund established under the Toll Indenture (i) an initial amount not greater than \$15,000,000, such transfer and deposit to occur at the later of the substantial completion date of the project financed in part with proceeds of the 2021 TIFIA Toll Revenue Bond, or the date on which the Commission makes the first draw under the 2021 TIFIA Toll Revenue Bond, and (ii) on an annual basis, an amount not greater than \$15,00,000 in any fiscal year to replenish any deficiencies in such toll revenue stabilization fund; and
- (C) For transfer and deposit to the major maintenance and renewal fund established under the Toll Indenture (i) the initial amount of \$5,000,000, such transfer and deposit to occur at the later of the substantial completion date of the project financed in part with proceeds of the 2021 TIFIA Toll Revenue Bond, or the date on which the Commission makes the first draw under the 2021 TIFIA Toll Revenue Bond, and (ii) such amounts as may be needed from time to time to restore any deficiency in such fund to its required amount, provided that the aggregate amount of all such HRTF Transfers made under this clause (ii) for deposit to the major maintenance and renewal fund shall not exceed a cumulative transfer cap equal to, as of any measurement date, the total of expected major maintenance and renewal fund permitted expenditures from such measurement date to the final maturity of obligations outstanding under the Toll Indenture, as estimated by the consulting engineer for the Hampton Roads Express Lanes and initially based, using an initial measurement date in Fiscal Year 2026, on a forecast of estimated life cycle maintenance costs with respect to the toll collection facilities and equipment needed for the toll roads system in its then-current state; such aggregate amount now estimated to be approximately \$160,000,000 but in no event an aggregate amount in excess of \$185,000,000 without further approval of the Commission;

HRTF Transfers are subject to the following provisions and restrictions:

- (W) The Executive Director is hereby delegated the authority to determine the final amounts to constitute HRTF Transfers, subject to the foregoing limits

and maximum authorized amounts, with the advice of the Commission's Financial Advisor and to maintain the minimum acceptable credit rating on the 2021 TIFIA Toll Revenue Bond;

- (X) HRTF Transfers are subject to reimbursement of such amounts to the Commission pursuant to the Toll Indenture;
- (Y) the Commission agrees to manage the use of HRTF revenues in the General Fund so as to provide for the availability of sufficient amounts in the General Fund to make the foregoing transfers as and when required, subject to the availability of HRTF revenues for such purpose; and
- (Z) HRTF Transfers are authorized only for so long as the 2021 TIFIA Toll Revenue Bond is outstanding, unless further approved by the Commission, and may only be expended as permitted by applicable law.

8. After the TIFIA Series 2021 Bond and the Series 2021 Notes are sold, (i) the HRTAC Representative is authorized and directed to take all necessary or proper steps to have such final obligations prepared in accordance with the terms of the Master Indenture and the respective Series Supplement and to execute the TIFIA Series 2021 Bond and the Series 2021 Notes by manual or facsimile signature, (ii) the Executive Director and the HRTAC Representative are authorized to countersign the TIFIA Series 2021 Bond and the Series 2021 Notes by manual or facsimile signature, and (iii) any such official is authorized to deliver the TIFIA Series 2021 Bond and the Series 2021 Notes to the applicable purchaser or underwriters upon receipt of the purchase price therefor.

9. The HRTAC Representative and the Executive Director, either of whom may act, is authorized and directed to execute, deliver and file all certificates and documents, and take all further action, as he or she may consider necessary or appropriate in accordance with the terms of this Resolution in connection with the issuance and sale of the TIFIA Series 2021 Bond and the Series 2021 Notes, including, without limitation, and with the advice of Bond Counsel, (a) execution and delivery of a certificate setting forth the expected use and investment of the proceeds of the Series 2021 Notes to show that such expected use and investment will not violate the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations promulgated thereunder (the "Tax Code"), (b) making any elections that such officials deem desirable including but not limited to regarding payments of rebate to the United States, and (c) filing Internal Revenue Service Form 8038-G.

10. The Executive Director and the Commission's staff shall monitor and comply with applicable provisions of the Commission's Post-Issuance Compliance Policies and Procedures and the same may be amended and supplemented to conform to current requirements of the Municipal Securities Rule.

11. The Executive Director is authorized to utilize the State Non-Arbitrage Program of the Commonwealth of Virginia ("SNAP") in connection with the investment of proceeds of the

TIFIA Series 2021 Bond or the Series 2021 Notes, if the Executive Director determines, with the advice of the PFM Asset Management LLC or its successor, as investment advisor, that the utilization of SNAP is in the best interest of the Commission. The Commission acknowledges that the Treasury Board of the Commonwealth is not, and shall not be, in any way liable to the Commission in connection with SNAP, except as otherwise provided in the standard form SNAP Contract utilized by state and local governmental entities within the Commonwealth.

12. The Executive Director and the Commission's staff are further authorized to take such actions as may be necessary or appropriate to provide for the deposit and investment of funds to carry out the Commission's purposes in accordance with the Commission's adopted budget, the Master Indenture and the HRTAC Act, both prior to and following the issuance of the TIFIA Series 2021 Bond and the Series 2021 Notes, including, without limitation, by the funding of a reserve for administrative operating expenses, the provision for payment of debt service on the TIFIA Series 2021 Bond and the Series 2021 Notes, the establishment and replenishment of reserves, and the deposit and investment of the proceeds of the TIFIA Series 2021 Bond and the Series 2021 Notes and Commission revenues in the various funds and accounts established by the Master Indenture and the respective Series Supplement or any supplemental indenture. Any of such Series Supplement or supplemental indenture may have a different and additional numbered supplemental designation if necessary, desirable or in connection with the issuance of the TIFIA Series 2021 Bond or the Series 2021 Notes.

13. Each HRTAC Representative and the Executive Director is authorized to execute and deliver on the Commission's behalf such other instruments, documents or certificates, and to do and perform such further things and acts, as he or she shall deem necessary or appropriate to carry out in accordance with the terms of this Resolution the transactions authorized by this Resolution or contemplated by the Master Indenture or any supplement thereto. Any of the foregoing previously done or performed by any officer or authorized representative of the Commission is in all respects approved, ratified and confirmed.

14. The Commission confirms the findings and determinations contained in the recitals to this Resolution setting forth the reason for the need to meet by electronic means without requiring members of the Commission to physically assemble at one location during the current declared state of emergency by the Governor of the Commonwealth arising from COVID-19.

15. This Resolution shall take effect immediately.

The undersigned hereby certify that this is a true and correct copy of a resolution duly adopted at a meeting of the Hampton Roads Transportation Accountability Commission held on June ____, 2021.

Chair, Hampton Roads Transportation
Accountability Commission

Vice-Chair, Hampton Roads Transportation
Accountability Commission

FIFTH SUPPLEMENTAL SERIES INDENTURE OF TRUST

between

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee**

Dated as of [____], 2021

relating to

\$ _____

**Hampton Roads Transportation Accountability Commission
Hampton Roads Transportation Fund**

**Subordinate Lien Revenue Bond
TIFIA Series 2021**

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FIFTH SUPPLEMENTAL SERIES INDENTURE OF TRUST

This **FIFTH SUPPLEMENTAL SERIES INDENTURE OF TRUST** (this “Fifth Series Supplement”) is made as of [____], 2021, between the **HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a body politic and a political subdivision of the Commonwealth of Virginia (“HRTAC” or the “Commission”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, and its successors, as trustee (the “Trustee”).

RECITALS:

WHEREAS, HRTAC is a body politic and a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) having the authority under the Code of Virginia of 1950, as amended (the “Virginia Code”), to receive all of the amounts dedicated to the Hampton Roads Transportation Fund (the “HRTF”) from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code;

WHEREAS, as provided in Chapter 26, Title 33.2, of the Virginia Code (the “HRTAC Act”), the Commission shall use the moneys deposited in the HRTF solely for the purposes of (i) funding new construction projects on new or existing highways, bridges, and tunnels in the Member Localities (as hereinafter defined), giving priority to projects expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within the Member Localities, and (ii) paying the Commission’s administrative and operating expenses as provided in the Annual Budget;

WHEREAS, Section 33.2-2606 of the HRTAC Act authorizes and empowers HRTAC to issue bonds and other evidences of debt and provides that the provisions of Article 5 (Section 33.2-1920 *et seq.*) of Chapter 19 of Title 33.2 of the Virginia Code shall apply, *mutatis mutandis*, to the issuance of such bonds and other evidences of debt (collectively, the “Bonds”) for any of the Commission’s purposes;

WHEREAS, Section 33.2-1920 of the Virginia Code permits the Bonds to be payable from and secured by a pledge of all or any part of the revenues, moneys or funds of HRTAC as specified in a resolution adopted or indenture entered into by HRTAC, but that such Bonds shall not constitute debt of the Commonwealth or any political subdivision thereof (including any Member Locality) other than HRTAC, and that such Bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code;

WHEREAS, HRTAC has executed and delivered to the Trustee a Master Indenture of Trust dated as of February 1, 2018 (the “Master Indenture”), under which, among other things, HRTAC has provided for the financing and refinancing of the costs of Projects through the issuance from time to time of Bonds, payable from and secured by the HRTAC Revenues;

WHEREAS, HRTAC and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), propose to enter into a TIFIA Loan Agreement, dated as of [____]

___,] 2021 (the “2021 TIFIA Loan Agreement”), pursuant to which the TIFIA Lender has agreed to extend a loan to HRTAC, the proceeds of which shall be used solely in respect of Eligible Project Costs (as defined in the 2021 TIFIA Loan Agreement) paid or incurred by or on behalf of the Borrower Related Parties (as defined in the 2021 TIFIA Loan Agreement) from time to time in connection with the 2021 TIFIA Financed Project (as defined below) and may be used to pay or redeem 2021 HRBT Project BANs (as defined below);

WHEREAS, as evidence of the loan extended by the TIFIA Lender under the 2021 TIFIA Loan Agreement, and to provide for the repayment thereof, HRTAC has determined to issue and deliver a Series of Bonds under the Master Indenture, to be issued as a Subordinate Obligation thereunder and designated the Hampton Roads Transportation Accountability Commission Subordinate Lien Revenue Bond, TIFIA Series 2021 (the “TIFIA Series 2021 Bond”) to the TIFIA Lender in the initial aggregate principal amount (excluding any capitalized interest) of up to \$ _____ to finance certain Eligible Project Costs;

WHEREAS, the Master Indenture provides that HRTAC may issue Subordinate Obligations from time to time as authorized by a Series Supplement, which Subordinate Obligations are to be secured by the HRTAC Revenues in accordance with the Master Indenture, and the Master Indenture further provides that, as a condition to the issuance and authentication of any Series of Bonds, HRTAC shall deliver to the Trustee a Series Supplement;

WHEREAS, HRTAC and the Trustee desire to enter into this Fifth Series Supplement as a Series Supplement under the Master Indenture to set forth the terms of HRTAC’s obligations to the TIFIA Lender relating to the 2021 TIFIA Loan Agreement, which is being entered into as indebtedness under, pursuant to and in accordance with the HRTAC Act;

WHEREAS, all things necessary to make the TIFIA Series 2021 Bond a valid and binding limited obligation of HRTAC, when authenticated and issued as provided in this Fifth Series Supplement, and to constitute this Fifth Series Supplement a valid and binding Series Supplement securing the payment of the principal of and premium, if any, and interest on the TIFIA Series 2021 Bond, have been done and performed.

NOW, THEREFORE, HRTAC hereby covenants and agrees with the Trustee and with the Owners, from time to time, of the TIFIA Series 2021 Bond, as follows:

ARTICLE I SERIES SUPPLEMENT

Section 1.1 Series Supplement. This Fifth Series Supplement is authorized and executed by HRTAC and delivered to the Trustee pursuant to and in accordance with Articles V and XV of the Master Indenture. All terms, covenants, conditions and agreements of the Master Indenture apply with full force and effect to the TIFIA Series 2021 Bond, except as otherwise expressly stated in this Fifth Series Supplement.

Section 1.2 Definitions. All capitalized words and terms used in this Fifth Series Supplement, including in the recitals, shall have the meanings set forth in Article I of the Master Indenture unless the context clearly requires a different or separate meaning. In addition, the

following words and terms have the following meanings in this Fifth Series Supplement unless the context clearly requires otherwise:

“2021 HRBT Project BANs” means HRTAC’s Senior Lien Bond Anticipation Notes, Series 2021A, to be issued on or about _____, 2021, in the par amount of \$ _____, for the purpose of paying Eligible Project Costs.

“2021 Maximum TIFIA Loan Amount” means the maximum principal amount of the 2021 TIFIA Loan allowable under the 2021 TIFIA Loan Agreement.

“2021 TIFIA Debt Service” means, with respect to any Semi-Annual Payment Date occurring on or after the 2021 TIFIA Debt Service Payment Commencement Date, the principal and/or interest required to be paid on the 2021 TIFIA Loan on such Semi-Annual Payment Date as shown on Exhibit G of the 2021 TIFIA Loan Agreement in accordance with the provisions of Section 9 of the 2021 TIFIA Loan Agreement.

“2021 TIFIA Debt Service Payment Commencement Date” means the earlier of (a) _____, and (b) the 9th Semi-Annual Payment Date immediately succeeding the 2021 TIFIA Substantial Completion Date.

“2021 TIFIA Debt Service Reserve Required Balance” means the lesser of (x) ten percent (10%) of the 2021 Maximum TIFIA Loan Agreement Amount, (y) one hundred percent (100%) of the 2021 TIFIA Maximum Annual Debt Service, and (z) one hundred and twenty-five percent (125%) of the average annual 2021 TIFIA Debt Service through the Final Maturity Date. If there are any Additional TIFIA Loans (as defined in the 2021 TIFIA Loan Agreement) outstanding at any time, then the amounts set forth in clauses (x) through (z) will be calculated using the summation of the 2021 TIFIA Loan and all of the Additional TIFIA Loans as if there were one TIFIA loan. The 2021 TIFIA Debt Service Reserve Required Balance shall constitute the “Subordinate Debt Service Reserve Fund Requirement,” as defined in the Master Indenture, with respect to the TIFIA Series 2021 Bond and any other bonds or other obligations issued to the TIFIA Lender under the Master Indenture and secured by a pledge of HRTAC Revenues thereunder.

“2021 TIFIA Financed Project” means [, collectively, the Project[s]] as defined in the 2021 TIFIA Loan Agreement.

“2021 TIFIA Interest Rate” means ___% per annum.

“2021 TIFIA Loan” shall have the meaning set forth in the 2021 TIFIA Loan Agreement as the “TIFIA Loan.”

“2021 TIFIA Loan Agreement” means the 2021 TIFIA Loan Agreement, dated as of [____], 2021, between the TIFIA Lender and HRTAC, relating to the 2021 TIFIA Financed Project(s), as amended in accordance with its terms. The 2021 TIFIA Loan Agreement is attached hereto as Exhibit A.

“2021 TIFIA Maximum Annual Debt Service” means the highest aggregate amount of 2021 TIFIA Debt Service for the present or any succeeding Fiscal Year.

“2021 TIFIA Substantial Completion Date” means the date of substantial completion, which occurs on the date of opening of all 2021 TIFIA Financed Project to vehicular traffic.

“2021 TIFIA Toll Obligation” means the Commission’s (Toll Roads System), 2021 TIFIA Series – Senior Lien Obligation.

“Dated Date” means the date of the issuance, authentication and delivery of the TIFIA Series 2021 Bond and may also be referred to as the “Closing Date.”

“Default Rate” means an interest rate of [200] basis points above the 2021 TIFIA Interest Rate.

[**“Excess Revenues”** means, following the occurrence of a Revenue Sharing Trigger Event and until such time as the Revenue Sharing Trigger Event ends, an amount in each month equal to 50% of the Pledged Revenues remaining after the transfers described in clauses “FIRST” through “TENTH” in Section 8.1(b) of the Master Indenture” have occurred.]

“Final Maturity Date” has the meaning set forth in the 2021 TIFIA Loan Agreement.

“Fifth Series Supplement” means this Fifth Series Supplement of Trust dated as of [____], 2021, between HRTAC and the Trustee, being a Series Supplement with respect to the TIFIA Series 2021 Bond pursuant to the provisions of the Master Indenture.

“Government” means the United States of America and its departments and agencies.

“Master Indenture” means the Master Indenture of Trust dated as of February 1, 2018, between HRTAC and the Trustee, as the same may be modified, altered, amended and supplemented from time to time in accordance with its terms.

“Member Localities” means, collectively, each county and city located in Planning District 23, established pursuant to Chapter 42, Title 15.2, of the Virginia Code, currently consisting of the Counties of Isle of Wight, James City, Southampton and York, and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg, and any other localities that may hereafter be added to HRTAC by amendment to the Virginia Code.

“Permitted Investments” has the meaning set forth in the 2021 TIFIA Loan Agreement.

“Pledged Revenues” means the HRTAC Revenues and all other property of any kind mortgaged, pledged or hypothecated to provide for the payment of or to secure the Bonds by HRTAC or by anyone on its behalf and with its written consent at any time as and for additional security under the Master Indenture and the Series Supplements.

“Revenue Sharing Trigger Event” means any date on which [Subordinate Obligations] issued to the TIFIA Lender are outstanding and the Borrower or VDOT, on behalf of the Borrower, is not actively engaged in the development of capital project programs in the Hampton Roads Transportation Planning Organization’s most recently adopted long-range transportation plan.

“Semi-Annual Payment Date” means each January 1 and July 1, or if such day is not a Business Day, then the Business Day succeeding such January 1 or July 1.

“TIFIA Bond” and **“TIFIA Loan”** each has the meaning set forth in the 2021 TIFIA Loan Agreement.

“TIFIA Lender” means the U.S. Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, and its successors and assigns.

“TIFIA Series 2021 Bond” means the Hampton Roads Transportation Accountability Subordinate Lien Revenue Bond, TIFIA Series 2021, authorized to be issued as a Subordinate Obligation under Section 3.1(a) of this Fifth Series Supplement.

“TIFIA Series 2021 Bond Debt Service Fund” means the Debt Service Fund related to the TIFIA Series 2021 Bond established pursuant to Section 7.1 of the Master Indenture and Section 5.1 of this Fifth Series Supplement.

“TIFIA Series 2021 Bond Debt Service Reserve Fund” means the Debt Service Reserve Fund related to the TIFIA Series 2021 Bond established pursuant to Section 7.1 of the Master Indenture and Section 5.1 of this Fifth Series Supplement.

“TIFIA Series 2021 Project Fund” means the Project Fund related to the TIFIA Series 2021 Bond established pursuant to Section 7.1 of the Master Indenture and Section 5.1 of this Fifth Series Supplement.

“Toll Indenture” means the Master Indenture of Trust dated as of _____, 2021 (Toll Roads System Revenue Bonds), relating to the between the Commission and the Toll Indenture Trustee, as amended and in effect from time to time.

“Toll First Supplemental Indenture” means the First Supplemental Indenture dated as of _____, 2021, supplementing the Toll Indenture in connection with the issuance of the Commission’s (Toll Roads System), 2021 TIFIA Series – Senior Lien Obligation.

“Toll Indenture Trustee” means U.S. Bank National Association, as trustee under the Toll Indenture, and its successors and assigns.

“Toll Major Maintenance and Renewal Fund” means the Major Maintenance and Renewal Fund established and maintained under the Toll Indenture.

“Toll Major Maintenance and Renewal Fund Required Amount” means the “Major Maintenance and Renewal Fund Required Amount” as defined in the Toll Indenture, as such amount may be amended from time to time.

“Toll Major M & R HRTF Cumulative Transfer Cap” means the “Major M & R HRTF Cumulative Transfer Cap” as defined in the Toll Indenture, as such amount may be amended from time to time.

“**Toll Maximum Annual RSF Transfer Cap**” means the amount of [\$ _____ .]

“**Toll Revenue Stabilization Fund**” means the Revenue Stabilization Fund established and maintained under the Toll Indenture.

“**Toll Revenue Stabilization Fund Requirement**” means the “Revenue Stabilization Fund Requirement” as defined in the Toll Indenture.

“**VDOT**” means the Virginia Department of Transportation, an agency of the Commonwealth of Virginia.

Section 1.3 Representations of HRTAC. HRTAC represents that (i) it is duly authorized under the Constitution and laws of the Commonwealth, including, particularly and without limitation, Section 33.2-2606 of the HRTAC Act, to issue the TIFIA Series 2021 Bond, to execute this Fifth Series Supplement, and to pledge and grant the security provided herein subject to the Master Indenture, (ii) all action on its part necessary for the execution and delivery of this Fifth Series Supplement has been taken, and (iii) the TIFIA Series 2021 Bond in the hands of the Owners thereof are and will be valid and enforceable limited obligations of HRTAC.

ARTICLE II [RESERVED]

ARTICLE III AUTHORIZATION AND DETAILS OF TIFIA SERIES 2021 BOND

Section 3.1 Authorization of TIFIA Series 2021 Bond. (a) There is authorized to be issued pursuant to the Master Indenture a Series of Subordinate Obligations to be called the “Hampton Roads Transportation Fund Subordinate Lien Revenue Bond, TIFIA Series 2021,” in the initial aggregate principal amount of up to \$ _____, which amount is subject to increase or decrease pursuant to the provisions of the 2021 TIFIA Loan Agreement and as described in Section 3.2(b) of this Fifth Series Supplement.

(b) The proceeds of the TIFIA Series 2021 Bond shall be used solely in respect of Eligible Project Costs and may be used to pay or redeem 2021 HRBT Project BANs but only to the extent that the portion of 2021 HRBT Project BANs to be paid or redeemed with proceeds of the TIFIA Series 2021 Bond financed Eligible Project Costs.

Section 3.2 Terms and Details of TIFIA Series 2021 Bond.

(a) The TIFIA Series 2021 Bond shall be issued to the TIFIA Lender in certificated form as one typewritten bond registered in the name of the TIFIA Lender as the Owner thereof. The TIFIA Series 2021 Bond shall not be issued as a book-entry-only obligation. Initially, there shall be delivered hereunder one fully registered TIFIA Series 2021 Bond up to the full authorized initial aggregate principal amount set forth above, numbered R-1, without interest coupons. Any TIFIA Series 2021 Bond issued in replacement thereof upon transfer or exchange

shall be numbered consecutively from R-2 upward, payable to the Owner thereof. The TIFIA Series 2021 Bond shall be payable, executed, authenticated, registrable, exchangeable and secured all as set forth in the Master Indenture, this Fifth Series Supplement, and the 2021 TIFIA Loan Agreement. In the event the TIFIA Lender sells or otherwise transfers all or a portion of the TIFIA Series 2021 Bond to another Owner, HRTAC shall provide, in writing, subsequent transfer and registration details to the Trustee.

(b) The TIFIA Series 2021 Bond shall be dated the Dated Date. The 2021 TIFIA Loan as evidenced by the TIFIA Series 2021 Bond shall bear interest at the 2021 TIFIA Interest Rate or at the Default Rate as further provided in the 2021 TIFIA Loan Agreement. Interest on the TIFIA Series 2021 Bond shall be calculated on the basis of a year of 365 or 366 days, as appropriate, for the actual number of days elapsed and shall be compounded semi-annually on each Semi-Annual Payment Date.

(c) The principal amount of the TIFIA Series 2021 Bond will be increased from time to time (i) on each occasion on which the TIFIA Lender shall disburse loan proceeds under and pursuant to the 2021 TIFIA Loan Agreement, by the amount of such disbursement of loan proceeds, and (ii) in accordance with Section 9(b) of the 2021 TIFIA Loan Agreement, on each occasion on which any amount representing interest that is not currently paid by HRTAC on the applicable Semi-Annual Payment Date, by the amount of such unpaid interest, which shall be capitalized. Not later than the tenth calendar day before the first Business Day of the month following (x) each disbursement of loan proceeds under the 2021 TIFIA Loan Agreement, and (y) each Semi-Annual Payment Date on which interest is capitalized as provided in the preceding sentence, HRTAC shall provide a revised schedule to the Trustee and the TIFIA Lender setting forth each increase in the principal amount of the TIFIA Series 2021 Bond and the revisions to the monthly deposits to the Funds and Accounts required by this Fifth Series Supplement. HRTAC shall, within a reasonable period of time after each disbursement or each Semi-Annual Payment Date on which interest is capitalized, notify the Trustee in writing of the date and amount of each such disbursement or capitalized interest amount and increase to the outstanding principal amount of the TIFIA Series 2021 Bond in accordance with Section 9(b) of the 2021 TIFIA Loan Agreement.

(d) The 2021 TIFIA Loan as evidenced by the TIFIA Series 2021 Bond shall mature no later than the Final Maturity Date.

(e) The principal of and premium, if any, and interest on the TIFIA Series 2021 Bond shall be payable in lawful money of the United States of America.

Section 3.3 Medium and Place of Payment. Payment of the principal of and/or interest on the TIFIA Series 2021 Bond shall be paid by the Trustee by wire transfer to the TIFIA Lender (or a successor) in immediately available funds in accordance with the payment instructions provided by the TIFIA Lender on the date of execution and delivery of the TIFIA Series 2021 Bond. Upon receipt by HRTAC of any revision to the payment instructions provided by the TIFIA Lender that is not also simultaneously sent directly to the Trustee and any Paying Agent, HRTAC shall promptly forward such revised payment instructions to the Trustee and any such Paying Agent. The Trustee shall comply with such revised payment instructions if received no later than five (5) Business Days prior to the next Semi-Annual Payment Date.

Section 3.4 Form of TIFIA Series 2021 Bond; Approval of 2021 TIFIA Loan Agreement.

(a) The TIFIA Series 2021 Bond and the certificate of authentication shall be substantially in the form attached as Exhibit B to this Fifth Series Supplement, which form is hereby approved and adopted as the form of the TIFIA Series 2021 Bond and the certificate of authentication, with such appropriate variations, omissions and insertions as permitted or required by the Master Indenture, this Fifth Series Supplement, or the 2021 TIFIA Loan Agreement. There may be endorsed on the TIFIA Series 2021 Bond such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law.

(b) The terms and provisions of the 2021 TIFIA Loan Agreement are hereby approved by HRTAC substantially in form and substance as set forth in Exhibit A to this Fifth Series Supplement.

Section 3.5 Authentication and Delivery of TIFIA Series 2021 Bond. (a) The TIFIA Series 2021 Bond shall bear a certificate of authentication, substantially as set forth in the form of the TIFIA Series 2021 Bond attached as Exhibit B, duly executed by the Trustee. The Trustee shall authenticate the TIFIA Series 2021 Bond with the signature of one of its authorized officers or employees. Only such authenticated TIFIA Series 2021 Bond shall be entitled to any right or benefit under the Master Indenture or this Fifth Series Supplement, and the certificate of authentication on the TIFIA Series 2021 Bond shall be conclusive evidence that the TIFIA Series 2021 Bond has been duly issued under and is secured by the provisions of the Master Indenture and this Fifth Series Supplement.

(b) The Trustee shall authenticate and deliver the TIFIA Series 2021 Bond to the TIFIA Lender when there have been filed with or delivered to it all items required by Section 5.3 of the Master Indenture and upon execution and delivery of the 2021 TIFIA Loan Agreement.

**ARTICLE IV
REDEMPTION OF TIFIA SERIES 2021 BOND**

Section 4.1 Optional Redemption. The TIFIA Series 2021 Bond is subject to redemption prior to maturity at the option of HRTAC from any available moneys, in whole or in part at any time (in principal amounts of \$1,000,000 or any integral multiple of \$1 in excess thereof), at 100% of the principal amount of the TIFIA Series 2021 Bond to be redeemed plus interest accrued to the date of redemption. HRTAC shall transfer the amounts necessary to fund the redemption from any available sources to the Trustee for deposit into the TIFIA Series 2021 Redemption Account at least ten (10) days prior, but not more than thirty (30) days prior, to the redemption date.

Section 4.2 Mandatory Redemption. The TIFIA Series 2021 Bond is subject to mandatory sinking fund redemption prior to maturity by HRTAC in accordance with Section 9(c) of the 2021 TIFIA Loan Agreement.

For purposes of clarification, it is the intention of HRTAC and the TIFIA Lender that such mandatory sinking fund redemption shall at all times match the principal amortization schedule set forth in Exhibit G to the 2021 TIFIA Loan Agreement (as it may be modified from time to time in accordance with the 2021 TIFIA Loan Agreement and Section 4.4 below), and any redemption or other action that results in a revision to the principal amortization schedule set forth in Exhibit G to the 2021 TIFIA Loan Agreement will automatically result in a revision to the mandatory sinking fund redemption requirements, and vice versa.

Section 4.3 Extraordinary Mandatory Redemption. (a) The TIFIA Series 2021 Bond is subject to redemption prior to maturity, in part and without penalty or premium, on each Semi-Annual Payment Date following the occurrence of a Revenue Sharing Trigger Event, for so long as the Revenue Sharing Trigger Event remains in effect, from any amounts on deposit in the TIFIA Revenue Sharing Account, as provided in Section 10(a) of the 2021 TIFIA Loan Agreement, plus interest accrued to the date of redemption.

(b) The TIFIA Series 2021 Bond is subject to redemption prior to maturity, in part and without penalty or premium, on any date and concurrently with the optional redemption or mandatory redemption of Senior Bonds or Intermediate Lien Obligations under Section 10(a)(ii) of the 2021 TIFIA Loan Agreement, in an amount equal to the same percentage of the Outstanding TIFIA Series 2021 Bond that the principal amount of Senior Bonds or Intermediate Lien Obligations being redeemed or prepaid bears to the principal amount of Senior Bonds or Intermediate Lien Obligations outstanding prior to the redemption or prepayment, in an amount equal to one hundred percent (100%) of the principal amount of the TIFIA Series 2021 Bond to be redeemed, as provided in Section 10(a) of the 2021 TIFIA Loan Agreement, plus interest accrued to the date of redemption; provided, however, that the provisions of this Section 4.3(b) shall not apply to the payment of Senior Bonds or Intermediate Lien Obligations that are paid or to be paid with the proceeds of Bonds issued on the same lien level to refund such Senior Bonds or Intermediate Lien Obligations.

(c) [Any redemption pursuant to this Section 4.3 shall not reduce any debt service payment otherwise due on the date of redemption.]

(d) Notice of redemption under this Section 4.3 shall be as provided in Section 4.3 of the Master Indenture, subject to the provisions of Section 10 of the 2021 TIFIA Loan Agreement.

Section 4.4 Partial Redemption of the TIFIA Series 2021 Bond. Any partial redemption of the TIFIA Series 2021 Bond under Section 4.3 shall be applied on a pro rata basis across remaining principal maturities and sinking fund installments. Upon any redemption of the TIFIA Series 2021 Bond in part only, Exhibit G to the 2021 TIFIA Loan Agreement may be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the 2021 TIFIA Loan Agreement; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner HRTAC's obligations hereunder, under the TIFIA Series 2021 Bond, or under any other TIFIA Loan Document (as defined in the 2021 TIFIA Loan Agreement).

Following any such partial redemption, HRTAC may effect corresponding changes to the monthly deposits to the Funds, Accounts and Subaccounts under this Fifth Series Supplement and, [subject to the concurrence of the TIFIA Lender], to the amount of the TIFIA Series 2021 Debt Service Reserve Required Balance.

ARTICLE V
ESTABLISHMENT OF FUNDS AND ACCOUNTS; APPLICATION OF PROCEEDS

Section 5.1 Establishment of Funds and Accounts for the TIFIA Series 2021 Bond.

(a) In accordance with Section 7.1 of the Master Indenture, the following Funds and Accounts are hereby established for the TIFIA Series 2021 Bond:

- (i) the TIFIA Series 2021 Project Fund;
- (ii) the TIFIA Series 2021 Bond Debt Service Fund, and within such Fund the TIFIA Series 2021 Interest Account, the TIFIA Series 2021 Principal Account, the TIFIA Series 2021 Redemption Account and the TIFIA Revenue Sharing Account; and
- (iii) the TIFIA Series 2021 Bond Debt Service Reserve Fund.

(b) The Funds and Accounts established pursuant to this Section 5.1 shall be held by the Trustee.

(c) As provided in Section 2.1(b) of the Master Indenture, the money and investments and earnings thereon held in the TIFIA Series 2021 Project Fund, the TIFIA Series 2021 Bond Debt Service Fund, and the TIFIA Series 2021 Bond Debt Service Reserve Fund are pledged exclusively to secure the TIFIA Series 2021 Bond.

Section 5.2 Use of Disbursements from TIFIA Loan. The disbursements received from the TIFIA Lender under the provisions of Section 4 of the 2021 TIFIA Loan Agreement as proceeds of the TIFIA Series 2021 Bond shall, if not applied immediately to reimburse HRTAC for Eligible Project Costs, or provide for the payment of 2021 HRBT Project BANs, be deposited when received by HRTAC into the TIFIA Series 2021 Project Fund and applied to the payment of Eligible Project Costs as provided in Section 6.3 herein.

ARTICLE VI
FLOW OF FUNDS; APPLICATION OF CERTAIN FUNDS

Section 6.1 TIFIA Series 2021 Bond Debt Service Fund. (a) Notwithstanding anything in the “FIFTH” clause of Section 8.1(b) of the Master Indenture to the contrary, with respect to the TIFIA Series 2021 Bond, beginning not later than the last Business Day in the month of the Semi-Annual Payment Date prior to the 2021 Debt Service Payment Commencement Date, and by the last Business Day of each month thereafter, an amount equal to one-sixth (1/6th) of the

next interest payment due after such date with respect to the TIFIA Series 2021 Bond shall be deposited to the TIFIA Series 2021 Interest Account. Notwithstanding anything in the “FIFTH” clause of Section 8.1(b) of the Master Indenture to the contrary, with respect to the TIFIA Series 2021 Bond, beginning not later than the last Business Day in the month of the second Semi-Annual Payment Date (*i.e.*, twelve months) prior to the payment of the first sinking fund principal payment required in accordance with Section 4.2 hereof, and by the last Business Day of each month thereafter, an amount equal to one-twelfth (1/12th) of the next sinking fund principal payment due after such date with respect to the TIFIA Series 2021 Bond shall be deposited to the TIFIA Series 2021 Principal Account; *provided, however*, HRTAC shall be entitled to a credit, as provided in the “FIFTH” clause of Section 8.1(b) of the Master Indenture, immediately before each Semi-Annual Payment Date for accrued interest and any other interest earnings currently on deposit therein. In the event Pledged Revenues are insufficient to fund the full amount of monthly deposits to all accounts within the TIFIA Series 2021 Bond Debt Service Fund, the Trustee shall apply such available Pledged Revenues *pro rata* in accordance with the Outstanding principal amount of each such Series of Subordinate Bonds, first to the applicable Interest Account and then to the applicable Principal Account.

(b) Moneys in the TIFIA Series 2021 Redemption Account shall be applied by the Trustee to the purchase or redemption of the TIFIA Series 2021 Bond as provided herein.

(c) TIFIA Revenue Sharing Account.

(i) The TIFIA Revenue Sharing Account will be funded in accordance with the “ELEVENTH” clause of Section 8.1(b) of the Master Indenture and this Section 6.1 and only for so long as the TIFIA Series 2021 Bond is Outstanding and is owned by the TIFIA Lender or another federal agency and except as otherwise agreed (or waived). The “FIRST” clause of Section 8.5(b) of the Master Indenture shall not be operative with respect to the deposit or transfer of amounts in the General Fund to the TIFIA Revenue Sharing Account, and HRTAC shall be under no obligation to transfer amounts in the General Fund to the TIFIA Revenue Sharing Account.

(ii) HRTAC shall provide prompt notice to the TIFIA Lender and the Trustee of the occurrence and of the discontinuation of a Revenue Sharing Trigger Event. On and after the 2021 TIFIA Debt Service Payment Commencement Date and during any month in which a Revenue Sharing Trigger Event occurs or continues, HRTAC shall calculate and transfer an amount equal to Excess Revenues for the month to the Trustee for deposit in the TIFIA Revenue Sharing Account.

(iii) On each Semi-Annual Payment Date with respect to the TIFIA Series 2021 Bond, the amount, if any, on deposit the TIFIA Revenue Sharing Account as of such Semi-Annual Payment Date will be transferred to the TIFIA Series 2021 Bond Redemption Account in the TIFIA Series 2021 Bond Debt Service Fund and used to effect an extraordinary mandatory redemption of the TIFIA Series 2021 Bond as provided in Section 4.3 of this Fifth Series Supplement.

(iv) HRTAC and the TIFIA Lender (or the Owner of the TIFIA Series 2021 Bond) may agree in a future Series Supplement that the provisions relating to the TIFIA Revenue

Sharing Account may apply to an additional Bond issued under the Master Indenture to the TIFIA Lender or any such Owner.

(v) With respect to the “FIFTH” clause of Section 8.1(b) of the Master Indenture, amounts in the TIFIA Revenue Sharing Account shall not be credited against transfers from the Revenue Fund to the TIFIA Series 2021 Bond Debt Service Fund.

Section 6.2 TIFIA Series 2021 TIFIA Debt Service Reserve Account. (a) On or prior to the later of the Substantial Completion Date (as defined in the 2021 TIFIA Loan Agreement) or the date of the final disbursement of the TIFIA Series 2021 Bond under the provisions of the 2021 TIFIA Loan Agreement, HRTAC shall cause the deposit of Pledged Revenues available under the “SIXTH” clause of Section 8.1(b) and Section 8.4 of the Master Indenture, into the TIFIA Series 2021 Debt Service Reserve Fund at such times and in amounts that are sufficient to cause the balance therein to equal the 2021 TIFIA Debt Service Reserve Required Balance as of such date. Thereafter, HRTAC shall cause the deposit of Pledged Revenues pursuant to the “SIXTH” clause of Section 8.1(b) of the Master Indenture into the 2021 TIFIA Debt Service Reserve Fund in an amount sufficient to maintain the balance therein to equal the 2021 TIFIA Debt Service Reserve Required Balance. The TIFIA Series 2021 Debt Service Reserve Fund shall be held solely for the benefit of the Owner of the TIFIA Series 2021 Bond, and shall be used, withdrawn, and replenished as provided herein and in Section 8.4 of the Master Indenture. If, on any date of valuation of Permitted Investments credited to the TIFIA Series 2021 Debt Service Reserve Fund pursuant to Section 8.4 of the Master Indenture, the amount on deposit in the TIFIA Series 2021 Debt Service Reserve Fund exceeds the 2021 TIFIA Debt Service Reserve Required Balance as of such date, the Trustee shall transfer such excess amount as provided in Section 8.4 of the Master Indenture.

It is acknowledged that, as of the issuance date of the TIFIA Series 2021 Bond, the Commission has issued its TIFIA Series 2019 Bond to the TIFIA Lender to evidence an “Additional TIFIA Loan” (as defined in the 2021 TIFIA Loan Agreement) on a Subordinate Lien basis, and hence the blended reserve account provisions of the definition of “2021 TIFIA Debt Service Reserve Required Balance” and the corresponding provisions for the TIFIA Series 2019 Bond in the Second Series Supplement are expected to be operative.

(b) Notwithstanding any provision in the Master Indenture to the contrary, without the written consent of the TIFIA Lender, HRTAC may not cause to be deposited to the credit of the TIFIA Series 2021 Debt Service Reserve Fund any form of Credit Facility in lieu of cash or Permitted Investments.

Section 6.3 TIFIA Series 2021 Project Fund. (a) The Trustee will disburse the amounts in the TIFIA Series 2021 Project Fund to the payment or reimbursement of Eligible Project Costs, as directed by HRTAC, and such amounts may be used to pay or redeem the principal portion of 2021 HRBT Project BANs as provided in an Officer’s Certificate, but only to the extent that such principal portion of the 2021 HRBT Project BANs to be paid or redeemed with proceeds of the TIFIA Series 2021 Bond financed Eligible Project Costs.

Disbursements from the TIFIA Series 2021 Project Fund shall be made by the Trustee to HRTAC or as directed by HRTAC upon receipt by the Trustee of an Officer’s Certificate

or of a requisition (upon which the Trustee shall be entitled to rely) signed by an HRTAC Representative and containing all information called for by, and otherwise being in the form of, Exhibit C.

(b) If the Trustee receives an Officer's Certificate stating that certain amounts in the TIFIA Series 2021 Project Fund will not be necessary to pay the costs of the 2021 TIFIA Financed Project, the Trustee shall then apply any remaining balance at the direction of an HRTAC Representative.

Section 6.4 HRTF Transfers to Toll Indenture.

(a) Subject to the availability of HRTF Revenues and for so long as the 2021 TIFIA Toll Obligation is outstanding, the Commission shall make the following transfers from the General Fund:

(1) For transfer and deposit to the Toll Revenue Stabilization Fund established under the Toll Indenture, the amount of [\$_____], on the later of (i) the Substantial Completion Date of the first segment of the Express Lanes Initial Project (as those terms are defined in the Toll Indenture), or (ii) the date of the first advance of principal with respect to the 2021 TIFIA Toll Obligation;

(2) For transfer and deposit to the TIFIA Loan Reserve Account established under the Toll First Supplemental Indenture, an amount equal to the TIFIA Loan Reserve Account Reserve Requirement (\$_____), such transfer and deposit to occur at the later of the (i) Substantial Completion Date of the Express Lanes Initial Project, or (ii) the date on which the Commission makes the first draw under the 2021 TIFIA Toll Obligation.

(3) For transfer and deposit to the Toll Major Maintenance and Renewal Fund established under the Toll Indenture, the amount of \$5,000,000 on the later of (i) the Substantial Completion Date of the first segment of the Express Lanes Initial Project, or (ii) the date on which the Commission makes the first draw under the 2021 TIFIA Toll Obligation.

(b) Subject to the availability of HRTF Revenues and to the provisions of Section 6.4(d) below, and for so long as the 2021 TIFIA Toll Obligation is outstanding, the Commission shall make the following transfers from the General Fund upon receipt of the written instructions of the Toll Indenture Trustee:

(1) Pursuant to Section 4.01(c)(2) of the Toll First Supplemental Indenture on or before July [15], 20__, and continuing on or before each July [15] thereafter through the maturity of the 2021 TIFIA Toll Obligation, to the extent that amounts on deposit in the Toll Revenue Stabilization Fund are less than the Toll Revenue Stabilization Fund Requirement, an amount sufficient to restore the amount on deposit in the Toll Revenue Stabilization Fund so as to satisfy the Toll Revenue Stabilization Fund Requirement; provided, however, that the Commission shall not transfer more than the Toll Maximum Annual RSF Transfer Cap during any Fiscal Year; and

(2) Pursuant to Section 4.01(d)(2) of the Toll First Supplemental Indenture, [on or before July [15], 20__, and continuing on or before each July [15]] thereafter through the maturity of the 2021 TIFIA Toll Obligation, to the extent that amounts on deposit in the Toll Major Maintenance and Renewal Fund are less than the Toll Major Maintenance and Renewal Fund Required Amount, an amount sufficient to restore the amount on deposit in the Toll Major Maintenance and Renewal Fund so as to satisfy the Toll Major Maintenance and Renewal Fund Required Amount; provided, however, that the aggregate amount of all HRTF Transfers made while the 2021 TIFIA Toll Obligation is outstanding for deposit to the Toll Major Maintenance and Renewal Fund shall not exceed the Toll Major M & R HRTF Cumulative Transfer Cap.

(c) The Commission agrees to manage the use of HRTF Revenues in the General Fund so as to provide for the availability of sufficient amounts in the General Fund to make the various transfers called for by this Section 6.4 as and when required, subject to the availability of HRTF Revenues and to its commitments to provide funding for the HRBT Expansion Project.

(d) No Event of Default will exist under this Section 6.4(b) until a period of six months has elapsed since the Commission has received notice from the Toll Indenture Trustee of a failure to make a transfer required under Section 6.4(b) and has failed to make such transfer. Pursuant to Section 13.1(c) of the Master Indenture and Section 8.7 hereof, an Event of Default with respect to this Section 6.4 shall not cause an Event of Default with respect to any other Series of Bonds unless such event or condition independently constitutes an Event of Default with such other Series of Bonds.

ARTICLE VII SECURITY FOR THE TIFIA SERIES 2021 BOND

Section 7.1 Security for the TIFIA Series 2021 Bonds. The TIFIA Series 2021 Bond shall be issued pursuant to the Master Indenture, this Fifth Series Supplement, and the 2021 TIFIA Loan Agreement, and shall be (a) equally and ratably secured with respect to the Pledged Revenues and certain Funds and Accounts established under the Master Indenture with any other Series of Subordinate Obligations (or any related Credit Facility, if any) of HRTAC issued pursuant to Articles V and XV of the Master Indenture, without preference, priority or distinction of any Subordinate Obligations over any other Subordinate Obligations, and (b) secured with respect to certain Funds and Accounts in accordance with the provisions of this Fifth Series Supplement. Notwithstanding anything in the Master Indenture to the contrary, amounts in the TIFIA Series 2021 Project Fund, the TIFIA Series 2021 Interest Account, the TIFIA Series 2021 Principal Account, the TIFIA Series 2021 Redemption Account, the TIFIA Revenue Sharing Account, and the TIFIA Series 2021 Debt Service Reserve Account are pledged exclusively to secure the obligations of HRTAC to the Owners of the TIFIA Series 2021 Bond.

HRTAC has filed a copy of this Fifth Series Supplement in the records of HRTAC.

Section 7.2 Covenant to Requisition Under TIFIA Loan Agreement. HRTAC agrees to take all actions necessary to ensure that it can requisition sufficient monies under the 2021 TIFIA Loan Agreement to pay Eligible Project Costs allocated to the 2021 TIFIA Loan.

ARTICLE VIII
SPECIAL COVENANTS WITH RESPECT TO TIFIA SERIES 2021 BOND

Section 8.1 Prior Consents in connection with Issuance of Subordinate Obligations.

For so long as any TIFIA Bond or Loan is Outstanding, HRTAC hereby agrees that, without the written consent of the TIFIA Lender, it will not issue Subordinate Obligations (a) that bear interest at a Variable Interest Rate (as defined in the 2021 TIFIA Loan Agreement), or (b) to any Person other than the TIFIA Lender.

Section 8.2 Compliance With Respect to Put Bonds. For so long as any TIFIA Bond or Loan is Outstanding, to the extent any “Variable Interest Rate Obligations” consist of “Put Bonds,” HRTAC agrees to provide and maintain a “Credit Facility” (as such terms are defined in the 2021 TIFIA Loan Agreement) that will pay any amounts payable by HRTAC in respect to such Put Bonds.

Section 8.3 Compliance With Respect to Swap-Related Bonds. For so long as any TIFIA Bond or Loan is Outstanding, in addition to the provisions of the Master Indenture relating to Swap Related Bonds in Section 5.4(a)(3) thereof, HRTAC hereby agrees that it will comply with the provisions requiring “Qualified Hedges” (as defined in the 2021 TIFIA Loan Agreement) if it issues any Senior Bonds or Intermediate Lien Obligations bearing interest at a “Variable Interest Rate” (as such terms are defined in the 2021 TIFIA Loan Agreement), as and to the extent provided in Section 16(l) of the 2021 TIFIA Loan Agreement.

Section 8.4 Issuance of Additional Bonds. For so long as any TIFIA Bond or Loan is Outstanding, HRTAC agrees, with respect to and in addition to the provisions of the Master Indenture relating to the issuance of a Series of Bonds, to satisfy the requirements, as applicable of paragraphs (a) and (b) of the definition of “Additional Obligations” in the 2021 TIFIA Loan Agreement.

Section 8.5 Additional Terms Relating to a Bond Credit Facility. For so long as any TIFIA Bond or Loan is Outstanding, in addition to the provisions of the Master Indenture relating to a “Bond Credit Facility,” HRTAC hereby agrees that it will comply with the provisions relating to “Credit Facilities” (as defined in the 2021 TIFIA Loan Agreement) in the 2021 TIFIA Loan Agreement

Section 8.6 Permitted Investments. For so long as any TIFIA Bond or Loan is Outstanding, and notwithstanding the provisions of the Master Indenture, amounts on deposit in any Fund or Account established under Section 5.1 of this Fifth Series Supplement, other than any amount in the General Fund or Account thereof, must be invested in Permitted Investments (as such term is defined in the 2021 TIFIA Loan Agreement) and amounts on deposit in the TIFIA Series 2021 Interest Account, the TIFIA Series 2021 Principal Account and the TIFIA Series 2021 Redemption Account may only be invested in Permitted Investments that have a maturity that does not extend, respectively, beyond the next applicable Interest Payment Date, Principal Payment Date or redemption date.

Section 8.7 Events of Default.

(a) In addition to the Events of Default under Section 13.1 of the Master Indenture and as provided in Section 13.1(d) thereof, the occurrence and continuation of an Event of Default under Section 20(a)(iii), (iv), (vi), (vii), (viii), (ix), (x), and (xi) of the TIFIA Loan Agreement shall constitute Events of Default under this Fifth Series Supplement with respect to the TIFIA Series 2021 Bond.

(b) The provisions of this Section 8.7 are subject to the terms and conditions of the Master Indenture, including but not limited to, Article XIII thereof. Failure to pay the principal or any Amortization Requirement of or interest on the TIFIA Series 2021 Bond will not constitute an Event of Default with respect to any Senior Bond or Intermediate Lien Obligation. An Event of Default with respect to the TIFIA Series 2021 Bond shall not cause an Event of Default with respect to any other Series of Bonds unless such event or condition independently constitutes an Event of Default with such other Series of Bonds.

(c) In accordance with the Master Indenture there shall be no rights of acceleration of the TIFIA Series 2021 Bond.

**ARTICLE IX
MISCELLANEOUS**

Section 9.1 Tax Status. HRTAC intends that the TIFIA Series 2021 Bond shall not be an obligation described in Section 103 of the Internal Revenue Code of 1986, as amended, the interest on which is excludable from the gross income of the holders. HRTAC agrees not to file a Form 8038-G or comparable information return relating to tax-exempt obligations with the Internal Revenue Service.

Section 9.2 Successors and Assigns. This Fifth Series Supplement is binding upon, inures to the benefit of and is enforceable by its parties and their respective successors and assigns.

Section 9.3 Severability. If any provision of this Fifth Series Supplement is held invalid by any court of competent jurisdiction, such holding will not invalidate any other provision.

Section 9.4 Governing Law. This Fifth Series Supplement will be governed by and construed under the applicable laws of the Commonwealth.

Section 9.5 Counterparts. This Fifth Series Supplement may be executed in several counterparts, each of which will be an original, and the counterparts will together constitute one and the same instrument.

Section 9.6 Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the Trustee and HRTAC and their respective successors and assigns, subject to the limitations contained herein.

Section 9.7 Parties Interested. Except as and to the extent provided in Article II hereof, nothing in this Fifth Series Supplement expressed or implied is intended or will be construed to confer upon any Person, other than HRTAC, the Trustee and the Owner(s) of the TIFIA Series 2021 Bond, any right, remedy or claim under or by reason of this Fifth Series Supplement, this Fifth Series Supplement being intended for the sole and exclusive benefit of HRTAC, the Trustee and the Owner(s) of the TIFIA Series 2021 Bond.

[Signature Page Follows]

IN WITNESS WHEREOF, HRTAC and the Trustee have caused this Fifth Series Supplement to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Chair

**WILMINGTON TRUST, NATIONAL
ASSOCIATION, as Trustee**

By: _____

Joy Holloway
Vice President

[Signature Page of Fifth Series Supplement]

EXHIBIT A
TIFIA LOAN AGREEMENT

(See Tab No. 6)

EXHIBIT B

FORM OF TIFIA SERIES 2021 BOND

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

HAMPTON ROADS TRANSPORTATION FUND

**HRTAC PROJECT
(TIFIA – _____)
TIFIA BOND**

**Subordinate Lien Revenue Bond
TIFIA Series 2021**

Maximum Principal Amount: \$ _____ (excluding capitalized interest)

Effective Date: [_____], 2021

Due: [_____], 20__

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, a body politic and political subdivision created under the laws of the Commonwealth of Virginia (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum on this TIFIA Bond (as defined herein) and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Exhibit G** to the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Loan Agreement from time to time in accordance with the terms of the TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(f) (*Manner of Payment*) and Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the

due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Final Maturity Date is amended in connection with an update to the Financial Plan approved by the TIFIA Lender pursuant to Section 22(a)(ii) (*Financial Plan*) of the TIFIA Loan Agreement, the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the “**TIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein (“**TIFIA Bond**”). Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement [or Master Indenture].

This TIFIA Bond is being issued by the Borrower pursuant to Chapter 26, Title 33.2, Code of Virginia of 1950, as amended, a resolution adopted by HRTAC on June __, 2021 and under and pursuant to a Master Indenture of Trust dated as of February 1, 2018 (the “**Master Indenture**”), between the Borrower and Wilmington Trust, National Association, or its successor, as trustee (the “**Trustee**”), as supplemented and amended by the First Supplemental Series Indenture of Trust dated as of February 1, 2018 (the “**First Series Supplement**”), the Second Supplemental Series Indenture of Trust dated as of December 1, 2019 (the “**Second Series Supplement**”), the Third Supplemental Series Indenture of Trust dated as of December 15, 2019 (the “**Third Series Supplement**”), the Fourth Supplemental Series Indenture of Trust dated as of October 1, 2020 (the “**Fourth Series Supplement**”), and the Fifth Supplemental Series Indenture of Trust dated as of [__ 1], 2021 (the “**Fifth Series Supplement**” and, together with the First Series Supplement, the Second Series Supplement, the Third Series Supplement, the Fourth Series Supplement, and the Master Indenture, the “**Indenture**”), between the Borrower and the Trustee, a certified copy of which Indenture is on file at the office of the Borrower.

This TIFIA Bond is issued as and constitutes a Subordinate Obligation within the meaning of such term in the Indenture.

This TIFIA Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision thereof (including any Member Locality) other than the Borrower. This TIFIA Bond shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code. *The Borrower’s authority to receive any or all of the taxes or other revenues pledged to the Trustee for payment of HRTAC Bonds (as defined below) pursuant to the Indenture is subject to appropriation by the General Assembly of the Commonwealth, and neither the General Assembly nor the Borrower can or will pledge, covenant or agree to impose or maintain at any particular rate or level any of such taxes or other revenues.*

The Indenture provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional series of Bonds for the purpose of financing projects, and of refunding outstanding obligations of the Borrower. Such additional series of Bonds may be issued as Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations (as defined in the Indenture). This TIFIA Bond, together with all other obligations heretofore or hereafter issued under the provisions of the Indenture, are herein collectively referred to as the “HRTAC Bonds”. Reference is hereby made to the Indenture for the provisions, among others, with respect to the terms and conditions on which the HRTAC Bonds of each series are or may be issued, the custody and application of the proceeds of HRTAC Bonds issued under the Indenture, the collection and disposition of revenues, the funds charged with and pledged to the payment of the interest on and the principal and premium, if any, of the HRTAC Bonds, the nature and extent of the security, the rights, duties and obligations of the Borrower, the Trustee and any paying agent for the HRTAC Bonds and the rights of the owners of the HRTAC Bonds. Certain of such funds, accounts and subaccounts secure only the Senior Obligations, certain of such funds, accounts and subaccounts secure only the Intermediate Lien Obligations, and certain of such funds, accounts and subaccounts secure only the Subordinate Obligations, all as more fully described in the Indenture.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The owner of this TIFIA Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute any suit or other proceeding with respect to the Indenture, except as provided in the Indenture.

All acts, conditions and things required by the Constitution and laws of the Commonwealth to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the Commonwealth shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until the Trustee has executed the Certificate of Authentication appearing on this TIFIA Bond and inserted the date of authentication.

IN WITNESS WHEREOF, HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION has caused this TIFIA Bond to be signed by the manual or facsimile signature of its Chair, to be attested by the manual or facsimile signature of its Executive Director and this Bond to be dated the Effective Date set forth above.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Chair

ATTEST:

By: _____
Kevin B. Page
Executive Director

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Indenture.

Authentication Date: _____

**WILMINGTON TRUST, NATIONAL
ASSOCIATION**

By: _____

Joy Holloway
Vice President

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT C

FORM OF REQUISITION

Wilmington Trust, National Association, as Trustee

Requisition No. _____

Dated: _____

Attn: _____

Re: Direction to Make Disbursements from the TIFIA Series 2021 Project Fund for the HRTAC Hampton Roads Transportation Accountability Commission Fund Subordinate Lien Revenue Bond TIFIA Series 2021

Pursuant to Section 6.3 of the Fifth Supplemental Series Indenture of Trust dated as of [July 1], 2021 (the “Fifth Series Supplement”), between the Hampton Roads Transportation Accountability Commission (“HRTAC”), and Wilmington Trust, National Association, as trustee (the “Trustee”), the Trustee is directed to disburse from the TIFIA Series 2021 Project Fund the amount indicated below.

Each capitalized terms not otherwise defined herein has the same meaning as used in the Fifth Series Supplement.

The undersigned certifies as follows:

1. The name(s) and address(es) of the person(s), firm(s) or corporation(s) to whom the disbursement(s) are due and the amounts to be disbursed are as follows:

<u>Name and Address</u>	<u>Amount</u>
-------------------------	---------------

[Use an additional page if necessary.]

2. The total amount to be disbursed is \$ _____.

3. The project for which the obligation(s) to be paid was/were incurred:
_____.

4. The undersigned is a “HRTAC Representative” within the meaning of the Fifth Series Supplement and the Master Indenture defined therein.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
HRTAC Representative

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

**TIFIA LOAN AGREEMENT
(HRTF Revenues)**

For Up to \$[817,990,000]

With

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY
COMMISSION**

For the

**I-64 HAMPTON ROADS BRIDGE-TUNNEL CONNECTING HAMPTON
AND NORFOLK PROJECT
(TIFIA – [____])**

Dated as of [____], 2021

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TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between the **HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a body politic and a political subdivision created under the laws of the Commonwealth of Virginia (the “**State**”), with an address of The Regional Building, 723 Woodlake Drive, Chesapeake, Virginia 23320 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**TIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 (“**TIFIA**”), as codified at 23 U.S.C. §§ 601-609 (as amended from time to time, the “**Act**”); and

WHEREAS, Section 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans; and

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$[817,990,000] (excluding interest that is capitalized in accordance with the terms hereof) (such amount, the “**Maximum TIFIA Loan Amount**”) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated [___], 2021 (the “**Application**”); and

WHEREAS, on [___], 2021, the Secretary (as defined herein) approved TIFIA credit assistance for the Project in the form of the TIFIA Loan; and

WHEREAS, it is contemplated that, on the Project BANs Closing Date (as defined herein), the Borrower and the Trustee shall enter into the Project BANs Supplemental Indenture (as defined herein) pursuant to which the Borrower shall authorize the issuance of the Project BANs (as defined herein), the proceeds of which shall be used to provide interim financing for a portion of the Eligible Project Costs related to the Project; and

WHEREAS, pursuant to the Indenture and each Supplemental Indenture (as defined herein), the Borrower has pledged and granted to the Trustee (as defined herein) the hereinafter defined Trust Estate, which secures the repayment of Bonds issued by the Borrower, including the TIFIA Bond (as defined herein), based on their respective lien priority; and

WHEREAS, the TIFIA Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the TIFIA Bond in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the HRTAC Act (as defined herein), the dedication and availability of the HRTF Revenues, and the Base Case Projections (as defined herein) delivered by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

Section 1. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (Definitions) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“Acceptable Credit Rating” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues a Qualified Hedge, a Credit Facility, or a repurchase obligation to fund any Reserve Account, “A+”, “A1” or the equivalent rating from at least one (1) Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from at least one (1) Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

“Acceptable Letter of Credit” means a letter of credit, in form and substance satisfactory to the TIFIA Lender, issued by a Qualified Issuer, that is non-recourse to the Pledged Revenues.

“Accreted Value” means, with respect to any Capital Appreciation Bonds, as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Capital Appreciation Bonds.

“Act” means the Act as defined in the recitals hereto.

“Additional Obligations” means any borrowings or indebtedness issued or incurred under the Indenture after the Effective Date and shall also satisfy the following requirements, as applicable:

- (a) if the proceeds thereof will be used to refinance any Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations and are issued on the same lien level as the proposed refunded obligations, (i) such Additional Obligations must receive a rating from a Rating Agency of equivalent to the lesser of the rating on the obligations

being refinanced with the proceeds of the Additional Obligations as of the Effective Date or the most recent rating of such obligations provided in accordance with Section 16(j) (*Annual Rating*), (ii) the net proceeds thereof (after deducting any amounts required to be deposited to satisfy the respective Debt Service Reserve Requirement or required to pay costs of issuance) must not exceed the principal amount of the respective obligations outstanding and being refinanced, (iii) the respective lien level Debt Service, after the incurrence of such Additional Obligations, in each year of the remaining term of the TIFIA Loan, must be projected to be less than the respective lien level Debt Service projected for each such year in the Base Case Projections, and (iv) the stated maturity of such Additional Obligations shall not exceed the stated maturity for the obligations being refinanced with the proceeds of the Additional Obligations; and

(b) if the proceeds thereof will be used for any reason not described in clause (a) above, the Borrower shall provide the TIFIA Lender a certificate of the Borrower's Authorized Representative, in a form reasonably acceptable to the TIFIA Lender (including the calculations supporting such certificate), certifying that (i) the activity or project to which such Additional Obligation proceeds will be applied could not reasonably be expected to result in a Material Adverse Effect; (ii) the Borrower has satisfied the requirements for issuing the Additional Obligations in accordance with the applicable provisions of the Indenture or Supplemental Indenture existing as of the Effective Date, including, specifically, that during any twelve consecutive months of the eighteen months preceding the issuance of the Additional Obligations, (A) the HRTAC Revenues were not less than (1) 2.00 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations then outstanding plus, if such Additional Obligations are Senior Obligations, such Additional Obligations, and (2) 1.50 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations and Intermediate Lien Obligations then outstanding plus, if such Additional Obligations are Intermediate Lien Obligations, such Additional Obligations, and (B) the Total Debt Service Coverage Ratio, including debt service for the Additional Obligations to be issued, for each Calculation Period is projected to be not less than 1.35 to 1.00 while any Subordinate Obligations issued to the TIFIA Lender remain outstanding;

provided that (x) for each of clauses (a) and (b) above, no Event of Default under any Indenture Document or this Agreement has occurred and is continuing, and (y) for clause (b) above, the Rating Agency that provided the most recent public ratings of the TIFIA Loan in accordance with Section 15(j) (*Annual Rating*) shall have provided a confirmation or affirmation (or the equivalent) that the incurrence of such Additional Obligations shall not result in a downgrade of the credit rating of any Subordinate Obligations issued to the TIFIA Lender then outstanding below "A-" or "A3".

"Additional Project Contracts" means any contract, agreement, letter of intent, understanding or instrument (other than a Principal Project Contract) entered into by the Borrower or VDOT after the Effective Date, providing for the design, construction, testing, and start-up, of the Project, or the safety, financial services, operation or maintenance of the Project, or otherwise relating to the Project, including any master contract providing goods or services for multiple

projects or assets including the Project; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (a) is entered into (i) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (ii) for necessary Project-related expenditures, (b) commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower in one contract or a series of related contracts of, no more than \$2,500,000 (inflated annually by CPI) in the aggregate for any such contract or series of related contracts allocable to the Project or payable from Revenues and (c) is for a term not exceeding two (2) years (including any contract term renewals).

“Additional TIFIA Loans” means any additional secured loans made by the TIFIA Lender to the Borrower issued pursuant to the Indenture Documents and secured by the Pledged Revenues.

“Additional Tolled Lanes” means any lane, other than those lanes that are already part of the Express Lanes Initial Project described in the definition of “Express Lanes Network”, on I-64 or other roadways within Hampton Roads that (a) is part of a segment that has been expanded, constructed, or improved with “Commission-Controlled Money” (as defined in the MTA), or (b) would be within the Hampton Roads Beltway (as defined in the MTA), if any, added under the provisions of the MTA.

“Agreement” has the meaning provided in the preamble hereto.

“Anticipated TIFIA Loan Disbursement Schedule” means the schedule set forth in **Exhibit B**, reflecting the anticipated disbursement of proceeds of the TIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (*Disbursement Conditions*).

“Anti-Corruption Laws” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“Application” has the meaning provided in the recitals hereto.

“Appreciated Value” means, with respect to any Deferred Income Bond as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Deferred Income Bond.

“Bank Lending Margin” means in respect of any Variable Interest Rate Obligations, the **“Applicable Margin”** or comparable interest rate margin as defined in the financing documents related to such Variable Interest Rate Obligations.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1959 and 31 U.S.C. §§ 312, 5311-5313, and 5316-5322), as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Debt Service in accordance with the provisions of Section 9 (*Payment of Principal and Interest*), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law;

(c) solely with respect to the Borrower, (i) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Bonds, or (ii) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of pursuant to a sale or disposition of such Trust Estate in lieu of foreclosure; or

(d) solely with respect to the Borrower, the Trustee shall transfer, pursuant to directions issued by the Bondholders, funds on deposit in any of the Project Funds upon the occurrence and during the continuation of an Event of Default under the Indenture Documents for application to the prepayment or repayment of any principal amount of the Bonds other than in accordance with the provisions of the Indenture.

“Base Case Financial Model” means a financial model prepared by (or on behalf of) the Borrower forecasting the revenues and expenditures of the Borrower for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender as of the Effective Date, which model shall be provided to the

TIFIA Lender as a fully functional Microsoft Excel – based financial model or such other format requested by the TIFIA Lender.

“**Base Case Projections**” means the initial forecast for the Borrower prepared as of the Effective Date using the Base Case Financial Model.

“**Bond Anticipation Notes**” means bond anticipation notes issued by the Borrower to provide interim financings that are anticipated to be refunded or refinanced with proceeds of Additional Obligations.

“**Bonds**” means any Senior Obligations, Intermediate Lien Obligations, Subordinate Obligations (including the TIFIA Bond), or any other evidences of indebtedness for borrowed money issued by the Borrower from time to time pursuant to Article V of the Indenture and the terms of any applicable Supplemental Indenture.

“**Bondholder**” means, when used with respect to the TIFIA Bond, the TIFIA Lender and, when used with respect to any other Bond, the registered owner of such Bond.

“**Borrower**” has the meaning provided in the preamble hereto.

“**Borrower Fiscal Year**” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the TIFIA Lender, as provided in Section 17(e) (*Organizational Documents; Fiscal Year*).

“**Borrower Related Party**” means, individually or collectively, the Borrower and VDOT.

“**Borrower’s Authorized Representative**” means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York, or Chesapeake, Virginia.

“**Calculation Date**” means each January 1 and July 1 occurring after the Effective Date.

“**Calculation Period**” means a twelve (12) month period ending on a Calculation Date.

“**Capital Appreciation Bonds**” means any Permitted Debt hereafter incurred as to which interest is payable only at the maturity or prior redemption of such Permitted Debt.

[“**Capital Expenditures**” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.]

“**Capitalized Interest Period**” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period.

“**Comprehensive Agreement**” means that certain Comprehensive Agreement, dated as of April 3, 2019, between VDOT and the Design-Builder.

“**Congress**” has the meaning provided in the recitals hereto.

“**Construction Contractor**” means the Design-Builder, each member of the Design-Builder consortium (as of the Effective Date, as listed in the definition of Design-Builder), and each Tolling Systems Provider.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

“**Construction Schedule**” means, collectively, (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached hereto as **Schedule II**, and (b) any updates thereto included in the Financial Plan most recently submitted to the TIFIA Lender pursuant to Section 21(a)(iii)(B) (*Financial Plan*).

“**Consulting Engineer**” means [_____] or any successor thereto or such other replacement engineering firm selected by the Borrower and not objected to by the TIFIA Lender within fifteen (15) Business Days after receiving notice of such selection.¹

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “**Controlling**” and “**Controlled by**” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2019 as the base period.

“**Credit Facility**” means any letter of credit, standby bond purchase agreement, line of credit, policy of bond insurance, surety bond, guarantee or similar instrument, or any agreement relating to the reimbursement of any payment thereunder (or any combination of the foregoing), which is obtained by the Borrower and is issued by a financial institution, insurance provider or other Person and which provides security or liquidity in respect of any Permitted Debt.

“**Debt Service Fund**” has the meaning provided in the Indenture.

¹ **Note to Borrower:** Please confirm Consulting Engineer.

“Debt Service Payment Commencement Date” means the earlier of (a) January 1, 2025 and (b) the first (1st) Semi-Annual Payment Date immediately succeeding the Substantial Completion Date.

“Debt Service Reserve Fund” has the meaning provided in the Indenture.

“Debt Service Reserve Requirement” has the meaning provided in the Indenture.

“Default” means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“Default Rate” means, with respect to each Tranche, an interest rate equal to the sum of (a) the TIFIA Interest Rate for such Tranche plus (b) two percent (2.00%).

“Deferred Income Bond” means any Permitted Debt (a) as to which interest accruing thereon prior to the applicable Interest Commencement Date of such Permitted Debt is (i) compounded on each Valuation Date for such Deferred Income Bond and (ii) payable only at the maturity or prior redemption of such Permitted Debt and (b) as to which interest accruing after the applicable Interest Commencement Date is payable on the first interest payment date immediately succeeding the Interest Commencement Date and thereafter on the dates specified in or determined pursuant to the Supplemental Indenture authorizing the Permitted Debt. For the purposes of receiving payment of the redemption price if a Deferred Income Bond is redeemed prior to maturity, the principal amount of a Deferred Income Bond shall be deemed to be its Appreciated Value.

“Design-Builder” means Hampton Roads Connector Partners, an unincorporated joint venture comprised of its members, Dragados USA, Inc., Vinci Construction Grands Projects, Flatiron Constructors, Inc., and Dodin Campenon Bernard.

“Development Default” means (a) VDOT fails to diligently prosecute the work related to the Project or (b) VDOT fails to complete the Project by the third anniversary of the Projected Substantial Completion Date.

“Effective Date” means the date of this Agreement.

“Electronic Signature” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to *[insert VA Statute]*², as amended from time to time.

“Electronic Toll Collection Agreement” means any Electronic Toll Collection Agreement entered into between the Borrower and VDOT.

“Eligible Project Costs” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including prior

² **Note to Borrower:** Please advise of correct VA statute.

Project expenditures for the 5-year period preceding the date of the Application, all of which shall arise from the following:

- (a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or
- (c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction.

“**Environmental Laws**” has the meaning provided in Section 13(s) (*Environmental Matters*).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. § 1001 *et seq.*), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

“**Event of Default**” has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

“**Excess Revenues**” means, following the occurrence of a Revenue Sharing Trigger Event, an amount in each month equal to 50% of the Pledged Revenues remaining after the transfers described in paragraphs FIRST through TENTH of Section 8.1(b) of the Indenture (a copy of which is attached hereto as **Exhibit O**) have occurred.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Existing Indebtedness**” means indebtedness of the Borrower that has been issued or incurred prior to the Effective Date, as listed and described in **Schedule III**.

“**Existing TIFIA Bond**” means the Bond delivered by the Borrower in connection with the Existing TIFIA Loan Agreement.

“**Existing TIFIA Loan**” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth in the Existing TIFIA Loan Agreement and as evidenced by the Borrower’s issuance of the Existing TIFIA Bond.

“**Existing TIFIA Loan Agreement**” means that certain Amended and Restated TIFIA Loan Agreement, dated as of [____], 2021, between the TIFIA Lender and the Borrower.

“**Existing TIFIA Loan Documents**” means the Existing TIFIA Loan Agreement, the Existing TIFIA Bond, and the TIFIA Supplemental Indenture (as defined in the Existing TIFIA Loan Agreement).

“**Express Lanes Network**” means a network of planned contiguous HOT lanes, in each direction, between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake, which ultimately would enable continuous HOT lane travel throughout such corridor (the foregoing constituting the “**Initial Interstate 64 Express Lanes Network**” or “**Initial Network**” as described in the MTA), as depicted on Exhibit A to the Indenture, and consisting of the Express Lanes Initial Project and subsequent Express Lanes Future Project(s) that comprise a segment, phase or portion of the Express Lanes Network, including but not limited to any Additional Tolled Lanes (as defined in the Indenture).

“**Federal Government**” means the United States of America and its departments and agencies.

“**Federal Fiscal Year**” or “**FFY**” means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**FHWA**” means the Federal Highway Administration, an agency of the USDOT.

“**FHWA Division Office**” means the Virginia Division Office of the FHWA.

“**Final Maturity Date**” means the earlier of (a) the Semi-Annual Payment Date occurring on or immediately prior to the [35th] anniversary of the Substantial Completion Date and (b) with respect to (i) Tranche A, [____], (ii) Tranche B, [____], (iii) Tranche C, [____], (iv) Tranche D, [____] and (v) Tranche E, [____]. Unless otherwise expressly provided herein, references to the Final Maturity Date shall mean the latest Final Maturity Date for any Tranche.

“**Financial Plan**” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 21(a) (*Financial Plan*) and (b) any updates thereto required pursuant to Section 21(a) (*Financial Plan*).

“**Financial Statements**” has the meaning provided in Section 13(z) (*Financial Statements*).

“**GASB**” means generally accepted accounting principles for state and local governments, which are the uniform minimum standards of and guidelines for financial accounting and reporting prescribed by the Governmental Accounting Standards Board.

“**General Assembly**” means the state legislature for the Commonwealth of Virginia.

“**General Fund**” has the meaning provided in the Indenture.

“Government Obligations” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Hedging Agreement” means (a) the ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, to be entered into by the Borrower and a Hedging Bank, (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, and (c) any other documentation directly relating to the foregoing.

“Hedging Banks” means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and its permitted successors (to the extent such successors are also Qualified Hedge Providers).

“Hedging Obligations” means, collectively, the payment of (a) all scheduled amounts payable to the Hedging Banks by the Borrower under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedging Banks, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedging Banks to the Borrower under such Hedging Agreements; provided that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Termination Obligations” means the aggregate amount payable to the Hedging Banks by the Borrower upon the early termination of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks upon the early unwind of all or a portion of such Hedging Agreements. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases and not for any speculative purpose.

“HRTAC Act” means Chapter 26 of Title 33.2 of the Code of Virginia of 1950, as amended.

“HRTAC Revenues” means, in any period, (a) all of the HRTF Revenues received by the Borrower during such period, and (b) any and all other revenues available under the HRTAC Act that have been designated as HRTAC Revenues pursuant to a Supplemental Indenture, but shall not include toll revenues.

“HRTF” means the Hampton Roads Transportation Fund established pursuant to the HRTAC Act.

“HRTF Revenues” means the revenues dedicated to the HRTF from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code, together with any other funds that may be appropriated to the HRTF.

“HRTF Transfer” means any transfer or payment of HRTF Revenues by or on behalf of the Borrower to a Fund or an Account pursuant to the provisions of the Indenture or any Supplemental Indenture[, and including by not limited to the transfers provided for under Section ___ of the Fifth Supplemental Indenture] for the purpose of: (a) annual deposits to the Revenue Stabilization Fund (as defined in the Toll Indenture), (b) the initial funding of the TIFIA Loan Reserve Account (as defined in the Toll Indenture), in an amount equal to the TIFIA Debt Service Reserve Required Balance (as defined in the Toll Indenture), and (c) deposits to the Major Maintenance and Renewal Fund (as defined in the Toll Indenture) from time to time.

“Indemnitee” has the meaning provided in Section 17 (Indemnification).

“Indenture” means that certain Master Indenture of Trust, dated as of February 1, 2018, between the Borrower and the Trustee, as supplemented or amended from time to time in accordance with its terms.

“Indenture Documents” means the Indenture, each Supplemental Indenture, each Hedging Agreement, each Credit Facility, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“Insolvency Laws” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“Interest Commencement Date” means, with respect to any particular Deferred Income Bond, the date determined by the Supplemental Indenture for such Deferred Income Bond after which interest accruing on such Deferred Income Bond shall be payable on the first interest payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Indenture.

“Intermediate Lien Debt Service” means, with respect to the Intermediate Lien Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Intermediate Lien Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Intermediate Lien Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Intermediate Lien Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

In calculating Intermediate Lien Debt Service for any future period (except as otherwise specifically provided herein):

(a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon);

(b) to the extent the requirements of Section 15(m) (*Hedging*) have been waived so that clause (a) of this definition no longer applies, any Variable Interest Rate Bonds for which the interest rate payable thereon has not yet been determined shall be deemed to bear interest at all times prior to the maturity date thereof at a rate which is the highest twelve (12) month rolling average of one (1) month LIBOR over the past ten (10) years preceding the date of calculation plus the Bank Lending Margin; provided that if such index is no longer published, the index to be used shall be that index which the TIFIA Lender, in consultation with the Borrower, determines most closely replicates it;

(c) any Put Bonds outstanding during such period which by their terms are not required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

(d) any Put Bonds outstanding during such period which by their terms are required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in the applicable Supplemental Indenture, or (iii) if the Credit Facility securing such Put Bonds expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Credit Facility;

(e) the principal amount of any Put Bonds tendered for payment by the Borrower which are required to be paid by the Borrower which have not yet been purchased in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender;

(f) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Income Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period;

(g) the principal and interest payments for all or any portion of any the Project BANs which is scheduled to be defeased with the proceeds of the TIFIA Loan shall be assumed to be the principal and interest portion of the TIFIA Debt Service, as defined herein and attached hereto as **Exhibit G**, with such amounts being included as Subordinate Debt Service and excluded from Intermediate Lien Debt Service; and

(h) the schedule of principal and interest payments (excluding capitalized interest) for any Bond Anticipation Notes shall be assumed to be the principal and interest payments schedule of the corresponding series of Intermediate Lien Obligations issued or authorized to be issued for the purpose of providing proceeds to refund or refinance such Bond Anticipation Notes; provided, however and notwithstanding the foregoing, any principal and interest payments which are scheduled to become due and payable prior to the issuance of the Intermediate Lien Obligations shall be calculated based on the actual principal and interest payments schedule (excluding capitalized interest) for the Bond Anticipation Notes.

“Intermediate Lien Debt Service Fund” means any debt service fund created for the benefit of one or more series of Intermediate Lien Obligations pursuant to the Indenture and any Supplemental Indenture.

“Intermediate Lien Debt Service Reserve Fund” means any debt service reserve fund created for the benefit of one or more series of Intermediate Lien Obligations pursuant to the Indenture and any Supplemental Indenture.

“Intermediate Lien Debt Service Reserve Requirement” means any debt service reserve requirement relating to the Intermediate Lien Obligations established in accordance with the provisions of the Indenture and any Supplemental Indenture.

“Intermediate Lien Obligations” means any Bonds issued under the Indenture and designated as being subordinate as to payment and security to the Senior Obligations but senior as to payment and security to the Subordinate Obligations.

“Investment Grade Rating” means a public rating no lower than ‘BBB-’, ‘Baa3’ or the equivalent public rating from a Rating Agency.

“ISDA Master Agreement” means a master agreement, entered into by the Borrower and a Hedging Bank, in the form published by the International Swaps and Derivatives Association, Inc.

“**LIBOR**” means, for any day, the 1-month London Interbank Offered Rate for deposits in the applicable currency as set by the British Banks Association (or the successor thereto if the British Bankers Association is no longer making a London Interbank Offered Rate available) (“BBA”) and published by the BBA at approximately 11:00 a.m. London time on such day. For any day that is not a Business Day, the LIBOR for such day shall be the rate published by the BBA on the immediately preceding Business Day.

“**Lien**” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“**Loan Amortization Schedule**” means, for each Tranche, the Loan Amortization Schedule reflected in the specified column for such Tranche set forth in **Exhibit G**, as amended from time to time in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“**Material Adverse Effect**” means a material adverse effect on (a) the collective components of the Project or the Trust Estate, (b) the business, operations, properties, condition (financial or otherwise), powers or revenues of the Borrower, (c) the legality, validity or enforceability of any material provision of any Indenture Document, TIFIA Loan Document or Principal Project Contract, (d) the ability of the Borrower or any other Principal Project Party to enter into, perform or comply with any of its material obligations under any Indenture Document, TIFIA Loan Document or Principal Project Contract to which it is a party, (e) the validity, enforceability or priority of the Liens provided under the Indenture Documents on the Trust Estate in favor of the Secured Parties or (f) the TIFIA Lender’s rights or remedies available under any TIFIA Loan Document.

“**Maximum Annual Debt Service**” means the highest aggregate amount of TIFIA Debt Service for the present or any succeeding Borrower Fiscal Year.

“**Maximum TIFIA Loan Amount**” has the meaning provided in the recitals hereto.

“**MMRF HRTF Cumulative Transfer Cap**” means, as of each measurement date, the total of expected Major Maintenance and Renewal Fund Permitted Expenditures (as defined in the Toll Indenture) from such measurement date to the final maturity of all Obligations issued under the Toll Indenture then Outstanding, as estimated by the Consulting Engineer and initially based, using an initial measurement date in Fiscal Year 2026, on a forecast of estimated life cycle maintenance costs with respect to the Tolling Infrastructure and System. The MMRF HRTF Cumulative Transfer Cap is subject to change based on the nature and extent of the Toll Roads

System and then-current information regarding Major Maintenance and Renewal Fund Permitted Expenditures prepared by the Borrower and certified by the Consulting Engineer.³

“**MTA**” means that certain Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network, dated as of August 18, 2020, by and among the Borrower, VDOT and the Commonwealth Transportation Board.

“**NEPA**” means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. § 4321 *et seq.*), and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“**NEPA Determination**” means [____].

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Operating Account**” has the meaning provided in the Indenture.

“**Operating Expenses**” has the meaning provided in the Indenture.

“**Operating Fund**” has the meaning provided in the Indenture.

“**Operating Reserve Account**” has the meaning provided in the Indenture.

“**Operating Reserve Requirement**” has the meaning provided in the Indenture.

“**Organizational Documents**” means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

³ **Note to Borrower:** Discuss methodology for determining MMRF HRTF Cumulative Transfer Cap. How frequently will the cap amount be updated? Annually?

“Outstanding TIFIA Loan Balance” means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the TIFIA Loan (inclusive of all of the Tranches), as determined in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“PAFA” means that certain Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 2, 2019, between the Borrower and VDOT.

“Patriot Act” means the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“Payment Default” has the meaning provided in Section 19(a)(i) (*Payment Default*).

“Payment Period” means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“Permitted Debt” means:

- (a) Existing Indebtedness;
- (b) the TIFIA Loan; and
- (c) Additional Obligations (including other Subordinate Obligations issued to the TIFIA Lender) that satisfy each of the requirements in the definition thereof.

“Permitted Hedging Termination” means the early termination, in whole or in part, of any Qualified Hedge (a) at the request of the Borrower as a result of a determination by the Borrower that such (or any part of such) Qualified Hedge is no longer necessary or required under the terms of this Agreement, (b) pursuant to the terms of any Hedging Agreement evidencing such Qualified Hedge that provides for the notional amount of such Qualified Hedge to amortize or otherwise be reduced from time to time or (c) as may be required pursuant to Section 15(m)(vii) (*Hedging*).

“Permitted Investments” means (with respect to the investment of the proceeds of the TIFIA Loan or any construction or reserve account established and maintained pursuant to the Indenture) the following obligations subject to additional restrictions included in the Investment of Public Funds Act, Chapter 45, Title 2.2, Code of Virginia 1950, as amended and the Security for Public Deposits Act, Chapter 44, Title 2.2, Code of Virginia 1950, as amended:

- (a) Government Obligations;
- (b) obligations of the United States Federal Housing Administration, the United States Farmers Home Administration, the United States Postal Service, and any other

agency or instrumentality of the United States of America now or hereafter created, which obligations are backed by the full faith and credit of the United States of America;

(c) obligations of the Federal National Mortgage Association, Federal Financing Bank, Federal Farm Credit System, and Federal Home Loan Mortgage Corporation;

(d) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;

(e) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(f) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Rating Agency;

(g) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency;

(h) investments pursuant to the Government Non-Arbitrage Act, Chapter 47, Title 2.2, Code of Virginia, 1950, as amended, that have been rated “AAAm-G,” “AAAm” or the equivalent rating by each Rating Agency that provides a rating on such obligations; and

(i) investments pursuant to the Local Government Investment Pool Act, Chapter 46, Title 2.2, Code of Virginia, 1950, as amended, that have been rated “AAAm-G,” “AAAm” or the equivalent rating by each Rating Agency that provides a rating on such obligations.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Pledged Revenues**” means all of the HRTAC Revenues and all other property of any kind mortgaged, pledged or hypothecated under the Indenture to provide for the payment of or to secure the Bonds by Borrower or by anyone on its behalf and with its written consent at any time as and for additional security under the Indenture and a Supplemental Indenture in favor of the Trustee, which is authorized to receive all such property at any time and to hold and apply it subject to the terms of the Indenture and the Supplemental Indentures.

“Principal Project Contracts” means the Comprehensive Agreement, the MTA, the PAFA, each Electronic Toll Collection Agreement, each Violation Processing Services Agreement, each Tolling Systems Contract, and each Standard Project Agreement.

“Principal Project Party” means any Person (other than the Borrower) that is a party to a Principal Project Contract.

“Project” means the following improvements on I-64 beginning west of Settlers Landing Road in Hampton (Exit 267) and ending at I-564 in Norfolk (Exit 276) pursuant to the terms of the Comprehensive Agreement:

(a) across the water, a new bridge-tunnel crossing approximately 3.5 miles long and generally parallel to the existing Hampton Roads Bridge-Tunnel, which new bridge-tunnel will have two new tunnels that provide four lanes of capacity for eastbound traffic and allow four lanes of capacity to be dedicated to westbound traffic (the Borrower’s funding obligations for the new bridge-tunnel crossing described above excludes the South Island Trestle Bridge Replacement Work described below);

(b) the construction of new marine approach bridges to carry westbound I-64 across the water between Norfolk and the South Island of the Hampton Roads Bridge-Tunnel, including the demolition (with removal and disposal) of the existing marine approach bridges between Norfolk and such south island (the “South Island Trestle Bridge Replacement Work”); and

(c) on land, a new third lane to I-64 in each direction, with a roadway section sufficient to accommodate a part-time median shoulder lane.

The Project is organized into three segments. When completed, each segment of the Project will include one or more lanes designated as high-occupancy toll lanes.

“Project BANs” means, the Borrower’s [Intermediate Lien Bond Anticipation Notes], Series [2021A] issued on or about [____], 2021, in the not to exceed par amount of \$[817,990,000], the proceeds of which are anticipated to be applied to the payment of Eligible Project Costs.

“Project BANs Bond” means the bond or note evidencing the issuance of the Project BANs.

“Project BANs Closing Date” means the date Project BANs are issued.

“Project BANs Supplemental Indenture” means that certain [____] Supplemental Series Indenture of Trust to the Indenture between the Borrower and the Trustee, dated as of [____], 2021, relating to the Project BANs.

“Project Budget” means, collectively, the budget for the Project in the aggregate amount of \$[____] attached to this Agreement as **Schedule I** showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project, , as amended from time to time subject to the reporting requirements in Section 22(b) (*Monthly Construction Progress Report*).

“**Project Fund**” means any project fund created for the benefit of one or more series of Bonds pursuant to the Indenture and any Supplemental Indenture.

“**Projected Substantial Completion Date**” means [April [], 2025],⁴ unless otherwise agreed by the TIFIA Lender in writing.

“**Put Bonds**” means any bond that by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof either (a) by the Borrower and by the Person and/or from the source specified in a Supplemental Indenture or (b) without recourse to the Borrower, by the Person and/or from the source specified in a Supplemental Indenture.

“**Qualified Hedge**” means, to the extent from time to time permitted by law, with respect to Permitted Debt any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 15(m) (*Hedging*).

“**Qualified Hedge Provider**” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“**Qualified Issuer**” means (i) with respect to any Credit Support Instrument issued by a bank or trust company, any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating. and (ii) with respect to any Credit Support Instrument issued by an insurance company or other financial institution, any insurance company or other financial institution that is authorized and qualified to do business by the state insurance commissioner of its jurisdiction of organization and of the State and that has an Acceptable Credit Rating.

“**Rating Agency**” means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. § 78c(a)(62)).

“**Rating Category**” means one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“**Rebate Amount**” has the meaning provided in the Indenture.

“**Rebate Fund**” means any rebate fund created for the benefit of one or more series of Bonds pursuant to the Indenture and any Supplemental Indenture.

“**Related Documents**” means the Indenture Documents, the Toll Indenture Documents, the TIFIA Loan Documents, the Hedging Agreements and the Principal Project Contracts.

“**Requisition**” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

⁴ **Note to Borrower:** Please confirm.

“Reserve Accounts” means, collectively, each Debt Service Reserve Fund pursuant to the Indenture and the Supplemental Indenture pursuant to which such accounts are created.

“Revenue Fund” has the meaning provided in the Indenture.

“Revenue Sharing Account” means the special account of the Borrower created under the TIFIA Supplemental Indenture.

“Revenue Sharing Trigger Event” means, as of any date on which Subordinate Obligations issued to the TIFIA Lender are outstanding, (a) the Borrower or VDOT, on behalf of the Borrower, is not actively engaged in the development of capital project programs in the Hampton Roads Transportation Planning Organization’s most recently adopted long-range transportation plan and (b) for so long as the Toll TIFIA Loan remains outstanding, the unencumbered amount on deposit in the General Fund (after taking into account any HRTF Transfers required to be made as of such date or within the next []-month period following such date and any other commitments to use amounts on deposit in the General Fund) is greater than [\$50,000,000].

“Revenue Stabilization Fund” means the Fund by that name created pursuant to Section 5.02 of the Toll Indenture.

“Revenue Stabilization Fund Requirement” means an amount equal to \$10,000,000, or such other amount, if any, as may be specified by a Supplemental Indenture, with respect to a series of Obligations issued under the Toll Indenture, with the prior written consent of the TIFIA Lender for so long as this Agreement remains in effect.

“Revised Financial Model” means an updated version of the Base Case Financial Model, in form and substance satisfactory to the TIFIA Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

“Secretary” means the United States Secretary of Transportation.

“Secured Obligations” means the Senior Obligations, the Intermediate Lien Obligations, the Subordinate Obligations (including the obligations of the Borrower under this Agreement, the

Existing TIFIA Loan Agreement, the TIFIA Bond and the Existing TIFIA Bond), the Hedging Obligations, and the Hedging Termination Obligations.

“**Secured Parties**” means the Trustee, the TIFIA Lender, any other Bondholders, and the Hedging Banks.

“**Semi-Annual Payment Date**” means each January 1 and July 1.

“**Senior Debt Service**” means, with respect to the Senior Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Senior Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Senior Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Senior Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

In calculating Senior Debt Service for any future period (except as otherwise specifically provided herein):

(a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon);

(b) to the extent the requirements of Section 15(m) (*Hedging*) have been waived so that clause (a) of this definition no longer applies, any Variable Interest Rate Bonds for which the interest rate payable thereon has not yet been determined shall be deemed to bear interest at all times prior to the maturity date thereof at a rate which is the highest twelve (12) month rolling average of one (1) month LIBOR over the past ten (10) years preceding the date of calculation plus the Bank Lending Margin; provided that if such index is no longer published, the index to be used shall be that index which the TIFIA Lender, in consultation with the Borrower, determines most closely replicates it;

(c) any Put Bonds outstanding during such period which by their terms are not required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

(d) any Put Bonds outstanding during such period which by their terms are required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in the applicable Supplemental Indenture, or (iii) if the Credit Facility securing such Put Bonds expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Credit Facility;

(e) the principal amount of any Put Bonds tendered for payment by the Borrower which are required to be paid by the Borrower which have not yet been purchased

in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender;

(f) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Income Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period; and

(g) the principal and interest payments schedule (excluding capitalized interest) for any Bond Anticipation Notes shall be assumed to be the principal and interest payments schedule of the corresponding series of Senior Obligations issued or authorized to be issued for the purpose of providing proceeds to refund or refinance such Bond Anticipation Notes; provided, however and notwithstanding the foregoing, any principal and interest payments which are scheduled to become due and payable prior to the issuance of such Senior Obligations shall be calculated based on the actual principal and interest payments schedule (excluding capitalized interest) for the Bond Anticipation Notes.

“Senior Debt Service Fund” means any debt service fund created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Debt Service Reserve Fund” means any debt service reserve fund created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Debt Service Reserve Requirement” means any debt service reserve requirement relating to the Senior Obligations established in accordance with the provisions of the Indenture and any Supplemental Indenture.

“Senior Obligations” means any Bonds heretofore or hereinafter issued, including the Series 2018A Bonds, under the Indenture and any Supplemental Indenture that are designated as being senior as to payment and security to the Intermediate Lien Obligations and the Subordinate Obligations.

“Series 2018A Bonds” means the Hampton Roads Transportation Accountability Commission Hampton Roads Transportation Fund Senior Lien Revenue Bonds, Series 2018A, dated February 14, 2018, originally issued in the aggregate principal amount of \$500,000,000.

“Series 2019 Project BANs” means the Borrower’s Intermediate Lien Bond Anticipation Notes, Series 2019A issued on or about December 17, 2019, in the not to exceed par amount of \$414,345,000, the proceeds of which will be applied to the payment of Eligible Project Costs.

“Servicer” means such entity or entities as the TIFIA Lender shall designate from time to time to perform, or assist the TIFIA Lender in performing, certain duties hereunder.

“Standard Project Agreement” means any standard project agreement or similar agreement related to the Project or any Additional Tolled Lanes (as defined in the Toll TIFIA Loan Agreement) or any Toll System Network Project (as defined in the Toll TIFIA Loan Agreement),

in each case entered into between VDOT and the Borrower after the Effective Date, as amended from time to time.

“**State**” has the meaning provided in the preamble hereto.

“**Subordinated Hedging Termination Obligations**” means Hedging Termination Obligations under any Hedging Agreement other than those arising as a result of a Permitted Hedging Termination or as a result of a tax or illegality event or upon failure of the Borrower to pay any Hedging Obligations when due.

“**Subordinate Debt Service**” means, with respect to the Subordinate Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Subordinate Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Subordinate Obligations due in such period, payment shall be assumed to be made in accordance with any amortization schedule established for such Subordinate Obligations.

In calculating the Subordinate Debt Service for any future period (except as otherwise specifically provided herein):

(a) the principal and interest payments for all or any portion of any Project BANs that are scheduled to be defeased with the proceeds of the TIFIA Loan shall be assumed to be the principal and interest portion of the TIFIA Debt Service, as defined herein and attached hereto as **Exhibit G**, with such amounts being included as Subordinate Debt Service and excluded from Intermediate Lien Debt Service; and

(b) the principal and interest payments for all or any portion of the Series 2019A Project BANs that are scheduled to be defeased with the proceeds of the Existing TIFIA Loan shall be assumed to be the principal and interest portion of the TIFIA Debt Service, as defined in the Existing TIFIA Loan Agreement and attached thereto as Exhibit G, with such amounts being included as Subordinate Debt Service and excluded from Intermediate Lien Debt Service; and

(c) the principal and interest payments schedule (excluding capitalized interest) for any Bond Anticipation Notes shall be assumed to be the principal and interest payments schedule of the corresponding series of Subordinate Obligations issued or authorized to be issued for the purpose of providing proceeds to refund or refinance such Bond Anticipation Notes; provided, however and notwithstanding the foregoing, any principal and interest payments which are scheduled to become due and payable prior to the issuance of the Subordinate Obligations shall be calculated based on the actual principal and interest payments schedule (excluding capitalized interest) for the Bond Anticipation Notes.

“**Subordinate Debt Service Fund**” means any debt service fund, including the TIFIA Debt Service Fund, created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“**Subordinate Debt Service Reserve Fund**” means any debt service reserve fund, including the TIFIA Debt Service Reserve Fund, created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“**Subordinate Debt Service Reserve Requirement**” means any debt service reserve requirement relating to the Subordinate Obligations, including the TIFIA Debt Service Reserve Required Balance, established in accordance with the provisions of the Indenture and any Supplemental Indenture.

“**Subordinate Obligations**” means any Bonds, including the TIFIA Bond, issued under the Indenture and designated as being subordinate as to payment and security to the Senior Obligations and the Intermediate Lien Obligations.

“**Subsequent Qualified Hedge**” has the meaning provided in Section 15(m)(iii) (*Hedging*).

“**Substantial Completion**” means the opening of the Project (inclusive of each segment) to tolled vehicular traffic.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Supplemental Indenture**” means a Supplemental Indenture to the Indenture relating to a specific issuance of Bonds by the Borrower, including the TIFIA Supplemental Indenture.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**TIFIA**” has the meaning provided in the recitals hereto.

“**TIFIA Bond**” means the Bond delivered by the Borrower in substantially the form of **Exhibit A**⁵.

“**TIFIA Debt Service**” means with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the TIFIA Interest Rate with respect to the applicable Tranche (or, as applicable, the Default Rate with respect to the applicable Tranche), in each case (a) as set forth on **Exhibit G**, and (b) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(c) (*Payment of TIFIA Debt Service*).

“**TIFIA Debt Service Fund**” has the meaning provided in the TIFIA Supplemental Indenture.

⁵ **Note to Borrower:** Discuss what, if any, changes will be made to the TIFIA Bond.

“**TIFIA Debt Service Reserve Fund**” has the meaning provided in the TIFIA Supplemental Indenture.

“**TIFIA Debt Service Reserve Required Balance**” means the aggregate of (a) the TIFIA Debt Service Reserve Required Balance (as defined in the Existing TIFIA Loan Agreement) and (b) the lesser of (1) ten percent (10%) of the Maximum TIFIA Loan Amount, (2) one hundred percent (100%) of the Maximum Annual Debt Service, and (3) one hundred and twenty-five percent (125%) of the average annual TIFIA Debt Service through the Final Maturity Date. If there are any Additional TIFIA Loans outstanding at any time, then the amounts set forth in clauses (1) through (3) will be calculated using the summation of the TIFIA Loan and all of the Additional TIFIA Loans as if there were one TIFIA loan.

“**TIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**TIFIA Lender**” has the meaning provided in the preamble hereto.

“**TIFIA Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 27 (*TIFIA Lender’s Authorized Representative*).

“**TIFIA Loan**” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth herein and as evidenced by the Borrower’s issuance of the TIFIA Bond, pursuant to the Act, in a principal amount not to exceed the Maximum TIFIA Loan Amount (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower, divided into the Tranches.

“**TIFIA Loan Documents**” means this Agreement, the TIFIA Bond, the TIFIA Supplemental Indenture, the other Indenture Documents, the VDOT Direct Agreement, and the Existing TIFIA Loan Documents.

“**TIFIA Supplemental Indenture**” means that certain [___] Supplemental Series Indenture of Trust, dated as of [___], 2021, between the Borrower and the Trustee in connection with the issuance of the TIFIA Bond.

“**Toll Indenture**” means that certain Master Indenture (Toll Roads System Revenue Bonds), dated as of [___] 1, 2021, between the Borrower and the Toll Indenture Trustee, as supplemented or amended from time to time in accordance with its terms.

“**Toll Indenture Trustee**” means [_____] a [___].

“**Toll Revenue Stabilization Fund**” means the Revenue Stabilization Fund established and maintained under the Toll Indenture.

“**Toll Roads System**” means the Express Lanes Initial Project, any Express Lanes Future Project (each as defined in the Indenture) that may be undertaken (which together with the Express Lanes Initial Project (as defined in the Indenture) forms the Express Lanes Network), and any other Toll System Network Project, all as the same may exist from time to time, and including

without limitation any new or improved highway, bridge or tunnel, or portion, phase or segment thereof, in which the Commission is empowered to impose and collect tolls.

“Toll System Network Project” means the Express Lanes Initial Project (other than the Project), any Express Lanes Future Project, and any addition, the acquisition, development, construction, reconstruction, improvement, betterment, extension or equipping of or relating to a tolled road or facility, or any additional capital project extending, improving or otherwise related to the Toll Roads System that the Borrower determines or proposes to finance pursuant to the Indenture.

“Toll TIFIA Loan” means the TIFIA loan under the Toll TIFIA Loan Agreement.

“Toll TIFIA Loan Agreement” means that certain TIFIA Loan Agreement, dated as of [____], between the TIFIA Lender and the Borrower, pursuant to which the TIFIA Lender will make a loan repayable from the Borrower’s toll revenues.

“Tolling Systems Contract” means any contract entered into by the Borrower or by VDOT for the provision of Tolling Infrastructure and System or Tolling O&M Duties. As of the Effective Date, the Tolling Systems Contracts consist of:

- (a) [Insert description]
- (b) [Insert description]

“Total Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of projected Pledged Revenues for such Calculation Period to the sum of (a) Senior Debt Service for such Calculation Period, (b) Intermediate Lien Debt Service for such Calculation Period, and (c) Subordinate Debt Service for such Calculation Period.

“Total Project Costs” means (a) the costs paid or incurred or to be paid or incurred by the Borrower or VDOT in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and costs of insurance; (b) the amount, if any, required by the Indenture Documents, the TIFIA Loan Documents or the Toll TIFIA Loan Agreement to be paid into any fund or account upon the incurrence of the TIFIA Loan, the Toll TIFIA Loan, any other TIFIA loan, or any Additional Obligations; and (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect to any indebtedness of the Borrower or any Credit Facility maintained by the Borrower, in each case in connection with the Project (other than the TIFIA Loan, the Existing TIFIA Loan, or any other TIFIA loan).

“Tranche” means the following tranches of the TIFIA Loan:

- (a) Tranche A, in a maximum principal amount equal to \$[____];
- (b) Tranche B, in a maximum principal amount equal to \$[____];
- (c) Tranche C, in a maximum principal amount equal to \$[____];

- (d) Tranche D, in a maximum principal amount equal to \$[____]; and
- (e) Tranche E, in a maximum principal amount equal to \$[____].

“**Transition Date**” means, subject to Section 16(e)(iii)(D) (*Actions under Existing Principal Project Contracts*) of the Toll TIFIA Loan Agreement, the earlier of (a) the first day that the Project is ready to accept traffic and commence tolling operation (the “**HRBT Segment Toll Day One**”) or (b) a date selected by the Borrower for such transition that is (i) after the first date there are continuous operational HOT lanes open to the public on I-64 between (A) Interstate 564 and (B) the interchange of I-64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake (the “Segment 2 Toll Day One”), but (ii) prior to the HRBT Segment Toll Day One.

“**Trust Estate**” means the Pledged Revenues plus, with respect to such series (and to such series only) of Bonds, the money and investments held in the applicable (a) Project Fund (if any), (b) Debt Service Fund, and (c) Debt Service Reserve Fund, if any.

“**Trustee**” means Wilmington Trust, National Association.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

“**USDOT**” means the United States Department of Transportation.

“**Valuation Date**” means (a) with respect to any Capital Appreciation Bonds, the date or dates set forth in the Supplemental Indenture authorizing such Capital Appreciation Bonds on which specific Accreted Values are assigned to the Capital Appreciation Bonds and (b) with respect to any Deferred Income Bonds, the date or dates on or prior to the Interest Commencement Date set forth in the Supplemental Indenture authorizing such Deferred Income Bonds on which specific Appreciated Values are assigned to the Deferred Income Bonds.

“**Variable Interest Rate**” means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the Supplemental Indenture pursuant to which such Permitted Debt is incurred. Such Supplemental Indenture shall also specify either (a) the particular period or periods of time for which each value of such variable

interest rate shall remain in effect, or (b) the time or times upon which any change in such variable interest rate shall become effective.

“Variable Interest Rate Bonds” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided, however, that Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Bonds if the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect; provided, further, that Permitted Debt bearing a fixed rate of interest shall be deemed Variable Interest Rate Bonds to the extent that the Borrower has entered into a Qualified Hedge pursuant to which the Borrower is obligated to pay a floating rate of interest and receives a fixed rate of interest and shall be deemed to bear interest at the lesser of the rate determined pursuant to clause (a) of the definition of the term Senior Debt Service or Intermediate Debt Service (as applicable) or the maximum interest rate, if any, payable pursuant to such Qualified Hedge.

“Variable Interest Rate Obligations” means any Senior Obligations or Intermediate Lien Obligations under the Indenture that accrue interest at a Variable Interest Rate.

“VDOT” means the Virginia Department of Transportation.

“VDOT Direct Agreement” means that certain Direct Agreement, dated as of [the date hereof], among the TIFIA Lender, the Borrower, and VDOT.

“Violation Processing Services Agreement” means any Violation Processing Services Agreement entered into between the Borrower and VDOT.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements

to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 37 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

Section 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$[817,990,000]. TIFIA Loan proceeds shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 13(b) (*Conditions Precedent to All Disbursements*).

Section 4. Disbursement Conditions.

(a) TIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project, divided into the Tranches, and may be used to pay or redeem Project BANs. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower's risk and expense, will not constitute Eligible Project Costs, and no TIFIA Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. Each disbursement of the TIFIA Loan may be in respect of all or a portion of one or more Tranches. If the Borrower intends to utilize the TIFIA Loan proceeds to make progress payments for the Project construction work performed under any Principal Project Contract, the Borrower shall demonstrate to the satisfaction of the TIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a "**Requisition**") in the form set forth in **Appendix One to Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to the TIFIA Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 (*Disbursement Conditions*) and the conditions set forth in Section 13(b) (*Conditions Precedent to All Disbursements*); provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender and the Servicer (if any) and the FHWA Division Office on or before the first (1st) Business Day of each month for which a disbursement is requested. Subject to Section 4(g), if the TIFIA Lender does not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express denial of a Requisition by the TIFIA Lender shall be provided substantially in the form attached as **Appendix Two to Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(d) The Borrower anticipates that it will draw down all of the proceeds of the TIFIA Loan to reimburse the Borrower for Eligible Project Costs paid by or on behalf of the Borrower prior to such disbursement of TIFIA Loan proceeds, including for the purpose of paying or redeeming the Project BANs. The Borrower shall deliver concurrently to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any), copies of all invoices and other records evidencing Eligible Project Costs (the “**Eligible Project Costs Documentation**”), irrespective of whether such costs were paid with the proceeds of the Project BANs; provided that the Borrower must deliver to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any) all Eligible Project Costs Documentation associated with any Eligible Project Costs included in a Requisition by the applicable following date: (i) with respect to Eligible Project Costs incurred by or on behalf of the Borrower prior to, and up to one (1) month after, the Effective Date, by the last Business Day of the second (2nd) month immediately following the Effective Date and (ii) with respect to Eligible Project Costs incurred by or on behalf of the Borrower after the one-month period referred to in clause (i) above, by the last Business Day of each month immediately following such second (2nd) month referred to in clause (i) above.

(e) Each time the Borrower delivers Eligible Project Costs Documentation to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any), the Borrower shall also deliver to such entities a certificate, duly executed by the Borrower’s Authorized Representative, certifying as to the following:

(i) the amount of Eligible Project Costs financed from the proceeds of Project BANs for the period of time for which such Eligible Project Costs Documentation is being provided;

(ii) that such proceeds of any Project BANs were expended solely in connection with the payment or reimbursement of Eligible Project Costs;

(iii) the amount of Eligible Project Costs paid by or on behalf of the Borrower from sources other than Project BANs and identifying such sources;

(iv) the amount of Eligible Project Costs included in such Eligible Project Costs Documentation for which VDOT has received or intends to receive Federal assistance and that none of the Eligible Project Costs submitted to the TIFIA Lender for which the Borrower is seeking a disbursement of TIFIA Loan proceeds include amounts for which VDOT has received or intends to receive Federal assistance; and

(v) that there does not currently exist any Event of Default or an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default (a “prospective Event of Default”) or, if there does currently exist an Event of Default or prospective Event of Default, the certificate shall specify all the actions that the Borrower is taking to remedy such Event of Default or prospective Event of Default.

(f) The Eligible Project Costs Documentation submitted pursuant to Section 4(d) and the certificate delivered pursuant to Section 4(e) must be satisfactory to the TIFIA Lender. The Eligible Project Costs Documentation must provide sufficient detail to enable the TIFIA Lender to verify that such costs are Eligible Project Costs paid by or on behalf of the Borrower.

The Eligible Project Costs Documentation and the certificate must provide sufficient detail to enable the TIFIA Lender to verify that proceeds of the Project BANs were expended for Eligible Project Costs and to audit Eligible Project Costs paid from sources other than the Project BANs, including Eligible Project Costs which VDOT has received or anticipates receiving Federal assistance. The certificate and the Eligible Project Costs Documentation are intended to document Eligible Project Costs in connection with the reimbursement of such Eligible Project Costs or for the purpose of paying or redeeming, in whole or part, only those Project BANs in respect of which the proceeds were used to pay such documented Eligible Project Costs. The TIFIA Lender shall review each such certificate for compliance with TIFIA disbursement requirements. Within fourteen (14) Business Days following the receipt of the Eligible Project Costs Documentation and the accompanying certificate, the TIFIA Lender shall deliver a notice to the Borrower confirming the Eligible Project Costs set forth in the certificate that have been approved, or notifying the Borrower as to which Eligible Project Costs have not been approved, and confirming the cumulative amount of Eligible Project Costs approved as of the notice date. Such approved amounts of Eligible Project Costs will be disbursed at such time as the Borrower submits a Requisition in respect of such approved amounts in accordance with clauses (a) and (b) above. In no event shall the Borrower submit a Requisition that seeks reimbursement of any Eligible Project Costs for which the related Eligible Project Costs Documentation and the certificate required pursuant to Section 4(e) (i) have not been delivered to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any) or (ii) were not delivered to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any) at least one (1) month prior to the date such Requisition is submitted.

(g) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 13 (*Conditions Precedent*) or **Exhibit D** (*Requisition Procedures*)), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 5. Term. The term of each Tranche shall extend from the Effective Date to the Final Maturity Date for such Tranche or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

Section 6. Interest Rate. The interest rate (the "**TIFIA Interest Rate**") with respect to each Tranche shall be (a) [] percent ([]%) per annum for Tranche A, (b) [] percent ([]%) per annum for Tranche B, (c) [] percent ([]%) per annum for Tranche C, (d) [] percent ([]%) per annum for Tranche D and (e) [] percent ([]%) per annum for Tranche E. Interest will be computed on the outstanding principal balance of each Tranche (as well as on any past due interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the outstanding principal balance of each Tranche and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate for the applicable Tranche from (and including) its due date to (but excluding)

the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the outstanding principal balance of each Tranche and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate for the applicable Tranche from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the TIFIA Lender and (b) the date such Tranche and any interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule.

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the TIFIA Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance (and the outstanding principal balance of each Tranche) as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** from time to time, in accordance with the principles set forth in Section 10(c) (*General Prepayment Instructions*) and **Exhibit M**, to reflect (i) any change to the Outstanding TIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the TIFIA Lender may determine is necessary for administering the TIFIA Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The TIFIA Lender shall provide the Borrower with a copy of **Exhibit G** as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

Section 8. Security and Priority; Flow of Funds.

(a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the TIFIA Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture Documents. The TIFIA Bond shall be issued as a Subordinate Obligation, secured by the Liens on the Trust Estate, and shall be subordinate to the Lien on the Trust Estate pledged to secure the Senior

Obligations and the Intermediate Lien Obligations, and shall be *pari passu* to the Lien on the Trust Estate pledged to secure the Subordinate Obligations.

(b) Except to the extent otherwise provided in clause (a) of this Section 8 (*Security and Priority; Flow of Funds*), the Trust Estate will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge of the Borrower created under the Indenture Documents, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 (*Security and Priority; Flow of Funds*) and the Indenture Documents and shall not apply any portion of the Pledged Revenues in contravention of this Agreement or the Indenture Documents.

(d) The Indenture provides that all Pledged Revenues shall be deposited in the Revenue Fund and applied in the order of priority identified therein, as more fully described, and in accordance with the requirements specified in Section 8.1(b) of the Indenture (a copy of which is attached hereto as **Exhibit O**).

Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the Trust Agreement Documents on (i) each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date, with respect to interest on the TIFIA Loan (and on each outstanding Tranche), (ii) on each July 1, commencing on July 1, 2026, with respect to the principal of the TIFIA Loan, and (iii) on each other date on which payment for each Tranche is required to be made hereunder (including the Final Maturity Date for each Tranche and any date on which payment is due by reason of the acceleration of the maturity of the TIFIA Loan or otherwise); provided, that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Bond shall be treated as a payment of the corresponding Tranche, and any payment of principal of the TIFIA Loan must specify to which Tranche such prepayment should be applied, and shall be treated as redemption of the TIFIA Bond.

(b) Capitalized Interest Period. No payment of the principal of or interest on the TIFIA Loan is required to be made during the Capitalized Interest Period. On each Semi-Annual Payment Date occurring during the Capitalized Interest Period (and on the Semi-Annual Payment Date immediately following the end of the Capitalized Interest Period), interest accrued on the TIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the outstanding principal amount of the applicable Tranche. Within thirty (30) days after the end of the Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance and the outstanding principal amount of each Tranche as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(c) Payment of TIFIA Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay or cause the Trustee to pay TIFIA Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(d) (*Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement and the TIFIA Bond shall be made by wire transfer on or before each Semi-Annual Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender pursuant to Section 37 (*Notices; Payment Instructions*), as modified in writing from time to time by the TIFIA Lender. The Borrower may make any such payment or portion thereof (or direct the Trustee to make such payment) with funds then on deposit in the TIFIA Debt Service Fund.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding TIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 20 (*Events of Default and Remedies*), but only to the extent acceleration is permitted under the Indenture.

(f) TIFIA Bond. As evidence of the Borrower's obligation to repay the TIFIA Loan (and each Tranche), the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Bond substantially in the form of **Exhibit A**, having a maximum principal amount (excluding capitalized interest) of \$[817,990,000] (subject to increase or decrease as herein provided) and bearing interest at the rate for each Tranche set forth in Section 6 (*Interest Rate*).

Section 10. Prepayment.

(a) Mandatory Prepayments. The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium:

(i) Following the occurrence of a Revenue Sharing Trigger Event, on each Semi-Annual Payment Date occurring while the Revenue Sharing Trigger Event remains in effect, any amounts on deposit in the Revenue Sharing Account. Prepayment of the TIFIA Loan will be made, on a pro rata basis with the Existing TIFIA Loan and any other Additional TIFIA Loans then outstanding, in each case, based on the then outstanding cumulative amount of the TIFIA Loan, the Existing TIFIA Loan and such Additional TIFIA Loans.

(ii) Upon any voluntary prepayment of any Bonds, other than any voluntary prepayment of any Bonds made with the proceeds of Additional Obligations issued in accordance with the requirements of subsection (a) in the definition thereof for the purpose of refinancing such Bonds, pro rata with such voluntary prepayment.

The Borrower shall provide written notice to the TIFIA Lender at least two (2) Business Days prior to the date on which it makes any mandatory prepayment; provided that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's

obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred. Each prepayment pursuant to this Section 10(a) (*Mandatory Prepayments*) shall be effected pursuant to Section 4.2 of the TIFIA Supplemental Indenture (as applicable) and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(b) Optional Prepayments. The Borrower may prepay the TIFIA Loan by causing the Trustee to redeem the TIFIA Bond in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in a minimum principal amount of \$1,000,000), at any time or from time to time, without penalty or premium. Each prepayment of the TIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender, which notice shall also specify the amount of unpaid interest for the applicable Tranche accrued to the date of such prepayment on the amount of principal of such Tranche to be prepaid that the Borrower intends to pay concurrently with such prepayment, if any. In the case of any optional prepayment, such written notice shall be delivered to the TIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the TIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the TIFIA Lender. Anything in this Section 10(b) (*Optional Prepayments*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) General Prepayment Instructions. Upon the TIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the TIFIA Lender shall surrender the TIFIA Bond to the Borrower or its representative at the principal office of the TIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the TIFIA Loan, such partial prepayments shall be applied ratably to each Tranche and within each Tranche ratably across payments with respect thereto set forth in **Exhibit G** to reduce all future payments due with respect to each Tranche. The TIFIA Lender may make a notation on **Exhibit G** indicating the amount of principal of and interest on such TIFIA Bond then being prepaid. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. All such partial prepayments of principal shall be applied on a pro rata basis to reduce future payments due on the TIFIA Bond. If said monies shall not have been so paid on the prepayment date, such principal amount of such TIFIA Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 11. Compliance with Laws. The Borrower shall, and shall require VDOT, which shall in turn require the Construction Contractors at all tiers for the Project, to comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including federal and state laws, rules, regulations and executive orders. In each Standard Project Agreement, VDOT has

represented to the Borrower that VDOT will ensure that all work performed relating to a Project, which is evidenced in the Principal Project Contract between VDOT and the applicable Construction Contractor, will be completed in accordance with any and all applicable federal, state, and local laws and regulations. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law.

Section 12. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have duly executed and delivered to the TIFIA Lender this Agreement and the TIFIA Bond, each in form and substance satisfactory to the TIFIA Lender.

(ii) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each Indenture Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that for purposes of this Section 13(a)(ii) (*Conditions Precedent to Effectiveness*), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

(iii) Counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-1**) and bond counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-2**).

(iv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to the Borrower and its principals (as defined in 2 CFR § 180.995).

(v) The Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit K** (A) as to the satisfaction of certain conditions precedent set forth in this Section 12(a) (*Conditions Precedent to Effectiveness*) as required by the TIFIA Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(vi) The Borrower shall have complied with the verification requirements set forth in 2 CFR §§ 180.300 and 180.320 and complied with its obligations under 2 CFR § 180.330 in connection with the Principal Project Contracts, and shall have provided evidence thereof satisfactory to the TIFIA Lender.

(vii) The Borrower shall certify to the TIFIA Lender in the certificate from the Borrower's Authorized Representative that the Borrower and VDOT have complied with their respective obligations under each Principal Project Contract, including the following:

(1) VDOT has complied with (A) the disclosure requirements set forth in 2 CFR § 180.355, (B) the verification requirements set forth in 2 CFR §§ 180.300 and 180.320, and (C) its obligations under 2 CFR § 180.330 with respect to the Construction Contracts;

(2) All Governmental Approvals necessary to commence construction of the Project have been obtained and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(3) With respect to the Project, the Borrower and VDOT have each complied with NEPA and have delivered a copy of the NEPA Determination to the TIFIA Lender;

(4) The Borrower and VDOT, respectively, have each complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);

(5) VDOT and each applicable Principal Project Party, as and if applicable, have obtained insurance with respect to the Project, which meets the requirements of Section 15(e) (*Compliance with Principal Project Contracts*); and

(6) Each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the Effective Date shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

To assist with the Borrower's compliance under this Section 12(a)(vii), the Borrower may rely on a certificate of an authorized representative of VDOT as to VDOT's compliance with the applicable certifications required herein.

(viii) The Borrower shall have provided to the TIFIA Lender satisfactory evidence that the Project has been included in (A) the metropolitan transportation improvement program adopted by the Hampton Roads Transportation Planning

Organization, (B) the State transportation plan, and (C) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project.

(ix) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the Effective Date, of the assignment by at least two (2) Rating Agencies of public ratings of not less than 'A-' or 'A3' to the TIFIA Loan and to the Existing Indebtedness, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(x) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that as of the Effective Date the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof, or, in the case of HRTF Revenues, are reasonably anticipated to be available, and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule and in any event on or prior to the Projected Substantial Completion Date.

(xi) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(xii) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [2.20], (C) not reflect the commencement of amortization of the principal amount of any Senior Obligations before the Debt Service Payment Commencement Date, (D) use the methodology in **Exhibit I** hereto for the purpose of forecasting HRTF Revenues, and (E) otherwise be in form and substance acceptable to the TIFIA Lender.

(xiii) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant Section 33.2-1920, as amended, Code of Virginia of 1950, to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated

by the Indenture Documents and required by applicable law, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xiv) The Borrower shall have paid in full all invoices delivered by the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xv) The TIFIA Lender shall have delivered its initial TIFIA Lender's Authorized Representative certificate.

(xvi) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System or Unique Entity Identifier number, as appropriate, and (C) registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov).

(xvii) The Borrower shall have provided to the TIFIA Lender evidence that the Borrower is duly created and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified by the Borrower's Authorized Representative: (A) a copy of its Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State or the state of its formation, to the extent applicable), which Organizational Documents shall be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents.

(xviii) The Borrower shall have provided the TIFIA Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the TIFIA Lender and in sufficient time prior to the Effective Date to permit the TIFIA Lender and the FHWA Division Office to review such costs.

(xix) The representations and warranties of the Borrower set forth in this Agreement (including Section 14 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct, as of the Effective Date, except to

the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xx) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the Effective Date (A) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (B) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs.

(xxi) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Trustee in the form attached hereto as **Exhibit J**.

(xxii) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit N** in accordance with 49 CFR §20.100(b).

(xxiii) The Borrower shall have delivered to the TIFIA Lender the forms of the Project BANs Supplemental Indenture, the Project BANs Bond, and any other documents required to issue the Project BANs on the Project BANs Closing Date, each in the form and substance satisfactory to the TIFIA Lender.

(xxiv) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments and evidence of the closing of the Existing Indebtedness).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the TIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the TIFIA Lender:

(i) With respect to the initial disbursement of the TIFIA Loan, each of the conditions set forth in Section 13(c) shall have been satisfied.

(ii) With respect to any disbursement occurring sixty (60) days or more after the Effective Date, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 22(a) (*Financial Plan*), which Financial Plan (or update thereto) reflects that amortization of the principal amount of any outstanding Bonds does not commence before the Debt Service Payment Commencement Date.

(iii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have delivered to the TIFIA Lender certified, complete and fully executed copies of any Indenture Documents entered into after the Effective Date.

(iv) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified copies of all Principal Project Contracts and all Additional Project Contracts requested by the TIFIA Lender pursuant to Section 15(b) (Copies of Documents) (including, in each case, any amendment, modification or supplement thereto and related performance security instrument) entered into after the Effective Date.

(v) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that VDOT has complied in all material respects with its obligations under each Principal Project Contract and shall provide, or shall use commercially reasonable efforts to cause VDOT to provide, upon the TIFIA Lender's request evidence thereof satisfactory to the TIFIA Lender, including the following:

(1) All Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect;

(2) Each Construction Contractor has maintained surety bonds and insurance coverage and amounts as required by the applicable Principal Project Contract; and

(3) Each of the insurance policies obtained by any applicable Principal Project Party in satisfaction of the conditions in Section 13(a)(vii)(6) (Conditions Precedent to Effectiveness) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vi) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder and no event of default (howsoever described or designated) under any other Related Document (other than an event of default of a Principal Project Party) shall have occurred and be continuing, (B) no material event of default (howsoever described or designated) of any Principal Project Party under any Principal Project Contract shall have occurred and be continuing, and (C) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of the Borrower under any other Related Document, in each case, shall have occurred and be continuing.

(vii) The representations and warranties of the Borrower set forth in this Agreement (including Section 14 (Representations and Warranties of Borrower)) and in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and

warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(viii) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the TIFIA Lender.

(ix) The Borrower shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the TIFIA Lender.

(x) The Borrower shall have paid in full all invoices received from the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) as of the date of disbursement of the TIFIA Loan, for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xi) To the extent not previously delivered to the TIFIA Lender, the Borrower shall request and upon receipt provide all certified, completed and fully executed copies of each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the date of disbursement of the TIFIA Loan, each of which performance security instruments shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

(c) Conditions Precedent to Project BANs Closing Date. Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate and the TIFIA Lender shall have no obligation hereunder in the event that the Project BANs Closing Date does not occur on or before [____] ⁶, 2021. The Borrower's obligations under Section 17 (*Indemnification*) and Section 28(c) (*Fees and Expenses*) shall survive any such termination of this Agreement. In no event shall the Project BANs Closing Date be deemed to have occurred until each of the following conditions has been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have provided evidence satisfactory to the TIFIA Lender that (A) the Project BANs have been approved by the Borrower and issued in accordance with the Indenture and Project BANs Supplemental Indenture, (B) each of the conditions contained in the Indenture and the Project BANs Supplemental Indenture to the closing of the transactions contemplated thereby has been satisfied or waived with the consent of the TIFIA Lender, and (C) Project BANs proceeds have been delivered to the Borrower.

(ii) Except for amendments effectuated pursuant to the terms of the Project BANs Supplemental Indenture, the Indenture shall remain in full force and effect, without any amendments thereto.

⁶ **Note to Draft:** To be no later than the date that is 5 days after the Effective Date.

(iii) The Project BANs Supplemental Indenture and the Project BANs Bond shall have been executed by each of the parties thereto and shall be in full force and effect, and certified, fully executed copies thereof shall have been delivered to the TIFIA Lender, in the form previously provided under Section 12(a) by the Borrower to the TIFIA Lender, with only such changes as are acceptable to the TIFIA Lender.

(iv) The Borrower shall have provided to the TIFIA Lender certified, complete and fully executed copies of any other amendment, waiver or modification to any Principal Project Contract (to the extent not delivered on the Effective Date), each of which shall be in form and substance satisfactory to the TIFIA Lender and in full force and effect.

(v) Counsel to the Borrower and the bond counsel to the Borrower shall have delivered to the TIFIA Lender legal opinions, in form and substance reasonably satisfactory to the TIFIA Lender, in respect of each of the Indenture Documents executed in connection with the Project BANs and not previously delivered to the TIFIA Lender or not previously covered in an opinion of legal counsel delivered to the TIFIA Lender on behalf of such entity (in each case to the extent such entity is a party thereto).

(vi) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true, correct and complete as of the Project BANs Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct and complete as of such earlier date).

(vii) The Borrower shall have paid, or shall pay concurrently with the Project BANs Closing Date, in full all invoices delivered by the TIFIA (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) as of the Project BANs Closing Date for the reasonable fees and expenses of the TIFIA Lender's counsel and financial advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof.

(viii) None of the ratings provided in satisfaction of the condition precedent specified in Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) shall have been reduced, withdrawn or suspended as of the Project BANs Closing Date.

(ix) The Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit K-2** as to the satisfaction of certain conditions precedent set forth in this Section 12(c) as required by the TIFIA Lender.

(x) The Borrower shall have provided to the TIFIA Lender any material documents required to be delivered to the Borrower pursuant to the Project BANs Supplemental Indenture in connection with issuance of the Project BANs, including the certificates and legal opinions received by the Borrower under the Project BANs Supplemental Indenture in connection with issuance of the Project BANs.

Section 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (Officer's Authorization) and Section 13(k) (Credit Ratings), as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a body politic and a political subdivision duly created and validly existing under the laws of the State, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the TIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related Documents will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, other than the Liens granted pursuant to the TIFIA Loan Documents.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by the Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can

reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Pledged Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or, as applicable, the most recent Revised Financial Model). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents and Section 33.2-1920, as amended, Code of Virginia of 1950, establish, in favor of the Trustee for the benefit of the TIFIA Lender, the valid and binding Liens on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Trust Estate except for the Liens associated with Senior Obligations and Intermediate Lien Obligations, and not *pari passu* with any obligations other than the Subordinate Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 15(a) (*Securing Liens*) or in the Indenture Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required by applicable law and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Trust Estate in favor of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (Conditions Precedent to Effectiveness). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332, with respect to VDOT in connection with the Principal Project Contracts. The Borrower is not aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 CFR Part 180.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Transportation Improvement Program. The Project has been included in (i) the metropolitan transportation improvement program adopted by the Hampton Roads Transportation Planning Organization, (ii) the State transportation plan, and (iii) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135 and 23 U.S.C. § 602(a)(3), as applicable. The financial plan for each such program or plan reflects the costs of, and the sources of funding for, the Project.

(k) Credit Ratings. The TIFIA Bond and the Existing Indebtedness outstanding as of the Effective Date have received a public credit rating of not less than 'A-' or 'A3' (or such equivalents for short-term obligations) from at least two (2) Rating Agencies, and written evidence of each such public rating has been provided to the TIFIA Lender prior to the Effective Date, and neither public rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of the Borrower under any Related Document has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Principal Project Contracts. Each Principal Project Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Principal Project Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Principal Project Contract and each Additional Project

Contract required to be delivered to, or requested by, the TIFIA Lender pursuant to Section 15(b) (Copies of Documents) (including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related Credit Facilities or side letters. No event has occurred that gives the Borrower (as applicable) or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any Principal Project Contract. The Borrower is not in breach of, or in default under, any Principal Project Contract (as applicable), and, to the knowledge of the Borrower, no Principal Project Party is in breach of, or in default under, any material term of any Principal Project Contract (as applicable).

(o) Information. The information furnished by the Borrower to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party is a Sanctioned Person.

(ii) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal; or

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or, to the knowledge of the Borrower, any Principal Project Party, with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the TIFIA Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(q) Trust Estate. The TIFIA Debt Service payments are limited obligations of the Borrower, secured solely by the Trust Estate pledged under the Indenture, which is funded solely from the HRTAC Revenues paid by the State to the Borrower pursuant to the HRTAC Act. The obligation of the Borrower to make TIFIA Debt Service payments does not constitute an indebtedness of the State or any political subdivision thereof other than the Borrower within the meaning or application of any constitutional provision or limitation. The obligation of the

Borrower to make TIFIA Debt Service payments does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The Borrower has no taxing power.

(r) Compliance with Law. The Borrower is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(s) (*Environmental Matters*)), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower's knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower (as applicable) or, to the Borrower's knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(s) Environmental Matters. To the Borrower's knowledge, each Principal Project Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower is not aware of any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that a Principal Project Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by a Principal Project Party with any such Environmental Law or Governmental Approval. The Borrower has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(t) Sufficient Rights and Utilities. VDOT, as the State entity responsible for building, maintaining, and operating the interstate, primary, and secondary state highway systems in the State, possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient for the construction, operation, maintenance and repair of the Project. The Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in VDOT sufficient to enable VDOT to own, construct,

operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

(u) Insurance. To the best of Borrower's knowledge and after due inquiry, VDOT is in compliance with all insurance obligations under, and maintains, or causes to be maintained, at all times and with responsible insurers, all insurance as required by, each of the Principal Project Contracts.

(v) Title. The Borrower has valid legal and beneficial title to, or a valid leasehold interest in, the personal property and other assets and revenues thereof (including the Pledged Revenues and the Trust Estate) on which it purports to grant Liens pursuant to the Indenture Documents, in each case free and clear of any Lien of any kind, except for Liens on the Senior Obligations and Intermediate Lien Obligations.

(w) No Liens. Except for the Liens in favor of the Senior Obligations and Intermediate Lien Obligations, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate, the Project, the Pledged Revenues, or the properties or assets in relation to the Project.

(x) Intellectual Property. To the Borrower's knowledge, VDOT owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(y) Investment Company Act. The Borrower is not, and after applying the proceeds of the TIFIA Loan will not be, required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(z) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the TIFIA Lender pursuant to Section 21(d) (*Financial Statements*) has been prepared in accordance with GASB and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in

such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GASB.

(aa) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

(bb) ERISA. Neither the Borrower nor any ERISA Affiliate maintains or otherwise has any liability in respect of any plan or other arrangement that is subject to ERISA or Section 412 of the Tax Code.

(cc) Sufficient Funds. The aggregate of (i) all funds that are undrawn but fully and completely committed under the Indenture Documents, this Agreement, and the Toll TIFIA Loan and (ii) all funds available under any other unused funding that is committed and available, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule (and in any event on or prior to the Projected Substantial Completion Date).

(dd) Sovereign Immunity. The Borrower has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any breach of contract action to enforce the obligations of the Borrower under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder.

(ee) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(ff) Compliance with Federal Requirements. With respect to the Project, the Borrower and VDOT have complied with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(gg) Borrower's Reliance on VDOT's Certificate. To assist with the Borrower's compliance under this Section 13, the Borrower may rely on a certificate of an authorized representative of VDOT as to VDOT's compliance with the applicable representations and warranties required herein.

Section 14. Representations and Warranties of TIFIA Lender. The TIFIA Lender hereby makes the following representations and warranties as of the Effective Date:

(a) Power and Authority. The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the TIFIA Lender executing each of the Related Documents to which the TIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

Section 15. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Trust Estate (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Trustee for the benefit of the TIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to the Liens securing the Senior Obligations and Intermediate Lien Obligations.

(b) Copies of Documents.

(i) The Borrower shall furnish to the TIFIA Lender a copy of any draft documents and final offering documents (including any Indenture Documents) and cash flow projections prepared in connection with the incurrence of any Permitted Debt (including the Project BANs) or other indebtedness subject to approval by the TIFIA Lender pursuant to Section 16(a) (Indebtedness), in each case prior to the incurrence of any such Permitted Debt or such other indebtedness, as well as copies of any continuing disclosure documents, prepared by or on behalf of the Borrower in connection with the incurrence of such Permitted Debt or such other indebtedness, in each case promptly following the preparation or filing thereof. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (i) copies of the then current draft documents relating to the incurrence of Permitted Debt (other than equipment leases and trade accounts included in such definition) at least thirty (30) days prior to the effective date thereof and (ii) copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (A) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received

from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project or any indebtedness of the Borrower that is or will be secured by or paid from the Trust Estate or any portion thereof, including the Pledged Revenues, (B) all notices and other written communications received by the Borrower from the Trustee or any Bondholder, (C) all reports, notices and other written materials required to be sent to the Trustee or any Bondholder under the Indenture Documents, and (D) all notices delivered by or to the Borrower relating to any of the Principal Project Contracts; unless, in each case, the TIFIA Lender notifies the Borrower in writing that any such reports, notices and/or other written materials no longer need to be provided.

(iii) The Borrower shall provide written notice to the TIFIA Lender of the Borrower's intent to enter into (or approve VDOT's entry into) a Principal Project Contract or an Additional Project Contract. If the TIFIA Lender requests a copy of any Additional Project Contract that is not subject to approval by the TIFIA Lender, the Borrower shall provide a copy of the final or near final draft of such Additional Project Contract, together with any related contracts, side letters or other understandings, prior to the execution thereof (provided such request is made prior to the execution of such contract). The Borrower shall provide to the TIFIA Lender an executed version of each Principal Project Contract, each Additional Project Contract that is subject to TIFIA Lender consent, and, if requested by the TIFIA Lender, each Additional Project Contract that is not subject to TIFIA Lender consent, in each case together with any related contracts, side letters or other understandings, promptly following the full execution thereof. Copies of drafts of the foregoing may be provided by email notice and a link to the proposed board of directors' agenda items.

(c) Use of Proceeds. The Borrower shall use the proceeds of the TIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Debarment and Suspension Requirements. The Borrower shall comply with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(e) Compliance with Principal Project Contracts. The Borrower shall ensure that VDOT complies in all material respects with its obligations under each Principal Project Contract and pursues all available remedies pursuant thereto to ensure VDOT's continued compliance therewith, including:

(i) Achievement of Substantial Completion of the Project in accordance with the respective Construction Schedule;

(ii) VDOT's and each Construction Contractor's compliance with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332;

(iii) VDOT's operation and maintenance of the Project and enforcement of all Tolling Systems Contracts to which it is a party;

(iv) VDOT's maintenance and compliance with all Government Approvals necessary for the development, construction, operation, and maintenance of the Project; and

(v) each Construction Contractor's maintenance of all performance security instruments and insurance coverages and amounts required by the applicable Principal Project Contract.

(f) Notice.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the TIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event, and including any relevant and significant documentation:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit L**;

(B) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower or VDOT with respect to the Project that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower with award amounts in excess of \$5,000,000 (inflated annually by CPI), either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(E) Environmental Notices: any notice of material violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(F) Amendments: except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any Principal Project Contract or other Related Document at least thirty (30) days prior to the effective

date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

(G) Principal Project Contract Defaults: any material breach or default or event of default on the part of the Borrower, VDOT, or any other party under any Principal Project Contract or any Additional Project Contract;

(H) Compensation Event; Compensable Maintenance Events; Contractor Acts: the occurrence of any event that the Borrower has determined constitutes, or would reasonably be expected to determine to constitute, a Compensation Event, Compensable Maintenance Event, or Contractor Act under (and each as defined in) the MTA, a copy of any Compensation Event Notice (as defined in the MTA) or notice of a Compensable Maintenance Event or Contractor Act delivered by the Borrower under the MTA and any material written response from VDOT to such Compensation Event Notice or notice of either a Compensable Maintenance Event or a Contractor Act;

(I) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(J) Project Changes: any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of total forecasted Total Project Costs, together (in the case of increased costs) with a written description of the committed funding sources available to the Borrower to pay for such increased Total Project Costs, (2) proposed change to the Projected Substantial Completion Date, together with an explanation of the reasons for such proposed adjustment, and (3) material change to the Construction Schedule, together with a proposed revised Construction Schedule;

(K) Ratings Changes: any change in the rating assigned to any Bonds by any Rating Agency that has provided a public rating on such indebtedness, the Borrower, or the Pledged Revenues;

(L) 2 CFR Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 12(a)(iv) (Conditions Precedent to Effectiveness) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the TIFIA Loan as described in 2 CFR § 200.113, and the Borrower shall require VDOT, the Construction Contractors, and each of their subcontractors for the Project to provide it notice of any such violation;

(M) Appropriations: if the appropriation of the HRTF Revenues to the HRTF (1) was not included in each biennial budget or any supplemental

budget that is presented to the General Assembly, and/or (2) if the General Assembly failed to appropriate for the next State fiscal biennium;

(N) Material Events: the filing of (together with a copy of) any notice to the Municipal Securities Rulemaking Board of any of the events described in clause (b)(5)(i)(C) of Rule 15c2-12 of the U.S. Securities and Exchange Commission (or any similar rule); and

(O) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described in Section 15(f)(i) (Notice).

(g) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(f)(i) (Notice) (other than in Section 15(f)(i)(A) (Substantial Completion), Section 15(f)(i)(F) (Amendments), or Section 15(f)(i)(K) (Ratings Changes) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto.

(h) Maintain Legal Structure. The Borrower shall maintain its existence as a body politic and a political subdivision under the laws of the State. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(i) Annual Rating. The Borrower shall, commencing in [2022], no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the TIFIA Bond and any other Bonds outstanding by a Rating Agency, together with the rating report or letter delivered by such Rating Agency in connection with each such rating, if any, in each case prepared no earlier than June 1 of such year.

(j) Project Funds; Permitted Investments.

(i) The Borrower shall fund the TIFIA Debt Service Reserve Fund in an amount equal to the TIFIA Debt Service Reserve Required Balance by no later than the date that is the later of (A) the Substantial Completion Date and (B) the date the final disbursement of the TIFIA Loan. Thereafter, the Borrower shall maintain the TIFIA Debt Service Reserve Fund in an amount equal to the TIFIA Debt Service Reserve Required Balance. To the extent that a Debt Service Reserve Fund is established at any lien level with respect to any other Series (as defined in the Indenture) of Bonds, the Borrower shall maintain such Debt Service Reserve Fund in an amount equal to the relevant Debt Service Reserve Requirement in accordance with the provisions of this Agreement and the applicable Indenture Documents. Amounts in any Debt Service Reserve Fund shall be

made available to ensure the timely payment of the principal, interest, and premium, if any, on the Bonds to which it relates.

(ii) To the extent not provided in Section 15(j)(i) (*Project Funds; Permitted Investments*), the Borrower shall cause the other Reserve Accounts to be funded in such amounts and under such conditions as are required by this Agreement and the Indenture Documents.

(iii) Amounts on deposit in the Project Funds shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Debt Service Reserve Fund, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the TIFIA Debt Service Fund or in any debt service account in respect of Senior Obligations corresponding to amounts needed for the payment of interest, not later than the next Semi-Annual Payment Date, (C) with respect to Permitted Investments maintained in the TIFIA Debt Service Fund or in any debt service account for Senior Obligations corresponding to amounts needed for the repayment of principal, the next Payment Date for repayment of principal in respect of such debt, and (D) with respect to any other Project Funds, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from the applicable Project Fund. The Borrower shall, promptly but in any event within five (5) days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(iv) The Borrower may replace all or a portion of the required balance of any Reserve Account, in accordance with the terms of the applicable Indenture Documents, with an Acceptable Letter of Credit provided by a financial institution with an Acceptable Credit Rating. If at any time an issuer of an Acceptable Letter of Credit securing a Reserve Account ceases to be a Qualified Issuer, the Borrower shall cause such letter of credit to be replaced by a new Acceptable Letter of Credit within ten (10) calendar days of the date on which the current issuer ceased to be a Qualified Issuer, or the Trustee shall be permitted to immediately draw the full amount of such letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account. Any new Acceptable Letter of Credit shall have the same terms and conditions (including expiration date and face amount) as the letter of credit being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any letter of credit securing a Reserve Account is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such letter of credit with a new Acceptable Letter of Credit at least ten (10) Business Days prior to the stated expiry date of the existing letter of credit and such new Acceptable Letter of Credit shall be in an amount equal to at least the amount of expiring letter of credit. If the Borrower fails to provide such new Acceptable Letter of Credit by the date required above, the Trustee shall (and the TIFIA Lender shall have the right to direct the Trustee to) immediately draw the full undrawn amount of the existing letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account.

(k) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon the Trust Estate or any portion thereof, including the Pledged Revenues, or the Borrower's other income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid might give rise to a Lien upon such the Project or any other portion of the Toll Roads System or on the Trust Estate or any portion thereof, including the Pledged Revenues; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GASB, applied on a consistent basis.

(l) HRTF Transfers. For so long as the Toll TIFIA Loan remains outstanding, the Borrower shall make the transfers described below from the General Fund:

(i) By no later than the Debt Service Payment Commencement Date (as defined in the Toll TIFIA Loan Agreement), the Borrower shall transfer HRTF Revenues in the amount of \$[_____] to the Toll Indenture Trustee for deposit to TIFIA Loan Reserve Account established under the Toll Indenture.

(ii) By no later than the Debt Service Payment Commencement Date (as defined in the Toll TIFIA Loan Agreement), the Borrower shall transfer HRTF Revenues in the amount of \$10,000,000 to the Toll Indenture Trustee for deposit to the Toll Revenue Stabilization Fund.

(iii) On or before each July 15, beginning from [____], the Borrower shall transfer HRTF Revenues to the Toll Indenture Trustee for deposit to the Toll Revenue Stabilization Fund in an amount equal the difference, if any, between \$10,000,000 and the amount on deposit in the Toll Revenue Stabilization Fund as of such date.

(iv) By no later than the later of (A) the Substantial Completion Date and (B) the date of the initial disbursement of the Toll TIFIA Loan under the Toll TIFIA Loan Agreement, the Borrower shall transfer HRTF Revenues in the amount of \$[_____] to the Toll Indenture Trustee for deposit to Major Maintenance and Renewal Fund established under the Toll Indenture.

(v) On or before each July 15 while the Toll TIFIA Loan remains outstanding the Borrower shall transfer HRTF Revenues to the Toll Indenture Trustee for deposit to the Major Maintenance and Renewal Fund established under the Toll Indenture in an amount equal the difference, if any, between Major Maintenance and Renewal Fund Required Amount (as defined in the Toll TIFIA Loan Agreement) and the amount on deposit in the Major Maintenance and Renewal Fund as of such date; provided, that cumulative amount of HRTF Transfers made pursuant to this Section 15(l)(v) shall not exceed the MMRF HRTF Cumulative Transfer Cap.

(m) Hedging.

(i) As a condition to the issuance of any Senior Obligations or Intermediate Lien Obligations that bear interest at a Variable Interest Rate, the Borrower shall enter into a Qualified Hedge with respect to such Senior Obligations or Intermediate Lien Obligations and shall maintain such Qualified Hedge in place until the earlier to occur of (i) the maturity date of any such Senior Obligations or Intermediate Lien Obligations and (ii) the Final Maturity Date. Each Qualified Hedge must have an aggregate stated notional amount of not less than (A) during the Construction Period, at least ninety percent (90%) and not more than one hundred ten percent (110%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding during such time period and (B) at all other times, at least ninety-eight percent (98%) and not more than one hundred two percent (102%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding until the maturity of such Variable Interest Rate Obligations. Any such Qualified Hedge shall have a payment profile that is reasonably consistent with the expected draw and repayment schedule of the applicable Variable Interest Rate Obligations subject to such Qualified Hedge. Such Qualified Hedge shall have a stated maturity or termination date not earlier than the earlier to occur of (x) the Final Maturity Date and (y) the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge.

(ii) Each Qualified Hedge shall provide for a fixed interest rate resulting in fixed payment amounts payable by the Borrower to the Qualified Hedge Provider. The Borrower's obligations to pay Hedging Obligations and Hedging Termination Obligations shall be from the sources and in the priority specified in the Indenture Documents. The Borrower shall ensure that, as of the day following the termination date of any Qualified Hedge that for any reason terminates before the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge, (A) a Subsequent Qualified Hedge (as defined below) is in full force and effect or (B) the Variable Interest Rate Obligations have been converted to a fixed rate, in each case in accordance with this Agreement and the Indenture Documents.

(iii) Any Hedging Transaction entered into subsequent to the initial Qualified Hedge (a "**Subsequent Qualified Hedge**") shall (A) be a Qualified Hedge, (B) commence no later than the termination date of the Qualified Hedge that is terminating and (C) terminate no earlier than the earlier to occur of (1) the Final Maturity Date and (2) the final maturity date of the Variable Interest Rate Obligations subject to such Subsequent Qualified Hedge.

(iv) The Borrower shall not commence seeking any bids from any Qualified Hedge Provider for a Subsequent Qualified Hedge unless, at least thirty (30) days prior thereto, the Borrower has delivered to the TIFIA Lender evidence satisfactory to the TIFIA Lender and certified by the Borrower's Authorized Representative that the process to be utilized by the Borrower for selecting such Subsequent Qualified Hedge is a competitive process designed to obtain a fair market price and to avoid conflicts of interest. At the time the Subsequent Qualified Hedge is priced, the Borrower shall provide to the TIFIA Lender a certificate from a qualified third party acceptable to the TIFIA Lender to

the effect that either the underlying fixed rate or the price of acquiring such Subsequent Qualified Hedge is a fair price based on the interest rate market at the time such Qualified Hedge is priced.

(v) The Trustee shall be granted a security interest in each Qualified Hedge and payments due under each Qualified Hedge in order to secure the Borrower's obligations under the TIFIA Loan Documents. The Hedging Agreements shall provide that all payments due thereunder to the Borrower shall be made directly to the Trustee for deposit and disbursement in accordance with the Indenture Documents.

(vi) The Borrower shall neither terminate (other than Permitted Hedging Terminations), transfer, nor consent to any transfer (other than to a Qualified Hedge Provider) of any existing Qualified Hedge without the TIFIA Lender's prior written consent as long as the Borrower is required to maintain a Qualified Hedge pursuant to this Agreement.

(vii) If at any time a Hedging Bank no longer satisfies the requirements for a Qualified Hedge Provider, the Borrower shall, within thirty (30) days (or such lesser number of days required by the applicable Hedging Agreement, including any credit support annex thereto) of the date on which such Hedging Bank failed to qualify as a Qualified Hedge Provider, either (A) cash collateralize the mark-to-market value of the Hedging Termination Obligations (in accordance with the credit support annex or similar requirements of the applicable Hedging Agreement) or provide a guarantee for such amount from an entity with an Acceptable Credit Rating, or (B) cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider, whether by means of a transfer of the disqualified Hedging Bank's Hedging Agreement to a Qualified Hedge Provider or by means of a termination of such disqualified Hedging Bank's Hedging Agreement and replacement thereof by a Hedging Agreement with a Qualified Hedge Provider on terms and conditions that satisfy the requirements of this Section 15(m) (Hedging); provided that if the disqualified Hedging Bank's highest credit rating from any Rating Agency is less than 'A-', 'A3' or the equivalent, clause (A) shall not apply and the Borrower shall be required to cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider pursuant to clause (B).

(n) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the TIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

(o) Immunity. The Borrower agrees that it will not assert any immunity (and hereby confirms that it has no such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the contractual obligations of the Borrower under this Agreement or any other TIFIA Loan Document.

(p) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the TIFIA Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(q) Cargo Preference Act. Pursuant to 46 CFR Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with TIFIA Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in clause (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(r) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

(s) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit P** hereto.

Section 16. Negative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the TIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) Prior to the incurrence of Additional Obligations, the Borrower shall provide to the TIFIA Lender (A) a certificate signed by the Borrower's Authorized Representative, demonstrating to the TIFIA Lender's satisfaction that such proposed indebtedness is authorized pursuant to this Section 16(a) (*Indebtedness*) and satisfies the applicable requirements under the definitions of "Permitted Debt" and "Additional Obligations," as applicable and (B) a copy of all certificates and reports provided to the Trustee in connection with such Additional Obligations in accordance with the requirements of the Indenture.

(ii) Except for Additional Obligations, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness under the

Indenture; provided that (1) the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Trust Estate, including Additional Obligations, following the occurrence, and during the continuation, of an Event of Default, and (2) the Borrower shall not issue any additional Subordinate Obligations without the prior written consent of the TIFIA Lender.

(iii) The Borrower shall not issue Subordinate Obligations which bear interest at a Variable Interest Rate.

(iv) To the extent any Obligations consists of Put Bonds, the Borrower must maintain a Credit Facility that will pay any amounts payable by the Borrower in respect of such Put Bonds.

(b) No Lien Extinguishment; Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, (i) extinguish, impair, or transfer the Liens on the Trust Estate granted pursuant to the Indenture, (ii) terminate, assign, amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, (iv) terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender's determination), or (v) agree to (A) any material amendment to a Principal Project Contracts, including a change to the Construction Schedule attached thereto, or (B) the use of the Project by VDOT other than for the purposes described in the Principal Project Contract. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (x) copies of any proposed amendments, modifications, replacements of, or waivers or supplements to any Related Document at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification, waiver or supplement to any Related Document within five (5) Business Days after execution thereof.

(c) No Prohibited Liens. Except for the Liens granted pursuant to the Indenture Documents, the Borrower shall not create, incur, assume or permit to exist any Lien on the Trust Estate, the Pledged Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Principal Project Contract, except pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease, or assign its rights and obligations under any Related Document, unless such sale, lease or assignment (A) could not reasonably be expected to result in a Material Adverse Effect, and (B) is made by the Borrower in the ordinary course of business.

(e) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Indenture or in the Trust Estate) without the prior written consent of the TIFIA Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the TIFIA Lender.

(f) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the TIFIA Loan Documents, the Borrower shall not engage in any other transactions in connection with the Project with any other Governmental Authority (including any other Governmental Authority of or in the State), the terms and provisions of which are materially adverse to the Borrower or the Project or that could reasonably be expected to result in a Material Adverse Effect.

(g) No Payment with Federal Funds. The Borrower shall not pay any portion of TIFIA Debt Service nor any other amount to the TIFIA Lender or to the Federal Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrower may prepay the TIFIA Loan in whole or in part with the proceeds of a validly issued federal credit instrument pursuant to, and in accordance with, Section 10 (Prepayment).

(h) Change in Legal Structure; Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with, or merge into another Person unless (A) such Person is a successor public entity or agency created by State law that succeeds to the assets of the Borrower and assumes the obligations of the Borrower hereunder and under the Related Documents to which the Borrower is a party, including payment of the TIFIA Bond and (B) such merger, consolidation, or reorganization does not adversely affect or impair to any extent or in any manner (1) the Pledged Revenues or other elements of the Trust Estate, or (2) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement and the other TIFIA Loan Documents; and (B) the Borrower provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender.

(i) No Defeasance of TIFIA Bond. The Borrower shall not defease the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture without the prior written consent of the TIFIA Lender.

(j) OFAC Compliance.

(i) The Borrower shall not:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents; or

(C) make a payment, directly or indirectly, to any Principal Project Party that (1) to the Borrower's knowledge, has violated any of the laws referenced in Section 16(j)(i) (OFAC Compliance) or (2) is a Sanctioned Person.

(ii) The Borrower shall ensure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the TIFIA Loan or lend to, make any payment to, contribute or otherwise make available any funds to any affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the TIFIA Lender or any Principal Project Party).

(k) Hedging. Other than interest rate hedging transactions expressly permitted hereunder, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the TIFIA Lender.

Section 17. Indemnification. To the fullest extent permitted by applicable law, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent, advisor, or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties,

costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 18. Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section 18. Any such sale or reoffering shall be on such terms as the TIFIA Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower in accordance with Section 29 (*Amendments and Waivers*). The TIFIA Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower of the TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 shall not (x) obligate the TIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan.

Section 19. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any amount of principal of or interest on the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*), and any mandatory prepayment required pursuant to the provisions of Section 10(a) (*Mandatory Prepayments*)), when due and payable (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder), the TIFIA Bond or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof, (B) the Borrower’s knowledge of such failure, or (C) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 20(a)(iv) (*Misrepresentation Default*) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (*No Debarment*), Section 13(j) (*Transportation Improvement Program*), Section 13(p) (*OFAC; Anti-Corruption Laws*), Section 13(ee) (*Patriot Act*), or Section 13(ff) (*Compliance with Federal Requirements*);

(C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Senior Obligations, Intermediate Lien Obligations or Subordinate Obligations. Any acceleration shall occur of the maturity of any Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations, or any such Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations shall not be paid in full upon the final maturity thereof.

(vi) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of \$5,000,000 (inflated annually by CPI) that are payable from the Trust Estate or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(vii) Failure to Maintain Existence; Organizational Documents. The Borrower shall fail to maintain its existence as a body politic and a political subdivision created and existing under the laws of the State or the HRTAC Act shall be repealed or amended or modified in such a manner as could reasonably be expected to result in a Material Adverse Effect, unless at or prior to the time the Borrower ceases to exist in such form or the repeal or amendment of the HRTAC Act described above becomes effective, a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law and has succeeded to the assets of the Borrower and has assumed all of the obligations of the Borrower under the TIFIA Loan Documents, the Indenture Documents and the Toll Indenture, including the payment of all Secured Obligations.

(viii) Occurrence of a Bankruptcy Related Event.

(A) A Bankruptcy Related Event shall occur with respect to the Borrower.

(B) A Bankruptcy Related Event shall occur with respect to any letter of credit issuer; provided, that no Event of Default shall be deemed to have occurred or be continuing under this clause (B) if such letter of credit issuer is replaced by a new issuer that is a Qualified Issuer within ten (10) Business Days after the occurrence of such Bankruptcy Related Event.

(C) A Bankruptcy Related Event shall occur with respect to any Principal Project Party provided that (1) prior to Substantial Completion of the Project, the occurrence of a Bankruptcy Related Event with respect to any Construction Contractor shall not constitute an Event of Default if the Borrower or VDOT shall have promptly provided evidence satisfactory to the TIFIA Lender demonstrating that the Construction Contractor has been replaced with a substitute Construction Contractor that has sufficient financial resources and operating expertise to complete their respective Principal Project Contract in accordance with the Construction Schedule, and (2) after Substantial Completion, the occurrence of a Bankruptcy Related Event with respect to any Construction Contractor party to such Project Construction Contract shall not constitute an Event of Default solely with respect to the Project if at the time of such occurrence, (I) no claim against any warranty under the applicable Principal Project Contract to which such Construction Contractor is a party exists or remains outstanding, or (II) the Borrower promptly provides evidence satisfactory to the TIFIA Lender showing that the Borrower has (x) sufficient moneys to correct any defect or nonconforming work of such Construction Contractor, and (y) a plan to carry out such works referred to in clause (x) hereof.

(ix) Project Abandonment. Any Borrower Related Party shall abandon the Project.

(x) Invalidity of TIFIA Loan Documents. (A) Any TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any TIFIA Loan Document to which it is a party or denies it has any further liability under any TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Trust Estate, including the Pledged Revenues, other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby.

(xi) Cessation of Operations. Operation of the Project shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of any Borrower Related Party (and which any Borrower Related Party could not reasonably have avoided or mitigated).

(b) Upon the occurrence of an Event of Default described in Section 19(a)(iii) (*Development Default*), the TIFIA Lender may (i) suspend the disbursement of TIFIA Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (iii) demand that the Borrower immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower, in which event the Borrower shall immediately repay any such unexpended TIFIA Loan proceeds to the TIFIA Lender.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and, to the extent permitted under the Indenture Documents, the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities, and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest, or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (ii) to the extent permitted under the Indenture Documents, declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, all without presentment, demand, notice, protest, or other requirements of any kind, all of which are hereby expressly waived.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder, under the TIFIA Bond or under the other TIFIA Loan Documents with respect to the TIFIA Loan, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor and a creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder, under the TIFIA Bond, or under the other TIFIA Loan Documents with respect to the TIFIA Loan, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Federal Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section 19 shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all of which shall survive any such action.

Section 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all HRTF Revenues, so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GASB, including, with respect to the TIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 20(b) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 20(b) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrower shall maintain and retain all files relating to the Project, the Pledged Revenues and the TIFIA Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the TIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Pledged Revenues, the TIFIA Loan or this Agreement is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and the Borrower. The Borrower shall provide to the TIFIA Lender in a timely manner all records and documentation relating to the Project or the Pledged Revenues that the TIFIA Lender may reasonably request from time to time.

(d) Copies of Debt Related Notices. The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (i) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project or any indebtedness of the Borrower that is or will be secured by or paid from the Pledged Revenues, (ii) all notices and other written communications, other than those that are non-substantive or ministerial in nature, received by it from the Trustee or any Bondholder, and (iii) all reports, notices and other written materials, other than those that are non-substantive or ministerial in nature, required to be sent to the Trustee or any Bondholder under the Indenture

Documents, including all such notices, other than those that are non-substantive or ministerial in nature, relating to any of the Principal Project Contracts; unless, in each case, the TIFIA Lender notifies the Borrower that any such reports, notices and/or other written materials no longer need to be provided.

(e) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2021 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 21. Financial Plan, Statements, and Reports.

(a) Financial Plan. The Borrower shall provide a Financial Plan to the TIFIA Lender and the FHWA Division Office within sixty (60) days after the Effective Date and annually thereafter until the TIFIA Loan has been repaid in full, in each case not later than ninety (90) days after the beginning of each Borrower Fiscal Year. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(i) Each Financial Plan shall be prepared in accordance with GASB, and shall satisfy FHWA's Major Project Financial Plan requirements, as amended from time to time.

(ii) Together with each Financial Plan, the Borrower shall deliver: (A) a certificate signed by the Borrower's Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower's knowledge and belief and (B) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, based upon assumptions and projections with respect to the Pledged Revenues, expenses and other financial aspects of the Project and the Trust Estate that shall reflect the prior experience and current status of the Project and the Pledged Revenues, and the expectations of the Borrower with respect to the Project and the Pledged Revenues, as of the most recent practicable date prior to the delivery of such Revised Financial Model, together with a change log describing such changes.

(iii) Each Financial Plan shall:

(A) provide an updated cash flow statement showing, for the Borrower Fiscal Year most recently ended, (1) actual annual cash inflows (Pledged Revenues and other income), (2) actual annual outflows (including Senior Debt Service, Intermediate Lien Debt Service, Subordinate Debt Service, TIFIA Debt Service, Operating Expenses, replenishment of reserves, and other uses), (3) Total

Debt Service Coverage Ratios (measured as of the last day of the applicable Borrower Fiscal Year) and (4) coverages of the payments and deposits required pursuant to clauses First through Sixth of Section 8.1(b) of the Indenture;

(B) provide an updated cash flow statement showing projected annual amounts for each of the items described in clause (A) above, in each case through the Final Maturity Date;

(C) report on variances during the prior Borrower Fiscal Year between the actual Operating Expenses and the budgeted Operating Expenses, as shown in the Financial Plan for such prior Borrower Fiscal Year;

(D) provide a schedule of then current HRTAC Revenues applicable to any Pledged Revenues and any planned increases thereto;

(E) to the extent that any Hedging Transactions are then in effect, report on the notional amounts and mark to market values (provided by the Qualified Hedge Provider) under such Hedging Transactions, in each case as of the last day of the most recently ended Borrower Fiscal Year; and

(F) provide a written narrative that (1) explains any variances greater than 10% in comparison to the Base Case Financial Model and the most recent Financial Plan with respect to (i) Pledged Revenues and the amounts deposited into each of the accounts and subaccounts established under the Indenture Documents; (ii) cost items that are senior to TIFIA Debt Service; (2) to the extent that any Hedging Transactions are then in effect, report on changes, if any, to the creditworthiness of the counterparties to such Hedging Transactions; (3) includes a description of any material matters that may affect the future performance by the Borrower of its obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Pledged Revenues, Principal Project Contracts, and third-party transactions; and (4) discusses contingency measures that will or may be taken to address any of the matters reported pursuant to this sub-clause (F).

(iv) In addition to the above, prior to the Substantial Completion Date, each Financial Plan shall:

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan;

(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including an updated Projected Substantial Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule and in the most recent Financial Plan,

and discuss the reasons for any changes to the expected completion of these Project milestones;

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the preceding Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of each individual change valued at \$5,000,000 or more, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower's obligations under this Agreement.

(b) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide written notification to the TIFIA Lender of any notification the Borrower receives from VDOT concerning "Additional Costs" (as defined in each Principal Project Contract) within ten (10) days of the Borrower's receipt of the same from VDOT. The Borrower shall additionally provide the TIFIA Lender written notification of the Borrower's and VDOT's proposed resolution of such Additional Costs pursuant to the terms of the respective Principal Project Contract at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than 5% of Total Project Costs. Such resolution shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Plan. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, and could not reasonably be expected to result in a Material Adverse Effect.

(c) Financial Statements. The Borrower shall furnish to the TIFIA Lender:

(i) (A) as soon as available, but no later than sixty (60) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited income statement and balance sheet of the Borrower as of the end of such period and the related unaudited statements of operations and of cash flow of the Borrower for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative fairly stating in all material respects the financial condition of the Borrower as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

(B) as soon as available, but no later than one hundred twenty (120) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a “going concern” or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the TIFIA Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GASB (or in the case of non-U.S. Persons, substantially equivalent principles) applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(d) Officer’s Certificate. The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Borrower pursuant to Section 21(c) (Financial Statements), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower’s Authorized Representative, stating whether or not, to the Borrower’s knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default actions that the Borrower has taken or intends to take in respect thereof.

Section 22. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. The Borrower agrees to cooperate in good faith with the TIFIA Lender and the FHWA Division Office in the conduct of such monitoring by promptly requesting that VDOT provide the TIFIA Lender and the FHWA Division Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and the FHWA Division Office, or its agents, including any Consulting Engineer reports, documentation or information.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender the documentation described below.

(i) Monthly Construction Progress Report. On or before the last Business Day of any calendar month during the Construction Period, a report executed by a Borrower’s Authorized Representative that:

(A) includes a copy of the monthly report that VDOT provides to the Borrower pursuant to each Principal Project Contract;

(B) specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar month and the amount of Total Project Costs estimated to be required to complete the Project;

(C) provides a demonstration that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project;

(D) provides an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule;

(E) specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date specified in the Financial Plan most recently submitted to the TIFIA Lender;

(F) provides a detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any) encountered or anticipated in connection with the construction of the Project since the date of the last report, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems;

(G) specifies the delivery status of major equipment and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Construction Schedule;

(H) specifies any proposed or pending change orders;

(I) specifies any material changes or deviations from the Borrower's land procurement plans or schedule;

(J) to the extent received by the Borrower from VDOT, a copy of each report delivered by a Construction Contractor to VDOT that has not previously been delivered to the TIFIA Lender in a prior report delivered pursuant to this Section 22(b)(i); and

(K) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause VDOT to assist with causing the applicable Construction Contractor to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and any Construction Contractor's performance of its obligations under the Project Construction Contract to which such Construction Contractor is a party.

(ii) Requested Information. The Borrower shall, at any time while the TIFIA Loan remains outstanding, promptly deliver, and shall use commercially reasonable efforts to cause VDOT to promptly deliver, to the TIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project or the Pledged Revenues as the TIFIA Lender may from time to time reasonably request, including copies of agreements related to the acquisition or control of any Project right-of-way.

(c) Project Operations. For the period following the Substantial Completion Date, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project and, as the TIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation, maintenance and safety services for the Project. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing or causing to be provided to the TIFIA Lender such reports, documentation, or other information requested by the TIFIA Lender. The TIFIA Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the TIFIA Lender, to carry out the provisions of this Section 22(c), and the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring, including the reasonable fees and expenses of any financial oversight advisor, shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

(d) Consulting Engineer. The Borrower shall retain a Consulting Engineer throughout the term of this Agreement. The Consulting Engineer shall advise the TIFIA Lender (with a duty of care to the TIFIA Lender) with regard to all technical matters related to the performance by the Borrower of its obligations under this Agreement and the applicable Related Documents (other than the HRTF Indenture Documents). The Borrower may replace the Consulting Engineer, subject to the TIFIA Lender's right to object to any replacement Consulting Engineer in accordance with this Section 22(d). The Borrower shall provide the TIFIA Lender with thirty (30) Business Days advance written notice of any proposed replacement of the Consulting Engineer, together with supporting information concerning the qualifications of the proposed replacement Consulting Engineer. The proposed replacement Consulting Engineer shall become the Consulting Engineer thirty (30) Business Days following the date of the notice provided by the Borrower under this Section 22(d), unless the TIFIA Lender objects in writing within fifteen (15) Business Days following receipt of the Borrower's notice. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed replacement Consulting Engineer. The Borrower shall pay for all services performed by the Consulting Engineer.

Section 23. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Federal Government, or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the TIFIA Lender,

the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 17 (Indemnification), from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

Section 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 26. TIFIA Lender's Authorized Representative.

(a) The TIFIA Lender shall at all times have appointed the TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016 (the "Delegation") the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 27. Servicer. The TIFIA Lender may from time to time designate an entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Bond. The TIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 28. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (“FFY”) 2022 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee for each Tranche on or before the fifteenth (15th) of November. The TIFIA Lender shall establish the amount of this annual per-Tranche fee, and the TIFIA Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the per-Tranche fee, the TIFIA Lender will adjust the previous year’s base amount in proportion to the percentage change in CPI. For the FFY 2022 calculation, the TIFIA Lender will use the FFY 2021 base amount of \$13,873.84, which applies to other TIFIA borrowers, as the previous year’s base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year’s base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year’s base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the TIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration, and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, or the Trust Estate, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder;

(iii) any ongoing oversight and monitoring of the TIFIA Loan, the Borrower or the Project by the TIFIA Lender as provided for herein; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement, the other TIFIA Loan Documents, or the Indenture Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 28 shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 30. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 31. Severability and Conflicts. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. In the event of a conflict between the Indenture and this Agreement, the provisions of this Agreement shall be given precedence; provided further that in the event there exists a conflict between the provisions of this Agreement and the Indenture and performance with the provisions of this Agreement is contrary to or inconsistent with the rights of the Bondholders under the Indenture, then the provisions of the Indenture shall be given precedence and performance with the provisions thereof shall not constitute a violation of this Agreement.

Section 32. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights nor obligations hereunder nor any interest therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the TIFIA Lender.

Section 33. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 34. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

Section 35. Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number

of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 36 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 36. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to TIFIA Lender: Build America Bureau
United States Department of
Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of
Credit Programs
Email: BureauOversight@dot.gov

with copies to: Federal Highway Administration
Virginia Division Office
400 North 8th St., Suite 750
Richmond, Virginia 23219-4825
Attn: Division Administrator
Telephone: 804-775-3320
Facsimile: 804-775-3356

If to Borrower: Hampton Roads Transportation
Accountability Commission
The Regional Building
723 Woodlake Drive
Chesapeake, Virginia 23320
Attention: Executive Director
Email: kpage@hrtac.org

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the TIFIA Lender's Authorized Representative, with

respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(d) (*Manner of Payment*) and the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time to time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 37. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 38. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding TIFIA Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 17 (*Indemnification*), the reporting and record keeping requirements of Section 20(b) (*Inspections*) and Section 20(c) (*Reports and Records*), and the payment requirements of Section 28 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 39. Integration. This Agreement, along with the TIFIA Bond, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name: _____
Title: _____

UNITED STATES DEPARTMENT OF
TRANSPORTATION, acting by and
through the Executive Director of the Build
America Bureau

By: _____
Name: Dr. Morteza Farajian
Title: Executive Director

SCHEDULE I
PROJECT BUDGET

[Borrower to provide]

SCHEDULE II
CONSTRUCTION SCHEDULE

[Borrower to provide]

SCHEDULE III

EXISTING INDEBTEDNESS⁷

Hampton Roads Transportation Accountability Commission Hampton Roads Transportation Fund Senior Lien Revenue Bonds, Series 2018A, dated February 14, 2018 in the original principal amount of \$500,000,000.

⁷ **Note to Borrower:** Please update.

EXHIBIT A

FORM OF TIFIA BOND⁸

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

HRTAC PROJECT

(TIFIA – [_____])

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION
HAMPTON ROADS TRANSPORTATION FUND
SUBORDINATE LIEN REVENUE BOND
TIFIA SERIES [2019]**

TIFIA BOND

**Maximum Principal Amount: \$[794,000,000]
(excluding capitalized interest)**

Effective Date: _____ **Due:** _____

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, a body politic and political subdivision created under the laws of the Commonwealth of Virginia (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Exhibit G** to the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Loan Agreement from time to time in accordance with the terms of the TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in

⁸ **Note to Draft:** This Exhibit A and the form of TIFIA Bond attached to the Fifth Supplemental Indenture will each be updated to an agreed identical form.

such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(f) (*Manner of Payment*) and Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Final Maturity Date is amended in connection with an update to the Financial Plan approved by the TIFIA Lender pursuant to Section 21(a)(iii)(B) (*Financial Plan*) of the TIFIA Loan Agreement, the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the "**TIFIA Loan Agreement**") and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower's obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This TIFIA Bond is being issued by the Borrower pursuant to Chapter 26, Title 33.2, Code of Virginia of 1950, as amended, a resolution adopted by HRTAC on [____], 2021 and under and pursuant to a Master Indenture of Trust dated as of February 1, 2018 (the *Master Indenture*), between the Borrower and Wilmington Trust, National Association, or its successor, as trustee (the *Trustee*), as supplemented and amended by the First Supplemental Series Indenture of Trust dated as of February 1, 2018 (the "**First Series Supplement**"), the Second Supplemental Series Indenture of Trust dated as of December 1, 2019 (the "**Second Series Supplement**"), the Third Supplemental Series Indenture of Trust dated as of December 15, 2019 (the "**Third Series Supplement**"), the Fourth Supplemental Series Indenture of Trust dated as of October 1, 2020 (the "**Fourth Series Supplement**"), and the Fifth Supplemental Series Indenture of Trust dated as of [__ 1], 2021 (the "**Fifth Series Supplement**" and, together with the First Series Supplement, the Second Series Supplement, the Third Series Supplement, the Fourth Series Supplement, and the Master Indenture, the "**Indenture**"), between the Borrower and the Trustee, a certified copy of which Indenture is on file at the office of the Borrower.

This TIFIA Bond is issued as and constitutes a Subordinate Obligation within the meaning of such term in the Indenture.

This TIFIA Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision thereof (including any Member Locality) other than the Borrower. This TIFIA Bond shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code. The Borrower's authority to receive any or all of the taxes or other revenues pledged to

the Trustee for payment of HRTAC Bonds (as defined below) pursuant to the Indenture is subject to appropriation by the General Assembly of the Commonwealth, and neither the General Assembly nor the Borrower can or will pledge, covenant or agree to impose or maintain at any particular rate or level any of such taxes or other revenues.

The Indenture provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional series of Bonds for the purpose of financing projects, and of refunding outstanding obligations of the Borrower. Such additional series of Bonds may be issued as Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations (as defined in the Indenture). This TIFIA Bond, together with all other obligations heretofore or hereafter issued under the provisions of the Indenture, are herein collectively referred to as the “HRTAC Bonds”. Reference is hereby made to the Indenture for the provisions, among others, with respect to the terms and conditions on which the HRTAC Bonds of each series are or may be issued, the custody and application of the proceeds of HRTAC Bonds issued under the Indenture, the collection and disposition of revenues, the funds charged with and pledged to the payment of the interest on and the principal and premium, if any, of the HRTAC Bonds, the nature and extent of the security, the rights, duties and obligations of the Borrower, the Trustee and any paying agent for the HRTAC Bonds and the rights of the owners of the HRTAC Bonds. Certain of such funds, accounts and subaccounts secure only the Senior Obligations, certain of such funds, accounts and subaccounts secure only the Intermediate Lien Obligations, and certain of such funds, accounts and subaccounts secure only the Subordinate Obligations, all as more fully described in the Indenture.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The owner of this TIFIA Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute any suit or other proceeding with respect to the Indenture, except as provided in the Indenture.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws

are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until the Trustee has executed the Certificate of Authentication appearing on this TIFIA Bond and inserted the date of authentication.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION has caused this TIFIA Bond to be signed by the manual or facsimile signature of its Chair and this Bond to be dated the Effective Date set forth above.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Name: Linda B. Johnson
Title: Chair

ATTEST:

By: _____
Kevin B. Page
Executive Director

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Indenture.

Authentication Date: _____

WILMINGTON TRUST, NATIONAL
ASSOCIATION

By: _____

Name: Joy Holloway
Title: Vice President

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

Borrower Fiscal Year

Amount

[]

\$794,000,000.00

EXHIBIT C

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS—
PRIMARY COVERED TRANSACTIONS**

The undersigned, on behalf of HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, hereby certifies that HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION has fully complied with its verification obligations under 2 CFR § 180.320 and hereby further confirms in accordance with 2 CFR § 180.335, that, to its knowledge, the Borrower and its principals (as defined in 2 CFR § 180.995):

- (a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);
- (b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR § 180.800(a); and
- (d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain TIFIA Loan Agreement, dated as of [___], 2021, between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name:
Title:

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through Section 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 36 (Notices; Payment Instructions) of the TIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as **Appendix One** to this **Exhibit D**. Supporting documentation should be submitted with the requisition.

All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if such day is not a Business Day, the next succeeding Business Day.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the TIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of or report prepared by an independent engineer relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender).

The TIFIA Lender shall promptly send to the Borrower, in accordance with Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as **Appendix Two** to this **Exhibit D**. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be

resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the TIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the TIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the TIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The TIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fails to ensure that VDOT has complied with its obligations to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the highest standards of VDOT's industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by VDOT with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or

(iv) fails to satisfy any condition set forth in Section 4 (Disbursement Conditions) or Section 12(b) (Conditions Precedent to All Disbursements) of the TIFIA Loan Agreement; or

(v) fails to deliver documentation satisfactory to the TIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Federal Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the TIFIA Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower (even if such disbursement has been approved by the TIFIA Lender), in each case if the TIFIA Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

Build America Bureau

United States Department of Transportation
c/o Director, Office of Credit Programs

Room W12-464
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

Federal Highway Administration
Virginia Division Office
400 North 8th St., Suite 750
Richmond, Virginia 23219-4825
Attn: Division Administrator

Re: HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION
PROJECT (TIFIA - [____])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2021 (the “**TIFIA Loan Agreement**”), by and between HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), we hereby request disbursement in the amount of \$[_____] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [_____].
2. The requested date of disbursement is [_____] 15, 20[___] (the “**Disbursement Date**”)[, which is the first Business Day following [_____] 15, 20[_____]].
3. The requested amount with respect to each Tranche is set forth below:
 - (a) Tranche A: \$[_____]
 - (b) Tranche B: \$[_____]
 - (c) Tranche C: \$[_____]
 - (d) Tranche D: \$[_____]

- (e) Tranche E: \$[_____]
4. The 2021 HRTF BANs were issued on [insert date] and \$[_____], representing the full amount off proceeds of such offering, less \$[_____], which was used to [fund reserves and] pay costs of issuance associated therewith) have been expended on Total Project Costs.
 5. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.
 6. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan and the amount of this Requisition, together with all prior Requisitions in respect of any Tranche, does not exceed the maximum principal amount for such Tranche.
 7. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
 8. The Borrower has ensured that VDOT has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
 9. As demonstrated in the Revised Financial Model most recently delivered to the TIFIA Lender and in the Project Budget, the funds that have been fully and completely committed and allocated to the Borrower by the providers thereof to pay Total Project Costs are sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule and by no later than the Projected Substantial Completion Date.
 10. Each of the insurance policies obtained by VDOT in satisfaction of the condition in Section 12(a)(xviii) (Conditions Precedent to Effectiveness) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
 11. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the TIFIA Lender and the FHWA Division Office and in accordance with the highest standards of VDOT's industry.
 12. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

13. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
14. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [*insert date of Application*] and is continuing.
15. A copy of the monthly construction progress report pursuant to Section 23(b)(i) (*Monthly Construction Progress Report*) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.
16. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(1)(1), to the extent the Federal Government deems appropriate.
17. A copy of this requisition has been delivered to each of the above named addressees.
18. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Trustee.]

Date: _____

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____

Name:

Title: _____

APPENDIX TWO TO EXHIBIT D

**DISAPPROVAL OF THE TIFIA LENDER
(TO BE DELIVERED TO THE BORROWER)**

Requisition Number [●] is [approved in part in the amount of \$[●]] [not approved]⁹ by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2021, by and between Hampton Roads Transportation Accountability Commission (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the TIFIA Lender’s sole discretion, and in no event shall the TIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and
through the Executive Director of the Build
America Bureau

By: _____
TIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

⁹Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

[INSERT REASONS FOR ANY PARTIAL OR FULL DENIAL OF APPROVAL.]

EXHIBIT E

COMPLIANCE WITH LAWS

The Borrower shall, and shall require VDOT, which shall in turn require that the Construction Contractors and their contractors and subcontractors at all tiers for the Project, to comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 CFR Part 35; 29 CFR Part 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 CFR Part 21);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 CFR Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), including the environmental mitigation requirements and commitments made by VDOT that result in the FHWA's approval of the NEPA Determination;
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (ix) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (x) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xi) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 CFR Part 1926 and 23 CFR § 635.108, as applicable);
- (xii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 CFR Part 5), and, as applicable, 23 U.S.C. § 113 and implementing regulations (23 CFR §§ 635.117(f) and 635.118), and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;

- (xiii) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 CFR § 635.410);
- (xiv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 CFR;
- (xv) The Cargo Preference Act of 1954, as amended (46 U.S.C. §55305), and implementing regulations (46 CFR Part 381);
- (xvi) The applicable requirements of 49 CFR Part 26 relating to the Disadvantaged Business Enterprise program; and
- (xvii) The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and implementing regulations (2 CFR § 200.216).

EXHIBIT F
RESERVED

EXHIBIT G

TIFIA DEBT SERVICE

[To be inserted on Effective Date]

EXHIBIT H-1

OPINIONS REQUIRED OF COUNSEL TO BORROWER

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that: (a) the Borrower is duly created and validly existing under the laws of the jurisdiction of formation; (b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action; (d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower; (f) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject; (g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and (h) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.

EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that: (a) each of the TIFIA Bond, the Indenture, and the TIFIA Supplemental Indenture has been duly authorized, executed, and delivered by the Borrower in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (b) each of the TIFIA Bond, the Indenture, and the TIFIA Supplemental Indenture is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions; (c) the TIFIA Bond is a Subordinate Obligation, secured by the Liens on the Trust Estate, and shall be subordinate to the Lien on the Trust Estate pledged to secure the Senior Obligations and the Intermediate Lien Obligations, and shall be *pari passu* to the Lien on the Trust Estate pledged to secure the Subordinate Obligations and is a Bond entitled to the benefits of a Bond under the Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person; (d) the Indenture and the TIFIA Supplemental Indenture create the valid and binding assignment and pledge of the Trust Estate to secure the payment of the principal of, interest on, and other amounts payable in respect of, the TIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act; (e) all actions by the Borrower that are required for the use of Pledged Revenues as required under the Indenture, the TIFIA Supplemental Indenture and under the TIFIA Loan Agreement have been duly and lawfully made; (f) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Pledged Revenues as required by the terms of the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Loan Agreement; (g) the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; and (h) the Borrower is not entitled to claim governmental immunity in any breach of contract action under the TIFIA Loan Agreement or the TIFIA Bond or by the Trustee under the Indenture Documents or the Toll Indenture.

EXHIBIT I

METHODOLOGY FOR FORECASTING HRTF REVENUES

Currently, the Virginia Department of Taxation (“VTAX”) prepares six-year revenue forecasts for the State’s state revenue sources on a bi-annual basis. The revenue forecasts include the non-general fund revenues dedicated transportation, such as HRTF Revenues, which are provided to the Hampton Roads Transportation Accountability Commission as specified in the Code of Virginia under Chapters 6 and 22.1. In any period when such information is provided to HRTAC, it will be utilized in the revenue projection described herein. If this information ceases to be available, HRTAC will consult with VDOT and VTAX to provide a replacement short-term forecast, acceptable to the Bureau.

Regional Retail Sales and Use Tax (“S&U Tax”) Forecasts

- Historical S&U Tax based on audited receipts
- Then the VDOT 6-year forecast (after the last year audited)
- Thereafter grow the S&U Tax based the compounded annual growth (CAGR) calculated on the historical 11 year sales tax and the 6 year of projected sales tax. (year end balance)

Note for the period prior to 2016 the growth of the LOST tax will be used a proxy for the historical S&U Tax.

Example for projections prepared within FY 2019

Years			
2008 – 2015	2016 – 2018	2019 – 2024	2025 onwards
Actual based on proxy	Actual audited S&U Tax receipts	VTAX projected S&U Tax receipts	Grow by prior year CAGR

where $CAGR = (VTAX \text{ projected S\&U Tax } 2024 / \text{ actual } 2008 \text{ S\&U Tax})^{(1/16)}$

Regional Motor Fuels Sales Tax (“RMF”) Forecasts

The regional motor fuels sales tax is equal to *Consumption x Price x Tax Rate*

- Historical RMF receipts based on audited receipts
- Then the VDOT 6-year forecast
- Thereafter grow the RMF Tax based the compounded annual growth (CAGR) calculated on the historical 6-year gas consumption and the 6 year of gas consumption

Note for the period prior to 2016 the growth of the LOST tax will be used a proxy.

Example for projections prepared with FY 2019

Years		
2012 – 2018	2019 – 2024	2025 onwards
Actual RMF	VDOT projected RMF Receipt	Grow by prior year CAGR
Actual gas usage	Projected gas usage	

where $CAGR = (VDOT \text{ projected gas usage } 2024 / \text{ actual } 2012 \text{ gas usage})^{(1/12)}$

EXHIBIT J

FORM OF CERTIFICATE OF TRUSTEE

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

TIFIA BOND,
HRTAC PROJECT
(TIFIA – [____])

The undersigned, Wilmington Trust, National Association (the “*Trustee*”), by its duly appointed, qualified and acting [Vice President], certifies with respect to the above referenced bond (the “*TIFIA Bond*”) dated as of [____], 2021, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Indenture (as defined below)):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of the United States of America.
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained and are in full force and effect.
3. The Indenture and the TIFIA Supplemental Indenture (each as defined herein) pertaining to the issuance of the TIFIA Bond to which the Trustee is a party was executed and the TIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the TIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the TIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture (“*Trusts*”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today,

and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section 5.3 and Section 15.3 of that certain Indenture (the “**Indenture**”), dated as of February 1, 2018, and the Supplemental Indenture pertaining to the TIFIA Bond (the “**TIFIA Supplemental Indenture**”), dated as of [] 1, 2021, each between the Hampton Roads Transportation Accountability Commission (the “**Borrower**”) and the Trustee.
7. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of [], 2021 (the “**TIFIA Loan Agreement**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Bondholder**”).
8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee and of Bond Registrar and Paying Agent for and in respect of the TIFIA Bond as set forth in the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Loan Agreement, including from time to time redeeming all or a portion of the TIFIA Bond as provided in Article IV of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Article XIV of the Indenture.
9. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture (including, but not limited to, the TIFIA Series 2021 Project Fund; the TIFIA Series 2021 Bond Debt Service Fund, and within such Fund the TIFIA Series 2021 Interest Account, the TIFIA Series 2021 Principal Account, the TIFIA Series 2021 Redemption Account and the TIFIA Revenue Sharing Account; and the TIFIA Series 2021 Bond Debt Service Reserve Fund) have been established as provided in the Indenture and the TIFIA Supplemental Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: [_____], 2021

WILMINGTON TRUST, NATIONAL
ASSOCIATION

By: _____
Its:

ANNEX ONE TO EXHIBIT J
OFFICERS OF TRUSTEE

ANNEX TWO TO EXHIBIT J
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT K-1

FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 2021 (the "TIFIA Loan Agreement"), by and among the Hampton Roads Transportation Accountability Commission (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

Pursuant to Section 12(a)(v) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the undersigned, Executive Director, as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 12(a)(v) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit A** is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 26 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (b) pursuant to Section 12(a)(ii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit B** are certified, complete, and fully executed copies of each Indenture Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived;
- (c) pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit C** is a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached to the TIFIA Loan Agreement as Exhibit C with respect to the Borrower and its principals (as defined in 2 CFR § 180.995);
- (d) pursuant to Section 12(a)(vi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that it is in compliance with the verification

requirements set forth in 2 CFR §§ 180.300 and 180.320 and with its obligations under 2 CFR § 180.330;

- (e) pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that:
 - a. With respect to the Project, the Borrower has complied with NEPA has delivered to the TIFIA Lender a copy of the NEPA Determination; and
 - b. The Borrower has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
- (f) pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit D** is a certificate from VDOT evidencing VDOT's compliance with its obligations under each Principal Project Contract, including the following:
 - a. VDOT has complied with (A) the disclosure requirements set forth in 2 CFR § 180.355, (B) the verification requirements set forth in 2 CFR §§ 180.300 and 180.320, and (C) its obligations under 2 CFR § 180.330 with respect to the Construction Contracts;
 - b. All Governmental Approvals necessary to commence construction of the Project have been obtained and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);
 - c. With respect to the Project, VDOT has complied with NEPA;
 - d. VDOT has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
 - e. VDOT and each applicable Principal Project Party, as and if applicable, have obtained insurance with respect to the Project, which meets the requirements of Section 15(e) (*Compliance with Principal Project Contracts*); and
 - f. Each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the Effective Date is (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect;
- (g) pursuant to Section 12(a)(viii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit E** is evidence that the Project has been included in (A) the metropolitan transportation improvement program adopted by the Hampton Roads Transportation Planning Organization, (B) the State transportation plan, and (C) the State

transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project;

- (h) pursuant to Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit F** is evidence of the assignment by at least two (2) Rating Agencies of public ratings of not less than ‘A-’ or ‘A3’ to the TIFIA Loan and to the Existing Indebtedness, and no such rating has been reduced, withdrawn or suspended as of the Effective Date;
- (i) pursuant to Section 12(a)(x) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has demonstrated that as of the Effective Date the funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof, or, in the case of HRTF Revenues, are reasonably anticipated to be available, and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule and in any event on or prior to the Projected Substantial Completion Date;
- (j) pursuant to Section 12(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has delivered to the TIFIA Lender certified, complete, and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender;
- (k) pursuant to Section 12(a)(xii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has delivered a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model (A) demonstrates that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrates a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 4.60, (C) does not reflect the commencement of amortization of the principal amount of any Senior Obligations before the Debt Service Payment Commencement Date, (D) uses the methodology in Exhibit I to the TIFIA Loan Agreement for the purpose of forecasting HRTF Revenues, and (E) is otherwise in form and substance acceptable to the TIFIA Lender;
- (l) pursuant to Section 12(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit H** is evidence that the Borrower (A) is authorized, pursuant Section 33.2-1920, as amended, Code of Virginia of 1950, to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) has recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee’s Lien on the Trust Estate (for the benefit of the Secured Parties)

to the extent contemplated by the Indenture Documents and required by applicable law, and (C) has paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing;

- (m) pursuant to Section 12(a)(xvi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 47-1742163, (ii) the Borrower's Data Universal Numbering System number is 081015577, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as **Exhibit I** is evidence of (iii);
- (n) pursuant to Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit J** is evidence that the Borrower is duly created and validly existing under the laws of the Commonwealth and a certified copy of the Borrower's Organizational Documents;
- (o) pursuant to Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit K** is a certified copy of the resolutions authorizing the execution of this Agreement, the TIFIA Supplemental Indenture, and the TIFIA Bond and the issuance of the TIFIA Bond;
- (p) pursuant to Section 12(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;
- (q) pursuant to Section 12(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that, as of the Effective Date, (i) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs; and
- (r) pursuant to Section 12(a)(xxii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit L** is a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form as Exhibit N to the TIFIA Loan Agreement in accordance with 49 CFR §20.100(b).

- (s) pursuant to Section 12(a)(xxiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit M** are forms of the Project BANs Supplemental Indenture, the Project BANs Bond, and any other documents required to issue the Project BANs on the Project BANs Closing Date, each in the form and substance satisfactory to the TIFIA Lender.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____

Name:

Title: Authorized Representative

EXHIBIT B TO EXHIBIT K-1

INCUMBENCY CERTIFICATE

The undersigned certifies that she is the Chair of the Hampton Roads Transportation Accountability Commission, a body politic and a political subdivision created under the laws of the Commonwealth of Virginia (the "Borrower"), and as such she is authorized to execute this certificate and further certifies that the following person has been elected or appointed, is qualified, and is now acting as an officer or authorized person of the Borrower in the capacity indicated below, and that the signature set forth opposite his name is a true and genuine signature. She further certifies that any of the officer or authorized person listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the TIFIA Loan Documents and/or the Indenture Documents as the Borrower's Authorized Representative (each as defined in that certain TIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

Name	Title	Signature
Kevin B. Page	Executive Director	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of _____, 2021.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name: Linda T. Johnson
Title: Chair

EXHIBIT K-2

FORM OF BORROWER'S PROJECT BANs CLOSING DATE BORROWER'S AUTHORIZED REPRESENTATIVE'S CERTIFICATE

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 2021 (the "TIFIA Loan Agreement"), by and among the Hampton Roads Transportation Accountability Commission (the "Borrower") and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

The undersigned, [____], as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 12(c)(i) of the TIFIA Loan Agreement, (i) the Project BANs have been approved by the Borrower and issued in accordance with the Indenture and Project BANs Supplemental Indenture, (ii) each of the conditions contained in the Indenture and the Project BANs Supplemental Indenture to the closing of the transactions contemplated thereby has been satisfied or waived with the consent of the TIFIA Lender, and (iii) Project BANs proceeds have been delivered to the Borrower;
- (b) pursuant to Section 12(c)(ii) of the TIFIA Loan Agreement, except for amendments effectuated pursuant to the terms of the Project BANs Supplemental Indenture, the Indenture shall remain in full force and effect, without any amendments thereto;
- (c) pursuant to Section 12(c)(iii) of the TIFIA Loan Agreement, attached hereto as **Exhibit A** are true, correct and complete copies of each of the Indenture, the Project BANs Supplemental Indenture, and the Project BANs Bond, executed by each of the parties thereto, in full force and effect, and in the form provided by the Borrower, with only such changes as are acceptable to the TIFIA Lender;
- (d) pursuant to Section 12(c)(iv) of the TIFIA Loan Agreement, [attached hereto as **Exhibit B** is a complete and fully executed copy of each other amendment, waiver or modification to any Principal Project Contract not delivered on the Effective Date, each of which is in full force and effect][there have been no amendments, waivers or modifications to any Principal Project Contract since the Effective Date];
- (e) pursuant to Section 12(c)(v), the Borrower has delivered the legal opinions of counsel to the Borrower and bond counsel to the Borrower to the TIFIA Lender;
- (f) pursuant to Section 12(c)(vi) of the TIFIA Loan Agreement, the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement (including Section 13 thereof) and in each other Related Document are true, correct and complete on and as of the Project BANs Closing Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties were true, correct and complete as of such earlier date); and

Exhibit L-1

- (g) pursuant to Section 12(c)(viii) of the TIFIA Loan Agreement, none of the ratings provided by the Borrower to the TIFIA Lender in satisfaction of the condition precedent specified in Section 12(a)(ix) of the TIFIA Loan Agreement as of the Effective Date has been reduced, withdrawn or suspended.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name:
Title: Authorized Representative

EXHIBIT B TO EXHIBIT K-2

INCUMBENCY CERTIFICATE

The undersigned certifies that she is the Chair of the Hampton Roads Transportation Accountability Commission, a body politic and a political subdivision created under the laws of the Commonwealth of Virginia (the "Borrower"), and as such she is authorized to execute this certificate and further certifies that the following person has been elected or appointed, is qualified, and is now acting as an officer or authorized person of the Borrower in the capacity indicated below, and that the signature set forth opposite his name is a true and genuine signature. She further certifies that the officer or authorized person listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the TIFIA Loan Documents and/or the Indenture Documents as the Borrower's Authorized Representative (each as defined in that certain TIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

Name	Title	Signature
Kevin B. Page	Executive Director	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of _____, 2021.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name: Linda T. Johnson
Title: Chair

EXHIBIT L

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

Build America Bureau

United States Department of Transportation

Room W12-464

1200 New Jersey Avenue, SE

Washington, D.C. 20590

Attention: Director, Office of Credit Programs

Project: Hampton Roads Transportation Accountability Commission Project (TIFIA – [_____])

Dear Director:

This Notice is provided pursuant to Section 15(f)(i)(A) (*Substantial Completion*) of that certain TIFIA Loan Agreement (the “TIFIA Loan Agreement”), dated as of [____] __, 2021, by and between the Hampton Roads Transportation Accountability Commission (the “**Borrower**”) and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the TIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the TIFIA Lender that:

- (a) on [*insert date Substantial Completion requirements were satisfied*], the Project satisfied each of the requirements for Substantial Completion set forth in the Comprehensive Agreement and the PAFA;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and

(c) Substantial Completion, as defined in the TIFIA Loan Agreement, has been achieved.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

Name:

Title:

EXHIBIT M

TIFIA LOAN REAMORTIZATION METHODOLOGY

The TIFIA loan principal to be paid on July 1 of each year is calculated by multiplying the percentages (set out in the Table below) by the amount of the Outstanding TIFIA Loan Balance at the start of the Debt Service Commencement Date. Any rounding differences will be applied to the last Principal Payment.

Year	Percentage
2025	
2026	
2027	
2028	
2029	
2030	
2031	
2032	
2033	
2034	
2035	
2036	
2037	
2038	
2039	
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2041	
2042	
2043	
2044	
2045	
2046	
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2049	
2050	
2051	
2052	
2053	
2054	
2055	
2056	
2057	
2058	
2059	

Exhibit M-1

2060	
2061	
Total	

EXHIBIT N

**CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF
APPROPRIATED FUNDS FOR LOBBYING**

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 2021 (the “TIFIA Loan Agreement”), by and among the Hampton Roads Transportation Accountability Commission (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement. The undersigned, on behalf of the Hampton Roads Transportation Accountability Commission, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of the TIFIA Loan.

(b) If any funds other than proceeds of the TIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the TIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the TIFIA Lender entered into the TIFIA Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the TIFIA Loan Agreement imposed by Section 1352 of title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: _____

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Name:
Title:

EXHIBIT O

SECTION 8.1(b) OF THE INDENTURE, AS AMENDED BY THE TIFIA SUPPLEMENTAL INDENTURE

(b) At least once each month, not later than the last Business Day of each month, HRTAC shall make transfers from the Revenue Fund in the amounts and in the order of priority set forth below:

FIRST: To each Senior Debt Service Fund ratably, the amount, if any, required under the Related Series Supplement so that the balance therein on the next Payment Date shall equal the amount of principal, if any, and interest due on the next Payment Date on the Related Series of Bonds; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in a Senior Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

SECOND: To each Senior Debt Service Reserve Fund, ratably, the amount, if any, required so that the balance in each such Fund shall be equal to the respective Senior Debt Service Reserve Requirement;

THIRD: To each Intermediate Lien Debt Service Fund, ratably, the amount, if any, required so that the balance in each such Fund shall equal the amount of principal, if any, and interest due on the Related Intermediate Lien Obligations on the next ensuing payment date; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in an Intermediate Lien Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

FOURTH: To each Intermediate Lien Debt Service Reserve Fund, ratably, the amount, if any, so that the balance in such Fund shall be equal to the respective Intermediate Lien Debt Service Reserve Requirement;

FIFTH: To each Subordinate Debt Service Fund, ratably, the amount, if any, required so that the balance in each such Fund shall equal the amount of principal, if any, and interest due on the Related Subordinate Obligations on the next ensuing payment date; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in a Subordinate Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

SIXTH: To each Subordinate Debt Service Reserve Fund, ratably, the amount, if any, so that the balance in such Fund shall be equal to the respective Subordinate Debt Service Reserve Requirement;

SEVENTH: To each Rebate Fund the amounts necessary to provide for the payment of any Rebate Amounts with respect to the Related Series of Bonds as confirmed in an Officer's Certificate;

EIGHTH: To the Operating Account of the Operating Fund, the amount of funds necessary to pay Operating Expenses during such period in accordance with the Annual Budget;

NINTH: To the Operating Reserve Account of the Operating Fund, the amount, if any, so that the balance in such Account shall be equal to the Operating Reserve Requirement;

TENTH, To fund any Hedging Termination Obligation in connection with a Qualified Hedge;

ELEVENTH, After curing any deficiencies as required by Section 8.5(b) of the Master Indenture to the deposits and balances required in "FIRST" through "TENTH" above, to the TIFIA Revenue Sharing Account, the amount, if any, as may be required under Section 6.1 of the Second Supplemental Indenture of Trust dated as of December 1, 2019, and the applicable provisions of any other Series Supplement, an amount equal to Excess Revenues for such month, for deposit into the TIFIA Revenue Sharing Account; and

TWELFTH: To the General Fund, the balance remaining in the Revenue Fund.

EXHIBIT P

2 CFR Part 170

I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this TIFIA Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month of the Effective Date, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this TIFIA Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this **Exhibit P**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and,

iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR § 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this TIFIA Loan; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)).

SIXTH SUPPLEMENTAL SERIES INDENTURE OF TRUST

between

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee**

Dated as of [____], 2021

relating to

\$ _____

**Hampton Roads Transportation Accountability Commission
Hampton Roads Transportation Fund**

**Senior Lien Bond Anticipation Notes
Series 2021A**

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SIXTH SUPPLEMENTAL SERIES INDENTURE OF TRUST

This **SIXTH SUPPLEMENTAL SERIES INDENTURE OF TRUST** (this “Sixth Series Supplement”) is made as of [_____], 2021 between the **HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a body politic and a political subdivision of the Commonwealth of Virginia (“HRTAC”), and **WILMINGTON TRUST, NATIONAL ASSOCIATION**, a national banking association, and its successors, as trustee (the “Trustee”).

RECITALS

WHEREAS, HRTAC is a body politic and a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) having the authority under the Code of Virginia of 1950, as amended (the “Virginia Code”), to receive all of the amounts dedicated to the Hampton Roads Transportation Fund (the “HRTF”) from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code;

WHEREAS, as provided in Chapter 26, Title 33.2, of the Virginia Code (the “HRTAC Act”), HRTAC shall use the moneys deposited in the HRTF solely for the purposes of (i) funding new construction projects on new or existing highways, bridges, and tunnels in the Member Localities (as hereinafter defined), giving priority to projects expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within the Member Localities, and (ii) paying HRTAC’s administrative and operating expenses as provided in the Annual Budget;

WHEREAS, Section 33.2-2606 of the HRTAC Act authorizes and empowers HRTAC to issue bonds and other evidences of debt and provides that the provisions of Article 5 (Section 33.2-1920 *et seq.*) of Chapter 19 of Title 33.2 of the Virginia Code shall apply, *mutatis mutandis*, to the issuance of such bonds and other evidences of debt (collectively, the “Bonds”) for any of HRTAC’s purposes;

WHEREAS, Section 33.2-1920 of the Virginia Code permits the Bonds to be payable from and secured by a pledge of all or any part of the revenues, moneys or funds of HRTAC as specified in a resolution adopted or indenture entered into by HRTAC, but that such Bonds shall not constitute debt of the Commonwealth or any political subdivision thereof (including any Member Locality) other than HRTAC, and that such Bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code;

WHEREAS, HRTAC has executed and delivered to the Trustee a Master Indenture of Trust dated as of February 1, 2018 (as supplemented and amended, the “Master Indenture”), under which, among other things, HRTAC has provided for the financing and refinancing of the costs of Projects through the issuance from time to time of Bonds, payable from and secured by the HRTAC Revenues;

WHEREAS, HRTAC now desires to issue, sell, and deliver a Series of Senior Lien Obligations under the Master Indenture in the original aggregate principal amount of \$ _____ (as further described in Section 2.1(a) below, the “2021A Notes”);

WHEREAS, HRTAC will use the proceeds of the 2021A Notes to: (a) pay, or to reimburse itself for, portions of the costs of the construction and acquisition of Projects described in Exhibit A hereto (collectively, the “2021A Notes Projects”), (b) pay certain capitalized interest on the 2021A Notes, and (c) finance certain costs of issuance of the 2021A Notes;

WHEREAS, the Master Indenture provides that, as a condition to the issuance and authentication of any Series of Bonds, HRTAC shall deliver to the Trustee a Series Supplement, which shall consist of this Sixth Series Supplement; and

WHEREAS, all things necessary to make the 2021A Notes valid and binding limited obligations of HRTAC, when authenticated and issued as provided in this Sixth Series Supplement, and to constitute this Sixth Series Supplement a valid and binding Series Supplement securing the payment of the principal of and premium, if any, and interest on the 2021A Notes, have been done and performed.

NOW, THEREFORE, HRTAC hereby covenants and agrees with the Trustee and with the Owners, from time to time, of the 2021A Notes, as follows:

ARTICLE I SERIES SUPPLEMENT

Section 1.1 Series Supplement This Sixth Series Supplement is a Series Supplement that is authorized and executed by HRTAC and delivered to the Trustee pursuant to and in accordance with Articles V and XV of the Master Indenture. All terms, covenants, conditions and agreements of the Master Indenture apply with full force and effect to the 2021A Notes, except as otherwise expressly stated in this Sixth Series Supplement.

Section 1.2 Definitions. All capitalized words and terms used in this Sixth Series Supplement, including in the recitals, shall have the meanings set forth in Article I of the Master Indenture unless the context clearly requires a different or separate meaning. In addition, the following words and terms have the following meanings in this Sixth Series Supplement unless the context clearly requires otherwise:

“2021A Cost of Issuance Fund” means the Cost of Issuance Fund Related to the 2021A Notes established pursuant to Section 7.1 of the Master Indenture and Section 4.1 of this Sixth Series Supplement.

“2021A Note Debt Service Fund” means the Debt Service Fund Related to the 2021A Notes established pursuant to Section 7.1 of the Master Indenture and Section 4.1 of this Sixth Series Supplement.

“2021A Notes” means the Series of Senior Lien Obligations authorized to be issued under Section 2.1(a) of this Sixth Series Supplement.

“2021A Notes Principal Payment Date” means _____.

“2021A Notes Projects” means, collectively, the Projects described in Exhibit A hereto.

“2021A Project Fund” means the Project Fund Related to the 2021A Notes established pursuant to Section 7.1 of the Master Indenture and Section 4.1 of this Sixth Series Supplement.

“2021A Rebate Fund” means the Rebate Fund Related to the 2021A Notes established pursuant to Section 7.1 of the Master Indenture and Section 4.1 of this Sixth Series Supplement.

“2021A Tax Regulatory Agreement” means the Tax Certificate and Regulatory Agreement dated the Closing Date made by HRTAC for the benefit of the Trustee and the Owners of the 2021A Notes.

“Closing Date” means the date of the issuance, authentication and delivery of the 2021A Notes.

“Dated Date” means the Closing Date.

“DTC” shall have the meaning set forth in Section 2.3 of this Sixth Series Supplement.

“Fifth Series Supplement” means the Fifth Supplemental Series Indenture of Trust dated as of [____], 2021 between HRTAC and the Trustee, supplementing and amending the Master Indenture.

“Letter of Representations” means HRTAC’s Blanket Issuer Letter of Representations to DTC dated January 22, 2018.

“Master Indenture” means the Master Indenture of Trust dated as of February 1, 2018, between HRTAC and the Trustee, as the same may be modified, altered, amended and supplemented from time to time in accordance with its terms.

“Member Localities” means, collectively, each county and city located in Planning District 23, established pursuant to Chapter 42, Title 15.2, of the Virginia Code, currently consisting of the Counties of Isle of Wight, James City, Southampton and York, and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg, and any other localities that may hereafter be added to HRTAC by amendment to the Virginia Code.

“Rebate Requirement” means, collectively, the requirements applicable to tax-exempt bonds under Section 148(f)(2) and (3) of the Tax Code.

“**Sixth Series Supplement**” means this Sixth Series Supplemental Series Indenture of Trust dated as of [_____], 2021, between HRTAC and the Trustee, being a Series Supplement with respect to the Series 2021A Notes pursuant to the provisions of the Master Indenture.

“**TIFIA Loan Agreement**” means the TIFIA Loan Agreement included as Exhibit A to the Fifth Series Supplement, dated as of _____, 2021, by and between HRTAC and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, as amended or supplemented from time to time.

Section 1.3 Representations of HRTAC. HRTAC represents that (i) it is duly authorized under the Constitution and laws of the Commonwealth, including, particularly and without limitation, Section 33.2-2606 of the HRTAC Act, to issue the 2021A Notes, to execute this Sixth Series Supplement, and to pledge and grant the security provided herein subject to the Master Indenture, (ii) all action on its part necessary for the execution and delivery of this Sixth Series Supplement has been taken, and (iii) the 2021A Notes in the hands of the Owners thereof are and will be valid and enforceable limited obligations of HRTAC.

ARTICLE II AUTHORIZATION AND DETAILS OF 2021A NOTES

Section 2.1 Authorization of 2021A Notes. (a) There is authorized to be issued pursuant to the Master Indenture a Series of Senior Lien Obligations in the aggregate principal amount of \$ _____, to be called the “Hampton Roads Transportation Fund Senior Lien Bond Anticipation Notes, Series 2021A.”

(b) The proceeds of the 2021A Notes shall be used for the purposes set forth in the recitals.

(c) The 2021A Notes are being issued to pay the costs of 2021A Notes Projects and in anticipation of the proceeds to be received by HRTAC from disbursements requested by HRTAC under and in accordance with the terms of the TIFIA Loan Agreement (which disbursements thereby increase the principal amount of the Bond issued by HRTAC as evidence of its obligation to repay the loan under the TIFIA Loan Agreement).

(d) The 2021A Notes are secured as provided in Article VI of this Sixth Series Supplement.

(e) Interest on the 2021A Notes through July 1, _____ shall be payable from amounts on deposit in the 2021A Capitalized Interest Subaccount (established in Article IV hereof) for so long as there are sufficient amounts therein or otherwise and thereafter as described in Article V of this Sixth Series Supplement. Principal due on the 2021A Notes on the 2021A Notes Principal Payment Date shall be payable from amounts available in the Funds and Accounts as described in Article V of this Sixth Series Supplement, from the proceeds of disbursements under the TIFIA Loan Agreement, and otherwise as provided in Section 6.2 hereof.

Section 2.2 Details of 2021A Notes. (a) The 2021A Notes shall be dated the Dated Date, shall be issued in denominations of \$5,000 and integral multiples of \$5,000, shall be numbered from R-1 upwards, sequentially, and shall bear interest, payable on each January 1 and July 1, commencing on January 1, 2022, at the annual rate of ___ percent (____%), and shall mature on the 2021A Notes Principal Payment Date.

(b) Each 2021A Note shall bear interest (i) from the Dated Date, if such 2021A Note is authenticated before January 1, 2022, or (ii) otherwise from the Interest Payment Date that is, or immediately precedes, the date on which such 2021A Note is authenticated; provided, however, that if at the time of authentication any payment of interest is in default, such 2021A Note shall bear interest from the date to which interest has been paid. Interest on the 2021A Notes shall be computed on the basis of a year of 360 days and twelve 30-day months.

(c) Interest on the 2021A Notes shall be payable by checks or drafts mailed to the Owners thereof at their addresses as they appear on the fifteenth day of the month preceding the Interest Payment Date on the registration books kept by the Trustee. Notwithstanding the foregoing, if (i) the Owner of a 2021A Note owns at least \$1,000,000 in aggregate principal amount of 2021A Notes, and (ii) such Owner has provided satisfactory prior notice to the Trustee regarding payment by wire transfer, then interest shall be paid to such Owner by wire transfer. Principal of and premium, if any, on the 2021A Notes shall be payable to the Owners thereof upon the surrender of the 2021A Notes at the Trustee's corporate trust office in Richmond, Virginia.

(d) Notwithstanding the foregoing, for so long as Cede & Co. or other nominee of DTC is Owner of all of the 2021A Notes, principal of and premium, if any, and interest on the 2021A Notes shall be payable as provided in the Letter of Representations.

(e) The principal of and premium, if any, and interest on the 2021A Notes shall be payable in lawful money of the United States of America.

(f) If the principal of any 2021A Note is not paid when due (whether at maturity or otherwise), then the overdue principal shall continue to bear interest until paid at the rate set forth in such 2021A Note.

Section 2.3 Book Entry Provisions for the 2021A Notes. (a) The 2021A Notes will be registered in the name of Cede & Co., a nominee of The Depository Trust Company, New York, New York ("DTC"), and immobilized in DTC's custody. One fully registered 2021A Note for the original principal amount of each maturity of the 2021A Notes will be registered to Cede & Co. Beneficial owners of the 2021A Notes will not receive physical delivery of the 2021A Notes. Individual purchases of the 2021A Notes may be made in book-entry form only in original principal amounts of \$5,000 and integral multiples of \$5,000. For as long as the 2021A Notes are held in book-entry format, payments of principal of and premium, if any, and interest on the 2021A Notes will be made to DTC or its nominee as the sole Owner on the applicable Payment Date in accordance with the Letter of Representations.

DTC is responsible for the transfer of the payments of the principal of and premium, if any, and interest on the 2021A Notes to the participants of DTC, which include securities brokers and

dealers, banks, trust companies, clearing corporations and certain other organizations (the “Participants”). Transfer of the payments of the principal of and premium, if any, and interest on the 2021A Notes to the beneficial owners of the 2021A Notes is the responsibility of the Participants and other nominees of such beneficial owners.

Transfer of beneficial ownership interests in the 2021A Notes shall be made by DTC and its Participants, acting as nominees of the beneficial owners of the 2021A Notes, in accordance with rules specified by DTC and its Participants. Neither HRTAC nor the Trustee makes any assurances that DTC, its Participants or other nominees of the beneficial owners of the 2021A Notes will act in accordance with such rules or on a timely basis.

HRTAC and the Trustee disclaim any responsibility or obligations to the Participants or the beneficial owners with respect to (i) the accuracy of any records maintained by DTC or any Participant, (ii) the payment by DTC or any Participant of any amount due to any beneficial owner in respect of the principal of and premium, if any, and interest on the 2021A Notes, (iii) the delivery by DTC or any Participant of any notice to any beneficial owner that is required or permitted under the terms of the Master Indenture or this Sixth Series Supplement to be given to Owners of the 2021A Notes, (iv) the selection of the beneficial owners to receive payment in any partial redemption of the 2021A Notes, or (v) any consent given or other action taken by DTC as Owner.

So long as Cede & Co., as nominee of DTC, is the sole Owner of the 2021A Notes, references in the Master Indenture or this Sixth Series Supplement to the Owners or registered owners of the 2021A Notes shall mean Cede & Co. and not the beneficial owners of the 2021A Notes. Any notice to or consent requested of Owners of 2021A Notes under the Master Indenture or this Sixth Series Supplement shall be given to or requested of Cede & Co.

(b) Replacement Notes (the “Replacement Notes”) will be registered in the name of and be issued directly to beneficial owners of the 2021A Notes rather than to DTC, or its nominee, but only if:

(1) DTC determines not to continue to act as securities depository for the 2021A Notes; or

(2) The Trustee or HRTAC has advised DTC of HRTAC’s determination that DTC is incapable of discharging its duties or that it is otherwise in the best interests of the beneficial owners of the 2021A Notes to discontinue the book-entry system of transfer.

(c) Upon the occurrence of an event described in subsection (b)(1) or (2) above (but the Trustee and HRTAC have no duty or undertake no obligation to make any investigation regarding the matters described in subsection (b)(2) above), HRTAC may attempt to locate another qualified securities depository. If HRTAC fails to locate another qualified securities depository to replace DTC, HRTAC shall execute and the Trustee shall authenticate and deliver to the Participants the Replacement Notes (substantially in the form set forth in Exhibit B with such appropriate variations, omissions and insertions as are permitted or required by the Master Indenture or this Sixth Series Supplement) to which the Participants are entitled for delivery to the

beneficial owners of the 2021A Notes. The Trustee shall be entitled to rely on the records provided by DTC as to the Participants entitled to receive Replacement Notes. The Owners of the Replacement Notes shall be entitled to the lien and benefits of the Master Indenture and this Sixth Series Supplement.

Section 2.4 Form of 2021A Notes. Each of the 2021A Notes shall be substantially in the form attached as Exhibit B to this Sixth Series Supplement, with such appropriate variations, omissions and insertions as permitted or required by the Master Indenture or this Sixth Series Supplement. There may be endorsed on any of the 2021A Notes such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law.

Section 2.5 Authentication of 2021A Notes. (a) Each 2021A Note shall bear a certificate of authentication, substantially as set forth in the form of the 2021A Note attached as Exhibit B, duly executed by the Trustee. The Trustee shall authenticate each 2021A Note with the signature of one of its authorized officers or employees, but it shall not be necessary for the same person to authenticate all of the 2021A Notes. Only such authenticated 2021A Notes shall be entitled to any right or benefit under the Master Indenture or this Sixth Series Supplement, and such certificate on any 2021A Note shall be conclusive evidence that the 2021A Note has been duly issued under and is secured by the provisions of the Master Indenture and this Sixth Series Supplement.

(b) The Trustee shall authenticate and deliver the 2021A Notes when there have been filed with it the following:

- i. The various documents, certificates and opinions required under Section 5.3 of the Master Indenture; and
- ii. An Officer's Certificate showing compliance with the provisions of Section 8.4 of the Second Series Supplement and Section 17(a) of the TIFIA Loan Agreement, with respect to the issuance of the 2021A Notes as Senior Lien Obligations, and delivery of the documents specified in Section 13(c) of the TIFIA Loan Agreement.

In connection with the foregoing, HRTAC specifies that the principal amount of the 2021A Notes, due and payable on [_____,] is expected to be payable from anticipated draws under the TIFIA Loan Agreement, which do not constitute HRTAC Revenues; therefore, such principal amount constitutes an "Excluded Principal Payment" as defined in the Master Indenture. Any disbursements under the TIFIA Loan Agreement received by or on behalf of HRTAC shall not constitute or comprise HRTAC Revenues.

**ARTICLE III
[RESERVED]**

**ARTICLE IV
ESTABLISHMENT OF FUNDS AND ACCOUNTS; APPLICATION OF PROCEEDS**

Section 4.1 Establishment of Funds and Accounts for the 2021A Notes. (a) In accordance with Section 7.1 of the Master Indenture, the following Funds are hereby established for the 2021A Notes:

(i) the 2021A Cost of Issuance Fund;

(ii) the 2021A Project Fund;

(iii) the 2021A Note Debt Service Fund, and within the 2021A Note Debt Service Fund there is established the 2021A Interest Account, the 2021A Principal Account, and the 2021A Capitalized Interest Subaccount; and

(iv) the 2021A Rebate Fund.

(b) All of the Funds and Accounts established pursuant to this Section shall be held by the Trustee.

(c) As provided in Section 7.1(b) of the Master Indenture, HRTAC has determined not to establish a debt service reserve fund securing the 2021A Notes, and the Owners of the Series 2021A Notes are not entitled to the benefits of any debt service reserve fund or account established for the benefit of any other Series of Bonds.

Section 4.2 Application of Sale Proceeds of the 2021A Notes. On the Closing Date, the Trustee shall apply the total amount received from the underwriters of the 2021A Notes in payment therefor (\$ _____, which is the principal amount of \$ _____ .00, plus original issue premium of \$ _____, less underwriting discount of \$ _____), as follows:

(1) \$ _____ shall be delivered to the Trustee to be deposited in the 2021A Cost of Issuance Fund;

(2) \$ _____ shall be delivered to the Trustee to be deposited in the 2021A Project Fund; and

(3) \$ _____ shall be delivered to the Trustee to be deposited in the 2021A Capitalized Interest Subaccount.

**ARTICLE V
APPLICATION OF CERTAIN FUNDS**

Section 5.1 Cost of Issuance Fund. (a) The Trustee shall disburse the amounts in the 2021A Cost of Issuance Fund to pay the issuance and financing costs of the 2021A Notes.

Disbursements from the 2021A Cost of Issuance Fund shall be made by the Trustee to HRTAC or as directed by HRTAC upon receipt by the Trustee of a requisition (upon which the Trustee shall be entitled to rely) signed by an HRTAC Representative and containing all information called for by, and otherwise being in the form of, Exhibit C-1.

(b) Any amount deposited in the 2021A Cost of Issuance Fund as described in Section 4.2(a)(1) that is not applied in accordance with Section 9.1 of the Master Indenture to pay the costs of issuance of the 2021A Notes shall be transferred to the 2021A Project Fund and applied as set forth in Section 5.2 below pursuant to an Officer's Certificate.

Section 5.2 Project Fund. (a) The Trustee will disburse the amounts in the 2021A Project Fund to the payment or reimbursement of the costs of the 2021A Notes Projects. Disbursements from the 2021A Project Fund shall be made by the Trustee to HRTAC or as directed by HRTAC upon receipt by the Trustee of a requisition (upon which the Trustee shall be entitled to rely) signed by an HRTAC Representative and containing all information called for by, and otherwise being in the form of, Exhibit C-2.

(b) If the Trustee receives an Officer's Certificate stating that certain amounts in the 2021A Project Fund will not be necessary to pay the costs of the 2021A Notes Projects, the Trustee shall then apply any remaining balance at the direction of an HRTAC Representative and with the consent of the TIFIA Lender, as defined in the TIFIA Loan Agreement, in such manner as will not, in the Opinion of Bond Counsel delivered to HRTAC and the Trustee, have an adverse effect on the tax-exempt status of the 2021A Notes.

Section 5.3 Note Debt Service Fund. (a) On or before each Interest Payment Date to and including [_____,] the Trustee shall transfer the interest payment due on the 2021A Notes from the 2021A Capitalized Interest Subaccount to the 2021A Interest Account. In the event (i) the amounts transferred pursuant to the preceding sentence are insufficient to pay the interest on the 2021A Notes in full on an Interest Payment Date, and (ii) amounts in the 2021A Capitalized Interest Subaccount are exhausted, HRTAC shall transfer HRTAC Revenues into the 2021A Interest Account in accordance with the provisions of Section 8.1(b) of the Master Indenture.

Thereafter, monthly transfers by HRTAC to the Trustee into the 2021A Interest Account under Section 8.1(b) of the Master Indenture shall be in an amount not less than one-sixth of the interest due on the 2021A Notes on the next ensuing Interest Payment Date, in accordance with the provisions of Section 8.1(b) of the Master Indenture.

If, on the 2021A Notes Principal Payment Date, any moneys remain in the 2021A Capitalized Interest Subaccount after the transfers required by the preceding paragraph, the remainder shall be applied to the payment of principal on the 2021A Notes in the event there are insufficient other moneys to make such payment in full, or to pay costs of the 2021A Notes Projects pursuant to written direction to the Trustee from an HRTAC Representative.

(b) On or before the 2021A Notes Principal Payment Date, HRTAC shall transfer to the Trustee for deposit into the Series 2021A Notes Principal Account such amount as may be specified in an Officer's Certificate from the proceeds of disbursements under the TIFIA Loan Agreement. In the event the amounts transferred in the preceding sentence are insufficient to pay

the principal on the 2021A Notes in full, HRTAC shall deposit HRTAC Revenues into the Series 2021A Notes Principal Account in accordance with the provisions of Section 8.1(b) of the Master Indenture until the 2021A Notes have been paid in full or from other funds that are available for such purpose pursuant to Section 6.2 herein.

(c) [For purposes of this section, HRTAC shall be entitled to a credit immediately before each Interest Payment Date for interest earned on monies deposited in the 2021A Interest Account.]

Section 5.4 Rebate Fund. The Trustee shall invest and apply amounts on deposit in the 2021A Rebate Fund as directed by Officer's Certificates provided pursuant to and in accordance with the Master Indenture.

ARTICLE VI SPECIAL COVENANTS

Section 6.1 Security for the 2021A Notes

(a) The 2021A Notes shall be issued pursuant to the Master Indenture and this Sixth Series Supplement as Senior Lien Obligations and shall be (a) equally and ratably secured with respect to the HRTAC Revenues and certain Funds, Accounts and Subaccounts established under the Master Indenture with any other Series of Senior Lien Obligations of HRTAC issued pursuant to Article V of the Master Indenture, without preference, priority or distinction of any Senior Lien Obligations over any other Senior Lien Obligations, and (b) secured with respect to certain Funds, Accounts and Subaccounts in accordance with the provisions of this Sixth Series Supplement. Notwithstanding anything in the Indenture to the contrary and as provided in Section 2.1(b) of the Master Indenture, the money and investments held in the 2021A Project Fund and in the 2021A Note Debt Service Fund, including the 2021A Capitalized Interest Subaccount, are pledged to secure the 2021A Notes.

(b) HRTAC has designated the principal amount of the Series 2021A Notes as an "Excluded Principal Payment" under the Master Indenture due to the use of anticipated draws under the TIFIA Loan Agreement for payment of the principal amount of the Series 2021A Notes. HRTAC may provide in an Officer's Certificate instructions to the Trustee for the transfer and deposit of such disbursements, if any, into the 2021A Principal Account of the 2021A Note Debt Service Fund as provided in Section 5.3(b) of this Sixth Supplemental Indenture.

Section 6.2 Covenant to Requisition Under TIFIA Loan Agreement and to Take Further Actions in the Event Such Moneys are Insufficient.

HRTAC hereby covenants to take all actions necessary to ensure that it will submit a timely requisition by the last business day of the month that precedes the 2021A Notes Principal Payment Date by two months such that sufficient monies under the TIFIA Loan Agreement may be disbursed to pay the 2021A Notes in full on the 2021A Notes Principal Payment Date. In the event the amounts received under the TIFIA Loan Agreement are insufficient to pay the principal on the

2021A Notes in full on the 2021A Notes Principal Payment Date, HRTAC hereby agrees to use its best efforts to find an alternative financing solution, which could include the issuance of rollover bond anticipation notes and/or other Bonds secured by HRTAC Revenues under the Master Indenture.

Section 6.3 Tax Regulatory Agreement. (a) HRTAC agrees that it will not take any action, or omit to take any action, if any such action or omission would adversely affect the excludability from gross income of interest on the 2021A Notes under Section 103 of the Tax Code. HRTAC agrees that it will not directly or indirectly use or permit the use of any proceeds of the 2021A Notes or any other funds of HRTAC or take or omit to take any action that would cause the 2021A Notes to be “arbitrage bonds” under Section 148(a) of the Tax Code. To these ends, HRTAC will comply with all requirements of Sections 141 through 150 of the Tax Code, including the Rebate Requirement, to the extent applicable to the 2021A Notes.

(b) Without limiting the generality of the foregoing, HRTAC agrees that (i) it will not directly or indirectly use or permit the use of the proceeds of the 2021A Notes except in accordance with the 2021A Tax Regulatory Agreement and (ii) insofar as the 2021A Tax Regulatory Agreement imposes duties and responsibilities on HRTAC, the 2021A Tax Regulatory Agreement is specifically incorporated by reference into this Section.

(c) The Trustee agrees to comply with all written instructions of an HRTAC Representative given in accordance with the 2021A Tax Regulatory Agreement, but the Trustee shall not be required to ascertain whether the instructions comply with the 2021A Tax Regulatory Agreement. The Trustee shall be entitled to receive and may request from time to time from HRTAC written instructions from a nationally-recognized bond counsel acceptable to the Trustee regarding the interpretation of Sections 141 through 150 of the Tax Code, and the Trustee agrees that it will comply with such instructions (upon which the Trustee and HRTAC may conclusively rely) so as to enable HRTAC to perform its covenants under this Section.

(1) Notwithstanding any provisions of this Section, if HRTAC shall provide to the Trustee an opinion of nationally-recognized bond counsel addressed and acceptable to HRTAC and the Trustee to the effect that any action required under this Section by incorporation or otherwise is not required or is no longer required to maintain the excludability from gross income of the interest on the 2021A Notes under Section 103 of the Tax Code, HRTAC and the Trustee may rely conclusively on such opinion in complying with the provisions of this Section.

ARTICLE VII MISCELLANEOUS

Section 7.1 Successors and Assigns. This Sixth Series Supplement is binding upon, inures to the benefit of and is enforceable by its parties and their respective successors and assigns.

Section 7.2 Severability. If any provision of this Sixth Series Supplement is held invalid by any court of competent jurisdiction, such holding will not invalidate any other provision.

Section 7.3 Governing Law. This Sixth Series Supplement will be governed by and construed under the applicable laws of the Commonwealth.

Section 7.4 Counterparts. This Sixth Series Supplement may be executed in several counterparts, each of which will be an original, and the counterparts will together constitute one and the same instrument.

Section 7.5 Parties Interested. Nothing in this Sixth Series Supplement expressed or implied is intended or will be construed to confer upon any Person, other than HRTAC, the Trustee and the Owners of the 2021A Notes, any right, remedy or claim under or by reason of this Sixth Series Supplement, this Sixth Series Supplement being intended for the sole and exclusive benefit of HRTAC, the Trustee and the Owners of the 2021A Notes.

[Signature Page Follows]

IN WITNESS WHEREOF, HRTAC and the Trustee have caused this Sixth Series Supplement to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Chair

**WILMINGTON TRUST, NATIONAL
ASSOCIATION, as Trustee**

By: _____

Joy Holloway
Vice President

EXHIBIT A

DESCRIPTION OF 2021A NOTES PROJECTS

All or a portion of the following projects:

1. Hampton Roads Bridge Tunnel Expansion Project
- [2. Hampton Roads Express Lanes, Segment 3]

EXHIBIT B
FORM OF 2021A NOTE

REGISTERED
R- _____

CUSIP
40934T _____

UNITED STATES OF AMERICA
COMMONWEALTH OF VIRGINIA

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION
HAMPTON ROADS TRANSPORTATION FUND
SENIOR LIEN BOND ANTICIPATION NOTE
SERIES 2021A

INTEREST RATE	MATURITY DATE	DATED DATE
_____ %	July 1, _____	[_____], 2021

REGISTERED OWNER:

PRINCIPAL AMOUNT:

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, a body politic and a political subdivision of the Commonwealth of Virginia (“HRTAC”), acknowledges itself indebted and for value received promises to pay upon surrender of this Note (defined herein) at the corporate trust office of **WILMINGTON TRUST, NATIONAL ASSOCIATION**, or its successor, as trustee and paying agent (the “Trustee”) under the Indenture (as defined below), to the registered owner of this Note (the “Owner”), or registered assigns or legal representative, the principal sum stated above on the maturity date stated above, and to pay interest on this Note semiannually on each January 1 and July 1, commencing January 1, 2022, at the annual rate stated above, solely from the sources pledged for such purpose as described below. The principal of and premium, if any, and interest on this Note are payable in lawful money of the United States of America.

“Indenture” means the Master Indenture of Trust dated as of February 1, 2018 (the “Master Indenture”), between HRTAC and Wilmington Trust, National Association, or its successor, as trustee (the “Trustee”), as amended and supplemented by the First Supplemental Series Indenture of Trust dated as of February 1, 2018 (the “First Supplemental Indenture”), the Second Supplemental Series Indenture of Trust dated as of December 1, 2019 (the “Second Supplemental Indenture”), the Third Supplemental Series Indenture of Trust dated as of December 15, 2019 (the “Third Supplemental Indenture”), the Fourth Supplemental Series Indenture of Trust dated as of October 1, 2020 (the “Fourth Supplemental Indenture”), the Fifth Supplemental Series Indenture of Trust dated as of [_____], 2021 (the “Fifth Supplemental Indenture Supplement”) and the Sixth Supplemental Series Indenture of Trust dated as [_____], 2021 (the “Sixth

Supplemental Indenture”). Unless otherwise defined, each capitalized term used in this Note has the meaning given it in the Indenture.

Interest is payable (i) from the dated date set forth above (the “Dated Date”), if this Note is authenticated before January 1, 2022 , or (ii) otherwise from the Interest Payment Date that is, or immediately precedes, the date on which this Note is authenticated (unless payment of interest on this Note is in default, in which case this Note shall bear interest from the date to which interest has been paid). Interest on this Note is computed on the basis of a year of 360 days and twelve 30-day months.

Interest is payable by check or draft mailed to the holder of this Note at the address that appears on the fifteenth day of the month preceding each Interest Payment Date on the registration books kept by the Trustee. Notwithstanding the foregoing, if (i) the Owner of this Note owns at least \$1,000,000 in aggregate principal amount of Notes (as defined below), and (ii) such Owner has provided satisfactory prior notice to the Trustee regarding payment by wire transfer, then interest shall be paid to such Owner by wire transfer. Notwithstanding anything to the contrary contained in this Note or in the Indenture, for so long as Cede & Co. or any other nominee of The Depository Trust Company (“DTC”) is the Owner of all of the Notes, the principal of and premium, if any, and interest on this Note shall be payable pursuant to the additional requirements provided under the Letter of Representations.

If the date of maturity of the principal of this Note or the date fixed for the payment of interest on this Note shall not be a Business Day , then payment of principal, premium, if any, and interest need not be made on such date, but may be made on the next succeeding Business Day, and, if made on such next succeeding Business Day, no additional interest shall accrue for the period after such date of maturity or date fixed for the payment of interest.

This Note and the issue of which it is a part and the premium, if any, and the interest on them are limited obligations of HRTAC and payable solely from the revenues, moneys and other property pledged to the Trustee for such purpose under the Indenture on a parity with the other Notes issued simultaneously herewith and the other Outstanding Senior Lien Obligations now or hereafter to be issued under the Indenture. **THE PRINCIPAL OF AND PREMIUM, IF ANY, AND INTEREST ON THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE A DEBT OF THE COMMONWEALTH OF VIRGINIA OR ANY POLITICAL SUBDIVISION THEREOF (INCLUDING ANY MEMBER LOCALITY) OTHER THAN HRTAC. THIS NOTE SHALL NOT CONSTITUTE AN INDEBTEDNESS WITHIN THE MEANING OF ANY DEBT LIMITATION OR RESTRICTION EXCEPT AS PROVIDED UNDER THE APPLICABLE PROVISIONS OF THE VIRGINIA CODE.**

This Note is one of an issue of \$ _____ Hampton Roads Transportation Fund Senior Lien Bond Anticipation Notes, Series 2021A (the “Notes”), of like date and tenor, except as to number, denomination, rate of interest, and maturity, authorized and issued by HRTAC pursuant to Chapter 26, Title 33.2, Code of Virginia of 1950, as amended, resolutions adopted by HRTAC on June 16, 2016, December 14, 2017, and _____, 2021, and the Indenture, to provide proceeds to be used, along with other available funds, to pay the issuance and financing costs of the Notes, to pay the costs of the construction and acquisition of the transportation facilities and projects described in Exhibit A to the Sixth Series Supplement, and to pay certain capitalized interest on

the Notes. The Notes are issued as and constitute Senior Lien Obligations within the meaning of such term in the Indenture.

Reference is made to the Indenture and all amendments and supplements to it for a description of the provisions, among others, with respect to the nature and extent of the security for the Notes, the rights, duties and obligations of HRTAC and the Trustee, the rights of the Owners of the Notes and the terms upon which the Notes are issued and secured. HRTAC's authority to receive any or all of the taxes or other revenues pledged to the Trustee for payment of the Notes pursuant to the Indenture is subject to appropriation by the General Assembly of the Commonwealth, and neither the General Assembly nor HRTAC can or will pledge, covenant or agree to impose or maintain at any particular rate or level any of such taxes or other revenues.

HRTAC may from time to time hereafter issue additional bonds ranking equally with or subordinate to the Notes for certain purposes on the terms provided in the Indenture.

The Owner of this Note shall have no right to enforce the provisions of the Indenture or to take any action with respect to any Event of Default under the Indenture or to institute, appear in or defend any suit or other proceedings with respect to it, except as provided in the Indenture.

Modifications or alterations of the Indenture, or of any supplement to it, may be made only to the extent and in the circumstances permitted by the Indenture.

The Notes are issuable as registered bonds in denominations of \$5,000 and integral multiples of \$5,000. Upon surrender for transfer or exchange of this Note at the Trustee's designated corporate trust office, HRTAC shall execute and the Trustee shall authenticate and deliver in the name of the transferee or transferees or Owner, as applicable, a new Note or Notes of like date, tenor and of any authorized denomination for the aggregate principal amount any such transferee or Owner is entitled to receive, subject in each case to such reasonable regulations as HRTAC or the Trustee may prescribe. When presented for transfer, exchange, or payment, this Note must be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and substance reasonably satisfactory to HRTAC and the Trustee, duly executed by the Owner or by his or her duly authorized attorney-in-fact or legal representative. Any such transfer or exchange shall be at HRTAC's expense, except that the Trustee may charge the person requesting such transfer or exchange the amount of any tax or other governmental charge required to be paid with respect to it.

The Owner of this Note shall be treated as the person exclusively entitled to payment of principal, premium, if any, and interest and the exercise of all other rights and powers of the Owner, except that interest payments shall be made to the person registered as Owner on the fifteenth day of the month preceding each Interest Payment Date.

All acts, conditions and things required to happen, exist or be performed precedent to and in the issuance of this Note have happened, exist and have been performed.

This Note shall not become obligatory for any purpose, be entitled to any security or benefit under the Indenture or be valid until the Trustee has executed the Certificate of Authentication appearing on this Note and inserted the date of authentication.

IN WITNESS WHEREOF, the Hampton Roads Transportation Accountability Commission has caused this Note to be signed by the manual or facsimile signature of its Chair, to be attested by the manual or facsimile signature of its Executive Director and this Note to be dated the Effective Date set forth above.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Chair

ATTEST:

By: _____
Kevin B. Page
Executive Director

* * * * *

CERTIFICATE OF AUTHENTICATION

This Note is one of the Notes described in the above-mentioned Indenture.

Authentication Date: [_____], 2021

**WILMINGTON TRUST, NATIONAL
ASSOCIATION**, as Trustee

By: _____
Joy Holloway
Vice President

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto

PLEASE INSERT SOCIAL SECURITY OR OTHER
IDENTIFYING NUMBER OF TRANSFEREE

(PLEASE PRINT OR TYPEWRITE NAME AND ADDRESS, INCLUDING ZIP CODE OF
TRANSFEREE)

this Note and all rights under it, and irrevocably constitutes and appoints
_____, attorney, to transfer this Note on the books kept for its
registration, with full power of substitution.

Dated: _____

Tax I.D. No. _____

Signature Guaranteed:

(NOTE: The signature of the registered owner
or owners must be guaranteed by an Eligible
Guarantor Institution such as a Commercial
Bank, Trust Company, Securities
Broker/Dealer, Credit Union or Savings
Association which is a member of a medallion
program approved by The Securities Transfer
Association, Inc.)

Registered Owner
(NOTE: The signature above must correspond
exactly with must correspond exactly with the
name of the registered owner as it appears on the
front of this Note.)

EXHIBIT C-1

**FORM OF
2021A COST OF ISSUANCE FUND REQUISITION**

Wilmington Trust, National Association, as Trustee

Requisition No. _____

Attn: _____

Dated: _____

Re: Direction to Make Disbursements from the 2021A Cost of Issuance Fund for the HRTAC Hampton Roads Transportation Fund Senior Lien Bond Anticipation Notes

Pursuant to Section 5.1 of the Sixth Supplemental Series Indenture of Trust dated as of [July 15], 2021 (the "Sixth Series Supplement"), between the Hampton Roads Transportation Accountability Commission ("HRTAC"), and Wilmington Trust, National Association, as trustee (the "Trustee"), the Trustee is directed to disburse from the 2021A Cost of Issuance Fund the amount indicated below.

Each capitalized terms not otherwise defined herein has the same meaning as used in the Sixth Series Supplement.

The undersigned certifies as follows:

1. The name(s) and address(es) of the person(s), firm(s) or corporation(s) to whom the disbursement(s) are due and the amounts to be disbursed are as follows:

<u>Name and Address</u>	<u>Amount</u>
-------------------------	---------------

[Use an additional page if necessary.]

2. The total amount to be disbursed is \$ _____.

3. The undersigned is a "HRTAC Representative" within the meaning of the Sixth Series Supplement and the Master Indenture defined therein.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
HRTAC Representative

EXHIBIT C-2

**FORM OF
2021A PROJECT FUND REQUISITION**

Wilmington Trust, National Association, as Trustee

Requisition No. _____

Dated: _____

Attn: _____

Re: Direction to Make Disbursements from the 2021A Project Fund for the HRTAC Hampton Roads Transportation Fund Senior Lien Bond Anticipation Notes

Pursuant to Section 5.2 of the Sixth Series Supplement of Trust dated as of [July 15], 2021 (the "Sixth Series Supplement"), between the Hampton Roads Transportation Accountability Commission ("HRTAC"), and Wilmington Trust, National Association, as trustee (the "Trustee"), the Trustee is directed to disburse from the 2021A Project Fund the amount indicated below.

Each capitalized terms not otherwise defined herein has the same meaning as used in the Sixth Series Supplement.

The undersigned certifies as follows:

4. The name(s) and address(es) of the person(s), firm(s) or corporation(s) to whom the disbursement(s) are due and the amounts to be disbursed are as follows:

<u>Name and Address</u>	<u>Amount</u>
-------------------------	---------------

[Use an additional page if necessary.]

5. The total amount to be disbursed is \$_____.

6. The project for which the obligation(s) to be paid was/were incurred:
_____.

7. The undersigned is a "HRTAC Representative" within the meaning of the Sixth Series Supplement and the Master Indenture defined therein.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
HRTAC Representative

NEW ISSUE
BOOK ENTRY ONLY

Ratings: Moody's: "___"
S&P: "___"
(See "Ratings" herein)

In the opinion of Bond Counsel, under current law and assuming the compliance with certain covenants and the accuracy of certain representations and certifications made by HRTAC, interest on the Series 2021A Notes (i) is excludable from gross income for federal income tax purposes under Section 103 of the Internal Revenue Code of 1986, as amended (the "Tax Code"), (ii) is not a specific item of tax preference for purposes of the federal alternative minimum tax imposed under the Tax Code, and (iii) is exempt from income taxation by the Commonwealth of Virginia. See "TAX MATTERS."

Hampton Roads Transportation Accountability Commission

\$ _____ *



Hampton Roads Transportation Fund Senior Lien Bond Anticipation Notes Series 2021A

Dated: Date of Delivery

Due: July 1, as shown on the inside cover

This Official Statement has been prepared by the Hampton Roads Transportation Accountability Commission ("HRTAC" or the "Commission") to provide information on the above-referenced notes (the "Series 2021A Notes"). Selected information is presented on this cover page for the convenience of the reader. To make an informed decision regarding the Series 2021A Notes, a prospective investor should read this Official Statement in its entirety.

Security/Payment

The Series 2021A Notes are limited obligations of HRTAC that are payable solely from certain funds pledged by HRTAC for such purpose under the Master Indenture (defined herein). The Series 2021A Notes are on parity in payment and the pledge of such funds with all other Senior Bonds and are senior to all Intermediate Lien Obligations and Subordinate Obligations, each as defined herein, as described in "SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES." The pledged funds consist of amounts credited by the Commonwealth of Virginia (the "Commonwealth") to the Hampton Roads Transportation Fund (the "HRTF"), a nonreverting fund held by the State Treasurer and recorded on the books of the Comptroller of Virginia and transferred to HRTAC for inclusion in the HRTAC Revenues (defined herein). The HRTF consists of revenues generated by (i) an additional 0.7% retail sales and use tax on transactions occurring in HRTAC's Member Localities (defined herein), and (ii) an additional wholesale motor vehicle fuels sales tax on transactions occurring in the Member Localities at a rate of 7.6 cents per gallon on gasoline and gasohol (and 7.7 cents per gallon on diesel), subject to an annual adjustment in accordance with the consumer price index beginning July 1, 2021. The availability of these tax revenues for deposit in the HRTF is subject to annual appropriation by the General Assembly of the Commonwealth, and the General Assembly may eliminate or change the source of funds for the HRTF at any time. HRTAC relies entirely on the Commonwealth to collect and deposit such funds in the HRTF and to transfer them to HRTAC for inclusion in the HRTAC Revenues. HRTAC has no taxing powers. The Series 2021A Notes are not a debt of the Commonwealth or any political subdivision thereof (including any Member Locality) other than HRTAC. Neither the faith and credit nor the taxing power of the Commonwealth or any of its political subdivisions (including any Member Locality) is pledged to the payment of the Series 2021A Notes. It is anticipated that the Series 2021A Notes will be paid at their maturity from a disbursement made to HRTAC under the 2021 TIFIA Loan Agreement (defined herein).. See "INTRODUCTION—Security and Sources of Payment" and "SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES."

Issued Pursuant to

The Series 2021A Notes will be issued pursuant to a Master Indenture of Trust dated as of February 1, 2018, and a Sixth Supplemental Series Indenture of Trust to be dated as of _____ 1, 2021. The Commission approved the Series 2021A Notes in a resolution dated _____, 2021.

Purpose

The proceeds of the Series 2021A Notes, along with other available funds, will be used to finance a portion of the costs of the Hampton Roads Bridge Tunnel expansion project, to fund [a portion of the] capitalized interest on the Series 2021A Notes, and to pay costs of issuance of the Series 2021A Notes. See "DESCRIPTION OF THE SERIES 2021A Notes—Estimated Sources and Uses of Funds."

Interest Rates/Yields

See inside cover.

Interest Payment Dates

January 1 and July 1, commencing January 1, 2022.

Redemption Terms

The Series 2021A Notes are not subject to redemption prior to maturity.

Denominations

\$5,000 or integral multiples thereof.

Closing/Delivery Date

_____, 2021.*

Registration

Full book-entry only; The Depository Trust Company, New York, New York.

Trustee

Wilmington Trust, National Association.

Bond Counsel

Kaufman & Canoles, a Professional Corporation, Richmond, Virginia.

Underwriter's Counsel

Butler Snow LLP, Richmond, Virginia.

Financial Advisor

PFM Financial Advisors, LLC, Orlando, Florida.

* Preliminary, subject to change.

This Preliminary Official Statement and the information contained herein are subject to change, completion and amendment without notice. The Series 2021A Notes may not be sold nor may an offer to buy be accepted prior to the time the Official Statement is delivered in final form. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Series 2021A Notes in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of such jurisdiction.

Official Statement Date: _____, 2021

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

\$ _____*
HAMPTON ROADS TRANSPORTATION FUND
SENIOR LIEN BOND ANTICIPATION NOTES
SERIES 2021A

_____1*	Principal Amount*	Interest Rate	Yield	CUSIP†
20__	\$			

* Preliminary, subject to change.

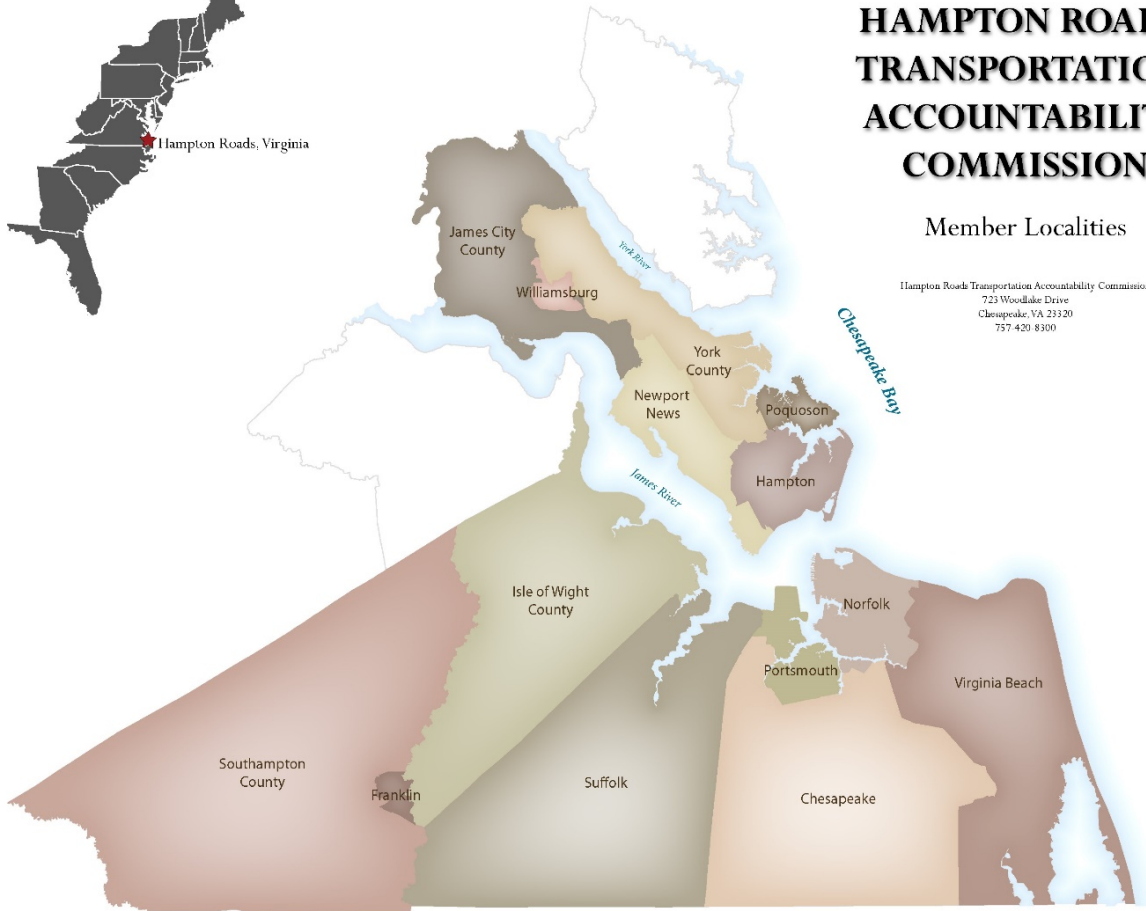
† CUSIP® is a registered trademark of the American Bankers Association. The CUSIP numbers listed above are being provided solely for the convenience of bondholders, and neither HRTAC nor the Underwriters make any representation with respect to such numbers or undertake any responsibility for their accuracy. The CUSIP numbers are subject to being changed after the issuance of the Series 2021A Notes.



HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

Member Localities

Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, VA 23320
757 420 8300



HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

VOTING MEMBERS

Donnie R. Tuck, Chair, *City of Hampton*
Dr. Richard W. “Rick” West, Vice Chair, *City of Chesapeake*

Kenneth C. Alexander, <i>City of Norfolk</i>	William M. McCarty, <i>Isle of Wight County</i>
Christopher D. Cornwell, Sr., <i>Southampton County</i>	Michael P. Mullin, <i>Virginia House of Delegates</i>
Robert M. Dyer, <i>City of Virginia Beach</i>	Douglas G. Pons, <i>City of Williamsburg</i>
Michael J. Hipple, <i>James City County</i>	Dr. McKinley L. Price, <i>City of Newport News</i>
Gordon C. Helsel, <i>City of Poquoson</i>	Frank M. Rabil, <i>City of Franklin</i>
Clinton L. Jenkins, <i>Virginia House of Delegates</i>	Shannon E. Glover, <i>City of Portsmouth</i>
Vacant, <i>Virginia House of Delegates</i>	Thomas G. Shepperd, <i>York County</i>
L. Louise Lucas, <i>Virginia Senate</i>	Dr. Richard W. “Rick” West, <i>City of Chesapeake</i>
Montgomery “Monty” Mason, <i>Virginia Senate</i>	Michael D. Duman, <i>City of Suffolk</i>

NON-VOTING MEMBERS

Stephen Brich, Commissioner of Highways	Virginia Department of Transportation
Jennifer Mitchell, Director	Department of Rail and Public Transportation
John F. Malbon, Member	Commonwealth Transportation Board
Stephen A. Edwards, Executive Director	Virginia Port Authority

HRTAC SENIOR STAFF

Kevin B. Page, Executive Director

GENERAL COUNSEL

Willcox & Savage, P.C.
Norfolk, Virginia

BOND COUNSEL

Kaufman & Canoles, a Professional Corporation
Richmond, Virginia

FINANCIAL ADVISOR

PFM Financial Advisors, LLC
Orlando, Florida

The Series 2021A Notes will be exempt from registration under the Securities Act of 1933, as amended. As obligations of a political subdivision of the Commonwealth, the Series 2021A Notes will also be exempt from registration under the securities laws of the Commonwealth.

No dealer, broker, salesman or other person has been authorized by HRTAC to give any information or to make any representations other than those contained in this Official Statement, and, if given or made, such other information or representations must not be relied upon as having been authorized by HRTAC. This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Series 2021A Notes by any person in any jurisdiction in which it is unlawful for such person to make an offer, solicitation or sale. This Official Statement is not to be construed as a contract or agreement between HRTAC and the purchasers or owners of any of the Series 2021A Notes. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of HRTAC or in any other matters described herein since the date hereof or, as in the case of any information incorporated herein by reference to certain publicly available documents, since the date of such documents.

The information set forth herein has been obtained from HRTAC and other sources which are believed to be reliable, but such information is not guaranteed as to accuracy or completeness and is not to be construed as a representation by any of such sources as to information provided by any other source. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of HRTAC or in any other matters described herein since the date hereof or, as in the case of any information incorporated herein by reference to certain publicly available documents, since the date of such documents.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS IN THIS OFFICIAL STATEMENT

Certain statements contained in this Official Statement, including the Appendices hereto, reflect not historical facts but forecasts, projections and “forward-looking statements.” No assurance can be given that the future results discussed in certain sections of this Official Statement will be achieved and actual results may differ materially from the forecasts and projections contained herein. In this respect, words such as “plan,” “expect,” “estimate,” “project,” “anticipate,” “intend,” “believe,” “budget” or words of similar import are intended to identify forward-looking statements. A number of factors affecting HRTAC and its financial results could cause actual results to differ materially from those stated in the forward-looking statements. All projections, forecasts, assumptions and other forward-looking statements are expressly qualified in their entirety by the cautionary statements set forth in this Official Statement. Such forward-looking statements include, among others, certain of the information under the captions “**SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES,**” “**DESCRIPTION OF THE SERIES 2021A NOTES – Estimated Sources and Uses of Funds,**” “**DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS,**” and “**INVESTMENT CONSIDERATIONS.**” See also “**FORWARD-LOOKING STATEMENTS.**” All statements in this Official Statement, including forward-looking statements, speak only as of the date they are made, and HRTAC and the Underwriters disclaim any obligation to update any of the forward-looking statements contained herein to reflect future events or developments.

The achievement of certain results or other expectations contained in or implied by such forward-looking statements involves known and unknown risks, uncertainties and other factors that may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. HRTAC does not plan to issue updates or revisions to those forward-looking statements if or when its expectations change or events, conditions or circumstances on which such statements are based occur or fail to occur.

Any references to website addresses presented herein are for informational purposes only and may be in the form of a hyperlink solely for the reader’s convenience. Unless specified otherwise, such websites and the information or links contained therein are not incorporated into, and are not part of, this offering document for purposes of, and as that term is defined in, Securities and Exchange Commission Rule 15c2-12, as amended.

The Underwriters have provided the following sentence for inclusion in this Official Statement. The Underwriters have reviewed the information in this Official Statement in accordance with, and as part of, their responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriters do not guarantee the accuracy or completeness of such information.

Third parties may engage in transactions that stabilize, maintain or otherwise affect the price of the Series 2021A Notes, including transactions to (i) overallot in arranging the sales of the Series 2021A Notes, and (ii) make purchases and sales of Series 2021A Notes, for long or short account, on a when-issued basis or otherwise, at such prices, in such amounts and in such manner beyond the control of HRTAC.

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OFFICIAL STATEMENT

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

\$ _____*

HAMPTON ROADS TRANSPORTATION FUND SENIOR LIEN BOND ANTICIPATION NOTES SERIES 2021A

INTRODUCTION

The purpose of this Official Statement, including the cover page and Appendices hereto, is to set forth certain information in connection with the issuance by the Hampton Roads Transportation Accountability Commission (“HRTAC” or the “Commission”) of its \$ _____* Hampton Roads Transportation Fund Senior Lien Bond Anticipation Notes, Series 2021A (the “Series 2021A Notes”).

This information speaks as of its date and is not intended to indicate future or continuing trends in the financial or economic position of HRTAC or of the revenues that will be credited to the Hampton Roads Transportation Fund (the “HRTF”) (as described herein) and transferred to HRTAC. The following material is qualified in its entirety by the detailed information and financial statements appearing elsewhere in this Official Statement, including the Appendices hereto, reference to which is hereby made for all purposes.

Unless otherwise defined in this Official Statement, all capitalized terms shall have the meanings as set forth in Appendix A – “DEFINITIONS AND SUMMARIES OF THE MASTER INDENTURE AND THE 2021A SERIES SUPPLEMENT.”

Hampton Roads Transportation Accountability Commission

HRTAC is a body politic and a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) created pursuant to the Code of Virginia of 1950, as amended (the “Virginia Code”), under Title 33.2, Chapter 26, thereof (the “HRTAC Act”), and empowered to finance and construct highway, bridge and tunnel projects in Planning District 23 of the Commonwealth. Planning District 23 is an area designated by the Virginia Department of Housing and Community Development (“DHCD”) to provide a forum for addressing regional cooperation among local governments in the Hampton Roads region of southeastern Virginia (“Hampton Roads”). As provided by the HRTAC Act, the Commission embraces all of the cities and counties in Planning District 23, which currently include the Counties of Isle of Wight, James City, Southampton, and York, and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg (collectively, the “Member Localities”). All of the Member Localities other than Southampton County and the City of Franklin are located in the Virginia portion of the Virginia Beach-Norfolk-Newport News Metropolitan Statistical Area (the “Hampton Roads MSA”), certain economic and demographic information about which is included in Appendix D. Cities and counties in the Commonwealth are independent entities; therefore, the Member Localities do not overlap. Certain local governments, including but not limited to the Member Localities, have agreed to assemble as the Hampton Roads Planning District Commission (“HRPDC”); however, the Member Localities (and sources of taxable transactions generating revenues for the HRTF) are limited to the localities designated by DHCD as constituting Planning District 23 and are not entirely identical to the membership of HRPDC. The membership of the Hampton Roads Transportation Planning

* Preliminary, subject to change.

Organization (“HRTPO”), the federally-mandated metropolitan planning organization for transportation in the Hampton Roads region, is also not exactly the same as the composition of Planning District 23. For example, both the HRPDC and the HRTPO include Gloucester County which is not a Member Locality of HRTAC.

The HRTF was established as a nonreverting fund in the State Treasury under Chapter 766, 2013 Va. Acts of Assembly (“Chapter 766”), enacted on April 3, 2013 and effective July 1, 2013. Pursuant to Chapter 766, the General Assembly of the Commonwealth (the “General Assembly”) dedicated to the HRTF all of the revenues generated by (i) an additional 0.7% retail sales and use tax on transactions occurring within the Member Localities, and (ii) an additional wholesale motor vehicle fuels sales tax on transactions occurring in the Member Localities, which is now at a rate of 7.6 cents per gallon on gasoline and gasohol (and 7.7 cents per gallon on diesel), subject to an annual adjustment in accordance with the consumer price index beginning July 1, 2021 (collectively, the “HRTF Revenues”). See “HAMPTON ROADS TRANSPORTATION FUND—HRTF Revenues.”

Funds in the HRTF were originally to be directed by the HRTPO. However, pursuant to statutory changes set forth in Chapter 545, 2014 Va. Acts of Assembly (“Chapter 545”), enacted on April 3, 2014, HRTAC was created and replaced HRTPO as the entity directing the use of the HRTF funds. HRTAC collaborates with HRTPO to set transportation funding priorities on the basis of a regional consensus developed by HRTPO. HRTAC does not replace the planning function of HRTPO, but serves primarily as a financing vehicle for regional transportation projects. See “HAMPTON ROADS TRANSPORTATION FUND” and “DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS.” Decisions of HRTAC are subject to a supermajority voting test, including an affirmative vote by the present and voting elected officials who represent Member Localities that collectively contain at least two-thirds of the region’s population.

The HRTAC Act provides, among other things, that the Commission shall use the moneys from the HRTF solely for the purposes of (i) funding new construction projects on new or existing highways, bridges, and tunnels in the Member Localities, giving priority to projects expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within the Member Localities, and (ii) paying the Commission’s administrative and operating expenses as provided in the Commission’s annual budget. See “HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION—HRTAC Annual Budget” herein, and “Table 5: HRTAC Operating Budget, FY 2022” in Appendix E. Although HRTAC has statutory authority to enter into agreements with public or private entities for the operation and maintenance of bridges, tunnels, transit, rail facilities, and highways, the HRTAC Act does not authorize HRTAC to include in its budget any funds to independently operate and maintain such facilities or to perform any transportation service.

HRTAC and the Virginia Department of Transportation (“VDOT”) entered into a Memorandum of Agreement dated March 30, 2015 (the “HRTAC-VDOT MOA”) to set forth terms under which the two entities would cooperate, along with HRTPO, to ensure the efficient and effective development and construction of projects to be funded with HRTF Revenues. All of HRTAC’s projects to date have been pursued as part of VDOT’s statewide transportation system. Therefore, consistent with the HRTAC-VDOT MOA, HRTAC and VDOT have entered into standard project agreements (“Standard Project Agreements”) to govern their funding and performance obligations on such projects and a Project Agreement for Funding and Administration (“PAFA”) with respect to the HRBT Expansion Project as described below in “HRBT EXPANSION PROJECT.” Under the PAFA and all Standard Project Agreements to date, VDOT has agreed to provide administration of project construction as well as project operation and maintenance. See “DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS.”

The 2020 Virginia General Assembly, pursuant to Chapter 703, 2020 Va. Acts of Assembly (“Chapter 703”) and effective July 1, 2020, granted additional and specific tolling authority to HRTAC for the “Hampton Roads Express Lanes Network” (the “Express Lanes Network”), a high occupancy toll network, contiguous and in each traffic direction on Interstate-64 from Jefferson Avenue in Newport News to the interchange of Interstate 64, Interstate 264 and Interstate 664 at Bowers Hill in Chesapeake. Segment 3 of the Express Lanes Network runs through the HRBT and comprises a part of the HRBT Expansion Project’s physical structure. The funding plan for the HRBT Expansion Project (as described below) anticipates that not less than \$345,000,000, and up to \$575,000,000, of the funding for such project will be derived through toll-backed financing derived from the Express Lanes Network. **Although toll revenues are a source of funding for the HRBT Expansion Project as described below, toll revenues are entirely distinct and separate from the HRTF Revenues, and toll revenues will not be pledged to or secure payment of the Series 2021A Notes.** Certain limited transfers of HRTF Revenues to support the toll debt are described below in “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES – Transfers of HRTF Revenues from General Fund.”

The 2020 Virginia General Assembly, pursuant to Chapters 1241 and 1281, 2020 Va. Acts of Assembly (the “2020 Transit Legislation”) and effective July 1, 2020, also created the Hampton Roads Regional Transit Program and Fund (the “Hampton Roads Regional Transit Fund”) to develop, maintain, and improve a regional network of transit routes and related infrastructure in Planning District 23. The program is funded by an additional (i) regional grantor’s tax at a rate of \$0.06 per \$100 of the consideration for the conveyance, and (ii) effective May 1, 2021, regional transient occupancy tax at a rate of one percent of the charge for the occupancy, both imposed in the Hampton Roads Transportation District. The legislation also dedicates \$20 million of revenues from existing statewide recordation taxes to fund the program. Participating localities may not reduce funds appropriated for public transportation to levels less than those appropriated on July 1, 2019. **HRTAC administers the Hampton Roads Regional Transit Fund, but it is entirely distinct and segregated from the HRTF and will not be pledged to or secure payment of the Series 2021A Notes.**

Master Indenture Structure

The HRTAC Act provides that HRTAC may issue bonds and pledge the funds received from the HRTF as security for such bonds. The Commission has entered into a Master Indenture of Trust dated as of February 1, 2018, as previously supplemented (the “Master Indenture”), between HRTAC and Wilmington Trust, National Association, as trustee (the “Trustee”), under which the Commission is authorized to issue senior lien, intermediate lien and subordinate lien obligations, as further described herein.

On February 14, 2018, the Commission issued its \$500,000,000 Senior Lien Revenue Bonds, Series 2018A (the “Series 2018A Bonds”), payable and secured on parity with all senior lien revenue bonds to be issued by the Commission under the Master Indenture (the “Senior Bonds”).

On December 10, 2019, the Commission issued its \$500,789,463 TIFIA Series 2019A Bond (TIFIA – 20201001A) (the “2019 TIFIA Bond”), payable and secured on parity with all subordinate obligations to be issued by the Commission under the Master Indenture (the “Subordinate Obligations”). On December 17, 2019, the Commission issued its \$414,345,000 Intermediate Lien Bond Anticipation Notes, Series 2019A (the “Series 2019A Notes”), payable and secured on parity with all intermediate lien revenue bonds to be issued by the Commission under the Master Indenture (the “Intermediate Lien Obligations”). HRTAC anticipates that the principal amount of the Series 2019A Notes will be repaid on July 1, 2022 with the proceeds of the 2019 TIFIA Bond.

On October 22, 2020 the Commission issued its \$614,615,000 Senior Lien Revenue Bonds, Series 2020A (the “Series 2020A Bonds”), payable and secured on parity with all Senior Bonds issued or to be issued by the Commission under the Master Indenture.

On [June 17,] 2021, the Commission adopted a resolution authorizing the issuance of the Series 2021A Notes in a principal amount not to exceed \$818,000,000 pursuant to the Master Indenture and a Sixth Supplemental Series Indenture of Trust to be dated as of _____ 1, 2021 (the “2021A Series Supplement”), between the Commission and the Trustee. The issuance of the Series 2021A Notes is fully authorized by the provisions of the HRTAC Act, the Master Indenture and the 2021A Series Supplement.

The Series 2021A Notes will be paid and secured as senior lien obligations under the Master Indenture and on a parity basis as to payment and security with the Series 2018A Bonds, Series 2020A Bonds and all Senior Bonds that may be issued in the future (“Senior Lien Obligations”), and senior as to payment and security to all Intermediate Lien Obligations and Subordinate Obligations.

The Series 2021A Notes, together with all Senior Bonds, Intermediate Lien Obligations and Subordinate Obligations issued previously or in the future under the Master Indenture, are collectively referred to herein as the “Bonds.”

Purpose of the Series 2021A Notes

HRTAC will use the proceeds of the Series 2021A Notes, along with other available funds, to finance the costs of the HRBT Expansion Project in anticipation of one or more draws under the 2021 TIFIA Loan Agreement for such purpose (as described below under “INTRODUCTION – Security and Sources of Payment”), to fund capitalized interest on the Series 2021A Notes through _____ 1, 20____, and to pay costs of issuance of the Series 2021A Notes (collectively, the “HRBT Financed Costs”). In particular, HRTAC will use the proceeds of the Series 2021A Notes in furtherance of its [“FY 2022-2027 Six-Year Operating and Capital Plan of Finance Update for the Region’s High Priority Projects,” which was approved on June 17, 2021] (the “Six-Year Funding Plan”). See “HRBT EXPANSION PROJECT” and “DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS—HRTAC Six-Year Funding Plan.”

TIFIA Background. On April 29, 2020, HRTAC submitted a letter of interest to the U.S. Department of Transportation (“USDOT”), an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), expressing its desire to receive funding under the Transportation Infrastructure Finance and Innovation Act (“TIFIA”). Pursuant to an application for TIFIA credit assistance dated [June __,] 2021, HRTAC requested that USDOT make a direct loan (the “2021 TIFIA Loan”) to HRTAC in a principal amount not to exceed \$ _____* to be used to pay or reimburse a portion of the eligible costs of the HRBT Financed Costs. USDOT determined that such application was complete on _____, 2021 and subsequently approved the 2021 TIFIA Loan on _____, 2021. HRTAC and USDOT are in the final stages of negotiating a loan agreement containing the terms and conditions of such loan (the “2021 TIFIA Loan Agreement”). HRTAC currently expects to close the 2021 TIFIA Loan by _____, 20____; however, there can be no assurances that HRTAC will be able to execute and deliver the 2021 TIFIA Loan Agreement at such time. See “2021 TIFIA LOAN AGREEMENT.” To evidence the Commission’s obligations under the 2021 TIFIA Loan Agreement upon the closing thereof, the Commission will issue its \$ _____* Subordinate Revenue Bond, TIFIA Series 2021 (the “2021 TIFIA Bond”) pursuant the Master Indenture and a Fifth Supplemental Series Indenture of Trust to be dated as of _____ 1, 2021 (the “TIFIA Series Supplement”), between the Commission and the Trustee. The 2021 TIFIA Bond will be a subordinate lien obligation under the Master Indenture,

* Preliminary, subject to change.

constituting Bonds that are specifically subordinate as to payment and security to the Senior Bonds and the Intermediate Lien Obligations (“Subordinate Obligations”). See “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES.” The 2019 TIFIA Loan was implemented under the provision of the TIFIA statute that allows for a waiver of TIFIA’s non-subordination or “springing lien” requirement, and HRTAC anticipates that the 2021 TIFIA Loan will also be implemented with a waiver from that requirement.

Security and Sources of Payment

The Series 2021A Notes are limited obligations of HRTAC that are payable solely from the funds pledged under the Master Indenture for such purpose, consisting of the HRTAC Revenues (as defined below). The Series 2021A Notes are on a parity basis in payment and security with the Series 2018A Bonds, the Series 2020A Bonds, and any other Senior Bonds that may be issued by HRTAC in the future. The Series 2021A Notes will be payable and secured senior to (i) the Series 2019A Notes and any other Intermediate Lien Obligations that HRTAC may issue in the future, and (ii) the 2019 TIFIA Bond, the 2021 TIFIA Bond, and any other Subordinate Obligations that HRTAC may issue in the future.

The Series 2021A Notes are not a debt of the Commonwealth or any political subdivision thereof (including any Member Locality or any member of the HRTPO or the HRPDC) other than HRTAC, and the Series 2021A Notes do not constitute indebtedness within the meaning of any debt limitation or restriction. Neither the faith and credit nor the taxing power of the Commonwealth or any of its political subdivisions (including any Member Locality or any member of the HRTPO or the HRPDC) is pledged to the payment of the Series 2021A Notes. HRTAC has no taxing powers.

The “HRTAC Revenues” pledged pursuant to the Master Indenture include (i) all of the revenues appropriated by the General Assembly and transferred by the Commonwealth into the HRTF, (ii) all earnings from the investment of moneys held in any Fund or Account under and as defined in the Master Indenture, and (iii) any other revenues available under the HRTAC Act that may be designated as HRTAC Revenues pursuant to a Supplemental Indenture. The Master Indenture does not permit toll revenues to be pledged to payment of the Bonds issued thereunder (including the Series 2021A Notes). The continued availability of tax revenues in the HRTF is subject to annual appropriation by the General Assembly of the Commonwealth. See “HAMPTON ROADS TRANSPORTATION FUND.”

It is anticipated that the Series 2021A Notes will be paid at their maturity from a disbursement made to HRTAC under the 2021 TIFIA Loan Agreement. In the event that disbursements received under the 2021 TIFIA Loan Agreement are insufficient to pay the principal on the 2021A Notes in full on their maturity date or HRTAC does not meet the conditions for disbursement of moneys under the 2021 TIFIA Loan Agreement or is otherwise unable to effect draws thereunder, HRTAC will use its best efforts to find an alternative refinancing solution, which could include the issuance of rollover bond anticipation notes and/or other Bonds secured by HRTAC Revenues under the Master Indenture; otherwise the Series 2021A Notes shall be paid from HRTAC Revenues, subject to the prior application of such funds to pay scheduled debt service on Senior Bonds. See “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES.”

Validation

On August 15, 2016, the Commission instituted a bond validation proceeding in the Circuit Court for the City of Chesapeake, Virginia (the “Court”). The bond validation was not challenged. On October 7, 2016, the Court entered an Order (the “Order”) by which the Court validated, among other things, the constitutionality and validity of the HRTAC Act, the HRTF, the six-year funding plan then in effect, the

Series 2018A Bonds, the pledge of the HRTAC Revenues to the payment of Bonds, and the original version of the Master Indenture. No appeal was taken within the time prescribed in Section 15.2-2656 of the Virginia Code. The Commission is not required by law, and does not intend, to seek validation of any further Bonds, including but not limited to the Series 2021A Notes, issued under the Master Indenture.

HAMPTON ROADS TRANSPORTATION FUND

General

The HRTF was established under Chapter 766, effective July 1, 2013. Pursuant to Chapter 766, the General Assembly dedicated to the HRTF all of the additional revenues generated by the imposition of an additional retail sales and use tax, and an additional wholesale motor vehicle fuels sales tax, on transactions occurring within the Member Localities. See “HAMPTON ROADS TRANSPORTATION FUND—HRTF Revenues.” As described in the following section, the continued availability of these tax revenues is subject to annual appropriation by the General Assembly of the Commonwealth.

HRTAC was established under Chapter 545, enacted on April 3, 2014, to receive the HRTF funds and apply them to the financing of (i) new construction projects on new or existing highways, bridges, and tunnels in the Member Localities, and (ii) administrative and operating expenses as provided in the Commission’s annual budget (which under the HRTAC Act shall be limited solely to administrative expenses of the Commission and shall not include any funds for construction or acquisition of transportation facilities or the performance of any transportation service). Under HRTAC’s existing Standard Project Agreements with VDOT, project construction and expenses for operating and maintaining projects funded by HRTAC are responsibilities of VDOT. See “DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS.”

The HRTF was created in the State Treasury to be held by the State Treasurer (the head of the Department of the Treasury) and recorded on the books of the Comptroller of Virginia (the head of the Department of Accounts) as a special non-reverting fund for Planning District 23. The tax revenues dedicated to the HRTF are collected and paid into the State Treasury and credited to the HRTF on a monthly basis. Interest earned on moneys in the HRTF remains in and is credited to the HRTF. Any moneys remaining in the HRTF, including interest thereon, at the end of each fiscal year of the Commonwealth will not revert to the Commonwealth’s general fund, but shall remain in the HRTF. Pursuant to Chapter 608, 2016 Va. Acts of Assembly, enacted on April 1, 2016, the amounts held in the HRTF are distributed to the Commission as soon as practicable for use in accordance with the HRTAC Act. If the Commission determines that such moneys distributed to it exceed the amount required to meet the current needs and demands to fund transportation projects pursuant to the HRTAC Act, the Commission may invest such excess funds in accordance with state law.

Subject-to-Appropriation

The continued availability of the above-described tax revenues for deposit in the HRTF remains subject to annual appropriation by the General Assembly of the Commonwealth, and the General Assembly may eliminate or change the source of funds for the HRTF at any time. Funds already transferred to the HRTF, which is a non-reverting fund, are no longer subject to appropriation but HRTAC continues to rely entirely on the Commonwealth to transmit such funds to HRTAC for inclusion in the HRTAC Revenues.

VDOT agreed, under the HRTAC-VDOT MOA, to annually request (in accordance with the schedule of the Virginia Department of Planning and Budget) for the Governor to include the HRTF Revenues in the budget delivered to the General Assembly for the next succeeding Fiscal Year or biennial

period, as applicable. VDOT also agreed to promptly notify HRTAC upon becoming aware of any failure by the General Assembly to appropriate tax revenues to the HRTF. As a practical matter there is no effective remedy if the Governor or the General Assembly fail to provide for HRTF funding in the Commonwealth's Budget. Further, the HRTAC-VDOT MOA provides that VDOT shall bear no responsibility for collecting or depositing the tax revenues in the HRTF.

Under the Virginia Constitution, no appropriation is valid for more than two years and six months after the adjournment of the session of the General Assembly at which the appropriation was made. The General Assembly of the Commonwealth is not obligated to make any future appropriations, and the Commission makes no representation that the General Assembly will keep the HRTF in existence or that appropriations to the HRTF will be made by the General Assembly in any future fiscal year of the Commonwealth.

Enactment Clause 14 of Chapter 766 provides that the provisions of Chapter 766 that generate revenue through the additional state taxes for transportation projects in Planning District 23 shall expire on December 31 of any year in which the General Assembly appropriates or transfers any of such revenues for any non-transportation-related purpose. See "INVESTMENT CONSIDERATIONS—Risks of Non-Appropriation and Future Legislative Actions."

HRTF Revenues

This section provides a brief description of the taxes which comprise the HRTF Revenues, and is followed by separate sections describing each tax source in greater detail. The HRTF Revenues are derived from the revenues generated from the following taxes that were imposed starting July 1, 2013 on transactions taking place within Planning District 23:

(i) Additional Retail Sales and Use Tax. Section 58.1-638.H.2 of the Virginia Code provides for the deposit in the HRTF of the revenue generated by an additional retail sales and use tax of 0.70 percent imposed on retail sales transactions within the Member Localities other than food purchased for home consumption (the "Additional Sales and Use Tax").

(ii) Additional Wholesale Motor Vehicle Fuels Sales Tax. Section 58.1-2295.A.2 of the Virginia Code provides for the deposit in the HRTF of the revenue generated by an additional motor vehicle fuels sales tax imposed on sales of fuel by distributors at wholesale to retail dealers for retail sales in the Member Localities, at a rate of 7.6 cents per gallon on gasoline and gasohol (and 7.7 cents per gallon on diesel), subject to an annual adjustment in accordance with the consumer price index beginning July 1, 2021 (the "Additional Motor Vehicle Fuels Tax"). Prior to July 1, 2020, the Additional Motor Vehicle Fuels Sales Tax was calculated based on 2.1% of the average statewide wholesale price per gallon, subject, beginning July 1, 2018, to a floor of 6.7 cents per gallon. Effective July 1, 2020, in conjunction with transportation reform legislation that enacted statewide changes to the Commonwealth's method of funding transportation, the Additional Motor Vehicle Fuels Sales Tax was changed to its present per gallon rate and the floor rate was eliminated.

Additional Sales and Use Tax

The Additional Sales and Use Tax is administered and collected by the State Tax Commissioner, the head of the Virginia Department of Taxation, in the same manner and subject to the same penalties as provided for the statewide retail sales and use tax. The receipts of the Additional Sales and Use Tax are deposited into the State Treasury and then credited by the Comptroller of Virginia to the HRTF. In accordance with the HRTAC-VDOT MOU, VDOT provides monthly notice to HRTAC of the Additional

Sales and Use Tax collection amounts. This usually occurs during the third week of the month. The revenues are typically transferred into the HRTF within a week after such notice. HRTAC is entirely dependent on the Virginia Department of Taxation, the Virginia Department of Treasury and the Virginia Department of Accounts to collect and deposit the Additional Sales and Use Tax revenues in the HRTF and to transfer them to HRTAC for inclusion in the HRTAC Revenues.

The Additional Sales and Use Tax is imposed upon transactions in the Member Localities in addition to the statewide retail sales and use tax of 4.3% and the local option retail sales and use tax of 1.0% used by the Commonwealth and its localities for other purposes. Consumers therefore pay a total of 6% in sales and use taxes on retail transactions occurring in the Member Localities. HRTAC does not receive any revenues from the statewide or local option retail sales and use taxes, but only receives the proceeds of the 0.7% Additional Sales and Use Tax.

Under Virginia law, retail sales taxes are imposed on transactions involving (i) the business of selling at retail or distributing tangible personal property; (ii) the leasing or rental of tangible personal property as part of an established business; (iii) the storing for use or consumption in the Commonwealth of any item or article of tangible personal property or leasing or renting such property within the Commonwealth; (iv) the finishing of transient accommodations; or (v) the selling of certain services. The tax on sales is based on the gross sales price of each item or article of tangible personal property. The seller collects the tax from the customer by separately stating the amount of the tax and adding it to the sales price or charge. The tax on accommodations, leases and rentals, which is based upon the lessor's gross proceeds from the leases and rentals, is collected by the lessor by separately stating the amount of tax and adding it to the charge made to the lessee. The tax on items or articles of tangible personal property stored in the Commonwealth for use or consumption in the Commonwealth is based on the cost price of each item or article. The tax on taxable services is based on the gross sales price of the services.

Under Virginia law, use taxes are imposed on the use or consumption of tangible personal property throughout the Commonwealth, or the storage of such property outside the Commonwealth for use or consumption in the Commonwealth. This tax applies to (i) tangible personal property purchased outside the Commonwealth that would have been subject to sales tax if purchased in the Commonwealth, and (ii) purchases, leases or rentals made in the Commonwealth if the sales tax was not paid at the time of purchase, lease or rental. In general, the use tax is based on the cost price of each item or article of tangible personal property used or consumed in the Commonwealth or the cost price of each item or article of tangible personal property stored outside the Commonwealth for use or consumption in the Commonwealth.

The Commonwealth requires all dealers with nexus to the Commonwealth to collect and remit applicable retail sales and use tax. In *South Dakota v. Wayfair*, 138 S. Ct. 2080 (2018), the U.S. Supreme Court held for the first time that states have the authority to collect sales tax directly from out-of-state sellers having no physical presence in the taxing state. In 2019, the Virginia General Assembly enacted Chapter 815, Acts of Assembly, which became effective on July 1, 2019 and provides uniform nexus requirements for remote sellers, marketplace facilitators, and marketplace sellers. Dealers with no Virginia physical presence are required to collect and remit sales tax if they have more than \$100,000 in Virginia gross sales or complete greater than 200 separate transactions in Virginia during the current or previous calendar year.

The Virginia Code provides various exclusions and exemptions from the retail sales and the use tax. For example, the sales and use tax is not levied upon medicines, certain purchases by nonprofit entities, certain agricultural supplies and commodities, certain industrial materials and machinery, supplies used to produce publications, and certain commercial computer equipment. Sales and use taxes are not imposed on food for human consumption except under the 1% local option sales tax described above (which is not included in the tax sources for the HRTF).

Additional Motor Vehicle Fuels Tax

The Additional Motor Vehicle Fuels Tax is administered and collected by distributors in each Member Locality and paid to the Commissioner of the Department of Motor Vehicles (the “DMV”) each month. The distributor is required to collect the tax from the retail dealer by separately stating the amount of the tax and adding it to the sales price or charge. Distributors are required to remit the collected amounts to the DMV by midnight of the 20th day of the second month succeeding the month of collection. However, remittance of the tax for the month of May must be received by the DMV no later than the last business day of June. Once received by the DMV, revenues from the Additional Motor Vehicle Fuels Tax are credited by the Comptroller of Virginia to the HRTF on a monthly basis and are thereafter distributed to HRTAC as soon as practicable. HRTAC is entirely dependent on the Virginia Department of Taxation, the DMV and the Virginia Department of Accounts to collect and deposit the Additional Motor Vehicle Fuels Tax revenues in the HRTF and to transfer them to HRTAC for inclusion in the HRTAC Revenues.

The Additional Motor Vehicle Fuels Tax is imposed upon transactions in the Member Localities and is in addition to the statewide motor vehicle fuels tax, used by the Commonwealth for other purposes. Prior to July 1, 2020, the statewide motor vehicle fuels tax was 5.1% of the statewide average wholesale price of a gallon of unleaded regular gasoline for a trailing six-month base period, subject to a designated floor price of \$3.17 per gallon. Legislation enacted by the 2020 Virginia General Assembly converted the then-existing tax rate, which equated to a rate of \$0.162 per gallon, to a cents-per-gallon rate of \$0.262 per gallon of gasoline, which rate is phased in by increasing the rate by \$0.05 per gallon each year over two years and then indexed to changes in the Consumer Price Index.

HRTAC does not receive any revenue from the statewide motor vehicle fuels tax, but instead receives the proceeds of the Additional Motor Vehicle Fuels Tax imposed on sales of fuel by distributors at wholesale to retail dealers for retail sales in the Member Localities, at a rate of 7.6 cents per gallon on gasoline and gasohol (and 7.7 cents per gallon on diesel), subject to an annual adjustment in accordance with the consumer price index beginning July 1, 2021. Unlike the change in the statewide motor vehicle fuels tax, the change in the Additional Motor Vehicle Fuels Tax was effective July 1, 2020 with no phase-in period.

Historical HRTF Revenues

The following Table I shows historical receipts from the two HRTF Revenue sources. See also “Table 1: HRTF Revenues” in [Appendix E](#) for additional information by jurisdiction. HRTF Revenues in Fiscal Years 2018, 2019 and 2020 were approximately \$169.2 million, \$225.7 million and \$201.2 million, respectively. Through [May, 2021], HRTAC received year-to-date Fiscal Year 2021 HRTF Revenues of [\$158.8] million, representing nine months of collections of the Additional Sales and Use Tax and eight months of collections of the Additional Motor Vehicle Fuels Tax. These collections reflect the accrual of the Additional Sales and Use Tax for two months and the accrual of the Additional Motor Vehicle Fuels Tax for three months.

There are certain considerations and risks relating to the HRTF Revenues to be received by the Commission due to COVID-19 disruptions, which are set forth in this Official Statement under the captions ‘POTENTIAL IMPACT OF COVID-19 ON HRTF REVENUES’ and ‘COVID-19 PANDEMIC.’

[Table appears on following page]

Table I
Historical Hampton Roads Transportation Fund Revenues (in Millions)^{(1), (2)}

<u>Source</u>	<u>FY</u> <u>2014</u>	<u>FY</u> <u>2015</u>	<u>FY</u> <u>2016</u>	<u>FY</u> <u>2017</u>	<u>FY</u> <u>2018</u>	<u>FY</u> <u>2019⁽⁵⁾</u>	<u>FY</u> <u>2020⁽¹⁾</u>	<u>FY</u> <u>2021⁽⁶⁾</u>
Additional Sales and Use Tax ⁽³⁾	\$107.9	\$130.0	\$126.5	\$131.5	\$136.5	\$144.6	\$146.2	[\$122.4]
Additional Motor Vehicle Fuels Tax ⁽⁴⁾	<u>37.3</u>	<u>40.9</u>	<u>26.7</u>	<u>25.0</u>	<u>32.7</u>	<u>81.1⁽⁴⁾</u>	<u>55.0</u>	<u>[36.4]</u>
TOTAL:	<u>\$145.2</u>	<u>\$170.9</u>	<u>\$153.2</u>	<u>\$156.5</u>	<u>\$169.2</u>	<u>\$225.7</u>	<u>\$201.2</u>	<u>[\$158.8]</u>

Source: HRTAC.

⁽¹⁾ At the end of Fiscal Year 2020, the Commission changed its accounting policy for recognizing revenue in order to match the Virginia Department of Transportation’s income, and thus accrued two months of Sales and Use tax and three months of Motor Fuels tax as receivables and revenue for the Fiscal Year ended June 30, 2020. This was a change from prior years where the Commission accrued one month of each of such taxes. This change in accounting and revenue recognition was made due to additional information provided by the agencies who collect and remit the taxes on behalf of the Commission. Accordingly, Fiscal Years 2014 – 2018 reflect 12 months of each of the two revenue sources, but Fiscal Year 2019 reflects a total of 13 months of Sales and Use tax (with the amount of the Sales and Use tax for the 13th month being \$5.21 m.) and 14 months of Fuels tax (with the amount of the Fuels Tax for such months being \$9.42 m.), while Fiscal Year 2020 reverts to 12 months of each. The Commission did not undertake a formal restatement of its financial statements for fiscal years prior to Fiscal Year 2020.

⁽²⁾ The Commission’s fiscal year ends on June 30.

⁽³⁾ Accelerated Retail Sales and Use Tax paid in June commencing in Fiscal Year 2015.

⁽⁴⁾ Effective as of July 1, 2018, the General Assembly established a wholesale price floor for deriving the Additional Motor Vehicle Fuels Tax, as described above. Effective July 1, 2020, the General Assembly changed the tax rate to 7.6 cents per gallon on gasoline and gasohol (and 7.7 cents per gallon on diesel).

⁽⁵⁾ Included \$11 million special audit assessment adjustments sourced from vendor audit settlements.

⁽⁶⁾ Unaudited; includes [9] months of Additional Sales and Use Tax revenue and [8] months of Additional Motor Vehicle Fuels Tax revenue, reflecting the accrual periods described above.

HRBT EXPANSION PROJECT

General

The “HRBT Expansion Project” is intended to address severe traffic congestion at the existing Hampton Roads Bridge Tunnel (“HRBT”) by increasing capacity and upgrading approximately ten miles of Interstate 64 (“I-64”) between the Settlers Landing Road interchange in Hampton, Virginia and the Interstate 564 (“I-564”) interchange in Norfolk, Virginia. For over three decades, public and area leaders have consistently identified persistent and significant traffic congestion and delays at the HRBT, with vehicles routinely queuing in both directions, as an important issue for the Hampton Roads region. Over 90,000 vehicles use the existing HRBT daily, seasonally exceeding 100,000 vehicles per day, which represents about half of all traffic crossing the James River/Hampton Roads water body between South Hampton Roads and the lower “Peninsula” formed by the James and York Rivers. HRBT is part of the Hampton Roads Beltway, an approximate 55-mile loop of I-64 and I-664, encircling the metropolitan area. Likewise, the HRBT is an important regional transportation link for residential, commercial, industrial, and military mobility.

The 3.5-mile long HRBT was originally placed in service in 1957, replacing a 30+ minute ferry ride with a seven-minute drive over a two-lane facility. HRBT was the first bridge-tunnel water crossing ever constructed utilizing artificial “portal” islands. The portal islands anchor the ends of the 7,479-foot tunnel and serve as the transition to the trestle bridges that connect the islands to the mainland. The HRBT was expanded to four lanes in 1976 and was incorporated into the interstate system as part of I-64. The 1976 expansion included the construction of new parallel trestle bridges and expansion of the portal islands to accommodate a new parallel tunnel. Both of the current HRBT tunnels, as well as all ten existing traffic tunnels in the region, were constructed using an immersed tube tunnel method that required extensive dredging followed by a fill covering. The four-lane configuration has remained constant since the HRBT expansion in 1976.

The HRBT Expansion Project will widen I-64 for approximately ten miles to create an eight lane bridge tunnel facility with six consistent lanes. The expanded facility will include four general purpose lanes, two new High Occupancy Toll (HOT) lanes and two new drivable (hard-running) shoulders to be used as HOT lanes during certain times of the day. It is anticipated that the HOT lanes will be incorporated into the Hampton Roads Express Lanes Network. I-64 is currently six lanes from the I-64/I-664 interchange to a point between the Settlers Landing Road interchange and the Mallory Street interchange in Hampton, which represents the western project limit. The eastern project limit is near Little Creek Road at the I-564/I-64 interchange in Norfolk. The HRBT Expansion Project will include the construction of two new two-lane tunnels, expansion of the existing portal islands, and full replacement of the existing trestle bridges at the HRBT. Various other bridges will be replaced and/or expanded. The two new parallel tunnels will be constructed using a tunnel boring machine. When complete, four subaqueous tunnels will connect to the two expanded portal islands.

The HRBT Expansion Project received full Notice to Proceed from VDOT in September, 2020 with receipt of final permits from the applicable permitting agencies. It is estimated that the HRBT Expansion Project will reach substantial completion in September 2025 and full completion in November 2025.

[At time of dissemination of Preliminary Official Statement, provide update status (construction and funding)]

The project budget for the HRBT Expansion Project is approximately \$3.862 billion, including project administration, right of way, incentive awards and contingency. Of this amount, HRTAC’s funding responsibility is approximately \$3.753 billion, \$200 million of which is expected to be provided by the allocation of Commonwealth SMART SCALE funds to HRTAC by VDOT. Substantially all of HRTAC’s funding obligations for the HRBT Expansion Project are set forth in the below-described Project Agreement for Funding and Administration or “PAFA.” The remaining funding obligations, related to procuring and installing certain tolling equipment and integrating the toll system for the Hampton Roads Express Lanes Network, are expected to be approximately \$63 million and will be set forth in one or more Standard Project Agreements between HRTAC and VDOT. The funding plan for the HRBT Expansion Project contemplates that HRTAC will continue to provide funding from the various sources, including future debt issuances under the Master Indenture, described below in “DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS.”

Description of PAFA

Under the PAFA, HRTAC’s maximum financial commitment for the HRBT Expansion Project is \$3.562 billion, as described above and in “DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS—VDOT Agreements.” This amount, with the inclusion of SMART SCALE funding

committed by VDOT, funds the main project scope and an additional \$8.5 million programmed but not committed. The PAFA identifies separate budgets for certain HRTAC-funded portions and VDOT-funded portions (the south trestle portion), with each budget including scheduled contract costs (payable to the project's design-builder), percentage share of administration costs, and contingency. HRTAC pays in accordance with a schedule that is designed to align with HRTAC available funds (assumed bond proceeds plus cash). See "DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS—VDOT Agreements."

The PAFA includes an option relating to certain additional bridge repair work. While VDOT has exercised this option, such additional work doesn't increase HRTAC's financial commitment under the PAFA. VDOT may seek reimbursement for certain elements of the work, currently estimated by VDOT to cost approximately \$32.2 million, but only in certain circumstances and then only to the extent there are funds available to HRTAC from the budget due to cost savings or, when the HRBT Expansion Project is completed, from unspent contingency.

The project contingency is designed to establish a reserve for potential additional costs, consistent with VDOT practice. Although the agreement for the design and construction of the HRBT Expansion Project is a fixed price contract, the design-builder may seek additional compensation if (i) certain differing conditions are encountered, or (ii) other compensation events occur, such as impacts to the work caused by VDOT delays, changes to permit requirements, interference with the work, changes in law, or discovery of unknown hazardous conditions. Separate contingencies exist for the (a) HRTAC-funded main Project scope, and (b) VDOT-funded south trestles.

The PAFA establishes protocols for addressing when VDOT must obtain HRTAC approval for change orders or claim settlements, which protocols are designed to balance (i) VDOT's need to efficiently and effectively manage the project with (ii) HRTAC's desire to monitor and control expenditures out of reserves. The HRBT Expansion Project is through the scope validation period, and hence VDOT has discretion to approve change orders without HRTAC approval, provided that the amount does not exceed \$20 million or cause the remaining HRTAC-funded contingency reserve to fall below certain specific thresholds tied to the remaining construction activities.

On a quarterly basis (or monthly if the remaining contingency reserve is below the then-applicable minimum), VDOT must evaluate whether the costs to complete the HRBT Expansion Project could reasonably be expected to exceed the remaining contingency reserve. If VDOT determines additional funding may be necessary, VDOT and HRTAC would consider solutions in the following order: reducing project scope, collaborating to identify other funding sources, or terminating the HRBT Expansion Project.

DESCRIPTION OF THE SERIES 2021A NOTES

General

The Series 2021A Notes will be issued as fully registered bonds in book-entry form. The Series 2021A Notes will be dated their date of delivery, will be issued in denominations of \$5,000 or integral multiples of \$5,000, and will bear interest from the dated date thereof, payable semiannually on each January 1 and July 1, beginning January 1, 2022, at the rates and will mature on the dates and in the amounts set forth on the inside front cover of this Official Statement. Interest on the Series 2021A Notes will be computed on the basis of a year of 360 days and twelve 30-day months. Interest will be payable to the registered owners of the Series 2021A Notes at their addresses as they appear on the fifteenth day of the month preceding the interest payment date on the registration books kept by the Trustee. Principal of, premium, if any, and interest on the Series 2021A Notes will be paid by the Trustee to The Depository Trust

Company (“DTC”) for distribution to its Direct and Indirect Participants (as defined in Appendix G). See “DESCRIPTION OF THE SERIES 2021A Notes—Book-Entry System” herein, and Appendix G.

Estimated Sources and Uses of Funds

Set forth below are the expected amounts and components of the proceeds of the sale of the Series 2021A Notes and the application of the proceeds on the date of delivery of the Series 2021A Notes:

Sources:

Principal Amount of Series 2021A Notes	\$ _____
[Net] Original Issue [Premium][Discount]	_____
Total Sources:	<u>\$ _____</u>

Uses:

Deposit to Project Fund	\$ _____
Deposit to Capitalized Interest Subaccount	_____
Underwriters’ Discount	_____
Deposit to Cost of Issuance Fund	_____
Total Uses:	<u>\$ _____</u>

Redemption *

The Series 2021A Notes are not subject to redemption prior to maturity.

Book-Entry System

DTC will act as securities depository for the Series 2021A Notes. The Series 2021A Notes will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Bond certificate will be issued for the Series 2021A Notes and will be deposited with DTC.

So long as Cede & Co. is the registered owner of the Series 2021A Notes, as nominee of DTC, references in this Official Statement to the Owners of the Series 2021A Notes shall mean Cede & Co. and shall not mean the Beneficial Owners, and Cede & Co. will be treated as the only owner of Bonds for all purposes under the Master Indenture and the 2021A Series Supplement.

Neither the Commission nor the Trustee has any responsibility or obligation to the Direct or Indirect Participants (as defined in Appendix G) or the Beneficial Owners with respect to (a) the accuracy of any records maintained by DTC or any Direct or Indirect Participant; (b) the payment by any Direct or Indirect Participant of any amount due to any Beneficial Owner in respect of the principal of, premium, if any, and interest on the Series 2021A Notes; (c) the delivery or timeliness of delivery by any Direct or Indirect Participant of any notice to any Beneficial Owner that is required or permitted under the terms of the Master Indenture to be given to Bondholders; or (d) any other action taken by DTC, or its nominee, Cede & Co., as Bondholder, including the effectiveness of any action taken pursuant to an Omnibus Proxy.

* Preliminary, subject to change.

ESTIMATED DEBT SERVICE REQUIREMENTS

The following Table II sets forth for each fiscal year the amounts needed for payment of principal and interest on the Series 2021A Notes, as of the date of issuance of the Series 20121 Notes. *Table II should be reviewed in conjunction with Table VII herein, which includes projected debt service requirements for HRTAC's Senior Bonds, including the Series 2021A Notes (which are expected to be retired on _____ by a draw upon the 2021 TIFIA Bond), the Series 2020A Bonds, and the Series 2018A Bonds, HRTAC's Intermediate Obligations, including the Series 2019A Notes (which are expected to be retired on July 1, 2022 by a draw upon the 2019 TIFIA Bond), and HRTAC's Subordinate Obligations including the 2021 TIFIA Bond and the 2019 TIFIA Bond and projected future Subordinate Obligations.*

Table II
Estimated Debt Service Requirements on the Series 2021A Notes

Payment Date	Principal ⁽¹⁾	Interest ⁽²⁾	Total
1/1/2022			0
7/1/2022			0
1/1/2023			0
7/1/2023			0
1/1/2024			0
7/1/2024			0
1/1/2025			0
7/1/2025			0
1/1/2026			0
3/1/2026			0
Total	0	0	0

⁽¹⁾ HRTAC expects to pay the principal installment on [March 1, 2026,] the maturity date of the Series 2021A Notes, from expected disbursements under the 2021 TIFIA Loan Agreement. See "SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES—Payment of Interest and Principal.

⁽²⁾ Capitalized interest will be funded at closing for interest payments through [March 1, 2026].

SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES

Limited Obligations

The Series 2021A Notes are limited obligations of HRTAC and are payable solely as Senior Lien Obligations from the revenues, moneys and other property pledged by the Master Indenture for such purpose, consisting of the HRTAC Revenues. The pledged HRTAC Revenues include (i) the amounts credited by the Comptroller of Virginia to the HRTF and transferred to HRTAC, including the Additional Sales and Use Tax revenues and the Additional Motor Vehicle Fuels Tax revenues, (ii) all earnings from the investment of moneys held in any Fund or Account under and as defined in the Master Indenture, and (iii) any other revenues available under the HRTAC Act which may be hereafter designated as HRTAC Revenues pursuant to a Supplemental Indenture. The availability of such Additional Sales and Use Tax revenues and Additional Motor Vehicle Fuels Tax revenues for deposit into the HRTF is subject to annual

appropriation by the General Assembly, and the General Assembly may eliminate or change such taxes and fees at any time. The receipt of such funds is also conditioned upon their use for transportation-related purposes, specifically new construction projects on new or existing highways, bridges or tunnels in the Member Localities. See “HAMPTON ROADS TRANSPORTATION FUND—Subject-to-Appropriation” above. It is anticipated that the Series 2021A Notes will be paid at their maturity of _____ 1, _____ from a disbursement made to HRTAC under the 2021 TIFIA Loan Agreement, and the issuance of the Series 2021A Notes is contingent upon HRTAC closing the 2021 TIFIA Loan.

The realization of amounts to be derived upon the enforcement of the Series 2021A Notes will depend upon the exercise and effectiveness of the remedies specified in the Master Indenture. These and other remedies may, in many respects, require judicial action of a nature that is often subject to discretion and delay. Under existing laws, the remedies specified in the Master Indenture may not be readily available or may be limited. The various legal opinions to be delivered concurrently with the delivery of the Series 2021A Notes will be qualified as to the enforceability of various legal instruments by limitations imposed by state and federal laws, rulings and decisions affecting remedies and by bankruptcy, fraudulent conveyance, reorganization and other laws affecting the enforcement of creditors’ rights generally. See “INVESTMENT CONSIDERATIONS—Limitation on Remedies” herein, and “THE MASTER INDENTURE—Events of Default and Remedies Upon Default” in Appendix A.

The Series 2021A Notes are not a debt of the Commonwealth or any political subdivision thereof (including any Member Locality or any member of the HRTPO or the HRPDC) other than the Commission, and the Series 2021A Notes do not constitute indebtedness within the meaning of any debt limitation or restriction. Neither the faith and credit nor the taxing power of the Commonwealth or any of its political subdivisions (including any Member Locality or any member of the HRTPO or the HRPDC) is pledged to the payment of the Series 2021A Notes. The Commission has no taxing powers.

Pledges Under the Master Indenture

Senior Lien Obligations. The Series 2021A Notes are being issued as Senior Lien Obligations and are the third Series of Senior Lien Obligations issued by HRTAC under the Master Indenture. The Series 2021A Notes are payable as to principal and interest from, and secured by, a pledge of HRTAC Revenues that is on parity with the payment of principal of and interest on all Senior Bonds, including the Series 2018A Bonds and the Series 2020A Bonds, and senior to all Intermediate Lien Obligations, including the Series 2019A Notes, and all Subordinate Obligations, including the 2019 TIFIA Bond.

Indenture Accounts. With respect to the Series 2021A Notes, the 2021A Series Supplement establishes solely for the benefit of the Owners of the Series 2021A Notes, the Series 2021A Capitalized Interest Subaccount, the Series 2021A Interest Account, the Series 2021A Principal Account, the Series 2021A Costs of Issuance Fund and the Series 2021A Project Fund, which are pledged exclusively to secure the obligations of HRTAC to the Owners of the Series 2021A Notes. The Series 2021A Rebate Account is created exclusively to make certain payments, if any, to maintain the federal tax-exempt status of the Series 2021A Notes, and is not pledged to the repayment of the Series 2021A Notes.

Payment of Interest and Principal. On the date of issuance of the Series 2021A Notes, \$ _____ will be deposited into the Series 2021A Capitalized Interest Subaccount to pay interest on the Series 2021A Notes through ____ 1, 20___. Interest to be paid on the Series 2021A Notes after the Series 2021A Capitalized Interest Subaccount no longer contains funds for such purpose shall be paid from the HRTAC Revenues, subject to the prior application of such funds as described below under “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES—Flow of Funds.”

It is anticipated that the Series 2021A Notes will be paid at their maturity from a disbursement made to HRTAC under the 2021 TIFIA Loan Agreement, and the issuance of the Series 2021A Notes is contingent upon HRTAC closing the 2021 TIFIA Loan. In the event that disbursements received under the 2021 TIFIA Loan Agreement are insufficient to pay the principal on the 2021A Notes in full on their maturity date or HRTAC does not meet the conditions for disbursement of moneys under the 2021 TIFIA Loan Agreement or is otherwise unable to effect draws thereunder, HRTAC will use its best efforts to find an alternative refinancing solution, which could include the issuance of rollover bond anticipation notes and/or other Bonds secured by HRTAC Revenues under the Master Indenture; otherwise the Series 2021A Notes shall be paid from HRTAC Revenues, subject to the prior application of such funds as described below under “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES—Flow of Funds” which would include the prior payment of scheduled debt service on Senior Bonds.

[Update based on structure of 2021 Loan Agreement] Under the 2021 TIFIA Loan Agreement, the TIFIA Lender agrees to extend the 2021 TIFIA Loan to HRTAC in an aggregate principal amount not to exceed \$_____,* and HRTAC will deliver to the TIFIA Lender the 2021 TIFIA Bond as a Subordinate Obligation to evidence HRTAC’s obligation to repay the 2021 TIFIA Loan. The principal amount of the 2021 TIFIA Bond will increase in an amount equal to the advances made by the TIFIA Lender to HRTAC under the 2021 TIFIA Loan Agreement. HRTAC expects to make a single requisition under the 2021 TIFIA Loan on or before ____ 1, 20__, within one year after substantial completion of the HRBT Expansion Project, and to apply such amount to reimburse itself for eligible project costs, including payment of the principal and eligible interest on the Series 2021A Notes at their maturity.

As more particularly described under “2021 TIFIA LOAN AGREEMENT,” there are numerous conditions that must be satisfied by HRTAC to execute the 2021 TIFIA Loan Agreement and in connection with the requisitioning of moneys under the 2021 TIFIA Loan Agreement, including certain conditions relating to third parties, such as VDOT, over which HRTAC has no control. In addition, the TIFIA Lender may refuse to honor a requisition if, among other things, an event of default under the 2021 TIFIA Loan Agreement or certain other material contracts has occurred and is continuing, or if HRTAC or certain other parties are not in compliance with federal law or their obligations under certain material contracts. See “2021 TIFIA LOAN AGREEMENT – Disbursement Conditions,” and “INVESTMENT CONSIDERATIONS—No Assurance of Funds under 2021 TIFIA Loan Agreement.” HRTAC has agreed in the 2021A Series Supplement to take all actions necessary to ensure that it can requisition sufficient moneys under the 2021 TIFIA Loan Agreement to pay the principal of the Series 2021A Notes on their maturity date.

No Mortgage, Lien or Acceleration. The Series 2021A Notes are not secured by any mortgage or lien on any transportation facilities of the Commission, VDOT, the Commonwealth, or any of the Member Localities or by a pledge of the revenues derived from any such facility. In the event of a failure to make any payment on the Series 2021A Notes when due, neither the Trustee nor the owners of the Series 2021A Notes shall have any right to take possession of any transportation facilities or to exclude the Commission, VDOT, the Commonwealth, or any of the Member Localities from possession of them, nor shall there be any right to accelerate payment of the Series 2021A Notes.

No Toll Revenues. The Series 2021A Notes are not secured by a pledge of any toll revenues. The Master Indenture does not permit toll revenues to be pledged to the payment of the Bonds. Although the funding plan for the HRBT Expansion Project anticipates that not less than \$345,000,000, and up to \$575,000,000, of the funding for such project will be derived through toll-backed financing from the Hampton Roads Express Lanes Network, such revenues are a source of project funding that is entirely

* Preliminary, subject to change.

distinct and separate from the HRTF Revenues and are not included under the Master Indenture waterfall. Certain limited transfers of HRTF Revenues to support the toll debt are described below in “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES – Transfers of HRTF Revenues from General Fund.”

Outstanding Bonds

As of the date of this Official Statement, the aggregate outstanding principal amount of the Series 2018A Bonds is \$500,000,000, the aggregate outstanding principal amount of the Series 2020A Bonds is \$614,615,000 and the aggregate outstanding principal amount of the Series 2019A Notes is \$414,345,000. No amount is presently outstanding under the 2019 TIFIA Bond, but HRTAC expects to make a single requisition under the 2019 TIFIA Loan on or before July 1, 2022 (subject to satisfaction of the conditions described in Appendix H - “2019 TIFIA LOAN AGREEMENT”), and to apply such amount to reimburse itself for eligible project costs, including payment of principal and eligible interest on the Series 2019A Notes. Other than the Series 2018A Bonds, the Series 2020A Bonds, the Series 2019A Notes, the 2019 TIFIA Bond (the proceeds of which are not expected to be advanced until needed to pay the Series 2019A Notes at their maturity), and the 2021 TIFIA Bond ((the proceeds of which are not expected to be advanced until needed to pay the Series 2021A Notes at their maturity)), on the date of issuance of the Series 2021A Notes there will be no other obligations outstanding that are secured by or payable from HRTAC Revenues.

Additional Bonds

Authority to Issue Additional Bonds. Under the Master Indenture, the Commission may issue additional Bonds, including (i) Senior Bonds that are on a parity as to the pledge of HRTAC Revenues with the Series 2021A Notes, (ii) Intermediate Lien Obligations that are subordinate as to the pledge of HRTAC Revenues with the Series 2021A Notes and subordinate in payment and security to all Senior Bonds, and (iii) Subordinate Obligations that are subordinate in payment and security to all Intermediate Lien Obligations and all Senior Bonds. The Series 2021A Notes and all other Senior Lien Obligations will be equally and ratably secured under the Master Indenture without preference, priority or distinction on account of the time of their authentication, delivery or maturity. However, different Series of Senior Lien Obligations may bear interest at different rates, have different maturity dates and payment dates, may be subject to different mandatory or optional redemption or tender terms, and may have the benefit of credit facilities that do not support other Series of Senior Lien Obligations.. See “THE MASTER INDENTURE—Issuance of Bonds—Parity of Bonds” in Appendix A.

Conditions to the Issuance of Senior Bonds. The Master Indenture requires as a condition to the issuance of any additional Senior Bonds for non-refunding purposes the filing with the Trustee of an Officer’s Certificate to the effect that, during any twelve consecutive months of the eighteen months preceding the issuance of the additional Senior Bonds, the HRTAC Revenues were not less than 2.00 times the maximum annual Principal and Interest Requirements during the current or any future Fiscal Year (defined in the Master Indenture as the twelve-month period commencing on July 1 of one year and ending on June 30 of the following year) on all Senior Bonds Outstanding and the Series of Senior Bonds to be issued. See “THE MASTER INDENTURE—Issuance of Bonds—Conditions to the Issuance of Additional Series of Bonds” in Appendix A.

Conditions to the Issuance of Intermediate Lien Obligations. HRTAC is permitted to issue Intermediate Lien Obligations secured by the HRTAC Revenues, the payment and security of each which shall be subordinate to all Senior Bonds and to the Senior Debt Service Fund deposits required to be made under the Master Indenture. The Series Supplement pursuant to which the Series 2019A Notes were issued provides that HRTAC will satisfy the following requirements in connection with the issuance of additional

Intermediate Lien Obligations, other than Intermediate Lien Obligations to be incurred to rollover or refinance the 2019A Notes: (i) unless such additional Intermediate Lien Obligations shall not be secured by or participating in a debt service reserve fund, there shall be or have been established in connection with such additional Intermediate Lien Obligations, an Intermediate Lien Debt Service Reserve Fund as provided in the Master Indenture; (ii) HRTAC shall file with the Trustee an Officer's Certificate to the effect that the Intermediate Lien Debt Service Reserve Fund Requirement, calculated immediately after the issuance of such additional Intermediate Lien Obligations, will be met effective upon the issuance of such additional Intermediate Lien Obligations; (iii) HRTAC shall file with the Trustee an Officer's Certificate to the effect that during any twelve consecutive months of the eighteen months preceding the issuance of the Bonds to be issued, the HRTAC Revenues were not less than 1.50 times the maximum annual Principal and Interest Requirements during the current or any future Fiscal Year on any Senior Bonds and Intermediate Lien Obligations then Outstanding plus the Intermediate Lien Obligations to be issued; and (iv) HRTAC shall file with the Trustee an Officer's Certificate demonstrating that, for each Fiscal Year while such Intermediate Lien Obligations will be Outstanding, HRTAC Revenues are projected by HRTAC to equal at least 1.35 times the annual aggregate Principal and Interest Requirements during the current or any future Fiscal Year on any Senior Bonds, Intermediate Lien Obligations, and Subordinate Lien Obligations then Outstanding plus the Series of Intermediate Lien Obligations to be issued. Such projections shall be in reasonable detail, may be made by HRTAC in consultation with the Virginia Department of Transportation and the Virginia Department of Taxation or other relevant state, regional or local agency.

Conditions to the Issuance of Subordinate Obligations. HRTAC is permitted to issue Subordinate Obligations secured by the HRTAC Revenues, the payment and security of each which shall be subordinate to all Senior Bonds and Intermediate Lien Obligations and to the Senior Debt Service Fund and Intermediate Debt Service Fund deposits required to be made under the Master Indenture.

Both the 2021 TIFIA Loan Agreement and the 2019 TIFIA Loan Agreement require that HRTAC satisfy certain conditions with respect to the issuance of permitted indebtedness thereunder. See "2021 TIFIA LOAN AGREEMENT – Permitted Indebtedness" and "THE MASTER INDENTURE—Issuance of Bonds—Intermediate Lien Obligations" and "—Subordinate Obligations" in Appendix A.

Debt Service Reserve

No debt service reserve fund will be established or maintained for the Series 2021A Notes. It is expected that the payment of principal of and interest on the 2021 TIFIA Bond will be secured by a debt service reserve account funded in an amount equal to the requirement therefor established in the 2021 TIFIA Loan Agreement. See "2021 TIFIA LOAN AGREEMENT – Debt Service Reserve." No debt service reserve fund or account was established for the Series 2020A Bonds or the Series 2018A Bonds.

As provided in the Master Indenture, HRTAC may provide that any Senior Lien Debt Service Reserve Fund be held collectively or with respect to all or multiple Series of Senior Lien Obligations, and determine that a Series of Senior Lien Obligations shall not participate in or be secured by a Senior Lien Debt Service Reserve Fund. The 2021A Notes are not participating in or secured by a Senior Lien Debt Service Reserve Fund.

Flow of Funds

The following summary of the Master Indenture's flow of funds provisions does not purport to be comprehensive or definitive and is qualified by reference to the entire Master Indenture, as supplemented by the 2021A Series Supplement and the TIFIA Series Supplement. The Master Indenture establishes a

Revenue Fund to which HRTAC will deposit all HRTAC Revenues immediately upon receipt. The Revenue Fund is the source of the following monthly transfers that will benefit the holders of the Bonds:

FIRST: To each Senior Debt Service Fund, ratably, the amount, if any, required under the Related Series Supplement so that the balance therein on the next Payment Date shall equal the amount of principal, if any, and interest due on the next Payment Date on the Related Series of Bonds; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in a Senior Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

SECOND: To each Senior Debt Service Reserve Fund, ratably, the amount, if any, required so that the balance in each such Fund shall be equal to the respective Senior Debt Service Reserve Requirement;

THIRD: To each Intermediate Lien Debt Service Fund, ratably, the amount, if any, required so that the balance in each such Fund shall equal the amount of principal, if any, and interest due on the Related Intermediate Lien Obligations on the next ensuing payment date; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in an Intermediate Lien Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

FOURTH: To each Intermediate Lien Debt Service Reserve Fund, ratably, the amount, if any, required so that the balance in such Fund shall be equal to the respective Intermediate Lien Debt Service Reserve Requirement;

FIFTH: To each Subordinate Debt Service Fund, ratably, the amount, if any, required so that the balance in each such Fund shall equal the amount of principal, if any, and interest due on the Related Subordinate Obligations on the next ensuing payment date; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in a Subordinate Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

SIXTH: To each Subordinate Debt Service Reserve Fund, ratably, the amount, if any, so that the balance in such Fund shall be equal to the respective Subordinate Debt Service Reserve Requirement;

SEVENTH: To each Rebate Fund the amounts necessary to provide for the payment of any Rebate Amounts with respect to the Related Series of Bonds as confirmed in an Officer's Certificate;

EIGHTH: To the Operating Account of the Operating Fund, the amount of funds necessary to pay Operating Expenses during such period in accordance with the Annual Budget (as defined in the Master Indenture; see Appendix A);

NINTH: To the Operating Reserve Account of the Operating Fund, the amount, if any, so that the balance in such Account shall be equal to the Operating Reserve Requirement;

TENTH: To fund any Hedging Termination Obligation in connection with a Qualified Hedge;

ELEVENTH: After curing any deficiencies as required by the Master Indenture to the deposits and balances required in "FIRST" through "TENTH" above, to the TIFIA Revenue

Sharing Account, the amount, if any, as may be required under the TIFIA Series Supplement, and the applicable provisions of any other Series Supplement, an amount equal to Excess Revenues for such month, for deposit into the TIFIA Revenue Sharing Account (see “2021 TIFIA LOAN AGREEMENT—Prepayment of the 2021 TIFIA Loan,” below; and “INVESTMENT CONSIDERATIONS—Risks of Non-Appropriation and Future Legislative or Administrative Actions Affecting Revenues—TIFIA Revenue Sharing Trigger Event”); and

TWELFTH: To the General Fund, the balance remaining in the Revenue Fund.

Pursuant to the 2021A Series Supplement, each monthly transfer into the 2021A Bond Debt Service Fund under the Master Indenture [shall be in an amount not less than the sum of (i) except to the extent interest is paid from the Capitalized Interest Subaccount, one-sixth of the interest due on the Series 2021A Notes on the next ensuing Interest Payment Date, plus (ii) one-twelfth of the principal due on the Series 2021A Notes at maturity or upon mandatory redemption on the next ensuing Principal Payment Date, less (iii) accrued interest and any other interest earnings currently on deposit therein.] See “THE 2021A SERIES SUPPLEMENT—Bond Debt Service Fund” in Appendix A.

HRTAC shall apply the balance in the General Fund, including interest earnings, as follows: (i) first to cure any deficiency in the amount required to be on deposit in any Senior Debt Service Fund, any Senior Debt Service Reserve Fund, any Intermediate Lien Debt Service Fund, any Intermediate Lien Debt Service Reserve Fund, any Subordinate Debt Service Fund, any Subordinate Debt Service Reserve Fund, any Rebate Fund, or the Operating Reserve Account, in that order; and (ii) then to any lawful purpose approved by resolution of HRTAC, including without limitation, expenditures for capital improvements or administrative expenses. See “THE MASTER INDENTURE—Revenue Fund and Flow of Funds” in Appendix A.

Transfers of HRTF Revenues from the General Fund to Support Toll Revenue Bonds. As stated above, the Master Indenture provides that HRTAC may use amounts in the General Fund for any lawful purpose approved by resolution of HRTAC, including expenditures for capital improvements. With respect to the funding of the HRBT Expansion Project, the Commission will enter into a Master Indenture of Trust between the Commission and U.S. Bank National Association, as trustee, dated as of _____, 2021 (the “Master Toll Indenture”) and a First Supplemental Indenture of Trust, dated as of _____, 2021 (the “First Supplemental Toll Indenture”) and together with the Master Toll Indenture, the “Toll Indenture”). The Toll Indenture provides for the collection, custody, application and use of toll revenues of the Express Lanes Network (the “Express Lanes Toll Revenues”) to finance the Express Lanes Network and facilities related thereto, including a portion of the HRBT Expansion Project. The Commission has negotiated the terms of a toll-supported loan with the TIFIA Lender, including the form of TIFIA Toll Loan Agreement (the “TIFIA Toll Loan Agreement”) between the Commission and the TIFIA Lender, pursuant to which the TIFIA Lender will agree to extend a secured loan to the Commission to finance a portion of the costs of the HRBT Expansion Project. To evidence the obligation of the Commission to repay the loan under the TIFIA Toll Loan Agreement, the Commission will issue an obligation under the Master Toll Indenture in an initial principal amount of up to \$ _____ (the “TIFIA Series 2021 Toll Bond”).

The Commission has agreed, in the TIFIA Series Supplement, to provide certain transfers of HRTF Revenues from the General Fund for limited support of the TIFIA Series 2021 Toll Bond, subject to the availability of HRTF Revenues in the General Fund for such purpose. These include the following (together, the “HRTF Transfers”):

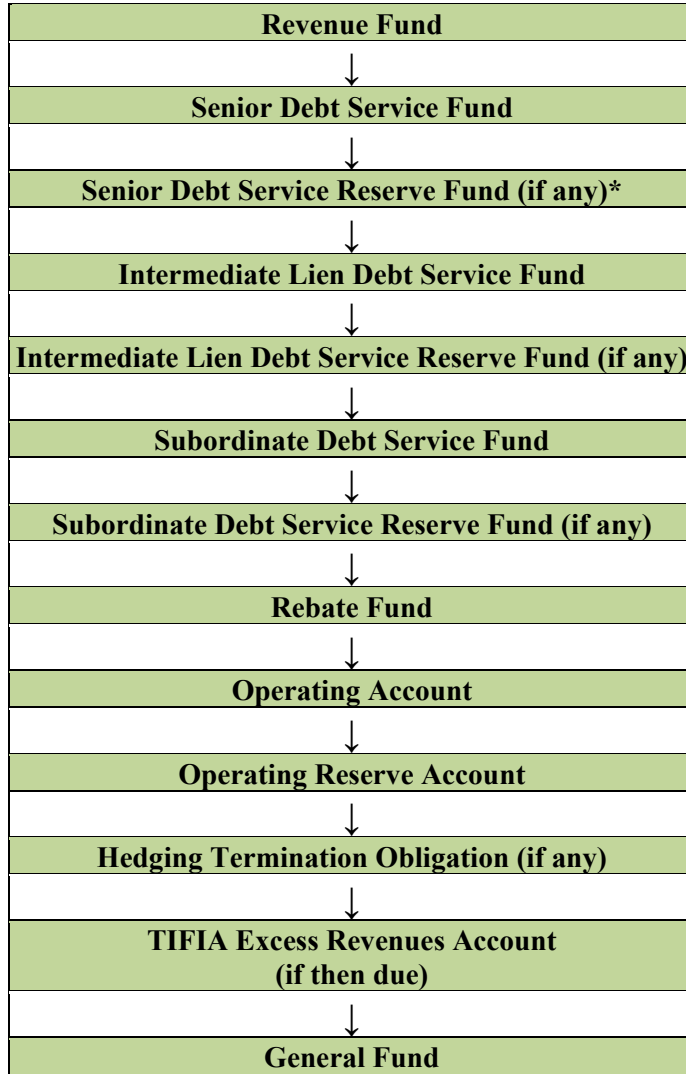
- An amount equal to the TIFIA Loan Reserve Account Reserve Requirement (\$ _____) for transfer and deposit to the debt service reserve account established

under the First Supplemental Toll Indenture, ;to occur at the later of the (i) substantial completion date of the HRBT Expansion Project, or (ii) the date on which the Commission makes the first draw under the TIFIA Series 2021 Toll Bond

- [\$ _____], to be deposited in a revenue stabilization fund to provide for debt service payments on the TIFIA Series 2021 Toll Bond, to occur at the later of the (i) substantial completion date of the HRBT Expansion Project, or (ii) the date on which the Commission makes the first draw under the TIFIA Series 2021 Toll Bond; and commencing with the Fiscal Year beginning July 1, 20__ , and continuing in each year through the maturity of the TIFIA Series 2021 Toll Bond, to the extent that amounts on deposit in such fund are less than [\$ _____], an amount sufficient to restore the balance therein to [\$ _____], subject to an annual transfer cap of [\$ _____] during any Fiscal Year;
- For deposit to the major maintenance and renewal fund established under the Toll Indenture, the amount of \$5,000,000, to occur at the later of the (i) substantial completion date of the HRBT Expansion Project, or (ii) the date on which the Commission makes the first draw under the TIFIA Series 2021 Toll Bond; and commencing with the Fiscal Year beginning July 1, 20__ , and continuing in each year through the maturity of the TIFIA Series 2021 Toll Bond, to the extent that amounts on deposit in such fund are less than specified amount for the major maintenance and renewal fund, based on the life cycle costs of the Express Lanes, an amount sufficient to restore the amount on deposit in the such fund to the specified amount, provided, however, that the aggregate amount of all HRTF Transfers made while the TIFIA Series 2021 Toll Bond is outstanding for deposit to such major maintenance and renewal fund shall not exceed a cumulative cap equal to the total of expected major maintenance and renewal fund expenditures to the final maturity of any toll obligations issued under the Toll Indenture.

The Toll Indenture specifies that HRTF Transfers may only be used to pay for costs legally permitted for the use of HRTF amounts. The Commission agrees to manage the use of HRTF Revenues in the General Fund so as to provide for the availability of sufficient amounts in the General Fund to make the foregoing as and when required, subject to the availability of HRTF Revenues and to its commitments to provide funding for the HRBT Expansion Project. Failure to make such transfers does not constitute a default or event of default until a period of six months has elapsed since the Commission has received notice from the trustee under the Toll Indenture of a failure to make a required transfer and has failed to make such transfer. No such event of default or default shall not cause an event of default with respect to any other Series of Bonds unless such event or condition independently constitutes an event of default with such other Series of Bonds.

FLOW OF FUNDS DIAGRAM



** No Debt Service Reserve Fund will be established or maintained for the Series 2021A Notes.*

2019 TIFIA LOAN AGREEMENT

Pursuant to the terms of a TIFIA Loan Agreement dated December 10, 2019 (the “2019 TIFIA Loan Agreement”), between the U.S. Department of Transportation (“USDOT”), an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”) and the Commission (the “2019 TIFIA Loan Agreement”), HRTAC issued the 2019 TIFIA Bond in the amount of \$500,789,463 as a Subordinate Lien Obligation under the Master Indenture. The 2019 TIFIA Bond bears interest on amounts disbursed thereunder at the fixed interest rate of 2.25%, computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed, except that, upon the occurrence and during the continuance of a payment default, the interest rate with respect to any overdue principal amount shall bear interest at the foregoing rate plus 2.00% *per annum*. HRTAC expects

to make a single requisition under the 2019 TIFIA Loan on or before July 1, 2022, within one year after substantial completion of the Initial Financed Projects (as described herein), and apply the amount requisitioned under the 2019 TIFIA Loan Agreement to reimburse itself for eligible project costs, including the use of a portion of such funds to pay principal on the Series 2019A Notes at their maturity date of July 1, 2022.

See Appendix H – “2019 TIFIA LOAN AGREEMENT” for a summary of certain provisions of the 2019 TIFIA Loan Agreement. The 2019 TIFIA Loan Agreement has been filed with the MSRB through its EMMA system with respect to the outstanding Series 2018A Bonds, Series 2020A Bonds and Series 2019A Notes and may be accessed over the internet at <https://www.emma.msrb.org>.

[Subject to revision to work in or combine applicable descriptions of the 2021 TIFIA HRTF Loan Agreement and/or the HREL Toll TIFIA Loan Agreement]

2021 TIFIA LOAN AGREEMENT

[The delivery and effective date of the 2021 TIFIA Loan Agreement is expected to occur by _____, 2021. While HRTAC expects that the 2021 TIFIA Loan Agreement will be executed and delivered, HRTAC and the TIFIA Lender are currently negotiating the final terms of such agreement and there are no assurances that HRTAC will be able to execute and deliver the 2021 TIFIA Loan Agreement. There may also be terms of the final 2021 TIFIA Loan Agreement that vary from the description that follows in this Official Statement. Any such changes are not expected to be material, but HRTAC makes no assurance as to the final form of the 2021 TIFIA Loan Agreement. After execution and delivery, HRTAC will promptly electronically file the final form of the 2021 TIFIA Loan Agreement with the Municipal Securities Rulemaking Board (the “MSRB”) through its Electronic Municipal Market Access System (“EMMA”).*

As described below, it is expected that the 2021 TIFIA Loan Agreement will have certain conditions precedent to the funding of any disbursement of the 2019 TIFIA Loan. While HRTAC anticipates it will be able to meet such conditions at the time of any disbursement, there are no assurances that HRTAC will be able to do so.

[Subject to revision to work in or combine applicable descriptions of the 2021 TIFIA HRTF Loan Agreement and/or the HREL Toll TIFIA Loan Agreement]

Pursuant to the 2021 TIFIA Loan Agreement, the TIFIA Lender is expected to commit to extend the 2021 TIFIA Loan to HRTAC in an aggregate principal amount not to exceed \$_____.* HRTAC expects to make a single requisition under the 2021 TIFIA Loan on or before _____, 20__, within one year after substantial completion of the HRBT Expansion Project, and apply the amount requisitioned under the 2021 TIFIA Loan Agreement to reimburse itself for eligible project costs, including the use of a portion of such funds to pay principal on the Series 2021A Notes at their maturity. The proceeds of the 2021 TIFIA Loan may be disbursed to HRTAC for the payment, reimbursement or refinancing of certain costs of the Financed Project that are eligible to be financed with proceeds of the 2021 TIFIA Loan pursuant to federal law; provided, that total disbursements under the 2021 TIFIA Loan cannot exceed 33% of all such eligible costs of the HRBT Financed Costs. Eligible costs include design, construction, oversight and certain financing costs (certain reserves, interest during construction and financing fees), and total federal

* Preliminary, subject to change.

assistance (including federal highway reimbursement funds) provided to projects cannot exceed 80% of all such eligible project costs of the HRBT Financed Costs.

Upon closing of the 2021 TIFIA Loan Agreement, HRTAC will issue the 2021 TIFIA Bond to the TIFIA Lender to evidence its repayment obligations under the 2021 TIFIA Loan. The interest rate on of the 2021 TIFIA Loan and hence of the 2021 TIFIA Bonds will be a fixed interest rate calculated by adding one basis point (0.01%) to the rate of U.S. Treasury securities of comparable maturity on the date of execution and delivery of the 2021 TIFIA Loan Agreement as such rate is published in the United States Treasury Bureau of Public Debt's daily rate tables for State and Local Government Series investments, computed on the basis of a 365- or 366-day year, as applicable, for the actual number of days elapsed, except that, upon the occurrence and during the continuance of a payment default, the interest rate with respect to any overdue principal amount shall bear interest at the foregoing rate plus 2.00% *per annum*.

The 2021 TIFIA Bond will be issued as a Subordinate Lien Obligation under the Master Indenture.

Certain provisions of the 2021 TIFIA Loan Agreement relating to conditions precedent to requisitioning moneys and events of default are summarized below.

Disbursement Conditions

Closing and delivery of, as well as disbursements under, the 2021 TIFIA Loan are subject to numerous conditions precedent. Other than the delivery of customary certificates as to representations and warranties, no defaults and other corporate matters, the following, among others, are additional conditions to the TIFIA Lender's obligation to fund a requisition request:

- delivery to the TIFIA Lender of updated Financial Plans and amendments and modifications, if any, to certain project contracts;
- compliance with statutes and regulations relating to the HRBT Expansion Project;
- all applicable insurance policies shall be in full force and effect and all permits and governmental approvals necessary to complete construction of the HRBT Expansion Project shall have been obtained;
- no event of default under the 2021 TIFIA Loan Agreement, the Master Indenture or other material contracts, or event which with the giving of notice or the passage of time or both under such documents would result in an event of default shall have occurred and be continuing; and
- since the date HRTAC submitted the application for the 2021 TIFIA Loan to the TIFIA Lender there shall not have occurred a Material Adverse Effect (as defined in the 2021 TIFIA Loan Agreement).

The TIFIA Lender shall be entitled to withhold approval of the disbursement of 2021 TIFIA Loan proceeds if:

- an event of default or an event that, with the giving of notice of the passage of time or both, would constitute an event of default, under the 2021 TIFIA Loan Agreement shall have occurred and be continuing; or
- HRTAC:

- knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated by the 2021 TIFIA Loan Agreement; or
- fails to ensure construction of the Financed Projects in a manner consistent with the governmental and other approvals therefor, where such failure prevents or materially impairs the project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by HRTAC with applicable federal or local law pertaining to the HRBT Expansion Project, or with the terms and conditions of the 2021 TIFIA Loan Agreement; or
- fails to observe or comply with any applicable federal or local law, or any term or condition of the 2021 TIFIA Loan Agreement; or
- fails to deliver documentation satisfactory to the TIFIA Lender evidencing eligible project costs claimed for disbursement at the times and in the manner specified by the 2019 TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing eligible project costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

See additional discussion of the conditions to closing and delivery of, as well as disbursements under, the 2021 TIFIA Loan below under “INVESTMENT CONSIDERATIONS—No Assurance of Funds under 2021 TIFIA Loan Agreement.”

Repayment Terms

No payment of the principal of or interest on the 2021 TIFIA Loan is required to be made during the capitalized interest period, which will be the period from the drawdown of the 2021 TIFIA Loan to the date that HRTAC commences repayment of the 2021 TIFIA Loan as described below (“TIFIA Capitalized Interest Period”). As of each June 30 and December 31 during the TIFIA Capitalized Interest Period and on the last day of the TIFIA Capitalized Interest Period, interest accrued in the six-month period ending on the subject date (or such lesser period in connection with the end of the TIFIA Capitalized Interest Period) on the 2021 TIFIA Loan shall be capitalized and added to the outstanding 2021 TIFIA Loan balance. Within 30 days after the end of the TIFIA Capitalized Interest Period, the TIFIA Lender shall give written notice to HRTAC stating the outstanding 2021 TIFIA Loan balance as of the close of business on the last day of the TIFIA Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Commission under the 2021 TIFIA Loan Agreement or under any of the other 2019 TIFIA Loan documents.

On the earlier of (a) January 1, 20__, and (b) the ninth semi-annual payment date immediately succeeding the substantial completion date of the HRBT Expansion Project financed with 2021 TIFIA Loan proceeds, HRTAC shall pay TIFIA Debt Service in the amount of interest on and principal of the 2021 TIFIA Loan equal to the amount set forth in the 2021 TIFIA Loan Agreement, as the same may be revised as provided in the 2021 TIFIA Loan Agreement, which payments shall be made in accordance with the terms of the 2021 TIFIA Loan Agreement. A projected amortization of the 2021 TIFIA Bond is set forth under the column entitled “TIFIA Series 2021 Debt Service” under Table II – Estimated Debt Service Requirements in “ESTIMATED DEBT SERVICE REQUIREMENTS.”

Prepayment of the 2021 TIFIA Loan

HRTAC will be required to mandatorily prepay all or a portion of the 2021 TIFIA Loan without penalty or premium following the occurrence of a Revenue Sharing Trigger Event (defined below), on each semi-annual payment date under the 2021 TIFIA Loan Agreement occurring while the Revenue Sharing Trigger Event remains in effect, from any amounts on deposit in the Revenue Sharing Account. See “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES – Flow of Funds” above. Prepayment of the 2021 TIFIA Loan will be made, on a pro rata basis with any other TIFIA Loans secured by HRTAC Revenues then outstanding, in each case, based on the then outstanding amount of such TIFIA Loans.

A “Revenue Sharing Trigger Event” is any date on which the 2021 TIFIA Loan Agreement is outstanding and HRTAC or VDOT, on behalf of HRTAC, is not actively engaged in the development of capital project programs in the Hampton Roads Transportation Planning Organization’s most recently adopted long-range transportation plan. See “INVESTMENT CONSIDERATIONS—Risks of Non-Appropriation and Future Legislative or Administrative Actions Affecting Revenues—TIFIA Revenue Sharing Trigger Event.” Under the Indenture and its flow of funds provisions, “Excess Revenues” are, following the occurrence of a Revenue Sharing Trigger Event, an amount in each month equal to 50% of the HRTAC Revenues remaining after occurrence of the transfers described in paragraphs FIRST through TENTH described in “FLOW OF FUNDS” above have occurred. See “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES – Flow of Funds” above.

Upon any voluntary prepayment of any Bonds, other than any voluntary prepayment of any Bonds made with the proceeds of Additional Bonds issued on the same lien level, in accordance with the requirements of the 2021 TIFIA Loan Agreement for the purpose of refinancing such Bonds, pro rata with such voluntary prepayment.

In addition, HRTAC will have the right to prepay the 2021 TIFIA Loan in whole or in part (and, if in part, the amounts thereof to be prepaid will be determined by HRTAC; provided, however, that such prepayments have to be in principal amounts of \$1,000,000 or any integral multiple of \$1.00 thereof), at any time or from time-to-time, without penalty or premium, by paying to the TIFIA Lender such principal amount of the 2021 TIFIA Loan to be prepaid, together with the unpaid interest accrued on the amount of principal so prepaid to the date of such prepayment. Each prepayment of the 2021 TIFIA Loan has to be made on such date and in such principal amount as HRTAC specifies in a written notice delivered to the TIFIA Lender. In the case of any prepayment, such written notice has to be delivered to the TIFIA Lender not less than 10 days or more than 30 days prior to the date set for prepayment.

If such notice has been given, the principal amount of the 2021 TIFIA Loan stated in such notice or the whole thereof, as the case may be, is due and payable on the prepayment date stated in such notice, together with interest accrued and unpaid to the prepayment date on the principal amount then being prepaid.

TIFIA Debt Service Reserve

The 2021 TIFIA Bond will be secured by a Subordinate Debt Service Reserve Fund. On or prior to the later of the substantial completion date of the HRBT Expansion Project or the date of the final disbursement under the 2021 TIFIA Loan Agreement, HRTAC shall cause the deposit of proceeds of the TIFIA Series 2021 Bond or available HRTAC Revenues in such Subordinate Debt Service Reserve Fund in an amount sufficient to cause the balance therein to equal the “2021 TIFIA Debt Service Reserve Required Balance.” Such amount is the lesser of (x) ten percent (10%) of the 2021 TIFIA Loan, (y) one

hundred percent (100%) of the 2021 TIFIA maximum annual debt service, or (z) one hundred and twenty-five percent (125%) of the average annual 2021 TIFIA debt service and any other TIFIA loans secured by HRTAC Revenues outstanding at any one time. If there are more than one 2021 TIFIA Loan secured by HRTAC Revenues outstanding at any time, then such amounts will be calculated using the summation of all TIFIA Loans as if there were one 2021 TIFIA Loan.

Representations, Warranties and Covenants

Pursuant to the terms of the 2021 TIFIA Loan Agreement, HRTAC will provide certain customary representations, warranties and covenants as of (i) the date of execution and delivery of the 2021 TIFIA Loan Agreement, and (ii) each date on which a disbursement of the 2021 TIFIA Loan is requested or made. In addition, HRTAC will undertake to comply with certain covenants, for the benefit of the TIFIA Lender, including, but not limited to:

Compliance with Laws. Pursuant to the 2021 TIFIA Loan Agreement, HRTAC represents and warrants that the execution and delivery by HRTAC of the 2021 TIFIA Loan Agreement and other related documents to which HRTAC is a party, and compliance with the terms thereof will not, in any material respect, conflict with or constitute a violation or breach of or default of any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument. VDOT has oversight responsibility for ensuring compliance with all applicable provisions of federal transportation law for project oversight activities.

Permitted Indebtedness. Under the 2021 TIFIA Loan Agreement, HRTAC may issue certain permitted debt and additional obligations (“Additional Obligations”), as follows, provided, however, that no event of default under the Indenture or the 2021 TIFIA Loan Agreement has occurred and is continuing. See “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A Notes – Additional Bonds” and “THE MASTER INDENTURE—Issuance of Bonds—Intermediate Lien Obligations” and “—Subordinate Obligations” in Appendix:

- (1) if the proceeds of the Additional Obligations will be used to refinance Senior Bonds, Intermediate Lien Obligations, or Subordinate Obligations and are issued on the same lien level as the proposed refunded obligations, (i) such Additional Obligations must receive a rating from a nationally recognized rating agency of equivalent to the lesser of the rating on the obligations being refinanced with the proceeds of the Additional Obligations as of the applicable effective date or the most recent rating of such obligations provided under the 2021 TIFIA Loan Agreement, (ii) the net proceeds thereof (after deducting any amounts required to be deposited to satisfy the respective debt service reserve requirement or required to pay costs of issuance) must not exceed the principal amount of the respective obligations outstanding and being refinanced, (iii) the respective lien level debt service, after the incurrence of such Additional Obligations, in each year of the remaining term of the 2021 TIFIA Loan, must be projected to be less than the respective lien level debt service projected for each such year in the 2021 TIFIA Loan Agreement’s base case projections, and (iv) the stated maturity of such Additional Obligations shall not exceed the stated maturity for the obligations being refinanced with the proceeds of the Additional Obligations; and
- (2) if the proceeds thereof will be used for any reason not described in the foregoing clause (1) above, the issuance of the Additional Obligations shall not result in a downgrade of any Subordinate Lien Obligations issued to the TIFIA Lender and HRTAC shall provide the TIFIA Lender a certificate in a form reasonably acceptable to the TIFIA Lender (including the calculations supporting such certificate), certifying that (i) the activity or project to which such Additional

Obligation proceeds will be applied could not reasonably be expected to result in a material adverse effect under the 2021 TIFIA Loan Agreement; (ii) HRTAC has satisfied the requirements for issuing the Additional Obligations in accordance with the applicable provisions of the Indenture or Series Supplement existing as of the applicable effective date, including, specifically, that during any twelve consecutive months of the eighteen months preceding the issuance of the Additional Obligations, (A) the HRTAC Revenues were not less than (1) 2.00 times the maximum annual Principal and Interest Requirements during the current or any future Fiscal Year on the Senior Bonds then outstanding plus, if such Additional Obligations are Senior Bonds, such Additional Obligations, and (2) 1.50 times the maximum annual Principal and Interest Requirements during the current or any future Fiscal Year on the Senior Bonds and Intermediate Lien Obligations then outstanding plus, if such Additional Obligations are Intermediate Lien Obligations, such Additional Obligations, and (B) the total debt service coverage ratio, including debt service for the Additional Obligations to be issued, for each calculation period under the 2021 TIFIA Loan Agreement is projected to be not less than 1.35 to 1.00 while any Subordinate Obligations issued to the TIFIA Lender remain outstanding.

Additional Covenants. The following briefly summarizes additional covenants of HRTAC (which covenants may be qualified by materiality and other exceptions).

- (1) Maintenance by HRTAC of legal structure;
- (2) No indebtedness, other than Permitted Indebtedness;
- (3) Securing and maintaining the liens on HRTAC Revenues;
- (4) No swap or hedging transactions other than as expressly permitted;
- (5) Ensure that VDOT has complied under the Standard Project Agreements with respect to the HRBT Expansion Project; and
- (6) Maintenance by HRTAC of all required insurance.

Events of Default Under the 2021 TIFIA Loan Agreement

The following events are expected to constitute events of default under the 2021 TIFIA Loan Agreement:

- (1) Failure to pay any of the principal amount of or interest due and payable on the 2021 TIFIA Loan or to make any required mandatory prepayment thereunder;
- (2) A failure by HRTAC to observe or perform any covenant, agreement or obligation of HRTAC, respectively, under the 2021 TIFIA Loan Agreement or any other 2021 TIFIA Loan Document (other than in the case of any payment default or any development default), and such failure shall not be cured within 30 days after HRTAC's knowledge thereof or receipt by HRTAC from the TIFIA Lender of written notice thereof provided, however, that if such failure is capable of cure but cannot reasonably be cured within such 30-day period, then no event of default shall be deemed to have occurred or be continuing under this provision if and so long as within such 30-day period HRTAC shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, provided such failure is cured within 180 days of the first occurrence of such failure;

- (3) A development default shall occur;
- (4) Any of the representations, warranties or certifications of HRTAC made in or delivered pursuant to the 2021 TIFIA Loan Agreement, the TIFIA Note and the 2021 TIFIA Loan Agreement (or in any certificates delivered by HRTAC in connection with such documents) shall prove to have been false or misleading in any material respect when made;
- (5) Any acceleration shall occur of the maturity of any Senior Lien Obligations, Intermediate Lien Obligations, or Subordinate Obligations, or any such Senior Lien Obligations, Intermediate Lien Obligations, or Subordinate Obligations shall not be paid in full upon the final maturity thereof;
- (6) One or more judgments (A) for the payment of money in an aggregate amount in excess of \$5,000,000 (inflated annually by CPI) that are payable from HRTAC Revenues and are not or have not been otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage), or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against HRTAC, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of HRTAC to enforce any such judgment;
- (7) HRTAC shall fail to maintain its existence as a body politic and a political subdivision created and existing under the laws of the Commonwealth, unless at or prior to the time HRTAC ceases to exist in such form a successor public agency or governing body has been created by the Commonwealth pursuant to a valid and unchallenged Commonwealth law and has succeeded to the assets of HRTAC and has assumed all of the obligations of HRTAC under the 2021 TIFIA Loan Documents and the Indenture, including the payment of all Secured Obligations;
- (8) A Bankruptcy Related Event, as defined in the 2021 TIFIA Loan Agreement, shall occur with respect to HRTAC, VDOT, or certain principal project parties;
- (9) HRTAC or VDOT shall abandon the HRBT Expansion Project, subject to certain exceptions;
- (10) (A) Any 2021 TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or HRTAC contests in any manner the validity or enforceability of any 2021 TIFIA Loan Document to which it is a party or denies it has any further liability under any 2021 TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any 2021 TIFIA Loan Document to which it is a party; or (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Trust Estate other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby; and
- (11) Operation of the HRBT Expansion Project shall cease for a continuous period of not less than one hundred eighty (180) days, subject to certain exceptions.

Remedies

Upon the occurrence of a development default under the 2021 TIFIA Loan Agreement, all obligations of the TIFIA Lender thereunder with respect to the disbursement of any undisbursed amounts of the 2021 TIFIA Loan shall immediately be deemed suspended, subject to cure by HRTAC.

Upon the occurrence of any bankruptcy related event of default with respect to HRTAC, all obligations of the TIFIA Lender thereunder with respect to the disbursement of any undisbursed amounts of the 2021 TIFIA Loan shall automatically be deemed terminated, and, to the extent permitted under the Indenture, the outstanding 2021 TIFIA Loan balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under the 2021 TIFIA Bond or the other 2021 TIFIA Loan documents, shall automatically become immediately due and payable;

Upon the occurrence of any other event of default under the 2021 TIFIA Loan Agreement, the TIFIA Lender, by written notice to HRTAC, may (A) suspend or terminate all of its obligations thereunder with respect to the disbursement of any undisbursed amounts of the 2021 TIFIA Loan, and (B) to the extent permitted under the Indenture, declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under the 2021 TIFIA Loan Agreement, the TIFIA Bond or the other 2021 TIFIA Loan documents.

Whenever any Event of Default thereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid thereunder or under the TIFIA Bond or the other 2021 TIFIA Loan Documents, and may prosecute any such judgment or final decree against HRTAC and collect in the manner provided by law out of the property of HRTAC the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts payable by HRTAC under the 2021 TIFIA Loan Agreement, the TIFIA Bond or the other 2021 TIFIA Loan documents then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of HRTAC under the 2021 TIFIA Loan Agreement, the TIFIA Bond or the other 2021 TIFIA Loan documents.

Whenever any Event of Default under the 2021 TIFIA Loan Agreement shall have occurred and be continuing, the TIFIA Lender may suspend or debar HRTAC from further participation in any federal government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

No action taken pursuant to the 2021 TIFIA Loan Agreement shall relieve HRTAC from its obligations pursuant to the 2021 TIFIA Loan Agreement, the TIFIA Bond or the other 2021 TIFIA Loan documents, all of which shall survive any such action.

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

The Commission was created by the Virginia General Assembly in 2014 to be a body politic and a political subdivision of the Commonwealth with responsibility for approving the funding of projects to be financed with the HRTF Revenues. Such revenues are derived from the additional taxes levied pursuant to Chapter 766 within Planning District 23. The Member Localities comprising Planning District 23 currently include the Counties of Isle of Wight, James City, Southampton, and York, and the Cities of Chesapeake,

Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg. The Commission is a separate legal entity from these Member Localities within Planning District 23. Cities and counties in the Commonwealth are independent entities; therefore, the Member Localities do not overlap. Pursuant to Chapter 545, the Commission must use the HRTF Revenues for purposes of (i) funding new construction projects on new or existing highways, bridges, and tunnels in the Member Localities, giving priority to projects expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within the Member Localities, and (ii) paying the Commission’s administrative and operating expenses as provided in its annual budget (which under the HRTAC Act shall be limited solely to administrative expenses of the Commission and shall not include any funds for construction or acquisition of transportation facilities or the performance of any transportation service). See “HAMPTON ROADS TRANSPORTATION FUND—General” herein, and “Table 5: HRTAC Operating Budget” in Appendix E. HRTAC collaborates with HRTPO to set transportation funding priorities on the basis of a regional consensus developed by HRTPO, but HRTAC serves primarily as a financing vehicle for regional transportation projects rather than as a planning board. To date, all of HRTAC’s projects have been part of VDOT’s statewide transportation system and HRTAC has entered into Standard Project Agreements and PAFA with VDOT whereby HRTAC provides funds to such projects. See “DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS.”

Hampton Roads Region

With the exception of Southampton County and the City of Franklin, all of the Member Localities are located in the Hampton Roads MSA. For a description of certain demographic, economic and financial information regarding Planning District 23 and Hampton Roads, see Appendix D.

Commission Members

Pursuant to the HRTAC Act, HRTAC has 23 members as follows: the chief elected official of the ten (10) cities embraced by the Commission, which in each such city is a mayor; a current elected official of each of the four (4) counties embraced by the Commission, provided that such official (a) serves on the governing body of the county and (b) has been appointed by resolution of such governing body to serve as the county’s member on the Commission; three (3) members of the House of Delegates who reside in different counties or cities embraced by the Commission and who are appointed by the Speaker of the House; and two (2) members of the Senate who reside in different counties or cities embraced by the Commission, who are appointed by the Senate Committee on Rules. In addition, the Director of the Virginia Department of Rail and Public Transportation (“VDRPT”), or his/her designee; the Commissioner of Highways, or his/her designee; the Executive Director of the Virginia Port Authority, or his/her designee; and a member of the Commonwealth Transportation Board (the “CTB”) who resides in a locality embraced by the Commission and who is appointed by the Governor, serve as non-voting members of HRTAC.

The current membership of HRTAC is listed below, together with the related Member Locality or appointing official or body [*subject to update*]:

<u>Voting Members</u>	<u>Title</u>	<u>Source of Appointment</u>
Donnie R. Tuck	HRTAC Chair	City of Hampton
Richard W. West	HRTAC Vice Chair	City of Chesapeake
William M. McCarty, Sr.	Member	Isle of Wight County
Kenneth C. Alexander	Member	City of Norfolk

L. Louise Lucas	Member	Virginia Senate
Michael Duman	Member	Suffolk
Bobby Dyer	Member	City of Virginia Beach
Paul Freiling	Member	City of Williamsburg
Michael J. Hipple	Member	James City County
Gordon C. Helsel	Member	City of Poquoson
Clinton L. Jenkins	Member	Virginia House of Delegates
Montgomery “Monty” Mason	Member	Virginia Senate
Christopher D. Cornwell, Sr.	Member	Southampton County
Dr. McKinley Price	Member	City of Newport News
Frank Rabil	Member	City of Franklin
Shannon E. Glover	Member	City of Portsmouth
Thomas G. Shepperd	Member	York County
Michael Mullin	Member	Virginia House of Delegates
Richard W. West	Member	City of Chesapeake
Vacant	Member	Virginia House of Delegates

<u>Non-Voting Members:</u>	<u>Title</u>	<u>Source of Appointment</u>
Stephen Brich	Non-Voting Member	Commissioner of Highways, VDOT
Jennifer Mitchell	Non-Voting Member	Director of VDRPT
<u>Non-Voting Members:</u>	<u>Title</u>	<u>Source of Appointment</u>
John F. Malbon	Non-Voting Member	Commonwealth Transportation Board
Stephen A. Edwards	Non-Voting Member	Executive Director, Virginia Port Authority

HRTAC Executive Director

Kevin B. Page serves as the Executive Director of HRTAC. He has served the Commission in this role for over 5 years. Mr. Page is responsible for management of the day-to-day administrative affairs of the Commission, which relate principally to the support of more than \$9.55 billion in mega highway transportation projects and \$552 million in transit projects that are planned for Hampton Roads. Mr. Page is also responsible for coordinating the management and investment of the HRTF funds received by HRTAC. Mr. Page has over 30 years of multimodal leadership experience within the transportation industry and has served in executive roles on major infrastructure funding and construction initiatives and in forging strategic partnerships, including serving on various transportation boards and safety committees. Before joining HRTAC, he spent over 10 years in executive leadership roles over transit and rail funding

and program delivery with the Virginia Department of Rail and Public Transportation, 7 years as the Transit Manager of Petersburg, Virginia’s separate transit and school bus enterprise operations, and 2 years with the Greater Richmond Transit Company in Richmond, Virginia. He has led the planning, development and implementation of a wide variety of projects including large scale public-private and multistate partnerships, the safety oversight of transportation systems, corridor long environmental studies, short and long-range planning and financing, and was instrumental in the development and delivery of regional Amtrak passenger train service and the expansion of the Virginia Railway Express to serve new markets. Mr. Page earned a B.S. degree in Urban Studies and Planning from Virginia Commonwealth University, is a graduate of the Virginia Executive Institute, and his professional awards of recognition include the VDOT Peer Award, VDOT Commissioner’s Award of Excellence, the Virginia Economic Developer’s Association Economic Development Ally of the Year Award, HB2 Team Excellence in Teamwork Award, CSX Transportation Partnership Award, the Commonwealth Transportation Safety Board’s Award for Rail Safety, and the Amtrak President’s State Partner Award.

HRTAC Annual Budget

As adopted, HRTAC’s Fiscal Year 2022 administrative and operating expense budget totals \$6,746,539 million and is expected to be funded proportionately by the HRTF and the Hampton Roads Regional Transit Fund. The largest expenditures in the budget are personnel and professional services costs. As required by the HRTAC Act, the annual budget is limited solely to the administrative and operating expenses of the Commission and does not include funds for construction or acquisition of transportation facilities or for the performance of any transportation service. See “HAMPTON ROADS TRANSPORTATION FUND—General” and “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES —Flow of Funds” herein, and “Table 5: HRTAC Operating Budget” in Appendix E. The financial activities of the Commission are overseen by the Commission’s Finance Committee and are subject to annual audit (as described below) and annual reporting to the Commonwealth’s Joint Legislative Commission on Transportation Accountability.

HRTAC Financial Statements

The audited financial statements of HRTAC for the Fiscal Year ending June 30, 2020 are included in Appendix B. The Commission’s financial statements are prepared in accordance with generally accepted accounting principles and audited annually in accordance with government auditing standards. The Commission’s independent auditor, PBMares, LLP, has not been engaged to perform and has not performed since the date of its report included in Appendix B any procedures on the financial statements addressed in that report. Such auditor also has not performed any procedures relating to this Official Statement.

DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS

The primary documents which guide the Commission’s transportation funding priorities are the HRTPO Long-Range Transportation Plan and the Six-Year Funding Plan, both of which are described below.

HRTPO’s Long-Range Transportation Plan

HRTAC sets its long-range transportation funding priorities in coordination with the conceptual, regional consensus developed through meetings of the HRTPO. The HRTPO is a metropolitan planning organization (“MPO”) established in accordance with the Federal-Aid Highway Act of 1962, as amended. Federal regulations require that urbanized areas throughout the United States have MPOs to conduct a continuing, cooperative and comprehensive transportation planning process. Urbanized areas are defined

as areas with a population of 200,000 or greater, known as Transportation Management Areas (“TMAs”). MPOs participate in a federal certification review of the transportation planning process for their TMAs every four years. MPOs must be certified in order to receive federal funds for transportation projects. The transportation planning process must result in plans and programs that consider all modes of transportation and support metropolitan community development and social goals. These plans and programs must lead to the development and operation of an integrated, intermodal transportation system that facilitates the efficient, economic movement of people and goods.

HRTAC participates in the HRTPO’s planning process by preparing and updating a fiscally constrained long-range regional transportation project funding plan for the High Priority Projects in Planning District 23 which includes transportation improvements of regional significance and improvements necessary or incidental thereto. It is important to note the “constrained” aspect of HRTAC’s plan for regional priority projects, which means HRTAC has identified only those projects which can be funded from available resources (HRTAC’s 2045 Long-Range Funding Plan (“HRTAC 2045 Long Range Funding Plan”). The HRTPO’s 2040 LRTP includes long-range and “Vision Plan” projects as detailed herein). HRTAC communicates its long-range plan to the HRTPO, and the HRTPO works to incorporate such plan into the constrained section of its broader Long-Range Transportation Plan. HRTPO currently has a 2040 Long-Range Transportation Plan (“2040 LRTP”) that differs from HRTAC’s 2045 Long Range Funding Plan with respect to HRTF funded projects, but HRTPO is in the process of updating for a 2045 LRTP which will be consistent with respect to HRTF funded projects. HRTPO’s 2040 LRTP includes the HRBT Expansion Project which is being funded in part by the Series 2021A Notes.

The HRTPO 2040 LRTP is the official transportation blueprint guiding multimodal transportation investments for Hampton Roads and is used to (i) identify regional priority projects, and (ii) help determine project sequencing based on project readiness and available funding. As the guiding regional transportation plan, the HRTAC 2045 LRTP is designed to be a “living” document, updated through an amendment process. HRTAC most recently amended its 2045 Long Range Funding Plan on June 17, 2021, to conform to updated cost estimates and opening year information for multiple regional priority projects to be supported by HRTAC funds and to reflect updated revenue forecasts used to fiscally-constrain those projects. Of the total \$10.1 billion highway and transit projects included in the HRTAC 2045 Long Range Funding Plan, HRTAC’s regional high priority highway project costs included are approximately \$9.55 billion [*Note: subject to approval at June 17, 2021 Board Meeting*], expressed in year-of-expenditure dollars to properly reflect inflation. HRTAC’s approach has been to provide funding as the project planning, engineering and readiness process warrants, and in coordination with VDOT.

The fiscally-constrained HRTAC projects in the HRTPO 2040 LRTP include the Interstate 64 Peninsula Widening Project in Newport News, York County and James City County, the I-64 /I-264 Interchange Improvements Project in Norfolk and Virginia Beach, and the I-64 Southside Widening and High Rise Bridge Project (Phase I) in Chesapeake (the “Initial Financed Projects”), together with the HRBT Expansion Project. HRTAC has entered into Standard Project Agreements with VDOT for the construction of the Initial Financed Projects, and all of the Initial Financed Projects are expected to be completed by Fiscal Year 2022. See “Table III: HRTAC Projects under Agreements with VDOT.” The HRBT Expansion Project is expected to be delivered by Fiscal Year 2026.

As HRTAC allocates funds to projects in its 2045 Long Range Funding Plan and FY 2022 – FY 2027 Six-Year Funding Plan Update, those projects are reflected in HRTPO’s Transportation Improvement Program (“TIP”), which is a four-year program for the implementation of surface transportation projects in Hampton Roads. The TIP includes all funded transportation projects of regional significance.

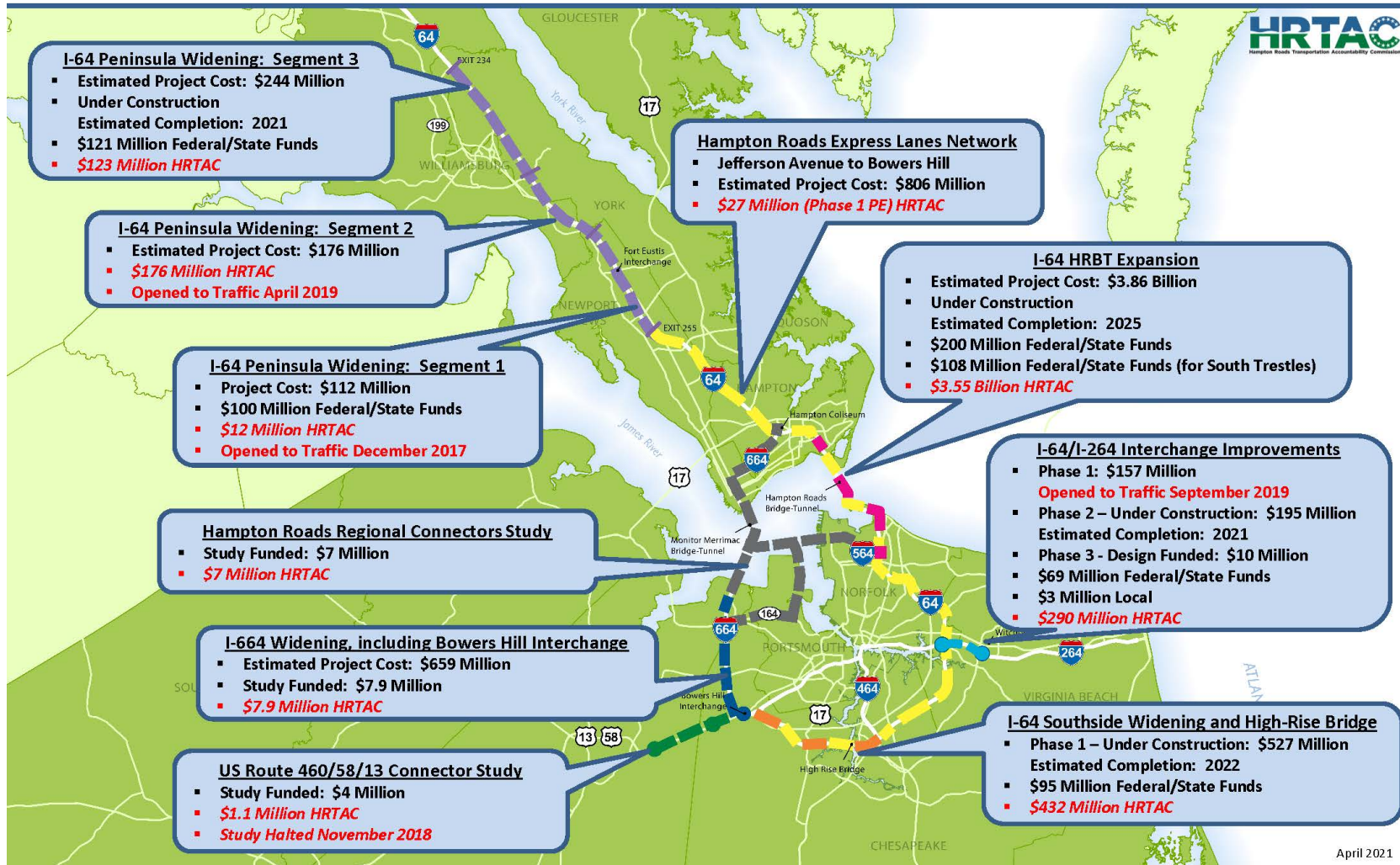
The HRTAC 2045 Long Range Funding Plan also identifies certain long-range HRTAC projects that are expected to be completed within the 2045 LRTP but whose completion dates and costs are subject to funding availability and other factors. The long-range HRTAC projects in the 2045 LRTP include I-64 Hampton Roads Express Lanes Network, Bowers Hill Interchange Improvements in Suffolk, and I-64/Fort Eustis Boulevard Interchange Improvements in Newport News. See “Table VI: Future HRTAC Projects in the 2045 Long Range Funding Plan.”

Projects not included in the HRTPO 2050 LRTP, but included within a “Vision Plan” for the region, are longer term and will require additional study and evaluation. They will not be completed unless additional resources become available. The projects within the “Vision Plan” include construction of an I-564/I-664 Connector (dubbed “Patriot’s Crossing”) to connect Norfolk with the existing Monitor Merrimac Memorial Bridge Tunnel, improvements to the I-664 Monitor-Merrimac Memorial Bridge-Tunnel connecting Suffolk with Newport News, improvements to VA 164 in Portsmouth, and construction of a VA I-64 Connector to the Patriot’s Crossing.

The map on the following page illustrates the regional priority projects included in the 2045 LRTP and the Vision Plan, excluding the Hampton Roads Express Lanes Network.

Hampton Roads Regional Transportation Priority Projects

\$5.22 Billion Total Value, \$4.65 Billion HRTAC Funded



April 2021

HRTAC Six-Year Funding Plan

The Commission is required by the HRTAC Act to develop and adopt the Six-Year Funding Plan (which is a rolling six-year plan) to provide for the expenditure of funds over a four- to six-year period for projects that have been planned and also programmed for actual development. The Six-Year Funding Plan is required by the HRTAC Act to align as much as possible with the Statewide Transportation Plan maintained by the CTB and described below.

HRTAC's current Six-Year Funding Plan (for Fiscal Years 2022 through 2027) was adopted in June 2020, and includes the Initial Financed Projects, the HRBT Expansion Project, and the Hampton Roads Express Lanes Network (HREL). Although the HREL is included in the Six-Year Funding Plan, the budgeted costs and financing alternatives will continue to be refined based on updated information as the network sections advance in project readiness. The HREL will be developed in sections, subject to the availability of funding, the development of a definitive funding plan, and the execution and delivery of one or more Standard Project Agreement(s) with VDOT in the future.

The current Six-Year Funding Plan identifies a variety of funding sources that may be utilized by the Commission, including HRTF funds not provided by bond or loan proceeds ("PayGo"), remaining proceeds of Bonds previously issued under the Master Indenture, additional Bonds (including another TIFIA Loan secured as a Subordinate Obligation under the Master Indenture), toll revenue debt proceeds (which toll-backed debt is separate from and not cross-collateralized with HRTF Revenues), VDOT funding, and other public funds.

The Six-Year Funding Plan is designed to prioritize the funding of projects in a manner consistent with (i) the regional project sequencing set forth in the HRTPO 2040 LRTP and HRTAC 2045 Long Range Funding Plan, (ii) the CTB's Statewide Transportation Plan and its prioritization process (described below), and (iii) the goal of providing the greatest impact on reducing congestion for the greatest number of citizens residing in the Member Localities.

Statewide Transportation Plan

Under state law, the CTB's Statewide Transportation Plan must incorporate the measures and goals of the approved long-range plans developed by applicable regional organizations. In addition, consistent with the Statewide Transportation Plan, the CTB is required to develop, in accordance with federal transportation requirements, and in cooperation with MPOs situated within the Commonwealth, a statewide prioritization process for the use of available highway funds in a manner that considers congestion mitigation, economic development, accessibility, safety, environmental quality, and other factors.

The statewide prioritization process for transportation projects financed by the Commonwealth was established under Chapter 726, 2014 Va. Acts of Assembly, enacted on April 6, 2014, and codified in Virginia Code Section 33.2-214.1. This project selection process, known as the SMART SCALE (System for the Management and Allocation of Resources for Transportation) (the "SMART SCALE Program"), is a competitive prioritization process administered by the Commonwealth to advise the CTB in its funding decisions. For each SMART SCALE cycle, the screening and scoring results are presented to the CTB and the public and a Six-Year Improvement Program for the Commonwealth is developed based on CTB direction and the SMART SCALE scoring results. As enacted, the prioritization process utilized by the CTB is designed to be an objective and quantifiable analysis for project selection that considers, at a minimum, congestion mitigation, economic development, accessibility, safety, and environmental quality. When evaluating and scoring projects within the geographical confines of HRTAC, the SMART SCALE Program requires the CTB to weigh congestion mitigation as the most important factor.

To-date, the SMART SCALE Program has provided approximately \$463.7 million toward the Initial Financed Projects and the HRBT Expansion Project.

The Six-Year Funding Plan assumes no additional SMART SCALE funding beyond these amounts. The HRTPO will submit HRTAC project SMART SCALE funding applications for the next allocation cycle. For each SMART SCALE cycle, basic project information must be submitted by June 1st of the calendar year, and final project applications must be submitted by August 1st.

VDOT Agreements

HRTAC has entered into Standard Project Agreements with VDOT for the Initial Financed Projects, and a Project Administration and Funding Agreement (“PAFA”) with VDOT for the HRBT Expansion Project, both of which relate to HRTAC’s funding of approved projects and will be part of VDOT’s statewide transportation system. Under certain Standard Project Agreements and the PAFA, CTB has agreed to also contribute state funds to the construction of certain of the Initial Financed Projects and to the construction of the HRBT Expansion Project. Under all Standard Project Agreements to date and the PAFA, VDOT has agreed to provide administration of project construction as reimbursed by HRTAC, and VDOT has assumed responsibility for operation and maintenance of all roadway, bridge and tunnel structures of the Initial Financed Projects and the HRBT Expansion Project at no cost to HRTAC. HRTAC’s construction funding obligation under each of these agreements is limited to the amounts budgeted. If VDOT determines it may incur additional, unbudgeted costs, such as to cover construction cost overruns, HRTAC has the option to provide additional funding, cancel the Initial Financed Projects or the HRBT Expansion Project or a portion thereof, or authorize VDOT to make modifications or reductions in scope or design to stay within the initial budget under the applicable Standard Project Agreement or PAFA. The HRTAC Act does not permit HRTAC to include in its budget any HRTF funds to independently operate and maintain funded projects or to perform any transportation service therefore. HRTAC has no control over the long-term impact of its spending on future obligations of the Commonwealth. See **“INVESTMENT CONSIDERATIONS – Risks Arising from Operating and Maintenance Burdens on Commonwealth.”**

HRTAC’s executed Standard Project Agreements and funding shares to date are described in Table III below. Upon issuance of the Series 2021A Notes, HRTAC will continue to contribute funds to the Initial Financed Projects as well as the HRBT Expansion Project, and such contributions will be made from proceeds of Bonds issued under the Master Indenture, PayGo funds from the HRTF, or toll revenue debt proceeds. See **“DEVELOPMENT OF CAPITAL EXPENDITURE AND FUNDING PLANS.”**

**Table III
HRTAC Projects under Agreements With VDOT (in Millions)**

	Prior Years	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026	Total ⁽¹⁾	
<u>Interstate 64 Peninsula Widening (Segments 1-3)</u>								
HRTAC Funding	\$310	0	0	0	0	0	\$310	
VDOT Funding	\$221	0	0	0	0	0	<u>221</u>	
Total	\$531	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$531</u>	
<u>I-64/I-264 Interchange Improvements (Phases I-III)</u>								
HRTAC Funding	\$290	0	0	0	0	0	\$290	
VDOT Funding	60	8	0	0	0	0	68	
HRTPO and Local Funding	5	<u>0</u>	0	0	0	0	<u>5</u>	
Total	<u>\$355</u>	<u>\$8</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$363</u>	
<u>I-64 Southside Widening and High Rise Bridge Project (Phase I)</u>								
HRTAC Funding	\$432	0	0	0	0	0	\$432	
VDOT Funding	95	0	0	0	0	0	95	
Total	<u>\$527</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$527</u>	
<u>(Mega Project) Delivery of HRBT Expansion Project</u>								
HRTAC Funding ⁽²⁾	\$1,570	\$714	\$546	\$421	\$291	\$11	\$3,553	
VDOT Funding ⁽³⁾	\$15	\$39	\$39	\$126	\$90		\$309	
Total	<u>\$1,585</u>	<u>\$753</u>	<u>\$585</u>	<u>\$547</u>	<u>\$381</u>	<u>\$11</u>	<u>\$3,862</u>	
<u>Project Development Including HREL</u>								
HRTAC Funding	73	0	0	0	0	0	\$73	
VDOT Funding	0	0	0	0	0	0	0	
Total	<u>\$73</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$73</u>	
<u>Total To-Date Standard Project Funding Agreements or Project Administration and Funding Agreement With VDOT</u>								
HRTAC Funding	\$2,675	\$714	\$546	\$421	\$291	\$11	\$4,658	
VDOT Funding	\$391	47	39	126	90	0	693	
HRTPO and Local Funding	<u>5</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>5</u>	
Total	<u>\$3,071</u>	<u>\$761</u>	<u>\$585</u>	<u>\$547</u>	<u>\$381</u>	<u>\$11</u>	<u>\$5,356</u>	

Source: HRTAC, as of May, 2021.

Notes:

- (1) Totals may not add up due to rounding.
- (2) Assumes \$345 million would be sourced from debt secured by and payable from toll revenues, expected to be issued under indenture(s) separate from and not cross-collateralized with HRTF Revenues. To the extent the amount derived from such source is less, then funding from HRTF Revenues could increase.
- (3) Includes \$109 million in VDOT Funded HRBT South Trestle Replacement Costs in Project Administration and Funding Agreement but not included in HRTAC Six-Year Funding Plan and \$200 million in Smart Scale funding.

The HRTAC projects in the 2045 LRTP that are subject to funding availability or are planned on a vision basis, but not yet programmed for actual development, are shown in Table IV below. HRTAC may receive SMART SCALE and other funding for these projects in the future. The expected completion dates and estimated costs shown below incorporate a number of assumptions and are subject to change.

Table IV
Future HRTAC Projects in the HRTAC 2045 LRTP (in Millions)⁽¹⁾

<u>Project</u>	<u>Expected Completion</u>	<u>Estimated Cost</u>
Hampton Roads Express Lanes Network	2026	806
I-64/I-464 Loop Ramps	2029	339
I-64/I-264 Interchange: Phase IIIA	2031	510
I-264/Independence Boulevard Interchange	2033	207
I-664 Widening (including Bowers Hill Interchange)	2038	771
I-64/Denbigh Boulevard Interchange Project	2040	219
I-264 Widening	2045	669
VA-164 Widening	2045	493
VA-168 Bypass	2045	355

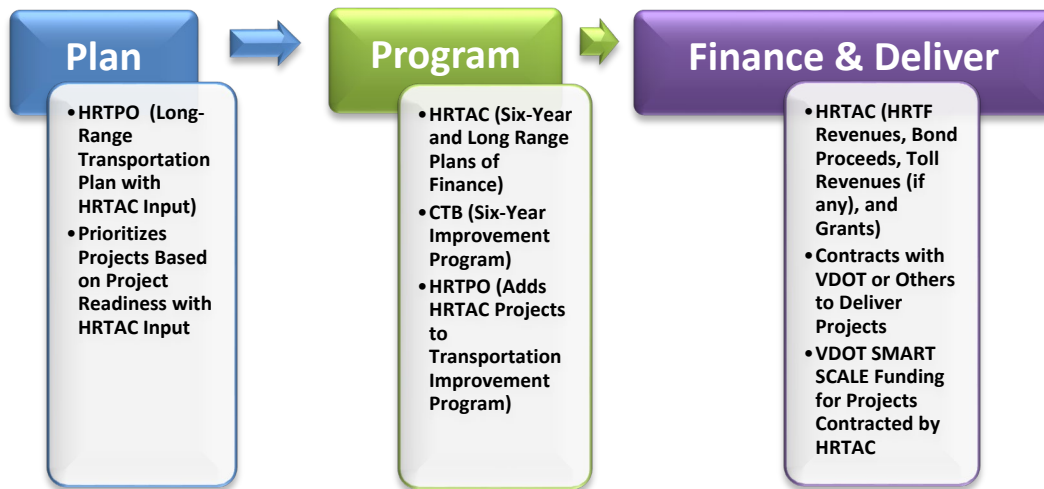
Source: HRTAC, 2045 Long Range Plan of Finance Update adopted June 17, 2021.

Notes:

(1) Assume \$1,090 million future VDOT funding

Collaborative Planning Process

As outlined above, the planning, programming, funding, and delivery of HRTAC projects requires input and collaboration between HRTAC, HRTPO and VDOT. HRTAC also receives administrative and technical support upon request from VDOT and VDRPT. In general, the three entities have different, but interdependent roles: HRTPO undertakes regional transportation planning, HRTAC provides funding from the HRTF and VDOT delivers and administers the projects. The interplay and cooperation among the various public entities is summarized by the following diagram and bullet points.



- HRTPO's LRTP identifies priority projects in the constrained plan or vision plan as under study/development/construction.
- HRTAC develops six-year and long range plans of finance to guide in project funding for development and construction; HRTAC's plans feed into HRTPO's LRTP and when HRTAC allocates funds to specific projects, they are added to HRTPO's TIP.
- The CTB selects Local Preferred Alternative, maintains Statewide Transportation Plan and the Commonwealth's Six-Year Improvement Program, allocates state funding to projects in the VDOT Six-Year Funding Program, and awards SMART SCALE funding through its competitive statewide prioritization process.
- VDOT assists in project readiness and construction through HRTAC/VDOT Standard Project Agreements.

HRTAC Debt Management Plan

Established on September 21, 2017 and as amended on March 21, 2019 and June 18, 2020, the Commission's Debt Management Plan helps to guide the Commission with respect to the funding and delivery of the projects in the Commission's Six-Year Funding Plan, currently through Fiscal Year 2027. The purpose of the plan is to support the furtherance of HRTAC's construction funding program while achieving the lowest cost of capital on its borrowings. The Debt Management Plan evolves over time and sets forth the following goals:

(a) Fully fund Project costs through Fiscal Year 2027 identified in the current Six-Year Funding Plan including the HRBT Expansion Project and the HREL project through completion in such year. Although the HREL is incorporated into the Six-Year Funding Plan, HRTAC's commitments related to funding the sections of the HREL project are subject to the execution and delivery of one or more Standard Project Agreement(s) with VDOT in the future.

(b) Issue Bonds as construction progresses (which began in calendar year 2018 with issuance of the Series 2018A Bonds), including Bonds to reimburse PayGo expenditures, so that Bond sales can be minimized in later years during which the Commission would likely have greater expenditure requirements;

(c) Establish and maintain a structure suited for subsequent Bond issuances needed for the HRTAC projects in the 2045 LRTP; and

(d) Explore the possibility of credit assistance under additional TIFIA through a series of one or more TIFIA Loans backed by HRTAC Revenues under the Master Indenture and/or toll revenue-backed TIFIA Loans, issued under indenture(s) separate from the Master Indenture and not cross-collateralized with HRTF Revenues, and including the use of bond anticipation notes where appropriate.

To fund its commitments to VDOT, HRTAC expects to issue approximately \$_____ billion of Senior Bonds and approximately \$___ billion of Intermediate Lien Obligations and/or Subordinate Obligations, including the Bonds previously described above, all issued under the Master Indenture and secured by HRTAC Revenues. Where appropriate, HRTAC may continue to utilize bond anticipation notes in conjunction with TIFIA Loans. The 2019 TIFIA Loan was implemented under the provision of the TIFIA statute that allows for a waiver of TIFIA’s non-subordination or “springing lien” requirement, and HRTAC anticipates that the 2021 TIFIA Loan will also be implemented with a waiver from that requirement.

The Debt Management Plan incorporates a number of assumptions regarding project costs, project timing, inflation rates, interest rates, revenue growth and federal and state funding, among others. The likelihood that all assumptions will prove to be accurate cannot be predicted. Assumptions and actual results are subject to change and to the occurrence of unanticipated events, such as those described under the captions “COVID-19 PANDEMIC” and “INVESTMENT CONSIDERATIONS.” HRTAC’s ability to incur indebtedness pursuant to its Debt Management Plan is in all instances subject to the conditions set forth in the Master Indenture and Related Supplemental Indentures, including but not limited to debt service coverage tests. See “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES” above.

The funding components and the debt issuance plan incorporated in the Debt Management Plan are described in Tables V and VI below.

Table V
Estimated HRTAC Project Costs by Funding Source (in Millions)⁽¹⁾
(Fiscal Years 2022 to 2026)

Sources	Amounts
HRTF Bonds and TIFIA Loans ⁽²⁾	1,061
Toll Revenue Debt ⁽³⁾	610
HRTAC PayGo	970
VDOT Funding	421
Total	3,064

Source: HRTAC.

Notes:

⁽¹⁾ Preliminary, subject to change.

⁽²⁾ Includes Senior Bonds, Intermediate Lien Obligations and Subordinate Obligations, both existing and those which may be incurred in the future. See Table VII herein.

⁽³⁾ May include one or more TIFIA Loans

Table VI
HRTAC Debt Issuance Plan in Par Amounts (in Millions)⁽¹⁾

	CY 2021	CY 2022	CY 2023	CY 2024	CY 2025	Total
HRTF Bonds/TIFIA⁽²⁾	790	245				1,035
Toll Revenue Debt⁽³⁾				143	467	610
Total	790	245	0	143	467	1,645

Source: HRTAC.

Notes:

⁽¹⁾ Preliminary, subject to change.

⁽²⁾ Includes the 2021A Notes and additional Senior Lien or Intermediate Lien Bonds which may be incurred in the future. See Table VII herein.

⁽³⁾ Include multiple Toll Revenue TIFIA Loans.

FORWARD-LOOKING STATEMENTS

Certain statements included or incorporated by reference in this Official Statement, including the Appendices hereto, constitute “forward-looking statements.” Such statements are generally identifiable by the terminology used such as “plan,” “expect,” “estimate,” “project,” “anticipate,” “intend,” “believe,” “budget” or other similar words. The achievement of certain results or other expectations contained in such forward-looking statements involve known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements described to be materially different from any future results, performance or achievements expressed or implied by such forward-looking statements. No assurance can be given that actual results will meet the Commission’s forecasts in any way, regardless of any level of optimism communicated in this Official Statement, including the Appendices hereto. The Commission will not issue any updates or revisions to forward-looking statements if or when its expectations, or events, conditions or circumstances on which such statements are based, change.

POTENTIAL IMPACT OF COVID-19 ON HRTF REVENUES

[This section subject to update closer to dissemination of Preliminary Official State]

The following Table VII presents a forward looking presentation of HRTAC Revenues, Principal and Interest Requirements and related measures of debt service coverage through Fiscal Year 2060, in light of the actual and potential impacts of COVID-19 and the governmental and societal responses thereto. **Investors considering a purchase of the Series 2021A Bonds should consider the following:**

The impact of the COVID-19 pandemic on Hampton Road’s economy and revenues has reduced and is expected to reduce the level of tax revenues collected and deposited into the HRTF, but HRTAC cannot predict the full amount or duration of such impact. For a more detailed discussion of the risks and the impact, see “**COVID-19 PANDEMIC.**” HRTAC and VDOT continue to review the impact of COVID-19 on transportation revenues, and HRTAC believes that it will be some time before it or VDOT will have a better understanding of the longer-term fiscal impact that COVID-19 will have on the taxes and revenues comprising the HRTF.

Actual future HRTAC Revenues are likely to vary from those presented below, especially in light

of the uncertainty presented by the ongoing COVID-19 Pandemic. See “COVID-19 PANDEMIC.”]

In conjunction with VDOT’s Six Year Plan, VDOT and the Virginia Department of Taxation provide estimates of HRTF Revenues, the most recent full projection of which occurred in December, 2020. These are as follows.

Hampton Roads Transportation Fund
 Revenue Forecast
 Fiscal Years 2021 - 2028
 (in millions)

	August 2020 Interim Forecast			December 2020 Forecast			Change		
	0.7% Local Sales Tax	Fuels Sales Tax	Total HRTF Revenues	0.7% Local Sales Tax	Fuels Sales Tax	Total HRTF Revenues	0.7% Local Sales Tax	Fuels Sales Tax	Total HRTF Revenues
FY 2021	\$ 129.0	\$ 54.5	\$ 183.5	\$ 139.1	\$ 58.6	\$ 197.7	\$ 10.1	\$ 4.1	\$ 14.2
FY 2022	132.6	55.4	188.0	142.8	60.4	203.2	10.2	5.0	15.2
FY 2023	157.0	74.9	231.9	146.8	62.2	209.0	(10.2)	(12.7)	(22.9)
FY 2024	159.9	75.8	235.7	150.2	63.5	213.7	(9.7)	(12.3)	(22.0)
FY 2025	162.7	77.0	239.7	157.8	64.3	222.1	(4.9)	(12.7)	(17.6)
FY 2026	165.8	78.8	244.6	165.4	65.5	230.9	(0.4)	(13.3)	(13.7)
FY 2027				169.9	67.2	237.1			
FY 2028				175.2	69.0	244.2			
Total - FY 2021 - 2026	\$ 907.0	\$ 416.4	\$ 1,323.4	\$ 902.1	\$ 374.5	\$ 1,276.6	\$ (4.9)	\$ (41.9)	\$ (46.8)

Projected Operating Results and Projected Debt Service Coverage.

The following Table VII presents the Commission’s projections for HRTAC Revenues, Principal and Interest Requirements and related measures of debt service coverage through Fiscal Year ____, which is the approximate maturity date of the 2021 TIFIA Loan. Such projections present management’s expectations based on various assumptions described therein and herein (especially as noted in the footnotes to Table VII), financials developed by the Commission and financial analysis prepared by the Commission’s Financial Advisor, and were prepared in connection with obtaining the 2021 TIFIA Loan.

Actual future HRTAC Revenues may vary from those presented below. None of the Commission, the Financial Advisor or the Underwriters warrants or represents that the estimates and projections in Table VII will be met. In addition, the Commission gives no assurances that the actual financial results of future HRTAC Revenues and debt service coverage will meet or exceed the estimates and projections set forth in Table VII. See “**FORWARD-LOOKING STATEMENTS**” and “**BONDHOLDER RISK FACTORS – Risks of Non-Appropriation and Future Legislative or Administrative Actions Affecting Revenues,**” “**– Forward-Looking Statements and Forecasts,**” and “**– Actual Results May Diverge from Projections.**”

Table VII - Projected HRTF Bonds' Debt Service and Debt Service Coverage Ratio⁽¹⁾

FY	Pledged Revenues ^{(2),(3)}			Principal and Interest Requirements					Debt Coverage		
	Retail Sales and Uses Tax	Wholesale Motor Vehicle Fuels Sales Tax	Total Pledged Revenues	Existing Senior Lien (2018A Bonds and 2020A Bonds)	Future Senior Lien ⁽⁴⁾	Existing Intermediate Lien (2019A Notes)	Existing Subordinate Lien (2019 TIFIA Loan) ⁽⁵⁾	Subordinate Lien (2021 TIFIA Loan) ⁽⁶⁾	Senior Lien	Intermediate Lien	Subordinate Lien
			[A]	[B]	[C]	[D]	[E]	[F]	[A]/([B]+[C])	[A]/([B]+[C]+[D])	[A]/([B]+[C]+[D]+[E]+[F])
2022	142,800,000	60,400,000	203,200,000	54,082,775		20,717,250			3.76x	2.72x	
2023	146,800,000	62,200,000	209,000,000	54,082,775	11,662,750				3.18x		
2024	150,200,000	63,500,000	213,700,000	54,082,775	11,662,750				3.25x		
2025	157,800,000	64,300,000	222,100,000	58,827,775	11,662,750		14,197,579		3.15x		2.62x
2026	165,400,000	65,500,000	230,900,000	58,830,525	11,662,750		14,694,188	6,363,855	3.28x		2.52x
2027	169,900,000	67,200,000	237,100,000	67,016,275	14,092,750		15,209,022	21,902,008	2.92x		2.01x
2028	175,200,000	69,000,000	244,200,000	67,015,275	14,096,250		15,742,771	21,911,872	3.01x		2.06x
2029	180,027,448	69,138,386	249,165,834	67,015,775	14,098,500		16,296,147	21,921,337	3.07x		2.09x
2030	184,987,910	69,277,049	254,264,959	67,016,025	14,094,250		16,869,893	26,487,707	3.13x		2.04x
2031	190,085,053	69,415,990	259,501,043	67,014,275	14,098,500		17,464,779	26,561,753	3.20x		2.07x
2032	195,322,643	69,555,210	264,877,853	67,013,775	14,095,500		18,081,605	29,836,288	3.27x		2.05x
2033	200,704,548	69,694,709	270,399,257	67,017,525	14,095,250		18,721,202	34,938,668	3.33x		2.01x
2034	206,234,746	69,834,488	276,069,234	67,018,275	14,097,250		19,384,430	35,274,297	3.40x		2.03x
2035	211,917,323	69,974,548	281,891,871	67,014,025	14,096,000		20,072,187	35,615,334	3.48x		2.06x
2036	217,756,476	70,114,888	287,871,364	67,017,775	14,096,250		20,785,401	35,851,936	3.55x		2.09x
2037	223,756,522	70,255,510	294,012,032	67,018,775	14,097,500		21,525,039	36,090,170	3.62x		2.12x
2038	229,921,892	70,396,413	300,318,305	67,017,025	14,099,250		22,292,103	36,330,048	3.70x		2.15x
2039	236,257,143	70,537,600	306,794,743	67,014,725	14,096,000		23,087,634	36,571,582	3.78x		2.18x
2040	242,766,954	70,679,069	313,446,023	67,013,725	14,097,500		23,912,714	36,814,782	3.86x		2.21x
2041	249,456,137	70,820,822	320,276,959	67,014,625	14,098,000		24,768,465	37,059,660	3.95x		2.24x
2042	256,329,632	70,962,860	327,292,492	67,015,675	14,097,000		25,656,053	37,306,227	4.04x		2.27x
2043	263,392,520	71,105,182	334,497,702	67,015,025	14,099,000		26,576,690	37,554,496	4.12x		2.30x
2044	270,650,017	71,247,790	341,897,807	67,015,075	14,098,250		27,531,632	37,753,056	4.22x		2.34x

2045	278,107,488	71,390,684	349,498,172	67,018,025	14,099,250	28,522,186	37,951,608	4.31x	2.37x
2046	285,770,440	71,533,864	357,304,304	67,015,875	14,096,250	29,549,709	38,150,121	4.41x	2.40x
2047	293,644,538	71,677,332	365,321,870	67,015,375	14,098,750	30,615,607	38,348,562	4.50x	2.43x
2048	301,735,597	71,821,087	373,556,684	67,016,375	14,095,750	31,721,345	38,546,896	4.61x	2.47x
2049	310,049,597	71,965,131	382,014,728	67,017,875	14,096,750	32,868,442	38,745,090	4.71x	2.50x
2050	318,592,680	72,109,463	390,702,143	67,014,625	14,095,750	34,058,474	38,943,108	4.82x	2.54x
2051	327,371,159	72,254,085	399,625,244	67,017,625	14,097,000	35,293,081	39,140,913	4.93x	2.57x
2052	336,391,519	72,398,997	408,790,516	67,017,425	14,094,500	36,573,964	39,338,467	5.04x	2.60x
2053	345,660,426	72,544,200	418,204,626	67,015,925	14,097,500	37,902,891	39,526,367	5.16x	2.64x
2054	355,184,727	72,689,694	427,874,421	67,015,850	14,094,750	39,281,697	39,713,642	5.28x	2.67x
2055	364,971,460	72,835,479	437,806,939	67,014,500	14,095,500	40,712,288	39,900,243	5.40x	2.71x
2056	375,027,856	72,981,557	448,009,413	67,015,925	14,098,500		40,086,121	5.52x	3.70x
2057	385,361,346	73,127,928	458,489,274	67,015,025	14,097,500		40,271,225	5.65x	3.78x
2058	395,979,563	73,274,593	469,254,156	67,017,575	14,096,500		40,455,502	5.79x	3.86x
2059	406,890,354	73,421,552	480,311,906	67,016,525	14,099,250		40,638,898	5.92x	3.94x
2060	418,101,780	73,568,805	491,670,585	67,017,800	14,094,250		40,821,356	6.06x	4.03x
2061	429,622,125	73,716,354	503,338,479		14,095,500			35.71x	
2062	441,459,901	73,864,199	515,324,100		14,096,250				

Notes:

- (1) Including existing HRTF debt and planned debt to be issued through CY 2025 - see Table VI
- (2) Does not include Revenue Fund investment earnings
- (3) See "Potential Impact of COVID-19 Review"
- (4) Preliminary, assume 1.03% - 2.26% yield
- (5) 2.25% loan rate
- (6) Preliminary, assume 1.68% - 2.55% loan series rates

None of the Commission, the Financial Advisor or the Underwriters warrants or represents that the estimates or amounts set forth in Table VII or the August 2020 VDOT estimates will be met. In addition, the Commission gives no assurances that the actual financial results of future HRTAC Revenues and debt service coverage will meet or exceed the presentation set forth in Table VII. See **“FORWARD-LOOKING STATEMENTS” and “BONDHOLDER RISK FACTORS – Risks of Non-Appropriation and Future Legislative or Administrative Actions Affecting Revenues,” “– Forward-Looking Statements and Review Presentation,” and “– Actual Results May Diverge From Review Presentation.”**

COVID-19 PANDEMIC

[This section subject to update as COVID situation evolves]

The information in this Section supplements the information provided elsewhere in this Official Statement and the other information in this Section of the Official Statement should be read in conjunction with the information in this Official Statement. The information herein is preliminary and is subject to change without notice. The information in this Section and the effects on HRTAC and HRTF Revenues of the COVID-19 pandemic will be affected by future events, circumstances, and actions that are outside of the control of HRTAC, and HRTAC does not undertake to update or supplement the information contained in this Section for such future events or circumstances.

The World Health Organization has declared a pandemic following the outbreak of COVID-19, a respiratory disease caused by a new strain of coronavirus that is currently negatively impacting most, if not all, areas of the world, including the United States and the Commonwealth. Within the United States, the federal government and various state and local governments, as well as private entities and institutions, have implemented a variety of different efforts aimed at preventing the spread of COVID-19 including, but not limited to, travel restrictions, voluntary and mandatory quarantines, event postponement and cancellations, voluntary and mandatory work from home arrangements, and facility closures. The impact of these various measures, as well as general concerns related to the global and national public health emergency and other contributing factors (including an ongoing oil production dispute), have also resulted in significant volatility in the stock and credit markets, dislocations in the labor market, and a general consensus that the global and national economies are distressed.

The economic and financial fallout from COVID-19 on the United States, including the Commonwealth, is expected to be significant and may be prolonged. For example, unemployment has increased significantly as service sector workers and others who cannot telework experience reduced hours or are laid-off because of decreases in business demand. In addition, supply shortages have increased as the production and distribution of raw and finished materials are adversely affected by efforts to mitigate the impact of COVID-19 on the labor force. The long-term and short-term capital markets have experienced significant volatility and deterioration in value, adversely affecting the liquidity and operations of private companies.

Steps Taken by the Governor of Virginia to Address the COVID-19 Pandemic. [also subject to update, as COVID disclosure continues to evolve]

On March 12, 2020, Governor Northam declared a state of emergency in the Commonwealth as a result of the COVID-19 pandemic (which declaration was reaffirmed and continued on May 26, 2020). In addition, on March 30, 2020, Governor Northam requested federal disaster assistance, which was received in the form of a Major Disaster Declaration on April 2, 2020 (the “Major Disaster Declaration”). A Major

Disaster Declaration designation provides federal public assistance for all areas in the Commonwealth affected by COVID-19 at a federal cost share of 75%. The cost share allows state agencies, local governments and certain non-profit organizations to purchase supplies and receive reimbursements for COVID-19 related costs under the Commonwealth's Public Assistance program. The Major Disaster Declaration also authorizes federal agencies to provide direct emergency assistance to the Commonwealth.

Since the start of the COVID-19 pandemic, Governor Northam has imposed a series of restrictions designed to mitigate the spread of COVID-19 in the Commonwealth, including, at various times, statewide mask-wearing and social distancing guidelines, limitations on public and private in-person gatherings, the closure of certain businesses, a statewide stay at home order, and the cancellation of in-person instruction at schools. Over time, the Governor has lifted or eased some restrictions, but, in some cases, has subsequently re-imposed other restrictions, depending on the trends in new cases and hospitalizations.

Under the Governor's executive order effective April 1, 2021, the citizens of the Commonwealth are asked to maintain a Safer at Home strategy with continued mitigation strategies including physical distancing, teleworking and universal mask-wearing requirements. The principal elements of the Governor's current order are as follows: (1) all brick and mortar retail establishments may operate fully; (2) all restaurant and beverage establishments may offer indoor and outdoor dining within certain capacity and distancing requirements; (3) fitness centers may open indoor areas at 75 percent occupancy; (4) indoor entertainment venues may operate at the lesser of 30 percent capacity or a maximum of 500 persons, and outdoor entertainment venues may operate at 30 percent capacity with no specific cap on the number of attendees; (5) large amusement venues may operate their outdoor facilities at 50 percent capacity; (6) Virginia institutions of higher education may operate regularly provided that they otherwise comply with the applicable requirements set forth under the guidance for all business sectors; (7) the number of individuals permitted in a social gathering is increased to 50 people for indoor settings and 100 people for outdoor settings; (8) overnight summer camps may open May 1, with strict mitigation measures in place; and (9) the number of spectators allowed at recreational sporting events is increased from 25 to 100 people per field or 30 percent capacity, whichever is less for indoor settings, and from 250 to 500 people per field or 30 percent capacity, whichever is less for outdoor settings.

There is no basis to predict how long the public health crisis caused by COVID-19 will continue. Likewise, there is no basis to predict how long the current level of restrictions may remain in place or whether the Governor may determine to loosen or tighten any of the restrictions in one or more localities or regions of the Commonwealth.

Under the auspices of the federal government's program called Operation Warp Speed, vaccines have recently been developed to combat COVID-19. Limited distributions of the vaccines commenced in December 2020. As reported by the Virginia Department of Health on April 5, 2021, approximately 2,800,332 people had been vaccinated with at least one dose of a COVID-19 vaccine in the Commonwealth, with an average of 77,879 doses being administered each day.

When vaccines became available, the Commonwealth prioritized vaccines for individuals who were most at risk of contracting COVID-19 and those who worked in certain critical industries, based on public health guidelines from the federal Centers for Disease Control and Prevention. Virginians who were first eligible to receive a vaccination included health care personnel, residents and staff of long-term care facilities, people aged 65 and older, frontline essential workers, those living and working in homeless shelters and correctional facilities, and individuals with underlying medical conditions or disabilities that increase their risk of severe illness from contracting COVID-19. The categories of those eligible to receive a vaccine have recently been expanded to include workers in the fields of energy, housing, food service, transportation and logistics, finance, media, public safety and other essential areas. Governor Northam has

announced that, beginning April 18, 2021, everyone aged 16 and older who lives or works in Virginia will be eligible to receive a COVID-19 vaccine.

Fiscal Impact of the COVID-19 Pandemic on HRTAC and HRTF Revenues.

The unpredictable duration and extent of the COVID-19 pandemic and the governmental and private-sector responses to the pandemic are expected to continue to adversely affect the economy and revenues of the Commonwealth and of the Hampton Roads region, as well as the revenues deposited into the HRTF. Because HRTAC cannot predict the amount or duration of such impact, the impact of the COVID-19 pandemic also creates challenges in forecasting and budget preparation.

[Add monthly chart of HRTF Revenues for 2019, 2020, and 2021 year to date]

HRTAC and VDOT continue to review the impact of COVID-19 on transportation revenues, and HRTAC believes that it will be some time before it or VDOT will have a better understanding of the fiscal impact that COVID-19 will have on the taxes comprising the HRTF.]

INVESTMENT CONSIDERATIONS

The Series 2021A Notes are Limited Obligations

The Series 2021A Notes are not a debt of the Commonwealth or any political subdivision thereof (including any Member Locality or any member of the HRTPO or the HRPDC) other than the Commission, and the Series 2021A Notes do not constitute indebtedness within the meaning of any debt limitation or restriction. Neither the faith and credit nor the taxing power of the Commonwealth or any of its political subdivisions (including any Member Locality or any member of the HRTPO or the HRPDC) is pledged to the payment of the Series 2021A Notes. The Series 2021A Notes are not secured by a pledge of any toll revenues or any other revenues generated by HRTAC projects.

COVID-19

The current COVID-19 pandemic has adversely impacted the HRTF revenues and may continue to adversely impact such revenues in future years. For a more detailed discussion of the risks and the impact, see “**COVID-19 PANDEMIC.**”

Risks of Non-Appropriation and Future Legislative or Administrative Actions Affecting Revenues

The Availability of HRTF Revenues is Subject to Appropriation. The General Assembly is responsible for setting the rates of the taxes and fees from which the HRTF Revenues are derived and for appropriating such revenues from the state budget to the HRTF. HRTAC makes no representation that the General Assembly will maintain the rates of the taxes and fees or continue to make appropriations of amounts to the HRTF. In addition, HRTAC makes no representation that the General Assembly will not repeal or materially modify the legislation creating the HRTF or imposing the taxes and fees. The General Assembly is not legally required to make the aforementioned appropriations or to refrain from repealing or

modifying such legislation. Legislative considerations regarding the Commonwealth's budget priorities could materially impact HRTAC's ability to continue receiving the HRTF Revenues.

Under the Virginia Constitution, no appropriation is valid for more than two years and six months after the adjournment of the session of the General Assembly at which the appropriation was made. The General Assembly of the Commonwealth is not obligated to make any future appropriations, and the Commission makes no representation that the General Assembly will keep the HRTF in existence or that appropriations to the HRTF will be made by the General Assembly in any future fiscal year of the Commonwealth. As a practical matter there is no effective remedy if the Governor or the General Assembly fail to provide for HRTF funding in the Commonwealth's budget. See "HAMPTON ROADS TRANSPORTATION FUND—Subject-to-Appropriation" above.

Political Risks. As in the Hampton Roads region, the General Assembly has established regional motor vehicle fuels taxes in the Northern Virginia region (Planning District 8) and, more recently under 2019 legislation, in the I-81 Corridor of western Virginia (Planning Districts 3, 4, 5, 6 and 7) and Central Virginia (begun October 1, 2020). The Northern Virginia region also has a regional sales tax like Hampton Roads, but the I-81 Corridor does not. Each such regional tax is subject to the Sunset Provision described in the following section. Only Northern Virginia and Hampton Roads have independent political subdivisions that control the regional tax receipts; the Northern Virginia counterpart to the Commission is called the Northern Virginia Transportation Authority ("NVTA"). Certain political trends may be discerned from observing the examples of the I-81 Corridor and NVTA. The new revenues being raised in the I-81 Corridor will be controlled by VDOT, and no authority is being delegated to any regional independent political subdivision. With regard to NVTA, a legislative change in 2018 caused portions of the regional tax receipts in Northern Virginia to be diverted to the Washington Metropolitan Area Transit Authority, reducing available funding for a period of time, although such funding was subsequently replenished through legislative action in 2019. The policy implications of these changes may suggest that the General Assembly and VDOT are currently comfortable with the regional taxation approach to funding new, large-scale transportation projects in the Commonwealth, but that they are less comfortable continuing to delegate power and authority over such funds to local or regional bodies. More generally, the funding sources for the Commission may, over time, be subject to political scrutiny as viewpoints change or new economic or financial challenges arise, including but not limited to, the COVID-19 pandemic and its impacts on economic and societal activities, the burdens of long-term operating and maintenance expense, and other factors. This is particularly true given that sales taxes and fuels taxes are regressive taxes that are not necessarily allocated to entities and persons that most benefit from the expenditures derived from such taxes. As with any body that undertakes infrastructure projects that involve significant sums of money and that affect many citizens and businesses, there is a risk of political interference into the operations of the funding and operating authorities, some of which may be detrimental to bondholders or their rights under the Indenture.

Sunset Provision. Chapter 766 is a broad-based transportation initiative that provides not only for the collection and application of HRTF Revenues, but also for generating certain other additional revenues to fund transportation improvements throughout the Commonwealth. However, enactment Clause 14 of Chapter 766 declares that the provisions of Chapter 766 that generate additional revenue through state taxes or fees for transportation throughout the Commonwealth and in Planning District 23 shall expire on December 31 of any year in which the General Assembly appropriates or transfers any of such additional revenues for any non-transportation-related purpose. In other words, the appropriation of revenues generated pursuant to Chapter 766 for a purpose other than that permitted by Chapter 766, even if the particular revenue affected is not payable to the HRTF, could result in expiration of all revenue provisions of Chapter 766 if the General Assembly does not enact any savings clause or otherwise take action to override such sunset provision. The General Assembly enacted a similar provision in 2020 Acts of

Assembly, Chapter 1230 (“Chapter 1230”), in connection with the statewide restructuring of the Commonwealth’s transportation funding arrangements and which legislation changed the Additional Motor Vehicles Fuels Sales Tax from its previous tax rate to the current rate of 7.6 cents per gallon (and 7.7 cents for diesel fuels).

No assurance can be given that the General Assembly will not take action in the future that could activate the sunset provisions of Chapter 766 or Chapter 1230, and no assurance can be given that, if such activation occurs, the General Assembly will enact a savings clause or otherwise take action to override such sunset provision(s). In such event, it is possible that the rights of bondholders under the Indenture could be impaired without any recourse by either bondholders or the Commission.

TIFIA Revenue Sharing Trigger Event. The 2019 TIFIA Loan Agreement [and the 2021 TIFIA Loan] provides that, following a Revenue Sharing Trigger Event, prepayment of the 2019 TIFIA Loan and 2021 TIFIA Loan will be made, on a pro rata basis with any other TIFIA Loans then outstanding, and such prepayment would be made in monthly increments under the Master Indenture after current payments are made on the senior and intermediate lien bonds of the Commission. A “Revenue Sharing Trigger Event” is defined to occur whenever the Commission or VDOT, on behalf of the Commission, is not actively engaged in the development of capital project programs in the HRTPO’s most recently adopted long-range transportation plan. If a Revenue Sharing Trigger Event occurs and obligations to TIFIA become due earlier in time than otherwise required by the 2019 TIFIA Loan Agreement or [2021 TIFIA Loan Agreement], it is possible that the interests of holders of senior and intermediate lien obligations under the Indenture could be impaired either immediately or over time, particularly if termination of Commission’s active engagement in capital project programs is coupled with a reduction in the Commission’s authority or the triggering of the Sunset Provision described in the foregoing section.

Administrative Actions. HRTAC’s ability to continue to fund its projects and its ability to receive and effectively utilize HRTF Revenues depends on the continued cooperation of the CTB and VDOT. If the CTB does not cause VDOT to satisfy its obligations under its Standard Project Agreements or PAFA with HRTAC, if HRTAC does not continue to obtain funding under SMART SCALE or any successor statewide prioritization process for transportation projects, or if the CTB and the Commonwealth’s Secretary of Transportation cause transportation projects in Hampton Roads to be constructed without HRTAC’s involvement and assistance, HRTAC may not continue to effectively function as the recipient of HRTF Revenues and as a key funding source of transportation projects in Hampton Roads. If HRTAC is unable to complete needed projects, it may lose political support and thereafter lose control of HRTF Revenues, impeding HRTAC’s ability to make timely payments of debt service on the Series 2021A Notes.

In addition to the foregoing, HRTAC is entirely dependent on the Virginia Department of Taxation and other state agencies to collect and deposit in the HRTF the Additional Sales and Use Tax revenues and the Additional Motor Vehicle Fuels Tax revenues and to timely transfer them to HRTAC. Failure or delay in this regard would also impede HRTAC’s ability to make timely payments of debt service on the Series 2021A Notes.

Commonwealth of Virginia Official Policy to Promote the Use of Motor Vehicles That Utilize Alternative Fuels. Virginia Code Section 67-102 (entitled “Commonwealth Energy Policy”) makes it the official policy of the Commonwealth to “[p]romote the use of motor vehicles that utilize alternate fuels.” Hence, the Virginia General Assembly has made I official policy of the Commonwealth to promote the use of motor vehicles that do not general motor fuels taxes, including Additional Motor Vehicle Fuels Taxes

Risk of Future Legislative or Court Decisions Affecting Tax-Exempt Obligations

Legislation affecting tax-exempt obligations is regularly considered by the United States Congress and may also be considered by the Virginia General Assembly. Court proceedings may also be filed, the outcome of which could modify the tax treatment of obligations such as the Series 2021A Notes. There can be no assurance that legislation enacted or proposed, or actions by a court, after the date of issuance of the Series 2021A Notes will not have an adverse effect on the tax status of the interest on the Series 2021A Notes or the market value or marketability of the Series 2021A Notes. These adverse effects could result, for example, from changes to federal or state income tax rates, changes in the structure of federal or state income taxes (including replacement with another type of tax), or repeal (or reduction in the benefit) of the exclusion of interest on the Series 2021A Notes from gross income for federal or state income tax purposes for all or certain taxpayers.

Additionally, investors in the Series 2021A Notes should be aware that future legislative actions (including federal income tax reform) may retroactively change the treatment of all or a portion of the interest on the Series 2021A Notes for federal income tax purposes for all or certain taxpayers. In all such events, the market value of the Series 2021A Notes may be affected and the ability of holders to sell their Series 2021A Notes in the secondary market may be reduced. The Series 2021A Notes are not subject to special mandatory redemption, and the interest rates on the Series 2021A Notes are not subject to adjustment, in the event of any such change in the tax treatment of interest on the Series 2021A Notes.

No Assurance of Funds under 2019 TIFIA Loan Agreement

It is anticipated that the Series 2019A Notes will be paid at their maturity from a disbursement made to HRTAC under the 2019 TIFIA Loan Agreement, and the issuance of the Series 2019A Notes is contingent upon HRTAC closing the 2019 TIFIA Loan. HRTAC has not executed the 2019 TIFIA Loan Agreement with the TIFIA Lender with respect to the 2019 TIFIA Loan, and there are no assurances that HRTAC will be able to obtain the 2019 TIFIA Loan. There are numerous conditions that must be satisfied by HRTAC to execute the 2019 TIFIA Loan Agreement and in connection with the requisitioning of moneys under the 2019 TIFIA Loan Agreement, including certain conditions relating to third parties, such as VDOT, over which HRTAC has no control. There can be no assurances that all such conditions to disbursement will be satisfied and thus no assurances that such funds will be available under the 2019 TIFIA Loan Agreement for HRTAC to reimburse itself for eligible project costs or to pay the Series 2019A Notes. In addition, the TIFIA Lender may refuse to honor a requisition if, among other things, an event of default under the 2019 TIFIA Loan Agreement or certain other material contracts has occurred and is continuing, or if HRTAC or certain other parties are not in compliance with federal law or their obligations under certain material contracts. If HRTAC does not meet the conditions for disbursement of moneys under the 2019 TIFIA Loan Agreement, the Series 2019A Notes will need to be paid from the HRTAC Revenues, subject to the prior application of such funds to pay scheduled debt service on Senior Bonds, or from proceeds of Additional Bonds issued under the Master Indenture. No assurance can be given that HRTAC will be able to pay such debt service from the HRTAC Revenues, or access the credit markets for the issuance of Additional Bonds, in the event it cannot requisition moneys under the 2019 TIFIA Loan Agreement.

No Assurance of Funds under 2021 TIFIA Loan Agreement

It is anticipated that the Series 2021A Notes will be paid at their maturity from a disbursement made to HRTAC under the 2021 TIFIA Loan Agreement, and the issuance of the Series 2021A Notes is contingent upon HRTAC closing the 2021 TIFIA Loan. HRTAC has not executed the 2021 TIFIA Loan Agreement with the TIFIA Lender with respect to the 2021 TIFIA Loan, and there are no assurances that

HRTAC will be able to obtain the 2021 TIFIA Loan. There are numerous conditions that must be satisfied by HRTAC to execute the 2021 TIFIA Loan Agreement and in connection with the requisitioning of moneys under the 2021 TIFIA Loan Agreement, including certain conditions relating to third parties, such as VDOT, over which HRTAC has no control. There can be no assurances that all such conditions to disbursement will be satisfied and thus no assurances that such funds will be available under the 2021 TIFIA Loan Agreement for HRTAC to reimburse itself for eligible project costs or to pay the Series 2021A Notes. In addition, the TIFIA Lender may refuse to honor a requisition if, among other things, an event of default under the 2021 TIFIA Loan Agreement or certain other material contracts has occurred and is continuing, or if HRTAC or certain other parties are not in compliance with federal law or their obligations under certain material contracts. If HRTAC does not meet the conditions for disbursement of moneys under the 2021 TIFIA Loan Agreement, the Series 2021A Notes will need to be paid from the HRTAC Revenues, subject to the prior application of such funds to pay scheduled debt service on Senior Bonds, or from proceeds of Additional Bonds issued under the Master Indenture. No assurance can be given that HRTAC will be able to pay such debt service from the HRTAC Revenues, or access the credit markets for the issuance of Additional Bonds, in the event it cannot requisition moneys under the 2021 TIFIA Loan Agreement.

Forward-Looking Statements and Forecasts

The statements contained in this Official Statement, and in other information provided by HRTAC, that are not purely historical, including statements regarding HRTAC's expectations regarding the collection and timing of future HRTF Revenues as discussed earlier in this Official Statement, are forward-looking statements. All forward-looking statements included in this Official Statement are based on information available to HRTAC as of the date hereof, and HRTAC assumes no obligation to update any such forward-looking statements, other than as set out in the Continuing Disclosure Undertaking, the form of which is attached hereto as Appendix C.

The forward-looking statements herein are based on various assumptions, forecasts and estimates that are inherently subject to numerous risks and uncertainties, including the possible invalidity of underlying assumptions, forecasts and estimates, possible changes or developments in social, economic, business, industry, market, legal and regulatory circumstances and conditions, and actions taken or not taken by third parties and legislative, judicial and other governmental authorities and officials. In addition, these assumptions, forecasts and estimates involve judgments regarding, among other things, future economic conditions, future actions by third parties and future events and decisions, all of which are difficult, if not impossible, to predict accurately. There can be no assurance that the forward-looking statements in this Official Statement will prove to be accurate.

No representation is made or intended, nor should any representation be inferred, with respect to the likely existence of any particular future set of facts or circumstances, and prospective purchasers of the Series 2021A Notes are cautioned not to place undue reliance upon any projections contained in this Official Statement. If actual results are less favorable than the results projected or if the assumptions used in preparing the projections prove to be incorrect, HRTAC's ability to make timely payment of the principal of and interest on the Series 2021A Notes may be materially and adversely affected.

Enforceability of Rights and Remedies, including Bankruptcy Ramifications

Effects of Bankruptcy on Rights and Remedies. The rights and remedies available to the owners of the Series 2021A Notes may be subject to the provisions of the United States Bankruptcy Code (the "Bankruptcy Code"), to other bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and equitable principles that may limit enforcement of such remedies. Under

existing constitutional and statutory law and judicial decisions, including specifically the Bankruptcy Code, the remedies provided in the Master Indenture may not be readily available or may be limited. No assurances can be given that a court or regulatory agency would enforce the rights or types of remedies available under the Master Indenture, including any rights and remedies with respect to the pledge of HRTF Revenues.

The various legal opinions to be delivered concurrently with the delivery of the Series 2021A Notes, including the opinion of Bond Counsel, will be qualified as to the enforceability of these rights and remedies, for example, by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of creditors generally and by principles of equity.

Bankruptcy Filing by HRTAC. Under the Bankruptcy Code and current Virginia law, the Commission may not file for bankruptcy protection under Chapter 9 of the Bankruptcy Code and no creditor or judgment holder of the Commission may file a Chapter 9 petition on behalf of the Commission. Pursuant to Section 109(c)(2) of the Bankruptcy Code, a political subdivision or public agency or instrumentality of a state must be specifically authorized by state law before it may file for bankruptcy protection. Currently, there is no Virginia statute that prescribes, authorizes or otherwise contains authorization for a political subdivision such as the Commission to file for Chapter 9 protection, or delegates such authority to any governmental officer or organization. There can be no assurance, however, that the Bankruptcy Code or Virginia law will not be amended in the future to permit the Commission to file for bankruptcy protection, and such a filing could, under certain circumstances, subject all or a portion of the HRTF Revenues to the jurisdiction of the bankruptcy court. Potential purchasers of the Series 2021A Notes should consult their own attorneys and advisors in assessing the risk and the likelihood of recovery in the event the Commission becomes a debtor in a bankruptcy proceeding. When an entity is in bankruptcy, its creditors (including noteholders) may be prohibited from acting to collect from or to enforce obligations of the debtor entity without permission of the bankruptcy court; therefore, the Commission may be prevented from making payments to the noteholders from funds in its possession. These restrictions may result in delays or reductions in payments on the Series 2021A Notes. Should the Commission become the debtor in a bankruptcy case, the holders of the Series 2021A Notes will not have a lien on HRTAC Revenues received by the Commission after the commencement of the bankruptcy case unless the bankruptcy court determines that such HRTAC Revenues constitute “Special Revenues” within the meaning of the Bankruptcy Code. “Special Revenues” are defined to include, among other things, receipts from the ownership, operation, or disposition of projects or systems that are primarily used or intended to be used primarily to provide transportation, utility or other services, as well as other revenues or receipts derived from functions of the debtor. Although the Commission believes that HRTAC Revenues should be treated as “Special Revenues,” no assurance can be given that a bankruptcy court would agree with such characterization. Further, even if the HRTAC Revenues are treated as “Special Revenues,” no assurance can be provided that a bankruptcy court would allow noteholders to compel payments on the Series 2021A Notes from such “Special Revenues.” In any case, there could be delays or reductions in payments on the Series 2021A Notes or losses to noteholders. Regardless of any specific adverse determinations in any bankruptcy proceeding involving the Commission, the mere existence of such a bankruptcy proceeding would have an adverse effect on the liquidity and value of the Series 2021A Notes.

Judicial Discretion. Upon a default under the Master Indenture, the remedies available to the Trustee may depend upon judicial actions that may be subject to substantial discretion and delay. Some of these remedies may in fact turn out not to be enforceable at all. The rights of the owners of the Series 2021A Notes and the enforceability of HRTAC’s obligations will be subject to the exercise of judicial discretion under a variety of circumstances. The enforceability of governmental obligations is also subject to constitutional, statutory and public policy limitations and to other considerations that do not limit enforcement of obligations of private parties.

Market Liquidity

The Series 2021A Notes constitute a new issue. Although the Underwriters currently intend to make a market for the Series 2021A Notes, the Underwriters are not obligated to do so, and they may discontinue any such market-making at any time without prior notice. No assurance can be given as to the development or liquidity of any market for the Series 2021A Notes. If an active public market does not develop, the market price and liquidity of the Series 2021A Notes may be adversely affected.

Economic Conditions Affecting the HRTF

The availability of HRTF Revenues from the HRTF is dependent on a number of economic factors. The revenues received from the Additional Sales and Use Tax and the Additional Motor Vehicle Fuels Tax tend to fluctuate significantly based on economic variables, including, but not limited to, the condition of the economies of the Member Localities in which such taxes are collected, the Commonwealth and the United States, economic growth or recessions, population growth, income and employment levels, levels of tourism, weather conditions, fuel prices, road conditions, and the availability of alternate modes of transportation. HRTAC's revenues and purposes may be further generally affected by those factors, as well as by trends or changes in housing and business concentrations, the opinions and sensitivities of area residents, the costs and consequences of complying with federal regulations, and unintended effects of infrastructure development on urban growth patterns. The economic recession that commenced with the COVID-19 pandemic could have severe, negative repercussions upon HRTAC's revenue and capital sources, including market disruptions in the financial sector and potential effects on the cost and duration of its funded projects in addition to the tax base upon which the HRTF relies. There can be no assurance that negative impacts attributable to economic factors will not materially adversely affect the availability of revenues in the HRTF and impede the ability of HRTAC to receive transfers from the HRTF sufficient to make timely payments on the Series 2020A Bonds. See [Appendix D](#)

Risk Arising from Operating and Maintenance Burdens on Commonwealth

The HRTAC Act does not permit HRTAC to include in its budget any funds to independently operate and maintain funded projects or to perform any transportation service; therefore, HRTAC has no control over the long-term impact of its spending on future obligations of the Commonwealth. This could result in future budgetary and political conditions that are difficult to predict, but may have a material adverse impact on HRTAC, the HRTF Revenues and HRTAC's ability over the long term to support debt service payments on the Senior Bonds.

Impact of Federal Budget Restraints and Federal Tax Policy

Hampton Roads has been directly affected by federal budget restraints and sequestration, given the large impact of the military and government contracts on the Hampton Roads economy. It is uncertain whether such budget restraints will be reduced or increased, or whether other industries will provide adequate economic growth to make up for any reduction in spending resulting from federal budget restraints. See "Economic Profile" in [Appendix D](#).

To the extent that federal funds for transportation projects cease to be provided to the Commonwealth or its political subdivisions, or that the federal government reduces funding to, restricts or eliminates the TIFIA credit assistance program, HRTAC will have difficulty carrying out its funding plans. If HRTAC is unable to complete needed projects, it may lose political support and thereafter lose control of HRTF Revenues, impeding HRTAC's ability to make timely payments of debt service on the Series 2021A Notes.

Restraints under tax reform, such as limitations on the federal deduction for state and local tax payments, or limitations on the home mortgage interest deduction, could affect consumer behavior and policy priorities at the state and local level, having an adverse effect on the HRTF that cannot presently be quantified.

Hurricanes, Flooding, Sea-Level Rise and Other Natural Risks

Planning District 23 is located in the Mid-Atlantic region of the east coast of the United States. The Mid-Atlantic region is an area that has in the past been periodically susceptible to damaging storms, storm surge, and flooding. The risk of hurricanes, tropical storms or other major weather events affecting the Member Localities and interrupting commerce and military activities within Hampton Roads is a material risk that could negatively affect the regional economy and the revenues available through the HRTF to pay debt service on the Series 2021A Notes and could directly impact or damage Commission-funded facilities. Further, storm and flooding-related risks are likely to intensify over time if scientific projections about climate change and sea-level rise are correct. In addition, the Member Localities are located within a seismic zone that has experienced earthquakes in the past 15 years, and there can be no assurance that Commission-funded projects would not be damaged in any future earthquakes.

Reduced Fuel Prices and Fuel Usage May Reduce HRTF Revenues

Improved automobile fuel economy, the increased adoption of electric and hybrid vehicles, increases in telecommuting, and the economic and societal impacts of the COVID-19 Pandemic have had, and are expected to continue to have, a material adverse effect on fuel tax revenues throughout the United States. In addition, reductions or fluctuations in fuel prices have had, and are expected to continue to have, a significant effect on the level of tax revenues that can be expected in any period from the Additional Motor Vehicle Fuels Tax.

Increased E-Commerce Activity May Reduce Retail Sales and Use Tax Revenues

Internet sales of physical products by businesses located in the Commonwealth, and Internet sales of physical products delivered to the Commonwealth are generally subject to the Additional Sales and Use Tax. However, many of these transactions may avoid taxation either through error or deliberate non-reporting and this potentially reduces the amount of Additional Sales and Use Tax revenues. As a result, additional incremental growth in retail sales on the Internet, along with the failure or inability to collect retail sales and use taxes on such Internet purchases, might result in reductions in HRTF Revenues. In its 2019 session, the Virginia General Assembly enacted Chapter 815, Acts of Assembly, which became effective on July 1, 2019 and provides uniform nexus requirements for remote sellers, marketplace facilitators, and marketplace sellers. Dealers with no Virginia physical presence are required to collect and remit sales tax if they have more than \$100,000 in Virginia gross sales or complete greater than 200 separate transactions in Virginia during the current or previous calendar year. It is uncertain whether Virginia's nexus requirements will be successful in reducing the negative impact of e-commerce activity on retail sales and use tax revenues.

General Assembly May Enact Exemptions to and Holidays from Sales and Use Tax

The Additional Sales and Use Tax applies to the same transactions and items that are subject to the statewide retail sales and use tax levied by the Commonwealth. In the past, the General Assembly has made changes to the transactions and items subject to the statewide retail sales and use tax. For example, in 1990, the General Assembly enacted legislation to exempt from the statewide retail sales and use tax all nonprescription drugs and proprietary medicines purchased for the cure, mitigation, treatment, or

prevention of disease in human beings. There can be no assurance that further exemptions will not be granted.

In addition, the General Assembly has established certain sales tax holidays. A “sales tax holiday” is a temporary period during which purchases of certain items are exempt from retail sales and use taxes. Following legislation enacted by the 2007 session of the General Assembly, the Commonwealth now has three annual sales tax holidays. During a seven-day period in May of each year, purchases of items designated by the Virginia Department of Taxation as hurricane preparedness equipment, including portable generators, are exempt from the statewide sales tax. Portable generators must be priced at \$1,000 or less, and other eligible items must be priced at \$60 or less for each item. During a three-day period in August of each year, purchases of certain school supplies, clothing and footwear are exempt from the statewide sales tax. Each eligible school supply item must be priced at \$20 or less, and each eligible article of clothing and footwear must be priced at \$100 or less. During a four-day period in October of each year, purchases of products meeting the Energy Star and WaterSense qualifications, such as certain energy-efficient appliances, are exempt from the statewide sales tax. Eligible products must be priced at \$2,500 or less for each item, and be purchased for noncommercial home or personal use.

Each such exemption and holiday affects the application of the Additional Sales and Use Tax that benefits the HRTF. In the future, the General Assembly could further change the transactions and items upon which either the general or additional tax is imposed or add or delete sales tax holidays. The Additional Sales and Use tax revenues available to the HRTF could increase or decrease depending on the nature of the change.

Actual Results May Diverge from Review Presentation

The Potential Impact of COVID-19 Review contained in “**POTENTIAL IMPACT OF COVID-19 ON HRTF REVENUES**” is based on assumptions regarding future transactions, trends and events that may not materialize, and unanticipated events or circumstances may occur. Future decisions, actions and policies of the Commission, to the extent they deviate from the Commission’s current expectations and assumptions, may also materially impact the Commission’s future performance and the amount of HRTF Revenues. The Commission cannot determine the nature and scope of the impact such divergence may have on the Commission’s operations or the HRTF Revenues. Summaries of certain assumptions upon which the Potential Impact of COVID-19 Review is based can be found in “**POTENTIAL IMPACT OF COVID-19 ON HRTF REVENUES.**”

Tax Revenues Could be Eroded by Changes to Planning District 23

The sources of taxable transactions generating revenues for the HRTF from the Additional Sales and Use Tax and the Additional Motor Vehicle Fuels Tax are limited geographically to Planning District 23. The mix of localities within Planning District 23, which currently include Isle of Wight, James City, Southampton, York, Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg, could be altered by administrative action of DHCD. Any such change could have a material adverse effect on the composition of the tax base for the Additional Sales and Use Tax and the Additional Motor Vehicle Fuels Tax, which could erode the revenues available to pay debt service on the Series 2021A Notes.

No Right to Accelerate Debt Service

The Master Indenture does not permit the Trustee or Owners, upon the occurrence of an Event of Default under the Master Indenture or for any other reason, to accelerate the maturity of any Bonds,

including the Series 2021A Notes, or the payment of principal of and interest due thereon. Owners will be able to collect principal and interest that become due after an Event of Default only from the HRTAC Revenues and any other funds pledged under the Master Indenture and only when such principal and interest are scheduled to be paid.

No Mortgage or Other Liens

Payment of the principal of and interest on the Series 2020A Bonds is not secured by any deed of trust, mortgage or other lien on any of the Initial Financed Projects, the HRBT Expansion Project, any equipment or other tangible personal property of HRTAC or VDOT, or any property of the Member Localities.

Limitation on Remedies

The remedies available to the Owners upon a default under the Master Indenture are in many respects dependent upon judicial action, which is often subject to discretion and delay under existing constitutional and statutory law and judicial decisions, including specifically Title 11 of the Bankruptcy Code. Although political subdivisions of the Commonwealth, including the Commission, are not currently authorized to seek relief under the provisions of Chapter 9 of the Federal Bankruptcy Code, the various legal opinions to be delivered concurrently with delivery of the Series 2021A Notes will be qualified as to enforceability of the various legal instruments by limitations imposed by bankruptcy, reorganization, insolvency or other similar laws affecting the rights of credits generally, now of hereafter in effect; to usual equity principles which shall limit the specific enforcement under laws of the Commonwealth as to certain remedies; to the exercise by the United States of America of the powers delegated to it by the United States Constitution; and to the reasonable and necessary exercise, in certain exceptional situations, of the police power inherent in the sovereignty of the Commonwealth and its governmental bodies, in the interest of serving an important public purpose.

No Redemption of Bonds in the Event of Taxability

The Series 2021A Notes are not subject to redemption prior to maturity upon the occurrence of an event which has the effect of rendering interest on the Series 2021A Notes includable in the gross income of the owners of the Series 2021A Notes for purposes of federal income taxation. No provision is made in the Master Indenture for any increase or other adjustment in the rate of interest payable on the Series 2021A Notes in the event of such an occurrence.

CERTAIN LEGAL MATTERS

Certain legal matters relating to the authorization and validity of the Series 2021A Notes will be subject to the approving opinion of Kaufman & Canoles, a Professional Corporation, Richmond, Virginia, Bond Counsel, which will be furnished at the expense of the Commission upon delivery of the Series 2021A Notes, in substantially the form set forth as Appendix F (the “Bond Opinion”). The Bond Opinion will be limited to matters relating to authorization and validity of the Series 2021A Notes and to the tax status of interest thereon as described in the section “TAX MATTERS.” Bond Counsel has not been engaged to investigate the financial resources of the Commission or its ability to provide for payment of principal of, interest, or premium, if any, on the Series 2021A Notes, and the Bond Opinion will make no statement as to such matters or as to the accuracy or completeness of this Official Statement or any other information that may have been relied on by anyone in making the decision to purchase Bonds.

Certain legal matters will be passed upon for HRTAC by Willcox & Savage, P.C., Norfolk, Virginia, its general counsel, and Kaufman & Canoles, a Professional Corporation, Richmond, Virginia, as disclosure counsel, and for the Underwriters by their counsel, Butler Snow LLP, Richmond, Virginia.

TAX MATTERS

Opinion of Bond Counsel

In the opinion of Bond Counsel, under current law, interest on the Series 2021A Notes (a) is not included in gross income for Federal income tax purposes, and (b) is not an item of tax preference for purposes of the Federal alternative minimum tax. Interest on the Series 2021A Notes is exempt from income taxation by the Commonwealth. No other opinion is expressed by Bond Counsel regarding the tax consequences of the ownership of or the receipt or accrual of interest on the Series 2021A Notes.

The Bond Opinion will be given in reliance upon certifications by representatives of the Commission as to certain facts relevant to both the opinion and requirements of the Internal Revenue Code of 1986, as amended (the "Tax Code"), and applicable regulations thereunder. The Bond Opinion is subject to the condition that there is compliance subsequent to the issuance of the Series 2021A Notes with all requirements of the Tax Code that must be satisfied in order for interest thereon to remain excludable from gross income for Federal income tax purposes. The Commission has covenanted to comply with the current provisions of the Tax Code regarding, among other matters, the use, expenditure and investment of the proceeds of the Series 2021A Notes and the timely payment to the United States of any arbitrage rebate amounts with respect to the Series 2021A Notes. Failure by the Commission to comply with such covenants, among other things, could cause interest on the Series 2021A Notes to be included in gross income for Federal income tax purposes retroactively to their date of issue.

Original Issue Premium

Series 2021A Notes purchased, whether upon issuance or otherwise, for an amount (excluding any amount attributable to accrued interest) in excess of their principal amount will be treated for federal income tax purposes as having amortizable bond premium. A holder's basis in such a Series 2021A Notes must be reduced by the amount of premium which accrues while such Series 2021A Notes is held by the holder. No deduction for such amount will be allowed, but it generally will offset interest on the Series 2021A Notes while so held. Purchasers of such Series 2021A Notes should consult their own tax advisors as to the calculation, accrual and treatment of amortizable bond premium and the state and local tax consequences of holding such Series 2021A Notes.

Original Issue Discount

The initial public offering prices of the Series 2021A Notes will not be less than their stated principal amount. Therefore, interest on the Series 2021A Notes will not include any accrued original issue discount.

Other Tax Matters

In addition to the matters addressed above, prospective purchasers of the Series 2021A Notes should be aware that the ownership of tax-exempt obligations may result in collateral Federal income tax consequences to certain taxpayers, including without limitation financial institutions, property and casualty insurance companies, S corporations, foreign corporations subject to the branch profits tax, recipients of Social Security or Railroad Retirement benefits and taxpayers who may be deemed to have incurred or

continued indebtedness to purchase or carry tax-exempt obligations. Prospective purchasers of the Series 2021A Notes should consult their tax advisors as to the applicability and impact of such consequences.

Prospective purchasers of the Series 2021A Notes should consult their own tax advisors as to the status of interest on the Series 2021A Notes under the tax laws of any state other than the Commonwealth.

The Internal Revenue Service (the “Service”) has a program to audit state and local government obligations to determine, as applicable, whether the interest thereon is includible in gross income for federal income tax purposes. If the Service does audit the Series 2021A Notes, under current Service procedures, the Service will treat the Commission as the taxpayer and the owners of the Series 2021A Notes will have only limited rights, if any, to participate.

The Bond Opinion represents Bond Counsel’s legal judgment based in part upon the representations and covenants referenced therein and its review of existing law, but are not a guarantee of results or binding on the Service or the courts. Bond Counsel assumes no duty to update or supplement its opinion to reflect any facts or circumstances that may come to Bond Counsel’s attention after the date of its opinion or to reflect any changes in law or the interpretation thereof that may occur or become effective after such date.

Future Events and Legislative and Regulatory Actions

There are many events that could affect the value and liquidity or marketability of the Series 2021A Notes after their issuance, including but not limited to public knowledge of an audit of the Series 2021A Notes by the Service, a general change in interest rates for comparable securities, a change in federal or state income tax rates, legislative or regulatory proposals affecting state and local government securities and changes in judicial interpretation of existing law. Legislation affecting tax-exempt obligations is regularly considered by the U.S. Congress and various state legislatures. Such legislation may effect changes in federal or state income tax rates and the application of federal or state income tax laws (including the substitution of another type of tax), or may repeal or reduce the benefit of the excludability of interest on the tax-exempt obligations from gross income for federal or state income tax purposes. For example, the tax reform act that was enacted by the U.S. Congress in December, 2017, and signed into law by the President on December 22, 2017, and effective after December 31, 2017, changed both corporate and individual tax rates and eliminated tax-exempt advance refunding bonds. The U.S. Treasury Department and the IRS are continuously drafting regulations to interpret and apply the provisions of the Tax Code and court proceedings may be filed the outcome of which could modify the federal or state tax treatment of tax-exempt obligations. There can be no assurance that legislation proposed or enacted after the date of issue of the Series 2021A Notes, regulatory interpretation of the Tax Code or actions by a court involving either the Series 2021A Notes or other tax-exempt obligations will not have an adverse effect on the Series 2021A Notes’ federal or state tax status, marketability or market price or on the economic value of the tax-exempt status of the interest on the Series 2021A Notes. Neither the Bond Opinion nor this Official Statement purports to address the likelihood or effect of any such future events or legislative and regulatory actions, and purchasers of the Series 2021A Notes should seek advice concerning such matters as they deem prudent in connection with their purchase of Series 2021A Notes.

LITIGATION

There is no litigation of any kind now pending or, to the best of its information, knowledge and belief, threatened against the Commission to restrain or enjoin the issuance or delivery of the Series 2021A Notes or the collection and application of HRTAC Revenues under the Master Indenture, or in any manner contesting or affecting the validity of the Series 2021A Notes, any proceeding of HRTAC taken with respect

to their issuance, authentication or sale, or any appropriation of funds to pay debt service on the Series 2021A Notes.

RATINGS

Moody's Investor Service ("Moody's") and S&P Global Ratings ("S&P") have given the Series 2021A Notes the ratings of "___" and "___," respectively. The Commission requested that the Series 2021A Notes be rated and furnished certain information to Moody's and S&P, including certain information that may not be included in this Official Statement.

Reference should be made to the individual rating agency for a more complete description of the meaning of the rating assigned by such rating agency. These ratings are not a recommendation to buy, sell or hold the Series 2021A Notes. The ratings are subject to review and change or withdrawal at any time if, in the judgment of the respective rating agency, circumstances so warrant. There is no assurance that any such ratings will continue for any period of time or that any such rating will not be revised or withdrawn. A downward revision or withdrawal of a rating may have an adverse effect on the market price of the Series 2021A Notes.

FINANCIAL ADVISOR

The Commission has retained PFM Financial Advisors LLC, Orlando, Florida, as financial advisor (the "Financial Advisor") in connection with the issuance of the Series 2021A Notes. Although the Financial Advisor assisted in the review of this Official Statement, the Financial Advisor is not obligated to undertake, and has not undertaken to make, an independent verification or to assume responsibility for the accuracy, completeness, or fairness of the information contained in this Official Statement. The Financial Advisor is a financial advisory, investment management and consulting organization and is not engaged in the business of underwriting municipal securities.

RELATIONSHIP OF PARTIES

Kaufman & Canoles, a Professional Corporation, Richmond, Virginia, Bond Counsel, from time to time represents one or more of the Underwriters or the Trustee in matters unrelated to the Series 2021A Notes or one or more of the Member Localities in matters unrelated to HRTAC. Butler Snow LLP, counsel to the Underwriters, from time to time represents the Trustee in transactions unrelated to the Series 2021A Notes or one or more of the Member Localities in matters unrelated to HRTAC.

UNDERWRITING

The Series 2021A Notes are being purchased by the Underwriters pursuant to a Bond Purchase Agreement (the "Bond Purchase Agreement") between HRTAC and _____, as representative of the Underwriters. The Bond Purchase Agreement sets forth the obligation of the Underwriters to purchase the Series 2021A Notes at an aggregate purchase price of \$_____ (representing the sum of the \$_____ par amount of the Series 2021A Notes, [plus] [less] original issue [premium] [discount] of \$_____, less an underwriting discount of \$_____ on such Series 2021A Notes) and is subject to certain terms and conditions, including the approval of certain legal matters by counsel. The Bond Purchase Agreement provides that the Underwriters will purchase all of the Series 2021A Notes if any are purchased. The Underwriters may offer and sell the Series 2021A Notes to certain dealers (including dealers depositing the Series 2021A Notes into investment trusts) and others at prices different from the public offering prices stated on the cover page of this Official Statement. The public offering prices may be changed from time to time at the discretion of the Underwriters.

The Underwriters and their respective affiliates are full service financial institutions engaged in various activities, which may include sales and trading, commercial and investment banking, advisory, investment management, investment research, principal investment, hedging, market making, brokerage and other financial and non-financial activities and services. In the course of their various business activities, the Underwriters and their respective affiliates, officers, directors and employees may purchase, sell or hold a broad array of investments and actively traded securities, derivatives, loans, commodities, currencies, credit default swaps and other financial instruments for their own account and for the accounts of their customers, and such investment and trading activities may involve or relate to assets, securities and/or instruments of the Commission (directly, as collateral securing other obligations or otherwise) and/or persons and entities with relationships with the Commission. The Underwriters and their respective affiliates may also communicate independent investment recommendations, market color or trading ideas and/or publish or express independent research views in respect of such assets, securities or instruments and may at any time hold, or recommend to clients that they should acquire, long and/or short positions in such assets, securities and instruments.

[add underwriter specific paragraphs]

CONTINUING DISCLOSURE

To assist the underwriters in complying with the provisions of Securities and Exchange Commission Rule 15c2-12, as amended (the “Rule”), promulgated by the Securities and Exchange Commission, HRTAC will execute a Continuing Disclosure Undertaking (the “Disclosure Undertaking”) at closing pursuant to which the Commission will agree to provide certain annual financial information and material event notices required by the Rule. Such information will be filed through the Electronic Municipal Market Access System (“EMMA”) maintained by the Municipal Securities Rulemaking Board and may be accessed through the Internet at emma.mrsb.org. As described in Appendix C, the Disclosure Undertaking requires the Commission to provide only limited information at specific times, and the information provided may not be all the information necessary to value the Series 2021A Notes at any particular time. The Commission may from time to time disclose certain information and data in addition to that required by the Disclosure Undertaking. If the Commission chooses to provide any additional information, the Commission will have no obligation to continue to update such information or to include it in any future disclosure filing.

[Identify any noncompliance in past five years]

Failure by the Commission to comply with the Disclosure Undertaking is not an event of default under the Series 2021A Notes or the Master Indenture. The sole remedy for a default under the Disclosure Undertaking is to bring an action for specific performance of the Commission’s covenants thereunder, and no assurance can be provided as to the outcome of any such proceeding.

APPROVAL OF PRELIMINARY OFFICIAL STATEMENT

Any statements in this Official Statement involving matters of opinion or estimates, whether or not expressly so stated, are intended as such and not representations of fact. No representation is made that any of the estimates will be realized. Neither this Official Statement nor any statement which may have been made verbally or in writing is to be construed as a contract with the holder of the Series 2021A Notes.

The attached Appendices are an integral part of this Official Statement and must be read together with the balance of this Preliminary Official Statement.

The distribution of this Preliminary Official Statement has been duly authorized by the Commission. For purposes of compliance with the Rule, this Preliminary Official Statement constitutes an official statement of the Commission that has been deemed final by the Commission as of its date except for the omission of certain pricing and other information as permitted by the Rule.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Chair

**DEFINITIONS AND SUMMARIES OF THE MASTER INDENTURE AND THE 2021A SERIES
SUPPLEMENT**

DEFINITIONS AND SUMMARIES OF THE MASTER INDENTURE AND THE 2021A SERIES SUPPLEMENT

Set forth below are definitions of certain terms contained in the Master Indenture or the 2021A Series Supplement, followed by summaries of certain provisions of the Master Indenture and the 2021A Series Supplement. The descriptions do not purport to be comprehensive or definitive and are qualified in their entirety by reference to the Master Indenture and the 2021A Series Supplement, copies of which can be obtained from HRTAC or the Trustee. The headings below have been added for ease of reference only.

DEFINITIONS OF CERTAIN TERMS

In addition to the terms previously defined in this Official Statement, the following words used in this Appendix A will have the following meanings unless a different meaning clearly appears from the context:

“2021A Notes” means the Series of Senior Bonds authorized to be issued under the 2021A Series Supplement.

“2021A Bond Debt Service Fund” means the Bond Debt Service Fund Related to the Series 2021A Notes established pursuant to the Master Indenture and the 2021A Series Supplement.

“2021A Cost of Issuance Fund” means the Cost of Issuance Fund Related to the Series 2021A Notes established pursuant to the Master Indenture and the 2021A Series Supplement.

“2021A Project Fund” means the Project Fund Related to the Series 2021A Notes established pursuant to the Master Indenture and the 2021A Series Supplement.

“2021A Rebate Fund” means the Rebate Fund Related to the Series 2021A Notes established pursuant to the Master Indenture and the 2021A Series Supplement.

“2021A Series Supplement or Sixth Series Supplement” means the Sixth Supplemental Indenture of Trust dated as of _____ 1, 2021, between HRTAC and the Trustee, being a Series Supplement with respect to the Series 2021A Notes pursuant to the provisions of the Master Indenture.

“2021A Tax Regulatory Agreement” means the Tax Certificate and Regulatory Agreement made by HRTAC for the benefit of the Trustee and the Owners of the Series 2021A Notes.

“Account” means any account established in a Fund with respect to a Related Series of Bonds or otherwise pursuant to the terms of the Master Indenture or any Supplemental Indenture.

“Accreted Amount” means with respect to Capital Appreciation Bonds of any Series, the amount set forth in the Related Series Supplement as the amount representing the initial public offering price plus the accreted and compounded interest on such Bonds as of any point in time.

“Agency Obligations” means senior debt obligations of U.S. government-sponsored agencies, corporations, and enterprises that are not backed by the full faith and credit of the U.S. government, including, but not limited to, Federal Home Loan Mortgage Corporation debt obligations, Farm Credit System consolidated system wide bonds and notes, Federal Home Loan Banks consolidated debt obligations, Federal National Mortgage Association debt obligations, Student Loan Marketing Association debt obligations, Tennessee Valley Authority debt obligations, Resolution Funding Corporation debt obligations (including principal and interest strips), and U.S. Agency for International Development guaranteed notes (including stripped securities).

“Amortization Requirement” as applied to any Term Bonds of any maturity for any Bond Year, means the principal amount or amounts fixed by, or computed in accordance with the terms of, the Related Series Supplement

for the retirement of such Term Bonds by mandatory purchase or redemption on the Principal Payment Date or Dates established by such Related Series Supplement.

“Annual Budget” means the administrative and operating expense budget of HRTAC for any Fiscal Year as adopted by HRTAC in accordance with the HRTAC Act, as such budget may be amended from time to time throughout such Fiscal Year.

“Assumed Debt Service” means for any Fiscal Year the aggregate amount of principal and interest that would be payable on all Bonds if each Excluded Principal Payment were amortized on a substantially level debt service basis or other amortization schedule provided by HRTAC for a period commencing on the date of calculation of such Assumed Debt Service and ending on the earlier of (i) the date specified by HRTAC or (ii) 30 years from the date of calculation, such Assumed Debt Service to be calculated on a level debt service basis or other amortization schedule provided by HRTAC, based on a fixed interest rate equal to the rate at which HRTAC could borrow for such period, as expressed in an Officer’s Certificate (which shall be based upon the opinion of HRTAC’s financial advisor or of a third party consultant reasonably acceptable to the Trustee).

“Bankruptcy Law” means Title 11 of the United States Code, as it is amended from time to time and any successor to or replacement of such Title and any other applicable federal or state bankruptcy, insolvency or other similar law.

“Bond” or **“Bonds”** means any or all of the bonds that HRTAC may issue under the Virginia Code and pursuant to Article V of the Master Indenture, including any Senior Bonds, any Intermediate Lien Obligations, or any Subordinate Obligations.

“Bond Counsel” means (i) Kaufman & Canoles, a Professional Corporation, or (ii) other counsel selected by HRTAC which is nationally recognized as experienced in matters relating to obligations issued or incurred by states and their political subdivisions.

“Bond Credit Facility” means a line of credit, letter of credit, standby bond purchase agreement, municipal bond insurance or similar credit enhancement or liquidity facility established to provide credit or liquidity support for all or any portion of a Series of Bonds as provided in the Related Series Supplement.

“Bond Credit Provider” means, as to all or any portion of a Series of Bonds, the Person providing a Bond Credit Facility, as designated in the Related Series Supplement in respect of such Series of Bonds.

“Bond Year” means each twelve month period beginning on July 1 and ending on June 30, or such other twelve-month period as may be selected by the Commission and approved by Bond Counsel with respect to any Series of Bonds.

“Business Day” means any day on which commercial banking institutions generally are open for business in New York and the Commonwealth.

“Capital Appreciation Bonds” means a Series of Bonds the interest on which is compounded and accumulated at the rates and on the dates set forth in the Related Series Supplement and is payable upon redemption or on the maturity date of such Series of Bonds.

“Commonwealth” means the Commonwealth of Virginia.

“Convertible Capital Appreciation Bonds” means a Series of Capital Appreciation Bonds having a conversion date after which such Bonds become Current Interest Bonds.

“Cost of Issuance Fund” means the Cost of Issuance Fund established with respect to a Series of Bonds as provided in the Master Indenture.

“Current Interest Bonds” means a Series of Bonds the interest on which is payable currently on the Interest Payment Dates provided therefor in the Related Series Supplement.

“Custodian” means a bank or trust company that is (i) organized and existing under the laws of the United States or any of its states and (ii) selected by HRTAC and reasonably acceptable to the Trustee.

“Debt Service Fund” means a Senior Debt Service Fund, an Intermediate Lien Debt Service Fund, and/or a Subordinate Debt Service Fund established with respect to any Series of Bonds issued under the Master Indenture.

“Debt Service Reserve Fund” means, as the context requires, a Senior Debt Service Reserve Fund, an Intermediate Lien Debt Service Reserve Fund, and/or a Subordinate Debt Service Reserve Fund established with respect to any Series of Bonds issued under the Master Indenture.

“Defeasance Obligations” means noncallable (i) Agency Obligations, (ii) Government Obligations, (iii) Government Certificates, (iv) Defeased Municipal Obligations, and (v) Defeased Municipal Obligation Certificates.

“Defeased Municipal Obligation Certificates” means evidence of ownership of a proportionate interest in specified Defeased Municipal Obligations, which Defeased Municipal Obligations are held by a Custodian.

“Defeased Municipal Obligations” means obligations of the Commonwealth or any county, city, town, district, authority, agency, political subdivision or other public body of the Commonwealth that are rated in the highest rating category by any Rating Agency and provision for the payment of the principal of and redemption premium, if any, and interest on which has been made by the deposit with a trustee or escrow agent of Government Obligations or Government Certificates, the maturing principal of and interest on which, when due and payable, will along with any cash held by the trustee or escrow agent provide sufficient money to pay the principal of and redemption premium, if any, and interest on such obligations.

“DSRF Credit Facility” means a letter of credit, surety bond or similar credit enhancement facility acquired by HRTAC, from a financial institution (including, without limitation, any bank, trust company, insurance company, or broker-dealer) with a long term credit rating at the time of issuance of such facility in the third highest rating category or higher by any Rating Agency, to substitute for cash or investments required to be held in a Debt Service Reserve Fund for any Series of Bonds pursuant to the Related Series Supplement.

“DSRF Credit Provider” means the financial institution providing, and qualified under the definition of, a DSRF Credit Facility.

“Escrow Fund” means an escrow fund relating to a Series of Refunding Bonds that may be established pursuant to the Related Series Supplement and the Master Indenture.

“Event of Default” means any of the events enumerated in the subsection “Events of Default and Remedies Upon Default” below.

“Excess Revenues” means, following the occurrence of a Revenue Sharing Trigger Event and until such time as the Revenue Sharing Trigger Event ends, an amount in each month equal to 50% of the Pledged Revenues remaining after the transfers described in clauses “FIRST” through “TENTH” in Section 8.1(b) “FLOW OF FUNDS” have occurred.

“Excluded Interest Payment” means each payment of interest on obligations that HRTAC has specified in a Related Series Supplement or in an Officer’s Certificate to be payable from or secured by funds or revenues that do not constitute HRTAC Revenues, which may include, without limitation, (i) Toll Revenues, (ii) any grants from the Commonwealth or federal government, or any agency or instrumentality thereof, that have not been designated as HRTAC Revenues, or (iii) any other funds that have not been designated as HRTAC Revenues.

“Excluded Principal Payment” means each payment of Principal on obligations that HRTAC has specified in a Related Series Supplement or in an Officer’s Certificate to be payable from or secured by funds or revenues that

do not constitute HRTAC Revenues, which may include, without limitation, (i) Toll Revenues, (ii) any grants from the Commonwealth or federal government, or any agency or instrumentality thereof, that have not been designated as HRTAC Revenues, (iii) any proceeds of anticipated future borrowings, or (iv) any other funds that have not been designated as HRTAC Revenues.

“Fiscal Year” means the twelve-month period commencing on July 1 of one year and ending on June 30 of the following year.

“Fund” means any fund established pursuant to the terms of the Master Indenture or any Supplemental Indenture.

“GAAP” means generally accepted accounting principles, existing from time to time, as applicable to state and local governmental units.

“General Fund” means the General Fund established pursuant to the Master Indenture.

“Government Certificates” means certificates representing an ownership interest in United States Treasury bond principal at maturity or interest coupons for accrued periods, which bonds or coupons are held in the capacity of custodian by a Custodian that is independent of the seller of such certificates.

“Government Obligations” means direct obligations of, or obligations the payment of the principal of and interest on which is guaranteed by, the United States of America.

“Hedge Agreement” means, without limitation, (i) any contract known as or referred to or which performs the function of an interest rate swap agreement, currency swap agreement, forward payment conversion agreement, or futures contract; (ii) any contract providing for payments based on levels of, or changes or differences in, interest rates, currency exchange rates, or stock or other indices; (iii) any contract to exchange cash flows or payments or series of payments; (iv) any type of contract called, or designed to perform the function of, interest rate floors, collars, or caps, options, puts, or calls, to hedge or minimize any type of financial risk, including, without limitation, payment, currency, rate, or other financial risk; and (v) any other type of contract or arrangement that HRTAC determines is to be used, or is intended to be used, to manage or reduce the cost of any Bonds, to convert any element of any Bonds from one form to another, to maximize or increase investment return, to minimize investment return risk, or to protect against any type of financial risk or uncertainty.

“Hedge Payments” means amounts payable by HRTAC pursuant to any Hedge Agreement, other than termination payments, fees, expenses, and indemnity payments.

“Hedge Period” means the period during which a Hedge Agreement is in effect and has not been terminated.

“Hedge Receipts” means amounts payable by any Swap Provider pursuant to a related Hedge Agreement, other than termination payments, fees, expenses, and indemnity payments.

[**“Hedging Termination Obligations”** means the aggregate amount payable to the Hedging Banks (as defined in the 2019 TIFIA Loan Agreement) by HRTAC upon the early termination of all or a portion of the Hedging Agreements (as defined in the 2019 TIFIA Loan Agreement), net of all amounts payable to HRTAC by such Hedging Banks upon the early unwind of all or a portion of such Hedging Agreements. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.]

“HRTAC” or **“Commission”** means the Hampton Roads Transportation Accountability Commission, a body politic and a political subdivision of the Commonwealth.

“HRTAC Act” means Chapter 26, Title 33.2 of the Virginia Code, as the same may be amended from time to time, and any successor statutes.

“HRTAC Representative” means (i) the Chair or Vice Chair of HRTAC, and (ii) any other commissioner, officer or employee of HRTAC authorized by resolution of HRTAC to perform the act or sign the document in question.

“HRTAC Revenues” means, in any period, (i) all of the HRTF Revenues received by HRTAC during such period, (ii) all earnings from the investment of moneys held in any Fund or Account that is pledged to the payment of any Bonds issued under the Master Indenture (other than any Rebate Fund or any Fund or Account that is established to hold the proceeds of a drawing on a Bond Credit Facility), and (iii) any and all other revenues available under the HRTAC Act that have been designated as HRTAC Revenues pursuant to a Supplemental Indenture, but shall not include Toll Revenues.

“HRTF” means the Hampton Roads Transportation Fund established pursuant to Section 33.2-2600 of the HRTAC Act.

“HRTF Revenues” means the revenues dedicated to the HRTF from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code, together with any other funds that may be hereafter appropriated to the HRTF.

“Initial Resolution” means the resolution numbered 2016-08 and entitled “Resolution Authorizing Hampton Roads Transportation Fund Revenue Bonds,” adopted by HRTAC on June 16, 2016, as supplemented by the resolution numbered 2017-08 adopted by HRTAC on December 14, 2017.

“Interest Payment Date” means any January 1 or July 1, as the case may be, or such other date or dates provided with respect to any Bond as may be designated in a Related Series Supplement.

“Interest Requirement” for any Interest Payment Date, as applied to all of the Current Interest Bonds or a portion thereof, means the total of the interest regularly scheduled to become due on such Bonds on such Interest Payment Date, subject to Section 5.4 (Modification of Certain Definitions) of the Master Indenture. Interest expense shall be excluded from the definition of Interest Requirement to the extent that (i) they constitute Excluded Interest Payments, or (ii) proceeds of any Bonds or other funds (including, without limitation, applicable Debt Service Funds and Debt Service Reserve Funds) are held by the Trustee, or are reasonably expected to be obtained from investment earnings thereon, to pay such interest. Unless HRTAC shall otherwise provide in a Supplemental Indenture, interest expense on Bond Credit Facilities drawn upon to purchase but not to retire Bonds, to the extent such interest exceeds the interest otherwise payable on such Bonds, shall not be included in the determination of an Interest Requirement.

“Intermediate Lien Debt Service Fund” means a Debt Service Fund established with respect to a Series of Intermediate Lien Obligations pursuant to the Master Indenture.

“Intermediate Lien Debt Service Reserve Fund” means a Debt Service Reserve Fund established with respect to one or more Series of Intermediate Lien Obligations pursuant to the Master Indenture.

“Intermediate Lien Debt Service Reserve Requirement” means an amount, required to be maintained in an Intermediate Lien Debt Service Reserve Fund established by the Series Supplement for any Intermediate Lien Obligations; provided, however, (1) to the extent specified in a Related Series Supplement or in an Officer’s Certificate in connection with the issuance of any additional Series of Intermediate Lien Obligations or any calculation of the Intermediate Lien Debt Service Reserve Requirement, HRTAC may hold any Intermediate Lien Debt Service Reserve Fund collectively with respect to all or multiple Series of Intermediate Lien Obligations; and (2) if any Intermediate Lien Debt Service Reserve Fund held collectively with respect to all or multiple Series of Intermediate Lien Obligations is determined as of the beginning of any Fiscal Year to be in an amount greater than the amount that would be derived by measuring the Intermediate Lien Debt Service Reserve Requirement separately for each Outstanding Series of Intermediate Lien Obligations, then such lesser derived amount shall be the Intermediate Lien Debt Service Reserve Requirement for such Fiscal Year.

“Intermediate Lien Obligations” means any Bonds issued under the Master Indenture and designated as being subordinate as to payment and security to the Senior Bonds but senior as to payment and security to the Subordinate Obligations.

“Majority Owners” means the Owners of greater than 50% of the aggregate principal amount of the Senior Bonds Outstanding.

“Master Indenture” means the Master Indenture of Trust dated as of February 1, 2018, between HRTAC and the Trustee, as the same may be modified, altered, amended and supplemented in accordance with its terms by one or more Series Supplements and other Supplemental Indentures.

“Member Localities” means, collectively, each county and city located in Planning District 23, established pursuant to Chapter 42, Title 15.2, of the Virginia Code, currently consisting of the Counties of Isle of Wight, James City, Southampton and York, and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg, and any other localities that may hereafter be added to HRTAC by amendment to the Virginia Code.

“Officer’s Certificate” means a certificate signed by an HRTAC Representative and filed with the Trustee, upon which the Trustee may conclusively rely.

“One Month USD LIBOR Rate” means, on any determination date, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for U.S. Dollars for a period equal in length to the interest period for calculation, as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen that displays such rate (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page or screen that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by HRTAC in its reasonable discretion; in each case the “LIBOR Screen Rate”) at approximately 11:00 a.m., London time, two London Banking Days (defined below) prior to the commencement of such interest period; provided that if the LIBOR Screen Rate shall be less than zero, such rate shall be deemed to be zero for the purposes of the Master Indenture; provided further that if the LIBOR Screen Rate shall not be available at such time, or if HRTAC or the Trustee determines that it is unlawful at such time to determine interest by reference to the LIBOR Screen Rate, then the “One Month USD LIBOR Rate” shall be determined by any comparable alternate method designed to measure interest rates in a similar manner as the original One Month USD LIBOR Rate, as selected by HRTAC and expressed in an Officer’s Certificate (which shall be based upon the opinion of HRTAC’s financial advisor or of a third party consultant reasonably acceptable to the Trustee). Any successor rate or alternate methodology must be an interest-based index, variations in the value of which can reasonably be expected to measure contemporaneous variations in the cost of newly borrowed funds in U.S. dollars. In order to account for the relationship of the replacement index to the original One Month USD LIBOR Rate, such alternate method will incorporate any spread to any replacement index or rate as is necessary to ensure that the alternate method will measure interest rates in a manner similar to the original One Month USD LIBOR Rate; provided further that if any rate established pursuant to any of the foregoing clauses is less than zero, such rate shall be deemed to be zero for purposes of the Master Indenture. As used in this definition, **“London Banking Day”** means any day on which commercial banks are open for general business, including dealings in U.S. dollars and foreign exchange and foreign currency, in London, England.

“Operating Expenses” means any expenditure made or to be made by HRTAC that is properly categorized as an “expense” under GAAP, including, without limitation, the administrative expenses of HRTAC, but shall exclude expenses related to the payment of debt service on any Bonds, capital expenditures for Projects, or expenses for the operation or maintenance of any Project.

“Operating Fund” means the Operating Fund established pursuant to the Master Indenture, in which there is established an Operating Account and an Operating Reserve Account.

“Operating Reserve Requirement” means an amount not to exceed 110% of the aggregate amount of Operating Expense provided for in the Annual Budget in effect as of the applicable measurement date.

“Opinion” or **“Opinion of Counsel”** means a written opinion of any attorney or firm of attorneys, who or which may be Bond Counsel or counsel for HRTAC or the Trustee.

“Optional Tender Bonds” means any Series of Bonds issued under the Master Indenture a feature of which is an option on the part of the Owners of such Bonds to tender to HRTAC, or to the Trustee, any Paying Agent or other fiduciary for such Owners, or to an agent of any of the foregoing, all or a portion of such Bonds for payment or purchase.

“Outstanding” when used in reference to the Bonds and as of a particular date, means all Bonds issued, authenticated and delivered under the Master Indenture except:

- (a) Any Bond canceled or required to be canceled by the Trustee at or before such date;
- (b) Any Bond in lieu of or in substitution for which another Bond shall have been issued, authenticated and delivered under the Master Indenture;
- (c) Any Bond deemed paid under Article XII of the Master Indenture except that any such Bond shall be considered Outstanding until its maturity or redemption date only for the purpose of actually being paid and for purposes of Articles III and IV and Section 6.1 of the Master Indenture (or the corresponding provisions of the Related Series Supplement, as the case may be); and
- (d) Any Bond not deemed Outstanding under, but only to the extent provided for in, Section 15.2 of the Master Indenture.

“Owner” means the registered owner of any Bond.

“Paying Agent” means any national banking association, state bank, bank and trust company or trust company appointed by HRTAC to fulfill the duties of a “paying agent” for the Bonds or any portion thereof as commonly understood in the municipal bond market and meeting the qualifications of, and subject to the obligations of, the Trustee in the Master Indenture. Unless otherwise provided in a Supplemental Indenture, the Trustee shall be the Paying Agent.

“Payment Date” means a date that is an Interest Payment Date or a Principal Payment Date or both.

“Person” means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, any unincorporated organization or a government or political subdivision thereof.

“Principal” or **“principal”** means (i) with respect to a Capital Appreciation Bond, the Accreted Amount thereof (the difference between the stated amount to be paid at maturity and the Accreted Amount being deemed unpaid interest) except when used in connection with the authorization and issuance of Bonds and with the order of priority of payments of Bonds after an Event of Default in which case “principal” means the initial public offering price of the Capital Appreciation Bond (the difference between the Accreted Amount and the initial public offering price being deemed interest) and (ii) with respect to the principal amount of any Current Interest Bond, the principal amount of such Bond payable in satisfaction of an Amortization Requirement, if applicable, or at maturity.

“Principal and Interest Requirements” for any Payment Date or for any period means the sum of the Principal Requirements and the Interest Requirements for such date or such period, respectively.

“Principal Payment Date” means any July 1 upon which the principal amount of any Bond is stated to mature or upon which the principal of any Term Bond is subject to redemption in satisfaction of an Amortization Requirement, or such other date or dates with respect to any Bond as may be provided by a Related Series Supplement.

“Principal Requirement” means for any Principal Payment Date, as applied to all Bonds or a portion thereof, the total of the principal regularly scheduled to become due on such Principal Payment Date, subject to Section 5.4 (Modification of Certain Definitions) of the Master Indenture. Principal payments shall be excluded from the

definition of Principal Requirement to the extent that (i) they constitute Excluded Principal Payments, or (ii) proceeds of any Bonds or other funds are held by the Trustee to pay such Principal.

“Project” means any transportation facility or project that HRTAC may finance or refinance pursuant to the Virginia Code.

“Project Fund” means the Project Fund to be established with respect to a Series of Bonds as provided in the Master Indenture.

“Purchase Price” means the purchase price established in any Series Supplement for Optional Tender Bonds as the purchase price to be paid for such Bonds upon an optional or mandatory tender of all or a portion of such Bonds.

“Rating Agency” means, with respect to any Bonds Outstanding, any nationally recognized credit rating agency if and for so long as such rating agency, at the request of HRTAC, maintains a rating on such Bonds.

“Rating Confirmation” means written evidence that no rating that has been requested by HRTAC and is then in effect from a Rating Agency with respect to a Series of Bonds will be withdrawn, reduced, or suspended solely as a result of an action to be taken under the Master Indenture.

“Rebate Amount” means the liability of HRTAC under Section 148 of the Tax Code (including any “yield reduction payments”) with respect to any Series of Bonds as may be calculated or specified (including with such reserves or error margin as HRTAC may deem appropriate) in accordance with a Related Series Supplement, a Related Tax Regulatory Agreement, or an Officer’s Certificate.

“Rebate Fund” means the Rebate Fund to be established with respect to a Series of Bonds as provided in the Master Indenture.

“Refunding Bonds” shall have the meaning set forth in the subsection “Issuance of Bonds” below.

“Reimbursement Accounts” means any Reimbursement Account that may be established within a Related Debt Service Fund by a Related Series Supplement and pursuant to Section 7.2 of the Master Indenture.

“Reimbursement Obligations” means any reimbursement obligations of HRTAC for principal and interest drawings on any Bond Credit Facility or DSRF Credit Facility with respect to which moneys in a Debt Service Fund, or Reimbursement Account thereof, are pledged or payable pursuant to the provisions of the Master Indenture or any Series Supplement.

“Related” means (i) when used with respect to any Fund, Account or Series of Bonds, the Fund, Account or Series of Bonds so authorized, designated and established by the Master Indenture and the Series Supplement authorizing a particular Series of Bonds, (ii) when used with respect to a Series Supplement, Tax Regulatory Agreement or other document contemplated hereunder, such document authorizing or related to a particular Series of Bonds, or Supplemental Indenture related thereto and (iii) when used with respect to a Bond Credit Facility, DSRF Credit Facility or Reimbursement Obligation, the Bond Credit Facility or DSRF Credit Facility securing a particular Series of Bonds and the Reimbursement Obligation entered into in connection therewith.

“Reserve Determination Date” means (i) the tenth day after each Interest Payment Date, or, if such day is not a Business Day, on the first Business Day thereafter or (ii) any other date set forth in a Series Supplement or an Officer’s Certificate for the valuation of a Debt Service Reserve Fund.

“Reserve Requirement” means, as the context requires, the Senior Debt Service Reserve Requirement, the Intermediate Lien Debt Service Reserve Requirement, and/or the Subordinate Debt Service Reserve Requirement.

“Revenue Fund” means the Revenue Fund established pursuant to the Master Indenture.

“Revenue Sharing Trigger Event” means any date on which Subordinate Obligations issued to the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, are outstanding and HRTAC or the Virginia Department of Transportation, an agency of the Commonwealth of Virginia, on behalf of HRTAC, is not actively engaged in the development of capital project programs in the Hampton Roads Transportation Planning Organization’s most recently adopted long-range transportation plan.

“Senior Bonds” means any Bonds issued under the Master Indenture with seniority of payment and security to the Intermediate Lien Obligations and the Subordinate Obligations.

“Senior Debt Service Fund” means a Debt Service Fund established with respect to a Series of Senior Bonds pursuant to the Master Indenture.

“Senior Debt Service Reserve Fund” means a Debt Service Reserve Fund established with respect to one or more Series of Senior Bonds pursuant to the Master Indenture.

“Senior Debt Service Reserve Requirement” means an amount, required to be maintained in a Senior Debt Service Reserve Fund established by the Series Supplement for any Series of Senior Bonds; provided, however, (1) to the extent specified in a Related Series Supplement or in an Officer’s Certificate in connection with the issuance of any additional Series of Senior Bonds or any calculation of the Senior Debt Service Reserve Requirement, HRTAC may hold any Senior Debt Service Reserve Fund collectively with respect to all or multiple Series of Senior Bonds; and (2) if any Senior Debt Service Reserve Fund held collectively with respect to all or multiple Series of Senior Bonds is determined as of the beginning of any Fiscal Year to be in an amount greater than the amount that would be derived by measuring the Senior Debt Service Reserve Requirement separately for each Outstanding Series of Senior Bonds, then such lesser derived amount shall be the Senior Debt Service Reserve Requirement for such Fiscal Year.

“Serial Bonds” means the Bonds of a Series that are stated to mature in semiannual or annual installments as designated in the Related Series Supplement.

“Series” means all of the Bonds of a particular series issued, authenticated and delivered pursuant to the Master Indenture and the Related Series Supplement and identified as such pursuant to such Series Supplement, and any Bonds of such Series thereafter authenticated and delivered in lieu of or in substitution for such Bonds pursuant to the Master Indenture and such Series Supplement, regardless of variations in priority of payment, lien status, maturity, interest rate, sinking fund installments or other provisions.

“Series Supplement” means a Supplemental Indenture providing for the issuance of a Series of Bonds, as such Series Supplement may be modified, altered, amended and supplemented by a Supplemental Indenture in accordance with the provisions of the Master Indenture.

“SIFMA” means the Securities Industry and Financial Markets Association and its successors.

“SIFMA Swap Index” means, on any determination date, the rate calculated, on the basis of the seven day high grade market index comprised of tax exempt variable rate demand obligation reset rates, by Bloomberg (or successor organizations) and published or made available by SIFMA or any Person acting in cooperation with or under the sponsorship of SIFMA as the SIFMA Municipal Swap Index on such date.

“Subordinate Debt Service Fund” means a Debt Service Fund established with respect to a Series of Subordinate Obligations pursuant to the Master Indenture.

“Subordinate Debt Service Reserve Fund” means a Debt Service Reserve Fund established with respect to one or more Series of Subordinate Obligations pursuant to the Master Indenture.

“Subordinate Debt Service Reserve Requirement” means an amount, required to be maintained in a Subordinate Debt Service Reserve Fund established by the Series Supplement for any Subordinate Obligations; provided, however, (1) to the extent specified in a Related Series Supplement or in an Officer’s Certificate in connection with the issuance of any additional Series of Subordinate Obligations or any calculation of the Subordinate

Debt Service Reserve Requirement, HRTAC may hold any Subordinate Debt Service Reserve Fund collectively with respect to all or multiple Series of Subordinate Obligations; and (2) if any Subordinate Debt Service Reserve Fund held collectively with respect to all or multiple Series of Subordinate Obligations is determined as of the beginning of any Fiscal Year to be in an amount greater than the amount that would be derived by measuring the Subordinate Debt Service Reserve Requirement separately for each Outstanding Series of Subordinate Obligations as of such date, then such lesser derived amount shall be the Subordinate Debt Service Reserve Requirement for such Fiscal Year.

“Subordinate Obligations” means any Bonds that are made specifically subordinate as to payment and security to the Senior Bonds and the Intermediate Lien Obligations.

“Supplemental Indenture” means any indenture supplementary to or amendatory of the Master Indenture or any Supplemental Indenture or Series Supplement now or hereafter duly executed and delivered in accordance with the provisions of the Master Indenture, including a Series Supplement.

“Swap Provider” means, with respect to a Hedge Agreement, the Person that is identified in such agreement as the counterparty to, or contracting party with, HRTAC.

“Swap Related Bonds” means all or any portion of Bonds with respect to which HRTAC has entered into a Hedge Agreement identified as relating to such Bonds, whether or not such Hedge Agreement constitutes a “qualified hedge” under the Tax Code.

“Tax Code” means the Internal Revenue Code of 1986, as amended, as in effect upon the issuance of and thereafter applicable to any Series of Bonds and the regulations of the U.S. Department of the Treasury promulgated thereunder as in effect upon the issuance of and thereafter applicable to any Series of Bonds.

“Tax Regulatory Agreement” means, with respect to any Series of Bonds, the Tax Certificate and Regulatory Agreement, dated the date of the issuance of such Series of Bonds, entered into by HRTAC for the benefit of the Owners of the Bonds of such Series, as the same may be modified, altered, amended or supplemented pursuant to its terms.

“Term Bonds” means all or some of the Bonds of a Series, other than Serial Bonds, that shall be stated to mature on one or more dates and that are so designated in the Related Series Supplement.

“TIFIA Revenue Sharing Account” means the account by that name established in the Subordinate Debt Service Fund with respect to the 2019 TIFIA Loan and any Additional TIFIA Loans (as defined in the 2019 TIFIA Loan Agreement) of HRTAC secured by HRTAC Revenues as provided in Section 5.1(b) of the Second Series Supplement.

“Toll Revenues” means revenues received from tolls established for the use of any transportation facility located in one or more of the Member Localities.

“Trustee” means Wilmington Trust, National Association, and its successors serving in the same capacity under the Master Indenture.

“Variable Rate Bonds” means any Series of Bonds the interest rate on which is not established, at the time such Bonds are issued, at a single numerical rate for the entire term of such Bonds.

“Verification Agent” means (i) a firm of nationally-recognized independent certified public accountants or (ii) any other qualified firm acceptable to HRTAC and the Trustee.

“Virginia Code” means the Code of Virginia of 1950, as amended.

THE MASTER INDENTURE

Establishment of Trust

Security for Bonds. In order to provide for the payment of the principal of and the premium, if any, and interest on the Bonds issued hereunder, and to secure the performance of all of the obligations of HRTAC with respect to the Bonds, this Master Indenture and the Series Supplements, subject to the terms hereof and thereof, HRTAC pledges and grants to the Trustee:

- (a) All of the HRTAC Revenues; and
- (b) The Revenue Fund; and
- (c) All other property of any kind mortgaged, pledged or hypothecated to provide for the payment of or to secure the Bonds by HRTAC or by anyone on its behalf and with its written consent at any time as and for additional security under this Master Indenture and the Series Supplements in favor of the Trustee, which is authorized to receive all such property at any time and to hold and apply it subject to the terms of this Master Indenture and the Series Supplements.

In order to provide for the payment of the principal of and the premium, if any, and interest on each Series of Bonds issued hereunder, and to secure the performance of all of the obligations of HRTAC with respect to such Series, the Master Indenture, and the Related Series Supplement, subject to the terms thereof, HRTAC pledges and grants to the Trustee with respect to such Series (and to such Series only) the money and investments held in the Related Project Fund (if any), Related Debt Service Fund, and Related Debt Service Reserve Fund (if any).

Bond Credit Facility. Any Bond Credit Facility that is given to secure some, but not all, of the Bonds, together with money drawn or paid under it, will be held by the Trustee solely as security for such Bonds of the Series to which such Bond Credit Facility is Related. Neither such Bond Credit Facility nor any money drawn or paid under it will secure the payment of any other Series of the Bonds. The status of the Bond Credit Facility as a Senior Bond, an Intermediate Lien Obligation, a Subordinate Obligation or otherwise will be provided for in the Related Series Supplement.

Issuance of Bonds

In General. HRTAC may issue Bonds, subject to the terms and conditions contained in the Master Indenture, for any purpose permitted to be financed from the proceeds of Bonds under the HRTAC Act or other law, including without limitation the construction and acquisition of any Project and the refunding of any Bonds previously issued and Outstanding. Such Bonds may be issued in any form permitted by law, including, but not limited to, Current Interest Bonds, Variable Rate Bonds, Capital Appreciation Bonds, Optional Tender Bonds, Serial Bonds or Term Bonds or any combination thereof.

HRTAC shall not issue or incur any Bonds that will be secured by a pledge of revenues, money or property pledged by the Master Indenture to the payment of any Series of Bonds, except for Senior Bonds, Intermediate Lien Obligations and Subordinate Obligations.

Subject to the restrictions described in the previous paragraph, HRTAC reserves the right in its sole discretion and without the consent of the Trustee or any Owner of any Bond to issue from time to time Bonds for any lawful purpose authorized by the HRTAC Act.

Parity of Bonds. The Master Indenture constitutes a continuing irrevocable pledge of the HRTAC Revenues and other revenues, money and property of HRTAC pledged as described in the subsection "Establishment of Trust" above to secure payment of the principal of and premium, if any, and interest on all Bonds which may, from time to time, be executed, authenticated and delivered under the Master Indenture. Except as otherwise described herein, all Bonds shall in all respects be equally and ratably secured under the Master Indenture without preference, priority or distinction on account of the time of their authentication, delivery or maturity, so that all such Bonds at any time outstanding under the Master Indenture will have the same right, lien and preference under the Master Indenture with

respect to the pledge described in the subsection “Establishment of Trust” above with like effect as if they had all been executed, authenticated and delivered simultaneously. Nothing in the Master Indenture will be construed, however, as (i) requiring that any Bonds bear interest at the same rate or in the same manner as any other Bonds, have the same or an earlier or later maturity, have the same Principal or Interest Payment Dates as other Bonds, be subject to mandatory or optional redemption before maturity on the same basis as any other Bonds, or precluding the creation of separate reserve funds or obtaining separate surety bonds, insurance policies or other Bond Credit Facilities or DSRF Credit Facilities for any Series of Bonds or portions thereof, (ii) prohibiting HRTAC from entering into financial arrangements, including any Bond Credit Facility or DSRF Credit Facility, designed to assure that funds will be available for the payment of certain Bonds at their maturity or tender for purchase, or (iii) prohibiting HRTAC from pledging funds or assets of HRTAC other than those pledged under the Master Indenture or any Supplemental Indenture for the benefit of any Bonds. Intermediate Lien Obligations shall in all respects be junior and subordinate to the Senior Bonds, but senior to the Subordinate Obligations. Subordinate Obligations shall in all respects be junior and subordinate to the Senior Bonds and the Intermediate Lien Obligations.

Conditions to the Issuance of Additional Series of Bonds. Before the issuance and authentication of any Series of Bonds by the Trustee, HRTAC shall deliver or cause to be delivered to the Trustee:

- (a) In the case of the initial Series of Bonds issued under the Master Indenture only:
 - (1) An original executed counterpart of the Master Indenture;
 - (2) A certified copy of the Initial Resolution, which authorized the execution and delivery of the Master Indenture; and
 - (3) An Opinion or Opinions of Counsel, subject to customary exceptions and qualifications, to the effect that the Master Indenture has been duly authorized, executed and delivered by HRTAC;
- (b) An original executed counterpart of the Related Series Supplement which may include provisions (i) authorizing the issuance, fixing the principal amount and setting forth the details of the Bonds of the Series then to be issued, the interest rate or rates and the manner in which the Bonds are to bear interest, the Principal and Interest Payment Dates of the Bonds, the purposes for which the Bonds are being issued, the date and the manner of numbering the Bonds, the series designation, the denominations, the maturity dates and amounts, the Amortization Requirements or the manner for determining such Amortization Requirements, and any other provisions for redemption before maturity; (ii) for Bond Credit Facilities for the Series and for the Funds to be established with respect to the Series of Bonds as required or authorized under the Master Indenture; (iii) for the application of the proceeds of the Bonds of the Series; (iv) any term or condition necessary or expedient for the issuance of Bonds constituting Variable Rate Bonds or Optional Tender Bonds, including without limitation, tender and remarketing provisions, liquidity facility provisions and provisions for establishing the variable rate and changing interest rate modes; (v) for the amount, if any, to be deposited into the Related Debt Service Reserve Fund to cause the amount held therein to equal the applicable Reserve Requirement; and (vi) for such other matters as HRTAC may deem appropriate;
- (c) A certified copy of each resolution adopted by HRTAC authorizing the execution and delivery of the Related Series Supplement, any Related Bond Credit Facility and any Related Reimbursement Obligation and the issuance, sale, execution and delivery of the Series of Bonds then to be issued;
- (d) Original executed counterparts of the Related Tax Regulatory Agreement, any Related Bond Credit Facility and any Related Reimbursement Obligation;
- (e) Except for the initial Series of Bonds to be issued under the Master Indenture and for any Series of Refunding Bonds, an Officer’s Certificate (subject to the requirements of Section 5.4 (Modification of Certain Definitions) of the Master Indenture, as applicable) to the effect that during any twelve consecutive months of the eighteen months preceding the issuance of the Series of Bonds to be issued the HRTAC Revenues were not less than 2.00 times the maximum annual Principal and Interest Requirements during the current or any future Fiscal Year on the Senior Bonds Outstanding plus the Series of Senior Bonds to be issued; and to the extent that the Series of

Bonds to be issued consists of or includes Intermediate Lien Obligations or Subordinate Obligations, HRTAC shall also provide in such Officer's Certificate evidence of compliance with any minimum ratio of HRTAC Revenues to Principal and Interest Requirements on Intermediate Lien Obligations and/or Subordinate Obligations as may be established by any Series Supplement;

(f) If the Bonds of the Series then to be issued are to be issued to refund Bonds issued and outstanding under the Master Indenture ("Refunding Bonds") evidence satisfactory to the Trustee that (i) the refunding produces present value debt service savings, and (ii) HRTAC has made provision for the payment or redemption of all of the Bonds to be refunded as required by the Master Indenture and the Related Series Supplement and for the payment of the estimated expenses of HRTAC and the Trustee incident to the refunding, including, if applicable, the fees of the Verification Agent and the escrow agent for the Related Escrow Fund;

(g) An Opinion of Bond Counsel to the effect that (i) the Bonds of the Series then to be issued have been duly authorized, (ii) all conditions precedent to the issuance of such Bonds have been fulfilled, (iii) the Related Series Supplement has been duly authorized, executed and delivered by HRTAC and complies in all respects with the requirements of the Master Indenture and (iv) Bonds are valid and legally binding limited obligations of HRTAC and are secured by the Master Indenture and the Related Series Supplement to the extent provided herein and therein;

(h) An Officer's Certificate, dated the date of delivery of the Bonds of the Series then to be issued, to the effect that to the best of the knowledge of the signatory, upon and immediately following such delivery, no Event of Default under the Master Indenture or any Series Supplement with respect to any Series of Bonds Outstanding will have occurred and be continuing;

(i) A written order and authorization to the Trustee on behalf of HRTAC, signed by an HRTAC Representative, to authenticate and deliver the Bonds of the Series then to be issued to or upon the order of the purchaser or purchasers therein identified upon payment to the Trustee of the purchase price (including accrued interest, if any) of such Series of Bonds; and

(j) Any additional document or instrument specified in the Related Series Supplement.

Modification of Certain Definitions.

(a) In the case of the following described types of Bonds, the definition of the term "Principal and Interest Requirements" for the purposes of preparing and delivering the Officer's Certificate regarding the coverage of HRTAC Revenues described above shall be modified as follows:

(1) Optional Tender Bonds. (i) If any of the Outstanding Bonds or additional Bonds of the Series then to be issued constitute Optional Tender Bonds, then the options of the Owners of such Bonds to tender the same for payment prior to their stated maturity or maturities shall be disregarded and Principal and Interest Requirements shall be calculated based on Assumed Debt Service, (ii) if such Bonds also constitute Variable Rate Bonds, HRTAC shall also make the adjustments described in the next paragraph, and (iii) any obligation HRTAC may have, other than its obligation on such additional Bonds (which need not be uniform as to all Owners thereof), to reimburse any Person for its having extended a Bond Credit Facility shall be disregarded and Principal and Interest Requirements shall be calculated based on Assumed Debt Service.

(2) Variable Rate Bonds.

(i) Tax-Exempt. If any of the Outstanding Bonds or Bonds of the Series then to be issued constitute Variable Rate Bonds the interest on which is or will be excluded from gross income for federal income tax purposes, then the interest rate used in the above-described computations shall be assumed to equal the average of the SIFMA Swap Index for the five years preceding such date of calculation, or such other rate as shall be specified in a Related Series Supplement or in an Officer's Certificate in connection with the issuance of any additional Series of Bonds or any calculation of the Reserve Requirement.

(ii) Taxable. If any of the Outstanding Bonds or Bonds of the Series then to be issued constitute Variable Rate Bonds the interest on which is or will be included in gross income for federal income tax purposes, then the interest rate used in the above-described computations shall be assumed to equal the average of the One Month USD LIBOR Rate for the five years preceding such date of calculation, or such other rate as shall be specified in a Related Series Supplement or in an Officer's Certificate in connection with the issuance of any additional Series of Bonds or any calculation of the Reserve Requirement.

(3) Swap Related Bonds. If any of the Outstanding Bonds or Bonds of the Series then to be issued constitute Swap Related Bonds, then the Interest Requirements on such Swap Related Bonds during any Hedge Period and, for so long as the Swap Provider has not defaulted on its payment obligations under the related Hedge Agreement, shall be calculated by adding (i) the amount of interest payable by HRTAC on such Swap Related Bonds pursuant to their terms, subject to paragraphs (a)(1) and (2) as applicable, and (ii) the amount of Hedge Payments payable by HRTAC pursuant to the Hedge Agreement and subtracting (iii) the amount of Hedge Receipts payable by the Swap Provider to HRTAC pursuant to the Hedge Agreement; provided, however, that if the Swap Provider is in default under the related Hedge Agreement, the Interest Requirements on such Swap Related Bonds shall be the interest calculated as if such Hedge Agreement had not been executed. In determining the amount of Hedge Payments or Hedge Receipts that are not fixed throughout the Hedge Period (i.e., which are variable), payable or receivable for any future period, such Hedge Payments or Hedge Receipts for any period of calculation (the "Determination Period") shall be computed by assuming that the variables comprising the calculation applicable to the Determination Period are equal to the higher of (1) such variables in effect as of the date of calculation and (2) the average of the actual variables that were in effect (weighted according to the length of the period during which each such variable was in effect) for the most recent 12-month period immediately preceding the date of calculation for which such information is available (or shorter period if such information is not available for a 12-month period).

(b) The conversion of Bonds constituting Variable Rate Bonds to bear interest at fixed rate or rates or vice-versa, in accordance with their terms, shall not constitute a new issuance of Bonds under the Master Indenture.

(c) With respect to any Bonds bearing interest that is subject to a federal interest subsidy the proceeds of which are not otherwise designated as HRTAC Revenues, the interest rate on such Bonds shall be assumed to be the rate net of such interest subsidy.

Intermediate Lien Obligations. Nothing in the Master Indenture shall prohibit or prevent HRTAC from authorizing and issuing Intermediate Lien Obligations for any lawful purpose payable from HRTAC Revenues subject and subordinate to the payment of any Senior Bonds and to the deposits required to be made from HRTAC Revenues to the Senior Debt Service Funds and the Senior Debt Service Reserve Funds, or any other Fund or Account established to secure any Senior Bonds, or from securing any Intermediate Lien Obligations and their payment by a lien and pledge of HRTAC Revenues junior and inferior to the lien on and pledge thereof for the payment and security of the Senior Bonds.

Subordinate Obligations. Nothing in the Master Indenture shall prohibit or prevent HRTAC from authorizing and issuing Subordinate Obligations for any lawful purpose payable from HRTAC Revenues subject and subordinate to the payment of any Senior Bonds and Intermediate Lien Obligations and to the deposits required to be made from HRTAC Revenues to Senior and Intermediate Lien Debt Service Funds and Senior and Intermediate Lien Debt Service Reserve Funds, or any other Fund or Account established to secure any Senior Bonds or Intermediate Lien Obligations, or from securing any Subordinate Obligations and their payment by a lien and pledge of HRTAC Revenues junior and inferior to the lien on and pledge thereof for the payment and security of the Senior Bonds and the Intermediate Lien Obligations.

Establishment of Funds and Accounts

Permanent Funds. The Funds listed below have been established under the Master Indenture with respect to all of the Outstanding Bonds issued under or in accordance with the Master Indenture and HRTAC's operations, and HRTAC will hold each such Fund without commingling the monies held therein.

- (a) Revenue Fund;

(b) Operating Fund, in which there is established an Operating Account and an Operating Reserve Account; and

(c) General Fund.

Series-Specific Funds. The Funds listed below will be established with respect to each separate Series of Bonds in the Related Series Supplement, and the Trustee shall hold such Funds without commingling the monies held therein, except that (i) HRTAC has the option not to establish a Debt Service Reserve Fund for a Series of Bonds, (ii) HRTAC has the option to establish a Debt Service Reserve Fund securing multiple Series of Bonds on a parity basis, and (iii) HRTAC shall hold each Cost of Issuance Fund.

(a) Cost of Issuance Fund;

(b) Project Fund and/or Escrow Fund, as appropriate;

(c) Debt Service Fund;

(d) Debt Service Reserve Fund; and

(e) Rebate Fund.

HRTAC may direct that a Debt Service Fund and/or Debt Service Reserve Fund established for a Series of Bonds will also provide for the payment of and/or secure any Refunding Bonds issued to refund such Series of Bonds in whole or in part.

Certain Special Funds.

(a) HRTAC may establish with the Trustee or an escrow agent satisfactory to the Trustee in connection with the issuance of any Series of Refunding Bonds, an Escrow Fund to provide for the application and investment of the portion of the proceeds of such Series to be used to refund the refunded Bonds. Such Escrow Fund shall be established under or in accordance with the Related Series Supplement.

(b) HRTAC may establish with the Trustee in connection with the incurrence of any Reimbursement Obligation, a Reimbursement Account in any Related Debt Service Fund. Amounts held for the credit of any such Reimbursement Account shall be paid out by the Trustee as necessary to enable HRTAC to meet its obligations constituting Reimbursement Obligations.

Revenue Fund and Flow of Funds

Revenue Fund. HRTAC will hold the Revenue Fund as a separate Fund. HRTAC will deposit into the Revenue Fund all HRTAC Revenues, including any HRTF Revenues transferred from the HRTF, immediately upon receipt.

At least once each month, not later than the last Business Day of each month, HRTAC shall make transfers from the Revenue Fund in the amounts and in the order of priority set forth below:

FIRST: To each Senior Debt Service Fund ratably, the amount, if any, required under the Related Series Supplement so that the balance therein on the next Payment Date shall equal the amount of principal, if any, and interest due on the next Payment Date on the Related Series of Bonds; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in a Senior Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

SECOND: To each Senior Debt Service Reserve Fund, ratably, the amount, if any, required so that the balance in each such Fund shall be equal to the respective Senior Debt Service Reserve Requirement;

THIRD: To each Intermediate Lien Debt Service Fund, ratably, the amount, if any, required so that the balance in each such Fund shall equal the amount of principal, if any, and interest due on the Related Intermediate Lien Obligations on the next ensuing payment date; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in an Intermediate Lien Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

FOURTH: To each Intermediate Lien Debt Service Reserve Fund, ratably, the amount, if any, so that the balance in such Fund shall be equal to the respective Intermediate Lien Debt Service Reserve Requirement;

FIFTH: To each Subordinate Debt Service Fund, ratably, the amount, if any, required so that the balance in each such Fund shall equal the amount of principal, if any, and interest due on the Related Subordinate Obligations on the next ensuing payment date; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in a Subordinate Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

SIXTH: To each Subordinate Debt Service Reserve Fund, ratably, the amount, if any, so that the balance in such Fund shall be equal to the respective Subordinate Debt Service Reserve Requirement;

SEVENTH: To each Rebate Fund the amounts necessary to provide for the payment of any Rebate Amounts with respect to the Related Series of Bonds as confirmed in an Officer's Certificate;

EIGHTH: To the Operating Account of the Operating Fund, the amount of funds necessary to pay Operating Expenses during such period in accordance with the Annual Budget;

NINTH: To the Operating Reserve Account of the Operating Fund, the amount, if any, so that the balance in such Account shall be equal to the Operating Reserve Requirement;

TENTH: To fund any Hedging Termination Obligation in connection with a Qualified Hedge;

ELEVENTH: After curing any deficiencies as required by Section 8.5(b) of the Master Indenture to the deposits and balances required in "FIRST" through "TENTH" above, to the TIFIA Revenue Sharing Account, the amount, if any, as may be required under Section 6.1 of the Second Supplemental Indenture of Trust dated as of December 1, 2019, and the applicable provisions of any other Series Supplement, an amount equal to Excess Revenues for such month, for deposit into the TIFIA Revenue Sharing Account; and

TWELFTH: To the General Fund, the balance remaining in the Revenue Fund.

In the case of Bonds of a Series secured by a Bond Credit Facility, amounts on deposit in the Revenue Fund may be transferred to the Related Debt Service Fund, or the Related Reimbursement Account thereof, or elsewhere as provided in the Related Series Supplement to reimburse the Bond Credit Provider for amounts drawn under the Bond Credit Facility to pay the principal of and premium, if any, and interest on such Bonds.

Operating Fund. HRTAC will hold the Operating Fund and the Accounts therein, as a separate Fund for the purpose of paying Operating Expenses. Neither the Operating Fund nor any amount therein is pledged to secure the Bonds. HRTAC shall pay Operating Expenses from the Operating Account as they become due and in accordance

with the purposes and amounts provided in the Annual Budget. If at any time there is a deficiency in the Operating Account, HRTAC shall transfer funds from the Operating Reserve Account to cover such deficiency. In determining the balance on deposit in the Operating Account for any purpose of the Master Indenture, there shall be deducted the amount of any pending payments or transfers from the Operating Account. HRTAC may cause amounts in the Operating Fund in excess of those required by the Annual Budget to be transferred to the General Fund.

Debt Service Funds. The Trustee shall promptly deposit the following amounts in each Debt Service Fund:

- (a) The amount, if any, of the proceeds of the Related Series of Bonds required by the Related Series Supplement to be deposited in the Debt Service Fund with respect to accrued and/or capitalized interest;
- (b) All amounts received from the Revenue Fund as described above;
- (c) Any amounts required to be transferred to the Debt Service Fund from a Debt Service Reserve Fund as provided under the Master Indenture; and
- (d) Any other amounts required to be paid to the Debt Service Fund or otherwise made available for deposit therein by HRTAC, including amounts made available pursuant to the Related Series Supplement.

The Trustee shall pay out of each Debt Service Fund ratably to the Trustee or, if applicable, the Paying Agent for the Related Series of Bonds (i) on each Interest Payment Date, the amount required for the payment of interest on such Bonds then due, (ii) on any redemption date, the amount required for the payment of accrued interest on such Bonds to be redeemed, unless the payment of such accrued interest shall be otherwise provided for, and such amounts shall be applied by the Trustee or the Paying Agent, as applicable, to such payment, and (iii) the accrued interest included in the Purchase Price of any such Bonds of the Related Series purchased for retirement pursuant to the Master Indenture.

The Trustee shall pay out of each Debt Service Fund for the Related Series of Bonds on each Principal Payment Date and redemption date for such Bonds, the amounts then required for the payment of such principal or redemption price, and such amounts shall be applied by the Trustee to such payments either itself or through the Paying Agent for such Bonds.

Whenever the amounts in a Debt Service Fund is sufficient to redeem all of the Outstanding Bonds of the Related Series and to pay interest accrued to the redemption date, the Commission will cause the Trustee to redeem all such Related Bonds on the applicable redemption date specified by the Commission. Any amounts remaining in the Related Debt Service Fund after payment in full of the principal or redemption price and interest on the Related Bonds (or provision for payment thereof) and the fees, charges and expenses related to such transaction, shall be transferred to the Revenue Fund.

Debt Service Reserve Funds. Except as specifically described below, the amount in each Debt Service Reserve Fund shall be used solely to cure deficiencies in the amount on deposit in the Related Debt Service Fund and only with respect to the Related Series of Bonds. If there are insufficient funds in the Related Bond Service Fund to pay the principal of and interest on a particular Series of Bonds when due, then the Trustee shall transfer the amount of deficiency from the amount, if any, on deposit in the Related Debt Service Reserve Fund to such Debt Service Fund.

Any interest earned from the investment of money in a Debt Service Reserve Fund shall be transferred upon receipt to the Revenue Fund and/or to the Related Rebate Fund to pay any Rebate Amounts in accordance with the Series Supplements and Tax Regulatory Agreements (as confirmed in an Officer's Certificate) to the extent that such transfer will not cause the balance in the Debt Service Reserve Fund to be less than its Reserve Requirement.

On each Reserve Determination Date, the Trustee shall determine if the balance in each of the Debt Service Reserve Funds is at least equal to the Reserve Requirement for the Related Series of Bonds. In making each such determination, investments in each Debt Service Reserve Fund shall be valued as described in the subsection

“Permitted Investments and Valuation of Funds” below or as otherwise provided in the Related Series Supplement. If on any Reserve Determination Date the amount in any Debt Service Reserve Fund is less than its Reserve Requirement, the Trustee shall immediately notify HRTAC of such fact and the amount of the deficiency.

Any interest earned from the investment of money in a Debt Service Reserve Fund shall be transferred upon receipt to the Related Debt Service Fund and/or to the Related Rebate Fund to pay any Rebate Amounts in accordance with the applicable Series Supplements, Tax Regulatory Agreements and Officer’s Certificates to the extent that such transfer will not cause the balance in the Debt Service Reserve Fund to be less than its Reserve Requirement. If on any Reserve Determination Date there exists a surplus in a Debt Service Reserve Fund, the Trustee shall transfer such surplus to the Related Debt Service Fund and/or to the Related Rebate Fund to pay any Rebate Amounts in accordance with the applicable Series Supplements, Tax Regulatory Agreements and Officer’s Certificate; provided, however, that if on any Reserve Determination Date there exists or will exist a surplus in a Debt Service Reserve Fund as the result of the payment at maturity, redemption or defeasance under the Master Indenture of a portion of the Bonds of the Related Series on or as of such Reserve Determination Date, then the Trustee is authorized to transfer the surplus (including to an Escrow Fund for any such Bonds to be redeemed or defeased) as specified in (i) a Series Supplement (as confirmed in an Officer’s Certificate) or (ii) an Officer’s Certificate.

In lieu of maintaining and depositing money or securities in a Debt Service Reserve Fund, HRTAC may deposit with the Trustee a DSRF Credit Facility in an amount equal to all or a portion of the applicable Reserve Requirement. Any DSRF Credit Facility will permit the Trustee to draw or obtain under it for deposit in the Debt Service Reserve Fund amounts that, when combined with the other amounts in such Fund, are not less than the applicable Reserve Requirement.

The Trustee will make a drawing on or otherwise obtain funds under any DSRF Credit Facility before its expiration or termination (i) whenever money is required for the purposes for which Debt Service Reserve Fund money may be applied and (ii) unless such DSRF Credit Facility has been extended or a qualified replacement for it delivered to the Trustee, in the event HRTAC has not deposited immediately available funds equal to the applicable Reserve Requirement at least two Business Days preceding the expiration or termination of such DSRF Credit Facility.

If HRTAC provides the Trustee with a DSRF Credit Facility as provided above, the Trustee will transfer the corresponding amount of funds then on deposit in the applicable Debt Service Reserve Fund to HRTAC, provided HRTAC delivers to the Trustee (i) an Opinion of Bond Counsel that such transfer of funds will not adversely affect the excludability from gross income for purposes of federal income taxation of interest on any Bonds the interest on which was excludable on the date of their issuance and (ii) HRTAC covenants to comply with any directions or restrictions contained in such opinion concerning the use of such funds.

General Fund. HRTAC will hold the General Fund and, except as otherwise provided below, neither such Fund nor any moneys or investments therein shall be pledged to secure the Bonds.

HRTAC shall apply the balance in the General Fund, including interest earnings, first to cure any deficiency in the amount required to be on deposit in any Senior Debt Service Fund, any Senior Debt Service Reserve Fund, any Intermediate Lien Debt Service Fund, any Intermediate Lien Debt Service Reserve Fund, any Subordinate Debt Service Fund, any Subordinate Debt Service Reserve Fund, any Rebate Fund, or the Operating Reserve Account, in that order; and then to any lawful purpose approved by resolution of HRTAC, including without limitation, expenditures for capital improvements with respect to any Project or payment of any Operating Expenses.

Operation of Certain Series-Specific Funds

Cost of Issuance Funds. There shall be deposited in each Cost of Issuance Fund the portion of the proceeds of the Related Series of Bonds and such other amounts as may be specified in the Related Series Supplement. HRTAC will use the amounts in each Cost of Issuance Fund to pay costs of issuance incurred in connection with the issuance of the Related Series of Bonds.

Project Funds. There will be deposited into each Project Fund such portion of the proceeds of the Related Series of Bonds and other amounts as may be specified in the Related Series Supplement. HRTAC shall use the

amounts in each Project Fund to finance or refinance the Projects in accordance with the requirements of the Related Series Supplement and Tax Regulatory Agreement.

Rebate Funds. There shall be transferred to each Rebate Fund amounts to be used to pay Rebate Amounts with respect to the Related Series of Bonds to the extent, and from the sources, specified in a Related Series Supplement, a Related Tax Regulatory Agreement or an Officer's Certificate. Whenever amounts on deposit in a Rebate Fund shall be required to pay Rebate Amounts and any other obligations under Section 148 of the Tax Code in connection with a Related Series of Bonds, HRTAC shall direct the Trustee to transfer such amounts to or on behalf of HRTAC for such purpose. HRTAC may direct the Trustee to transfer any amounts on deposit in a Rebate Fund that are not needed for such purpose to the Revenue Fund and/or another Fund or Account established hereunder as may be authorized or directed in a Related Series Supplement, a Related Tax Regulatory Agreement or an Officer's Certificate.

Permitted Investments and Valuation of Funds

Permitted Investments. Subject to the provisions of any Supplemental Indenture, any amounts held in any Fund or Account established by the Master Indenture or any Supplemental Indenture may be separately invested and reinvested by the Trustee, at the request of and as directed in writing by an HRTAC Representative, in any investments that are at the time (i) legal investments for public funds of the type to be invested under Virginia law, including without limitation the Investment of Public Funds Act, Chapter 45 of Title 2.2 of the Virginia Code or any successor provision of law and the Government Non-Arbitrage Investment Act, Chapter 47 of Title 2.2 of the Virginia Code or any successor provision of law, (ii) authorized by HRTAC's Statement of Investment Policy then in effect, and (iii) structured to permit adequate liquidity to permit the purpose of such Fund or Account to be satisfied. Notwithstanding anything to the contrary contained herein, HRTAC may invest the amounts on deposit in the General Fund to the same extent as provided in Section 33.2-1525 of the Virginia Code for excess funds in the Transportation Trust Fund.

Subject to the provision of any Supplemental Indenture, all investments shall be held by or under the control of the Trustee or HRTAC, as the case may be, and while so held shall be deemed a part of the Fund or Account in which the amounts were originally held. The Trustee and HRTAC shall sell and reduce to cash a sufficient amount of investments whenever the case balance in any Fund or Account is insufficient for its purposes.

Valuation of Investments. Unless otherwise provided in a Supplemental Indenture, HRTAC or the Trustee shall value the investments in each Fund and Account established under the Master Indenture or any Supplemental Indenture and held by it or at its direction as of the last Business Day of each month; provided that, notwithstanding the foregoing, a Debt Service Reserve Fund shall be valued only on Reserve Determination Dates.

Unless otherwise provided in a Supplemental Indenture, each such investment shall be valued (i) at amortized cost if the weighted average life of all investments held in the same Fund or Account is five years or less or (ii) at its fair market value or the amortized cost thereof, whichever is lower if the weighted average life of all investments held in the same Fund or Account exceeds five years. A DSRF Credit Facility shall be valued at the amount that the Trustee is authorized to draw thereon to pay debt service on the Series of Bonds secured thereby.

Discharge and Defeasance

Discharge. If the following conditions exist:

(a) The principal of any and all of the Series of Bonds and the interest due or to become due thereon together with any redemption premium required by redemption of any of the Bonds prior to maturity shall be paid, or is caused to be paid, or is provided for as described under the heading "Defeasance" below, at the times and in the manner to which reference is made in the Bonds, according to the true intent and meaning thereof, or the Outstanding Bonds shall have been paid and discharged in accordance with the Master Indenture, and

(b) All of the covenants, agreements, obligations, terms and conditions of HRTAC under the Master Indenture shall have been kept, performed and observed and there shall have been paid to the Trustee, the

Bond Registrar and the Paying Agents all sums of money due or to become due to them in accordance with the terms and provisions of the Master Indenture,

then the right, title and interest of the Trustee in the trust estate granted pursuant the Master Indenture will thereupon cease and the Trustee, on the request of and at the expense of HRTAC, shall release the Master Indenture and the trust estate and shall execute such documents to evidence such release as may be reasonably required by HRTAC and shall turn over to HRTAC, or to such other Person as may be entitled to receive the same, all balances remaining in any Funds and Accounts established hereunder except for amounts required to pay the Bonds.

Provision for Payment of Particular Bonds. If HRTAC shall pay or provide for the payment of all or part of the indebtedness on particular Bonds in any one or more of the following ways:

(a) by paying or causing to be paid the principal of and premium, if any, and interest on such Bonds, as and when the same shall become due and payable;

(b) by delivering such Bonds to the Trustee for cancellation; or

(c) by depositing with the Trustee (or an escrow agent acceptable to the Trustee), in trust, cash and/or Defeasance Obligations in such amount as will, together with the income or increment to accrue on such Defeasance Obligations (the "Defeasance Amount"), be fully sufficient to pay or redeem (when redeemable) and discharge the indebtedness on such Bonds at or before their respective maturity dates, without consideration of any reinvestment of the Defeasance Amount, as a Verification Agent will verify to the Trustee's satisfaction;

and if HRTAC shall also pay or provide for the payment of all other sums payable hereunder by HRTAC with respect to such Bonds, and, if such Bonds are to be redeemed before their maturity, notice of such redemption shall have been given as provided in the Master indenture (or the corresponding provisions of the Related Series Supplements) or provisions satisfactory to the Trustee shall have been made for the giving of such notice, such Bonds shall cease to be entitled to any lien, benefit or security under the Master Indenture except as described below.

HRTAC may at any time surrender to the Trustee for cancellation any Bonds previously authenticated and delivered that HRTAC may have acquired in any manner whatsoever, and such Bonds, upon such surrender and cancellation, shall be deemed to be paid and retired as described above.

Upon such defeasance all rights of HRTAC, including its right to provide for optional redemption of such Bonds on dates other than planned pursuant to such defeasance, shall cease unless specifically retained by filing a written notification thereof with the Trustee on or prior to the date the Defeasance Amount is deposited with the Trustee or escrow agent.

When a Transportation Bond is deemed to be paid as described above, it shall no longer be secured by or entitled to the benefits of the Master Indenture, except for the purposes of any such payment (to the exclusion of all other Owners) from the Defeasance Amount and except for the provisions of payment and redemption provisions of the Master Indenture.

Events of Default and Remedies Upon Default

Events of Default. The occurrence and continuation of one or more of the following events shall constitute an Event of Default with respect to the Bonds:

(a) default in the payment of any installment of interest in respect of the any Series of Bonds as the same shall become due and payable; or

(b) default in the payment of the principal of or premium, if any, in respect of any Series of Bonds as the same shall become due and payable either at maturity, upon redemption, or otherwise; or

(c) default in the payment of any Amortization Requirement in respect of any Bond that is a Term Bond as the same shall become due and payable; or

(d) failure on the part of HRTAC duly to observe or perform any other of the covenants or agreements on the part of HRTAC contained in the Master Indenture, a Series Supplement, a Tax Regulatory Agreement or any Bond (a “Covenant Event of Default”), subject to the provisions described in the subsection “Notice of Certain Defaults; Opportunity to Cure Such Defaults” below; or

(e) appointment by a court of competent jurisdiction of a receiver for all or any substantial part of the HRTAC Revenues and the other Funds and Accounts pledged pursuant to the Master Indenture, or the filing by HRTAC of any petition for reorganization of HRTAC or rearrangement or readjustment of the obligations of HRTAC under the provisions of any applicable Bankruptcy Law.

Notwithstanding any other provision of the Master Indenture, failure to pay the principal or any Amortization Requirement of or interest on any Intermediate Lien Obligation or Subordinate Obligation will not constitute an Event of Default with respect to any of the Senior Bonds, and failure to pay the principal or any Amortization Requirement of or interest on any Subordinate Obligation will not constitute an Event of Default with respect to any of the Intermediate Lien Obligations.

An Event of Default with respect to one Series of Bonds shall not cause an Event of Default with respect to any Series of Bonds unless such event or condition independently constitutes an Event of Default with such other Series of Bonds.

HRTAC may, pursuant to a Series Supplement, provide for a particular Series of Bonds different or additional Events of Default and remedies upon the occurrence thereof including, but not limited to, Events of Default upon the occurrence of events specified in any agreement entered into in connection with the delivery of a Bond Credit Facility; provided, however, no such Series Supplement shall provide for any acceleration of the full principal amount of any Bonds.

Remedies Upon Default. If an Event of Default occurs and is continuing, there shall be no right of acceleration with respect to any Bonds but the Trustee may, and upon the written request to the Trustee by the Majority Owners shall, subject to the indemnity requirements of the Master Indenture, protect and enforce its rights and the rights of the Owners of such Bonds by such suits, actions or proceedings to enforce payment of and receive any and all amounts due from the Commission hereunder, together with any and all costs and expenses of proceedings and collections, and to collect (but solely from HRTAC Revenues available for such purpose) in any manner provided by law, the moneys adjudged or decreed to be payable.

Without limiting the generality of the foregoing, the Commission shall not enter into any agreement, including, without limitation, a Credit Facility, continuing covenants agreement or similar direct purchase agreement, which purports to create any rights of acceleration of any Bonds; provided, however, the following shall not be considered acceleration for purposes of this paragraph: (i) termination payments under any Hedge Agreement; and (ii) term-outs of Reimbursement Obligations under Bond Credit Facilities that occur as a result of (A) mandatory tender for purchase of the Bonds or (B) revised amortization requirements and/or increased interest rates following an optional or mandatory tender for purchase of the Bonds.

Control of Remedies. Notwithstanding anything in the Master Indenture or the Supplemental Indentures to the contrary, upon the occurrence and continuation of an Event of Default, the Majority Owners will control and direct all actions of the Trustee in exercising such of the rights and powers conferred by the Master Indenture on the Trustee or the Owners.

So long as any Senior Bonds are Outstanding, no owner or holder of any Intermediate Lien Obligation or any Subordinate Obligation may exercise any remedy under the Master Indenture or any Supplemental Indenture, and so long as any Intermediate Lien Obligations are Outstanding, no owner or holder of any Subordinate Obligation may exercise any remedy under the Master Indenture or any Supplemental Indenture.

Restriction on Owners' Actions. No Owner will have any right to institute any suit, action or proceeding in equity or at law for the enforcement of the Master Indenture or any remedy under the Master Indenture or any Supplemental Indenture or the Bonds, unless (i) an Event of Default has occurred and is continuing of which the Trustee has been notified as provided in the Master Indenture, or of which it is deemed to have notice thereunder; (ii) the Majority Owners have made written request of the Trustee to institute the suit, action, proceeding or other remedy, after the right to exercise the powers or rights of action, as the case may be, has accrued, and have afforded the Trustee a reasonable opportunity either to proceed to exercise the powers granted in the Master Indenture or to institute the action, suit or proceeding in its or their name; (iii) there has been offered to the Trustee security and indemnity reasonably satisfactory to it against the costs, expenses and liabilities to be incurred as provided in the Master Indenture; and (iv) the Trustee has not complied with the request within a reasonable time. Such notification, request and offer of indemnity are declared, at the option of the Trustee, to be conditions precedent to the execution of the trusts of the Master Indenture or for any other remedy under the Master Indenture. It is intended that no one or more Owners will have any right to affect, disturb or prejudice the security of the Master Indenture, or to enforce any right under the Master Indenture or the Bonds, except in the manner provided for in the Master Indenture, and that all proceedings at law or in equity will be instituted, had and maintained in the manner provided in the Master Indenture and for the benefit of all Owners. Nothing in the Master Indenture will affect or impair the right of the Owners generally to enforce payment of the Bonds in accordance with their terms.

Power of Trustee to Enforce. All rights of action under the Master Indenture or under any of the Bonds secured by it that are enforceable by the Trustee may be enforced without the possession of any of the Bonds, or their production at the trial or other related proceedings. Any suit, action or proceedings instituted by the Trustee may be brought in its own name, as trustee, for the equal and ratable benefit of the Owners subject to the provisions of the Master Indenture.

Waiver of Events of Default; Effect of Waiver. The Trustee will waive any Event of Default and its consequences at the written request of the Majority Owners. If any Event of Default with respect to the Bonds has been waived as provided in the Master Indenture, the Trustee will promptly give written notice of the waiver to HRTAC and by first class mail, postage prepaid, to all Owners if the Owners had previously been given notice of the Event of Default. No waiver, rescission and annulment will extend to or affect any subsequent Event of Default or impair any right, power or remedy available under the Master Indenture.

Application of Money. Any amounts received by the Trustee following an Event of Default will, after payment of the costs and expenses of the proceedings resulting in the collection of the money, the expenses, liabilities and advances incurred or made by the Trustee and the fees (whether ordinary or extraordinary) of the Trustee and expenses of HRTAC in carrying out the provisions of the Master Indenture, be deposited in an appropriate Account established and held by the Trustee and shall be applied as follows:

FIRST: To the payment of the persons entitled to it of all installments of interest then due on the Senior Bonds, in order of the maturity of the installments of such interest and, if the money available is not sufficient to pay in full any particular installment, then ratably, according to the amounts due on such installment, to the persons entitled to it, without any discrimination or privilege;

SECOND: To the payment of the persons entitled to it of the unpaid principal or Amortization Requirements of on any of the Senior Bonds which have become due (other than Senior Bonds matured or called for redemption for the payment of which money is held pursuant to the provisions of the Master Indenture), in the order of their due dates and, if the amount available is not sufficient to pay in full such Senior Bonds due on any particular date, then ratably, according to the amount of principal due on such date, to the persons entitled to it without any discrimination or privilege;

THIRD: To the payment of the persons entitled to it of all installments of interest then due on the Intermediate Lien Obligations, in order of the maturity of the installments of such interest and, if the money available is not sufficient to pay in full any particular installment, then ratably, according to the amounts due on such installment, to the persons entitled to it, without any discrimination or privilege;

FOURTH: To the payment of the persons entitled to it of the unpaid principal or Amortization Requirements of any of the Intermediate Lien Obligations that have become due (other than Intermediate

Lien Obligations matured or called for redemption for the payment of which money is held pursuant to the provisions of the Master Indenture), in the order of their due dates and, if the amount available is not sufficient to pay in full such Intermediate Lien Obligations due on any particular date, then ratably, according to the amount of principal due on such date, to the persons entitled to it without any discrimination or privilege;

FIFTH: To the payment of the persons entitled to it of all installments of interest then due on the Subordinate Obligations, in order of the maturity of the installments of such interest and, if the money available is not sufficient to pay in full any particular installment, then ratably, according to the amounts due on such installment, to the persons entitled to it, without any discrimination or privilege; and

SIXTH: To the payment of the persons entitled to it of the unpaid principal or Amortization Requirements of any of the Subordinate Obligations that have become due (other than Subordinate Obligations matured or called for redemption for the payment of which money is held pursuant to the provisions of the Master Indenture), in the order of their due dates and, if the amount available is not sufficient to pay in full such Subordinate Obligations due on any particular date, then ratably, according to the amount of principal due on such date, to the persons entitled to it without any discrimination or privilege.

Whenever money is to be applied as described above, it will be applied at such times, and from time to time, as the Trustee determines, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. Whenever the Trustee applies such money, it will fix the date on which payment is to be made, and interest on the amount of principal to be paid on such date will cease to accrue. The Trustee will give, in such form as it may deem appropriate, notice to the Owners of the fixing of such payment date.

Notice of Certain Defaults; Opportunity to Cure Such Defaults. Notwithstanding anything to the contrary in the Master Indenture, no Covenant Event of Default will occur until actual notice of the default is given to HRTAC by the Trustee or by the Owners of not less than 25% in aggregate principal amount of all Outstanding Bonds, and HRTAC has had (i) 30 days after receipt of the notice with respect to any default in the payment of money or (ii) 90 days after receipt of the notice of any other default to correct the default or to cause the default to be corrected; provided, however, that if the default can be corrected, but cannot within the applicable period, it will not constitute an Event of Default if corrective action is instituted by HRTAC within the applicable period and diligently pursued (as determined by the Trustee) until the default is corrected.

Rights of Bond Credit Provider. Notwithstanding anything contained in the Master Indenture to the contrary, until HRTAC has reimbursed a Bond Credit Provider for amounts paid under a Bond Credit Facility to pay the interest on or the principal of any Bonds on any Payment Date, (i) such Bonds shall be deemed to be Outstanding and such Bond Credit Provider shall succeed to the rights and interests of the Owners to the extent of the amounts paid under the Bond Credit Facility until such amounts have been reimbursed and (ii) upon presentation to the Trustee, such Bond shall be registered in the name of the Bond Credit Provider or its nominee.

Amendments and Supplemental Indentures

HRTAC and the Trustee may, without the consent of, or notice to, any of the Owners of the Bonds, enter into such Supplemental Indenture or Supplemental Indentures as shall not be inconsistent with the terms and provisions of the Master Indenture or any Supplemental Indenture for any one or more of the following purposes:

- (a) To cure or correct any ambiguity, formal defect, omission or inconsistent provision in the Master Indenture or in a Supplemental Indenture;
- (b) To grant to or confer on the Trustee for the benefit of the Owners any additional rights, remedies, powers or authority that may lawfully be granted to or conferred on the Owners or the Trustee;
- (c) To permit the appointment of a co-Trustee or additional Paying Agents under the Master Indenture;

(d) To subject to the lien and pledge of the Master Indenture additional revenues, properties or collateral;

(e) To provide for the issuance of coupon Bonds if authorized under the Related Supplemental Indenture;

(f) To amend certain provisions of the Master Indenture or any Supplemental Indenture in any manner consistent with Sections 103 and 141 through 150 of the Tax Code (or such other sections of the Tax Code as may be applicable to the Bonds) as in effect at the time of the amendment;

(g) To confirm, as further assurance, any pledge under, and the subjection to any lien or pledge created or to be created by the Master Indenture or any Supplemental Indenture, of the HRTAC Revenues or any other moneys, property or Funds or Accounts;

(h) To modify, amend or supplement the Master Indenture or any Supplemental Indenture as required to permit its qualification under the Trust Indenture Act of 1939, as amended, or any similar federal statute hereafter in effect, or to permit the qualification of any of the Bonds for sale under the securities laws of any of the states of the United States, and, if HRTAC and the Trustee so determine, to add to the Master Indenture or any Supplemental Indenture such other terms, conditions and provisions as may be permitted by the Trust Indenture Act of 1939, as amended, or similar federal statute;

(i) To add to the covenants and agreements of HRTAC contained in the Master Indenture or any Supplemental Indenture other covenants and agreements thereafter to be observed for the Owners' protection, including, but not limited to, additional requirements imposed by virtue of a change of law, or to surrender or to limit any right, power or authority therein reserved to or conferred upon HRTAC;

(j) To amend, modify or change the terms of any agreements governing any book-entry-only system for any of the Bonds;

(k) In the case of Series Supplements, to provide for the issuance of additional Series of Bonds (including Refunding Bonds) and to provide for such other related matters as may be required or contemplated by or appropriate under the Master Indenture;

(l) To make any changes necessary to comply with the requirements of a Rating Agency, a Bond Credit Provider, or an DSRF Credit Provider that, as expressed in a written finding or determination by HRTAC (which shall be stated in the Related Supplemental Indenture, and may be based on an Opinion of Bond Counsel or the written opinion of HRTAC's financial advisor), would not materially adversely affect the security for the Bonds;

(m) To make any other changes that (i) will have no adverse effect upon the ratings currently assigned to the Bonds by any Rating Agency, as expressed in a Rating Confirmation or (ii) shall not prejudice in any material respect the rights of the Owners of such Bonds then Outstanding, as expressed in a written determination or finding by HRTAC (which shall be stated in the Supplemental Indenture, and may be based upon an Opinion of Bond Counsel or the written opinion of HRTAC's financial advisor); and

(n) To restate in one document the Master Indenture and all Supplemental Indentures, which restatement shall then become the Master Indenture for all purposes, effective as of the date of the Master Indenture with respect to matters set forth therein and as of the date of any Supplemental Indenture included in the restatement as to matters set forth in any such Supplemental Indenture. Supplemental Indentures and the Bonds issued thereunder prior to a restatement shall be deemed to relate to the restated Master Indenture without any further action or amendment.

Exclusive of Supplemental Indentures covered above and subject to the terms and provisions contained above, the Majority Owners shall have the right from time to time, notwithstanding any other provision of the Master Indenture, to consent to and approve the execution by HRTAC and the Trustee of such other Supplemental Indenture or Supplemental Indentures as HRTAC shall deem necessary or desirable to modify, alter, amend, add to or rescind,

in any particular, any of the terms or provisions contained in the Master Indenture or in any Supplemental Indenture; provided, however, that without the consent and approval of the Owners of all of the affected Senior Bonds, Intermediate Lien Obligations or Subordinate Obligations, as applicable, then Outstanding nothing in the Master Indenture shall permit, or be construed as permitting (i) an extension of the maturity of the principal of or the interest on any such Senior Bond, Intermediate Lien Obligation or Subordinate Obligation, (ii) a reduction in the principal amount of any such Senior Bond, Intermediate Lien Obligation or Subordinate Obligation or the rate of interest on it, (iii) a privilege or priority of any such Senior Bond over any other Senior Bond, any such Intermediate Lien Obligation over any other Intermediate Lien Obligation, or any such Subordinate Obligation over any other Subordinate Obligation, or (iv) a reduction in the aggregate principal amount of Senior Bonds, Intermediate Lien Obligations or Subordinate Obligations required for consent to such Supplemental Indenture.

If at any time HRTAC shall request the Trustee to enter into any such Supplemental Indenture for any of the purposes of expressed above, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of the Supplemental Indenture to be mailed to each Owner of Bonds then Outstanding by registered or certified mail to the address of each such Owner as it appears on the registration books for such Bonds; provided, however, that failure to give such notice by mailing, or any defect in it, shall not affect the validity of any proceedings regarding such Supplemental Indenture. Such notice shall briefly state the nature of the proposed Supplemental Indenture and shall state that copies of it are on file at the Trustee's designated corporate trust office for inspection by all Owners. If, within six months or such longer period as shall be prescribed by HRTAC following the giving of such notice, the Majority Owners shall have consented to and approved its execution, no Owner of any such Bond shall have any right to object to any of the terms and provisions contained in it, or its operation, or in any manner to question the propriety of its execution, or to enjoin or restrain the Trustee or HRTAC from executing such Supplemental Indenture or from taking any action under its provisions. Upon the execution of any such Supplemental Indenture permitted as described above, the Master Indenture shall be deemed to be modified and amended in accordance therewith.

Bonds owned or held by or for the account of HRTAC or any Person controlling, controlled by or under common control with HRTAC shall not be deemed Outstanding for the purpose of consent or any calculation of Outstanding Bonds for purposes of entering into Supplemental Indentures. At the time of any such calculation, HRTAC shall furnish the Trustee an Officer's Certificate describing all such Bonds so to be excluded.

Anything contained in the Master Indenture to the contrary notwithstanding, HRTAC and the Trustee may enter into any Supplemental Indenture upon receipt of the consent of the Owners of all Bonds then Outstanding.

THE 2021A SERIES SUPPLEMENT [to be updated]

Authorization and Details of 2021A Notes

The 2021A Series Supplement authorizes the issuance pursuant to the Master Indenture of the Series 2021A Notes. The details as to principal, interest, and redemption terms are set forth in the 2021A Series Supplement and are consistent with the provisions of the Series 2021A Notes as described in the Official Statement.

Establishment of Funds

The 2021A Series Supplement creates the following funds to be held by the Trustee:

1. the 2021A Cost of Issuance Fund;
2. the 2021A Project Fund;
3. the 2021A Bond Debt Service Fund, in which there is established the 2021A Capitalized Interest Subaccount; and
4. the 2021A Rebate Fund.

On the date of issuance of the Series 2021A Notes, the Trustee shall apply the amounts received from the underwriters of the Series 2021A Notes in payment therefor to the 2021A Cost of Issuance Fund, the 2021A Capitalized Interest Subaccount, and the 2021A Project Fund as provided in the 2021A Series Supplement.

The money and investments held in the 2021A Project Fund and in the 2021A Bond Debt Service Fund are pledged to secure the Series 2021A Notes.

Cost of Issuance Fund

HRTAC shall apply the amounts in the 2021A Cost of Issuance Fund to pay the issuance and financing costs of the Series 2021A Notes. Any amount deposited in the 2021A Cost of Issuance Fund that is not applied in accordance with the Master Indenture to pay the costs of issuance of the Series 2021A Notes shall be transferred by HRTAC to the Project Fund and applied as set forth below.

Project Fund

The Trustee will apply the amounts in the 2021A Project Fund to the payment or reimbursement of the costs of certain projects as directed by HRTAC. Disbursements from the 2021A Project Fund shall be made by the Trustee to HRTAC or as directed by HRTAC upon receipt by the Trustee of a requisition signed by an HRTAC Representative and containing all information called for by the 2021A Series Supplement.

Bond Debt Service Fund

Each monthly transfer into the 2021A Bond Debt Service Fund under the Master Indenture shall be in an amount not less than the sum of (i) one-sixth of the interest due on the Series 2021A Notes on the next ensuing Interest Payment Date, plus (ii) one-twelfth of the principal due on the Series 2021A Notes at maturity or upon mandatory redemption on the next ensuing Principal Payment Date, less (iii) accrued interest and any other interest earnings currently on deposit therein.

Rebate Fund

The Trustee shall invest and apply amounts on deposit in the 2021A Rebate Fund as directed by Officer's Certificates provided pursuant to and in accordance with the Master Indenture.

Tax Regulatory Agreement

HRTAC agrees that it will not directly or indirectly use or permit the use of the proceeds of the Series 2021A Notes except in accordance with the 2021A Tax Regulatory Agreement. HRTAC agrees that it will not take any action, or omit to take any action, if any such action or omission would adversely affect the excludability from gross income of interest on the Series 2021A Notes under Section 103 of the Tax Code. HRTAC agrees that it will not directly or indirectly use or permit the use of any proceeds of the Series 2021A Notes or any other funds of HRTAC or take or omit to take any action that would cause the Series 2021A Notes to be "arbitrage bonds" under Section 148(a) of the Tax Code. To these ends, HRTAC will comply with all requirements of Sections 141 through 150 of the Tax Code, including Section 148(f)(2) and (3) of the Tax Code, to the extent applicable to the Series 2021A Notes.

The Trustee agrees to comply with all written instructions of an HRTAC Representative given in accordance with the 2021A Tax Regulatory Agreement, but the Trustee shall not be required to ascertain whether the instructions comply with the 2021A Tax Regulatory Agreement. The Trustee shall be entitled to receive and may request from time to time from HRTAC written instructions from a nationally-recognized bond counsel acceptable to the Trustee regarding the interpretation of Sections 141 through 150 of the Tax Code, and the Trustee agrees that it will comply with such instructions (upon which the Trustee and HRTAC may conclusively rely) so as to enable HRTAC to perform its covenants under the Master Indenture and the 2021A Series Supplement.

Notwithstanding any provisions of the 2021A Series Supplement, if HRTAC shall provide to the Trustee an opinion of nationally-recognized bond counsel addressed and acceptable to HRTAC and the Trustee to the effect that

any action required under the 2021A Series Supplement by incorporation or otherwise is not required or is no longer require to maintain the excludability from gross income of the interest on the Series 2021A Notes under Section 103 of the Tax Code, HRTAC and the Trustee may rely conclusively on such opinion in complying with the provisions of the Master Indenture and the 2021A Series Supplement.

FINANCIAL STATEMENTS OF HRTAC FOR THE FISCAL YEAR ENDED JUNE 30, 2020

FORM OF CONTINUING DISCLOSURE UNDERTAKING

CONTINUING DISCLOSURE UNDERTAKING

This **CONTINUING DISCLOSURE UNDERTAKING** dated _____, 2021 (the “Disclosure Undertaking”), is executed and delivered by the Hampton Roads Transportation Accountability Commission (the “Commission”), in connection with the issuance by the Commission of its \$_____ Hampton Roads Transportation Fund Senior Lien Bond Anticipation Notes, Series 2021A (the “Series 2021A Notes”). The Commission hereby covenants and agrees as follows:

Section 1. Purpose. This Disclosure Undertaking is being executed and delivered by the Commission for the benefit of the holders of the Series 2021A Notes and in order to assist the original purchasers of the Series 2021A Notes in complying with the provisions of Section (b)(5)(i) of Securities and Exchange Commission (“SEC”) Rule 15c2-12, as amended (the “Rule”), by providing certain annual financial information and event notices required by the Rule (collectively, “Continuing Disclosure”).

Section 2. Annual Disclosure.

(a) The Commission shall provide annually certain financial information and operating data in accordance with the provisions of Section (b)(5)(i) of the Rule as follows:

(i) the audited financial statements of the Commission prepared in accordance with accounting principles generally accepted in the United States; and

(ii) updated operating data of the type described in the Official Statement for the Series 2021A Notes in (A) Table I: “Historical Hampton Roads Transportation Fund Revenues,” (B) Appendix E, Table 1: “HRTF Revenues,” (C) Appendix E, Table 2: “Hampton Roads Transportation Fund (HRTF) Revenues and Expenditures,” and (D) Appendix E, Table 3: “Hampton Roads Transportation Fund (HRTF) Transportation Project Expenditures.”

(b) The Commission shall file annually with the Municipal Securities Rulemaking Board (the “MSRB”) the financial information and operating data described in subsection (a) above (collectively, the “Annual Disclosure”) within 180 days after the end of the Commission’s fiscal year, commencing with the Commission’s fiscal year ending [June 30, 2022.]

(c) Any Annual Disclosure may be included by specific reference to other documents previously provided to the MSRB or filed with the SEC; provided, however, that any final official statement incorporated by reference must be available from the MSRB.

(d) The Commission shall file with the MSRB in a timely manner notice specifying any failure of the Commission to provide the Annual Disclosure by the date specified.

Section 3. Event Disclosure. The Commission shall file with the MSRB in a timely manner not in excess of ten (10) business days after the occurrence of the event, notice of any of the following events with respect to the Series 2021A Notes:

- (a) principal and interest payment delinquencies;
- (b) non-payment related defaults, if material;
- (c) unscheduled draws on debt service reserves reflecting financial difficulties;
- (d) unscheduled draws on any credit enhancement reflecting financial difficulties;
- (e) substitution of credit or liquidity providers, or their failure to perform;
- (f) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or

determinations with respect to the tax status of the Series 2021A Notes, or other material events affecting the tax status of the Series 2021A Notes;

- (g) modifications to rights of Bondholders, if material;
- (h) bond calls, if material, and tender offers;
- (i) defeasance of all or any portion of the Series 2021A Notes;
- (j) release, substitution, or sale of property securing repayment of the Series 2021A Notes, if material;
- (k) rating changes;
- (l) bankruptcy, insolvency, receivership or similar event of the Commission;
- (m) the consummation of a merger, consolidation, or acquisition involving the Commission or the sale of all or substantially all of the assets of the Commission, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;
- (n) appointment of a successor or additional trustee or the change of name of a trustee, if material.
- (o) incurrence of a “Financial Obligation”^{*} of the Commission, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Commission, any of which affect Bondholders of the Series 2021A Notes, if material; and
- (p) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Commission, any of which reflect financial difficulties.

Section 4. Termination. The obligations of the Commission hereunder will terminate upon the redemption, defeasance (within the meaning of the Rule) or payment in full of all the Series 2021A Notes.

Section 5. Amendment. The Commission may modify its obligations hereunder without the consent of Bondholders, provided that this Disclosure Undertaking as so modified complies with the Rule as it exists at the time of modification. The Commission shall within a reasonable time thereafter file with the MSRB a description of such modification(s).

Section 6. Defaults. (a) If the Commission fails to comply with any covenant or obligation regarding Continuing Disclosure specified in this Disclosure Undertaking, any holder (within the meaning of the Rule) or beneficial holder of Bonds then outstanding may, by notice to the Commission, proceed to protect and enforce its rights and the rights of the holders by an action for specific performance of the Commission’s covenant to provide the Continuing Disclosure.

(b) Notwithstanding anything herein to the contrary, any failure of the Commission to comply with any obligation regarding Continuing Disclosure specified in this Disclosure Undertaking (i) shall not be deemed to constitute an event of default under the Series 2021A Notes or the Master Indenture of Trust, and any supplement thereto, providing for the issuance of the Series 2021A Notes and (ii) shall not give rise to any right or remedy other than that described in Section 6(a) above.

^{*} “Financial Obligation” means a (a) debt obligation; (b) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (c) guarantee of a debt obligation or any such derivative instrument; provided that “financial obligation” shall not include municipal securities (as defined in the Securities Exchange Act of 1934, as amended) as to which a final official statement (as defined in the Rule) has been provided to the MSRB consistent with the Rule.

Section 7. Filing Method. Any filing required hereunder shall be made by transmitting such disclosure, notice or other information in electronic format to the MSRB through the MSRB's Electronic Municipal Market Access (EMMA) system pursuant to procedures promulgated by the MSRB.

Section 8. Additional Disclosure. The Commission may from time to time disclose certain information and data in addition to the Continuing Disclosure. Notwithstanding anything herein to the contrary, the Commission will not incur or be subject to any obligation or duty to continue to provide, or to update, such additional information or data.

Section 9. Dissemination Agent. The Commission may, in its discretion, from time to time appoint or engage an entity to serve as Dissemination Agent to assist the Commission in fulfilling its covenants and obligations regarding this Disclosure Undertaking. HRTAC anticipates utilizing the services of Digital Assurance Certification, L.L.C. to serve as Dissemination Agent.

Section 10. Counterparts. This Disclosure Undertaking may be executed in several counterparts each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11. Governing Law. This Disclosure Undertaking shall be construed and enforced in accordance with the laws of the Commonwealth of Virginia.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Donnie R. Tuck, Chair

By: _____
Kevin B. Page, Executive Director

APPENDIX D

**DEMOGRAPHIC, ECONOMIC AND FINANCIAL INFORMATION
REGARDING PLANNING DISTRICT 23 AND THE HAMPTON ROADS MSA**

APPENDIX E

HRTAC REVENUES AND EXPENSES

FORM OF BOND COUNSEL OPINION

**INFORMATION REGARDING THE DEPOSITORY
TRUST COMPANY AND ITS BOOK-ENTRY SYSTEM**

INFORMATION REGARDING THE DEPOSITORY TRUST COMPANY AND ITS BOOK-ENTRY SYSTEM

The description which follows of the procedures and recordkeeping with respect to beneficial ownership interests in the Bonds, payments of principal of and premium, if any and interest on the Series 2021A Notes to The Depository Trust Company, New York, New York (“DTC”), its nominee, Participants or Beneficial Owners (each as hereinafter defined), confirmation and transfer of beneficial ownership interests in the Bonds and other bond-related transactions by and between DTC, Participants and Beneficial Owners is based solely on information furnished by DTC.

DTC will act as securities depository for the Series 2021A Notes. The Series 2021A Notes will be issued as fully-registered securities registered in the name of Cede & Co. (DTC’s partnership nominee) or such other name as may be requested by an authorized representative of DTC. One fully-registered Series 2021A Note certificate will be issued for the Series 2021A Notes, each in the aggregate principal amount of such maturity, and will be deposited with DTC.

DTC, the world’s largest depository, is a limited-purpose trust company organized under the New York Banking Law, a “banking organization” within the meaning of the New York Banking Law, a member of the Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (the “Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities, through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has an S&P rating of AA+. The DTC Rules applicable to its Participants are on file with the Securities and Exchange Commission. More information about DTC can be found at www.dtcc.com.

Purchases of the Series 2021A Notes under the DTC system must be made by or through Direct Participants, which will receive a credit for the Series 2021A Notes on DTC’s records. The ownership interest of each actual purchaser of each Bond (the “Beneficial Owner”) is in turn to be recorded on the Direct and Indirect Participants’ records. Beneficial Owners will not receive written confirmation from DTC of their purchase. Beneficial Owners, however, are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the Beneficial Owner entered into the transaction. Transfers of ownership interests in the Series 2021A Notes are to be accomplished by entries made on the books of Direct or Indirect Participants acting on behalf of Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Series 2021A Notes, except in the event that use of the book-entry system for the Series 2021A Notes is discontinued.

To facilitate subsequent transfers, all Series 2021A Notes deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of the Series 2021A Notes with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in beneficial ownership. DTC has no knowledge of the actual Beneficial Owners of the Series 2021A Notes; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Series 2021A Notes are credited, which may or may not be the Beneficial Owners. The Direct and Indirect Participants will remain responsible for keeping account of their holding on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to Beneficial Owners will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Series 2021A Notes are being redeemed, DTC's practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Series 2021A Notes unless authorized by a Direct Participant in accordance with DTC's MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Commission or the Registrar as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.'s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and dividend payments on the Series 2021A Notes will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC's practice is to credit Direct Participants' accounts upon DTC's receipt of funds and corresponding detail information from the Commission or the Registrar, on payable date in accordance with their respective holdings shown on DTC's records. Payments by Participants to Beneficial Owners will be governed by standing instructions and customary practices, as is the case with securities held for the accounts of customers in bearer form or registered in "street name," and will be the responsibility of such Participant and not of DTC, the Commission or the Registrar subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and dividend payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Commission or the Registrar, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the Beneficial Owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Series 2021A Notes at any time by giving reasonable notice to the Commission or the Registrar. Under such circumstances, in the event that a successor securities depository is not obtained, Series 2021A Note certificates will be printed and delivered.

The Commission may decide to discontinue use of the system of book-entry transfers through DTC (or a successor securities depository). In that event, Series 2021A Note certificates will be printed and delivered.

The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Commission believes to be reliable, but the Commission takes no responsibility for the accuracy thereof.

Neither the Commission nor the Registrar has any responsibility or obligation to the Direct or Indirect Participants or the Beneficial Owners with respect to (a) the accuracy of any records maintained by DTC or any Direct or Indirect Participant; (b) the payment by any Direct or Indirect Participant of any amount due to any Beneficial Owner in respect of the principal of and interest on the Series 2021A Notes; (c) the delivery or timeliness of delivery by any Direct or Indirect Participant of any notice to any Beneficial Owner that is required or permitted under the terms of the Master Indenture to be given to Bondholders; or (d) any other action taken by DTC, or its nominee, Cede & Co., as Bondholder, including the effectiveness of any action taken pursuant to an Omnibus Proxy.

So long as Cede & Co. is the registered owner of the Series 2021A Notes, as nominee of DTC, references in this Official Statement to the Owners of the Bonds shall mean Cede & Co. and shall not mean the Beneficial Owners, and Cede & Co. will be treated as the only holder of Series 2021A Notes for all purposes under the Master Indenture.

The Commission may enter into amendments to the agreement with DTC or successor agreements with a successor securities depository, relating to the book-entry system to be maintained with respect to the Series 2021A Notes without the consent of Beneficial Owners or Bondholders.

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION
HAMPTON ROADS TRANSPORTATION FUND
SENIOR LIEN BOND ANTICIPATION NOTES
SERIES 2021A**

BOND PURCHASE AGREEMENT

_____, 2021

Hampton Roads Transportation
Accountability Commission
Chesapeake, Virginia

Ladies and Gentlemen:

The undersigned Citigroup Global Markets Inc., acting on behalf of itself and as representative (the “Representative”) of J.P. Morgan Securities LLC, Wells Fargo Securities, Loop Capital Markets LLC, and Siebert Williams Shank & Co., LLC (collectively, the “Underwriters”), hereby offers to enter into this Bond Purchase Agreement (this “Agreement”) with the Hampton Roads Transportation Accountability Commission, a political subdivision of the Commonwealth of Virginia (the “Commission”), for the sale by the Commission and purchase by the Underwriters of \$_____ in aggregate principal amount of the Commission’s Hampton Roads Transportation Fund Senior Lien Bond Anticipation Notes, Series 2021A (the “Series 2021A Notes”). The Underwriters are making this offer subject to acceptance by the Commission of this Agreement, which acceptance shall be evidenced by the execution and delivery of this Agreement by a duly authorized officer of the Commission, prior to 6:00 p.m., Eastern Time, on the date hereof and, upon such acceptance, execution and delivery, this Agreement shall be in full force and effect in accordance with its terms and shall be binding upon the Commission and the Underwriters, subject to Section 10 hereof. The Underwriters may withdraw this Agreement upon written notice delivered by the Representative to the Executive Director of the Commission at any time prior to the acceptance of this Agreement by the Commission.

Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Official Statement (as defined in Section 5 hereof).

1. **Purchase and Sale of Series 2021A Notes.** Upon the terms and conditions and in reliance on the representations, warranties, and covenants contained in this Agreement, the Underwriters hereby agree to purchase from the Commission, and the Commission hereby agrees to sell and deliver to the Underwriters, all (but not less than all) of the Series 2021A Notes at the purchase price of \$_____ (representing the sum of the par amount of the Series 2021A Notes, [plus] [net] original issue [premium] of \$_____, less an underwriting discount of \$_____) (the “Purchase Price”). The Purchase Price shall be payable to the Commission

on the Closing Date (as defined herein), by wire transfer of Federal Funds as provided in Section 8 below.

The Underwriters intend to make an initial bona fide public offering of all of the Series 2021A Notes of each maturity at a price not in excess of the respective initial offering price set forth in the front portion of the Official Statement and Schedule I attached hereto; provided, however, after such bona fide public offering the Underwriters may change such prices as they may deem necessary or desirable in connection with the offering and sale of the Series 2021A Notes and to sell the Series 2021A Notes to dealers (including dealer banks and dealers depositing the Series 2021A Notes into investment trusts) and others at prices higher than the initial offering prices indicated in the Official Statement (but in all case subject to the requirements of Section 6 hereof). As used in this paragraph the term “public” means the general public of investors who are purchasing for their own account as ultimate purchasers and does not include bond houses, brokers or similar persons or organizations acting in the capacity of underwriters, placement agents or wholesalers, including any of the Underwriters, any affiliates or affiliated accounts of any of the Underwriters, or dealers (including dealer banks and dealers depositing the Series 2021A Notes into investment trusts). The Underwriters agree that the Series 2021A Notes will only be offered pursuant to the Official Statement and only in jurisdictions where such offer is legal, and that a copy of the final version of the Official Statement will be delivered to each purchaser of the Series 2021A Notes.

2. **No Advisory or Fiduciary Role.** The Commission acknowledges and agrees that each of the Underwriters is acting as a principal and not as agent, municipal advisor or fiduciary, and each Underwriter’s engagement under the terms set forth herein is as an independent contractor and not in any other capacity. The Commission acknowledges and agrees with the Underwriters that (i) the Underwriters are not acting as municipal advisors within the meaning of Section 15B of the Securities Exchange Act, as amended; (ii) the purchase and sale of the Series 2021A Notes pursuant to this Agreement is an arm’s-length commercial transaction among the Commission and the Underwriters; (iii) each Underwriter is and has been acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary of the Commission and has not assumed an advisory or fiduciary responsibility in favor of the Commission with respect to the transaction contemplated hereby or the discussions, undertakings, and procedures leading thereto (irrespective of whether such Underwriter has provided other services or is currently providing other services to the Commission on other matters); (iv) none of the Underwriters has any obligation to the Commission with respect to the offering contemplated hereby except the obligations expressly set forth in this Agreement; and (v) the Commission has consulted its own legal, financial and/or municipal, accounting, tax and other advisors, as applicable, to the extent it has deemed appropriate.

3. **Good Faith Deposit.** The Representative has delivered to the Commission, and the Commission acknowledges receipt of, a wire transfer in the aggregate amount of \$_____, representing the good faith deposit of the Underwriters. At the Closing (hereinafter defined in Section 8 below), the good faith deposit, exclusive of any interest earned on such amount which shall accrue to the benefit of the Commission, will be deducted from the amount payable by the Underwriters with respect to the aggregate purchase price of the Series 2021A Notes (and applied by the Commission as proceeds of the Series 2021A Notes), and, accordingly, the Underwriters will pay \$_____ (representing the \$_____.

purchase price, less the \$ _____ . __ good faith deposit). If the Commission fails to deliver the Series 2021A Notes at the Closing, or if the Commission is unable on or before the Closing to satisfy the conditions to the Underwriters' obligations contained in this Agreement, or if the obligations of the Underwriters are terminated for any reason permitted by this Agreement, the good faith deposit (with no credit for interest thereon) will be returned to the Representative. If the Underwriters fail (other than for a reason permitted in this Agreement) to accept delivery of and pay for the Series 2021A Notes as provided in this Agreement, the good faith deposit will be retained by the Commission as full liquidated damages for such failure and for any and all defaults on the part of the Underwriters, and the delivery of the good faith deposit will constitute satisfaction, and will result in full release and discharge of the Underwriters and their affiliates from all claims and damages for such failure and for any and all defaults. The Underwriters and the Commission understand that in such event the actual damages of the Commission may be greater or may be less than the good faith deposit. Accordingly, the Underwriters hereby waive any right to claim that the actual damages of the Commission are less than such sum, and the acceptance of this offer by the Commission shall constitute a waiver of any right the Commission may have to additional damages from the Underwriters.

4. **Background.** The Series 2021A Notes are authorized to be issued pursuant to the provisions of Chapter 26 of Title 33.2 of the Code of Virginia of 1950, as amended (the "HRTAC Act"), a resolution adopted by the Commission on June 17, 2021 (the "Bond Resolution"), the Master Trust Indenture dated as of February 1, 2018, by and between the Commission and Wilmington Trust, National Association, as trustee (the "Trustee"), as previously supplemented and amended (the "Master Indenture"), and the Sixth Supplemental Series Indenture of Trust dated as of _____, 2021 (the "Sixth Supplemental Indenture"), between the Commission and the Trustee. The Commission will use the proceeds from the sale of the Series 2021A Notes primarily to pay, or reimburse itself for, portions of the costs of certain Commission projects as described in Exhibit A to the Sixth Supplemental Indenture, in anticipation of the proceeds to be received by the Commission from disbursements under that certain TIFIA Loan Agreement (the "TIFIA Loan Agreement") attached as Exhibit A to the Fifth Supplemental Series Indenture of Trust dated as of _____, 2021 (the "Fifth Supplemental Indenture"), between the Commission and the Trustee. The Master Indenture, as supplemented by the Fifth Supplemental Indenture and Sixth Supplemental Indenture, is hereinafter referred to as the "Indenture."

The Series 2021A Notes shall be as described in, authorized by, and issued and secured under the Indenture, shall be dated the date of delivery, shall bear interest at the rates and mature in principal amounts as described in the hereinafter defined Official Statement and in Schedule I attached hereto. The Series 2021A Notes are limited obligations of the Commission that are payable solely from the funds pledged under the Indenture for such purpose and constitute Senior Bonds under such Indenture. The Series 2021A Notes are not a debt of the Commonwealth or any political subdivision thereof (including any member locality) other than the Commission, and the Series 2021A Notes do not constitute indebtedness within the meaning of any debt limitation or restriction. Neither the faith and credit nor the taxing power of the Commonwealth or any of its political subdivisions (including any member locality) is pledged to the payment of the Series 2021A Notes. HRTAC has no taxing powers.

5. Delivery of Official Statement and Other Documents.

(a) The Commission has previously delivered to the Representative a Preliminary Official Statement dated _____, 2021, with respect to the Series 2021A Notes (the “Preliminary Official Statement”), in electronic form, and represents that the Preliminary Official Statement was deemed final by the Commission as of its date for purposes of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934 (the “Rule”), except for the omission of such information as is specified under the Rule. The Commission ratifies, confirms and consents to the use of the Preliminary Official Statement and the final Official Statement (as defined below) by the Underwriters prior to the date hereof. The Commission also authorizes and consents to the references in the Preliminary Official Statement and in the Official Statement to the Indenture and other pertinent documents, and the use by the Underwriters of copies of the Indenture and other pertinent documents of the Commission in connection with the public offering and sale of the Series 2021A Notes, including, without limitation, the Audited Financial Statements of the Commission for the Fiscal Year ended June 30, 2019 (the “Financial Statements”).

(b) Within seven (7) business days from the date hereof and, in any event, unless otherwise agreed to by the parties hereto, at least three (3) business days prior to Closing (as hereinafter defined), the Commission will deliver to the Underwriters copies of the final Official Statement relating to the Series 2021A Notes (such Official Statement, including the cover page and inside cover pages, and all appendices and statements included therein, incorporated by reference therein or attached thereto, together with all information previously permitted to have been omitted by Rule 15c2-12 and any supplements thereto, as have been approved by the Commission and the Representative, being hereinafter referred to as the “Official Statement”), in electronic word-searchable portable document format and dated the date hereof, in sufficient quantities to enable the Underwriters to comply with the Rule and other applicable rules of the Securities and Exchange Commission and the Municipal Securities Rulemaking Board (the “MSRB”) and to meet potential customer request for copies of the Official Statement. The Official Statement shall be executed by and on behalf of the Commission by an authorized officer of the Commission. The Official Statement shall be in substantially the same form as the Preliminary Official Statement and, other than information previously permitted to have been omitted by the Rule, the Commission shall only make such other additions, deletions and revisions in the Official Statement which are approved by the Representative. By execution and delivery thereof by its Executive Director, the Commission shall deem the Official Statement complete as of its date within the meaning of the Rule. The Commission authorizes and consents to the use by the Underwriters of the Official Statement and the Indenture in connection with the public offering and sale of the Series 2021A Notes.

(c) The Representative shall submit a copy of the Official Statement to the MSRB’s Electronic Municipal Market Access System for municipal securities disclosures.

(d) The Commission agrees that it will cooperate with the Representative in the qualification of the Series 2021A Notes for offering and sale and the determination of their eligibility for investment under the securities or “blue sky” laws of such jurisdictions as the Representative shall designate; provided, however, the Commission shall not be

required to register as a dealer or broker in any such jurisdiction, execute a general or special consent to service of process or qualify to do business in connection with any such qualification of the Series 2021A Notes in any jurisdiction other than Virginia, nor incur any costs or fees in connection with such qualification of the Series 2021A Notes.

(e) To assist the Underwriters in complying with the Rule, the Commission (i) has executed and delivered a Rule 15c2-12 Compliance Certificate dated _____, 2021 (the “Rule 15c2-12 Compliance Certificate”); and (ii) will execute and deliver a Continuing Disclosure Undertaking dated _____, 2021 (the “Continuing Disclosure Undertaking”) wherein the Commission will agree to provide annual financial information and operating data, and notices of the occurrence of certain specified events. The Continuing Disclosure Undertaking is described in, and a form thereof is attached as an Appendix to, the Preliminary Official Statement and shall also be included in the Official Statement.

(f) The Commission covenants and agrees to promptly notify the Representative if, during the period commencing on the date hereof through the date twenty-five (25) days after the “end of the underwriting period,” as hereinafter defined, any event shall occur including, but not limited to, any material adverse change in the financial position, results of operations or condition, financial or otherwise, of the Commission, and of which the Commission has knowledge, that would cause the Official Statement to contain any untrue or incorrect statement of a material fact or to omit to state a material fact which should be included therein for the purpose for which the Official Statement is to be used or which is necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading (provided, however, no representation or warranty is made as to any of the information described in the provisos of Section 7(k) or Section 7(l) herein), and, if in the reasonable opinion of the Representative such event requires any amendment or supplement to the Official Statement, the Commission will at the Commission’s expense promptly amend or supplement the Official Statement in a form and manner jointly approved by the Commission and the Representative. The “end of the underwriting period” means the Closing Date unless the Representative advises the Commission in writing on such Closing Date that as of such date there remains an unsold balance of the Series 2021A Notes, in which case the “end of the underwriting period” means the date as of which the Representative notifies the Commission that the Underwriters no longer retain an unsold balance of the Series 2021A Notes for sale to the public.

6. Establishment of Issue Price.

(a) The Representative, on behalf of the Underwriters, agrees to assist the Commission in establishing the issue price of the Series 2021A Notes, and shall execute and deliver to the Commission and Kaufman & Canoles, a Professional Corporation (“Bond Counsel”), on the Closing Date an “issue price” certificate, together with supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit D (the “Issue Price Certificate”), with such modifications as may be appropriate or necessary, in the reasonable judgment of the Representative, the

Commission and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the public of the Series 2021A Notes.

(b) Except as otherwise set forth in Exhibit D attached hereto, the Commission will treat the first price at which 10% of each maturity of the Series 2021A Notes (the “10% test”) is sold to the public as the issue price of that maturity. At or promptly after the execution of this Agreement, the Representative shall report to the Commission the price or prices at which the Underwriters have sold to the public each maturity of the Series 2021A Notes. For purposes of this Section, if Series 2021A Notes mature on the same date but have different interest rates, each separate CUSIP number within that maturity will be treated as a separate maturity of the Series 2021A Notes.

(c) The Representative confirms that the Underwriters have offered the Series 2021A Notes to the public on or before the date of this Agreement at the offering price or prices (the “initial offering price”), or at the corresponding yield or yields, set forth in Exhibit D attached hereto, except as otherwise set forth therein. Exhibit D also sets forth, as of the date of this Agreement, the maturities, if any, of the Series 2021A Notes for which the 10% test has not been satisfied and for which the Commission and the Representative, on behalf of the Underwriters, agree that (i) the Representative will retain all unsold Series 2021A Notes of each maturity for which the 10% test has not been satisfied and not allocate any such Series 2021A Notes to any other Underwriter and (ii) the restrictions set forth in the next sentence shall apply, which will allow the Commission to treat the initial offering price to the public of each such maturity as of the sale date as the issue price of that maturity (the “hold-the-offering-price rule”). So long as the hold-the-offering-price rule remains applicable to any maturity of the Series 2021A Notes, the Representative will neither offer nor sell unsold Series 2021A Notes of that maturity to any person at a price that is higher than the initial offering price to the public during the period starting on the sale date and ending on the earlier of the following:

- (1) the close of the fifth (5th) business day after the sale date; or
- (2) the date on which the Underwriters have sold at least 10% of that maturity of the Series 2021A Notes at a price that is no higher than the initial offering price to the public.

The Representative will advise the Commission promptly after the close of the fifth (5th) business day after the sale date whether the Underwriters have sold 10% of that maturity of the Series 2021A Notes to the public at a price that is no higher than the initial offering price to the public.

(d) The Representative confirms that:

- (i) any agreement among underwriters, any selling group agreement and each third-party distribution agreement (to which the Representative is a party) relating to the initial sale of the Series 2021A Notes to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter, each

dealer who is a member of the selling group and each broker-dealer that is a party to such third-party distribution agreement, as applicable:

(A)(i) to report the prices at which it sells to the public the unsold Series 2021A Notes of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2021A Notes of that maturity allocated to it have been sold or it is notified by the Representative that the 10% test has been satisfied as to the Series 2021A Notes of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Representative, and (ii) to comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Representative and as set forth in the related pricing wires,

(B) to promptly notify the Representative of any sales of Series 2021A Notes that, to its knowledge, are made to a purchaser who is a related party to an underwriter participating in the initial sale of the Series 2021A Notes to the public (each such term being used as defined below), and

(C) to acknowledge that, unless otherwise advised by the Underwriter, dealer or broker-dealer, the Representative shall assume that each order submitted by the Underwriter, dealer or broker-dealer is a sale to the public.

(ii) any agreement among underwriters or selling group agreement relating to the initial sale of the Series 2021A Notes to the public, together with the related pricing wires, contains or will contain language obligating each Underwriter or dealer that is a party to a third-party distribution agreement to be employed in connection with the initial sale of the Series 2021A Notes to the public to require each broker-dealer that is a party to such third-party distribution agreement to (A) report the prices at which it sells to the public the unsold Series 2021A Notes of each maturity allocated to it, whether or not the Closing Date has occurred, until either all Series 2021A Notes of that maturity allocated to it have been sold or it is notified by the Representative or such Underwriter or dealer that the 10% test has been satisfied as to the Series 2021A Notes of that maturity, provided that, the reporting obligation after the Closing Date may be at reasonable periodic intervals or otherwise upon request of the Representative or such Underwriter or dealer, and (B) comply with the hold-the-offering-price rule, if applicable, if and for so long as directed by the Representative or the Underwriter or the dealer and as set forth in the related pricing wires.

(e) The Commission acknowledges that, in making the representations set forth in this section, the Representative will rely on (i) the agreement of each Underwriter to comply with the requirements for establishing issue price of the Series 2021A Notes, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021A Notes, as set forth in an agreement among underwriters and the related pricing wires, (ii) in the event a selling group has been created in connection with the initial sale of the Series 2021A Notes to the public, the agreement of each dealer

who is a member of the selling group to comply with the requirements for establishing issue price of the Series 2021A Notes, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021A Notes, as set forth in a selling group agreement and the related pricing wires, and (iii) in the event that an Underwriter or dealer who is a member of the selling group is a party to a third-party distribution agreement that was employed in connection with the initial sale of the Series 2021A Notes to the public, the agreement of each broker-dealer that is a party to such agreement to comply with the requirements for establishing issue price of the Series 2021A Notes, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021A Notes, as set forth in the third-party distribution agreement and the related pricing wires. The Commission further acknowledges that each Underwriter shall be solely liable for its failure to comply with its agreement regarding the requirements for establishing issue price of the Series 2021A Notes, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021A Notes, and that no Underwriter shall be liable for the failure of any other Underwriter, or of any dealer who is a member of a selling group, or of any broker-dealer that is a party to a third-party distribution agreement, to comply with its corresponding agreement to comply with the requirements for establishing issue price of the Series 2021A Notes, including, but not limited to, its agreement to comply with the hold-the-offering-price rule, if applicable to the Series 2021A Notes.

(f) The Underwriters acknowledge that sales of any Series 2021A Notes to any person that is a related party to an underwriter participating in the initial sale of the Series 2021A Notes to the public (each such term being used as defined below) shall not constitute sales to the public for purposes of this section. Further, for purposes of this section:

- (i) “public” means any person other than an underwriter or a related party,
- (ii) “underwriter” means (A) any person that agrees pursuant to a written contract with the Commission (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2021A Notes to the public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of the Series 2021A Notes to the public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Series 2021A Notes to the public),
- (iii) a purchaser of any of the Series 2021A Notes is a “related party” to an underwriter if the underwriter and the purchaser are subject, directly or indirectly, to (A) more than fifty percent (50%) common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than fifty percent (50%) common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than fifty percent (50%) common ownership of the value of the outstanding stock of

the corporation or the capital interests or profit interests of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other), and

- (iv) “sale date” means the date of execution of this Bond Purchase Agreement by all parties.

7. **Representations, Warranties and Covenants of the Commission.** By the Commission’s acceptance hereof, it hereby represents, warrants and covenants to the Underwriters, as of the date of this Agreement (and it shall be a condition of the obligation of the Underwriters to purchase and accept delivery of the Series 2021A Notes at the Closing that the Commission shall so represent and warrant as of the Closing Date), that:

- (a) The Commission is a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) duly created and validly existing under the laws of the Commonwealth;

- (b) The Commission has complied with all applicable provisions of the Constitution and laws of the Commonwealth, including the HRTAC Act, with respect to the consummation of, and has full power and authority to consummate, all transactions contemplated by this Agreement, the Indenture, the Continuing Disclosure Undertaking, and the Official Statement (collectively, the “Commission Documents”) and any other agreements and instruments relating thereto;

- (c) The Commission is authorized under the provisions of the HRTAC Act to issue the Series 2021A Notes for the purposes described in the Indenture and the Official Statement;

- (d) The Bond Resolution has duly and validly authorized all necessary action to be taken by the Commission for (i) the issuance, sale, and delivery of the Series 2021A Notes upon the terms set forth herein, (ii) the execution, delivery, and performance of the Commission Documents, which provide for the issuance and delivery of and security for the Series 2021A Notes, (iii) the carrying out, giving effect to, and consummation of the transactions contemplated hereby and (iv) to the distribution by the Underwriters of the Preliminary Official Statement and the Official Statement;

- (e) All conditions precedent set forth in the Bond Resolution for the issuance of the Series 2021A Notes have been satisfied;

- (f) The Commission Documents, when executed by the other parties thereto, if any, will have been duly and validly executed and delivered by the Commission and will be in full force and effect as to the Commission, and such Commission Documents constitute legal, valid and binding obligations of the Commission, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors’ rights; and the Series 2021A Notes, when issued, authenticated and delivered to the Underwriters in accordance with the Bond Resolution and the

Indenture will constitute legal, valid and binding limited obligations of the Commission enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights;

(g) Except as described in the Official Statement, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, governmental agency or public board or body, pending or, to the best knowledge of the Commission, threatened against the Commission (i) which may affect the existence of the Commission or the titles or rights of its officers to their respective offices, (ii) which may affect or which seeks to prohibit, restrain or enjoin (A) the sale, issuance, authentication or delivery of the Series 2021A Notes or (B) the collection or payment of HRTAC Revenues or the pledge and assignment thereof by the Commission to make payments on the Series 2021A Notes, (iii) which in any way contests or affects the validity or enforceability of the Commission Documents, (iv) which contests in any way the completeness or accuracy of the Official Statement, or (v) which contests the powers of the Commission or, to the best knowledge of the Commission, any authority or proceedings for the issuance, authentication, sale or delivery of the Series 2021A Notes, the Commission Documents or any of them or the transactions contemplated thereby, nor, to the best knowledge of the Commission, is there any basis therefor wherein an unfavorable decision, ruling or finding would materially adversely affect the validity or enforceability of the Series 2021A Notes or any of the Commission Documents;

(h) The Commission is not in breach of or default under any constitutional provision, law or administrative regulation of the Commonwealth of Virginia or the United States of America or any applicable judgment or decree or any loan agreement, indenture, bond, note, ordinance, resolution, agreement or other instrument to which the Commission is a party or to which the Commission or any of its property or assets are otherwise subject, and no event has occurred and is continuing which constitutes or with the passage of time or the giving of notice, or both, would constitute a default or event of default by the Commission under any such instrument; and the execution and delivery of this Agreement and the other Commission Documents, and the Commission's compliance with the provisions hereof and thereof, under the circumstances contemplated hereby, will not conflict with or constitute on the part of the Commission a violation of, breach of, or default under (i) the HRTAC Act, (ii) in any material respect, any indenture, mortgage, lease or note agreement, or any other agreement or instrument to which the Commission is a party or by which the Commission is bound, or (iii) any constitutional provision or statute or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Commission or any of its activities or properties;

(i) All consents, approvals, authorizations and orders of governmental or regulatory authorities that are required to be obtained by the Commission in connection with the execution and delivery of this Agreement and the other Commission Documents and the consummation of the transactions contemplated thereby to be consummated on or before the Closing Date have been or will be, at Closing, duly obtained and in full force and effect; provided, that no representation or warranty is expressed as to any action

required under applicable federal or state securities laws or “blue sky” laws of any jurisdiction in connection with the issuance and sale of the Series 2021A Notes;

(j) The Series 2021A Notes conform to the descriptions thereof contained in the Official Statement under the captions “INTRODUCTION,” “DESCRIPTION OF THE SERIES 2021A NOTES,” and “SECURITY FOR AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES”; the Continuing Disclosure Undertaking conforms to the description thereof contained in the Official Statement under the caption “CONTINUING DISCLOSURE” and in APPENDIX F; and the proceeds of the sale of the Series 2021A Notes will be applied generally as described in the Official Statement under the caption “DESCRIPTION OF THE SERIES 2021A NOTES – Estimated Sources and Uses of Funds”;

(k) Except for information which is permitted to be omitted pursuant to the Rule, the Preliminary Official Statement, as of its date and as of the date hereof, was and is true and correct in all material respects and did not and does not contain any untrue or misleading statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, no representation or warranty is made as to information in the Preliminary Official Statement (A) with respect to overallotment and stabilization, (B) under the captions “TAX MATTERS,” “FINANCIAL ADVISOR,” and “UNDERWRITING,” and (C) in APPENDICES A, F and G;

(l) The Official Statement is, as of its date, and at all times after the date of the Official Statement up to and including the Closing Date will be, true and correct in all material respects and does not and will not contain any untrue or misleading statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, no representation or warranty is made as to information in the Official Statement (A) with respect to overallotment and stabilization, (B) under the captions “TAX MATTERS,” “FINANCIAL ADVISOR,” and “UNDERWRITING,” and (C) in APPENDICES A, F and G;

(m) The Commission certifies that it has either received the consent of the Commission’s independent auditor, PBMares, LLP, to the inclusion of the financial statements set forth in APPENDIX B to the Preliminary Official Statement and the Official Statement, or that such consent is not required.

(n) At the time of the Commission’s acceptance hereof and (unless an event occurs of the nature described in Section 5(f)) at all times subsequent hereto during the period up to and including twenty-five (25) days subsequent to the end of the underwriting period, as defined in Section 5(f), the Official Statement did not and will not contain any untrue or misleading statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, no representation or warranty is made as to any of the information described in the provisos of paragraph (k) and (l) above;

(o) If the Official Statement is supplemented or amended pursuant to Section 5(f), at the time of each supplement or amendment thereto and (unless subsequently again supplemented or amended pursuant to Section 5(f)) at all times subsequent thereto during the period up to and including twenty-five (25) days subsequent to the end of the underwriting period, the Official Statement as so supplemented or amended will not contain any untrue or misleading statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; provided, however, no representation or warranty is made as to any of the information described in the provisos of paragraphs (k) and (l) above;

(p) The Financial Statements and other financial information regarding the Commission contained in the Preliminary Official Statement and the Official Statement have been prepared in all material respects on a consistent basis (except as described in the Preliminary Official Statement and the Official Statement) in accordance with generally accepted accounting principles applicable to the financial reporting of governmental entities and present fairly the financial position and results of operations of the Commission as of the dates and for the periods therein indicated;

(q) The Commission has the legal authority to apply and will apply, or cause to be applied, the proceeds from the sale of the Series 2021A Notes as provided in, and subject to all of the terms and provisions of the Indenture, and will not take or omit to take any action which action or omission would adversely affect the excludability from gross income for federal income tax purposes of the interest on the Series 2021A Notes;

(r) Prior to the Closing, the Commission will not take any action within or under its control that would cause any adverse change of a material nature in such financial position, results of operations or condition of the Commission;

(s) Neither the SEC nor any state securities commission has issued or threatened to issue any order preventing or suspending the use of the Preliminary Official Statement, which has been “deemed final” by the Commission under the Rule, or the Official Statement;

(t) Except as set forth in the Preliminary Official Statement and the Official Statement, the Commission has not failed during the previous five (5) years to comply in all material respects with any previous undertakings in a written continuing disclosure contract or agreement under the Rule;

(u) No person, whether generally or through an enterprise, fund, or account of such person, other than the Commission, is committed by contract or other arrangement structured to support payment of all, or part, of the obligations on the Series 2021A Notes for purposes of and within the meaning of the Rule;

(v) Any certificate signed by any of the Commission’s authorized officers and delivered to the Representative shall be deemed a representation and warranty by it to the Underwriters as to the statements made therein; and

(w) Between the date hereof and the time of the Closing, except pursuant to the Fifth Supplemental Indenture and the TIFIA Loan Agreement, the Commission shall not, without the prior written consent of the Representative, offer or issue in any material amount any bonds, notes or other obligations for borrowed money, or incur any material liabilities, direct or contingent, except in the course of normal business operations of the Commission or except for such borrowings as may be described in or contemplated by the Official Statement.

All representations, warranties and agreements of the Commission shall remain operative and in full force and effect regardless of any investigations made by any Underwriter or on an Underwriter's behalf and shall survive the delivery of the Series 2021A Notes.

8. **Closing.** At or before 2:00 p.m., Eastern Time, on _____, 2021, or at such other time or at such other date as shall have been mutually agreed upon by the Commission and the Representative (the "Closing Date" or the "Closing"), (a) the Commission will deliver the Series 2021A Notes to the Underwriters, in definitive form and duly executed and authenticated, in such authorized denominations and registered in such names as the Underwriters may request through the FAST system of registration with The Depository Trust Company ("DTC"), New York, New York, at the offices of the Trustee, (b) the Commission will deliver to the Representative the closing documents hereinafter mentioned and (c) the Underwriters will accept such delivery and pay the Purchase Price of the Series 2021A Notes as set forth in Section 1 hereof by wire transfer of Federal Funds to or as directed by the Commission for deposit in the various funds established under the Indenture. Delivery of the other documents as aforesaid shall be made at the offices of Bond Counsel or at such other location as shall have been mutually agreed upon by the Commission and the Representative. The Series 2021A Notes shall bear proper CUSIP numbers and shall be in typewritten form, with a single note for each maturity of the Series 2021A Notes, each such note to be in a principal amount equal to the principal amount of the Series 2021A Notes maturing on each such date. The Series 2021A Notes shall be registered in the name of Cede & Co., as nominee of DTC and will be made available for inspection and checking by the Underwriters at the offices of the Trustee in Richmond, Virginia, not later than the business day prior to the Closing Date. It is anticipated that CUSIP identification numbers will be printed on each Series 2021A Note, but neither the failure to print the numbers on any Series 2021A Note nor any error in the numbers or the printing will constitute cause for a failure or refusal by the Underwriters to accept delivery and pay the Purchase Price.

9. **Conditions Precedent to the Underwriters' Obligations.** The Underwriters have entered into this Agreement in reliance upon the Commission's representations and warranties and subject to the Commission's performance of its obligations hereunder, both as of the date hereof and as of the date of the Closing. The Underwriters' obligations under this Agreement are and shall be subject to the following further conditions:

(a) The TIFIA Loan Agreement shall have been executed and delivered, the conditions precedent to its effectiveness set forth therein shall have been met so that the interest rate on the TIFIA Loan Agreement may be established, and the Commission shall have performed all of its obligations required to be performed so that the TIFIA Loan will be in full force and effect on the Closing Date;

(b) At the time of the Closing, the Bond Resolution and the Commission Documents shall be in full force and effect and shall not have been repealed, amended, modified or supplemented in any material respect since the date of this Agreement unless agreed to by the Representative;

(c) There shall not have occurred any material change, or any development involving a material change, in or affecting the activities, properties, revenues or financial condition of the Commission from that described in the Preliminary Official Statement and Official Statement, which in the reasonable judgment of the Representative materially and adversely affects the investment quality of the Series 2021A Notes or the price at which the Series 2021A Notes are proposed to be sold; and

(d) At or prior to the Closing, the Representative shall have received each of the following documents (in each case with only such changes as the Representative shall approve):

(1) The final approving opinion of Bond Counsel in substantially the form attached as APPENDIX F to the Official Statement;

(2) The supplemental opinion of Bond Counsel in substantially the form attached hereto as Exhibit A;

(3) The opinion of Willcox & Savage, P.C., counsel to the Commission (“Commission’s Counsel”), in substantially the form attached hereto as Exhibit B;

(4) The opinion of Butler Snow LLP, counsel to the Underwriters (“Underwriters’ Counsel”), in substantially the form attached hereto as Exhibit C;

(5) A certificate of the Commission dated the Closing Date signed by its Executive Director and by the Chair of the Commission (and/or other such proper officer of the Commission) to the effect that: (A) the representations and warranties of the Commission contained herein and in the Indenture are true and correct in all material respects as of the Closing Date, as if made on the Closing Date; (B) except as otherwise disclosed in the Official Statement, no litigation or proceeding is pending with respect to which service or notice on the Commission has been perfected or given or, to their knowledge, threatened against the Commission (i) to restrain or enjoin the issuance or delivery of the Series 2021A Notes and the Commission Documents or the collection of HRTAC Revenues, (ii) in any way contesting or affecting any authority for the issuance or the validity of the Series 2021A Notes, the validity, due authorization and execution of the Commission Documents, or the Commission’s right to use the proceeds of the Series 2021A Notes for the purposes described in the Bond Resolution, the Official Statement and the Indenture, (iii) in any way contesting the corporate existence or powers of the Commission with respect to the transactions contemplated hereby, or (iv) if adversely determined, could materially adversely affect the financial position or operating condition of the Commission; (C) at the time of the Closing, the Agreement, the Bond Resolution and the Commission Documents are in full force

and effect and none of the proceedings or authority for the issuance and delivery of the Series 2021A Notes and for the execution and delivery of this Agreement, the Bond Resolution and the Commission Documents have been modified, amended or repealed; and (D) the Financial Statements present fairly the Commission's financial condition as of June 30, 2019, and the results of its operations for such period set forth therein and have been prepared in accordance with generally accepted accounting principles consistently applied; and there has been no material adverse change in the financial affairs of the Commission since June 30, 2019, except as disclosed in the Official Statement;

(6) A certified copy of the Bond Resolution, a fully-executed copy of the TIFIA Loan Agreement, and a fully-executed original of each of the Commission Documents;

(7) A request and authorization of the Commission signed by its Chair (or such other proper officer of the Commission) to the Trustee to authenticate and deliver the Series 2021A Notes to or at the direction of the Underwriters for the account of the Underwriters upon payment to or for the account of the Commission of the Purchase Price;

(8) Evidence that the Commission shall have received long-term rating for the Series 2021A Notes of not less than Aa2 by Moody's Investor Service (or any successor thereto, "Moody's"), and not less than "AA" by S&P Global Ratings, a Standard & Poor's Financial Services LLC business (or any successor thereto, "S&P");

(9) A certificate signed by the Commission's Executive Director setting forth facts, estimates and circumstances (including covenants of the Commission) in existence on the Closing Date sufficient to support the conclusion that it is not expected that the proceeds of the Series 2021A Notes will be used in a manner that would cause the Series 2021A Notes to be "arbitrage bonds" within the meaning of Section 148 of the Internal Revenue Code of 1986, as amended, and applicable rules and regulations;

(10) A copy of the Internal Revenue Service Form 8038-G relating to the Series 2021A Notes and duly signed by an authorized officer of the Commission and evidence that such form will be filed with the Internal Revenue Service within the applicable time limit;

(11) Evidence that the Commission has satisfied the conditions set forth in the Indenture with respect to the issuance of the Series 2021A Notes; and

(12) Such additional legal opinions, certificates, proceedings, instruments and other documents as the Representative may reasonably require to evidence the truth and accuracy, as of the date hereof and as of the Closing Date, of the representations and warranties contained herein and of the statements and information contained in the Official Statement and the due performance or

satisfaction on or prior to the Closing Date of all the agreements then to be performed and conditions then to be satisfied by the Commission.

If the Commission shall be unable to satisfy the conditions to the Underwriters' obligations contained in this Agreement or if the Underwriters' obligations shall be terminated for any reason permitted by this Agreement, this Agreement shall terminate and neither the Underwriters nor the Commission shall have any further obligation hereunder, except (i) as required by Section 1 hereof with respect to the good faith deposit, and (ii) that the respective obligations of the Commission and the Underwriters set forth in Section 11 hereof shall continue in full force and effect.

10. Events Permitting the Underwriters to Terminate. The Representative shall have the right to cancel the Underwriters' obligation to purchase and accept delivery of the Series 2021A Notes hereunder and to terminate this Agreement by written notification by the Representative to the Commission of their election to cancel if at any time subsequent to the date of this Agreement and prior to the Closing Date:

(a) an event shall occur that makes untrue or incorrect in any material respect, as of the time of such event, any statement or information contained in the Preliminary Official Statement or the Official Statement or results in an omission to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading in any material respect and, in either such event, (i) the Commission does not permit the Official Statement to be supplemented to supply such statement or information, or (ii) the effect of the Official Statement as so supplemented, in the reasonable judgment of the Representative, is to materially adversely affect the market price or marketability of the Series 2021A Notes or the sale, at the contemplated offering prices (or yields), by the Underwriters of the Series 2021A Notes;

(b) an amendment to the Constitution of the United States or the Commonwealth of Virginia shall have been passed or legislation shall have been enacted by the Congress of the United States, or legislation shall be reported out of committee, or recommended for passage by either House of the Congress, or recommended to the Congress or otherwise endorsed for passage (by press release, other form of notice or otherwise) by the President of the United States, the Treasury Department of the United States, the Internal Revenue Service or the Chair or ranking minority member of the Committee on Finance of the United States Senate or the Committee on Ways and Means of the United States House of Representatives, or legislation is proposed for consideration by either such committee by any member thereof or presented as an option for consideration by either such committee by the staff or such committee or by the staff of the Joint Committee on Taxation of the Congress of the United States, or a bill to amend the Code (which, if enacted, would be effective as of a date prior to the Closing) shall be filed in either House, or a decision by a court the United States or of the Commonwealth of Virginia or the Tax Court of the United States shall be rendered, or a ruling shall have been made or a regulation or temporary regulation shall be issued or proposed by or on behalf of the Department of the Treasury or the Internal Revenue Service of the United States, or other agency of the federal government or the Commonwealth of Virginia, in any such case with respect to or affecting (directly or indirectly) the taxation by the federal government or the Commonwealth of Virginia of interest received on obligations of the general

character of the Series 2021A Notes which, in the opinion of the Representative, materially adversely affects the market for the Series 2021A Notes or the sale, at the contemplated offering prices (or yields), by the Underwriters of the Series 2021A Notes or may have the purpose or effect, directly or, indirectly, of affecting the tax status of the Commission, its property or income, its securities (including the Series 2021A Notes) or the interest thereon, or any tax exemption granted or authorized by the Commonwealth of Virginia;

(c) a stop order, ruling, regulation, proposed regulation or statement by or on behalf of the Securities and Exchange Commission or any other governmental agency having jurisdiction of the subject matter shall be issued or made to the effect of which is that the issuance, offering or sale of the Series 2021A Notes, or the execution and delivery of this Agreement, the Rule 15c2-12 Compliance Certificate, the Indenture, or the Continuing Disclosure Undertaking, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, is or would be in violation of any applicable law, rule or regulation, including (without limitation) any provision of applicable federal securities laws, including the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended or the Trust Indenture Act of 1939, as amended;

(d) an order, decree or injunction of any court of competent jurisdiction, issued or made to the effect that the issuance, offering or sale of obligations of the general character of the Series 2021A Notes, or the issuance, offering or sale of the Series 2021A Notes, including any or all underlying obligations, as contemplated hereby or by the Preliminary Official Statement or the Official Statement, is or would be in violation of any applicable law, rule or regulation, including (without limitation) any provision of applicable federal securities laws as amended and then in effect;

(e) any litigation shall be instituted or be pending at the time of the Closing to restrain or enjoin the issuance, sale or delivery of the Series 2021A Notes, or in any way contesting or affecting any authority for or the validity of the proceedings authorizing and approving the HRTAC Act, the Bond Resolution, this Agreement, the Rule 15c2-12 Compliance Certificate, the Indenture, or the Continuing Disclosure Undertaking; or the existence or powers of the Commission with respect to its obligations under the HRTAC Act, the Bond Resolution, this Agreement, the Rule 15c2-12 Compliance Certificate, the Indenture, or the Continuing Disclosure Undertaking;

(f) legislation introduced in or enacted (or resolution passed) by the Congress or recommended for passage (whether or not then introduced) by the President of the United States, or an order, decree or injunction issued by any court established under Article III of the Constitution of the United States or by the Tax Court of the United States, or an order, ruling, regulation (final, temporary, or proposed), press release or other form of notice issued or made by or on behalf of the Securities and Exchange Commission, or any other governmental agency having jurisdiction of the subject matter, to the effect that obligations of the general character of the Series 2021A Notes, including any or all underlying arrangements, are not exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), or that the Indenture is not exempt from qualification under or other requirements of the Trust Indenture Act of 1939, as amended, or that the issuance, offering or sale of obligations of the general character of the Series

2021A Notes, including any or all underlying arrangements, as contemplated hereby or by the Official Statement or otherwise, is or would be in violation of the federal securities law as amended and then in effect;

(g) there shall have occurred (i) any outbreak or escalation of hostilities, declaration by the United States of a national or international emergency or war; or (ii) any other calamity or crisis in the financial markets of the United States or elsewhere (or any escalation thereof); or (iii) a downgrade of the sovereign debt rating of the United States by any major credit rating agency or payment default on United States Treasury obligations; or (iv) a default with respect to the debt obligations of, or the institution of proceedings under any federal bankruptcy laws by or against any state of the United States or any city, county or other political subdivision located in the United States having a population of over 1,000,000, which, in the judgment of the Representative, materially adversely affects the market price or marketability of the Series 2021A Notes or the ability of the Underwriters to enforce contracts for the sale, at the contemplated offering prices (or yields), of the Series 2021A Notes;

(h) there shall have occurred a general suspension of trading, minimum or maximum prices for trading shall have been fixed and be in force or maximum ranges or prices for securities shall have been required on the New York Stock Exchange or other national stock exchange whether by virtue of a determination by that Exchange or by order of the Securities and Exchange Commission or any other governmental agency having jurisdiction or any national securities exchange shall have: (i) imposed additional material restrictions not in force as of the date hereof with respect to trading in securities generally, or to the Series 2021A Notes or similar obligations; or (ii) materially increased restrictions now in force with respect to the extension of credit by or the charge to the net capital requirements of Underwriters or broker-dealers such as to make it, in the reasonable judgment of the Representative, impractical or inadvisable to proceed with the offering of the Series 2021A Notes as contemplated in the Official Statement;

(i) a general banking moratorium shall have been declared by federal or New York or Virginia state authorities, or a major financial crisis or a material disruption in commercial banking or securities settlement or clearing services, or a material disruption or deterioration in the fixed income or municipal securities market shall have occurred such as to make it, in the reasonable judgment of the Representative, impractical or inadvisable to proceed with the offering of the Series 2021A Notes as contemplated in the Official Statement;

(j) any legislation, ordinance, rule or regulation shall be introduced in, or be enacted by, any governmental body, department or agency in the Commonwealth of Virginia, or a decision by any court of competent jurisdiction within the Commonwealth of Virginia shall be rendered that, in the Representative's reasonable judgment, would have a material adverse effect on the market price or marketability of the Series 2021A Notes or the ability of the Underwriters to enforce contracts for the sale, at the contemplated offering prices (or yields), of the Series 2021A Notes;

(k) the marketability of the Series 2021A Notes or the market price thereof, in the opinion of the Representative, has been materially and adversely affected by disruptive events, occurrences, or conditions in the securities or debt markets; or

(l) there shall have occurred or any notice shall have been given of any intended downgrading, suspension, withdrawal or negative change in credit watch status by any national rating service to any of the Commission's obligations, including, without limitation, the Series 2021A Notes.

11. Expenses.

(i) Except as provided in Section 11(ii) below, the Commission shall pay any expenses incident to the performance of its obligations hereunder, including but not limited to (a) the cost of the preparation, reproduction, printing, distribution, mailing, execution, delivery, filing and recording, as the case may be, of this Agreement, the Official Statement, the Bond Resolution, the Indenture, the Continuing Disclosure Undertaking and all other agreements and documents required in connection with the consummation of the transactions contemplated hereby, (b) the cost of the preparation, execution and delivery of the definitive Series 2021A Notes, (c) the cost of preparing and publishing all advertisements relating to the Series 2021A Notes upon commencement of the offering of the Series 2021A Notes, (d) the fees and disbursements of Bond Counsel and Commission's Counsel, and any other experts, advisors or consultants retained by the Commission, (e) the initial or acceptance fee, if any, of the Trustee, (f) any rating fees charged by the rating agencies, requested by the Commission to rate the Series 2021A Notes, and (g) any expenses incurred by or on behalf of Commission employees that are incidental to implementing this Agreement, including, but not limited to, meals, transportation, and lodging of such employees. The Commission also agrees to pay or to reimburse the Underwriters for any expenses incident to the cost of preparing and publishing all advertisements and investor presentations relating to the Series 2021A Notes upon commencement of the offering of the Series 2021A Notes. Notwithstanding anything herein to the contrary, the Commission's obligation to pay expenses shall be limited to amounts available to it from the proceeds of the sale of the Series 2021A Notes unless the Commission otherwise agrees.

(ii) The Underwriters shall pay: (a) the cost of qualifying the Series 2021A Notes for offer and sale under "blue sky" laws and determining their eligibility for investment under the laws of such jurisdictions and the Representative may designate, including filing fees; (b) the fees and disbursements of Underwriters' Counsel; (c) the cost of the transportation and lodging for representatives of the Underwriters to attend meetings and the Closing; (d) all other expenses incurred by the Underwriters in connection with the offering and the distribution of the Series 2021A Notes, including the fees of Digital Assurance Certification, L.L.C. for a continuing disclosure undertaking compliance review; (e) any fees of the MSRB in connection with the issuance, offering or sale of the Series 2021A Notes; and (f) the cost of obtaining CUSIP number assignments for the Series 2021A Notes; provided, however, the Commission acknowledges that a portion of such expenses and other actual expenses incurred or paid for or by the Underwriters on behalf of the Commission in connection with the marketing, issuance, and delivery of the Series 2021A Notes are included in the expense component of the Underwriters' discount or as direct reimbursement as a cost of issuance in either case as proposed by the Representative and agreed to by the Commission.

12. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Commission and the Underwriters and their respective successors and assigns. Nothing in this Agreement is intended or shall be construed to give any person, firm or corporation, other than the parties hereto and their respective successors and assigns, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns, and not for the benefit of any other person, firm or corporation. No purchaser of the Series 2021A Notes from the Underwriters or any other persons or entity shall be deemed to be a successor merely by reason of such purchase.

13. **Notices.** All notices, demands and formal actions shall be in writing and mailed, faxed, sent by electronic communication (provided that electronic communications must be confirmed by the sender), or hand delivered to: (a) the Commission, at 723 Woodlake Drive, Chesapeake, Virginia 23320, Attention: Executive Director, kpage@hrtac.org, and (b) the Representative, at 388 Greenwich, 6th Floor Trading, New York, New York 10013, Attention: Ronald J. Marino, ronald.j.marino@citi.com.

14. **Survival of Representations and Obligations.** All representations, warranties, covenants and agreements by the Commission in this Agreement shall remain operative and in full force and effect regardless of: (i) any investigation made by or on behalf of the Underwriters; (ii) delivery of and payment for the Series 2021A Notes hereunder; or (iii) any termination of this Agreement, other than pursuant to Section 10 (and in all events the agreements of the Commission pursuant to Sections 11 and 13 hereof shall remain in full force and effect notwithstanding the termination of this Purchase Agreement under Section 10 hereof).

15. **Miscellaneous.** This Agreement contains the entire agreement between the parties relating to the subject matter hereof and supersedes all oral statements, prior writings and representations with respect thereto. This Agreement may not be amended without the written consent of the Commission and the Representative. None of the officers, directors, employees or agents of the Commission shall be charged personally by the Underwriters with any liability or be held liable by the Underwriters under any term or provision of this Agreement because of its execution or attempted execution, or because of any breach or attempted or alleged breach thereof.

16. **Governing Law.** The validity, interpretation and performance of this Agreement shall be governed by the laws of the Commonwealth, without regard to conflict of law principles.

17. **Severability.** In case any one or more of the provisions of this Agreement shall, for any reason, be held illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Agreement, and this Agreement shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

18. **Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute one and the same instrument, and any of the parties hereto may execute this Agreement by signing any such counterpart. The parties hereto may evidence their acceptance, execution and delivery of this Agreement by facsimile signature.

Very truly yours,

CITIGROUP GLOBAL MARKETS INC., J.P. MORGAN
SECURITIES LLC, WELLS FARGO SECURITIES,
LOOP CAPITAL MARKETS LLC, AND SIEBERT
WILLIAMS SHANK & CO., LLC

By: CITIGROUP GLOBAL MARKETS INC.,
as Representative

By: _____

[Underwriters' signature page to Bond Purchase Agreement]

Accepted as of the date first above written at
the following time: _____.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Donnie R. Tuck
Chair

By: _____
Kevin B. Page
Executive Director

[Commission's signature page to Bond Purchase Agreement]

SCHEDULE I

\$ _____

**Hampton Roads Transportation Accountability Commission
Hampton Roads Transportation Fund
Senior Lien Bond Anticipation Notes
Series 2021A**

Maturities, Principal Amounts, Interest Rates and Yields

[to be provided]

Redemption Terms

[to be provided]

EXHIBIT A

FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL

_____, 2021

Citigroup Global Markets Inc.,
as Representative
New York, New York

\$ _____
Hampton Roads Transportation Accountability Commission
Hampton Roads Transportation Fund
Senior Lien Bond Anticipation Notes, Series 2021A

Ladies and Gentlemen:

As Bond Counsel to the Hampton Roads Transportation Accountability Commission (the “Commission”), we have delivered to Citigroup Global Markets Inc., as representative of the underwriters for the above-captioned notes (the “Series 2021A Notes”), a copy of our approving opinion dated today relating to the issuance by the Commission of the Series 2021A Notes. This letter confirms that you may rely on our approving opinion as if it were addressed to you.

At your request, we have also reviewed (a) the Bond Purchase Agreement, dated _____, 2021 (the “Bond Purchase Agreement”), between you (the “Underwriters”) and the Commission with respect to the offering and sale of the Series 2021A Notes; (b) certain sections described below of the Official Statement, dated _____, 2021, relating to the Series 2021A Notes (the “Official Statement”); (c) the Continuing Disclosure Undertaking dated the date of its execution and delivery, for benefit and the benefit of the holders of the Series 2021A Notes (the “Continuing Disclosure Undertaking”) and (d) certified copies of proceedings of the Hampton Roads Transportation Accountability Commission with respect to the Bond Purchase Agreement and the Official Statement, as well as such other documents as we deem necessary to render this opinion.

We express no view as to any part of the Official Statement not described below, and no view is expressed as to financial statements and other financial, statistical, technical, economic, engineering, demographic or tabular data or forecasts, numbers, charts, tables, graphs, estimates, suggestions, assumptions or expressions of opinions included in the Official Statement.

Based on the foregoing, we are of the opinion that:

1. The Bond Purchase Agreement and the Continuing Disclosure Undertaking have been duly authorized, executed and delivered by the Commission and, assuming their due authorization, execution and delivery by the other parties thereto, each constitutes a valid and

binding legal obligation of the Commission, enforceable against the Commission in accordance with their respective terms. The enforceability of the Bond Purchase Agreement and the Continuing Disclosure Undertaking may be limited by the provisions of bankruptcy, insolvency, reorganization, moratorium, or other laws, now or hereafter in effect, and by equitable principles which may limit the specific enforcement of certain remedies.

2. The Series 2021A Notes are not subject to the registration requirements of the Securities Act of 1933, as amended, and the Indenture, as defined in the Bond Purchase Agreement, is exempt from qualification under the Trust Indenture Act of 1939, as amended.

We also advise you that the statements in the Official Statement under “INTRODUCTION,” “DESCRIPTION OF THE SERIES 2021A NOTES” (except “Book-Entry Only System”) and “SECURITY AND SOURCES OF PAYMENT OF THE SERIES 2021A NOTES” and the summaries contained in Appendix A fairly and accurately summarize the indicated provisions of the Series 2021A Notes and the Indenture, and the information in the Official Statement under “Tax Matters,” read together with our approving opinion, the form of which appears as Appendix F to the Official Statement, fairly and accurately reflects the matters discussed thereunder. *[Address Appendix H, or others summarizing TIFIA agreements, if included]*

This letter is furnished by us in our capacity as Bond Counsel to the Commission. No attorney-client relationship has existed or exists between our firm and the addressee hereof in connection with the Series 2021A Notes, the Official Statement or by virtue of this opinion. This opinion has been prepared solely for your use in connection with the issuance of the Series 2021A Notes on the date hereof and should not be used, circulated, quoted or otherwise referred to or relied upon by any person other than you. This opinion is not intended to be relied upon by the Trustee (as described in the Bond Purchase Agreement) or the holders or the beneficial owners of the Series 2021A Notes.

Very truly yours,

EXHIBIT B

FORM OF COMMISSION'S COUNSEL OPINION

_____, 2021

Hampton Roads Transportation
Accountability Commission
Chesapeake, Virginia

Kaufman & Canoles, P.C.
Richmond, Virginia

Citigroup Global Markets Inc.,
as Representative
New York, New York

\$ _____
Hampton Roads Transportation Accountability Commission
Hampton Roads Transportation Fund
Senior Lien Bond Anticipation Notes, Series 2021A

Ladies and Gentlemen:

We have acted as general counsel to the Hampton Roads Transportation Accountability Commission (the "Commission") in connection with the execution and delivery of the Bond Purchase Agreement dated _____, 2021, among the Commission and Citigroup Global Markets Inc., as representative of the underwriters (collectively, the "Underwriters") (the "Bond Purchase Agreement") relating to the Commission's Hampton Roads Transportation Fund Senior Lien Bond Anticipation Notes, Series 2021A (the "Series 2021A Notes"). For purposes of this opinion, capitalized terms used herein and not defined herein have the meanings assigned to them in the Bond Purchase Agreement.

In rendering the opinions hereinafter set forth, we have examined copies of the following documents and instruments:

- (i) Title 33.2, Chapter 26, of the Code of Virginia of 1950, as amended (the "Act");
- (ii) the Third Amended and Restated Bylaws of the Commission dated July 16, 2020 (the "Bylaws");
- (iii) the Resolutions of the Commission adopted by the Commission on June 17, 2021 (the "Bond Resolution"), approving the Series 2021A Notes and the execution and delivery by the Commission of the Commission Documents (defined below);
- (iv) the Bond Purchase Agreement;

- (v) the Indenture;
- (vi) the Continuing Disclosure Undertaking;
- (vii) the Preliminary Official Statement of the Commission dated _____, 2021 and the Official Statement of the Commission dated _____, 2021 (together, the “Official Statement”); and
- (viii) the General Certificate of the Commission dated _____, 2021 (the “General Certificate”).

The items described in paragraphs (iv) through (vii) above are collectively referred to herein as the “Commission Documents.”

With your consent, our examination has been confined solely to the above-enumerated documents and our opinions, as set forth herein, are based solely on the information contained therein, without any independent verification or investigation. As to questions of fact material to the opinions expressed herein, we have relied upon representations of the Commission made in the Commission Documents, certifications by officers and representatives of the Commission (including, without limitation, in the General Certificate), and representations and certifications of public officials (including, without limitation, those set forth on Schedule 1 attached hereto). We have assumed that no events have occurred after the dates of such representations and certifications that would change the representations or certifications contained therein and that such representations and certifications are complete and accurate as of the date hereof.

We have assumed that all documents delivered to us are accurate and complete, that each such document delivered as an original is authentic and that each such document delivered as a copy conforms to the original document in all respects. We have also assumed the genuineness of all signatures and the legal capacity of all natural persons.

We have assumed that there has not been any mutual mistake of fact or misunderstanding, fraud, dishonesty, coercion, duress, undue influence or breach of fiduciary duty. We have further assumed that to the extent applicable law would require any rights or remedies set forth in the any of the Commission Documents to be exercised in good faith or in a reasonable or commercially reasonable manner as a condition to the enforceability thereof, such legal requirements will be observed and satisfied. We have also assumed that the Commission will obtain all permits and governmental approvals and all consents and authorizations from third parties which are required in the future for the performance of its obligations under the Commission Documents.

Although this firm has represented the Commission on general legal matters since July 2, 2014, our employment by it is limited to specific matters referred to us and there may exist matters about which we have not been consulted. Further, the Commission has engaged Kaufman & Canoles, a Professional Corporation, as its Bond Counsel, in connection with the issuance, sale and delivery of the Series 2021A Notes, as contemplated by the Commission Documents, and reference is hereby made to Bond Counsel’s opinion as to all matters addressed therein, including opinions relating to the validity of the Series 2021A Notes, the enforceability of the Series 2021A Notes and the Indenture, and the tax treatment of interest on the Series 2021A Notes. We have

made no independent examination of the statements made in such opinion and express no opinion as to the matters therein, but assume that such statements and opinions are accurate and correct.

Based upon the foregoing, and subject to the assumptions and qualifications contained herein, we are of the opinion as of the date hereof that:

1. The Commission is a body politic and a political subdivision of the Commonwealth of Virginia created by, and existing pursuant to, the Act. The Commission has the requisite power and authority (a) to enter into and perform its obligations under the Commission Documents; and (b) to issue the Series 2021A Notes under the Indenture.

2. Based solely upon the certifications of public officials set forth on Schedule 1 attached hereto, the officials of the Commission named in the Official Statement have been duly appointed and are as of the date of the Bond Resolution legally qualified to serve in their respective positions.

3. The Bond Resolution, which authorizes the issuance of the Series 2021A Notes and the execution and delivery of the Commission Documents, has been duly adopted by the Commission, and the Commission Documents have been duly authorized and executed by the Commission. Assuming due authorization, execution and delivery by the other parties thereto, the Commission Documents constitute the valid and binding obligations of the Commission and, subject to the assumptions, exceptions and limitations set forth herein, are enforceable against the Commission in accordance with their respective terms.

4. The execution and delivery of the Commission Documents by the Commission do not violate the Act or the Commission's Bylaws and, to our actual knowledge, do not (a) violate any applicable law, or (b) conflict with or constitute a material breach or default under any judgment, court order or consent decree of any court or governmental authority to which the Commission is subject that is listed on Schedule 2 attached hereto, or any agreement, note, resolution, indenture or other instrument to which the Commission is a party or by which it is bound.

5. Except as disclosed in the Official Statement, to our actual knowledge based upon the General Certificate and our review of the records described on Schedule 3 attached hereto, no legal proceedings are pending or threatened against the Commission: (a) contesting or affecting the validity or authority for the issuance of the Series 2021A Notes or seeking to restrain or enjoin the issuance or delivery of the Series 2021A Notes; (b) contesting or affecting the operation of the Commission or the validity or enforceability of the Bond Resolution or any of the Commission Documents; (c) seeking to restrain or enjoin the collection of revenues pledged under the Bond Resolution that, if determined adversely to the Commission, would have a material impact on the Commission's collection of the revenues pledged under the Indenture, or the pledge thereof; (d) contesting the completeness or accuracy of the Official Statement; or (e) contesting the power of the officials of the Commission or their authority with respect to the Bond Resolution or the Commission Documents.

6. We are not passing upon and do not assume any responsibility for, and make no representation that we have independently verified the accuracy, completeness or fairness of, the

statements contained in the Preliminary Official Statement or the Official Statement. Based, however, solely upon the examination that we have made in our role as general counsel to the Commission, and without having undertaken to independently determine the accuracy, completeness or fairness of the statements contained in the Preliminary Official Statement or the Official Statement, but on the basis of our conferences with representatives of the Commission, its financial advisor, its bond counsel and your representatives, and upon our examination of the Preliminary Official Statement and the Official Statement, nothing has come to our attention that has led us to believe that the Preliminary Official Statement, as of its date, or the Official Statement, as of its date and as of the date hereof, contained or contains any untrue statement of a material fact or omitted or omits to state a material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Notwithstanding the foregoing, no opinion or advice is hereby given with respect to the sections in the Preliminary Official Statement and the Official Statement titled “DESCRIPTION OF THE SERIES 2021A NOTES – Book Entry System,” “TAX MATTERS,” “RATINGS,” “FINANCIAL ADVISOR,” “UNDERWRITER,” the Appendices, or other financial and statistical information and data included in the Preliminary Official Statement or the Official Statement.

The foregoing opinions are subject to the following additional limitations and qualifications:

(A) Our opinion is based solely upon Federal law and the laws of the Commonwealth of Virginia (without giving effect to Virginia’s principles of conflict of laws) and we express no opinion based upon the laws of any other state. This opinion does not address, and expressly excludes, any consideration of (i) the status of interest on the Series 2021A Notes for federal or state income tax purposes, (ii) Rule 15c2-12 promulgated under the Security Exchange Act of 1934, as amended, (iii) the registration requirements of the Securities Act of 1933, as amended, (iv) the Trust Indenture Act of 1939, as amended, (v) antitrust and unfair competition laws, (vi) tax laws, (vii) subdivision, zoning, environmental, and land use laws, (viii) laws pertaining to fiduciary duties, (ix) banking laws, and (x) laws related to terrorism or money-laundering.

(B) Our opinions with respect to the enforceability of the Commission Documents is limited by, and the performance by the Commission of its obligations thereunder is subject to, (i) applicable Federal or state bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar laws, now or hereafter in effect, relating to, or affecting the enforcement of, creditors’ rights against the Commission and to any judicially developed doctrines related thereto; (ii) sovereign immunity, or other applicable provisions of law relating to judgments against the Commonwealth of Virginia, its bodies politic and corporate, and its political subdivisions, including any limitation of indemnification obligations of the Commission on the basis of public policy or by applicable statutory or constitutional provisions of the Commonwealth of Virginia; and (iii) general principles of equity, including, without limitation, the possible unavailability of specific performance or injunctive relief, and the possible application of defenses such as estoppel or waiver.

(C) We express no opinion with respect to any terms in any Commission Documents (i) obligating the Commission to comply with laws or regulations of a type identified in any of clauses (i) through (x) of paragraph (A) above, (ii) authorizing self-help or permitting the unilateral

or ex parte appointment of a receiver, (iii) permitting the Trustee, the Underwriters, or any other party, or their respective agents, to bring suit against less than all parties liable thereon without affecting the liability of the other parties thereto, (iv) regarding choice of law or forum selection or purporting to affect the jurisdiction or venue of courts, (v) indemnifying a party for, or releasing, exculpating or exempting a party from, liability for its own action or inaction, (vi) concerning payment of penalties, liquidated damages, or prepayment charges, (vii) waiving obligations of good faith, fair dealing, diligence, or commercial reasonableness, (viii) providing that an election of remedies does not affect a party's right to other remedies, (ix) providing that any unenforceable terms shall not affect the enforceability of any other terms where the unenforceable terms are an essential part of the agreement, (x) to the effect that the failure or delay of the Trustee, the Underwriters or any other party or their respective agents in exercising a right or remedy will not operate as a waiver of such right or remedy, (xi) purporting to waive (or having the effect of waiving) rights under the Constitution or laws of the United States or the Commonwealth of Virginia, (xii) waiving statutes of limitation, (xiii) waiving or restricting access to courts or to legal or equitable remedies, (xiv) purporting to waive or otherwise affect any right to receive notice, or (xv) purporting to grant rights to, or limit the rights of, third parties.

(D) We have not been asked to, and do not render any opinion herein with respect to (i) the general business affairs or creditworthiness of the Commission, or (ii) any other matter not expressly set forth above.

This opinion is solely for your benefit in connection with the transaction described herein and for no other purpose. This opinion may not be distributed to or relied upon by any other person, quoted in whole or in part, or otherwise reproduced in any other document (except that copies of this opinion may be included in any binder or compilation of documents for the transaction to which this opinion relates), nor is it to be filed with any governmental agency other than the Commission and regulatory authorities having jurisdiction over the Trustee or the Underwriters, except with our prior written consent. We do not undertake to advise you of any changes in the opinions expressed herein resulting from any matters that might hereafter come or be brought to our attention.

Very truly yours,

WILLCOX & SAVAGE, P.C.

By: _____
Member

EXHIBIT C

FORM OF OPINION OF UNDERWRITERS' COUNSEL

_____, 2021

Citigroup Global Markets Inc.,
as Representative
New York, New York

\$ _____
Hampton Roads Transportation Accountability Commission
Hampton Roads Transportation Fund
Senior Lien Bond Anticipation Notes, Series 2021A

Ladies and Gentlemen:

We have acted as underwriters' counsel to Citigroup Global Markets Inc., as representative (the "Representative") of the underwriters (the "Underwriters"), in connection with the Underwriters' purchase of the above-captioned notes (the "Series 2021A Notes") pursuant to a Bond Purchase Agreement dated _____, 2021 (the "Agreement"), between the Hampton Roads Transportation Accountability Commission (the "Commission") and the Representative. Capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Agreement.

In the course of our engagement, we have examined such law as we have deemed relevant and necessary as a basis for this letter and originals or copies, certified or otherwise, identified to our satisfaction, of records, documents, agreements, certificates and opinions relating to the Series 2021A Notes and required to be delivered pursuant to conditions of the Agreement regarding the transactions contemplated by the Official Statement dated _____, 2021 (the "Official Statement") relating to the Series 2021A Notes, and we have relied on the statements of fact contained therein and such opinions without independently verifying the truth or accuracy of such statements, opinions and other documents.

Based upon the foregoing, and subject to the qualifications, assumptions, and matters of reliance set forth herein, it is our opinion that, under existing law, (A) the Series 2021A Notes are exempt from registration under the Securities Act of 1933, as amended, and (B) the Indenture, as supplemented and amended, is exempt from qualification under the Trust Indenture Act of 1939, as amended.

We cannot and do not assume responsibility for or pass upon the accuracy, completeness and fairness of the statements contained in the Official Statement and make no representation that

we have independently verified the accuracy of such statements. As counsel to the Underwriters, we have participated with the Underwriters in discussions, meetings, and telephone conferences at which representatives of the Commission and Bond Counsel were at various times present. Based upon our participation in the above-mentioned conferences and such consultations (which did not extend beyond the date of the Official Statement) and subject to the foregoing, we state that, as of the date of the Official Statement, no information came to the attention of the attorneys in our firm rendering legal services in connection with such review which leads us to believe that the Preliminary Official Statement, as of its date, or the Official Statement, as of its date and as of the date hereof (except for Appendices thereto, any financial statements, development plans, engineering, demographic, economic, and financial or statistical data and any statements of trends, forecasts, estimates and assumptions, and any expressions of opinion, including opinions as to the federal tax status of the Series 2021A Notes, and information concerning The Depository Trust Company and its procedures contained in the Preliminary Official Statement or the Official Statement and its Appendices, as to each of which we express no view) contained any untrue statement of a material fact or omitted a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

We are of the further opinion that the Continuing Disclosure Undertaking, dated _____, 2021, executed by the Commission in connection with the issuance of the Series 2021A Notes (“Continuing Disclosure Agreement”), meets the requirements of Rule 15c2-12 (the “Rule”) of the Securities and Exchange Commission and that the undertakings contained in the Continuing Disclosure Agreement provide a suitable basis for the Underwriters to reasonably determine that the Commission has undertaken to provide the information required to be provided in connection with the primary offering of the Series 2021A Notes pursuant to section (b)(5)(i) of said Rule; provided, however, we note that the Commission has covenanted in the Continuing Disclosure Agreement to provide certain information regarding the Commission, and our opinion is conditioned upon the obligation of the Commission to timely provide such information regarding the Commission. We do not opine upon the enforceability of the Continuing Disclosure Agreement and have relied upon the opinion of counsel to the Commission that the Continuing Disclosure Agreement has been duly authorized, executed, and delivered and constitutes a valid and binding obligation of the Commission.

We have not passed upon, and the foregoing is subject to, the validity of the Series 2021A Notes, the exclusion from gross income for federal income tax purposes of the interest on the Series 2021A Notes, and the exemption with respect to the Series 2021A Notes and the income therefrom from all Commonwealth of Virginia income tax, as to which we understand that the Underwriters are relying upon the opinion, dated the date hereof, of Kaufman & Canoles, a Professional Corporation, Richmond, Virginia.

We are issuing this letter to and for sole benefit of the Underwriters in connection with the Underwriters’ initial purchase and primary offering of the Series 2021A Notes. No person other than the Underwriters may rely upon this opinion without our express prior written consent. This letter may not be utilized by the Underwriters for any other purpose whatsoever and may not be quoted by the Underwriters without our express prior written consent, provided this letter may be

contained in the Commission's official record of proceedings for the issuance and sale of the Series 2021A Notes. Our engagement as counsel to the Underwriters terminates upon the Closing for the issuance and sale of the Series 2021A Notes on the date hereof.

We assume no obligation to review or supplement this letter or any opinion or advice contained herein, subsequent to the date hereof, whether by reason of a change in applicable law, by legislative or regulatory action or judicial decision or order, or for any other reason whatsoever. We are passing only upon the matters set forth herein and are not passing upon the accuracy, adequacy or completeness of any statement made in connection with any offer or sale of the Series 2021A Notes, except as specifically addressed above.

Very truly yours,

EXHIBIT D

FORM OF ISSUE PRICE CERTIFICATE

\$ _____
Hampton Roads Transportation Accountability Commission
Hampton Roads Transportation Fund
Senior Lien Bond Anticipation Notes, Series 2021A

ISSUE PRICE CERTIFICATE

The undersigned, on behalf of Citigroup Global Markets Inc. (the “Representative”), on behalf of itself and as representative of J.P. Morgan Securities LLC, Wells Fargo Securities, Loop Capital Markets LLC, and Siebert Williams Shank & Co., LLC (together, the “Underwriting Group”), hereby certifies as set forth below with respect to the sale and issuance of the above-captioned obligations (the “Series 2021A Notes”).

1. [Alternative 1 – All Maturities Use General Rule: *Sale of the Series 2021A Notes*. As of the date of this certificate, for each Maturity of the Series 2021A Notes, the first price at which at least 10% of such Maturity of the Series 2021A Notes was sold to the Public is the respective price listed in Schedule A] [Alternative 2 – Select Maturities Use General Rule: *Sale of the General Rule Maturities*. As of the date of this certificate, for each Maturity of the General Rule Maturities, the first price at which at least 10% of such Maturity of the Series 2021A Notes was sold to the Public is the respective price listed in Schedule A].

2. ***Initial Offering Prices of the [Series 2021A Notes] [Hold-the-Offering-Price Maturities]***.

(a) [Alternative 1 – All Maturities Use Hold-the-Offering-Price Rule: The Underwriting Group offered the Series 2021A Notes to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Series 2021A Notes is attached to this certificate as Schedule B.] [Alternative 2 – Select Maturities Use Hold-the-Offering-Price Rule: The Underwriting Group offered the Hold-the-Offering-Price Maturities to the Public for purchase at the respective initial offering prices listed in Schedule A (the “Initial Offering Prices”) on or before the Sale Date. A copy of the pricing wire or equivalent communication for the Series 2021A Notes is attached to this certificate as Schedule B.]

(b) [Alternative 1 – All Maturities use Hold-the-Offering-Price Rule: As set forth in the Bond Purchase Agreement, the members of the Underwriting Group have agreed in writing that, (i) the Representative would retain the unsold Series 2021A Notes of each Maturity and not allocate any such Series 2021A Notes to any other Underwriter, (ii) for each Maturity of the Series 2021A Notes, the Representative would neither offer nor sell any of the unsold Series 2021A Notes of such Maturity to any person at a price that is higher than the Initial Offering Price for such

Maturity during the Holding Period for such Maturity (the “hold-the offering-price rule”), and (iii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement shall contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, to comply with the hold-the-offering-price rule. The Representative has not offered or sold unsold Series 2021A Notes of any Maturity at a price that is higher than the respective Initial Offering Price for that Maturity of the Series 2021A Notes during the Holding Period.] [Alternative 2 - Select Maturities Use Hold-the-Offering-Price Rule: As set forth in the Bond Purchase Agreement, the members of the Underwriting Group have agreed in writing that, (i) the Representative would retain the unsold Series 2021A Notes of each Hold-the-Offering-Price Maturity and not allocate any such Series 2021A Notes to any other Underwriter, (ii) for each Maturity of the Hold-the-Offering-Price Maturities, the Representative would neither offer nor sell any of the unsold Series 2021A Notes of such Maturity to any person at a price that is higher than the Initial Offering Price for such Maturity during the Holding Period for such Maturity (the “hold-the-offering-price rule”), and (iii) any selling group agreement shall contain the agreement of each dealer who is a member of the selling group, and any third-party distribution agreement shall contain the agreement of each broker-dealer who is a party to the third-party distribution agreement, to comply with the hold-the-offering-price rule. The Representative has not offered or sold any unsold Series 2021A Notes of any Maturity of the Hold-the-Offering-Price Maturities at a price that is higher than the respective Initial Offering Price for that Maturity of the Series 2021A Notes during the Holding Period.]

3. ***Defined Terms.***

(a) [*General Rule Maturities* means those Maturities of the Series 2021A Notes listed in Schedule A hereto as the “General Rule Maturities.”]

(b) [*Hold-the-Offering-Price Maturities* means those Maturities of the Series 2021A Notes listed in Schedule A hereto as the “Hold-the-Offering-Price Maturities.”]

(c) [*Holding Period* means, with respect to a Hold-the-Offering-Price Maturity, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date (as defined below), or (ii) the date on which the Underwriters have sold at least 10% of such Hold-the-Offering-Price Maturity to the Public at prices that are no higher than the Initial Offering Price for such Hold-the-Offering-Price Maturity.]

(d) *Issuer* means the Hampton Roads Transportation Accountability Commission.

(e) *Maturity* means Series 2021A Notes with the same credit and payment terms. Series 2021A Notes with different maturity dates, or Series 2021A Notes with the same maturity date but different stated interest rates, are treated as separate maturities.

(f) *Public* means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a related party to an Underwriter. The term “related party” for purposes of this certificate means any two or more persons who have greater than 50 percent common ownership, directly or indirectly.

(g) *Sale Date* means the first day on which there is a binding contract in writing for the sale of a Maturity of the Series 2021A Notes. The Sale Date of the Series 2021A Notes is _____, 2021.

(h) *Underwriter* means (i) any person that agrees pursuant to a written contract with the Issuer (or with the lead underwriter to form an underwriting syndicate) to participate in the initial sale of the Series 2021A Notes to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this paragraph to participate in the initial sale of the Series 2021A Notes to the Public (including a member of a selling group or a party to a third-party distribution agreement participating in the initial sale of the Series 2021A Notes to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Representative's interpretation of any laws, including specifically Sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer with respect to certain of the representations set forth in its Tax Certificate and with respect to compliance with the federal income tax rules affecting the Series 2021A Notes, and by Kaufman & Canoles, a Professional Corporation, in connection with rendering its opinion that the interest on the Series 2021A Notes is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038-G and other federal income tax advice it may give to the Issuer from time to time relating to the Series 2021A Notes.

Except as expressly set forth above, the representations set forth herein may not be relied upon or used by any third party or for any other purpose. Notwithstanding anything set forth herein, the Underwriting Group is not engaged in the practice of law. Accordingly, the Underwriting Group makes no representation as to the legal sufficiency of the factual matters set forth herein.

CITIGROUP GLOBAL MARKETS INC., as
Representative of the Underwriting Group

By: _____
Name: _____
Title: _____

Dated: _____, 2021

SCHEDULE A TO ISSUE PRICE CERTIFICATE
SALE PRICES OF THE MATURITIES

[Attach]

**SCHEDULE B TO ISSUE PRICE CERTIFICATE
PRICING WIRE OR EQUIVALENT COMMUNICATION**

[Attach]

Agenda Item 5C
Action Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: 2021 Toll Backed TIFIA Loan Authorization – Resolution 2021-06

Recommendation:

The HRTAC Director, financial advisors, and bond counsel recommend that the Finance Committee endorse Resolution 2021-06 for the proposed 2021 Toll Backed TIFIA Loan Authorization of \$345 million and authorize the Finance Committee Chair to communicate the Finance Committee’s endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.

Background:

The Commission has previously reviewed and approved a debt management plan for the financing and refinancing of the costs of Commission-approved new construction projects for congestion relief in the localities comprising Planning District 23. The Commission has to date utilized its HRTF Master Indenture to provide initial funding of six congestion relief projects on interstate highways in Planning District 23 and, most recently, for the HRBT Expansion Project.

On January 21, 2021, the Commission adopted HRTAC Resolution 2021-02 entitled “Resolution Authorizing Indenture for Toll Roads System Revenue Bonds” (the “Initial Bond Authorizing Resolution”) which (i) authorized, subject to further approving resolutions of the Commission, the issuance of bonds payable from and secured by certain toll revenues (the “Toll Revenue Bonds”) and the use of the proceeds thereof to finance and refinance the costs of the Express Lanes Network, comprised of the various segments thereof and including the Hampton Roads Bridge Tunnel Expansion Project, as defined in the Master Toll Indenture, which in aggregate constitute the “facility” described in Virginia Code § 33.2-2612 (the “Toll Financed Projects”), and (ii) approved the execution and delivery of a form of Master Indenture, a form of Supplemental Indenture and other financing documents to effect the issuance of Toll Roads System Revenue Bonds, subject to further approving resolutions of the Commission. The Commission’s April 29, 2020 Letter of Interest for a secured loan (the “TIFIA Loan”) under the Transportation Infrastructure Finance and Innovation Act of 1978, as amended (“TIFIA Act”), to finance a portion of the costs of the Hampton Roads Bridge Tunnel Expansion Project and comprising a portion of Segment 3 of the Express Lanes Network (the “Toll Financed Projects”) has been advanced by the United States Department of Transportation (“U.S. DOT”) through creditworthiness review and into negotiation of business terms.

Following a full briefing update, the Finance Committee will be asked for action to endorse



Resolution 2021-06 for the issuance of a Senior Lien Toll Revenue Bonds issue for up to \$345 million, such issuances anticipated to occur during the Third Quarter of CY 2021. As set out in the Resolution, limited support from the HRTF is provided for this toll-backed financing. This HRTAC Resolution 2021-06 finalizes the January 2021 authorization in Resolution 2021-02 with respect to the implementation of a toll revenue financing structure, as updated to reflect the TIFIA financing element, and would authorize the Commission's staff, counsel and financial advisor to move forward with such financings, and finalize the documents and agreements required for the same, all subject to parameters in the Resolution.

Fiscal Impact:

There is a significant fiscal impact in relation to this Action Item as a portion of the Commission's revenues will be devoted to debt service payments while these financings remain outstanding.

Suggested Motion:

Motion: The Finance Committee endorses Resolution 2021-06 and authorizes the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.

HRTAC RESOLUTION 2021 – 06

RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$345,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SENIOR LIEN TOLL ROADS SYSTEM REVENUE BONDS

WHEREAS, the Hampton Roads Transportation Accountability Commission (the “Commission”), has been empowered under the Code of Virginia of 1950, as amended (the “Virginia Code”), pursuant to Virginia Code § 33.2-2607 and as set forth in Chapter 26, Title 33.2 of the Virginia Code (the “HRTAC Act”), to impose and collect tolls in amounts established by the Commission for the use of any new or improved highway, bridge or tunnel, to increase capacity on such facility or to address congestion within Planning District 23 as long as such facilities are constructed by the Commission (i) with federal, state, or local funds, (ii) solely with revenues of the Commission, or (iii) with revenues under the control of the Commission;

WHEREAS, the Commission has been further empowered under Virginia Code § 33.2-2612 to impose and collect tolls on high-occupancy toll lanes on Interstate 64 in the “facility”, being the vicinity of the interchange of Interstate 64 and Jefferson Avenue in Newport News to the Bowers Hill interchange of Interstate 64, Interstate 264, and Interstate 664 in Chesapeake (the “Express Lanes Network,” as further described and defined in the Master Toll Indenture, as later defined herein; all capitalized terms used but not otherwise defined herein shall have the same meanings as set forth in the Master Toll Indenture), provided that such tolls shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the Express Lanes Network and may only be imposed on a portion of the Express Lanes Network that has been designated as high-occupancy toll lanes by the Commonwealth Transportation Board (the “CTB”) pursuant to Virginia Code § 33.2-502, with the amount of the tolls to be varied by congestion level;

WHEREAS, the CTB has designated certain segments of the Express Lanes Network as high-occupancy toll lanes pursuant to resolutions duly adopted on October 19, 2016, September 20, 2017, January 10, 2018, and July 14, 2020;

WHEREAS, all tolls imposed by the Commission under Virginia Code § 33.2-2612 may be used for programs and projects that are reasonably related to or that benefit users of the Express Lanes Network and, without limiting the foregoing, may be used to pay the debt service on and related reserves and financing costs for, and pledged to support, bonds and other evidences of indebtedness the proceeds of which are or were used for construction or improvement of the Express Lanes Network;

WHEREAS, on January 21, 2021, the Commission adopted HRTAC Resolution 2021-02 entitled “Resolution Authorizing Indenture for Toll Roads System Revenue Bonds” (the “Initial Bond Authorizing Resolution”) which (i) authorized, subject to further approving resolutions of the Commission, the issuance of bonds payable from and secured by certain toll revenues (the “Toll Revenue Bonds”) and the use of the proceeds thereof to finance and refinance the costs of the Express Lanes Network, comprised of the various segments thereof and including the Hampton Roads Bridge Tunnel Expansion Project, as defined in the Master Toll Indenture, which in aggregate constitute the “facility” described in Virginia Code § 33.2-2612 (the “Toll Financed

Projects”), and (ii) approved the execution and delivery of a form of Master Indenture, a form of Supplemental Indenture and other financing documents to effect the issuance of Toll Roads System Revenue Bonds, subject to further approving resolutions of the Commission;

WHEREAS, the Commission’s Letter of Interest dated April 29, 2020, for a secured loan (the “TIFIA Loan”) under the Transportation Infrastructure Finance and Innovation Act of 1978, as amended (“TIFIA Act”), to finance a portion of the costs of the Hampton Roads Bridge Tunnel Expansion Project and comprising a portion of Segment 3 of the Express Lanes Network (the “Toll Financed Projects”) has been advanced by the United States Department of Transportation (“U.S. DOT”) through creditworthiness review and into negotiation of business terms;

WHEREAS, the Commission has negotiated the terms of the TIFIA Loan, including a form of TIFIA Toll Loan Agreement (the “TIFIA Toll Loan Agreement”) between the Commission and U.S. DOT, acting by and through the Federal Highway Administrator (the “TIFIA Lender”), pursuant to which the TIFIA Lender will agree to extend a secured loan to the Commission to finance a portion of the costs of the Toll Financed Projects secured by toll revenues as set forth in the Master Toll Indenture including tolls imposed on the Express Lanes Network;

WHEREAS, to evidence the obligation of the Commission to repay the loan under the TIFIA Toll Loan Agreement, the Commission desires to authorize the issuance of a series of obligations under the Master Toll Indenture in an initial principal amount of up to \$345,000,000 (subject to increase pursuant to the TIFIA Toll Loan Agreement as described herein), to be designated as the “Toll Roads System Revenue Bond, TIFIA Series 2021” (the “TIFIA Series 2021 Toll Revenue Bond”), the proceeds of which would be used to finance in part the costs of the Eligible Project Costs (as defined in the TIFIA Toll Loan Agreement) with respect to the Toll Financed Projects;

WHEREAS, in furtherance of the foregoing, the Executive Director and the Finance Committee have recommended that the Commission proceed with the issuance of the TIFIA Series 2021 Toll Revenue Bond, and with the authorization, execution and delivery of certain financing documents, drafts of which have been presented by the Commission’s Financial Advisor and Bond Counsel to the Finance Committee and to the Commission, including the following (collectively, the “Toll Bond Documents”):

- (a) A Master Toll Indenture (the “Master Toll Indenture”) between the Commission and U.S. Bank National Association as trustee (the “Trustee”), revised and updated following negotiations with the TIFIA Lender;
- (b) A First Supplemental Indenture between the Commission and the Trustee (the “First Series Supplement”), revised and updated following negotiations with the TIFIA Lender;
- (c) The TIFIA Toll Loan Agreement;
- (d) The form of the TIFIA Series 2021 Toll Revenue Bond, attached as Exhibit B to the First Series Supplement;

WHEREAS, the Commission has determined that it would be in the best interests of the Commission to authorize the Executive Director and the Chair of the Commission to finalize the terms of the TIFIA Series 2021 Toll Revenue Bond and the Toll Bond Documents with the assistance of the Financial Advisor, Bond Counsel and the Commission’s general counsel, and to cause the execution and delivery thereof, subject to the limitations and parameters hereinafter provided in this Resolution; and

WHEREAS, the Commission is meeting to discuss and transact the business of the Commission, and the Commission deems it necessary to meet by electronic communications without physical assembly of members of the Commission in accordance with the budget bill of the Commonwealth of Virginia (the “Commonwealth”) for the biennium ending June 30, 2022, as adopted by the Virginia General Assembly, because the Governor of the Commonwealth has issued Executive Order Fifty-One (2020) declaring a state of emergency, which declaration continues in force and effect, and the nature of such emergency makes it impracticable or unsafe for the Directors of the Commission to assemble in a single location.

NOW, THEREFORE, BE IT RESOLVED BY THE HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION:

1. The Commission reaffirms its findings, determinations, authorizations and pledge of revenues set forth in the Initial Bond Authorizing Resolution, hereby approves this Resolution in order to supplement the Initial Bond Authorizing Resolution to approve certain details for the issuance and sale of the initial series of Toll Revenue Bonds, and authorizes and approves the issuance of the TIFIA Series 2021 Toll Revenue Bond under the Master Toll Indenture.

2. The Commission is authorized to enter into the TIFIA Toll Loan Agreement to obtain a secured loan from the TIFIA Lender in the initial principal amount of up to \$345,000,000, which amount may be increased from time to time, to the extent permitted under the TIFIA Toll Loan Agreement, to reflect the amount of interest on the disbursed amount of the loan that is not currently paid by the Commission.

3. The Commission authorizes and directs the Executive Director and the Chair of the Commission, either of whom may act, to develop, negotiate and finalize, with the advice of the Financial Advisor, Bond Counsel and the Commission’s general counsel, the structure, terms and conditions of the TIFIA Series 2021 Toll Revenue Bond, including, without limitation, its series designation, dated date or dates, principal amount, interest rate or rates, maturity date or dates, redemption and prepayment provisions, and sales price, subject to the following parameters and conditions:

- (i) the TIFIA Series 2021 Toll Revenue Bond shall be issued in accordance with the form and requirements of the Master Toll Indenture and the First Series Supplement (as finalized in accordance with the terms of this Resolution);
- (ii) the original principal amount of the TIFIA Series 2021 Toll Revenue Bond shall not exceed \$345,000,000, subject to increase as set forth above;

- (iii) the interest rate on the TIFIA Series 2021 Toll Revenue Bond shall not exceed 3.25%; provided that, upon the occurrence and during the continuance of a payment default, the interest rate with respect to any overdue principal amount shall be the applicable default rate specified in the TIFIA Toll Loan Agreement;
- (iv) the TIFIA Series 2021 Toll Revenue Bond shall have a final maturity date not later than 40 years from its dated date; and
- (v) the amount of funds to transfer from the “General Fund” established under the Commission’s existing Master Indenture with respect to the Hampton Roads Transportation Fund to the Revenue Stabilization Fund, the Debt Service Reserve Fund and the Major Maintenance and Renewal Fund (together, the “HRTF Transfers”) will not exceed the applicable amounts set forth in Commission Resolution 2021 – 05 without further approval of the Commission.

4. The Toll Bond Documents are approved; the Chair or Vice Chair of the Commission, either of whom may act (the “HRTAC Representative”), is authorized to execute and deliver the Toll Bond Documents on the Commission’s behalf, with such changes, insertions or omissions (not inconsistent with the parameters in Sections 2 and 3 above) as may be finalized by the Executive Director or Chair of the Commission in accordance with the terms of this Resolution with the advice of the Financial Advisor, Bond Counsel and the Commission’s general counsel. Such authorization and approval shall be evidenced conclusively by the execution and delivery of the finalized Bond Documents by the HRTAC Representative. Each HRTAC Representative and the Executive Director are appointed as the “Borrower’s Authorized Representative” under the TIFIA Loan Agreement.

5. Following a competitive solicitation process as previously authorized, the Commission ratifies the appointment of U.S. Bank National Association as the trustee under the Master Toll Indenture and each Series Supplement thereunder, subject to removal and replacement in accordance with the terms of the Master Toll Indenture.

6. In connection with the sale of the TIFIA Series 2021 Toll Revenue Bond, (i) the HRTAC Representative is authorized and directed to take all necessary or proper steps to have such final obligations prepared in accordance with the terms of the Master Toll Indenture and the First Series Supplement and to execute the TIFIA Series 2021 Toll Revenue Bond by manual or facsimile signature, (ii) the Executive Director is authorized to countersign the TIFIA Series 2021 Toll Revenue Bond by manual or facsimile signature, and (iii) any such official is authorized to deliver the TIFIA Series 2021 Toll Revenue Bond to the purchaser upon receipt of the purchase price therefor or satisfaction of the conditions for the purchase therefor.

7. The HRTAC Representative and the Executive Director, either of whom may act, is authorized and directed to execute, deliver and file all certificates and documents, and take all further action, as he or she may consider necessary or appropriate in accordance with the terms of this Resolution in connection with the issuance and sale of the TIFIA Series 2021 Toll Revenue Bond.

8. The Executive Director is authorized to utilize the State Non-Arbitrage Program of the Commonwealth of Virginia (“SNAP”) in connection with the investment of proceeds of the

TIFIA Series 2021 Toll Revenue Bond, if the Executive Director determines, with the advice of the PFM Asset Management LLC, as investment advisor, that the utilization of SNAP is in the best interest of the Commission and permitted by the Toll Bond Documents. The Commission acknowledges that the Treasury Board of the Commonwealth is not, and shall not be, in any way liable to the Commission in connection with SNAP, except as otherwise provided in the standard form SNAP Contract utilized by state and local governmental entities within the Commonwealth.

9. The Executive Director and the Commission’s staff are further authorized to take such actions as may be necessary or appropriate to provide for the deposit and investment of funds to carry out the Commission’s purposes in accordance with the Commission’s adopted budget, the Master Toll Indenture and the HRTAC Act, both prior to and following the issuance of the TIFIA Series 2021 Toll Revenue Bond, including without limitation, HRTF Transfers, the provision for payment of debt service on the TIFIA Series 2021 Toll Revenue Bond, the establishment and replenishment of reserves, and the deposit and investment of the proceeds of the TIFIA Series 2021 Toll Revenue Bond and Commission revenues in the various funds and accounts established by the Master Toll Indenture and the First Series Supplement or any other supplemental indenture. Any of such Series Supplement or supplemental indenture may have a different and additional numbered supplemental designation if necessary, desirable or in connection with the issuance of the TIFIA Series 2021 Toll Revenue Bond.

10. Each HRTAC Representative and the Executive Director is authorized to execute and deliver on the Commission’s behalf such other instruments, documents or certificates, and to do and perform such further things and acts, as he or she shall deem necessary or appropriate to carry out in accordance with the terms of this Resolution the transactions authorized by this Resolution or contemplated by the Master Toll Indenture or any supplement thereto. Any of the foregoing previously done or performed by any officer or authorized representative of the Commission is in all respects approved, ratified and confirmed.

11. The Commission confirms the findings and determinations contained in the recitals to this Resolution setting forth the reason for the need to meet by electronic means without requiring members of the Commission to physically assemble at one location during the current declared state of emergency by the Governor of the Commonwealth arising from COVID-19.

12. This Resolution shall take effect immediately.

* * * * *

The undersigned hereby certify that this is a true and correct copy of a resolution duly adopted at a meeting of the Hampton Roads Transportation Accountability Commission held on June __, 2021.

Chair, Hampton Roads Transportation
Accountability Commission

Vice-Chair, Hampton Roads Transportation
Accountability Commission

MASTER INDENTURE

between

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

and

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

Dated as of _____ 1, 2021

**Hampton Roads Transportation
Accountability Commission**

Toll Roads System Revenue Bonds

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This **MASTER INDENTURE**, dated as of _____ 1, 2021 (this “**Master Indenture**”), between the **HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a body politic and a political subdivision of the Commonwealth of Virginia (“**HRTAC**” or the “**Commission**”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States of America, as trustee (together with any successor thereto the “**Trustee**”);

WITNESSETH:

WHEREAS, HRTAC is a body politic and a political subdivision of the Commonwealth of Virginia (the “**Commonwealth**”);

WHEREAS, pursuant to Va. Code § 33.2-2612, as set forth in Chapter 26, Title 33.2 (the “**HRTAC Act**”) of the Code of Virginia of 1950, as amended (the “**Virginia Code**”), the Commission is empowered to impose and collect tolls on high-occupancy toll lanes on Interstate 64 in the vicinity of the interchange of Interstate 64 and Jefferson Avenue in Newport News to the Bowers Hill interchange of Interstate 64, Interstate 264, and Interstate 664 in Chesapeake (further described and defined herein as the “**Express Lanes Network**”), provided that such tolls shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the Express Lanes Network and may only be imposed on a portion of the Express Lanes Network that has been designated as high-occupancy toll lanes by the Commonwealth Transportation Board (the “**CTB**”) pursuant to Virginia Code § 33.2-502, with the amount of the tolls to be varied by congestion level;

WHEREAS, under the provisions of Virginia Code § 33.2-2612, all such tolls may be used for programs and projects that are reasonably related to or that benefit users of the Express Lanes Network and, without limiting the foregoing, may be used to pay the debt service on and related reserves and financing costs for, and pledged to support, bonds and other evidences of indebtedness the proceeds of which are or were used for construction or improvement of the Express Lanes Network;

WHEREAS, the HRTAC Act, in addition to authorizing the imposition of tolls on the Express Lanes Network and the various segments, phases and portions thereof, authorizes the Commission pursuant to Va. Code § 33.2-2607 to impose and collect tolls in amounts established by the Commission for the use of any new or improved highway, bridge or tunnel, to increase capacity on such facility or to address congestion within Planning District 23, as long as such facilities are constructed by the Commission (i) with federal, state, or local funds, (ii) solely with revenues of the Commission, or (iii) with revenues under the control of the Commission;

WHEREAS, the CTB has designated segments of the Express Lanes Network as high-occupancy toll lanes;

WHEREAS, HRTAC, CTB and the Virginia Department of Transportation (“**VDOT**” or the “**Department**”), an agency of the Commonwealth of Virginia, have entered into a Master Agreement for Development and Tolling Of Hampton Roads Express Lanes Network dated August 18, 2020 (the “**Master Tolling Agreement**” or “**MTA**”) in order to coordinate their efforts and actions with respect to, and to establish protocols and procedures to govern, among other

things, (i) the procurement, financing, and delivery of the additional facilities to support the Express Lanes Network, including the design, construction, installation, testing and implementation of the tolling infrastructure and system for the Express Lanes Network, as well as its operation and maintenance and that of the HOT Lanes and the Express Lanes Corridor (as such terms are defined below), (ii) the tolling policies applicable to the Express Lane Network, (iii) the imposition, collection, and enforcement of tolls on the Express Lanes Network, and (iv) the uses of Toll Revenues (defined below) and the proceeds of the Obligations (defined below);

WHEREAS, the Hampton Roads Transportation Planning Organization (the “**HRTPO**”), in its Resolution No. 2020-04, identified and adopted the Express Lanes Network as a component of the Regional Priority Projects (added to its current version dated January 2020) identified by the HRTPO in its 2040 Long-Range Transportation Plan to collectively provide the greatest impact on reducing congestion for the greatest number of citizens residing in Hampton Roads and requested that HRTAC pursue development of a funding, development, and implementation plan for the Express Lanes Network to be advanced by HRTAC based on project readiness;

WHEREAS, pursuant to the requirements set forth in the Master Tolling Agreement and the HRTAC Act, the Commission has determined to provide for the imposition of tolls on the initial segments or phases of the Express Lane Network in amounts required to provide Toll Revenues to make payments of debt service on the Obligations, as well as to satisfy related payment and other obligations related thereto;

WHEREAS, Section 33.2-2606 of the HRTAC Act authorizes and empowers HRTAC to issue bonds and other evidences of debt, including the Obligations, and further provides that the provisions of Article 5 (Section 33.2-1920 *et seq.*) of Chapter 19 of Title 33.2 of the Virginia Code shall apply, *mutatis mutandis*, to the issuance of such bonds, Obligations and other evidences of debt for any of the Commission’s purposes;

WHEREAS, Section 33.2-1920 of the Virginia Code permits the Obligations to be payable from and secured by a pledge of all or any part of the revenues, moneys or funds of HRTAC as specified in a resolution adopted or indenture entered into by HRTAC, but that such Obligations shall not constitute a debt of the Commonwealth or any political subdivision thereof (including any Member Locality (defined below)) other than HRTAC, and that such Obligations shall not constitute an indebtedness within the meaning of any debt limitation or restriction, and only the Commission shall be liable thereon as provided under Section 33.2-1920 of the Virginia Code;

WHEREAS, HRTAC has found and determined that the purposes of HRTAC and the HRTAC Act will be furthered by providing, through the execution and delivery of this Master Indenture, for the financing and refinancing of the costs of the Toll Roads System (defined below), including the Express Lanes Network, through the issuance from time to time of Obligations payable from and secured by the Toll Revenues and certain other sources of revenues available to the Commission for such purpose;

WHEREAS, the Virginia Code specifies that the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code are to be deposited to the Hampton Roads Transportation Fund (the “**HRTF**”);

WHEREAS, as provided in the HRTAC Act, the amounts in the HRTF shall be used solely for the purposes of (i) funding new construction projects on new or existing highways, bridges, and tunnels in the Member Localities, giving priority to projects expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within the Member Localities, and (ii) paying HRTAC's administrative and operating expenses as provided in its annual budget;

WHEREAS, the Commission has previously issued its HRTF revenue bonds pursuant to a Master Indenture, dated as of February 1, 2018, between the Commission and Wilmington Trust, National Association (the "**HRTF Bond Trustee**") as supplemented by a First Supplemental Indenture, dated as of February 1, 2018, a Second Supplemental Indenture, dated as of December 1, 2019, a Third Supplemental Indenture, dated as of December 15, 2019, and a Fourth Supplemental Indenture, dated as of October 1, 2020 (together, and including such supplemental or successor indentures as may be entered into from time to time, the "**HRTF Indenture**"), in order to provide for the funding and refunding of such construction projects, all as more fully described in such HRTF Indenture;

WHEREAS, the Obligations issued hereunder are issued and secured separately from the HRTF revenue bonds;

WHEREAS, the Commission has determined to enter into this Master Indenture and one or more Supplemental Indentures (collectively, the "**Indenture**") to provide for (i) the issuance from time to time of Obligations designated as "Hampton Roads Transportation Accountability Commission Toll Roads System Revenue Bonds Senior Lien Bonds" (the "**Senior Lien Bonds**"), to establish and declare the terms and conditions upon which the Senior Lien Bonds and other obligations secured by Toll Revenues and other sources of funds shall be issued and secured and to secure the payment of the principal, premium (if any), and interest on the Senior Lien Bonds and other Obligations secured by Toll Revenues on parity with the Senior Lien Bonds (the "**Parity Obligations**" and, together with the Senior Lien Bonds, the "**Senior Lien Obligations**"); (ii) the issuance of Obligations designated as "Hampton Roads Transportation Accountability Commission Toll Roads System Revenue Second Lien Obligations" (the "**Second Lien Obligations**"), to establish and declare the terms and conditions upon which the Second Lien Obligations shall be issued and secured and to secure the payment of the principal, premium (if any), and interest on the Second Lien Obligations, and (iii) the issuance of Obligations designated as "Hampton Roads Transportation Accountability Commission Toll Roads System Revenue Subordinate Obligations" (the "**Subordinate Obligations**"), to establish and declare the terms and conditions upon which the Subordinate Obligations shall be issued and secured and to secure the payment of the principal, premium (if any), and interest on the Subordinate Obligations;

WHEREAS, the execution and delivery of this Master Indenture has in all respects been duly and validly authorized by resolution duly passed and approved by the Commission; and

WHEREAS, the Commission certifies that all acts that are necessary to make the Obligations, when executed by the Commission and authenticated and delivered by the Trustee, duly issued and the valid, legal and binding obligations of the Commission payable in accordance with their terms, and to constitute this Master Indenture a valid and binding agreement of the

parties hereto, have been done and taken, and the execution and delivery of this Master Indenture have been duly authorized;

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

The Commission, to secure the payment of the Obligations as the same become due and payable, whether at maturity or by prior redemption, and the performance and observance of all of the covenants and conditions herein contained, and in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Obligations by the Holders thereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commission does hereby grant, mortgage, grant a security interest in, assign, transfer in trust, and pledge to the Trustee, and to its successors in trust hereunder, and to them and their assigns forever, all rights, title, interest and privileges of the Commission in, to and under (i) the Toll Revenues, (ii) all interest or other income from investment of money in the Funds and Accounts established hereunder (excluding the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument), (iii) all Swap Revenues, and (iv) all amounts (including the proceeds of Obligations) held in each Fund and Account established under this Indenture (except for amounts on deposit in the Rebate Fund and amounts on deposit in any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument);

TO HAVE AND TO HOLD all the same (herein called the “Trust Estate”) with all privileges and appurtenances hereby granted and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and to them and their assigns forever;

IN TRUST NEVERTHELESS, upon the terms and trusts herein set forth,

FIRST: for the equal and proportionate benefit and security of all Senior Lien Obligations, all of which, regardless of the time or times of their delivery, maturity or other due date, shall be of equal rank without preference, priority or distinction as to lien or otherwise of any Senior Lien Obligation over any other Senior Lien Obligation, except as otherwise permitted by or provided for in this Indenture or in a Supplemental Indenture; provided, that any funds held by the Trustee for the payment of specific Senior Lien Obligations which are deemed to have been paid pursuant to the provisions of Article X and any funds deposited with the Trustee hereunder specifically to be held in escrow or otherwise to provide additional security or an additional source of payment for specified Senior Lien Obligations shall be held and used only to pay or provide security for the Senior Lien Obligations for which such deposit was made and shall not be held as security on a parity for any other Senior Lien Obligations; and provided further, that the Trustee shall apply the Trust Estate hereunder to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to the Senior Lien Obligations and for the purposes and uses and in the order of priority set forth herein prior to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to Second Lien Obligations, or Subordinate Obligations; and

SECOND: subject to the prior security interest in the Trust Estate pledged for the security and payment of the Senior Lien Obligations, for the equal and proportionate benefit and security of all Second Lien Obligations, all of which, regardless of the time or times of their delivery,

maturity or other due date, shall be of equal rank without preference, priority or distinction as to lien or otherwise of any Second Lien Obligation over any other Second Lien Obligation, except as otherwise permitted by or provided for in this Indenture or in a Supplemental Indenture; provided, that any funds held by the Trustee for the payment of specific Second Lien Obligations that are deemed to have been paid pursuant to the provisions of Article X and any funds deposited with the Trustee hereunder specifically to be held in escrow or otherwise to provide additional security or an additional source of payment for specified Second Lien Obligations shall be held and used only to pay or provide security for the Second Lien Obligations for which such deposit was made and shall not be held as security on a parity for any other Second Lien Obligations; and provided further, that the Trustee shall apply the Trust Estate hereunder to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to the Second Lien Obligations and for the purposes and uses and in the order of priority set forth herein subordinate to the payment of the Senior Lien Obligations but prior to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to Subordinate Obligations and other Obligations; and

THIRD: subject to the security interest in the Trust Estate pledged for the security and payment of the Senior Lien Obligations and the Second Lien Obligations, for the equal and proportionate benefit and security of all Subordinate Obligations, all of which, regardless of the time or times of their delivery, maturity or other due date, shall be of equal rank without preference, priority or distinction as to lien or otherwise of any Subordinate Obligation over any other Subordinate Obligation, except as otherwise permitted by or provided for in this Indenture or in a Supplemental Indenture; provided, that any funds held by the Trustee for the payment of specific Subordinate Obligations which are deemed to have been paid pursuant to the provisions of Article X and any funds deposited with the Trustee hereunder specifically to be held in escrow or otherwise to provide additional security or an additional source of payment for specified Subordinate Obligations shall be held and used only to pay or provide security for the Subordinate Obligations for which such deposit was made and shall not be held as security on a parity for any other Subordinate Obligations; and provided further, that the Trustee shall apply the Trust Estate hereunder to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to the Subordinate Obligations and for the purposes and uses and in the order of priority set forth herein subordinate to the payment of the Senior Lien Obligations and the Second Lien Obligations but prior to the payment of the principal of and interest on, or Maturity Value of, and other payments with respect to other Obligations;

PROVIDED, HOWEVER, that if the Commission, its successors or assigns, shall well and truly pay, or cause to be paid, or provide fully for payment as herein provided of the principal of the Obligations and the interest due or to become due thereon (together with premium, if any), at the time and in the manner set forth in the Obligations according to the true intent and meaning thereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient for payment of the entire amount due or to become due thereon as herein provided, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, then this Indenture and the rights hereby granted shall cease, terminate and be void except as otherwise provided herein.

THIS INDENTURE FURTHER WITNESSETH, and it is expressly declared, that all Obligations issued and secured hereunder are to be issued, authenticated and delivered and all payments, revenues, income and funds hereby pledged and assigned, and are subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Commission has agreed and covenanted, and does hereby covenant and agree with the Trustee, for the benefit of the Owners from time to time of the Obligations issued hereunder and the Secured Creditors, as follows:

ARTICLE I DEFINITIONS

Section 1.01 Definitions. In addition to terms elsewhere defined in this Indenture, the following terms shall have the following meanings unless the context or use clearly indicates another meaning. These definitions shall apply to the singular and plural forms of these defined terms.

“Acceptable Credit Rating” means, with respect to any Reserve Facility Provider and any Credit Provider, (i) the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Reserve Facility Provider or Credit Provider executes, delivers or issues a Credit Support Instrument, “A”, “A2” or the equivalent rating from any Rating Agency that provides a rating on such Reserve Facility Provider’s or Credit Provider’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Reserve Facility Provider or Credit Provider, as applicable, and (ii) while the Obligation in the form of the TIFIA Loan is Outstanding, the applicable requirements in the definition of Acceptable Credit Rating set forth in the TIFIA Loan Agreement.

“Account” means each account established in accordance with the terms of this Indenture.

“Accreted Value” means, with respect to any Capital Appreciation Obligations or Convertible Capital Appreciation Obligations, the principal amount thereof plus the interest accrued thereon at and prior to the maturity or earlier redemption thereof, in the case of a Capital Appreciation Obligation, or at and prior to the date of conversion of such Obligation to a Current Interest Obligation, in the case of a Convertible Capital Appreciation Obligation, compounded on the basis of a 360-day year of twelve 30-day months at the approximate interest rate thereon on each compounding date specified therein. The Accreted Value of an Obligation at any date of computation shall be an amount equal to the principal amount of such Obligation plus interest accrued thereon from the date of issuance, such interest to accrue at the rate *per annum* established as provided in a Supplemental Indenture and be compounded periodically, plus, if such date of computation shall not be a compounding date, the ratable portion of the difference between the Accreted Value computed as of the immediately preceding compounding date (or the date of issuance thereof if the date of computation is prior to the first compounding date succeeding the date of issuance) and the Accreted Value computed as of the immediately succeeding compounding date, calculated based on the assumption that the Accreted Value increases during any period in equal daily amounts (with straight-line interpolation between compounding dates). Notwithstanding the foregoing, interest on the TIFIA Loan shall accrue and compound in accordance with the terms of the TIFIA Loan Agreement.

“Additional Toll Roads System Cost Payment Fund ” means the Fund by that name created pursuant to Section 5.02.

“Additional Tolled Lanes” means any lane, other than those lanes that are already part of the Express Lanes Initial Project, on I-64 or other roadways within Hampton Roads that (i) is part of a segment that has been expanded, constructed, or improved with “Commission-Controlled Money” (as defined in the MTA), or (ii) would be within the Hampton Roads Beltway (as defined in the MTA), if any, added under the provisions of the MTA.

“Agency Obligations” means senior debt obligations of U.S. government-sponsored agencies, corporations, and enterprises that are not backed by the full faith and credit of the U.S. government, including, but not limited to, Federal Home Loan Mortgage Corporation debt obligations, Farm Credit System consolidated system wide bonds and notes, Federal Home Loan Banks consolidated debt obligations, Federal National Mortgage Association debt obligations, Student Loan Marketing Association debt obligations, Tennessee Valley Authority debt obligations, Resolution Funding Corporation debt obligations (including principal and interest strips), and U.S. Agency for International Development guaranteed notes (including stripped securities).

“All-in Cost Coverage Ratio” means, for any Calculation Period, the ratio of (a) (i) projected Net Revenue for such Calculation Period, plus amounts on deposit in the Restricted Account in the General Reserve Fund that are not programmed or committed for any other purpose and amounts on deposit in the Unrestricted Account in the General Fund to (b) (i) aggregate Annual Debt Service with respect to all Obligations for such Calculation Period plus (ii) the Major Maintenance and Renewal Fund Required Amount for such Calculation Period; provided that the Major Maintenance and Renewal Fund Required Amount, for purposes of the foregoing calculation, shall be decreased by amounts during any Fiscal Year that are (y) paid by HRTAC for the purpose of funding or pre-funding Major Maintenance and Renewal Fund Permitted Expenditures that are in excess of required HRTF Transfers under this Indenture, and (z) paid by VDOT for the purpose of funding or pre-funding Major Maintenance and Renewal Fund Permitted Expenditures.

“Annual Debt Service” means the amount of payments due on the applicable Outstanding Obligations for any Calculation Period, as calculated by the Commission, utilizing the following assumptions about payments on such Obligations (and if more than one such assumption may apply, using the relevant assumptions selected by the Commission):

(i) in determining the principal amount of an Obligation due in each year, payment shall be assumed to be made in accordance with the amortization schedule established for such Obligation, including any minimum sinking fund or account payments;

(ii) with respect to Balloon Maturities, the principal of and interest on such Series of Obligations may be treated as if the amount of principal which would be payable in such Calculation Period if such principal were amortized from the date of incurrence thereof over a period of twenty (20) years (or the actual number of years over which such Series of Obligations is being amortized, if greater than twenty (20) years, but in no event greater than forty (40) years) on a level debt service basis at a Certified Interest Rate;

(iii) if the Obligation is supported by a Credit Support Instrument, principal may be treated as if it were due based upon the level amortization of such principal over the maximum term of repayment of borrowings under such Credit Support Instrument;

(iv) if an Outstanding Obligation bears a variable interest rate, the interest rate on such Obligations shall be assumed to be a Certified Interest Rate; provided, however, while the Obligation in the form of the TIFIA Loan is Outstanding, if an Outstanding Obligation bears a variable interest rate, the interest rate shall be calculated in accordance with the TIFIA Loan Agreement;

(v) if Obligations are variable interest rate obligations, the interest on which is excluded from gross income for federal income tax purposes, then such Obligations shall be assumed to bear interest at a Certified Interest Rate; provided, however, while the Obligation in the form of the TIFIA Loan is Outstanding, if an Outstanding Obligation bears a variable interest rate, the interest on which is excluded from gross income for federal income tax purposes, then such Obligations shall be assumed to bear interest at an interest rate calculated in accordance with the TIFIA Loan Agreement;

(vi) if Obligations are variable interest rate obligations the interest on which is included in gross income for federal income tax purposes, then such Obligations shall be assumed to bear interest at a Certified Interest Rate; provided, however, while the Obligation in the form of the TIFIA Loan is Outstanding, if an Outstanding Obligation bears a variable interest rate, the interest on which is included in gross income for federal income tax purposes, then such Obligations shall be assumed to bear interest at an interest rate calculated in accordance with the TIFIA Loan Agreement;

(vii) if Obligations are part of a Commercial Paper Program, the principal of such Obligations may be treated as if such principal were due based upon a 30-year level amortization of debt service on such Obligations from the date of calculation and the interest on such Obligations shall be calculated as if such Obligations were variable interest rate Obligations;

(viii) if the variable interest on any Obligation plus the variable payments due to the Commission and fixed payments due from the Commission under a Swap designated by the Commission are treated by the Commission as synthetic fixed rate debt, the variable interest rate Obligation may be treated as bearing such synthetic fixed rate for the duration of the synthetic fixed rate period;

(ix) if the fixed interest on any Obligation plus the fixed payments due to the Commission and variable payments due from the Commission under a Swap designated by the Commission are treated by the Commission as synthetic variable rate debt, the fixed interest rate Obligation may be treated as bearing such synthetic variable rate for the duration of the synthetic variable rate and such synthetic variable rate shall be calculated using the principles of clauses (iii), (iv) or (v) hereof;

(x) if any of the Obligations are Short-Term/Put Obligations or Bond Anticipation Obligations, the principal of such Obligations may be treated as if such principal were due based

upon a 30-year level amortization of debt service on such Obligations from the date of calculation and the interest on such Obligations may be calculated as if such Obligations were variable interest rate Obligations; provided, however, while any Obligation in the form of a TIFIA Loan is Outstanding, if a Series of Short-Term/Put Obligations or Bond Anticipation Obligations is intended to be paid with proceeds of a draw on the TIFIA Loan Agreement, the payment terms contained in the corresponding TIFIA Loan Agreement shall be utilized for purposes of calculating Annual Debt Service with respect to such Series of Bond Anticipation Obligations;

(xi) principal and interest payments on Obligations may be excluded (a) to the extent such payments are to be paid from amounts (from sources other than Revenues) then currently on deposit with the Trustee or another fiduciary in escrow specifically and irrevocably therefor, and (b) to the extent that such payments are to be paid from capitalized interest or other amounts held by the Trustee or another fiduciary specifically to pay such principal or interest (from sources other than Revenues);

(xii) if any of the Obligations are, or upon issuance will be, obligations for which the Commission is entitled to receive Subsidy Payments, as evidenced by an Opinion of Bond Counsel delivered with respect to such Obligations, such Obligations may be treated as bearing an interest rate equal to the rate of interest borne or assumed to be borne, as applicable, by the Obligations for the period of determination minus a rate equal to the Subsidy Payments to which the Commission is entitled for such period;

(xiii) any collateral postings and payment obligation under an Obligation that was or is optional or contingent (such as the obligation to make a termination payment under a Swap), whether or not the option is exercised or the contingency occurs, and any payments that are not scheduled payments, may be excluded;

(xiv) with respect to any Credit Support Instrument or Reserve Facility, (i) to the extent that such Credit Support Instrument or Reserve Facility has not been used or drawn upon, the principal and interest relating to such Credit Support Instrument or Reserve Facility shall not be included in Annual Debt Service, and (ii) to the extent that the Commission has reimbursed a Credit Provider or Reserve Facility Provider for a drawing on a Credit Support Instrument or Reserve Facility to pay principal or interest on Obligations that is already included in Annual Debt Service, only the portion of the reimbursement payment that is in excess of the payment of principal and interest paid from the drawing shall be included in Annual Debt Service; and

(xv) with respect to the TIFIA Loan, Annual Debt Service on such Obligations shall include only TIFIA Mandatory Debt Service [; provided, that in the case of determinations required for the issuance of additional Obligations, the TIFIA Loan shall include both TIFIA Scheduled Debt Service and TIFIA Mandatory Debt Service.].

“Annual Operating Budget” means the annual budget required by Section 6.04 hereof.

“Applicable Revolving Account Costs” means non-recurring costs that VDOT has advanced (or will advance) out of its toll facilities revolving account with respect to the Toll System Network Project, such costs to be paid by the Commission to VDOT from Revenues under the provisions of, and as defined in, the Master Tolling Agreement.

“Authorized Denominations” means, with respect to a Series of Obligations, the denomination or denominations designated as such in a Supplemental Indenture providing for the issuance of such Obligations.

“Authorized Representative” means (i) the Chair, Vice Chair or Executive Director of the Commission, and (ii) any other commissioner, officer or employee of the Commission authorized at the time by resolution of HRTAC to act on behalf of the Commission as set forth in a Certificate of the Commission filed with the Trustee, which Certificate shall contain such commissioner’s, officer’s, or employee’s specimen signature.

“Balloon Maturities” means, with respect to any Series of Obligations, 25% or more of the principal of which matures on the same date or within a Fiscal Year, that portion of such Series which matures on such date or within such Fiscal Year. For purpose of this definition, the principal amount maturing on any date shall be reduced by the amount of such Obligations scheduled to be amortized by prepayment or redemption prior to their stated maturity date. Commercial paper, Bond Anticipation Obligations or other Short-Term/Put Obligations shall not be Balloon Maturities. For purposes of applying any debt service coverage test (except with respect to the issuance of additional Obligations subsequent to the initial issuance of Obligations under this Indenture), Balloon Maturities shall be ignored.

“Bankruptcy Related Event” means (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Commission or any of its debts, or of a substantial part of the assets of the Commission, under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Commission for a substantial part of the assets of the Commission, and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Commission shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Commission or for a substantial part of the assets of the Commission, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing; or (c) (i) all or a substantial part of the Trust Estate shall be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the lien thereon securing any Obligations, or (ii) all or a substantial part of the Trust Estate shall be transferred pursuant to a sale or disposition of such Trust Estate in lieu of foreclosure.

“Beneficial Owner” means, with respect to any Book-Entry Obligation, the beneficial owner of such Book-Entry Obligation as determined in accordance with the applicable rules of the Securities Depository for such Book-Entry Obligations.

“Bond Anticipation Obligations” means Obligations issued in anticipation of the sale of a Series of Obligations in a principal amount not exceeding the principal amount of such Series of Obligations and payable from the proceeds of the sale of the Series of Obligations in anticipation of which such Bond Anticipation Obligations are issued, which may be payable, in whole or in part, from Toll Revenues, at the discretion of the Commission, as set forth in a Supplemental Indenture.

“Bond Counsel” means a firm of nationally-recognized attorneys-at-law experienced in legal work relating to the issuance of municipal bonds selected by the Commission.

“Bond Obligation” means, as of any given date of calculation, (a) with respect to any Outstanding Current Interest Obligation, the principal amount of such Obligation, and (b) with respect to any Outstanding Capital Appreciation Obligation or Convertible Capital Appreciation Obligation, the Accreted Value thereof.

“Bond Register” means the registration books for the ownership of Obligations maintained by the Trustee pursuant to Section 2.08.

“Bondholder” or **“Holder”** or **“Owner”** means the record owner of any Obligation shown on the books of registration kept by the Trustee, which, during any period when such Obligation is a Book-Entry Obligation, shall be the Securities Depository or its Nominee.

“Book-Entry Obligations” means Obligations issued under a book-entry only depository system as provided in Section 2.13.

“Business Day” means any day, other than a Saturday, Sunday or other day on which the Government or banks are authorized or obligated by law or executive order to be closed in the Commonwealth or the State of New York or in any city in which the Principal Office of the Trustee or, with respect to any Obligations secured by a Credit Support Instrument, the office where draws are to be made on a Credit Provider is located.

“Calculation Date” means each June 30 and December 31, commencing with the first such date following the Substantial Completion Date.

“Calculation Period” means a period of consecutive twelve (12) months.

“Capital Appreciation Obligations” means the Obligations designated as Capital Appreciation Obligations in the Supplemental Indenture providing for the issuance of such Obligations and on which interest is compounded and paid at maturity or on a redemption date.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America.

“Certificate of the Commission” means an instrument in writing signed by an Authorized Representative of the Commission.

“Certified Interest Rate” means a fixed rate of interest, determined by a qualified municipal adviser or investment bank with expertise in municipal bonds and selected by the Commission, and determined based on the amortization and credit rating of the debt to which such interest rate is being applied.

“Code” means the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder.

“Commercial Paper Program” means a program of short-term Obligations (secured, at the option of the Commission, on a parity with Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations) having the characteristics of commercial paper in that (i) such Obligations have a stated maturity not later than 270 days from their date of issue, and (ii) maturing Obligations of such program may be paid with the proceeds of renewal Obligations.

“Commonwealth” means the Commonwealth of Virginia.

“Commonwealth Transportation Board” or **“CTB”** means the policy board of the Commonwealth, with the power and authority set forth in Article 4, Chapter 15, Title 33.2 of the Virginia Code, as amended and in effect from time to time, or successor entity.

“Completion Obligations” means any Obligations, in an aggregate principal amount not to exceed 10% of the aggregate principal amount of Obligations originally incurred by the Commission to finance a Toll System Network Project, issued for the purpose of financing the completion of such Toll System Network Project, to the extent necessary to complete such Toll System Network Project, in the manner and scope contemplated at the time that such Obligations theretofore incurred were originally incurred, and, to the extent the same shall be applicable, in accordance with the general plans and specifications contained in a Construction Plan, with such changes as have been made in conformance with the Financing Documents pursuant to which such Obligations theretofore incurred were originally incurred. The 10% limitation is subject to the provisions of Sections 3.03(c)(3) and 3.04(e)(3) of this Master Indenture.

“Construction Plan” means the plan for transportation improvements relating to a Toll System Network Project, including projected costs, the use of Toll Revenues, and a proposed completion schedule.

“Consulting Engineer” means, [initially VDOT], and at any time thereafter means an independent engineer or engineering firm, or an affiliate thereof, experienced with planning and estimating the costs of construction, operation, maintenance, repair, and/or replacement of facilities similar to the Toll System Network Project, who is appointed by the Commission or, with the approval of the Commission, by VDOT; provided, while the Obligation in the form of the TIFIA Loan is Outstanding, such appointment is not objected to in written notice to the Commission by the TIFIA Lender within 15 Business Days after receiving written notice from the Commission of the name of the proposed engineering firm and supporting information regarding the qualifications of the proposed engineering firm.

“Continuing Disclosure Agreement” means, with respect to each Series of Obligations requiring an undertaking regarding disclosure under Rule 15c2-12, the continuing disclosure undertaking entered into by the Commission and, if applicable, the Trustee or a Dissemination Agent or both, as the same may be supplemented, modified or amended in accordance with its terms.

“Convertible Capital Appreciation Obligations” means Obligations that initially are issued as Capital Appreciation Obligations (including the Obligation in the form of the TIFIA Loan), but convert on a certain date to Obligations on which interest is paid periodically (“conversion date”). Convertible Capital Appreciation Obligations shall be Capital Appreciation Obligations until the conversion date and from and after such conversion date shall no longer be Capital Appreciation Obligations, but shall be treated as Current Interest Obligations having a principal amount equal to their Accreted Value on the conversion date; provided that the principal amount of the TIFIA Loan on a conversion date shall be determined as provided in the TIFIA Loan Agreement.

“Costs of Issuance” means all items of expense directly or indirectly payable by or reimbursable to the Commission and related to the authorization, execution, sale and delivery of Obligations, including, but not limited to, advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, financial advisor fees and expenses, underwriting fees and discounts, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of such Obligations, surety, insurance, liquidity and credit enhancements costs, and any other cost, charge or fee incurred in connection with the issuance of Obligations.

“Coverage Calculation Date” has the meaning assigned in Section 6.03(b).

“Coverage Ratio” has the meaning assigned in Section 6.03(b).

“Credit Provider” means any municipal bond insurance company, bank or other financial institution or organization or group of financial institutions or organizations that provides a Credit Support Instrument for a Series of Obligations and, that has an Acceptable Credit Rating.

“Credit Support Instrument” means a policy of insurance, letter of credit, line of credit, standby purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a Credit Provider provides credit or liquidity support with respect to, or available for, the payment of interest, principal or Purchase Price of any Series of Obligations, as the same may be amended from time to time pursuant to its terms, and any replacement therefor.

“Current Interest Obligations” means Obligations designated as Current Interest Obligations in the Supplemental Indenture providing for the issuance of such Obligations and that pay interest to the Holders thereof on a periodic basis prior to maturity. Current Interest Obligations also include Convertible Capital Appreciation Obligations after their conversion date.

“DBRS” means DBRS Limited, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “DBRS” shall be deemed to refer to any other nationally recognized

statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

“Deemed Event of Default” means an Event of Default as such term is defined in the TIFIA Loan Agreement.

“Defeasance Obligations” means noncallable (i) Agency Obligations, (ii) Government Obligations, (iii) Government Certificates, (iv) Defeased Municipal Obligations, and (v) Defeased Municipal Obligation Certificates.

“Defeased Municipal Obligation Certificates” means evidence of ownership of a proportionate interest in specified Defeased Municipal Obligations, which Defeased Municipal Obligations are held by a custodian.

“Defeased Municipal Obligations” means obligations of the Commonwealth or any county, city, town, district, authority, agency, political subdivision or other public body of the Commonwealth that are rated in the highest rating category by any Rating Agency and provision for the payment of the principal of and redemption premium, if any, and interest on which has been made by the deposit with a trustee or escrow agent of Government Obligations or Government Certificates, the maturing principal of and interest on which, when due and payable, will along with any cash held by the trustee or escrow agent provide sufficient money to pay the principal of and redemption premium, if any, and interest on such Obligations.

“Dissemination Agent” means, with respect to each Series of Obligations requiring an undertaking regarding disclosure under Rule 15c2-12, the party (which may be the Commission) acting as dissemination agent under the applicable Continuing Disclosure Agreement, or any successor dissemination agent designated in writing by the Commission and which has filed a written acceptance with the Commission and the Trustee.

“DTC” means The Depository Trust Company, New York, New York or any successor thereto.

“Electronic” means, with respect to notice, notice through the internet or through a time-sharing terminal.

“EMMA” means the Electronic Municipal Market Access website of the MSRB located at <http://emma.msrb.org>.

“Event of Default” means any of the events specified in Section 7.01.

“Excess Interest” means such interest due on a Credit Support Instrument or Reserve Facility that exceeds the interest that is otherwise due and payable to the Credit Provider or Reserve Facility Provider on the unpaid principal of and interest on the corresponding Obligations or portion thereof pursuant to this Indenture. Excess Interest shall include any related additional interest or fees.

“Express Lanes Corridor” means the I-64 corridor (together with certain connecting facilities, as applicable), located within the Member Localities and between the interchange of

Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake, together with any additional transportation corridor in which the Commission is empowered to operate an express lanes toll program.

“Express Lanes Initial Project” means the development, design, construction, right-of-way acquisition, utilities adjustment, operation and maintenance, equipping, repair, rehabilitation, reconstruction, financing, administration, or any combination of these including the establishment of reserves for such purposes, and the installation of an electronic toll collection and enforcement system, all with respect to the development, construction or equipping of Phase I of the Express Lanes Network, as depicted on Exhibit A, comprising tolled express lanes in the Express Lanes Corridor extending from Settlers Landing Road in the City of Hampton to Interstate 564 in the City of Norfolk, and including all costs, elements, segments, phases or portions of the Hampton Roads Bridge Tunnel Expansion Project that are reasonably related thereto or that benefit users of the Express Lanes Network.

“Express Lanes Network” or the **“Hampton Roads Express Lanes Network”** means a network of planned contiguous HOT lanes, in each direction, between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake, which ultimately would enable continuous HOT lane travel throughout such corridor (the foregoing constituting the “Initial Interstate 64 Express Lanes Network” or “Initial Network” as described in the MTA), as depicted on Exhibit A, and consisting of the Express Lanes Initial Project and subsequent Express Lanes Future Project(s) that comprise a segment, phase or portion of the Express Lanes Network, including but not limited to any Additional Tolled Lanes.

“Express Lanes Future Project” means the development, design, construction, right-of-way acquisition, utilities adjustment, operation and maintenance, equipping, repair, rehabilitation, reconstruction, financing, administration, or any combination of these including the establishment of reserves for such purposes, and the installation of an electronic toll collection and enforcement system, all with respect to the development, construction or equipping of subsequent phases of the Express Lanes Network following the Express Lanes Initial Project, as depicted on Exhibit A, such subsequent phases consisting of all or any of the following: (i) Phase II, comprised of Segment 1, Segment 4b, and Segment 4c), (ii) Phase III, comprised of Segment 1 (part time shoulder lanes) and Segment 4a, and (iii) Additional Tolled Lane(s), if any, added under the provisions of the Master Tolling Agreement.

“Federal Funds Rate” means, for any day, the rate *per annum* equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day.

“Fifth Supplemental HRTF Indenture” means that certain Fifth Supplemental Indenture, dated as of [] 1, 2021, which supplements and amends the HRTF Indenture.

“Financing Documents” means this Indenture, any Swaps, and any documents and/or instruments evidencing, documenting, securing or otherwise relating to any or all of the

Obligations (including each TIFIA Loan Agreement), all as the same may from time to time be amended, modified, extended, renewed and/or restated, and each other document or instrument required to be executed and delivered by the aforementioned agreements.

“Fiscal Year” means the period of twelve months terminating on June 30 of each year, or any other annual period hereafter selected and designated by the Commission as its Fiscal Year in accordance with applicable law and, if applicable, the applicable TIFIA Loan Agreement.

“Fitch” means Fitch Ratings, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

“Fund” means each fund established in accordance with the terms of this Indenture.

“Funds Transfer Certificate” means a certificate prepared by the Commission in accordance with the terms of this Indenture substantially in the form of Exhibit B attached hereto containing the certifications by the Commission required by this Indenture with respect to a requested transfer of funds from a Fund or Account.

“General Reserve Fund” means the Fund by that name created pursuant to Section 5.02. **“General Reserve Fund Release Conditions”** means the conditions set forth in Section 5.11(b).

“Government” means the United States of America and its departments and agencies.

“Government Certificates” means certificates representing an ownership interest in United States Treasury bond principal at maturity or interest coupons for accrued periods, which bonds or coupons are held in the capacity of custodian by a bank or trust company that is organized and existing under the laws of the United States or any of its states that is independent of the seller of such certificates.

“Government Obligations” means direct obligations of, or obligations the payment of the principal of and interest on which is guaranteed by, the United States of America.

“Hampton Roads Bridge Tunnel Expansion Project” means the following improvements to the I-64 corridor between the Settlers Landing interchange lying east of the I-64/I-664 interchange in the City of Hampton and the I-564 interchange in the City of Norfolk, that are intended to provide at least six lanes of capacity along such corridor: (i) the design and construction of a new tunnel generally parallel to the existing Hampton Roads Bridge-Tunnel; and (ii) the design and construction of additional highway capacity on portions of the I-64 corridor that currently have only two lanes in each direction, to include one or more lanes designated as HOT lanes and comprising a segment of the Express Lanes Initial Project.

“Hedging Obligations” means, collectively, the payment of (a) all scheduled amounts payable to the Swap Parties by the Commission under the Swaps (including interest accruing after the date of any filing by the Commission of any bankruptcy, insolvency or similar proceeding with respect to the Commission), net of all scheduled amounts payable to the Commission by such

Swap Parties, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Commission to the Swap Parties under such Swaps, net of all other indebtedness, fees, indemnities and other amounts payable by the Swap Parties to the Commission under such Swaps; provided, that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Swaps shall be made in accordance with the terms of the applicable Swaps.

“**Hedging Termination Obligations**” means the aggregate amount payable to the Swap Parties by the Commission upon the early unwind of all or a portion of the Swaps, net of all amounts payable to the Commission by such Swap Parties upon the early unwind of all or a portion of such Swaps. For the avoidance of doubt, all calculations of such amounts payable under the Swaps shall be made in accordance with the terms of the applicable Swaps.

“**Highest Priority Obligations**” means, as of any date, Senior Lien Obligations, unless and until there are no Senior Lien Obligations Outstanding hereunder, in which case it means Second Lien Obligations, unless and until there are also no Second Lien Obligations Outstanding hereunder, in which case it means Subordinate Obligations.

“**HRTAC**” or “**Commission**” means the Hampton Roads Transportation Accountability Commission, a body politic and a political subdivision of the Commonwealth.

“**HRTAC Act**” means Chapter 26, Title 33.2 of the Virginia Code, as the same may be amended from time to time, and any successor statutes, and such other provisions of law applicable to the Commission’s authority to issue Obligations to provide for the financing of the Toll Roads System or any phase, portion or segment thereof, including setting, levying and collecting tolls and other charges for such purpose.

“**HRTAC Board**” means the governing body of the Commission.

“**HOT Lanes**” means high-occupancy toll lanes or other dynamically-priced travel lane.

“**HRTF**” means, for purposes of this Indenture, amounts received in the Hampton Roads Transportation Fund established under Section 33.2-2600 of the Virginia Code from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code, as provided in the HRTAC Act, as such Virginia Code sections are in amended and in effect from time to time.

“**HRTF Funds**” means amounts made available for distribution from the HRTF Indenture as set forth in the Fifth Supplemental HRTF Indenture.

“**HRTF Eligible Costs**” means Project Costs or other use or uses of funds that may lawfully be paid with or from HRTF Funds (or the proceeds of HRTF revenue bonds) in accordance with the provisions of the HRTAC Act and the HRTF Indenture.

“**HRTF Indenture**” means that certain Master Indenture, dated as of February 1, 2018, between the Commission and Wilmington Trust, National Association (the “**HRTF Bond Trustee**”) as supplemented by a First Supplemental Indenture, dated as of February 1, 2018, a

Second Supplemental Indenture, dated as of December 1, 2019, a Third Supplemental Indenture, dated as of December 15, 2019, and a Fourth Supplemental Indenture, dated as of October 1, 2020, together with and including such supplemental or successor indentures as may be entered into from time to time.

“HRTF Repayment Fund” means the Fund by the name created pursuant to Section 5.02.

“HRTF Transfer” means any transfer or payment of HRTF Funds by or on behalf of the Commission to a Fund or Account pursuant to the provisions of this Master Indenture or any Supplemental Indenture, and including but not limited to the transfers provided for under Section 6.4 of the Fifth Supplemental HRTF Indenture.

“I-64” means Interstate 64.

“Indenture” means this Master Indenture as the same may be amended or supplemented from time to time as permitted hereby.

“Independent Certified Public Accountant” means any certified public accountant or firm of such accountants appointed by the Commission, and who, or each of whom, is independent with respect to the Commission, pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

“Insolvency Law” means the United States Bankruptcy Code, including 11 U.S.C. § 101 *et seq.*, as from time-to-time amended and in effect, and any state bankruptcy, insolvency, receivership or similar law now or hereafter in effect.

“Insurance and Condemnation Proceeds Account” means the Account by that name created within the Project Fund pursuant to Section 5.02.

“Interest Payment Date” means, with respect to a Series of Obligations, the date or dates for the payment of interest on such Obligations set forth in a Supplemental Indenture providing for the issuance of such Obligations.

“Kroll” means Kroll Bond Rating Agency, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, the term “Kroll” shall be deemed to refer to any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

“Loan Life Coverage Ratio” means the ratio of (a) the present value of all projected Revenue for the period from and including each Calculation Date to the final maturity of any TIFIA Loan or TIFIA Loans Outstanding plus amounts on deposit in the TIFIA Loan Reserve Account and the Unrestricted Account, to (b) the aggregate Outstanding principal amount of all Obligations issued hereunder on such Calculation Date, all calculated as set forth in the applicable TIFIA Loan Agreement.

“Major Maintenance and Renewal Fund” means the Fund by that name created pursuant to Section 5.02.

“Major Maintenance and Renewal Fund Permitted Expenditures” means Capital Expenditures reasonably necessary for the construction, reconstruction, preservation, replacement, renewal or modification of the toll collection facilities and equipment needed for the Toll Roads System or any segment, phase or portion thereof, constituting real or personal property, so that it remains in operating condition.

“Major Maintenance and Renewal Fund Required Amount” means, for any Calculation Period ending at the end of each Fiscal Year, commencing with the Fiscal Year following the Fiscal Year in which occurs the first funding of the Major Maintenance and Renewal Fund pursuant to a Supplemental Indenture, an amount equal to the greater of (a) \$5,000,000, and (b) the aggregate of (i) one hundred percent (100%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the following 12 month period, (ii) eighty percent (80%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next following 12 month period (*i.e.*, year 2), (iii) sixty percent (60%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding 12 month period (*i.e.*, year 3), (iv) forty percent (40%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding 12 month period (*i.e.*, year 4) and (v) twenty percent (20%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding 12 month period (*i.e.*, year 5), in each case, based on, initially, the forecast of estimated life cycle maintenance costs with respect to the toll collection facilities and equipment needed for the Toll Roads System as set forth in the base case financial model delivered to the TIFIA Lender on the effective date of the TIFIA Loan Agreement and, thereafter, based on the then-current information regarding Major Maintenance and Renewal Fund Permitted Expenditures prepared by the Commission and certified by the Consulting Engineer.

“Major M & R HRTF Cumulative Transfer Cap” means, as of a measurement date, the total of expected Major Maintenance and Renewal Fund Permitted Expenditures from such measurement date to the final maturity of Obligations, as estimated by the Consulting Engineer and initially based, using an initial measurement date in Fiscal Year 2026, on a forecast of estimated life cycle maintenance costs with respect to the toll collection facilities and equipment needed for the Toll Roads System in its then-current state. The Major M & R HRTF Cumulative Transfer Cap is subject to change based on the nature and extent of the Toll Roads System and then-current information regarding Major Maintenance and Renewal Fund Permitted Expenditures prepared by the Commission and certified by the Consulting Engineer.

“Master Indenture” has the meaning assigned in the first paragraph hereof.

“Master Tolling Agreement” or **“MTA”** means the Master Agreement for Development and Tolling Of Hampton Roads Express Lanes Network dated August 18, 2020 among HRTAC, CTB and the VDOT, as amended and in effect from time to time.

“Maturity Value,” with respect to any Capital Appreciation Obligation, shall mean the Accreted Value of such Obligation at the maturity thereof and, with respect to a Convertible Capital Appreciation Obligation, shall mean the Accreted Value of such Obligation on the conversion date.

“Maximum Annual Debt Service” means the highest amount of Annual Debt Service due on all Obligations of the Commission of the same lien ranking as the applicable additional Obligations proposed to be issued for any Calculation Period during the period from the date of such determination through the final maturity date of the applicable Obligations then Outstanding and proposed to be issued.

“Member Localities” means, collectively, each county and city located in Planning District 23, established pursuant to Chapter 42, Title 15.2, of the Virginia Code, currently consisting of the Counties of Isle of Wight, James City, Southampton and York, and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg, and any other localities that may hereafter be added to HRTAC by amendment to the Virginia Code.

“Monthly Funding Date” means the last day of each calendar month or, if such day is not a Business Day, the next preceding Business Day.

“Moody’s” means Moody’s Investors Service, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, the term “Moody’s” shall be deemed to refer to any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

“MSRB” means the Municipal Securities Rulemaking Board, and its successors and assigns. Until otherwise designated by the MSRB, filings with the MSRB are to be made through EMMA.

“Net Revenue” means, for any Fiscal Year or Calculation Period ending on a Calculation Date (a) Revenue less (b) Operation and Maintenance Expenses paid from Revenue for that period, less (c) any additional Revenue deposited to the Operation and Maintenance Reserve Fund in order to maintain the Operation and Maintenance Reserve Fund Requirement therein, and less (d) deposits to the Rebate Fund made from Revenues. In addition the following shall be excluded from the calculation of Net Revenue, (i) any extraordinary or one-time Revenues for such period, and (ii) any extraordinary or one-time expenses from Operation and Maintenance Expenses for such period, but only if and to the extent such extraordinary or one-time expenses are paid or payable from extraordinary or one-time revenues being excluded from Revenue for such period. When calculating projected Net Revenue for purposes of Sections 3.01(b), Sections 3.03 (b), and Section 6.03, Revenue shall not include the amounts received under clauses (ii) and (iii) of the definition of Toll Revenues.

“Nominee” means the nominee of the Securities Depository for the Book-Entry Obligations, in whose name such Book-Entry Obligations are to be registered. The initial Nominee shall be Cede & Co., the partnership nominee of DTC.

“Obligations” means all indebtedness of the Commission payable from Revenue and other collateral in the Trust Estate incurred or assumed by the Commission for borrowed money (including indebtedness arising under Credit Support Instruments) and all other financing obligations of the Commission relating to the Toll Roads System that, in accordance with generally

accepted accounting principles, are included as a liability on a balance sheet for the Toll Roads System books and records, including any bonds, notes, certificates or other obligations, as the case may be, and including but not limited to Bond Anticipation Obligations, commercial paper and other Short-Term/Put Obligations, authenticated and delivered under and pursuant to this Indenture as Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations. For the purpose of determining the “Obligations” payable from Revenue, Obligations that are no longer Outstanding shall be excluded.

“Operation and Maintenance Expenses” means all reasonable current expenses incurred and paid or payable by the Commission for the operation and maintenance of the toll collection facilities and equipment needed for the Toll Roads System payable from Revenue, including, without limitation, all amounts paid or payable under toll collection service agreements and similar agreements, costs for operation, maintenance and repair, consumables, payments under any lease or rental payments properly considered to be operating expenses, payments pursuant to agreements for the management of the Toll Roads System, taxes, premiums paid or payable on any insurance, payments for oversight services, all administrative, engineering and policing costs, costs for any security, toll collection and enforcement expenses, fees and expenses of the Traffic Consultant, the Trustee, each trustee of Obligations, and the TIFIA Lender, any other Secured Creditor (for the avoidance of doubt, such fees, administrative costs and expenses do not include any commitment fees, termination fees, fines or other penalties or any payments to be made to Swap Parties including Hedging Obligations and Hedging Termination Obligations), any rating agency, any insurance consultant, legal and accounting expenses, and any other reasonable and necessary expense paid or payable for the operation and maintenance of the Toll Roads System, but excluding Capital Expenditures, expenditures for rehabilitation and operational improvement projects on the Toll Roads System, Reserve Facility Costs, any costs, fees or reimbursements in respect of any Credit Support Instrument, depreciation or obsolescence charges or reserves therefore, debt service for Obligations, and any non-cash charges, such as depreciation, amortization of intangibles and other bookkeeping entries of a similar nature.

“Operation and Maintenance Fund” means the Fund by that name created pursuant to Section 5.02.

“Operation and Maintenance Fund Required Amount” means the amount described in and required to be maintained pursuant to Section 5.07.

“Operation and Maintenance Reserve Fund” means the Fund by that name created pursuant to Section 5.02.

“Operation and Maintenance Reserve Fund Requirement” means an amount equal to 25% of the amount of Operation and Maintenance Expenses projected by the Commission at such time to be due and payable in the Fiscal Year in question, as reflected in the Annual Operating Budget for such Fiscal Year, including any revisions thereto.

“Opinion of Bond Counsel” means a written opinion of Bond Counsel.

“Outstanding,” when used with reference to Obligations hereunder means all Obligations that have been issued by the Commission hereunder or pursuant hereto, except such Obligations:

(i) canceled or delivered for cancellation; (ii) deemed to be paid in accordance with Section 10.02 or any similar provisions in the constituent instruments defining the rights of the Holders of such Obligations; (iii) in lieu of which other Obligations have been authenticated under Sections 2.07 or 2.08 or any similar provisions in the constituent instruments defining the rights of the Holders of such Obligations; and (iv) to the extent described in Section 9.05, Obligations held by or for the account of the Commission.

“Parity Obligations” means obligations of the Commission that are secured by the Trust Estate on a parity with the Senior Lien Bonds.

“Participating Underwriter” means any of the original underwriters of any Series of Obligations required to comply with Rule 15c2-12.

“Permitted Investments” means, subject to the provisions of any Supplemental Indenture, any amounts held in any Fund or Account established by this Master Indenture or any Supplemental Indenture may be separately invested and reinvested by the Trustee, at the request of and as directed in writing by an Authorized Representative, in any investments that are at the time (i) legal investments for public funds of the type to be invested under Virginia law, including without limitation the Investment of Public Funds Act, Chapter 45 of Title 2.2 of the Virginia Code or any successor provision of law, the Government Non-Arbitrage Investment Act, Chapter 47 of Title 2.2 of the Virginia Code or any successor provision of law, and the Local Government Investment Pool Act, Chapter 46 of Title 2.2 of the Virginia Code or any successor provision of law, (ii) authorized by HRTAC’s Statement of Investment Policy then in effect, and (iii) structured to permit adequate liquidity to permit the purpose of such Fund or Account to be satisfied.

“Person” means any natural person, firm, partnership, association, corporation, or public body.

“Principal Office” means, with respect to the Trustee, the corporate trust office of the Trustee at [1021 East Cary Street, 18th Floor, Richmond, Virginia, 23219], Attention: [_____], and solely for purposes of the presentation of Obligations for transfer, exchange or payment, such other or additional offices as may be designated by the Trustee from time to time.

“Project Costs” means all or any part of the following with respect to a Toll System Network Project:

(a) the cost of program and project management, design, construction, right-of-way acquisition, and utilities adjustment, repair, rehabilitation and reconstruction, including, but not limited to:

(1) construction, expansion, enlargement, extension, reconstruction, restoration, repair and rehabilitation of the Toll System Network Project or any segment, phase or portion thereof (including, but not limited to, indemnity and surety bonds, permits, taxes, licenses, insurance premiums, or other municipal or governmental charges lawfully levied or assessed during construction);

- (2) the cost of acquisition of all real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for the Toll System Network Project or any segment, phase or portion thereof;
 - (3) the cost of site preparation, including demolishing or removing any structures on land so acquired and the cost of acquiring any land to which the structures may be removed;
 - (4) any cost of borings and other preliminary investigations necessary or incident to determining the feasibility or practicability of constructing the Toll System Network Project or any segment, phase or portion thereof and any cost necessary or desirable to satisfy conditions associated with the issuance of any permit for the construction thereof (including the costs of environmental related mitigation required in connection therewith);
 - (5) the cost of architectural, engineering, environmental feasibility, traffic and revenue, economic and demographic, appraisal, financial, and legal services;
 - (6) the cost of planning, investigations, studies, evaluations, plans, specifications, estimates, and administrative and other expenses that are necessary or incidental to the determination of the feasibility of constructing the Toll System Network Project or any segment, phase or portion thereof or incidental to the obtaining of construction contracts or to the construction (including construction administration and inspection), acquisition or financing thereof and that constitute capital costs;
 - (7) the cost of all machinery and equipment, vehicles, materials and rolling stock;
- (b) Costs of Issuance;
 - (c) interest on Obligations or other debt of the Commission issued for the Toll System Network Project for the period prior to and during acquisition or completion of construction (or such longer period as may be allowed by applicable law), as determined by the Commission;
 - (d) Operation and Maintenance Expenses occurring during and for a period of up to one year after acquisition or completion of construction, as determined by the Commission, provided that, if applicable, the Trustee has received an Opinion of Bond Counsel (which opinion may address either specific Operation and Maintenance Expenses or categories of Operation and Maintenance Expenses) to the effect that the treatment of such Operation and Maintenance Expenses as a Project Cost will not adversely affect the exclusion of interest on any Outstanding Obligations intended to be tax-exempt from gross income for federal income tax purposes;
 - (e) the repayment or reimbursement of any Obligation, loan or advance for any of the foregoing; and
 - (f) such other costs and expenses as are permitted by the HRTAC Act or other applicable law at the time such Obligations are issued.

“Project Fund” means the Fund by that name established pursuant to Section 5.02.

“Purchase Price” means, with respect to Obligations, the amount set forth in this Indenture as the amount to be paid when such Obligations are tendered for purchase or deemed tendered for purchase in accordance with the provisions of this Indenture.

“Rating Agency” means, as and to the extent applicable to a Series of Obligations, each of DBRS, Fitch, Moody’s, S&P, or Kroll then maintaining a rating on such Series of Obligations.

“Rating Category” means: (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier; and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

“Rebate Fund” means the Fund by that name created pursuant to Section 5.02.

“Rebate Requirement” means, subject to any Supplemental Indenture or the provisions of a Tax Certificate, the collective requirements applicable to tax-exempt bonds under Section 148(f)(2) and (3) of the Internal Revenue Code of 1986, as amended and in effect from time to time.

“Redemption Fund” means the Fund by that name created pursuant to Section 5.24.

“Representation Letter” means the letter or letters of representation from the Commission to, or other instrument or agreement with, a Securities Depository for Book-Entry Obligations, in which the Commission, among other things, makes certain representations to the Securities Depository with respect to the Book-Entry Obligations, the payment thereof and delivery of notices with respect thereto.

“Reserve Facility” means a letter of credit, surety bond or insurance policy issued to the Trustee by a bank or company licensed to issue a surety bond or insurance policy in substitution or in lieu of cash deposits in a reserve fund guaranteeing the timely payment of the principal of and interest on the Obligations supported by the Reserve Facility.

“Reserve Facility Costs” means amounts owed with respect to repayment of draws on a Reserve Facility, including interest thereon at the rate specified in the agreement pertaining to such Reserve Facility and expenses owed to the Reserve Facility Provider in connection with such Reserve Facility.

“Reserve Facility Provider” means any provider of a Reserve Facility, any successor thereto or any replacement therefor.

“Reserve Funds” means the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund and the Subordinate Obligations Reserve Fund, including any accounts and sub-accounts under any of the foregoing.

“Restricted Account” means the Account by that name created within the General Reserve Fund pursuant to Section 5.02.

“Revenue” means: (i) Toll Revenues; (ii) all interest or other income from investment of money in the Funds and Accounts established hereunder (excluding the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument); and (iii) all Swap Revenues; provided that for any calculations required by Article III hereof, “Revenue” shall not include Subsidy Payments.

“Revenue Sharing Trigger Event” means both (i) the existence of a balance in the Unrestricted Account of the General Fund greater than \$50 million, and (ii) whenever the Commission or VDOT, on behalf of or pursuant to contract with the Commission, is not actively engaged in the development of capital project programs funded in whole or in part with toll revenues in the HRTPO’s most recently adopted long-range transportation plan.

“Revenue Stabilization Fund” means the Fund by that name created pursuant to Section 5.02.

“Revenue Stabilization Fund Requirement” means an amount equal to \$10,000,000, or such other amount, if any, as may be specified by a Supplemental Indenture, with respect to a Series of Obligations.

“Reversible HOT Lanes” means the HOT lanes in the Reversible HOT Lanes Segment.

“Reversible HOT Lanes Segment” the segment of I-64 from the interchange of Interstate 64 and Interstate 264, that as of the date of execution and delivery of this Master Indenture is tolled as one or more HOT Lanes as a result of work undertaken by VDOT and funded out of the Commonwealth’s Toll Facilities Revolving Account, to convert the reversible high-occupancy vehicle (“HOV”) lanes that existed on such segment of Interstate 64 into HOT Lanes.

“Rule 15c2-12” means Securities and Exchange Commission Rule 15c2-12, adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“S&P” means Standard & Poor’s Ratings Services, a division of Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, the term “S&P” shall be deemed to refer to any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

“Second Lien Obligations” means any Obligations issued or incurred hereunder that are subordinated in right of payment and lien priority to the Senior Lien Obligations and senior in right of payment and lien priority to the Subordinate Obligations, including Second Lien Obligations in the form of or securing payment of any TIFIA Loans prior to the occurrence of a Bankruptcy Related Event; provided, however, that upon the occurrence of a Bankruptcy Related Event, Second Lien Obligations in the form of or securing payment of a TIFIA Loan shall be Senior Lien Obligations.

“Second Lien Obligations Account” means the Account by that name created within the Project Fund pursuant to Section 5.02.

“Second Lien Obligations Fund” means the Fund by that name created pursuant to Section 5.02.

“Second Lien Obligations Interest Account” means the Account by that name created within the Second Lien Obligations Fund pursuant to Section 5.02.

“Second Lien Obligations Principal Account” means the Account by that name created within the Second Lien Obligations Fund pursuant to Section 5.02.

“Second Lien Obligations Reserve Fund” means the Fund by that name created pursuant to Section 5.02.

“Second Lien Obligations Reserve Requirement” for any Second Lien Obligations means the amount, if any, specified by a Supplemental Indenture as the amount required to be held in the Second Lien Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Second Lien Obligations secured by such Fund or Account.

“Secured Creditors” means, collectively, (i) the Trustee on behalf of the Bondholders, (ii) any Swap Party, and (iii) any other trustee, holder or creditor of any Obligations.

“Securities Depository” means DTC or any other trust company or other entity that provides a book-entry system for the registration of ownership interests in securities and which is acting as security depository for Book-Entry Obligations.

“Senior Debt Service Coverage Ratio” means, for any Calculation Period, the ratio of (a) projected Net Revenue for such Calculation Period, to (b) Annual Debt Service in respect of all Senior Lien Obligations for such Calculation Period.

“Senior Lien Bonds” means the bonds or commercial paper identified as the Hampton Roads Transportation Accountability Commission Toll Revenue Senior Lien Bonds authorized by, issued in accordance with, and at any time Outstanding pursuant to, this Indenture.

“Senior Lien Obligations” means collectively, Senior Lien Bonds and Parity Obligations issued or incurred hereunder and, upon the occurrence of a Bankruptcy Related Event, Second Lien Obligations in the form of or securing payment of a TIFIA Loan.

“Senior Lien Obligations Account” means the Account by that name created within the Project Fund pursuant to Section 5.02.

“Senior Lien Obligations Fund” means the Fund by that name created pursuant to Section 5.02.

“Senior Lien Obligations Interest Account” means the Account by that name created within the Senior Lien Obligations Fund pursuant to Section 5.02.

“Senior Lien Obligations Principal Account” means the Account by that name created within the Senior Lien Obligations Fund pursuant to Section 5.02.

“Senior Lien Obligations Reserve Fund” means the Fund by that name created pursuant to Section 5.02.

“Senior Lien Obligations Reserve Requirement” for any Senior Lien Obligations means the amount, if any, specified by a Supplemental Indenture as the amount required to be held in the Senior Lien Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Senior Lien Obligations secured by such Fund or Account.

“Series” means all Obligations identified in this Indenture or any Supplemental Indenture as a separate Series.

“Short-Term/Put Obligation” means an Obligation, including any Bond Anticipation Obligation, with a stated maturity of ten years or less, the principal of which (a) is payable on demand by or at the option of the Holder at a time sooner than a date on which such principal is deemed to be payable for purposes of computing Annual Debt Service, or (b) the Commission determines on or before the date of issuance that it intends to pay from remarketing proceeds or proceeds of refunding obligations, including additional Short-Term/Put Obligations or the issuance of other Obligations.

“SIFMA Index” means Securities Industry and Financial Markets Association Municipal Swap Index as of the most recent date such index was published by the Securities Industry and Financial Markets Association or any successor thereto, or in the event such index is no longer published by the Securities Industry and Financial Markets Association or any successor thereto, such comparable replacement index as shall be published by the Securities Industry and Financial Markets Association or any successor thereto. In the event that such comparable replacement index is no longer published by the Securities Industry and Financial Markets Association or any successor thereto, an alternative index shall be selected by the Commission.

“Sinking Fund Installment” means, with respect to any Series of Obligations, each amount so designated for the Term Bonds of such Series in the Supplemental Indenture providing for the issuance of such Series of Obligations requiring payments by the Commission to be applied to the retirement of such Series of Obligations on and prior to the stated maturity date thereof.

“Specified Funding Conditions” means, with respect to the application of the Flow of Funds provisions in Section 5.03, to deposits into the Additional Toll Roads System Cost Payment Fund, the VDOT Repayment Fund, the HRTF Repayment Fund, and the Unrestricted Account in the General Fund, all of the following: (i) the balance of the Restricted Account in the General Reserve Fund as of the end of the immediately preceding Fiscal Year shall be at least equal to \$20,000,000, (ii) each of the Reserve Funds is fully funded to their required balance, (iii) the Commission shall be compliant with all covenants included in this Master Indenture and all payments, deposits and transfers required by Section 5.03(b) First through Sixteenth shall be current, (iv) the Commission shall have commenced principal payments on the first TIFIA Loan issued under the Master Indenture (unless the TIFIA Lender shall have waived this condition), and (v) a Certificate of the Commission accompanied by a report, letter or certificate of the Traffic

Consultant as to the projection of Net Revenue in clause (B) and dated within the [90 days] immediately preceding the Commission's certificate, to the effect that (A) Net Revenue during the preceding Calculation Period ending not more than ninety (90) days prior to such funding date, was sufficient to satisfy the requirements of Section 6.03(a) of this Indenture; and (B) projected Net Revenue is expected to be sufficient to produce (I) a Senior Debt Service Coverage Ratio for each Calculation Period from the funding date through the end of the fifth Calculation Period following such funding date of not less than 1.35:1.00, (II) together with amounts on deposit in the Restricted Account and the Unrestricted Account of the General Reserve Fund, an All-in Cost Coverage Ratio for each Calculation Period from the funding date through the end of the fifth Calculation Period following such funding date of not less than 1.10:1.00, and (III) together with amounts on deposit in the TIFIA Loan Reserve Account and the Unrestricted Account, a Loan Life Coverage Ratio for each Calculation Period from the funding date through the end of the fifth Calculation Period following such funding date of not less than 1.50:1.00. In calculating projected Net Revenue, the Commission and/or the Traffic Consultant shall (i) take into account (A) amounts projected to be received from any adopted toll increase or increases (provided that no additional approvals need to be obtained and no additional requirements need to be satisfied in order to implement any such increase or increases), and (B) any additional toll lanes and facilities to be designated as included within the definition of the Toll Roads System. In calculating Annual Debt Service, the Commission may take into consideration as a credit against Annual Debt Service any amounts that would be available pursuant to the last paragraph of Section 6.03(a).

“Standard Project Agreement” means, with respect to any portion, phase or segment of the Express Lanes Network, “Standard Project Agreement” as used in the Master Tolling Agreement.

“Subordinate Obligations” means any Obligations that are subordinated in right of payment and lien priority to the Senior Lien Obligations and the Second Lien Obligations.

“Subordinate Obligations Account” means the Account by that name created within the Project Fund pursuant to Section 5.02.

“Subordinate Obligations Fund” means the Fund by that name created pursuant to Section 5.02.

“Subordinate Obligations Interest Account” means the Account by that name created within the Subordinate Obligations Fund pursuant to Section 5.02.

“Subordinate Obligations Principal Account” means the Account by that name created within the Subordinate Obligations Fund pursuant to Section 5.02.

“Subordinate Obligations Reserve Fund” means the Fund by that name created pursuant to Section 5.02.

“Subordinate Obligations Reserve Requirement” for any Subordinate Obligations means the amount, if any, specified by a Supplemental Indenture as the amount required to be held in the Subordinate Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Subordinate Obligations secured by such Fund or Account.

“Subsidy Payments” means, (a) with respect to a Series of Obligations issued under Section 54AA of the Code, the amounts relating to such Series of Obligations which are payable by the Federal government under Section 6431 of the Code, which the Commission has elected to receive under Section 54AA(g)(1) of the Code, and (b) with respect to a Series of Obligations issued under any other provision of the Code that creates a substantially similar direct-pay subsidy program, the amounts relating to such Series of Obligations which are payable by the Federal government under the applicable provision of the Code which the Commission has elected to receive under the applicable provisions of the Code.

“Substantial Completion” means the opening of any portion, phase or segment of the Toll Roads System to revenue service.

“Substantial Completion Date” means, unless otherwise provided in a Supplemental Indenture for any particular Toll System Network Project, with respect to any Toll System Network Project, the date on which a portion, phase or segment of such Toll System Network Project opens for revenue service. The “Transition Date” as defined in the Master Tolling Agreement shall be a Substantial Completion Date with respect to the applicable portion, phase or segment of the Express Lanes Network.

“Supplemental Indenture” means any indenture executed and delivered by the Commission and the Trustee in accordance with this Indenture that is stated to be a supplemental indenture hereto.

“Swap” means any interest rate swap agreement, currency swap agreement, forward payment conversion agreement or futures contract, any contract providing for payments based on levels of, or changes in, interest rates, currency exchange rates, stock or other indices, any contract to exchange cash flows or a series of payments, or any contract, including, without limitation, an interest rate floor or cap, or an option, put or call, to hedge payment, currency, rate, spread or similar exposure, between the Commission and a Swap Party.

“Swap Party” means each entity that is a party to a Swap entered into with the Commission.

“Swap Revenues” means any amount paid by a Swap Party to the Commission pursuant to any Swap, after any netting of payments required by such Swap, and any payments paid to the Commission by a Swap Party as consideration for termination or amendment of a Swap.

“Tax Certificate” means the Tax Certificate delivered by the Commission at the time of the issuance of a Series of Obligations the interest on which is intended to be tax-exempt or for which the Commission is eligible to receive Subsidy Payments, as the same may be amended and supplemented in accordance with its terms.

“Term Bonds” means Obligations of any Series that are payable on or before their specified maturity dates from Sinking Fund Installments established for that purpose in the Supplemental Indenture providing for the issuance of such Series of Obligations, which Sinking Fund Installments are calculated to retire such Obligations on or before their specified maturity dates.

“**TIFIA Debt Service**” means, collectively, TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service.

“**TIFIA Lender**” means the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau.

“**TIFIA Loan**” means the loan made to the Commission by the TIFIA Lender pursuant to the TIFIA Loan Agreement and secured by the Trust Estate.

“**TIFIA Loan Agreement**” means the Loan Agreement, dated as of [_____], 2021, by and between the Commission and the TIFIA Lender, and any amendments or supplements thereto permitted hereby and thereby.

“**TIFIA Loan Prepayment Account**” means the account of such name created pursuant to Section 5.02.

“**TIFIA Loan Reserve Account**” mean the account of such name created pursuant to Section 5.02.

“**TIFIA Mandatory Debt Service**” has the meaning set forth in the TIFIA Loan Agreement.

“**TIFIA Payment Date**” has the meaning specified for the term “Payment Date” (or any similar term) in the applicable TIFIA Loan Agreement.

“**TIFIA Scheduled Prepayment Amount**” has the meaning set forth in the TIFIA Loan Agreement.

“**TIFIA Scheduled Debt Service**” has the meaning set forth in the TIFIA Loan Agreement.

“**Toll Operator**” means initially VDOT, or any successor, as operator of the applicable segment, phase or portion of the Toll Roads System, responsible for the collection of tolls and fees and the establishment and maintenance of customer accounts and records, pursuant to the Master Tolling Agreement or other successor agreement.

“**Toll Revenue Fund**” means the Fund by that name created pursuant to Section 5.01.

“**Toll Revenues**” means (i) all amounts received by or on behalf of the Commission for use of any segment, phase or portion of the Toll Roads System, whether before or after any Transition Date or Substantial Completion Date and including without limitation fees, tolls, rates, incidental charges, and other charges (including administrative charges such as late fees, insufficient funds fees, etc.), (ii) amounts received by or on behalf of the Commission pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues, including fines and penalties and interest thereon collected as a result of failure to pay any such amounts; (iii) amounts received by or on behalf of the Commission as contractual liquidated, other contract damages, insurance proceeds, third party recoveries, condemnation awards or any other amounts in lieu of or with respect to the Toll Roads System or any of the

foregoing revenues; and (iv) all other amounts received by or on behalf of the Commission that are derived from or with respect to the operation of the Toll Roads System or any part thereof, including but not limited to amounts paid prior to any Transition Date or Substantial Completion Date pursuant to the Master Tolling Agreement or any Standard Project Agreement. Amounts received by the CTB or VDOT with respect to the Reversible HOT Lanes shall constitute Toll Revenues to the extent such amounts are payable to the Commission under the MTA. Except as otherwise specifically provided in this Master Indenture or any Supplemental Indenture, Toll Revenues shall not include HRTF Funds or amounts derived from the HRTF.

“Toll Road” means a lane or lanes of a street, road or highway upon which the Commission has all right, power and authority pursuant to applicable law to impose tolls, and upon which tolls are imposed by the Commission using any of the following tolling strategies: (a) general purpose or generally-applicable tolls, (b) tolls that may be levied and may vary according to levels of congestion anticipated or experienced or according to the occupancy of the vehicle, (c) any combination of (a) and (b), and (d) any other tolling strategy the Commission may determine appropriate on a facility-by-facility basis; and the related tolling facilities, as such tolled lanes and related facilities may from time to time be expanded, improved, upgraded, enlarged, or enhanced, but only to the extent that: (i) the Commission irrevocably designates in writing that such toll lanes and related facilities, and any expansion, improvement, upgrade, enlargement or enhancement constitute a Toll Road generating Toll Revenues hereunder, and (ii) that (x) the additional Operation and Maintenance Expenses associated with any such expansion, improvement, upgrade, enlargement or enhancement, and (y) any additional Obligations issued to finance the costs of any such expansion, improvement, upgrade, enlargement or enhancements satisfy all of the requirements applicable thereto in the TIFIA Loan Agreement for so long as the TIFIA Loan is Outstanding. “Toll Road” initially means the Express Lanes Initial Project, and shall include, upon Substantial Completion thereof, any subsequent portion, phase or segment of the Toll Roads System in accordance with a Written Request of the Commission.

“Toll Roads System” means the Express Lanes Initial Project, any Express Lanes Future Project that may be undertaken (which together with the Express Lanes Initial Project forms the Express Lanes Network), and any other Toll System Network Project, all as the same may exist from time to time, and including without limitation any new or improved highway, bridge or tunnel, or portion, phase or segment thereof, in which the Commission is empowered to impose and collect tolls.

“Toll System Network Project” means the Express Lanes Initial Project, any Express Lanes Future Project, and any addition, the acquisition, development, construction, reconstruction, improvement, betterment, extension or equipping of or relating to a tolled road or facility, or any additional capital project extending, improving or otherwise related to the Toll Roads System that the Commission determines or proposes to finance pursuant to this Indenture, provided that, (a) such capital project or addition, acquisition, improvement, betterment, extension or equipping shall be a Toll Road or any part, segment, portion or phase thereof, or substantially related thereto and (b) such addition complies with the terms of Section 3.01(b) hereof.

“Traffic Consultant” means CDM Smith or such other traffic and revenue consultant or firm of nationally-recognized traffic and revenue consultants experienced in performing the duties for which a Traffic Consultant is required to be employed pursuant to the provisions of this

Indenture, who is appointed by the Commission or, with the approval of the Commission, by VDOT; provided that while the Obligation in the form of the TIFIA Loan is Outstanding, such appointment is not objected to in written notice to the Commission by the TIFIA Lender within 15 Business Days after receiving written notice from the Commission of the name of the proposed replacement traffic consulting firm and supporting information regarding the qualifications of the proposed replacement traffic consulting firm.

“**Trust Estate**” has the meaning specified in the Granting Clauses herein.

“**Unrestricted Account**” means the Account by that name created within the General Reserve Fund pursuant to Section 5.02.

“**VDOT**” or the “**Department**” means the Virginia Department of Transportation, an agency of the Commonwealth of Virginia.

“**VDOT Repayment Fund**” means the Fund by that name created pursuant to Section 5.02.

“**Written Request of the Commission**” means an instrument in writing signed by an Authorized Representative.

ARTICLE II THE OBLIGATIONS

Section 2.01 Authorization and Purposes. Obligations in the form of Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations may be issued hereunder, in book-entry form or otherwise, from time to time as the issuance thereof is approved by the Commission. The maximum Bond Obligation of Obligations that may be issued hereunder is not limited; subject, however, to any limitations contained in the HRTAC Act and to the right of the Commission, which is hereby reserved, to limit the initial Bond Obligation of Obligations that may be issued or Outstanding hereunder. The Senior Lien Bonds are designated generally as “**Hampton Roads Transportation Accountability Commission Toll Revenue Senior Lien Bonds (Hampton Roads Express Lanes)**,” each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Senior Lien Obligations. The Second Lien Obligations are designated generally as “**Hampton Roads Transportation Accountability Commission Toll Revenue Second Lien Obligations (Hampton Roads Express Lanes)**,” each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Second Lien Obligations. The Subordinate Obligations are designated generally as “**Hampton Roads Transportation Accountability Commission Toll Revenue Subordinate Obligations (Hampton Roads Express Lanes)**,” each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Subordinate Obligations. The Obligations may be issued in such Series as from time to time shall be established and authorized by the Commission, subject to the covenants, provisions and conditions herein. Each separate Series of Obligations shall be authorized by the Commission in a Supplemental Indenture. No Obligations may be issued under the provisions of this Indenture except in accordance with this Article and Article III.

Obligations may be issued for the purpose of financing or refinancing any Toll System Network Project, or for any other purpose authorized by the HRTAC Act.

Section 2.02 General Terms of Obligations. Each Obligation shall be secured hereby and shall bear interest and shall be payable and be additionally secured and have such other terms as shall be specified in its Supplemental Indenture, or if not specified therein, as specified by an Authorized Representative pursuant to Section 2.06.

The principal and Purchase Price of, premium, if any, and interest on the Obligations shall be payable in lawful currency of the United States of America. During any period in which any Obligations are Book-Entry Obligations, payment of debt service on such Book-Entry Obligations shall be made to the Securities Depository, or its Nominee, and in accordance with arrangements among the Commission, the Trustee and the Securities Depository. During any period in which any Obligations are not Book-Entry Obligations, unless otherwise specified in a Supplemental Indenture, the principal and Purchase Price of and premium, if any, on all such Obligations shall be payable by wire or check at the Principal Office of the Trustee upon the presentation and surrender of such Obligations as the same become due and payable, and the interest on such Obligations shall be paid by wire or check drawn upon the Trustee and mailed on the applicable Interest Payment Date to the persons in whose names the Obligations are registered on the registration books maintained by the Trustee at the close of business on the record date for such interest payment.

Section 2.03 Execution. Except as may otherwise specified in a Supplemental Indenture, the Obligations shall be executed in the name and on behalf of the Commission by the facsimile or manual signature of the Chair or Vice Chair of the HRTAC Board. Unless otherwise provided in any Supplemental Indenture, the Obligations shall then be delivered to the Trustee for authentication by the Trustee. In case any of the officers who shall have signed any of the Obligations shall cease to be such officer or officers of the Commission before the Obligations so signed or attested shall have been authenticated or delivered by the Trustee or issued by the Commission, such Obligations may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Commission as though those who signed the same had continued to be such officers of the Commission, and also any Obligation may be signed on behalf of the Commission by such persons as at the actual date of execution of such Obligation shall be the proper officers of the Commission although at the nominal date of such Obligation any such person shall not have been such officer of the Commission.

Section 2.04 Certificate of Authentication. No Obligations shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form set forth in the form of Obligation referred to in Section 2.05 hereof, executed by the Trustee; and such certificate on any Obligation issued by the Commission shall be conclusive evidence that such Obligation has been duly authenticated and delivered hereunder.

Section 2.05 Forms of Obligations. The Obligations, the Trustee's certificate of authentication and the form of assignment shall be in substantially the forms specified in a Supplemental Indenture or if not specified therein, as specified by an Authorized Representative

pursuant to Section 2.06, and may have such letters, numbers or other marks of identification (including, but not limited to, the Series designation provided for in Section 2.01) and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by an Authorized Representative. The Obligations shall be in either typewritten or printed form, as an Authorized Representative shall direct, provided that any expenses incurred in connection therewith shall be paid by the Commission.

Section 2.06 Issuance, Sale and Delivery of Obligations; Application of Proceeds.

The Obligations of each Series shall be delivered by the Trustee in accordance with a Written Request of the Commission, which may be Electronic, in the manner specified herein and the applicable Supplemental Indenture. Such Written Request of the Commission shall specify the following terms for the Obligations then being issued to the extent such terms are not set forth in the Supplemental Indenture creating such Series of Obligations and are applicable to such Obligations: whether such Obligation is a Senior Lien Bond, Parity Obligation, Second Lien Obligation or Subordinate Obligation hereunder; Series designation; Authorized Denominations; form of such Obligation; book-entry provisions, if any; maturity date or dates or maturity determination method, which may vary for Obligations within such Series; principal amount; issue date; interest rate or interest rate determination method, which may vary for Obligations within such Series; record date for interest payments; sinking fund provisions, if any; required reserves, if any; redemption provisions, if any; tender provisions, if any; additional security, if any; and any other terms and conditions that are not inconsistent with this Indenture. Upon the delivery of each Series of Obligations, the proceeds shall immediately be applied and deposited as set forth in the applicable Supplemental Indenture.

Section 2.07 Mutilated, Lost, Stolen or Destroyed Obligations. If any Obligation is mutilated, lost, stolen or destroyed, the Commission shall execute and the Trustee shall authenticate and deliver a new Obligation of the same Series, maturity date, principal amount and tenor in lieu of and in substitution for the Obligation mutilated, lost, stolen or destroyed; provided that there shall be first furnished to the Trustee evidence satisfactory to the Trustee of the ownership of such Obligation and of such loss, theft or destruction (or, in the case of a mutilated Obligation, such mutilated Obligation shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee (subject to Section 8.01(c)) and compliance with such other reasonable regulations as the Commission and Trustee may prescribe. Subject to the proviso set forth in the preceding sentence, if any such Obligation shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Obligation, the Commission may pay the same without surrender thereof. Subject to Section 8.01(c), the Commission and the Trustee may charge the Holder of such Obligation with their reasonable fees and expenses in this connection.

Section 2.08 Exchangeability and Transfer of Obligations; Persons Treated as Holders. The Commission hereby directs the Trustee, which is hereby constituted and appointed the bond registrar for the Obligations, to keep books for the registration of the Obligations and for the registration of transfer of the Obligations as provided herein.

Any registered owner of an Obligation, in person or by its duly authorized attorney, may transfer title to its Obligation on the books of registration kept by the Trustee, upon surrender

thereof at the Principal Office of the Trustee, together with a written instrument of transfer (in substantially the form of assignment attached to the Obligation or as provided in its Supplemental Indenture) executed by the registered owner or its duly authorized attorney, and upon surrender for registration of transfer of any Obligation, the Commission shall execute, and the Trustee shall authenticate and deliver in the name of the transferee or transferees, a new Obligation or Obligations of the same Series, maturity date, and tenor as the Obligation surrendered.

Obligations may be exchanged upon surrender thereof at the Principal Office of the Trustee for Obligations of the same Series, maturity date, and tenor as the Obligations being exchanged. The Commission shall execute and the Trustee shall authenticate and deliver Obligations that the registered owner making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

Such registrations of transfers or exchanges of Obligations shall be without charge to the registered owner of such Obligations, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the registered owner of the Obligation requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege. Any service charge made by the Trustee for any such registration, transfer or exchange shall be paid by the Commission.

The Trustee shall not register any transfer of any Obligation after notice calling such Obligation (or portion thereof) for redemption or partial redemption or notice of mandatory tender with respect thereto has been given and prior to such redemption or mandatory tender, as the case may be, except, in the case of any Obligation to be redeemed in part, the portion thereof not to be redeemed.

The person in whose name any Obligation shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal, premium, if any, or interest shall be made only to or upon the order of the registered owner thereof or his duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Obligation to the extent of the sum or sums so paid.

All Obligations issued upon any transfer or exchange of Obligations shall be legal, valid and binding obligations of the Commission, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Obligations surrendered upon such transfer or exchange.

Section 2.09 Cancellation. All Obligations that have been surrendered to the Trustee pursuant to Section 2.07 or 2.08 of this Indenture and all Obligations that have been paid or redeemed, either at or prior to maturity, except as otherwise provided in a Supplemental Indenture, shall be cancelled and destroyed by the Trustee and a certificate of destruction shall be delivered to the Commission upon its request.

Section 2.10 Senior Lien Obligations Ratably Secured. All Senior Lien Obligations issued hereunder that by their terms are stated to be equally and ratably secured by this Indenture without preference, priority or distinction on account of the Series or the actual time or times of

the authentication, delivery or maturity of such Senior Lien Obligations shall be so equally and ratably secured so that, subject to any differences specified in this Indenture, all such Senior Lien Obligations at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they were of the same Series and they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date; provided, however, that the moneys in any Account within the Senior Lien Obligations Reserve Fund shall only secure the Series of Senior Lien Obligations to which such Account relates. The Senior Lien Obligation in the form of or securing payment of one or more TIFIA Loans will not be secured by any other Account within the Senior Lien Obligations Reserve Fund and will be available only to pay principal of or interest on the Senior Lien Obligation in the form of or securing payment of one or more TIFIA Loans.

Section 2.11 Second Lien Obligations Ratably Secured. All Second Lien Obligations issued hereunder that by their terms are stated to be equally and ratably secured by this Indenture without preference, priority or distinction on account of the Series or the actual time or times of the authentication, delivery or maturity of such Second Lien Obligations shall be so equally and ratably secured so that, subject to any differences specified in this Indenture, all such Second Lien Obligations at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they were of the same Series and they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date; provided, however, that the moneys in any Account within the Second Lien Obligations Reserve Fund shall only secure the Series of Second Lien Obligations to which such Account relates. Upon the occurrence of a Bankruptcy Related Event of which the Trustee shall be notified in writing, any Account within the Second Lien Obligations Reserve Fund that secures payment of the principal and interest on a Second Lien Obligation in the form of or securing payment of one or more TIFIA Loans, will become an Account within the Senior Lien Obligations Reserve Fund, will be funded on a parity with any other Accounts within the Senior Lien Obligations Reserve Fund, and will be available only to pay principal and interest on the Second Lien Obligation in the form of or securing payment of such TIFIA Loan(s).

Section 2.12 Subordinate Obligations Ratably Secured. All Subordinate Obligations issued hereunder that by their terms are stated to be equally and ratably secured by this Indenture without preference, priority or distinction on account of the Series or the actual time or times of the authentication, delivery or maturity of such Subordinate Obligations shall be so equally and ratably secured so that, subject to any differences specified in this Indenture, all such Subordinate Obligations at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they were of the same Series and they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date; provided, however, that the moneys in any Account within the Subordinate Obligations Reserve Fund shall only secure the Series of Subordinate Obligations to which such Account relates.

Section 2.13 Book-Entry Only System. Unless an Authorized Representative shall otherwise direct or unless otherwise specified in a Supplemental Indenture, all Obligations issued hereunder shall be issued as Book-Entry Obligations in fully registered form. Book-Entry Obligations shall be registered in the name of the Securities Depository or its Nominee as directed by such Securities Depository. DTC shall act as the initial Securities Depository and has designated Cede & Co. as its Nominee. Beneficial Owners of Obligations will not receive physical delivery of bond certificates except as provided hereinafter. For so long as DTC shall continue to serve as Securities Depository for the Obligations as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no person purchasing, selling or otherwise transferring beneficial ownership of Obligations is to receive, hold or deliver any Obligation certificate.

With respect to Obligations registered in the name of Cede & Co., as Nominee of DTC, the Commission and the Trustee shall have no responsibility or obligation to any participant in DTC (each, a “DTC Participant”) or to any person on whose behalf a DTC Participant holds an interest in the Obligations. Without limiting the immediately preceding sentence, the Commission and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Obligations, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Obligations, as shown on the registration books, of any notice with respect to the Obligations, including any notice of redemption or mandatory tender, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of the Obligations, as shown in the registration books, of any amount with respect to principal or Purchase Price of, or premium, if any, or interest on, the Obligations.

Replacement Obligations may be issued directly to Beneficial Owners of Obligations other than DTC, or its Nominee, but only in the event that: (i) DTC determines not to continue to act as Securities Depository for the Obligations (which determination shall become effective no less than 90 days after written notice to such effect to the Commission and the Trustee); or (ii) an Authorized Representative has advised DTC of its determination (which determination is conclusive as to DTC and Beneficial Owners of the Obligations) that DTC is incapable of discharging its duties as Securities Depository for the Obligations; or (iii) the Commission has determined (which determination is conclusive as to DTC and the Beneficial Owners of the Obligations) that the interests of the Beneficial Owners of the Obligations might be adversely affected if such book-entry only system of registration and transfer is continued. Upon occurrence of any of the foregoing events, the Commission shall use its best efforts to attempt to locate another qualified Securities Depository. If the Commission fails to locate another qualified Securities Depository to replace DTC, the Commission shall cause to be authenticated and delivered replacement Obligations, in certificate form, to the Beneficial Owners of the Obligations. In the event that the Commission makes the determination noted in (ii) or (iii) above (provided that the Commission undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Commission to make any such determination), and has made provisions to notify the Beneficial Owners of Obligations of such determination by mailing an appropriate notice to DTC and its Nominee, the Commission shall cause to be issued replacement Obligations in certificate form to Beneficial Owners of the Obligations as shown on the records of DTC provided to the Commission.

Whenever, during the term of the Obligations, the Beneficial Ownership thereof is determined by book-entry at DTC, (i) the requirements in this Indenture of holding, delivering or transferring Obligations shall be deemed modified to require the appropriate person or entity to meet the requirements of DTC as to registering or transferring the book entry to produce the same effect and (ii) delivery of the Obligations and notices to Bondholders will be in accordance with arrangements among the Commission, the Trustee and DTC notwithstanding any provision of this Indenture to the contrary.

The Trustee and the Commission, acting by and through an Authorized Representative, are authorized to enter into a letter of representations with DTC to implement the book-entry only system of Obligation registration described above and all payments of principal, Purchase Price, interest and premium, if any, shall be made in accordance with the letter of representations with DTC.

If at any time, DTC ceases to hold the Obligations in book-entry form, all references herein to DTC shall be of no further force or effect.

The provisions of this Section 2.13 shall not apply to the Obligation in the form of the TIFIA Loan.

ARTICLE III ADDITIONAL OBLIGATIONS

Section 3.01 Restrictions on Issuance of Senior Lien Obligations. Subsequent to the initial issuance of Obligations pursuant to this Indenture, Senior Lien Obligations may be issued if the requirements of (a), (b), (c), or (d) below and of Section 3.02 are met.

(a) Refundings. Senior Lien Obligations may be issued for purposes of refunding Outstanding Senior Lien Obligations by providing funds for the payment of any or all of the following:

(1) the Bond Obligation, redemption or purchase price (including premium, if any) of the Outstanding Senior Lien Obligations to be refunded;

(2) all expenses incident to the calling, retiring or paying of such Outstanding Senior Lien Obligations, and the Costs of Issuance of such refunding Senior Lien Obligations;

(3) interest on all Outstanding Senior Lien Obligations to be refunded to the date such Senior Lien Obligations will be called for redemption or paid at maturity;

(4) interest on the refunding Senior Lien Obligations from the date thereof to the date of payment or redemption of the Senior Lien Obligations or to be refunded; and

(5) amounts necessary to fund a Senior Lien Obligations Reserve Fund.

In connection with the issuance of Senior Lien Obligations pursuant to this Section 3.01(a), (i) the Commission shall deliver to the Trustee a Certificate of the Commission to the effect that the Commission projects that the Annual Debt Service on all Outstanding Obligations after the issuance of the proposed additional Senior Lien Obligations will be less than the Annual Debt Service on all Outstanding Obligations prior to such issuance in each year through the stated maturity date of the Senior Lien Obligations being refunded, and (ii) if the maturity date of such additional Senior Lien Obligations to be issued extends to a date later than the stated final maturity date of the Obligations being refunded, the Commission shall satisfy the conditions set forth in Clauses (2), (3) and (4) of paragraph (b) below.

If the TIFIA Loan is outstanding, the Commission shall deliver a Certificate of the Commission demonstrating that each of the requirements set forth in clauses (2) and (3) in paragraph (b) below and in [the proviso of] the definition of “Additional Obligations” in the TIFIA Loan Agreement has been satisfied in connection with the issuance of Senior Lien Obligations pursuant to this Section 3.01(a) unless waived by the TIFIA Lender.

(b) Additional Toll System Network Project. Senior Lien Obligations may be issued to pay for any Toll System Network Project or improvements, extensions, betterments, enhancements or expansions to the Toll Roads System, provided that the Commission delivers to the Trustee:

(1) a certified copy of a resolution of the HRTAC Board approving such additional Toll System Network Project as a part of the Toll Roads System, or any phase, portion, segment thereof;

(2) a Certificate of the Commission supported by a report of the Traffic Consultant to the effect that, as of the date of issuance of the additional Senior Lien Obligations, (i) Net Revenue during the preceding Calculation Period ending not more than ninety (90) days prior to the date of delivery of the proposed additional Senior Lien Obligations, was sufficient to satisfy the requirements of Section 6.03(a) of this Indenture; and (ii) projected Net Revenue is expected to be sufficient to produce (A) a Senior Debt Service Coverage Ratio for each Calculation Period from the date of issuance of such Senior Lien Obligations through the final maturity date of all outstanding Senior Lien Obligations of not less than 1.55:1.00, and (B) an All-in Cost Coverage Ratio for each Calculation Period from the date of issuance of Senior Lien Obligations through the final maturity date of all outstanding Obligations of not less than 1.10:1.00. In calculating projected Net Revenue, the Traffic Consultant shall (i) take into account (A) amounts projected to be received from any adopted toll increase or increases (provided that no additional approvals need to be obtained and no additional requirements need to be satisfied in order to implement any such increase or increases), and (B) any additional toll lanes and facilities to be designated as included within the definition of the Toll Roads System. In calculating Annual Debt Service, the Commission may take into consideration as a credit against Annual Debt Service any amounts that would be available pursuant to the last paragraph of Section 6.03(a);

(3) written evidence from the applicable Rating Agency or Rating Agencies that such Senior Lien Obligations will be rated at an investment grade rating by such Rating Agency;

(4) if the TIFIA Loan is outstanding, each of the requirements to the issuance of such Senior Lien Obligations set forth in paragraph (c) and in [the proviso of] the definition of Additional Obligations in the TIFIA Loan Agreement has been satisfied in connection with the issuance of Senior Lien Obligations pursuant to this Section 3.01(b) unless waived by the TIFIA Lender; and

(5) an opinion of counsel (which opinion may be a reasoned opinion and subject to customary assumptions and exclusions), who may be counsel to the Commission or Bond Counsel, addressed to the Trustee and the Commission and to the effect that under the HRTAC Act or other applicable law, the Commission may lawfully issue Obligations to finance or refinance such Toll System Network Project or the proposed improvements, extensions, betterments, enhancements or expansions to the Toll Roads System.

(c) Completion Obligations. Senior Lien Obligations constituting Completion Obligations may be issued; provided, however, that prior to the incurrence of such Completion Obligations, the Commission shall furnish to the Trustee:

(1) a Certificate of the Commission, confirmed in writing by the Consulting Engineer, certifying the estimated costs of completing the facilities for which such Completion Obligations are to be incurred and confirming that such Completion Obligations are necessary for completing such Toll System Network Project;

(2) a Certificate of the Commission, confirmed in writing by the Consulting Engineer, certifying that the amount of such Completion Obligations to be incurred will be sufficient, together with other funds, if applicable, to complete the applicable Toll System Network Project as estimated by the Consulting Engineer in respect of which such Completion Obligations are to be incurred and to pay capitalized interest, if any, on Obligations Outstanding during the period of time needed to complete such Toll System Network Project; and

(3) written evidence from the applicable credit rating agency or agencies that such Senior Lien Obligations will be rated at an investment grade rating by such credit rating agency, unless, while the Commission has outstanding Obligations in the form of or securing payment of a TIFIA Loan held by the TIFIA Lender, the TIFIA Lender consents to waive this requirement.

Section 3.02 Proceedings for and Conditions of Issuance of Additional Senior Lien Obligations. Whenever the Commission determines to issue Senior Lien Obligations subsequent to the initial issuance of Obligations pursuant to this Indenture and all Supplemental Indentures executed as of the same date, the Commission shall, in addition to fulfilling the requirements of Article II and Section 3.01, file with or provide to the Trustee:

(a) a Certificate of the Commission stating that no Event of Default specified in Section 7.01 has occurred and is then continuing and, if the TIFIA Loan is outstanding, that no Event of Default specified under the TIFIA Loan Agreement has occurred and is then continuing;

(b) a Certificate of the Commission stating that the applicable requirements of Section 3.01 and, if the TIFIA Loan is outstanding and unless waived by the TIFIA Lender, the TIFIA Loan Agreement have been satisfied;

(c) if the TIFIA Loan is outstanding, each Reserve Fund established hereunder shall be fully funded as and to the extent required in any applicable Supplemental Indenture, and all Accounts or Funds with minimum required balances or target balances hereunder shall be funded to 100% of the minimum required balance or target balance, as applicable;

(d) if the TIFIA Loan is outstanding, the Commission shall provide written evidence from the applicable Rating Agency or Rating Agencies that the issuance of such Obligations shall not result in a downgrade in the public credit ratings of the Obligations in the form of or securing payment of the TIFIA Loan or any other Senior Lien Obligations then Outstanding to the lower of (A) the then-existing credit ratings of the Obligations in the form of or securing payment of the TIFIA Loan and such Outstanding Senior Lien Obligations, respectively, and (B) the credit ratings, respectively, of the Obligations in the form of or securing payment of the TIFIA Loan as of the respective issuance dates of the Obligations in the form of or securing payment of the TIFIA Loan and such other Senior Lien Obligations;

(e) such amount, in cash or in the form of a Reserve Facility, as shall equal the Senior Lien Obligations Reserve Requirement, if any, for such Senior Lien Obligations for deposit in the Senior Lien Obligations Reserve Fund, as calculated by the Commission; and

(f) an Opinion of Bond Counsel to the effect that the Supplemental Indenture creating such Senior Lien Obligations has been executed and delivered by the Commission in accordance with this Indenture and that such Senior Lien Obligations, when duly executed by the Commission and authenticated and delivered by the Trustee, will be valid and binding obligations of the Commission.

Section 3.03 Restrictions on Issuance of Second Lien Obligations or Additional Subordinate Obligations. Subsequent to the initial issuance of Obligations pursuant to this Indenture, Second Lien Obligations or additional Subordinate Obligations may be issued if the requirements of (a), (b), or (c) below and Section 3.04 are met. The Second Lien Obligations or Subordinate Obligations, as applicable, are issued for purposes of refunding Outstanding Obligations by providing funds for the payment of any or all of the following:

(1) the Bond Obligation, redemption or purchase price (including premium, if any) of the Outstanding Obligations to be refunded;

(2) all expenses incident to the calling, retiring or paying of such Outstanding Second Lien Obligations or Outstanding Subordinate Obligations, the Costs of Issuance of such refunding Second Lien Obligations or Subordinate Obligations;

(3) interest on all Outstanding Obligations to be refunded to the date such Obligations will be called for redemption or paid at maturity;

(4) interest on the refunding Second Lien Obligations or Subordinate Obligations from the date thereof to the date of payment or redemption of the Obligations to be refunded; and

(5) any amounts necessary to fund a Second Lien Obligations Reserve Fund or Subordinate Obligations Reserve Fund, as applicable; and

the Commission delivers to the Trustee, (i) a Certificate of the Commission to the effect that the Annual Debt Service on all Outstanding Obligations after the issuance of the proposed additional Second Lien Obligations or Subordinate Obligations will be less than the Annual Debt Service on all Outstanding Obligations prior to the issuance of such proposed Second Lien Obligations or Subordinate Obligations in each year through the stated maturity date of such refunded Obligations, and (ii) if the maturity date of such additional Second Lien Obligations or Subordinate Obligations to be issued extends to a date later than the stated final maturity date of the Obligations being refunded, the Commission shall satisfy the conditions set forth in Clauses (2) and (3) of paragraph (b) below; and

if the TIFIA Loan is outstanding, the Commission shall deliver a Certificate of the Commission demonstrating that each of the requirements set forth in clause (2) of paragraph (b) below and in [the proviso of] the definition of Additional Obligations in the TIFIA Loan Agreement has been satisfied in connection with the issuance of Second Lien Obligations or Subordinate Obligations, as applicable, pursuant to this Section 3.03(a) unless waived by the TIFIA Lender.

(b) The Second Lien Obligations or Subordinate Obligations, as applicable, may be issued to pay for any Toll System Network Project or improvements, extensions, betterments, enhancements or expansions to the Toll Roads System, provided that the Commission delivers to the Trustee:

(1) a certified copy of a resolution of the HRTAC Board approving such additional Toll System Network Project as a part of the Toll Roads System, or any phase, portion, segment thereof;

(2) a Certificate of the Commission supported by a report of the Traffic Consultant to the effect that, as of the date of issuance of the additional Second Lien Obligations or Subordinate Obligations, as applicable: (i) Net Revenue during the preceding Calculation Period ending not more than ninety (90) days prior to the date of delivery of the proposed additional Second Lien Obligations or Subordinate Obligations, was sufficient to satisfy the requirements of Section 6.03(a) of this Indenture; and (ii) projected Net Revenue for each Calculation Period over the term of the proposed additional Second Lien Obligations or Subordinate Obligations is expected to be sufficient to satisfy the requirements of Section 6.03(a) of this Indenture in each Calculation Period and produce an All-in Cost Coverage Ratio for each Calculation Period from the date of issuance of such Obligation through the final maturity date of all outstanding Obligations of not less than 1.10:1.00. In calculating projected Net Revenue, the Traffic Consultant

shall take into account amounts projected to be received from any adopted toll increase or increases (provided that no additional approvals need to be obtained and no additional requirements need to be satisfied in order to implement any such increase or increases) and any additional toll lanes and facilities to be designated as included within the definition of the Toll Roads System. In calculating Annual Debt Service, the Commission may take into consideration as a credit against Annual Debt Service any amounts that would be available pursuant to the last paragraph of Section 6.03(a);

(3) if the TIFIA Loan is outstanding, each of the requirements to the issuance of such Second Lien Obligations or Subordinate Obligations, as applicable, set forth in paragraph (c) and in [the proviso of] the definition of Additional Obligations in the TIFIA Loan Agreement has been satisfied in connection with the issuance of Second Lien Obligations or Subordinate Obligations, as applicable, pursuant to this Section 3.03(b) unless waived by the TIFIA Lender; and

(4) an opinion of counsel (which opinion may be a reasoned opinion and subject to customary assumptions and exclusions), who may be counsel to the Commission or Bond Counsel, addressed to the Trustee and the Commission and to the effect that under the HRTAC Act or other applicable law, the Commission may lawfully issue Obligations to finance or refinance such Toll System Network Project or the proposed improvements, extensions, betterments, enhancements or expansions to the Toll Roads System.

(c) Second Lien Obligations or Subordinate Obligations constituting Completion Obligations may be issued; provided, however, that prior to the incurrence of such Completion Obligations, the Commission shall furnish to the Trustee:

(1) a certificate of the Commission, confirmed in writing by the Consulting Engineer, certifying the estimated costs of completing the facilities for which such Completion Obligations are to be incurred and confirming that such Completion Obligations are necessary for completing such Toll System Network Project;

(2) a Certificate of the Commission, confirmed in writing by the Consulting Engineer, certifying that the amount of such Completion Obligations to be incurred will be sufficient, together with other funds, if applicable, to complete the Toll System Network Project as estimated by the Consulting Engineer in respect of which such Completion Obligations is to be incurred and pay capitalized interest, if any, on Obligations Outstanding during the period of time needed to complete the Toll System Network Project; and

(3) if the TIFIA Loan is outstanding, a Certificate of the Commission to the effect that the principal amount of such Completion Obligations, when aggregated with any Completion Obligations previously issued with respect to the applicable Toll System Network Project, shall not exceed 10% of the aggregate principal amount of Obligations originally incurred by the Commission to finance such Toll System Network Project (unless the TIFIA Lender consents to an increased amount) and written evidence from the applicable Rating Agency or Rating Agencies that such Second Lien Obligations or

Subordinate Obligations, as applicable, will be rated at an investment grade rating by such Rating Agency, unless the TIFIA Lender consents to waive this requirement.

Section 3.04 Proceedings and Additional Conditions for Issuance of Second Lien Obligations or Subordinate Obligations. Whenever the Commission determines to issue Second Lien Obligations or Subordinate Obligations subsequent to the initial issuance of Obligations pursuant to this Indenture and all Supplemental Indentures executed as of the same date, the Commission shall, in addition to fulfilling the requirements of Article II and Section 3.03, file with or provide to the Trustee:

(a) a Certificate of the Commission stating that no Event of Default specified in Section 7.01 has occurred and is then continuing and, if the TIFIA Loan is outstanding, that no Event of Default specified under the TIFIA Loan Agreement has occurred and is then continuing;

(b) a Certificate of the Commission stating that the applicable requirements of Section 3.03 and, if the TIFIA Loan is outstanding and unless waived by the TIFIA Lender, the TIFIA Loan Agreement have been satisfied;

(c) such amount, in cash or in the form of a Reserve Facility, as shall equal the Second Lien Obligations Reserve Requirement or Subordinate Obligations Reserve Requirement, if any, as of the date of issuance of such Series of Second Lien Obligations or Subordinate Obligations, for deposit in the Second Lien Obligations Reserve Fund or Subordinate Obligations Reserve Fund as applicable, as calculated by the Commission;

(d) an Opinion of Bond Counsel to the effect that the Supplemental Indenture creating such Series of Second Lien Obligations or Subordinate Obligations has been executed and delivered by the Commission in accordance with this Indenture and that such Series of Second Lien Obligations or Subordinate Obligations, when duly executed by the Commission and authenticated and delivered by the Trustee, will be valid and binding obligations of the Commission; and

(e) if the TIFIA Loan is outstanding, the following additional restrictions shall apply:

(1) the Commission shall provide written evidence from the applicable Rating Agency or Rating Agencies that the issuance of such Obligations shall not result in a downgrade in the public credit ratings of the Obligations in the form of or securing payment of the TIFIA Loan or any other Senior Lien Obligations then Outstanding to the lower of (A) the then-existing credit ratings of the Obligations in the form of or securing payment of the TIFIA Loan and such Outstanding Senior Lien Obligations, respectively, and (B) the credit ratings, respectively, of the Obligations in the form of or securing payment of the TIFIA Loan as of the respective issuance dates of the Obligations in the form of or securing payment of the TIFIA Loan and such other Senior Lien Obligations;

(2) each Reserve Fund established hereunder shall be fully funded, and all Accounts or Funds with minimum required balances or target balances hereunder shall be funded to 100% of the minimum required balance or target balance, as applicable;

(3) if the Obligations are Completion Obligations, then the aggregate principal amount of such Obligations, when aggregated with any Completion Obligations previously issued with respect to the applicable Toll System Network Project, shall not exceed 10% of the aggregate principal amount of Obligations originally incurred by the Commission to finance such Toll System Network Project, without the consent of the TIFIA Lender to such increased amount; and

(4) written evidence from the applicable Rating Agency or Rating Agencies that such Obligations will be rated at an investment grade rating by such Rating Agency.

Section 3.05 Bond Anticipation Obligations Whenever the Commission shall authorize the issuance of a Series of Obligations, the Commission may authorize the issuance of Bond Anticipation Obligations in anticipation of such Series. The principal of and interest on such Bond Anticipation Obligations shall be payable from the proceeds of such Bond Anticipation Obligations, or from the proceeds of the sale of the Series of Obligations in anticipation of which such Bond Anticipation Obligations are issued and as otherwise provided in the Supplemental Indenture. The provisions of this Indenture relating to “Obligations” shall apply equally to Bond Anticipation Obligations except as otherwise provided in a Supplemental Indenture. Any Bond Anticipation Obligations may be payable solely from the proceeds of Obligations issued to retire such Bond Anticipation Obligations.

ARTICLE IV REDEMPTION

Section 4.01 Redemption and Purchase of Obligations. Each Series of Obligations may be made subject to mandatory or optional redemption or mandatory or optional tender and purchase prior to their respective stated maturities, as a whole or in part, at such time or times, upon such terms and conditions, at such prices, upon such notice and with such effect as may be provided in the Supplemental Indenture creating such Series of Obligations.

Section 4.02 Notice of Redemption. Unless otherwise specified in a Supplemental Indenture creating a Series of Obligations, each notice of redemption shall be mailed by the Trustee, not less than twenty (20) nor more than sixty (60) days prior to the redemption date, to each Owner, to all organizations registered with the Securities and Exchange Commission as securities depositories, and to the MSRB. Notice of redemption to the Owners shall be given by first class mail. Each notice of redemption shall state the date of such notice, the date of issue of the Series of Obligations to which such notice relates, the redemption date, the redemption price, the place or places of redemption (including the name and appropriate address or addresses of the Trustee), the CUSIP number (if any) of the maturity or maturities, and, in the case of a Series of Obligations to be redeemed in part only, the identity of the Obligations to be redeemed. Except as provided in Section 4.03 in the case of conditional optional redemption, each such notice shall also state that on such date there will become due and payable on each of such Obligations the redemption price thereof, together with interest accrued thereon to the date fixed for redemption, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Obligations be then surrendered at the address or addresses of the Trustee specified in the redemption notice. Neither the Commission nor the Trustee shall have any

responsibility for any defect in the CUSIP number that appears on any Obligation or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the Commission nor the Trustee shall be liable for any inaccuracy in such numbers. Failure of any Owner to receive any notice of redemption or any defect therein shall not affect the sufficiency of any proceedings for redemption. This Section 4.02 shall not apply to the TIFIA Loan.

Section 4.03 Conditional Notice of Redemption; Rescission. Any notice of optional redemption of the Obligations delivered in accordance with Section 4.02 may be conditional, and if any condition stated in the notice of redemption shall not have been satisfied on or prior to the redemption date, such notice shall be of no force and effect and the Commission shall not be required to redeem the Obligations thereby called for redemption, such Obligations shall not become due and payable, and the redemption shall be cancelled and the Trustee shall within a reasonable time thereafter give notice, to the persons and in the manner in which the notice of redemption was given, that such condition or conditions were not met and that the redemption was cancelled. In addition, the Commission may, at its option, on or prior to the date fixed for optional redemption in any notice of redemption of the Obligations, rescind and cancel such notice of redemption by Written Request of the Commission to the Trustee, and any optional redemption of Obligations and notice thereof shall be rescinded and cancelled and the Trustee shall mail notice of such cancellation to the recipients of the notice of redemption being cancelled pursuant to the provisions of Section 4.02. Any optional redemption of Obligations and notice thereof shall be rescinded and cancelled if for any reason on the date fixed for optional redemption moneys are not available in the Redemption Fund or otherwise held in trust for such purpose in an amount sufficient to pay in full on such date the principal of, interest, and any premium due on the Obligations called for optional redemption and such failure to optionally redeem the Obligations called for redemption shall not be a default hereunder.

Section 4.04 Effect of Redemption. Notice of redemption having been duly given as aforesaid or as otherwise provided in a Supplemental Indenture, and moneys for payment of the redemption price of, together with interest accrued to the redemption date on, the Obligations (or portions thereof) so called for redemption having been irrevocably deposited with the Trustee, on the redemption date designated in such notice, the Obligations (or portions thereof) so called for redemption shall become due and payable at the redemption price specified in this Indenture, together with interest accrued thereon to the date fixed for redemption, interest on the Obligations so called for redemption shall cease to accrue, such Obligations (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of such Obligations shall have no rights in respect thereof except to receive payment of such redemption price and accrued interest to the date fixed for redemption.

Section 4.05 Partial Redemption of Obligations. Upon surrender of any Obligation to be redeemed in part only, the Commission shall execute, and the Trustee shall authenticate and deliver to the Owner of such Obligation, at the expense of the Commission, a new Obligation or Obligations of Authorized Denominations equal in Bond Obligation to the unredeemed portion of the Obligation surrendered, of the same Series, maturity and terms as the surrendered Obligation.

**ARTICLE V
PLEDGE; FUNDS AND ACCOUNTS**

Section 5.01 Deposit of Revenue by Trustee; Establishment of Toll Revenue Fund.

(a) All Toll Revenues received and receivable by the Commission and pledged and assigned by this Indenture to the Trustee, together with the balance of the Trust Estate, are to be paid by or on behalf of the Commission to the Trustee and deposited by the Trustee in the Funds and Accounts described in this Article V and held in trust for the purposes set forth herein, and, except as otherwise provided herein, shall not be subject to any lien, levy, garnishment or attachment by any creditor of the Commission nor shall they be subject to any assignment or hypothecation by the Commission. Subject only to the provisions of this Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth herein, the Trustee shall be entitled to and shall collect and receive all of the Toll Revenues, and any Toll Revenues collected or received by or on behalf of the Commission shall be deemed to be held, and to have been collected or received, by the Commission as the agent of the Trustee and shall forthwith be paid by the Commission to the Trustee. Moneys on deposit in the Funds and Accounts described in this Article V (excluding the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument) shall be held by the Trustee or the Commission, as applicable, in trust, and pending application in accordance with the provisions of this Article V shall be subject to a lien and charge in favor of the Holders until applied as hereinafter provided. The Trustee shall at all times maintain accurate records of deposits into such Funds and Accounts and the sources and timing of such deposits.

(b) As long as any Obligations remain unpaid, the Commission hereby assigns and shall cause Toll Revenues to be transmitted by the Toll Operator on at least a weekly basis directly to the Trustee for deposit in a trust fund, designated as the "Toll Revenue Fund," which Fund the Trustee shall establish and maintain in trust. Investment income on amounts held by the Trustee in the Toll Revenue Fund shall also be deposited in the Toll Revenue Fund. All moneys at any time held in the Toll Revenue Fund shall be held in trust for the benefit of the Holders of the Obligations and shall be disbursed, allocated and applied solely for the uses and purposes set forth in this Indenture.

Section 5.02 Establishment of Other Funds and Accounts.

(a) In addition to the Toll Revenue Fund established pursuant to Section 5.01, the following Funds and Accounts are hereby established and created and shall be maintained in trust by the Trustee:

- (1) the Project Fund, and within the Project Fund, the Senior Lien Obligations Account, the Second Lien Obligations Account, the Subordinate Obligations Account, and the Insurance and Condemnation Proceeds Account;
- (2) the Rebate Fund;
- (3) the Revenue Stabilization Fund;

- (4) the Operation and Maintenance Reserve Fund;
- (5) the Senior Lien Obligations Fund and, within the Senior Lien Obligations Fund, the Senior Lien Obligations Interest Account, the Senior Lien Obligations Principal Account, and the TIFIA Loan Prepayment Account;
- (6) the Senior Lien Obligations Reserve Fund and, within the Senior Lien Obligations Reserve Fund, the TIFIA Loan Reserve Account;
- (7) the Second Lien Obligations Fund and, within the Second Lien Obligations Fund, the Second Lien Obligations Interest Account, and the Second Lien Obligations Principal Account;
- (8) the Second Lien Obligations Reserve Fund;
- (9) the Subordinate Obligations Fund and, within the Subordinate Obligations Fund, the Subordinate Obligations Interest Account and the Subordinate Obligations Principal Account;
- (10) the Subordinate Obligations Reserve Fund;
- (11) the Major Maintenance and Renewal Fund;
- (12) the Additional Toll Roads System Cost Payment Fund and, within the Additional Toll Roads System Cost Payment Fund, the Construction Account;
- (13) the VDOT Repayment Fund;
- (14) the HRTF Repayment Fund; and
- (15) the General Reserve Fund, and within the General Reserve Fund, the Restricted Account and the Unrestricted Account.

and the following Fund(s) are hereby established and created and shall be maintained by the Commission:

- (16) the Operation and Maintenance Fund.

In addition, upon the written request of the Commission or as may be specified in a Supplemental Indenture, the Trustee shall establish and maintain additional temporary Funds or Accounts or sub-accounts for the purposes specified in any such request.

(b) All of the Funds and Accounts (other than the Operation and Maintenance Fund) shall be held by the Trustee and, except as expressly provided herein, the Commission shall not have any right to withdraw funds from any Fund or Account established pursuant to Section 5.02(a). The Commission hereby irrevocably authorizes the Trustee to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Fund or Account in accordance with the terms of this Indenture.

Section 5.03 Toll Revenue Fund; Priority of Deposits and Transfers.

(a) Except for amounts to be deposited in other Funds or Accounts pursuant to this Article or the provisions of any Supplemental Indenture, the Commission shall promptly deposit or cause to be deposited into the Toll Revenue Fund all Revenue, all HRTF Transfers, and transfers from other Funds or Accounts as required by the terms of this Indenture.

(b) Subject to Section 5.28 hereof, including the delivery of a Funds Transfer Certificate by the Commission (to the extent required by such Section 5.28), the Trustee shall make the following transfers and payments from the Toll Revenue Fund in the amounts, at the times and only for the purposes specified below and in the following order of priority (it being agreed that no amount shall be transferred on any date pursuant to any clause below until amounts sufficient as of the Monthly Funding Date falling on or most recently prior to such date (to the extent applicable) for all the purposes specified under the prior clauses shall have been transferred or set aside):

First, on each Monthly Funding Date, to the Operation and Maintenance Fund, the amount necessary to increase the balance of the Operation and Maintenance Fund to an amount equal to the Operation and Maintenance Expenses then due and payable on the day after such Monthly Funding Date, as reflected in the Annual Operating Budget for such Fiscal Year, including any revisions thereto; provided, that in the event amounts available in the Toll Revenue Fund would be insufficient to make any of the transfers required by this clause on such Monthly Funding Date, funds available from the Operation and Maintenance Reserve Fund shall first be transferred to the Operation and Maintenance Fund up to an amount equal to the lesser of (a) the amount of such shortfall on such Monthly Funding Date, and (b) the amount required to be deposited to the Operation and Maintenance Fund on such Monthly Funding Date, in each case offsetting in an equal amount the obligation to transfer funds from the Toll Revenue Fund on such Monthly Funding Date;

Second, on each Monthly Funding Date, any payments then due and payable by the Commission to the Rebate Fund or any similar rebate fund established with respect to any future tax-exempt borrowing transaction under this Indenture;

Third, on each Monthly Funding Date, to the Operation and Maintenance Reserve Fund any remaining amounts as may be necessary to increase the amount on deposit therein to equal the Operation and Maintenance Reserve Fund Requirement;

Fourth, (x) on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, to the Senior Lien Obligations Interest Account the sum of (A)(1) in the case of Outstanding Senior Lien Obligations with semiannual Interest Payment Dates, one-sixth (1/6) of the amount of the interest payable on such Senior Lien Obligations on the next Interest Payment Date; (2) in the case of Outstanding Senior Lien Obligations with quarterly Interest Payment Dates, one-third (1/3) of the amount of the interest payable on such Senior Lien Obligations on the next Interest Payment Date; and (3) in the case of Outstanding Senior Lien Obligations with monthly Interest Payment Dates, the amount of interest payable on such Senior Lien Obligations on the next Interest Payment Date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Senior Lien Obligations

Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on any Senior Lien Obligations, any other amount required to make the amount credited to the Senior Lien Obligations Interest Account equal to the amount payable on such Senior Lien Obligations on such Interest Payment Date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, and the applicable Account in the Senior Lien Obligations Reserve Fund (in that order) shall be transferred to the Senior Lien Obligations Interest Account up to an amount equal to such shortfall; and (y) on each Monthly Funding Date, to the applicable Swap Parties, scheduled payments due under any Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to such scheduled Hedging Obligations, under any Swaps entered into in connection with such Senior Lien Obligations; and provided further, however, that with respect to Senior Lien Obligations in the form of or securing payment of the TIFIA Loan, only the interest component of TIFIA Mandatory Debt Service shall be set aside pursuant to this Fourth clause;

Fifth, on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, commencing twelve (12) months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six (6) months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Senior Lien Obligations Principal Account, the sum of (A)(1) in the case of Outstanding Senior Lien Obligations with annual principal or mandatory sinking fund payment dates, one-twelfth (1/12) of the principal and mandatory sinking fund redemptions due on such Senior Lien Obligations; and (2) in the case of Outstanding Senior Lien Obligations with semi-annual principal or mandatory sinking fund payment dates, one-sixth (1/6) of the principal and mandatory sinking fund redemptions due on such Senior Lien Obligations; (B) the sum of any shortfall in transfers required to have been made to the Senior Lien Obligations Principal Account on any previous Monthly Funding Date; and (C) if the Monthly Funding Date is also a principal payment date (or mandatory sinking fund redemption date) or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Senior Lien Obligations, any other amount required to make the amount credited to the Senior Lien Obligations Principal Account equal to the amount of principal due on such Senior Lien Obligations on such principal payment date or mandatory sinking fund redemption date; provided that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, and the applicable Account in the Senior Lien Obligations Reserve Fund (in that order) shall be transferred to the Senior Lien Obligations Principal Account up to an amount equal to such shortfall, and provided further, however, that with respect to Senior Lien Obligations in the form of or securing payment of the TIFIA Loan, only the principal component of TIFIA Mandatory Debt Service shall be set aside pursuant to this Fifth clause;

Sixth, for so long as Senior Lien Obligations in the form of or securing the TIFIA Loan are outstanding and no Bankruptcy Related Event has occurred, on each Monthly Funding Date commencing on the Monthly Funding Date that is six (6) months prior to the date on which TIFIA Debt Service is first due and payable, the following amounts (in equal monthly installments

and in the following order of priority (A) (w) to the to the Senior Lien Obligations Interest Account, the interest portion of TIFIA Mandatory Debt Service then due (or the accrual of appropriate amounts in advance thereof), (x) to the Senior Lien Obligations Principal Account, the principal portion of TIFIA Mandatory Debt Service then due (or the accrual of appropriate amounts in advance thereof), (y) to the Senior Lien Obligations Interest Account, the interest portion of the TIFIA Scheduled Debt Service then due, and (z) to the Senior Lien Obligations Principal Account, the principal portion of the TIFIA Scheduled Debt Service then due; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Senior Lien Obligations Interest Account in respect of TIFIA Debt Service on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on the Senior Lien Obligations in the form of or securing payment of the TIFIA Loan, any other amount required to make the amount credited to the Senior Lien Obligations Interest Account equal to the amount payable on such TIFIA Loan constituting Senior Lien Obligations on such Interest Payment Date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, and the applicable Account in the Senior Lien Obligations Reserve Fund (in that order) shall be transferred to the Senior Lien Obligations Interest Account up to an amount equal to such shortfall; ;

Seventh, on each Monthly Funding Date, to the Senior Lien Obligations Reserve Fund (or the applicable Account therein), the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein) to the Senior Lien Obligations Reserve Requirement; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, (A) funds available in the Restricted and Unrestricted Accounts in the General Reserve Fund and the Additional Toll Roads System Cost Payment Fund shall be transferred to the Senior Lien Obligations Reserve Fund up to an amount equal to such shortfall, and (B) the funds available for such transfer(s) shall be transferred to each Account in the Senior Lien Obligations Reserve Fund ratably in accordance with its respective shortfall;

Eighth, (x) on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, to the Second Lien Obligations Interest Account the sum of (A)(1) in the case of Outstanding Second Lien Obligations with semiannual Interest Payment Dates, one-sixth (1/6) of the amount of the interest payable on such Second Lien Obligations on the next Interest Payment Date; (2) in the case of Outstanding Second Lien Obligations with quarterly Interest Payment Dates, one-third (1/3) of the amount of the interest payable on such Second Lien Obligations on the next Interest Payment Date; and (3) in the case of Outstanding Second Lien Obligations with monthly Interest Payment Dates, the amount of interest payable on such Second Lien Obligations on the next Interest Payment Date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Second Lien Obligations Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on any Second Lien Obligations, any other amount required to make the amount credited to the Second Lien Obligations Interest Account equal to the amount payable on such Second Lien Obligations on such Interest Payment Date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the

Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, and the applicable Account in the Second Lien Obligations Reserve Fund (in that order) shall be transferred to the Second Lien Obligations Interest Account up to an amount equal to such shortfall; and (y) on each Monthly Funding Date, to the applicable Swap Parties, scheduled payments due under any Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to such scheduled Hedging Obligations, under any Swaps entered into in connection with such Second Lien Obligations; provided, however, that with respect to Second Lien Obligations in the form of or securing payment of the TIFIA Loan, only the interest component of TIFIA Debt Service shall be set aside pursuant to this Eighth clause;

Ninth, on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, commencing twelve (12) months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six (6) months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Second Lien Obligations Principal Account, the sum of (A)(1) in the case of Outstanding Second Lien Obligations with annual principal or mandatory sinking fund payment dates, one-twelfth (1/12) of the principal and mandatory sinking fund redemptions due on such Second Lien Obligations; and (2) in the case of Outstanding Second Lien Obligations with semi-annual principal or mandatory sinking fund payment dates, one-sixth (1/6) of the principal and mandatory sinking fund redemptions due on such Second Lien Obligations; (B) the sum of any shortfall in transfers required to have been made to the Second Lien Obligations Principal Account on any previous Monthly Funding Date; and (C) if the Monthly Funding Date is also a principal payment date (or mandatory sinking fund redemption date) or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Second Lien Obligations, any other amount required to make the amount credited to the Second Lien Obligations Principal Account equal to the amount of principal due on such Second Lien Obligations on such principal payment date or mandatory sinking fund redemption date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Unrestricted Account in the General Reserve Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, and the applicable Account in the Second Lien Obligations Reserve Fund (in that order) shall be transferred to the Second Lien Obligations Principal Account up to an amount equal to such shortfall; provided, however, that with respect to Second Lien Obligations in the form of or securing payment of the TIFIA Loan, only the principal component of TIFIA Debt Service shall be set aside pursuant to this Ninth clause;

Tenth, on each Monthly Funding Date, to the Second Lien Obligations Reserve Fund (or the applicable Account therein), the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein and any amounts to be transferred from the Restricted and Unrestricted Accounts in the General Reserve Fund and the Additional Toll Roads System Cost Payment Fund) to the Second Lien Obligations Reserve Requirement; provided, however, that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Second Lien Obligations Reserve Fund ratably in accordance with its respective shortfall;

Eleventh, for so long as Second Lien Obligations in the form of or securing the TIFIA Loan are outstanding, on each Monthly Funding Date commencing on the Monthly Funding

Date that is six (6) months prior to the date on which TIFIA Debt Service is first due and payable, to the Second Lien Obligations Interest Account, an amount which equals the sum of (A) one-sixth (1/6) of the TIFIA Debt Service due and payable on the immediately succeeding TIFIA Payment Date for the TIFIA Loan; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Second Lien Obligations Interest Account with respect to TIFIA Debt Service on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on the Second Lien Obligations in the form of or securing payment of the TIFIA Loan, any other amount required to make the amount credited to the Second Lien Obligations Interest Account equal to the amount payable on such TIFIA Loan constituting Second Lien Obligations on such Interest Payment Date;]

Twelfth, (x) on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, to the Subordinate Obligations Interest Account the sum of (A)(1) in the case of Outstanding Subordinate Obligations with semi-annual Interest Payment Dates, one-sixth (1/6) of the interest payable on such Subordinate Obligations on the next Interest Payment Date; (2) in the case of Outstanding Subordinate Obligations with quarterly Interest Payment Dates, one-third (1/3) of the amount of the interest payable on such Subordinate Obligations on the next Interest Payment Date; and (3) in the case of Outstanding Subordinate Obligations with monthly Interest Payment Dates, the interest payable on such Subordinate Obligations on the next Interest Payment Date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Subordinate Obligations Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on any Subordinate Obligations, any other amount required to make the amount credited to the Subordinate Obligations Interest Account equal to the interest payable on such Subordinate Obligations on such Interest Payment Date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, and the applicable Account in the Subordinate Obligations Reserve Fund (in that order) shall be transferred to the Subordinate Obligations Interest Account up to an amount equal to such shortfall, and (y) on each Monthly Funding Date, to the applicable Swap Parties, scheduled payments due under any Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to such scheduled Hedging Obligations, under any Swaps entered into in connection with such Subordinate Obligations;

Thirteenth, on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, commencing twelve (12) months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six (6) months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Subordinate Obligations Principal Account the sum of (A)(1) in the case of Outstanding Subordinate Obligations with annual principal payment date, one-twelfth (1/12) of the principal due on such Subordinate Obligations on the next principal payment date; and (2) in the case of Outstanding Subordinate Obligations with semi-annual principal payment dates, one-sixth (1/6) of the principal redemptions due on such Subordinate Obligation on the next principal payment date; plus (B) the sum of any shortfall in transfers required to have been made to the Subordinate Obligations Principal Account on any previous Monthly Funding Date; plus (C) if the

Monthly Funding Date is also a principal payment date or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Subordinate Obligations, any other amount required to make the amount credited to the Subordinate Obligations Principal Account equal to the amount of principal due on such Subordinate Obligation on such principal payment date or mandatory sinking fund redemption date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, and the applicable Account in the Subordinate Obligations Reserve Fund (in that order) shall be transferred to the Subordinate Obligations Principal Account up to an amount equal to such shortfall.

Fourteenth, on each Monthly Funding Date, to the Subordinate Obligations Reserve Fund (or the applicable Account therein), the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein) to the Subordinate Obligations Reserve Requirement; provided, that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Subordinate Obligations Reserve Fund ratably in accordance with its respective shortfall;

Fifteenth, on each Monthly Funding Date solely to the extent sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 5.03(b), to the Major Maintenance and Renewal Fund, 1/12 of the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit) to the Major Maintenance and Renewal Fund Required Amount calculated at the end of each Fiscal Year; provided, that in the event such requirement cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Unrestricted Account in the General Reserve Fund, available HRTF Transfers as and to the extent provided for in any Supplemental Indenture, and the Restricted Account in the General Fund (in that order) shall be transferred to the Major Maintenance and Renewal Fund up to an amount equal to such shortfall;

Sixteenth, on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, to the counterparties to Swaps, an amount equal to any Hedging Termination Obligations then due or due prior to the next Monthly Funding Date with respect to a termination of any such Swaps and to any Credit Provider or Reserve Facility Provider any Excess Interest owed due to a drawing on any applicable Credit Support Instrument or Reserve Facility or any additional interest, fees, fines or other penalties owed as a result of a default on any applicable Credit Support Instrument or Reserve Facility;

Seventeenth, on each Monthly Funding Date solely to the extent (i) sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 5.03(b) and (ii) the Specified Funding Conditions are met, to the Additional Toll Roads System Cost Payment Fund to cause the amount on deposit in the Additional Toll Roads System Cost Payment Fund to equal the amount specified in Section 5.13;

Eighteenth, on each Monthly Funding Date solely to the extent (i) sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this

Section 5.03(b) and (ii) the Specified Funding Conditions are met, to the VDOT Repayment Fund to equal the amount specified in Section 5.14 for Applicable Revolving Account Costs;

Nineteenth, on each Monthly Funding Date solely to the extent (i) sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 5.03(b) and (ii) the Specified Funding Conditions are met, to the HRTF Repayment Fund in accordance with Section 5.15(a); and

Twentieth, on each Monthly Funding Date, any amount remaining after the deposits and transfers described in Clauses First through Nineteenth above shall be deposited, first, to the Restricted Account in the General Reserve Fund until the balance therein is equal to or greater than \$20,000,000 and all Specified Funding Conditions are met, second, to the Unrestricted Account in the General Reserve Fund unless the balance therein in the prior month exceeds \$50,000,000, in which case 50% of such remaining amount shall be deposited in the Redemption Fund and the remaining 50% shall be deposited in the Unrestricted Account in the General Reserve Fund; provided, however, that to the extent the Specified Funding Conditions referenced in Clauses Seventeenth through Nineteenth are not met or satisfied, no deposit shall be made to the corresponding Account or Fund under Clauses Seventeenth through Nineteenth on the Monthly Funding Date and the funding provisions of this Clause Twentieth shall be operative.

(c) In the event amounts available in the Toll Revenue Fund would be insufficient to make any of the transfers required by Clauses First through Fifteenth of Section 5.03(b) on the Business Day immediately prior to a Monthly Funding Date, the Trustee shall notify the Commission of the amount of such shortfall by 10:00 a.m. (Eastern time) on such day.

(d) To the extent that on any Calculation Date or any other date of determination requested by the Commission, the Commission determines that (i) the amounts on deposit in the Senior Lien Obligations Reserve Fund are in excess of the Senior Lien Obligations Reserve Requirement with respect to all Outstanding Senior Lien Obligations, (ii) the amounts on deposit in the Second Lien Obligations Reserve Fund are in excess of the Second Lien Obligations Reserve Requirement with respect to all Outstanding Second Lien Obligations, (iii) amounts on deposit in the Subordinate Obligations Reserve Fund are in excess of the Subordinate Obligations Reserve Requirement with respect to all Outstanding Subordinate Obligations, (iv) the amounts on deposit in the Major Maintenance and Renewal Fund are certified by the Commission to be in excess of what is required for expected Major Maintenance and Renewal Fund Permitted Expenditures and the Major Maintenance and Renewal Fund Required Amount, (v) amounts in the Additional Toll Roads System Cost Payment Fund are certified by the Commission to be in excess of what is required for Toll Roads System costs expected to be funded from such Fund, (vi) amounts in the VDOT Repayment Fund are certified by the Commission to be in excess of what is required for payment of Applicable Revolving Account Costs expected to be funded from such Fund, or (vii) amounts in the HRTF Repayment Fund are certified by the Commission to be in excess of what is required for payment of any unreimbursed HRTF Transfer expected to be funded from such Fund, then in each such case, as applicable, the Trustee shall transfer the excess amounts to the Toll Revenue Fund.

Section 5.04 Project Fund.

(a) Accounts. Pursuant to Section 5.02(a) hereof, the Trustee is to establish and create and maintain in trust the following separate Accounts within the Project Fund:

- (1) the Senior Lien Obligations Account;
- (2) the Second Lien Obligations Account;
- (3) the Subordinate Obligations Account; and
- (4) the Insurance and Condemnation Proceeds Account.

Project Costs shall be paid from the Project Fund and its Accounts, including the Senior Lien Obligations Account, the Second Lien Obligations Account, the Subordinate Obligations Account, and the Insurance and Condemnation Proceeds Account as described below. The Commission shall be entitled to open new Accounts of the Project Fund for such purposes as may be set forth in a Supplemental Indenture.

(b) Senior Lien Obligations Account. The net proceeds of each Series of the Senior Lien Obligations shall be deposited by the Trustee into the applicable sub-account of the Senior Lien Obligations Account as provided by the applicable Supplemental Indenture. The Senior Lien Obligations Account and all sub-accounts therein shall be maintained in order to account for the receipt and disbursement of proceeds (and all earnings thereon) of the Senior Lien Obligations, including but not limited to, the payment of, or reimbursement for a prior payment of, Costs of Issuance of Senior Lien Obligations and other Project Costs permitted to be paid with the proceeds of such Senior Lien Obligations. Funds therein shall be disbursed pursuant to a Funds Transfer Certificate in accordance with the provisions of Section 5.28. Notwithstanding anything to the contrary set forth herein, the amounts on deposit in any such sub-account of the Senior Lien Obligations Account (and all earnings thereon) shall secure only the Senior Lien Obligations issued to fund the initial deposit to such sub-account, and such amounts shall be held by the Trustee hereunder solely for the benefit of the Holders of such Senior Lien Obligations until such funds have been disbursed in accordance with this Section.

(c) Second Lien Obligations Account. The net proceeds of Second Lien Obligations shall be deposited by the Trustee into the applicable sub-account of the Second Lien Obligations Account as provided by the applicable Supplemental Indenture. The Second Lien Obligations Account and all sub-accounts therein shall be maintained in order to account for the receipt and disbursement of proceeds (and all earnings thereon) of the Second Lien Obligations, including but not limited to, the payment of, or reimbursement for a prior payment of, Costs of Issuance of Second Lien Obligations and other Project Costs permitted to be paid with the proceeds of such Second Lien Obligations. Funds therein shall be disbursed pursuant to a Funds Transfer Certificate in accordance with the provisions of Section 5.28. Notwithstanding anything to the contrary set forth herein, the amounts on deposit in any such sub-account of the Second Lien Obligations Account (and all earnings thereon) shall secure only the Second Lien Obligations issued to fund the initial deposit to such sub-account, and such amounts shall be held by the Trustee hereunder solely for the benefit of the Holders of such Second Lien Obligations until such funds have been disbursed in accordance with this Section.

(d) Subordinate Obligations Account. The net proceeds of Subordinate Obligations shall be deposited by the Trustee into the applicable sub-account of the Subordinate Obligations Account as provided by the applicable Supplemental Indenture. The Subordinate Obligations Account and all sub-accounts therein shall be maintained in order to account for the receipt and disbursement of proceeds (and all earnings thereon) of the Subordinate Obligations, including but not limited to, the payment of, or reimbursement for a prior payment of, Costs of Issuance of Subordinate Obligations and other Project Costs permitted to be paid with the proceeds of such Subordinate Obligations. Funds therein shall be disbursed pursuant to a Funds Transfer Certificate in accordance with the provisions of Section 5.28. Notwithstanding anything to the contrary set forth herein, the amounts on deposit in any such sub-account of the Subordinate Obligations Account (and all earnings thereon) shall secure only the Subordinate Obligations issued to fund the initial deposit into such sub-account, and such amounts shall be held by the Trustee hereunder solely for the benefit of the Holders of such Subordinate Obligations until such funds have been disbursed in accordance with this Section.

(e) Insurance and Condemnation Proceeds Account. Proceeds of fire and other property and casualty insurance payable to or received by the Commission with respect to the Toll Roads System (whether by way of claims, return of premiums, *ex gratia* settlements or otherwise), and proceeds of any condemnation awards payable to or received by the Commission with respect to the Toll Roads System, whether or not included as an element of Toll Revenues, shall be transferred to the Trustee and deposited by the Trustee into the Insurance and Condemnation Proceeds Account; provided, that proceeds of any contractual or liquidated damages for delay, business interruption, delay in startup or loss of advance profits insurance paid to or for the benefit of the Commission shall be deposited to the Toll Revenue Fund. The Trustee may conclusively rely upon a Written Request of the Commission as to the deposit of any such amounts in the Revenue Fund and/or the Insurance and Proceeds Account.

If received prior to the applicable Substantial Completion Date, amounts on deposit in such Account shall be used to pay Project Costs, and, if required, a mandatory prepayment of the TIFIA Loan (and shall be transferred for such purpose). If received after the applicable Substantial Completion Date, amounts on deposit in the Insurance and Condemnation Proceeds Account may be used by the Commission to pay the costs of restoration, repair or rehabilitation of the Toll Roads System or any segment, phase or portion thereof to which such insurance or condemnation proceeds relate; provided, however, that any portion of such amounts that the Commission elects not to use for such restoration, repair or rehabilitation of the Toll Roads System or that are in excess of the amount needed for such restoration, repair or rehabilitation of the Toll Roads System, as evidenced by a Certificate of the Commission delivered to the Trustee, shall be transferred to the Redemption Fund and applied to the prepayment of principal of Outstanding Highest Priority Obligations, including the Senior Lien Obligations in the form of the TIFIA Loan if it is then Outstanding. The Commission shall comply with Section 5.28, including the delivery of a Funds Transfer Certificate (to the extent required by such Section 5.28 in requesting a disbursement of funds from time to time from the Insurance and Condemnation Proceeds Account.

Section 5.05 Revenue Stabilization Fund.

(a) Monies in the Revenue Stabilization Fund shall be available solely for transfer to the Senior Lien Obligations Fund, the Second Lien Obligations Fund, and the Subordinate

Obligations Fund, at such times as the Commission determines in its sole discretion, as may be set forth in a Written Request of the Commission, provided, however, if in any month there are insufficient Toll Revenues on deposit in the Toll Revenue Fund to make any required payments to the Senior Lien Obligations Fund, the Second Lien Obligations Fund, or the Subordinate Obligations Fund, the Trustee, after taking into account any transfers from the Unrestricted Account in the General Reserve Fund or the Additional Network Project Cost Fund as provided in a Written Request of the Commission, shall be required to transfer monies from the Revenue Stabilization Fund to the Senior Lien Obligations Fund, the Second Lien Obligations Fund, and the Subordinate Obligations Fund for application in accordance with the provisions of Clause Fourth, Clause Fifth, Clause Eighth, Clause Ninth, Clause Twelfth, and Clause Thirteenth of Section 5.03(b). Unless otherwise specified in a Supplemental Indenture, monies in the Revenue Stabilization Fund shall be used on the first semi-annual TIFIA Payment Date each year for payment of TIFIA Mandatory Debt Service and on the second semi-annual TIFIA Payment Date each year for payment of TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service plus payment of any amounts of previously unpaid TIFIA Debt Service .

(b) The Revenue Stabilization Fund Requirement may be permitted or required by the applicable Supplemental Indenture to be funded in whole or in part with a Credit Support Instrument. The terms and conditions for any Credit Support Instrument shall be set forth in the Credit Support Instrument or the applicable Supplemental Indenture specifying that the Revenue Stabilization Fund Requirement may be met in whole or in part by the Credit Support Instrument, provided that those terms and conditions shall conform to and be consistent with the provisions set forth in this Section 5.05 and, for so long as the TIFIA Loan Agreement remains in effect, the requirements for Credit Support Instruments under the TIFIA Loan Agreement. The Trustee shall withdraw cash (and liquidate investments to produce cash) and draw on Credit Support Instruments in or with respect to the Revenue Stabilization Fund to fund payments of principal of and interest on Obligations supported by the Revenue Stabilization Fund in the manner and in the order specified herein and in the applicable Supplemental Indenture or Supplemental Indentures. This Indenture shall not be discharged until all costs owing to a Credit Provider have been paid or duly provided for.

(c) Amounts in the Revenue Stabilization Fund in excess of the Revenue Stabilization Fund Requirement may be transferred to the Commission upon Written Request of the Commission.

Section 5.06 HRTF Transfers.

(a) As and to the extent the Commission has authorized HRTF Transfers pursuant to the applicable provisions of the HRTF Indenture, the Commission will make available such HRTF Transfer for deposit to the Revenue Stabilization Fund, the Major Maintenance and Renewal Fund, and any other Fund or Account under this Indenture, all as may be provided in any Supplemental Indenture.

Unless provided otherwise in any Supplemental Indenture or as may be approved from time to time by resolution of the Commission, the amount of HRTF Transfers for deposit to the Revenue Stabilization Fund shall not exceed \$10,000,000 in any Fiscal Year, such maximum

amount being subject to any reimbursement of such amounts to the Commission pursuant to Section 5.15(c).

Unless provided otherwise in any Supplemental Indenture or as may be approved from time to time by resolution of the Commission, the aggregate amount of all HRTF Transfers made while any Obligations are Outstanding for deposit to the Major Maintenance and Renewal Fund shall not exceed the Major M & R HRTF Cumulative Transfer Cap, such maximum amount being subject to any reimbursement of such amounts to the Commission pursuant to Section 5.15(c). Commencing with the Fiscal Year ending June 30, 2027, and continuing on a biennial basis thereafter, the Commission shall calculate the Major M & R HRTF Cumulative Transfer Cap as of the end of such Fiscal Year. The Commission shall provide such calculation to the Trustee within one hundred eighty days of the end of the applicable Fiscal Year.

(b) HRTF Transfers may only be used to pay HRTF Eligible Costs.

Section 5.07 Operation and Maintenance Fund.

The Commission shall establish and maintain the Operation and Maintenance Fund in accordance herewith. As provided in Clause First of Section 5.03(b), the Commission shall maintain in the Operation and Maintenance Fund an amount equal to the Operation and Maintenance Expenses then due and payable, as reflected in the Annual Operating Budget for such Fiscal Year (including any revisions thereto) (the “**Operation and Maintenance Fund Required Amount**”). The Commission shall apply the funds in the Operation and Maintenance Fund and the amounts transferred to the Operation and Maintenance Fund under Article V of this Indenture for the payment of Operation and Maintenance Expenses in accordance with the terms of this Indenture.

Section 5.08 Operation and Maintenance Reserve Fund.

In the event that the Commission delivers to the Trustee a Written Request of the Commission certifying that (i) at any time, monies on deposit in the Operation and Maintenance Fund are insufficient to pay Operation and Maintenance Expenses then due and payable, or (ii) on any Monthly Funding Date, monies on deposit in the Toll Revenue Fund are insufficient to make the deposits required by Clause First of Section 5.03(b), the Trustee shall transfer such funds from the Operations and Maintenance Reserve Fund to the Operation and Maintenance Fund in an amount sufficient to cure such deficiency.

As provided in Section 5.16(a), the Commission may also direct the use of amounts in the Unrestricted Account and Restricted Account in the General Reserve Fund to satisfy any amounts required to be on deposit in the Operation and Maintenance Reserve Fund.

Section 5.09 Senior Lien Obligations Reserve Fund.

(a) Except as may otherwise be specified in a Supplemental Indenture, on the date of issuance of any Series of Senior Lien Obligations that has a Senior Lien Obligations Reserve Requirement, the Senior Lien Obligations Reserve Requirement for those Senior Lien Obligations shall be deposited in the Senior Lien Obligations Reserve Fund in an Account solely for the benefit of those Senior Lien Obligations. Alternatively, the Supplemental Indenture for any

Series of Senior Lien Obligations may establish a pooled Senior Lien Obligations Reserve Requirement for that Series of Senior Lien Obligations and any one or more subsequently issued Series of Senior Lien Obligations with the same pooled Senior Lien Obligations Reserve Requirement, in which case the Senior Lien Obligations Reserve Requirement for the initial issue of such Senior Lien Obligations shall be deposited in the Senior Lien Obligations Reserve Fund in an Account solely for the benefit of those Senior Lien Obligations and any additional Senior Lien Obligations with the same pooled Senior Lien Obligations Reserve Requirement, and on the date of issuance of any such additional Senior Lien Obligations, there shall be deposited in the Account the amount necessary to increase the balance in the Account to an amount equal to the Senior Lien Obligations Reserve Requirement for all Senior Lien Obligations secured by that Account.

(b) Monies on deposit in each Account within the Senior Lien Obligations Reserve Fund shall be applied by the Trustee as follows:

(1) If on any (x) Interest Payment Date for Senior Lien Obligations secured by an Account within the Senior Lien Obligations Reserve Fund, (y) principal payment date for such Senior Lien Obligations or (z) redemption date on which such Senior Lien Obligations are subject to mandatory sinking fund redemption, the amount on deposit in the applicable Account of the Senior Lien Obligations Fund, determined after taking into account all amounts transferred to such Account of the Senior Lien Obligations Fund in accordance with Clauses Fourth and Fifth of Section 5.03(b), is not sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Senior Lien Obligations, then moneys shall be transferred to the Senior Lien Obligations Interest Account and/or the Senior Lien Obligations Principal Account, as applicable, from the applicable Account of the Senior Lien Obligations Reserve Fund which, together with moneys then on deposit in the applicable Account of the Senior Lien Obligations Fund, will be sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Senior Lien Obligations on such date. Moneys shall be transferred first to the Senior Lien Obligations Interest Account until such Account, together with any available funds then on deposit in the Senior Lien Obligations Interest Account, is sufficiently funded with respect to such Senior Lien Obligations and thereafter, to the Senior Lien Obligations Principal Account until such Account, together with any available funds then on deposit in the Senior Lien Obligations Principal Account, is sufficiently funded with respect to such Senior Lien Obligations.

(2) Upon the maturity of Senior Lien Obligations secured by funds on deposit in an Account of the Senior Lien Obligations Reserve Fund or upon the earlier redemption of all or any portion of such Senior Lien Obligations, the Commission may direct the Trustee to transfer amounts on deposit in the applicable Account within the Senior Lien Obligations Reserve Fund to the Senior Lien Obligations Principal Account for application to the final payment of principal of all or a portion of the Senior Lien Obligations secured thereby or to an escrow account established for defeasance of such Senior Lien Obligations pursuant to Article X hereof, provided that, if less than all of the Senior Lien Obligations mature or are redeemed, the amount remaining on deposit in such Account of the Senior Lien Obligations Reserve Fund following any such transfer shall not be less than the Senior Lien Obligations Reserve Requirement applicable to the Senior Lien Obligations secured thereby that remain Outstanding.

(3) Except as provided in paragraph (2) above, any amounts on deposit in an Account of the Senior Lien Obligations Reserve Fund in excess of the applicable Senior Lien Obligations Reserve Requirement shall be applied in accordance with Section 5.03(d) of this Indenture.

(c) The lien on the Senior Lien Obligations Reserve Fund (and all earnings thereon) shall apply only to the Senior Lien Obligations and the related interest of the Holder of such Senior Lien Obligations with respect to amounts on deposit in such Fund from time to time, and such amounts shall be solely for the benefit of such Holder of Senior Lien Obligations until such funds have been disbursed in accordance with this Section. If necessary, the Commission shall instruct the Trustee to create Accounts within the Senior Lien Obligations Reserve Fund to facilitate compliance with the provisions of this paragraph.

(d) The Senior Lien Obligations Reserve Requirement for any Series of Senior Lien Obligations may be permitted or required by the Supplemental Indenture establishing the Senior Lien Obligations Reserve Requirement to be funded in whole or in part with a Reserve Facility. The terms and conditions for any Reserve Facility shall be set forth in the Reserve Facility or the Supplemental Indenture establishing the Senior Lien Obligations Reserve Requirement to be met in whole or in part by the Reserve Facility, provided that those terms and conditions shall conform to and be consistent with the provisions set forth in this Section 5.09 and, for so long as the TIFIA Loan Agreement remains in effect, the requirements for Credit Support Instruments under the TIFIA Loan Agreement. The Trustee shall withdraw cash (and liquidate investments to produce cash) and draw on Reserve Facilities in or with respect to any Account in the Senior Lien Obligations Reserve Fund to fund payments of principal of and interest on Senior Lien Obligations supported by such Account in the Senior Lien Obligations Reserve Fund in the manner and in the order specified herein and in the applicable Supplemental Indenture or Supplemental Indentures. This Indenture shall not be discharged until all Reserve Facility Costs owing to a Reserve Facility Provider have been paid or duly provided for.

(e) Upon the occurrence of a Bankruptcy Related Event of which the Trustee shall be notified in writing, any Account within the Second Lien Obligations Reserve Fund that secures payment of the principal and interest on a Second Lien Obligation in the form of or securing payment of a TIFIA Loan, will become an Account within the Senior Lien Obligations Reserve Fund, will be funded on a parity with any other Accounts within the Senior Lien Obligations Reserve Fund and will be available only to pay principal and interest on the Parity Obligation in the form of or securing payment of such TIFIA Loan. The Parity Obligation in the form of or securing payment of a TIFIA Loan will not be secured by any other Account within the Senior Lien Obligations Reserve Fund.

Section 5.10 Second Lien Obligations Reserve Fund.

(a) Except as may otherwise be specified in a Supplemental Indenture, on the date of issuance of any Series of Second Lien Obligations that has a Second Lien Obligations Reserve Requirement, the Second Lien Obligations Reserve Requirement for those Second Lien Obligations shall be deposited in the Second Lien Obligations Reserve Fund in an Account solely for the benefit of those Second Lien Obligations. Alternatively, the Supplemental Indenture for any Series of Second Lien Obligations may establish a pooled Second Lien Obligations Reserve

Requirement for those Second Lien Obligations and any one or more subsequently issued Second Lien Obligations with the same pooled Second Lien Obligations Reserve Requirement, in which case the Second Lien Obligations Reserve Requirement for the initial issue of such Second Lien Obligations shall be deposited in the Second Lien Obligations Reserve Fund in an Account solely for the benefit of those Second Lien Obligations and any additional Second Lien Obligations with the same pooled Second Lien Obligations Reserve Requirement, and on the date of issuance of any such additional Second Lien Obligations, there shall be deposited in the Account the amount necessary to increase the balance in the Account to an amount equal to the Second Lien Obligations Reserve Requirement for all Second Lien Obligations secured by that Account.

(b) Monies on deposit in each Account within the Second Lien Obligations Reserve Fund shall be applied by the Trustee as follows:

(1) If on any (x) Interest Payment Date for Second Lien Obligations secured by an Account within the Second Lien Obligations Reserve Fund, (y) principal payment date for such Second Lien Obligations or (z) redemption date on which such Second Lien Obligations are subject to mandatory sinking fund redemption, the amount on deposit in the applicable Account of the Second Lien Obligations Fund, determined after taking into account all amounts transferred to such Account of the Second Lien Obligations Fund in accordance with Clauses Eighth and Ninth of Section 5.03(b), is not sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Second Lien Obligations, then moneys shall be transferred to the Second Lien Obligations Interest Account and/or the Second Lien Obligations Principal Account, as applicable, from the applicable Account of the Second Lien Obligations Reserve Fund which, together with moneys then on deposit in the applicable Account of the Second Lien Obligations Fund, will be sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Second Lien Obligations on such date. Moneys shall be transferred first to the Second Lien Obligations Interest Account until such Account, together with any available funds then on deposit in the Second Lien Obligations Interest Account, is sufficiently funded with respect to such Second Lien Obligations and thereafter, to the Second Lien Obligations Principal Account until such Account, together with any available funds then on deposit in the Second Lien Obligations Principal Account, is sufficiently funded with respect to such Second Lien Obligations.

(2) Upon the maturity of Second Lien Obligations secured by funds on deposit in an Account of the Second Lien Obligations Reserve Fund or upon the earlier redemption of all or any portion of such Second Lien Obligations, the Commission may direct the Trustee to transfer amounts on deposit in the applicable Account within the Second Lien Obligations Reserve Fund to the Second Lien Obligations Principal Account for application to the final payment of principal of all or a portion of the Second Lien Obligations secured thereby or to an escrow account established for defeasance of such Second Lien Obligations pursuant to Article X hereof, provided that, if less than all of the Second Lien Obligations mature or are redeemed, the amount remaining on deposit in such Account of the Second Lien Obligations Reserve Fund following any such transfer shall not be less than the Second Lien Obligations Reserve Requirement applicable to the Second Lien Obligations secured thereby that remain Outstanding.

(3) Except as provided in paragraph (2) above, any amounts on deposit in an Account of the Second Lien Obligations Reserve Fund in excess of the applicable Second Lien Obligations Reserve Requirement shall be applied in accordance with Sections 5.03(d) of this Indenture.

(c) The lien on the Second Lien Obligations Reserve Fund (and all earnings thereon) shall apply only to the Second Lien Obligations and the related interest of the Holder of such Second Lien Obligations with respect to amounts on deposit in such Fund from time to time, and such amounts shall be solely for the benefit of such Holder of Second Lien Obligations until such funds have been disbursed in accordance with this Section. If necessary, the Commission shall instruct the Trustee to create Accounts within the Second Lien Obligations Reserve Fund to facilitate compliance with the provisions of this paragraph.

(d) The Second Lien Obligations Reserve Requirement for any Series of Second Lien Obligations may be permitted or required by the Supplemental Indenture establishing the Second Lien Obligations Reserve Requirement to be funded in whole or in part with a Reserve Facility. The terms and conditions for any Reserve Facility shall be set forth in the Reserve Facility or the Supplemental Indenture establishing the Second Lien Obligations Reserve Requirement to be met in whole or in part by the Reserve Facility, provided that those terms and conditions shall conform to and be consistent with the provisions set forth in this Section 5.10 and, for so long as the TIFIA Loan Agreement remains in effect, the requirements for Credit Support Instruments under the TIFIA Loan Agreement. The Trustee shall withdraw cash (and liquidate investments to produce cash) and draw on Reserve Facilities in or with respect to any Account in the Second Lien Obligations Reserve Fund to fund payments of principal of and interest on Second Lien Obligations supported by such Account in the Second Lien Obligations Reserve Fund in the manner and in the order specified herein and in the applicable Supplemental Indenture or Supplemental Indentures. This Indenture shall not be discharged until all Reserve Facility Costs owing to a Reserve Facility Provider have been paid or duly provided for.

(e) Upon the occurrence of a Bankruptcy Related Event of which the Trustee shall be notified in writing, any Account within the Second Lien Obligations Reserve Fund that secures payment of the principal and interest on a Second Lien Obligation in the form of or securing payment of a TIFIA Loan, will become an Account within the Senior Lien Obligations Reserve Fund, will be funded on a parity with any other Accounts within the Senior Lien Obligations Reserve Fund and will be available only to pay principal and interest on the Parity Obligation in the form of or securing payment of such TIFIA Loan. The Parity Obligation in the form of or securing payment of a TIFIA Loan will not be secured by any other Account within the Senior Lien Obligations Reserve Fund.

Section 5.11 Subordinate Obligations Reserve Fund.

(a) The Subordinate Obligations Reserve Requirement for those Subordinate Obligations secured by the Subordinate Obligations Reserve Fund or an Account therein shall be deposited in the Subordinate Obligations Reserve Fund in an Account solely for the benefit of those Subordinate Obligations on the dates and in the amounts set forth in the Supplemental Indenture authorizing the issuance of such Subordinate Obligations; provided, however, alternatively, the Supplemental Indenture for any Series of Subordinate Obligations may establish

a pooled Subordinate Obligations Reserve Requirement for those Subordinate Obligations and any one or more subsequently issued Subordinate Obligations with the same pooled Subordinate Obligations Reserve Requirement, in which case the Subordinate Obligations Reserve Requirement for the initial issue of such Subordinate Obligations shall be deposited in the Subordinate Obligations Reserve Fund in an Account solely for the benefit of those Subordinate Obligations and any additional Subordinate Obligations with the same pooled Subordinate Obligations Reserve Requirement, and on the date of issuance of any such additional Subordinate Obligations, there shall be deposited in the Account the amount necessary to increase the balance in the Account to an amount equal to the Subordinate Obligations Reserve Requirement for all Subordinate Obligations secured by that Account.

(b) Monies on deposit in each Account within the Subordinate Obligations Reserve Fund shall be applied by the Trustee as follows:

(1) If on any (x) Interest Payment Date for Subordinate Obligations secured by an Account within the Subordinate Obligations Reserve Fund, (y) principal payment date for such Subordinate Obligations or (z) redemption date on which such Subordinate Obligations are subject to mandatory sinking fund redemption, the amount on deposit in the applicable Account of the Subordinate Obligations Fund, determined after taking into account all amounts transferred to such Account of the Subordinate Obligations Fund in accordance with Clauses Twelfth and Thirteenth of Section 5.03(b), is not sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Subordinate Obligations, then moneys shall be transferred to the Subordinate Obligations Interest Account and/or the Subordinate Obligations Principal Account, as applicable, from the applicable Account of the Subordinate Obligations Reserve Fund which, together with moneys then on deposit in the applicable Account of the Subordinate Obligations Fund, will be sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Subordinate Obligations on such date. Moneys shall be transferred first to the Subordinate Obligations Interest Account until such Account, together with any available funds then on deposit in the Subordinate Obligations Interest Account, is sufficiently funded with respect to such Subordinate Obligations and thereafter, to the Subordinate Obligations Principal Account until such Account, together with any available funds then on deposit in the Subordinate Obligations Principal Account, is sufficiently funded with respect to such Subordinate Obligations.

(2) Upon the maturity of Subordinate Obligations secured by funds on deposit in an Account of the Subordinate Obligations Reserve Fund or upon the earlier redemption of all or any portion of such Subordinate Obligations, the Commission may direct the Trustee to transfer amounts on deposit in the applicable Account within the Subordinate Obligations Reserve Fund to the Subordinate Obligations Principal Account for application to the final payment of principal of all or a portion of the Subordinate Obligations secured thereby or to an escrow account established for defeasance of such Subordinate Obligations pursuant to Article X hereof, provided that, if less than all of the Subordinate Obligations mature or are redeemed, the amount remaining on deposit in such Account of the Subordinate Obligations Reserve Fund following any such transfer shall

not be less than the Subordinate Obligations Reserve Requirement applicable to the Subordinate Obligations secured thereby that remain Outstanding.

(3) Except as provided in paragraph (2) above, any amounts on deposit in an Account of the Subordinate Obligations Reserve Fund in excess of the applicable Subordinate Obligations Reserve Requirement shall be applied in accordance with Section 5.03(d) of this Indenture.

(c) The lien on the Subordinate Obligations Reserve Fund (and all earnings thereon) shall apply only to the Subordinate Obligations and the related interest of the Holder of such Subordinate Obligations with respect to amounts on deposit in such Fund from time to time, and such amounts shall be solely for the benefit of such Holder of Subordinate Obligations until such funds have been disbursed in accordance with this Section. If necessary, the Commission shall instruct the Trustee to create Accounts within the Subordinate Obligations Reserve Fund to facilitate compliance with the provisions of this paragraph.

(d) The Subordinate Obligations Reserve Requirement for any Series of Subordinate Obligations may be permitted or required by the Supplemental Indenture establishing the Subordinate Obligations Reserve Requirement to be funded in whole or in part with a Reserve Facility. The terms and conditions for any Reserve Facility shall be set forth in the Reserve Facility or the Supplemental Indenture establishing the Subordinate Obligations Reserve Requirement to be met in whole or in part by the Reserve Facility, provided that those terms and conditions shall conform to and be consistent with the provisions set forth in this Section 5.11 and, for so long as the TIFIA Loan Agreement remains in effect, the requirements for Credit Support Instruments under the TIFIA Loan Agreement. The Trustee shall withdraw cash (and liquidate investments to produce cash) and draw on Reserve Facilities in or with respect to any Account in the Subordinate Obligations Reserve Fund to fund payments of principal of and interest on Subordinate Obligations supported by such Account in the Subordinate Obligations Reserve Fund in the manner and in the order specified herein and in the applicable Supplemental Indenture or Supplemental Indentures. This Indenture shall not be discharged until all Reserve Facility Costs owing to a Reserve Facility Provider have been paid or duly provided for.

Section 5.12 Major Maintenance and Renewal Fund.

(a) The Trustee shall, in accordance with Clause Fifteenth of Section 5.03(b), cause amounts in the Toll Revenue Fund and the General Fund, in that order and each as and to the extent available, to be deposited into the Major Maintenance and Renewal Fund from time to time to increase the balance therein to an amount equal to the Major Maintenance and Renewal Fund Required Amount. If on any Monthly Funding Date, the amount on deposit in the Major Maintenance and Renewal Fund, determined after taking into account all amounts transferred to such Fund in accordance with Section 5.03 and the preceding sentence, is less than the Major Maintenance and Renewal Fund Required Amount, the Trustee and the Commission shall cause the deposit of HRTF Transfers in the amount of such deficiency to the Major Maintenance and Renewal Fund, subject to the limits with respect to the Major M & R HRTF Cumulative Transfer Cap set forth in Section 5.06. The Commission may direct the Trustee to establish accounts or subaccounts in the Major Maintenance and Renewal Fund in order to facilitate the tracking and use of HRTF Transfers.

(b) Any amounts on deposit in the Major Maintenance and Renewal Fund not derived from HRTF Transfers that are certified by the Commission as no longer being needed for Major Maintenance and Renewal Fund Permitted Expenditures shall be applied in accordance with the requirements of Section 5.03(d) of this Indenture. Any amounts on deposit in the Major Maintenance and Renewal Fund that are derived from HRTF Transfers and that are certified by the Commission as no longer being needed for Major Maintenance and Renewal Fund Permitted Expenditures shall be paid to the Commission.

(c) On any date on which Major Maintenance and Renewal Fund Permitted Expenditures are due and payable or reasonably expected to become due and payable, monies on deposit in the Major Maintenance and Renewal Fund shall be applied by the Trustee pursuant to a Written Request of the Commission to pay or reimburse the Commission for such Major Maintenance and Renewal Fund Permitted Expenditures.

(d) The Major Maintenance and Renewal Fund constitutes a “reserve fund” within the meaning of Section 6.03(a)(ii) of the MTA.

Section 5.13 Additional Toll Roads System Cost Payment Fund.

(a) The Trustee shall, in accordance with Clause Seventeenth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available and to the extent the Specified Funding Conditions are met, to be deposited into the Additional Toll Roads System Cost Payment Fund from time to time up to such amount as may be specified by the Commission in an officer’s certificate provided to the Trustee. In addition, the Trustee shall deposit in the Additional Toll Roads System Cost Payment Fund any amounts specified by Written Request of the Commission to be transferred therein from the Unrestricted Account of the General Reserve Fund pursuant to Section 5.16(a). Any amounts on deposit in the Additional Toll Roads System Cost Payment Fund shall be applied by the Trustee pursuant to a Written Request of the Commission to pay or reimburse the Commission or its designee for the costs of any Toll Roads System Network Project. The Commission may not submit such a Written Request of the Commission to utilize funds in the Additional Toll Roads System Cost Payment Fund unless the project for which funding is sought is the subject of an executed Standard Project Agreement or similar instrument with respect to such project, in which case the Commission shall be entitled to submit a Written Request of the Commission in an amount or amounts up to the aggregate estimated amount under contract, taking into account all previously funded requests for such project.

(b) Subject to the foregoing, moneys on deposit in the Additional Toll Roads System Cost Payment Fund that are not committed by an executed Standard Project Agreement or that are on deposit in the Construction Account of the Additional Toll Roads System Cost Payment Fund can be used to cure any deficiency in amounts required to be on deposit in the O & M Reserve Fund, the Senior Lien Obligations Fund, the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Fund, the Second Lien Reserve Obligations Fund, the Subordinate Obligations Fund, the Subordinate Obligations Reserve Fund, and the Major Maintenance and Renewal Fund.

(c) *Construction Account.* When the Commission enters into a Standard Project Agreement for the construction and equipping of a Toll Roads System Network Project, the Commission shall submit a Written Request of the Commission to transfer an amount equal to

the aggregate costs of such Toll Roads System Network Project to the Construction Account. Thereafter, the costs of such Toll Roads System Network Project shall be paid from amounts in the Construction Account in accordance with a Written Request of the Commission. Amounts in the Construction Account are not considered available for transfer pursuant to the provisions of Section 5.03(b) or Section 5.13(b) above.

Section 5.14 VDOT Repayment Fund

The Trustee shall, in accordance with Clause Eighteenth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available and to the extent the Specified Funding Conditions are met, to be deposited into the VDOT Repayment Fund up to the then-current total and unpaid Applicable Revolving Account Costs, such amount to be specified by the Commission in an officer's certificate provided to the Trustee from time to time. Any amounts on deposit in the VDOT Repayment Fund shall be applied by the Trustee pursuant to a Written Request of the Commission to pay or reimburse VDOT pursuant to the Master Tolling Agreement for Applicable Revolving Account Costs. Each Written Request of the Commission for the payment of amounts from the VDOT Repayment Fund shall contain a statement of the then total amount of Applicable Revolving Account Costs, the amount that has been repaid, and the amount that remains unpaid.

Section 5.15 HRTF Repayment Fund

(a) The Trustee shall, in accordance with clause Nineteenth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available and to the extent the Specified Funding Conditions are met, to be deposited into the HRTF Repayment Fund from time to time up to the amount of any unreimbursed HRTF Transfer.

(b) On the Monthly Funding Date following any Calculation Date as of which each of the HRTF Repayment Fund Conditions has been satisfied, moneys on deposit in the HRTF Repayment Fund as of such date, if any, shall be transferred to the Commission and applied to the payment of any unreimbursed HRTF Transfer as of such Monthly Funding Date.

Section 5.16 General Reserve Fund.

(a) The Unrestricted Account of the General Fund will be funded in accordance with the "TWENTIETH" clause of Section 5.03(b) and this Section 5.16. Moneys on deposit in the Unrestricted Account in the General Reserve Fund can be used to make transfers to the Operation and Maintenance Fund without limit and, at any time as may be set forth in a Written Request of the Commission, to cure any deficiency in amounts required to be on deposit in the Operation and Maintenance Reserve Fund, the Senior Lien Obligations Fund, the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Fund, the Second Lien Reserve Obligations Fund, the Subordinate Obligations Fund, the Subordinate Obligations Reserve Fund, the Major Maintenance and Renewal Fund, the Additional Toll Roads System Cost Payment Fund, VDOT Repayment Fund, HRTF Repayment Fund, to pay any amounts due under Clause Sixteenth of Section 5.03, or cure any deficiency in amounts required to be on deposit in the Rebate Fund, in that order. To the extent the Unrestricted Account contains any amount budgeted or allocated for the funding of all or any portion of a Toll System Network Project identified in the Commission's then current six year plan or long range transportation plan, then such amounts shall

be transferred to the Additional Toll Roads System Cost Payment Fund as specified in a Written Request of the Commission.

(b) Subject to the provisions of subsection 5.16(a), moneys on deposit in the Unrestricted Account in the General Reserve Fund can be used, as specified in a Written Request of the Commission, for any lawful purpose approved by resolution of the Commission that is reasonably related to or that benefits users of the Toll Roads System; provided that (i) no Event of Default (or event that with notice, the passage of time or both, would result in an Event of Default) shall have occurred and be continuing, and (ii) each Reserve Fund is fully funded, the amount on deposit in the Major Maintenance and Renewal Fund is equal to the then applicable Major Maintenance and Renewal Fund Required Amount, the amount on deposit in the Operation and Maintenance Fund is equal to the then applicable Operation and Maintenance Fund Required Amount, and the amount on deposit in the Operation and Maintenance Reserve Fund is equal to the then applicable Operation and Maintenance Reserve Fund Requirement.

(c) (i) The Restricted Account of the General Fund will be funded in accordance with the “TWENTIETH” clause of Section 5.3(b) and this Section 5.16 and only for so long as any TIFIA Loan issued as an Obligation under this Master Indenture is Outstanding and is owned by the TIFIA Lender or another federal agency and except as otherwise agreed (or waived). Moneys on deposit in the Restricted Account in the General Reserve Fund can be used to make transfers to the Operation and Maintenance Fund without limit and, at any time as may be set forth in a Written Request of the Commission, to cure any deficiency in amounts required to be on deposit in the Operation and Maintenance Reserve Fund, the Senior Lien Obligations Fund, the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Fund, the Second Lien Reserve Obligations Fund, the Subordinate Obligations Fund, the Subordinate Obligations Reserve Fund, the Major Maintenance and Renewal Fund, to pay any amounts due under Clause Sixteenth of Section 5.03, or cure any deficiency in amounts required to be on deposit in the Rebate Fund, in that order.

(d) On each July 1, subject to the provisions of subsection 5.16(a) and following satisfaction of the requirements of subsection 5.16(b), funds on deposit in the Unrestricted Account of the General Reserve Fund and funds credited to such Fund will not be subject to the lien and pledge of this Indenture, and the Commission will have the exclusive right to withdraw or otherwise dispose of or transfer funds on deposit in the Unrestricted Account in the General Reserve Fund to any account (or to such Person) for any lawful purpose as may be approved by resolution of the Commission. To the extent such funds are not used for expansion of the Toll Roads System or to make a payment or transfer into any Account or Fund established or maintained under this Indenture or any Supplemental Indenture, such funds shall be subject to revenue sharing with the TIFIA Lender (but only for so long as any TIFIA Loan issued as an Obligation under this Master Indenture is Outstanding and is owned by the TIFIA Lender or another federal agency), such revenue sharing to be effected as a 50% split of such funds for deposit in the Restricted Account of the General Reserve Fund as generally provided in Section 4.04 of the First Supplemental Indenture, *mutatis mutandis*.

Section 5.17 Rebate Fund. There shall be deposited in the Rebate Fund amounts transferred in accordance with Clause Second of Section 5.03(b). All money at any time deposited in the Rebate Fund shall be held by the Trustee to satisfy the rebate requirement (as set forth in

any Tax Certificate) for payment to the United States of America, and shall be treated as an Operations and Maintenance Expense for purposes of the flow of funds and the MTA. The Trustee shall have no responsibility with respect to the Rebate Fund or the Rebate Requirement except to follow the written instructions of the Commission.

Section 5.18 Senior Lien Obligations Interest Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with Clause Fourth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in Clauses First through Third of Section 5.03(b), and before making any transfers to the Senior Lien Obligations Fund from the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, or the Senior Lien Obligations Reserve Fund in accordance with Clause Fourth of Section 5.03(b), Section 5.13(b), Section 5.16, and Section 5.09(b), in such order of priority, to be deposited into the Senior Lien Obligations Interest Account.

(b) On the Business Day prior to each date when the interest portion of debt service on any Senior Lien Obligations shall be due and payable, monies on deposit in the Senior Lien Obligations Interest Account shall be applied pro rata to the payment of the interest due on such Senior Lien Obligations in accordance with this Indenture.

Section 5.19 Senior Lien Obligations Principal Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with Clause Fifth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in Clauses First through Fourth of Section 5.03(b), and before making any transfers to the Senior Lien Obligations Fund from the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, or the Senior Lien Obligations Reserve Fund in accordance with Clause Fifth of Section 5.03(b), Section 5.13(b), Section 5.16, and Section 5.09(b), to be deposited into the Senior Lien Obligations Principal Account.

(b) On the Business Day prior to each date when the principal portion of debt service (including any mandatory sinking fund redemption payments) on any Senior Lien Obligations shall be due and payable, monies on deposit in the Senior Lien Obligations Principal Account shall be applied pro rata to the payment of the principal portion of such Senior Lien Obligations in accordance with this Indenture.

Section 5.20 Second Lien Obligations Interest Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with Clause Eighth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in Clauses First through Seventh of Section 5.03(b), and before making any transfers to the Second Lien Obligations Fund from the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, or the Second

Lien Obligations Reserve Fund in accordance with Clause Eighth of Section 5.03(b), Section 5.13(b), Section 5.16, and Section 5.10(b), to be deposited into the Second Lien Obligations Interest Account.

(b) On the Business Day prior to each date when the interest portion of debt service on any Second Lien Obligations shall be due and payable, monies on deposit in the Second Lien Obligations Interest Account shall be transferred pro rata to the trustee for the interest due on such Second Lien Obligations in accordance with this Indenture.

Section 5.21 Second Lien Obligations Principal Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with Clause Ninth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in Clauses First through Eighth of Section 5.03(b), and before making any transfers to the Second Lien Obligations Fund from the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, or the Second Lien Obligations Reserve Fund in accordance with Clause Ninth of Section 5.03(b), Section 5.13(b), Section 5.16, and Section 5.10(b), to be deposited into the Second Lien Obligations Principal Account.

(b) On the Business Day prior to the date when the principal portion of debt service (including any mandatory sinking fund redemption payments) on any Second Lien Obligations shall be due and payable, monies on deposit in the Second Lien Obligations Principal Account shall be transferred pro rata to the trustee for the principal portion of such Second Lien Obligations in accordance with this Indenture.

Section 5.22 Subordinate Obligations Interest Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with Clause Twelfth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in Clauses First through Eleventh of Section 5.03(b), and before making any transfers to the Subordinate Obligations Fund from the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, or the Subordinate Obligations Reserve Fund in accordance with Clause Twelfth of Section 5.03(b), Section 5.13(b), Section 5.16, and Section 5.11(b), in such order of priority, to be deposited into the Subordinate Obligations Interest Account.

(b) On the Business Day prior to the date when the interest portion of debt service on any Subordinate Obligations shall be due and payable, monies on deposit in the Subordinate Obligations Interest Account shall be transferred to the trustee for or Holder of such Subordinate Obligations in accordance this Indenture.

Section 5.23 Subordinate Obligations Principal Account.

(a) On each Monthly Funding Date, the Trustee shall, in accordance with Clause Thirteenth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent

available after application of funds for the purposes specified in Clauses First through Twelfth of Section 5.03(b), and before making any transfers to the Subordinate Obligations Fund from the Unrestricted Account in the General Fund, the Revenue Stabilization Fund, the Restricted Account in the General Reserve Fund, the Additional Toll Roads System Cost Payment Fund, or the Subordinate Obligations Reserve Fund in accordance with Clause Thirteenth of Section 5.03(b), Section 5.13(b), Section 5.16, and Section 5.11(b), in such order of priority, to be deposited into the Subordinate Obligations Principal Account.

(b) On the Business Day prior to the date when the interest portion of debt service on any Subordinate Obligations shall be due and payable, monies on deposit in the Subordinate Obligations Principal Account shall be transferred to the trustee for or Holder of such Subordinate Obligations in accordance this Indenture.

Section 5.24 Establishment and Application of the Redemption Fund. The Trustee shall establish, maintain and hold in trust a special Fund designated as the “Redemption Fund.” All moneys deposited by the Commission with the Trustee for the purpose of redeeming Obligations of any Series (other than pursuant to a mandatory sinking fund redemption) shall, unless otherwise provided in the Supplemental Indenture establishing the terms and conditions for such Series Obligations, be deposited in the Redemption Fund. All amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of redeeming Obligations of such Series and maturity as shall be specified by the Commission in a Written Request of the Commission delivered to the Trustee, in the manner, at the times and upon the terms and conditions specified in the Supplemental Indenture pursuant to which such Series of Obligations was issued. Such Written Request of the Commission may specify that amounts on deposit in the Redemption Fund that remain unclaimed for a specified period of time shall be paid to the Commission, and the Trustee shall pay such unclaimed amounts to the Commission in accordance with the Written Request of the Commission.

Section 5.25 Records. The Trustee shall cause to be kept and maintained records pertaining to each Fund and Account held by it and all disbursements therefrom and shall deliver monthly to the Commission and, for so long as the TIFIA Loan remains Outstanding, to the TIFIA Lender statements of activity with respect to such Funds and Accounts, provided that the Trustee shall not be obligated to report as to any Fund or Account that (a) has a balance of zero, and (b) has not had any activity since the last reporting date.

In addition, the Commission shall cause to be kept and maintained records pertaining to each Fund and Account held by it and all disbursements therefrom and shall deliver monthly to the Trustee and, for so long as any Obligations in the form of or securing payment of the TIFIA Loan remain Outstanding, to the TIFIA Lender statements of activity with respect to such Funds and Accounts, provided that the Commission shall not be obligated to report as to any Fund or Account that (a) has a balance of zero, and (b) has not had any activity since the last reporting date.

Section 5.26 Investment by Trustee. Unless otherwise provided in a Supplemental Indenture and while Obligations in the form of or securing a TIFIA Loan are Outstanding, subject to the conditions in the TIFIA Loan Agreement, moneys held by the Trustee in the Funds and Accounts created hereunder shall be invested and reinvested in Permitted Investments in accordance with the written instructions of an Authorized Representative.

Unless otherwise specified in the Supplemental Indenture with respect to a Fund or Account created pursuant to such Supplemental Indenture, all Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the Fund or Account that was used to purchase the Permitted Investment. Unless otherwise provided by a Written Request of the Commission or in a Supplemental Indenture with respect to a Fund or Account created pursuant thereto, all interest, profits and other income received from the investment of moneys in any Fund or Account held by the Trustee, other than the Rebate Fund and the Accounts in the Project Fund, shall be transferred to the Toll Revenue Fund when received. All interest, profits and other income received from the investment of moneys in the Rebate Fund shall be deposited in the Rebate Fund. All interest, profits and other income received from the investment of monies in the Operation and Maintenance Fund shall be deposited in the Operation and Maintenance Fund. Unless otherwise provided in a Supplemental Indenture establishing an Account within the Project Fund, all interest, profits and other income received from the investment of moneys in an Account within the Project Fund shall be deposited in such Account. Notwithstanding anything to the contrary contained in this paragraph, an amount of interest received with respect to any Permitted Investment equal to the amount of accrued interest, if any, paid as part of the purchase price of such Permitted Investment shall be credited to the Fund or Account from which such accrued interest was paid.

The Trustee is authorized and directed to cause to be sold or redeemed and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any Fund or Account is or will be insufficient to make any required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investments or for any loss resulting from such sale or redemption. Absent a Written Request of the Commission instructing the Trustee how to invest the cash balance in a Fund or Account held by the Trustee hereunder, the Trustee shall hold such cash balances uninvested pending its receipt of such a Written Request of the Commission.

All Permitted Investments credited to the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund or the Subordinate Obligations Reserve Fund shall be valued by the Trustee as of each Calculation Date. All Permitted Investments credited to the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund or the Subordinate Obligations Reserve Fund shall be valued at their fair market value determined to the extent practical by reference to the closing bid price thereof published in *The Wall Street Journal* or any other financial publication or generally recognized pricing information service selected by the Trustee in its discretion. The Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

The Trustee or its affiliates may act as sponsor, advisor, principal or agent in the acquisition or disposition of any investment with the prior written approval of an Authorized Representative. The Trustee may commingle any of the moneys held by it pursuant to this Indenture (except for amounts on deposit in the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument) for investment purposes only; provided, however, that the Trustee shall account separately for the moneys belonging to each Fund or Account established pursuant to this Indenture and held by it. The Commission shall not commingle the moneys held by it in the Operation and Maintenance Fund with any other funds held by the

Commission. The Trustee may rely on the investment directions of the Commission as to both the suitability and legality of the directed investments.

Section 5.27 Subsidy Payments. The Commission irrevocably directs that all Subsidy Payments with respect to Senior Lien Bonds be made directly to the Trustee for deposit in the Senior Lien Obligations Interest Account pursuant to this Indenture. The Commission irrevocably directs that all Subsidy Payments with respect to Second Lien Obligations be made directly to the Trustee for deposit in the Second Lien Obligations Interest Account pursuant to this Indenture. The Commission irrevocably directs that all Subsidy Payments with respect to Subordinate Obligations be made directly to the Trustee for deposit in the Subordinate Obligations Fund pursuant to this Indenture. Any such Subsidy Payments received by the Commission shall be promptly remitted to the Trustee. The Trustee shall deposit all such Subsidy Payments to the applicable Account upon receipt thereof.

Section 5.28 Withdrawal and Application of Funds; Priority of Transfers from Funds and Accounts.

(a) Except as provided in Sections [5.05, 5.07, 5.08, 5.09, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.18 and 5.19], each withdrawal or transfer of funds from the Funds and Accounts by the Trustee on behalf of the Commission in accordance herewith shall be made pursuant to an executed Funds Transfer Certificate, which certificate shall be provided and prepared by the Commission in accordance with the terms hereof and shall contain a certification by the Commission that such withdrawal or transfer complies with the requirements of this Indenture.

(b) The Funds Transfer Certificate relating to each applicable Fund or Account shall be delivered to the Trustee (with a copy to the trustee for or Holder of any Second Lien Obligations or Subordinate Obligations) no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn from the applicable Fund or Account or transferred from a Fund or Account to another Fund or Account in accordance with this Indenture. The Trustee shall comply with any such Funds Transfer Certificate; provided, that if the trustee for or Holder of Second Lien Obligations or Subordinate Obligations provides written notice to the Trustee, the Commission and the other Secured Creditors that any payment, withdrawal or transfer of funds is not in compliance with this Indenture or the other Financing Documents and specifies such non-compliance in such notice, the Commission shall not be entitled to cause such proposed withdrawal until such time as it has submitted a revised Funds Transfer Certificate which complies with the terms hereof or thereof.

(c) The Commission shall have the right to withdraw or cause to be transferred funds from the Operation and Maintenance Fund and the Major Maintenance and Renewal Fund solely for the purpose of payment of Operation and Maintenance Expenses or Major Maintenance and Renewal Fund Permitted Expenditures, respectively, at any time without any approval or consent of the Trustee or any other person, but subject to any transfers required to be made on any such date from the Major Maintenance and Renewal Fund required hereunder that may be of a higher priority, as described in Section 5.03(b).

(d) Each Funds Transfer Certificate requesting a disbursement from an Account within the Project Fund shall contain the following certifications by the Commission or, as to paragraph (5), the Commission and the Consulting Engineer:

(1) the names of the persons, firms or corporations to whom each such payment is due, including the Commission in the case of reimbursements or the Trustee in the case of payments of capitalized interest;

(2) the respective amounts to be paid or reimbursed to such entities;

(3) the purpose or Project Cost by general classification for which each such Obligation to be paid or reimbursed was incurred;

(4) that obligations in the stated amounts have been incurred by the Commission and presently are due and payable (except with respect to requisitions for capitalized interest, in which case amounts requisitioned, together with expected earnings from investment thereof, do not exceed amounts properly capitalizable as interest related to projects prior to their completion), or properly are reimbursable to the Commission, and that each item thereof is a Project Cost, is a proper charge against the applicable Account in the Project Fund, and has not been paid or reimbursed previously;

(5) after giving effect to the requisition, sufficient funds are and will be available to the Commission to achieve Substantial Completion of the applicable Project; provided that this certification need not be provided with respect to requisitions made after the applicable Substantial Completion Date;

(6) that there has not been filed with or served on the Commission any notice of lien, right of lien, or attachment upon or claim affecting the right of any person, firm or corporation named in such requisition to receive payment of any amounts which has not been released or will not be released simultaneously with the payment of such Obligation; and

(7) that, as of the date of such Funds Transfer Certificate, no event or condition exists that constitutes, or that with the notice or lapse of time or both, would constitute, an Event of Default under this Indenture.

Section 5.29 Effect of Bankruptcy Related Event on TIFIA Loan. Notwithstanding any other provision to the contrary herein, upon the occurrence of any Bankruptcy Related Event, Second Lien Obligations in the form of or securing payment of the TIFIA Loan shall, automatically and without action on the part of the TIFIA Lender or any other person, immediately become Parity Obligations, and be of equal rank and on a parity with other Senior Lien Obligations, and the TIFIA Lender shall become and be entitled to all rights of an owner of Senior Lien Obligations hereunder (including, without limitation, the right of payment pro rata with other Senior Lien Obligations hereunder).

Upon the occurrence of a Bankruptcy Related Event of which the Trustee shall be notified in writing, any Account within the Second Lien Obligations Reserve Fund that secures payment of the principal and interest on a Second Lien Obligation in the form of or securing payment of a

TIFIA Loan, will become an Account within the Senior Lien Obligations Reserve Fund, will be funded on a parity with any other Accounts within the Senior Lien Obligations Reserve Fund and will be available only to pay principal and interest on the Parity Obligation in the form of or securing payment of such TIFIA Loan. The Parity Obligation in the form of or securing payment of a TIFIA Loan will not be secured by any other Account within the Senior Lien Obligations Reserve Fund.

The provisions contained in this Section 5.29 and in Sections 1.01, 2.10, 2.11, 5.09(e) and 5.10(e) of this Indenture with respect to the TIFIA Lender's right to have the Second Lien Obligations in the form of or securing payment of the TIFIA Loan become and be secured as Parity Obligations upon the occurrence of a Bankruptcy Related Event shall be of no force or effect following the sale of the TIFIA Loan to a non-governmental commercial entity, but only with respect to that portion of the TIFIA Loan so sold. However, should an assignment or sale be made to a federal government agency or instrumentality, the federal government shall retain the right to have the Second Lien Obligations in the form of or securing payment of the TIFIA Loan become and be secured as Parity Obligations upon the occurrence of any Bankruptcy Related Event.

ARTICLE VI COVENANTS OF THE COMMISSION

Section 6.01 Punctual Payment and Performance. The Commission will pay when due and payable the principal of and the interest on (and redemption premiums, if any, to become due on) its Obligations hereunder in strict conformity with the terms of the HRTAC Act, this Indenture and such Obligations, and will faithfully observe and perform all of the agreements and covenants contained in this Indenture and such Obligations.

Section 6.02 Against Encumbrances. The Commission will not create or cause or permit to be created any pledge, lien, charge or encumbrance having priority over the lien of the Senior Lien Obligations upon any part of the Trust Estate, provided that Operation and Maintenance Expenses are payable from Revenue prior to debt service in the order of priority established pursuant to Section 5.03(b) and Section 7.02. The Commission will not create or cause or permit to be created any pledge, lien, charge or encumbrance having parity with the lien of the Senior Lien Obligations upon any part of the Trust Estate except the lien of Senior Lien Obligations and Parity Obligations. The Commission will not create or cause or permit to be created any pledge, lien, charge or encumbrance having priority over the lien of the Second Lien Obligations upon any part of the Trust Estate except Senior Lien Obligations and Parity Obligations. The Commission will not create or cause or permit to be created any pledge, lien, charge or encumbrance having priority over the lien of the Subordinate Obligations upon any part of the Trust Estate, except Senior Lien Obligations, Parity Obligations and Second Lien Obligations. The Commission will not create or permit to be created or issue any Obligations secured by the Trust Estate except in accordance with the terms of this Indenture.

Section 6.03 Toll and Revenue Covenants.

(a) The Commission covenants that it shall at all times, beginning in the month following the Substantial Completion Date for any portion, phase or segment of the Toll Roads

System, establish, impose, maintain and collect tolls in connection with the Toll Roads System shall be sufficient, collectively, to produce Net Revenue in each Calculation Period commencing after the Substantial Completion Date equal to or in excess of the ratios set forth in each of (1) and (2) below:

(1) one hundred thirty-five percent (135%) of the Annual Debt Service in such Calculation Period on all Outstanding Senior Lien Obligations, with debt service on Senior Lien Obligations in the form of a TIFIA Loan calculated on the basis of TIFIA Debt if the TIFIA Loan is outstanding; and

(2) one hundred percent (100%) of the Annual Debt Service in such Calculation Period on all Outstanding Senior Lien Obligations, Second Lien Obligations and Subordinate Obligations, with debt service on Senior Lien Obligations in the form of a TIFIA Loan calculated on the basis of TIFIA Debt Service if the TIFIA Loan is outstanding, plus the amounts required to be deposited into the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund, the Subordinate Obligations Reserve Fund, and the Major Maintenance and Renewal Fund; provided, however, that amounts funded or to be funded by HRTF Transfers shall not be included in this requirement.

In making the calculations in (1) and (2) above, the Commission may take into consideration as a credit against Annual Debt Service (i) any amount on deposit in the Revenue Stabilization Fund or the Unrestricted Account of the General Fund at the time of calculation, and (ii) any amounts received, or reasonably expected to be received, in the Fiscal Year from or as a result of any additional security irrevocably granted or pledged to Bondholders by the Commission with respect to the Obligations in accordance with Section 9.01(b) of this Indenture; provided, that if such grant or pledge is not for the benefit of all Obligations, the amounts expected to be received may only be taken into account when making the calculation with respect to the Obligations receiving the benefit of such grant or pledge.

(b) Beginning with the first Calculation Date in the first full Fiscal Year following the Substantial Completion Date for the Express Lanes Initial Project, the Commission covenants: (i) to compute Net Revenue for the Calculation Period ending on such Calculation Date and each Calculation Period thereafter and the ratios described in Section 6.03(a)(1) and (2) (each, a “**Coverage Ratio**”) not later than 60 days after such Calculation Date and each Calculation Date thereafter (such date of computation being hereinafter referred to as a “**Coverage Calculation Date**”); (ii) to furnish promptly to the Trustee and, while the TIFIA Loan is outstanding, the TIFIA Lender a Certificate of the Commission setting forth the results of such computations; and (iii) if any Coverage Ratio is less than the applicable requirement of Section 6.03(a), to take such action as promptly as practicable after the Coverage Calculation Date (including, without limitation, increasing Toll Revenues through toll increases) as the Commission projects is necessary to cause each projected Coverage Ratio for each Calculation Period thereafter to equal or exceed the requirement of Section 6.03(a) for each such Calculation Period.

Within 60 days after the end of each Calculation Period ending after the Substantial Completion Date for the Express Lanes Initial Project, the Commission will file with the Trustee

and, while the TIFIA Loan is outstanding, the TIFIA Lender a report setting forth the Net Revenue for such Calculation Period. The failure of toll rates to yield an amount sufficient to achieve each Coverage Ratio shall not be deemed to constitute an Event of Default so long as the Commission complies with the requirements set forth below in this Section 6.03(b). If any such report indicates that the Net Revenue for such Calculation Period was less than the amount required pursuant to Section 6.03(a), then as soon as practicable after delivering such report to the Trustee and the TIFIA Lender the Commission may, and within 30 days of a written request from the TIFIA Lender, shall, employ a Traffic Consultant to review and analyze the operations of the Toll Roads System. As soon as practicable (but not later than 180 days after engagement of the Traffic Consultant or, so long as the TIFIA Loan is outstanding, such other time period requirement specified in the TIFIA Loan Agreement), the Traffic Consultant shall submit a written report which shall include the HRTAC actions that the Traffic Consultant may recommend should be taken by the Commission with respect to (i) revising the toll rates, (ii) altering its methods of operation, or (iii) taking other action projected, to the extent necessary, to produce the amount so required to comply in each year with each Coverage Ratio (or, if less, the maximum amount deemed feasible by the Traffic Consultant and that the Traffic Consultant estimates will not adversely affect the amount of Net Revenue). Promptly upon its receipt of such written report, after giving due consideration thereto and, so long as the TIFIA Loan is outstanding, within the time period specified in the TIFIA Loan Agreement, the Commission will revise the toll rates, as permitted by law, alter its methods of operation, or take such other action as it deems appropriate. Such revisions, alterations, or actions need not comply with the recommendations of the Traffic Consultant so long as Net Revenue projected by the Traffic Consultant, or by the Commission if it chooses to act without a Traffic Consultant, to be produced by the revisions, alterations or actions then taken by the Commission are at least equal to the amount required hereinabove. The Trustee shall have no responsibility to review any written report received pursuant to this Section 6.03(b).

(c) The Commission further covenants that such toll rates for traffic using the Toll Roads System will be established and maintained in a reasonable way to cover such traffic (other than vehicles which are otherwise exempt from payment of tolls under State or federal law; and any vehicles during a public emergency declared by the Commonwealth in the Hampton Roads region) consistent with the requirements of the MTA, including but not limited to the tolling policies adopted by the Commission in accordance with the MTA, but with such classifications as the Commission may deem appropriate; provided, that for so long as the TIFIA Loan Agreement remains in effect, the Commission will comply with any additional requirements with respect to toll policy set forth in the TIFIA Loan Agreement.

(d) Notwithstanding any provision to the contrary, nothing in this Section 6.03 shall be deemed to require the Commission to collect tolls and other fees with respect to which the Commission has determined, based upon a report from a Traffic Consultant, that the costs of collection would exceed the amount of tolls and other fees expected to be collected.

Section 6.04 Annual Operating Budget. The Commission covenants that, for each Fiscal Year, it will take such actions as may be required of it to prepare and will adopt an annual operating budget with respect to the Toll Roads System in accordance with applicable law, including the HRTAC Act, and as may be required under the Master Tolling Agreement. The Commission further covenants that it will provide to the Trustee (A) no later than thirty (30) days prior to the commencement of each Fiscal Year, an operating plan and a preliminary budget setting

forth the sources and amounts of funds to be deposited to each required Fund or Account, and (B) not later than the first day of each Fiscal Year, a copy of the Commission's final budget (such copy of the final budget being referred to herein as the "Annual Operating Budget"). The Trustee shall have no responsibility to review such preliminary budget or Annual Operating Budget and shall only retain such documents as a repository for the Holders of the Obligations.

Section 6.05 Operation and Maintenance of the Toll Roads System. The Commission represents and warrants that it has taken, and, so long as any Obligations are Outstanding, covenants and agrees that it will take, all lawful steps within its control as may be necessary to ensure that it will continue to have lawful right and lawful power to operate the Toll Roads System as a revenue-producing facility and maintain the toll collection facilities and equipment with respect to the Toll Roads System or any segment, phase or portion thereof, so that it remains in operating condition, and that it will impose and collect tolls on the Toll Roads System consistent with its obligations under the HRTAC Act and the Master Tolling Agreement. The Commission covenants and agrees to at all times operate, or cause to be operated, the Toll Roads System in accordance with the requirements of the HRTAC Act and the Master Tolling Agreement, including under contract with a Toll Operator pursuant to the provisions of the Master Tolling Agreement and the various agreements referred to therein. The Commission further covenants and agrees that it will pay all Operation and Maintenance Expenses and keep or cause to be kept the Toll Roads System in good repair in accordance with the Master Tolling Agreement, including but not limited to the Tolling Operations and Maintenance Standards (as defined in the MTA).

Section 6.06 Retention of Assets. Subject to the provisions of the HRTAC Act and the Master Tolling Agreement, the Commission covenants not to sell, lease or otherwise dispose of assets necessary to operate the Toll Roads System in the manner and at the levels of activity required to enable it to perform its covenants contained herein, including, without limitation, the covenants contained in Section 6.03 and Section 6.05.

Section 6.07 Insurance. The Commission covenants to carry at all times insurance or cause insurance to be carried (including by the general contractor or contractors for any Toll System Network Project, its subcontractors and the Toll Operator) with responsible insurance and/or reinsurance companies authorized and qualified to do business in (or with companies duly authorized and qualified to do business in) the Commonwealth and to assume the risks thereof consistent with insurance requirements of all agreements entered into by the Commission in connection with the design, construction, operation and maintenance of each Project until the Substantial Completion Date therefor, and after the Substantial Completion of the Toll System Network Project, of the Toll Roads System.

Nothing contained herein shall be deemed or construed to prevent the Commission from maintaining policies of insurance with respect to the Toll Roads System in which parties other than the Commission are named as dual obligee beneficiaries, provided that such other parties shall be limited to VDOT, the Trustee, the TIFIA Lender, and persons supplying toll collection and revenue management system services, equipment or facilities. Upon request of the Trustee, the Commission shall provide the Trustee with an officer's certificate stating that it is in compliance with this Section 6.07.

Section 6.08 Payment of Claims. The Commission will pay and discharge any and all lawful claims that, if unpaid, might become a charge or lien upon the Trust Estate or any part thereof, prior to or on a parity with the charge and lien upon the Revenue securing the Obligations Outstanding hereunder.

Section 6.09 Master Tolling Agreement. The Commission hereby covenants and agrees that it has all lawful right and power to enter into the Master Tolling Agreement and that it shall perform all of its material obligations and exercise all of the powers granted to it thereunder (including but not limited to the Commission's powers to enforce performance by each counterparty to the Master Tolling Agreement of such counterparty's obligations thereunder) as the Commission may, in its reasonable judgment, determine are necessary to complete or cause the Substantial Completion and final completion of the portions, phases or segments of the Toll System Network Project in accordance with the Construction Plan and any applicable Standard Project Agreement (as referenced in the Master Tolling Agreement) for such portion, phase or segment, to allow the Toll System Network Project to be opened to vehicular traffic, and to commence and continue collection of tolls established pursuant to Section 6.03 of this Indenture.

Section 6.10 Reserved.

Section 6.11 Construction and Maintenance From Other Sources Permitted. Notwithstanding any provision to the contrary in this Indenture, the Commission may, in accordance with the HRTAC Act and other applicable laws, construct, reconstruct, rehabilitate, improve, acquire, lease, operate, or maintain, or any combination of these, both tolled and non-tolled facilities, structures, onramps, connector roads, bridges, tunnels and roadways that are on, necessary for, or related to the construction or operation of the Toll Roads System using any funds legally available therefor, including, without limitation and as applicable, HRTF Funds and federal, State and local grants, loans and matching funds.

Section 6.12 Tax Covenants.

(a) The Commission shall not use or permit the use of any proceeds of the Obligations or any funds of the Commission, directly or indirectly, to acquire any securities or obligations that would cause the interest on Obligations intended by the Commission to be exempt from federal income taxation to become subject to federal income taxation, and shall not take or permit to be taken any other action or actions that would cause any such Obligations to be an "arbitrage bond" within the meaning of Section 148 of the Code or "federally guaranteed" within the meaning of Section 149(b) of the Code and any such applicable regulations promulgated from time to time thereunder. The Commission shall observe and not violate the requirements of Section 148 of the Code and any such applicable regulations. The Commission shall comply with all requirements of Sections 148 and 149(b) of the Code to the extent applicable to Obligations. In the event that at any time the Commission is of the opinion that for purposes of this Section 6.12(a) it is necessary to restrict or to limit the yield on the investment of any moneys held by the Trustee under this Indenture, the Commission shall so instruct the Trustee under this Indenture in writing, and the Trustee shall take such action as may be reasonably necessary in accordance with such instructions.

(b) The Commission covenants to comply with the provisions and procedures of each Tax Certificate.

(c) The Commission shall not, and shall not cause the Trustee to, use or permit the use of any proceeds of the Obligations or any funds of the Commission (so long as such proceeds or other funds are under its control), directly or indirectly, in any manner, and shall not take or omit to take any action that would cause any of the Obligations to be treated as an obligation not described in Section 103(a) of the Code if such Obligations were, when originally issued, intended by the Commission to be obligations described in Section 103(a) of the Code.

(d) Notwithstanding any provisions of this Section 6.12 or any Tax Certificate, if the Commission shall provide to the Trustee an Opinion of Bond Counsel to the effect that any specified action required under this Section 6.12 is no longer required or that some further or different action is required to maintain the exclusion from gross income for federal income tax purposes of interest on any Obligations, the Trustee and the Commission may conclusively rely on such opinion in complying with the requirements of this Section, and, notwithstanding any other provision of this Indenture or any Tax Certificate, the covenants hereunder shall be deemed to be modified to that extent.

(e) The Trustee shall follow the directions of the Commission given pursuant to the Tax Certificate, and shall have no liability or responsibility to enforce compliance by the Commission with the terms of the Tax Certificate.

Section 6.13 Accounting Records; Financial Statements and Other Reports.

(a) The Commission shall keep appropriate accounting records in accordance with generally accepted accounting principles. Such accounting records shall at all times during business hours be subject to the inspection of the Trustee or of any Holder (or its representative authorized in writing).

(b) The Commission shall prepare and file with the Trustee annually within 180 days after the close of each Fiscal Year financial statements of the Commission for such Fiscal Year, together with an audit report thereon prepared by an Independent Certified Public Accountant.

Section 6.14 Protection of Trust Estate and Rights of Holders. The Commission shall preserve and protect the Trust Estate and the security of the Obligations issued hereunder and the rights of the Holders of such Obligations and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations by the Commission, such Obligations shall be incontestable by the Commission.

Section 6.15 Payment of Governmental Charges and Compliance with Governmental Regulations. The Commission shall pay and discharge all taxes or payments in lieu of taxes, assessments and other governmental charges or liens that may be levied, assessed or charged upon the Revenue, or any part thereof, promptly as and when the same shall become due and payable, except that the Commission shall not be required to pay any such governmental

charges so long as the application or validity thereof shall be contested in good faith and the Commission shall have set aside reserves to cover such payments.

Section 6.16 Maintenance of Powers. The Commission covenants that it will at all times use its best efforts to maintain the powers, rights, functions, duties and obligations now delegated to it pursuant to the HRTAC Act and all other laws and the Master Tolling Agreement and will not at any time voluntarily do, suffer or permit any act or thing within its control the effect of which would be to hinder, delay or imperil either the payment of the indebtedness evidenced by any of the Obligations hereunder or Credit Support Instruments relating thereto or the performance or observance of any of the covenants herein contained.

Section 6.17 Covenants Binding on Commission and Successors. All covenants, stipulations, obligations and agreements of the Commission contained in this Indenture shall be deemed to be covenants, stipulations, obligations and agreements of the Commission to the full extent authorized or permitted by law. If the powers or duties of the Commission shall hereafter be transferred by amendment of the HRTAC Act or a new act or any provision of the Constitution or any other law of the Commonwealth or in any other manner there shall be a successor to the Commission, and if such transfer shall relate to any matter or thing permitted or required to be done under this Indenture by the Commission then the entity that shall succeed to such powers or duties of the Commission shall act and be obligated in the place and stead of the Commission as in this Indenture provided, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time and upon any officer, board, body or authority to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreement shall be transferred by or in accordance with law.

Section 6.18 Continuing Disclosure. Upon the issuance of any Series of Obligations, or upon conversion of any Series of Obligations to an interest rate period, requiring an undertaking regarding continuing disclosure under Rule 15c2-12, the Commission hereby covenants and agrees that it will execute and deliver a Continuing Disclosure Agreement with respect to such Series of Obligations and comply with and carry out all of the provisions of such Continuing Disclosure Agreement applicable to it. Notwithstanding any other provision of this Indenture, failure of the Commission to comply with the provisions of any Continuing Disclosure Agreement shall not constitute an Event of Default under this Indenture; provided, however, that the Trustee, at the request of any Participating Underwriter or the Owner of an Outstanding Obligation, shall (but only to the extent that the Trustee is indemnified to its satisfaction from any liability or expense, including fees and expenses of its attorneys) or any Owner or Beneficial Owner of an Obligation may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order to cause the Commission to comply with its obligations under this Section.

Section 6.19 Further Assurances. The Commission will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Holders of the rights and benefits provided herein.

ARTICLE VII
DEFAULT PROVISIONS AND REMEDIES

Section 7.01 Events of Default. Any one of the following, and any other event specified in a Supplemental Indenture as an Event of Default, shall constitute an Event of Default hereunder:

(a) default in the payment of any interest on any Highest Priority Obligation when and as the same shall have become due and payable;

(b) default in the payment of the principal of or premium, if any, on any Highest Priority Obligation when and as the same shall become due and payable, whether at the stated maturity or redemption date thereof or otherwise;

(c) default by the Commission in the observance or performance of any other covenant, agreement or obligation of the Commission contained in this Indenture and the continuance thereof for a period of thirty (30) days after the earlier to occur of (i) receipt by the Commission from the Trustee of written notice thereof, or (ii) the Commission's actual knowledge of such default; provided, however, that if such default is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 7.01(c), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (A) within such thirty (30) day cure period the Commission shall commence actions reasonably designed to cure such default and shall diligently pursue such actions until such default is cured, and (B) such failure is cured within one hundred eighty (180) days of the date specified in either (i) or (ii) above, as applicable;

(d) if the Commission files a petition in voluntary bankruptcy for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(e) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the Commission insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the Commission, or approving a petition filed against the Commission seeking reorganization of the Commission under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof;

(f) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Commission or of the Revenue, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control; or

(g) while the Obligation in the form of the TIFIA Loan is Outstanding, the TIFIA Lender notifies the Trustee of a Deemed Event of Default that remains uncured in accordance with the terms of the TIFIA Loan Agreement.

The Commission shall notify the Trustee of the occurrence of an Event of Default or a Bankruptcy Related Event immediately after the Commission learns of the occurrence; provided, that notwithstanding any failure by the Commission to deliver such notice, an Event of Default shall occur hereunder immediately upon the occurrence of such Event of Default. If the Trustee has actual knowledge, or is notified by the Commission or a Bondholder, of the occurrence of an Event of Default or a Bankruptcy Related Event hereunder, the Trustee shall provide prompt written notice of the occurrence of such Event of Default or a Bankruptcy Related Event to the Commission and all Bondholders.

Section 7.02 Application of Revenue and Other Funds After Default. If an Event of Default shall occur and be continuing, the Trust Estate shall be under the control of and applied by the Trustee as follows and in the following order:

(a) first, to the payment of all fees, costs and other expenses (including the reasonable fees, costs and expenses of counsel and actual fees, costs and expenses due and payable by the Commission pursuant to any indemnity required by Section 8.01(c)) owed to the Trustee, and then to the pro rata payment of all costs and other expenses (including the reasonable fees, costs and expenses of counsel) owed to the trustee or Holder of any Obligations, in each case, in connection with the performance of their obligations under the Financing Documents, including to the TIFIA Lender under the TIFIA Loan Agreement, to which they are a party and the consummation of the transactions contemplated thereby (in each case to the extent not previously satisfied);

(b) second, to the payment of Operation and Maintenance Expenses;

(c) third, to the pro rata payment of all accrued and unpaid interest (but not default interest, if any) on all Senior Lien Obligations then Outstanding, in each case in the order of maturity of the payments thereof;

(d) fourth, to the pro rata payment of all unpaid principal amounts of any Senior Lien Obligations then due;

(e) fifth, to the pro rata payment of all accrued and unpaid default interest then due, if any, with respect to any Senior Lien Obligations, and scheduled payments due under any related Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to scheduled Hedging Obligations under Swaps;

(f) sixth, to the pro rata payment of all accrued and unpaid redemption or prepayment premium then due, if any, with respect to any Senior Lien Obligations;

(g) seventh, to the pro rata payment of all other amounts, if any, due and payable under any Financing Document with respect to any Senior Lien Obligations;

(h) eighth, to the pro rata payment of all accrued and unpaid interest (but not default interest, if any) on all Second Lien Obligations;

(i) ninth, if any unpaid principal of any Second Lien Obligations has become due, to the pro rata payment of such unpaid principal amounts;

(j) tenth, to the pro rata payment of all accrued and unpaid default interest then due, if any, with respect to any Second Lien Obligations, and scheduled payments due under any related Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to scheduled Hedging Obligations under Swaps;

(k) eleventh, to the pro rata payment of all accrued and unpaid redemption or prepayment premium then due, if any, with respect to any Second Lien Obligations;

(l) twelfth, to the pro rata payment of all other amounts, if any, due and payable under any Financing Document with respect to any Second Lien Obligations;

(m) thirteenth, to the pro rata payment of all accrued and unpaid interest (but not default interest, if any) on all Subordinate Obligations;

(n) fourteenth, if any unpaid principal of any Subordinate Obligations has become due, to the pro rata payment of such unpaid principal amounts;

(o) fifteenth, to the pro rata payment of all accrued and unpaid default interest then due, if any, with respect to any Subordinate Obligations, and scheduled payments due under any related Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to scheduled Hedging Obligations under Swaps;

(p) sixteenth, to the pro rata payment of all accrued and unpaid redemption or prepayment premium then due, if any, with respect to any Subordinate Obligations;

(q) seventeenth, to the pro rata payment of all other amounts, if any, due and payable under any Financing Document with respect to any Subordinate Obligations; and

(r) eighteenth, to the payment of any Hedging Termination Obligations with respect to Swaps; and

(s) nineteenth, upon the payment in full of all Secured Creditors in accordance with clauses (a) through (r) hereof, to pay to the Commission, or as may be directed by the Commission, or as a court of competent jurisdiction may direct, any Revenue or other funds then remaining in the Trust Estate.

Section 7.03 No Acceleration. There shall be no right of acceleration with respect to the Obligations.

Section 7.04 Suits at Law or in Equity and Mandamus. In case one or more Events of Default shall occur, then and in every such case the Trustee may, and shall at the request of the Holders of not less than a majority of the Bond Obligation of the Highest Priority Obligations then Outstanding (or such greater percentage of the Holders of Highest Priority Obligations as may be specified in the Supplemental Indenture) upon receiving indemnity reasonably satisfactory to the Trustee, potentially including indemnity provided by such Holders (subject to Section 8.01(c)), proceed to protect and enforce Bondholder rights by such appropriate judicial proceeding as shall be deemed most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement

contained in this Indenture, or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Holders of Obligations by this Indenture or such Obligations or by law. The provisions of this Indenture shall constitute a contract with each and every Bondholder and the responsibilities of the Commission shall be enforceable by the Trustee on behalf of any Bondholder by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan of reorganization, arrangement, adjustment, or composition affecting the Obligations or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding without the approval of the Holders so affected.

Section 7.05 Waivers. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

Section 7.06 Rights of Subordinate Lenders. Nothing in this Article VII or elsewhere in this Indenture shall be construed to limit or preclude the exercise of any rights or remedies reserved by the trustee for the Second Lien Obligations or by the trustee for or Holder of any Subordinate Obligations; provided, that such rights and remedies may not interfere with, be adverse to or frustrate the rights and remedies of the Holders of the Senior Lien Obligations.

ARTICLE VIII THE TRUSTEE

Section 8.01 Trustee. (a) U.S. Bank National Association will serve as the Trustee under this Indenture. The Trustee shall be required to perform such duties and only such duties as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default (that has not been cured), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as reasonable persons would exercise or use under the circumstances in the conduct of their own affairs. The Trustee accepts the duties imposed upon it hereunder and agrees, particularly: (i) to hold all sums held by it for the payment of the principal and Purchase Price of, premium, if any, or interest on the Obligations in trust for the benefit of the Holders of the Obligations as provided herein until such sums shall be paid to such Holders of such Obligations or otherwise disposed of as herein provided; (ii) to authenticate and cancel Obligations as provided herein; (iii) to perform its obligations under this Indenture; and (iv) to keep such books and records relating to its duties as Trustee as shall be consistent with reasonable industry practice and to make such books and records available for inspection by the Commission at all reasonable times upon reasonable notice.

The Commission shall cause the necessary arrangements to be made and to be thereafter continued whereby: (i) funds derived from the sources specified in this Indenture will be made available at the Principal Office of the Trustee for the timely payment of principal and Purchase

Price of, premium, if any, and interest on the Obligations; (ii) Obligations shall be made available for authentication, exchange and registration of transfer by the Trustee at the Principal Office of the Trustee; and (iii) the Trustee shall be furnished such records and other information, at such times, as shall be required to enable the Trustee to perform the duties and obligations imposed upon it hereunder.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action or its own negligent failure to act, except that, at all times regardless of whether or not any Event of Default shall exist: (i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; (ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate, notice, order, requisition, request, consent or opinion furnished to the Trustee conforming to the requirements of this Indenture; but in the case of any such certificate, notice, order, requisition, request, consent or opinion which by any provision hereof is specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not it, on its face, conforms to the requirements of this Indenture; (iii) the Trustee shall not be liable for any error of judgment made in good faith unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts; and (iv) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority, or such larger or smaller percentage as may be required hereunder, in Bond Obligations of the Highest Priority Obligations at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Indenture. The permissive right of the Trustee to do things enumerated in this Indenture as a right shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(c) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers. The Trustee shall not be required to give any bond or surety in respect of the execution of the such trusts and powers or otherwise in respect of the premises. Before taking any action under this Indenture relating to an Event of Default or taking any other action (other than making payments of principal and interest in accordance with the provisions of this Indenture) hereunder, the Trustee may require that indemnity reasonably satisfactory to it be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability.

(d) No delivery of Obligations to the Trustee or purchase of Obligations by the Trustee shall constitute a redemption of Obligations or any extinguishment of the debt represented thereby, unless such Obligations are surrendered by the Commission to the Trustee for cancellation pursuant to this Indenture.

(e) The Trustee shall not be accountable for the use or application by the Commission of the proceeds of the Obligations or for the use or application of any money paid

over to the Commission by the Trustee in accordance with the provisions of this Indenture. The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Obligations other than information provided by the Trustee for use therein, if any.

(f) Whenever in the administration of this Indenture the Trustee shall deem it necessary or desirable that a matter be provided or established prior to taking or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the Commission and delivered to the Trustee and such certificate, in the absence of negligence or willful misconduct on the part of the Trustee, shall be full authority to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof; provided that, notwithstanding the foregoing, until the TIFIA Loan is prepaid in full, no interpretation of the TIFIA Loan Agreement shall be deemed conclusively provided without the consent of the TIFIA Lender.

(g) The Trustee may elect to accept and act upon instructions or directions pursuant to this Indenture sent by facsimile or Electronic means, provided that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Commission elects to give the Trustee facsimile or Electronic instructions and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling in the absence of its negligence or willful misconduct. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. In the absence of negligence or willful misconduct by the Trustee, the Commission agrees to assume all risks arising out of the use of such facsimile or Electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

Section 8.02 Compensation. The Commission shall: (i) pay the Trustee reasonable compensation (which, to the extent permitted by applicable law, shall not be limited by any law limiting the compensation of the trustee of an express trust); and (ii) pay or reimburse the Trustee upon request for all reasonable fees, expenses, disbursements and advances incurred or made in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own negligence or willful misconduct. The obligations of the Commission under this Section 8.02 shall survive the satisfaction and discharge of this Indenture and the earlier removal or resignation of the Trustee. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

Section 8.03 Qualifications of Trustee; Resignation; Removal.

(a) There shall at all times be a trustee hereunder that is a commercial bank, trust company or national association organized and doing business under the laws of the United States or of a state thereof, authorized under such laws to exercise corporate trust powers, having (or if such bank, trust company or national association is a member of a bank holding company system, its holding company has) a combined capital and surplus of at least five hundred million dollars (\$500,000,000), and subject to supervision or examination by federal or state authority. If such banks, trust companies, or banking associations publish reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then, for the purposes of this Section 8.03, the combined capital and surplus of such banks, trust companies or banking associations shall be deemed to be their combined capital and surplus as set forth in their most recent reports of conditions so published.

(b) The Trustee may at any time resign by giving at least thirty (30) days' written notice to the Commission. Upon receiving such notice of resignation, the Commission, shall promptly appoint a successor trustee by an instrument in writing. If no successor trustee shall have been so appointed and have accepted appointment within thirty (30) days after the giving of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide Holder of a Highest Priority Obligation for at least six months may, on behalf of itself and any others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(c) In case at any time either of the following shall occur: (i) the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.03 and shall fail to resign after written request therefor by the Commission or by any Holder who has been a bona fide Holder of a Highest Priority Obligation for at least six months; or (ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, the Commission may remove the Trustee and appoint a successor trustee by an instrument in writing executed by an Authorized Representative (provided that during the continuance of any Event of Default, the Commission shall have no right to remove the Trustee without the prior written consent of Holders of a majority of the outstanding principal amount of the Highest Priority Obligations), or Holders of a majority of the outstanding principal amount of the Highest Priority Obligations may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee. If no successor trustee shall have been so appointed by the Commission and have accepted appointment within thirty (30) days after such removal, the Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or Holders of a majority of the outstanding principal amount of the Highest Priority Obligations may petition any such court for the appointment of a successor trustee.

(d) The Commission or Holders of a majority in Bond Obligation of the Highest Priority Obligation at the time Outstanding may at any time remove the Trustee and appoint a successor trustee by an instrument or concurrent instruments in writing signed by an Authorized Representative of the Commission or by such Holders, as the case may be.

(e) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.03 shall become effective upon written acceptance of appointment by the successor trustee acceptable to the Commission. Any successor trustee shall execute, acknowledge and deliver to the Commission and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the Written Request of the Commission or the request of the successor trustee, the predecessor trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the rights, powers and trusts of the trustee so ceasing to act. Upon request of any such successor trustee, the Commission shall execute any and all instruments in writing necessary or desirable for more fully and certainly vesting in and confirming to such successor trustee all such rights, powers and duties. No successor trustee shall accept appointment as provided in this Section 8.03 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of this Section 8.03. Upon acceptance of appointment by a successor trustee as provided in this Section 8.03, the Commission or such successor trustee shall give Holders notice of the succession of such trustee to the trusts hereunder.

(f) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under this Section 8.03 and acceptable to the Commission, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

(g) In the event of the resignation or removal of the Trustee, the Trustee shall deliver any money and any Obligations and its related books and records held by it in such capacity to its successor.

(h) The Trustee may execute any of the trusts or powers hereof and perform any of its duties and responsibilities hereunder by or through attorneys, agents or receivers, including issuing and paying agents as provided in Section 8.05, and the Trustee shall not be answerable for the conduct of the same if appointed with due care hereunder, provided that the Trustee shall remain responsible for its duties hereunder. The Trustee may consult with counsel and the advice or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in the absence of negligence and willful misconduct and in accordance with such advice or opinion of counsel.

Section 8.04 Instrument of Bondholders. Any instrument required by this Indenture to be executed by Bondholders may be in any number of writings of similar tenor and may be

executed by Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Obligations given in any of the following forms shall be sufficient for any of the purposes of this Indenture: (i) a certificate of any officer in any jurisdiction who by law has power to take acknowledgements within such jurisdiction that the person signing such writing acknowledged before him the execution thereof; or (ii) a certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Obligations therein mentioned.

The Trustee may rely on such an instrument of Bondholders unless and until the Trustee receives notice in the form specified in (i) or (ii) above that the original such instrument is no longer reliable. In the event that the Trustee shall receive conflicting directions from two or more groups of Bondholders, the directions given by the group of Bondholders that holds greater than 50% of the outstanding principal amount of the Highest Priority Obligations shall be controlling and the Trustee shall follow such directions to the extent required herein. The Trustee shall have no liability provided it is following the instructions of such Bondholders permitted to direct the Trustee pursuant to this Indenture.

Section 8.05 Issuing and Paying Agents. The Commission may appoint and at all times have one or more issuing and paying agents in such place or places as the Commission may designate, for the payment of a Series of Obligations. Such issuing and paying agent shall meet the qualifications for the Trustee and the procedures and conditions for removal and resignation set forth in Section 8.03 hereof. It shall be the duty of the Trustee to make such arrangements with any such issuing and paying agent as may be necessary to assure, to the extent of the moneys held by the Trustee for such payment, the prompt payment of Obligations presented at either place of payment.

ARTICLE IX AMENDMENTS

Section 9.01 Amendments to Indenture Not Requiring Consent of Bondholders. Except to the extent expressly set forth by a Supplemental Indenture, the Commission and the Trustee, without the consent of any Bondholders, may execute Supplemental Indentures amending this Indenture for one or more of the following purposes:

(a) to grant to or confer upon the Trustee for the benefit of the Holders of any Series of Obligations or of all Obligations any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Trustee; provided that such additional rights, remedies, powers or authority may not impair or adversely affect in any material respect the rights, remedies, powers or authority of the Holders of any other Series of Obligations without the express written consent of Holders of a majority of the outstanding principal amount of such other Series of Obligations;

(b) to grant or pledge to the Trustee for the benefit of the Holders of any Series of Obligations or of all Obligations any Credit Support Instrument or similar additional security;

(c) to amend this Indenture in such manner as may be necessary or convenient in connection with the book-entry system for payments, transfers and other matters relating to the Obligations;

(d) to cure any ambiguity, supply any omission, or to correct or supplement any provision of this Indenture that, in the Opinion of Bond Counsel, is defective or inconsistent with any other provision of this Indenture;

(e) to insert such provisions clarifying matters or questions arising under this Indenture as are necessary or desirable and are not contrary to or inconsistent with this Indenture as theretofore in effect;

(f) to make any change therein necessary, in the Opinion of Bond Counsel, to maintain the exclusion from gross income for federal income tax purposes of the interest on any Outstanding Obligations intended by the Commission to bear federally tax-exempt interest; provided that such change may not impair or adversely affect in any material respect the rights, remedies, powers or authority of the Holders of any Series of Obligations without the express written consent of Holders of a majority of the outstanding principal amount of such Series of Obligations;

(g) to modify, amend or supplement this Indenture or any Supplemental Indenture in such manner as to permit, if presented, the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or under any state blue sky law; provided that such change may not impair or adversely affect in any material respect the rights, remedies, powers or authority of the Holders of any Series of Obligations without the express written consent of Holders of a majority of the outstanding principal amount of such Series of Obligations;

(h) to make modifications or adjustments necessary in order to accommodate a Credit Support Instrument or a Reserve Facility; provided that, for so long as the TIFIA Loan is outstanding such modifications or adjustments are subject to the requirements of the TIFIA Loan Agreement;

(i) to accommodate the technical, operational and structural features of Obligations which are issued or are proposed to be issued or of a financing program which has been authorized or is proposed to be authorized by a resolution of the Commission and identified in a previous or proposed Supplemental Indenture, and for which the items required under Section 3.01, 3.02, 3.03 or 3.04 have been or will be filed with the Trustee (including demonstration of compliance with the applicable additional bonds test), including, but not limited to, changes in methods and assumptions to be used in calculations of "Annual Debt Service" and any other changes needed to accommodate Bond Anticipation Obligations, commercial paper, Hedging Obligations, Hedging Termination Obligations, Short-Term/Put Obligations and other variable rate or adjustable rate Obligations, and any other discounted or compound interest Obligations, or other forms of indebtedness which the Commission from time to time deems appropriate to incur;

(j) to modify, alter, amend or supplement this Indenture if (1) all of the Obligations to be affected thereby are variable interest rate obligations, (2) the modification, alteration, amendment or supplement shall not become effective until written notice thereof shall

have been given to Bondholders of the affected Series by the Trustee, and (3) thirty (30) days shall have passed during which time such Bondholders shall have had the opportunity to tender their variable interest rate bonds for purchase;

(k) to modify, alter, amend or supplement this Indenture if (1) all of the Obligations to be affected thereby are Obligations in the form of or securing payment of the TIFIA Loan, and (2) the written consent of the TIFIA Lender has been obtained to such modification, alteration, amendment or supplement;

(l) to make any change therein that does not adversely affect in any material respect the rights of any of the Holders of the Obligations (and the absence of a material adverse effect is required to, be evidenced by a Certificate of the Commission or an Opinion of Bond Counsel delivered pursuant to Section 9.04); and

(m) to issue additional Obligations hereunder in accordance with the terms hereof, including to specify and determine the lien status of a Series of Obligations or, if applicable, the springing lien status of a Series of Obligations and also any other matters and things relative to such Obligations that are not contrary to or inconsistent with this Indenture as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the original issuance of such Obligations;

provided that, in addition to the limitation set forth in Section 9.04, no such amendment may permit, (i) an extension of the maturity of the principal of, or the mandatory redemption date of, or interest on, any Obligation, or (ii) a reduction in the principal amount of, or the redemption premium or the rate of interest on, any Obligation, or (iii) a preference or priority of any Senior Lien Obligations over any other Senior Lien Obligations, or (iv) a preference or priority of any Second Lien Obligation or Second Lien Obligations over any other Second Lien Obligation or Second Lien Obligations or Senior Lien Obligation, or (v) a preference or priority of any Subordinate Obligation or Subordinate Obligations over any other Subordinate Obligation or Subordinate Obligations, Second Lien Obligation or Senior Lien Obligation or (vi) a reduction in the Bond Obligation of the Obligations required for any consent to any amendment pursuant to Section 9.02.

Section 9.02 Amendments to Indenture Requiring Consent of Bondholders and TIFIA Lender. Exclusive of amendments authorized by Section 9.01 and subject to the terms and provisions contained in this Section 9.02 and in any Supplemental Indenture, and further subject at all times prior to repayment of the TIFIA Loan in full pursuant to its terms to receipt of written consent from the TIFIA Lender, the Holders of at least a majority in aggregate Bond Obligation of the Obligations Outstanding at the time such consent is given, and in case less than all of the several Series of Obligations then Outstanding are affected by the modification or amendment, of the Holders of at least a majority in aggregate Bond Obligation of the Obligations of each Series so affected and Outstanding at the time such consent is given (provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Obligations of any particular Series and maturity remain Outstanding, the consent of the Holders of such Obligations shall not be required and such Obligations shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Obligations under this Section 9.02) shall have the right, from time to time, anything contained in this Indenture to the contrary

notwithstanding, to consent to such other amendments hereto for the purpose of modifying, altering, amending, or supplementing any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section 9.02 shall permit, or be construed as permitting (i) an extension of the maturity of the principal of, or the mandatory redemption date of, or interest on, any Obligation, or (ii) a reduction in the principal amount of, or the redemption premium or the rate of interest on, any Obligation, or (iii) a preference or priority of any Senior Lien Obligations over any other Senior Lien Obligations, or (iv) a preference or priority of any Second Lien Obligation or Second Lien Obligations over any other Second Lien Obligation or Second Lien Obligations or Senior Lien Obligations, or (v) a preference or priority of any Subordinate Obligation over any other Subordinate Obligation, or (vi) a reduction in the Bond Obligation of the Obligations required for any consent to any amendment.

Section 9.03 Notice to and Consent of Bondholders. If consent of the Bondholders is required under the terms of this Indenture for the amendment of this Indenture or for any other similar purpose, the Commission shall cause notice of the proposed amendment to be given by first-class mail to the Holders of the Outstanding Obligations then shown on the registration books for the Obligations. Such notice shall briefly set forth the nature of the proposed amendment or other action and shall state that copies of any such amendment are on file at the office of the Commission and the Principal Office of the Trustee for inspection by all Bondholders. If, within sixty (60) days or such longer period as shall be prescribed by the Commission following the mailing of such notice, the Holders of the requisite principal amount of the Obligations Outstanding by instruments filed with the Commission shall have expressly consented in writing to the amendment or other proposed action, then the Commission may adopt or execute, as appropriate, such amendment or take such proposed action and the consent of the Bondholders shall thereby be conclusively presumed. Such instruments filed with the Commission may include documents, including Certificates of the Commission, stating that Holders of Obligations have consented to an amendment by purchasing such Obligations if the official statement or other disclosure document related to such purchase disclosed that the purchase of the Obligations was deemed to mean that the Holders consented to the amendment.

Section 9.04 Execution and Effect of Supplemental Indentures. Prior to executing any Supplemental Indenture hereunder, the Trustee shall receive, and is entitled to rely upon, an Opinion of Bond Counsel to the effect that such Supplemental Indenture is authorized or permitted hereunder. The Trustee is not obligated to execute any Supplemental Indenture adversely affecting its rights, duties, protections or immunities hereunder. Upon the execution and delivery of any Supplemental Indenture pursuant to this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Commission, the Trustee and all Owners of Outstanding Obligations shall thereafter be determined, exercised and enforced subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 9.05 Obligations Owned by the Commission.

(a) For purposes of this Article IX, Obligations owned or held by or for the account of the Commission shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Obligations provided for in this Article IX, and the Commission shall not be entitled with respect to such Obligations to give any consent or take any other action provided for in this Article IX; except that in determining whether the Trustee shall be protected in relying upon any such approval or consent of a Holder, only Obligations which the Trustee actually knows to be owned by the Commission shall be disregarded unless all Obligations are owned or held by or for the account of the Commission, in which case such Obligations shall be considered Outstanding for the purpose of such determination. Upon request of the Trustee, at the time of any consent or other action is to be taken under this Article IX, the Commission shall furnish the Trustee a Certificate of the Commission, upon which the Trustee may rely, describing all Senior Lien Obligations so to be excluded. The purchase or other acquisition of Obligations by or on behalf of the Commission shall not cancel, extinguish, or otherwise affect the Obligations unless such Obligations are surrendered by the Commission to the Trustee for cancellation in accordance with Section 10.01(b).

ARTICLE X DISCHARGE OF LIEN

Section 10.01 Discharge of Lien and Security Interest. (a) At the election of the Commission, upon payment in full of all the Obligations and of all other amounts payable under this Indenture, the pledge and lien on the Trust Estate arising under this Indenture shall cease, terminate, and be void; provided, however, such discharge of this Indenture shall not terminate the powers and rights granted to the Trustee with respect to the payment, transfer and exchange of the Obligations, and Section 8.02 shall survive hereunder. In such event, upon the written request of the Commission, the Trustee shall cooperate with an accounting for such period or periods as shall be requested by the Commission to be prepared and filed with the Commission and shall execute and deliver to the Commission all such instruments as may be necessary or desirable to evidence such discharge as prepared by or on behalf of the Commission, and the Trustee shall pay over, transfer, assign or deliver to the Commission all moneys or securities or other property held by it pursuant to this Indenture which are not required for the payment or redemption of Obligations not theretofore surrendered for such payment or redemption.

(b) The Commission may at any time surrender to the Trustee for cancellation any Obligations previously authenticated and delivered hereunder that the Commission at its option may have acquired in any manner whatsoever and such Obligations upon such surrender and cancellation shall be deemed to be paid and retired. Notwithstanding any provision in this Indenture to the contrary, if the principal of or interest on any Obligations shall be paid by a Credit Provider, those Obligations shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Commission within the meaning of this Section 10.01, and the pledge of the Trust Estate and all covenants, agreements and other obligations of the Commission as herein provided shall continue to exist and shall run to the benefit of such Credit Provider, and such Credit Provider shall be subrogated to the rights of the Holders.

Section 10.02 Provision for Payment of Obligations. Obligations (or any portion of the Obligations) shall be deemed to have been paid within the meaning of Section 10.01 if:

(a) there shall have been irrevocably deposited with the Trustee or other fiduciary in trust either (i) lawful money of the United States of America in an amount that shall be sufficient, or (ii) Defeasance Obligations, the principal and interest on which when due, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient (as confirmed by a report of an Independent Certified Public Accountant or verification agent), to pay when due the principal amount of, redemption premium (if any) and all unpaid interest on such Obligations (or any portion thereof) to the maturity or the redemption date thereof, as the case may be; and

(b) any such Obligations are to be redeemed on any date prior to their maturity, (i) the Trustee shall have received (not less than 25 days prior to the proposed redemption date) in form satisfactory to it irrevocable written instructions from an Authorized Representative to redeem such Obligations on such redemption date, and (ii) notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been irrevocably made for the giving of such notice.

Limitations elsewhere specified herein regarding the investment of money held by the Trustee shall not be construed to prevent the depositing and holding of the Defeasance Obligations described in Section 10.02(a)(ii) for the purpose of defeasing the lien of this Indenture as to Obligations that have not yet become due and payable. In addition, all money so deposited as provided in Section 10.02(a)(i) may also be invested and reinvested, at the written direction of an Authorized Representative, in Defeasance Obligations, maturing in the amounts and times as hereinbefore set forth, subject to the confirming report of an Independent Certified Public Accountant or verification agent as to the sufficiency thereof as provided in Section 10.02(a)(ii), and all income from all Defeasance Obligations in the hands of the Trustee or other fiduciary pursuant to this Section 10.02, that is not required for the payment of the principal of the Obligations and interest and redemption premium, if any, thereon with respect to which such money shall have been so deposited, shall be deposited in the Toll Revenue Fund as and when realized and applied as is other money deposited in the Toll Revenue Fund, or, in the event there are no longer any Obligations Outstanding under this Indenture, such income shall be automatically paid over to the Commission.

Notwithstanding any other provision of this Indenture, no Obligation that is subject to optional or mandatory tender in accordance with the provisions of the Supplemental Indenture pursuant to which such Obligation was issued, shall be deemed to be paid within the meaning of this Indenture, unless arrangements shall have been made to assure that such Obligation, if tendered for purchase prior to the date of its redemption or maturity in accordance with the provisions of the applicable Supplemental Indenture, could be paid and redeemed from such moneys or Defeasance Obligations as are provided pursuant to this Section 10.02.

Section 10.03 Unclaimed Moneys. Anything contained herein to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any of the Obligations that remain unclaimed for two (2) years after the date when such Obligations shall have become due and payable (during which period the Trustee shall hold such moneys without liability for interest), either at their stated maturity dates, tender for purchase or by call for redemption, if such moneys were held by the Trustee at such date, or for two (2) years after the date of deposit of such moneys, if deposited with Trustee after the date when such Obligations or

the Purchase Price thereof became due and payable, shall automatically be repaid by the Trustee to the Commission as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Holders shall look only to the Commission for the payment of the principal or Purchase Price of, the redemption premiums, if any, and interest on such Obligations.

ARTICLE XI MISCELLANEOUS

Section 11.01 Liability of Commission Limited to Trust Estate. Notwithstanding anything to the contrary contained in this Indenture, the Commission shall not be required to advance any money derived from any source of income other than from the Trust Estate as provided herein for the payment of the principal of or redemption premium, if any, or interest on the Obligations or for the payment or performance of any agreements or covenants contained herein. The Commission may, but is not obligated to, advance funds for any such purpose so long as such funds are derived from a source legally available for such purpose and may be used by the Commission for such purpose without incurring an indebtedness prohibited hereby.

The Obligations are limited obligations of the Commission payable, as to principal thereof, and redemption premium, if any, upon the redemption of any thereof, and interest thereon, solely from the Trust Estate as provided herein and the Commission is not obligated to pay them except from the Trust Estate. The Obligations do not constitute a debt or liability of the Commonwealth or of any political subdivision of the Commonwealth other than the Commission, an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code, or a pledge of the full faith and credit of the Commonwealth or of any political subdivision of the Commonwealth.

Section 11.02 Limitation of Rights; Third Party Beneficiary. With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Obligations is intended or shall be construed to give to any Person other than the Bondholders and each Secured Creditor any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the Bondholders and each Secured Creditor. Any consent right set forth herein of the TIFIA Lender shall not be applicable if the Obligation evidenced by the TIFIA Loan has been repaid in full.

Section 11.03 Rights of Credit Providers. (a) A Supplemental Indenture authorizing a Series of Obligations may provide that any Credit Provider providing a Credit Support Instrument with respect to Obligations of such Series may exercise any right under this Indenture given to the Owners of the Obligations to which such Credit Support Instrument relates; provided that no Credit Support Instrument will be entered into without consent of the TIFIA Lender while the Obligations in the form of or securing the TIFIA Loan Agreement are outstanding.

(b) All provisions under this Indenture authorizing the exercise of rights by a Credit Provider with respect to consents, approvals, directions, waivers, appointments, requests or

other actions, shall not be deemed to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions (and shall be read as if the Credit Provider were not mentioned therein) during any period during which there is a default by such Credit Provider under the applicable Credit Support Instrument or after the applicable Credit Support Instrument shall at any time for any reason cease to be valid and binding on the Credit Provider, or shall be declared to be null and void by final judgment of a court of competent jurisdiction, or after the Credit Support Instrument has been rescinded, repudiated by the Credit Provider or terminated, or after a receiver, conservator or liquidator has been appointed for the Credit Provider or if the Credit Provider does not have an Acceptable Credit Rating. All provisions relating to the rights of a Credit Provider shall be of no further force and effect if all amounts owing to the Credit Provider under a Credit Support Instrument have been paid and the Credit Support Instrument provided by such Credit Provider is no longer in effect.

Section 11.04 Severability. If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. If any one or more of the provisions contained in this Indenture or in the Obligations shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Commission hereby declares that it would have executed this Indenture and each and every other section, paragraph, sentence, clause or phrase hereof, and authorized the issuance of the Obligations pursuant to this Indenture, irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

Section 11.05 Notices. Except as otherwise provided herein, it shall be sufficient service or giving of notice, request, complaint, demand or other paper if the same shall be duly mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Commission:

Hampton Roads Transportation Accountability Commission

723 Woodlake Drive, Chesapeake, Virginia 23220

Attention: Executive Director

Telephone: (757) 420-8300

Fax: (757) 523-4881

If to the Trustee:

U.S. Bank National Association

1021 East Cary Street, 18th Floor

Richmond, Virginia 23219

Attention: [_____]

Telephone: [_____]

Fax: [_____]

The Commission and the Trustee by notice given hereunder may designate any different addresses to which subsequent notices, certificates or other communications shall be sent, or addresses or other instructions for the giving of Electronic notice, but no notice directed to any one such entity shall be thereby required to be sent to more than two addresses.

Section 11.06 Payments Due on Non-Business Days. Except as specifically provided otherwise in a Supplemental Indenture or in the TIFIA Loan Agreement, any payment or transfer that would otherwise become due on a day that is not a Business Day need not be made on such day but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date due, and no interest shall accrue on the amount of such payment or transfer for the period from and after the calendar date due.

Section 11.07 Captions. The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

Section 11.08 Virginia Law. This Indenture shall be construed and governed in accordance with the laws of the Commonwealth of Virginia.

Section 11.09 Effective Date. This Indenture shall become effective upon its execution and delivery.

Section 11.10 Execution in Several Counterparts. This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Commission and Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Master Indenture to be executed by their duly authorized officers as of the day and year first written above.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
[Chair]

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

By: _____
Authorized Officer

EXHIBIT A

DIAGRAM/SCHEMATIC AND DESCRIPTION OF HAMPTON ROADS EXPRESS LANES NETWORK

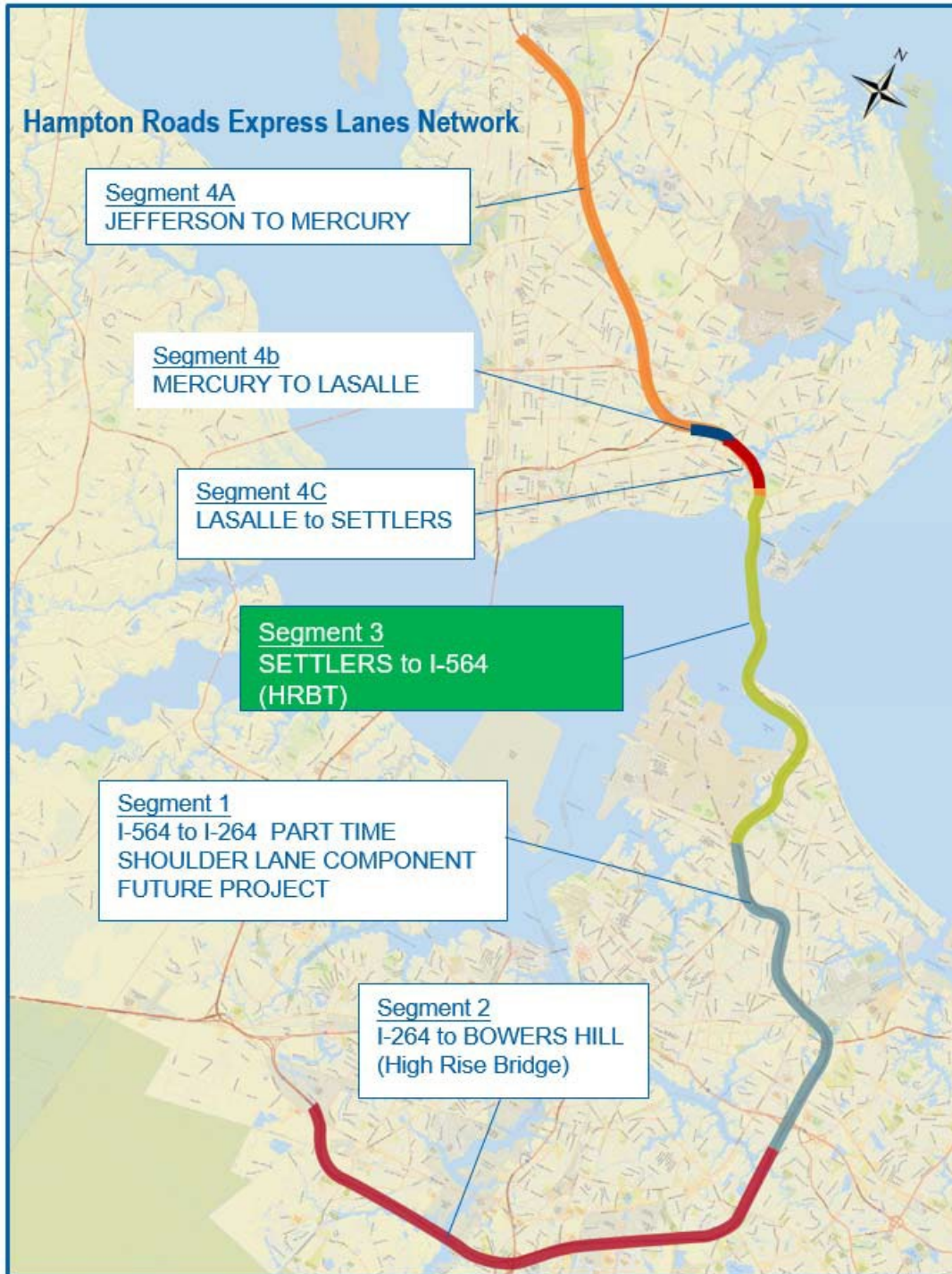


EXHIBIT B

FORM OF FUNDS TRANSFER CERTIFICATE

[To come]

FIRST SUPPLEMENTAL INDENTURE

between

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

and

**U.S. BANK NATIONAL ASSOCIATION,
as Trustee**

Dated as of [_____] 1, 2021

Relating to the

**Hampton Roads Transportation Accountability Commission
Toll Roads System Revenue Bonds, 2021 TIFIA Series – Senior Lien Obligation**

(Supplementing the Master Indenture Dated as of [_____] 1, 2021)

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[The prior written approval of the TIFIA Lender shall be required for any Express Lanes Future Project (other than Phases ____, ____, and ____ any Additional Tolled Lanes added under the provisions of the Master Tolling Agreement), unless, prior to any such undertaking, the Commission shall have delivered to the TIFIA Lender (i) a certificate of the Traffic Consultant which projects Revenue for the existing Toll Road System and such Express Lanes Future Project, for each Calculation Period to the Final Maturity Date and (ii) a certificate of the Commission that demonstrates, based on the projections of the Traffic Consultant, to the effect that (A) Net Revenue during the preceding Calculation Period ending not more than ninety (90) days prior to the date of such certificate, was sufficient to satisfy the requirements of Section 6.03(a) of the Master Indenture; and (B) projected Net Revenue is expected to be

sufficient to produce (I) a Senior Debt Service Coverage Ratio for each Calculation Period to the Final Maturity Date of not less than 1.35:1.00, (II) an All-in Cost Coverage Ratio for each Calculation Period to the Final Maturity Date of not less than 1.10:1.00, and (III) a Loan Life Coverage Ratio for each Calculation Period to the Final Maturity Date of not less than 1.50:1.00. In calculating projected Net Revenue, the Commission and/or the Traffic Consultant shall (i) take into account (A) amounts projected to be received from any adopted toll increase or increases (provided that no additional approvals need to be obtained and no additional requirements need to be satisfied in order to implement any such increase or increases), and (B) any additional toll lanes and facilities to be designated as included within the definition of the Toll Roads System. [In calculating Annual Debt Service, the Commission may take into consideration as a credit against Annual Debt Service any amounts that would be available pursuant to the last paragraph of Section 6.03(a).]..... 11

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THIS FIRST SUPPLEMENTAL INDENTURE, dated as of [] 1, 2021 (this “First Supplemental Indenture”), between the **HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a body politic and a political subdivision of the Commonwealth of Virginia (“**HRTAC**” or the “**Commission**”), and **U.S. BANK NATIONAL ASSOCIATION**, a national banking association duly organized and existing under the laws of the United States of America, as trustee (together with any successor thereto the “**Trustee**”).

WITNESSETH:

WHEREAS, the Commission has executed and delivered to the Trustee a Master Indenture dated as of [] 1, 2021 (the “**Master Indenture**” and, as supplemented and amended from time to time pursuant to its terms, the “**Indenture**”), under which, among other things, the Commission has provided for the financing and refinancing of the costs of projects through the issuance from time to time of Obligations payable from and secured by Toll Revenues;

WHEREAS, the Indenture provides that the Commission may issue Senior Lien Obligations from time to time as authorized by a Supplemental Indenture, which Senior Lien Obligations are to be secured by the Trust Estate in accordance with the Indenture;

WHEREAS, the Commission and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), propose to enter into a TIFIA Loan Agreement, dated as of [] 1, 2021 (the “**TIFIA Toll Loan Agreement**”), authorizing and setting forth the terms and conditions of a TIFIA Loan (the “**TIFIA Loan**”) from the TIFIA Lender to the Commission; the proceeds of which shall be used to finance the Express Lanes Initial Project (as defined in the Indenture);

WHEREAS, as evidence of the loan extended by the TIFIA Lender under the TIFIA Toll Loan Agreement, and to provide for the repayment thereof, the Commission has determined to issue and deliver a Series of Obligations under the Master Indenture, to be issued as a Senior Lien Obligation thereunder and designated the Hampton Roads Transportation Accountability Commission Toll Revenue Bonds, 2021 TIFIA Series – Senior Lien Obligation” (the “**TIFIA Bond**”), to be issued to the TIFIA Lender in an aggregate principal amount not to exceed \$345,000,000;

WHEREAS, the TIFIA Toll Loan Agreement is being entered into and the TIFIA Bond is issued under, pursuant to and in accordance with Chapter 26, Title 33.2 (and including the provisions of Va. Code 33.2-1920 as applicable to the issuance of the TIFIA Bond collectively, the “**HRTAC Act**”); and

WHEREAS, HRTAC and the Trustee desire to enter into this First Supplemental Indenture as a Supplemental Indenture under the Master Indenture to set forth the terms of HRTAC’s obligations to the TIFIA Lender relating to the TIFIA Toll Loan Agreement, which is being entered into as indebtedness under, pursuant to and in accordance with the HRTAC Act;

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

Section 1.01 Supplemental Indenture.

(a) This First Supplemental Indenture is authorized and executed by the Commission and delivered to the Trustee pursuant to and in accordance with Articles II and III of the Master Indenture. All terms, covenants, conditions and agreements of the Master Indenture apply with full force and effect to the TIFIA Bond, except as otherwise expressly stated in this First Supplemental Indenture.

Section 1.02 Definitions.

(a) Definitions. Unless the context otherwise requires, or as otherwise provided in subsection (b) of this Section, all terms defined in the Indenture shall have the same meanings, respectively, in this First Supplemental Indenture.

(b) Additional Definitions. Unless the context otherwise requires, the following terms shall, for all purposes of this First Supplemental Indenture, have the following meanings:

“**Authorized Denominations**” means, with respect to the TIFIA Bond, \$[] principal amount and any integral multiple of \$[] in excess thereof.

“**Fifth Supplemental HRTF Indenture**” means that certain Fifth Supplemental Indenture, dated as of [] 1, 2021, which supplements and amends the HRTF Indenture.

“**Final Maturity Date**” has the meaning set forth in the TIFIA Toll Loan Agreement.

“**First Supplemental Indenture**” means this First Supplemental Indenture, dated as of [] 1, 2021.

“**Interest Payment Date**” means, with respect to the TIFIA Bond, each July 1 and January 1 (and, if applicable, each Interim Payment Date) of each applicable year on and after the TIFIA Debt Service Payment Commencement Date, or if such day is not a Business Day, then the next succeeding Business Day.

“**Interim Payment Date**” means any date (a) on which interest on or principal of any Obligations is payable, and (b) that is not a [July 1] or [January 1] occurring on or after the TIFIA Debt Service Payment Commencement Date.

“**Issue Date**” means the date of delivery of the TIFIA Bond to the TIFIA Lender.

“**Principal Payment Date**” means, with respect to the TIFIA Bond, each principal payment date as set forth in the Loan Amortization Schedule (as defined in the TIFIA Toll Loan Agreement), which shall occur on June 30 [and December 31] of each applicable year on and after the TIFIA Debt Service Payment Commencement Date, or if such day is not a Business Day, then the next succeeding Business Day.

“**Record Date**” means, with respect to the TIFIA Bonds, the fifteenth (15th) day (whether or not a Business Day) of the month preceding the month in which such Interest Payment Date occurs.

“**Substantial Completion Date,**” as permitted by the definition thereof in the Master Indenture and with respect to the Initial Express Lanes Project, [shall have the meaning set forth in the TIFIA Toll Loan Agreement] [means the opening to tolled vehicular traffic on the last of all segments of the Express Lanes Initial Project].

“**TIFIA Loan Prepayment Commencement Date**” means _____.

“**TIFIA Loan Reserve Account**” means the TIFIA Loan Reserve Account established within the Senior Lien Obligations Reserve Fund pursuant to Sections 5.02(a) and 5.09 of the Indenture.

“**TIFIA Loan Reserve Account Reserve Requirement**” means an amount which is equal to the lesser of (x) ten percent (10%) of the maximum loan amount under the TIFIA Bond, (y) one hundred percent (100%) of the Maximum Annual Debt Service, and (z) one hundred and twenty-five percent (125%) of the average annual TIFIA Debt Service through the Final Maturity Date. If there are any Additional TIFIA Loans (as defined in the TIFIA Toll Loan Agreement) outstanding at any time, then the amounts set forth in clauses (x) through (z) will be calculated using the summation of the TIFIA Loan and all of the Additional TIFIA Loans as if there were one TIFIA loan.

The TIFIA Loan Reserve Account Reserve Requirement shall be the Senior Lien Obligations Reserve Requirement with respect to the TIFIA Bond under the Indenture and any other bonds or other obligations issued to the TIFIA Lender under the Master Indenture and secured by a pledge of Toll Revenues thereunder.

Section 1.03 Rules of Construction. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. Defined terms shall include any variant of the terms set forth in this Article XVIII.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this First Supplemental Indenture, refer to the Indenture.

ARTICLE II

FINDINGS, DETERMINATIONS AND DIRECTIONS

Section 2.01 Findings and Determinations. The Commission hereby finds and determines that the TIFIA Bond shall be issued pursuant to Article III hereof and upon the issuance of the TIFIA Bond, any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the issuance thereof, will exist, will have happened and will have

been performed, in due time, form and manner, as required by the Virginia Constitution and statutes of the Commonwealth.

Section 2.02 Recital in Bonds. There shall be included in the definitive TIFIA Bond, and also in the temporary TIFIA Bond, if any is issued, a certification and recital that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by that TIFIA Bond, and in the issuing of that TIFIA Bond, exist, have happened and have been performed in due time, form and manner, as required by the Virginia Constitution and statutes of the Commonwealth and the HRTAC Act, and that the TIFIA Bond, shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision thereof (including any Member Locality) other than the Commission, nor shall the TIFIA Bond constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code.

Section 2.03 Effect of Findings and Recitals. From and after the issuance of the TIFIA Bond, the findings and determinations herein shall be conclusive evidence of the existence of the facts so found and determined in any action or proceeding in any court in which the validity of the TIFIA Bond is at issue, and no bona fide purchaser of any such TIFIA Bond containing the certification and recital shall be required to see to the existence of any fact, or to the performance of any condition, or to the taking of any proceeding, required prior to such issuance, or to the application of the proceeds of such TIFIA Bond.

ARTICLE III **AUTHORIZATION OF THE TIFIA BOND**

Section 3.01 Authorization; Principal Amount, Designation and Series. The Commission hereby approves the terms and provisions of the TIFIA Toll Loan Agreement. Pursuant to the provisions of the Indenture and the provisions of the HRTAC Act, and to evidence the principal and interest payment obligations of the Commission under the TIFIA Toll Loan Agreement, a Senior Lien Obligation entitled to the benefit, protection and security of such provisions, including without limitation the grant of the Trust Estate in the Indenture subject to the provisions of the Indenture, is hereby authorized in the aggregate principal amount not to exceed \$[] (excluding compounded interest). Such Senior Lien Obligation shall be designated as, and shall be distinguished from the Senior Lien Obligations of all other Series by the title, “Hampton Roads Transportation Accountability Commission (Toll Roads System), 2021 TIFIA Series – Senior Lien Obligation.”

Section 3.02 Priority and Lien. The principal and interest payment obligations pursuant to the TIFIA Toll Loan Agreement and evidenced by the TIFIA Bond shall constitute Senior Lien Obligations under the Indenture. Payment obligations other than the obligation to pay principal and interest under the TIFIA Toll Loan Agreement (evidenced by the corresponding obligation to pay principal of and interest on the TIFIA Bond), [including but not limited to fees and expenses payable to the TIFIA Lender under the TIFIA Toll Loan Agreement], shall constitute either Operation and Maintenance Expenses or, to the extent such obligations are not Operation and Maintenance Expenses, Senior Lien Obligations.

Section 3.03 Purpose. The TIFIA Bond is issued for the purpose of financing the Express Lanes Initial Project.

Section 3.04 Form, Denomination, Numbers and Letters. The TIFIA Bond shall not be issued as a book-entry-only Obligation. Initially there shall be delivered hereunder one fully registered TIFIA Bond numbered R-1, without interest coupons. Any TIFIA Bonds issued in replacement thereof upon transfer or exchange shall be numbered consecutively from R-2 upward, payable to the Owner thereof. The TIFIA Bond and the certificate of authentication shall be substantially in the form attached hereto as Exhibit B, which form is hereby approved and adopted as the form of the TIFIA Bond and as the form of the certificate of authentication. The TIFIA Bond shall be issued as one or more single TIFIA Bonds for each Owner, and each such TIFIA Bond shall be in an Authorized Denomination.

Section 3.05 Date, Maturities and Interest Rates.

(a) The TIFIA Bond shall be dated the Issue Date. The principal amount of the TIFIA Bond will increase from time to time by the amount disbursed by the TIFIA Lender to the Commission pursuant to the TIFIA Toll Loan Agreement, as noted by the TIFIA Lender on the grid attached to the TIFIA Bond as Appendix One, with a copy to the Commission and the Trustee. The Commission shall copy the Trustee on each request to the TIFIA Lender for a disbursement under the TIFIA Toll Loan Agreement. Interest on such principal amount of the TIFIA Bond will accrue on the basis of a 365-day or 366-day year, as appropriate for the actual number of days elapsed, and will be compounded on July 1 and January 1 of each year following the initial disbursement and capitalized in accordance with the provisions of the TIFIA Toll Loan Agreement. The TIFIA Bond (i) may and shall be prepaid prior to the respective payment dates, in whole or in part, and at such time, in such amounts and with such notice as may be provided in the TIFIA Toll Loan Agreement and the form of TIFIA Bond set forth herein, and (ii) the principal of and interest on the TIFIA Bond shall be payable, all as provided, and in the manner required or indicated, herein and in the form of TIFIA Bond set forth herein and as set forth in the TIFIA Toll Loan Agreement, including Section [9] thereof.

(b) The TIFIA Loan as evidenced by the TIFIA Bond shall mature on the earlier of (i) June 30, 20[], and (ii) the July 1 or January 1 (whichever is more recent) occurring immediately prior to the date that is 35 years after the Substantial Completion Date, and shall bear interest at the rate of []% per annum (or the TIFIA Default Rate (as defined in the TIFIA Toll Loan Agreement), if applicable), compounded and payable on the dates and in accordance with the form of TIFIA Bond set forth herein and in the TIFIA Toll Loan Agreement.

(c) [For purposes of calculations of Annual Debt Service, debt service on the TIFIA Bond shall include only TIFIA Mandatory Debt Service (for calculations during the period prior to the TIFIA Debt Service Payment Commencement Date, the TIFIA Mandatory Debt Service shall be deemed to be zero); provided, that in the case of determinations required for the issuance of additional Bonds, the TIFIA Bond shall include both TIFIA Scheduled Debt Service and TIFIA Mandatory Debt Service.]

(d) The entity in whose name the TIFIA Bond shall be registered in the registration books of the Trustee at any time shall be deemed and treated as the absolute Owner

thereof for all purposes of the Indenture, whether or not the TIFIA Bond shall be overdue, and the Commission and the Trustee shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. Payment of, or on account of, the principal of, premium, if any, and interest on the TIFIA Bond shall be made only to such Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon the TIFIA Bond to the extent of the sum or sums so paid. Pursuant to the TIFIA Toll Loan Agreement, the TIFIA Lender may sell the TIFIA Bond but may not change the terms and conditions of the TIFIA Loan without the consent of the Commission. The Trustee shall not register any transfer or exchange of the TIFIA Bond unless the Owner's prospective transferee delivers to the Trustee (i) a letter substantially in the form as set forth in Exhibit A attached hereto and (ii) confirmation from the Commission that it has consented to any amendments to the TIFIA Toll Loan Agreement necessitated by such sale and transfer. The Trustee may rely on such confirmation and the letter in making a transfer or exchange of the TIFIA Bond without any investigation. In the event there is more than one Owner of the TIFIA Bond, payments of principal of and interest on the TIFIA Bond shall be made ratably, based on the aggregate principal amount of TIFIA Bond held by each such Owner.

(e) The Commission appoints the Trustee to act as the paying agent for paying the principal of and interest on the TIFIA Bond and any other amounts under the TIFIA Toll Loan Agreement, and hereby instructs the Trustee to make the payments when due to the TIFIA Lender in accordance with this Section 3.05 and Section 4.01. The Trustee shall keep proper records of all payments made by the Commission and the Trustee with respect to the TIFIA Bond, and of all exchanges and replacements of TIFIA Bond, as provided in the Indenture.

Section 3.06 Redemption of the TIFIA Bond.

(a) *Optional Redemption.* The TIFIA Bond is subject to redemption prior to maturity at the option of the Commission from any available moneys, in whole or in part at any time (in principal amounts of \$1,000,000 or any integral multiple of \$1 in excess thereof), at 100% of the principal amount of the TIFIA Bond to be redeemed plus interest accrued to the date of redemption. The Commission shall transfer the amounts necessary to fund the redemption from any available sources to the Trustee for deposit into the TIFIA Loan Prepayment Account at least ten (10) days prior, but not more than thirty (30) days prior, to the redemption date.

(b) *Mandatory Redemption.* The TIFIA Series 2021 Bond is subject to mandatory sinking fund redemption prior to maturity by HRTAC in accordance with Section 9(c) of the 2021 TIFIA Toll Loan Agreement.

For purposes of clarification, it is the intention of HRTAC and the TIFIA Lender that such mandatory sinking fund redemption shall at all times match the principal amortization schedule set forth in Exhibit G to the TIFIA Toll Loan Agreement (as it may be modified from time to time in accordance with the TIFIA Toll Loan Agreement and Section 4.4 below), and any redemption or other action that results in a revision to the principal amortization schedule set forth in Exhibit G to the 2021 TIFIA Toll Loan Agreement will automatically result in a revision to the mandatory sinking fund redemption, and vice versa.

(c) *Extraordinary Mandatory Redemption.* The TIFIA Bond is subject to redemption prior to maturity, in part and without penalty or premium, on each Semi-Annual Payment Date following the occurrence of a Revenue Sharing Trigger Event, for so long as the Revenue Sharing Trigger Event remains in effect, from any amounts on deposit in the Restricted Account in the General Reserve Fund, as provided in Section 10(a) of the 2021 TIFIA Toll Loan Agreement, plus interest accrued to the date of redemption.

[Any redemption pursuant to this Section 3.06(c) pursuant to a Revenue Sharing Trigger Event shall be payable from 50% of the funds then on deposit in the [_____ Account of the] General Reserve Fund.]

(d) *Concurrent Redemption.* The TIFIA Bond is subject to redemption prior to maturity, in part and without penalty or premium, on any date and concurrently with the optional redemption or mandatory redemption of Senior Bonds under Section [10____] of the 2021 TIFIA Toll Loan Agreement and in accordance with the “TWENTIETH” clause of Section 5.3(b) of the Master Indenture, in an amount equal to the same percentage of the TIFIA Series 2021 Bond Outstanding that the principal amount of Senior Bonds being redeemed or prepaid bears to the principal amount of Senior Bonds outstanding prior to the redemption or prepayment, in an amount equal to one hundred percent (100%) of the principal amount of the TIFIA Series 2021 Bond to be redeemed, as provided in Section [10(a)] of the TIFIA Toll Loan Agreement, plus interest accrued to the date of redemption; provided, however, that the provisions of this Section 3.06(d) shall not apply to the payment of Senior Bonds that are paid or to be paid with the proceeds of Bonds issued on the same lien level to refund the proposed refunded obligations.

(e) Any redemption pursuant to this Section 3.06 shall not reduce any debt service payment otherwise due on the date of redemption.

(f) Notice of redemption under this Section 3.06 shall be as provided in Section 4.3 of the Master Indenture, subject to the provisions of Section [10] of the 2021 TIFIA Toll Loan Agreement.

(g) *Partial Redemption of TIFIA Bond.* Any partial redemption of the TIFIA Bond under this Section 3.06 shall be applied on a pro rata basis across remaining principal maturities and sinking fund installments. Upon any redemption of the TIFIA Bond in part only, Exhibit G to the TIFIA Toll Loan Agreement may be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Toll Loan Agreement; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Commission’s obligations hereunder, under the TIFIA Bond, or under any other TIFIA Loan Document (as defined in the TIFIA Toll Loan Agreement).

Following any such partial redemption, HRTAC may effect corresponding changes to the monthly deposits to the Funds, Accounts and Subaccounts under this First Supplemental Indenture and, subject to the concurrence of the TIFIA Lender, to the amount of the TIFIA Debt Service Reserve Requirement.

Section 3.07 Conditions To Delivery of TIFIA Bonds. The TIFIA Bond shall be executed and delivered as authorized by this First Supplemental Indenture and the Indenture, including Article II thereof, upon execution and delivery of the TIFIA Toll Loan Agreement.

Section 3.08 Disposition of Proceeds of TIFIA Bonds. The proceeds from the sale of the TIFIA Bond shall be received by the Commission and applied by the Commission in accordance with the TIFIA Toll Loan Agreement.

ARTICLE IV
HRTF AND DEBT SERVICE TRANSFERS; TIFIA LOAN RESERVE ACCOUNT

Section 4.01 HRTF Transfers.

(a) The Commission has authorized and provided for HRTF Transfers pursuant to the Fifth Supplemental HRTF Indenture, subject to the availability of such amounts therefor under the HRTF Indenture, and the Commission shall cause HRTF Transfers to be deposited into the Revenue Stabilization Fund, the TIFIA Loan Reserve Account within the Senior Lien Obligations Reserve Fund, and the Major Maintenance and Renewal Fund, in accordance with this Article IV and the applicable provisions of the Fifth Supplemental HRTF Indenture.

(b) HRTF Transfers may only be used to pay HRTF Eligible Costs. Further, unless provided otherwise in any Supplemental Indenture:

(i) the amount of HRTF Transfers made while any Obligations are Outstanding for deposit to the Revenue Stabilization Fund shall not exceed the Toll Maximum Annual RSF Transfer Cap in any Fiscal Year, subject to any reimbursement of such amounts to the Commission pursuant to Section 5.15(c) of the Master Indenture; and

(ii) the aggregate amount of all HRTF Transfers made while any Obligations are Outstanding for deposit to the Major Maintenance and Renewal Fund shall not exceed the Major M & R HRTF Cumulative Transfer Cap, subject to any reimbursement of such amounts to the Commission pursuant to Section 5.15(c) of the Master Indenture.

(c) Subject to the provisions of Section 4.01(b)(i) above, HRTF Transfers shall be applied as follows:

(1) Pursuant to Section 6.4(a)(1) of the Fifth Supplemental HRTF Indenture, with respect to HRTF Transfers for transfer and deposit to the Revenue Stabilization Fund, the amount of [\$_____,] on the later of (i) the Substantial Completion Date of the [first] [last] segment of the Express Lanes Initial Project, or (ii) the date of the first advance of principal with respect to the first series of Obligations under the Master Indenture; and

(2) Beginning July 1, 20__ and continuing each July 1 thereafter through the maturity of the 2021 TIFIA Toll Revenue Bond, the Trustee shall determine if a shortfall exists in the Revenue Stabilization Fund as of each such

July 1. If a shortfall exists, by July 5 the Trustee shall notify the Commission in writing of the amount of shortfall and instruct the Commission to make a transfer of HRTF Funds pursuant to Section 6.4(b)(i) of the Fifth Supplemental HRTF Indenture in an amount sufficient to restore the amount on deposit in the Revenue Stabilization Fund so as to satisfy the Revenue Stabilization Fund Requirement; provided, however, that the Commission shall not transfer more than the Toll Maximum Annual RSF Transfer Cap (as such term is defined in the Fifth Supplemental HRTF Indenture, as amended and in effect from time to time) during any single Fiscal Year.

(d) Subject to the provisions of Section 4.01(b)(ii) above, HRTF Transfers shall be applied as follows:

(1) Pursuant to Section 6.4(a)(3) of the Fifth Supplemental HRTF Indenture, with respect to HRTF Transfers for transfer and deposit to the Major Maintenance and Renewal Fund, the amount of \$5,000,000 on the later of (i) the Substantial Completion Date of the [first] [last] segment of the Express Lanes Initial Project, or (ii) the date of the first advance of principal with respect to the first series of Obligations under the Master Indenture;

(2) Beginning July 1, 20__ and continuing each July 1 thereafter through the maturity of the 2021 TIFIA Toll Revenue Bond, the Trustee shall determine if the Major Maintenance and Renewal Fund Required Amount is not on deposit in the Major Maintenance and Renewal Fund after the application of the twelve month replenishment period provided in Clause Fifteen of Section 5.03(b) of the Master Indenture. If a shortfall exists, by July 5 the Trustee shall notify the Commission in writing of the amount of shortfall and instruct the Commission to make a transfer of HRTF Funds pursuant to Section 6.4(b)(ii) of the Fifth Supplemental HRTF Indenture in an amount sufficient to restore the amount on deposit in the Major Maintenance and Fund so as to satisfy the Major Maintenance and Renewal Fund Required Amount; provided, however, that the Commission shall not transfer more than the Toll Maximum Annual RSF Transfer Cap (as defined in the Fifth Supplemental HRTF Indenture) during any single Fiscal Year.

(e) HRTF Transfers for transfer and deposit to the TIFIA Loan Reserve Account pursuant to Section 6.4(a)(2) of the Fifth Supplemental HRTF Indenture, in an amount equal to the TIFIA Loan Reserve Account Reserve Requirement (\$_____), such funding to occur at the later of the (i) Substantial Completion of the Express Lanes Initial Project, or (ii) the date on which the Commission makes the first draw under the TIFIA Loan, shall be deposited in the TIFIA Loan Reserve Account.

Section 4.02 Transfers to the Debt Service Fund. Transfers to the Senior Lien Obligations Fund with respect to the TIFIA Bond shall commence on the sixth Monthly Funding Date prior to the TIFIA Debt Service Payment Commencement Date. On each Interest Payment Date and each Principal Payment Date thereafter, the Trustee shall transfer to the Owner of the TIFIA Bond money on deposit in the Senior Lien Obligations Fund to pay principal of and interest on the TIFIA Bond due and payable on such Interest Payment Date or Principal Payment Date.

On each [July 1] and [January 1] (or if such day is not a Business Day, then the Business Day succeeding such date) on and after the [TIFIA Loan Prepayment Commencement Date] and on any date of prepayment specified by the Commission pursuant to Section [], the Trustee shall transfer the amount then on deposit in the TIFIA Loan Prepayment Account to the Owner of the TIFIA Bond to prepay principal of the TIFIA Bond.

Section 4.03 TIFIA Loan Reserve Account. There is hereby established the TIFIA Loan Reserve Account within the Senior Lien Obligations Reserve Fund, such account to be held by the Trustee.

On or before June 30, of each Fiscal Year (beginning on June 30, 20[]), the Trustee shall deposit to the TIFIA Loan Reserve Account funds in the amount required such that an aggregate amount equal to the TIFIA Loan Reserve Account Reserve Requirement is on deposit therein. The funds set aside and placed in the TIFIA Loan Reserve Account on account of the TIFIA Loan Reserve Account Reserve Requirement shall be held solely for the benefit of the Owner of the TIFIA Bond, and shall be used, withdrawn, and replenished as provided herein and in Article V of the Master Indenture. If, on any date of valuation of Permitted Investments credited to the TIFIA Loan Reserve Account pursuant to Section 5.26 of the Master Indenture, the amount on deposit in the TIFIA Loan Reserve Account exceeds the TIFIA Loan Reserve Account Reserve Requirement as of the later of June 30, 20[] or such date, the Trustee shall transfer such excess amount to the Toll Revenue Fund.

Section 4.04 Major Maintenance and Renewal Fund – HRTF Transfers Account.

To facilitate the tracking and use of HRTF Transfers, there is hereby established the HRTF Transfers Account within the Major Maintenance and Renewal Fund, such account to be held by the Trustee. HRTF Transfers pursuant to Section 4.01 of this First Supplemental Indenture shall be deposited in the HRTF Transfers Account and shall only be used for Major Maintenance and Renewal Fund Permitted Expenditures that also constitute HRTF Eligible Costs.

Section 4.05 General Reserve Fund – Restricted Account.

(a) The Restricted Account of the General Reserve Fund will be funded only for so long as any TIFIA Loan issued as an Obligation under this Master Indenture is Outstanding and is owned by the TIFIA Lender or another federal agency and except as otherwise agreed (or waived).

(b) On and after the TIFIA Debt Service Payment Commencement Date, the Restricted Account in the General Reserve Fund will be subject to funding in accordance with Clause Twentieth” of Section 5.3(b) of the Master Indenture and this Section 4.05.

(c) [On each Semi-Annual Payment Date with respect to the TIFIA Bond, the amount, if any, on deposit the Restricted Account in the General Reserve Fund as of such Semi-Annual Payment Date will be transferred to the TIFIA Loan Prepayment Account in the Senior Lien Obligations Fund and used to effect an extraordinary mandatory redemption of the TIFIA Bond as provided in Section 3.06 of this First Supplemental Indenture.]

(d) The Commission and the TIFIA Lender (or the Owner of the TIFIA Bond) may agree in a future Supplemental Indenture that the provisions relating to the Restricted Account in the General Reserve Fund may apply to an additional Obligation issued under the Master Indenture to the TIFIA Lender or any such Owner.

(v) [With respect to the “FOURTH,” “FIFTH,” and “SIXTH” clauses of Section 5.03(b) of the Master Indenture, amounts in the Restricted Account in the General Reserve Fund shall not be credited against transfers from the Revenue Fund to the Senior Lien Obligations Fund.]

Section 4.06 Notice to Commission by Trustee of Certain Insufficiencies. In the event amounts available in the Toll Revenue Fund would be insufficient to make any of the transfers required by [Clauses First through Tenth and/or Clause Fifteenth of Section 5.03(b) of the Master Indenture] on the Business Day immediately prior to a Monthly Funding Date, the Trustee shall notify the Commission of the amount of such shortfall by 10:00 a.m. (Eastern time) on such day.

ARTICLE V **OTHER PROVISIONS**

Section 5.01 Express Lanes Future Project. [The prior written approval of the TIFIA Lender shall be required for any Express Lanes Future Project (other than Phases ____, ____, and ____ any Additional Tolled Lanes added under the provisions of the Master Tolling Agreement), unless, prior to any such undertaking, the Commission shall have delivered to the TIFIA Lender (i) a certificate of the Traffic Consultant which projects Revenue for the existing Toll Road System and such Express Lanes Future Project, for each Calculation Period to the Final Maturity Date and (ii) a certificate of the Commission that demonstrates, based on the projections of the Traffic Consultant, to the effect that (A) Net Revenue during the preceding Calculation Period ending not more than ninety (90) days prior to the date of such certificate, was sufficient to satisfy the requirements of Section 6.03(a) of the Master Indenture; and (B) projected Net Revenue is expected to be sufficient to produce (I) a Senior Debt Service Coverage Ratio for each Calculation Period to the Final Maturity Date of not less than 1.35:1.00, (II) an All-in Cost Coverage Ratio for each Calculation Period to the Final Maturity Date of not less than 1.10:1.00, and (III) a Loan Life Coverage Ratio for each Calculation Period to the Final Maturity Date of not less than 1.50:1.00. In calculating projected Net Revenue, the Commission and/or the Traffic Consultant shall (i) take into account (A) amounts projected to be received from any adopted toll increase or increases (provided that no additional approvals need to be obtained and no additional requirements need to be satisfied in order to implement any such increase or increases), and (B) any additional toll lanes and facilities to be designated as included within the definition of the Toll Roads System. [In calculating Annual Debt Service, the Commission may take into consideration as a credit against Annual Debt Service any amounts that would be available pursuant to the last paragraph of Section 6.03(a).]

Section 5.02 Tax Status. It is the intention of the Commission that the interest on the TIFIA Bond is not excluded from the gross income of the holders and in that regard the

Commission agrees not to file a form 8038-G, or any comparable information return relating to tax-exempt obligations, with the Internal Revenue Service.

Section 5.03 No Amendment without Consent of the TIFIA Lender. The Commission shall not enter into a Supplemental Indenture (other than this First Supplemental Indenture) pursuant to the Indenture without the prior written consent of the TIFIA Lender (or its successors or assigns) as set forth in the Indenture except to provide for the authorization and issuance of additional Obligations for which, under the provisions of the TIFIA Toll Loan Agreement and the Indenture, the consent of the TIFIA Lender is not required.

ARTICLE VI MISCELLANEOUS

Section 6.02 Severability. If any covenant, agreement or provision, or any portion thereof, contained in this First Supplemental Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this First Supplemental Indenture, and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this First Supplemental Indenture shall remain valid.

Section 6.03 Parties Interested Herein. Nothing in this First Supplemental Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Commission, the Trustee, and the Owners of the TIFIA Bond, any right, remedy or claim under or by reason of this First Supplemental Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this First Supplemental Indenture contained by and on behalf of the Commission shall be for the sole and exclusive benefit of the Commission, the Trustee and the Owners.

Section 6.04 Headings Not Binding. The headings in this First Supplemental Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this First Supplemental Indenture.

Section 6.05 Indenture to Remain in Effect. Save and except as supplemented by this First Supplemental Indenture, the Master Indenture shall remain in full force and effect.

Section 6.06 Effective Date of First Supplemental Indenture. This First Supplemental Indenture shall take effect upon its execution and delivery.

Section 6.07 Execution in Counterparts. This First Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this First Supplemental Indenture by their officers thereunto duly authorized as of the day and year first written above.

**HAMPTON ROADS
TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
[Title]

_____,
as Trustee

By: _____
Authorized Officer

EXHIBIT A

FORM OF TRANSFEREE'S LETTER

 [NAME OF BOND TRUSTEE]

Re: Hampton Roads Transportation Accountability Commission
Toll Revenue Senior Lien Obligation, 2021 TIFIA Series

Ladies and Gentlemen:

The undersigned representatives of _____ (the "Purchaser"), do hereby certify, represent and warrant for the benefit of _____ as trustee (the "Trustee"), that the Purchaser is not a party to the TIFIA Toll Loan Agreement and does not have the rights or obligations of the "TIFIA Lender" thereunder. The Purchaser understands that in connection with any future transfer or exchange of the TIFIA Bond by the Purchaser, there must be delivered to the Trustee a letter of the transferee in substantially the form of Exhibit A to the First Supplemental Indenture.

The undersigned Purchaser hereby further represents as follows:

1. The Purchaser has full power and authority to carry on its business as now conducted, deliver this letter and make the representations contained herein.
2. The Purchaser has knowledge and experience in financial and business matters that make it capable of evaluating the TIFIA Bond and the risks associated with the purchase of the TIFIA Bond; has the ability to bear the economic risk of an investment in the TIFIA Bond; and is an "accredited investor" as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended.
3. The Purchaser has conducted its own investigation of the financial condition of the Commission, the TIFIA Bond, the Indenture, the Toll Roads System, the Revenues and the Trust Estate, and has obtained such information regarding the TIFIA Bond, such facilities and the Commission and its operations, financial condition and financial prospects as the Purchaser deems necessary to make an informed investment decision with respect to the purchase of the TIFIA Bond.
4. The Purchaser is purchasing the TIFIA Bond for its own account solely and not with a present view to any distribution of the TIFIA Bond or any interest therein or portion thereof or without a present intention of distributing or reselling the TIFIA Bond or any interest therein or portion thereof, provided that the Purchaser retains the right at any time to dispose of the TIFIA Bond or any interest therein or portion thereof as it may determine to be in its best interests, subject to the requirements and provisions of the Indenture. In the event that the Purchaser disposes of the TIFIA Bond or any part thereof in the future, the Purchaser understands that it has the responsibility for complying with any applicable

federal and state securities laws and all rules and regulations promulgated pursuant thereto.

5. The Purchaser understands that the TIFIA Bond is a limited obligation of the Commission secured solely by the Trust Estate as defined and provided in the Indenture and the Commission is not obligated to pay the TIFIA Bond except from the Trust Estate. The TIFIA Bond does not constitute a debt or liability of the Commonwealth of Virginia or any political subdivision of the State other than the Commission. Neither the full faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision of the Commonwealth of Virginia is pledged to the payment of principal of or interest on the TIFIA Bond.

6. The Purchaser acknowledges that the TIFIA Bond has not been registered under the under the Securities Act of 1933, as amended, and that such registration is not legally required. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any subsequent disposition of the TIFIA Bond, and further acknowledges that any current exemption from registration of the TIFIA Bond does not affect or diminish this requirement.

7. In entering into this transaction, the Purchaser has not relied upon any representations or opinions of the Commission (except as with respect to representations, warranties and covenants made by the Commission in the Indenture), its counsel or its bond counsel, or other counsel to the Commission relating to the legal consequences or other aspects of its investment in the TIFIA Bond.

9. The Purchaser has been informed that the TIFIA Bond (i) has not been and will not be registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any jurisdiction, and (ii) will not be listed on any stock or other securities exchange.

10. None of the Commission, its governing body, or any of its employees, counsel or agents will have any responsibility to the Purchaser for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Commission or its financial condition or regarding the TIFIA Bond, the provision for payment thereof, or the sufficiency of any security therefor. No written information has been provided by the Commission to the Purchaser with respect to the TIFIA Bond. The Purchaser acknowledges that, as between the Purchaser and all of such parties, the Purchaser has assumed responsibility for obtaining such information and making such review as the Purchaser deemed necessary or desirable in connection with its decision to purchase the TIFIA Bond.

Terms not defined herein shall have the meanings given to them under the Master Indenture, dated as of 1, 2021, as supplemented, including as supplemented by the First Supplemental Indenture, dated as of 1, 2021 (as so supplemented, the “Indenture”), each by and between Hampton Roads Transportation Accountability Commission and _____, as Trustee.

IN WITNESS WHEREOF, the undersigned representative has hereunto executed this letter as of the day of , 20__.

[PURCHASER]

By: _____

Name: _____

Title: _____

[MUST BE SIGNED BY ACTUAL PURCHASER
MAY NOT BE SIGNED BY NOMINEE OR AGENT]

EXHIBIT B
FORM OF TIFIA BOND

Number R-1

Not to Exceed \$
(plus compounded interest added to principal)

UNITED STATES OF AMERICA

COMMONWEALTH OF VIRGINIA

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION
TOLL REVENUE BONDS, 2021 TIFIA SERIES – SENIOR LIEN OBLIGATION

Registered Owner: **UNITED STATES DEPARTMENT OF TRANSPORTATION,**
acting by and through the Executive Director of the Build America Bureau

Maturity Date: **June 30, 20__** or such earlier date determined pursuant to the
TIFIA
Loan Agreement

Maximum
Principal Amount: **DOLLARS (PLUS COMPOUNDED INTEREST ADDED TO**
PRINCIPAL)

Interest Rate:

Issue Date: _____, 2021

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, a public entity duly organized and existing under the laws of the Commonwealth of Virginia (the “Commission”) for value received, hereby promises to pay (but solely from the Trust Estate hereinafter referred to) to the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender” or “Registered Owner”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “Disbursements”) made by the TIFIA Lender (such lesser amount, together with any interest at the rate set forth above that is compounded on July 1 and January 1 of each year following the initial disbursement and capitalized in accordance with the provisions of the TIFIA Toll Loan Agreement, dated , 2021, by and between the Commission and the TIFIA Lender (the “TIFIA Toll Loan Agreement”), being hereinafter referred to as the “Outstanding TIFIA Loan Balance”), together with accrued and unpaid interest (including, if applicable, interest at the TIFIA Default Rate, as defined in the TIFIA Toll Loan Agreement) on the Outstanding TIFIA Loan Balance from the last compounding date, compounded on the basis of a 365-day or 366-day year, as appropriate, all as more fully described in the above-referenced TIFIA Toll Loan Agreement. Each Disbursement made by the TIFIA

Lender to the Commission pursuant to the TIFIA Toll Loan Agreement and each prepayment made on account of the Outstanding TIFIA Loan Balance shall be recorded by or on behalf of the TIFIA Lender and endorsed on the grid attached hereto as Appendix One, which will correspond to [Exhibit G-1 in the TIFIA Toll Loan Agreement]; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The Commission shall provide notice to the Trustee of the same. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Toll Loan Agreement and shall be paid in accordance with [Exhibit G-1 to the TIFIA Toll Loan Agreement], as revised from time-to-time in accordance with the TIFIA Toll Loan Agreement, until paid in full. Such [Exhibit G-1 to the TIFIA Toll Loan Agreement] shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Toll Loan Agreement, provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Commission's obligations hereunder or under any other TIFIA Loan Document. Payments of interest hereon are to be made in accordance with Sections [9 and 10] of the TIFIA Toll Loan Agreement as the same become due. Principal of and interest on this Bond shall be paid in funds available on the due date and in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

This Bond is a fully registered Bond and the principal of and interest on the Bond shall be payable by wire transfer to the Registered Owner hereof in accordance with the TIFIA Toll Loan Agreement.

This Bond is one of a duly authorized issue of bonds of the Commission, designated as "Hampton Roads Transportation Accountability Commission Toll Revenue Bonds, 2021 TIFIA Series – Senior Lien Obligation" (the "Bond"), of the series designated above, all of which are being issued pursuant to Virginia Code 33.2-2612, is set forth in Chapter 26, Title 33.2 (the "HRTAC Act") and a Master Indenture, dated as of _____ 1, 2021 (the "Master Indenture"), as supplemented by a First Supplemental Indenture, dated as of _____ 1, 2021 (the "First Supplemental Indenture"), each between the Commission and _____, as trustee (the "Trustee"). The Master Indenture, as supplemented and amended from time to time pursuant to its terms, including as supplemented by the First Supplemental Indenture, is hereinafter referred to as the "Indenture." Capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Indenture, and if not defined in the Indenture, as defined in the TIFIA Toll Loan Agreement.

This Bond and the issue of which it is a part, and the premium, if any, and the interest on this Bond are limited obligations of the Borrower, and shall be payable solely from the revenues, moneys and other property pledged to the Trustee for such purpose under the Indenture on a parity with other Outstanding Senior Lien Obligations now or hereafter to be issued under the Indenture. The principal of and premium, if any, and interest on this Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision thereof (including any Member Locality), and only the Borrower shall be liable thereon as provided herein. This TIFIA Bond shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code.

Reference is hereby made to the Indenture, the HRTAC Act and the TIFIA Toll Loan Agreement for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Trust Estate and the rights of the registered owners of the Bonds and all the terms of the Indenture and the TIFIA Toll Loan Agreement are hereby incorporated herein and constitute a contract between the Commission and the registered owner from time to time of this Bond, and to all the provisions thereof the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued and other indebtedness may be incurred on a parity basis with the Series of Bonds of which this Bond is a part, but only subject to the conditions and limitations contained in the Indenture and the TIFIA Toll Loan Agreement. Fees, costs and other amounts are payable from time to time by the Commission to the TIFIA Lender in connection with and pursuant to the terms of the TIFIA Toll Loan Agreement and the Indenture.

This Bond is secured by and payable both as to principal and interest, and as to any premium upon the redemption hereof, solely from the Trust Estate as defined in the Indenture, subject only to the provisions of the Indenture permitting application thereof for the purposes and on the terms and conditions set forth therein, and the Commission is not obligated to pay this Bond except from such Trust Estate.

THIS BOND SHALL AND MAY BE PREPAID in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid to be determined in accordance with the TIFIA Toll Loan Agreement and the Indenture; provided, however, that any prepayment shall be in principal amounts of \$[1,000,000] or any integral multiple of \$[1.00] in excess thereof), at any time or from time to time, without penalty or premium, by paying to the Owner all or part of the principal amount of this Bond in accordance with the TIFIA Toll Loan Agreement.

THIS BOND SHALL BE SUBJECT TO MANDATORY PREPAYMENT in accordance with the TIFIA Toll Loan Agreement and the Indenture.

The rights and obligations of the Commission and of the holders and registered owners of the Bonds of the Series of Bonds of which this Bond is a part may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the TIFIA Toll Loan Agreement.

This Bond is transferable or exchangeable as provided in Section [19] of the TIFIA Toll Loan Agreement and Section 2.08 of the Indenture, upon surrender by the registered owner hereof in person, or by such owner's duly authorized attorney, of this Bond at the Principal Office of the Trustee, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or such owner's duly authorized attorney, and thereupon a new Bond or Bonds of the same series, maturity, interest rate and in the aggregate maximum principal amount, shall be issued to the registered owner or owners in exchange therefor as provided in the Indenture, upon payment of any charges therein prescribed.

The person in whose name this Bond is registered shall be deemed and regarded as the absolute owner hereof for all purposes, including receiving payment of, or on account of, the principal of and premium and interest due hereon.

The Trustee shall not register any transfer or exchange of this Bond unless the Owner's prospective transferee delivers to the Trustee a letter substantially in the form as set forth in Exhibit A attached to the First Supplemental Indenture.

Any delay on the part of the TIFIA Lender in exercising any right hereunder or under the TIFIA Toll Loan Agreement shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default. The Commission hereby waives presentment, demand, protest and notice of any kind.

It is hereby certified and recited by the Commission that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the Commonwealth of Virginia and the HRTAC Act, and that this Bond, together with all other indebtedness of the Commission secured by the Trust Estate, is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF the Hampton Roads Transportation Accountability Commission has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its duly authorized representatives all as of the Issue Date set forth above.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
[Chair]

[FORM OF CERTIFICATE OF AUTHENTICATION]

It is hereby certified that this Bond has been issued under the provisions of the Indenture described in this Bond.

Dated of Authentication:

_____, as
Trustee

By: _____
Authorized Officer

[FORM OF ASSIGNMENT]

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

(Please print or Type Name and Address of Assignee)

PLEASE INSERT SOCIAL SECURITY OR OTHER
TAX IDENTIFICATION NUMBER OF ASSIGNEE

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

to transfer the Bond on the books kept for registration thereof with full power of substitution in
the premises.

Dated: _____

Signature:

(Signature of Assignor)

**APPENDIX ONE
HAMPTON ROADS TRANSPORTATION AUTHORITY
TOLL REVENUE BONDS, 2021 TIFIA SERIES – SENIOR LIEN OBLIGATION
(TIFIA – 20__ - ____)**

HAMPTON ROADS EXPRESS LANES INITIAL PROJECT

Maximum Principal Sum: \$ _____ Maturity Date: June 30, 20[___] (or such
(plus compounded interest earlier date determined pursuant
added to principal) to the TIFIA Toll Loan Agreement)

Borrower: Hampton Roads Transportation Accountability Commission

TIFIA Lender: The United States Department of Transportation, acting by and through
the Executive Director of the Build America Bureau

DISBURSEMENTS AND PAYMENTS OF PRINCIPAL

Date	Amount of Disbursement	Compounded Interest	Amount of Principal Paid	Unpaid Principal Balance	Notation Made By

¹ This Grid may be extended if the number of Disbursements, payments and extensions so requires.

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

**TIFIA LOAN AGREEMENT
(Toll Revenues)**

For Up to \$[345,000,000]

With

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY
COMMISSION**

For the

**I-64 HAMPTON ROADS BRIDGE-TUNNEL CONNECTING HAMPTON
AND NORFOLK PROJECT
(TIFIA – 2021[____])**

Dated as of [____], 2021

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TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between the **HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a body politic and a political subdivision created under the laws of the Commonwealth of Virginia (the “**State**”), with an address of The Regional Building, 723 Woodlake Drive, Chesapeake, Virginia 23320 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**TIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 (“**TIFIA**”), as codified at 23 U.S.C. §§ 601-609 (as amended from time to time, the “**Act**”); and

WHEREAS, Section 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans; and

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$[345,000,000] (excluding interest that is capitalized in accordance with the terms hereof) (such amount, the “**Maximum TIFIA Loan Amount**”) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated [____], 2021 (the “**Application**”); and

WHEREAS, on [____], 2021, the Secretary (as defined herein) approved TIFIA credit assistance for the Project in the form of the TIFIA Loan; and

WHEREAS, pursuant to the Indenture and the TIFIA Supplemental Indenture (as defined herein), the Borrower has pledged and granted to the Trustee (as defined herein) the hereinafter defined Trust Estate, which secures the repayment of Obligations issued by the Borrower, including the TIFIA Bond (as defined herein), based on their respective lien priority; and

WHEREAS, the TIFIA Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the TIFIA Bond in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the Traffic and Revenue Study (as defined herein), the Consulting Engineer's Report (as defined herein), and the Base Case Projections (as defined herein) delivered by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

Section 1. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (*Definitions*) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

"2021 HRTF BANs" means the Borrower's [Intermediate] Lien Bond Anticipation Notes, Series 2021A to be issued on or about [____], 2021, in the not to exceed par amount of \$[____], the proceeds of which are anticipated to be applied to the payment of Eligible Project Costs.

"Acceptable Credit Rating" means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues a Qualified Hedge, a Credit Support Instrument, or a repurchase obligation to fund any Reserve Fund, "A+", "A1" or the equivalent rating from at least one (1) Rating Agency that provides a rating on such Person's unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, "A", "A2" or the equivalent rating from at least one (1) Rating Agency that provides a rating on such Person's unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

"Account" means each account established in accordance with the terms of the Indenture.

"Accreted Value" means, with respect to any Capital Appreciation Obligations or Convertible Capital Appreciation Obligations, the principal amount thereof plus the interest accrued thereon at and prior to the maturity or earlier redemption thereof, in the case of a Capital Appreciation Obligation, or at and prior to the date of conversion of such Obligation to a Current Interest Obligation, in the case of a Convertible Capital Appreciation Obligation (other than the TIFIA Loan), compounded on the basis of a 360-day year of twelve 30-day months at the approximate interest rate thereon on each compounding date specified therein. The Accreted Value of an Obligation at any date of computation shall be an amount equal to the principal amount of such Obligation plus interest accrued thereon from the date of issuance, such interest to accrue at the rate per annum established as provided in a Supplemental Indenture and be compounded periodically, plus, if such date of computation shall not be a compounding date, the ratable portion of the difference between the Accreted Value computed as of the immediately preceding compounding date (or the date of issuance thereof if the date of computation is prior to the first compounding date succeeding the date of issuance) and the Accreted Value computed as of the immediately succeeding compounding date, calculated based on the assumption that the Accreted Value increases during any period in equal daily amounts (with straight-line interpolation between compounding dates).

“Act” means the Act as defined in the recitals hereto.

"Additional Network Costs Payment Fund" means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“Additional Project Contracts” means any contract, agreement, letter of intent, understanding or instrument (other than a Principal Project Contract) entered into by the Borrower or VDOT after the Effective Date, providing for the design, construction, testing, and start-up, of the Project, or the safety, financial services, operation or maintenance of the Project, or otherwise relating to the Project, including any master contract providing goods or services for multiple projects or assets including the Project; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (a) is entered into (i) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (ii) for necessary Project-related expenditures, (b) commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower in one contract or a series of related contracts of, no more than \$2,500,000 (inflated annually by CPI) in the aggregate for any such contract or series of related contracts allocable to the Project or payable from Revenues and (c) is for a term not exceeding two (2) years (including any contract term renewals).

“Additional Obligations” means any Obligations issued pursuant to the Indenture that are permitted under Section 16(a) (*Indebtedness*) and under the Indenture, which Additional Obligations are issued or incurred after the Effective Date and also satisfy the following requirements, as applicable:

(a) if the proceeds thereof will be used to refinance any Senior Lien Obligations, Second Lien Obligations, or Subordinate Obligations and are issued on the same lien level as the proposed refunded Obligations, (i) such Additional Obligations must receive a rating from a Rating Agency that is at least the equivalent to the lesser of (A) the rating given on the Effective Date to the Obligations being refinanced with the proceeds of the Additional Obligations or (B) the most recent rating given to such Obligations pursuant to Section 15(i) (*Annual Rating*), (ii) the net proceeds thereof (after deducting any amounts required to be deposited to satisfy the respective Debt Service Reserve Requirement or required to pay costs of issuance) must not exceed the principal amount of the Obligations being refinanced, (iii) the respective lien level Annual Debt Service, after the incurrence of such Additional Obligations, in each year of the remaining term of the TIFIA Loan, must be projected to be less than the respective lien level Annual Debt Service projected for each such year in the Base Case Projections, and (iv) the stated maturity of such Additional Obligations shall not exceed the stated maturity for the Obligations being refinanced with the proceeds of the Additional Obligations; and

(b) if the proceeds thereof will be used for any reason not described in clause (a) above, then:

(i) if such Additional Obligations are Senior Lien Obligations, such Additional Obligations must receive an Investment Grade Rating;

(ii) the Borrower's Authorized Representative shall have certified to the TIFIA Lender, and the Consulting Engineer shall have confirmed, that (A) there will be no fundamental change in the use of the Project, and the activity or project to which such Additional Obligations will be applied could not reasonably be expected to result in a Material Adverse Effect, (B) the Senior Debt Service Coverage Ratio for each Calculation Period from the date of issuance of such Additional Obligations through the Final Maturity Date will not be less than 1.55:1.00 (based on a certified revenue forecast prepared by the Traffic Consultant and satisfactory to the TIFIA Lender), and (C) the All-in Cost Coverage Ratio for each Calculation Date from the date of issuance of such Additional Obligations through the Final Maturity Date is not less than 1.10:1.00 (based on a certified revenue forecast prepared by the Traffic Consultant and satisfactory to the TIFIA Lender); and

(iii) repayment of the principal amount of such Additional Obligations must not commence before the Debt Service Payment Commencement Date;

provided that (x) for each of clauses (a) and (b) above, no Event of Default under any Indenture Document or this Agreement has occurred and is continuing, and (y) for clause (b) above, the Rating Agency that provided the most recent public ratings of the TIFIA Loan and on any other outstanding Senior Lien Obligations in accordance with Section 15(i) (*Annual Rating*) shall have provided a confirmation or affirmation (or the equivalent) that the incurrence of such Additional Obligations shall not result in a downgrade of the credit rating of the TIFIA Loan or such other outstanding Senior Lien Obligations to below the lower of (A) the then-existing credit ratings of the TIFIA Loan or such other outstanding Senior Lien Obligations, respectively, and (B) the credit rating of the TIFIA Loan as of the Effective Date or of such other outstanding Senior Obligations as of the date of issuance thereof.

“Additional Tolled Lanes” means any lane, other than those lanes that are already part of the Express Lanes Initial Project described in the definition of "Express Lanes Network", on I-64 or other roadways within Hampton Roads that (a) is part of a segment that has been expanded, constructed, or improved with “Commission-Controlled Money” (as defined in the MTA), or (b) would be within the Hampton Roads Beltway (as defined in the MTA), if any, added under the provisions of the MTA.

“Agreement” has the meaning provided in the preamble hereto.

“All-in Cost Coverage Ratio” means, for any Calculation Period, the ratio of (a) projected Net Revenue for such Calculation Period to (b) (i) aggregate Annual Debt Service with respect to all Obligations for such Calculation Period plus (ii) deposits during such Calculation Period to the Major Maintenance and Renewal Fund less transfers from the Major Maintenance and Renewal Fund during such Calculation Period to pay Major Maintenance and Renewal Fund Permitted Expenditures, plus (iii) deposits during such Calculation Period to the Tolling O&M Reserve Fund less transfers from the Tolling O&M Reserve Fund during such Calculation Period, plus (iv) the amount, if any, required to make up shortfalls in any other Reserve Fund; provided, that:

(a) when calculating the All-in Cost Coverage Ratio for purposes of the Rate Coverage Test (but not for purposes of the Restricted Payment Conditions or any Additional Obligations), the projected balance in the Unrestricted General Reserve

Account as of the applicable Calculation Date covered by such calculation may be added to Net Revenues for each applicable Calculation Period;

(b) when calculating the All-in Cost Coverage Ratio for any historical Calculation Period, the actual amount on deposit in the Revenue Stabilization Fund as of the applicable Calculation Date may be added to Net Revenues for such applicable Calculation Period;

(c) when calculating the All-in Cost Coverage Ratio for any prospective Calculation Period, (i) Toll Revenues shall be limited to those revenues described in clause (a) of the definition thereof and (ii) the amount of the Revenue Stabilization Fund Requirement may be added to Net Revenues for such applicable Calculation Period; and

(d) when calculating the All-in Cost Coverage Ratio for all purposes other than the Rate Coverage Test pursuant to Section 15(m) (*Rate Coverage*), TIFIA Scheduled Debt Service (in addition to TIFIA Mandatory Debt Service) shall be included in the calculation of Annual Debt Service with respect to the WIFIA Loan.

"ANCPF Restricted Account" means the Account by that name within the Additional Network Costs Payment Fund created pursuant to Section 5.02 of the Indenture.

"Annual Debt Service" means, except as expressly provided below, the amount of payments actually due on the applicable Obligations for any Calculation Period. In calculating Annual Debt Service for any future period (except as otherwise specifically provided herein):

(a) in determining the principal amount of an Obligation due in any period, payment shall be assumed to be made in accordance with the amortization schedule established for such principal, including any minimum sinking fund or account payments;

(b) to the extent the requirements of Section 16(a)(ii) (*Indebtedness*) have been waived, any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at such rate or rates approved in writing by the TIFIA Lender at the time such debt is issued;

(c) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Obligations and Deferred Income Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period;

(d) principal and interest payments on Obligations may be excluded to the extent such payments are to be paid from amounts other than Revenues that are irrevocably held by the Trustee or another fiduciary in escrow specifically for the payment of such principal and interest and interest payments on any Obligations may be excluded to the extent that such interest payments are to be paid from capitalized interest held by the Trustee or another fiduciary in a capitalized interest account (and not a Reserve Fund) funded from sources other than Revenues specifically to pay such interest, including amounts held on deposit to pay capitalized interest on one or more Series of Obligations;

(e) if any of the Obligations are, or upon issuance will be, obligations for which the Borrower is entitled to receive Subsidy Payments, as evidenced by an opinion of Bond Counsel

delivered with respect to such Obligations, such Obligations may be treated as bearing an interest rate equal to the rate of interest borne or assumed to be borne, as applicable, by the Obligations for the period of determination minus a rate equal to the Subsidy Payments to which the Borrower is entitled for such period, divided by the Outstanding principal amount of such Obligations during such period; and

(f) Except as otherwise expressly set forth herein, Annual Debt Service in respect of the TIFIA Loan shall include TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service with respect to the applicable time period.

“Annual Operating Budget” means the budget of revenues and expenses prepared by the Borrower and approved by the Borrower’s board of directors for each Borrower Fiscal Year.

“Anticipated TIFIA Loan Disbursement Schedule” means the schedule set forth in **Exhibit B**, reflecting the anticipated disbursement of proceeds of the TIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (*Disbursement Conditions*).

“Anti-Corruption Laws” means all U.S. and other applicable laws, rules and regulations, as amended from time to time concerning or related to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations, as amended from time to time concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“Application” has the meaning provided in the recitals hereto.

“Appreciated Value” means, with respect to any Deferred Income Bond as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Deferred Income Bond.

“Balloon Indebtedness” means any Obligations, twenty-five percent (25%) or more of the principal of which matures on the same date or within a Borrower Fiscal Year.

“Bank Lending Margin” means in respect of any Variable Interest Rate Obligations, the **“Applicable Margin”** or comparable interest rate margin as defined in the financing documents related to such Variable Interest Rate Obligations.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1959 and 31 U.S.C. §§ 312, 5311-5313, and 5316-5322), as amended from time to time, and any successor statute of similar import and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator

or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Mandatory Debt Service in accordance with the provisions of Section 9 (*Payment of Principal and Interest*), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law;

(c) solely with respect to the Borrower, (i) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing any Obligations (including the TIFIA Loan), or (ii) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of pursuant to a sale or disposition of such Trust Estate in lieu of foreclosure; or

(d) solely with respect to the Borrower, the Trustee shall transfer, pursuant to directions issued by the Bondholders, funds on deposit in any of the Funds upon the occurrence and during the continuation of an Event of Default under the Indenture Documents for application to the prepayment or repayment of any principal amount of the Obligations other than in accordance with the provisions of the Indenture.

“Base Case Financial Model” means a financial model prepared by (or on behalf of) the Borrower forecasting the revenues and expenditures of the Borrower for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender as of the Effective Date, which model shall be provided to the TIFIA Lender as a fully functional Microsoft Excel – based financial model or such other format requested by the TIFIA Lender.

“Base Case Projections” means the initial forecast for the Borrower prepared as of the Effective Date using the Base Case Financial Model.

“Bond Anticipation Obligations” means Obligations issued in anticipation of the sale of a Series of Obligations in a principal amount not exceeding the principal amount of such Series of Obligations and payable from the proceeds of the sale of the Series of Obligations in anticipation of which such Bond Anticipation Obligations are issued, which may be payable, in whole or in part, from Toll Revenues, as set forth in a Supplemental Indenture.

“Bondholder” or **“Holder”** or **“Owner”** means, when used with respect to the TIFIA Bond, the TIFIA Lender and, when used with respect to any other Obligation, the record owner of such Obligation.

“Borrower” has the meaning provided in the preamble hereto.

“Borrower Fiscal Year” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the TIFIA Lender, as provided in Section 16(i) (*Organizational Documents; Fiscal Year*).

“Borrower Related Party” means, individually or collectively, the Borrower and VDOT.

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

“Business Day” means any day, other than a Saturday, Sunday or other day on which the Federal Government or banks are authorized or obligated by law or executive order to be closed in the Commonwealth or the State of New York or in any city in which the Principal Office of the Trustee or, with respect to any Obligations secured by a Credit Support Instrument, the office where draws are to be made on a Qualified Issuer is located.

“Calculation Date” means each January 1 and July 1 occurring after the Effective Date.

“Calculation Period” means a twelve (12) month period ending on a Calculation Date.

“Capital Appreciation Obligations” means the Obligations designated as Capital Appreciation Obligations in the Supplemental Indenture providing for the issuance of such Obligations and on which interest is compounded and paid at maturity or on a redemption date.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America.

“Capitalized Interest Period” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period.

“Commission-Controlled Funds” has the meaning provided in the PAFA.

"**Comprehensive Agreement**" means that certain Comprehensive Agreement, dated as of April 3, 2019, between VDOT and the Design-Builder.

"**Congress**" has the meaning provided in the recitals hereto.

"**Construction Contractor**" means the Design-Builder, each member of the Design-Builder consortium (as of the Effective Date, as listed in the definition of Design-Builder), and each Tolling Systems Provider.

"**Construction Period**" means the period from the Effective Date through the Substantial Completion Date.

"**Construction Schedule**" means, collectively, (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached hereto as **Schedule II**, and (b) any updates thereto included in the Financial Plan most recently submitted to the TIFIA Lender pursuant to Section 21(a)(iii)(B) (*Financial Plan*).

"**Consulting Engineer**" means [_____] or any successor thereto or such other replacement engineering firm selected by the Borrower and not objected to by the TIFIA Lender within fifteen (15) Business Days after receiving notice of such selection.¹

"**Consulting Engineer's Report**" means [_____].²

"**Control**" means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms "**Controlling**" and "**Controlled by**" have meanings correlative to the foregoing.

"**Convertible Capital Appreciation Obligations**" means Obligations (other than the TIFIA Loan) that initially are issued as Capital Appreciation Obligations, but later convert to Obligations on which interest is paid periodically. Convertible Capital Appreciation Obligations shall be Capital Appreciation Obligations until the conversion date and from and after such conversion date shall no longer be Capital Appreciation Obligations, but shall be treated as Current Interest Obligations having a principal amount equal to their Accreted Value on the conversion date.

"**CPI**" means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with January 2021 as the base period.

"**Credit Support Instrument**" means any letter of credit, standby bond purchase agreement, line of credit, surety instrument or similar instrument, any bond insurance policy, or

¹ **Note to Borrower:** Please confirm Consulting Engineer.

² **Note to Borrower:** Discuss

any agreement relating to the reimbursement of any payment thereunder (or any combination of the foregoing), that is obtained by the Borrower and is issued by a Qualified Issuer.

“Current Interest Obligations” means Obligations designated as Current Interest Obligations in the Supplemental Indenture providing for the issuance of such Obligations and that pay interest to the Holders thereof on a periodic basis prior to maturity. Current Interest Obligations also include Convertible Capital Appreciation Obligations after their conversion date.

“Debt Service Payment Commencement Date” means the earlier of (a) the [third (3rd)]³ anniversary of the Substantial Completion Date or (b) if such date does not fall on a Semi-Annual Payment Date, then the Debt Service Payment Commencement Date shall be the Semi-Annual Payment Date immediately preceding the [third (3rd)] anniversary of the Substantial Completion Date.

“Debt Service Reserve Fund” means, as applicable, the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund and the Subordinate Obligations Reserve Fund.

“Debt Service Reserve Requirement” means, as applicable, the Senior Lien Obligations Reserve Requirement, the Second Lien Obligations Reserve Requirement and the Subordinate Obligations Reserve Requirement.

“Default” means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“Default Rate” means an interest rate equal to the sum of (a) the TIFIA Interest Rate plus (b) two percent (2.00%).

“Deferred Income Bond” means any Permitted Debt (a) as to which interest accruing thereon prior to the applicable Interest Commencement Date of such Permitted Debt is (i) compounded on each Valuation Date for such Deferred Income Bond and (ii) payable only at the maturity or prior redemption of such Permitted Debt and (b) as to which interest accruing after the applicable Interest Commencement Date is payable on the first interest payment date immediately succeeding the Interest Commencement Date and thereafter on the dates specified in or determined pursuant to the Supplemental Indenture authorizing the Permitted Debt. For the purposes of receiving payment of the redemption price if a Deferred Income Bond is redeemed prior to maturity, the principal amount of a Deferred Income Bond shall be deemed to be its Appreciated Value.

“Design-Builder” means Hampton Roads Connector Partners, an unincorporated joint venture comprised of its members, Dragados USA, Inc., Vinci Construction Grands Projects, Flatiron Constructors, Inc., and Dodin Campenon Bernard.

“Development Default” means (a) VDOT fails to diligently prosecute the work related to the Project or (b) VDOT fails to complete the Project by the third (3rd) anniversary of the Projected Substantial Completion Date.

³ **Note to Borrower:** Please confirm.

“**Effective Date**” means the date of this Agreement.

“**Electronic Signature**” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to *[insert VA Statute]*⁴, as amended from time to time.

“**Electronic Toll Collection Agreement**” means any Electronic Toll Collection Agreement entered into between the Borrower and VDOT.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including prior Project expenditures for the 5-year period preceding the date of the Application, all of which shall arise from the following:

- (a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or
- (c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction.

“**Environmental Laws**” has the meaning provided in Section 13(s) (*Environmental Matters*).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. § 1001 et seq.), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

“**Event of Default**” has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

“**Event of Loss**” means any event or series of events that causes any portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

⁴ **Note to Borrower:** Please advise of correct VA statute.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Express Lanes Network**” means a network of planned contiguous HOT lanes, in each direction, between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake, which ultimately would enable continuous HOT lane travel throughout such corridor (the foregoing constituting the “**Initial Interstate 64 Express Lanes Network**” or “**Initial Network**” as described in the MTA), as depicted on Exhibit A to the Indenture, and consisting of the Express Lanes Initial Project and subsequent Express Lanes Future Project(s) that comprise a segment, phase or portion of the Express Lanes Network, including but not limited to any Additional Tolloed Lanes (as defined in the Indenture).

“**Federal Fiscal Year**” or “**FFY**” means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**Federal Government**” means the United States of America and its departments and agencies.

“**FHWA**” means the Federal Highway Administration, an agency of the USDOT.

“**FHWA Division Office**” means the Virginia Division Office of the FHWA.

“**Final Maturity Date**” means the Semi-Annual Payment Date occurring on or immediately preceding the thirty-fifth (35th) anniversary of the Substantial Completion Date.

“**Financial Plan**” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 21(a) (*Financial Plan*) and (b) any updates thereto required pursuant to Section 21(a) (*Financial Plan*).

“**Financial Statements**” has the meaning provided in Section 13(z) (*Financial Statements*).

“**Fixed Level Payment**” has the meaning provided in Section 9(e) (*Fixed Level Payments*).

“**Fund**” means each fund established in accordance with the terms of the Indenture.

“**GASB**” means generally accepted accounting principles for state and local governments, which are the uniform minimum standards of and guidelines for financial accounting and reporting prescribed by the Governmental Accounting Standards Board.

“**General Assembly**” means the state legislature for the Commonwealth of Virginia.

“**General Reserve Fund**” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“**Government Obligations**” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal

Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Hedging Agreement” means (a) the ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, to be entered into by the Borrower and a Hedging Bank, (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, and (c) any other documentation directly relating to the foregoing.

“Hedging Banks” means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and its permitted successors (to the extent such successors are also Qualified Hedge Providers).

“Hedging Obligations” means, collectively, the payment of (a) all scheduled amounts payable to the Hedging Banks by the Borrower under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedging Banks, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedging Banks to the Borrower under such Hedging Agreements; provided that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Termination Obligations” means the aggregate amount payable to the Hedging Banks by the Borrower upon the early termination of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks upon the early unwind of all or a portion of such Hedging Agreements. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases and not for any speculative purpose.

“HRTAC Act” means Chapter 26 of Title 33.2 of the Code of Virginia of 1950, as amended.

“HRTF” means the Hampton Roads Transportation Fund established pursuant to the HRTAC Act.

“HRTF Fifth Supplemental Indenture” means that certain Fifth Supplemental Indenture, dated as of [] 1, 2021, between the Borrower and the Trustee.

“HRTF Funds” means amounts made available for distribution from the HRTF Indenture as set forth in the HRTF Fifth Supplemental Indenture.

“HRTF Indenture” means that certain Master Indenture of Trust, dated as of February 1, 2018, between the Borrower and the HRTF Trustee, as supplemented or amended from time to time in accordance with its terms.

“HRTF Indenture Documents” means the HRTF Indenture, the HRTF Bonds, and the HRTF Fifth Supplemental Indenture.

“HRTF Obligations” means bonds or other obligations issued pursuant to the HRTF Indenture.

“HRTF Repayment Fund” means the account by the name created pursuant to Section 5.02 of the Indenture.

“HRTF Revenues” means the revenues dedicated to the HRTF from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code, together with any other funds that may be appropriated to the HRTF.

“HRTF TIFIA Loans” means (a) the TIFIA loan under that certain TIFIA Loan Agreement, dated as of [the date hereof], between the Borrower and the TIFIA Lender and (b) the TIFIA loan under that certain TIFIA Loan Agreement, dated as of December 10, 2019, between the Borrower and the TIFIA Lender.

“**HRTF Transfer**” means any transfer or payment of HRTF Funds by or on behalf of the Borrower to a Fund or an Account pursuant to the provisions of the Indenture or any Supplemental Indenture[, and including by not limited to the transfers provided for under Section ___ of the Fifth Supplemental HRTF Indenture] for the purpose of: (a) annual deposits to the Revenue Stabilization Fund, (b) the initial funding of the TIFIA Loan Reserve Account, in an amount equal to the TIFIA Debt Service Reserve Required Balance, and (c) deposits to the Major Maintenance and Renewal Fund from time to time.

“**HRTF Trustee**” means Wilmington Trust Company, National Association.

“**Indemnitee**” has the meaning provided in Section 17 (*Indemnification*).

“**Indenture**” means that certain Master Indenture (Toll Roads System Revenue Bonds), dated as of [___] 1, 2021, between the Borrower and the Trustee, as supplemented or amended from time to time in accordance with its terms.

“**Indenture Documents**” means the Indenture, each Supplemental Indenture, each Hedging Agreement related to any Obligations, each Credit Support Instrument related to any Obligations, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“**Interest Commencement Date**” means, with respect to any particular Deferred Income Bond, the date determined by the Supplemental Indenture for such Deferred Income Bond after which interest accruing on such Deferred Income Bond shall be payable on the first interest payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Indenture.

“**Investment Grade Rating**” means a public rating no lower than “BBB-”, “Baa3” or the equivalent public rating from a Rating Agency.

“**ISDA Master Agreement**” means a master agreement, entered into by the Borrower and a Hedging Bank, in the form published by the International Swaps and Derivatives Association, Inc.

“**Level Payment Commencement Date**” means the [forty-first (41st)] Semi-Annual Payment Date after the Debt Service Payment Commencement Date.

“**Level Payment Period**” means the period commencing on the Level Payment Commencement Date and ending on the Final Maturity Date (or on such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash).

“**Lien**” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature

whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“Loan Amortization Schedule” means the Loan Amortization Schedule reflected in the applicable column of **Exhibit G**, as amended from time to time in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“Loan Life Coverage Ratio” means, as of each applicable Calculation Date, the ratio of (a) the present value of all projected Net Revenue for each Calculation Date from and including such Calculation Date to the Final Maturity Date, in each case discounted at the Weighted Average Interest Cost, using the most recent Revised Financial Model (or the Base Case Financial Model if no Revised Financial Model has been submitted to the TIFIA Lender), adjusted to take into account (i) actual results and updated Net Revenue projections and (ii) additional projected Net Revenue and Annual Debt Service in connection with Additional Obligations; to (b) the aggregate outstanding principal amount of all Senior Lien Obligations and the Outstanding TIFIA Loan Balance on such Calculation Date; provided, that for any calculation of the Loan Life Coverage Ratio (i) Toll Revenues shall be limited to those revenues described in clause (a) of the definition thereof and (ii) the amount of the Revenue Stabilization Fund Requirement may be added to Net Revenues for each applicable Calculation Period.

“Loss Proceeds” means any proceeds of insurance resulting from any Event of Loss.

“Major Maintenance and Renewal Fund” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“Major Maintenance and Renewal Fund Permitted Expenditures” means Capital Expenditures reasonably necessary for the construction, reconstruction, preservation, replacement, renewal or modification of the Tolling Infrastructure and System.

“Major Maintenance and Renewal Fund Required Amount” means, for any Calculation Period ending at the end of each Borrower Fiscal Year, commencing with the Borrower Fiscal Year following the Borrower Fiscal Year in which occurs the first funding of the Major Maintenance and Renewal Fund pursuant to a Supplemental Indenture, an amount equal to the greater of (a) \$5,000,000, and (b) the aggregate of (i) one hundred percent (100%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the following twelve (12) month period, (ii) eighty percent (80%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next following twelve (12) month period (i.e., year 2), (iii) sixty percent (60%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding twelve (12) month period (i.e., year 3), (iv) forty percent (40%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding twelve (12) month period (i.e., year 4) and (v) twenty percent (20%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding twelve (12) month period (i.e., year 5), in each case, based on, initially, the forecast of estimated life cycle maintenance costs with respect to the toll collection facilities and equipment needed for the Tolling Infrastructure and System as set forth in the Base Case Financial Model or, as applicable, in any Revised Financial

Model, in each case based on the then-current information regarding Major Maintenance and Renewal Fund Permitted Expenditures prepared by the Borrower and certified by the Consulting Engineer.

“Material Adverse Effect” means a material adverse effect on (a) the Project, the Toll Revenues, or the Trust Estate, (b) the business, operations, properties, condition (financial or otherwise), powers or revenues of the Borrower, (c) the legality, validity or enforceability of any material provision of any Indenture Document, TIFIA Loan Document or Principal Project Contract, (d) the ability of the Borrower or any other Principal Project Party to enter into, perform or comply with any of its material obligations under any Indenture Document, TIFIA Loan Document or Principal Project Contract to which it is a party, (e) the validity, enforceability or priority of the Liens provided under the Indenture Documents on the Trust Estate in favor of the Secured Parties or (f) the TIFIA Lender’s rights or remedies available under any TIFIA Loan Document.

“Maximum Annual Debt Service” means the highest aggregate amount of TIFIA Debt Service for the present or any succeeding Borrower Fiscal Year.

“Maximum TIFIA Loan Amount” has the meaning provided in the recitals hereto.

“MMRF HRTF Cumulative Transfer Cap” means, as of each measurement date, the total of expected Major Maintenance and Renewal Fund Permitted Expenditures from such measurement date to the final maturity of all Obligations issued under the Toll Revenue Indenture then Outstanding, as estimated by the Consulting Engineer and initially based, using an initial measurement date in Fiscal Year 2026, on a forecast of estimated life cycle maintenance costs with respect to the Tolling Infrastructure and System. The MMRF HRTF Cumulative Transfer Cap is subject to change based on the nature and extent of the Toll Roads System and then-current information regarding Major Maintenance and Renewal Fund Permitted Expenditures prepared by the Borrower and certified by the Consulting Engineer.⁵

“Monthly Funding Date” means the last day of each calendar month or, if such day is not a Business Day, the next preceding Business Day.

“MTA” means that certain Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network, dated as of August 18, 2020, by and among the Borrower, VDOT and the Commonwealth Transportation Board.

“NEPA” means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. § 4321 et seq.), and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“NEPA Determination” means [____].

“Net Loss Proceeds” means Loss Proceeds (excluding any proceeds of business interruption insurance, delay-in-start-up insurance, proceeds covering liability of the Borrower to

⁵ **Note to Borrower:** Discuss methodology for determining MMRF HRTF Cumulative Transfer Cap. How frequently will the cap amount be updated? Annually?

third parties and Other Recoveries and Damages) that remain after Loss Proceeds that have been used or are to be used by the Borrower or VDOT to repair or restore the Project and that are payable or transferable to the Borrower (or to which the Borrower is otherwise entitled).

“**Net Revenue**” means, for any Fiscal Year or Calculation Period ending on a Calculation Date (a) Revenue less (b) Tolling O&M Costs for that period, less (c) any additional Revenue deposited to the Operation and Maintenance Reserve Fund in order to maintain the Tolling O&M Reserve Fund Requirement therein, and less (d) deposits to the Rebate Fund made from Revenues. In addition the following shall be excluded from the calculation of Net Revenue, (i) any extraordinary or one-time Revenues for such period, and (ii) any extraordinary or one-time expenses from Tolling O&M Costs for such period, but only if and to the extent such extraordinary or one-time expenses are paid or payable from extraordinary or one-time revenues being excluded from Revenue for such period.

“**Obligations**” means all indebtedness of the Borrower (including Parity Obligations as defined in the Indenture) payable from Revenue and other collateral in the Trust Estate incurred or assumed by the Borrower for borrowed money (including indebtedness arising under Credit Support Instruments if payable from Revenues) and all other financing obligations of the Borrower relating to the Toll Roads System that, in accordance with generally accepted accounting principles, are included as a liability on a balance sheet for the Toll Roads System books and records, including any bonds, notes, certificates or other obligations, as the case may be, and including but not limited to Bond Anticipation Obligations, commercial paper and other Short-Term/Put Obligations, authenticated and delivered under and pursuant to the Indenture as Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations. For the purpose of determining the “Obligations” payable from Revenue, Obligations that are no longer Outstanding shall be excluded.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Organizational Documents**” means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“Outstanding TIFIA Loan Balance” means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the TIFIA Loan, as determined in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“PAFA” means that certain Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 2, 2019, between the Borrower and VDOT.

“Patriot Act” means the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“Payment Default” has the meaning provided in Section 19(a)(i) (*Payment Default*).

“Payment Period” means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“Permitted Debt” means:

- (d) the TIFIA Loan; and
- (e) Additional Obligations that satisfy each of the applicable requirements in the definition thereof.

“Permitted Hedging Termination” means the early termination, in whole or in part, of any Qualified Hedge (a) at the request of the Borrower as a result of a determination by the Borrower that such (or any part of such) Qualified Hedge is no longer necessary or required under the terms of this Agreement, (b) pursuant to the terms of any Hedging Agreement evidencing such Qualified Hedge that provides for the notional amount of such Qualified Hedge to amortize or otherwise be reduced from time to time or (c) as may be required pursuant to Section 15(o)(vii) (*Hedging*).

“Permitted Investments” means (with respect to the investment of the proceeds of the TIFIA Loan or any construction or reserve account established and maintained pursuant to the Indenture) the following obligations subject to additional restrictions included in the Investment of Public Funds Act, Chapter 45, Title 2.2, Code of Virginia 1950, as amended and the Security for Public Deposits Act, Chapter 44, Title 2.2, Code of Virginia 1950, as amended:

- (a) Government Obligations;
- (b) obligations of the United States Federal Housing Administration, the United States Farmers Home Administration, the United States Postal Service, and any other agency or instrumentality of the United States of America now or hereafter created, which obligations are backed by the full faith and credit of the United States of America;

(c) obligations of the Federal National Mortgage Association, Federal Financing Bank, Federal Farm Credit System, and Federal Home Loan Mortgage Corporation;

(d) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;

(e) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(f) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Rating Agency;

(g) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency;

(h) investments pursuant to the Government Non-Arbitrage Act, Chapter 47, Title 2.2, Code of Virginia, 1950, as amended, that have been rated “AAAm-G,” “AAAm” or the equivalent rating by each Rating Agency that provides a rating on such obligations; and

(i) investments pursuant to the Local Government Investment Pool Act, Chapter 46, Title 2.2, Code of Virginia, 1950, as amended, that have been rated “AAAm-G,” “AAAm” or the equivalent rating by each Rating Agency that provides a rating on such obligations.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Principal Project Contracts**” means the Comprehensive Agreement, the MTA, the PAFA, each Electronic Toll Collection Agreement, each Violation Processing Services Agreement, each Tolling Systems Contract, and each Standard Project Agreement.

“**Principal Project Party**” means any Person (other than the Borrower) that is a party to a Principal Project Contract.

“**Project**” means the following improvements on I-64 beginning west of Settlers Landing Road in Hampton (Exit 267) and ending at I-564 in Norfolk (Exit 276) pursuant to the terms of the Comprehensive Agreement:

(a) across the water, a new bridge-tunnel crossing approximately 3.5 miles long and generally parallel to the existing Hampton Roads Bridge-Tunnel, which new bridge-tunnel will have two new tunnels that provide four lanes of capacity for eastbound traffic and allow four lanes of capacity to be dedicated to westbound traffic (the Borrower’s funding obligations for the new bridge-tunnel crossing described above excludes the South Island Trestle Bridge Replacement Work described below);

(b) the construction of new marine approach bridges to carry westbound I-64 across the water between Norfolk and the South Island of the Hampton Roads Bridge-Tunnel, including the demolition (with removal and disposal) of the existing marine approach bridges between Norfolk and such south island (the “South Island Trestle Bridge Replacement Work”); and

(c) on land, a new third lane to I-64 in each direction, with a roadway section sufficient to accommodate a part-time median shoulder lane.

The Project is organized into three segments. When completed, each segment of the Project will include one or more lanes designated as high-occupancy toll lanes.

“**Project Budget**” means, collectively, the budget for the Project in the aggregate amount of \$[] attached to this Agreement as **Schedule I** showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time subject to the reporting requirements in Section 22(b) (*Monthly Construction Progress Report*).

“**Project Construction Contracts**” means the Comprehensive Agreement and each Tolling Systems Contract.

“**Project Fund**” means the Fund by that name established pursuant to Section 5.02 of the Indenture.

“**Projected Substantial Completion Date**” means [April [], 2025],⁶ unless otherwise agreed by the TIFIA Lender in writing.

“**Put Bonds**” means any bond that by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof either (a) by the Borrower and by the Person and/or from the source specified in a Supplemental Indenture or (b) without recourse to the Borrower, by the Person and/or from the source specified in a Supplemental Indenture.

⁶ **Note to Borrower:** Please confirm.

“**Qualified Hedge**” means, to the extent from time to time permitted by law, with respect to Permitted Debt any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 15(o) (*Hedging*).

“**Qualified Hedge Provider**” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“**Qualified Issuer**” means (i) with respect to any Credit Support Instrument issued by a bank or trust company, any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating. and (ii) with respect to any Credit Support Instrument issued by an insurance company or other financial institution, any insurance company or other financial institution that is authorized and qualified to do business by the state insurance commissioner of its jurisdiction of organization and of the State and that has an Acceptable Credit Rating.

“**Rate Coverage Test**” has the meaning set forth in Section 15(m) (*Rate Coverage*).

“**Rating Agency**” means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. §78c(a)(62)).

“**Rating Category**” means one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“**Rebate Fund**” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“**Related Documents**” means the Indenture Documents, the HRTF Indenture Documents, the TIFIA Loan Documents, the Hedging Agreements and the Principal Project Contracts.

“**Requisition**” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

“**Reserve Funds**” means the Senior Lien Obligations Reserve Fund (including the TIFIA Loan Reserve Account), the Second Lien Obligations Reserve Fund, the Subordinate Obligations Reserve Fund, the Tolling O&M Reserve Fund, and the Major Maintenance and Renewal Fund, including any accounts and sub-accounts under any of the foregoing.

“**Restricted Payment Conditions**” means the requirements set forth in Section 16(d) (*Restricted Payments*).

“**Revenue Sharing Account**” means the Account by that name created pursuant to Section 5.02 of the Indenture.⁷

⁷ **Note to Borrower:** Please add to Indenture.

"Revenue Sharing Amount" means, as of any Calculation Date, an amount equal to fifty percent (50%) of any amounts available to be deposited to the Unrestricted General Reserve Account on such Calculation Date will cause the balance on deposit in the Unrestricted General Reserve Account (following such deposit, but prior to any deduction of the Revenue Sharing Amount) to exceed fifty million dollars (\$50,000,000).

"Revenue Stabilization Fund" means the Fund by that name created pursuant to Section 5.02 of the Indenture.

"Revenue Stabilization Fund Requirement" means an amount equal to \$10,000,000, or such other amount, if any, as may be specified by a Supplemental Indenture, with respect to a series of Obligations, with the prior written consent of the TIFIA Lender for so long as this Agreement remains in effect.

"Revenues" means (a) Toll Revenues, (b) all interest or other income received from investment of money in the Funds and Accounts (excluding the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument), and (c) revenues received under any Hedging Transactions permitted hereunder; provided, that except as expressly set forth herein, "Revenues" calculated for any ratio determination shall not include HRTF Revenues or any amounts transferred to the Toll Revenue Fund from any other Fund or Account.

"Revised Financial Model" means an updated version of the Base Case Financial Model, in form and substance satisfactory to the TIFIA Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

"Sanctioned Country" means, at any time, a country or territory which is itself the subject or target of any Sanctions.

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

"Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

"Second Lien Obligations" means any Obligations issued or incurred under the Indenture that are subordinated in right of payment and lien priority to the Senior Lien Obligations and senior in right of payment and lien priority to the Subordinate Obligations.

"Second Lien Obligations Fund" means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“**Second Lien Obligations Reserve Fund**” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“**Second Lien Obligations Reserve Requirement**” for any Second Lien Obligations means the amount, if any, specified by a Supplemental Indenture as the amount required to be held in the Second Lien Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Second Lien Obligations secured by such Fund or Account.

“**Secretary**” means the United States Secretary of Transportation.

“**Secured Obligations**” means the Senior Lien Obligations (including the obligations of the Borrower under this Agreement and the TIFIA Bond), the Second Lien Obligations, the Subordinate Obligations, the Hedging Obligations, and the Hedging Termination Obligations.

“**Secured Parties**” means the Trustee, the TIFIA Lender, any other Bondholders, and the Hedging Banks.

“**Semi-Annual Payment Date**” means each January 1 and July 1.

“**Semi-Annual Coverage Certificate**” has the meaning provided in Section 21(b) (*Semi-Annual Coverage Certificates*).

“**Senior Debt Service Coverage Ratio**” means, for any Calculation Period, the ratio of (a) projected Net Revenue for such Calculation Period, to (b) (i) Annual Debt Service in respect of all Senior Lien Obligations for such Calculation Period plus (ii) deposits during such Calculation Period to the Tolling O&M Reserve Fund less transfers from the Tolling O&M Reserve Fund during such Calculation Period; provided, that:

(a) when calculating the Senior Debt Service Coverage Ratio for any historical Calculation Period, the actual amount on deposit in the Revenue Stabilization Fund as of the applicable Calculation Date may be added to Net Revenues for the applicable Calculation Period;

(b) when calculating the Senior Debt Service Coverage Ratio for any prospective Calculation Period, (i) Toll Revenues shall be limited to those revenues described in clause (a) of the definition thereof and (ii) the amount of the Revenue Stabilization Fund Requirement may be added to Net Revenues for such applicable Calculation Period; and

(c) when calculating the Senior Debt Service Coverage Ratio for all purposes other than the Rate Coverage Test pursuant to Section 15(m) (*Rate Coverage*), TIFIA Scheduled Debt Service (in addition to TIFIA Mandatory Debt Service) shall be included in the calculation of Annual Debt Service with respect to the WIFIA Loan.

“**Senior Lien Bonds**” means the bonds or commercial paper identified as the Hampton Roads Transportation Accountability Commission Toll Revenue Senior Lien Bonds authorized by, issued in accordance with, and at any time outstanding pursuant to, the Indenture.

“**Senior Lien Obligations**” means collectively, Senior Lien Bonds and Parity Obligations issued or incurred under the Indenture.

“**Senior Lien Obligations Fund**” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“**Senior Lien Obligations Reserve Fund**” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“**Senior Lien Obligations Reserve Requirement**” for any Senior Lien Obligations means the amount, if any, specified by a Supplemental Indenture as the amount required to be held in the Senior Lien Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Senior Lien Obligations secured by such Fund or Account.

“**Servicer**” means such entity or entities as the TIFIA Lender shall designate from time to time to perform, or assist the TIFIA Lender in performing, certain duties hereunder.

“**Standard Project Agreement**” means any standard project agreement or similar agreement related to the Project or any Additional Tolled Lanes or any Toll System Network Project, in each case entered into between VDOT and the Borrower after the Effective Date, as amended from time to time.

“**State**” has the meaning provided in the preamble hereto.

“**Subordinated Hedging Termination Obligations**” means Hedging Termination Obligations under any Hedging Agreement other than those arising as a result of a Permitted Hedging Termination or as a result of a tax or illegality event or upon failure of the Borrower to pay any Hedging Obligations when due.

“**Subordinate Obligations Fund**” has the meaning provided in the Indenture.

“**Subordinate Obligations Reserve Fund**” has the meaning provided in the Indenture.

“**Subordinate Debt Service Reserve Requirement**” means any debt service reserve requirement relating to the Subordinate Obligations established in accordance with the provisions of the Indenture and any Supplemental Indenture.

“**Subordinate Obligations**” means any Obligations that are subordinated in right of payment and lien priority to the Senior Lien Obligations and the Second Lien Obligations.

“**Subsequent Qualified Hedge**” has the meaning provided in Section 15(o)(iii) (*Hedging*).

“**Substantial Completion**” means the opening of the Project (inclusive of each segment) to tolled vehicular traffic.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Supplemental Indenture**” means any indenture executed and delivered by the Borrower and the Trustee in accordance with the Indenture that is stated to be a supplemental indenture hereto.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**TIFIA**” has the meaning provided in the recitals hereto.

“**TIFIA Bond**” means the Bond delivered by the Borrower in substantially the form of **Exhibit A**.

“**TIFIA Debt Service**” means with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the sum of (a) TIFIA Mandatory Debt Service and (b) the TIFIA Scheduled Debt Service, in each case (x) as set forth on **Exhibit G**, and (y) that is due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(d) (*Payment of TIFIA Mandatory Debt Service*), Section 9(d) (*Payment of TIFIA Scheduled Debt Service*), and Section 9(e) (*Fixed Level Payments*) as applicable.

“**TIFIA Debt Service Fund**” has the meaning provided in the TIFIA Supplemental Indenture.

“**TIFIA Debt Service Reserve Required Balance**” means the lesser of (a) ten percent (10%) of the Maximum TIFIA Loan Amount, (b) one hundred percent (100%) of the Maximum Annual Debt Service (taking into account both TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service), and (c) one hundred and twenty-five percent (125%) of the average annual TIFIA Debt Service (taking into account both TIFIA Mandatory Debt Service and TIFIA Scheduled Debt Service) through the Final Maturity Date.

“**TIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**TIFIA Lender**” has the meaning provided in the preamble hereto.

“**TIFIA Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 26 (*TIFIA Lender’s Authorized Representative*).

“**TIFIA Loan**” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth herein and as evidenced by the Borrower’s issuance of the TIFIA Bond, pursuant to the Act, in a principal amount not to exceed the Maximum TIFIA Loan Amount (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

“**TIFIA Loan Documents**” means this Agreement, the TIFIA Bond, the TIFIA Supplemental Indenture, the Fifth Supplemental Indenture to the HRTF Indenture, the VDOT Direct Agreement, and the other Indenture Documents.

“**TIFIA Loan Prepayment Account**” means the account of such name created pursuant to Section 5.02 of the Indenture.

“**TIFIA Loan Reserve Account**” mean the account of such name created pursuant to Section 5.02 of the Indenture.

“**TIFIA Mandatory Debt Service**” means, with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the portion of the principal of the Outstanding TIFIA Loan Balance and the interest payable on such Outstanding TIFIA Loan Balance, or portion thereof, (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the TIFIA Interest Rate (or, as applicable, the Default Rate), in each case, (a) designated as “TIFIA Mandatory Debt Service” on **Exhibit G** and (b) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(c) (*Payment of TIFIA Mandatory Debt Service*), and which shall be unconditionally required to be paid on such Semi-Annual Payment Date.

“**TIFIA Scheduled Debt Service**” means, with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the portion of the principal of the Outstanding TIFIA Loan Balance and the interest payable on such Outstanding TIFIA Loan Balance, or portion thereof, (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the TIFIA Interest Rate (or, as applicable, the Default Rate), in each case, (a) designated as “TIFIA Scheduled Debt Service” on **Exhibit G** (or that becomes payable as TIFIA Scheduled Debt Service as a result of a missed payment by the Borrower pursuant to Section 9(d) (*Payment of TIFIA Scheduled Debt Service*)) and (b) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(d) (*Payment of TIFIA Scheduled Debt Service*).

“**TIFIA Supplemental Indenture**” means that certain First Supplemental Series Indenture of Trust, dated as of [] 1, 2021, between the Borrower and the Trustee in connection with the issuance of the TIFIA Bond.

“**Toll Revenue Fund**” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“**Toll Revenues**” means (a) all amounts received by or on behalf of the Borrower for use of any segment, phase or portion of the Toll Roads System, whether before or after any Transition Date or Substantial Completion Date and including without limitation fees, tolls, rates, incidental charges, and other charges (including administrative charges such as late fees, insufficient funds fees, etc.), (b) amounts received by or on behalf of the Borrower pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues, including fines and penalties and interest thereon collected as a result of failure to pay any such amounts; (c) amounts received by or on behalf of the Borrower as contractual liquidated, other contract damages, insurance proceeds, third party recoveries, condemnation awards or any other amounts in lieu of or with respect to the Toll Roads System or any of the foregoing revenues; and (d) all other amounts received by or on behalf of the Borrower that are derived from or with respect

to the operation of the Toll Roads System or any part thereof, including but not limited to amounts paid prior to any Transition Date or Substantial Completion Date pursuant to the MTA or any Standard Project Agreement. Amounts received by the CTB or VDOT with respect to the Reversible HOT Lanes shall constitute Toll Revenues to the extent such amounts are payable to the Borrower under the MTA. Except as otherwise specifically provided in the Indenture or any Supplemental Indenture, Toll Revenues do not include HRTF Funds or amounts derived from the HRTF.

"Toll Roads System" means the Express Lanes Initial Project, any Express Lanes Future Project (each as defined in the Indenture) that may be undertaken (which together with the Express Lanes Initial Project (as defined in the Indenture) forms the Express Lanes Network), and any other Toll System Network Project, all as the same may exist from time to time, and including without limitation any new or improved highway, bridge or tunnel, or portion, phase or segment thereof, in which the Commission is empowered to impose and collect tolls.

"Toll System Network Project" means the Express Lanes Initial Project (other than the Project), any Express Lanes Future Project, and any addition, the acquisition, development, construction, reconstruction, improvement, betterment, extension or equipping of or relating to a tolled road or facility, or any additional capital project extending, improving or otherwise related to the Toll Roads System that the Borrower determines or proposes to finance pursuant to the Indenture.

"Tolling Infrastructure and System" means, collectively, the (i) electronic toll gantries, shelters, high-tech sensors, signage, and other tolling infrastructure, and (ii) the comprehensive electronic tolling solution, in each case with respect to the Express Lanes Network.

"Tolling O&M Costs" means the costs incurred by the entity performing the Tolling O&M Duties with respect to performing such duties, plus, without duplication, (i) any compensation due to VDOT under an Electronic Toll Collection Agreement(s) with respect to the Electronic Lanes Network, and (ii) any amounts due under Sections 5.07(b) and (c), 6.05(b), 9.02(b), 10.02(b) and/or 10.03 of the MTA. Tolling O&M Costs shall not include highway, bridge or tunnel operations and maintenance costs, and if Tolling O&M Duties are performed by VDOT, the Tolling O&M Costs shall not include an administrative charge applied by VDOT. **[Note to Draft: Should this definition (here and in the Indenture) specify the Toll System Contracts?]**

"Tolling O&M Duties" means those duties relating to the operation and maintenance of the Tolling Infrastructure and System set forth in Exhibit 16 of the MTA (but does not include Department E-ZPass Back Office Operations, as defined in the MTA).

"Tolling O&M Fund" means the Fund by that name created pursuant to Section 5.02 of the Indenture.

"Tolling O&M Reserve Fund" means the Fund by that name created pursuant to Section 5.02 of the Indenture.

"Tolling O&M Reserve Fund Requirement" means an amount equal to twenty-five percent (25%) of the amount of Tolling O&M Costs projected by the Borrower at such time to be

due and payable in the Borrower Fiscal Year in question, as reflected in the Annual Operating Budget for such Borrower Fiscal Year, including any revisions thereto.

"Tolling Services Provider" means any contractor under a Tolling Systems Contract that performs Tolling O&M Duties.

"Tolling Systems Contract" means any contract entered into by the Borrower or by VDOT for the provision of Tolling Infrastructure and System or Tolling O&M Duties. As of the Effective Date, the Tolling Systems Contracts consist of:

- (a) [Insert description]
- (b) [Insert description]

"Total Project Costs" means (a) the costs paid or incurred or to be paid or incurred by the Borrower or VDOT in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and costs of insurance; (b) the amount, if any, required by the Indenture Documents, the TIFIA Loan Documents or any other TIFIA loan agreement to be paid into any fund or account upon the incurrence of the TIFIA Loan, the HRTF TIFIA Loan related to the Project, any Additional TIFIA Loan or any Additional Obligations; and (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect to any indebtedness of the Borrower or any Credit Support Instrument maintained by the Borrower, in each case in connection with the Project (other than the TIFIA Loan, HRTF TIFIA Loan or any Additional TIFIA Loan).

"Traffic and Revenue Study" means the [_____] for the Project, dated [____], prepared by the Traffic Consultant, and any amendments, supplements or updates thereto.

"Traffic Consultant" means CDM Smith and any replacement traffic consultant firm selected by the Borrower or, with the approval of the Borrower, by VDOT and not objected to by the TIFIA Lender within fifteen (15) Business Days after receiving notice of such selection.

"Transition Date" means, subject to Section 16(e)(iii)(D) (*Actions under Existing Principal Project Contracts*), the earlier of (a) the first day that the Project is ready to accept traffic and commence tolling operation (the "**HRBT Segment Toll Day One**") or (b) a date selected by the Borrower for such transition that is (i) after the first date there are continuous operational HOT lanes open to the public on I-64 between (A) Interstate 564 and (B) the interchange of I-64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake (the "**Segment 2 Toll Day One**"), but (ii) prior to the HRBT Segment Toll Day One.

"Trust Estate" means all rights, title, interest and privileges of the Borrower in, to and under (a) the Toll Revenues, (b) all interest or other income from investment of money in the Funds and Accounts established hereunder (excluding the Rebate Fund), (c) all Swap Revenues (as defined in the Indenture), and (d) all amounts (including the proceeds of Obligations) held in each Fund and Account established under the Indenture (except for amounts on deposit in the Rebate Fund).

“**Trustee**” means U.S. Bank National Association a national banking association.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

“**Unrestricted General Reserve Account**” means the Account by that name within the General Reserve Fund created pursuant to Section 5.02 of the Indenture.

“**USDOT**” means the United States Department of Transportation.

“**Valuation Date**” means (a) with respect to any Capital Appreciation Obligations, the date or dates set forth in the Supplemental Indenture authorizing such Capital Appreciation Obligations on which specific Accreted Values are assigned to the Capital Appreciation Obligations and (b) with respect to any Deferred Income Bonds, the date or dates on or prior to the Interest Commencement Date set forth in the Supplemental Indenture authorizing such Deferred Income Bonds on which specific Appreciated Values are assigned to the Deferred Income Bonds.

“**Variable Interest Rate**” means a variable interest rate to be borne by any Obligations. The method of computing such variable interest rate shall be specified in the Supplemental Indenture pursuant to which such Obligations is incurred. Such Supplemental Indenture shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect, or (b) the time or times upon which any change in such variable interest rate shall become effective.

“**Variable Interest Rate Obligations**” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided, however, that Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Bonds if the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect.

“**VDOT**” means the Virginia Department of Transportation.

“**VDOT Direct Agreement**” means that certain Direct Agreement, dated as of [the date hereof], among the TIFIA Lender, the Borrower, and VDOT.

“**VDOT Repayment Fund**” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“Violation Processing Services Agreement” means any Violation Processing Services Agreement entered into between the Borrower and VDOT.

“**Weighted Average Interest Cost**” means, for each Semi-Annual Payment Date, a rate calculated as follows: the sum of (a) the applicable True Interest Cost(s) for the Senior Lien Obligations multiplied by the ratio of (i) the current Senior Lien Obligations principal amount then outstanding to (ii) the aggregate principal amount of each of the Senior Lien Obligations and the Outstanding TIFIA Loan Balance as of such Semi-Annual Payment Date; and (b) the interest rate on the TIFIA Loan multiplied by the ratio of (i) the current Outstanding TIFIA Loan Balance to (ii) the aggregate principal amount of each of the Senior Lien Obligations and the TIFIA Loan as of such Semi-Annual Payment Date.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

Section 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$[345,000,000] (excluding capitalized interest). TIFIA Loan proceeds shall be disbursed

from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 12(b) (*Conditions Precedent to All Disbursements*).

Section 4. Disbursement Conditions.

(a) TIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower's risk and expense, will not constitute Eligible Project Costs, and no TIFIA Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. If the Borrower intends to utilize the TIFIA Loan proceeds to make progress payments for construction work related to the Project performed under any Principal Project Contract, the Borrower shall demonstrate to the satisfaction of the TIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a "**Requisition**") in the form set forth in **Appendix One to Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to the TIFIA Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 (*Disbursement Conditions*) and the conditions set forth in Section 12(b) (*Conditions Precedent to All Disbursements*); provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender and the Servicer (if any) and the FHWA Division Office on or before the first (1st) Business Day of each month for which a disbursement is requested. Subject to Section 4(g), if the TIFIA Lender does not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express denial of a Requisition by the TIFIA Lender shall be provided substantially in the form attached as **Appendix Two to Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 12 (*Conditions Precedent*) or **Exhibit D** (*Requisition Procedures*)), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 5. Term. The term of the TIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

Section 6. Interest Rate. The interest rate with respect to the Outstanding TIFIA Loan Balance (the “**TIFIA Interest Rate**”) shall be [] percent ([]%) per annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due and not capitalized interest) from time to time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date and not capitalized as part of the Outstanding TIFIA Loan Balance (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date and not capitalized as part of the Outstanding TIFIA Loan Balance (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the TIFIA Lender and (b) the date the Outstanding TIFIA Loan Balance and any past due and not capitalized interest thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule.

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the TIFIA Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; (iii) increased on each occasion on which the interest portion of any TIFIA Scheduled Debt Service is not paid by the Borrower on the applicable Semi-Annual Payment Date, by the amount of such unpaid interest, which shall be capitalized; and (iv) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** from time to time, in accordance with the principles set forth in Section 10(c) (*General Prepayment Instructions*) and **Exhibit M**, to reflect (i) any change to the Outstanding TIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the TIFIA Lender may determine is necessary for administering the

TIFIA Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The TIFIA Lender shall provide the Borrower with a copy of **Exhibit G** as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

Section 8. Security and Priority; Flow of Funds.

(a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the TIFIA Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture Documents. The TIFIA Bond shall be issued as a Senior Lien Obligation, secured by a first priority Lien on the Trust Estate, senior to any Second Lien Obligations and Subordinate Obligations, and *pari passu* with any other Senior Lien Obligations.

(b) Except to the extent otherwise provided in clause (a) of this Section 8 (*Security and Priority; Flow of Funds*), the Trust Estate will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge of the Borrower created under the Indenture Documents, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 (*Security and Priority; Flow of Funds*) and the Indenture Documents and shall not apply any portion of the Revenues in contravention of this Agreement or the Indenture Documents.

(d) The Indenture provides that all Toll Revenues shall be deposited in the Toll Revenue Fund and applied in the order of priority identified therein, as more fully described, and in accordance with the requirements specified in Section 5.03(b) of the Indenture, a copy of which, as of the Effective Date, is attached hereto as **Exhibit O** (all capitalized terms used in **Exhibit O** have the meanings given to them in the Indenture).

Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments on the TIFIA Bond in accordance with the provisions of this Agreement and the Indenture Documents on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of the mandatory redemption, prepayment, acceleration of the maturity of the TIFIA Loan or otherwise); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Bond shall be

treated as a payment of the TIFIA Loan and any payment of principal of the TIFIA Loan shall be treated as redemption of the TIFIA Bond.

(b) Capitalized Interest Period. No payment of the principal of or interest on the TIFIA Loan is required to be made during the Capitalized Interest Period. On each Semi-Annual Payment Date occurring during the Capitalized Interest Period (and on the Semi-Annual Payment Date immediately following the end of the Capitalized Interest Period), interest accrued on the TIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding TIFIA Loan Balance. Within thirty (30) days after the end of the Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(c) Payment of TIFIA Mandatory Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the Borrower shall pay TIFIA Mandatory Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date as TIFIA Mandatory Debt Service on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(h) (*Manner of Payment*) and the Indenture.

(d) Payment of TIFIA Scheduled Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date and prior to the Level Payment Commencement Date, the Borrower shall pay TIFIA Scheduled Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date as TIFIA Scheduled Debt Service on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(h) (*Manner of Payment*) and the Indenture; provided, that the Borrower's obligation to pay TIFIA Scheduled Debt Service on any Semi-Annual Payment Date shall be applicable only if and solely to the extent that (i) Revenues are available thereof on such date in accordance with the provisions of Section 5.03(b) of the Indenture or (ii) with respect to each July 1 Semi-Annual Payment Date, amounts are then available in the Revenue Stabilization Fund after the payment of debt service then due with respect to Senior Lien Obligations (including TIFIA Mandatory Debt Service). To the extent that the aggregate amount of TIFIA Scheduled Debt Service actually paid with respect to any Payment Period for the TIFIA Loan in accordance with the provisions hereof is less than the aggregate amount of the TIFIA Scheduled Debt Service for such Payment Period determined as provided above, then, with respect to any such unpaid TIFIA Scheduled Debt Service, (A) the portion of such unpaid TIFIA Scheduled Debt Service constituting principal shall be deferred and added to the amount of TIFIA Scheduled Debt Service due and payable on the next Semi-Annual Payment Date and (B) the portion of such unpaid TIFIA Scheduled Debt Service constituting interest shall be (1) capitalized as described in Section 9(b) (*Capitalized Interest Period*) and (2) added to the amount of TIFIA Scheduled Debt Service due and payable on the next Semi-Annual Payment Date. Any portion of TIFIA Scheduled Debt Service that remains unpaid on the Level Payment Commencement Date shall be included in the Outstanding TIFIA Loan Balance that is due and payable over the remaining life of the TIFIA

Loan from the Level Payment Commencement Date to the Final Maturity Date. Following any such deferral, the TIFIA Lender may, but shall not be obligated to, make applicable revisions to Exhibit G on each such Semi-Annual Payment Date to take into account such deferral and any adjustment for TIFIA Scheduled Debt Service, provided that the principal portion of TIFIA Mandatory Debt Service prior to the Level Payment Commencement Date shall not be revised or altered as a result thereof. The Borrower shall pay all TIFIA Scheduled Debt Service exclusively with funds derived from a source other than the Federal Government. For purposes of clarity, if a Bankruptcy Related Event has occurred, TIFIA Scheduled Debt Service (whether then payable or to be paid) shall immediately become TIFIA Mandatory Debt Service that is secured and payable as a Senior Lien Obligation.

(e) Fixed Level Payments. On each Semi-Annual Payment Date occurring on or after the Level Payment Commencement Date, the Borrower shall pay TIFIA Debt Service in the amount of one hundred percent (100%) of the Fixed Level Payment, which payments shall constitute TIFIA Mandatory Debt Service and shall be made in accordance with this Section 9(e) and Section 9(h) (*Manner of Payment*). On each Semi-Annual Payment Date occurring during the Level Payment Period, the Borrower shall make level payments of principal and interest (each a “**Fixed Level Payment**”), each of which payments shall be approximately equal in amount. The amount of the Fixed Level Payment shall be calculated in such manner that the Outstanding TIFIA Loan Balance as of the Level Payment Commencement Date shall be reduced to \$0 on the Final Maturity Date (assuming that interest accrues during such period on the Outstanding TIFIA Loan Balance at the rate per annum set forth in Section 6 (*Interest Rate*) in the absence of an Event of Default, that all Fixed Level Payments are made in a timely manner during such period, and that no additional payments of principal or interest on the TIFIA Loan are made during such period). Within thirty (30) days prior to the beginning of the Level Payment Period, the TIFIA Lender may (or, at the written request of the Borrower, shall) give written notice to the Borrower of the amount of the related Fixed Level Payment, which amount shall be deemed conclusive absent manifest error, but no failure to provide or delay in providing the Borrower with such notice shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents. To the extent that any prepayments of the TIFIA Loan shall be made during the Level Payment Period in addition to the Fixed Level Payments, such prepayments shall be applied to the remaining Outstanding TIFIA Loan Balance and the resulting Fixed Level Payments shall be recalculated as provided in Section 10(c) (*General Prepayment Instructions*) and reflected in a revised **Exhibit G**

(f) Manner of Payment. Payments under this Agreement and the TIFIA Bond shall be made by wire transfer on or before each Semi-Annual Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender pursuant to Section 36 (*Notices; Payment Instructions*), as modified in writing from time to time by the TIFIA Lender. The Borrower may make any such payment or portion thereof (or direct the Trustee to make such payment) with funds then on deposit in the TIFIA Debt Service Fund.

(g) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding TIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 19 (*Events of Default and Remedies*), but only to the extent acceleration is permitted under the Indenture.

(h) TIFIA Bond. As evidence of the Borrower's obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Bond substantially in the form of **Exhibit A**, having a maximum principal amount (excluding capitalized interest) of \$[345,000,000] (subject to increase or decrease as herein provided) and bearing interest at the rate set forth in Section 6 (*Interest Rate*).

Section 10. Prepayment.

(a) Mandatory Prepayments. The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium:

(i) on each Semi-Annual Payment Date, a pro rata portion (based on the relative outstanding principal amounts of the TIFIA Loan and any Additional Obligations that are Senior Lien Obligations) of any Revenue Sharing Amount payable as of the applicable Calculation Date; provided, that if no other Senior Lien Obligations or to the extent the Borrower is not required to make a prepayment of such other Senior Lien Obligations in the circumstances described above, the full amount described above (and not a pro rata portion) shall be paid to the TIFIA Lender as a mandatory prepayment under this clause (i);

(ii) in the amount of any Net Loss Proceeds received by the Borrower or, to the extent Net Loss Proceeds will also be used to prepay other Senior Lien Obligations, in the pro rata amount (based on relative outstanding principal amounts of the TIFIA Loan and any Additional Obligations that are Senior Lien Obligations or Second Lien Obligations) of such Net Loss Proceeds allocable to the TIFIA Loan;

(iii) upon any voluntary prepayment of any Obligations, other than any voluntary prepayment of any Obligations made with the proceeds of Additional Obligations issued in accordance with the requirements of subsection (a) in the definition thereof for the purpose of refinancing such Obligations, pro rata with such voluntary prepayment;

(iv) an amount equal to one hundred percent (100%) of any Delay Liquidated Damage and Other Damages and Recoveries (as each term is defined in the PAFA as of the Effective Date) received by the Borrower; provided, that the Borrower may, by written request to the TIFIA Lender, seek to apply such Delay Liquidated Damages and/or Other Damages and Recoveries to the payment of Total Project Costs instead of a mandatory prepayment of the TIFIA Loan (but may not apply such funds to make any deposit to the VDOT Repayment Fund or the HRTF Repayment Fund or otherwise make reimbursements to VDOT or in respect of the HRTF), which request will not be unreasonably refused if, at the time of such written request (A) there is no Default or Event of Default then in effect and (B) [*Other conditions to be determined*]; and

(v) from and after any Semi-Annual Payment Date following the first anniversary of Substantial Completion as of which the Borrower shall have failed to be in compliance with the Rate Coverage Test on four (4) consecutive Calculation Dates, on such Semi-Annual Payment Date (or on the next Monthly Funding Date thereafter) in an

amount equal to a pro rata portion (based on the relative outstanding principal amounts of the TIFIA Loan and any Additional Obligations that are Senior Lien Obligations) of the lesser of (A) the total amount then on deposit in (1) first, the Unrestricted General Reserve Account and (2) second, the General Reserve Fund (after any other transfers from the Unrestricted General Reserve Account or General Reserve Fund otherwise contemplated on such Semi-Annual Payment Date) and (B) the amount necessary to cause the Borrower to regain compliance with the Rate Coverage Test; provided, that if no other Senior Lien Obligations or to the extent the Borrower is not required to make a prepayment of such other Senior Lien Obligations in the circumstances described above, the full amount described above (and not a pro rata portion) shall be paid to the TIFIA Lender as a mandatory prepayment under this clause (v). If the mandatory prepayment described above is insufficient to cause the Borrower to regain compliance with the Rate Coverage Test, the Borrower shall thereafter make mandatory prepayments in the manner described above on each Semi-Annual Payment Date thereafter until the Borrower is in compliance with the Rate Coverage Test.

The Borrower shall provide written notice to the TIFIA Lender at least two (2) Business Days prior to the date on which it makes any mandatory prepayment; provided that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred. Each prepayment pursuant to this Section 10(a) (*Mandatory Prepayments*) shall be effected pursuant to Section [] of the TIFIA Supplemental Indenture (as applicable) and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(b) Optional Prepayments. The Borrower may prepay the TIFIA Loan by causing the Trustee to redeem the TIFIA Bond in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in a minimum principal amount of \$1,000,000), at any time or from time to time, without penalty or premium. Each prepayment of the TIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender, which notice shall also specify the amount of unpaid interest accrued to the date of such prepayment on the amount of principal to be prepaid that the Borrower intends to pay concurrently with such prepayment, if any. In the case of any optional prepayment, such written notice shall be delivered to the TIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the TIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the TIFIA Lender. Anything in this Section 10(b) (*Optional Prepayments*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) General Prepayment Instructions. Upon the TIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the TIFIA Lender shall surrender the TIFIA Bond to the Borrower or its

representative at the principal office of the TIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the TIFIA Bond, the TIFIA Lender may make a notation on **Exhibit G** indicating the amount of principal of and interest on such TIFIA Bond then being prepaid. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The Borrower shall promptly deposit into the TIFIA Loan Prepayment Account pursuant to the Indenture any amounts required or elected to be applied to a prepayment of the TIFIA Loan. All such partial prepayments of principal shall be applied to reduce future payments due on the TIFIA Bond in inverse order of maturity or, to the extent any such prepayment occurs on or after the Level Payment Commencement Date, to reduce each Fixed Level Payment ratably by an equal amount. If said monies shall not have been so paid on the prepayment date, such principal amount of such TIFIA Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (*Interest Rate*).

Section 11. Compliance with Laws. The Borrower shall, and shall require VDOT, which shall in turn require the Construction Contractors at all tiers for the Project, to comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including federal and state laws, rules, regulations and executive orders. In each Standard Project Agreement, VDOT has represented to the Borrower that VDOT will ensure that all work performed relating to a Project, which is evidenced in the Principal Project Contract between VDOT and the applicable Construction Contractor, will be completed in accordance with any and all applicable federal, state, and local laws and regulations. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law.

Section 12. Conditions Precedent.

(a) **Conditions Precedent to Effectiveness.** Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have duly executed and delivered to the TIFIA Lender this Agreement and the TIFIA Bond, each in form and substance satisfactory to the TIFIA Lender.

(ii) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each Indenture Document and each HRTF Indenture Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that for purposes of this

Section 12(a)(ii), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

(iii) Counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-1**) and bond counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-2**). The TIFIA Lender shall also have received customary legal opinions, each in form and substance satisfactory to the TIFIA Lender, from counsel to VDOT.

(iv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to the Borrower and its principals (as defined in 2 CFR § 180.995).

(v) The Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit K (A)** as to the satisfaction of certain conditions precedent set forth in this Section 13(a) as required by the TIFIA Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(vi) The Borrower shall have complied with the verification requirements set forth in 2 CFR §§ 180.300 and 180.320 and complied with its obligations under 2 CFR § 180.330 in connection with the Principal Project Contracts, and shall have provided evidence thereof satisfactory to the TIFIA Lender.

(vii) The Borrower shall have certified to the TIFIA Lender in the certificate from the Borrower's Authorized Representative that the Borrower and VDOT have complied with their respective obligations under each Principal Project Contract, including the following:

(1) VDOT has complied with (A) the disclosure requirements set forth in 2 CFR § 180.355, (B) the verification requirements set forth in 2 CFR §§ 180.300 and 180.320, and (C) its obligations under 2 CFR § 180.330 with respect to the Construction Contracts;

(2) All Governmental Approvals necessary to commence construction of the Project have been obtained and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(3) With respect to the Project, the Borrower and VDOT have each complied with NEPA and have delivered a copy of the NEPA Determination to the TIFIA Lender;

(4) The Borrower and VDOT, respectively, have each complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);

(5) VDOT and each applicable Principal Project Party, as and if applicable, have obtained insurance with respect to the Project, which meets the requirements of Section 15(e) (*Compliance with Principal Project Contracts*);

(6) Each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the Effective Date shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

To assist with the Borrower's compliance under this Section 12(a)(vii), the Borrower may rely on a certificate of an authorized representative of VDOT as to VDOT's compliance with the applicable certifications required herein.

(viii) The Borrower shall have provided to the TIFIA Lender satisfactory evidence that the Project has been included in (A) the metropolitan transportation improvement program adopted by the Hampton Roads Transportation Planning Organization, (B) the State transportation plan, and (C) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project.

(ix) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the Effective Date, of the assignment by at least two (2) Rating Agencies of a public Investment Grade Rating to the TIFIA Loan, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(x) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that as of the Effective Date the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof, or, in the case of HRTF Revenues, are reasonably anticipated to be available, and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule and in any event on or prior to the Projected Substantial Completion Date.

(xi) The Borrower shall have delivered to the TIFIA Lender an original fully executed counterpart (or a certified copy) of the Traffic and Revenue Study in form

and substance acceptable to the TIFIA Lender, accompanied by a letter from the preparer of such study, dated as of [____], 2021, and certifying that the assumptions and projections contained in the Traffic and Revenue Study are reasonable and may be relied upon by the TIFIA Lender.

(xii) [The Borrower shall have delivered to the TIFIA Lender an original fully executed counterpart (or a certified copy) of the Consulting Engineer's Report, accompanied by a letter from the Consulting Engineer, dated as of [____], 2021, and certifying that Consulting Engineer's Report may be relied upon by the TIFIA Lender.]⁸

(xiii) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto, and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(xiv) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Toll Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate a Senior Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.55:1.00, (C) demonstrate an All-In Cost Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.10:1.00, (D) not reflect the commencement of amortization of the principal amount of any Senior Lien Obligations (other than the TIFIA Loan) before the Debt Service Payment Commencement Date, and (E) otherwise be in form and substance acceptable to the TIFIA Lender.

(xv) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant Section 33.2-1920, as amended, Code of Virginia of 1950, to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents and required by applicable law, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xvi) The Borrower shall have paid in full all invoices delivered by the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the fees and expenses of

⁸ **Note to Borrower:** Discuss

the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof.

(xvii) The TIFIA Lender shall have delivered its initial TIFIA Lender's Authorized Representative certificate.

(xviii) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System or Unique Entity Identifier number, as appropriate, and (C) registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov).

(xix) The Borrower shall have provided to the TIFIA Lender evidence that the Borrower is duly organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified by the Borrower's Authorized Representative: (A) a copy of its Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State or the state of its formation, to the extent applicable), which Organizational Documents shall be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents.

(xx) The Borrower shall have provided the TIFIA Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the TIFIA Lender and in sufficient time prior to the Effective Date to permit the TIFIA Lender and the FHWA Division Office to review such costs.

(xxi) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxii) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the Effective Date (A) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (B) as required pursuant to § 603(b)(9) of the Act,

the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs.

(xxiii) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Trustee in the form attached hereto as **Exhibit J**.

(xxiv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit N** in accordance with 49 CFR §20.100(b).

(xxv) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the TIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the TIFIA Lender:

(i) With respect to the initial disbursement of the TIFIA Loan:

(A) the Borrower shall have demonstrated to the TIFIA Lender's satisfaction that (1) the 2021 HRTF BANs have been issued and (2) the full amount of the proceeds thereof (less reasonable amounts used to [fund reserves and] pay costs of issuance associated therewith) have been expended on Total Project Costs; and

(B) the Borrower shall have demonstrated to the TIFIA Lender's satisfaction that the Borrower has (1) expended all amounts reflected as non-contingency Borrower pay-go amounts in the Project Budget and in the most recent Revised Financial Model (less the amount of any realized cost savings otherwise payable from such pay-go funds) on Total Project Costs and (2) expended from pay-go funds of the Borrower, to the extent so required as of the date of such disbursement, any amounts in respect of Total Project Costs that are payable from contingency amounts to be funded with Commission-Controlled Funds in accordance with the PAFA.

(ii) With respect to any disbursement occurring sixty (60) days or more after the Effective Date, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 21(a) (*Financial Plan*).

(iii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have delivered to the TIFIA Lender certified, complete and fully executed

copies of any Indenture Documents or HRTF Indenture Documents, and any amendments to any of the foregoing, entered into after the Effective Date.

(iv) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified copies of all Principal Project Contracts and all Additional Project Contracts requested by the TIFIA Lender pursuant to Section 15(b) (*Copies of Documents*) or Section 16(e) (*Principal Project Contracts; Additional Project Contracts*) (including, in each case, any amendment, modification or supplement thereto and related performance security instrument) entered into after the Effective Date.

(v) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that VDOT has complied in all material respects with its obligations under each Principal Project Contract and Additional Project Contract to which VDOT is a party and shall provide, or shall use commercially reasonable efforts to cause VDOT to provide, upon the TIFIA Lender's request evidence thereof satisfactory to the TIFIA Lender, including the following:

(1) All Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect;

(2) Each Construction Contractor has maintained surety bonds and insurance coverage and amounts as required by the applicable Principal Project Contract or Additional Project Contract; and

(3) Each of the insurance policies obtained by any applicable Principal Project Party in satisfaction of the conditions in Section 12(a)(vii)(5) (*Conditions Precedent to Effectiveness*) or required under an Additional Project Contract is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vi) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder and no event of default (howsoever described or designated) under any other Related Document (other than an event of default of a Principal Project Party) shall have occurred and be continuing, (B) no material event of default (howsoever described or designated) of any Principal Project Party under any Principal Project Contract shall have occurred and be continuing, and (C) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of the Borrower under any other Related Document, in each case, shall have occurred and be continuing.

(vii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and

warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(viii) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the TIFIA Lender.

(ix) The Borrower shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the TIFIA Lender.

(x) The Borrower shall have paid in full all invoices received from the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) as of the date of disbursement of the TIFIA Loan, for the fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof.

(xi) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified, complete and fully executed copies of each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the date of disbursement of the TIFIA Loan, each of which performance security instruments shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

(xii) The Borrower shall have demonstrated, and the Consulting Engineer shall have confirmed in writing, in each case to the TIFIA Lender's satisfaction, that the funds described in the Financial Plan most recently submitted to the TIFIA Lender as being available and committed to pay for Project costs will be sufficient to complete the Project in accordance with the Construction Schedule (and in any event on or prior to the Projected Substantial Completion Date) and no facts or circumstances have arisen that would reasonably be likely to cause such amounts reflected in such Financial Plan not to be available as and when needed to pay such costs, including such committed and allocated contingency funds as needed to enable the Borrower to pay for any reasonably anticipated cost overruns associated with completion of the Project.

Section 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (*Officer's Authorization*) and Section 13(k) (*Credit Ratings*), as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) **Organization; Power and Authority.** The Borrower is a body politic and a political subdivision duly created and validly existing under the laws of the State, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the TIFIA Bond, and to carry out and consummate all transactions contemplated hereby

and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related Documents will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, other than the Liens granted pursuant to the TIFIA Loan Documents.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by the Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other

Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Toll Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or, as applicable, the most recent Revised Financial Model). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents and Section 33.2-1920, as amended, Code of Virginia of 1950, establish, in favor of the Trustee for the benefit of the TIFIA Lender, the valid and binding Liens on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to, any other Liens in respect of the Trust Estate. As of the Effective Date, the TIFIA Bond is not *pari passu* with any Obligations. As of any other date on which this representation and warranty is made, the TIFIA Bond is not *pari passu* with any obligations other than Additional Obligations that are Senior Lien Obligations and that have been issued in accordance with the requirements of this Agreement and the Indenture Documents. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 15(a) (*Securing Liens*) or in the Indenture Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required by applicable law and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Trust Estate in favor of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332, with respect to VDOT in connection with the Principal Project

Contracts. The Borrower is not aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 CFR Part 180.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Transportation Improvement Program. The Project has been included in (i) the metropolitan transportation improvement program adopted by the Hampton Roads Transportation Planning Organization, (ii) the State transportation plan, and (iii) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135 and 23 U.S.C. § 602(a)(3), as applicable. The financial plan for each such program or plan reflects the costs of, and sources of funding for, the Project.

(k) Credit Ratings. The TIFIA Bond has received a public Investment Grade Rating from at least two (2) Rating Agencies, and written evidence of each such public rating has been provided to the TIFIA Lender prior to the Effective Date, and neither public rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of the Borrower under any Related Document has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Principal Project Contracts. Each Principal Project Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Principal Project Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Principal Project Contract and each Additional Project Contract required to be delivered to, or requested by, the TIFIA Lender pursuant to Section 15(b) (*Copies of Documents*) (including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related Credit Support Instruments, guarantees and side letters. No event has occurred that gives the Borrower (as applicable) or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any Principal Project Contract. The Borrower is not in breach of, or in default under, any Principal Project Contract (as applicable), and, to the knowledge of the Borrower, no Principal Project Party is in breach of, or in default under, any material term of any Principal Project Contract (as applicable).

(o) Information. The information furnished by the Borrower to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party is a Sanctioned Person.

(ii) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal; or

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or, to the knowledge of the Borrower, any Principal Project Party, with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the TIFIA Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(q) Trust Estate. The TIFIA Debt Service payments are limited obligations of the Borrower, secured solely by the Trust Estate pledged under the Indenture. The obligation of the Borrower to make TIFIA Debt Service payments does not constitute an indebtedness of the State or any political subdivision thereof other than the Borrower within the meaning or application of any constitutional provision or limitation. The obligation of the Borrower to make TIFIA Debt Service payments does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The Borrower has no taxing power.

(r) Compliance with Law. The Borrower is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(s) (*Environmental Matters*)), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower's knowledge, each Principal Project Party is, and has caused its respective contractors

and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower (as applicable) or, to the Borrower's knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(s) Environmental Matters. To the Borrower's knowledge, each Principal Project Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower is not aware of any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that a Principal Project Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by a Principal Project Party with any such Environmental Law or Governmental Approval. The Borrower has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(t) Sufficient Rights and Utilities. VDOT, as the State entity responsible for building, maintaining, and operating the interstate, primary, and secondary state highway systems in the State, possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient for the construction, operation, maintenance and repair of the Project. The Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in VDOT sufficient to enable VDOT to own, construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

(u) Insurance. To the best of Borrower's knowledge and after due inquiry, VDOT is in compliance with all insurance obligations under, and maintains, or causes to be maintained, at all times and with responsible insurers, all insurance as required by, each of the Principal Project Contracts.

(v) Title. The Borrower has valid legal and beneficial title to, or a valid leasehold interest in, the personal property and other assets and revenues thereof (including the Toll Revenues and the Trust Estate) on which it purports to grant Liens pursuant to the Indenture Documents, in each case free and clear of any Lien of any kind, except for the Liens created by the Indenture Documents.

(w) No Liens. Except for the Lien granted in favor of the Senior Lien Obligations (including the TIFIA Bond), the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate, the Project, the Toll Revenues, or the properties or assets in relation to the Project.

(x) Intellectual Property. To the Borrower's knowledge, VDOT owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(y) Investment Company Act. The Borrower is not, and after applying the proceeds of the TIFIA Loan will not be, required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

(z) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the TIFIA Lender pursuant to Section 21(d) (*Financial Statements*) has been prepared in accordance with GASB and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GASB.

(aa) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

(bb) ERISA. Neither the Borrower nor any ERISA Affiliate maintains or otherwise has any liability in respect of any plan or other arrangement that is subject to ERISA or Section 412 of the Tax Code.

(cc) Sufficient Funds. The aggregate of (i) all funds that are undrawn but fully and completely committed under the Indenture Documents, this Agreement, and the HRTF Loan described in clause (a) of the definition thereof and (ii) all funds available under any other unused funding that is committed and available, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule (and in any event on or prior to the Projected Substantial Completion Date).

(dd) Sovereign Immunity. The Borrower has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any breach of contract action to enforce the obligations of the Borrower under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder.

(ee) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(ff) Compliance with Federal Requirements. With respect to the Project, the Borrower and VDOT have complied with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(gg) Borrower's Reliance on VDOT's Certificate. To assist with the Borrower's compliance under this Section 13, the Borrower may rely on a certificate of an authorized representative of VDOT as to VDOT's compliance with the applicable representations and warranties required herein.

Section 14. Representations and Warranties of TIFIA Lender. The TIFIA Lender hereby makes the following representations and warranties as of the Effective Date:

(a) Power and Authority. The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the TIFIA Lender executing each of the Related Documents to which the TIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

Section 15. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender

no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Trust Estate (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Trustee for the benefit of the TIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever.

(b) Copies of Documents.

(i) The Borrower shall furnish to the TIFIA Lender a copy of any draft documents and final offering documents (including any Indenture Documents) and cash flow projections prepared in connection with the incurrence of any Permitted Debt or other indebtedness subject to approval by the TIFIA Lender pursuant to Section 16(a) (*Indebtedness*), in each case prior to the incurrence of any such Permitted Debt or such other indebtedness, as well as copies of any continuing disclosure documents, prepared by or on behalf of the Borrower in connection with the incurrence of such Permitted Debt or such other indebtedness, in each case promptly following the preparation or filing thereof. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (i) copies of the then current draft documents relating to the incurrence of Permitted Debt (other than equipment leases and trade accounts included in such definition) at least thirty (30) days prior to the effective date thereof and (ii) copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (A) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project or any indebtedness of the Borrower that is or will be secured by or paid from the Trust Estate or any portion thereof, including the Pledged Revenues, (B) all notices and other written communications received by the Borrower from the Trustee or any Bondholder, (C) all reports, notices and other written materials required to be sent to the Trustee or any Bondholder under the Indenture Documents, and (D) all notices delivered by or to the Borrower relating to any of the Principal Project Contracts; unless,

in each case, the TIFIA Lender notifies the Borrower in writing that any such reports, notices and/or other written materials no longer need to be provided.

(iii) The Borrower shall provide written notice to the TIFIA Lender of the Borrower's intent to enter into (or approve VDOT's entry into) a Principal Project Contract or an Additional Project Contract and shall provide drafts of any such Principal Project Contract or Additional Project Contract (if such Principal Project Contract or Additional Project Contract is subject to approval by the TIFIA Lender pursuant to Section 16(e) (*Principal Project Contracts; Additional Project Contracts*)) at least thirty (30) days prior to the proposed effective date thereof, together with any related contracts, side letters or other understandings. If the TIFIA Lender requests a copy of any Additional Project Contract that is not subject to approval by the TIFIA Lender, the Borrower shall provide a copy of the final or near final draft of such Additional Project Contract, together with any related contracts, side letters or other understandings, prior to the execution thereof (provided such request is made prior to the execution of such contract). The Borrower shall provide to the TIFIA Lender an executed version of each Principal Project Contract, each Additional Project Contract that is subject to TIFIA Lender consent, and, if requested by the TIFIA Lender, each Additional Project Contract that is not subject to TIFIA Lender consent, in each case together with any related contracts, side letters or other understandings, promptly following the full execution thereof. Copies of drafts of the foregoing may be provided by email notice and a link to the proposed board of directors' agenda items.

(c) Use of Proceeds. The Borrower shall use the proceeds of the TIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Debarment and Suspension Requirements. The Borrower shall comply with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(e) Compliance with Principal Project Contracts. The Borrower shall ensure that VDOT complies in all material respects with its obligations under each Principal Project Contract and pursues all available remedies pursuant thereto to ensure VDOT's continued compliance therewith, including:

(i) Achievement of Substantial Completion of the Project in accordance with the Construction Schedule;

(ii) VDOT's and each Construction Contractor's compliance with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332;

(iii) VDOT's operation and maintenance of the Project and enforcement of all Tolling Systems Contracts to which it is a party;

(iv) VDOT's maintenance, and compliance with, all Government Approvals necessary for the development, construction, operation, and maintenance of the Project; and

(v) each Construction Contractor's maintenance of all performance security instruments and insurance coverages and amounts required by the applicable Principal Project Contract.

(f) Notice.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the TIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event, and including any relevant and significant documentation:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit L**;

(B) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower or VDOT with respect to the Project that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower with award amounts in excess of \$5,000,000 (inflated annually by CPI), either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(E) Environmental Notices: any notice of material violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(F) Amendments: except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any Principal Project Contract or other Related Document at least thirty (30) days prior to the effective

date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

(G) Principal Project Contract Defaults: any material breach or default or event of default on the part of the Borrower, VDOT, or any other party under any Principal Project Contract or any Additional Project Contract;

(H) Compensation Event; Compensable Maintenance Events; Contractor Acts: the occurrence of any event that the Borrower has determined constitutes, or would reasonably be expected to determine to constitute, a Compensation Event, Compensable Maintenance Event, or Contractor Act under (and each as defined in) the MTA, a copy of any Compensation Event Notice (as defined in the MTA) or notice of a Compensable Maintenance Event or Contractor Act delivered by the Borrower under the MTA and any material written response from VDOT to such Compensation Event Notice or notice of either a Compensable Maintenance Event or a Contractor Act;

(I) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(J) Project Changes: any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of total forecasted Total Project Costs, together (in the case of increased costs) with a written description of the committed funding sources available to the Borrower to pay for such increased Total Project Costs, (2) proposed change to the Projected Substantial Completion Date, together with an explanation of the reasons for such proposed adjustment, and (3) material change to the Construction Schedule, together with a proposed revised Construction Schedule;

(K) Ratings Changes: any change in the rating assigned to any Obligations by any Rating Agency that has provided a public rating on such indebtedness, the Borrower, or the Toll Revenues;

(L) 2 CFR Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the TIFIA Loan as described in 2 CFR § 200.113, and the Borrower shall require VDOT, the Construction Contractors, and each of their subcontractors for the Project to provide it notice of any such violation;

(M) Appropriations: if the appropriation of the HRTF Revenues to the HRTF (1) was not included in each biennial budget or any supplemental

budget that is presented to the General Assembly, and/or (2) if the General Assembly failed to appropriate for the next State fiscal biennium;

(N) Rate Stabilization Fund Deposits and Withdrawals: each HRTF Transfer into the Rate Stabilization Fund and each withdrawal from the Rate Stabilization Fund (including a description of the amount and purpose of such withdrawal);

(O) Material Events: the filing of (together with a copy of) any notice to the Municipal Securities Rulemaking Board of any of the events described in clause (b)(5)(i)(C) of Rule 15c2-12 of the U.S. Securities and Exchange Commission (or any similar rule); and

(P) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described in Section 15(f)(i) (*Notice*).

(g) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(f)(i) (*Notice*) (other than in Section 15(f)(i)(A) (*Substantial Completion*), Section 15(f)(i)(F) (*Amendments*), Section 15(f)(i)(K) (*Ratings Changes*) (in the case of a ratings upgrade) or Section 15(f)(i)(N) (*Rate Stabilization Fund Deposits and Withdrawals*)), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto.

(h) Maintain Legal Structure. The Borrower shall maintain its existence as a body politic and a political subdivision under the laws of the State. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(i) Annual Rating. The Borrower shall, commencing in 2022, no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the TIFIA Bond and any other Obligations outstanding by a Rating Agency, together with the rating report or letter delivered by such Rating Agency in connection with each such rating, if any, in each case prepared no earlier than June 1 of such year.

(j) Deposit of Liquidated Damages and Other Recoveries. The Borrower shall deposit into the Toll Revenue Fund all liquidated damages that it receives with respect to any Principal Project Contract or Additional Project Contract and all Other Recoveries and Damages that it receives. To the extent that VDOT will receive any such liquidated damages or Other Recoveries and Damages from the applicable Principal Project Party or other Person, the Borrower shall cause VDOT to transfer the liquidated damages and Other Recoveries and Damages allocable to the Borrower directly into the Toll Revenue Fund. The Borrower shall deposit (and shall cause

VDOT to deposit) all Commission Damages (as defined in the MTA) directly into the Toll Revenue Fund. The Borrower shall deposit (and shall cause VDOT to deposit) all amounts payable to the Borrower in respect of any Compensable Maintenance Event or any Commission Share of recoveries in respect of any Contractor Act under (and as each such term is defined in) the MTA directly into the Toll Revenue Fund.

(k) Funds and Accounts; Permitted Investments.

(i) TIFIA Loan Reserve Account.

(A) The Borrower shall provide initial funding for the TIFIA Loan Reserve Account pursuant to Section 15(1)(i) (*HRTF Transfers*).

(B) Amounts in the TIFIA Loan Reserve Account shall be made available to ensure the timely payment of TIFIA Mandatory Debt Service. To the extent the Trustee withdraws amounts from the TIFIA Loan Reserve Account, the Borrower shall cause such Account to be replenished on a monthly basis to one hundred percent (100%) of the TIFIA Loan Reserve Requirement by no later than the next Semi-Annual Payment Date, subject to the availability of Toll Revenues, HRTF Transfers and amounts on deposit in the Revenue Stabilization Fund for such purpose; provided, that the Borrower's failure to do so due to the unavailability of Toll Revenues or amounts on deposit in the Revenue Stabilization Fund due to the limits on HRTF Transfers to the Revenue Stabilization Fund described in Section 15(k) shall not by itself constitute an Event of Default.

(ii) Senior Lien Obligations Reserve Fund. With respect to any Senior Lien Obligations other than the TIFIA Loan, the Borrower shall deposit amounts into the Senior Lien Obligations Reserve Fund so that such Fund or Account is funded in an amount equal to the Senior Lien Obligations Reserve Requirement applicable to such Senior Lien Obligations. The Borrower's failure to deposit the Senior Lien Obligations Reserve Requirement into the Senior Lien Obligations Reserve Fund (or the applicable Account thereunder) on or prior to the date required therefor pursuant to the applicable Indenture Documents shall be an Event of Default pursuant to Section 19(a)(xvi) (*Funding of Required Amounts*). Amounts in the Senior Lien Obligations Reserve Fund (or the applicable Account thereunder) shall be made available to ensure the timely payment of the principal of, and interest accrued on, such Senior Lien Obligations. To the extent the Borrower withdraws amounts from the Senior Lien Obligations Reserve Fund (or an Account therein), the Borrower shall cause such Fund or Account to be replenished on a monthly basis to one hundred percent (100%) of the Senior Lien Obligations Reserve Requirement by no later than the next Semi-Annual Payment Date, subject to the availability of Revenues for such purpose; provided, that the Borrower's failure to do so due to the unavailability of Toll Revenues or amounts in the Revenue Stabilization Fund due to limits on HRTF Transfers to the Revenue Stabilization Fund described in Section 15(k) shall not by itself constitute an Event of Default.

(iii) Second Lien Obligations Reserve Fund. The Borrower shall deposit amounts into the Second Lien Obligations Reserve Fund so that such Fund or Account is

funded in an amount equal to the Second Lien Obligations Reserve Requirement applicable to such Second Lien Obligations. The Borrower's failure to deposit the Second Lien Obligations Reserve Requirement into the Second Lien Obligations Reserve Fund (or the applicable Account thereunder) on or prior to the date required therefor pursuant to the applicable Indenture Documents shall be an Event of Default pursuant to Section 19(a)(xvi) (*Funding of Required Amounts*). Amounts in the Second Lien Obligations Reserve Fund (or the applicable Account thereunder) shall be made available to ensure the timely payment of the principal of, and interest accrued on, such Second Lien Obligations. To the extent the Borrower withdraws amounts from the Second Lien Obligations Reserve Fund (or an Account therein), the Borrower shall cause such Fund or Account to be replenished on a monthly basis to one hundred percent (100%) of the Second Lien Obligations Reserve Requirement by no later than the next Semi-Annual Payment Date, subject to the availability of Revenues for such purpose; provided, that the Borrower's failure to do so due to the unavailability of Toll Revenues or amounts in the Revenue Stabilization Fund due to limits on HRTF Transfers to the Revenue Stabilization Fund described in Section 15(k) shall not by itself constitute an Event of Default.

(iv) Tolling O&M Reserve Fund. At all times from and after the Transition Date, the Borrower shall fund the Tolling O&M Reserve Fund in an amount equal to the Tolling O&M Reserve Fund Requirement. The Borrower's failure to deposit the Tolling O&M Reserve Fund Requirement into the Tolling O&M Reserve Fund as of the Transition Date shall be an Event of Default pursuant to Section 19(a)(xvi) (*Funding of Required Amounts*). Amounts in the Tolling O&M Reserve Fund shall be made available to ensure the timely payment of Tolling O&M Costs. To the extent the Borrower withdraws amounts from the Tolling O&M Reserve Fund, the Borrower shall cause such Fund to be replenished on a monthly basis to one hundred percent (100%) of the Tolling O&M Reserve Fund Requirement by no later than the next Semi-Annual Payment Date, subject to the availability of Toll Revenues for such purpose; provided, that the Borrower's failure to do so due to the unavailability of Toll Revenues itself constitute an Event of Default.

(v) Major Maintenance and Renewal Fund.

(A) The Borrower shall provide initial funding for the Major Maintenance and Renewal Fund pursuant to Section 15(l)(ii) (*HRTF Transfers*).

(B) Amounts in the Major Maintenance and Renewal Fund shall be made available to ensure the timely payment of Major Maintenance and Renewal Fund Permitted Expenditures. To the extent the Borrower withdraws amounts from the Major Maintenance and Renewal Fund, the Borrower shall cause such Fund to be replenished on a monthly basis to one hundred percent (100%) of the Major Maintenance and Renewal Fund Required Amount by no later than the next Semi-Annual Payment Date, *first* from available Toll Revenues pursuant to Section 5.03(b) of the Indenture, *second* from amounts then available in the Unrestricted General Reserve Account, *third* from the proceeds of HRTF Transfers, and *fourth* from amounts then available in the Additional Network Project Cost Fund (but not the ANCPF Restricted Account).

(vi) Revenue Stabilization Fund.

(A) The Borrower shall provide initial funding for the Major Maintenance and Renewal Fund pursuant to Section 15(1)(iv) (*HRTF Transfers*).

(B) Amounts in the Revenue Stabilization Fund shall be available to ensure the timely payment of (1) TIFIA Mandatory Debt Service, (2) debt service with respect to all other Senior Lien Obligations, and (3) with respect to each July 1 Semi-Annual Payment Date only, TIFIA Scheduled Debt Service (after the payment of debt service then due with respect to Senior Lien Obligations (including TIFIA Mandatory Debt Service)), in each case to the extent that Toll Revenues are insufficient to make such deposits after taking into account transfers from the Unrestricted General Reserve Account and the General Reserve Fund, in that order, of amounts then available in such Account or Fund. Amounts in the Revenue Stabilization Fund shall not be used to pay debt service or other amounts with respect to Second Lien Obligations or Subordinate Obligations.

(vii) General Reserve Fund.

(A) The Borrower shall use amounts on deposit in the Unrestricted General Reserve Account and the General Reserve Fund (and not yet deposited to any Account thereunder), in that order, to make up shortfalls in higher priority deposits in the cash flow waterfall in section 5.03(b) of the Indenture; provided, that amounts in General Reserve Fund (and not yet deposited to any Account thereunder) shall not be used to make any deposit into the Additional Network Costs Payment Fund, the VDOT Repayment Fund or the HRTF Repayment Fund. The Borrower shall utilize all amounts on deposit in the Unrestricted General Reserve Account and the General Reserve Fund (and not yet deposited to any Account thereunder), in that order, before any amounts are drawn from a Debt Service Reserve Fund in respect of any Obligations.

(B) As provided in Section 16(d) (*Restricted Payments*), the Borrower shall deposit amounts into the Unrestricted General Reserve Account only after satisfying the Restricted Payment Conditions as of the Calculation Date on which the Borrower proposes to make such deposit.

(viii) Revenue Sharing Account. The Borrower shall use amounts in the Revenue Sharing Account solely to make mandatory prepayments pursuant to Section 10(a)(i) (*Mandatory Prepayments*). The Borrower shall cause the Trustee to transfer any Revenue Sharing Amounts from the General Reserve Fund to the Revenue Sharing Account on each applicable Calculation Date.

(ix) Additional Network Project Cost Fund. The Borrower may deposit amounts to the Additional Network Project Cost Fund only after it has satisfied each of the Restricted Payment Conditions as of the Calculation Date on which it proposes to make such deposit. Amounts in the Additional Network Project Cost Fund and net yet deposited to the ANCPF Restricted Account shall be available to make up shortfalls in required

deposits into the debt service account established under the Indenture for any Obligations or to make up a shortfall in any Reserve Fund, after taking into account transfers from the Unrestricted General Reserve Account and the Rate Stabilization Fund and the proceeds of any HRTF Transfers, as applicable. The Borrower shall deposit amounts to the ANCPF Restricted Account only upon satisfaction of the following additional conditions:

(A) the Borrower has delivered a complete, correct and fully executed version of the Standard Project Agreement pursuant to which the Borrower has become committed to contribute the amounts proposed to be transferred to the ANCPF Restricted Account; and

(B) the Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative, in form and substance reasonably satisfactory to the TIFIA Lender, that provides a budget for the Additional Tolled Lanes or the Toll System Network Project, as applicable, sets forth the amount the Borrower proposes to deposit into the ANCPF Restricted Account, and provides an accounting of what costs related to such Additional Tolled Lanes or Toll System Network Project will be paid from amounts on deposit in the ANCPF Restricted Account and the approximate dates for such payments.

The Borrower shall be permitted to withdraw amounts from the ANCPF Restricted Account solely to pay for costs described in the above-referenced certificate of the Borrower.

(x) VDOT Repayment Fund. The Borrower may deposit amounts to the VDOT Repayment Fund only after it has satisfied each of the applicable Restricted Payment Conditions as of the Calculation Date on which it proposes to make a deposit to any such Fund. The Borrower shall deposit into, and withdraw from, the VDOT Repayment Fund only such amounts as the Borrower is obligated to reimburse to VDOT for amounts previously contributed to the payment of Total Project Costs from the Toll Facilities Revolving Account of the State (established pursuant to the Public-Private Transportation Act of 1995 (VA Code § 33.2-1800 et seq.) pursuant to and in accordance with Sections 3.06 and []⁹ of the PAFA.

(xi) HRTF Repayment Fund. The Borrower may deposit amounts to the HRTF Repayment Fund only after it has satisfied each of the applicable Restricted Payment Conditions as of the Calculation Date on which it proposes to make a deposit to any such Fund (including the requirement that the Borrower shall have certified to the TIFIA Lender and the Trustee that all amounts due and payable to VDOT pursuant to the PAFA shall have been indefeasibly paid in full). The Borrower shall deposit into, and withdraw from, the HRTF Repayment Fund only amounts that do not exceed the aggregate amount of HRTF Transfers previously deposited into a Fund or Account as specified herein (and not into any other Fund or Account). The Borrower withdraw amounts from the HRTF Repayment Fund solely to reimburse HRTAC in respect of prior HRTF Transfers made

⁹ **Note to Borrower:** Please provide the appropriate section references.

and actually used to meet a funding requirement pursuant to Section 5.03(b) of the Indenture.

(xii) Permitted Investments. The Borrower shall hold (or cause the Trustee to hold) amounts on deposit in the Senior Lien Obligations Fund and the TIFIA Loan Reserve Account uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Loan Reserve Account, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the Senior Lien Obligations Interest Account corresponding to amounts needed for the payment of interest, not later than the next Semi-Annual Payment Date, (C) with respect to Permitted Investments maintained in the Senior Lien Obligations Principal Account corresponding to amounts needed for the repayment of principal, the next Semi-Annual Payment Date for repayment of principal in respect of the TIFIA Loan, and (D) with respect to any other Funds or Accounts, on or prior to the date on which the funds invested in such Permitted Investments (as defined in the Indenture as of the Effective Date) are reasonably expected to be needed for any payments from the applicable Fund or Account. The Borrower shall hold (or cause the Trustee to hold) amounts on deposit in all Funds and Accounts other than the Senior Lien Obligations Fund and the TIFIA Loan Reserve Account uninvested or invested in Permitted Investments (as such term is defined in the Indenture) and shall comply with the requirements of the Indenture with respect to any such Permitted Investments.

(xiii) Post-Construction Transfers from the Project Fund. Upon Final Completion (as defined in the PAFA), the Borrower shall transfer, or shall cause the Trustee to transfer any amounts remaining in the Project Fund to the Toll Revenue Fund.

(l) HRTF Transfers.

(i) By no later than the Debt Service Payment Commencement Date, the Borrower shall fund the TIFIA Loan Reserve Account from the proceeds of one or more HRTF Transfers in an amount equal to the TIFIA Debt Service Reserve Required Balance. The Borrower's failure to deposit the TIFIA Debt Service Reserve Required Balance into the TIFIA Loan Reserve Account by the Debt Service Payment Commencement Date shall be an Event of Default pursuant to Section 19(a)(xvi) (*Events of Default - Funding of Required Amounts*).

(ii) By no later than the later of (A) the Substantial Completion Date and (B) the date of the initial disbursement of the TIFIA Loan hereunder, the Borrower shall deposit HRTF Revenues into the Major Maintenance and Renewal Fund in an amount equal to the Major Maintenance and Renewal Fund Required Amount, measured as of the applicable date described above. The Borrower's failure to deposit the Major Maintenance and Renewal Fund Required Amount into the Major Maintenance and Renewal Fund on or prior to the applicable date described in the preceding sentence shall be an Event of Default pursuant to Section 19(a)(xvi) (*Events of Default - Funding of Required Amounts*).

(iii) The Borrower shall make an HRTF Transfer into the Major Maintenance and Renewal Fund on July 15 of each year while the TIFIA Loan remains outstanding in the amount necessary to cause the balance on deposit in the Major Maintenance and Renewal Fund to be equal to the Major Maintenance and Renewal Fund Required Amount as of such date, in that order, made to the Major Maintenance and Renewal Fund on the preceding Semi-Annual Payment Date); provided, that the aggregate amount of HRTF Transfers into the Major Maintenance and Renewal Fund through the Final Maturity Date shall not exceed the MMRF HRTF Cumulative Transfer Cap. The Borrower's failure to make the full amount of the deposit described in the preceding sentence on or prior to the December 30th next following such July 15th described above for any reason other than the prior funding of the MMRF HRTF Cumulative Transfer Cap shall be an Event of Default pursuant to Section 19(a)(xvi) (*Events of Default - Funding of Required Amounts*).

(iv) By no later than the Debt Service Payment Commencement Date, the Borrower shall deposit HRTF Revenues into the Revenue Stabilization Fund in an amount equal to the Revenue Stabilization Fund Requirement. The Borrower's failure to deposit the full amount of the Revenue Stabilization Fund Requirement into the Revenue Stabilization Fund by the Debt Service Payment Commencement Date shall be an Event of Default pursuant to Section 19(a)(xvi) (*Events of Default - Funding of Required Amounts*).

(v) The Borrower shall make an HRTF Transfer into the Revenue Stabilization Fund on July 15 of each year in the amount necessary to cause the balance on deposit in the Revenue Stabilization Fund to be equal to the Revenue Stabilization Fund Requirement. The Borrower's failure to make the full amount of the deposit described in the preceding sentence on or prior to the December 30th next following such July 15th described above shall be an Event of Default pursuant to Section 19(a)(xvi) (*Events of Default - Funding of Required Amounts*).

(m) Rate Coverage. The Borrower shall, subject to the remainder of this paragraph, fix, charge and collect rates and charges such that Net Cash Flow in each Calculation Period through the Final Maturity Date shall be projected to produce (i) a Senior Debt Service Coverage Ratio at least equal to [1.35:1.00] in each such Calculation Period and (ii) an All-in Cost Coverage Ratio [1.00:1.00] in each such Calculation Period (clauses (i) and (ii) collectively, the "**Rate Coverage Test**"). If the forecast furnished by the Borrower pursuant hereto (including in any Financial Plan or Semi-Annual Coverage Certificate) demonstrates that projected Net Cash Flow may be inadequate to satisfy the Rate Coverage Test for any Calculation Period covered in such Financial Plan or Semi-Annual Coverage Certificate, or if the Borrower fails to satisfy the Rate Coverage Test in respect of any Calculation Period then ended, the Borrower shall (x) within thirty (30) days after request by the TIFIA Lender, engage the Traffic Consultant to review and analyze the operations of the Project and recommend actions regarding revising the rates or changing the methods of operations, or any other actions to increase the Net Cash Flow so as to satisfy the Rate Coverage Test, (y) cause the Traffic Consultant to issue its report, including any such recommended actions, no later than ninety (90) days following such engagement, and (z) either (A) implement the Traffic Consultant's recommendation or (B) undertake an alternative course of action after demonstrating to the TIFIA Lender's satisfaction the manifest errors

contained in the Traffic Consultant's recommended actions, or to the extent agreed upon by the TIFIA Lender, undertake an alternative course of action that will ensure the Borrower's ability to meet its payment obligations under this Agreement. The Borrower's failure to comply with the Rate Coverage Test on any four (4) consecutive Calculation Dates after the Substantial Completion Date shall result in the mandatory prepayment described in Section 10(a)(v) (*Mandatory Prepayments*), but shall not constitute an Event of Default.

(n) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon the Trust Estate or any portion thereof, including the Toll Revenues, or the Borrower's other income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid might give rise to a Lien upon the Project or any other portion of the Toll Roads System or on the Trust Estate or any portion thereof, including the Toll Revenues; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GASB, applied on a consistent basis.

(o) Hedging.

(i) As a condition to the issuance of any Obligations that bear interest at a Variable Interest Rate (subject to Section 16(o) (*Hedging*), the Borrower shall enter into a Qualified Hedge with respect to such Obligations and shall maintain such Qualified Hedge in place until the earlier to occur of (i) the maturity date of any such Obligations and (ii) the Final Maturity Date. Each Qualified Hedge must have an aggregate stated notional amount of not less than (A) during the Construction Period, at least ninety percent (90%) and not more than one hundred ten percent (110%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding during such time period and (B) at all other times, at least ninety-eight percent (98%) and not more than one hundred two percent (102%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding until the maturity of such Variable Interest Rate Obligation. Any such Qualified Hedge shall have a payment profile that is reasonably consistent with the expected draw and repayment schedule of the applicable Variable Interest Rate Obligations subject to such Qualified Hedge. Such Qualified Hedge shall have a stated maturity or termination date not earlier than the earlier to occur of (x) the Final Maturity Date and (y) the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge.

(ii) Each Qualified Hedge shall provide for a fixed interest rate resulting in fixed payment amounts payable by the Borrower to the Qualified Hedge Provider. The Borrower's obligations to pay Hedging Obligations and Hedging Termination Obligations shall be from the sources and in the priority specified in the Indenture Documents. The Borrower shall ensure that, as of the day following the termination date of any Qualified Hedge that for any reason terminates before the final maturity date of the Variable Interest

Rate Obligations subject to such Qualified Hedge, (A) a Subsequent Qualified Hedge (as defined below) is in full force and effect or (B) the Variable Interest Rate Obligations have been converted to a fixed rate, in each case in accordance with this Agreement and the Indenture Documents.

(iii) Any Hedging Transaction entered into subsequent to the initial Qualified Hedge (a “**Subsequent Qualified Hedge**”) shall (A) be a Qualified Hedge, (B) commence no later than the termination date of the Qualified Hedge that is terminating and (C) terminate no earlier than the earlier to occur of (1) the Final Maturity Date and (2) the final maturity date of the Variable Interest Rate Obligations subject to such Subsequent Qualified Hedge.

(iv) The Borrower shall not commence seeking any bids from any Qualified Hedge Provider for a Subsequent Qualified Hedge unless, at least thirty (30) days prior thereto, the Borrower has delivered to the TIFIA Lender evidence satisfactory to the TIFIA Lender and certified by the Borrower’s Authorized Representative that the process to be utilized by the Borrower for selecting such Subsequent Qualified Hedge is a competitive process designed to obtain a fair market price and to avoid conflicts of interest. At the time the Subsequent Qualified Hedge is priced, the Borrower shall provide to the TIFIA Lender a certificate from a qualified third party acceptable to the TIFIA Lender to the effect that either the underlying fixed rate or the price of acquiring such Subsequent Qualified Hedge is a fair price based on the interest rate market at the time such Qualified Hedge is priced.

(v) The Trustee shall be granted a security interest in each Qualified Hedge and payments due under each Qualified Hedge in order to secure the Borrower’s obligations under the TIFIA Loan Documents. The Hedging Agreements shall provide that all payments due thereunder to the Borrower shall be made directly to the Trustee for deposit and disbursement in accordance with the Indenture Documents.

(vi) The Borrower shall neither terminate (other than Permitted Hedging Terminations), transfer, nor consent to any transfer (other than to a Qualified Hedge Provider) of any existing Qualified Hedge without the TIFIA Lender’s prior written consent as long as the Borrower is required to maintain a Qualified Hedge pursuant to this Agreement.

(vii) If at any time a Hedging Bank no longer satisfies the requirements for a Qualified Hedge Provider, the Borrower shall, within thirty (30) days (or such lesser number of days required by the applicable Hedging Agreement, including any credit support annex thereto) of the date on which such Hedging Bank failed to qualify as a Qualified Hedge Provider, either (A) cash collateralize the mark-to-market value of the Hedging Termination Obligations (in accordance with the credit support annex or similar requirements of the applicable Hedging Agreement) or provide a guarantee for such amount from an entity with an Acceptable Credit Rating, or (B) cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider, whether by means of a transfer of the disqualified Hedging Bank’s Hedging Agreement to a Qualified Hedge Provider or by means of a termination of such disqualified Hedging Bank’s Hedging

Agreement and replacement thereof by a Hedging Agreement with a Qualified Hedge Provider on terms and conditions that satisfy the requirements of this Section 15(o) (*Hedging*); provided that if the disqualified Hedging Bank's highest credit rating from any Rating Agency is less than "A-", "A3" or the equivalent, clause (A) shall not apply and the Borrower shall be required to cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider pursuant to clause (B).

(p) Credit Support Instruments.

(i) The Borrower may replace all or a portion of the required balance of the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund, the Subordinate Obligations Reserve Fund, or any Account under any of the foregoing, in accordance with the terms of the applicable Indenture Documents, with a Credit Support Instrument provided by a financial institution with an Acceptable Credit Rating, provided that the terms and conditions of any such Credit Support Instrument shall not permit or require the Borrower to use Revenues to satisfy any payment obligations to the Qualified Issuer or any other Person in connection with such Credit Support Instrument.

(ii) The Borrower shall not enter into any Credit Support Instrument that permits the provider of such Credit Support Instrument to accelerate the Borrower's reimbursement obligations.

(iii) If at any time the issuer of Credit Support Instrument ceases to be a Qualified Issuer, the Borrower shall cause such Credit Support Instrument to be replaced by a new Credit Support Instrument from a Qualified Issuer within ten (10) calendar days of the date on which the current issuer ceased to be a Qualified Issuer, or the Trustee shall be permitted to immediately draw the full available amount of such Credit Support Instrument and deposit the proceeds of such drawing into the applicable Reserve Fund and the TIFIA Lender shall be permitted to direct the Trustee to make such draw. Any new Credit Support Instrument shall have the same terms and conditions (including expiration date and face amount) as the Credit Support Instrument being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender.

(iv) If any Credit Support Instrument securing a Reserve Fund is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such Credit Support Instrument with a new Credit Support Instrument from a Qualified Issuer at least thirty (30) calendar days prior to the stated expiry date of the existing Credit Support Instrument and such new Credit Support Instrument shall be in an amount equal to at least the amount of expiring Credit Support Instrument. If the Borrower fails to provide such new Credit Support Instrument from a Qualified Issuer by the date required above, the Trustee shall be permitted to immediately draw the full undrawn amount of the existing Credit Support Instrument and deposit the proceeds of such drawing into the applicable Reserve Fund and the TIFIA Lender shall be permitted to direct the Trustee to make such draw.

(q) Net Loss Proceeds. If the Borrower receives Net Loss Proceeds, the Borrower shall apply all such Net Loss Prepayments as specified in Section 10(a)(ii) (*Mandatory Prepayments*)

(r) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the TIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

(s) Immunity. The Borrower agrees that it will not assert any immunity (and hereby confirms that it has no such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the contractual obligations of the Borrower under this Agreement or any other TIFIA Loan Document.

(t) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the TIFIA Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(u) Cargo Preference Act. Pursuant to 46 CFR Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with TIFIA Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in clause (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(v) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

(w) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit Q** hereto.

Section 16. Negative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than

contingent indemnity obligations) are irrevocably paid in full in cash, unless the TIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) Prior to the incurrence of Additional Obligations, the Borrower shall provide to the TIFIA Lender (A) a certificate signed by the Borrower's Authorized Representative, demonstrating to the TIFIA Lender's satisfaction that such proposed indebtedness is authorized pursuant to this Section 16(a) (*Indebtedness*) and satisfies the applicable requirements under the definitions of "Permitted Debt" and "Additional Obligations," as applicable and (B) a copy of all certificates and reports provided to the Trustee in connection with such Additional Obligations in accordance with the requirements of the Indenture.

(ii) Except for Additional Obligations, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness under the Indenture; provided that (1) the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Trust Estate, including Additional Obligations, following the occurrence, and during the continuation, of an Event of Default, and (2) the Borrower shall not issue Second Lien Obligations or Subordinate Obligations without the prior written consent of the TIFIA Lender.

(iii) The Borrower shall not issue Variable Interest Rate Obligations without the prior written consent of the TIFIA Lender.

(iv) To the extent any Obligations consists of Put Bonds, the Borrower must maintain a Credit Support Instrument that will pay any amounts payable by the Borrower in respect of such Put Bonds.

(v) The Borrower shall not enter into any Balloon Indebtedness without the prior written consent of the TIFIA Lender.

(b) No Lien Extinguishment; Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, (i) extinguish, impair, or transfer the Liens on the Trust Estate granted pursuant to the Indenture, (ii) terminate, assign, amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, (iv) terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender's determination), or (v) agree to (A) any material amendment to a Principal Project Contract, including a change to the Construction Schedule attached thereto, or (B) the use of the Project by VDOT other than for the purposes described in the Principal Project Contracts. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (x) copies of any proposed amendments,

modifications, replacements of, or waivers or supplements to any Related Document at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification, waiver or supplement to any Related Document within five (5) Business Days after execution thereof.

(c) No Prohibited Liens. Except for the Liens granted pursuant to the Indenture Documents, the Borrower shall not create, incur, assume or permit to exist any Lien on the Trust Estate, the Toll Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Principal Project Contract, except pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) Restricted Payments. The Borrower shall not at any time deposit any funds into the VDOT Repayment Fund, the HRTF Repayment Fund, the Additional Network Costs Payment Fund, or the Unrestricted General Reserve Account, whether pursuant to Section 5.03(b) of the Indenture or any transfer among Funds or Accounts under the Indenture unless, in each case, the Borrower shall have first, as of the Semi-Annual Payment Date on which the Borrower proposes to make any such deposit, satisfied each of the following conditions (the "**Restricted Payment Conditions**"):

(i) the Debt Service Payment Commencement Date has occurred and the Borrower shall have commenced making payments of principal of the TIFIA in accordance with **Exhibit G**;

(ii) each Reserve Fund is fully funded to the applicable required amount;

(iii) no Default has occurred and is continuing and no Event of Default has occurred and not been waived in writing by the TIFIA Lender;

(iv) all TIFIA Mandatory Debt Service, all TIFIA Scheduled Debt Service, and all principal and interest in respect of all other Obligations for all Payment Dates through such Semi-Annual Payment Date shall have been paid in full (including any amounts remaining unpaid from any prior period);

(v) the amount on deposit in the General Reserve Fund (excluding any amounts deposited to the Unrestricted General Reserve Account) is at least equal to [\$20,000,000] and will be at least equal to [\$20,000,000] following any such restricted payment or deposit described above;

(vi) the Senior Debt Service Coverage Ratio (1) for the Calculation Periods ending on the then current Calculation Date and as of each of the immediately preceding Calculation Date is or was, as applicable, equal to at least [1.35:1.00] and (2) for the Calculation Periods ending as of each of the ten (10) consecutive succeeding Calculation Dates is, in each case, projected to equal at least [1.35:1.00];

(vii) the All-in Costs Coverage Ratio (1) for the Calculation Periods ending on the then current Calculation Date and as of each of the immediately preceding Calculation Date is or was, as applicable, equal to at least [1.10:1.00] and (2) for the Calculation Periods ending as of each of the ten (10) consecutive succeeding Calculation Dates is, in each case, projected to equal at least [1.10:1.00]; and

(viii) the Loan Life Coverage Ratio for each Calculation Date from the current Calculation Date through the Final Maturity Date is not less than [1.50:1.00];

provided, that in no event shall any of the deposits described above be made from amounts deposited to the General Reserve Fund or any Account therein. Any reimbursement to VDOT or the Borrower (in respect of HRTF Transfers) or transfer of amounts to any Fund or Account after satisfaction of the Restricted Payment Conditions shall be made on the Calculation Date (or as soon as practical thereafter) on which the Restricted Payment Conditions with respect to such Revenues were satisfied.

(e) Principal Project Contracts; Additional Project Contracts.

(i) New Principal Project Contracts. The Borrower shall not, and shall not permit VDOT to, in each case without the prior written consent of the TIFIA Lender, enter into any Principal Project Contract that is not in effect as of the Effective Date (other than an Electronic Toll Agreement that is in the form of Exhibit 14 to the MTA or a Violation Processing Services Agreement that is in the form of Exhibit 15 to the MTA).

(ii) Additional Project Contracts. The Borrower shall not, without the prior written consent of the TIFIA Lender, enter into (or consent to VDOT's entry into) any Additional Project Contract (or series of related contracts) allocable to the Project or payable from Revenue that commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower of, amounts that either: (i) exceed \$2,500,000, inflated annually by CPI, in any Borrower Fiscal Year, or (ii), alone or when aggregated with the other Total Project Costs or Tolling O&M Costs, as applicable, in the same line item of the applicable budget set forth in the Financial Plan most recently submitted to the TIFIA Lender, would cause aggregate Total Project Costs or Tolling O&M Costs, as applicable, for such line item in any Borrower Fiscal Year to exceed the amounts for such line item for any Borrower Fiscal Year reflected in the budget in the Financial Plan most recently submitted to the TIFIA Lender.

(iii) Actions under Existing Principal Project Contracts.

(A) The Borrower shall not waive or excuse VDOT's obligation to refund amounts to the Borrower pursuant to and in accordance with Section 7.01(c) of the PAFA without the prior written consent of the TIFIA Lender.

(B) The Borrower shall not agree to any amount of, or waive any claim with respect to, any Commission Damages (as such term is defined in the MTA) without the prior written consent of the TIFIA Lender. The Borrower shall not waive any Compensation Event (as such term is defined in the MTA) without the prior written consent of the TIFIA Lender.

(C) The Borrower shall not agree to any amount of, or waive any claim with respect to, any Compensable Maintenance Event or Contractor Act (as each such term is defined in the MTA) without the prior written consent of the TIFIA Lender. The Borrower shall not waive any Compensable Maintenance Event or Contractor Act (as each such term is defined in the MTA) without the prior written consent of the TIFIA Lender.

(D) The Borrower shall not select or agree to a Transition Date (pursuant to the MTA or otherwise) prior to HRBT Segment Toll Day One (as described in the definition of Transition Date) without the prior written consent of the TIFIA Lender.

(E) The Borrower shall not agree to any action in connection with any item listed in Section 1 of Exhibit 13 to the PAFA without the prior written consent of the TIFIA Lender.

(f) Changes to Tolling Policies. The Borrower shall not make any change to its toll policies for the Project in a manner that would be reasonably likely to result in a material reduction to projected Toll Revenues in comparison to the Base Case Projections, unless Borrower first demonstrates to the TIFIA Lender's satisfaction that, following the implementation of such change to the toll policies for the Project, Toll Revenues and amounts on deposit in, or to be deposited to, the Rate Stabilization Fund are reasonably expected to allow the Borrower to at all times maintain compliance with the Rate Coverage Test.

(g) Additional Tolled Lanes; Toll System Network Project. The Borrower shall not undertake any work of a physical nature (excluding internal planning and budgeting and environmental review and approvals) with respect to any Additional Tolled Lanes or Toll System Network Project without the prior written approval of TIFIA Lender, unless, prior to such undertaking, the Borrower shall have delivered to the TIFIA Lender (i) a Revised Financial Model and a level 3 report from (and certified by) the Traffic Consultant, each of which demonstrate to the TIFIA Lender's reasonable satisfaction that Toll Revenues from the Express Lanes Network, inclusive of such Additional Tolled Lanes or Toll System Network Project, shall satisfy the Rate Coverage Test for each Calculation Period through the Final Maturity Date. From and after the substantial completion of any Additional Tolled Lanes or Toll System Network Project, such Additional Tolled Lanes or Toll System Network Project shall be considered as part of the Project and part of the Express Lanes Network, any revenues derived from such Additional Tolled Lanes or Toll System Network Project shall be treated as Revenues for all purposes of this Agreement and the Indenture, and such revenues shall be included in the Trust Estate for all purposes hereunder and under the Indenture. As provided in Section 16(d) (*Restricted Payments*), the Borrower shall not deposit any amounts in the Additional Network Costs Payment Fund in connection with any Additional Tolled Lanes or Toll System Network Project unless the Borrower shall have first satisfied each of the Restricted Payment Conditions as of any Calculation Date on which the Borrower proposes to make a deposit to such Fund.

(h) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease, or assign its rights and obligations under any Related Document, unless such sale, lease or

assignment (A) could not reasonably be expected to result in a Material Adverse Effect, and (B) is made by the Borrower in the ordinary course of business.

(i) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Indenture or in the Trust Estate) without the prior written consent of the TIFIA Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the TIFIA Lender.

(j) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the TIFIA Loan Documents, the Borrower shall not engage in any other transactions in connection with the Project with any other Governmental Authority (including any other Governmental Authority of or in the State), the terms and provisions of which are materially adverse to the Borrower or the Project or that could reasonably be expected to result in a Material Adverse Effect.

(k) No Payment with Federal Funds. The Borrower shall not pay any portion of TIFIA Debt Service nor any other amount to the TIFIA Lender or to the Federal Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrower may prepay the TIFIA Loan in whole or in part with the proceeds of a validly issued federal credit instrument pursuant to, and in accordance with Section 10 (*Prepayment*).

(l) Change in Legal Structure; Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with, or merge into another Person unless (A) such Person is a successor public entity or agency created by State law that succeeds to the assets of the Borrower and assumes the obligations of the Borrower hereunder and under the Related Documents to which the Borrower is a party, including payment of the TIFIA Bond and (B) such merger, consolidation, or reorganization does not adversely affect or impair to any extent or in any manner (1) the Toll Revenues or other elements of the Trust Estate, or (2) the availability of the Toll Revenues for the payment and security of the obligations of the Borrower under this Agreement and the other TIFIA Loan Documents; and (B) the Borrower provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender.

(m) No Defeasance of TIFIA Bond. The Borrower shall not defease the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture without the prior written consent of the TIFIA Lender.

(n) OFAC Compliance.

(i) The Borrower shall not:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents; or

(C) make a payment, directly or indirectly, to any Principal Project Party that (1) to the Borrower's knowledge has violated any of the laws referenced in Section 16(n)(i) (*OFAC Compliance*) or (2) is a Sanctioned Person.

(ii) The Borrower shall ensure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the TIFIA Loan or lend to, make any payment to, contribute or otherwise make available any funds to any affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the TIFIA Lender or any Principal Project Party).

(o) Hedging. Other than Hedging Transactions expressly permitted hereunder, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the TIFIA Lender. The Borrower shall not, without the prior written consent of the TIFIA Lender, enter into any Hedging Transaction under which the Borrower is required to make payments based on a Variable Interest Rate, in either case secured by the Revenues.

Section 17. Indemnification. To the fullest extent permitted by applicable law, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent, advisor, or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or

any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17. Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 18. Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section 18. Any such sale or reoffering shall be on such terms as the TIFIA Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower in accordance with Section 29 (*Amendments and Waivers*). The TIFIA Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower of the TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to

this Section 18 shall not (x) obligate the TIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan.

Section 19. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any amount of principal of or interest on the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*), and any mandatory prepayment required pursuant to the provisions of Section 10(a) (*Mandatory Prepayments*)), when due and payable (each such failure, a “**Payment Default**”); provided, however, that failure to pay TIFIA Scheduled Debt Service shall not be a Payment Default hereunder if the amount on deposit in the First Lien Obligations Interest Account or the First Lien Obligations Principal Account within the First Lien Obligations Fund, as applicable, was insufficient therefor notwithstanding compliance by the Borrower and the Trustee with Section 8(d) (*Security and Priority; Flow of Funds*).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder), the TIFIA Bond or any other TIFIA Loan Document (other than in the case of any Payment Default, any Development Default, or failure to fund any Project Fund), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof, (B) the Borrower’s knowledge of such failure, or (C) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either clause (A) or (B) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no

Event of Default shall be deemed to have occurred under this Section 20(a)(iv) (*Misrepresentation Default*) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (*No Debarment*), Section 13(j) (*Transportation Improvement Program*), Section 13(p) (*OFAC; Anti-Corruption Laws*), Section 13(ee) (*Patriot Act*), or Section 13(ff) (*Compliance with Federal Requirements*);

(C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations. Any acceleration shall occur of the maturity of any Senior Lien Obligations, Second Lien Obligations, or Subordinate Obligations, or any such Senior Lien Obligations, Second Lien Obligations, or Subordinate Obligations shall not be paid in full upon the final maturity thereof.

(vi) Acceleration or Non-Payment of HRTF Obligations.

(A) Any acceleration shall occur of the maturity of any HRTF Obligations due to a default with respect thereto.

(B) Any HRTF Obligations shall not be paid in full upon the final maturity thereof.

(C) The Borrower shall fail to pay any amount of principal or interest due with respect to any HRTF Obligations (including any reimbursement obligations under any Credit Support Instruments) or any amount of debt service due with respect to any HRTF Obligations, and such failure shall not be remedied within any grace period applicable to such HRTF Obligations.

(vii) Cross-Default to Other Financing Documents. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to any Indenture Document, any other agreement under which the Borrower has incurred

indebtedness in an aggregate amount equal to or greater than \$1,000,000 payable in whole or in part from Toll Revenues (collectively, the “**Other Financing Documents**”) shall prove to be false or misleading in any material respect (each a “**Cross Misrepresentation Default**”), or any default shall occur in respect of the performance of any covenant, agreement or obligation of the Borrower under any Other Financing Documents, and, in either case, such default shall be continuing after the giving of any applicable notice and the expiration of any applicable grace period specified in any such Other Financing Document (as the case may be) with respect to such default (each a “**Cross Covenant Default**”), if the effect of such Cross Misrepresentation Default or Cross Covenant Default shall be to permit the immediate acceleration of the maturity of any or all of any indebtedness incurred pursuant to such Other Financing Documents (as the case may be), and, in the case of any such Cross Misrepresentation Default or Cross Covenant Default, the Borrower shall have failed to cure such Cross Misrepresentation Default or Cross Covenant Default or to obtain an effective written waiver thereof in accordance with the terms of the Other Financing Documents.

(viii) Cross Default to Principal Project Contracts. (A) The Borrower, VDOT, or any other Principal Project Party shall default in the timely performance of any covenant, agreement or obligation under any Principal Project Contract (unless in any case such default could not reasonably be expected to have a Material Adverse Effect) or any Principal Project Contract shall be terminated prior to its scheduled expiration, and the Borrower, VDOT or such other Principal Project Party shall have failed to cure such default or to obtain an effective written waiver thereof prior to the expiration of the applicable grace period specified in any such Principal Project Contract, or to obtain an effective revocation of such termination (as the case may be) or (B) any Principal Project Contract ceases to be in full force and effect for any reason (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower, VDOT or any other Principal Project Party shall contest in any manner the validity or enforceability of any Principal Project Contract or any material provision thereof, or denies it has any further liability under any Principal Project Contract, or purports to revoke, terminate or rescind any Principal Project Contract or any material provision thereof; provided, however, that no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(vii) if, in the case any Principal Project Contract is terminated or otherwise ceases to be in full force and effect prior to its scheduled expiration, (x) the Borrower or VDOT, as applicable, replaces such Principal Project Contract with a replacement agreement (1) entered into with another counterparty that (I) is of similar or greater creditworthiness (including credit support), technical capability, and relevant experience as the counterparty being replaced was at the time the applicable Principal Project Contract was originally executed (or otherwise reasonably acceptable to the TIFIA Lender), (II) is not, at the time of such replacement, suspended or debarred or subject to a proceeding to suspend or debar from bidding, proposing or contracting with any federal or state department or agency, and (III) is not, at the time of such replacement, in violation of any applicable laws referenced in Section 13(p) (*OFAC; Anti-Corruption Laws*), and is in compliance with all applicable laws referenced in Section 13(r) (*Compliance with Law*) and Section 13(s) (*Environmental Matters*), (2) on substantially the same terms and conditions as the Principal Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender), (3) effective as of the date of

termination of the Principal Project Contract being replaced, and (4) each performance security instrument required under the replacement agreement is in full force and effect at the time of such replacement and is on substantially the same terms and conditions as the comparable performance security instrument required under the Principal Project Contract being replaced (or otherwise reasonably acceptable to the TIFIA Lender).

(ix) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of \$5,000,000 (inflated annually by CPI) that are payable from the Trust Estate or any portion thereof, including the Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(x) Failure to Maintain Existence; Organizational Documents. The Borrower shall fail to maintain its existence as a body politic and a political subdivision created and existing under the laws of the State or the HRTAC Act shall be repealed or amended or modified in such a manner as could reasonably be expected to result in a Material Adverse Effect, unless at or prior to the time the Borrower ceases to exist in such form or the repeal or amendment of the HRTAC Act described above becomes effective, a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law and has succeeded to the assets of the Borrower and has assumed all of the obligations of the Borrower under the TIFIA Loan Documents, the Indenture Documents and the HRTF Indenture Documents, including the payment of all Secured Obligations.

(xi) Occurrence of a Bankruptcy Related Event.

(A) A Bankruptcy Related Event shall occur with respect to the Borrower.

(B) A Bankruptcy Related Event shall occur with respect to any letter of credit issuer; provided, that no Event of Default shall be deemed to have occurred or be continuing under this clause (B) if such letter of credit issuer is replaced by a new issuer that is a Qualified Issuer within ten (10) Business Days after the occurrence of such Bankruptcy Related Event.

(C) A Bankruptcy Related Event shall occur with respect to any Principal Project Party; provided, that (1) prior to Substantial Completion of the Project, the occurrence of a Bankruptcy Related Event with respect to any Construction Contractor shall not constitute an Event of Default if the Borrower or VDOT shall have promptly provided evidence satisfactory to the TIFIA Lender demonstrating that the Construction Contractor has been replaced with a substitute Construction Contractor that has sufficient financial resources and operating expertise to complete their respective Principal Project Contract in accordance with

the applicable Construction Schedule for such Project, and (2) after Substantial Completion of the Project, the occurrence of a Bankruptcy Related Event with respect to any Construction Contractor party to such Project Construction Contract shall not constitute an Event of Default solely with respect to such Project if at the time of such occurrence, (I) no claim against any warranty under the applicable Principal Project Contract to which such Construction Contractor is a party exists or remains outstanding, or (II) the Borrower promptly provides evidence satisfactory to the TIFIA Lender showing that the Borrower has (x) sufficient moneys to correct any defect or nonconforming work of such Construction Contractor, and (y) a plan to carry out such works referred to in clause (x) hereof.

(xii) Project Abandonment. Any Borrower Related Party shall abandon the Project.

(xiii) Invalidity of TIFIA Loan Documents. (A) Any TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any TIFIA Loan Document to which it is a party or denies it has any further liability under any TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Trust Estate, including the Revenues, other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby.

(xiv) Invalidity of the HRTF Indenture. The HRTF Indenture ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or any party thereto contests in any manner the validity or enforceability of the HRTF Indenture, or denies it has any further liability under any such document prior to the termination thereof in accordance with its terms, or purports to revoke, terminate or rescind the HRTF Indenture.

(xv) Cessation of Operations. Operation of the Project shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of any Borrower Related Party (and which any Borrower Related Party could not reasonably have avoided or mitigated) and the Borrower shall have in force an insurance policy or policies under which the Borrower is entitled to recover amounts sufficient to pay (and may use such amounts to pay) all TIFIA Debt Service, all Annual Debt Service in respect of all Obligations, and costs and expenses of the Borrower during such cessation of operations.

(xvi) Funding of Required Amounts.

(A) The Borrower shall fail to fund one hundred percent (100%) of the initial required minimum balance in any of the TIFIA Loan Reserve Account,

the Major Maintenance and Renewal Fund or the Revenue Stabilization Fund by the date required for such deposit in Section 15(l) (*HRTF Transfers*) and the applicable Indenture Documents.

(B) The Borrower shall, in any year prior to the Final Maturity Date, fail to make an HRTF Transfer to the Revenue Stabilization Fund in the full amount required to cause the balance on deposit in the Revenue Stabilization Fund to be at least equal to the Revenue Stabilization Fund Requirement on or prior to the December 30th next following the July 15th on which such deposit was required to be made.

(C) The Borrower shall, in any year prior to the Final Maturity Date, fail to make an HRTF Transfer to the Major Maintenance and Renewal Fund in the full amount required to cause the balance on deposit in the Major Maintenance and Renewal Fund to be at least equal to the Major Maintenance and Renewal Fund Required Amount on or prior to the December 30th next following the July 15th on which such deposit was required to be made; provided, that if the sole reason for the Borrower's failure to make such HRTF Transfer is because the Borrower has previously made HRTF Transfers to the Major Maintenance and Renewal Fund in a cumulative amount that equals or exceeds the MMRF HRTF Cumulative Transfer Cap, then the failure to make the portion of such HRTF Transfer that would cause cumulative transfers to the Major Maintenance and Renewal Fund to exceed the HRTF Cumulative Transfer Cap shall not be an Event of Default.

(D) Except as described in clauses (A) – (C) above, the Borrower shall fail to make any deposit from time to time required hereunder or under any of the Indenture Documents to be made into any Fund or Account (other than the VDOT Repayment Fund, the HRTF Repayment Fund, or the Additional Network Costs Payment Fund) for any reason other than the insufficiency of Revenues available for such deposits in accordance with Section 5.03(b) of the Indenture.

(b) Upon the occurrence of an Event of Default described in Section 19(a)(iii) (*Development Default*), the TIFIA Lender may (i) suspend the disbursement of TIFIA Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and/or (iii) demand that the Borrower immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower, in which event the Borrower shall immediately repay any such unexpended TIFIA Loan proceeds to the TIFIA Lender.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents with respect to the TIFIA Loan, shall automatically become

immediately due and payable, without presentment, demand, notice, declaration, protest or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (ii) declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, with respect to the TIFIA Loan, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived. The TIFIA Lender shall have the right to deliver notice to the Trustee with direction to the Trustee that the Trustee shall deem an Event of Default hereunder to be an “Event of Default” under the Indenture.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder, under the TIFIA Bond or under the other TIFIA Loan Documents with respect to the TIFIA Loan, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor and a creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder, under the TIFIA Bond, or under the other TIFIA Loan Documents with respect to the TIFIA Loan, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Federal Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section 19 shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all of which shall survive any such action.

Section 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Project-related transactions (including collection of Revenues, and any other revenues attributable to the Project, and TIFIA Loan requisitions received and disbursements made with regard to the Project, so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GASB, including, with

respect to the TIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 20(b) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 20(b) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrower shall maintain and retain all files relating to the Project, the Revenues and the TIFIA Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the TIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Revenues, the TIFIA Loan or this Agreement is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and the Borrower. The Borrower shall provide to the TIFIA Lender in a timely manner all records and documentation relating to the Project or the Revenues that the TIFIA Lender may reasonably request from time to time.

(d) Copies of Debt Related Notices. The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (i) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project or any indebtedness of the Borrower that is or will be secured by or paid from the Toll Revenues, (ii) all notices and other written communications, other than those that are non-substantive or ministerial in nature, received by it from the Trustee or any Bondholder, and (iii) all reports, notices and other written materials, other than those that are non-substantive or ministerial in nature, required to be sent to the Trustee or any Bondholder under the Indenture Documents, including all such notices, other than those that are non-substantive or ministerial in nature, relating to any of the Principal Project Contracts; unless, in each case, the TIFIA Lender notifies the Borrower that any such reports, notices and/or other written materials no longer need to be provided.

(e) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2021 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the

USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 21. Financial Plan, Semi-Annual Coverage Certificates; Statements, and Reports.

(a) Financial Plan. The Borrower shall provide a Financial Plan to the TIFIA Lender and the FHWA Division Office within sixty (60) days after the Effective Date and annually thereafter until the TIFIA Loan has been repaid in full, in each case not later than ninety (90) days after the beginning of each Borrower Fiscal Year. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(i) Each Financial Plan shall be prepared in accordance with GASB and shall satisfy FHWA's Major Project Financial Plan requirements, as amended from time to time.

(ii) Together with each Financial Plan, the Borrower shall deliver: (A) a certificate signed by the Borrower's Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower's knowledge and belief and (B) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, based upon assumptions and projections with respect to the Revenues, the HRTF Transfers, expenses and other financial aspects of the Project, and the Trust Estate that shall reflect the prior experience and current status of the Project and the Revenues, the HRTF Transfers, and the expectations of the Borrower with respect to the Project, the Pledged Revenues, and the HRTF Transfers as of the most recent practicable date prior to the delivery of such Revised Financial Model, together with a change log describing such changes.

(iii) Each Financial Plan shall:

(A) provide an updated cash flow statement showing, for the Borrower Fiscal Year most recently ended, (1) actual annual cash inflows (Revenues, HRTF Transfers, and other income), (2) actual annual outflows (including all Debt Service, Tolling O&M Costs, Major Maintenance and Renewal Fund Permitted Expenditures, Capital Expenditures, replenishment of reserves, and other uses), (3) Senior Debt Service Coverage Ratios, All-in Cost Coverage Ratios, and Loan Life Coverage Ratios (in each case measured as of the last day of the applicable Borrower Fiscal Year), and (4) coverages of the payments and deposits required pursuant to clauses First through [] of Section 5.03(b) of the Indenture;

(B) provide an updated cash flow statement showing projected annual amounts for each of the items described in clause (A) above, in each case through the Final Maturity Date;

(C) report on variances during the prior Borrower Fiscal Year between (1) the actual Tolling O&M Costs and the budgeted Tolling O&M Costs and (2) the actual amounts deposited to the Operation and Maintenance Reserve Fund in order to maintain the Tolling O&M Reserve Fund Requirement therein and budgeted amounts for such deposits, in each case as shown in the Financial Plan for such prior Borrower Fiscal Year;

(D) provide a schedule of then current toll rates and charges applicable to any segment of the Express Lanes Network and any planned increases thereto;

(E) to the extent that any Hedging Transactions are then in effect, report on the notional amounts and mark to market values (provided by the Qualified Hedge Provider) under such Hedging Transactions, in each case as of the last day of the most recently ended Borrower Fiscal Year; and

(F) provide a written narrative that (1) explains any variances greater than 10% in comparison to the Base Case Financial Model and the most recent Financial Plan with respect to (i) Revenues, HRTF Transfers and the amounts deposited into each of the accounts and subaccounts established under the Indenture Documents; (ii) cost items that are senior to TIFIA Debt Service; (2) to the extent that any Hedging Transactions are then in effect, report on changes, if any, to the creditworthiness of the counterparties to such Hedging Transactions; (3) includes a description of any material matters that may affect the future performance by the Borrower of its obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Revenues, HRTF Transfers, Principal Project Contracts, and third-party transactions; and (4) discusses contingency measures that will or may be taken to address any of the matters reported pursuant to this sub-clause (F)

(iv) In addition to the above, prior to the Substantial Completion Date, each Financial Plan shall:

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan;

(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including an updated Projected Substantial Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule and in the most recent Financial Plan, and discuss the reasons for any changes to the expected completion of these Project milestones;

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the preceding Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of each individual change valued at \$5,000,000 or more, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower's obligations under this Agreement.

(b) Semi-Annual Coverage Certificates. Within fifteen (15) days after each Calculation Date, the Borrower shall deliver to the TIFIA Lender, a certificate in the form of **Exhibit P** and signed by the Borrower's Authorized Representative (each, a "**Semi-Annual Coverage Certificate**") that (i) certifies that annual projected Toll Revenues shall be sufficient to meet the Loan Amortization Schedule and to meet the Borrower's Annual Debt Service obligations with respect to all Obligations that are currently outstanding, in each case as of each applicable payment date through the fifth (5th) anniversary of the most recent Semi-Annual Payment Date, (ii) sets forth the historical Senior Debt Service Coverage Ratio and All-in Cost Coverage Ratio for each of the two (2) consecutive Calculation Periods ended as of the immediately preceding Calculation Date and as of the immediately preceding Calculation Date, respectively, and (iii) sets forth the projected Senior Debt Service Coverage Ratio and All-in Cost Coverage Ratio as of each Calculation Date through the fifth (5th) anniversary of the immediately preceding Calculation Date.

(c) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide written notification to the TIFIA Lender of any notification the Borrower receives from VDOT concerning "Additional Costs" (as defined in each Principal Project Contract) within ten (10) days of the Borrower's receipt of the same from VDOT. The Borrower shall additionally provide the TIFIA Lender written notification of the Borrower's and VDOT's proposed resolution of such Additional Costs pursuant to the terms of the respective Principal Project Contract at least thirty (30) days prior to instituting any increase or decrease to the aggregate Total Project Costs in an amount equal to or greater than 5% of Total Project Costs. Such resolution shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Plan. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, and could not reasonably be expected to result in a Material Adverse Effect.

(d) Financial Statements. The Borrower shall furnish to the TIFIA Lender:

(i) (A) as soon as available, but no later than sixty (60) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited income statement and balance sheet of the Borrower as of the end of such period and the related unaudited statements of operations and of cash flow of the Borrower for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative fairly stating in all material respects the financial condition of the Borrower as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

(B) as soon as available, but no later than one hundred twenty (120) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the TIFIA Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GASB (or in the case of non-U.S. Persons, substantially equivalent principles) applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(e) Officer's Certificate. The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Borrower pursuant to Section 21(d) (*Financial Statements*), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Default or Event of Default, and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the Borrower has taken or intends to take in respect thereof.

Section 22. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. The Borrower agrees to cooperate in good faith with the TIFIA Lender and the FHWA Division Office

in the conduct of such monitoring by promptly requesting that VDOT provide the TIFIA Lender and the FHWA Division Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and the FHWA Division Office, or its agents, including any Consulting Engineer reports, documentation or information.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender the documentation described below.

(i) Monthly Construction Progress Report. On or before the last Business Day of any calendar month during the Construction Period, a report executed by a Borrower's Authorized Representative that:

(A) includes a copy of the monthly report that VDOT provides to the Borrower pursuant to each Principal Project Contract;

(B) specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar month and the amount of Total Project Costs estimated to be required to complete the Project;

(C) provides a demonstration that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project;

(D) provides an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule;

(E) specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date specified in the Financial Plan most recently submitted to the TIFIA Lender;

(F) provides a detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any) encountered or anticipated in connection with the construction of the Project since the date of the last report, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems;

(G) specifies the delivery status of major equipment and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Construction Schedule;

(H) specifies any proposed or pending change orders;

(I) specifies any material changes or deviations from the Borrower's land procurement plans or schedule;

(J) to the extent received by the Borrower from VDOT, a copy of each report delivered by any Construction Contractor to VDOT that has not previously been delivered to the TIFIA Lender in a prior report delivered pursuant to this Section 22(b)(i); and

(K) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause VDOT to assist with causing the applicable Construction Contractor to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and any Construction Contractor's performance of its obligations under the Project Construction Contract to which such Construction Contractor is a party.

(ii) Quarterly Traffic and Operating Report. For the period commencing after the earlier to occur of the Substantial Completion Date and the Transition Date, deliver to the TIFIA Lender, not later than ninety (90) days after the end of each financial quarter, a traffic and operating report showing (A) the operating data for the Project for the previous financial quarter, including total Toll Revenues received and total Tolling O&M Costs and Major Maintenance and Renewal Fund Permitted Expenditures incurred, (B) the variances for such period between the Toll Revenues actually received and the budgeted Toll Revenues as shown in the Financial Plan most recently submitted to the TIFIA Lender, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more, and (C) the variances for such period between the actual Tolling O&M Costs and Major Maintenance and Renewal Fund Permitted Expenditures incurred and the budgeted Tolling O&M Costs and Major Maintenance and Renewal Fund Permitted Expenditures as shown in the Financial Plan, together with a brief narrative explanation of the reasons for any such variance of ten percent (10%) or more.

(iii) Requested Information. The Borrower shall, at any time while the TIFIA Loan remains outstanding, promptly deliver, and shall use commercially reasonable efforts to cause VDOT to promptly deliver, to the TIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project or the Toll Revenues as the TIFIA Lender may from time to time reasonably request, including copies of agreements related to the acquisition or control of any Project right-of-way.

(c) Project Operations. For the period following the Substantial Completion Date, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project and, as the TIFIA Lender may request from time to time, to receive reporting on the operation and management of the Project, and copies of any contracts relating to the operation, maintenance and safety services for the Project. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing, or causing to be provided, to the TIFIA Lender such reports, documentation, or other information requested by the TIFIA Lender. The TIFIA Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the TIFIA Lender, to carry out the provisions of this Section 22(c), and the full cost of such monitoring shall be borne by the Borrower. Any costs

incurred by the TIFIA Lender for such monitoring, including the fees and expenses of any financial oversight advisor, shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

(d) **Consulting Engineer.** The Borrower shall retain a Consulting Engineer throughout the term of this Agreement. The Consulting Engineer shall advise the TIFIA Lender (with a duty of care to the TIFIA Lender) with regard to all technical matters related to the performance by the Borrower of its obligations under this Agreement and the applicable Related Documents (other than the HRTF Indenture Documents). The Borrower may replace the Consulting Engineer, subject to the TIFIA Lender's right to object to any replacement Consulting Engineer in accordance with this Section 22(d). The Borrower shall provide the TIFIA Lender with thirty (30) Business Days advance written notice of any proposed replacement of the Consulting Engineer, together with supporting information concerning the qualifications of the proposed replacement Consulting Engineer. The proposed replacement Consulting Engineer shall become the Consulting Engineer thirty (30) Business Days following the date of the notice provided by the Borrower under this Section 22(d), unless the TIFIA Lender objects in writing within fifteen (15) Business Days following receipt of the Borrower's notice. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed replacement Consulting Engineer. The Borrower shall pay for all services performed by the Consulting Engineer.

Section 23. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Federal Government, or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the TIFIA Lender, the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 17 (*Indemnification*), from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

Section 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 26. TIFIA Lender's Authorized Representative.

(a) The TIFIA Lender shall at all times have appointed the TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer,

if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016 (the “Delegation”), the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender’s Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 27. Servicer. The TIFIA Lender may from time to time designate an entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Bond. The TIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 28. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (“FFY”) 2022 and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the fifteenth (15th) of November. The TIFIA Lender shall establish the amount of this annual fee, and the TIFIA Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the fee, the TIFIA Lender will adjust the previous year’s base amount in proportion to the percentage change in CPI. For the FFY 2022 calculation, the TIFIA Lender will use the FFY 2021 base amount of \$13,873.84, which applies to other TIFIA borrowers, as the previous year’s base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year’s base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year’s base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the TIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, or the Trust Estate, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder;

(iii) any ongoing oversight and monitoring of the TIFIA Loan, the Borrower or the Project by the TIFIA Lender as provided for herein; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement, the other TIFIA Loan Documents, the Indenture Documents or the HRTF Indenture Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 28 shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 30. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 31. Severability and Conflicts. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. In the event of a conflict between the Indenture and this Agreement, the provisions of this Agreement shall be given precedence; provided further that in the event there exists a conflict between the provisions of this

Agreement and the Indenture and performance with the provisions of this Agreement is contrary to or inconsistent with the rights of the Bondholders under the Indenture, then the provisions of the Indenture shall be given precedence and performance with the provisions thereof shall not constitute a violation of this Agreement.

Section 32. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights nor obligations hereunder nor any interest therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the TIFIA Lender.

Section 33. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 34. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

Section 35. Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 36 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 36. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to TIFIA Lender:

Build America Bureau
United States Department of
Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of
Credit Programs
Email: BureauOversight@dot.gov

with copies to:

Federal Highway Administration
Virginia Division Office
400 North 8th St., Suite 750
Richmond, Virginia 23219-4825
Attn: Division Administrator
Telephone: 804-775-3320
Facsimile: 804-775-3356

If to Borrower:

Hampton Roads Transportation
Accountability Commission
The Regional Building
723 Woodlake Drive
Chesapeake, Virginia 23320
Attention: Executive Director
Email: kpage@hrtac.org

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(d) (*Manner of Payment*) and the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time to time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 37. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 38. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding TIFIA Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 17 (*Indemnification*), the reporting and record keeping requirements of Section 20(b) (*Inspections*) and Section 20(c) (*Reports and Records*), and the payment requirements of Section 28 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 39. Integration. This Agreement, along with the TIFIA Bond, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name: _____
Title: _____

UNITED STATES DEPARTMENT OF
TRANSPORTATION, acting by and
through the Executive Director of the Build
America Bureau

By: _____
Name: Dr. Morteza Farajian
Title: Executive Director

[Signature Page to HRTAC HRBT Toll TIFIA Loan Agreement]

SCHEDULE I
PROJECT BUDGET

[Borrower to provide]

SCHEDULE II
CONSTRUCTION SCHEDULE

[Borrower to provide]

SCHEDULE III

[RESERVED]

EXHIBIT A

FORM OF TIFIA BOND¹⁰

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

[] PROJECT

(TIFIA – [])

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

TOLL REVENUE BONDS

SENIOR LIEN REVENUE BOND

TIFIA SERIES 2021

TIFIA BOND

**Maximum Principal Amount: \$[345,000,000]
(excluding capitalized interest)**

Effective Date: _____ **Due:** _____

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, a body politic and political subdivision created under the laws of the Commonwealth of Virginia (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Exhibit G** to the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Loan Agreement from time to time in accordance with the terms of the TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in

¹⁰ **Note to Draft:** This Exhibit A and the form of TIFIA Bond attached to the First Supplemental Indenture will each be updated to an agreed identical form.

such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(f) (*Manner of Payment*) and Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Final Maturity Date is amended in connection with an update to the Financial Plan approved by the TIFIA Lender pursuant to Section 21(a)(iii)(B) (*Financial Plan*) of the TIFIA Loan Agreement, the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the "**TIFIA Loan Agreement**") and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower's obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This TIFIA Bond is being issued by the Borrower pursuant to Chapter 26, Title 33.2, Code of Virginia of 1950, as amended, a resolution adopted by HRTAC on [____], 2021 and under and pursuant to a Master Indenture dated as of [____]1, 2021 (the *Master Indenture*), between the Borrower and U.S. Bank National Association, or its successor, as trustee (the *Trustee*), as supplemented and amended by the First Supplemental Indenture dated as of [____] 1, 2021 (the *First Supplement* and, together with the Master Indenture, the *Indenture*), between the Borrower and the Trustee, a certified copy of which Indenture is on file at the office of the Borrower.

This TIFIA Bond is issued as and constitutes a Senior Lien Obligation within the meaning of such term in the Indenture.

This TIFIA Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision thereof (including any Member Locality) other than the Borrower. This TIFIA Bond shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code.

The Indenture provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional series of Obligations for the purpose of financing projects, and of refunding outstanding obligations of the Borrower. Such additional series of Obligations may be issued as Senior Lien Obligations, Second Lien Obligations, or Subordinate Obligations (as defined in the Indenture). This TIFIA Bond, together with all other Obligations hereafter issued under the provisions of the Indenture, are herein collectively referred

to as the [“HRTAC Toll Revenue Bonds”]. Reference is hereby made to the Indenture for the provisions, among others, with respect to the terms and conditions on which the [HRTAC Toll Revenue Bonds] of each series are or may be issued, the custody and application of the proceeds of [HRTAC Toll Revenue Bonds] issued under the Indenture, the collection and disposition of revenues, the funds charged with and pledged to the payment of the interest on and the principal and premium, if any, of the [HRTAC Toll Revenue Bonds], the nature and extent of the security, the rights, duties and obligations of the Borrower, the Trustee and any paying agent for the [HRTAC Toll Revenue Bonds] and the rights of the owners of the [HRTAC Toll Revenue Bonds]. Certain of such funds, accounts and subaccounts secure only the Senior Lien Obligations, certain of such funds, accounts and subaccounts secure only the Second Lien Obligations, and certain of such funds, accounts and subaccounts secure only the Subordinate Obligations, all as more fully described in the Indenture.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The owner of this TIFIA Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute any suit or other proceeding with respect to the Indenture, except as provided in the Indenture.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until the Trustee has executed the Certificate of Authentication appearing on this TIFIA Bond and inserted the date of authentication.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION has caused this TIFIA Bond to be signed by the manual or facsimile signature of its Chair and this Bond to be dated the Effective Date set forth above.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Name: Linda B. Johnson
Title: Chair

ATTEST:

By: _____
Kevin B. Page
Executive Director

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Indenture.

Authentication Date: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____
Name:
Title:

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

<u>Borrower Fiscal Year</u>	<u>Amount</u>
[Date]	\$
[Date]	\$

EXHIBIT C

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS—
PRIMARY COVERED TRANSACTIONS**

The undersigned, on behalf of HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, hereby certifies that HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION has fully complied with its verification obligations under 2 CFR § 180.320 and hereby further confirms in accordance with 2 CFR § 180.335, that, to its knowledge, the Borrower and its principals (as defined in 2 CFR § 180.995):

(a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);

(b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR § 180.800(a); and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain TIFIA Loan Agreement, dated as of [____], 2021, between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name:
Title:

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Section 2 through Section 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 36 (Notices; Payment Instructions) of the TIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as **Appendix One to this Exhibit D**. Supporting documentation should be submitted with the requisition.

All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if such day is not a Business Day, the next succeeding Business Day.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the TIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of or report prepared by an independent engineer relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender).

The TIFIA Lender shall promptly send to the Borrower, in accordance with Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as **Appendix Two** to this **Exhibit D**. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be

resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the TIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the TIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the TIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The TIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fails to ensure that VDOT has complied with its obligations to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the highest standards of VDOT's industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by VDOT with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or

(iv) fails to satisfy any condition set forth in Section 4 (*Disbursement Conditions*) or Section 12(b) (*Conditions Precedent to All Disbursements*) of the TIFIA Loan Agreement; or

(v) fails to deliver documentation satisfactory to the TIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Federal Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the TIFIA Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower (even if such disbursement has been approved by the TIFIA Lender), in each case if the TIFIA Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

Build America Bureau

United States Department of Transportation
c/o Director, Office of Credit Programs

Room W12-464
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

Federal Highway Administration
Virginia Division Office
400 North 8th St., Suite 750
Richmond, Virginia 23219-4825
Attn: Division Administrator

Re: HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION
PROJECT (TIFIA - [____])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2021 (the “**TIFIA Loan Agreement**”), by and between HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), we hereby request disbursement in the amount of \$[_____] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [_____].
2. The requested date of disbursement is [_____] 15, 20[___] (the “**Disbursement Date**”)[, which is the first Business Day following [_____] 15, 20[_____]].
3. The amounts previously disbursed under the TIFIA Loan Agreement equal, in the aggregate, \$[_____]. [The 2021 HRTF BANs were issued on [insert date] and \$[_____], representing the full amount off proceeds of such offering, less \$[___], which was used to [fund reserves and] pay costs of issuance associated therewith) have been expended on Total Project Costs. The Borrower has (1) expended all amounts reflected as non-contingency Borrower pay-go amounts in the Project Budget and in the most recent Revised Financial Model (less the amount of any realized cost savings otherwise payable from such pay-go funds) on Total Project Costs and (2) expended from pay-go funds of the

Borrower, to the extent so required as of the date of such disbursement, any amounts in respect of Total Project Costs that are payable from contingency amounts to be funded with Commission-Controlled Funds in accordance with the PAFA.]¹¹

4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan.
6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
7. As demonstrated in the Revised Financial Model most recently delivered to the TIFIA Lender and in the Project Budget, the funds that have been fully and completely committed and allocated to the Borrower by the providers thereof to pay Total Project Costs are sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule and by no later than the Projected Substantial Completion Date.
8. The Borrower has ensured that VDOT has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
9. Each of the insurance policies obtained by VDOT in satisfaction of the condition in Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
10. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the TIFIA Lender and the FHWA Division Office and in accordance with the highest standards of VDOT's industry.
11. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
12. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event

¹¹ Bracketed text applicable solely to be included in Requisition for initial disbursement of the TIFIA Loan.

of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.

13. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [*insert date of Application*] and is continuing.
14. A copy of the most recent certificate or report of the Consulting Engineer delivered pursuant to Section [5.28(d)] of the Indenture has been delivered to the TIFIA Lender.
15. A copy of the monthly construction progress report pursuant to Section 22(b)(i) (*Monthly Construction Progress Report*) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.
16. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Federal Government deems appropriate.
17. A copy of this requisition has been delivered to each of the above named addressees.
18. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Trustee.]

Date: _____

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name:
Title: _____

APPENDIX TWO TO EXHIBIT D

**DISAPPROVAL OF THE TIFIA LENDER
(TO BE DELIVERED TO THE BORROWER)**

Requisition Number [●] is [approved in part in the amount of \$[●]] [not approved]¹² by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2021, by and between Hampton Roads Transportation Accountability Commission (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the TIFIA Lender’s sole discretion, and in no event shall the TIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and
through the Executive Director of the Build
America Bureau

By: _____
TIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

¹²Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

[INSERT REASONS FOR ANY PARTIAL OR FULL DENIAL OF APPROVAL.]

EXHIBIT E

COMPLIANCE WITH LAWS

The Borrower shall, and shall require VDOT, which shall in turn require that the Construction Contractors and their contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 CFR Part 35; 29 CFR Part 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 CFR Part 21);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 CFR Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), including the environmental mitigation requirements and commitments made by [VDOT] that result in the FHWA's approval of the NEPA Determination;
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (ix) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (x) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xi) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 CFR Part 1926 and 23 CFR § 635.108, as applicable);
- (xii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 CFR Part 5), and, as applicable, 23 U.S.C. § 113 and implementing regulations (23 CFR §§ 635.117(f) and 635.118), and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
- (xiii) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 CFR § 635.410);
- (xiv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 CFR;
- (xv) The Cargo Preference Act of 1954, as amended (46 U.S.C. § 55305), and implementing regulations (46 CFR Part 381);

(xvi) The applicable requirements of 49 CFR Part 26 relating to the Disadvantaged Business Enterprise program; and

(xvii) The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) and implementing regulations (2 CFR § 200.216).

EXHIBIT F
RESERVED

EXHIBIT G
TIFIA DEBT SERVICE

EXHIBIT H-1

OPINIONS REQUIRED OF COUNSEL TO BORROWER

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that: (a) the Borrower is duly created and validly existing under the laws of the jurisdiction of formation; (b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action; (d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower; (f) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject; (g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and (h) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.

EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that: (a) each of the TIFIA Bond, the Indenture, the TIFIA Supplemental Indenture, and the HRTF Fifth Supplemental Indenture has been duly authorized, executed, and delivered by the Borrower in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (b) each of the TIFIA Bond, the Indenture, the TIFIA Supplemental Indenture, the HRTF Indenture and the HRTF Fifth Supplemental Indenture is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions; (c) the TIFIA Bond is a Senior Lien Obligation, secured by a first priority Lien on the Trust Estate, shall be *pari passu* to the Lien on the Trust Estate pledged to secure any other Senior Lien Obligations and shall be senior to the Lien on the Trust Estate pledged to secure Second Lien Obligations and Subordinate Obligations, and is a Bond entitled to the benefits of a Bond under the Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person; (d) the Indenture and the TIFIA Supplemental Indenture create the valid and binding assignment and pledge of the Trust Estate to secure the payment of the principal of, interest on, and other amounts payable in respect of, the TIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act; (e) all actions by the Borrower that are required for the use of Toll Revenues as required under the Indenture, the TIFIA Supplemental Indenture and under the TIFIA Loan Agreement have been duly and lawfully made; (f) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Revenues as required by the terms of the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Loan Agreement; (g) the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; and (h) the Borrower is not entitled to claim governmental immunity in any breach of contract action under the TIFIA Loan Agreement or the TIFIA Bond or by the Trustee under the Indenture Documents or the HRTF Indenture Documents.

EXHIBIT I
[RESERVED]

EXHIBIT J

FORM OF CERTIFICATE OF TRUSTEE

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

TIFIA BOND,
[] PROJECT
(TIFIA – [])

The undersigned, U.S. Bank National Association (the “*Trustee*”), by its duly appointed, qualified and acting [Vice President], certifies with respect to the above referenced bond (the “*TIFIA Bond*”) dated as of [], 2021, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Indenture (as defined below)):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of the United States of America.
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained and are in full force and effect.
3. The Indenture and the TIFIA Supplemental Indenture (each as defined herein) pertaining to the issuance of the TIFIA Bond to which the Trustee is a party was executed and the TIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the TIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the TIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture (“*Trusts*”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today,

and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section [] and Section [] of that certain Indenture (the “**Indenture**”), dated as of [] 1, 2021, and the Supplemental Indenture pertaining to the TIFIA Bond (the “**TIFIA Supplemental Indenture**”), dated as of [] 1, 2021, each between the Hampton Roads Transportation Accountability Commission (the “**Borrower**”) and the Trustee.
7. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of [], 2021 (the “**TIFIA Loan Agreement**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Bondholder**”).
8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee and of Bond Registrar and Paying Agent for and in respect of the TIFIA Bond as set forth in the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Loan Agreement, including from time to time redeeming all or a portion of the TIFIA Bond as provided in Article [IV] of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Article [XIV] of the Indenture.
9. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture (including, but not limited to, the Project Fund, and within such Fund the Senior Lien Obligations Account; the Senior Lien Obligations Fund, and within such Fund the Senior Lien Obligations Interest Account, the Senior Lien Obligations Principal Account and the TIFIA Loan Prepayment Account; the Senior Lien Obligations Reserve Fund, and within that Fund the TIFIA Loan Reserve Account; and the Revenue Stabilization Fund) have been established as provided in the Indenture and the TIFIA Supplemental Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: [_____], 2021

U.S. BANK NATIONAL ASSOCIATION

By: _____

Its:

ANNEX ONE TO EXHIBIT J
OFFICERS OF TRUSTEE

ANNEX TWO TO EXHIBIT J
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT K

FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 2021 (the "TIFIA Loan Agreement"), by and among the Hampton Roads Transportation Accountability Commission (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

Pursuant to Section 12(a)(v) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the undersigned, Executive Director, as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 12(a)(v) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit A** is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 26 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (b) pursuant to Section 12(a)(ii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit B** are certified, complete, and fully executed copies of each Indenture Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived;
- (c) pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit C** is a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached to the TIFIA Loan Agreement as Exhibit C with respect to the Borrower and its principals (as defined in 2 CFR § 180.995);
- (d) pursuant to Section 12(a)(vi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that it is in compliance with the verification

requirements set forth in 2 CFR §§ 180.300 and 180.320 and with its obligations under 2 CFR § 180.330;

- (e) pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that:
 - a. With respect to the Project, the Borrower has complied with NEPA and attached hereto as **Exhibit D** is as is a copy of the NEPA Determination; and
 - b. The Borrower has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
- (f) pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit E** is a certificate from VDOT evidencing VDOT's compliance with its obligations under each Principal Project Contract, including the following:
 - a. VDOT has complied with (A) the disclosure requirements set forth in 2 CFR § 180.355, (B) the verification requirements set forth in 2 CFR §§ 180.300 and 180.320, and (C) its obligations under 2 CFR § 180.330 with respect to the Construction Contracts;
 - b. All Governmental Approvals necessary to commence construction of the Project have been obtained and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);
 - c. With respect to the Project, VDOT has complied with NEPA;
 - d. VDOT has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
 - e. VDOT and each applicable Principal Project Party, as and if applicable, have obtained insurance with respect to the Project, which meets the requirements of Section 15(e) (*Compliance with Principal Project Contracts*); and
 - f. Each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the Effective Date is (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect;
- (g) pursuant to Section 12(a)(viii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit F** is evidence that the Project has been included in (A) the metropolitan transportation improvement program adopted by the Hampton Roads Transportation Planning Organization, (B) the State transportation plan, and (C) the State

transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project;

- (h) pursuant to Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit G** is evidence of the assignment by at least two (2) Rating Agencies of a public Investment Grade Rating to the TIFIA Loan, and no such rating has been reduced, withdrawn or suspended as of the Effective Date;
- (i) pursuant to Section 12(a)(x) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has demonstrated that as of the Effective Date the funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof, or, in the case of HRTF Revenues, are reasonably anticipated to be available, and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule and in any event on or prior to the Projected Substantial Completion Date;
- (j) pursuant to Section 12(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit H** are certified, complete, and fully executed copies of each Principal Project Contract listed below, together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender:
 - (1) PAFA;
 - (2) Comprehensive Agreement;
 - (3) MTA;
 - (4) [*Describe any Tolling Systems Contracts in place as of the Effective Date*]
 - (5) [*Describe any Electronic Toll Collection Agreements in place as of the Effective Date*]
 - (6) [*Describe any Standard Project Agreements in place as of the Effective Date*]
- (k) pursuant to Section 12(a)(xii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has delivered a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model (A) demonstrates that projected Toll Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrates a Senior Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.55:1.00, (C) demonstrates an All-In Cost Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 1.10:1.00; (D) does not reflect the commencement of amortization of the principal amount of any Senior

Lien Obligations (other than the TIFIA Loan) before the Debt Service Payment Commencement Date;

- (l) pursuant to Section 12(a)(xv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit I** is evidence that the Borrower (A) is authorized, pursuant Section 33.2-1920, as amended, Code of Virginia of 1950, to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) has recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents and required by applicable law, and (C) has paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing;
- (m) pursuant to Section 12(a)(xviii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 47-1742163, (ii) the Borrower's Data Universal Numbering System number is 081015577, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as **Exhibit J** is evidence of (iii);
- (n) pursuant to Section 12(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit K** is evidence that the Borrower is duly created and validly existing under the laws of the Commonwealth and a certified copy of the Borrower's Organizational Documents;
- (o) pursuant to Section 12(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit L** is a certified copy of the resolutions authorizing the execution of the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Bond and the issuance of the TIFIA Bond;
- (p) pursuant to Section 12(a)(xxi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;
- (q) pursuant to Section 12(a)(xxii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that, as of the Effective Date, (i) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of

reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs; and

- (r) pursuant to Section 12(a)(xxiv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit M** is a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form as Exhibit N to the TIFIA Loan Agreement in accordance with 49 CFR §20.100(b).

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____

Name:

Title: Authorized Representative

EXHIBIT B TO EXHIBIT K

INCUMBENCY CERTIFICATE

The undersigned certifies that she is the Chair of the Hampton Roads Transportation Accountability Commission, a body politic and a political subdivision created under the laws of the Commonwealth of Virginia (the "Borrower"), and as such she is authorized to execute this certificate and further certifies that the following person has been elected or appointed, is qualified, and is now acting as an officer or authorized person of the Borrower in the capacity indicated below, and that the signature set forth opposite his name is a true and genuine signature. She further certifies that any of the officer or authorized person listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the TIFIA Loan Documents and/or the Indenture Documents as the Borrower's Authorized Representative (each as defined in that certain TIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

Name	Title	Signature
Kevin B. Page	Executive Director	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of _____, 2021.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name: Linda T. Johnson
Title: Chair

EXHIBIT L

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

Build America Bureau

United States Department of Transportation

Room W12-464

1200 New Jersey Avenue, SE

Washington, D.C. 20590

Attention: Director, Office of Credit Programs

Project: Hampton Roads Transportation Accountability Commission Project (TIFIA – [____])

Dear Director:

This Notice is provided pursuant to Section 15(f)(i)(A) (*Substantial Completion*) of that certain TIFIA Loan Agreement (the “TIFIA Loan Agreement”), dated as of [____] __, 2021, by and between the Hampton Roads Transportation Accountability Commission (the “**Borrower**”) and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the TIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the TIFIA Lender that:

- (a) on [*insert date Substantial Completion requirements were satisfied*], the Project satisfied each of the requirements for Substantial Completion set forth in the Comprehensive Agreement and the PAFA;
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and

(c) Substantial Completion, as defined in the TIFIA Loan Agreement, has been achieved.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

Name:

Title:

EXHIBIT M
TIFIA LOAN REAMORTIZATION METHODOLOGY

EXHIBIT N

CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF APPROPRIATED FUNDS FOR LOBBYING

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 2021 (the “TIFIA Loan Agreement”), by and among the Hampton Roads Transportation Accountability Commission, (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement. The undersigned, on behalf of the Hampton Roads Transportation Accountability Commission, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of the TIFIA Loan.

(b) If any funds other than proceeds of the TIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the TIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the TIFIA Lender entered into the TIFIA Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the TIFIA Loan Agreement imposed by Section 1352 of title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: _____

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Name:
Title:

EXHIBIT O

SECTION 5.03(b) OF THE INDENTURE

[To be inserted]

**EXHIBIT P
FORM OF SEMI-ANNUAL COVERAGE CERTIFICATE**

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 2021 (the “TIFIA Loan Agreement”), by and among THE Hampton Roads Transportation Accountability Commission (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

The undersigned, [____], as Borrower’s Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

1. The undersigned has reviewed the terms of the TIFIA Loan Agreement, including Section 21(b) (*Semi-Annual Coverage Certificates*) thereof and the related defined terms.

2. The undersigned hereby certifies that annual projected Toll Revenues shall be sufficient to meet the Loan Amortization Schedule and to meet the Borrower’s debt service obligations with respect to any other Obligations that are currently outstanding, including all debt service obligations pursuant to the Indenture, in each case as of each applicable payment date through the fifth (5th) anniversary of the most recent Semi-Annual Payment Date.

3. The undersigned hereby certifies that Annex One hereto sets forth:

(a) the historical Senior Debt Service Coverage Ratios and All-in Cost Coverage Ratios for the two (2) consecutive Calculation Periods ended as of the immediately preceding Calculation Date and as of the immediately preceding Calculation Date,

(b) the projected Senior Debt Service Coverage Ratios and All-in Cost Coverage Ratios as of each Calculation Date through the fifth (5th) anniversary of the most recent Calculation Date; and

(c) the Loan Life Coverage Ratio for each Calculation Date from the current Calculation Date through the Final Maturity Date.

The foregoing certifications, together with the computations set forth in the Annex A hereto, are made and delivered [mm/dd/yy]¹³ pursuant to Section 21(b) (*Semi-Annual Coverage Certificates*) of the TIFIA Loan Agreement.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Name:

¹³ Each Semi-Annual Coverage Certificate must be delivered within fifteen (15) days after the most recent Calculation Date.

Title:

ANNEX ONE
TO SEMI-ANNUAL COVERAGE CERTIFICATE

EXHIBIT Q

2 CFR Part 170

I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this TIFIA Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month of the Effective Date, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this TIFIA Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this **Exhibit Q**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

- iii. A domestic or foreign nonprofit organization; and,
- iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR § 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this TIFIA Loan; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)).

Agenda Item 5D
Action Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: Master Tolling Agreement Amendment

Recommendation:

The Finance Committee is asked by Staff to endorse the Master Tolling Agreement Amendment and authorize the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.

Background:

On August 18, 2020, the Commission, VDOT, and the Commonwealth Transportation Board entered into a Master Agreement for Development and Tolling of the Hampton Roads Express Lanes Network (the "HRELN"), a.k.a. the Master Tolling Agreement ("MTA"). The MTA is the blueprint for the relationship between the parties as to how the Hampton Roads Express Lanes Network is to be funded, constructed, and operated. In the MTA, VDOT has committed to provide advanced funding of certain aspects of the project's development, construction, and operation of the toll collection equipment and toll collection service integration. In the evaluation of the MTA as it relates to the currently anticipated funding plan for the development and construction of the HRELN and VDOT's advancement of funds from the Tolling Facilities Revolving Account ("TFRA"), it was determined that the MTA needed to be clarified as to the funding plan and how VDOT's advancement of TFRA funds would be documented for HRTAC's future repayment. The amendment further clarifies how VDOT is expected to administer the project agreements through which it procures goods and services relating to the development and construction of the HRELN. The Commission Staff and Counsel have developed with VDOT an amendment to the MTA that addresses the foregoing for the Finance Committee's review and recommendation to the Commission at its June 17, 2021 Annual Organizational meeting.

Fiscal Impact:

There is no fiscal impact in relation to this Action Item.

Suggested Motion:

Motion: The Finance Committee endorses Master Tolling Agreement Amendment and authorizes the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.



**AMENDMENT NO. 1 TO MASTER AGREEMENT FOR DEVELOPMENT AND
TOLLING OF
HAMPTON ROADS EXPRESS LANES NETWORK**

This AMENDMENT NO. 1 TO MASTER AGREEMENT FOR DEVELOPMENT AND TOLLING OF HAMPTON ROADS EXPRESS LANES NETWORK (this “Amendment”) is made and entered into as of _____, 2021 (the “Effective Date”), by and among the HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (the “Commission”), a body politic and a political subdivision of the Commonwealth of Virginia; the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia; and the COMMONWEALTH TRANSPORTATION BOARD, a board of the Commonwealth of Virginia (the “Board”) (each a “Party” and, together, the “Parties”).

RECITALS

WHEREAS, the Parties entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network dated August 18, 2020 (the “Master Agreement”);

WHEREAS, words and phrases not otherwise defined in this Amendment shall have the same meanings that such words and phrases have in the Master Agreement;

WHEREAS, under the Master Agreement, the Parties agreed to coordinate their efforts and actions with respect to, and to establish protocols and procedures to govern, among other things, (i) the procurement, financing, and delivery of the additional facilities to support the Initial Interstate 64 Express Lanes Network, including the design, construction, installation, testing and implementation of the Tolling Infrastructure and System for the Initial Interstate 64 Express Lanes Network, (ii) the tolling policies applicable to the Initial Interstate 64 Express Lanes Network, (iii) the imposition, collection, and enforcement of tolls on the Initial Interstate 64 Express Lanes Network, (iv) the operation and maintenance of the Tolling Infrastructure and System, the HOT lanes and the applicable Interstate 64 facilities, and (v) the uses of Toll Revenues and the proceeds of Toll-Backed Debt;

WHEREAS, the Master Agreement included as Exhibit 6 a conceptual-level summary of the scope of work and cost estimates needed to design, construct, and implement the Initial Interstate 64 Express Lanes Network and also included as Exhibit 8 a Conceptual Funding Plan for such work;

WHEREAS, under the Master Agreement, the Parties acknowledged that Exhibits 6 and 8 were working drafts based upon limited, preliminary information and would have to be evolved into a Definitive Project Budget and a Definitive Funding Plan as additional information was developed and evaluated, including the T&R Study and the Tolling O&M Cost Study;

WHEREAS, in light of additional information that has become available or been developed, the Parties now desire to clarify, refine and amend certain terms of the Master Agreement on the terms set forth below.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Attached hereto as Annex I is a chart depicting the currently anticipated segments of the Initial Interstate 64 Express Lanes Network together with a summary describing the currently anticipated construction phases.

2. Attached hereto as Annex II is a summary of the Applicable Revolving Account Costs that have been advanced by the Department as of the date hereof (the “Existing Applicable Revolving Account Costs”), which include, among other things, the amounts that the Department advanced out of the Toll Facilities Revolving Account with respect to the construction of Segment 1.

3. Attached hereto as Annex III is a matrix outlining the currently anticipated construction (CAPEX) and implementation costs with respect to each of Segments 2 (including 2a and 2b), 3, 4 (including 4a, 4b and 4c), and Segment 1 Median Shoulders and Direct Access to Segment 3, along with (a) the respective funding source anticipated for such work (including the amount that will be transferred by the Department to the Commission in accordance with the 2021 Appropriation Act (Item 447) to complete the funding plan for the Initial Interstate 64 Express Lanes Network),¹ and (b) the respective contractual arrangement upon which the Department and the Commission shall rely for, as the case may be, (i) payments from the Commission to the Department or (ii) advances by the Department out of the Toll Facilities Revolving Account that, when confirmed in the manner described below, shall be Applicable Revolving Account Costs that are reimbursed out of the Revenues Waterfall in accordance with Section 6.02 of the Master Agreement.

4. Simultaneous with the execution and delivery of this Amendment, the Parties shall execute and deliver:

(a) a Standard Project Agreement (UPC 118376) with respect to the Segment 3 (Capital Improvements - Tolling Infrastructure) project; and

(b) a Standard Project Agreement (UPC T24778) with respect to the HREL Toll Integration (Toll Systems Integrator) project relating to Segments 3, 4a, 4b, 4c and 1 (“TSI SPA”), pursuant to which the Commission shall become obligated to fund certain expenses that the Department will incur under the contract that it intends to award pursuant to its October 6, 2020 request for proposal (#156173) (or, if such request for proposal does not result in a contract for all of the work contemplated by the TSI SPA, under any contract(s) resulting from any subsequent procurement(s) by the Department for such work) (the “2021 Toll System Integrator Contract”).

5. The Parties acknowledge that the TSI SPA will establish a protocol for:

¹ **Note to Draft:** Annex III to address how the Appropriation Act funding (up to \$93.1 million) will be transferred and applied.

(a) the Department to deliver Advance Certifications (as defined in the TSI SPA) to the Commission, when the Department makes an advance in respect of the applicable project out of the Toll Facilities Revolving Account; and

(b) the Commission to review and confirm such Advance Certifications.

The Parties agree that amounts confirmed pursuant to this protocol will constitute Applicable Revolving Account Costs to be reimbursed out of the Revenues Waterfall in accordance with Section 6.02 of the Master Agreement (such protocol, the “TFRA Advance Certification Protocol”).

6. For purposes of addressing advances out of the Toll Facilities Revolving Account, the Parties agree that the TFRA Advance Certification Protocol and the other modifications made to the model HREL SPA reflected in the TSI SPA will serve as a guide for future HREL SPAs that contemplate advances out of the Toll Facilities Revolving Account.

7. The Parties agree to jointly create, and maintain and update on a quarterly basis, a master ledger with respect to advances constituting Applicable Revolving Account Costs, which would (a) have a starting balance equal to the sum of the Existing Applicable Revolving Account Costs; (b) be increased by amounts that are advanced pursuant to an HREL SPA and, pursuant to the TFRA Advance Certification Protocol therein, confirmed as Applicable Revolving Account Costs; (c) be further increased by advances made by the Department pursuant to Section 4.03 of the Master Agreement, which advances shall be reported by the Department in accordance with Section **Error! Reference source not found.** below; and (d) be decreased by all amounts reimbursed by the Commission from the Revenues Waterfall in accordance with Section 6.02 of the Master Agreement or otherwise. (For clarity, the Parties further acknowledge and agree that the work covered by the TSI SPA was identified in the last row of the “Conceptual Scope” estimates set forth on Exhibit 6 to the Master Agreement (reflecting a conceptual estimate of \$39,156,350), and that footnote 2 of Exhibit 6 should have further identified the Parties’ expectation that the costs incurred with respect to such work would also constitute Applicable Revolving Account Costs.)

8. /The Parties acknowledge that under Exhibit 12 to the Master Agreement, the Tolling O&M Duties are to be performed in accordance with the standards set forth in Exhibit 12./² The Parties hereby agree that the performance of the standards set forth in the 2021 Toll System Integrator Contract shall be deemed sufficient to satisfy (for all purposes) the standards set forth in Exhibit 12.

9. /The Parties acknowledge that under the Master Agreement (a) the Department will perform the Tolling O&M Duties until the Transition Date, at which time the Tolling O&M Duties will be transitioned to the Commission (and, as further provided in Section 4.01(d) of the Master Agreement, the Commission and the Department may enter into a contract under which the Department agrees to perform or cause the performance of such Tolling O&M Duties); and (b) in connection with such transition, the Commission may require the Department to assign the 2021

² **Note to VDOT:** Bracketed language in Sections 8 and 9 may be deleted if you feel the contextual statements are not needed.

Toll System Integrator Contract to the Commission. The Parties further acknowledge that the 2021 Toll System Integrator Contract includes certain options that affect the Parties' joint efforts to develop the Initial Interstate 64 Express Lanes Network. In light of the foregoing (and without limiting the Department's obligations under the Master Agreement),] the Department hereby agrees that it will not amend, renew or terminate the 2021 Toll System Integrator Contract, or exercise any option thereunder, unless, in each case, the Department obtains the Commission's prior written consent to the applicable action.³

10. Section 3.01(d) of the Master Agreement addresses, among other things, the actions that the Department will take in connection with procuring goods and services for the HREL Project, and provides that each contract through which such goods and services are procured (each a "Project Agreement") will establish liquidated damages for late completion "in an appropriate amount per day". In light of the potential adverse effects that late completion may have on Toll Revenues and the Commission's ability to satisfy its obligations in respect of Toll-Backed Debt, the Department agrees that before entering into a Project Agreement, the Department will (a) provide to the Commission the Department's analysis (consistent with [_____])⁴ relating to the risks that the relevant goods or services may have on the timely completion and opening of the HOT lanes or the Commission's ability to timely and effectively impose and collect tolls on the use of the HOT lanes, the potential losses that may be incurred, and the appropriateness of the value of the liquidated damages that the Department intends to impose in relation to such risks, such potential losses, the nature of the relevant goods or services, and the magnitude of the Project Agreement, and (b) seek the Commission's consent (such consent not to be unreasonably withheld, conditioned or delayed) to the liquidated damages terms that the Department proposes to include in such Project Agreement.

11. [_____])⁵

12. Except as modified hereby, all other terms of the Agreement shall remain full force and effect.

13. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Amendment No. 1 to Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network as of the date first written above.

[SIGNATURE PAGES TO FOLLOW]

³ **Note to VDOT:** Subject to revision depending upon how the parties revise the TSI SPA to address the different phases; specifically, implementation versus operations.

⁴ **Note to VDOT:** Please insert an example that reflects an appropriate format and level of detail for this analysis.

⁵ **Note to VDOT:** VDOT to suggest how advances under Section 4.03 would be documented.

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION,
a body politic and a political subdivision of the Commonwealth of Virginia

Donnie R. Tuck
Hampton Roads Transportation Accountability Commission Chair

Date: _____

[Signature page to Amendment No. 1 to Master Agreement
for Development and Tolling of Hampton Roads Express Lanes Network]

COMMONWEALTH TRANSPORTATION BOARD

The Honorable Shannon Valentine
Secretary of Transportation

Date: _____

[Signature page to Amendment No. 1 to Master Agreement
for Development and Tolling of Hampton Roads Express Lanes Network]

VIRGINIA DEPARTMENT OF TRANSPORTATION

Stephen C. Brich, P.E.
Commissioner of Highways

Date: _____

[Signature page to Amendment No. 1 to Master Agreement
for Development and Tolling of Hampton Roads Express Lanes Network]

Annex I
Anticipated segments of the Initial Interstate 64 Express Lanes Network

Existing: Segment 1 (two HOT reversible lanes)

Phase I (Under Construction)

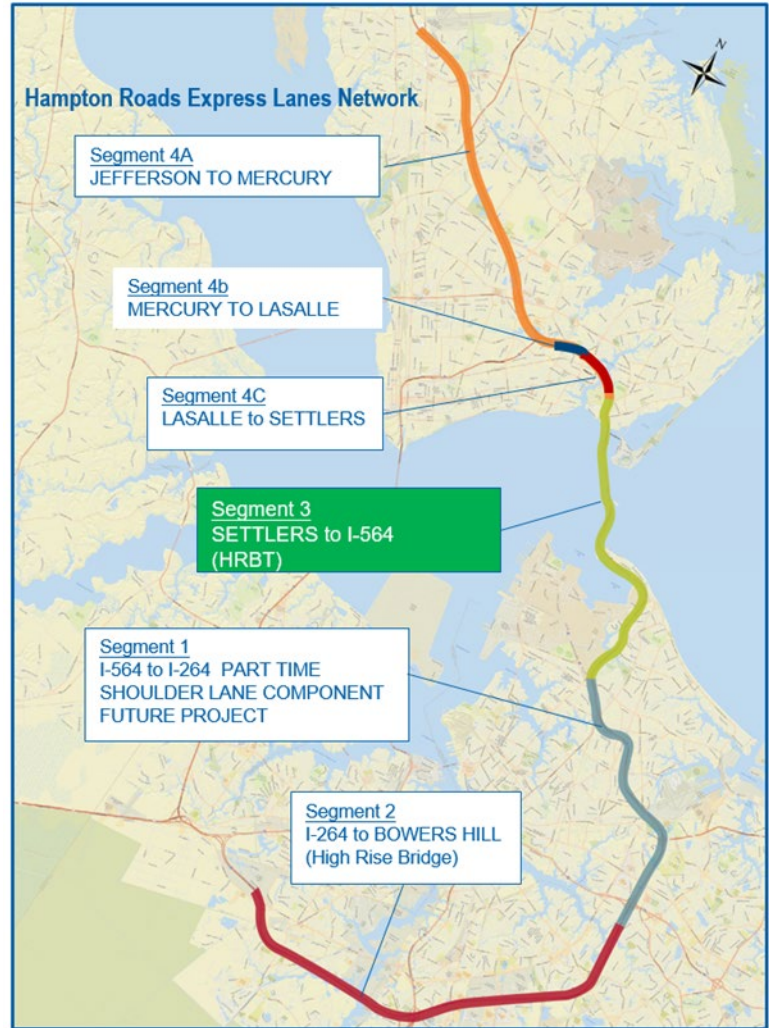
- Segment 2 - under construction & fully funded (one HOT lane in each direction, completion Fall 2022)
- **Segment 3 (HRBT Expansion Project) – additional capacity under construction completion October 2025)**

Phase II (Targeting 2025 Operational)

- Segment 1 – currently in preliminary design (completes modifications to 564 interchange to facilitate 2 lane HOT2 WB transition)
- Segment 4b - currently in preliminary design (one HOT2 lane in each direction Lasalle Ave to Mercury Blvd interchange)
- Segment 4c – currently in preliminary design (provides 2 lane HOT2 entrance EB transition)

Phase III (Targeting 2025 Operational)

- Segment 1 - (Part Time Shoulder Lanes) provides single bi-directional HOT2 part time shoulder lane to operate in concert with reversible lanes
- Segment 4a – currently in preliminary design (converts existing HOV lanes to one HOT2 lane in each direction)



Annex II

Summary of the Applicable Revolving Account Costs that have been advanced by the Department *[VDOT to populate]*

Annex III

Matrix outlining the currently anticipated construction (CAPEX) and implementation costs with respect to each of Segments 2 (including 2a and 2b), 3, 4 (including 4a, 4b and 4c), and Segment 1 Median Shoulders and Direct Access to Segment *[VDOT to populate]*

Agenda Item 5E
Action Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: HRELN Toll Integration (System Integrator) Standard Project Agreement

Recommendation:

The Finance Committee is asked by Staff to endorse the HRELN Toll Integration (System Integrator) Standard Project Agreement and authorize the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.

Background:

On August 18, 2020, the Commission, VDOT, and the Commonwealth Transportation Board entered into a Master Agreement for Development and Tolling of the Hampton Roads Express Lanes Network, a.k.a. the Master Tolling Agreement ("MTA"). The MTA is the blueprint for the relationship between the parties as to how the Hampton Roads Express Lanes Network is to be funded, constructed, and operated. The MTA identifies projects and establishes a pathway for project financing, development, construction, and operation through the use of Standard Project Agreements. Currently, VDOT contracts with a vendor to operate and maintain the tolling system relating to Segment 1. VDOT has conducted an RFP to engage a separate vendor to develop, implement, operate and maintain to tolling system that will be used for one or more of the new segments (and potentially Segment 1). In accordance with the MTA, the Commission Staff and Counsel have developed with VDOT the HRELN Toll Integration (System Integrator) Standard Project Agreement to support the proposed project with the new vendor and are presenting it to the Finance Committee for its review and recommendation to the Commission at its June 17, 2021 Annual Organizational meeting.

Fiscal Impact:

There is no initial fiscal impact in relation to this Action Item as the funds will be advanced by VDOT, but the amounts advanced, approximately \$28,010,440, will be repaid in accordance with the MTA using future HRELN toll revenues.

Suggested Motion:

Motion: The Finance Committee endorses the HRELN Toll Integration (System Integrator) Standard Project Agreement and authorizes the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual



Organizational meeting.



**Standard Project Agreement for Funding and Administration
between
Hampton Roads Transportation Accountability Commission
and
Virginia Department of Transportation
(Hampton Roads Express Lanes Network Project Elements)**

HRTAC Project Title: HREL Toll Integration (System Integrator)

HRTAC Project Number: UPC T24778

This Standard Project Agreement for Funding and Administration (the "Agreement") is made and executed in duplicate on this ____ day of _____, 2021, as between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT").

WITNESSETH

WHEREAS, Chapter 766 of the 2013 Acts of Assembly established the Hampton Roads Transportation Fund (the "HRTF"), and provides that moneys deposited in the HRTF are to be used solely for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, Chapter 678 of the 2014 Acts of Assembly (now codified in Section 33.2-2600 *et seq.* of the Code of Virginia, as amended) (the "HRTAC Act") created HRTAC as a political subdivision of the Commonwealth of Virginia, and moved the responsibility to determine the projects that will be funded by the HRTF from the Hampton Roads Transportation Planning Organization to HRTAC;

WHEREAS, under Sections 33.2-2606 and 33.2-2607 of the Code of Virginia, HRTAC is also authorized to issue bonds and other evidences of debt, and to impose and collect certain tolls;

WHEREAS, under Chapter 703 of the 2020 Acts of Assembly (H1438)(the "HREL Tolling Legislation"), HRTAC is also authorized to impose and collect tolls in designated high-occupancy toll lanes on certain portions of Interstate 64;

WHEREAS, HRTAC is required to use all moneys that it receives, whether from the HRTF, bond proceeds, collections from any tolls imposed by HRTAC or otherwise (collectively, "HRTAC-Controlled Moneys"), for the benefit of those counties and cities that are embraced by HRTAC and in accordance with applicable law;

WHEREAS, VDOT is the Virginia state agency responsible for building, maintaining and operating the interstate, primary, and secondary state highway systems ("VDOT Highways");

WHEREAS, in light of (i) VDOT's responsibilities with respect to VDOT Highways and HRTAC's responsibilities with respect to the application of the HRTAC-Controlled Moneys, and (ii) the determinations of VDOT and HRTAC to coordinate their efforts with respect to, among other things, the development, tolling, financing, procurement and delivery of the Hampton Roads Express Lanes Network Project (the "HREL Project"), VDOT and HRTAC entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network dated August 18, 2020 (such agreement as thereafter amended and modified from time to time, including by Amendment No. 1 dated _____, the "Master Agreement");¹

WHEREAS, the Master Agreement contemplates that HRTAC may from time to time enter into Standard Project Agreements for Funding and Administration pursuant to which VDOT will procure all goods and services necessary to design and construct elements of the HREL Project;

WHEREAS, pursuant to the Master Agreement, the parties are prepared to have VDOT proceed with the services described on Appendix A in respect of the project set forth and described on Appendix A to this Agreement (the "Project");

WHEREAS, the Master Agreement further contemplates that funding for certain costs relating to procuring goods and services will be advanced by VDOT out of the Toll Facilities Revolving Account (as such term is defined in the Master Agreement) ("TFRA Funding") and then subsequently reimbursed by HRTAC out of Toll Revenues (as defined in the Master Agreement), in accordance with the terms of the Master Agreement as an Applicable Revolving Account Cost (as defined in the Master Agreement);

WHEREAS, HRTAC has determined that the Project would benefit the cities and counties that are embraced by HRTAC, it otherwise satisfies the requirements of the HRTAC Act, and it is consistent with the HREL Tolling Legislation;

WHEREAS, VDOT agrees to administer and/or develop the Project in accordance with the budget (the "Project Budget") and cashflow and construction schedule (the "Project Schedule") set forth and described on Appendix B to this Agreement (this Agreement and its appendices may be amended from time to time by

¹ **Note to VDOT:** When the MTA was entered into, there was only a "concept"-level plan. Now, the parties have a better understanding of the scope of work and financing. The amendment would be entered into before the execution of the SPA and would, among other things, memorialize the current understanding of the overall project, provide a schedule of the Applicable Revolving Account Costs incurred (e.g., Segment 1), and clarify that (i) the definition of Applicable Revolving Account Costs should have included the toll system integration costs set forth on Appendix B hereto, (ii) footnote 2 of Exhibit 6 of the MTA should have stated that the toll system integration costs listed in the penultimate row of Exhibit 6 (page 6-4) would be funded as Applicable Revolving Account Costs, and (iii) the actual Applicable Revolving Account Costs are determined by reference to the expenditures under the SPAs or, in the case of Segment 1, the schedule. The amendment would also address any refinements to the model HRELN SPA that have been made to address TFRA funding or TIFIA issues.

mutual agreement of the parties to address mutually agreed changes relating to, among other things, Project scope, design, funding and regulatory approvals);

WHEREAS, subject to the terms, conditions and limitations set forth herein, the parties desire for the funding for the administration and/or development of the Project to be advanced by VDOT through TFRA Funding and for HRTAC to reimburse VDOT for such funding in accordance with the terms of the Master Agreement as an Applicable Revolving Account Cost;

WHEREAS, the Commonwealth Transportation Board (“CTB”) has the authority, pursuant to Section 33.2-214 of the Code of Virginia, to cause VDOT to enter into this Agreement and has authorized the Commissioner of Highways to enter into agreements with HRTAC for project administration and development purposes, and Section 33.2-2608 of the Code of Virginia authorizes HRTAC to enter into this Agreement;

WHEREAS, the CTB, by resolution passed on January 14, 2015, resolved that any agreement between VDOT and HRTAC for project services shall provide that overruns or other additional project costs shall be prorated between HRTAC and VDOT so that each party bears a proportionate share of the additional costs based on each party’s percentage responsibility of the project budget; and

WHEREAS, HRTAC's governing body and the CTB have each authorized that their respective designee(s) execute this Agreement on their respective behalf(s) as evidenced by copies of each such entity's clerk's minutes or such other official authorizing documents which are appended hereto as Appendix E.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, the parties hereto agree as follows:

A. VDOT's Obligations

VDOT shall:

1. Complete or perform or cause to be completed or performed all work relating to the Project, as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with (i) any and all applicable federal, state, and local laws and regulations, and (ii) all terms and conditions of the Master Agreement and this Agreement, including, without limitation, the Project Budget and Project Schedule reflected in Appendix B. VDOT will use TFRA Funding to advance the costs of the work, which advances, subject to the confirmation procedures described below, will be reimbursed in the manner described below. VDOT represents that the Project Budget and Project Schedule have been prepared in good faith, in accordance with the practices and procedures that VDOT uses for projects where the state or VDOT bears the cost of the project (including, without limitation, the practices used to price and budget services that may be internally sourced, such as Construction

Engineering Inspection/CEI). The parties acknowledge that the Project Budget and Project Schedule may be amended pursuant to Section A.8 below or as follows:

- (a) In the event that VDOT determines, after receipt of proposals or bids for any work related to the Project, that the cost of the contract for said work will result in a significant reduction in costs associated with a portion of the Project Budget reflected in Appendix B that is allocated to work covered by the contract, then VDOT shall notify HRTAC's Executive Director of the significant reduction in costs. For purposes of this Section A.1(a), HRTAC and VDOT agree that a "significant reduction in costs" shall mean a reduction in costs that has the effect of reducing, in Appendix B, (x) the costs for the particular portion of the Project Budget allocated to work covered by the contract by more than 20 percent or (y) the entire Project Budget either by more than 10 percent or \$10,000,000, whichever applies. In the event there is a significant reduction in costs, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the effect of the reduction (for the avoidance of doubt, the amount by which a commitment is reduced shall be considered deobligated from the Project).
- (b) In the event that any federal or state funding not previously available for the Project becomes available for any portion of the Project Budget reflected in Appendix B, then VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the benefit of the additional funding.
- (c) In the event that application is made for federal or state funding or loans not previously available for the Project, then VDOT will, to the extent within its reasonable control, provide reasonable support to such application and, if any such funding or loans are awarded or otherwise become available, take action to satisfy conditions and comply with requirements of such funding or loans, in each case as may be reasonably requested by HRTAC.

2. Without limiting the foregoing, VDOT shall:

- (a) Select contractors, contract with contractors, and administer and enforce contracts all in a manner that is consistent in all material respects with the policies, procedures and practices that VDOT uses where the state or VDOT bears the cost of a project; for example, VDOT shall use its customary policies, procedures and practices relating to requesting bids/proposals, negotiating/finalizing terms and conditions of contracts (using, where applicable, standard terms/forms), and monitoring and enforcing performance of contracts;

- (b) Not enter into any contract to perform the work related to the Project if (i) the cost of that contract would exceed the portion of the Project Budget reflected in Appendix B that is allocated to the work covered by that contract, (ii) the cost of that contract, when aggregated with the cost of all other contracts relating to the Project that have been, or are expected to be, entered into would exceed the Project Budget reflected in Appendix B, or (iii) the schedule in the contract for performing and paying for the work related to the Project would be materially different (whether accelerated or delayed) from the Project Schedule set forth in Appendix B; in addition, if the bids or proposals received for any portion of the Project are not qualitatively consistent with VDOT's standards for that work or quantitatively within VDOT's projections for that work, each as determined by VDOT in its good faith judgment, VDOT shall (i) undertake a new procurement, or (ii) recommend alternative measures to HRTAC, and seek HRTAC's advice and consent regarding pursuit of those alternative measures. If HRTAC grants its written consent to a modification to the Project Budget and/or Project Schedule in order to permit VDOT to enter into a contract to perform the work, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to reflect the modified Project Budget and Project Schedule.
 - (c) Involve HRTAC in any procurement consistent with the terms of the Master Agreement.
- 3. Perform or have performed in accordance with VDOT's standards for highways, bridges and tunnels (or that otherwise are applicable to the work under the Project) all design and engineering, all environmental work, and all right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions, as is required by this Agreement or that may be necessary for completion of the Project pursuant to the terms of this Agreement. If VDOT determines that a delay will more likely than not prevent the completion of a material phase of the Project (e.g., PE or ROW acquisition), or the entire Project, in accordance with the Project Schedule, VDOT shall notify HRTAC in writing and provide HRTAC with such information as HRTAC may reasonably request, including information pertaining to potential corrective measures and remedies against the contractor (if VDOT and HRTAC mutually develop a model notice for such purposes, VDOT's notice will follow the format of the model).
- 4. Not use any funds provided by HRTAC, or advance TFRA Funding to pay any Project cost (and seek reimbursement as an Applicable Revolving Account Cost) if, as applicable, the HRTAC Act or HREL Tolling Legislation does not permit such Project cost to be paid with HRTAC funds.

5. Recognize and agree that (a) all funding for the Project shall be advanced by VDOT through the TFRA Funding and (b) all reimbursement for the TFRA Funding will come from Toll Revenues in accordance with the terms of the Master Agreement.
6. (a) Permit (and assist) HRTAC's Executive Director to periodically update HRTAC's estimates for the Project with the objective toward keeping those estimates accurate throughout the performance of the Project. VDOT shall provide all available information reasonably required by HRTAC so as to ensure and facilitate accurate estimates and accurate updates to those estimates throughout the performance of the Project as described in Appendix B.

(b) Provide HRTAC's Executive Director with the monthly reports described on Appendix D.
7. VDOT will advance the costs of the Project using TFRA Funding; in connection with each such advance and payment, VDOT will submit to HRTAC's Executive Director an Advance Certification in the form attached hereto as Appendix C in order to permit him or her to confirm that such advance should be booked as an Applicable Revolving Account Cost. Each Advance Certification will contain (a) detailed summaries of actual Project costs incurred, together with such supporting documentation as HRTAC may reasonably request, and (ii) certifications that all such costs were incurred in the performance of work for the Project as authorized by this Agreement.
8. (a) Promptly notify HRTAC's Executive Director if VDOT determines that any additional, unbudgeted costs may be incurred to perform and complete the Project ("Additional Costs"), which notice shall include a description of the Additional Costs, an explanation of how they arose and the assumptions in the initial budget regarding those costs, and a detailed estimate of the Additional Costs and whether additional TFRA Funding is available to pay such Additional Costs. VDOT shall make recommendations regarding any curative actions that may be available relating to such Additional Costs, including procuring additional TFRA Funding for such Additional Costs, any potential modification or reduction that may be made to the Project scope or design, or any other action, in order to stay within the initial budget for the Project. If the Additional Costs can be paid with additional advances of TFRA Funding or absorbed in the Project Budget by modifying or reducing the scope or design of the Project (or avoided by cancelling the Project or any portion thereof), HRTAC may, in its sole discretion, elect to (i) authorize VDOT to proceed with obtaining additional TFRA Funding, (ii) authorize VDOT to proceed with such

modifications or reductions, (iii) authorize the Additional Costs (or if a combination of (i), (ii) and (iii) is feasible, HRTAC may elect such combination), or (iv) elect to cancel the Project or a portion thereof; provided, however, in any case, the respective obligations of VDOT and HRTAC, as modified by the elected alternative, shall be set forth in an amendment to this Agreement (VDOT and HRTAC shall work in good faith to finalize and execute such amendment). If the Additional Costs cannot be paid through additional advances of TFRA Funding or absorbed in the initial budget by modifying or reducing the scope or design of the Project (and HRTAC elects option (iii) above), then, subject to Section F below, such Additional Costs shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget. In the event that HRTAC elects to cancel the Project (or any portion thereof) pursuant to this Section A.8(a)(iv), (A) all compensation due and owing to any and all contractors for work on the Project that has been completed at the time of cancellation, shall be paid in accord with Appendix B, and (B) subject to Section F, all reasonable costs associated with the cancellation due and owing to said contractors pursuant to the terms of the contracts with the contractors, which terms shall be consistent with VDOT's standard contract terms relating to contract cancellation and termination, (the "Breakage Compensation"), shall be paid with TFRA Funding and reimbursed as an Applicable Revolving Account Cost in accordance with the terms of the Master Agreement, unless VDOT and HRTAC mutually determine that cancellation of the Project is necessary or warranted, in which case, the Breakage Compensation shall be paid from HRTAC-Controlled Moneys (advanced through the TFRA Funding and then reimbursed in accordance with the terms of the Master Agreement), and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget.

- (b) VDOT shall not include in any contract with a contractor working on the Project any term, condition or remedy in respect of Additional Costs that is more favorable to the contractor than the terms, conditions or remedies VDOT includes in standard contracts where the state or VDOT bears the cost of the project.
- (c) The Additional Costs may include costs incurred by VDOT as a result of contractor claims relating to the Project made pursuant to the VDOT Roads and Bridge Specifications and §§ 33.2-1101 through 33.2-1105 of the Code, as amended. VDOT shall promptly notify HRTAC if any such claims are made or VDOT receives a notice of intent to file a claim or other written communication from a

contractor relating to a claim or contractual dispute that could result in increased contract costs, and whether in each such case the claimed amount is expected to become, or result in, Additional Costs (and the estimate thereof) or is expected to have a material adverse effect on the contingency reserves established as part of the Project Budget (and the estimated effect thereon). VDOT shall be responsible to handle all such claims and notices of intent, but VDOT may not settle any claim or notice of intent to file a claim and thereafter submit it as an Additional Cost pursuant to Section A.8(a) unless the settlement has been approved by HRTAC. Funding for the settlement will be prorated based on the respective proportionate share of HRTAC-Controlled Moneys (which, for the avoidance of doubt, would be advanced through the TFRA Funding and then reimbursed in accordance with the terms of the Master Agreement) and state and federal funds in the Project Budget. Should the claim not be settled, any final judgment from a court of competent jurisdiction shall be paid in accordance with the proration rule set forth in the preceding sentence.

- (d) Notwithstanding anything to the contrary set forth herein, if any additional cost (including, without limitation, any additional cost relating to a contractor claim described in Section A.8(c) above) arises out of or results from VDOT's negligence, breach of contract, willful misconduct or violation of law ("VDOT Fault"), HRTAC shall not be responsible for such additional costs (and, for the avoidance of doubt, they shall not be reimburseable as Applicable Revolving Account Costs). Any notice provided by VDOT to HRTAC pursuant to Section A.8(c) above shall be accompanied by a certification from VDOT that it has determined in good faith that any Additional Costs do not arise out of or result from VDOT Fault.
9. Release or return any unexpended HRTAC-Controlled Moneys to HRTAC (or, if TFRA Funding has been drawn but not paid, make a corresponding reduction in the amount of Applicable Revolving Account Costs that are subject to reimbursement) no later than 90 days after final payment has been made in respect of the Project.
 10. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations.
 11. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations.

12. Reimburse HRTAC (or such other entity as may have provided funds) (or, as applicable, make a corresponding reduction in the amount of Applicable Revolving Account Costs that are subject to reimbursement) for all funds provided by HRTAC (or on behalf of HRTAC) and, to the extent applicable and permitted by law, with interest earned at the rate earned by HRTAC, (a) that VDOT misapplied, used or requested reimbursement for in contravention of the HRTAC Act or any other applicable law, or any term or condition of this Agreement or (b) the expenditure of which arose out of VDOT Fault.
13. Be solely responsible for the administration and/or development of the Project and all engagements, commitments and agreements with contractors (and, without limiting the foregoing, shall ensure that such engagements, commitments and agreements contain all terms that, pursuant to the Master Agreement or this Agreement, are required to be included therein). VDOT shall ensure that VDOT's contractors maintain surety bonds and insurance in amounts and with coverages that VDOT requires under its Road and Bridge Specifications for all work to be performed for the Project, and name HRTAC and its members, officers, employees and, if applicable, any HRTAC lender and any bond trustee, as additional insureds on any such insurance policy, and present HRTAC with satisfactory evidence thereof before any work on the Project commences.
14. If in connection with the work VDOT engages outside legal counsel approved by the Attorney General (as opposed to utilizing the services of the Office of the Attorney General), VDOT will give HRTAC notice of the engagement so as to ensure that no conflict of interest may arise from any such representation (VDOT also shall ensure that such engagements are consistent with the practices and terms that VDOT uses where it is solely responsible for project costs).
15. Subject to and consistent with the requirements of Section E of this Agreement, upon final payment to all contractors for the Project, if the Project is or is part of a VDOT Highway, VDOT will use the Project (a) for its intended purposes for the duration of the Project's useful life, and (b) in accordance with, and subject to, the terms of the Master Agreement (including, without limitation, the license granted to HRTAC pursuant to Section 3.08 thereof). If the Project is or is part of a VDOT Highway, VDOT shall be responsible to operate and/or maintain the Project (which duty and obligation excludes the Tolling O&M Duties, as defined in the Master Agreement, except as otherwise provided in the Master Agreement or in any other contract between VDOT and HRTAC under which VDOT is responsible to perform such duties as a contractor to HRTAC) after its completion (including responsibility to correct any defects or to cause any defects to be corrected)(and, without limiting the foregoing, shall perform its operations and maintenance obligations in accordance with the terms of the Master Agreement), and, except as and to the extent provided

under the Master Agreement (with respect to Tolling O&M Duties), under no circumstances will HRTAC have any responsibility or obligation to operate and/or maintain the Project (or correct defects with respect to the Project).

16. Comply with all applicable federal, state and local laws and regulations, including without limitation requirements of the Virginia Public Procurement Act.
17. Recognize that VDOT or its contractors are solely responsible for obtaining, and shall obtain, all permits, permissions and approvals necessary to construct and/or operate the Project, including, but not limited to, obtaining all required VDOT and local land use permits, zoning approvals, environmental permits, and regulatory approvals.
18. Recognize that if the Project is being funded, in whole or in part, with federal and/or state funds (in addition to HRTAC-Controlled Moneys used to reimburse Applicable Revolving Account Costs), that VDOT shall (a) take any and all necessary actions to satisfy any conditions to such federal and/or state funding (provided that such actions are within the control of VDOT) and to enforce any commitments made in connection therewith, (b) comply with all applicable federal and Commonwealth funding requirements within the control or purview of VDOT, and (c) include in its contracts with contractors provisions that permit such contracts to be terminated, without penalty, if the funding is rescinded or otherwise becomes unavailable (for clarification, a provision shall not be deemed to include a penalty solely as a result of terms that require payment of compensation due and owing at the time of cancellation and reasonable costs associated with cancellation provided that such costs are consistent with costs paid pursuant to VDOT's standard contract terms relating to contract cancellation and termination). VDOT acknowledges and agrees that if funding from such an additional federal or state source is rescinded or otherwise becomes unavailable HRTAC (i) shall not be responsible for any amount in excess of its commitment set forth on Appendix B (which commitment, for the avoidance of doubt, is only a commitment to reimburse VDOT in accordance with the terms of the Master Agreement for Applicable Revolving Account Costs incurred) and (ii) may (A) replace said reduced funding with HRTAC Controlled-Moneys (with a preference to have VDOT use TFRA Funding which would be reimbursed as Applicable Revolving Account Costs in accordance with the terms of the Master Agreement) or (B) request VDOT to immediately suspend or discontinue all work relating to the Project, provided if HRTAC requests suspension HRTAC shall be responsible for the costs reasonably incurred in connection with such suspension. Should HRTAC not replace the reduced funding or request VDOT to suspend or discontinue work, VDOT may reduce the Project scope or take any other actions needed to reduce the Project costs to the Project Budget.

19. Provide a certification to HRTAC no later than 90 days after final payment for the Project that VDOT adhered to all applicable laws and regulations and all requirements of this Agreement.
20. Notify HRTAC if VDOT determines that a delay will more likely than not prevent the timely completion of a material phase of the Project, including information regarding potential corrective measures and remedies against the contractor.
21. With respect to modifications to any agreement with a contractor, concede to HRTAC any resulting savings, if HRTAC-Controlled Moneys are funding 100% of the applicable work, or if the cost savings relate to work funded with HRTAC-Controlled Moneys and state and/or federal funds (excluding, for the avoidance of doubt, TFRA Funding), concede such savings to such parties *pro rata*, based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget for such work.
22. Include in any agreement with a contractor an assessment of liquidated damages in an amount equal to or greater than the amount specified under the Master Agreement (unless HRTAC expressly agrees in writing to a reduced amount) if either substantial completion or final acceptance is not achieved by the applicable deadline. Unless otherwise agreed by the parties acting reasonably, any liquidated damages (as well as other damages paid by a contractor, insurance proceeds, or recoveries from third parties) received by VDOT in respect of the Project shall be administered in accordance with the terms of the Master Agreement.
23. Terminate any agreement with a contractor upon the written request of HRTAC if (a) VDOT has failed to exercise the right to terminate such agreement for cause, but only (i) if such failure is reasonably expected to have a material adverse effect on HRTAC and (ii) following consultation between HRTAC and VDOT regarding the reasons, if any, for VDOT's failure to exercise such right; or (b) HRTAC determines in good faith that HRTAC has suffered a material adverse change in its ability to satisfy its obligations under this Agreement and it is in HRTAC's best interests for VDOT to terminate the contractor's agreement for convenience.

B. HRTAC's Obligations

HRTAC shall:

1. Subject to the limitations as to amounts set forth in Appendix B (and subject to Section F of this Agreement), provide to VDOT the funding authorized by HRTAC for the Project, on a reimbursement basis, in accordance with the terms of this Agreement and the Master Agreement (VDOT will use TFRA Funding, and then the Applicable Revolving Account

Costs will be reimbursed using Toll Revenues in accordance with the terms of the Master Agreement).

2. Assign a person to serve as a Program Coordinator for the Project, who will be responsible for review of the Project on behalf of HRTAC for purposes of ensuring it is being completed in compliance with this Agreement and all HRTAC requirements. (In the absence of an assigned person, HRTAC's Executive Director shall serve as the Program Coordinator.) HRTAC's Program Coordinator will be responsible for overseeing, managing, reviewing, and processing, in consultation with HRTAC's Executive Director and its Chief Financial Officer ("CFO"), all Advance Certifications submitted by VDOT for the Project. HRTAC's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the scope of the Project as set forth on Appendix A or to the Project Budget and Project Schedule as set forth on Appendix B.
3. Route to HRTAC's assigned Program Coordinator all VDOT Advance Certifications and the summaries of actual costs submitted to HRTAC for the Project. After submission to HRTAC, HRTAC's Program Coordinator will conduct an initial review of the Advance Certification and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. HRTAC's Program Coordinator will then make a recommendation to the HRTAC's CFO and Executive Director whether to authorize or refuse booking the applicable advance as an Applicable Revolving Account Cost, or seek additional information from VDOT. If the Advance Certification is sufficient as submitted, HRTAC will send a confirmation to VDOT and the confirmed amount will be booked as an Applicable Revolving Account Cost and reimbursed in accordance with the terms of the Master Agreement. If the Advance Certification is, in HRTAC's reasonable judgment, deemed insufficient, within twenty (20) days from receipt, HRTAC's Program Coordinator will notify VDOT in writing and set forth the reasons why the Advance Certification was declined or why and what specific additional information is needed in order to confirm the booking of the advance as an Applicable Revolving Account Cost. HRTAC's confirmation will be withheld until all deficiencies identified by HRTAC have been corrected to HRTAC's reasonable satisfaction. Under no circumstances will HRTAC be required to confirm an Advance Certification in respect of any work performed by or on behalf of VDOT that is not in conformity with the requirements of the HRTAC Act, the Master Agreement or this Agreement.
4. Route all of VDOT's supplemental requests for funding from HRTAC under Section A.8 of this Agreement to HRTAC's Executive Director. HRTAC's Executive Director will initially review those requests and all supporting documentation with HRTAC's CFO. After such initial review, HRTAC's Executive Director will make a recommendation to HRTAC's Finance

Committee for its independent consideration and review. HRTAC's Finance Committee will thereafter make a recommendation on any such request to HRTAC for final determination by HRTAC.

5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the HRTAC Act and other applicable law. Such compliance reviews may entail (i) review of VDOT's financial records for the Project, (ii) on-Project site inspections and (iii) review of a contractor's books and records in relation to the Project to the extent VDOT has access thereto.
6. Acknowledge that if, as a result of HRTAC's review of any Advance Certification or of any HRTAC compliance review, HRTAC staff determines that VDOT is required under Section A.12 of this Agreement to reimburse or credit funds to HRTAC, HRTAC staff will promptly advise HRTAC's Executive Director and will advise VDOT's designated representative in writing. VDOT will thereafter have thirty (30) days to respond in writing to HRTAC's initial findings. HRTAC's staff will review VDOT's response and make a recommendation to HRTAC's Finance Committee. HRTAC's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to HRTAC. If HRTAC makes a final determination that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, the parties should engage in dispute resolution as provided in Section D of this Agreement. Pending final resolution of the matter, HRTAC will not be required to book the applicable amount as an Applicable Revolving Account Cost (or reimburse it as such) or otherwise provide further funding on the Project. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.
7. Upon issuing the final confirmation with respect to VDOT's Advance Certifications for the Project, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans, if any, developed pursuant to or in association with the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.
8. Be the sole determinant of the amount and source of HRTAC funds to be provided and allocated to the Project and the amounts of any HRTAC funds to be provided in excess of the amounts specified in Appendix B.
9. Have no obligation to pay or reimburse VDOT for any cost (including, without limitation, compensation paid or payable to any contractor) arising out of VDOT Fault.

C. Term

1. This Agreement shall (i) be effective upon adoption and execution by both parties and (ii) unless terminated earlier in accordance with its terms, expire ninety (90) days after the date [on which VDOT makes final payment to Project contractor(s) and all contractor claims have been resolved or are barred].²
2. VDOT may terminate this Agreement, for cause, in the event of a material breach by HRTAC of this Agreement. If so terminated, HRTAC shall pay for all Project costs incurred in accordance with the terms of this Agreement through the date of termination and all reasonable costs incurred by VDOT to terminate all Project-related contracts. The Virginia General Assembly's failure to appropriate funds to HRTAC as described in Section F of this Agreement and/or repeal or amendment of the legislation establishing the HRTF or HRTAC's powers shall not be considered material breaches of this Agreement by HRTAC if such failure to appropriate or such repeal or amendment eliminates funds in the HRTF to be used for the Project or renders HRTAC without legal authority to provide funding for the Project. Before initiating any proceedings to terminate under this Section, VDOT shall give HRTAC sixty (60) days written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing HRTAC an opportunity to investigate and cure any such alleged breach.
3. HRTAC may terminate this Agreement, for cause, resulting from VDOT's material breach of this Agreement. If so terminated, VDOT shall refund to HRTAC all funds HRTAC provided to VDOT for the Project and, to the extent permitted by law, with interest earned at the rate earned by HRTAC. Before initiating any proceedings to terminate under this Section, HRTAC shall give VDOT sixty (60) days' written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing VDOT an opportunity to investigate and cure any such alleged breach. Prior to termination, if VDOT has substantially completed the Project or a portion that is severable (meaning it is subject to independent use), VDOT may request that HRTAC excuse VDOT from refunding funds paid in respect of the substantially completed Project or portion, and HRTAC may, in its sole discretion, excuse VDOT from refunding all or a portion of the funds HRTAC provided to VDOT for the substantially completed Project or portion thereof. No such request to be excused from refunding will be allowed (a) where VDOT has either misused or misapplied HRTAC funds in contravention of this Agreement or applicable law, or (b) without the prior written consent of any lender to HRTAC, if the terms of HRTAC's loan agreement with such lender require such consent.

² **Note to VDOT:** See Appendix A for discussion of difference between Implementation Phase and the O&M Phase.

4. Upon (a) expiration or earlier termination of this Agreement and (b) payment of all eligible expenses as set forth in Section C.3 above, VDOT will release or return to HRTAC all unexpended HRTAC funds and, to the extent permitted by law, with interest earned at the rate earned by HRTAC, no later than sixty (60) days after the date of such expiration or earlier termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer promptly in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. HRTAC's Executive Director and the Commissioner shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to HRTAC and to the Commissioner for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law or in equity, including all judicial remedies. The foregoing dispute resolution method shall not bar either party's right to seek equitable relief on an emergency basis. Neither party will seek or accept an award of attorneys' fees or costs incurred in connection with resolution of a dispute.

E. HRTAC's Interest in Project Assets

VDOT agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by HRTAC under this Agreement ("Assets") for the designated transportation purposes of the Project, in accordance with applicable law throughout the useful life of each such Asset, and in accordance with, and subject to, the terms of the Master Agreement (including, without limitation, the license granted to HRTAC pursuant to Section 3.08(b) thereof). If VDOT intends to sell, convey, or dispose any Asset funded with HRTAC funds or intends to use any Asset for a purpose inconsistent with this Agreement or the Master Agreement, VDOT shall notify HRTAC's Executive Director in writing of any such intent before further action is taken by VDOT in furtherance thereof. Upon receiving notification from VDOT, HRTAC's Executive Director shall notify HRTAC of VDOT's intended action(s). The parties shall, thereafter, meet and confer to discuss what measures need to be taken regarding VDOT's proposed sale, conveyance, disposition, or use of any such Asset(s) so as to ensure compliance with all applicable requirements and terms of the HRTAC Act and the Master Agreement (without limiting the foregoing, VDOT acknowledges that (i) under the HRTAC Act and applicable law, HRTAC is vested with the right to impose and collect tolls on facilities constructed by the Commission and holds a license to, among other things, use the tolling infrastructure and system), and (ii) under the HREL Tolling Legislation, HRTAC is vested with the right to impose and collect tolls on the portion of the HREL Project facility that has been

designated by the CTB for use as high-occupancy toll lanes). All recommendations and/or proposed remedial actions developed by the parties' designated representatives during the meet and confer process shall be formally presented to HRTAC and the Commissioner for their respective approval.

F. Appropriations Requirements

1. Nothing herein shall require or obligate HRTAC to commit or obligate funds to the Project beyond those funds that have been received by HRTAC from Toll Revenues from the operation of tolling facilities in the HREL Network, and then only to the extent that such Toll Revenues are available under the terms of the Master Agreement to reimburse Applicable Revolving Account Costs.
2. The parties acknowledge that all funding provided by HRTAC pursuant to the HRTAC Act is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the HRTF pursuant to applicable provisions of the Code of Virginia and any other moneys that the General Assembly appropriates for deposit into the HRTF are subject to appropriation by the General Assembly and (ii) HRTAC's obligations under this Agreement are subject to such moneys being appropriated to the HRTF by the General Assembly.
3. The parties agree that VDOT's obligations under this Agreement are subject to funds being appropriated by the General Assembly and allocated by the Commonwealth Transportation Board and otherwise legally available to VDOT for HRTAC projects.
4. Should VDOT be required to provide additional funds in order to proceed or complete the funding necessary for the Project, VDOT shall certify to HRTAC that such additional funds have been allocated and authorized by the CTB and/or appropriated by the Virginia General Assembly as may be applicable or have been obtained through another independent, lawful source.

G. Representations and Warranties

1. VDOT hereby represents and warrants to HRTAC as of the date of this Agreement as follows:
 - (a) VDOT is an agency of the Commonwealth of Virginia, and it has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;
 - (b) VDOT has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement, and each person executing this

Agreement on behalf of VDOT has been duly authorized to execute and deliver it on behalf of VDOT;

- (c) the execution and delivery by VDOT of this Agreement, and the performance of its obligations hereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any law, where such violation will have a material adverse effect on the ability of VDOT to perform its obligations under this Agreement;
- (d) this Agreement has been duly authorized, executed, and delivered by VDOT and constitutes a valid and legally binding obligation of VDOT, enforceable against it in accordance with the terms hereof, subject to (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) sovereign immunity under the law of the Commonwealth of Virginia; *provided, however,* that, for the avoidance of doubt, sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth of Virginia; and
- (e) there is no action, suit, proceeding, investigation, or litigation pending and served on VDOT which challenges VDOT's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the VDOT official executing this Agreement, and VDOT has disclosed to HRTAC any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which VDOT is aware.

2. HRTAC hereby represents and warrants to VDOT as of the date of this Agreement as follows:

- (a) HRTAC is a body politic and a political subdivision of the Commonwealth of Virginia, and it has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;
- (b) HRTAC has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement, and each person executing this Agreement on behalf of HRTAC has been duly authorized to execute and deliver it on behalf of HRTAC;

- (c) the execution and delivery by HRTAC of this Agreement, and the performance of its obligations hereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any law, where such violation will have a material adverse effect on the ability of HRTAC to perform its obligations under this Agreement;
- (d) this Agreement has been duly authorized, executed, and delivered by HRTAC and constitutes a valid and legally binding obligation of HRTAC, enforceable against it in accordance with the terms hereof, subject to (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) sovereign immunity under the law of the Commonwealth of Virginia; *provided, however,* that, for the avoidance of doubt, sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth of Virginia; and
- (e) there is no action, suit, proceeding, investigation, or litigation pending and served on HRTAC which challenges HRTAC's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the HRTAC official executing this Agreement, and HRTAC has disclosed to VDOT any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which HRTAC is aware.

H. Tax Covenants for Bond-Funded Projects

VDOT shall comply in all material respects with the Tax Covenants for Bond-Funded Projects set forth in Appendix F (*Tax Covenants for Bond-Funded Projects*).

I. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

- 1) to: HRTAC, to the attention of its Executive Director and Chairman;
723 Woodlake Drive
Chesapeake, VA 23320
- 2) to: VDOT, to the attention of:
Commissioner, Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219

J. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

K. Modification or Amendment

(a) This Agreement may not be modified or amended, except pursuant a written agreement that is duly authorized, executed and delivered by both parties.

(b) If HRTAC is able to obtain a source of funding for the Project that would reduce or replace the amount of HRTAC-Controlled Moneys expended on the Project, VDOT and HRTAC will work in good faith to amend this Agreement so it takes into account that other funding.

(c) VDOT and HRTAC will work in good faith to adopt such amendments to this Agreement as VDOT and HRTAC may mutually agree are necessary and desirable in connection with any bond financing.

L. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, member, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

M. No Agency

VDOT represents that it is not acting as a partner or agent of HRTAC; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

N. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

O. Incorporation of Recitals and Appendices

The recitals and Appendices to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that the recitals are true and correct.

P. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

Q. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

Q. Survival

The following provisions shall survive the expiration or earlier termination of this Agreement: Sections A.4, A.9, A.12, A.15, A.17, A.19, A.22, B.5 and B.7, and Sections C through Q.

[Signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Hampton Roads Transportation Accountability Commission

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

HAMPTON ROADS EXPRESS LANES NETWORK PROJECT ELEMENTS

HREL TOLL INTEGRATION (SYSTEM INTEGRATOR) PROJECT

Scope: The Master Agreement contemplates the construction of the Hampton Roads Express Lane Network; there are four primary segments which will be completed in phases. Currently, Segment 1 is operational and Segments 2 and 3 [and part of 4] are under construction. Segment 1 is presently operated through a legacy toll systems integrator. A separate toll systems integrator (the Systems Integrator) is being procured to prepare a new system that will support Segments 2, 3 and 4 (as well as Segment 1), when the express lanes on such segments commence operation.³

Under this Standard Project Agreement for the HREL Toll Integration (System Integrator), funding will be provided to engage a Systems Integrator to implement a High Occupancy Tolling system and, in that connection, the Systems Integrator will be required to design and implement an Open Road Tolling System for the applicable segments. These tasks include but are not limited to the following:

Mapping, survey, project management, development of software and hardware, design plan development, risk analysis & mitigation, tolling infrastructure installation, software and hardware testing, web page development and implementation, electrical and communications connectivity, cost estimate & schedule refinements, and development of HREL Network connectivity plan.

This project will not require any additional right of way or utility relocations [and all ORT equipment shall be installed on existing infrastructure as provided by each individual phased segment of the HREL. – **verify**] [This Agreement is not intended to address the civil work that will be required in connection with the project, which is the subject of separate Standard Project Agreements for UPC #s _____.]

VDOT will further contract with the Systems Integrator to operate and perform maintenance on the Open Road Tolling System. This Agreement is not intended to address such operations and maintenance phase; the Master Agreement addresses the Tolling O&M Duties (as defined therein), the party responsible therefor (VDOT or HRTAC), and the subcontracting thereof through the Systems Integrator or other third party. Without limiting the foregoing, VDOT shall ensure that its contract with the Systems Integrator is assignable to HRTAC should HRTAC determine such assignment to be necessary or appropriate in connection with HRTAC's performance of Tolling O&M Duties.⁴

³ **Note to VDOT:** RFP speaks in terms of Segment 2, so the details in this Appendix A seem incomplete.

⁴ **Note to VDOT:** Amendment No. 1 to the MTA to address more details relating to the O&M phase since this SPA is more appropriately suited for completion of construction, which has a finite timeline.

APPENDIX B

HAMPTON ROADS EXPRESS LANES NETWORK ELEMENTS HREL TOLL INTEGRATION (SYSTEM INTEGRATOR) PROJECT PROJECT BUDGET AND PROJECT SCHEDULE

Project Budget:

Total Project Cost Estimate	
Preliminary Engineering (PE)	\$0
Right of Way (RW)	\$0
Construction (CN)	\$28,010,440
Total Cost	\$28,010,440

Project Cost Estimate by Segment (PE/CN Combined)	
Segment 1	\$12,873,016
Segment 3	\$2,210,526
Segment 4A	\$7,546,875
Segment 4B	\$3,230,769
Segment 4C	\$2,149,254
Total	\$28,010,440

* The estimated cost of \$28,010,440 include escalation in the amount of \$2,010,440

The work associated with this Standard Project Agreement for the HREL Toll Integration (System Integrator) will complete a High Occupancy Tolling system and shall design, implement, operate, and perform maintenance on a complete operating Open Road Tolling system on Interstate 64 beginning at the Jefferson Avenue Interchange in Newport News to the Interstate 264 Interchange in Norfolk. This integration includes the proposed tolling integration for HREL Segments 1, 3, 4A/4B and 4C.⁵

These tasks include but are not limited to the following:

Mapping, survey, project management, development of software and hardware, design plan development, risk analysis & mitigation, tolling infrastructure installation, software and hardware testing, web page development and implementation, electrical and communications connectivity, cost estimate & schedule refinements, and development of HREL Network connectivity plan.

Project Schedule: (all dates are estimates):

- TSI notice to proceed April 2021
- Tolling Systems Integration (TSI)

⁵ Note to VDOT: See earlier footnote re: Segment 2.

APPENDIX C

FORM OF ADVANCE CERTIFICATION

HRTAC Project Title and Number: Hampton Roads Express Lanes Network Elements - Toll Integration (System Integrator) - UPC T24778

Project Scope/Services Description: Complete a tolling system integrator to provide a complete operating tolling system /on Interstate 64 beginning at the Jefferson Avenue Interchange in Newport News to the Interstate 264 Interchange in Norfolk (Includes tolling integration for HREL Segments 1, 3, 4A/4B and 4C)/.

Advance Certification Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, VA 23320

Attention _____, Program Coordinator:

This Advance Certification is submitted in connection with the Standard Project Agreement for Funding and Administration for the project services noted above and dated _____, 20__ (the "Agreement") between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT"). VDOT hereby certifies to HRTAC that VDOT is advancing \$ _____ from the Toll Facilities Revolving Account to pay the costs of the project services described and set forth in Appendices A and B of the Agreement ("Project Services") and in accordance with the Agreement, and seeks HRTAC's confirmation that such advance should be booked as an Applicable Revolving Account Cost, as defined in the Master Agreement for the Development and Tolling of the HRELN (such agreement, as amended from time to time, the "MTA"), which would be reimbursed by HRTAC out of the Toll Revenues (as defined in the MTA), in accordance with the terms and conditions of the MTA. Also included are copies of each invoice relating to the items for which this Advance Certification is submitted.

The undersigned further certifies (i) the amounts included within this Advance Certification will be applied solely and exclusively for the payment of VDOT's eligible costs of the Project Services, (ii) VDOT is responsible for payment to vendors/contractors, (iii) VDOT is not in breach or default with respect to any of its obligations under the Agreement, including without limitation (but only if applicable) the tax covenants set forth in another Appendix to the Agreement, (iv) the representations and warranties made by VDOT in the Agreement are true and correct as of the date of this Advance Certification and (v) to the knowledge of VDOT, no condition exists under the Agreement that would allow HRTAC to withhold confirming that the advance will be booked as an Applicable Revolving Account Cost.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

**Confirmation to Book the Advance as an Applicable
Revolving Account Cost**

By: _____

Name: _____

Title: HRTAC Program Coordinator

DETAILED ADVANCE CERTIFICATION

Advance Certification Number: _____

Date: _____

HRTAC Project Number: UPC T24778

Project Title: HRELN Toll Integration

(System Integrator)

Cost Category	HRTAC Approved Project Costs	Total Advances Previously Approved	Amount of Advances Approved This Period	Remaining Project Budget (Calculation)
Project Starting Balance	\$0			\$ -
Design Work/ Engineering	\$0	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Work	-	-	-	\$ -
Construction	\$28,010,440	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$28,010,440	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Item Number	Invoice Number	Cost Category	Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-
Advances Covered				\$ -

Instructions

1. Column B-Please list approved Project Cost per category.
2. Column C-Please list Total Amounts per Category Previously Approved by HRTAC
3. Column D- Please list invoice amounts summarized by Category from the Listing of Attached Invoices
4. Column E - Is a calculation of the Remaining PAYGO Budget per Category

Instructions-Listing of Attached Invoices: (please list each invoice separately)

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please manually number the invoices attached with the corresponding Item number in this schedule.

3. Column C- Please list the invoice number as it appears on the Invoice
4. Column D- Please list the appropriate Cost Category based on the Project Category breakout above
5. Column E- Please enter the dollar amount listed on the invoice.
6. The calculated Advance Certification Amount should equal the total in Column D in the Schedule above.

APPENDIX D

REPORTS TO BE PROVIDED BY VDOT

1) Monthly Project Expenditure Report which lists, by category of expense (*e.g.*, engineering, ROW, utility relocations, construction), (a) information regarding expenditures to date against the budget, both monthly and for the life of the project, and a statement of the percent completed; and (b) such other information as VDOT customarily provides with monthly expenditure reports.

2) Monthly Project Report which provides (a) an overview of progress on major project tasks; (b) information regarding the budget (such as, the baseline planned forecast, any approved changes thereto, the monthly expenditures, the cumulative expenditures, and the cumulative forecasted expenditures); (c) future key tasks; and (d) significant issues.

APPENDIX E

OFFICIAL AUTHORIZING DOCUMENTS

APPENDIX F

TAX COVENANTS FOR BOND-FUNDED PROJECTS

1. (A) VDOT (the Department) shall not permit the "Proceeds" of any "Commission Bonds" or any "Financed Property" to be used in any manner that would result in either: (1) 5% or more of such proceeds being considered as having been used in any trade or business carried on by any person other than a governmental unit as provided in Section 141(b) of the "Code;" (2) 5% or more of such Proceeds being used with respect to any "output facility" (other than a facility for the furnishing of water) within the meaning of Section 141(b)(4) of the Code; (3) 5% or more of such Proceeds being considered as having been used directly or indirectly to make or finance loans to any person other than a governmental unit, as provided in Section 141(c) of the Code; or (4) more than an aggregate of \$15,000,000 of Proceeds of any single Commission Bond issue being considered as having been used in any trade or business, any output facility or to make or finance loans as described in (1), (2) or (3) above; **provided, however,** that if HRTAC (the Commission) and the Department receive an opinion of nationally recognized bond counsel concluding that such use or action will not affect the exclusion of interest on the Commission Bonds from gross income of the holders thereof for federal tax purposes under existing law, the Department need not comply with such restrictions.

(B) Notwithstanding the foregoing, the Department and the Commission agree that the provisions herein shall not apply to Proceeds of Commission Bonds derived from "qualified bonds" (as defined in Section 141(e) of the Code (or any successor provisions thereto or regulations thereunder)) the Commission may from time to time issue. In the event any such "qualified bonds" are issued by the Commission, the Department agrees that it will not permit Proceeds of Commission Bond derived from such "qualified bonds" to be used in a manner that fails to comply with the provisions of Section 141(e) and 142(a) of the Code (or any successor provisions thereto or regulations thereunder). The provisions of this subparagraph (B) shall not negate any provision in the Agreement or other agreement between the Commission and the Department that requires mutual consent of the parties or Commission approval of a concession arrangement in respect of the Project.

2. the Department agrees not to requisition or spend the proceeds of any the Commission Bond for any cost of the Project not constituting a "Capital Expenditure."

3. Except as may be described in writing to the Commission, the Department neither has on the date of this Agreement nor expects to have after this date any funds that are restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, for the purposes for which the Department is receiving or may receive Proceeds of Commission Bonds.

4. The Department acknowledges that it may have to provide detailed information about the investment of the amount of any requisition unless (i) payments are remitted directly by the Commission to the contractors/vendors, or (ii) the Department remits payment to the contractors/vendors within five banking days after the date on which the Commission advances the amount of the requisition. The Commission may request the detailed information in order to compute the rebate liability to the U.S. Treasury on the Commission's bonds or other debt financing pursuant to

Section 148 of the Code. In addition, the Department shall provide the Commission with any further information reasonably requested by the Commission from time to time concerning the matters described in this Appendix F.

5. The following terms have the meanings assigned to them below whenever they are used in this Appendix F.

“Capital Expenditure” means any cost of a type that is properly chargeable to capital account (or would be so chargeable with (or but for) a proper election or the application of the definition of “placed in service” under Treas. Reg. § 1.150-2(c)) under general federal income tax principles, determined at the time the expenditure is paid.

“Code” means the Internal Revenue Code of 1986, as amended.

“Financed Property” means any property financed in whole or in part by any allocation of Commission Bond Proceeds.

“Commission Bond” means any Commission bond or other debt instrument that is a “tax-exempt bond” or a “tax-advantaged bond” (as defined in Treasury Regulations Section 1.150-1(a)).

“Proceeds” means the sale proceeds of any Commission Bond, together with the investment earnings on such proceeds, to the extent allocated to the Project.

Agenda Item 5F
Action Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: Amendment to Project Agreement for Funding and Administration for the Hampton Roads Bridge Tunnel Project

Recommendation:

The Finance Committee is asked by Staff to endorse the Amendment to Project Agreement for Funding and Administration for the Hampton Roads Bridge Tunnel Project and authorize the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.

Background:

On April 2, 2019, the Commission and VDOT entered into the Project Agreement for Funding and Administration for the Hampton Roads Bridge Tunnel Project ("PAFA"). The PAFA establishes the terms and conditions of the relationship between the parties relating to the funding of the HRBT Expansion Project. In the PAFA, the Commission's maximum financial commitment is identified and correlated to the project budget, which includes a contingency for certain unanticipated additional costs. In the evaluation of the relationship between the parties as to how the Hampton Roads Express Lanes Network is to be funded, constructed, and operated, it was determined that the costs of the tolling infrastructure construction needed to be addressed and that the contingency under the PAFA should be used for such purpose. The Commission Staff and Counsel have developed with VDOT an Amendment to the Project Agreement for Funding and Administration for the Hampton Roads Bridge Tunnel Project Amendment that addresses such use of the contingency and are presenting it to the Finance Committee for its review and recommendation to the Commission at its June 17, 2021 Annual Organizational meeting. The amendment does not increase the Commission's maximum financial commitment to the HRBT project.

Fiscal Impact:

There is no fiscal impact in relation to this Action Item.

Suggested Motion:

Motion: The Finance Committee endorses the Amendment to the Project Agreement for Funding and Administration for the Hampton Roads Bridge Tunnel Project and authorizes the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at



its June 17, 2021 Annual Organizational meeting.



**AMENDMENT TO PROJECT AGREEMENT FOR FUNDING
AND ADMINISTRATION**

This AMENDMENT TO PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (this “Amendment”) is made, entered into and effective as of February ____, 2021, by and between the HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (the “Commission”), a body politic and a political subdivision of the Commonwealth of Virginia; and the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia.

RECITALS

WHEREAS, the Commission and the Department have previously entered into the Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (the “Agreement”), dated as of April 2, 2019, for the Project, as identified and described in the Agreement;

WHEREAS, words and phrases not otherwise defined in this Amendment have the same meanings that such words and phrases have in the Agreement;

WHEREAS, in order to achieve the design and construction of the Project, the Department has entered into the Comprehensive Agreement (the form of which is attached to the Agreement as EXHIBIT 8), dated April 2, 2019, with Hampton Roads Connector Partners (the “Design-Builder”);

WHEREAS, portions of the Project will constitute a part of, and be operated and maintained in connection with, a network of tolled express lanes in the Hampton Roads region (the “Hampton Roads Express Lanes Network” or the “HREL Network”);

WHEREAS, the HREL Network is comprised of various segments of tolled express lanes, including a segment of tolled express lanes to be constructed between Settlers Landing Road in Hampton and the Interstate 564 interchange in Norfolk (“Segment 3”);

WHEREAS, although the Agreement contemplated that portions of the Project would be opened as tolled express lanes, the Agreement did not expressly address the work relating to the construction of tolling infrastructure for Segment 3 (the “Segment 3 (Capital Improvements) Project”);

WHEREAS, the Commission and the Department each acknowledge and agree that the construction and implementation of the Segment 3 (Capital Improvements) Project is essential to the proper functioning and operation of the tolled express lanes through the Project;

WHEREAS, the Commission and the Department desire to provide for the funding and construction of the Segment 3 (Capital Improvements) Project;

WHEREAS, in order to achieve this objective, the Commission and the Department intend to enter into a standard project agreement for the Segment 3 (Capital Improvements) Project in the form attached hereto as Exhibit A (the “Segment 3 Tolling Infrastructure SPA”);

WHEREAS, on and subject to the terms and conditions of the Segment 3 Tolling Infrastructure SPA, the Department will cause the Segment 3 (Capital Improvements) Project to be completed by entering into a construction contract with a contractor, which may or may not be the Design-Builder as selected by the Department;

WHEREAS, on and subject to the terms and conditions of the Segment 3 Tolling Infrastructure SPA, the Commission will reimburse the Department for the construction costs of the Segment 3 (Capital Improvements) Project;

WHEREAS, the Commission and the Department each acknowledge and agree that it is appropriate that work under the Segment 3 Tolling Infrastructure SPA be treated as covered by the Project Budget for the Project as set forth on EXHIBIT 3 to the Agreement through, specifically, the Commission-Supported Contingency Reserve;

WHEREAS, the Commission and the Department desire to amend the Agreement on the terms set forth herein to provide for this modification to the Project Budget and to confirm that all sums funded by the Commission under the Segment 3 Tolling Infrastructure SPA will be credited, dollar-for-dollar, against the Commission-Supported Contingency Reserve.

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. The Parties hereby agree that all amounts paid by the Commission to the Department under the Segment 3 Tolling Infrastructure SPA will be treated as covered by the Project Budget for the Project (as set forth on EXHIBIT 3 to the Agreement), through, specifically, the Commission-Supported Contingency Reserve.

2. Section 3.08 (*Availability of Contingency Reserves; Tracking*) of the Agreement is hereby amended by adding the following as a new Section 3.08(f) of the Agreement:

(f) Notwithstanding any other provision of this Agreement that may appear or be construed to the contrary, the Department shall reduce the balance of the Commission-Supported Contingency Reserve, dollar-for-dollar, by each dollar for which the Commission reimburses the Department under the Standard Project Agreement for the Segment 3 (Capital Improvements) Project - UPC 118376 (also referred to as the Segment 3 Tolling Infrastructure SPA), just as if each such dollar had been expended for a cost of the Project under this Agreement.

3. For the avoidance of doubt, the Maximum Commission Financial Commitment and the amount of the Commission-Funded Budget are not increased by the modifications set forth herein.

4. Except as modified hereby, all other terms of the Agreement shall remain full force and effect.

5. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Amendment to Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project as of the date first written above.

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION,
a body politic and a political subdivision of the Commonwealth of Virginia

By: _____
Name: _____
Title: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
Stephen C. Brich, P.E.
Commissioner of Highways

EXHIBIT A

Standard Project Agreement for the Segment 3 (Capital Improvements) Project

UPC 118376

(see attached)

Agenda Item 5G
Action Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: HRELN Segment 3 (Tolling Infrastructure) Standard Project Agreement

Recommendation:

The Finance Committee is asked by Staff to endorse the HRELN Segment 3 (Tolling Infrastructure) Standard Project Agreement and authorize the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.

Background:

On April 2, 2019, the Commission and VDOT entered into the Project Agreement for Funding and Administration for the Hampton Roads Bridge Tunnel Project ("PAFA"). On August 18, 2020, the Commission, VDOT, and the Commonwealth Transportation Board entered into a Master Agreement for Development and Tolling of the Hampton Roads Express Lanes Network (the "HRELN"), a.k.a. the Master Tolling Agreement ("MTA"). The MTA is the blueprint for the relationship between the parties as to how the Hampton Roads Express Lanes Network is to be funded, constructed, and operated. The MTA identifies projects and establishes a pathway for project financing, development, construction, and operation through the use of Standard Project Agreements. VDOT is ready to proceed with engaging a vendor to develop and install the tolling infrastructure (e.g., traffic management structures, equipment, generators and cabinets) for Segment 3 of the HRELN, which includes the HRBT. In accordance with the MTA, the Commission Staff and Counsel have developed with VDOT the HRELN Segment 3 (Tolling Infrastructure) Standard Project Agreement to support the proposed project and are presenting it to the Finance Committee for its review and recommendation to the Commission at its June 17, 2021 Annual Organizational meeting.

Fiscal Impact:

There is no incremental fiscal impact in relation to this Action Item as the funds provided, approximately \$18,789,474, will be sourced out of the contingency relating to the HRBT Expansion Project established under the PAFA.

Suggested Motion:

Motion: The Finance Committee endorses HRELN Segment 3 (Tolling Infrastructure)



Standard Project Agreement and authorizes the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.



**Standard Project Agreement for Funding and Administration
between
Hampton Roads Transportation Accountability Commission
and
Virginia Department of Transportation
(Hampton Roads Express Lanes Network Project Elements)**

HRTAC Project Title: Segment 3 (Capital Improvements – Tolling Infrastructure) Project

HRTAC Project Number: UPC 118376

This Standard Project Agreement for Funding and Administration (the “Agreement”) is made and executed in duplicate on this ____ day of _____, 2021, as between the Hampton Roads Transportation Accountability Commission (“HRTAC”) and the Virginia Department of Transportation (“VDOT”).

WITNESSETH

WHEREAS, Chapter 766 of the 2013 Acts of Assembly established the Hampton Roads Transportation Fund (the “HRTF”), and provides that moneys deposited in the HRTF are to be used solely for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, Chapter 678 of the 2014 Acts of Assembly (now codified in Section 33.2-2600 *et seq.* of the Code of Virginia, as amended) (the “HRTAC Act”) created HRTAC as a political subdivision of the Commonwealth of Virginia, and moved the responsibility to determine the projects that will be funded by the HRTF from the Hampton Roads Transportation Planning Organization to HRTAC;

WHEREAS, under Sections 33.2-2606 and 33.2-2607 of the Code of Virginia, HRTAC is also authorized to issue bonds and other evidences of debt, and to impose and collect certain tolls;

WHEREAS, under Chapter 703 of the 2020 Acts of Assembly (H1438)(the “HREL Tolling Legislation”), HRTAC is also authorized to impose and collect tolls in designated high-occupancy toll lanes on certain portions of Interstate 64;

WHEREAS, HRTAC is required to use all moneys that it receives, whether from the HRTF, bond proceeds, collections from any tolls imposed by HRTAC or otherwise (collectively, “HRTAC-Controlled Moneys”), for the benefit of those counties and cities that are embraced by HRTAC and in accordance with applicable law;

WHEREAS, VDOT is the Virginia state agency responsible for building, maintaining and operating the interstate, primary, and secondary state highway systems (“VDOT Highways”);

WHEREAS, in light of (i) VDOT's responsibilities with respect to VDOT Highways and HRTAC's responsibilities with respect to the application of the HRTAC-Controlled Moneys, and (ii) the determinations of VDOT and HRTAC to coordinate their efforts with respect to, among other things, the development, tolling, financing, procurement and delivery of the Hampton Roads Express Lanes Network Project (the "HREL Project"), VDOT and HRTAC entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network dated August 18, 2020 (such agreement as thereafter amended and modified from time to time, including by Amendment No. 1 dated _____, the "Master Agreement");¹

WHEREAS, the Master Agreement contemplates that HRTAC may from time to time enter into Standard Project Agreements for Funding and Administration pursuant to which VDOT will procure all goods and services necessary to design and construct elements of the HREL Project;

WHEREAS, pursuant to the Master Agreement, the parties are prepared to have VDOT proceed with the services described on Appendix A in respect of the project set forth and described on Appendix A to this Agreement (the "Project");

WHEREAS, HRTAC has determined that the Project would benefit the cities and counties that are embraced by HRTAC, it otherwise satisfies the requirements of the HRTAC Act, and it is consistent with the HREL Tolling Legislation;

WHEREAS, VDOT agrees to administer and/or develop the Project in accordance with the budget (the "Project Budget") and cashflow and construction schedule (the "Project Schedule") set forth and described on Appendix B to this Agreement (this Agreement and its appendices may be amended from time to time by mutual agreement of the parties to address mutually agreed changes relating to, among other things, Project scope, design, funding and regulatory approvals);

WHEREAS, HRTAC desires to provide funding for the administration and/or development of the Project out of HRTAC-Controlled Moneys, subject to the terms, conditions and limitations set forth herein;

¹ **Note to VDOT:** When the MTA was entered into, there was only a "concept"-level plan. Now, the parties have a better understanding of the scope of work and financing. The amendment would be entered into before the execution of the SPA and would, among other things, memorialize the current understanding of the overall project, provide a schedule of the Applicable Revolving Account Costs incurred (e.g., Segment 1), and clarify that (i) the definition of Applicable Revolving Account Costs should have included the toll system integration costs set forth on Appendix B hereto, (ii) footnote 2 of Exhibit 6 of the MTA should have stated that the toll system integration costs listed in the penultimate row of Exhibit 6 (page 6-4) would be funded as Applicable Revolving Account Costs, and (iii) the actual Applicable Revolving Account Costs are determined by reference to the expenditures under the SPAs or, in the case of Segment 1, the schedule. The amendment would also address any refinements to the model HRELN SPA that have been made to address TFRA funding or TIFIA issues.

WHEREAS, the Commonwealth Transportation Board (“CTB”) has the authority, pursuant to Section 33.2-214 of the Code of Virginia, to cause VDOT to enter into this Agreement and has authorized the Commissioner of Highways to enter into agreements with HRTAC for project administration and development purposes, and Section 33.2-2608 of the Code of Virginia authorizes HRTAC to enter into this Agreement;

WHEREAS, the CTB, by resolution passed on January 14, 2015, resolved that any agreement between VDOT and HRTAC for project services shall provide that overruns or other additional project costs shall be prorated between HRTAC and VDOT so that each party bears a proportionate share of the additional costs based on each party’s percentage responsibility of the project budget;

WHEREAS, in order to permit HRTAC to meet its obligations under this Agreement and Appendix B, contemporaneously with the execution and delivery of this Agreement, VDOT and HRTAC have agreed to amend the Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project dated April 2, 2019 (the “PAFA”), to ensure that all amounts paid by HRTAC under this Agreement will be treated as covered under the project budget set forth on Exhibit 3 to the PAFA through, specifically, the Commission-Supported Contingency Reserve (as defined in the PAFA); and

WHEREAS, HRTAC's governing body and the CTB have each authorized that their respective designee(s) execute this Agreement on their respective behalf(s) as evidenced by copies of each such entity's clerk's minutes or such other official authorizing documents which are appended hereto as Appendix E.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, the parties hereto agree as follows:

A. VDOT's Obligations

VDOT shall:

1. Complete or perform or cause to be completed or performed all work relating to the Project, as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with (i) any and all applicable federal, state, and local laws and regulations, and (ii) all terms and conditions of the Master Agreement and this Agreement, including, without limitation, the Project Budget and Project Schedule reflected in Appendix B, which Project Budget and Project Schedule (A) VDOT represents have been prepared in good faith, in accordance with the practices and procedures that VDOT uses for projects where the state or VDOT bears the cost of the project (including, without limitation, the practices used to price and budget services that may be internally sourced, such as Construction Engineering Inspection/CEI), and (B) the parties acknowledge may be amended pursuant to Section A.8 below or as follows:

- (a) In the event that VDOT determines, after receipt of proposals or bids for any work related to the Project, that the cost of the contract for said work will result in a significant reduction in costs associated with a portion of the Project Budget reflected in Appendix B that is allocated to work covered by the contract, then VDOT shall notify HRTAC's Executive Director of the significant reduction in costs. For purposes of this Section A.1(a), HRTAC and VDOT agree that a "significant reduction in costs" shall mean a reduction in costs that has the effect of reducing, in Appendix B, (x) the costs for the particular portion of the Project Budget allocated to work covered by the contract by more than 20 percent or (y) the entire Project Budget either by more than 10 percent or \$10,000,000, whichever applies. In the event there is a significant reduction in costs, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the effect of the reduction (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state or federal contributions, then the commitment of each funding source would be reduced by its proportionate share of the reduction in costs, which proportionate share will be based on the funding source's proportionate responsibility for the total budgeted costs before the reduction was realized) (for the avoidance of doubt, the amount by which a commitment is reduced shall be considered deobligated from the Project).
- (b) In the event that any federal or state funding not previously available for the Project becomes available for any portion of the Project Budget reflected in Appendix B, then VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the benefit of the additional funding (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state contributions, but federal funding subsequently becomes available, then the respective commitments of HRTAC and the state would be reduced by each party's proportionate share of the additional funds, which proportionate share will be based on the party's proportionate responsibility for the total budgeted cost before the additional funding became available).
- (c) In the event that application is made for federal or state funding or loans not previously available for the Project, then VDOT will, to the extent within its reasonable control, provide reasonable support to such application and, if any such funding or loans are awarded or otherwise become available, take action to satisfy conditions and comply with requirements of such funding or loans, in each case as may be reasonably requested by HRTAC.

2. Without limiting the foregoing, VDOT shall:
 - (a) Select contractors, contract with contractors, and administer and enforce contracts all in a manner that is consistent in all material respects with the policies, procedures and practices that VDOT uses where the state or VDOT bears the cost of a project; for example, VDOT shall use its customary policies, procedures and practices relating to requesting bids/proposals, negotiating/finalizing terms and conditions of contracts (using, where applicable, standard terms/forms), and monitoring and enforcing performance of contracts;
 - (b) Not enter into any contract to perform the work related to the Project if (i) the cost of that contract would exceed the portion of the Project Budget reflected in Appendix B that is allocated to the work covered by that contract, (ii) the cost of that contract, when aggregated with the cost of all other contracts relating to the Project that have been, or are expected to be, entered into would exceed the Project Budget reflected in Appendix B, or (iii) the schedule in the contract for performing and paying for the work related to the Project would be materially different (whether accelerated or delayed) from the Project Schedule set forth in Appendix B; in addition, if the bids or proposals received for any portion of the Project are not qualitatively consistent with VDOT's standards for that work or quantitatively within VDOT's projections for that work, each as determined by VDOT in its good faith judgment, VDOT shall (i) undertake a new procurement, or (ii) recommend alternative measures to HRTAC, and seek HRTAC's advice and consent regarding pursuit of those alternative measures. If HRTAC grants its written consent to a modification to the Project Budget and/or Project Schedule in order to permit VDOT to enter into a contract to perform the work, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to reflect the modified Project Budget and Project Schedule.
 - (c) Involve HRTAC in any procurement consistent with the terms of the Master Agreement.
3. Perform or have performed in accordance with VDOT's standards for highways, bridges and tunnels (or that otherwise are applicable to the work under the Project) all design and engineering, all environmental work, and all right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions, as is required by this Agreement or that may be necessary for completion of the Project pursuant to the terms of this Agreement. If VDOT determines that a delay will more likely than not prevent the completion of a material phase of the Project (e.g., PE or ROW acquisition), or the entire Project, in

accordance with the Project Schedule, VDOT shall notify HRTAC in writing and provide HRTAC with such information as HRTAC may reasonably request, including information pertaining to potential corrective measures and remedies against the contractor (if VDOT and HRTAC mutually develop a model notice for such purposes, VDOT's notice will follow the format of the model).

4. Not use any funds provided by HRTAC, including the funds specified on Appendix B, to pay any Project cost if, as applicable, the HRTAC Act or HREL Tolling Legislation does not permit such Project cost to be paid with HRTAC funds.
5. Recognize that, if the Project contains "multiple funding phases" (as such "multiple funding phases" are set out for the Project on Appendix A), for which HRTAC will provide funding for such multiple funding phases (as scheduled on Appendix B), HRTAC may not have sufficient cash flows to permit accelerated funding to VDOT and to advance the funding schedule for the Project. In any circumstance where VDOT seeks to advance the funding schedule for the Project, VDOT shall submit a written request to HRTAC's Executive Director explaining VDOT's reasons why HRTAC should authorize acceleration to the next funding phase. (As used in this Agreement, "Executive Director" shall mean HRTAC's Chairman if at any applicable time, HRTAC has not engaged a dedicated, full-time Executive Director.) HRTAC's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and HRTAC's current and projected cash flow position and make a recommendation to HRTAC whether to authorize VDOT's requested accelerated funding. The foregoing shall not prohibit VDOT from providing its own funds to advance a future funding phase of the Project and from requesting reimbursement from HRTAC for having advance funded a future phase of the Project; however, VDOT further recognizes that HRTAC's reimbursement to VDOT for having advance funded a phase of the Project will be dependent upon HRTAC's cash flow position at the time such a request for reimbursement is submitted and may be dependent upon the extent to which the reimbursement of any such advanced funding is otherwise consistent with the terms of this Agreement, including Appendix B.
6. (a) Permit (and assist) HRTAC's Executive Director to periodically update HRTAC's cash flow estimates for the Project with the objective toward keeping those estimates accurate throughout the performance of the Project. VDOT shall provide all available information reasonably required by HRTAC so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the performance of the Project as described in Appendix B.

- (b) Provide HRTAC's Executive Director with the monthly reports described on Appendix D.
- 7. Provide to HRTAC's Executive Director requests for payment consistent with Appendix C (and the most recently approved HRTAC cash flow estimates) that include (a) HRTAC's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by HRTAC, and (b) certifications that all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by HRTAC, VDOT can expect to receive payment within twenty (20) days upon receipt by HRTAC. Approved payments may be made by means of electronic transfer of funds from HRTAC to or for the account of VDOT.
- 8. (a) Promptly notify HRTAC's Executive Director if VDOT determines that any additional, unbudgeted costs may be incurred to perform and complete the Project ("Additional Costs"), which notice shall include a description of the Additional Costs, an explanation of how they arose and the assumptions in the initial budget regarding those costs, and a detailed estimate of the Additional Costs. VDOT shall make recommendations regarding any curative actions that may be available relating to such Additional Costs, including any potential modification or reduction that may be made to the Project scope or design, or any other action, in order to stay within the initial budget for the Project. If the Additional Costs can be absorbed in the Project Budget by modifying or reducing the scope or design of the Project (or avoided by cancelling the Project or any portion thereof), HRTAC may, in its sole discretion, elect to (i) authorize VDOT to proceed with such modifications or reductions, (ii) authorize the Additional Costs (or if a combination of (i) and (ii) is feasible, HRTAC may elect such combination), or (iii) elect to cancel the Project or a portion thereof; provided, however, in any case, the respective obligations of VDOT and HRTAC, as modified by the elected alternative, shall be set forth in an amendment to this Agreement (VDOT and HRTAC shall work in good faith to finalize and execute such amendment). If the Additional Costs cannot be absorbed in the initial budget by modifying or reducing the scope or design of the Project (and HRTAC elects option (ii) above), then, subject to Section F below, such Additional Costs shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget. In the event that HRTAC elects to cancel the Project (or any portion thereof) pursuant to this Section A.8(a)(iii), (A) all compensation due and owing to any and all contractors for work on the Project

that has been completed at the time of cancellation, shall be paid in accord with Appendix B, and (B) subject to Section F, all reasonable costs associated with the cancellation due and owing to said contractors pursuant to the terms of the contracts with the contractors, which terms shall be consistent with VDOT's standard contract terms relating to contract cancellation and termination, (the "Breakage Compensation"), shall be paid with HRTAC-Controlled Moneys, unless VDOT and HRTAC mutually determine that cancellation of the Project is necessary or warranted, in which case, the Breakage Compensation shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget.

- (b) VDOT shall not include in any contract with a contractor working on the Project any term, condition or remedy in respect of Additional Costs that is more favorable to the contractor than the terms, conditions or remedies VDOT includes in standard contracts where the state or VDOT bears the cost of the project.
- (c) The Additional Costs may include costs incurred by VDOT as a result of contractor claims relating to the Project made pursuant to the VDOT Roads and Bridge Specifications and §§ 33.2-1101 through 33.2-1105 of the Code, as amended. VDOT shall promptly notify HRTAC if any such claims are made or VDOT receives a notice of intent to file a claim or other written communication from a contractor relating to a claim or contractual dispute that could result in increased contract costs, and whether in each such case the claimed amount is expected to become, or result in, Additional Costs (and the estimate thereof) or is expected to have a material adverse effect on the contingency reserves established as part of the Project Budget (and the estimated effect thereon). VDOT shall be responsible to handle all such claims and notices of intent, but VDOT may not settle any claim or notice of intent to file a claim and thereafter submit it as an Additional Cost pursuant to Section A.8(a) unless the settlement has been approved by HRTAC. Funding for the settlement will be prorated based on the respective proportionate share of the HRTAC-Controlled Moneys and state and federal funds in the Project Budget. Should the claim not be settled, any final judgment from a court of competent jurisdiction shall be paid in accordance with the proration rule set forth in the preceding sentence.
- (d) Notwithstanding anything to the contrary set forth herein, if any additional cost (including, without limitation, any additional cost relating to a contractor claim described in Section A.8(c) above) arises out of or results from VDOT's negligence, breach of contract,

willful misconduct or violation of law (“VDOT Fault”), HRTAC shall not be responsible for such additional costs. Any notice provided by VDOT to HRTAC pursuant to Section A.8(c) above shall be accompanied by a certification from VDOT that it has determined in good faith that any Additional Costs do not arise out of or result from VDOT Fault.

9. Release or return any unexpended funds to HRTAC no later than 90 days after final payment has been made in respect of the Project.
10. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations.
11. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations.
12. Reimburse HRTAC (or such other entity as may have provided funds) for all funds provided by HRTAC (or on behalf of HRTAC) and, to the extent applicable and permitted by law, with interest earned at the rate earned by HRTAC, (a) that VDOT misapplied, used or requisitioned in contravention of the HRTAC Act or any other applicable law, or any term or condition of this Agreement or (b) the expenditure of which arose out of VDOT Fault.
13. Be solely responsible for the administration and/or development of the Project and all engagements, commitments and agreements with contractors (and, without limiting the foregoing, shall ensure that such engagements, commitments and agreements contain all terms that, pursuant to the Master Agreement or this Agreement, are required to be included therein). VDOT shall ensure that VDOT’s contractors maintain surety bonds and insurance in amounts and with coverages that VDOT requires under its Road and Bridge Specifications for all work to be performed for the Project, and name HRTAC and its members, officers, employees and, if applicable, any HRTAC lender and any bond trustee, as additional insureds on any such insurance policy, and present HRTAC with satisfactory evidence thereof before any work on the Project commences.
14. If in connection with the work VDOT engages outside legal counsel approved by the Attorney General (as opposed to utilizing the services of the Office of the Attorney General), VDOT will give HRTAC notice of the engagement so as to ensure that no conflict of interest may arise from any such representation (VDOT also shall ensure that such engagements are

consistent with the practices and terms that VDOT uses where it is solely responsible for project costs).

15. Subject to and consistent with the requirements of Section E of this Agreement, upon final payment to all contractors for the Project, if the Project is or is part of a VDOT Highway, VDOT will use the Project (a) for its intended purposes for the duration of the Project's useful life, and (b) in accordance with, and subject to, the terms of the Master Agreement (including, without limitation, the license granted to HRTAC pursuant to Section 3.08(b) thereof). If the Project is or is part of a VDOT Highway, VDOT shall be responsible to operate and/or maintain the Project (which duty and obligation excludes the Tolling O&M Duties, as defined in the Master Agreement, except as otherwise provided in the Master Agreement or in any other contract between VDOT and HRTAC under which VDOT is responsible to perform such duties as a contractor to HRTAC) after its completion (including responsibility to correct any defects or to cause any defects to be corrected)(and, without limiting the foregoing, shall perform its operations and maintenance obligations in accordance with the terms of the Master Agreement), and, except as and to the extent provided under the Master Agreement (with respect to Tolling O&M Duties), under no circumstances will HRTAC have any responsibility or obligation to operate and/or maintain the Project (or correct defects with respect to the Project).
16. Comply with all applicable federal, state and local laws and regulations, including without limitation requirements of the Virginia Public Procurement Act.
17. Recognize that VDOT or its contractors are solely responsible for obtaining, and shall obtain, all permits, permissions and approvals necessary to construct and/or operate the Project, including, but not limited to, obtaining all required VDOT and local land use permits, zoning approvals, environmental permits, and regulatory approvals.
18. Recognize that if the Project is being funded, in whole or in part, with federal and/or state funds (in addition to HRTAC-Controlled Moneys), that VDOT shall (a) take any and all necessary actions to satisfy any conditions to such additional federal and/or state funding (provided that such actions are within the control of VDOT) and to enforce any commitments made in connection therewith, (b) comply with all applicable federal and Commonwealth funding requirements within the control or purview of VDOT, and (c) include in its contracts with contractors provisions that permit such contracts to be terminated, without penalty, if the funding is rescinded or otherwise becomes unavailable (for clarification, a provision shall not be deemed to include a penalty solely as a result of terms that require payment of compensation due and owing at the time of cancellation and reasonable costs associated with cancellation

provided that such costs are consistent with costs paid pursuant to VDOT's standard contract terms relating to contract cancellation and termination). VDOT acknowledges and agrees that if funding from such an additional federal or state source is rescinded or otherwise becomes unavailable HRTAC (i) shall not be responsible for any amount in excess of its commitment set forth on Appendix B, and (ii) may (A) replace said reduced funding with HRTAC Controlled-Moneys or (B) may request VDOT to immediately suspend or discontinue all work relating to the Project, provided if HRTAC requests suspension HRTAC shall be responsible for the costs reasonably incurred in connection with such suspension. Should HRTAC not replace the reduced funding or request VDOT to suspend or discontinue work, VDOT may reduce the Project scope or take any other actions needed to reduce the Project costs to the Project Budget.

19. Provide a certification to HRTAC no later than 90 days after final payment for the Project that VDOT adhered to all applicable laws and regulations and all requirements of this Agreement.
20. Notify HRTAC if VDOT determines that a delay will more likely than not prevent the timely completion of a material phase of the Project, including information regarding potential corrective measures and remedies against the contractor.
21. With respect to modifications to any agreement with a contractor, concede to HRTAC any resulting savings, if HRTAC-Controlled Moneys are funding 100% of the applicable work, or if the cost savings relate to work funded with HRTAC-Controlled Moneys and state and/or federal funds, concede such savings to such parties *pro rata*, based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget for such work.
22. Include in any agreement with a contractor an assessment of liquidated damages in an amount equal to or greater than the amount specified under the Master Agreement (unless HRTAC expressly agrees in writing to a reduced amount) if either substantial completion or final acceptance is not achieved by the applicable deadline. Unless otherwise agreed by the parties acting reasonably, any liquidated damages (as well as other damages paid by a contractor, insurance proceeds, or recoveries from third parties) received by VDOT in respect of the Project shall be administered in accordance with the terms of the Master Agreement.
23. Terminate any agreement with a contractor upon the written request of HRTAC if (a) VDOT has failed to exercise the right to terminate such agreement for cause, but only (i) if such failure is reasonably expected to have a material adverse effect on HRTAC and (ii) following consultation between HRTAC and VDOT regarding the reasons, if any, for VDOT's

failure to exercise such right; or (b) HRTAC determines in good faith that HRTAC has suffered a material adverse change in its ability to satisfy its obligations under this Agreement and it is in HRTAC's best interests for VDOT to terminate the contractor's agreement for convenience.

B. HRTAC's Obligations

HRTAC shall:

1. Subject to the limitations as to amounts set forth in Appendix B (and subject to Section F of this Agreement), provide to VDOT the funding authorized by HRTAC for the Project, on a reimbursement basis as set forth in this Agreement and as specified in Appendix B to this Agreement or the most updated amendment thereto, as approved by HRTAC.
2. Assign a person to serve as a Program Coordinator for the Project, who will be responsible for review of the Project on behalf of HRTAC for purposes of ensuring it is being completed in compliance with this Agreement and all HRTAC requirements. (In the absence of an assigned person, HRTAC's Executive Director shall serve as the Program Coordinator.) HRTAC's Program Coordinator will be responsible for overseeing, managing, reviewing, and processing, in consultation with HRTAC's Executive Director and its Chief Financial Officer ("CFO"), all payment requisitions submitted by VDOT for the Project. HRTAC's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the scope of the Project as set forth on Appendix A or to the Project Budget and Project Schedule as set forth on Appendix B.
3. Route to HRTAC's assigned Program Coordinator all VDOT payment requisitions and the summaries of actual costs submitted to HRTAC for the Project. After submission to HRTAC, HRTAC's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. HRTAC's Program Coordinator will then make a recommendation to the HRTAC's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from VDOT. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is, in HRTAC's reasonable judgment, deemed insufficient, within twenty (20) days from receipt, HRTAC's Program Coordinator will notify VDOT in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed in order to authorize the payment request. Payment will be withheld until all deficiencies identified by HRTAC have been corrected to HRTAC's reasonable satisfaction. Under no circumstances will HRTAC authorize payment for any work performed by or on behalf of

VDOT that is not in conformity with the requirements of the HRTAC Act or this Agreement.

4. Route all of VDOT's accelerated or supplemental requests for funding from HRTAC under Sections A.5 and A.8, respectively, of this Agreement to HRTAC's Executive Director. HRTAC's Executive Director will initially review those requests and all supporting documentation with HRTAC's CFO. After such initial review, HRTAC's Executive Director will make a recommendation to HRTAC's Finance Committee for its independent consideration and review. HRTAC's Finance Committee will thereafter make a recommendation on any such request to HRTAC for final determination by HRTAC.
5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the HRTAC Act and other applicable law. Such compliance reviews may entail (i) review of VDOT's financial records for the Project, (ii) on-Project site inspections and (iii) review of a contractor's books and records in relation to the Project to the extent VDOT has access thereto.
6. Acknowledge that if, as a result of HRTAC's review of any payment requisition or of any HRTAC compliance review, HRTAC staff determines that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, HRTAC staff will promptly advise HRTAC's Executive Director and will advise VDOT's designated representative in writing. VDOT will thereafter have thirty (30) days to respond in writing to HRTAC's initial findings. HRTAC's staff will review VDOT's response and make a recommendation to HRTAC's Finance Committee. HRTAC's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to HRTAC. If HRTAC makes a final determination that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, the parties should engage in dispute resolution as provided in Section D of this Agreement. Pending final resolution of the matter, HRTAC will withhold further funding on the Project. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.
7. Upon making final payment to VDOT for the Project, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans, if any, developed pursuant to or in association with the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.

8. Be the sole determinant of the amount and source of HRTAC funds to be provided and allocated to the Project and the amounts of any HRTAC funds to be provided in excess of the amounts specified in Appendix B.
9. Have no obligation to pay or reimburse VDOT for any cost (including, without limitation, compensation paid or payable to any contractor) arising out of VDOT Fault.

C. Term

1. This Agreement shall (i) be effective upon adoption and execution by both parties and (ii) unless terminated earlier in accordance with its terms, expire ninety (90) days after the date on which VDOT makes final payment to Project contractor(s) and all contractor claims have been resolved or are barred.
2. VDOT may terminate this Agreement, for cause, in the event of a material breach by HRTAC of this Agreement. If so terminated, HRTAC shall pay for all Project costs incurred in accordance with the terms of this Agreement through the date of termination and all reasonable costs incurred by VDOT to terminate all Project-related contracts. The Virginia General Assembly's failure to appropriate funds to HRTAC as described in Section F of this Agreement and/or repeal or amendment of the legislation establishing the HRTF or HRTAC's powers shall not be considered material breaches of this Agreement by HRTAC if such failure to appropriate or such repeal or amendment eliminates funds in the HRTF to be used for the Project or renders HRTAC without legal authority to provide funding for the Project. Before initiating any proceedings to terminate under this Section, VDOT shall give HRTAC sixty (60) days written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing HRTAC an opportunity to investigate and cure any such alleged breach.
3. HRTAC may terminate this Agreement, for cause, resulting from VDOT's material breach of this Agreement. If so terminated, VDOT shall refund to HRTAC all funds HRTAC provided to VDOT for the Project and, to the extent permitted by law, with interest earned at the rate earned by HRTAC. Before initiating any proceedings to terminate under this Section, HRTAC shall give VDOT sixty (60) days' written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing VDOT an opportunity to investigate and cure any such alleged breach. Prior to termination, if VDOT has substantially completed the Project or a portion that is severable (meaning it is subject to independent use), VDOT may request that HRTAC excuse VDOT from refunding funds paid in respect of the substantially completed Project or portion, and HRTAC may, in its sole discretion, excuse VDOT from refunding all or a portion of the funds HRTAC provided to VDOT for the substantially

completed Project or portion thereof. No such request to be excused from refunding will be allowed (a) where VDOT has either misused or misapplied HRTAC funds in contravention of this Agreement or applicable law, or (b) without the prior written consent of any lender to HRTAC, if the terms of HRTAC's loan agreement with such lender require such consent.

4. Upon (a) expiration or earlier termination of this Agreement and (b) payment of all eligible expenses as set forth in Section C.3 above, VDOT will release or return to HRTAC all unexpended HRTAC funds and, to the extent permitted by law, with interest earned at the rate earned by HRTAC, no later than sixty (60) days after the date of such expiration or earlier termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer promptly in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. HRTAC's Executive Director and the Commissioner shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to HRTAC and to the Commissioner for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law or in equity, including all judicial remedies. The foregoing dispute resolution method shall not bar either party's right to seek equitable relief on an emergency basis. Neither party will seek or accept an award of attorneys' fees or costs incurred in connection with resolution of a dispute.

E. HRTAC's Interest in Project Assets

VDOT agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by HRTAC under this Agreement ("Assets") for the designated transportation purposes of the Project, in accordance with applicable law throughout the useful life of each such Asset, and in accordance with, and subject to, the terms of the Master Agreement (including, without limitation, the license granted to HRTAC pursuant to Section 3.08(b) thereof). If VDOT intends to sell, convey, or dispose any Asset funded with HRTAC funds or intends to use any Asset for a purpose inconsistent with this Agreement or the Master Agreement, VDOT shall notify HRTAC's Executive Director in writing of any such intent before further action is taken by VDOT in furtherance thereof. Upon receiving notification from VDOT, HRTAC's Executive Director shall notify HRTAC of VDOT's intended action(s). The parties shall, thereafter, meet and confer to discuss what measures need to be taken regarding VDOT's proposed sale, conveyance, disposition, or use of any such Asset(s) so as to ensure compliance with all applicable requirements and terms of the HRTAC Act and the

Master Agreement (without limiting the foregoing, VDOT acknowledges that (i) under the HRTAC Act and applicable law, HRTAC is vested with the right to impose and collect tolls on facilities constructed by the Commission and holds a license to, among other things, use the tolling infrastructure and system), and (ii) under the HREL Tolling Legislation, HRTAC is vested with the right to impose and collect tolls on the portion of the HREL Project facility that has been designated by the CTB for use as high-occupancy toll lanes). All recommendations and/or proposed remedial actions developed by the parties' designated representatives during the meet and confer process shall be formally presented to HRTAC and the Commissioner for their respective approval.

F. Appropriations Requirements

1. Nothing herein shall require or obligate HRTAC to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by its governing body for the Project.
2. The parties acknowledge that all funding provided by HRTAC pursuant to the HRTAC Act is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the HRTF pursuant to applicable provisions of the Code of Virginia and any other moneys that the General Assembly appropriates for deposit into the HRTF are subject to appropriation by the General Assembly and (ii) HRTAC's obligations under this Agreement are subject to such moneys being appropriated to the HRTF by the General Assembly.
3. The parties agree that VDOT's obligations under this Agreement are subject to funds being appropriated by the General Assembly and allocated by the Commonwealth Transportation Board and otherwise legally available to VDOT for HRTAC projects.
4. Should VDOT be required to provide additional funds in order to proceed or complete the funding necessary for the Project, VDOT shall certify to HRTAC that such additional funds have been allocated and authorized by the CTB and/or appropriated by the Virginia General Assembly as may be applicable or have been obtained through another independent, lawful source.

G. Representations and Warranties

1. VDOT hereby represents and warrants to HRTAC as of the date of this Agreement as follows:
 - (a) VDOT is an agency of the Commonwealth of Virginia, and it has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;

- (b) VDOT has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement, and each person executing this Agreement on behalf of VDOT has been duly authorized to execute and deliver it on behalf of VDOT;
 - (c) the execution and delivery by VDOT of this Agreement, and the performance of its obligations hereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any law, where such violation will have a material adverse effect on the ability of VDOT to perform its obligations under this Agreement;
 - (d) this Agreement has been duly authorized, executed, and delivered by VDOT and constitutes a valid and legally binding obligation of VDOT, enforceable against it in accordance with the terms hereof, subject to (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) sovereign immunity under the law of the Commonwealth of Virginia; *provided, however,* that, for the avoidance of doubt, sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth of Virginia; and
 - (e) there is no action, suit, proceeding, investigation, or litigation pending and served on VDOT which challenges VDOT's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the VDOT official executing this Agreement, and VDOT has disclosed to HRTAC any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which VDOT is aware.
2. HRTAC hereby represents and warrants to VDOT as of the date of this Agreement as follows:
- (a) HRTAC is a body politic and a political subdivision of the Commonwealth of Virginia, and it has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;
 - (b) HRTAC has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement, and each person executing this

Agreement on behalf of HRTAC has been duly authorized to execute and deliver it on behalf of HRTAC;

- (c) the execution and delivery by HRTAC of this Agreement, and the performance of its obligations hereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any law, where such violation will have a material adverse effect on the ability of HRTAC to perform its obligations under this Agreement;
- (d) this Agreement has been duly authorized, executed, and delivered by HRTAC and constitutes a valid and legally binding obligation of HRTAC, enforceable against it in accordance with the terms hereof, subject to (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) sovereign immunity under the law of the Commonwealth of Virginia; *provided, however*, that, for the avoidance of doubt, sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth of Virginia; and
- (e) there is no action, suit, proceeding, investigation, or litigation pending and served on HRTAC which challenges HRTAC's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the HRTAC official executing this Agreement, and HRTAC has disclosed to VDOT any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which HRTAC is aware.

H. Tax Covenants for Bond-Funded Projects

VDOT shall comply in all material respects with the Tax Covenants for Bond-Funded Projects set forth in Appendix F (*Tax Covenants for Bond-Funded Projects*).

I. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

- 1) to: HRTAC, to the attention of its Executive Director and Chairman;
723 Woodlake Drive
Chesapeake, VA 23320

2) to: VDOT, to the attention of:
Commissioner, Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219

J. Assignment

This Agreement shall not be assigned by either party unless express written consent is given by the other party.

K. Modification or Amendment

(a) This Agreement may not be modified or amended, except pursuant a written agreement that is duly authorized, executed and delivered by both parties.

(b) If HRTAC is able to obtain a source of funding for the Project that would reduce or replace the amount of HRTAC-Controlled Moneys expended on the Project, VDOT and HRTAC will work in good faith to amend this Agreement so it takes into account that other funding.

(c) VDOT and HRTAC will work in good faith to adopt such amendments to this Agreement as VDOT and HRTAC may mutually agree are necessary and desirable in connection with any bond financing.

L. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, member, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

M. No Agency

VDOT represents that it is not acting as a partner or agent of HRTAC; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

N. Sovereign Immunity

This Agreement shall not be construed as a waiver of either party's sovereign immunity rights.

O. Incorporation of Recitals and Appendices

The recitals and Appendices to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that the recitals are true and correct.

P. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

Q. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

Q. Survival

The following provisions shall survive the expiration or earlier termination of this Agreement: Sections A.4, A.9, A.12, A.15, A.17, A.19, A.22, B.5 and B.7, and Sections C through Q.

[Signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Hampton Roads Transportation Accountability Commission

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

HAMPTON ROADS EXPRESS LANES NETWORK PROJECT ELEMENTS

SEGMENT 3 (CAPITAL IMPROVEMENTS – TOLLING INFRASTRUCTURE) PROJECT

Scope: The Segment 3 (Capital Improvements – Tolling Infrastructure) to be performed under this Agreement includes providing the tolling infrastructure construction for Segment 3 of the Hampton Roads Express Lane Network. The Segment 3 project, which is approximately 10 miles in length, is located along I-64 in the Cities of Hampton and of Norfolk from approximately 1,000 feet west of Settlers Landing Road to approximately 1,500 feet east of Little Creek Road. No additional right of way is anticipated. This project will have minimal utility relocations. The proposed design includes tolling traffic management structures, equipment, generators and cabinets, power and communications services, advisory and confirmation DMS structures and sign panels with overhead support structures.

The tasks to be completed include but are not limited to the following:

Survey, subsurface utility designation, scoping plan development, risk analysis & matrix, tolling infrastructure and equipment, generators and cabinets, power and communications services, advisory and confirmation DMS structures and sign panels with overhead support structures, scoping level cost estimate & schedule refinements, public information meetings, City of Norfolk bi-weekly meetings, HRBT/HREL coordination meetings, civic league information meetings, other information meetings as requested, NEPA Categorical Exclusion investigation and documentation, preliminary and final design and plan development, final quantity and cost estimate, LRTP inclusion coordination, TIP/STIP inclusion coordination and construction advertisement.

APPENDIX B

HAMPTON ROADS EXPRESS LANES NETWORK ELEMENTS

SEGMENT 3 (CAPITAL IMPROVEMENTS – TOLLING INFRASTRUCTURE) PROJECT

PROJECT BUDGET AND PROJECT SCHEDULE

Project Budget: SEGMENT 3 (CAPITAL IMPROVEMENTS – TOLLING INFRASTRUCTURE) PROJECT:

Preliminary Engineering	\$1,361,556
Right of Way (RW)	\$0
Construction (CN)	\$17,427,918
<hr/>	<hr/>
Total Cost	\$18,789,474

The estimated cost of Segment 3 Capital Improvements – Tolling Infrastructure, as shown in Appendix B, utilizes the anticipated synergies by aligning with a corridor-wide tolling solutions of other segments of the Hampton Roads Express Lanes Network (Segments 1, 4A, 4B, and 4C). The estimated cost shown above does not include Tolling System Integration cost for Segment 3, [which will be reflected in a separate Standard Project Agreement for the Tolling System Integration of the entire HREL Network].

The work associated with this Standard Project Agreement for the Segment 3 (Capital Improvements – Tolling Infrastructure) project will complete the installation of Tolling Infrastructure to support tolling operations on Interstate 64 from Settlers Landing Road in Hampton to the Interstate 564 Interchange in Norfolk.

These tasks include but are not limited to the following:

Survey, subsurface utility designation, scoping plan development, risk analysis & matrix, tolling infrastructure and equipment, generators and cabinets, power and communications services, advisory and confirmation DMS structures and sign panels with overhead support structures, scoping level cost estimate & schedule refinements, public information meetings, City of Norfolk bi-weekly meetings, HRBT/HREL coordination meetings, civic league information meetings, other information meetings as requested, NEPA Categorical Exclusion investigation and documentation, preliminary and final design and plan development, final quantity and cost estimate, LRTP inclusion coordination, TIP/STIP inclusion coordination and construction advertisement.

Project Schedule: SEGMENT 3 (CAPITAL IMPROVEMENTS – TOLLING INFRASTRUCTURE) PROJECT (all dates are estimates):

- **Preliminary Engineering (PE):**
 - PE Start: May 2021
 - PE End: October 2022
- **Construction (CN):**
 - CN Start: October 2022
 - CN End: March 2025*
- **Tolling System Integration (TSI):**
 - TSI Start: September 2024*
 - TSI End: November 2025

**Tolling System Integration cost is not included in this agreement. Although Segment 3 construction is anticipated to be completed by September 2024, an additional 6 months have been added to account for construction related close out and payment of invoices (i.e. March 2025). The Tolling System Integration is anticipated to commence in September 2024, based on early construction completion date assumptions of the HRBT project, and expected to be completed by Toll Day 1. It should be noted that additional testing of the tolling system may go beyond Toll Day 1 as Segment 3 begins to operate.*

APPENDIX C

FORM OF PAYMENT REQUISITION

HRTAC Project Title and Number: Hampton Roads Express Lanes Network Elements, Segment 3
(Capital Improvements – Tolling Infrastructure) Project - UPC 118376

Project Scope/Services Description: The work associated with this Standard Project Agreement for the Segment 3 (Capital Improvements – Tolling Infrastructure) project will complete the installation of Tolling Infrastructure to support tolling operations on Interstate 64 from Settlers Landing Road in Hampton to the Interstate 564 Interchange in Norfolk.

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, VA 23320

Attention _____, Program Coordinator:

This requisition is submitted in connection with the Standard Project Agreement for Funding and Administration for the project services noted above and dated _____, 20__ (the "Agreement") between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT"). VDOT hereby requests \$_____ of HRTAC funds, to pay the costs of the project services described and set forth in Appendices A and B of the Agreement ("Project Services") and in accordance with the Agreement. Also included are copies of each invoice relating to the items for which this requisition is requested.

The undersigned certifies (i) the amounts included within this requisition will be applied solely and exclusively for the payment or the reimbursement of VDOT's costs of the Project Services, (ii) VDOT is responsible for payment to vendors/contractors, (iii) VDOT is not in breach or default with respect to any of its obligations under the Agreement, including without limitation (but only if applicable) the tax covenants set forth in another Appendix to the Agreement, (iv) the representations and warranties made by VDOT in the Agreement are true and correct as of the date of this Requisition and (v) to the knowledge of VDOT, no condition exists under the Agreement that would allow HRTAC to withhold the requested advance.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

Recommended For Payment

By: _____
Name: _____
Title: HRTAC Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____
HRTAC Project Number: UPC 118376

Request Date: _____
Project Title: HRELN Segment 3

Cost Category	HRTAC Approved Project Costs	Total PayGo Requests Previously Received	PayGo Requisition Amount this Period	Remaining PAYGO Project Budget (Calculation)
Project Starting Balance	\$1,361,556			\$ -
Design Work/ Engineering	\$1,361,556	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Work	-	-	-	\$ -
Construction	\$17,427,918	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$18,789,474	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Item Number	Invoice Number	Cost Category	Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-
Requisition Amount				\$ -

Instructions

1. Column B-Please list approved PayGo Project Cost per category.
2. Column C-Please list Total PayGo Amounts per Category Previously Reimbursed by HRTAC
3. Column D- Please list invoice amounts summarized by Category from the Listing of Attached Invoices
4. Column E - Is a calculation of the Remaining PAYGO Budget per Category

Instructions-Listing of Attached Invoices: (please list each invoice separately)

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please manually number the invoices attached with the corresponding Item number in this schedule.
3. Column C- Please list the invoice number as it appears on the Invoice
4. Column D- Please list the appropriate Cost Category based on the Project Category breakout above
5. Column E- Please enter the dollar amount listed on the invoice.
6. The calculated Requisition Amount should equal the total in Column D in the Schedule above.

APPENDIX D

REPORTS TO BE PROVIDED BY VDOT

1) Monthly Project Expenditure Report which lists, by category of expense (*e.g.*, engineering, ROW, utility relocations, construction), (a) information regarding expenditures to date against the budget, both monthly and for the life of the project, and a statement of the percent completed; and (b) such other information as VDOT customarily provides with monthly expenditure reports.

2) Monthly Project Report which provides (a) an overview of progress on major project tasks; (b) information regarding the budget (such as, the baseline planned forecast, any approved changes thereto, the monthly expenditures, the cumulative expenditures, and the cumulative forecasted expenditures); (c) future key tasks; and (d) significant issues.

APPENDIX E

OFFICIAL AUTHORIZING DOCUMENTS

APPENDIX F

TAX COVENANTS FOR BOND-FUNDED PROJECTS

1. (A) VDOT (the Department) shall not permit the "Proceeds" of any "Commission Bonds" or any "Financed Property" to be used in any manner that would result in either: (1) 5% or more of such proceeds being considered as having been used in any trade or business carried on by any person other than a governmental unit as provided in Section 141(b) of the "Code;" (2) 5% or more of such Proceeds being used with respect to any "output facility" (other than a facility for the furnishing of water) within the meaning of Section 141(b)(4) of the Code; (3) 5% or more of such Proceeds being considered as having been used directly or indirectly to make or finance loans to any person other than a governmental unit, as provided in Section 141(c) of the Code; or (4) more than an aggregate of \$15,000,000 of Proceeds of any single Commission Bond issue being considered as having been used in any trade or business, any output facility or to make or finance loans as described in (1), (2) or (3) above; **provided, however,** that if HRTAC (the Commission) and the Department receive an opinion of nationally recognized bond counsel concluding that such use or action will not affect the exclusion of interest on the Commission Bonds from gross income of the holders thereof for federal tax purposes under existing law, the Department need not comply with such restrictions.

(B) Notwithstanding the foregoing, the Department and the Commission agree that the provisions herein shall not apply to Proceeds of Commission Bonds derived from "qualified bonds" (as defined in Section 141(e) of the Code (or any successor provisions thereto or regulations thereunder)) the Commission may from time to time issue. In the event any such "qualified bonds" are issued by the Commission, the Department agrees that it will not permit Proceeds of Commission Bond derived from such "qualified bonds" to be used in a manner that fails to comply with the provisions of Section 141(e) and 142(a) of the Code (or any successor provisions thereto or regulations thereunder). The provisions of this subparagraph (B) shall not negate any provision in the Agreement or other agreement between the Commission and the Department that requires mutual consent of the parties or Commission approval of a concession arrangement in respect of the Project.

2. the Department agrees not to requisition or spend the proceeds of any the Commission Bond for any cost of the Project not constituting a "Capital Expenditure."

3. Except as may be described in writing to the Commission, the Department neither has on the date of this Agreement nor expects to have after this date any funds that are restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, for the purposes for which the Department is receiving or may receive Proceeds of Commission Bonds.

4. The Department acknowledges that it may have to provide detailed information about the investment of the amount of any requisition unless (i) payments are remitted directly by the Commission to the contractors/vendors, or (ii) the Department remits payment to the contractors/vendors within five banking days after the date on which the Commission advances the amount of the requisition. The Commission may request the detailed information in order to compute the rebate liability to the U.S. Treasury on the Commission's bonds or other debt financing pursuant to Section 148 of the Code. In addition, the Department shall provide the Commission with any further

information reasonably requested by the Commission from time to time concerning the matters described in this Appendix F.

5. The following terms have the meanings assigned to them below whenever they are used in this Appendix F.

“Capital Expenditure” means any cost of a type that is properly chargeable to capital account (or would be so chargeable with (or but for) a proper election or the application of the definition of “placed in service” under Treas. Reg. § 1.150-2(c)) under general federal income tax principles, determined at the time the expenditure is paid.

“Code” means the Internal Revenue Code of 1986, as amended.

“Financed Property” means any property financed in whole or in part by any allocation of Commission Bond Proceeds.

“Commission Bond” means any Commission bond or other debt instrument that is a “tax-exempt bond” or a “tax-advantaged bond” (as defined in Treasury Regulations Section 1.150-1(a)).

“Proceeds” means the sale proceeds of any Commission Bond, together with the investment earnings on such proceeds, to the extent allocated to the Project.

Agenda Item 5H
Action Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: 2019A TIFIA Loan Refinancing Authorization – Resolution 2021-07

Recommendation:

The HRTAC Director, financial advisors, and bond counsel recommend that the Finance Committee endorse Resolution 2021-07 for the proposed 2019A TIFIA Loan Refinancing Authorization and authorize the Finance Committee Chair to communicate the Finance Committee's endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.

Background:

The Commission has previously reviewed and approved a debt management plan for the financing and refinancing of the costs of Commission-approved new construction projects for congestion relief in the localities comprising Planning District 23. In February, 2018, the Commission issued \$500 million of Senior Lien Revenue Bonds, Series 2018A under its HRTF Master Indenture, to provide funding in part for the initial six debt-funded projects. The Commission continued the funding of these projects in December, 2019 with the issuance under the Master Indenture of its \$500,789,463 TIFIA Series 2019A Bond (the "2019 TIFIA Loan"); \$414,345,000 Intermediate Lien Bond Anticipation Notes, Series 2019A.

During current negotiations and in response to the Commission's Letter of Interest for financing the HRBT Expansion Project through the Transportation and Infrastructure Finance and Innovation Act of 1978, the U.S. DOT, acting through the Federal Highway Administrator, HRTAC has been made aware by the Build America Bureau Staff that the 2019 TIFIA Loan has an opportunity to be refinanced or reset to the interest rate at the time of the refinancing execution. The existing loan rate of the 2019 TIFIA Loan is 2.25 percent. TIFIA has provided a draft loan agreement for HRTAC's consideration to be used in the event HRTAC chooses to exercise its option to refinance the 2019 TIFIA Loan. HRTAC is now provided with the opportunity to opt to refinance the 2019 TIFIA Loan provided the refinancing is more cost advantageous to the Commission. In Resolution 2021-07, the Commission would authorize the Commission's Executive Director, counsel and financial advisor to move forward with such refinancing or interest rate reset, and finalize the documents and agreements required for the same, all subject to parameters in the Resolution. The Resolution also provides the Chair the authority to execute the necessary documents and agreements provided the refinancing option is



exercised.

Fiscal Impact:

There would be fiscal savings in relation to this Action Item. A portion of the contemplated Commission’s revenues would not be necessary due to the debt service savings of a lower loan interest rate. Several examples of savings over time are provided in the table below:

2019 Loan Rate Reduced by:	Total Gross Savings Over Time
5 basis points	\$6.2 million
10 basis points	\$12.5 million
15 basis points	\$18.7 million

Suggested Motion:

Motion: The Finance Committee endorses Resolution 2021-07 for the proposed 2019A TIFIA Loan Refinancing Authorization and authorizes the Finance Committee Chair to communicate the Finance Committee’s endorsement to the Commission at its June 17, 2021 Annual Organizational meeting.



HRTAC RESOLUTION 2021-07

**RESOLUTION AUTHORIZING THE AMENDMENT OR REFUNDING
OF THE UP TO \$500,789,463
OF HAMPTON ROADS TRANSPORTATION FUND
SUBORDINATE LIEN REVENUE BONDS (TIFIA SERIES 2019)**

WHEREAS, the Hampton Roads Transportation Accountability Commission (the “Commission”) is a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) having the powers set forth in Chapter 26, Title 33.2, of the Code of Virginia of 1950, as amended (the “HRTAC Act”);

WHEREAS, on December 10, 2019, the Commission issued its \$500,789,463 Subordinate Lien Revenue Bond, TIFIA Series 2019 (the “TIFIA Series 2019 Bond”), pursuant to the terms of the HRTAC Act, a Master Indenture of Trust (as amended and supplemented from time to time, the “Master Indenture”) between the Commission and Wilmington Trust, National Association (the “Trustee”) and dated as of February 1, 2018, and a Second Supplemental Series Indenture (the “Second Supplemental Indenture”), between the Commission and the Trustee and dated as of December 1, 2019;

WHEREAS, obligations issued under the Master Indenture are payable from and secured by the revenues and funds in the Hampton Roads Transportation Fund (as defined in the HRTAC Act) (the “HRTF Bonds”) and the proceeds of such HRTF Bonds are to be used to finance and refinance the costs of new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, the TIFIA Series 2019 Bond evidences a loan from the United States Department of Transportation (the “TIFIA Lender”) to the Commission for the purpose of providing funds with which to pay and reimburse expenditures for certain eligible project costs paid or incurred by the Commission in connection with the Interstate 64 Peninsula Widening (Segments I, II and III), I-64 / I-264 Interchange Improvements (Phase I and II), and I-64 Southside Widening & High Rise Bridge (Phase I) projects (together, the “Financed Projects”), and in connection with which the Commission entered into that certain TIFIA Loan Agreement dated as of December 10, 2019 (including any amendment to or amendment and restatement of such TIFIA Loan Agreement, the “2019 TIFIA Loan Agreement”), between the TIFIA Lender and the Commission;

WHEREAS, market conditions may make it fiscally advantageous for the Commission to amend or refinance the TIFIA Series 2019 Bond, provided that the Commission can realize debt service savings thereby;

WHEREAS, the Commission desires to authorize any such refunding or amendment transaction (either, the “Refunding Transaction”) subject to the limitations and parameters set forth in this Resolution; and

WHEREAS, the Commission is meeting to discuss and transact the business of the Commission, and the Commission deems it necessary to meet by electronic communications without physical assembly of members of the Commission in accordance with the budget bill of the Commonwealth of Virginia (the “Commonwealth”) for the biennium ending June 30, 2022, as adopted by the Virginia General Assembly, because the Governor of the Commonwealth has issued Executive Order Fifty-One (2020) declaring a state of emergency, which declaration continues in force and effect, and the nature of such emergency makes it impracticable or unsafe for the Directors of the Commission to assemble in a single location.

NOW, THEREFORE, BE IT RESOLVED BY THE HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION:

1. The Commission authorizes and approves the Refunding Transaction, subject to the terms and conditions of this Resolution.

2. The Commission authorizes and directs the Executive Director or the Chair of the Commission, either of whom may act, to develop, negotiate and finalize, with the advice of the Financial Advisor, Bond Counsel and the Commission’s general counsel, the structure, terms and conditions of any refunding of the TIFIA Series 2019 Bond or modification of its terms to achieve debt service savings, including, without limitation, the issuance of HRTF Bonds to effect the refunding of the TIFIA Series 2019 Bond and the associated TIFIA loan (the “Refunding Bonds”) under the Master Indenture, their series designations, dated dates, principal amounts, interest rates, maturity dates, redemption and prepayment provisions (if any), sales prices, and principal amounts, provided that:

- (a) the Refunding Bonds shall be issued to evidence the refinancing of the 2019 TIFIA Loan Agreement in accordance with the form and requirements of the Master Indenture and as subordinate lien obligations thereunder;
- (b) the original principal amount of the Refunding Bond shall not exceed the amount of the TIFIA Series 2019 Bond, plus amounts for the payment of financing costs and costs of issuance to the extent allowed by the TIFIA Lender;
- (c) the interest rate on the Refunding Bonds shall be at least 5 basis points below the stated interest rate on the TIFIA Series 2019 Bond; and
- (d) the Refunding Bonds shall have a final maturity date not later than the final maturity date of the TIFIA Series 2019 Bond;

In lieu of the issuance of any Refunding Bond to effect the Refunding Transaction, the Commission may enter into an amendment or modification of the TIFIA Series 2019 Bond, the 2019 TIFIA Loan Agreement and the Second Supplemental Indenture, subject to the same conditions set forth above.

2. To effect the Refunding Transaction, the Commission is authorized to enter into any of the following, subject to the conditions and limitations of the foregoing paragraph: a supplemental indenture under the Master Indenture to provide for the issuance of any Refunding

Bond, or an amendment, allonge or modification to the TIFIA Series 2019 Bond and the related Second Supplemental Indenture and any related supplemental indenture with respect to the Refunding Transaction, a revised TIFIA Loan Agreement with substantially similar provisions as the 2019 TIFIA Loan Agreement, or an amendment or modification to the 2019 TIFIA Loan Agreement (any of the foregoing are, collectively with such documents as are customarily required by the TIFIA Lender and such related documents as are referenced in Paragraph 5 below, the “Refunding Documents”).

3. The Chair or Vice Chair of the Commission, either of whom may act (the “HRTAC Representative”), is authorized to execute and deliver any Refunding Documents on the Commission’s behalf, with such changes, insertions or omissions (not inconsistent with the parameters in Section 2 above) as may be finalized by the Executive Director in accordance with the terms of this Resolution with the advice of the Financial Advisor, Bond Counsel and the Commission’s general counsel. Such authorization and approval shall be evidenced conclusively by the execution and delivery of the finalized Refunding Documents by the HRTAC Representative. Each HRTAC Representative and the Executive Director are appointed as the “Borrower’s Authorized Representative” under the applicable or modified TIFIA Loan Agreement.

4. Each HRTAC Representative and the Executive Director are authorized and directed to take all necessary or proper steps to have final Refunding Bonds and Refunding Documents prepared in accordance with the terms of the Master Indenture and this Resolution and to execute the Refunding Bond by manual or facsimile signature, (ii) the Executive Director is authorized to countersign the Refunding Bond, and (iii) any such official is authorized to deliver the Refunding Bond and Refunding Documents to the TIFIA Lender in connection with the consummation of the Refunding Transaction.

5. Each HRTAC Representative and the Executive Director, either of whom may act, is authorized to execute and deliver on the Commission’s behalf such other instruments, documents or certificates, and to do and perform such further things and acts, as he or she shall deem necessary or appropriate to carry out in accordance with the terms of this Resolution the transactions authorized by this Resolution or contemplated by the Master Indenture or any supplement thereto. Any of the foregoing previously done or performed by any officer or authorized representative of the Commission is in all respects approved, ratified and confirmed.

6. The Commission confirms the findings and determinations contained in the recitals to this Resolution setting forth the reason for the need to meet by electronic means without requiring members of the Commission to physically assemble at one location during the current declared state of emergency by the Governor of the Commonwealth arising from COVID-19.

7. This Resolution shall take effect immediately and shall expire upon the earlier of the consummation of any Refunding Transaction, or July 1, 2023.

The undersigned hereby certify that this is a true and correct copy of a resolution duly adopted at a meeting of the Hampton Roads Transportation Accountability Commission held on _____, 2021.

Chair, Hampton Roads Transportation
Accountability Commission

Vice-Chair, Hampton Roads Transportation
Accountability Commission

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

AMENDED AND RESTATED TIFIA LOAN AGREEMENT

For Up to \$500,789,463

With

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY
COMMISSION**

For the

**HRTAC PROJECT
(TIFIA – 20201001A)**

Dated as of [____], 2021

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AMENDED AND RESTATED TIFIA LOAN AGREEMENT

THIS AMENDED AND RESTATED TIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between the **HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a body politic and a political subdivision created under the laws of the Commonwealth of Virginia (the “**State**”), with an address of The Regional Building, 723 Woodlake Drive, Chesapeake, Virginia 23320 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**TIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 (“**TIFIA**”), as codified at 23 U.S.C. §§ 601-609 (as amended from time to time, the “**Act**”); and

WHEREAS, Section 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans; and

WHEREAS, the Borrower requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$500,789,463 (excluding interest that is capitalized in accordance with the terms hereof) (such amount, the “**Maximum TIFIA Loan Amount**”) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated August 12, 2019 (the “**Application**”); and

WHEREAS, on November 5, 2019, the Secretary (as defined herein) approved TIFIA credit assistance for the Project in the form of the TIFIA Loan; and

WHEREAS, the Borrower and the TIFIA Lender previously entered into that certain TIFIA Loan Agreement, dated as of December 10, 2019, by and between the Borrower and the TIFIA Lender (the “**2019 TIFIA Loan Agreement**”); and

WHEREAS, the TIFIA Lender extended credit upon the terms and conditions thereof; and

WHEREAS, the Borrower has financed a portion of the Eligible Project Costs related to the Project through the issuance of the Series 2018A Bonds (as defined herein) under the Indenture and the Series 2018A Supplemental Indenture (each as defined herein); and

WHEREAS, on December 15, 2019, the Borrower and the Trustee entered into the Project BANs Supplemental Indenture (as defined herein) pursuant to which the Borrower authorized the issuance of the Project BANs (as defined herein), the proceeds of which shall be used to provide interim financing for a portion of the Eligible Project Costs related to the Project; and

WHEREAS, pursuant to the Indenture and each Supplemental Indenture (as defined herein), the Borrower has pledged and granted to the Trustee (as defined herein) the hereinafter defined Trust Estate, which secures the repayment of Bonds issued by the Borrower, including the TIFIA Bond (as defined herein), based on their respective lien priority; and

WHEREAS, the Borrower has not drawn any funds under the 2019 TIFIA Loan Agreement; and

WHEREAS, the Borrower and the TIFIA Lender desire to (i) amend and restate the 2019 TIFIA Loan Agreement in its entirety with this Agreement and (ii) enter into this Agreement; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the TIFIA Bond in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the HRTAC Act (as defined herein), the dedication and availability of the HRTF Revenues, and the Base Case Projections (as defined herein) delivered by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

Section 1. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (*Definitions*) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“2019 TIFIA Loan Agreement” has the meaning provided in the recitals hereto.

“Acceptable Credit Rating” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers or issues a Qualified Hedge, a Credit Facility, or a repurchase obligation to fund any Reserve Account, “A+”, “A1” or the equivalent rating from at least one (1) Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from at least one (1) Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable.

“Acceptable Letter of Credit” means a letter of credit, in form and substance satisfactory to the TIFIA Lender, issued by a Qualified Issuer, that is non-recourse to the Pledged Revenues.

“**Accreted Value**” means, with respect to any Capital Appreciation Bonds, as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Capital Appreciation Bonds.

“**Act**” means the Act as defined in the recitals hereto, as amended from time to time.

“**Additional Obligations**” means any borrowings or indebtedness issued or incurred under the Indenture after the Effective Date and shall also satisfy the following requirements, as applicable:

(a) if the proceeds thereof will be used to refinance any Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations and are issued on the same lien level as the proposed refunded obligations, (i) such Additional Obligations must receive a rating from a Rating Agency of equivalent to the lesser of the rating on the obligations being refinanced with the proceeds of the Additional Obligations as of the Effective Date or the most recent rating of such obligations provided in accordance with Section 16(i) (Annual Rating), (ii) the net proceeds thereof (after deducting any amounts required to be deposited to satisfy the respective Debt Service Reserve Requirement or required to pay costs of issuance) must not exceed the principal amount of the respective obligations outstanding and being refinanced, (iii) the respective lien level Debt Service, after the incurrence of such Additional Obligations, in each year of the remaining term of the TIFIA Loan, must be projected to be less than the respective lien level Debt Service projected for each such year in the Base Case Projections, and (iv) the stated maturity of such Additional Obligations shall not exceed the stated maturity for the obligations being refinanced with the proceeds of the Additional Obligations; and

(b) if the proceeds thereof will be used for any reason not described in clause (a) above, the Borrower shall provide the TIFIA Lender a certificate of the Borrower’s Authorized Representative, in a form reasonably acceptable to the TIFIA Lender (including the calculations supporting such certificate), certifying that (i) the activity or project to which such Additional Obligation proceeds will be applied could not reasonably be expected to result in a Material Adverse Effect; (ii) the Borrower has satisfied the requirements for issuing the Additional Obligations in accordance with the applicable provisions of the Indenture or Supplemental Indenture existing as of the Effective Date, including, specifically, that during any twelve consecutive months of the eighteen months preceding the issuance of the Additional Obligations, (A) the HRTAC Revenues were not less than (1) 2.00 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations then outstanding plus, if such Additional Obligations are Senior Obligations, such Additional Obligations, and (2) 1.50 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations and Intermediate Lien Obligations then outstanding plus, if such Additional Obligations are Intermediate Lien Obligations, such Additional Obligations, and (B) the Total Debt Service Coverage Ratio, including debt service for the Additional Obligations to be issued, for each Calculation Period is projected to be not less than 1.35 to 1.00 while any Subordinate Obligations issued to the TIFIA Lender remain outstanding;

provided that (x) for each of clauses (a) and (b) above, no Event of Default under any Indenture Document or this Agreement has occurred and is continuing, and (y) for clause (b) above, the Rating Agency that provided the most recent public ratings of the TIFIA Loan in accordance with Section 16(i) (*Annual Rating*) shall have provided a confirmation or affirmation (or the equivalent) that the incurrence of such Additional Obligations shall not result in a downgrade of the credit rating of any Subordinate Obligations issued to the TIFIA Lender then outstanding below “A-” or “A3”.

“**Additional TIFIA Loans**” means any additional secured loans made by the TIFIA Lender to the Borrower issued pursuant to the Indenture Documents and secured by the Pledged Revenues.

“**Agreement**” has the meaning provided in the preamble hereto.

“**Anticipated TIFIA Loan Disbursement Schedule**” means the schedule set forth in **Exhibit B**, reflecting the anticipated disbursement of proceeds of the TIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (*Disbursement Conditions*).

“**Anti-Corruption Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption.

“**Anti-Money Laundering Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“**Application**” has the meaning provided in the recitals hereto.

“**Appreciated Value**” means, with respect to any Deferred Income Bond as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Deferred Income Bond.

“**Bank Lending Margin**” means in respect of any Variable Interest Rate Obligations, the “**Applicable Margin**” or comparable interest rate margin as defined in the financing documents related to such Variable Interest Rate Obligations.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1959 and 31 U.S.C. §§ 312, 5311-5313, and 5316-5322), as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**Bankruptcy Related Event**” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall

continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Debt Service in accordance with the provisions of Section 9 (Payment of Principal and Interest), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law;

(c) solely with respect to the Borrower, (i) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Bonds, or (ii) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of pursuant to a sale or disposition of such Trust Estate in lieu of foreclosure; or

(d) solely with respect to the Borrower, the Trustee shall transfer, pursuant to directions issued by the Bondholders, funds on deposit in any of the Project Funds upon the occurrence and during the continuation of an Event of Default under the Indenture Documents for application to the prepayment or repayment of any principal amount of the Bonds other than in accordance with the provisions of the Indenture.

“Base Case Financial Model” means a financial model prepared by (or on behalf of) the Borrower forecasting the revenues and expenditures of the Borrower for time periods through the Final Maturity Date and based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender as of the Effective Date, which model shall be provided to the TIFIA Lender as a fully functional Microsoft Excel – based financial model or such other format requested by the TIFIA Lender.

“Base Case Projections” means the initial forecast for the Borrower prepared as of the Effective Date using the Base Case Financial Model.

“Bond Anticipation Notes” means bond anticipation notes issued by the Borrower to provide interim financings that are anticipated to be refunded or refinanced with proceeds of Additional Obligations.

“**Bonds**” means any Senior Obligations, Intermediate Lien Obligations, Subordinate Obligations (including the TIFIA Bond), or any other evidences of indebtedness for borrowed money issued by the Borrower from time to time pursuant to Article V of the Indenture and the terms of any applicable Supplemental Indenture.

“**Bondholder**” means, when used with respect to the TIFIA Bond, the TIFIA Lender and, when used with respect to any other Bond, the registered owner of such Bond.

“**Borrower**” has the meaning provided in the preamble hereto.

“**Borrower Fiscal Year**” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the TIFIA Lender, as provided in Section 17(e) (*Organizational Documents; Fiscal Year*).

“**Borrower Related Party**” means, individually or collectively, the Borrower and VDOT.

“**Borrower’s Authorized Representative**” means any Person who shall be designated as such pursuant to Section 26 (*Borrower’s Authorized Representative*).

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York, or Chesapeake, Virginia.

“**Calculation Date**” means each January 1 and July 1 occurring after the Effective Date.

“**Calculation Period**” means a twelve (12) month period ending on a Calculation Date.

“**Capital Appreciation Bonds**” means any Permitted Debt hereafter incurred as to which interest is payable only at the maturity or prior redemption of such Permitted Debt.

“**Capitalized Interest Period**” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period.

“**Congress**” has the meaning provided in the recitals hereto.

“**Construction Contractor**” means, collectively, the design-builder identified in each Project Construction Contract, including all of the contractors, subcontractors, and assigns thereto.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

“**Construction Schedule**” means, collectively, (a) the initial schedule or schedules on which the construction timetables for each respective Project, as set forth in an exhibit to each Standard Project Agreement, as amended, and attached hereto as **Schedule II**, and (b) any updates

thereto included in the Financial Plan most recently submitted to the TIFIA Lender pursuant to Section 22(a)(iii)(B) (Financial Plan).

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “**Controlling**” and “**Controlled by**” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2019 as the base period.

“**Credit Facility**” means any letter of credit, standby bond purchase agreement, line of credit, policy of bond insurance, surety bond, guarantee or similar instrument, or any agreement relating to the reimbursement of any payment thereunder (or any combination of the foregoing), which is obtained by the Borrower and is issued by a financial institution, insurance provider or other Person and which provides security or liquidity in respect of any Permitted Debt.

“**Debt Service Fund**” has the meaning provided in the Indenture.

“**Debt Service Payment Commencement Date**” means the earlier of (a) January 1, 2025 and (b) the ninth (9th) Semi-Annual Payment Date immediately succeeding the Substantial Completion Date.

“**Debt Service Reserve Fund**” has the meaning provided in the Indenture.

“**Debt Service Reserve Requirement**” has the meaning provided in the Indenture.

“**Default**” means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“**Default Rate**” means an interest rate equal to the sum of (a) the TIFIA Interest Rate plus (b) two percent (2.00%).

“**Deferred Income Bond**” means any Permitted Debt (a) as to which interest accruing thereon prior to the applicable Interest Commencement Date of such Permitted Debt is (i) compounded on each Valuation Date for such Deferred Income Bond and (ii) payable only at the maturity or prior redemption of such Permitted Debt and (b) as to which interest accruing after the applicable Interest Commencement Date is payable on the first interest payment date immediately succeeding the Interest Commencement Date and thereafter on the dates specified in or determined pursuant to the Supplemental Indenture authorizing the Permitted Debt. For the purposes of receiving payment of the redemption price if a Deferred Income Bond is redeemed prior to maturity, the principal amount of a Deferred Income Bond shall be deemed to be its Appreciated Value.

“**Development Default**” means (a) VDOT fails to diligently prosecute the work related to the Project or (b) VDOT fails to complete the Project by the third anniversary of the Projected Substantial Completion Date.

“**Effective Date**” means the date of this Agreement.

“**Electronic Signature**” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to *[insert VA Statute]*¹, as amended from time to time.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including prior Project expenditures for the 5-year period preceding the date of the Application, all of which shall arise from the following:

- (a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;
- (b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or
- (c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction.

“**Environmental Laws**” has the meaning provided in Section 14(s) (*Environmental Matters*).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. § 1001 *et seq.*), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

“**Event of Default**” has the meaning provided in Section 20(a) (*Events of Default and Remedies*).

“**Excess Revenues**” means, following the occurrence of a Revenue Sharing Trigger Event, an amount in each month equal to 50% of the Pledged Revenues remaining after the transfers

¹ **Note to Borrower:** Please advise of correct VA statute.

described in paragraphs FIRST through TENTH of Section 8.1(b) of the Indenture (a copy of which is attached hereto as **Exhibit O**) have occurred.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Existing Indebtedness**” means indebtedness of the Borrower that has been issued or incurred prior to the Effective Date, as listed and described in **Schedule III**.

“**Federal Government**” means the United States of America and its departments and agencies.

“**Federal Fiscal Year**” or “**FFY**” means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**FHWA**” means the Federal Highway Administration, an agency of the USDOT.

“**FHWA Division Office**” means the Virginia Division Office of the FHWA.

“**Final Maturity Date**” means the earlier of (a) July 1, 2055 and (b) the Semi-Annual Payment Date occurring on or immediately preceding the thirty-fifth (35th) anniversary of the Substantial Completion Date.

“**Financial Plan**” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 22(a) (*Financial Plan*) and (b) any updates thereto required pursuant to Section 22(a) (*Financial Plan*).

“**Financial Statements**” has the meaning provided in Section 14(z) (*Financial Statements*).

“**GASB**” means generally accepted accounting principles for state and local governments, which are the uniform minimum standards of and guidelines for financial accounting and reporting prescribed by the Governmental Accounting Standards Board.

“**General Assembly**” means the state legislature for the Commonwealth of Virginia.

“**General Fund**” has the meaning provided in the Indenture.

“**Government Obligations**” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (a), (b) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the

custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Hedging Agreement” means (a) the ISDA Master Agreement(s) and any related credit support annex, schedules and confirmations, to be entered into by the Borrower and a Hedging Bank, (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, and (c) any other documentation directly relating to the foregoing.

“Hedging Banks” means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and its permitted successors (to the extent such successors are also Qualified Hedge Providers).

“Hedging Obligations” means, collectively, the payment of (a) all scheduled amounts payable to the Hedging Banks by the Borrower under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedging Banks, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the Hedging Banks under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedging Banks to the Borrower under such Hedging Agreements; provided that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Termination Obligations” means the aggregate amount payable to the Hedging Banks by the Borrower upon the early termination of all or a portion of the Hedging Agreements, net of all amounts payable to the Borrower by such Hedging Banks upon the early unwind of all or a portion of such Hedging Agreements. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar

interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases and not for any speculative purpose.

“**HRTAC Act**” means Chapter 26 of Title 33.2 of the Code of Virginia of 1950, as amended.

“**HRTAC Revenues**” means, in any period, (a) all of the HRTF Revenues received by the Borrower during such period, and (b) any and all other revenues available under the HRTAC Act that have been designated as HRTAC Revenues pursuant to a Supplemental Indenture, but shall not include toll revenues.

“**HRTF**” means the Hampton Roads Transportation Fund established pursuant to the HRTAC Act.

“**HRTF Revenues**” means the revenues dedicated to the HRTF from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code, together with any other funds that may be appropriated to the HRTF.

“**Indemnitee**” has the meaning provided in Section 18 (*Indemnification*).

“**Indenture**” means that certain Master Indenture of Trust, dated as of February 1, 2018, between the Borrower and the Trustee, as supplemented or amended from time to time in accordance with its terms.

“**Indenture Documents**” means the Indenture, each Supplemental Indenture, each Hedging Agreement, each Credit Facility, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, as from time to time amended and in effect, and any state bankruptcy, insolvency, receivership, conservatorship or similar law now or hereafter in effect.

“**Interest Commencement Date**” means, with respect to any particular Deferred Income Bond, the date determined by the Supplemental Indenture for such Deferred Income Bond after which interest accruing on such Deferred Income Bond shall be payable on the first interest payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Indenture.

“**Intermediate Lien Debt Service**” means, with respect to the Intermediate Lien Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Intermediate Lien Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Intermediate Lien Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Intermediate Lien Obligations, including any scheduled redemption of Permitted Debt on the basis

of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

In calculating Intermediate Lien Debt Service for any future period (except as otherwise specifically provided herein):

(a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon);

(b) to the extent the requirements of Section 16(l) (Hedging) have been waived so that clause (a) of this definition no longer applies, any Variable Interest Rate Bonds for which the interest rate payable thereon has not yet been determined shall be deemed to bear interest at all times prior to the maturity date thereof at a rate which is the highest twelve (12) month rolling average of one (1) month LIBOR over the past ten (10) years preceding the date of calculation plus the Bank Lending Margin; provided that if such index is no longer published, the index to be used shall be that index which the TIFIA Lender, in consultation with the Borrower, determines most closely replicates it;

(c) any Put Bonds outstanding during such period which by their terms are not required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

(d) any Put Bonds outstanding during such period which by their terms are required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in the applicable Supplemental Indenture, or (iii) if the Credit Facility securing such Put Bonds expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Credit Facility;

(e) the principal amount of any Put Bonds tendered for payment by the Borrower which are required to be paid by the Borrower which have not yet been purchased in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender;

(f) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Income Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period;

(g) the principal and interest payments for all or any portion of any the Project BANs which is scheduled to be defeased with the proceeds of the TIFIA Loan shall be assumed to be the principal and interest portion of the TIFIA Debt Service, as defined herein and attached hereto as **Exhibit G**, with such amounts being included as Subordinate Debt Service and excluded from Intermediate Lien Debt Service; and

(h) the schedule of principal and interest payments (excluding capitalized interest) for any Bond Anticipation Notes shall be assumed to be the principal and interest payments schedule of the corresponding series of Intermediate Lien Obligations issued or

authorized to be issued for the purpose of providing proceeds to refund or refinance such Bond Anticipation Notes; provided, however and notwithstanding the foregoing, any principal and interest payments which are scheduled to become due and payable prior to the issuance of the Intermediate Lien Obligations shall be calculated based on the actual principal and interest payments schedule (excluding capitalized interest) for the Bond Anticipation Notes.

“Intermediate Lien Debt Service Fund” means any debt service fund created for the benefit of one or more series of Intermediate Lien Obligations pursuant to the Indenture and any Supplemental Indenture.

“Intermediate Lien Debt Service Reserve Fund” means any debt service reserve fund created for the benefit of one or more series of Intermediate Lien Obligations pursuant to the Indenture and any Supplemental Indenture.

“Intermediate Lien Debt Service Reserve Requirement” means any debt service reserve requirement relating to the Intermediate Lien Obligations established in accordance with the provisions of the Indenture and any Supplemental Indenture.

“Intermediate Lien Obligations” means any Bonds issued under the Indenture and designated as being subordinate as to payment and security to the Senior Obligations but senior as to payment and security to the Subordinate Obligations.

“Investment Grade Rating” means a public rating no lower than ‘BBB-’, ‘Baa3’ or the equivalent public rating from a Rating Agency.

“ISDA Master Agreement” means a master agreement, entered into by the Borrower and a Hedging Bank, in the form published by the International Swaps and Derivatives Association, Inc.

“LIBOR” means, for any day, the 1-month London Interbank Offered Rate for deposits in the applicable currency as set by the British Banks Association (or the successor thereto if the British Bankers Association is no longer making a London Interbank Offered Rate available) (“BBA”) and published by the BBA at approximately 11:00 a.m. London time on such day. For any day that is not a Business Day, the LIBOR for such day shall be the rate published by the BBA on the immediately preceding Business Day.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“Loan Amortization Schedule” means the Loan Amortization Schedule reflected in the applicable column of **Exhibit G**, as amended from time to time in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“Material Adverse Effect” means a material adverse effect on (a) the collective components of the Project or the Trust Estate, (b) the business, operations, properties, condition (financial or otherwise), powers or revenues of the Borrower, (c) the legality, validity or enforceability of any material provision of any Indenture Document, TIFIA Loan Document or Principal Project Contract, (d) the ability of the Borrower or any other Principal Project Party to enter into, perform or comply with any of its material obligations under any Indenture Document, TIFIA Loan Document or Principal Project Contract to which it is a party, (e) the validity, enforceability or priority of the Liens provided under the Indenture Documents on the Trust Estate in favor of the Secured Parties or (f) the TIFIA Lender’s rights or remedies available under any TIFIA Loan Document.

“Maximum Annual Debt Service” means the highest aggregate amount of TIFIA Debt Service for the present or any succeeding Borrower Fiscal Year.

“Maximum TIFIA Loan Amount” has the meaning provided in the recitals hereto.

“Memorandum of Agreement” means that certain Memorandum of Agreement between the Borrower and VDOT, dated as of March 30, 2015, which sets forth the terms pursuant to which the Borrower and VDOT will ensure the efficient and effective development and construction of the Projects.

“NEPA” means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. § 4321 *et seq.*), and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“NEPA Determination” means, collectively, the Finding of No Significant Impact for the I-64 Southside Widening and High Rise Bridge Improvements - Phase I issued by FHWA on August 22, 2016, the Finding of No Significant Impact for the I-64 Peninsula Widening- Segment III issued by FHWA on August 10, 2016, the Record of Decision for the I-64 Peninsula Widening- Segment II issued by FHWA on June 9, 2015, the Record of Decision for the I-64 Peninsula Widening- Segment I issued by FHWA on April 21, 2014, and the Categorical Exclusion for the I-64/I-264 Interchange Improvements - Phase I and Phase II issued by FHWA on February 19, 2008, in each case in accordance with NEPA.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Operating Account” has the meaning provided in the Indenture.

“Operating Expenses” has the meaning provided in the Indenture.

“Operating Fund” has the meaning provided in the Indenture.

“Operating Reserve Account” has the meaning provided in the Indenture.

“Operating Reserve Requirement” has the meaning provided in the Indenture.

“Organizational Documents” means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“Outstanding TIFIA Loan Balance” means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the TIFIA Loan, as determined in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“Patriot Act” means the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“Payment Default” has the meaning provided in Section 20(a)(i) (*Payment Default*).

“Payment Period” means any period of six (6) months from (and including) a Semi-Annual Payment Date to (but excluding) the immediately succeeding Semi-Annual Payment Date, commencing with the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“Permitted Debt” means:

- (a) Existing Indebtedness;
- (b) the TIFIA Loan; and
- (c) Additional Obligations (including other Subordinate Obligations issued to the TIFIA Lender) that satisfy each of the requirements in the definition thereof.

“Permitted Hedging Termination” means the early termination, in whole or in part, of any Qualified Hedge (a) at the request of the Borrower as a result of a determination by the Borrower that such (or any part of such) Qualified Hedge is no longer necessary or required under the terms of this Agreement, (b) pursuant to the terms of any Hedging Agreement evidencing such

Qualified Hedge that provides for the notional amount of such Qualified Hedge to amortize or otherwise be reduced from time to time or (c) as may be required pursuant to Section 16(1)(vii) (Hedging).

“**Permitted Investments**” means (with respect to the investment of the proceeds of the TIFIA Loan or any construction or reserve account established and maintained pursuant to the Indenture) the following obligations subject to additional restrictions included in the Investment of Public Funds Act, Chapter 45, Title 2.2, Code of Virginia 1950, as amended and the Security for Public Deposits Act, Chapter 44, Title 2.2, Code of Virginia 1950, as amended:

- (a) Government Obligations;
- (b) obligations of the United States Federal Housing Administration, the United States Farmers Home Administration, the United States Postal Service, and any other agency or instrumentality of the United States of America now or hereafter created, which obligations are backed by the full faith and credit of the United States of America;
- (c) obligations of the Federal National Mortgage Association, Federal Financing Bank, Federal Farm Credit System, and Federal Home Loan Mortgage Corporation;
- (d) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;
- (e) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;
- (f) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Rating Agency;
- (g) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency;
- (h) investments pursuant to the Government Non-Arbitrage Act, Chapter 47, Title 2.2, Code of Virginia, 1950, as amended, that have been rated “AAAm-G,” “AAAm” or the equivalent rating by each Rating Agency that provides a rating on such obligations; and

(i) investments pursuant to the Local Government Investment Pool Act, Chapter 46, Title 2.2, Code of Virginia, 1950, as amended, that have been rated “AAAm-G,” “AAAm” or the equivalent rating by each Rating Agency that provides a rating on such obligations.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Pledged Revenues**” means all of the HRTAC Revenues and all other property of any kind mortgaged, pledged or hypothecated under the Indenture to provide for the payment of or to secure the Bonds by Borrower or by anyone on its behalf and with its written consent at any time as and for additional security under the Indenture and a Supplemental Indenture in favor of the Trustee, which is authorized to receive all such property at any time and to hold and apply it subject to the terms of the Indenture and the Supplemental Indentures.

“**Principal Project Contracts**” means the Memorandum of Agreement, the Standard Project Agreements, and the Project Construction Contracts.

“**Principal Project Party**” means any Person (other than the Borrower) that is a party to a Principal Project Contract.

“**Project**” means, collectively, the projects evidenced in the Project Construction Contracts and the Standard Project Agreements that the Borrower is authorized to finance or refinance pursuant to the HRTAC Act.

“**Project BANs**” means, the Borrower’s Intermediate Lien Bond Anticipation Notes, Series 2019A issued on or about December 17, 2019, in the not to exceed par amount of \$414,345,000, the proceeds of which are anticipated to be applied to the payment of Eligible Project Costs.

“**Project BANs Bond**” means the bond or note evidencing the issuance of the Project BANs.

“**Project BANs Closing Date**” means the date Project BANs are issued.

“**Project BANs Supplemental Indenture**” means that certain Third Supplemental Series Indenture of Trust to the Indenture between the Borrower and the Trustee, dated as of December 15, 2019, relating to the Project BANs.

“**Project Budget**” means, collectively, the budget for the Project in the aggregate amount of \$[1,582,635,261.00] attached to this Agreement as **Schedule I** showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time subject to the reporting requirements in Section 23(b) (*Monthly Construction Progress Report*).

“Project Construction Contracts” means the following construction contracts entered into between VDOT and each respective Construction Contractor:

1. I-64 Peninsula Widening Segment I (Contract ID. No.: C00104905DB75);
2. I-64 Peninsula Widening Segment II (Contract ID. No.: C00106665DB82);
3. I-64 Peninsula Widening Segment III (Contract ID. No.: C00106689DB97);
4. I-64 / I-264 Interchange Improvements Phase I (Contract ID. No.: C0000057048C08);
5. I-64 / I-264 Interchange Improvements Phase II (Contract ID. No.: C0000017630C01); and
6. I-64 Southside Widening and High Rise Bridge Phase I (Contract ID. No.: C00106692DB93).

“Project Fund” means any project fund created for the benefit of one or more series of Bonds pursuant to the Indenture and any Supplemental Indenture.

“Projected Substantial Completion Date” means [June 21, 2021], unless otherwise agreed by the TIFIA Lender in writing.

“Put Bonds” means any bond that by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof either (a) by the Borrower and by the Person and/or from the source specified in a Supplemental Indenture or (b) without recourse to the Borrower, by the Person and/or from the source specified in a Supplemental Indenture.

“Qualified Hedge” means, to the extent from time to time permitted by law, with respect to Permitted Debt any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 16(l) (*Hedging*).

“Qualified Hedge Provider” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“Qualified Issuer” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“Rating Agency” means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. § 78c(a)(62)).

“Rating Category” means one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“Rebate Amount” has the meaning provided in the Indenture.

“Rebate Fund” means any rebate fund created for the benefit of one or more series of Bonds pursuant to the Indenture and any Supplemental Indenture.

“Related Documents” means the Indenture Documents, the TIFIA Loan Documents, the Hedging Agreements and the Principal Project Contracts.

“Requisition” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

“Reserve Accounts” means, collectively, each Debt Service Reserve Fund pursuant to the Indenture and the Supplemental Indenture pursuant to which such accounts are created.

“Revenue Fund” has the meaning provided in the Indenture.

“Revenue Sharing Account” means the special account of the Borrower created under the TIFIA Supplemental Indenture.

“Revenue Sharing Trigger Event” means any date on which Subordinate Obligations issued to the TIFIA Lender are outstanding and the Borrower or VDOT, on behalf of the Borrower, is not actively engaged in the development of capital project programs in the Hampton Roads Transportation Planning Organization’s most recently adopted long-range transportation plan.

“Revised Financial Model” means an updated version of the Base Case Financial Model, in form and substance satisfactory to the TIFIA Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

“Sanctioned Country” means, at any time, a country or territory which is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

“Secretary” means the United States Secretary of Transportation.

“**Secured Obligations**” means the Senior Obligations, the Intermediate Lien Obligations, the Subordinate Obligations (including the obligations of the Borrower under this Agreement and the TIFIA Bond), the Hedging Obligations, and the Hedging Termination Obligations.

“**Secured Parties**” means the Trustee, the TIFIA Lender, any other Bondholders, and the Hedging Banks.

“**Semi-Annual Payment Date**” means each January 1 and July 1.

“**Senior Debt Service**” means, with respect to the Senior Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Senior Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Senior Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Senior Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

In calculating Senior Debt Service for any future period (except as otherwise specifically provided herein):

(a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon);

(b) to the extent the requirements of Section 16(1) (Hedging) have been waived so that clause (a) of this definition no longer applies, any Variable Interest Rate Bonds for which the interest rate payable thereon has not yet been determined shall be deemed to bear interest at all times prior to the maturity date thereof at a rate which is the highest twelve (12) month rolling average of one (1) month LIBOR over the past ten (10) years preceding the date of calculation plus the Bank Lending Margin; provided that if such index is no longer published, the index to be used shall be that index which the TIFIA Lender, in consultation with the Borrower, determines most closely replicates it;

(c) any Put Bonds outstanding during such period which by their terms are not required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

(d) any Put Bonds outstanding during such period which by their terms are required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in the applicable Supplemental Indenture, or (iii) if the Credit Facility securing such Put Bonds expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Credit Facility;

(e) the principal amount of any Put Bonds tendered for payment by the Borrower which are required to be paid by the Borrower which have not yet been purchased

in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender;

(f) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Income Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period; and

(g) the principal and interest payments schedule (excluding capitalized interest) for any Bond Anticipation Notes shall be assumed to be the principal and interest payments schedule of the corresponding series of Senior Obligations issued or authorized to be issued for the purpose of providing proceeds to refund or refinance such Bond Anticipation Notes; provided, however and notwithstanding the foregoing, any principal and interest payments which are scheduled to become due and payable prior to the issuance of such Senior Obligations shall be calculated based on the actual principal and interest payments schedule (excluding capitalized interest) for the Bond Anticipation Notes.

“Senior Debt Service Fund” means any debt service fund created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Debt Service Reserve Fund” means any debt service reserve fund created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Debt Service Reserve Requirement” means any debt service reserve requirement relating to the Senior Obligations established in accordance with the provisions of the Indenture and any Supplemental Indenture.

“Senior Obligations” means any Bonds heretofore or hereinafter issued, including the Series 2018A Bonds, under the Indenture and any Supplemental Indenture that are designated as being senior as to payment and security to the Intermediate Lien Obligations and the Subordinate Obligations.

“Series 2018A Bonds” means the Hampton Roads Transportation Accountability Commission Hampton Roads Transportation Fund Senior Lien Revenue Bonds, Series 2018A, dated February 14, 2018, originally issued in the aggregate principal amount of \$500,000,000.

“Series 2018A Supplemental Indenture” means that certain First Supplemental Series Indenture of Trust to the Indenture between the Borrower and the Trustee, dated February 1, 2018, relating to the Series 2018A Bonds.

“Servicer” means such entity or entities as the TIFIA Lender shall designate from time to time to perform, or assist the TIFIA Lender in performing, certain duties hereunder.

“Standard Project Agreement” means the following Standard Project Agreements or Memoranda of Agreement entered into between VDOT and the Borrower for the funding and administration of the Projects, as amended from time to time, which govern the responsibilities of

the Borrower and VDOT pertaining to the funding, construction, administration, and maintenance of each respective Project:

1. I-64 Peninsula Widening Segment I (UPC #104905);
2. I-64 Peninsula Widening Segment II (UPC #106665);
3. I-64 Peninsula Widening Segment III (UPC #106689/109790);
4. I-64 / I-264 Interchange Improvements Phase I (UPC #108041);
5. I-64 / I-264 Interchange Improvements Phase II (UPC #108042); and
6. I-64 Southside Widening and High Rise Bridge Phase I (UPC #106692).

“**State**” has the meaning provided in the preamble hereto.

“**Subordinated Hedging Termination Obligations**” means Hedging Termination Obligations under any Hedging Agreement other than those arising as a result of a Permitted Hedging Termination or as a result of a tax or illegality event or upon failure of the Borrower to pay any Hedging Obligations when due.

“**Subordinate Debt Service**” means, with respect to the Subordinate Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Subordinate Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Subordinate Obligations due in such period, payment shall be assumed to be made in accordance with any amortization schedule established for such Subordinate Obligations.

In calculating the Subordinate Debt Service for any future period (except as otherwise specifically provided herein):

(a) the principal and interest payments for all or any portion of any the Project BANs which is scheduled to be defeased with the proceeds of the TIFIA Loan shall be assumed to be the principal and interest portion of the TIFIA Debt Service, as defined herein and attached hereto as **Exhibit G**, with such amounts being included as Subordinate Debt Service and excluded from Intermediate Lien Debt Service; and

(b) the principal and interest payments schedule (excluding capitalized interest) for any Bond Anticipation Notes shall be assumed to be the principal and interest payments schedule of the corresponding series of Subordinate Obligations issued or authorized to be issued for the purpose of providing proceeds to refund or refinance such Bond Anticipation Notes; provided, however and notwithstanding the foregoing, any principal and interest payments which are scheduled to become due and payable prior to the issuance of the Subordinate Obligations shall be calculated based on the actual principal and interest payments schedule (excluding capitalized interest) for the Bond Anticipation Notes.

“**Subordinate Debt Service Fund**” means any debt service fund, including the TIFIA Debt Service Fund, created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“**Subordinate Debt Service Reserve Fund**” means any debt service reserve fund, including the TIFIA Debt Service Reserve Fund, created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“**Subordinate Debt Service Reserve Requirement**” means any debt service reserve requirement relating to the Subordinate Obligations, including the TIFIA Debt Service Reserve Required Balance, established in accordance with the provisions of the Indenture and any Supplemental Indenture.

“**Subordinate Obligations**” means any Bonds, including the TIFIA Bond, issued under the Indenture and designated as being subordinate as to payment and security to the Senior Obligations and the Intermediate Lien Obligations.

“**Subsequent Qualified Hedge**” has the meaning provided in Section 16(l)(iii) (Hedging).

“**Substantial Completion**” means the opening of all Projects to vehicular traffic.

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Supplemental Indenture**” means a Supplemental Indenture to the Indenture relating to a specific issuance of Bonds by the Borrower, including the Series 2018A Supplemental Indenture and the TIFIA Supplemental Indenture.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**TIFIA**” has the meaning provided in the recitals hereto.

“**TIFIA Bond**” means the Bond delivered by the Borrower in substantially the form of **Exhibit A²**.

“**TIFIA Debt Service**” means with respect to any Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the TIFIA Interest Rate (or, as applicable, the Default Rate), in each case (a) as set forth on **Exhibit G**, and (b) due and payable on such Semi-Annual Payment Date in accordance with the provisions of Section 9(c) (Payment of TIFIA Debt Service).

“**TIFIA Debt Service Fund**” has the meaning provided in the TIFIA Supplemental Indenture.

² **Note to Borrower:** Discuss what, if any, changes will be made to the TIFIA Bond.

“**TIFIA Debt Service Reserve Fund**” has the meaning provided in the TIFIA Supplemental Indenture.

“**TIFIA Debt Service Reserve Required Balance**” means the lesser of (a) ten percent (10%) of the Maximum TIFIA Loan Amount, (b) one hundred percent (100%) of the Maximum Annual Debt Service, and (c) one hundred and twenty-five percent (125%) of the average annual TIFIA Debt Service through the Final Maturity Date. If there are any Additional TIFIA Loans outstanding at any time, then the amounts set forth in clauses (a) through (c) will be calculated using the summation of the TIFIA Loan and all of the Additional TIFIA Loans as if there were one TIFIA loan.

“**TIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**TIFIA Lender**” has the meaning provided in the preamble hereto.

“**TIFIA Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 27 (*TIFIA Lender’s Authorized Representative*).

“**TIFIA Loan**” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth herein and as evidenced by the Borrower’s issuance of the TIFIA Bond, pursuant to the Act, in a principal amount not to exceed the Maximum TIFIA Loan Amount (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

“**TIFIA Loan Documents**” means this Agreement, the TIFIA Bond, the TIFIA Supplemental Indenture, and the other Indenture Documents.

“**TIFIA Supplemental Indenture**” means that certain Second Supplemental Series Indenture of Trust, dated as of December 1, 2019, between the Borrower and the Trustee in connection with the issuance of the TIFIA Bond.

“**Total Debt Service Coverage Ratio**” means, for any Calculation Period, the ratio of projected Pledged Revenues for such Calculation Period to the sum of (a) Senior Debt Service for such Calculation Period, (b) Intermediate Lien Debt Service for such Calculation Period, and (c) Subordinate Debt Service for such Calculation Period.

“**Total Project Costs**” means (a) the costs paid or incurred or to be paid or incurred by the Borrower or VDOT in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance and costs of insurance; (b) amount, if any, required by the Indenture Documents of the TIFIA Loan Documents to be paid into any fund or account upon the incurrence of the TIFIA Loan or any Additional Obligations; and (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect to any indebtedness of the Borrower or any Credit Facility maintained by the Borrower, in each case in connection with the Project (other than the TIFIA Loan).

“**Trust Estate**” means the Pledged Revenues plus, with respect to such series (and to such series only) of Bonds, the money and investments held in the applicable (a) Project Fund (if any), (b) Debt Service Fund, and (c) Debt Service Reserve Fund, if any.

“**Trustee**” means Wilmington Trust, National Association.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

“**USDOT**” means the United States Department of Transportation.

“**Valuation Date**” means (a) with respect to any Capital Appreciation Bonds, the date or dates set forth in the Supplemental Indenture authorizing such Capital Appreciation Bonds on which specific Accreted Values are assigned to the Capital Appreciation Bonds and (b) with respect to any Deferred Income Bonds, the date or dates on or prior to the Interest Commencement Date set forth in the Supplemental Indenture authorizing such Deferred Income Bonds on which specific Appreciated Values are assigned to the Deferred Income Bonds.

“**Variable Interest Rate**” means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the Supplemental Indenture pursuant to which such Permitted Debt is incurred. Such Supplemental Indenture shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect, or (b) the time or times upon which any change in such variable interest rate shall become effective.

“**Variable Interest Rate Bonds**” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided, however, that Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Bonds if the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect; provided, further, that Permitted Debt bearing a fixed rate of interest shall be deemed Variable Interest Rate Bonds to the extent that the Borrower has entered into a Qualified Hedge pursuant to which the Borrower is obligated to pay a floating rate of interest and receives a fixed rate of interest and shall be deemed to bear interest at the lesser of the rate

determined pursuant to clause (a) of the definition of the term Senior Debt Service or Intermediate Debt Service (as applicable) or the maximum interest rate, if any, payable pursuant to such Qualified Hedge.

“**Variable Interest Rate Obligations**” means any Senior Obligations or Intermediate Lien Obligations under the Indenture that accrue interest at a Variable Interest Rate.

“**VDOT**” means the Virginia Department of Transportation.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 37 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

Section 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$500,789,463. TIFIA Loan proceeds shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 13(b) (*Conditions Precedent to All Disbursements*).

Section 4. Disbursement Conditions.

(a) TIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project and may be used to pay or redeem Project BANs. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the

USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower's risk and expense, will not constitute Eligible Project Costs, and no TIFIA Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. If the Borrower intends to utilize the TIFIA Loan proceeds to make progress payments for the Project construction work performed under any Principal Project Contract, the Borrower shall demonstrate to the satisfaction of the TIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a "**Requisition**") in the form set forth in **Appendix One to Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to the TIFIA Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 (Disbursement Conditions) and the conditions set forth in Section 13(b) (Conditions Precedent to All Disbursements); provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender and the Servicer (if any) and the FHWA Division Office on or before the first (1st) Business Day of each month for which a disbursement is requested. Subject to Section 4(g), if the TIFIA Lender does not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express denial of a Requisition by the TIFIA Lender shall be provided substantially in the form attached as **Appendix Two to Exhibit D (Requisition Procedures)**. In no event shall disbursements be made more than once each month.

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(d) The Borrower anticipates that it will draw down all of the proceeds of the TIFIA Loan to reimburse the Borrower for Eligible Project Costs paid by or on behalf of the Borrower prior to such disbursement of TIFIA Loan proceeds, including for the purpose of paying or redeeming the Project BANs. The Borrower shall deliver concurrently to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any), copies of all invoices and other records evidencing Eligible Project Costs (the "**Eligible Project Costs Documentation**"), irrespective of whether such costs were paid with the proceeds of the Project BANs; provided that the Borrower must deliver to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any) all Eligible Project Costs Documentation associated with any Eligible Project Costs included in a Requisition by the applicable following date: (i) with respect to Eligible Project Costs incurred by or on behalf of the Borrower prior to, and up to one (1) month after, the Effective Date, by the last Business Day of the second (2nd) month immediately following the Effective Date and (ii) with respect to Eligible Project Costs incurred by or on behalf of the Borrower after the one-month period referred to in clause (i) above, by the last Business Day of each month immediately following such second (2nd) month referred to in clause (i) above.

(e) Each time the Borrower delivers Eligible Project Costs Documentation to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any), the Borrower shall also

deliver to such entities a certificate, duly executed by the Borrower's Authorized Representative, certifying as to the following:

(i) the amount of Eligible Project Costs financed from the proceeds of Project BANs for the period of time for which such Eligible Project Costs Documentation is being provided;

(ii) that such proceeds of any Project BANs were expended solely in connection with the payment or reimbursement of Eligible Project Costs;

(iii) the amount of Eligible Project Costs paid by or on behalf of the Borrower from sources other than Project BANs and identifying such sources;

(iv) the amount of Eligible Project Costs included in such Eligible Project Costs Documentation for which VDOT has received or intends to receive Federal assistance and that none of the Eligible Project Costs submitted to the TIFIA Lender for which the Borrower is seeking a disbursement of TIFIA Loan proceeds include amounts for which VDOT has received or intends to receive Federal assistance; and

(v) that there does not currently exist any Event of Default or an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default (a "prospective Event of Default") or, if there does currently exist an Event of Default or prospective Event of Default, the certificate shall specify all the actions that the Borrower is taking to remedy such Event of Default or prospective Event of Default.

(f) The Eligible Project Costs Documentation submitted pursuant to Section 4(d) and the certificate delivered pursuant to Section 4(e) must be satisfactory to the TIFIA Lender. The Eligible Project Costs Documentation must provide sufficient detail to enable the TIFIA Lender to verify that such costs are Eligible Project Costs paid by or on behalf of the Borrower. The Eligible Project Costs Documentation and the certificate must provide sufficient detail to enable the TIFIA Lender to verify that proceeds of the Project BANs were expended for Eligible Project Costs and to audit Eligible Project Costs paid from sources other than the Project BANs, including Eligible Project Costs which VDOT has received or anticipates receiving Federal assistance. The certificate and the Eligible Project Costs Documentation are intended to document Eligible Project Costs in connection with the reimbursement of such Eligible Project Costs or for the purpose of paying or redeeming, in whole or part, only those Project BANs in respect of which the proceeds were used to pay such documented Eligible Project Costs. The TIFIA Lender shall review each such certificate for compliance with TIFIA disbursement requirements. Within fourteen (14) Business Days following the receipt of the Eligible Project Costs Documentation and the accompanying certificate, the TIFIA Lender shall deliver a notice to the Borrower confirming the Eligible Project Costs set forth in the certificate that have been approved, or notifying the Borrower as to which Eligible Project Costs have not been approved, and confirming the cumulative amount of Eligible Project Costs approved as of the notice date. Such approved amounts of Eligible Project Costs will be disbursed at such time as the Borrower submits a Requisition in respect of such approved amounts in accordance with clauses (a) and (b) above. In no event shall the Borrower submit a Requisition that seeks reimbursement of any Eligible Project Costs for which the related Eligible Project Costs Documentation and the certificate required

pursuant to Section 4(e) (i) have not been delivered to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any) or (ii) were not delivered to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any) at least one (1) month prior to the date such Requisition is submitted.

(g) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 13 (*Conditions Precedent*) or **Exhibit D** (*Requisition Procedures*)), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 5. Term. The term of the TIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

Section 6. Interest Rate. The interest rate with respect to the Outstanding TIFIA Loan Balance (the "**TIFIA Interest Rate**") shall be two and one quarter percent (2.25%) per annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time to time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Semi-Annual Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the TIFIA Lender and (b) the date the Outstanding TIFIA Loan Balance and any interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in cash.

Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule.

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the TIFIA Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the

Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** from time to time, in accordance with the principles set forth in Section 10(c) (*General Prepayment Instructions*) and **Exhibit M**, to reflect (i) any change to the Outstanding TIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the TIFIA Lender may determine is necessary for administering the TIFIA Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The TIFIA Lender shall provide the Borrower with a copy of **Exhibit G** as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

Section 8. Security and Priority; Flow of Funds.

(a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the TIFIA Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture Documents. The TIFIA Bond shall be issued as a Subordinate Obligation, secured by the Liens on the Trust Estate, and shall be subordinate to the Lien on the Trust Estate pledged to secure the Senior Obligations and the Intermediate Lien Obligations, and shall be *pari passu* to the Lien on the Trust Estate pledged to secure the Subordinate Obligations.

(b) Except to the extent otherwise provided in clause (a) of this Section 8 (*Security and Priority; Flow of Funds*), the Trust Estate will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge of the Borrower created under the Indenture Documents, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 (*Security and Priority; Flow of Funds*) and the Indenture Documents and shall not apply any portion of the Pledged Revenues in contravention of this Agreement or the Indenture Documents.

(d) The Indenture provides that all Pledged Revenues shall be deposited in the Revenue Fund and applied in the order of priority identified therein, as more fully described, and

in accordance with the requirements specified in Section 8.1(b) of the Indenture (a copy of which is attached hereto as **Exhibit O**).

Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the Indenture Documents on each Semi-Annual Payment Date, beginning on the Debt Service Payment Commencement Date, and on each other date on which payment thereof is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of the mandatory redemption, prepayment, or acceleration of the maturity of the TIFIA Loan or otherwise); provided that if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Bond shall be treated as a payment of the TIFIA Loan and any payment of principal of the TIFIA Loan shall be treated as redemption of the TIFIA Bond.

(b) Capitalized Interest Period. No payment of the principal of or interest on the TIFIA Loan is required to be made during the Capitalized Interest Period. On each Semi-Annual Payment Date occurring during the Capitalized Interest Period (and on the Semi-Annual Payment Date immediately following the end of the Capitalized Interest Period), interest accrued on the TIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding TIFIA Loan Balance. Within thirty (30) days after the end of the Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(c) Payment of TIFIA Debt Service. On each Semi-Annual Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay or cause the Trustee to pay TIFIA Debt Service in the amounts set forth in respect of such Semi-Annual Payment Date on **Exhibit G**, as the same may be revised as provided in Section 7 (Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule), which payments shall be made in accordance with Section 9(d) (Manner of Payment).

(d) Manner of Payment. Payments under this Agreement and the TIFIA Bond shall be made by wire transfer on or before each Semi-Annual Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender pursuant to Section 37 (Notices; Payment Instructions), as modified in writing from time to time by the TIFIA Lender. The Borrower may make any such payment or portion thereof (or direct the Trustee to make such payment) with funds then on deposit in the TIFIA Debt Service Fund.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding TIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 20 (Events of Default and Remedies)), but only to the extent acceleration is permitted under the Indenture.

(f) TIFIA Bond. As evidence of the Borrower's obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Bond substantially in the form of **Exhibit A**, having a maximum principal amount (excluding capitalized interest) of \$500,789,463 (subject to increase or decrease as herein provided) and bearing interest at the rate set forth in Section 6 (*Interest Rate*).

Section 10. Prepayment.

(a) Mandatory Prepayments. The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium:

(i) Following the occurrence of a Revenue Sharing Trigger Event, on each Semi-Annual Payment Date occurring while the Revenue Sharing Trigger Event remains in effect, any amounts on deposit in the Revenue Sharing Account. Prepayment of the TIFIA Loan will be made, on a pro rata basis with any other Additional TIFIA Loans then outstanding, in each case, based on the then outstanding cumulative amount of the TIFIA Loan and such Additional TIFIA Loans.

(ii) Upon any voluntary prepayment of any Bonds, other than any voluntary prepayment of any Bonds made with the proceeds of Additional Obligations issued in accordance with the requirements of subsection (a) in the definition thereof for the purpose of refinancing such Bonds, pro rata with such voluntary prepayment.

The Borrower shall provide written notice to the TIFIA Lender at least two (2) Business Days prior to the date on which it makes any mandatory prepayment; provided that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred. Each prepayment pursuant to this Section 10(a) (*Mandatory Prepayments*) shall be effected pursuant to Section 4.2 of the TIFIA Supplemental Indenture (as applicable) and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(b) Optional Prepayments. The Borrower may prepay the TIFIA Loan by causing the Trustee to redeem the TIFIA Bond in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in a minimum principal amount of \$1,000,000), at any time or from time to time, without penalty or premium. Each prepayment of the TIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender, which notice shall also specify the amount of unpaid interest accrued to the date of such prepayment on the amount of principal to be prepaid that the Borrower intends to pay concurrently with such prepayment, if any. In the case of any optional prepayment, such written notice shall be delivered to the TIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the TIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the TIFIA Lender. Anything in this Section 10(b) (*Optional Prepayments*) to the

contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) General Prepayment Instructions. Upon the TIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the TIFIA Lender shall surrender the TIFIA Bond to the Borrower or its representative at the principal office of the TIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the TIFIA Bond, the TIFIA Lender may make a notation on **Exhibit G** indicating the amount of principal of and interest on such TIFIA Bond then being prepaid. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. All such partial prepayments of principal shall be applied on a pro rata basis to reduce future payments due on the TIFIA Bond. If said monies shall not have been so paid on the prepayment date, such principal amount of such TIFIA Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate).

Section 11. [Reserved].

Section 12. Compliance with Laws. The Borrower shall, and shall require VDOT, which shall in turn require the Construction Contractors at all tiers for the Project, to comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including federal and state laws, rules, regulations and executive orders. In each Standard Project Agreement, VDOT has represented to the Borrower that VDOT will ensure that all work performed relating to a Project, which is evidenced in the Principal Project Contract between VDOT and the applicable Construction Contractor pertaining to such Project, will be completed in accordance with any and all applicable federal, state, and local laws and regulations. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law.

Section 13. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have duly executed and delivered to the TIFIA Lender this Agreement and the TIFIA Bond, each in form and substance satisfactory to the TIFIA Lender.

(ii) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each Indenture Document, together with any

amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that for purposes of this Section 13(a)(ii) (*Conditions Precedent to Effectiveness*), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

(iii) Counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-1**) and bond counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-2**).

(iv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to the Borrower and its principals (as defined in 2 CFR § 180.995).

(v) The Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit K (A)** as to the satisfaction of certain conditions precedent set forth in this Section 13(a) (*Conditions Precedent to Effectiveness*) as required by the TIFIA Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(vi) The Borrower shall have complied with the verification requirements set forth in 2 CFR §§ 180.300 and 180.320 and complied with its obligations under 2 CFR § 180.330 in connection with the Standard Project Agreements, and shall have provided evidence thereof satisfactory to the TIFIA Lender.

(vii) The Borrower shall certify to the TIFIA Lender in the certificate from the Borrower's Authorized Representative that the Borrower and VDOT have complied with their respective obligations under each Standard Project Agreement, including the following:

(1) VDOT has complied with (A) the disclosure requirements set forth in 2 CFR § 180.355, (B) the verification requirements set forth in 2 CFR §§ 180.300 and 180.320, and (C) its obligations under 2 CFR § 180.330 with respect to the Construction Contracts;

(2) All Governmental Approvals necessary to commence construction of the Project have been obtained and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);

(3) With respect to the Project, the Borrower and VDOT have each complied with NEPA;

(4) The Borrower and VDOT, respectively, have each complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);

(5) VDOT and each applicable Principal Project Party, as and if applicable, have obtained insurance with respect to the Project, which meets the requirements of Section 16(e) (*Compliance with Standard Project Agreement*);

(6) Each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the Effective Date shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect; and

(7) upon the TIFIA Lender's request, shall provide, or shall use commercially reasonable efforts to cause VDOT to provide, evidence thereof satisfactory to the TIFIA Lender.

To assist with the Borrower's compliance under this Section 13(a)(vii), the Borrower may rely on a certificate of an authorized representative of VDOT as to VDOT's compliance with the applicable certifications required herein.

(viii) The Borrower shall have provided to the TIFIA Lender satisfactory evidence that the Project has been included in (A) the metropolitan transportation improvement program adopted by the Hampton Roads Transportation Planning Organization, (B) the State transportation plan, and (C) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project.

(ix) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the Effective Date, of the assignment by at least two (2) Rating Agencies of public ratings of not less than 'A-' or 'A3' to the TIFIA Loan and to the Existing Indebtedness, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(x) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that as of the Effective Date the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof, or, in the case of HRTF Revenues, are reasonably anticipated to be

available, and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion as and when needed.

(xi) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender.

(xii) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 4.60, (C) not reflect the commencement of amortization of the principal amount of any Senior Obligations before the Debt Service Payment Commencement Date, (D) use the methodology in **Exhibit I** hereto for the purpose of forecasting HRTF Revenues, and (E) otherwise be in form and substance acceptable to the TIFIA Lender.

(xiii) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant Section 33.2-1920, as amended, Code of Virginia of 1950, to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents and required by applicable law, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xiv) The Borrower shall have paid in full all invoices delivered by the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xv) The TIFIA Lender shall have delivered its initial TIFIA Lender's Authorized Representative certificate.

(xvi) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System or Unique Entity Identifier number, as appropriate, and (C) registered with, and obtained confirmation of

active registration status from, the federal System for Award Management (www.SAM.gov).

(xvii) The Borrower shall have provided to the TIFIA Lender evidence that the Borrower is duly created and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified by the Borrower's Authorized Representative: (A) a copy of its Organizational Documents, as in effect on the Effective Date (and certified by the Secretary of State of the State or the state of its formation, to the extent applicable), which Organizational Documents shall be in full force and effect and shall not have been amended since the date of the last amendment thereto shown on the certificate, (B) a copy of all resolutions authorizing the Borrower to execute and deliver, and to perform its respective obligations under, the TIFIA Loan Documents to which it is a party, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by the Borrower relating to the matters described therein, and (C) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the TIFIA Loan Documents.

(xviii) The Borrower shall have provided the TIFIA Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the TIFIA Lender and in sufficient time prior to the Effective Date to permit the TIFIA Lender and the FHWA Division Office to review such costs.

(xix) The representations and warranties of the Borrower set forth in this Agreement (including Section 14 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xx) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the Effective Date (A) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (B) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs.

(xxi) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Trustee in the form attached hereto as **Exhibit J**.

(xxii) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for

lobbying substantially in the form attached hereto as **Exhibit N** in accordance with 49 CFR §20.100(b).

(xxiii) The Borrower shall have delivered to the TIFIA Lender the forms of the Project BANs Supplemental Indenture, the Project BANs Bond, and any other documents required to issue the Project BANs on the Project BANs Closing Date, each in the form and substance satisfactory to the TIFIA Lender.

(xxiv) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments and evidence of the closing of the Existing Indebtedness).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the TIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the TIFIA Lender:

(i) [Reserved.]

(ii) With respect to any disbursement occurring sixty (60) days or more after the Effective Date, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 22(a) (*Financial Plan*), which Financial Plan (or update thereto) reflects that amortization of the principal amount of any outstanding Bonds does not commence before the Debt Service Payment Commencement Date.

(iii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have delivered to the TIFIA Lender certified, complete and fully executed copies of any Indenture Documents entered into after the Effective Date.

(iv) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified copies of all Principal Project Contracts requested by the TIFIA Lender pursuant to Section 16(b) (*Copies of Documents*) (including, in each case, any amendment, modification or supplement thereto and related performance security instrument) entered into after the Effective Date.

(v) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that VDOT has complied in all material respects with its obligations under each Standard Project Agreement and shall provide, or shall use commercially reasonable efforts to cause VDOT to provide, upon the TIFIA Lender's request evidence thereof satisfactory to the TIFIA Lender, including the following:

(1) All Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction,

operation and maintenance of the Project have been issued and are in full force and effect;

(2) Each Construction Contractor has maintained surety bonds and insurance coverage and amounts as required by the applicable Principal Project Contract; and

(3) Each of the insurance policies obtained by any applicable Principal Project Party in satisfaction of the conditions in Section 13(a)(vii)(6) (*Conditions Precedent to Effectiveness*) is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.

(vi) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder and no event of default (howsoever described or designated) under any other Related Document (other than an event of default of a Principal Project Party) shall have occurred and be continuing, (B) no material event of default (howsoever described or designated) of any Principal Project Party under any Principal Project Contract shall have occurred and be continuing, and (C) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of the Borrower under any other Related Document, in each case, shall have occurred and be continuing.

(vii) The representations and warranties of the Borrower set forth in this Agreement (including Section 14 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(viii) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the TIFIA Lender.

(ix) The Borrower shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the TIFIA Lender.

(x) The Borrower shall have paid in full all invoices received from the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) as of the date of disbursement of the TIFIA Loan, for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xi) To the extent not previously delivered to the TIFIA Lender, the Borrower shall request and upon receipt provide all certified, completed and fully executed

copies of each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the date of disbursement of the TIFIA Loan, each of which performance security instruments shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

Section 14. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 14(b) (Officer's Authorization) and Section 14(k) (Credit Ratings), as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a body politic and a political subdivision duly created and validly existing under the laws of the State, has full legal right, power and authority to enter into the Related Documents then in existence, to execute and deliver the TIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related Documents will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, other than the Liens granted pursuant to the TIFIA Loan Documents.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of the Borrower or any other Person, and no consent, permission, authorization,

order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by the Borrower of the Related Documents, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by the Related Documents or (B) the fulfillment of or compliance by the Borrower with the terms and conditions of the Related Documents, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Pledged Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or, as applicable, the most recent Revised Financial Model). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. The Indenture Documents and Section 33.2-1920, as amended, Code of Virginia of 1950, establish, in favor of the Trustee for the benefit of the TIFIA Lender, the valid and binding Liens on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Trust Estate except for the Liens associated with Senior Obligations and Intermediate Lien Obligations, and not *pari passu* with any obligations other than the Subordinate Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents, and applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 16(a) (Securing Liens) or in the Indenture Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required by applicable law and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Trust Estate in favor of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery

or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 13(a)(iv) (Conditions Precedent to Effectiveness). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332, with respect to VDOT in connection with the Standard Project Agreements. The Borrower is not aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 CFR Part 180.

(i) Accuracy of Representations and Warranties. The representations, warranties and certifications of the Borrower set forth in this Agreement and the other Related Documents are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(j) Transportation Improvement Program. The Project has been included in (i) the metropolitan transportation improvement program adopted by the Hampton Roads Transportation Planning Organization, (ii) the State transportation plan, and (iii) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135 and 23 U.S.C. § 602(a)(3), as applicable. The financial plan for each such program or plan reflects the costs of, and the sources of funding for, the Project.

(k) Credit Ratings. The TIFIA Bond and the Existing Indebtedness outstanding as of the Effective Date have received a public credit rating of not less than ‘A-’ or ‘A3’ (or such equivalents for short-term obligations) from at least two (2) Rating Agencies, and written evidence of each such public rating has been provided to the TIFIA Lender prior to the Effective Date, and neither public rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of the Borrower under any Related Document has occurred and is continuing.

(m) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion of the Project, and for the operation and management thereof, have been obtained or effected and are in full force and effect and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(n) Principal Project Contracts. Each Principal Project Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Principal Project Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Principal Project Contract required to be delivered to, or requested by, the TIFIA Lender pursuant to Section 16(b) (Copies of Documents) (including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related credit support instruments or side letters. No event has occurred that gives the Borrower (as applicable) or, to the Borrower's knowledge, any Principal Project Party, the right to terminate any Principal Project Contract. The Borrower is not in breach of, or in default under, any Principal Project Contract (as applicable), and, to the knowledge of the Borrower, no Principal Project Party is in breach of, or in default under, any material term of any Principal Project Contract (as applicable).

(o) Information. The information furnished by the Borrower to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party is a Sanctioned Person.

(ii) None of the Borrower nor, to the knowledge of the Borrower, any Principal Project Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal; or

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or, to the knowledge of the Borrower, any Principal Project Party, with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the TIFIA Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(q) Trust Estate. The TIFIA Debt Service payments are limited obligations of the Borrower, secured solely by the Trust Estate pledged under the Indenture, which is funded solely from the HRTAC Revenues paid by the State to the Borrower pursuant to the HRTAC Act. The obligation of the Borrower to make TIFIA Debt Service payments does not constitute an indebtedness of the State or any political subdivision thereof other than the Borrower within the meaning or application of any constitutional provision or limitation. The obligation of the Borrower to make TIFIA Debt Service payments does not constitute a pledge of the faith, credit or taxing power of the State or any political subdivision thereof within the meaning or application of any constitutional provision or limitation. The Borrower has no taxing power.

(r) Compliance with Law. The Borrower is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 14(s) (Environmental Matters)), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower's knowledge, each Principal Project Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by the Borrower (as applicable) or, to the Borrower's knowledge and solely in respect of the Project or any Principal Project Contract, any Principal Project Party, other than, in each case, notices of violations that are immaterial.

(s) Environmental Matters. To the Borrower's knowledge, each Principal Project Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**"). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. The Borrower is not aware of any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that a Principal Project Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by a Principal Project Party with any such Environmental Law or Governmental Approval. The Borrower has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to the Borrower regarding the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(t) Sufficient Rights and Utilities. As evidenced in each Principal Project Contract, VDOT, as the State entity responsible for building, maintaining, and operating the interstate, primary, and secondary state highway systems in the State, possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real property relating to the Project, in each case as is necessary and sufficient for the construction, operation, maintenance and repair of the Project. The Principal Project Contracts then in effect and the Governmental Approvals that have been obtained and are then in full force and effect create rights in VDOT sufficient to enable VDOT to own, construct, operate, maintain and repair the Project and to perform its obligations under the Principal Project Contracts to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

(u) Insurance. To the best of Borrower's knowledge and after due inquiry, VDOT is in compliance with all insurance obligations under, and maintains, or causes to be maintained, at all times and with responsible insurers, all insurance as required by, each of the Principal Project Contracts.

(v) Title. The Borrower has valid legal and beneficial title to, or a valid leasehold interest in, the personal property and other assets and revenues thereof (including the Pledged Revenues and the Trust Estate) on which it purports to grant Liens pursuant to the Indenture Documents, in each case free and clear of any Lien of any kind, except for Liens on the Senior Obligations and Intermediate Lien Obligations.

(w) No Liens. Except for the Liens in favor of the Senior Obligations and Intermediate Lien Obligations, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate, the Project, the Pledged Revenues, or the properties or assets in relation to the Project.

(x) Intellectual Property. To the Borrower's knowledge, VDOT owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(y) Investment Company Act. The Borrower is not, and after applying the proceeds of the TIFIA Loan will not be, required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a

company required to register as an “investment company” under the Investment Company Act of 1940, as amended.

(z) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, “**Financial Statements**”) delivered to the TIFIA Lender pursuant to Section 22(c) (*Financial Statements*) has been prepared in accordance with GASB and presents fairly, in all material respects, the financial condition of the Borrower as of the respective dates of the balance sheets included therein and the results of operations of the Borrower for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GASB.

(aa) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

(bb) ERISA. Neither the Borrower nor any ERISA Affiliate maintains or otherwise has any liability in respect of any plan or other arrangement that is subject to ERISA or Section 412 of the Tax Code.

(cc) Sufficient Funds. The aggregate of (i) all funds that are undrawn but fully and completely committed under the Indenture Documents and this Agreement and (ii) all funds available under any other unused funding that is committed and available, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(dd) Sovereign Immunity. The Borrower has no immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein which could be asserted in any breach of contract action to enforce the obligations of the Borrower under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder.

(ee) Patriot Act. The Borrower is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

(ff) Compliance with Federal Requirements. With respect to the Project, the Borrower and VDOT have complied with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*).

(gg) Borrower’s Reliance on VDOT’s Certificate. To assist with the Borrower’s compliance under this Section 14, the Borrower may rely on a certificate of an authorized representative of VDOT as to VDOT’s compliance with the applicable representations and warranties required herein.

Section 15. Representations and Warranties of TIFIA Lender. The TIFIA Lender hereby makes the following representations and warranties as of the Effective Date:

(a) Power and Authority. The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the TIFIA Lender executing each of the Related Documents to which the TIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

Section 16. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Trust Estate (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken at all times. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Trustee for the benefit of the TIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to the Liens securing the Senior Obligations and Intermediate Lien Obligations.

(b) Copies of Documents.

(i) The Borrower shall furnish to the TIFIA Lender a copy of any draft documents and final offering documents (including any Indenture Documents) and cash flow projections prepared in connection with the incurrence of any Permitted Debt (including the Project BANs) or other indebtedness subject to approval by the TIFIA Lender pursuant to Section 17(a) (Indebtedness), in each case prior to the incurrence of any such Permitted Debt or such other indebtedness, as well as copies of any continuing disclosure documents, prepared by or on behalf of the Borrower in connection with the

incurrence of such Permitted Debt or such other indebtedness, in each case promptly following the preparation or filing thereof. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (i) copies of the then current draft documents relating to the incurrence of Permitted Debt (other than equipment leases and trade accounts included in such definition) at least thirty (30) days prior to the effective date thereof and (ii) copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (A) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project or any indebtedness of the Borrower that is or will be secured by or paid from the Trust Estate or any portion thereof, including the Pledged Revenues, (B) all notices and other written communications received by the Borrower from the Trustee or any Bondholder, (C) all reports, notices and other written materials required to be sent to the Trustee or any Bondholder under the Indenture Documents, and (D) all notices delivered by or to the Borrower relating to any of the Principal Project Contracts; unless, in each case, the TIFIA Lender notifies the Borrower in writing that any such reports, notices and/or other written materials no longer need to be provided.

(c) Use of Proceeds. The Borrower shall use the proceeds of the TIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents.

(d) Debarment and Suspension Requirements. The Borrower shall comply with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(e) Compliance with Standard Project Agreement. The Borrower shall ensure that VDOT has complied in all material respects with its obligations under each Standard Project Agreement and shall pursue all available remedies pursuant thereto to ensure VDOT's continued compliance therewith, including:

(i) Substantial Completion of the Project is in accordance with the respective Construction Schedule;

(ii) VDOT and each Construction Contractor is in compliance with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332;

(iii) VDOT's operation and maintenance of the Project;

(iv) All Government Approvals necessary for the development, construction, operation, and maintenance of the Project have been issued and are in full force and effect; and

(v) Each Construction Contractor has maintained surety bonds and insurance coverage and amounts as required by the applicable Principal Project Contract.

(f) Notice.

(i) The Borrower shall, within five (5) Business Days after the Borrower learns of the occurrence, give the TIFIA Lender notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event:

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit L**;

(B) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(C) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower or VDOT with respect to the Project that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower with award amounts in excess of \$5,000,000 (inflated annually by CPI), either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and the Borrower's plans to remedy or mitigate the effects of such failure or delay;

(E) Environmental Notices: any notice of material violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(F) Amendments: except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any Principal Project Contract or other Related Document at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof;

(G) Principal Project Contract Defaults: any material breach or default or event of default on the part of the Borrower, VDOT, or any other party under any Principal Project Contract;

(H) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(I) Project Changes: any (1) change to the Total Project Costs forecasts in excess of five percent (5%) of total forecasted Total Project Costs (2) proposed change to the Project Substantial Completion Date, together with an explanation of the reasons for such proposed adjustment, and (3) material change to the Construction Schedule;

(J) Ratings Changes: any change in the rating assigned to any Bonds by any Rating Agency that has provided a public rating on such indebtedness, the Borrower, or the Pledged Revenues;

(K) 2 CFR Notices: (1) that any of the information set forth in the certificate provided pursuant to Section 13(a)(iv) (Conditions Precedent to Effectiveness) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the TIFIA Loan as described in 2 CFR § 200.113, and the Borrower shall require VDOT, the Construction Contractors, and each of their subcontractors for the Project to provide it notice of any such violation;

(L) Appropriations: if the appropriation of the HTRF Revenues to the HRTF (1) was not included in each biennial budget or any supplemental budget that is presented to the General Assembly, and/or (2) if the General Assembly failed to appropriate for the next State fiscal biennium;

(M) Material Events: the filing of (together with a copy of) any notice to the Municipal Securities Rulemaking Board of any of the events described in clause (b)(5)(i)(C) of Rule 15c2-12 of the U.S. Securities and Exchange Commission (or any similar rule); and

(N) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect.

(ii) The Borrower shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described in Section 16(f)(i) (Notice).

(g) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 16(f)(i) (Notice) (other than in Section

16(f)(i)(A) (Substantial Completion), (Section 16(f)(i)(F) (Amendments)), or Section 16(f)(i)(J) (Ratings Changes) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto.

(h) Maintain Legal Structure. The Borrower shall maintain its existence as a body politic and a political subdivision under the laws of the State. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

(i) Annual Rating. The Borrower shall, commencing in [2022], no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the TIFIA Bond and any other Bonds outstanding by a Rating Agency, together with the rating report or letter delivered by such Rating Agency in connection with each such rating, if any, in each case prepared no earlier than June 1 of such year.

(j) Project Funds; Permitted Investments.

(i) The Borrower shall fund the TIFIA Debt Service Reserve Fund in an amount equal to the TIFIA Debt Service Reserve Required Balance by no later than the date that is the later of (A) the Substantial Completion Date and (B) the date the final disbursement of the TIFIA Loan. Thereafter, the Borrower shall maintain the TIFIA Debt Service Reserve Fund in an amount equal to the TIFIA Debt Service Reserve Required Balance. To the extent that a Debt Service Reserve Fund is established at any lien level with respect to any other Series (as defined in the Indenture) of Bonds, the Borrower shall maintain such Debt Service Reserve Fund in an amount equal to the relevant Debt Service Reserve Requirement in accordance with the provisions of this Agreement and the applicable Indenture Documents. Amounts in any Debt Service Reserve Fund shall be made available to ensure the timely payment of the principal, interest, and premium, if any, on the Bonds to which it relates.

(ii) To the extent not provided in Section 16(j)(i) (Project Funds; Permitted Investments), the Borrower shall cause the other Reserve Accounts to be funded in such amounts and under such conditions as are required by this Agreement and the Indenture Documents.

(iii) Amounts on deposit in the Project Funds, except as to the Series 2018A Bonds, shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Debt Service Reserve Fund, not later than the next Semi-Annual Payment Date, (B) with respect to Permitted Investments maintained in the TIFIA Debt Service Fund or in any debt service account in respect of Senior Obligations corresponding to amounts needed for the payment of interest, not later than the next Semi-Annual Payment Date, (C) with respect to Permitted Investments maintained in the TIFIA Debt Service Fund or in any debt service account for

Senior Obligations corresponding to amounts needed for the repayment of principal, the next Payment Date for repayment of principal in respect of such debt, and (D) with respect to any other Project Funds, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from the applicable Project Fund. The Borrower shall, promptly but in any event within five (5) days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(iv) The Borrower may replace all or a portion of the required balance of any Reserve Account, in accordance with the terms of the applicable Indenture Documents, with an Acceptable Letter of Credit provided by a financial institution with an Acceptable Credit Rating. If at any time an issuer of an Acceptable Letter of Credit securing a Reserve Account ceases to be a Qualified Issuer, the Borrower shall cause such letter of credit to be replaced by a new Acceptable Letter of Credit within ten (10) calendar days of the date on which the current issuer ceased to be a Qualified Issuer, or the Trustee shall be permitted to immediately draw the full amount of such letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account. Any new Acceptable Letter of Credit shall have the same terms and conditions (including expiration date and face amount) as the letter of credit being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any letter of credit securing a Reserve Account is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such letter of credit with a new Acceptable Letter of Credit at least ten (10) Business Days prior to the stated expiry date of the existing letter of credit and such new Acceptable Letter of Credit shall be in an amount equal to at least the amount of expiring letter of credit. If the Borrower fails to provide such new Acceptable Letter of Credit by the date required above, the Trustee shall (and the TIFIA Lender shall have the right to direct the Trustee to) immediately draw the full undrawn amount of the existing letter of credit and deposit the proceeds of such drawing into the applicable Reserve Account.

(k) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon the Trust Estate or any portion thereof, including the Pledged Revenues, or the Borrower's other income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims which, if unpaid might give rise to a Lien upon such properties or any part thereof or on the Trust Estate or any portion thereof, including the Pledged Revenues; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GASB, applied on a consistent basis.

(l) Hedging.

(i) As a condition to the issuance of any Senior Obligations or Intermediate Lien Obligations that bear interest at a Variable Interest Rate, the Borrower shall enter into a Qualified Hedge with respect to such Senior Obligations or Intermediate

Lien Obligations and shall maintain such Qualified Hedge in place until the earlier to occur of (i) the maturity date of any such Senior Obligations or Intermediate Lien Obligations and (ii) the Final Maturity Date. Each Qualified Hedge must have an aggregate stated notional amount of not less than (A) during the Construction Period, at least ninety percent (90%) and not more than one hundred ten percent (110%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding during such time period and (B) at all other times, at least ninety-eight percent (98%) and not more than one hundred two percent (102%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding until the maturity of such Variable Interest Rate Obligations. Any such Qualified Hedge shall have a payment profile that is reasonably consistent with the expected draw and repayment schedule of the applicable Variable Interest Rate Obligations subject to such Qualified Hedge. Such Qualified Hedge shall have a stated maturity or termination date not earlier than the earlier to occur of (x) the Final Maturity Date and (y) the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge.

(ii) Each Qualified Hedge shall provide for a fixed interest rate resulting in fixed payment amounts payable by the Borrower to the Qualified Hedge Provider. The Borrower's obligations to pay Hedging Obligations and Hedging Termination Obligations shall be from the sources and in the priority specified in the Indenture Documents. The Borrower shall ensure that, as of the day following the termination date of any Qualified Hedge that for any reason terminates before the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge, (A) a Subsequent Qualified Hedge (as defined below) is in full force and effect or (B) the Variable Interest Rate Obligations have been converted to a fixed rate, in each case in accordance with this Agreement and the Indenture Documents.

(iii) Any Hedging Transaction entered into subsequent to the initial Qualified Hedge (a "**Subsequent Qualified Hedge**") shall (A) be a Qualified Hedge, (B) commence no later than the termination date of the Qualified Hedge that is terminating and (C) terminate no earlier than the earlier to occur of (1) the Final Maturity Date and (2) the final maturity date of the Variable Interest Rate Obligations subject to such Subsequent Qualified Hedge.

(iv) The Borrower shall not commence seeking any bids from any Qualified Hedge Provider for a Subsequent Qualified Hedge unless, at least thirty (30) days prior thereto, the Borrower has delivered to the TIFIA Lender evidence satisfactory to the TIFIA Lender and certified by the Borrower's Authorized Representative that the process to be utilized by the Borrower for selecting such Subsequent Qualified Hedge is a competitive process designed to obtain a fair market price and to avoid conflicts of interest. At the time the Subsequent Qualified Hedge is priced, the Borrower shall provide to the TIFIA Lender a certificate from a qualified third party acceptable to the TIFIA Lender to the effect that either the underlying fixed rate or the price of acquiring such Subsequent Qualified Hedge is a fair price based on the interest rate market at the time such Qualified Hedge is priced.

(v) The Trustee shall be granted a security interest in each Qualified Hedge and payments due under each Qualified Hedge in order to secure the Borrower's obligations under the TIFIA Loan Documents. The Hedging Agreements shall provide that all payments due thereunder to the Borrower shall be made directly to the Trustee for deposit and disbursement in accordance with the Indenture Documents.

(vi) The Borrower shall neither terminate (other than Permitted Hedging Terminations), transfer, nor consent to any transfer (other than to a Qualified Hedge Provider) of any existing Qualified Hedge without the TIFIA Lender's prior written consent as long as the Borrower is required to maintain a Qualified Hedge pursuant to this Agreement.

(vii) If at any time a Hedging Bank no longer satisfies the requirements for a Qualified Hedge Provider, the Borrower shall, within thirty (30) days (or such lesser number of days required by the applicable Hedging Agreement, including any credit support annex thereto) of the date on which such Hedging Bank failed to qualify as a Qualified Hedge Provider, either (A) cash collateralize the mark-to-market value of the Hedging Termination Obligations (in accordance with the credit support annex or similar requirements of the applicable Hedging Agreement) or provide a guarantee for such amount from an entity with an Acceptable Credit Rating, or (B) cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider, whether by means of a transfer of the disqualified Hedging Bank's Hedging Agreement to a Qualified Hedge Provider or by means of a termination of such disqualified Hedging Bank's Hedging Agreement and replacement thereof by a Hedging Agreement with a Qualified Hedge Provider on terms and conditions that satisfy the requirements of this Section 16(l) (Hedging); provided that if the disqualified Hedging Bank's highest credit rating from any Rating Agency is less than 'A-', 'A3' or the equivalent, clause (A) shall not apply and the Borrower shall be required to cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider pursuant to clause (B).

(m) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the TIFIA Lender evidence of such active registration status with no active exclusions reflected in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

(n) Immunity. The Borrower agrees that it will not assert any immunity (and hereby confirms that it has no such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the contractual obligations of the Borrower under this Agreement or any other TIFIA Loan Document.

(o) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to the Borrower, then the Borrower will provide written notice to the TIFIA Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all requirements of the Patriot Act.

(p) Cargo Preference Act. Pursuant to 46 CFR Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with TIFIA Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

(q) Lobbying. The Borrower shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

(r) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit P** hereto.

Section 17. Negative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the TIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) Prior to the incurrence of Additional Obligations, the Borrower shall provide to the TIFIA Lender a certificate signed by the Borrower's Authorized Representative, demonstrating to the TIFIA Lender's satisfaction that such proposed indebtedness is authorized pursuant to this Section 17(a) (Indebtedness) and satisfies the applicable requirements under the definitions of "Permitted Debt" and "Additional Obligations," as applicable.

(ii) Except for Additional Obligations, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness under the Indenture; provided that (1) the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Trust Estate, including Additional Obligations, following the occurrence, and during the continuation, of an Event of Default, and (2) the Borrower shall not issue any additional Subordinate Obligations without the TIFIA Lender's consent.

(iii) The Borrower shall not issue Subordinate Obligations which bear interest at a Variable Interest Rate.

(iv) To the extent any Obligations consists of Put Bonds, the Borrower must maintain a Credit Facility that will pay any amounts payable by the Borrower in respect of such Put Bonds.

(b) No Lien Extinguishment; Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, (i) extinguish, impair, or transfer the Liens on the Trust Estate granted pursuant to the Indenture, (ii) terminate, assign, amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, (iv) terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any Principal Project Contract except for termination, assignment, amendment, modification or waiver that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender's determination), or (v) agree to (A) any material amendment to a Standard Project Agreement, including a change to the Construction Schedule attached thereto, or (B) the use of the Project by VDOT other than for the purposes described in the Standard Project Agreement. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (x) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification or supplement to any Related Document within five (5) Business Days after execution thereof.

(c) No Prohibited Liens. Except for the Liens granted pursuant to the Indenture Documents, the Borrower shall not create, incur, assume or permit to exist any Lien on the Trust Estate, the Pledged Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Principal Project Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Principal Project Contract, except pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease, or assign its rights and obligations under any Related Document, unless such sale, lease or assignment (A) could not reasonably be expected to result in a Material Adverse Effect, and (B) is made by the Borrower in the ordinary course of business.

(e) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Indenture or in the Trust Estate) without the prior written consent of the TIFIA Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the TIFIA Lender.

(f) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the TIFIA Loan Documents, the Borrower shall not engage in any other transactions in connection with the Project with any other Governmental Authority (including any other Governmental Authority of or in the State), the terms and provisions of which are materially adverse to the Borrower or the Project or that could reasonably be expected to result in a Material Adverse Effect.

(g) No Payment with Federal Funds. The Borrower shall not pay any portion of TIFIA Debt Service nor any other amount to the TIFIA Lender or to the Federal Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrower may prepay the TIFIA Loan in whole or in part with the proceeds of a validly issued federal credit instrument pursuant to, and in accordance with, Section 10 (Prepayment).

(h) Change in Legal Structure; Mergers and Acquisitions. The Borrower shall not, and shall not agree to, reorganize, consolidate with, or merge into another Person unless (A) such Person is a successor public entity or agency created by State law that succeeds to the assets of the Borrower and assumes the obligations of the Borrower hereunder and under the Related Documents to which the Borrower is a party, including payment of the TIFIA Bond and (B) such merger, consolidation, or reorganization does not adversely affect or impair to any extent or in any manner (1) the Pledged Revenues or other elements of the Trust Estate, or (2) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement and the other TIFIA Loan Documents; and (B) the Borrower provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender.

(i) No Defeasance of TIFIA Bond. The Borrower shall not defease the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture without the prior written consent of the TIFIA Lender.

(j) OFAC Compliance.

(i) The Borrower shall not:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents; or

(C) make a payment, directly or indirectly, to any Principal Project Party that (1) to the Borrower's knowledge, has violated any of the laws referenced in Section 17(j)(i) (OFAC Compliance) or (2) is a Sanctioned Person.

(ii) The Borrower shall ensure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of the TIFIA Loan or lend to, make any payment to, contribute or otherwise make available any funds to any affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the TIFIA Lender or any Principal Project Party).

(k) Hedging. Other than interest rate hedging transactions expressly permitted hereunder, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the TIFIA Lender.

Section 18. Indemnification. To the fullest extent permitted by applicable law, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent, advisor, or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section

18 (Indemnification) is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 18 (Indemnification). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 18 (Indemnification) shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 18 (Indemnification) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 18 (Indemnification)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 19. Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section 19 (Sale of TIFIA Loan). Any such sale or reoffering shall be on such terms as the TIFIA Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower in accordance with Section 30 (Amendments and Waivers). The TIFIA Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower of the TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 19 (Sale of TIFIA Loan) shall not (x) obligate the TIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan.

Section 20. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any amount of principal of or interest on the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9 (Payment of Principal and Interest), and any mandatory prepayment required pursuant to the provisions of Section 10(a)

(*Mandatory Prepayments*)), when due and payable (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder), the TIFIA Bond or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof, (B) the Borrower’s knowledge of such failure, or (C) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 20(a)(ii) (Covenant Default), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either (A) or (B) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 20(a)(iv) (Misrepresentation Default) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 14(h) (No Debarment), Section 14(j) (Transportation Improvement Program), Section 14(p) (OFAC; Anti-Corruption Laws), Section 14(ee) (Patriot Act), or Section 14(ff) (Compliance with Federal Requirements);

(C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Senior Obligations, Intermediate Lien Obligations or Subordinate Obligations. Any acceleration shall occur of the maturity of any Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations, or any such Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations shall not be paid in full upon the final maturity thereof.

(vi) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of \$5,000,000 (inflated annually by CPI) that are payable from the Trust Estate or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(vii) Failure to Maintain Existence; Organizational Documents. The Borrower shall fail to maintain its existence as a body politic and a political subdivision created and existing under the laws of the State or the HRTAC Act shall be repealed or amended or modified in such a manner as could reasonably be expected to result in a Material Adverse Effect, unless at or prior to the time the Borrower ceases to exist in such form or the repeal or amendment of the HRTAC Act described above becomes effective, a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law and has succeeded to the assets of the Borrower and has assumed all of the obligations of the Borrower under the TIFIA Loan Documents and the Indenture Documents, including the payment of all Secured Obligations.

(viii) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower or (B) a Bankruptcy Related Event shall occur with respect to any Principal Project Party provided that (1) prior to Substantial Completion of a Project, the occurrence of a Bankruptcy Related Event with respect to any Construction Contractor shall not constitute an Event of Default if the Borrower or VDOT shall have promptly provided evidence satisfactory to the TIFIA Lender demonstrating that the Construction Contractor has been replaced with a substitute Construction Contractor that has sufficient financial resources and operating expertise to complete their respective Principal Project Contract in accordance with the applicable Construction Schedule for such Project, and (2) after Substantial Completion of a Project in accordance with its respective Project Construction Contract, the occurrence of a Bankruptcy Related Event with respect to any Construction Contractor party to such Project Construction Contract

shall not constitute an Event of Default solely with respect to such Project if at the time of such occurrence, (I) no claim against any warranty under the applicable Principal Project Contract to which such Construction Contractor is a party exists or remains outstanding, or (II) the Borrower promptly provides evidence satisfactory to the TIFIA Lender showing that the Borrower has (x) sufficient moneys to correct any defect or nonconforming work of such Construction Contractor, and (y) a plan to carry out such works referred to in clause (x) hereof.

(ix) Project Abandonment. Any Borrower Related Party shall abandon the Project.

(x) Invalidity of TIFIA Loan Documents. (A) Any TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or the Borrower contests in any manner the validity or enforceability of any TIFIA Loan Document to which it is a party or denies it has any further liability under any TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Trust Estate, including the Pledged Revenues, other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby.

(xi) Cessation of Operations. Operation of the Project shall cease for a continuous period of not less than one hundred eighty (180) days unless such cessation of operations shall occur by reason of an Uncontrollable Force that is not due to the fault of any Borrower Related Party (and which any Borrower Related Party could not reasonably have avoided or mitigated).

(b) Upon the occurrence of an Event of Default described in Section 20(a)(iii) (Development Default), the TIFIA Lender may (i) suspend the disbursement of TIFIA Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (iii) demand that the Borrower immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower, in which event the Borrower shall immediately repay any such unexpended TIFIA Loan proceeds to the TIFIA Lender.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and, to the extent permitted under the Indenture Documents, the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities, and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest, or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (ii) to the extent permitted under the Indenture Documents, declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, all without presentment, demand, notice, protest, or other requirements of any kind, all of which are hereby expressly waived.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder, under the TIFIA Bond or under the other TIFIA Loan Documents with respect to the TIFIA Loan, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the property of the Borrower the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor under the Uniform Commercial Code, and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder, under the TIFIA Bond, or under the other TIFIA Loan Documents with respect to the TIFIA Loan, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Federal Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section 20 (Events of Default and Remedies) shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all of which shall survive any such action.

Section 21. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all HRTF Revenues, so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GASB, including, with respect to the TIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and

accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 21(b) (Accounting and Audit Procedures; Inspections; Reports and Records) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 21(b) (Accounting and Audit Procedures; Inspections; Reports and Records) at any time when an Event of Default shall have occurred and be continuing.

(c) Reports and Records. The Borrower shall maintain and retain all files relating to the Project, the Pledged Revenues and the TIFIA Loan until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the TIFIA Bond (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Pledged Revenues, the TIFIA Loan or this Agreement is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and the Borrower. The Borrower shall provide to the TIFIA Lender in a timely manner all records and documentation relating to the Project or the Pledged Revenues that the TIFIA Lender may reasonably request from time to time.

(d) [Reserved.]

(e) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2019 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 22. Financial Plan, Statements, and Reports.

(a) Financial Plan.³ The Borrower shall provide a Financial Plan to the TIFIA Lender within sixty (60) days after the Effective Date and annually thereafter until the TIFIA Loan has been repaid in full, in each case not later than ninety (90) days after the beginning of each Borrower Fiscal Year. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model. The Financial Plan shall not reflect amortization of Senior Obligations and Intermediate Lien Obligations until such time as all currently accruing interest on the TIFIA Loan is being paid in full.

³ **Note to Borrower:** USDOT has updated and streamlined the Financial Plan requirements. We are updating the requirements here to bring them in line with those reflected in the TIFIA Loan Agreements for the HRBT Project.

(i) Each Financial Plan shall be prepared in accordance with GASB, and shall satisfy FHWA's Major Project Financial Plan requirements, as amended from time to time.

(ii) Together with each Financial Plan, the Borrower shall deliver: (A) a certificate signed by the Borrower's Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower's knowledge and belief and (B) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, based upon assumptions and projections with respect to the Pledged Revenues, expenses and other financial aspects of the Project and the Trust Estate that shall reflect the prior experience and current status of the Project and the Pledged Revenues, and the expectations of the Borrower with respect to the Project and the Pledged Revenues, as of the most recent practicable date prior to the delivery of such Revised Financial Model, together with a change log describing such changes.

(iii) Each Financial Plan shall:

(A) provide an updated cash flow statement showing, for the Borrower Fiscal Year most recently ended, (1) actual annual cash inflows (Pledged Revenues and other income), (2) actual annual outflows (including Senior Debt Service, Intermediate Lien Debt Service, Subordinate Debt Service, TIFIA Debt Service, Operating Expenses, replenishment of reserves, and other uses), (3) Total Debt Service Coverage Ratios (measured as of the last day of the applicable Borrower Fiscal Year) and (4) coverages of the payments and deposits required pursuant to clauses First through Sixth of Section 8.1(b) of the Indenture;

(B) provide an updated cash flow statement showing projected annual amounts for each of the items described in clause (A) above, in each case through the Final Maturity Date;

(C) provide a schedule of then current HRTAC Revenues applicable to any Pledged Revenues and any planned increases thereto;

(D) to the extent that any Hedging Transactions are then in effect, report on the notional amounts and mark to market values (provided by the Qualified Hedge Provider) under such Hedging Transactions, in each case as of the last day of the most recently ended Borrower Fiscal Year; and

(E) provide a written narrative that (1) explains any variances greater than 10% in comparison to the Base Case Financial Model and the most recent Financial Plan with respect to (i) Pledged Revenues and the amounts deposited into each of the accounts and subaccounts established under the Indenture Documents; (ii) cost items that are senior to TIFIA Debt Service; (2) to the extent that any Hedging Transactions are then in effect, report on changes, if any, to the creditworthiness of the counterparties to such Hedging Transactions; (3) includes a description of any material matters that may affect the future performance by the

Borrower of its obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Pledged Revenues, Principal Project Contracts, and third-party transactions; and (4) discusses contingency measures that will or may be taken to address any of the matters reported pursuant to this sub-clause (F).

(iv) In addition to the above, prior to the Substantial Completion Date, the Financial Plan shall:

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan;

(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including and updated Projected Substantial Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule and in the most recent Financial Plan, and discuss the reasons for any changes to the expected completion of these Project milestones;

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the preceding Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of each individual change valued at \$5,000,000 or more, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower's obligations under this Agreement.

(b) Modifications to Total Project Costs. For the period through the Substantial Completion Date, the Borrower shall provide written notification to the TIFIA Lender of any notification the Borrower receives from VDOT concerning "Additional Costs" (as defined in each Standard Project Agreement) within ten (10) days of the Borrower's receipt of the same from VDOT. The Borrower shall additionally provide the TIFIA Lender written notification of the Borrower's and VDOT's proposed resolution of such Additional Costs pursuant to the terms of the respective Standard Project Agreement at least thirty (30) days prior to instituting any increase

or decrease to the aggregate Total Project Costs in an amount equal to or greater than 5% of Total Project Costs. Such resolution shall set forth the nature of the proposed increase or decrease and an estimate of the impact of such increase or decrease on the capital costs and operating costs of the Project, and the Financial Plan. The Borrower's notice shall demonstrate that the proposed increase or decrease is consistent with the provisions of this Agreement, is necessary or beneficial to the Project, and could not reasonably be expected to result in a Material Adverse Effect.

(c) Financial Statements. The Borrower shall furnish to the TIFIA Lender:

(i) (A) as soon as available, but no later than sixty (60) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited income statement and balance sheet of the Borrower as of the end of such period and the related unaudited statements of operations and of cash flow of the Borrower for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative fairly stating in all material respects the financial condition of the Borrower as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

(B) as soon as available, but no later than one hundred twenty (120) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the TIFIA Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GASB (or in the case of non-U.S. Persons, substantially equivalent principles) applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(d) Officer's Certificate. The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Borrower pursuant to Section 22(c) (*Financial Statements*), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Event of Default or event that, with the giving of notice or the passage of time or both, would become an Event of Default, and, if any such Event of Default or other event shall have occurred during such period, the nature of such Event of Default or other event and the actions that the Borrower has taken or intends to take in respect thereof.

Section 23. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. The Borrower agrees to cooperate in good faith with the TIFIA Lender and the FHWA Division Office in the conduct of such monitoring by promptly requesting that VDOT provide the TIFIA Lender and the FHWA Division Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and the FHWA Division Office, or its agents, including any independent engineer reports, documentation or information.

(b) Reporting. The Borrower shall furnish to the TIFIA Lender the documentation described below.

(i) Monthly Construction Progress Report. On or before the last Business Day of any calendar month during the Construction Period, a report executed by a Borrower's Authorized Representative that:

(A) includes a copy of the monthly report that VDOT provides to the Borrower pursuant to each Standard Project Agreement;

(B) specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar month and the amount of Total Project Costs estimated to be required to complete the Project;

(C) provides an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule;

(D) specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date specified in the Financial Plan most recently submitted to the TIFIA Lender;

(E) provides a detailed description of all material problems (including actual and anticipated cost and/or schedule overruns, if any) encountered or anticipated in connection with the construction of the Project since the date of the last report, together with an assessment of how such problems may impact the Construction Schedule and the meeting of critical dates thereunder and a detailed description of the proposed solutions to any such problems;

(F) specifies the delivery status of major equipment and the effect, if any, that the anticipated delivery dates of such equipment has on the overall Construction Schedule;

(G) specifies any proposed or pending change orders;

(H) specifies any material changes or deviations from the Borrower's land procurement plans or schedule;

(I) to the extent received by the Borrower from VDOT, a copy of each report delivered by a Construction Contractor to VDOT that has not previously been delivered to the TIFIA Lender in a prior report delivered pursuant to this Section 23(b)(i) (*Monthly Construction Progress Report*); and

(J) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request. The Borrower shall respond, and use commercially reasonable efforts to cause VDOT to assist with causing the applicable Construction Contractor to respond, to the TIFIA Lender's inquiries regarding such report, the construction of the Project and any Construction Contractor's performance of its obligations under the Project Construction Contract to which such Construction Contractor is a party.

(ii) Requested Information. The Borrower shall, at any time while the TIFIA Loan remains outstanding, promptly deliver, and shall use commercially reasonable efforts to cause VDOT to promptly deliver, to the TIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project or the Pledged Revenues as the TIFIA Lender may from time to time reasonably request, including copies of agreements related to the acquisition or control of any Project right-of-way.

(c) Project Operations. For the period following the Substantial Completion Date, the TIFIA Lender shall have the right, in its sole discretion, to monitor (or direct its agents to monitor) the Project and, as the TIFIA Lender may request from time to time, to receive reporting on the management of the Project, and copies of any contracts relating to the maintenance and safety services for the Project. The Borrower agrees to cooperate in good faith with the TIFIA Lender in the conduct of such monitoring by promptly providing or causing to be provided to the TIFIA Lender such reports, documentation, or other information requested by the TIFIA Lender. The TIFIA Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the TIFIA Lender, to carry out the provisions of this Section 23(c) (*Project Operations*), and the full cost of such monitoring shall be borne by the Borrower. Any costs incurred by the TIFIA Lender for such monitoring, including the reasonable fees and expenses of any financial oversight advisor (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation), shall be promptly reimbursed by the Borrower upon demand therefor in the form of an invoice reasonably acceptable to the Borrower.

Section 24. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 25. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Federal Government, or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the TIFIA Lender,

the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 18 (Indemnification), from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

Section 26. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 27. TIFIA Lender's Authorized Representative.

(a) The TIFIA Lender shall at all times have appointed the TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016, and the redelegation of authority, dated December 16, 2016 (the "Delegation") by the Executive Director of the Build America Bureau to the Director of the Credit Office of the Build America Bureau, the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into agreements implementing credit assistance, and to enter into contracts and sign all contractual and funding documents necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 28. Servicer. The TIFIA Lender may from time to time designate an entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Bond. The TIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 29. Fees and Expenses.

(a) Commencing in Federal Fiscal Year (“FFY”) [2021] and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the fifteenth (15th) of November. The TIFIA Lender shall establish the amount of this annual fee, and the TIFIA Lender or the Servicer, if any, shall notify the Borrower of the amount, at least thirty (30) days before payment is due.

(b) In establishing the amount of the fee, the TIFIA Lender will adjust the previous year’s base amount in proportion to the percentage change in CPI. For the FFY [2021] calculation, the TIFIA Lender will use the FFY [2020] base amount of \$[13,694.49], which applies to other TIFIA borrowers, as the previous year’s base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year’s base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year’s base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the TIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration, and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys’, and engineers’ fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, or the Trust Estate, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder;

(iii) any ongoing oversight and monitoring of the TIFIA Loan, the Borrower or the Project by the TIFIA Lender as provided for herein; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 29 (Fees and Expenses) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 30. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 31. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 32. Severability and Conflicts. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. In the event of a conflict between the Indenture and this Agreement, the provisions of this Agreement shall be given precedence; provided further that in the event there exists a conflict between the provisions of this Agreement and the Indenture and performance with the provisions of this Agreement is contrary to or inconsistent with the rights of the Bondholders under the Indenture, then the provisions of the Indenture shall be given precedence and performance with the provisions thereof shall not constitute a violation of this Agreement.

Section 33. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the TIFIA Lender.

Section 34. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 35. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

Section 36. Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate

counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 37 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 37. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to TIFIA Lender: Build America Bureau
United States Department of
Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of
Credit Programs
Email: BureauOversight@dot.gov

with copies to: Federal Highway Administration
Virginia Division Office
400 North 8th St., Suite 750
Richmond, Virginia 23219-4825
Attn: Division Administrator
Telephone: 804-775-3320
Facsimile: 804-775-3356

If to Borrower: Hampton Roads Transportation
Accountability Commission
The Regional Building
723 Woodlake Drive
Chesapeake, Virginia 23320
Attention: Executive Director
Email: kpage@hrtac.org

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(d) (*Manner of Payment*) and the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as

modified from time to time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 37 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 37 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 38. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 39. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding TIFIA Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 18 (*Indemnification*), the reporting and record keeping requirements of Section 21(b) (*Inspections*) and Section 21(c) (*Reports and Records*), and the payment requirements of Section 29 (*Fees and Expenses*) shall survive the termination of this Agreement as provided in such sections.

Section 40. Integration. This Agreement constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name: _____
Title: _____

UNITED STATES DEPARTMENT OF
TRANSPORTATION, acting by and
through the Executive Director of the Build
America Bureau

By: _____
Name: Dr. Morteza Farajian
Title: Executive Director

SCHEDULE I
PROJECT BUDGET

Schedule I - Project Budget

Sources of Project Funds	Amount
HRTAF 2018A Senior Bonds	595,051,014
HRTAF 2019 TIFIA BANS	459,503,349
State / Local Funds	222,979,323
Federal Funds (through VDOT)	168,307,849
PayGo (HRTAC Funds)	136,793,726
Total	1,582,635,261

Cost Element	Total Costs	Non-Eligible Costs	Eligible Costs
Construction	1,255,944,687		1,255,944,687
Right of Way	98,233,771		98,233,771
PE	57,782,575	15,698,842	42,083,732
Debt Issuance Costs	1,998,957		1,998,957
Capitalized Interest	139,999,933	20,717,250	119,282,683
TIFIA Debt Service Reserve	28,675,339	28,675,339	0
Total	1,582,635,261	65,091,431	1,517,543,830

SCHEDULE II

CONSTRUCTION SCHEDULE

**Early Incentive Date has the same meaning as Substantial Completion Date (open to vehicle traffic)*

I-64 Peninsula Widening- Segment I

Milestone	Date
PE Authorization	05/18/2015
Begin Phase 1 Construction	09/14/2015
Begin Phase 2 Construction	03/21/2016
Begin Phase 3 Construction	05/18/2017
Begin Phase 4 Construction	07/28/2017
Final Construction Completion	12/01/2017

I-64 Peninsula Widening- Segment II

Milestone	Date
PE Authorization	02/17/2016
Begin Phase 1 Construction	10/26/2016
Begin Phase 2, Part 1 Construction	04/28/2018
Begin Phase 2, Part 2 Construction	05/18/2017
Early Incentive Date	05/24/2019
Final Construction Completion	7/31/2019

I-64 Peninsula Widening- Segment III

Milestone	Date
PE Authorization	05/01/2016
NTP	01/03/2018
Begin Phase 1A Construction	07/30/2018
Begin Phase 1B Construction	11/28/2018
Begin Phase 2 Construction	09/04/2019
Begin Phase 3 Construction	09/02/2020
Early Incentive Date	06/26/2021
Final Construction Completion	09/24/2021

I-64/I-264 Interchange Improvements - Phase I

Milestone	Date
PE Authorization	02/01/2001
RW Authorization	04/30/2015
RW NTP	09/03/2015
Advertisement	04/26/2016
CN Award (NTP)	09/21/2016
Early Incentive Date	05/23/2019
Final Construction Completion	10/24/2019

I-64/I-264 Interchange Improvements - Phase II

Milestone	Date
PE Authorization	12/08/2000
RW Authorization	04/30/2015
RW NTP	11/04/2015
Advertisement	07/25/2017
CN Award (NTP)	01/16/2018
Early Incentive Date	05/27/2021
Final Construction Completion	09/16/2021

I-64 Southside Widening and High Rise Bridge Improvements - Phase I

Milestone	Date
PE Authorization	04/01/2015
NTP	11/17/2017
Begin HRB Construction	08/01/2018
Obtain Environmental Permits	12/28/2018
Complete Tide gate Construction	09/27/2018
Complete HRB Construction	11/21/2020
Early Incentive Date	05/07/2021
Final Construction Completion	07/30/2021

SCHEDULE III

EXISTING INDEBTEDNESS⁴

Hampton Roads Transportation Accountability Commission Hampton Roads Transportation Fund Senior Lien Revenue Bonds, Series 2018A, dated February 14, 2018 in the original principal amount of \$500,000,000.

⁴ **Note to Borrower:** Please update.

EXHIBIT A

FORM OF TIFIA BOND

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

HRTAC PROJECT

(TIFIA – 20201001A)

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

HAMPTON ROADS TRANSPORTATION FUND

SUBORDINATE LIEN REVENUE BOND

TIFIA SERIES 2019

TIFIA BOND

Maximum Principal Amount: \$500,789,463
(excluding capitalized interest)

Effective Date: _____ **Due:** _____

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, a body politic and political subdivision created under the laws of the Commonwealth of Virginia (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Exhibit G** to the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Loan Agreement from time to time in accordance with the terms of the TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(f) (*Manner of Payment*) and Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Final Maturity Date is amended in connection with an update to the Financial Plan approved by the TIFIA Lender pursuant to Section 22(a)(iii)(B) (*Financial Plan*) of the TIFIA Loan Agreement, the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the “**TIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement.

This TIFIA Bond is being issued by the Borrower pursuant to Chapter 26, Title 33.2, Code of Virginia of 1950, as amended, a resolution adopted by HRTAC on September 19, 2019 and under and pursuant to a Master Indenture of Trust dated as of February 1, 2018 (the *Master Indenture*), between the Borrower and Wilmington Trust, National Association, or its successor, as trustee (the *Trustee*), as supplemented and amended by the First Supplemental Series Indenture of Trust dated as of February 1, 2018 (the *First Series Supplement*) and the Second Supplemental Series Indenture of Trust dated as of December 1, 2019 (the *Second Series Supplement* and, together with the First Series Supplement and the Master Indenture, the *Indenture*), between the Borrower and the Trustee, a certified copy of which Indenture is on file at the office of the Borrower.

This TIFIA Bond is issued as and constitutes a Subordinate Obligation within the meaning of such term in the Indenture.

This TIFIA Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision thereof (including any Member Locality) other than the Borrower. This TIFIA Bond shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code. *The Borrower’s authority to receive any or all of the taxes or other revenues pledged to the Trustee for payment of HRTAC Bonds (as defined below) pursuant to the Indenture is subject to appropriation by the General Assembly of the Commonwealth, and neither the General Assembly nor the Borrower can or will pledge, covenant or agree to impose or maintain at any particular rate or level any of such taxes or other revenues.*

The Indenture provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional series of Bonds for the purpose of

financing projects, and of refunding outstanding obligations of the Borrower. Such additional series of Bonds may be issued as Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations (as defined in the Indenture). This TIFIA Bond, together with all other obligations heretofore or hereafter issued under the provisions of the Indenture, are herein collectively referred to as the “HRTAC Bonds”. Reference is hereby made to the Indenture for the provisions, among others, with respect to the terms and conditions on which the HRTAC Bonds of each series are or may be issued, the custody and application of the proceeds of HRTAC Bonds issued under the Indenture, the collection and disposition of revenues, the funds charged with and pledged to the payment of the interest on and the principal and premium, if any, of the HRTAC Bonds, the nature and extent of the security, the rights, duties and obligations of the Borrower, the Trustee and any paying agent for the HRTAC Bonds and the rights of the owners of the HRTAC Bonds. Certain of such funds, accounts and subaccounts secure only the Senior Obligations, certain of such funds, accounts and subaccounts secure only the Intermediate Lien Obligations, and certain of such funds, accounts and subaccounts secure only the Subordinate Obligations, all as more fully described in the Indenture.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The owner of this TIFIA Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute any suit or other proceeding with respect to the Indenture, except as provided in the Indenture.

All acts, conditions and things required by the Constitution and laws of the State to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the State shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until the Trustee has executed the Certificate of Authentication appearing on this TIFIA Bond and inserted the date of authentication.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION has caused this TIFIA Bond to be signed by the manual or facsimile signature of its Chair and this Bond to be dated the Effective Date set forth above.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Linda B. Johnson
Chair

ATTEST:

By: _____
Kevin B. Page
Executive Director

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Indenture.

Authentication Date: _____

WILMINGTON TRUST, NATIONAL
ASSOCIATION

By: _____

Joy Holloway
Vice President

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

<u>Borrower Fiscal Year</u>	<u>Amount</u>
2022	\$500,789,463.00

EXHIBIT C

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
AND OTHER RESPONSIBILITY MATTERS—
PRIMARY COVERED TRANSACTIONS**

The undersigned, on behalf of HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, hereby certifies that HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION has fully complied with its verification obligations under 2 CFR § 180.320 and hereby further confirms in accordance with 2 CFR § 180.335, that, to its knowledge, the Borrower and its principals (as defined in 2 CFR § 180.995) and with respect to VDOT:

- (a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);
- (b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR § 180.800(a); and
- (d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain Amended and Restated TIFIA Loan Agreement, dated as of [], 2021, between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name:
Title:

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Sections 2 through Section 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 37 (Notices; Payment Instructions) of the TIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as **Appendix One** to this **Exhibit D**. Supporting documentation should be submitted with the requisition.

All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if such day is not a Business Day, the next succeeding Business Day.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the TIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of or report prepared by an independent engineer relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender).

The TIFIA Lender shall promptly send to the Borrower, in accordance with Section 37 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as **Appendix Two** to this **Exhibit D**. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be

resubmitted in proper form in order to be considered for approval. If a Requisition exceeds the balance of the TIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the TIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the TIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The TIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

(i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or

(ii) fails to ensure that VDOT has complied with its obligations to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the highest standards of VDOT's industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by VDOT with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement; or

(iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or

(iv) fails to satisfy any condition set forth in Section 4 (Disbursement Conditions) or Section 13(b) (Conditions Precedent to All Disbursements) of the TIFIA Loan Agreement; or

(v) fails to deliver documentation satisfactory to the TIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Federal Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the TIFIA Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower (even if such disbursement has been approved by the TIFIA Lender), in each case if the TIFIA Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

Build America Bureau

United States Department of Transportation
c/o Director, Office of Credit Programs

Room W12-464
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

Federal Highway Administration
Virginia Division Office
400 North 8th St., Suite 750
Richmond, Virginia 23219-4825
Attn: Division Administrator

Re: HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION
PROJECT (TIFIA - 20201001A)

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the Amended and Restated TIFIA Loan Agreement, dated as of [____], 2021 (the “**TIFIA Loan Agreement**”), by and between HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), we hereby request disbursement in the amount of \$[_____] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [_____].
2. The requested date of disbursement is [_____] 15, 20[___] (the “**Disbursement Date**”)[, which is the first Business Day following [_____] 15, 20[_____]].
3. The amounts previously disbursed under the TIFIA Loan Agreement equal, in the aggregate, \$[_____]. [The amounts previously disbursed and to be disbursed under the Senior Loan Agreements as of the date of the requested disbursement equal, in the aggregate, \$[_____].] The amounts previously disbursed and to be disbursed under the [*applicable funding document*] as of the date of the requested disbursement equal, in the aggregate, \$[_____].

4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan.
6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
7. The Borrower has ensured that VDOT has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
8. Each of the insurance policies obtained by VDOT in satisfaction of the condition in Section 13(a)(xviii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
9. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the TIFIA Lender and the FHWA Division Office and in accordance with the highest standards of VDOT's industry.
10. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
11. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
12. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since August 12, 2019 and is continuing.
13. A copy of the monthly construction progress report pursuant to Section 23(b)(i) (*Monthly Construction Progress Report*) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.
14. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with

the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Federal Government deems appropriate.

15. A copy of this requisition has been delivered to each of the above named addressees.
16. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Trustee.]

Date: _____

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____

Name:

Title: _____

APPENDIX TWO TO EXHIBIT D

**DISAPPROVAL OF THE TIFIA LENDER
(TO BE DELIVERED TO THE BORROWER)**

Requisition Number [●] is [approved in part in the amount of \$[●]] [not approved]⁵ by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2021, by and between Hampton Roads Transportation Accountability Commission (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the TIFIA Lender’s sole discretion, and in no event shall the TIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

**UNITED STATES DEPARTMENT OF
TRANSPORTATION**, acting by and
through the Executive Director of the Build
America Bureau

By: _____
TIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

⁵Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

[INSERT REASONS FOR ANY PARTIAL OR FULL DENIAL OF APPROVAL.]

EXHIBIT E

COMPLIANCE WITH LAWS

The Borrower shall, and shall require VDOT, which shall in turn require that the Construction Contractors at all tiers for the Project, to comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 CFR Part 35; 29 CFR Part 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 CFR Part 21);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 CFR Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), including the environmental mitigation requirements and commitments made by VDOT that result in the FHWA's approval of the NEPA Determination;
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (ix) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (x) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xi) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 CFR Part 1926 and 23 CFR § 635.108, as applicable);
- (xii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 CFR Part 5), and, as applicable, 23 U.S.C. § 113 and implementing regulations (23 CFR §§ 635.117(f) and 635.118), and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;

- (xiii) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 CFR § 635.410);
- (xiv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 CFR;
- (xv) The Cargo Preference Act of 1954, as amended (46 U.S.C. §55305), and implementing regulations (46 CFR Part 381);
- (xvi) The applicable requirements of 49 CFR Part 26 relating to the Disadvantaged Business Enterprise program; and
- (xvii) The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and implementing regulations (2 CFR § 200.216).

EXHIBIT F
RESERVED

EXHIBIT G

TIFIA DEBT SERVICE

Interest Rate: 2.250%

End of Period	Beginning Balance	Draw ¹	Interest Due	Interest Paid	Capitalized	Principal Paid	Total Debt Service	Ending Balance
7/1/2022	-	500,789,463.00	-	-	-	-	-	500,789,463.00
1/1/2023	500,789,463.00	-	5,680,187.33	-	5,680,187.33	-	-	506,469,650.33
7/1/2023	506,469,650.33	-	5,650,952.47	-	5,650,952.47	-	-	512,120,602.80
1/1/2024	512,120,602.80	-	5,792,839.61	-	5,792,839.61	-	-	517,913,442.41
7/1/2024	517,913,442.41	-	5,794,687.29	-	5,794,687.29	-	-	523,708,129.69
1/1/2025	523,708,129.69	-	5,940,141.53	(5,940,141.53)	-	-	(5,940,141.53)	523,708,129.69
7/1/2025	523,708,129.69	-	5,843,291.39	(5,843,291.39)	-	(2,414,146.21)	(8,257,437.60)	521,293,983.48
1/1/2026	521,293,983.48	-	5,912,759.16	(5,912,759.16)	-	-	(5,912,759.16)	521,293,983.48
7/1/2026	521,293,983.48	-	5,816,355.47	(5,816,355.47)	-	(2,965,073.18)	(8,781,428.65)	518,328,910.30
1/1/2027	518,328,910.30	-	5,879,127.91	(5,879,127.91)	-	-	(5,879,127.91)	518,328,910.30
7/1/2027	518,328,910.30	-	5,783,272.57	(5,783,272.57)	-	(3,546,621.80)	(9,329,894.37)	514,782,288.50
1/1/2028	514,782,288.50	-	5,822,947.20	(5,822,947.20)	-	-	(5,822,947.20)	514,782,288.50
7/1/2028	514,782,288.50	-	5,759,654.29	(5,759,654.29)	-	(4,160,169.04)	(9,919,823.33)	510,622,119.46
1/1/2029	510,622,119.46	-	5,791,713.90	(5,791,713.90)	-	-	(5,791,713.90)	510,622,119.46
7/1/2029	510,622,119.46	-	5,697,283.78	(5,697,283.78)	-	(4,807,149.20)	(10,504,432.98)	505,814,970.26
1/1/2030	505,814,970.26	-	5,737,188.98	(5,737,188.98)	-	-	(5,737,188.98)	505,814,970.26
7/1/2030	505,814,970.26	-	5,643,647.85	(5,643,647.85)	-	(5,489,056.26)	(11,132,704.11)	500,325,914.00
1/1/2031	500,325,914.00	-	5,674,929.55	(5,674,929.55)	-	-	(5,674,929.55)	500,325,914.00
7/1/2031	500,325,914.00	-	5,582,403.52	(5,582,403.52)	-	(6,207,446.25)	(11,789,849.77)	494,118,467.75
1/1/2032	494,118,467.75	-	5,589,208.90	(5,589,208.90)	-	-	(5,589,208.90)	494,118,467.75
7/1/2032	494,118,467.75	-	5,528,456.63	(5,528,456.63)	-	(6,963,939.79)	(12,492,396.42)	487,154,527.95
1/1/2033	487,154,527.95	-	5,525,533.55	(5,525,533.55)	-	-	(5,525,533.55)	487,154,527.95
7/1/2033	487,154,527.95	-	5,435,443.33	(5,435,443.33)	-	(7,760,224.65)	(13,195,667.98)	479,394,303.31
1/1/2034	479,394,303.31	-	5,437,513.47	(5,437,513.47)	-	-	(5,437,513.47)	479,394,303.31
7/1/2034	479,394,303.31	-	5,348,858.36	(5,348,858.36)	-	(8,598,058.43)	(13,946,916.79)	470,796,244.88
1/1/2035	470,796,244.88	-	5,339,990.28	(5,339,990.28)	-	-	(5,339,990.28)	470,796,244.88
7/1/2035	470,796,244.88	-	5,252,925.23	(5,252,925.23)	-	(9,479,271.44)	(14,732,196.66)	461,316,973.44
1/1/2036	461,316,973.44	-	5,218,175.60	(5,218,175.60)	-	-	(5,218,175.60)	461,316,973.44
7/1/2036	461,316,973.44	-	5,161,456.30	(5,161,456.30)	-	(10,405,769.52)	(15,567,225.82)	450,911,203.92
1/1/2037	450,911,203.92	-	5,114,444.89	(5,114,444.89)	-	-	(5,114,444.89)	450,911,203.92
7/1/2037	450,911,203.92	-	5,031,057.20	(5,031,057.20)	-	(11,379,537.16)	(16,410,594.36)	439,531,666.76
1/1/2038	439,531,666.76	-	4,985,372.88	(4,985,372.88)	-	-	(4,985,372.88)	439,531,666.76
7/1/2038	439,531,666.76	-	4,904,089.62	(4,904,089.62)	-	(12,402,640.59)	(17,306,730.22)	427,129,026.16
1/1/2039	427,129,026.16	-	4,844,696.35	(4,844,696.35)	-	-	(4,844,696.35)	427,129,026.16
7/1/2039	427,129,026.16	-	4,765,706.74	(4,765,706.74)	-	(13,477,231.09)	(18,242,937.83)	413,651,795.07
1/1/2040	413,651,795.07	-	4,679,012.11	(4,679,012.11)	-	-	(4,679,012.11)	413,651,795.07
7/1/2040	413,651,795.07	-	4,628,153.28	(4,628,153.28)	-	(14,605,548.36)	(19,233,701.65)	399,046,246.71
1/1/2041	399,046,246.71	-	4,526,168.39	(4,526,168.39)	-	-	(4,526,168.39)	399,046,246.71
7/1/2041	399,046,246.71	-	4,452,372.16	(4,452,372.16)	-	(15,789,924.12)	(20,242,296.28)	383,256,322.59
1/1/2042	383,256,322.59	-	4,347,071.71	(4,347,071.71)	-	-	(4,347,071.71)	383,256,322.59
7/1/2042	383,256,322.59	-	4,276,195.54	(4,276,195.54)	-	(17,032,785.71)	(21,308,981.26)	366,223,536.88
1/1/2043	366,223,536.88	-	4,153,877.93	(4,153,877.93)	-	-	(4,153,877.93)	366,223,536.88
7/1/2043	366,223,536.88	-	4,086,151.65	(4,086,151.65)	-	(18,336,660.00)	(22,422,811.66)	347,886,876.88
1/1/2044	347,886,876.88	-	3,935,113.85	(3,935,113.85)	-	-	(3,935,113.85)	347,886,876.88
7/1/2044	347,886,876.88	-	3,892,340.88	(3,892,340.88)	-	(19,704,177.30)	(23,596,518.18)	328,182,699.57
1/1/2045	328,182,699.57	-	3,722,401.03	(3,722,401.03)	-	-	(3,722,401.03)	328,182,699.57
7/1/2045	328,182,699.57	-	3,661,709.71	(3,661,709.71)	-	(21,138,075.53)	(24,799,785.24)	307,044,624.05
1/1/2046	307,044,624.05	-	3,482,643.13	(3,482,643.13)	-	-	(3,482,643.13)	307,044,624.05
7/1/2046	307,044,624.05	-	3,425,860.91	(3,425,860.91)	-	(22,641,204.49)	(26,067,065.40)	284,403,419.56
1/1/2047	284,403,419.56	-	3,225,836.05	(3,225,836.05)	-	-	(3,225,836.05)	284,403,419.56
7/1/2047	284,403,419.56	-	3,173,240.89	(3,173,240.89)	-	(24,216,530.36)	(27,389,771.25)	260,186,889.20
1/1/2048	260,186,889.20	-	2,943,097.60	(2,943,097.60)	-	-	(2,943,097.60)	260,186,889.20
7/1/2048	260,186,889.20	-	2,911,107.41	(2,911,107.41)	-	(25,867,140.32)	(28,778,247.73)	234,319,748.89
1/1/2049	234,319,748.89	-	2,657,763.73	(2,657,763.73)	-	-	(2,657,763.73)	234,319,748.89
7/1/2049	234,319,748.89	-	2,614,430.62	(2,614,430.62)	-	(27,596,247.37)	(30,210,677.99)	206,723,501.52
1/1/2050	206,723,501.52	-	2,344,754.24	(2,344,754.24)	-	-	(2,344,754.24)	206,723,501.52
7/1/2050	206,723,501.52	-	2,306,524.55	(2,306,524.55)	-	(29,407,195.37)	(31,713,719.92)	177,316,306.15
1/1/2051	177,316,306.15	-	2,011,204.13	(2,011,204.13)	-	-	(2,011,204.13)	177,316,306.15
7/1/2051	177,316,306.15	-	1,978,412.76	(1,978,412.76)	-	(31,303,464.23)	(33,281,876.98)	146,012,841.92
1/1/2052	146,012,841.92	-	1,651,620.67	(1,651,620.67)	-	-	(1,651,620.67)	146,012,841.92
7/1/2052	146,012,841.92	-	1,633,668.27	(1,633,668.27)	-	(33,288,675.33)	(34,922,343.61)	112,724,166.59
1/1/2053	112,724,166.59	-	1,278,570.00	(1,278,570.00)	-	-	(1,278,570.00)	112,724,166.59
7/1/2053	112,724,166.59	-	1,257,723.75	(1,257,723.75)	-	(35,366,597.20)	(36,624,320.95)	77,357,569.39
1/1/2054	77,357,569.39	-	877,425.58	(877,425.58)	-	-	(877,425.58)	77,357,569.39
7/1/2054	77,357,569.39	-	863,119.73	(863,119.73)	-	(37,541,151.28)	(38,404,271.01)	39,816,418.11
1/1/2055	39,816,418.11	-	451,616.36	(451,616.36)	-	-	(451,616.36)	39,816,418.11
7/1/2055	39,816,418.11	-	444,253.05	(444,253.05)	-	(39,816,418.11)	(40,260,671.16)	0.00
Total	-	500,789,463.00	279,179,754.78	(256,261,088.09)	22,918,666.69	(523,708,129.69)	(779,969,217.78)	

*Assumes Substantial Completion Date of June 2021 and the draw in June 2022, to repay the 2019A BANS.

EXHIBIT H-1

OPINIONS REQUIRED OF COUNSEL TO BORROWER

An opinion of the counsel of the Borrower, dated as of the Effective Date, to the effect that: (a) the Borrower is duly created and validly existing under the laws of the jurisdiction of formation; (b) the Borrower has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by the Borrower of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action; (d) the Borrower has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of the Borrower for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by the Borrower; (f) the execution and delivery by the Borrower of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of the Borrower, (ii) violate the law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which the Borrower is a party, or to the best of such counsel's knowledge, after reasonable review, any court order, consent decree, statute, rule, regulation or any other law to which the Borrower is subject; (g) the Borrower is not an investment company required to register under the Investment Company Act of 1940, as amended; and (h) to our knowledge after due inquiry, there are no actions, suits, proceedings or investigations against the Borrower by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.

EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that: (a) each of the TIFIA Bond, the Indenture, and the TIFIA Supplemental Indenture has been duly authorized, executed, and delivered by the Borrower in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (b) each of the TIFIA Bond, the Indenture, and the TIFIA Supplemental Indenture is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions; (c) the TIFIA Bond is a Subordinate Obligation, secured by the Liens on the Trust Estate, and shall be subordinate to the Lien on the Trust Estate pledged to secure the Senior Obligations and the Intermediate Lien Obligations, and shall be *pari passu* to the Lien on the Trust Estate pledged to secure the Subordinate Obligations and is a Bond entitled to the benefits of a Bond under the Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person; (d) the Indenture and the TIFIA Supplemental Indenture create the valid and binding assignment and pledge of the Trust Estate to secure the payment of the principal of, interest on, and other amounts payable in respect of, the TIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act; (e) all actions by the Borrower that are required for the use of Pledged Revenues as required under the Indenture, the TIFIA Supplemental Indenture and under the Amended and Restated TIFIA Loan Agreement have been duly and lawfully made; (f) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Pledged Revenues as required by the terms of the Indenture, the TIFIA Supplemental Indenture, and the Amended and Restated TIFIA Loan Agreement; (g) the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; and (h) the Borrower is not entitled to claim governmental immunity in any breach of contract action under the Amended and Restated TIFIA Loan Agreement or the TIFIA Bond or by the Trustee under the Indenture Documents.

EXHIBIT I

METHODOLOGY FOR FORECASTING HRTF REVENUES

Currently, the Virginia Department of Taxation (“VTAX”) prepares six-year revenue forecasts for the State’s state revenue sources on a bi-annual basis. The revenue forecasts include the non-general fund revenues dedicated transportation, such as HRTF Revenues, which are provided to the Hampton Roads Transportation Accountability Commission as specified in the Code of Virginia under Chapters 6 and 22.1. In any period when such information is provided to HRTAC, it will be utilized in the revenue projection described herein. If this information ceases to be available, HRTAC will consult with VDOT and VTAX to provide a replacement short-term forecast, acceptable to the Bureau.

Regional Retail Sales and Use Tax (“S&U Tax”) Forecasts

- Historical S&U Tax based on audited receipts
- Then the VDOT 6-year forecast (after the last year audited)
- Thereafter grow the S&U Tax based the compounded annual growth (CAGR) calculated on the historical 11 year sales tax and the 6 year of projected sales tax. (year end balance)

Note for the period prior to 2016 the growth of the LOST tax will be used a proxy for the historical S&U Tax.

Example for projections prepared within FY 2019

Years			
2008 – 2015	2016 – 2018	2019 – 2024	2025 onwards
Actual based on proxy	Actual audited S&U Tax receipts	VTAX projected S&U Tax receipts	Grow by prior year CAGR

$$\text{where CAGR} = (\text{VTAX projected S\&U Tax 2024} / \text{actual 2008 S\&U Tax})^{(1/16)}$$

Regional Motor Fuels Sales Tax (“RMF”) Forecasts

The regional motor fuels sales tax is equal to *Consumption x Price x Tax Rate*

- Historical RMF receipts based on audited receipts
- Then the VDOT 6-year forecast
- Thereafter grow the RMF Tax based the compounded annual growth (CAGR) calculated on the historical 6-year gas consumption and the 6 year of gas consumption

Note for the period prior to 2016 the growth of the LOST tax will be used a proxy.

Example for projections prepared with FY 2019

Years		
2012 – 2018	2019 – 2024	2025 onwards
Actual RMF	VDOT projected RMF Receipt	Grow by prior year CAGR
Actual gas usage	Projected gas usage	

$$\text{where CAGR} = (\text{VDOT projected gas usage 2024} / \text{actual 2012 gas usage})^{(1/12)}$$

EXHIBIT J

FORM OF CERTIFICATE OF TRUSTEE

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

TIFIA BOND,
HRTAC PROJECT
(TIFIA – 20201001A)

The undersigned, Wilmington Trust, National Association (the “*Trustee*”), by its duly appointed, qualified and acting [Vice President], certifies with respect to the above referenced bond (the “*TIFIA Bond*”) dated as of December 10, 2019, as follows (capitalized terms used in this Certificate which are not otherwise defined shall have the meanings given to such terms in the Indenture (as defined below)):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of the United States of America.
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained and are in full force and effect.
3. The Indenture and the TIFIA Supplemental Indenture (each as defined herein) pertaining to the issuance of the TIFIA Bond to which the Trustee is a party was executed and the TIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the TIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the TIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture (“*Trusts*”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today,

and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section 5.3 and Section 15.3 of that certain Indenture (the “**Indenture**”), dated as of February 1, 2018, and the Supplemental Indenture pertaining to the TIFIA Bond (the “**TIFIA Supplemental Indenture**”), dated as of December 1, 2019, each between the Hampton Roads Transportation Accountability Commission (the “**Borrower**”) and the Trustee.
7. That receipt is also acknowledged of that certain Amended and Restated TIFIA Loan Agreement, dated as of [____], 2021 (the “**TIFIA Loan Agreement**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Bondholder**”).
8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee and of Bond Registrar and Paying Agent for and in respect of the TIFIA Bond as set forth in the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Loan Agreement, including from time to time redeeming all or a portion of the TIFIA Bond as provided in Article IV of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Article XIV of the Indenture.
9. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture (including, but not limited to, the TIFIA Series 2019 Project Fund; the TIFIA Series 2019 Bond Debt Service Fund, and within such Fund the TIFIA Series 2019 Interest Account, the TIFIA Series 2019 Principal Account, the TIFIA Series 2019 Redemption Account and the TIFIA Revenue Sharing Account; and the TIFIA Series 2019 Bond Debt Service Reserve Fund) have been established as provided in the Indenture and the TIFIA Supplemental Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: [____], 20[]

WILMINGTON TRUST, NATIONAL
ASSOCIATION

By: _____
Its:

ANNEX ONE TO EXHIBIT J
OFFICERS OF TRUSTEE

ANNEX TWO TO EXHIBIT J
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT K-1

FORM OF BORROWER'S OFFICER'S CERTIFICATE

Reference is made to that certain Amended and Restated TIFIA Loan Agreement, dated as of [____], 2021 (the "TIFIA Loan Agreement"), by and among the Hampton Roads Transportation Accountability Commission (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

Pursuant to Section 13(a)(v) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the undersigned, Executive Director, as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 13(a)(v) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit A** is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 26 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (b) pursuant to Section 13(a)(ii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit B** are certified, complete, and fully executed copies of each Indenture Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that for purposes of Section 13(a)(ii) (*Conditions Precedent to Effectiveness*), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion);
- (c) pursuant to Section 13(a)(iv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit C** is a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached to the TIFIA Loan Agreement as Exhibit C with respect to the Borrower and its principals (as defined in 2 CFR § 180.995);
- (d) pursuant to Section 13(a)(vi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that it is in compliance with the verification

requirements set forth in 2 CFR §§ 180.300 and 180.320 and with its obligations under 2 CFR § 180.330;

- (e) pursuant to Section 13(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that:
 - a. With respect to the Project, the Borrower has complied with NEPA; and
 - b. The Borrower has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
- (f) pursuant to Section 13(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit D** is a certificate from VDOT evidencing VDOT's compliance with its obligations under each Standard Project Agreement, including the following:
 - a. VDOT has complied with (A) the disclosure requirements set forth in 2 CFR § 180.355, (B) the verification requirements set forth in 2 CFR §§ 180.300 and 180.320, and (C) its obligations under 2 CFR § 180.330 with respect to the Construction Contracts;
 - b. All Governmental Approvals necessary to commence construction of the Project have been obtained and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);
 - c. With respect to the Project, VDOT has complied with NEPA;
 - d. VDOT has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
 - e. VDOT and each applicable Principal Project Party, as and if applicable, have obtained insurance with respect to the Project, which meets the requirements of Section 16(e) (*Compliance with Standard Project Agreement*); and
 - f. Each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the Effective Date shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect;
- (g) pursuant to Section 13(a)(viii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit E** is evidence that the Project has been included in (A) the metropolitan transportation improvement program adopted by the Hampton Roads Transportation Planning Organization, (B) the State transportation plan, and (C) the State transportation improvement program approved by the USDOT or its designated agency, in

each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project;

- (h) pursuant to Section 13(a)(ix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit F** is evidence of the assignment by at least two (2) Rating Agencies of public ratings of not less than ‘A-’ or ‘A3’ to the TIFIA Loan and to the Existing Indebtedness, and no such rating has been reduced, withdrawn or suspended as of the Effective Date;
- (i) pursuant to Section 13(a)(x) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has demonstrated that as of the Effective Date the funds shown in the Base Case Financial Model to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof, or, in the case of HRTF Revenues, are reasonably anticipated to be available, and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion as and when needed;
- (j) pursuant to Section 13(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit G** are certified, complete, and fully executed copies of each Principal Project Contract, together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender;
- (k) pursuant to Section 13(a)(xii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has delivered a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model (A) demonstrates that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrates a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than 4.60, (C) does not reflect the commencement of amortization of the principal amount of any Senior Obligations before the Debt Service Payment Commencement Date, (D) uses the methodology in Exhibit I to the TIFIA Loan Agreement for the purpose of forecasting HRTF Revenues, and (E) is otherwise in form and substance acceptable to the TIFIA Lender;
- (l) pursuant to Section 13(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit H** is evidence that the Borrower (A) is authorized, pursuant Section 33.2-1920, as amended, Code of Virginia of 1950, to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) has recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee’s Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents and required by applicable law, and (C) has paid, or caused to be paid, all taxes and filing fees that are due and payable in

connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing;

- (m) pursuant to Section 13(a)(xvi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is 47-1742163, (ii) the Borrower's Data Universal Numbering System number is 081015577, and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as **Exhibit I** is evidence of (iii);
- (n) pursuant to Section 13(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit J** is evidence that the Borrower is duly created and validly existing under the laws of the Commonwealth and a certified copy of the Borrower's Organizational Documents;
- (o) pursuant to Section 13(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit K** is a certified copy of the resolutions authorizing the execution of the Indenture, the Series 2018A Supplemental Indenture, and the Series 2018A Bonds and the issuance of the Series 2018A Bonds;
- (p) pursuant to Section 13(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date;
- (q) pursuant to Section 13(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that, as of the Effective Date, (i) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Eligible Project Costs; and
- (r) pursuant to Section 13(a)(xxii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit L** is a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form as Exhibit N to the TIFIA Loan Agreement in accordance with 49 CFR §20.100(b).
- (s) pursuant to Section 13(a)(xxii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit M** are forms of the Project BANs Supplemental

Indenture, the Project BANs Bond, and any other documents required to issue the Project BANs on the Project BANs Closing Date, each in the form and substance satisfactory to the TIFIA Lender.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____

Name:

Title: Authorized Representative

EXHIBIT B TO EXHIBIT K-1

INCUMBENCY CERTIFICATE

The undersigned certifies that she is the Chair of the Hampton Roads Transportation Accountability Commission, a body politic and a political subdivision created under the laws of the Commonwealth of Virginia (the "Borrower"), and as such she is authorized to execute this certificate and further certifies that the following person has been elected or appointed, is qualified, and is now acting as an officer or authorized person of the Borrower in the capacity indicated below, and that the signature set forth opposite his name is a true and genuine signature. She further certifies that any of the officer or authorized person listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the TIFIA Loan Documents and/or the Indenture Documents as the Borrower's Authorized Representative (each as defined in that certain TIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

Name	Title	Signature
Kevin B. Page	Executive Director	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of _____, 2021.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name: [Linda T. Johnson]
Title: [Chair]

EXHIBIT L

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

Build America Bureau

United States Department of Transportation

Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of Credit Programs

Project: Hampton Roads Transportation Accountability Commission Project (TIFIA – 20201001A)

Dear Director:

This Notice is provided pursuant to Section 16(f)(i)(A) (*Substantial Completion*) of that certain Amended and Restated TIFIA Loan Agreement (the “TIFIA Loan Agreement”), dated as of [_____] __, 2021, by and between the Hampton Roads Transportation Accountability Commission (the “**Borrower**”) and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the TIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the TIFIA Lender that:

- (a) on [insert date Substantial Completion requirements were satisfied], the Project satisfied each of the requirements for Substantial Completion set forth in the [Insert reference to the concession agreement, design-build or similar agreement for the Project];
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and

(c) Substantial Completion, as defined in the TIFIA Loan Agreement, has been achieved.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

Name:

Title:

EXHIBIT M

TIFIA LOAN REAMORTIZATION METHODOLOGY

The TIFIA loan principal to be paid in July 1 of each year is calculated by multiplying the percentages (set out in the Table below) by the amount of the Outstanding TIFIA Loan Balance at the start of the Debt Service Commencement Date. Any rounding differences will be applied to the last Principal Payment.

Year	Percentage
2025	0.4610%
2026	0.5662%
2027	0.6772%
2028	0.7944%
2029	0.9179%
2030	1.0481%
2031	1.1853%
2032	1.3297%
2033	1.4818%
2034	1.6418%
2035	1.8100%
2036	1.9869%
2037	2.1729%
2038	2.3682%
2039	2.5734%
2040	2.7889%
2041	3.0150%
2042	3.2523%
2043	3.5013%
2044	3.7624%
2045	4.0362%
2046	4.3232%
2047	4.6241%
2048	4.9392%
2049	5.2694%
2050	5.6152%
2051	5.9773%
2052	6.3563%
2053	6.7531%
2054	7.1683%
2055	7.6030%
Total	100.0000%

EXHIBIT N

**CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF
APPROPRIATED FUNDS FOR LOBBYING**

Reference is made to that certain Amended and Restated TIFIA Loan Agreement, dated as of [____], 2021 (the “TIFIA Loan Agreement”), by and among the Hampton Roads Transportation Accountability Commission (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement. The undersigned, on behalf of the Hampton Roads Transportation Accountability Commission, hereby certifies, to the best of his or her knowledge and belief, that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of the TIFIA Loan.

(b) If any funds other than proceeds of the TIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the TIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.

(c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the TIFIA Lender entered into the TIFIA Loan Agreement. Submission of this certification is a prerequisite to the effectiveness of the TIFIA Loan Agreement imposed by Section 1352 of title 31, United States Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: _____

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Name:
Title:

EXHIBIT O

SECTION 8.1(b) OF THE INDENTURE, AS AMENDED BY THE TIFIA SUPPLEMENTAL INDENTURE

(b) At least once each month, not later than the last Business Day of each month, HRTAC shall make transfers from the Revenue Fund in the amounts and in the order of priority set forth below:

FIRST: To each Senior Debt Service Fund ratably, the amount, if any, required under the Related Series Supplement so that the balance therein on the next Payment Date shall equal the amount of principal, if any, and interest due on the next Payment Date on the Related Series of Bonds; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in a Senior Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

SECOND: To each Senior Debt Service Reserve Fund, ratably, the amount, if any, required so that the balance in each such Fund shall be equal to the respective Senior Debt Service Reserve Requirement;

THIRD: To each Intermediate Lien Debt Service Fund, ratably, the amount, if any, required so that the balance in each such Fund shall equal the amount of principal, if any, and interest due on the Related Intermediate Lien Obligations on the next ensuing payment date; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in an Intermediate Lien Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

FOURTH: To each Intermediate Lien Debt Service Reserve Fund, ratably, the amount, if any, so that the balance in such Fund shall be equal to the respective Intermediate Lien Debt Service Reserve Requirement;

FIFTH: To each Subordinate Debt Service Fund, ratably, the amount, if any, required so that the balance in each such Fund shall equal the amount of principal, if any, and interest due on the Related Subordinate Obligations on the next ensuing payment date; provided that HRTAC shall receive a credit against such transfer for the amount, if any, held in a Subordinate Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

SIXTH: To each Subordinate Debt Service Reserve Fund, ratably, the amount, if any, so that the balance in such Fund shall be equal to the respective Subordinate Debt Service Reserve Requirement;

SEVENTH: To each Rebate Fund the amounts necessary to provide for the payment of any Rebate Amounts with respect to the Related Series of Bonds as confirmed in an Officer's Certificate;

EIGHTH: To the Operating Account of the Operating Fund, the amount of funds necessary to pay Operating Expenses during such period in accordance with the Annual Budget;

NINTH: To the Operating Reserve Account of the Operating Fund, the amount, if any, so that the balance in such Account shall be equal to the Operating Reserve Requirement;

TENTH, To fund any Hedging Termination Obligation in connection with a Qualified Hedge;

ELEVENTH, After curing any deficiencies as required by Section 8.5(b) of the Master Indenture to the deposits and balances required in "FIRST" through "TENTH" above, to the TIFIA Revenue Sharing Account, the amount, if any, as may be required under Section 6.1 of the Second Supplemental Indenture of Trust dated as of December 1, 2019, and the applicable provisions of any other Series Supplement, an amount equal to Excess Revenues for such month, for deposit into the TIFIA Revenue Sharing Account; and

TWELFTH: To the General Fund, the balance remaining in the Revenue Fund.

EXHIBIT P

2 CFR Part 170

I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this TIFIA Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month of the Effective Date, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this TIFIA Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this **Exhibit P**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and,

iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this TIFIA Loan; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402).

Agenda Item 6A
Discussion Item

To: Chair Hipple and the other members of the Finance Committee

From: Kevin B. Page, Executive Director

Date: June 10, 2021

Re: HRTAC FY2021 Financial Audit Kick-Off Discussion

Recommendation:

The Executive Director recommends that the Finance Committee engage in an HRTAC FY2021 pre-financial audit kick-off discussion with Mr. Michael Garber, PB Mares LLP.

Background:

As a part of the HRTAC FY2021 Audit, PB Mares has requested to have a pre-financial audit kick-off discussion with the Finance Committee.

Fiscal Impact

There is no specific fiscal impact to this discussion item.

Suggested Motion:

Not applicable.



**HAMPTON ROADS TRANSPORTATION FUND and
HAMPTON ROADS REGIONAL TRANSIT FUND
FINANCIAL REPORTS
FY2014 – FY2021
Period Ending February 28, 2021**

The HRTAC staff has prepared the attached February 2021 financial report based on data received to date from the Virginia Department of Transportation.

<u>Revenues</u>	<u>Inception to February 2021</u>	<u>FY2021 YTD</u>	<u>February 2021</u>
Total Gross Revenues¹	3,247,495,806	915,174,473	15,822,222
State Sales & Use Tax ¹	1,029,682,942	106,503,367	11,563,378
Local Fuels Tax ¹	335,146,207	36,410,757	3,669,674
Regional Transportation Fees	4,582,565	4,582,565	422,886
Annual Recordation Tax Distribution	20,000,000	20,000,000	--
Interest	4,229,402	282,890	22,768
Investment Income	73,162,662	2,806,445	143,516
Bond Proceeds	1,780,692,030	744,588,450	--

<u>Expenditures</u>	<u>Inception to February 2021</u>	<u>FY2021 YTD</u>	<u>February 2021</u>
Total Expenditures	1,475,312,643	553,900,063	100,719,561
Projects	1,354,788,866	509,191,640	94,312,591
DMV & DOT Admin. Fees	909,463	--	--
Investment Fees	1,511,869	152,046	17,812
Bond Interest Expenses	105,603,100	41,162,834	6,233,335
Operating Expenses	12,499,345	3,393,542	155,822

Cash Balance

February 28, 2021 Ending Cash/Cash Equivalents **\$ 1,772,183,162**

Encumbered Balance

Balance of Encumbered (through FY2027) **\$ 3,317,488,690**

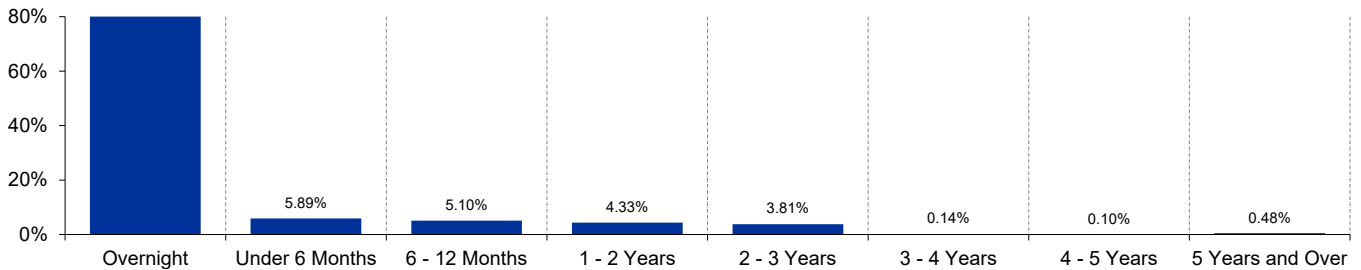
Allocation	4,672,277,556
Less: Project Expenditures	1,354,788,865

¹ Beginning in June 2020, State Sales Tax and Local Fuels Tax are recorded either one month (sales tax) or two months (fuels tax) earlier than in previous periods, due to additional information received from the Commonwealth of Virginia on the timing of the source transactions for tax revenues.

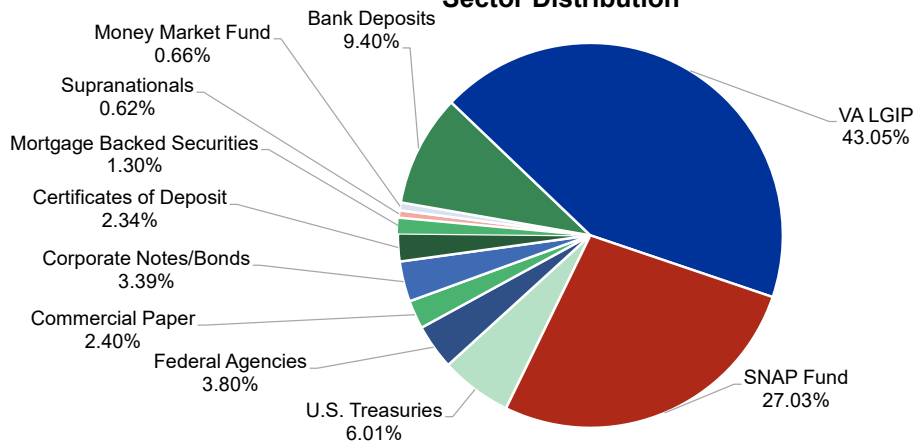
Hampton Roads Transportation Fund Summary of Cash and Investments For February 2021

Portfolio	Yield at Cost	Yield at Market	Balances at Cost	Balances at Market	% of Total
Union Checking	0.00%	0.00%	1,000,000	1,000,000	0.06%
Union Sweep	0.20%	0.20%	8,508,297	8,508,297	0.50%
Union Money Market	0.20%	0.20%	3,100	3,100	0.00%
Union General	0.20%	0.20%	150,831,634	150,831,634	8.84%
VA LGIP	0.12%	0.12%	734,214,583	734,214,583	43.05%
Enhanced Cash Portfolio	1.03%	0.29%	211,567,165	211,982,067	12.43%
Core Portfolio	1.20%	0.26%	136,422,212	137,969,974	8.09%
SNAP Fund	0.13%	0.13%	460,943,349	460,943,349	27.03%
Total			\$ 1,703,490,340	\$ 1,705,453,003	100.00%

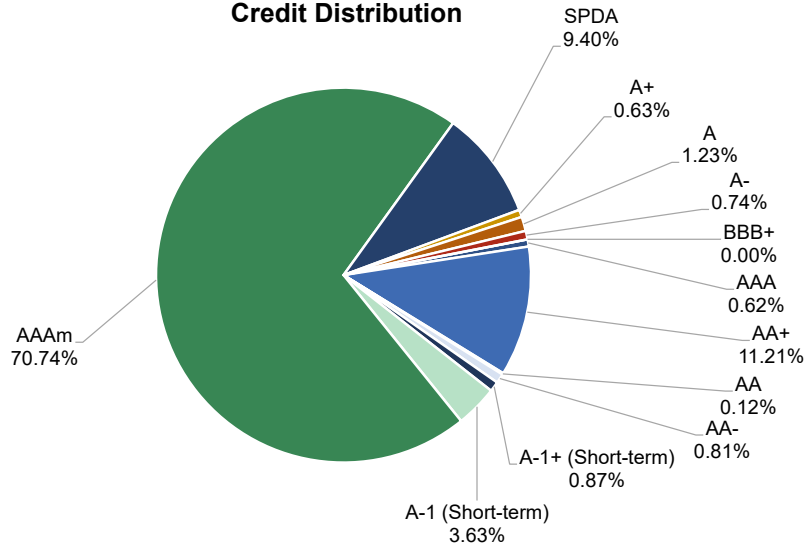
Total Maturity Distribution



Sector Distribution



Credit Distribution



All charts are based on market value as of 2/28/21

This material is for general informational purposes only and is not intended to provide specific advice or a specific recommendation.

Hampton Roads Transportation Fund (HRTF)
Interest and Investment Income
Inception - February 2021

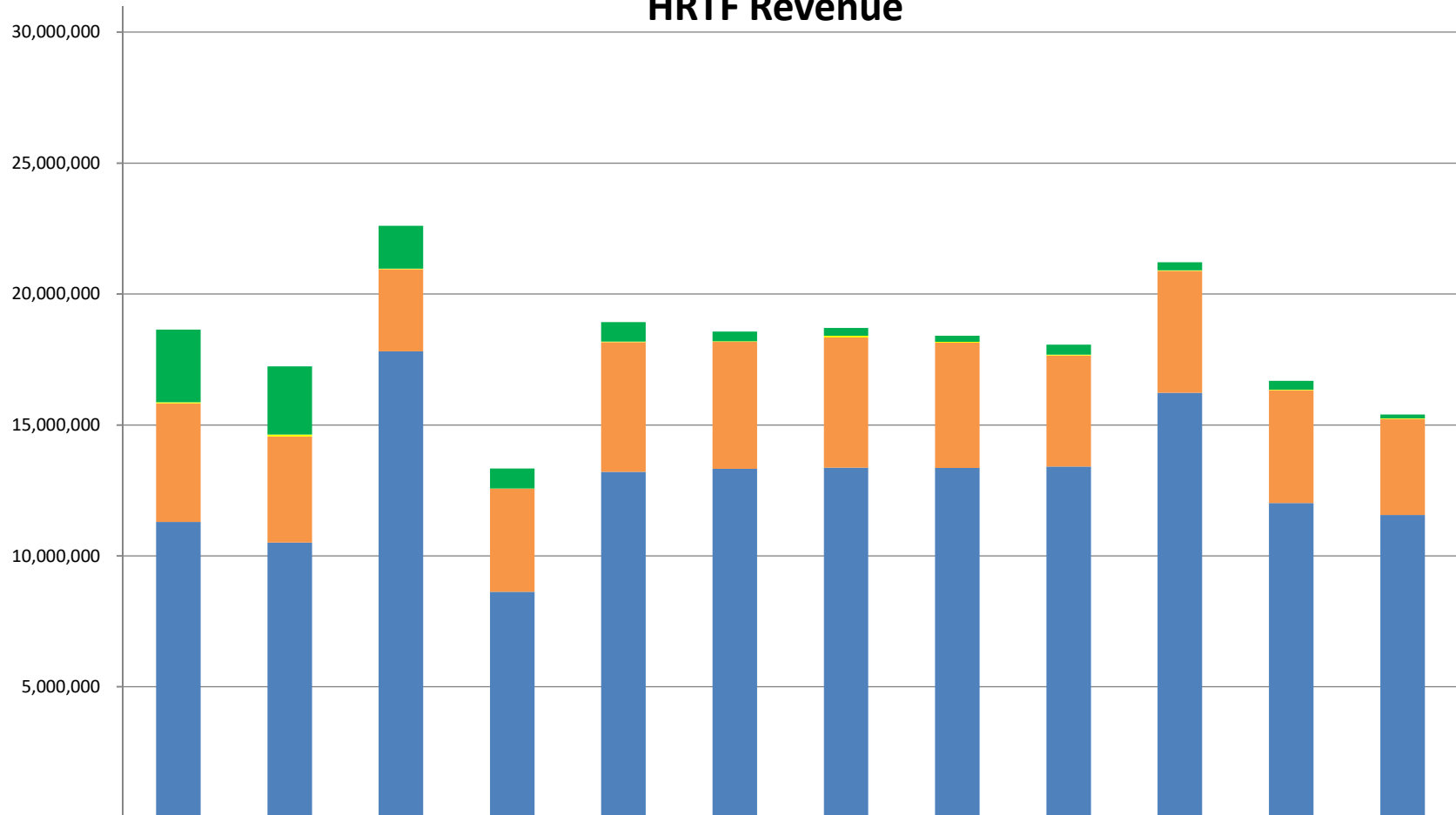
	<u>FY2014</u>	<u>FY2015</u>	<u>FY2016</u>	<u>FY2017</u>	<u>FY2018</u>	<u>FY2019</u>	<u>FY2020</u>	<u>FY2021</u>	<u>Total</u>
HRTF Interest Income	\$ 363,854	\$ 1,027,959	\$ 272,261	\$ 291,738	\$ 321,499	\$ 1,000,093	\$ 669,108	\$ 239,197	\$ 4,185,710
HRTF Investment Income	<u>-</u>	<u>368,310</u>	<u>3,993,773</u>	<u>980,870</u>	<u>8,868,404</u>	<u>29,869,111</u>	<u>26,275,750</u>	<u>2,806,444</u>	<u>73,162,661.28</u>
Total	<u>\$ 363,854</u>	<u>\$ 1,396,269</u>	<u>\$ 4,266,033</u>	<u>\$ 1,272,608</u>	<u>\$ 9,189,903</u>	<u>\$ 30,869,204</u>	<u>\$ 26,944,858</u>	<u>\$ 3,045,641</u>	<u>\$ 77,348,371</u>

Notes:

"HRTF Interest Income" includes interest from Union Bank money market, sweep, and general accounts, as well as Regional Tax Interest/Interest Refund Adjustments.

"HRTF Investment Income" in FY2019 and FY2020 includes income from PFMAM (US Bank) core and enhanced cash, LGIP, and SNAP accounts. FY2014-2018 totals also include income from Sterling and Union Bank.

HRTF Revenue



	March 2020	April 2020	May 2020	June 2020	July 2020	August 2020	September 2020	October 2020	November 2020	December 2020	January 2021	February 2021
Total	18,636,288	17,233,104	22,600,772	13,338,997	18,927,179	18,562,982	18,702,901	18,408,996	18,069,379	21,210,602	16,681,882	15,395,844
Investment Income	2,766,621	2,603,561	1,627,145	770,625	746,248	364,694	293,903	238,217	380,231	300,883	338,753	143,516
Interest	45,257	65,506	26,500	8,754	20,765	20,084	67,980	30,691	31,979	26,941	21,481	19,277
Fuel Tax	4,529,544	4,050,540	3,134,001	3,927,379	4,947,480	4,849,437	4,969,314	4,776,324	4,247,129	4,653,578	4,297,822	3,669,674
Sales & Use Tax	11,294,866	10,513,497	17,813,127	8,632,239	13,212,686	13,328,767	13,371,704	13,363,765	13,410,040	16,229,201	12,023,827	11,563,378

Notes: November 2018 Wholesale Fuels Tax revenue includes a \$9,865,900 Special Audit Assessment adjustment sourced from vendor audit settlement.
 January 2019 Wholesale Fuels Tax revenue includes \$510,330 in adjustments from a Special Audit Assessment and a vendor audit settlement.
 February 2019 Wholesale Fuels Tax revenue includes \$806,491 from a vendor audit assessment.

Hampton Roads Transportation Fund (HRTF)
Total of Sales & Use and Fuels Taxes
Summary

	Gross Revenue						Expenditures						Cumulative Balance
	Sales & Use		Investment				Projects	Dept of Tax Admin Fee	Investment Fees	Operating		Total	
	Tax	Fuels Tax	Interest	Income	Bond Proceeds	Total				Expenses	Total		
<i>July 2013 - February 2020</i>	\$ 874,925,845	\$ 283,093,986	\$ 3,800,496	\$ 62,588,266	\$ 1,036,103,580	\$ 2,260,512,173	\$ 666,969,368	\$ 826,678	\$ 1,281,622	\$ 58,727,647	\$ 7,651,994	\$ 735,457,310	1,525,054,863
<i>March 2020</i>	11,294,866	4,529,544	45,257	2,766,621		18,636,288	44,512,900	-	19,830	3,880,944	239,547	48,653,221	1,495,037,929
<i>April 2020</i>	10,513,497	4,050,540	65,506	2,603,561		17,233,104	12,842,838	-	19,243	3,880,944	149,574	16,892,600	1,495,378,433
<i>May 2020</i>	17,813,127	3,134,001	26,500	1,627,145		22,600,772	16,011,917	-	19,872	3,880,944	162,423	20,075,156	1,497,904,049
<i>June 2020</i>	8,632,239	3,927,379	8,754	770,625		13,338,997	105,260,202	82,785	19,255	(5,930,212)	902,264	100,334,294	1,410,908,752
<i>July 2020</i>	13,212,686	4,947,480	20,765	746,248		18,927,179	-	-	19,848	3,880,944	167,463	4,068,255	1,425,767,676
<i>August 2020</i>	13,328,767	4,849,437	20,084	364,694	-	18,562,982	2,089,463	-	19,905	3,880,944	268,006	6,258,318	1,438,072,340
<i>September 2020</i>	13,371,704	4,969,314	67,980	293,903	-	18,702,901	11,457,285	-	19,009	3,880,944	299,762	15,657,000	1,441,118,241
<i>October 2020</i>	13,363,765	4,776,324	30,691	238,217	744,588,450	762,997,445	206,912,728	-	18,108	5,684,444	1,781,241	214,396,521	1,989,719,165
<i>November 2020</i>	13,410,040	4,247,129	31,979	380,231	-	18,069,379	126,180,247	-	18,302	5,684,444	124,612	132,007,605	1,875,780,940
<i>December 2020</i>	16,229,201	4,653,578	26,941	300,883	-	21,210,602	40,094,296	-	19,419	5,684,444	318,348	46,116,507	1,850,875,034
<i>January 2021</i>	12,023,827	4,297,822	21,481	338,753	-	16,681,882	28,145,029	-	19,643	6,233,335	225,223	34,623,231	1,832,933,686
<i>February 2021</i>	11,563,378	3,669,674	19,277	143,516	-	15,395,844	94,312,591	-	17,812	6,233,335	155,574	100,719,313	1,747,610,217
<i>Total 12 Months</i>	\$ 154,757,097	\$ 52,052,220	\$ 385,214	\$ 10,574,396	\$ 744,588,450	\$ 962,357,377	\$ 687,819,497	\$ 82,785	\$ 230,247	\$ 46,875,454	\$ 4,794,039	\$ 739,802,022	
<i>Grand Totals</i>	\$ 1,029,682,942	\$ 335,146,207	\$ 4,185,710	\$ 73,162,662	\$ 1,780,692,030	\$ 3,222,869,549	\$ 1,354,788,866	\$ 909,463	\$ 1,511,869	\$ 105,603,100	\$ 12,446,033	\$ 1,475,259,332	
Less Balance of Encumbered (through FY2027)													\$ (3,303,775,690)
Total Net Available													\$ (1,556,165,473)

Notes:

- November 2018 Wholesale Fuels Tax revenue includes a \$9,865,900 Special Audit Assessment adjustment sourced from vendor audit settlement.
- January 2019 Wholesale Fuels Tax revenue includes \$510,330 in adjustments from a Special Audit Assessment and a vendor audit settlement.
- February 2019 Wholesale Fuels Tax revenue includes \$806,491 from a vendor audit assessment.
- June 2019 Sales & Use Tax revenue includes \$7,424,592 of FY2019 AST Estimated Sales & Use Tax revenue
- For audit purposes, the January through December 2019 investment income and bond expenses have been updated to reflect the gain on investments (on bond proceeds) held by the trustee and the full bond interest expense.
- June 2019 Department of Taxation Administrative Fee is a \$199,993 fee charged by the Department of Motor Vehicles for fuels tax audit costs.
- December 2019 Revenues include proceeds from the issuance of Intermediate Lien Bond Anticipation Notes, Series 2019A, dated December 17, 2019.

Table 1 - Total HRTAC Revenues
Hampton Roads Transportation Fund (HRTF)
Total of Sales & Use Taxes and Fuels Taxes
Fiscal Year 2021

Locality	Total FY2014 - FY2020	Previous FY2021	February 2021	Total YTD FY2021	Total
<i>Chesapeake</i>	\$ 223,633,516	\$ 23,141,599	\$ 2,864,620	\$ 26,006,219	\$ 249,639,735
<i>Franklin</i>	13,388,549	1,482,297	181,572	1,663,869	15,052,419
<i>Hampton</i>	89,038,564	9,046,752	1,147,400	10,194,152	99,232,716
<i>Isle of Wight</i>	19,466,436	2,061,699	235,159	2,296,858	21,763,294
<i>James City</i>	54,046,414	5,642,297	542,457	6,184,754	60,231,168
<i>Newport News</i>	130,358,262	13,113,010	1,680,163	14,793,173	145,151,435
<i>Norfolk</i>	171,444,852	17,841,478	2,208,163	20,049,640	191,494,493
<i>Poquoson</i>	3,233,039	799,509	46,321	845,830	4,078,869
<i>Portsmouth</i>	43,286,558	5,251,184	594,177	5,845,361	49,131,919
<i>Southampton</i>	6,426,959	647,611	82,780	730,392	7,157,351
<i>Suffolk</i>	62,657,267	7,554,308	900,113	8,454,421	71,111,688
<i>Virginia Beach</i>	325,024,589	33,163,928	3,934,204	37,098,131	362,122,720
<i>Williamsburg</i>	25,350,751	2,896,443	214,024	3,110,466	28,461,217
<i>York</i>	54,559,268	5,038,958	601,899	5,640,857	60,200,125
Total ^d	<u>1,221,915,024</u>	<u>127,681,073</u>	<u>15,233,052</u>	<u>142,914,125</u>	<u>1,364,829,148</u>
Interest ^a	3,946,512	219,920	19,277	239,197	4,185,710
Investment Income ^b	70,356,217	2,662,929	143,516	2,806,445	73,162,662
Bond Proceeds	1,036,103,580	744,588,450	-	744,588,450	1,780,692,030
Total Revenues	<u>2,332,321,334</u>	<u>875,152,372</u>	<u>15,395,844</u>	<u>890,548,216</u>	<u>3,222,869,549</u>
Project Expenses	(845,597,225)	(414,879,049)	(94,312,591)	(509,191,640)	(1,354,788,865)
DMV & Dept. of Tax Admin Fees	(909,463)	-	-	-	(909,463)
Investment Fees (Sterling&PFMAM)	(1,359,823)	(134,234)	(17,812)	(152,046)	(1,511,869)
Bond Interest Expenses ^e	(64,440,266)	(34,929,499)	(6,233,335)	(41,162,834)	(105,603,100)
Operating Expense	<u>(9,105,803)</u>	<u>(3,184,656)</u>	<u>(155,574)</u>	<u>(3,340,230)</u>	<u>(12,446,033)</u>
Cash Balance	\$ <u>1,410,908,753</u>	\$ <u>422,024,934</u>	\$ <u>(85,323,468)</u>	\$ <u>336,701,465</u>	\$ <u>1,747,610,217</u>
Less Balance of Encumbered	<u>(3,782,103,576)</u>				<u>(3,303,775,690)</u>
Net Available Cash	\$ <u>(2,371,194,823)</u>				<u>(1,556,165,473)</u>
Updated forecast ^c	<u>1,215,454,951</u>	<u>96,202,270</u>	<u>4,391,526</u>	<u>112,694,877</u>	<u>1,328,149,828</u>
Total Revenue - Forecast (under)/over	\$ 6,460,073	\$ 31,478,803	\$ 10,841,526	\$ 30,219,248	\$ 36,679,320

Notes:

^a Includes interest from Union Bank money market, sweep, and general accounts, as well as Regional Tax Interest/Interest Refund Adjustments.

^b FY2019 and FY2020 include income from PFMAM (US Bank), LGIP, and SNAP accounts. FY2014-2018 includes income from Sterling and Union Bank.

^d Beginning in June 2020, State Sales Tax and Local Fuels Tax are recorded either one month (sales tax) or two months (fuels tax) earlier than in prior accounting periods, due to additional information received from the Commonwealth of Virginia on the timing of the source transactions for tax revenues. The change is retroactive and the prior year amounts have been restated.

Table 1A - State Sales & Use Tax

Hampton Roads Transportation Fund (HRTF)

State Sales & Use Tax

Fiscal Year 2021

Locality	Total FY2014 - FY2020	Previous FY2021	February 2021	Total YTD FY2021	Total
<i>Chesapeake</i>	\$ 167,101,988	\$ 17,769,206	\$ 2,215,589	\$ 19,984,795	\$ 187,086,783
<i>Franklin</i>	7,099,174	573,966	87,489	756,572	7,855,746
<i>Hampton</i>	65,011,642	5,668,604	842,573	7,439,383	72,451,025
<i>Isle of Wight</i>	10,958,098	1,067,147	160,099	1,407,135	12,365,233
<i>James City</i>	44,784,453	3,271,918	419,799	4,265,370	49,049,823
<i>Newport News</i>	101,448,008	8,912,903	1,323,208	11,652,141	113,100,149
<i>Norfolk</i>	134,953,873	11,719,302	1,727,942	15,352,972	150,306,844
<i>Poquoson</i>	2,275,728	245,655	35,304	327,006	2,602,734
<i>Portsmouth</i>	29,916,585	2,878,503	422,347	3,764,702	33,681,287
<i>Southampton</i>	2,735,028	246,361	36,647	330,793	3,065,821
<i>Suffolk</i>	40,302,525	4,194,591	584,507	5,604,158	45,906,684
<i>Virginia Beach</i>	255,804,258	22,932,244	3,090,604	29,657,249	285,461,507
<i>Williamsburg</i>	19,633,099	1,283,627	156,224	1,662,792	21,295,891
<i>York</i>	41,155,115	3,269,133	461,044	4,298,300	45,453,414
Total ¹	<u>\$ 923,179,574</u>	<u>\$ 84,033,160</u>	<u>\$ 11,563,378</u>	<u>\$ 106,503,367</u>	<u>\$ 1,029,682,942</u>
Updated Forecast	<u>914,271,042</u>	<u>76,442,498</u>	<u>-</u>	<u>76,442,498</u>	<u>990,713,540</u>
Diff(under)/over	8,908,532	7,590,662	11,563,378	30,060,869	38,969,402

1 Beginning in June 2020, State Sales Tax and Local Fuels Tax are recorded either one month (sales tax) or two months (fuels tax) earlier than in prior accounting periods, due to additional information received from the Commonwealth of Virginia on the timing of the source transactions for tax revenues. The change is retroactive and the prior year amounts have been restated.

Table 1B - Local Fuels Tax

Hampton Roads Transportation Fund (HRTF)

Local Fuels Tax

Fiscal Year 2021

Locality	Total FY2014 - FY2020	Previous FY2021	February 2021	Total YTD FY2021	Total
<i>Chesapeake</i>	\$ 56,531,528	\$ 5,372,393	\$ 649,031	\$ 6,021,424	\$ 62,552,952
<i>Franklin</i>	6,289,375	813,214	94,083	907,297	7,196,672
<i>Hampton</i>	24,026,922	2,449,942	304,827	2,754,769	26,781,691
<i>Isle of Wight</i>	8,508,339	814,663	75,060	889,723	9,398,062
<i>James City</i>	9,261,961	1,796,726	122,658	1,919,384	11,181,345
<i>Newport News</i>	28,910,253	2,784,078	356,955	3,141,033	32,051,286
<i>Norfolk</i>	36,490,980	4,216,448	480,221	4,696,669	41,187,649
<i>Poquoson</i>	957,311	507,807	11,017	518,824	1,476,134
<i>Portsmouth</i>	13,369,972	1,908,830	171,830	2,080,660	15,450,632
<i>Southampton</i>	3,691,931	353,465	46,133	399,598	4,091,529
<i>Suffolk</i>	22,354,741	2,534,657	315,606	2,850,263	25,205,004
<i>Virginia Beach</i>	69,220,331	6,597,283	843,600	7,440,883	76,661,213
<i>Williamsburg</i>	5,717,652	1,389,875	57,799	1,447,674	7,165,326
<i>York</i>	13,404,154	1,201,703	140,855	1,342,557	14,746,711
Total ¹	<u>\$ 298,735,450</u>	<u>\$ 32,741,083</u>	<u>\$ 3,669,674</u>	<u>\$ 36,410,757</u>	<u>\$ 335,146,207</u>
Updated Forecast	<u>301,183,909</u>	<u>31,860,853</u>	<u>4,391,526</u>	<u>36,252,379</u>	<u>337,436,288</u>
Diff(under)/over	(2,448,459)	880,230	(721,852)	158,378	(2,290,081)

Note: November 2018 Wholesale Fuels Tax revenue included a \$9,865,900 Special Audit Assessment adjustment sourced from vendor audit settlement.

1 Beginning in June 2020, State Sales Tax and Local Fuels Tax are recorded either one month (sales tax) or two months (fuels tax) earlier than in prior accounting periods, due to additional information received from the Commonwealth of Virginia on the timing of the source transactions for tax revenues. The change is retroactive and the prior year amounts have been restated.

Table 2 - Allocations

Hampton Roads Transportation Fund (HRTF)

Allocations

Fiscal Year 2021

Project	Total FY2014 - FY2020	Previous FY2021	February 2021	Total YTD FY2021	Total
<i>I-64 Peninsula Widening</i>					
<i>UPC 104905 - Segment 1 - Construction</i>	\$ 11,608,385	\$ -	\$ -	\$ -	\$ 11,608,385
<i>UPC 106665 - Segment 2 - PE/ROW/Construction</i>	175,832,897	-	-	-	175,832,897
<i>UPC 109790/106689 - Segment 3 - PE</i>	10,000,000	-	-	-	10,000,000
<i>UPC 109790/106689 - Segment 3 - Construction</i>	112,893,996	-	-	-	112,893,996
<i>I-64/264 Interchange Improvement</i>					
<i>UPC 57048/108042 - Phase I - PE/ROW</i>	15,071,063	-	-	-	15,071,063
<i>UPC 57048/108042 - Phase I - Construction</i>	137,023,653	-	-	-	137,023,653
<i>UPC 17630/108041 - Phase II - PE/ROW</i>	54,592,576	-	-	-	54,592,576
<i>UPC 17630/108041 - Phase II - Construction</i>	73,157,062	-	-	-	73,157,062
<i>UPC 106693 - Phase III - PE & ROW</i>	10,000,000	-	-	-	10,000,000
<i>I-64 Southside Widening/High-Rise Bridge</i>					
<i>UPC 106692 - Phase I - PE</i>	12,200,000	-	-	-	12,200,000
<i>UPC 106692/108990 - Phase I - ROW/Construction</i>	419,756,220	-	-	-	419,756,220
<i>I-64 HRBT Expansion Project</i>					
<i>UPC 115008 - I-64 HRBT Expansion Project D-B Contract</i>	3,004,569,251	-	-	-	3,004,569,251
<i>UPC 115009 - I-64 HRBT Expansion Project Owners Oversight</i>	548,900,330	-	-	-	548,900,330
<i>HRELN Segment 1 Phase 1 PE - UPC</i>					
<i>UPC 117840 - Segment 1 Phase 1 - PE</i>	-	5,621,500		5,621,500	5,621,500
<i>UPC 117839 - Segment 4A/4B Phase 1 - PE</i>	-	5,916,425		5,916,425	5,916,425
<i>UPC 117841 - Segment 4C Phase 1 - PE</i>	-	15,421,200		15,421,200	15,421,200
<i>HRCS Preferred Alternative Refinement - HRBT UPC 110577 - SEIS</i>	30,000,000	-	-	-	30,000,000
<i>460/58/13 Connector Study - UPC 106694 - PE</i>	1,095,368	-	*	-	1,095,368 *
<i>Bowers Hill Interchange Study - UPC 111427</i>	4,000,000	3,904,630	-	3,904,630	7,904,630
<i>HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)</i>	7,000,000	-	-	-	7,000,000
Total	<u>\$ 4,627,700,801</u>	<u>\$ 30,863,755</u>	<u>\$ -</u>	<u>\$ 30,863,755</u>	<u>\$ 4,658,564,556</u>

* Remaining project funds were deallocated based on action Consent Item 5B of the 11/21/2019 HRTAC Regular Meeting. SPA Floatdown agreement with VDOT was executed 12/11/2019.

Table 3 - Expenditures
Hampton Roads Transportation Fund (HRTF)
Expenditures
Fiscal Year 2021

Project	Total FY2014 - FY2020	Previous FY2021	February 2021	Total YTD FY2021	Total
<i>I-64 Peninsula Widening</i>					
<i>UPC 104905/111926 - Segment 1 - PE/Construction</i>	\$ 11,608,384	\$ -	\$ -	\$ -	\$ 11,608,384
<i>UPC 106665 - Segment 2 - PE/ROW/Construction</i>	154,979,139	18,638	44,193	62,832	155,041,971
<i>UPC 109790/106689 - Segment 3 - PE</i>	5,468,986	19,200	30,124	49,324	5,518,310
<i>UPC 109790/106689 - Segment 3 - Construction</i>	-	-	19,253,901	19,253,901	19,253,901
<i>I-64/264 Interchange Improvement</i>					
<i>UPC 57048/108042 - Phase I - PE/ROW</i>	15,071,063	-	-	-	15,071,063
<i>UPC 57048/108042 - Phase I - Construction</i>	119,720,152	164,758	40,909	205,667	119,925,819
<i>UPC 17630/108041 - Phase II - PE/ROW</i>	54,592,299	-	4,325,915	4,325,915	58,918,214
<i>UPC 17630/108041 - Phase II - Construction</i>	16,266,772	5,604,681	2,894,009	8,498,690	24,765,462
<i>UPC 106693 - Phase III - PE & ROW</i>	2,201,527	73,312	7,667	80,979	2,282,506
<i>I-64 Southside Widening/High-Rise Bridge</i>					
<i>UPC 106692 - Phase I - PE</i>	12,189,098	-	-	-	12,189,098
<i>UPC 106692/108990 - Phase I - ROW/Construction</i>	116,813,882	14,012,222	17,136,575	31,148,797	147,962,679
<i>I-64 HRBT Expansion Project</i>					
<i>UPC 115008 - I-64 HRBT Expansion Project D-B Contract</i>	276,300,147	390,602,956	48,590,457	439,193,413	715,493,560
<i>UPC 115009 - I-64 HRBT Expansion Project Owners Oversight</i>	25,730,830	3,919,250	1,675,112	5,594,362	31,325,192
<i>HRELN Segment 1 Phase 1 PE - UPC</i>					
<i>UPC 117840 - Segment 1 Phase 1 - PE</i>	-	-	-	-	-
<i>UPC 117839 - Segment 4A/4B Phase 1 - PE</i>	-	-	-	-	-
<i>UPC 117841 - Segment 4C Phase 1 - PE</i>	-	-	-	-	-
<i>HRCS Preferred Alternative Refinement - HRBT</i>					
<i>UPC 110577 - SEIS</i>	28,800,287	-	-	-	28,800,287
<i>460/58/13 Connector Study - UPC 106694 - PE</i>					
	1,095,368	-	-	-	1,095,368
<i>Bowers Hill Interchange Study - UPC 111427</i>					
	2,064,879	88,250	313,728	401,978	2,466,857
<i>HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)</i>					
	2,694,413	375,782	-	375,782	3,070,195
Total	<u>\$ 845,597,225</u>	<u>\$ 414,879,049</u>	<u>\$ 94,312,591</u>	<u>\$ 509,191,640</u>	<u>\$ 1,354,788,865</u>

Table 3A - Bond-Reimbursed Expenditures

Hampton Roads Transportation Fund (HRTF)

Bond Reimbursements

Fiscal Year 2021

Project	Total FY2014 - FY2020	Previous FY2021	February 2021	Total YTD FY2021	Total
<i>I-64 Peninsula Widening</i>					
<i>UPC 104905/111926 - Segment 1 - PE/Construction</i>	\$ 10,063,882	\$ -	\$ -	\$ -	\$ 10,063,882
<i>UPC 106665 - Segment 2 - PE/ROW/Construction</i>	154,979,139	18,638	44,193	62,832	155,041,971
<i>UPC 109790/106689 - Segment 3 - PE</i>	5,468,986	19,200	30,124	49,324	5,518,310
<i>UPC 109790/106689 - Segment 3 - Construction</i>	-	-	19,253,901	19,253,901	19,253,901
<i>I-64/264 Interchange Improvement</i>					
<i>UPC 57048/108042 - Phase I - PE/ROW</i>	15,071,063	-	-	-	15,071,063
<i>UPC 57048/108042 - Phase I - Construction</i>	119,720,152	164,758	40,909	205,667	119,925,819
<i>UPC 17630/108041 - Phase II - PE/ROW</i>	54,592,299	-	4,325,915	4,325,915	58,918,214
<i>UPC 17630/108041 - Phase II - Construction</i>	16,266,772	5,604,681	2,894,009	8,498,690	24,765,462
<i>UPC 106693 - Phase III - PE & ROW</i>	-	-	-	-	-
<i>I-64 Southside Widening/High-Rise Bridge</i>					
<i>UPC 106692 - Phase I - PE</i>	12,189,098	-	-	-	12,189,098
<i>UPC 106692/108990 - Phase I - ROW/Construction</i>	116,813,882	14,012,222	17,136,575	31,148,797	147,962,679
<i>I-64 HRBT Expansion Project</i>					
<i>UPC 115008 - I-64 HRBT Expansion Project D-B Contract</i>	-	390,602,956	46,390,484	436,993,440	436,993,440
<i>UPC 115009 - I-64 HRBT Expansion Project Owners Oversight</i>	-	3,734,097	1,675,112	5,409,209	5,409,209
<i>HRELN Segment 1 Phase 1 PE - UPC</i>					
<i>UPC 117840 - Segment 1 Phase 1 - PE</i>	-	-	-	-	-
<i>UPC 117839 - Segment 4A/4B Phase 1 - PE</i>	-	-	-	-	-
<i>UPC 117841 - Segment 4C Phase 1 - PE</i>	-	-	-	-	-
<i>HRCS Preferred Alternative Refinement - HRBT</i>					
<i>UPC 110577 - SEIS</i>	-	-	-	-	-
<i>460/58/13 Connector Study - UPC 106694 - PE</i>	-	-	-	-	-
<i>Bowers Hill Interchange Study - UPC 111427</i>	-	-	-	-	-
<i>HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)</i>	-	-	-	-	-
Total	<u>\$ 505,165,273</u>	<u>\$ 414,156,553</u>	<u>\$ 91,791,223</u>	<u>\$ 505,947,775</u>	<u>\$ 1,011,113,048</u>

Table 3B - Non-Bond Reimbursed Expenditures

Hampton Roads Transportation Fund (HRTF)

Expenditures

Fiscal Year 2021

Project	Total FY2014 - FY2020	Previous FY2021	February 2021	Total YTD FY2021	Total
<i>I-64 Peninsula Widening</i>					
<i>UPC 104905/111926 - Segment 1 - PE/Construction</i>	\$ 1,544,502	\$ -	\$ -	\$ -	\$ 1,544,502
<i>UPC 106665 - Segment 2 - PE/ROW/Construction</i>	-	-	-	-	-
<i>UPC 109790/106689 - Segment 3 - PE</i>	-	-	-	-	-
<i>UPC 109790/106689 - Segment 3 - Construction</i>	-	-	-	-	-
<i>I-64/264 Interchange Improvement</i>					
<i>UPC 57048/108042 - Phase I - PE/ROW</i>	-	-	-	-	-
<i>UPC 57048/108042 - Phase I - Construction</i>	-	-	-	-	-
<i>UPC 17630/108041 - Phase II - PE/ROW</i>	-	-	-	-	-
<i>UPC 17630/108041 - Phase II - Construction</i>	-	-	-	-	-
<i>UPC 106693 - Phase III - PE & ROW</i>	2,201,527	73,312	7,667	80,979	2,282,506
<i>I-64 Southside Widening/High-Rise Bridge</i>					
<i>UPC 106692 - Phase I - PE</i>	-	-	-	-	-
<i>UPC 106692/108990 - Phase I - ROW/Construction</i>	-	-	-	-	-
<i>I-64 HRBT Expansion Project</i>					
<i>UPC 115008 - I-64 HRBT Expansion Project D-B Contract</i>	276,300,147	-	2,199,973	2,199,973	278,500,120
<i>UPC 115009 - I-64 HRBT Expansion Project Owners Oversight</i>	25,730,830	185,152	-	185,152	25,915,982
<i>HRELN Segment 1 Phase 1 PE - UPC</i>					
<i>UPC 117840 - Segment 1 Phase 1 - PE</i>	-	-	-	-	-
<i>UPC 117839 - Segment 4A/4B Phase 1 - PE</i>	-	-	-	-	-
<i>UPC 117841 - Segment 4C Phase 1 - PE</i>	-	-	-	-	-
<i>HRCS Preferred Alternative Refinement - HRBT 110577 - SEIS</i>	28,800,287	-	-	-	28,800,287
<i>460/58/13 Connector Study - UPC 106694 - PE</i>	1,095,368	-	-	-	1,095,368
<i>Bowers Hill Interchange Study - UPC 111427</i>	2,064,879	88,250	313,728	401,978	2,466,857
<i>HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)</i>	2,694,413	375,782	-	375,782	3,070,195
Total	<u>\$ 340,431,951</u>	<u>\$ 722,497</u>	<u>\$ 2,521,369</u>	<u>\$ 3,243,865</u>	<u>\$ 343,675,816</u>

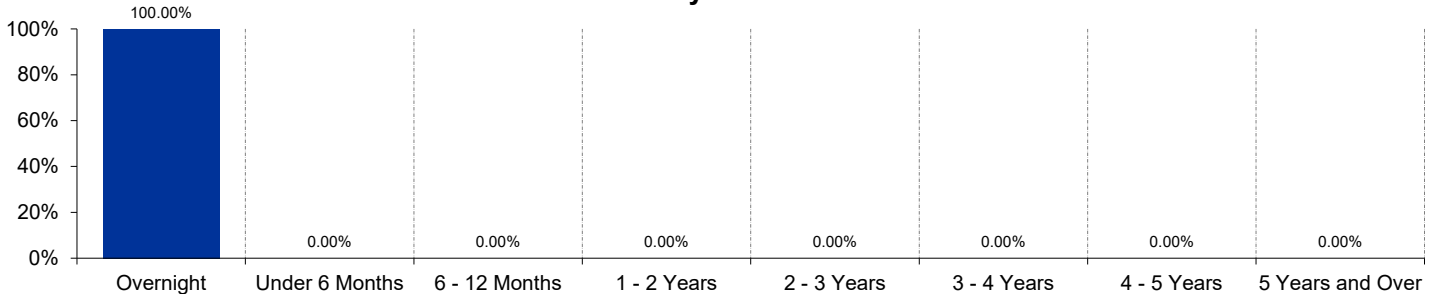
Hampton Roads Regional Transit Fund

Summary of Cash and Investments

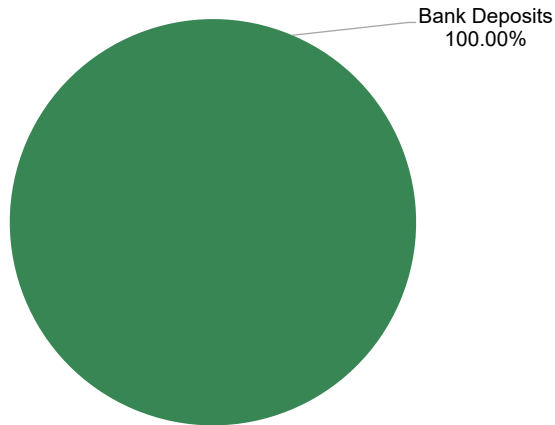
For February 2021

Portfolio	Yield at Cost	Yield at Market	Balances at Cost	Balances at Market	% of Total
Union Checking	0.00%	0.00%	1,000,000	1,000,000	4.14%
Union Sweep	0.21%	0.21%	23,155,015	23,155,015	95.86%
VA LGIP	0.00%	0.00%	-	-	0.00%
Total			\$ 24,155,015	\$ 24,155,015	100.00%

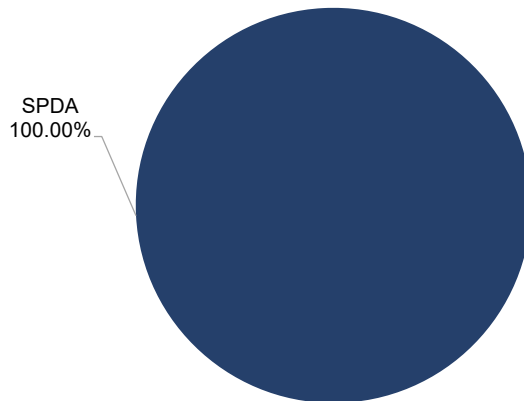
Total Maturity Distribution



Sector Distribution



Credit Distribution



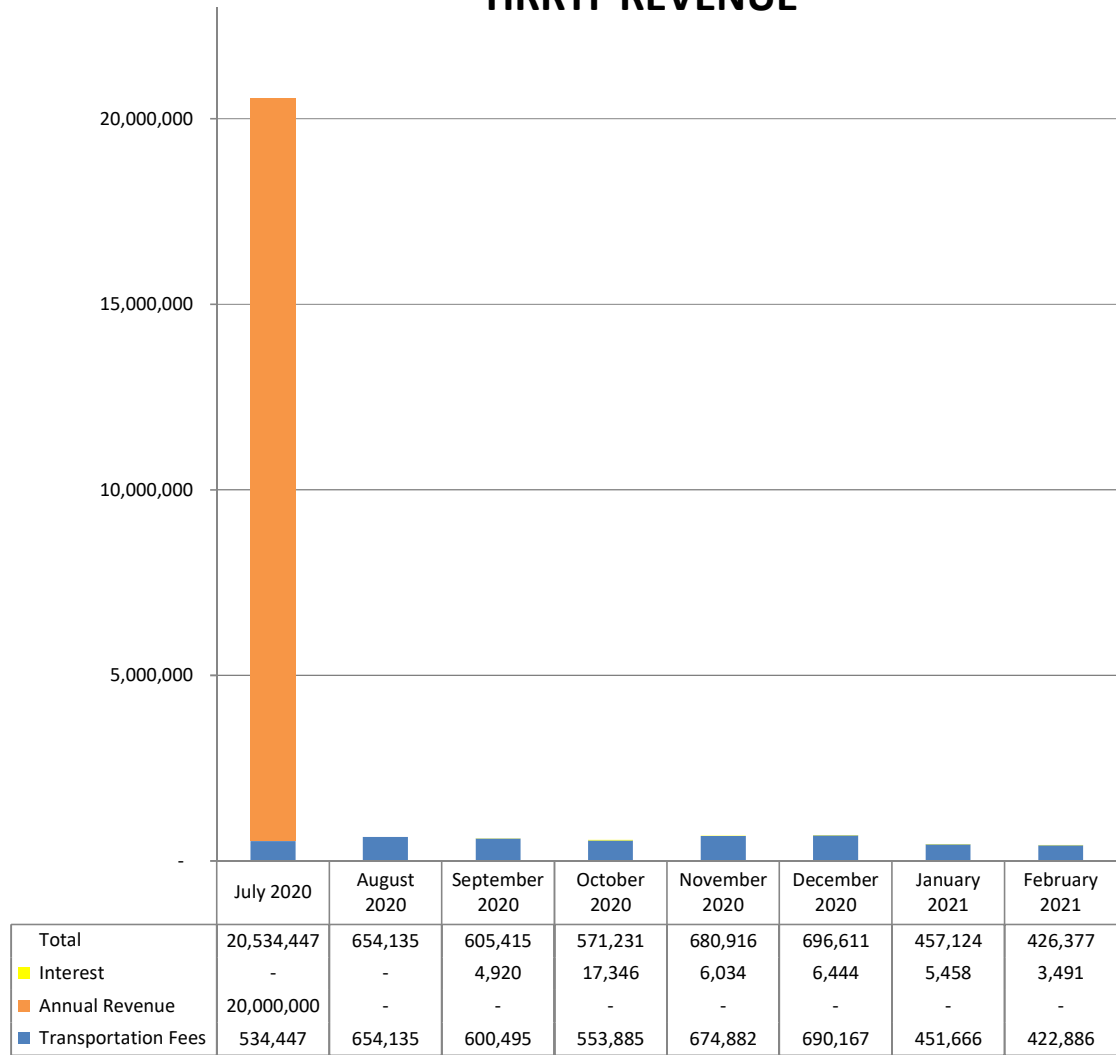
All charts are based on market value as of 2/28/21

This material is for general informational purposes only and is not intended to provide specific advice or a specific recommendation.

Hampton Roads Regional Transit Fund
Interest and Investment Income
Inception - February 2021

	<u>FY2021</u>
Interest Income	\$ 43,693
Investment Income	<u>-</u>
Total	<u>\$ 43,693</u>

HRRTF REVENUE



Hampton Roads Regional Transit Fund
Revenue and Expenditures
Summary

	Gross Revenue				Expenditures	Cumulative Balance
	Regional Transportation Improvement Fees	Annual Recordation Tax Distribution	Interest	Total Revenue	Operating Expenses	7/1/20 - 2/28/21
<i>July 2020</i>	\$ 534,447	\$ 20,000,000	\$ -	\$ 20,534,447	\$ -	\$ 20,534,447
<i>August 2020</i>	654,135	-	-	654,135	2,286	21,186,296
<i>September 2020</i>	600,495	-	4,920	605,415	15,067	21,776,644
<i>October 2020</i>	553,885	-	17,346	571,231	7,349	22,340,526
<i>November 2020</i>	674,882	-	6,034	680,916	1,417	23,020,025
<i>December 2020</i>	690,167	-	6,444	696,611	20,417	23,696,219
<i>January 2021</i>	451,666	-	5,458	457,124	6,528	24,146,816
<i>February 2021</i>	422,886	-	3,491	426,377	248	24,572,945
<i>Total 8 months</i>	<u>\$ 4,582,565</u>	<u>\$ 20,000,000</u>	<u>\$ 43,693</u>	<u>\$ 24,626,257</u>	<u>\$ 53,312</u>	
<i>Total</i>	<u>\$ 4,582,565</u>	<u>\$ 20,000,000</u>	<u>\$ 43,693</u>	<u>\$ 24,626,257</u>	<u>\$ 53,312</u>	
Less Balance of Encumbered (through FY2027)						(13,713,000)
Total Net Available						<u>\$ 10,859,945</u>

Table 1 - Revenues
Hampton Roads Regional Transit Fund (HRRTF)
Fiscal Year 2021

Locality	Previous FY2021	February 2021	Total
Regional Transportation Improvement Fees			
<i>Chesapeake</i>	\$ 974,055	\$ 87,661	\$ 1,061,717
<i>Hampton</i>	324,085	48,845	372,930
<i>Newport News</i>	414,252	34,331	448,582
<i>Norfolk</i>	620,811	55,210	676,021
<i>Portsmouth</i>	214,241	44,127	258,368
<i>Virginia Beach</i>	<u>1,612,234</u>	<u>152,713</u>	<u>1,764,946</u>
Total Transportation Improvement Fees	<u>4,159,678</u>	<u>422,886</u>	<u>4,582,565</u>
Annual Recordation Tax Distribution	<u>20,000,000</u>	-	<u>20,000,000</u>
Total Tax and Fees Revenue	<u>24,159,678</u>	<u>422,886</u>	<u>24,582,565</u>
Interest ^a	<u>40,201</u>	<u>3,491</u>	<u>43,693</u>
Total Revenues	<u>24,199,880</u>	<u>426,377</u>	<u>24,626,257</u>
Operating Expense	<u>(53,064)</u>	<u>(248)</u>	<u>(53,312)</u>
Cash Balance	<u>24,146,816</u>	<u>426,130</u>	<u>24,572,945</u>
Less Balance of Encumbered	<u>(13,713,000)</u>	-	<u>(13,713,000)</u>
Net Available Cash	<u>\$ 10,433,816</u>	<u>\$ 426,130</u>	<u>\$ 10,859,945</u>
Updated forecast	<u>23,315,781</u>	<u>526,804</u>	<u>23,842,585</u>
Total Revenue - Forecast (under)/over	<u>843,897</u>	<u>(103,918)</u>	<u>739,980</u>

Notes:

^a Includes interest from Atlantic Union Bank money market and sweep accounts, as well as interest income from the Commonwealth of Virginia.

Table 2 - Allocations

Hampton Roads Regional Transit Fund (HRRTF)

Allocations

Fiscal Year 2021

Project	Previous FY2021	February 2021	Total
<i>Regional Transit System - 757 Express</i>			
<i>Transit Bus Expansion (Group A)</i>	\$ 9,306,000	\$ -	\$ 9,306,000
<i>Bus Stop Amenity Program</i>	3,265,000	-	3,265,000
<i>Regional Transit System Technology</i>	80,000	-	80,000
<i>Net Center Replacement</i>	62,000	-	62,000
<i>New Bus Operating Division - Southside</i>	1,000,000	-	1,000,000
Total	<u>\$ 13,713,000</u>	<u>\$ -</u>	<u>\$ 13,713,000</u>