

AGENDA

Hampton Roads Transportation Accountability Commission

Finance Committee Meeting *In Person Meeting*

**September 18, 2025
9:00 a.m.**

- 1. Call to Order 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 June 12, 2025 Finance Committee Meeting (Attachment 4A)**
- 5. Action Items**
 - *Recommended Action: Discussion/Endorsement/Recommendation*
 - A. Fiscal Year 2025 Audited Financial and Compliance Report (Attachment 5A) - Executive Director Page and Michael Garber PBMAres LLC - Recommended Action: Endorsement and Recommendation to the Commission for Approval**
 - B. Recommendation to Issue Up to \$315,000,000 in Aggregate Principal Amount of Senior Lien Toll Roads System Revenue Bonds – Resolution 2025-03 (Attachment 5B) - Executive Director Page, Bond Counsel, General Counselor Inglima, and Financial Advisor Shan PFM FA – Recommended Action: Endorsement and Recommendation to the Commission for Approval**
 - C. Fiscal Year 2025 Annual Report to the Joint Commission on Transportation Accountability Relating to the Hampton Roads Transportation Fund (Attachment 5C) – Executive Director Page - Recommended Action: Endorsement and Recommendation to the Commission for Approval**
 - D. HRTAC Accounting Manual Update – Credit Card, Small Purchases, and Fixed Asset Threshold Policies (Attachment 5D) - Executive Director Page, and CFO Lynn Coen – Recommended Action: Endorsement and Recommendation to the Commission for Approval**
 - E. HRTAC Investment Policy Update – Investment Guidelines (Attachment 5E) – Executive Director Page and Nelson Bush PFM Asset Managers – Recommended Action: Endorsement and Recommendation to the Commission for Approval**

- F. **HRTAC Engagement of Court Stenographer/Court Reporter Services (Attachment 5F)** - Executive Director Page, and CFO Lynn Coen – **Recommended Action:** Endorsement and Recommendation to the Commission for Approval

6. Information Items

- A. **HRTAC Monthly Financial Report – (Attachment 6A)** – Executive Director Page

7. Adjournment

4. A. Minutes of the June 12, 2025 Finance Committee Meeting

Agenda Item 4A
Consent Item

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

From: Kevin B. Page, Executive Director

Date: September 18, 2025

Re: June 12, 2025 Meeting Minutes

Recommendation:

The Finance Committee is asked to approve the June 12, 2025 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 June 12, 2025.

**Hampton Roads Transportation
Accountability Commission (HRTAC)
Summary Minutes of the June 12, 2025 Finance Committee Meeting**

The Hampton Roads Transportation Accountability Commission (HRTAC) Finance Committee Meeting was called to order at 9:00 a.m. with the following in attendance:

HRTAC Members in Attendance:

Supervisor Michael Hipple, JC, Chair
Mayor David Hux, PQ

Supervisor Thomas Shepperd, YK

HRTAC Executive Director

Kevin Page

HRTAC Voting Members Absent:

Mayor Shannon Glover, PO

Other Participants:

Tom Inglima, Willcox & Savage

Others Recorded Attending:

Todd Halacy (VDOT); Lynn Coen, Jennifer Hodnett, Danetta Jankosky, Tiffany Smith (HRTAC); Kandi Oliver (Veteran's Reporters)

Call to Order and Roll Call

HRTAC Finance Committee Chair, Supervisor Michael Hipple, called the meeting to order and a roll call of all Members was taken:

Chair Michael Hipple: Present

Mayor David Hux: Present

Mayor Shannon Glover: No Response

Supervisor Thomas Shepperd: Present

Mr. Kevin Page, HRTAC Executive Director, reminded the Committee that three candidates for the HRTAC Deputy Director position had been interviewed and recommended adding an item to the agenda to discuss the prospective candidates for employment. The Chair endorsed that addition.

Approval of Agenda

Supervisor Thomas Shepperd Moved to approve the agenda with the additional item; Seconded by Mayor David Hux. The Motion Carried.

Public Comment Period (limit 5 minutes per individual)

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

Chair's Comments

Chair Hipple welcomed Poquoson Mayor David Hux as the newest member of the Finance Committee and noted that the Finance Committee was responsible for reviewing in depth the financing activities of HRTAC and advising the Commission on all financial matters.

Consent Item

A. Minutes of the March 20, 2025 Finance Committee Meeting

Supervisor Shepperd Moved to approve the consent agenda item; Seconded by Mayor Hux. The Motion Carried.

Action Item

A. Commonwealth of Virginia 457 Deferred Compensation Plan

Executive Director Page stated that HRTAC does not currently offer a 457 deferred compensation plan of the type administered by Virginia Retirement Service (VRS). Executive Director Page noted that the VRS plan allows employees to voluntarily participate at no cost to HRTAC. He summarized the steps needed for HRTAC to establish such a plan.

Ms. Lynn Coen, HRTAC Chief Financial Officer, noted that a small administrative fee would be payable in connection with implementing the 457 Deferred Compensation Plan but that the fee would be passed through to the participating employees.

Committee members commented on the tax benefits of implementing a 457 Deferred Compensation Plan and noted the potential benefits for HRTAC's employee retainment and recruitment efforts.

Supervisor Shepperd Moved that the Finance Committee recommends that: (i) the Commission adopt resolution 2025-02 that approves HRTAC's participation in the Commonwealth of Virginia 457 Deferred Compensation Plan effective as soon as administratively possible on or after October 1, 2025; (ii) authorize the Chair to execute the Commonwealth of Virginia 457 Deferred Compensation Plan Agreement between the Virginia Retirement Service and Commission with advice of counsel; and, (iii) approve the amendment to the HRTAC Personnel Manual Adopted April 18, 2024 to add the Commonwealth of Virginia 457 Deferred Compensation Plan availability to HRTAC employees; Seconded by Mayor Hux. The Motion Carried.

Discussion Item

A. Prospective Candidate for Employment – Deputy Director (Closed Session as Appropriate)

Chair Hipple requested that Mr. Tom Inglima, Willcox & Savage, HRTAC General Counsel, and Ms. Lynn Coen, HRTAC Chief Financial Officer, attend a closed session.

Supervisor Shepperd Moved that the Finance Committee hold a closed session to interview prospective candidates for employment as the Deputy Director of the Commission, which closed session will be held in accordance with Virginia Code Section 2.2-3711(A)(1) for the purpose of discussion and consideration of the assignment, appointment, promotion, performance, demotion, salary, discipline, or resignation of specific employees of the Commission; Seconded by Mayor Hux. The Motion Carried.

Closed session began at 9:13 a.m. and ended at 10:10 a.m.

Mr. Inglima read the following certification:

The Finance Committee hereby certifies that to the best of each member's knowledge: (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (ii) 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: Aye

Mayor David Hux: Aye

Supervisor Thomas Shepperd: Aye

Information Item

A. HRTAC Monthly Financial Report

Executive Director Page highlighted the HRTAC Monthly Financial Report with the Committee.

He updated the Committee on the status of the Commission's new provider of custody services, Principal Bank, and the transfer of funds from HRTAC's previous provider to Principal Bank.

Adjournment

With no further business to come before the Finance Committee the meeting adjourned at 10:15 a.m.

Michael Hipple,
HRTAC Finance Committee Chair

5. A. Fiscal Year 2025 Audited Financial and Compliance Report

Agenda Item 5A
Action Item

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

From: Kevin B. Page, Executive Director

Date: September 18, 2025

Re: HRTAC Fiscal Year 2025 Audited Financial and Compliance Report

Recommendation:

HRTAC Staff recommends that the Finance Committee recommend to the Commission to approve the Draft FY2025 Audited Financial and Compliance Report for HRTAC and authorize the Executive Director to work with the Auditor of Public Accounts to finalize and provide its distribution.

Background:

In accordance with the HRTAC enabling legislation, the Auditor of Public Accounts (APA) must conduct an annual audit of HRTAC. PBMares, LLP was engaged by the APA to conduct the annual audit. The auditor reported that there were no material weaknesses or deficiencies in any of the internal controls or processes of the HRTAC financial activity, and all information was free of any material misstatements. Mr. Michael A. Garber, Partner of PBMares, LLP will provide the Finance Committee an overview of the annual audit.

Fiscal Impact:

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

Suggested Motion:

Motion: The Finance Committee: i. recommends to the Commission that it approve the Draft FY2025 Audited Financial and Compliance Report for HRTAC and authorize the Executive Director to work with the Auditor of Public Accounts to finalize and provide its distribution; and ii, authorizes the Finance Committee Chair to communicate said recommendation to the Commission at its next meeting.



**5. B. Recommendation to Issue Up to \$315,000,000 in Aggregate
Principal Amount of Senior Lien Toll Roads System Revenue
Bonds – Resolution 2025-03**

Agenda Item 5B
Action Item

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

From: Kevin B. Page, Executive Director

Date: September 18, 2025

**Re: Recommendation to Issue Up to \$315,000,000 in Aggregate Principal Amount
of Senior Lien Toll Roads System Revenue Bonds – Resolution 2025-03**

Recommendation:

HRTAC's Executive Director and financial advisors recommend that the Finance Committee endorse, and recommend that HRTAC approve, Resolution 2025-03 for the proposed 2025 toll-backed senior lien revenue bonds issuance for up to \$315,000,000, along with related amendments to various bond documents.

Background:

HRTAC has previously reviewed and approved a debt management plan for the financing and refinancing of the costs of HRTAC-approved new construction projects for congestion relief in the localities comprising Planning District 23. The current financing provides funding toward various segments of the Hampton Roads Express Lanes Network (the "HRELN").

HRTAC's September 5, 2024 Letter of Interest for a secured loan under the Transportation Infrastructure Finance and Innovation Act of 1978, as amended, to finance a portion of the costs of the HRELN, has been advanced by the United States Department of Transportation 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 2025-03 for the issuance of Senior Lien Toll Roads System Revenue Bonds for up to \$315,000,000, such issuance anticipated to occur during the Fourth Quarter of CY 2025. As set out in the Resolution, limited support from the Hampton Roads Transportation Fund is provided for this toll-backed financing. This HRTAC Resolution 2025-03 authorizes HRTAC's staff and Chair, working with HRTAC's counsel and financial advisor to move forward with such financing, and finalize the documents and agreements required for the same, all subject to parameters in the Resolution, which will be reviewed at the Finance Committee meeting.

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 this financing remains



outstanding.

Suggested Motion:

Motion: The Finance Committee endorses, and recommends that the Commission approve, Resolution 2025-03, and authorizes the Finance Committee Chair to communicate the action of the Finance Committee at the Commission's September 18, 2025 meeting.

HRTAC RESOLUTION 2025 – 03

RESOLUTION AUTHORIZING THE ISSUANCE OF UP TO \$315,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SENIOR LIEN TOLL ROADS SYSTEM REVENUE BONDS ALONG WITH RELATED AMENDMENTS TO VARIOUS BOND DOCUMENTS

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, the Commission has entered into a Master Indenture dated as of September 1, 2021 (as supplemented, the “Master Toll Indenture”) with U.S. Bank Trust Company, National Association, as trustee (the “Trustee”), which provides for the issuance from time to time of the Commission’s bonds payable from and secured by certain toll revenues as described in the Master Toll Indenture (the “Toll Revenue Bonds”) and the use of the proceeds thereof to finance and refinance the costs of the Express Lanes Network;

WHEREAS, on September 21, 2021, the Commission issued its Senior Lien Revenue Bond, TIFIA Series 2021 (the “2021 TIFIA Bond”), pursuant to the Master Toll Indenture and a First Supplemental Indenture between the Commission and the Trustee, dated as of September 1, 2021;

WHEREAS, the Commission’s Letter of Interest dated September 5, 2024, 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 Express Lanes Network, including some or all of Segments 1A, 1B, and 4A/B, I-64/I-464 Interchange Improvements, and Tolling Integration (as more specifically described in the hereinafter defined TIFIA Toll Loan Agreement, 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 principal 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 not to exceed \$315,000,000 (subject to increase pursuant to the TIFIA Toll Loan Agreement as described herein), to be designated as the “Hampton Roads Transportation Accountability Commission Toll Revenue Bonds, Senior Lien Revenue Bond – TIFIA Series 2025” (the “2025 TIFIA 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 of the Commission have recommended that the Commission proceed with the issuance of the 2025 TIFIA 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 Second Supplemental Indenture between the Commission and the Trustee (the “Second Supplement”), related to the issuance of the 2025 TIFIA Bond;
- (b) The form of the 2025 TIFIA Bond, attached as Exhibit A to the Second Supplement;
- (c) The TIFIA Toll Loan Agreement;

- (d) A Direct Agreement among the Virginia Department of Transportation (“VDOT”), the Commission, and the TIFIA Lender, with respect to the Toll Financed Projects and related contracts; and
- (f) An Amendatory Supplement (the “Amendatory Supplement”) to Fifth Supplemental Series Indenture of Trust, dated as of September 1, 2021, which supplemented and amended that certain Master Indenture of Trust (as previously supplemented and amended, the “HRTF Indenture”), dated as of February 1, 2018, all between the Commission and Wilmington Trust, National Association, as trustee, related to the amendment of certain HRTF Transfers (as defined below) in order to provide additional limited credit support for the 2025 TIFIA Bond; and

WHEREAS, the Commission has determined that it is in the best interests of the Commission to authorize the Executive Director and the Chair of the Commission to finalize the terms of the 2025 TIFIA Bond and the Toll Bond Documents with the assistance of the Financial Advisor, Bond Counsel and the Commission’s general counsel, and to cause or effect the execution and delivery thereof, subject to the limitations and parameters hereinafter provided in this Resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION:

1. The Commission authorizes and approves the issuance of the 2025 TIFIA Bond, in one or more sub-series, 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 not to exceed \$315,000,000, 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 or the HRTAC Representative (as defined below), 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 2025 TIFIA 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 2025 TIFIA Bond shall be issued in accordance with the form and requirements of the Master Toll Indenture and the Second Supplement (as finalized in accordance with the terms of this Resolution);
- (ii) the original principal amount of the 2025 TIFIA Bond shall not exceed \$315,000,000, subject to increase as set forth above;

- (iii) the interest rate on the 2025 TIFIA Bond or any sub-series thereof shall not exceed 6.25%, 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 2025 TIFIA Bond shall have a final maturity date not later than 40 years from the date of its issuance; and
- (v) the amount of funds transferred from the “General Fund” established under the HRTF Indenture in order to provide limited credit support to bonds issued under the Master Toll Indenture (collectively, the “HRTF Transfers”), will not exceed the amounts authorized and set forth in Commission Resolutions 2021-05 and 2021-06, and the HRTF Indenture, as amended by the Amendatory Supplement, and as set forth in Section 5 below, 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, and the Executive Director is authorized to attest or countersign 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 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 Toll Bond Documents by the HRTAC Representative or the Executive Director to the extent applicable. Each of the HRTAC Representative and the Executive Director are appointed as the “Borrower’s Authorized Representative” under the TIFIA Loan Agreement. The Second Supplement may have a different and additional numbered supplemental designation if necessary, desirable or in connection with the issuance of the 2025 TIFIA Bond such that separate supplemental indentures may be used and are hereby authorized for any separate series or sub-series of bonds.

5. In order to provide limited credit support to the 2025 TIFIA Bond, the Commission authorizes further HRTF Transfers from the HRTF Indenture general fund, subject to their availability for such purpose, in addition to amounts previously authorized with respect to the 2021 TIFIA Bond in Commission Resolutions 2021-05 and 2021-06, as described in the Second Supplement, the TIFIA Toll Loan Agreement, and the Amendatory Supplement, which provide, among other things, for the transfer and deposit (i) to the Revenue Stabilization Fund (as defined in the Master Toll Indenture) additional amounts in order to satisfy the increase in the required balance on deposit therein from \$10,000,000 to \$15,000,000, (ii) to the 2025 TIFIA Loan Reserve Account an amount necessary to satisfy the 2025 TIFIA Loan Reserve Account Reserve Requirement (each as defined and derived in the Second Supplement), and (iii) to the Major Maintenance and Renewal Fund (as defined in the Master Toll Indenture) additional amounts in order to satisfy the increase in the minimum required balance on deposit therein from \$5,000,000 to \$10,000,000. The HRTF Transfers remain subject to the general provisions and restrictions set forth in Commission Resolutions 2021-05 and 2021-06 except as otherwise amended hereby or by the finalized Toll Bond Documents. In the event authorized the HRTF Transfers are insufficient to make any necessary payments under the Master Toll Indenture, the Commission may approve a non-recurring increase in the amount of the HRTF Transfers during the applicable fiscal year by subsequent authorization.

6. In connection with the sale of the 2025 TIFIA 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 Second Supplement and to execute the 2025 TIFIA Bond by manual or facsimile signature, (ii) the Executive Director is authorized to countersign the 2025 TIFIA Bond by manual or facsimile signature, and (iii) any such official is authorized to deliver the 2025 TIFIA 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 2025 TIFIA Bond, including, without limitation, the implementation of any necessary amendments to conform the TIFIA Loan Agreement (Toll Revenues) dated as of September 21, 2021, between the TIFIA Lender and the Commission, related to the 2021 TIFIA Bond, to the finalized Toll Bond Documents (without limiting the foregoing, such amendments may include a Letter Agreement (the “MTA Amendment”), by and between the Commission and VDOT, to amend that certain Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network dated August 18, 2020, by and among the Commission, the CTB, and VDOT (the “MTA”), in respect of the uses of the net proceeds of Toll-Backed Debt (as defined in the MTA) incurred in connection with the 2025 TIFIA Bond). All terms of the MTA, as modified by the MTA Amendment, the Letter Agreement dated September 2, 2021 regarding the use of proceeds of the Toll-Backed Debt incurred in connection with the 2021 TIFIA Bond, the Letter Agreement dated March 3, 2023 regarding Tolling O&M Duties, and the Letter Agreement dated June 25, 2025 regarding Tolling O&M Duties, each by and between the Commission and VDOT, are hereby ratified and confirmed in all respects (as those terms are defined in the MTA).

8. 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 2025 TIFIA Bond, including without limitation, the authorized HRTF Transfers, the provision for payment of debt service on the 2025 TIFIA Bond, the establishment and replenishment of reserves, and the deposit and investment of the proceeds of the 2025 TIFIA Bond and Commission revenues in the various funds and accounts established by the Master Toll Indenture and the Second Supplement or any other supplemental indenture.

9. The HRTAC Representative and the Executive Director are each 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 they 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. The authorizations granted in this Resolution to the Executive Director may be carried out by any employee designated in writing by the Executive Director or by any Deputy or Interim Executive Director, as appropriate, in the absence of the Executive Director. 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.

10. 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 September 18, 2025.

Chair, Hampton Roads Transportation
Accountability Commission

Vice-Chair, Hampton Roads Transportation
Accountability Commission

SECOND SUPPLEMENTAL INDENTURE

between

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

and

U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,

as Trustee

Dated as of _____ 1, 2025

Relating to the

Hampton Roads Transportation Accountability Commission

Toll Revenue Bonds, Senior Lien Revenue Bond – TIFIA Series 2025

(Supplementing and Amending the Master Indenture Dated as of September 1, 2021)

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[To Be Updated]

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THIS SECOND SUPPLEMENTAL INDENTURE, dated as of _____ 1, 2025 (this “Second 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 TRUST COMPANY, 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 September 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 (Toll Revenues), dated as of _____, 2025 (the “**2025 TIFIA Toll Loan Agreement**”), authorizing and setting forth the terms and conditions of a TIFIA Loan (the “**2025 TIFIA Loan**”) from the TIFIA Lender to the Commission, the proceeds of which shall be used to finance the Project (as defined in the 2025 TIFIA Toll Loan Agreement);

WHEREAS, as evidence of the loan extended by the TIFIA Lender under the 2025 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, Senior Lien Revenue Bond – TIFIA Series 2025” (the “**TIFIA Bond**”), to be issued to the TIFIA Lender in an aggregate principal amount not to exceed \$[_____];

WHEREAS, the 2025 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, the Commission and the Trustee desire to enter into this Second Supplemental Indenture as a Supplemental Indenture under the Master Indenture to set forth the terms of Commission’s obligations to the TIFIA Lender relating to the 2025 TIFIA Toll Loan Agreement, which is being entered into as indebtedness under, pursuant to and in accordance with the HRTAC Act, and to amend certain terms of the Indenture with the consent of the TIFIA Lender;

NOW, THEREFORE, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01. Supplemental Indenture.

(a) This Second 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 Second 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 Second Supplemental Indenture.

(b) Additional Definitions. Unless the context otherwise requires, the following terms shall, for all purposes of this Second Supplemental Indenture, have the following meanings:

“2025 TIFIA Loan Reserve Account” means the 2025 TIFIA Loan Reserve Account established pursuant to Section 5.03 of this Second Supplemental Indenture within the TIFIA Loan Reserve Account.

“2025 TIFIA Loan Reserve Account Reserve Requirement” has the meaning set forth in the 2025 TIFIA Toll Loan Agreement for the term “TIFIA 2025 Debt Service Reserve Required Balance.”

“Fifth Supplemental HRTF Indenture” means that certain Fifth Supplemental Series Indenture of Trust, dated as of September 1, 2021, as amended by that certain First Amendatory Supplement to Fifth Supplemental Series Indenture of Trust, dated as of _____ 1, 2025, which supplements and amends the HRTF Indenture.

“Final Maturity Date” has the meaning set forth in the 2025 TIFIA Toll Loan Agreement.

“First Supplemental Indenture” means the First Supplemental Indenture, dated as of September 1, 2021, between the Commission and the Trustee, supplementing the Master Indenture.

“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.

“Level Payment Commencement Date (Final)” shall have the meaning set forth in the 2025 TIFIA Toll Loan Agreement.

“Level Payment Commencement Date (Initial)” shall have the meaning set forth in the 2025 TIFIA Toll Loan Agreement.

“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 2025 TIFIA Toll Loan Agreement), which shall occur on July 1 and January 1 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.

“Second Supplemental Indenture” means this Second Supplemental Indenture, dated as of _____ 1, 2025, between the Commission and the Trustee, supplementing and amending the Master Indenture.

“Substantial Completion Date” shall have the meaning set forth in the 2025 TIFIA Toll Loan Agreement.

“TIFIA Debt Service Payment Commencement Date” means [July 1, 2031].

“TIFIA Loan Prepayment Account” means the TIFIA Loan Prepayment Account established within the Senior Lien Obligations Fund pursuant to Section 5.02 of the Master Indenture.

“TIFIA Series 2021 Toll Revenue Bond” means the Hampton Roads Transportation Accountability Commission Senior Lien Revenue Bond, TIFIA Series 2021, issued pursuant to the First Supplemental Indenture to the TIFIA Lender in the maximum principal amount of \$345,000,000.

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 I.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this Second 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 IV 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

AMENDMENTS TO THE MASTER INDENTURE

Section 3.01. Amendment and Restatement of Certain Definitions in the Master Indenture. The following definitions in Section 1.01 of the Master Indenture are amended and restated to provide as follows:

[To be updated with definitional amendments conforming to changes from the 2021 Toll TIFIA Loan Agreement to the 2025 TIFIA Toll Loan Agreement.]

Section 3.02. Amendment and Restatement of Section 6.04 of the Master Indenture. Section 6.04 of the Master Indenture is amended and restated to provide as follows:

Section 6.04 Annual Operating Budget. The Commission covenants that, for each Fiscal Year, beginning with the Fiscal Year in which the Commission owns or operates all or any part of a Toll Road, 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 and, for so long as the TIFIA Loan remains outstanding, the TIFIA Lender (A) no later than thirty (30) days prior to the commencement of each Fiscal Year, an operating plan and a preliminary budget for the Toll Roads System 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 for the Toll Roads System (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 3.03. Amendments to First Supplemental Indenture. For the avoidance of doubt, to the extent any amendments to the Indenture or other provisions set forth herein conflict with any provision of the First Supplemental Indenture, such provisions set forth herein shall control. The parties agree that except to the extent expressly modified herein, all of the other terms, covenants, and conditions of the First Supplemental Indenture shall remain in full force and effect.

ARTICLE IV **AUTHORIZATION OF THE TIFIA BOND**

Section 4.01. Authorization; Principal Amount, Designation and Series. The Commission hereby approves the terms and provisions of the 2025 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 2025 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 Revenue Bonds, Senior Lien Revenue Bond – TIFIA Series 2025."

Section 4.02. Priority and Lien. The principal and interest payment obligations pursuant to the 2025 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 2025 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 2025 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 4.03. Purpose. The TIFIA Bond is issued for the purpose of financing the Project.

Section 4.04. 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 A, which form is hereby approved and adopted as the form of the TIFIA Bond and as the form of the certificate of authentication.

Section 4.05. 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 2025 TIFIA Toll Loan Agreement. The Commission shall copy the Trustee on each request to the TIFIA Lender for a disbursement under the 2025 TIFIA Toll Loan Agreement, provide a copy to the Trustee of any update to Exhibit G to the 2025 TIFIA Toll Loan Agreement and any amendments to the 2025 TIFIA Toll Loan Agreement, and provide notice to the Trustee of the Substantial Completion Date, the Level Payment Commencement Date (Initial) and the Level Payment Commencement Date (Final) under the 2025 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 2025 TIFIA Toll Loan Agreement. The TIFIA Bond 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 2025 TIFIA Toll Loan Agreement and the form of TIFIA Bond set forth herein. 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. The Commission shall also comply with and direct the Trustee in accordance with the requirements as set forth in the 2025 TIFIA Toll Loan Agreement, including Section 9 thereof.

(b) The TIFIA Loan as evidenced by the TIFIA Bond shall mature no later than the Final Maturity Date (as defined in the 2025 TIFIA Toll Loan Agreement), and shall bear interest at the rate of _____ percent (____)% per annum (or the Default Rate (as defined in the 2025 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 2025 TIFIA Toll Loan Agreement.

(c) [For purposes of calculations of Annual Debt Service, unless otherwise specifically set forth _____, for so long as the 2025 TIFIA Toll Loan Agreement remains in effect, the definition of “Annual Debt Service” in the 2025 TIFIA Loan Agreement will apply throughout the Indenture.]

(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 2025 TIFIA Toll Loan Agreement, the TIFIA Lender may sell the TIFIA Bond but may not change the terms and conditions of the 2025

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 confirmation that the Commission has consented to any amendments to the 2025 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 2025 TIFIA Toll Loan Agreement, and hereby instructs the Trustee to make the payments when due to the TIFIA Lender in accordance with this Section 4.05 and Section 5.01. The Trustee shall keep records of all payments made by the Commission to the Trustee and by the Trustee with respect to the TIFIA Bond, and of all exchanges and replacements of TIFIA Bond, as provided in the Indenture.

Section 4.06. 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 a minimum principal amount of \$1,000,000), 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 Bond is subject to mandatory sinking fund redemption prior to maturity by HRTAC in accordance with Section 9(c) of the 2025 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 with respect to TIFIA Mandatory Debt Service set forth in Exhibit G to the 2025 TIFIA Toll Loan Agreement (as it may be modified from time to time in accordance with the 2025 TIFIA Toll Loan Agreement and Section 5.04 below), and any redemption or other action that results in a revision to the principal amortization schedule set forth in Exhibit G to the 2025 TIFIA Toll Loan Agreement will automatically result in a revision to the mandatory sinking fund redemption, and vice versa.

(c) Extraordinary Mandatory Redemption.

(1) The TIFIA Bond is subject to extraordinary mandatory redemption prior to maturity, in part and without penalty or premium, under Section 10(a)(i) of the 2025 TIFIA Toll Loan Agreement, on each applicable March 1 or September 1 (or, if any such date is not a Business Day, on the next Business Day following such date), in an amount equal to a pro rata portion (based on the relative outstanding principal amounts of the TIFIA Bond, the TIFIA Series 2021 Toll Revenue Bond, and any additional Obligations

that are Senior Lien Obligations) of any Excess Revenues, transferred into the TIFIA Prepayment Account; provided, that if no other Senior Lien Obligations are Outstanding, or to the extent the Commission is not required to make a prepayment of such other Senior Lien Obligations in the circumstances described above in this Section 4.06, in an amount equal to 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 (1).

(2) The TIFIA Bond is subject to extraordinary mandatory redemption prior to maturity, in part and without penalty or premium, under Section 10(a)(ii) of the 2025 TIFIA Toll Loan Agreement, on any date (A) in the amount allocated for prepayment of Obligations in the Insurance and Condemnation Proceeds Account pursuant to Section 5.04 of the Indenture, to the extent such amounts will also be used to prepay other Senior Lien Obligations, in the pro rata amount (based on relative outstanding principal amounts of the TIFIA Bond, the TIFIA Series 2021 Toll Revenue Bond, and any additional Obligations that are Senior Lien Obligations), and/or (B) any Loss Proceeds (as defined in the 2025 TIFIA Toll Loan Agreement) received by the Commission in respect of any portion of the [Express Lanes Initial Project or of the Express Lanes Future Project] and otherwise not allocated to repair, replacement or rehabilitation of the property affected by such casualty event or loss.

(3) The TIFIA Bond is subject to extraordinary mandatory redemption prior to maturity, in part and without penalty or premium, under Section 10(a)(iii) of the 2025 TIFIA Toll Loan Agreement on any date and concurrently with the optional redemption or mandatory redemption of Obligations, in an amount equal to the same percentage of the Outstanding TIFIA Bond that the principal amount of Obligations being redeemed or prepaid bears to the principal amount of Obligations of the same Series outstanding prior to the redemption or prepayment, in an amount equal to one hundred percent (100%) of the principal amount of the TIFIA Bond to be redeemed, as provided in Section 10(a) of the 2025 TIFIA Toll Loan Agreement, plus interest accrued to the date of redemption; provided, however, that the provisions of this Section 4.06(c) shall not apply to the payment of Obligations that are paid or to be paid with the proceeds of Obligations issued on the same lien level to refund Obligations.

(4) The TIFIA Bond is subject to extraordinary mandatory redemption prior to maturity, in part and without penalty or premium, under Section 10(a)(iv) of the 2025 TIFIA Toll Loan Agreement, on each applicable Semi-Annual Payment Date (as defined in the 2025 TIFIA Toll Loan Agreement) from and after any Semi-Annual Payment Date following the first anniversary of Substantial Completion as of which the Commission shall have failed to be in compliance with the Section 6.03 of the Master Indenture on four (4) consecutive Calculation Dates, in an amount equal to a pro rata portion (based on the relative outstanding principal amounts of the TIFIA Bond, the TIFIA Series 2021 Toll Revenue Bond, 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 Account (after taking into account any other transfers from the Unrestricted Account otherwise required to be made hereunder or under the Indenture on or with respect to the applicable Semi-Annual Payment Date), and (2) *second*, the Restricted Account (after taking into account any other transfers from the Restricted Account otherwise required to be made hereunder

or under the Indenture on or with respect to the applicable Semi-Annual Payment Date), and (B) the amount necessary to cause the Commission to regain compliance with Section 6.03(a); provided, that if no other Senior Lien Obligations are Outstanding, or to the extent the Commission 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 (iv). The Commission shall make such mandatory prepayments from amounts, if any, in the Unrestricted Account in the General Reserve Fund or from the Restricted Account of the General Reserve Fund. If the mandatory prepayment described above is insufficient to cause the Commission to regain compliance with Section 6.03(a) of the Master Indenture, the Commission shall thereafter make mandatory prepayments in the manner described above on each Semi-Annual Payment Date thereafter until the Commission is in compliance with such Section 6.03.

(d) Any redemption pursuant to this Section 4.06 shall not reduce any debt service payment otherwise due on the date of redemption.

(e) Notice of redemption under this Section 4.06 shall be as provided in Section 4.03 of the Master Indenture, subject to the provisions of Section 10 of the 2025 TIFIA Toll Loan Agreement.

(f) Partial Redemption of TIFIA Bond. Prior to the Level Payment Commencement Date (Final), any partial redemption of the TIFIA Bond under this Section 4.06 shall be applied as set forth in Section 10(c) of the 2025 TIFIA Toll Loan Agreement. Any partial redemption of the TIFIA Bond under this Section 4.06 shall be applied on a pro rata basis across remaining installments of TIFIA Debt Service after the Level Payment Commencement Date (Final). Upon any redemption of the TIFIA Bond in part only, Exhibit G to the 2025 TIFIA Toll Loan Agreement may be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the 2025 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 2025 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 Second Supplemental Indenture and, subject to the concurrence of the TIFIA Lender, to the amount of the TIFIA Debt Service Reserve Requirement.

The Trustee shall be notified by the Commission of the Level Payment Commencement Date (Initial) and the Level Payment Commencement Date (Final).

Section 4.07. Conditions To Delivery of TIFIA Bonds.

(a) The TIFIA Bond shall be executed and delivered as authorized by this Second Supplemental Indenture and the Indenture, including Article II thereof, upon execution and delivery of the 2025 TIFIA Toll Loan Agreement and satisfaction (or waiver in writing by the TIFIA Lender) of the conditions to effectiveness thereof.

(b) In addition, the Trustee shall authenticate and deliver the TIFIA Bond when there have been filed with it such items or showings as are required by Sections 3.01 and 3.02 of the Master Indenture.

Section 4.08. 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 2025 TIFIA Toll Loan Agreement.

ARTICLE V

HRTF AND DEBT SERVICE TRANSFERS; TIFIA LOAN RESERVE ACCOUNT

Section 5.01. 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. 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 the provisions of Article IV of the First Supplemental Indenture, this Article V, and the applicable provisions of the Fifth Supplemental HRTF Indenture.

The Trustee shall, solely in accordance with a Written Request of the Commission and this Section 5.01, deposit HRTF Transfers into the Revenue Stabilization Fund, the TIFIA Loan Reserve Account within the Senior Lien Obligations Reserve Fund, and the Major Maintenance and Renewal Fund as applicable in the amounts set forth in such written request. The Trustee shall have no duties or obligations relating to HRTF Transfers under the 2025 TIFIA Toll Loan Agreement, the HRTF Indenture or the Fifth Supplemental HRTF Indenture and shall be fully protected in conclusively relying on a Written Request of the Commission as to any HRTF Transfers.

(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 (as defined in the Fifth Supplemental HRTF Indenture) in any Fiscal Year;

(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; and

(iii) HRTF Transfers are subject to reimbursement to the Commission, pursuant to Section 5.15(b) of the Master Indenture and the Commission acknowledges that such reimbursement is also subject to Section 16(d) of the 2025 TIFIA Toll Loan Agreement.

[The following sections to be updated to conform to the 2025 TIFIA Toll Loan Agreement.]

(c) [As permitted by the definition of “Revenue Stabilization Fund Requirement” in the Master Indenture, the Revenue Stabilization Fund Requirement shall mean the aggregate amount equal to \$15,000,000, provided that until the TIFIA Debt Service Payment Commencement Date, the Revenue Stabilization Fund Requirement shall remain an amount equal to \$10,000,000].

(d) [Subject to the provisions of Section 5.01(b)(i) above, HRTF Transfers shall be applied as follows:

(1) Pursuant to the Fifth Supplemental HRTF Indenture with respect to HRTF Transfers for transfer and deposit to the Revenue Stabilization Fund, (A) the amount of \$10,000,000, by no later than the 2021 TIFIA Debt Service Payment Commencement Date (as defined in the Fifth Supplemental HRTF Indenture); and (B) by no later than the TIFIA Debt Service Payment Commencement Date (as defined in the 2025 TIFIA Toll Loan Agreement) the amount needed to bring the aggregate amount on deposit therein to the amount of \$15,000,000, or such other amount as the TIFIA Lender may approve in writing.

(2) Beginning on July 1 of the year following the year in which the first to occur of the 2021 TIFIA Debt Service Payment Commencement Date or the TIFIA Debt Service Payment Commencement Date occurs (or if such day is not a Business Day, then the Business Day succeeding such date) and continuing each July 15 thereafter (or if such day is not a Business Day, then the Business Day succeeding such date) through the maturity of the TIFIA Bond, the Trustee shall determine if a shortfall exists in the amount on deposit 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 the Fifth Supplemental HRTF Indenture on July 15 (or if such day is not a Business Day, then the Business Day succeeding such date) 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) during any single Fiscal Year. Notwithstanding the foregoing, until the TIFIA Debt Service Payment Commencement Date for the TIFIA Bond shall have occurred, the Toll Maximum Annual RSF Transfer Cap shall be deemed to be \$10,000,000 and the required amount in the Revenue Stabilization Fund as set forth above shall be \$10,000,000 rather than \$15,000,000, until the funding of the Revenue Stabilization Fund with respect to the commencement of debt service payments on the TIFIA Bond is required under the provisions of the Fifth Supplemental HRTF Indenture.]

(e) [Subject to the provisions of Section 5.01(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 HRTF Account of the Major Maintenance and Renewal Fund, on the later of the Substantial Completion Date with respect to the TIFIA Series 2021 Toll Revenue Bond, or the date of the first advance of the TIFIA Series 2021 Toll Revenue Bond, an amount equal to the greater of (i) \$5,000,000 (except that such amount shall be increased to \$10,000,000 on the later of the Substantial Completion Date with respect to the TIFIA Bond, or the date of the first advance of the TIFIA Bond), and (ii) 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).

(2) Beginning July 1 in the year following the year in which the initial deposit is made per paragraph (1) above and continuing each July 1 thereafter through the maturity of the TIFIA Bond, the Trustee shall determine if the Major Maintenance and Renewal Fund Required Amount is fully funded in the Major Maintenance and Renewal Fund or not after the application of the twelve month replenishment period provided in Clause Fourteenth 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 the shortfall and instruct the Commission to make a transfer of HRTF Funds pursuant to Section 6.4(b)(2) of the Fifth Supplemental HRTF Indenture on July 15 (or if such day is not a Business Day, then the Business Day succeeding such date) 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.]

(f) [HRTF Transfers for transfer and deposit to the 2025 TIFIA Loan Reserve Account pursuant the Fifth Supplemental HRTF Indenture, in an amount equal to the 2025 TIFIA Loan Reserve Account Reserve Requirement (\$____), such funding to occur by no later than the TIFIA Debt Service Payment Commencement Date.]

Section 5.02. Transfers to the Debt Service Fund; TIFIA Loan Prepayment Account.

(a) 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.

(b) 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 Debt Service Payment Commencement Date and on any date of prepayment pursuant to Section 10(a) of the 2025 TIFIA Toll Loan Agreement, 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 5.03. TIFIA Loan Reserve Account. Reference is hereby made to Section 5.02 of the Master Indenture pursuant to which the TIFIA Loan Reserve Account is established within the Senior Lien Obligations Reserve Fund, such account to be held by the Trustee. In accordance with Section 5.02 of the Master Indenture, there is hereby established and created and shall be maintained in trust by the Trustee a separate subaccount within the TIFIA Loan Reserve Account called the “2025 TIFIA Loan Reserve Account.”

[On or before the TIFIA Debt Service Payment Commencement Date, the Trustee shall deposit to the 2025 TIFIA Loan Reserve Account funds in the amount required such that an aggregate amount equal to the 2025 TIFIA Loan Reserve Account Reserve Requirement as set forth in a Certificate of the Commission is on deposit therein. The funds set aside and placed in the 2025 TIFIA Loan Reserve Account on account of the 2025 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, following the TIFIA Debt Service Payment Commencement Date, on any date of valuation of Permitted Investments credited to the 2025 TIFIA Loan Reserve Account pursuant to Section 5.26 of the Master Indenture, the amount on deposit in the 2025 TIFIA Loan Reserve Account exceeds the 2025 TIFIA Loan Reserve Account Reserve Requirement as of such date, the Trustee shall transfer such excess amount to the Toll Revenue Fund.]

Section 5.04. General Reserve Fund – Restricted Account.

(a) As permitted by Section 4.04 of the First Supplemental Indenture, the provisions relating to the Restricted Account in the General Reserve Fund shall apply to the TIFIA Bond as an additional Obligation issued under the Indenture to the TIFIA Lender.

(b) On and after the TIFIA Debt Service Payment Commencement Date, the Restricted Account in the General Reserve Fund will be subject to funding[, with respect to the TIFIA Bond,] in accordance with Clause “Sixteenth” of Section 5.03(b) of the Master Indenture and this Section 5.04.

(c) 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 any additional Obligations issued under the Indenture to the TIFIA Lender or any such Owner.

Section 5.05. 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 “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 VI

OTHER PROVISIONS

Section 6.01. Additional Tolled Lanes. So long as the TIFIA Bond is outstanding, the Commission shall not undertake any Additional Tolled Lanes or Toll System Network Project except in compliance with Section 16(g) of the 2025 TIFIA Toll Loan Agreement.

Section 6.02. 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 6.03. No Amendment without Consent of the TIFIA Lender. The Commission shall not enter into a Supplemental Indenture (other than this Second 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 any additional Obligations for which, under the provisions of the 2025 TIFIA Toll Loan Agreement and the Indenture, the consent of the TIFIA Lender is not required.

Section 6.04. Remedies Upon An Event of Default. In addition to any other remedy permitted under the Master Indenture, in case one or more Events of Default shall occur, then and in every such case the Trustee may, and if directed in writing by the Holders of not less than a majority of the Senior Lien Obligations then Outstanding (subject to Section 8.01(c) of the Master Indenture) shall, declare the unpaid principal amounts of the Outstanding Senior Lien Obligations 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 Indenture, all without presentment, demand, notice, protest or other requirements of any kind, all of which are hereby expressly waived.

ARTICLE VII

MISCELLANEOUS

Section 7.01. Severability. If any covenant, agreement or provision, or any portion thereof, contained in this Second Supplemental Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this Second 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 Second Supplemental Indenture shall remain valid.

Section 7.02. Parties Interested Herein. Nothing in this Second 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 Second Supplemental Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this Second 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 7.03. Headings Not Binding. The headings in this Second 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 Second Supplemental Indenture.

Section 7.04. Indenture to Remain in Effect. Save and except as supplemented by this Second Supplemental Indenture, the Indenture shall remain in full force and effect.

Section 7.05. Effective Date of Second Supplemental Indenture. This Second Supplemental Indenture shall take effect upon its execution and delivery.

Section 7.06. Execution in Counterparts. This Second 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 Second Supplemental Indenture by their officers thereunto duly authorized as of the day and year first written above.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Chair

**U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Trustee**

By: _____
Authorized Officer

**ACKNOWLEDGED AND CONSENTED TO,
AND WITH RESPECT TO THE
AMENDMENTS TO THE MASTER
INDENTURE SET FORTH HEREIN, AGREED
TO BY THE HOLDER OF ALL
OBLIGATIONS OUTSTANDING, BY:**

**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

EXHIBIT A

FORM OF TIFIA BOND

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

HRELN PROJECT

(TIFIA – 2025[_____])

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

TOLL REVENUE BONDS

SENIOR LIEN REVENUE BOND

TIFIA SERIES 2025

TIFIA BOND

Maximum Principal Amount: \$[_____] (excluding capitalized interest)

Effective Date: [____], 2025

Due: [The earlier of (a) the Semi-Annual Payment Date occurring on or immediately preceding the thirty-fifth (35th) anniversary of the Substantial Completion Date and (b) the fortieth (40th) anniversary of the Effective Date.]

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 (but solely from the Trust Estate hereinafter referred to) 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 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 [____], 2025 and under and pursuant to a Master Indenture dated as of September 1, 2021 (the *Master Indenture*), between the Borrower and U.S. Bank Trust Company, National Association, or its successor, as trustee (the *Trustee*), as supplemented by the First Supplemental Indenture dated as of September 1, 2021 (*First Supplement*) and the Second Supplemental Indenture dated as of [____], 2025 (the *Second Supplement*) and, together with the First Supplement and 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 Va. Code Section 33.2-1920.

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 Trust Estate, 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 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 TIFIA Bond except from such Trust Estate.

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), 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.

[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 TIFIA Bond to be dated the Effective Date set forth above.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Name: _____

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 TRUST COMPANY, NATIONAL
ASSOCIATION**

By: _____

Name: _____

Title: _____

[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)

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

**TIFIA LOAN AGREEMENT
(Toll Revenues)**

For Up to \$[310,194,800]

With

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY
COMMISSION**

For the

HAMPTON ROADS EXPRESS LANES NETWORK 2025 PROJECT

(TIFIA –2025[_____])

Dated as of [_____] , 2025

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SCHEDULE II – Construction Schedule

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EXHIBIT G – TIFIA Debt Service

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EXHIBIT I – Reserved

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EXHIBIT K – Form of Borrower’s Effective Date Officer’s Certificate

EXHIBIT L – Form of Certificate of Substantial Completion

EXHIBIT M – TIFIA Loan Reamortization Methodology

EXHIBIT N – Certification Regarding Lobbying

EXHIBIT O – Section 5.03(b) of the Indenture

EXHIBIT P – Form of Semi-Annual Coverage Certificate

EXHIBIT Q – Reporting Subawards and Executive Compensation

EXHIBIT R – Form of VDOT Direct Agreement

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 \$[310,194,800] (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 [____], 2025 (the “**Application**”); and

WHEREAS, on [____], 2025, 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 (each 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 (as defined herein) 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) 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 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 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 accrued but unpaid interest to the call date plus 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);

(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 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 and providing either for (i) the design, construction, testing, and start-up, of the Project, or (ii) goods or services constituting Tolling O&M Costs, including (in either clause (i) or (ii)) any master contract providing goods or services for multiple projects or assets including, as applicable, the Project or, with respect to Tolling O&M Costs, the Toll Roads System; provided, however, that a contract or agreement shall not constitute an Additional Project Contract if it (A) is entered into (1) in the ordinary course of business in connection with the furnishing of goods or the performance of services or (2) 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 the annual change in 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 Tolled Lanes” means any tolled lane, other than those lanes that are already being tolled or constructed as part of the Toll Roads System, 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.

“Additional Toll Roads System Cost Payment Fund” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“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) the amounts, if any, required to make up shortfalls in any Reserve Fund (other than the Tolling O&M Reserve Fund); provided, that:

(A) when calculating the All-in Cost Coverage Ratio for purposes of any prospective calculation of the Rate Coverage Test and the Specified Funding Conditions (but not for purposes of any Additional Obligations), the projected balances in the Restricted Account and the Unrestricted Account that, in each case, are not needed to supplement a higher priority Fund or Account and are not intended or expected to be transferred to the Additional Toll Roads System Cost Payment Fund (or any Account therein), the VDOT Repayment Fund, or the HRTF Repayment Fund as of any 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, (1) Toll Revenues shall be limited to those revenues described in clauses (a) and (b) of the definition thereof and (2) the amount of the Revenue Stabilization Fund Requirement may be added to Net Revenues for such applicable Calculation Period;

(D) in calculating Net Revenue for any prospective Calculation Period, the Borrower and/or the Traffic Consultant may take into account (1) amounts projected to be received from any adopted toll rate 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 (2) any Additional Tolled Lanes or Toll System Network Project that has been designated by the Borrower as to be included within the definition of the Toll Roads System and for which the Borrower has satisfied each of the conditions and requirements set forth in Section 16(g) (*Additional Tolled Lanes; Toll System Network Project*); and

(E) when calculating the All-in Cost Coverage Ratio for any purpose, 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 TIFIA Loan.

“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 defined in the Indenture), 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;

(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; and

(g) if any of the Obligations are Short-Term/Put Obligation, 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, that while any Obligation in the form of a TIFIA Loan is Outstanding, if a series of 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.

“Annual Operating Budget” means the budget of revenues and expenses with respect to the Toll Roads System prepared by the Borrower and approved by the Borrower’s board of commissioners for each Borrower Fiscal Year and delivered pursuant to Section 6.04 of the Indenture.

“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.

“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, as applicable, the Express Lanes Initial Project or the Express Lanes Future Project (or as are otherwise covered by the definition of Applicable Revolving Account Costs under the MTA), such costs to be paid by the Borrower to VDOT from Revenues under the provisions of, and as defined in, the Master Tolling Agreement and subject to the terms hereof.

“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 1951-1960 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 related to the Project, forecasting revenues and expenditures of the HRTF and the Toll Roads System for time periods through the Final Maturity Date, including tabs for Toll Revenues and Tolling O&M Costs, and based upon assumptions and a 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 State 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 Substantial Completion 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.

“Congress” has the meaning provided in the recitals hereto.

“Construction Contractors” means each party (other than VDOT) to a Construction-Related Contract (and each member of any design-build consortium party to any Construction-Related Contract) and each Tolling Services Provider.

“Construction Period” means the period from the Effective Date through the Substantial Completion Date.

“Construction-Related Contracts” means, collectively, (a) with respect to I-64/I-464 Interchange Improvements, that certain 2016 Lump Sum Design-Build Agreement, dated January 17, 2024, by and between VDOT and Joseph B. Fay Co., that certain 2016 Division I Amendments to the Standard Specifications General Provisions for Design-Build Contracts, dated January 17, 2024, by and between VDOT and Joseph B. Fay Co. and that certain 2016 General Conditions Contract, dated January 17, 2024, by and between VDOT and Joseph B. Fay Co., (b) with respect to Segment 1A, that certain 2016 Lump Sum Design-Build Agreement, dated December 7, 2022, by and between VDOT and Allan Myers VA, Inc., that certain 2016 Division I Amendments to the Standard Specifications General Provisions for Design-Build Contracts, dated December 7, 2022, by and between VDOT and Allan Myers VA, Inc. and that certain 2016 General Conditions Contract, dated December 7, 2022, by and between VDOT and Allan Myers VA, Inc., (c) with respect to Segment 4A/B, that certain Bid Proposal and Contract (ID C0000119824C01), dated February 22, 2024, by and between VDOT and the Lane Construction Corporation, and (d) any construction contract entered into by VDOT from time to time with respect to Segment 1B.

“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)(iv)(B) (*Financial Plan*).

“Consulting Engineer” means, initially VDOT, which for the purposes of this definition shall include any independent engineer or engineering firm, or an affiliate thereof, procured by VDOT to assist in providing consulting engineering services, and at any time thereafter, if VDOT does not serve in such role, 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 Borrower or, with the approval of the Borrower, by VDOT subject to Section 22(d) (*Consulting Engineer*).

“Consulting Engineer’s Report” means that certain report with respect to the Project delivered by the Consulting Engineer following the Effective Date.

“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 2025 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 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.

“CTB” means the Commonwealth Transportation Board.

“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 July 1, 2031.

“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.

“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.

“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 the Uniform Electronic Transactions Act, Va. Code 59, 1-479 *et seq.*, 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.

“Excess Revenues” means, beginning on the September 1 or March 1, as applicable, following the occurrence of a Revenue Sharing Trigger Event and until such time as the Revenue Sharing Trigger Event ends, an amount as of each September 1 or March 1, as applicable, equal to 50% of the amount to be transferred to the Unrestricted Account of the General Reserve Fund on such date in accordance with the provisions of Section 5.16(a)(ii) of the Indenture. Excess Revenues shall only be determined based on amounts to be transferred into the Unrestricted Account of the General Reserve Fund from the Restricted Account and no amount previously on deposit in the Unrestricted Account shall constitute Excess Revenues.

“Executive Director” has the meaning provided in the preamble hereto.

“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 earlier of (a) the Semi-Annual Payment Date occurring on or immediately preceding the thirty-fifth (35th) anniversary of the Substantial Completion Date and (b) July 1, 2065.

“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*).

“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) any ISDA Master Agreement(s) and the 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 unwind or 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.

“HRBT Project” means the “Project”, as such term is defined in the HRBT Toll TIFIA Loan Agreement.

“HRBT Toll TIFIA Bond” means the Bond delivered by the Borrower in connection with the HRBT Toll TIFIA Loan Agreement.

“HRBT Toll TIFIA Loan” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth in the HRBT Toll TIFIA Loan Agreement and as evidenced by the Borrower’s issuance of the HRBT Toll TIFIA Bond.

“HRBT Toll TIFIA Loan Agreement” means that certain TIFIA Loan Agreement (Toll Revenues), dated as of September 21, 2021, between the TIFIA Lender and the Borrower, as amended by the Amendment to TIFIA Loan Agreement (Toll Revenues), dated as of February 2, 2024, and the Second Amendment to TIFIA Loan Agreement (Toll Revenues, dated as of June 1, 2025.

“HRBT Toll TIFIA Loan Documents” means the HRBT Toll TIFIA Loan Agreement, the HRBT Toll TIFIA Bond, and the TIFIA Supplemental Indenture (as defined in the HRBT Toll TIFIA Loan Agreement).

“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 Account” means the Account by that name within the Major Maintenance and Renewal Fund created pursuant to Section 5.02 of the Indenture.

“HRTF Fifth Supplemental Indenture” means that certain Fifth Series Indenture of Trust, dated as of September 1, 2021, between the Borrower and the HRTF Trustee, as amended by that certain First Amendatory Supplement to Fifth Supplemental Series Indenture of Trust, dated as of _____ 1, 2025, between the Borrower and the HRTF Trustee.

“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, and any supplemental indentures to the HRTF 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 Va. Code Section 58.1-638.H.2 and the additional wholesale motor vehicle sales tax revenues described in Va. Code Section 58.1-2295.A.2, together with any other funds that may be appropriated to the HRTF.

“HRTF Transfer” means any transfer of HRTF Revenues pursuant to the HRTF Fifth Supplemental Indenture for the purpose of funding deposits to the Revenue Stabilization, the TIFIA Loan Reserve Account, and the HRTF Account in the Major Maintenance and Renewal Fund, in each case as and to the extent required in this Agreement and in the HRBT Toll TIFIA Loan Agreement.

“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 September 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” has the meaning provided in Section 9(e) (*Level Payments*).

“Level Payment Commencement Date (Initial)” means the Semi-Annual Payment Date starting on January 1, 2056.

“Level Payment Commencement Date (Final)” means the Semi-Annual Payment Date starting on January 1, 2062.

“Level Payment Period” means the Level Payment Period (Initial) and the Level Payment Period (Final), as applicable.

“Level Payment Period (Initial)” means the period commencing on the Level Payment Commencement Date (Initial) and ending on July 1, 2061 (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).

“Level Payment Period (Final)” means the period commencing on the Level Payment Commencement Date (Final) 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, without duplication, (i) actual results and updated Net Revenue projections, plus (ii) amounts on deposit in the TIFIA Loan Reserve Account, the Restricted Account, and the Unrestricted Account; to (b) the aggregate outstanding principal amount of all Senior Lien Obligations (including Additional Obligations that are Senior 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 clauses (a) and (b) of the definition thereof, (ii) the actual balance in the Revenue Stabilization Fund may be added to Net Revenue for the current Calculation Period, and (iii) the amount of the Revenue Stabilization Fund Requirement may be added to Net Revenues for each future Calculation Period; provided, that:

(A) in calculating Net Revenue for any prospective Calculation Period, the Borrower and/or the Traffic Consultant may take into account amounts projected to be received from (1) any adopted toll rate 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 (2) any Additional Tolloed Lanes or Toll System Network Project that has been designated by the Borrower as to be included within the definition of the Toll Roads System and for which the Borrower has satisfied each of the conditions and requirements set forth in Section 16(g) (*Additional Tolloed Lanes; Toll System Network Project*); and

(B) when calculating the Loan Life Coverage Ratio for any purpose, 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 TIFIA Loan.

“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) (1) until the Debt Service Payment Commencement Date, \$5,000,000 and (2)

from and after the Debt Service Payment Commencement Date, \$10,000,000, 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 or the Toll Roads System, the Toll Revenues, or the Trust Estate, (b) the legality, validity or enforceability of any material provision of any Indenture Document, TIFIA Loan Document or Principal Project Contract, (c) 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, (d) the validity, enforceability or priority of the Liens provided under the Indenture Documents on the Trust Estate in favor of the Secured Parties or (e) 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 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 biennially 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.

“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 CTB, as amended by that certain letter agreement dated September 2, 2021, by and

between the Borrower and VDOT, and that certain letter agreement dated _____, 2025, by and between the Borrower and VDOT.

“**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 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 Tolling O&M 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 Revenues 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 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*).

“Parity Obligations” means obligations of the Borrower that are secured by the Trust Estate on a parity with the Senior Lien Bonds.

“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 Account” means the Account by that name within the Additional Toll Roads System Cost Payment Fund created pursuant to Section 5.02 of the Indenture.

“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) the TIFIA Loan;
- (b) the HRBT Toll TIFIA Loan; and
- (c) 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.

“Preliminary Costs” means any cost of a type that is properly chargeable to capital account (or would be so chargeable under general Federal income tax principles) of a preliminary

or “non-physical” nature, such as, without limitation, architectural, design, feasibility, engineering, surveying, soil testing, reimbursement bond issuance, and similar costs that are incurred prior to commencement of acquisition, construction, or rehabilitation of a project. Land or right of way acquisition, site preparation, and similar costs incident to commencement of construction shall not be considered Preliminary Costs.

“**Principal Project Contracts**” means the Construction-Related Contracts, the MTA, 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, which constitute part of the Toll Road System.

(a) The HREL Norfolk Segment 1A will repurpose I-64 in both directions from Tidewater Drive to Patrol Road in Norfolk. The three existing general purpose lanes and shoulders will be converted to one inside Part Time Shoulder Express Lane (PTSEL) and three general purpose lanes in both directions for a total of approximately 2 miles (“**Segment 1A**”);

(b) The HREL Norfolk Segment 1B will repurpose I-64 in both directions from I-264 to Tidewater Drive in Norfolk. The three existing general purpose lanes and shoulders will be converted to one inside Part Time Shoulder Express Lane (PTSEL) and three general purpose lanes in both directions for a total of approximately 7 miles (“**Segment 1B**”);

(c) The HREL Newport News Segment spans from 1.2 miles west of the Denbigh Boulevard overpass to east of LaSalle Avenue (exit 265) for a total length of approximately 13.5 miles. For 10.5 miles of the segment from just west of Jefferson Avenue (exit 255) to I-664 (exit 264), the existing HOV lane in each direction will be converted into an express lane, alongside the three general purpose lanes. For the last 1 mile of the segment between I-664 and LaSalle Avenue, one general purpose lane will be converted into an express lane in each direction, alongside two general purpose lanes (“**Segment 4A/B**”);

(d) The I-64/I-464 Interchange Exit 291 Ramp Improvements Project includes the widening of the I-64 east ramp at exit 291A to accommodate two lanes of travel, reconfiguring the ramp from I-64 east to I-464 north, and providing a new direct connection to Route 168 through the construction of a new flyover ramp bridge from I-64 east to I-464 south. Additionally, the roadway and existing I-464 south overpass bridge will be rehabilitated and modified to include two 12-foot travel lanes and two 12-foot shoulders at the overpass bridge and a 12-foot outside shoulder and 4-foot inside shoulder at the roadway approaches. (“**I-64/I-464 Interchange Improvements**”); and

(e) [] (“**Tolling Integration**”).

“**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 BANs” means the [●] to be issued on or about [●], in the not to exceed par amount of \$[●], the proceeds of which are anticipated to be applied to the payment of Eligible Project Costs.

“Project Construction Contracts” means the Construction-Related Contracts 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 June 15, 2030, unless otherwise agreed by the TIFIA Lender in writing.

“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 Account” means the Account by that name within the General Reserve Fund created pursuant to Section 5.02 of the Indenture.

“Revenue Sharing Trigger Event” means, as of any Calculation Date, if on such date (a) the amount on deposit in the Unrestricted Account (following any withdrawals from the Unrestricted Account to make up shortfalls under any applicable clause in Section 5.03(b) of the Indenture, as described in Section 5.16(b) of the Indenture, and following any deposit to the Unrestricted Account on such date, but prior to any deduction of the Revenue Sharing Amount) exceeds \$50,000,000 or will exceed \$50,000,000 following the deposit of any amounts available to be deposited to the Unrestricted Account as of such Calculation Date, and (b) neither the Borrower nor VDOT, on behalf of or pursuant to contract with the Borrower, is actively engaged in the development of any capital project program in the Hampton Regional Transportation Planning Organization’s most recently adopted long-range transportation plan that is projected to be funded in whole or in part with Toll Revenues.

“Revenue Stabilization Fund” means the Fund by that name created pursuant to Section 5.02 of the Indenture.

“Revenue Stabilization Fund Requirement” means, initially, an amount equal to \$10,000,000, and from and after the Debt Service Payment Commencement Date, an amount equal to \$[15,000,000], 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.

“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 564 eastward to the interchange of Interstate 64 and Interstate 264, that as of the date of execution and delivery of the 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.

“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, the TIFIA Bond, the HRBT Toll TIFIA Loan Agreement and the HRBT Toll 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) Annual Debt Service in respect of all Senior Lien Obligations for 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, (1) Toll Revenues shall be limited to those revenues described in clauses (a) and (b) of the definition thereof and (2) the amount of the Revenue Stabilization Fund Requirement may be added to Net Revenues for such applicable Calculation Period;

(C) in calculating Net Revenue for any prospective Calculation Period, the Borrower and/or the Traffic Consultant may take into account (1) amounts projected to be received from any adopted toll rate 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 (2) any Additional Tolled Lanes or Toll System Network Project that has been designated by the Borrower as to be included within the definition of the Toll Roads System and for which the Borrower has satisfied each of the conditions and requirements set forth in Section 16(g) (*Additional Tolled Lanes; Toll System Network Project*); and

(D) 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 TIFIA 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” means (a) for the TIFIA Loan, the TIFIA 2025 Debt Service Reserve Required Balance and (b) for any other Senior Lien Obligations, 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 such Senior Lien Obligations.

“Series 2024A HRTF Bonds” means those certain Senior Lien Revenue Bonds, Series 2024A, issued by the Borrower on October 22, 2024, pursuant to the HRTF Indenture.

“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.

“Short-Term/Put Obligation” means an 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 thereof 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 Borrower 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.

“Specified Funding Conditions” means the requirements set forth in Section 16(d) (*Specified Funding Conditions*).

“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 thereof) 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 2025 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 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(c) (*Payment of TIFIA Mandatory Debt Service*), Section 9(d) (*Payment of TIFIA Scheduled Debt Service*), and Section 9(e) (*Level Payments*) as applicable.

“**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 HRTF Fifth Supplemental Indenture to the HRTF Indenture, the VDOT Direct Agreement, the HRBT Toll TIFIA Loan Documents, 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, which shall include a separate subaccount for the TIFIA Loan in accordance with the TIFIA Supplemental 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 Second Supplemental Indenture, dated as of [____], 2025, 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 5.01 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. Toll Revenues do not include amounts derived from the HRTF pursuant to any HRTF Transfer or otherwise.

“Toll Revenues Account” means the Account by that name within the Major Maintenance and Renewal Fund created pursuant to Section 5.02 of the Indenture.

“Toll Roads System” means the Express Lanes Initial Project, any Express Lanes Future Project (as defined in the Indenture) that has been or may be undertaken (which, when added to the Express Lanes Initial Project, becomes part of the Express Lanes Network (as defined in the Indenture)), 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 Borrower 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 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 Toll Roads System.

“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 Toll Roads System, (ii) any compensation due to a Tolling Services Provider under any Tolling System Contract and (iii) 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.

“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 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) that certain Standard Contract for VDOT I-64 Express Lanes Toll System and Services, dated as of March 21, 2017, between the VDOT and TransCore, LP;

(b) that certain Standard Contract for VDOT I-64 Express Lanes Toll System and Services, dated as of June 17, 2021, between the VDOT and Conduent State and Local Solutions, Inc.;

(c) any contract entered into by VDOT and/or the Borrower and a third-party provider from time to time for the design, procurement, installation, administration, operation or maintenance of the Tolling Infrastructure and System; and

(d) [_____].

“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 or any Additional Obligations related to the Project; 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).

“Traffic and Revenue Study” means the HRTAC I-64 Express Lanes Comprehensive Traffic and Revenue Study for the Project, dated December 2023, 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 HRBT 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) the vicinity of the interchange of Interstate 64 and 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.

“True Interest Cost” means the rate necessary to discount the cumulative amounts payable on the respective Payment Dates in respect of Annual Debt Service to the original purchase price of the Senior Obligations or Parity Obligations (taking into account discounts, premiums and transaction costs) on the basis of semi-annual compounding of interest.

“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 Trust Company, 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.

“Unrestricted 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, substantially in the form of **Exhibit R** (*Form of VDOT Direct Agreement*).

“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 \$[310,194,800] (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, and approved by 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 (i) cumulative disbursements of the TIFIA Loan through any Borrower Fiscal Year shall not exceed the cumulative amounts reflected as of such date in **Exhibit B** (*Anticipated TIFIA Loan Disbursement Schedule*) as of the Effective Date; and (ii) 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(e), 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 appropriate FHWA Division Office, and the Servicer (if any) invoices and 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 all Eligible Project Costs Documentation to the TIFIA Lender, the FHWA Division Office, and the Servicer (if any) by no later than a date that is at least three (3) months prior to the requested date for the initial disbursement of the TIFIA Loan.”

(e) Each time the Borrower delivers Eligible Project Costs Documentation to the TIFIA Lender, the appropriate 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; and

(iv) 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 for the Project and to audit such other Eligible Project Costs paid by or on behalf of the Borrower. 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 [____] ([____]) 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. The Borrower shall not submit a Requisition that seeks reimbursement of any Eligible Project Costs for which the related Eligible Project Costs Documentation was not delivered to the TIFIA Lender 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 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 (Initial), 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(f) (*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 (Initial), 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(f) (*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 (Initial) 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 (Initial) to July 1, 2061. 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 (Initial) 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) Level Payments. On each Semi-Annual Payment Date occurring during the Level Payment Period (Initial) and Level Payment Period (Final), the Borrower shall make level payments of principal and interest (each a "**Level Payment**") on the TIFIA Loan, each of which payments shall be approximately equal in amount. The amount of the Level Payments during the Level Payment Period (Initial) shall be calculated in such manner that the Outstanding TIFIA Loan Balance as of the Level Payment Commencement Date (Initial) shall be reduced to [one hundred sixty-one million six hundred sixty thousand dollars] million dollars (\$[161,660,000.00]) as of the last Semi-Annual Payment Date of the Level Payment Period (Initial) (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 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). The amount of the Level Payments during the Level Payment Period (Final) shall be calculated in such manner that the Outstanding TIFIA Loan Balance as of the Level Payment Period Commencement Date (Final) 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 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 each of the Level Payment Period (Initial)

and the Level Payment Period (Final), 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 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 (Initial) or the Level Payment Period (Final) in addition to the Level Payments, such prepayments shall be applied to the remaining Outstanding TIFIA Loan Balance and the resulting Level Payments in the applicable Level Payment Period shall be recalculated as provided in Section 10(c) (*General Prepayment Instructions*) and reflected in a revised **Exhibit G**.

(f) Manner of Payment. Except to the extent otherwise expressly provided in Section 10(a) (*Mandatory Prepayments*), 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.

(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 \$[310,194,800] (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 applicable March 1 or September 1 (or, if any such date is not a Business Day, on the next Business Day following such 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 Excess Revenues, which the Borrower shall transfer into the TIFIA Prepayment Account; provided, that if no other Senior Lien Obligations are Outstanding, 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 (A) any Loss Proceeds allocated for prepayment of Obligations pursuant to Section 5.04 of the Indenture, to the extent such 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) and/or (B) any Loss Proceeds received by the Borrower in respect of any portion of the Toll Roads System and otherwise not allocated to repair, replacement or rehabilitation of the property affected by such casualty event or loss;

(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; and

(iv) on each applicable Semi-Annual Payment Date from and after any Semi-Annual Payment Date following the first (1st) 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, 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 Account (after taking into account any other transfers from the Unrestricted Account otherwise required to be made hereunder or under the Indenture on or with respect to the applicable Semi-Annual Payment Date) and (2) *second*, the Restricted Account (after taking into account any other transfers from the Restricted Account otherwise required to be made hereunder or under the Indenture on or with respect to the applicable 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 are Outstanding, 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 (iv). 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 as described in Section 3.06(c) of the TIFIA Supplemental Indenture (as applicable) 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 occurring prior to the Level Payment Commencement Date (Initial) shall be applied to reduce the Outstanding TIFIA Loan Balance as of the Level Payment Commencement Date (Initial). All such partial prepayments of principal occurring after the Level Payment Commencement Date (Initial) and prior to the Level Payment Commencement Date (Final) shall be applied to reduce the Outstanding TIFIA Loan Balance as of the Level Payment Commencement Date (Final). All such partial prepayments of principal occurring after the Level Payment Commencement Date (Final) shall be applied to reduce future payments of principal of the TIFIA Loan 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 each of this Agreement, the TIFIA Bond, the VDOT Direct Agreement and the TIFIA Supplemental Indenture, each in form and substance satisfactory to the TIFIA Lender, and VDOT shall have executed and delivered each of the deliverables required under the VDOT Direct Agreement, where applicable in substantially the form attached thereto.

(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 not previously delivered to the TIFIA Lender, 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 clause (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 (including those opinions set forth in Exhibit A to the VDOT Direct Agreement).

(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) 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), but without limiting the applicability or effect of Section 19(a)(iv) (*Misrepresentation Default*), the Borrower may rely on VDOT representations and warranties in the Direct Agreement as

well as 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 [____], 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 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.

(xiii) 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 and the HRBT Toll TIFIA Loan) before the Debt Service Payment Commencement Date, and (E) otherwise be in form and substance acceptable to the TIFIA Lender.

(xiv) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant to 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.

(xv) 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 documented 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.

(xvi) The TIFIA Lender shall have delivered its initial TIFIA Lender's Authorized Representative certificate.

(xvii) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Unique Entity Identifier number, and (C) registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management (www.SAM.gov).

(xviii) 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.

(xix) 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.

(xx) 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).

(xxi) 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 forty-nine percent (49%) 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 Total Project Costs.

(xxii) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Trustee in the form attached hereto as

(xxiii) 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 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*).

(ii) 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.

(iii) 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, or required to be delivered to, 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.

(iv) 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.

(v) 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.

(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 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).

(vii) 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.

(viii) 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.

(ix) The Borrower shall have delivered to the TIFIA Lender the Consulting Engineer's Report, in form and substance satisfactory to the TIFIA Lender.

(x) The Borrower shall have paid in full all invoices received from the TIFIA Lender (or from 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 documented 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.

(xiii) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the date of disbursement of the TIFIA Loan, 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 Total Project Costs.

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 (other than HRBT Toll TIFIA Loan). 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 the HRBT Toll TIFIA Loan and 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 on the Project 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. TIFIA Debt Service and all other payment obligations hereunder 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 and to pay other amounts due hereunder 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. The Borrower is in compliance with all of its insurance obligations under, and maintains, or causes to be maintained, at all times and with responsible insurers, all insurance as required to be maintained by the Borrower under, each of the Principal Project Contracts. To the best of Borrower’s knowledge and after due inquiry, VDOT is in compliance with all of its insurance obligations under, and maintains, or causes to be maintained, at all times and with responsible insurers, all insurance as required to be maintained by VDOT under, 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) the proceeds of the Series 2024A HRTF Bonds (including any earnings on Permitted Investments acquired with the proceeds thereof) allocated to the payment of Total Project Costs, (ii) HRTF Revenues that have either been

applied towards Total Project Costs or that are dedicated to the payment of Total Project Costs, (iii) the proceeds of Federal grants that have been committed to the payment of Total Project Costs, (iv) funds from VDOT that have either been applied towards Total Project Costs or that are dedicated to the payment of Total Project Costs, and (v) all funds that have been drawn or are undrawn but available under this Agreement, 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, but without limiting the applicability or effect of Section 19(a)(iv) (*Misrepresentation Default*), the Borrower may rely on VDOT representations and warranties in the Direct Agreement as well as 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 commissioners' 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 comply with its obligations under each Principal Project Contract to which it is a party and shall pursue all available remedies pursuant thereto. 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 the annual change in CPI), either individually or in the aggregate;

(D) Delayed Governmental Approvals: any failure by the Borrower, VDOT or another Principal Project Party 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 or such Principal Project Party'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, any other Related Document, any Additional Project Contract, or any Standard Project Agreement or other contract with a third party related to an Additional Tolled Lane or Toll System Network Project, in each case 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) VDOT Applicable Revolving Account Costs: each recalculation of the Applicable Revolving Account Costs, in the form of the officer's certificate delivered to the Trustee pursuant to Section 5.14 of the Indenture;

(O) MMRF HRTF Cumulative Transfer Cap Notifications: each recalculation of the MMRF HRTF Cumulative Transfer Cap pursuant to Section 5.06 of the Indenture and each action of the governing body of the Borrower that establishes a revised upper limit of the MMRF HRTF Cumulative Transfer Cap;

(P) Revenue Stabilization Fund Deposits and Withdrawals: each HRTF Transfer into the Revenue Stabilization Fund and each withdrawal from the Revenue Stabilization Fund (including a description of the amount and purpose of such withdrawal);

(Q) 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

(R) 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*).

(iii) The Borrower shall provide to the Trustee a certified copy of the complete and fully executed TIFIA Loan Agreement promptly following the delivery thereof to the Borrower. The Borrower shall provide to the Trustee certified copies of any amendments or modifications to this Agreement promptly (and in any event within three (3) Business Days) after the execution and delivery thereof.

(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), Section 15(f)(i)(K) (*VDOT Applicable Revolving Account Costs*), Section 15(f)(i)(K) (*MMRF HRTF Cumulative Transfer Cap Recalculations*) or Section 15(f)(i)(K) (*Revenue 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 [2026], 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 delay liquidated damages that it receives with respect to any Principal Project Contract or Additional Project Contract. The Borrower shall deposit into the Insurance and Condemnation Proceeds Account of the Project Fund all Other Recoveries and Damages and all liquidated damages (other than delay liquidated damages) that it receives; provided that if Other Recoveries and Damages in the form of damages received from a third party contractor pursuant to a terminated Principal Project Contract or Additional Project Contract will not be applied to pay Total Project Costs or costs for the Additional Tolled Lanes or Toll System Network Projects related to the applicable Additional Project Contracts, the Borrower shall cause such Other Recoveries and Damages to be deposited to the Toll Revenue Fund. 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 and such amounts will be paid to the Borrower and not set off against amounts otherwise payable to such Principal Project Party, the Borrower shall cause VDOT to transfer such liquidated damages and Other Recoveries and Damages allocable to the Borrower directly to the Trustee for deposit to the appropriate 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 funding for the TIFIA Loan Reserve Account pursuant to Section 15(k)(ii) (*Senior Lien Obligations Reserve Fund*) and, if applicable, Section 15(l)(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 2025 Debt Service Reserve Required Balance

by no later than the next Semi-Annual Payment Date, *first* from available Toll Revenues pursuant to Section 5.03(b) of the Indenture and *second* from amounts then available in the Unrestricted Account, *third* with respect to each July 1 Semi-Annual Payment Date only, from amounts 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 and TIFIA Scheduled Debt Service)), *fourth* from amounts then available in the Payment Account in the Additional Toll Roads System Cost Payment Fund, and *fifth* from amounts then available in the Restricted Account; provided, that the Borrower's failure to do so due to the unavailability of Toll Revenues, 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)(vi) (*Revenue Stabilization Fund*), or the unavailability of funds in the Unrestricted Account, the Payment Account in Additional Toll Roads System Cost Payment Fund or the Restricted Account shall not by itself constitute an Event of Default.

(ii) Senior Lien Obligations Reserve Fund. With respect to any Senior Lien Obligations (including the TIFIA Loan), the Borrower shall deposit (or shall cause the Trustee to 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 (or cause the Trustee to deposit) amounts equal to 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, *first* from available Toll Revenues pursuant to Section 5.03(b) of the Indenture and *second* from amounts then available in the Unrestricted Account, *third* with respect to each July 1 Semi-Annual Payment Date only, from amounts 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 and TIFIA Scheduled Debt Service)), *fourth* from amounts then available in the Payment Account in the Additional Toll Roads System Cost Payment Fund, and *fifth* from amounts then available in the Restricted Account; provided, that the Borrower's failure to do so due to the unavailability of Toll Revenues, 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)(vi) (*Revenue Stabilization Fund*), or the unavailability of funds in the Unrestricted Account, the Payment Account in the Additional Toll Roads System Cost Payment Fund or the Restricted Account shall not by itself constitute an Event of Default.

(iii) Second Lien Obligations Reserve Fund. The Borrower shall deposit (or cause the Trustee to 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 (or cause the Trustee to deposit) amounts equal to 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 shall not by itself constitute an Event of Default.

(iv) Tolling O&M Reserve Fund. At all times from and after the later to occur of the Substantial Completion Date or the date of the initial disbursement of TIFIA Loan proceeds hereunder, but in no event later than 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 amounts equal to 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, *first* from available Toll Revenues pursuant to Section 5.03(b) of the Indenture, *second* from amounts then available in the Unrestricted Account, *third* from amounts then available in the Payment Account in the Additional Toll Roads System Cost Payment Fund, and *fourth* from amounts then available in the Restricted Account; provided, that the Borrower's failure to do so due to the unavailability of Toll Revenues or the unavailability of funds in the Unrestricted Account, the Payment Account in the Additional Toll Roads System Cost Payment Fund, or the Restricted Account shall not by itself constitute an Event of Default. Any excess amounts in the Tolling O&M Reserve Fund shall be transferred to the Toll Revenue Fund.

(v) Major Maintenance and Renewal Fund.

(A) The Borrower shall provide 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 Account, *third* from the proceeds of HRTF Transfers (subject to application of the “Major M&R HRTF Cumulative Transfer Cap” (as defined in the Indenture)), *fourth* from amounts then available in the Payment Account in Additional Toll Roads System Cost Payment Fund and *fifth* from amounts then available in the Restricted Account; provided, that the Borrower’s failure to do so due to the unavailability of Toll Revenues, limits to HRTF Transfers due to the application of the Major M&R HRTF Cumulative Transfer Cap, or due to the unavailability of funds in the Unrestricted Account, the Additional Toll Roads System Cost Payment Fund, or the Restricted Account shall not by itself constitute an Event of Default.

(C) The Borrower may maintain a balance in the Major Maintenance and Renewal Fund that exceeds the then-current Major Maintenance and Renewal Fund Required Amount; provided, that no excess balance in the Major Maintenance and Renewal Fund shall be funded with Toll Revenues after December 31, 2033. The Borrower shall provide written notice to the TIFIA Lender prior to releasing such excess amount from the Major Maintenance and Renewal Fund, at which time the Borrower shall request the Trustee to release funds in the amount of such excess solely from the Toll Revenues Account and direct the Trustee to deposit such excess amounts into the Restricted Account.

(vi) Revenue Stabilization Fund.

(A) The Borrower shall provide funding for the Revenue Stabilization Fund pursuant to Section 15(l)(iii) (*HRTF Revenues*) and 15(l)(iv) (*HRTF Transfers*).

(B) Amounts in the Revenue Stabilization Fund shall be available to ensure the timely payment or deposit of, as applicable, (1) TIFIA Mandatory Debt Service, (2) debt service with respect to all other Senior Lien Obligations, (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)), and (4) with respect to each July 1 Semi-Annual Payment Date only, the amount (if any) needed to cause each account in the Senior Lien Obligations Reserve Fund to hold the respective Senior Lien Obligations Reserve Requirement (after the payment of debt service then due with respect to Senior Lien Obligations (including TIFIA Mandatory Debt Service and TIFIA Scheduled 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 Account of amounts then available in such Account.

(vii) General Reserve Fund.

(A) The Borrower shall use amounts on deposit in the Unrestricted Account and the Restricted Account, in that order (subject to use of amounts in other Funds or Accounts, as applicable), to make up shortfalls in higher priority deposits in the cash flow waterfall set forth in section 5.03(b) of the Indenture. The Borrower shall utilize all amounts on deposit in the Unrestricted Account and the Restricted 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) (*Specified Funding Conditions*), the Borrower shall deposit amounts into the Unrestricted Account only after satisfying each of the Specified Funding Conditions as of the Calculation Date immediately preceding the date of any such deposit.

(viii) TIFIA Loan Prepayment Account. The Borrower shall use amounts in the TIFIA Loan Prepayment Account solely to make mandatory prepayments pursuant to Section 10(a) (*Mandatory Prepayments*). The Borrower shall cause the Trustee to transfer any Excess Revenues to the TIFIA Loan Prepayment Account on each applicable date, as specified in Section 10(a) (*Mandatory Prepayments*).

(ix) Additional Toll Roads System Cost Payment Fund.

(A) The Borrower may deposit amounts to the Additional Toll Roads System Cost Payment Fund if (1) the Borrower has satisfied each of the Specified Funding Conditions with respect to the Calculation Date immediately preceding the date of such deposit and (2) if the Borrower at such time has Additional Tolled Lane or Toll System Network Project in development or under construction that is included in the Borrower's then-applicable long range plan of finance.

(B) Within the Additional Toll Roads System Cost Payment Fund, the Borrower may establish the Payment Account and may transfer amounts on deposit in the Additional Toll Roads System Cost Payment Fund into the Payment Account, subject to the Borrower first providing to the TIFIA Lender (1) a fully executed and complete copy of the Standard Project Agreement or agreement with a third party contractor pursuant to which the Borrower has incurred such costs (and any amendments or supplements thereto) and (2) a certificate from Borrower's Authorized Representative setting forth the expected type and amount of expenditures to be paid pursuant to such Standard Project Agreement or other agreement.

(C) In addition to the requirements set forth in clauses (A) and (B) above, the Borrower may withdraw amounts from the Construction Account to pay for the acquisition of right of way or for construction costs or other costs for work of a physical nature (i.e., other than preliminary engineering, environmental reviews and permitting) with respect to an Additional Tolled Lane or Toll System

Network Project only upon satisfaction of each of the following additional conditions:

(1) the Borrower has delivered a complete, correct and fully executed version of the Standard Project Agreement or agreement with a third party contractor pursuant to which the Borrower has become committed to contribute the amounts proposed to be withdrawn from the Construction Account for such acquisition of right of way, construction costs, or other work of a physical nature (and any amendments or supplements thereto);

(2) the Borrower has provided evidence satisfactory to the TIFIA Lender that the Borrower has satisfied each of the requirements for such Additional Tolled Lane(s) or Toll System Network Project set forth in Section 16(g) (*Negative Covenants – Additional Tolled Lanes; Toll System Network Project*); and

(3) 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 such Additional Tolled Lane(s) or the Toll System Network Project, as applicable, sets forth the amount the Borrower proposes to withdraw from the Construction Account with respect to such Additional Tolled Lane(s) or Toll System Network Project, and provides an accounting of what costs related to such Additional Tolled Lane(s) or Toll System Network Project will be paid from amounts on deposit in the Construction Account and the approximate dates for such payments.

The Borrower shall use amounts withdrawn from the Construction Account solely to pay for costs described in the above-referenced certificate of the Borrower relating to such withdrawal.

(D) Amounts in the Additional Toll Roads System Cost Payment Fund and not yet deposited to the Construction Account shall be available to make up shortfalls in required deposits into the Senior Lien Obligations Fund, the Senior Lien Obligations Reserve Fund, and the Major Maintenance Reserve Fund, after taking into account transfers from the Unrestricted Account, the Revenue Stabilization Fund, and the proceeds of any HRTF Transfers, as applicable.

(x) VDOT Repayment Fund. The Borrower may deposit amounts to the VDOT Repayment Fund only after it has satisfied each of the Specified Funding Conditions as of the Calculation Date immediately preceding the date of such deposit. The Borrower shall deposit into, and withdraw from, the VDOT Repayment Fund only such amounts as the Borrower is obligated to reimburse to VDOT pursuant to and in accordance with Section 5.14 of the Indenture for amounts previously contributed by VDOT 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.). The aggregate amount withdrawn from the VDOT Repayment Account shall at no time exceed the then-current total and unpaid Applicable Revolving Account Costs that have been advanced by VDOT to (or on behalf of) the Borrower, as specified in the most recent officer's certificate provided by the Borrower to the TIFIA Lender pursuant to Section 15(f)(i)(N) (*Affirmative Covenants – Notices*).

(xi) HRTF Repayment Fund. The Borrower may deposit amounts to the HRTF Repayment Fund only after it has satisfied each of the Specified Funding Conditions as of the Calculation Date immediately preceding the date of such deposit and reimbursed to VDOT from amounts in the VDOT Repayment Fund all amounts payable to VDOT pursuant to the any Principal Project Contract. 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; provided, that at any time that the Borrower pays Excess Revenues to the TIFIA Lender, the Borrower shall be entitled to cause the Trustee to deposit an equal amount as was paid to the TIFIA Lender as Excess Revenues into the HRTF Repayment Fund and the Borrower shall be entitled to transfer such amount to the HRTF without regard to the limitation on such transfers described above. The Borrower may withdraw amounts from the HRTF Repayment Fund solely to reimburse HRTAC in respect of prior HRTF Transfers made and actually used to meet a funding requirement pursuant to Section 5.03(b) or Section 5.06 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 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 defined in the Indenture as of the Effective Date) and shall comply with the requirements of the Indenture with respect to any such Permitted Investments.

(l) HRTF Transfers.

(i) TIFIA 2025 Debt Service Reserve Required Balance. By no later than the Debt Service Payment Commencement Date, if deposits to the TIFIA Loan Reserve Account pursuant to Section 15(k)(ii) (*Senior Lien Obligations Fund*) have not

amounted to the TIFIA 2025 Debt Service Reserve Required Balance (measured as of 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 sufficient to cause the amount in the TIFIA Loan Reserve Account to be the TIFIA 2025 Debt Service Reserve Required Balance, measured as of the Debt Service Payment Commencement Date. The Borrower's failure to deposit the TIFIA 2025 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) Major Maintenance and Renewal Fund Required Amount; MMRF HRTF Cumulative Transfer Cap.

(A) By no later than the later of (1) the Substantial Completion Date and (2) 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 sufficient to cause the amount in the Major Maintenance and Renewal Fund to be 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*).

(B) If Toll Revenues are at any time insufficient to cause the Major Maintenance and Renewal Fund to hold the Major Maintenance and Renewal Fund Required Amount, the Borrower shall make an HRTF Transfer into the Major Maintenance and Renewal Fund on or prior to 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; 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*).

(C) if at any time the MMRF HRTF Cumulative Transfer Cap, as estimated biennially by the Consulting Engineer, would exceed the upper limit for the MMRF HRTF Cumulative Transfer Cap as authorized by the Borrower's governing body, the Borrower shall cause its governing body to authorize an increase to the upper limit of the MMRF HRTF Cumulative Transfer Cap that is no lower than the MMRF HRTF Cumulative Transfer Cap most recently estimated by the Consulting Engineer. The Borrower's failure to deliver written evidence satisfactory to the TIFIA Lender of the authorization of such increase to the MMRF

HRTF Cumulative Transfer Cap by its governing body within one hundred twenty (120) days of the date of any estimate of the MMRF HRTF Cumulative Transfer Cap by the Consulting Engineer that would exceed the then-current upper limit to the MMRF HRTF Cumulative Transfer Cap approved by the Borrower's governing body shall be an Event of Default pursuant to Section 19(a)(xvi) (*Events of Default - Funding of Required Amounts*).

(iii) Revenue Stabilization Fund Requirement

(A) [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*).

(B) The Borrower shall make an HRTF Transfer into the Revenue Stabilization Fund on or prior to 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 Revenue in each Calculation Period following the Transition Date 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 of 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 Revenue 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 Revenue 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)(iv) (*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 provide that any amount payable to the provider of such Credit Support Instrument that exceeds the debt service otherwise normally payable in respect of the Obligations to which such Credit Support Instrument relate (including any excess principal, interest and fees) shall be payable solely at level Fifteenth in Section 5.03(b) of the Indenture.

(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) Loss Proceeds. To the extent applicable, the Borrower shall apply Loss Proceeds received by the Borrower 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 listed in such registration, in each case until the earlier of the first (1st) anniversary of the Substantial Completion Date and the date on which the TIFIA Loan has been disbursed in full.

(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.

(x) Buy America.

[(i) The Borrower agrees that steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. § 313, as implemented by FHWA. The Borrower acknowledges that this Agreement is neither a waiver of 23 U.S.C. § 313(a) nor a finding under 23 U.S.C. § 313(b).

(ii) The Borrower agrees that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, and FHWA. The Borrower acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).]

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 and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, 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 that satisfy each of the applicable requirements, 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) The Borrower shall not issue Short-Term/Put Obligation without the prior written consent of the TIFIA Lender. In connection with any approved Short-Term/Put Obligation, the Borrower must maintain a Credit Support Instrument that will pay any amounts payable by the Borrower in respect of such Short-Term/Put Obligation.

(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) Specified Funding Conditions. The Borrower shall not transfer (or cause or permit the Trustee to transfer) any funds from the Restricted Account to the Unrestricted Account, the VDOT Repayment Fund, the HRTF Repayment Fund, or the Additional Toll Roads System Cost Payment Fund unless, in each case, the Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative (including calculations of the applicable coverage ratios in reasonable detail) demonstrating that each of the following conditions (the "**Specified Funding Conditions**") was satisfied as of the most recent preceding Calculation Date (such certificate to be delivered no later than thirty (30) days after such Calculation Date):

(i) each Reserve Fund is fully funded to the applicable required amount;

(ii) no Default has occurred and is continuing and no Event of Default has occurred and not been waived in writing by the TIFIA Lender;

(iii) all TIFIA Mandatory Debt Service, all TIFIA Scheduled Debt Service, and all principal and interest accrued in respect of all other Obligations for all Payment Dates through such Calculation Date shall have been paid in full (including any amounts remaining unpaid from any prior period);

(iv) the amount on deposit in the Restricted Account is at least equal to \$[20,000,000] and will be at least equal to \$[20,000,000] following any withdrawal therefrom related to a deposit described above; and

(v) the Borrower shall have delivered to the TIFIA Lender an executed Semi-Annual Coverage Certificate accompanied by a report, letter or certificate of the Traffic Consultant as to the projection of Net Revenue, demonstrating that:

(A) the Senior Debt Service Coverage Ratio (1) for the Calculation Period 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;

(B) the All-in Cost Coverage Ratio (1) for the Calculation Period 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

(C) 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;

Any reimbursement to VDOT or the Borrower (in respect of HRTF Transfers) or transfer of amounts to any Fund or Account shall be made after satisfaction of each of the Specified Funding Conditions as of the Calculation Date immediately preceding the date of such deposit.

(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: (i) exceed \$2,500,000, inflated annually by the annual change in CPI, in any Borrower Fiscal Year, and (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 (or, with respect to an Additional

Project Contract, would exceed the existing amounts for such line item or group of line items for any Borrower Fiscal Year by more than \$2,500,000).

(iii) Actions under Existing Principal Project Contracts.

(A) 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.

(B) 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.

(C) 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.

(D) [Other TBD]

(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 Revenue 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 or incur any costs other than Preliminary Costs 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 an investment grade report from (and certified by) the Traffic Consultant, which Revised Financial Model (taking into account the results and assumptions of such report from the Traffic Consultant) demonstrates to the TIFIA Lender's reasonable satisfaction that Net Revenues from the Toll Roads System, 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, (ii) a plan of finance for such Additional Tolled Lanes or Toll System Network Project, and (iii) a certificate from Borrower's Authorized Representative, in form and substance reasonably satisfactory to the TIFIA Lender, demonstrating that the development and construction of such Additional Tolled Lanes or Toll System Network Project have satisfied all of the applicable requirements under the MTA or under any other

agreement entered into by the Borrower, VDOT and/or CTB with respect to such Additional Tolled Lane or such Toll System Network Project. 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 Toll Roads System, 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.

(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 this 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 “**Indemnatee**”) against, and hold each Indemnatee 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 Indemnatee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnatee 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 Indemnatee, 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 Indemnatee. In case any action or proceeding is brought against an Indemnatee by reason of any claim with respect to which such Indemnatee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnatee 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 Indemnatee. Any Indemnatee 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 Indemnatee 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 Indemnatee. 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 Indemnatee 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 Indemnatee is entitled to indemnification hereunder. All amounts due to any Indemnatee 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 an Event of Default hereunder if the amount on deposit in the Senior Lien Obligations Interest Account or the Senior Lien Obligations Principal Account within the Senior 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 or VDOT shall fail to observe or perform any covenant, agreement or obligation of the Borrower or VDOT 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 to which it is a party (other than in the case of any Payment Default, any Development Default, or any Event of Default addressed in Section 19(a)(xvi) (*Funding of Required Amounts*)), 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 or VDOT, as applicable, shall commence actions reasonably designed to cure such failure (it being understood that written notice from the Borrower to VDOT demanding that VDOT cure any breach by VDOT under the VDOT Direct Agreement shall be considered the commencement of such actions) 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 or VDOT made in or delivered pursuant to the TIFIA Loan Documents to which it is a party (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 19(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*) or Section 4.1(n) (*OFAC; Anti-Corruption Laws*) of the VDOT Direct Agreement;

(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 or VDOT, as applicable, within thirty (30) days from the date on which the Borrower or VDOT, as applicable, first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower (or VDOT, if the applicable misrepresentation is in respect of VDOT) 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)(viii) 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 the annual change in 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 or VDOT 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 a material portion of the Toll Roads System that has entered into tolling operations 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 HRTF Account in 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 subject to clause (D) below, 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) In any event where the MMRF HRTF Cumulative Transfer Cap, as estimated by the Consulting Engineer, would exceed the upper limit to the MMRF HRTF Cumulative Transfer Cap authorized by the Borrower's governing body, the Borrower shall fail to deliver written evidence satisfactory to the TIFIA Lender, within one hundred twenty (120) days of the date of such estimate of the MMRF HRTF Cumulative Transfer Cap by the Consulting Engineer, that the Borrower's governing body has increased the upper limit to the MMRF HRTF Cumulative Transfer Cap to an amount equal to or greater than the updated MMRF HRTF Cumulative Transfer Cap estimated by the Consulting Engineer.

(E) Except as described in clauses (A) – (D) 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 Toll Roads System Cost 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 Trust Estate 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 (to the extent applicable), 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 the 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 2026 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 an updated 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 satisfy FHWA's Major Project Financial Plan requirements, as amended from time to time, and, where applicable, shall be prepared in accordance with GASB.

(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 Fourteenth 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 Tolling O&M 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 Toll Roads System 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. By no later than thirty (30) 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 next 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 ninety (90) 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

(A) 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) Quarterly Construction Progress Report. On or before the last Business Day of any calendar quarter during the Construction Period, a report executed by a Borrower's Authorized Representative that:

(A) includes a copy of each monthly report during the quarterly period 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 quarter 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, funds available through any TIFIA Loan then in effect, 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. If requested in writing by the TIFIA Lender (in circumstances where the Borrower does not already have a designated Consulting Engineer), the Borrower shall hire and retain a Consulting Engineer for so long as required by the TIFIA Lender. The Borrower may designate or replace the Consulting Engineer; provided, that the TIFIA Lender shall have the right to object to any such Consulting Engineer (and the Borrower shall not retain any proposed Consulting Engineer if the TIFIA Lender has objected in writing to such proposed Consulting Engineer). The Borrower shall provide the TIFIA Lender with fifteen (15) Business Days' advance written notice of any proposed replacement Consulting Engineer, together with supporting information concerning the qualifications of the proposed Consulting Engineer. The Borrower may designate the proposed Consulting Engineer unless the TIFIA Lender objects in writing within fifteen (15) Business Days following receipt of the Borrower's notice above. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed 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”) 2027 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 2027 calculation, the TIFIA Lender will use the FFY 2026 base amount of \$[_____], 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 and 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: _____

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(f) (*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

[to be inserted]

SCHEDULE II

CONSTRUCTION SCHEDULE

[updated construction schedule to be inserted]

SCHEDULE III

[RESERVED]

EXHIBIT A
FORM OF TIFIA BOND
HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION
HRELN PROJECT
(TIFIA – 2025[____])
HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION
TOLL REVENUE BONDS
SENIOR LIEN REVENUE BOND
TIFIA SERIES 2025
TIFIA BOND

Maximum Principal Amount: \$[310,194,800] (excluding capitalized interest)

Effective Date: [____], 2025

Due: [The earlier of (a) the Semi-Annual Payment Date occurring on or immediately preceding the thirty-fifth (35th) anniversary of the Substantial Completion Date and (b) the fortieth (40th) anniversary of the Effective Date.]

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 (but solely from the Trust Estate hereinafter referred to) 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 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 [____], 2025 and under and pursuant to a Master Indenture dated as of September 1, 2021 (the *Master Indenture*), between the Borrower and U.S. Bank Trust Company, National Association, or its successor, as trustee (the *Trustee*), as supplemented by the First Supplemental Indenture dated as of September 1, 2021 (*First Supplement*) and the Second Supplemental Indenture dated as of [____], 2025 (the *Second Supplement*) and, together with the First Supplement and 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 Va. Code Section 33.2-1920.

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 Trust Estate, 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 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 TIFIA Bond except from such Trust Estate.

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), 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.

[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 TIFIA Bond to be dated the Effective Date set forth above.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Name: _____

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 TRUST COMPANY, NATIONAL
ASSOCIATION

By: _____
Name:
Title:

[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)

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

<u>Borrower Fiscal Year</u>	<u>Amount</u>
20[___]	\$[_____]
20[___]	\$[_____]
<hr/>	
Total	\$[310,194,800]

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 [_____], 2025, 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 –2025[____])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [____], 2025 (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 contributed by VDOT in respect of the Project as of the date of the requested disbursement equal, in the aggregate, \$[____]. The amounts previously contributed by the Borrower from proceeds of the [*describe federal grant*] in respect of the Project 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. The amount of this Requisition, together with all prior Requisitions, does not exceed the cumulative amounts reflected in **Exhibit B** (*Anticipated TIFIA Loan Disbursement Schedule*), as such exhibit appeared on the Effective Date (and prior to any modifications thereto permitted pursuant to the TIFIA Loan Agreement), through the last day of the Borrower Fiscal Year in which this Requisition is being submitted.
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. 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.
9. 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).
10. Each of the insurance policies obtained by VDOT or the applicable Principal Project Party, in satisfaction of the condition in Section 12(a)(vii)(5) (*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 TIFIA Lender's acceptance of the Application*] and is continuing.
15. A copy of the quarterly construction progress report pursuant to Section 22(b)(i) (*Quarterly Construction Progress Report*) of the TIFIA Loan Agreement for the quarter 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]¹ by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [_____], 2025, 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:

¹ Attached 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 (a)a.i.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 Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52);
- (xv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 CFR;

- (xvi) The Cargo Preference Act of 1954, as amended (46 U.S.C. §55305), and implementing regulations (46 CFR Part 381);
- (xvii) The applicable requirements of 49 CFR Part 26 relating to the Disadvantaged Business Enterprise program; and
- (xviii) 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]

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 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, the TIFIA Supplemental Indenture and the HRTF 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 any TIFIA Loan Documents, Indenture Documents or HRTF Indenture Documents.

EXHIBIT I
[RESERVED]

EXHIBIT J

FORM OF CERTIFICATE OF TRUSTEE

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

TIFIA BOND,
HRELN PROJECT
(TIFIA –2025[____])

The undersigned, U.S. Bank Trust Company, 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 [____], 2025, 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 certain corporate documents 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 the Written Request of the Commission delivered in accordance with Section 2.06 of that certain Indenture (the “**Indenture**”), dated as of September 1, 2021, and pursuant to Section 3.07 of the Supplemental Indenture pertaining to the TIFIA Bond (the “**TIFIA Supplemental Indenture**”), dated as of [____], 2025, 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 [____], 2025 (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 VIII 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: [_____], 2025

U.S. BANK TRUST COMPANY, 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 [_____], 2025 (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 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 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 (to the extent not previously delivered as of the effective date of the HRBT Toll TIFIA Loan Agreement), 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) each Construction-Related Contract;
 - (2) MTA;
 - (3) each Electronic Toll Collection Agreement;
 - (4) each Violation Processing Services Agreement;
 - (5) each Tolling Systems Contract; and
 - (6) each Standard Project Agreement.
- (k) pursuant to Section 12(a)(xiv) (*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 to 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 Unique Entity Identifier number is NEUHFP6RELY3, and (iii) the Borrower has registered with, and obtained confirmation of active registration status with no active exclusions listed in such registration 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 Total 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 he 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 he 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 [____], 2025.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

By: _____
Name: _____
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 – 2025[____])

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 [____], 2025, 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 Construction-Related Contracts;
- (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

Period	Payment Period	Mandatory Interest (% of Total TIFIA Interest Due)	Scheduled Interest (% of Total TIFIA Interest Due)	Mandatory Principal (in US\$)	Scheduled Principal (in US\$)
Capitalized Interest Period	Debt Service Payment Commencement Date – [_____]	-	-	-	-
Principal and Interest (Mandatory and Scheduled)					

Level Payment Period (Initial)			-	All Mandatory and calculated in a manner that the Outstanding Balance is reduced to [\$161,660,000] by the end of the period and semi-annual TIFIA Debt Service is level throughout the period.	
Level Payment Period (Final)				All Mandatory and calculated in a manner that the Outstanding Balance is reduced to \$0 by the end of the period and annual TIFIA Debt Service are level throughout the period.	

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 [_____], 2025 (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

Section 5.03 Toll Revenue Fund; Priority of Deposits and Transfers.

(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) shall have been transferred or set aside for all the purposes specified under the prior clauses:

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 for such month, 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 in the Operation and Maintenance Reserve Fund, the Unrestricted Account in the General Reserve Fund, the Payment Account of the Additional Toll Roads System Cost Payment Fund, and the Restricted Account in the General Reserve Fund (in that order) shall be transferred to the Operation and Maintenance Fund up to an aggregate amount equal to such shortfall;

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 to the extent necessary to increase the amount on deposit therein to equal the Operation and Maintenance Reserve Fund Requirement; 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 in the Unrestricted Account in the General Reserve Fund, the Payment Account of the Additional Toll Roads System Cost Payment Fund, and the Restricted Account in the General Reserve Fund (in that order) shall be transferred to the Operation and Maintenance Reserve Fund up to an aggregate amount equal to such shortfall;

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 (including the interest portion of TIFIA Mandatory Debt Service) 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, however, 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 Payment Account of the Additional Toll Roads System Cost Payment Fund, the Restricted Account in the General Reserve 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 aggregate 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 then due and payable 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 (including the principal portion of TIFIA Mandatory Debt Service), 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 Reserve Fund, the Revenue Stabilization Fund, the Payment Account in the Additional Toll Roads System Cost Payment Fund, the Restricted Account in the General Reserve 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 aggregate 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, 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) (1) to the to the Senior Lien Obligations Interest Account, the interest portion of TIFIA Scheduled Debt Service then due (or the accrual of appropriate amounts in advance thereof), and (2) to the Senior Lien Obligations Principal Account, the principal portion of TIFIA Scheduled Debt Service then due (or the accrual of appropriate amounts in advance thereof); 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 the interest portion of TIFIA Scheduled Debt Service on any preceding Monthly Funding Date; plus (C) the sum of any continuing shortfall in transfers required to have been made to the Senior Lien Obligations Principal Account in respect of the principal portion of TIFIA Scheduled Debt Service on any preceding Monthly Funding Date; plus (D) 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 Reserve Fund and the Revenue Stabilization Fund (in that order) shall be transferred to the Senior Lien Obligations Principal Account up to an aggregate amount equal to such shortfall pursuant to this Sixth Clause;

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 requirement cannot be fully funded with amounts available in the Toll Revenue Fund, (A) funds available in the Unrestricted Account in the General Reserve Fund, the Revenue Stabilization Fund, the Payment Account in the Additional Toll Roads System Cost Payment Fund, and the Restricted Account in the General Reserve Fund (in that order) shall be transferred to the Senior Lien Obligations Reserve Fund up to an aggregate 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 Reserve Fund, the Payment Account in the Additional Toll Roads System Cost Payment Fund, the Restricted Account in the General Reserve 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 aggregate 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;

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 Payment Account in the Additional Toll Roads System Cost Payment Fund, the Restricted Account in the General Reserve 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 aggregate amount equal to such shortfall;

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 Unrestricted Account in the General Reserve Fund, the Payment Account in the Additional Toll Roads System Cost Payment Fund, and the Restricted Account in the General Reserve Fund

(in that order), 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, (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 Reserve Fund, the Payment Account in the Additional Toll Roads System Cost Payment Fund, the Restricted Account in the General Reserve 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 aggregate 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;

Twelfth, 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 Reserve Fund, the Payment Account in the Additional Toll Roads System Cost Payment Fund, the Restricted Account in the General Reserve 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 aggregate amount equal to such shortfall;

Thirteenth, 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;

Fourteenth, 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 Toll Revenues Account in 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, including in the HRTF Account) 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, HRTF Transfers as and to the extent provided for in any Supplemental Indenture, funds available in the Payment Account in the Additional Toll Roads System Cost Payment Fund and in the Restricted Account in the General Reserve Fund (in that order) shall be transferred to the Major Maintenance and Renewal Fund up to an aggregate amount equal to such shortfall;

Fifteenth, 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; and

Sixteenth, on each Monthly Funding Date, any amount remaining after the deposits and transfers described in Clauses First through Fifteenth above shall be deposited to the Restricted Account in the General Reserve Fund or as otherwise provided in Section 5.16(a) related to amounts in the Restricted Account in the General Reserve Fund.

EXHIBIT P
FORM OF SEMI-ANNUAL COVERAGE CERTIFICATE

Reference is made to that certain TIFIA Loan Agreement, dated as of [____], 2025 (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 next 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 on [Insert Date].²

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Name:
Title:

² Each Semi-Annual Coverage Certificate must be delivered within thirty (30) days after the immediately preceding Calculation Date.

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)).

EXHIBIT R
FORM OF VDOT DIRECT AGREEMENT
DIRECT AGREEMENT (VDOT)

[to be inserted]

DIRECT AGREEMENT (VDOT)

This **DIRECT AGREEMENT** (this “**Agreement**”) dated as of [___], 2025 (the “**Effective Date**”), is made by and among the (i) VIRGINIA DEPARTMENT OF TRANSPORTATION, an agency of the Commonwealth of Virginia (“**VDOT**”); (ii) HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, a body politic and a political subdivision created under the laws of the Commonwealth of Virginia (the “**Borrower**”); and (iii) UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States, acting by and through the Executive Director of the Build America Bureau (“**USDOT**” or the “**TIFIA Lender**”).

RECITALS

WHEREAS:

(1) VDOT and the Borrower have entered into the following, each in connection with the Project: (a) that certain Standard Project Agreement for Funding and Administration UPC 117840 (Segment 1 Preliminary Engineering (Phase I PE)), dated as of April 1, 2021; (b) that certain Standard Project Agreement for Funding and Administration UPC 119637 (Segment 1A (Full Build Potential Scope) Project), dated as of May 20, 2022, as amended on March 17, 2023; (c) that certain Standard Project Agreement for Funding and Administration UPC 120863 (Segment 1B (Full Build Potential Scope) Project), dated as of May 20, 2022; (d) that certain Standard Project Agreement for Funding and Administration UPC 119824 (Segment 4A/4B (Full Build Potential Scope) Project), dated as of December 16, 2021, as amended on March 17, 2023 and on May 18, 2024; (e) that certain Standard Project Agreement for Funding and Administration UPCs 120375 and 123322 (I-64/I-464 Interchange, Exit 291 Flyover Ramp Project), dated as of October 25, 2023, as amended on June 7, 2024; and (f) that certain Standard Project Agreement for Funding and Administration UPC No. 122999 (Transportation Management Plan (TMP) Project), dated as of May 9, 2023, as amended by the Amendment to Standard Project Agreement for Funding and Administration, dated as of January 3, 2025 (each, a “**SPA**” and, collectively, the “**HRELN Project SPAs**”);

(2) VDOT (a) has entered into the following construction contracts related to the Project: (i) that certain contract (Contract ID. No.: C0011784DB112), last executed as of December 7, 2022, with Allan Myers VA, Inc. and relating to I-64 Hampton Roads Express Lanes (HREL) Segment 1A; (ii) that certain contract (Contract ID. No.: C0000119824C01), dated as of February 22, 2022, with The Lane Construction Corporation and relating to Express Lanes Segment 4A/4B; and (iii) that certain contract (Contract ID. NO.: C00120375DB118), dated as of January 17, 2024, with Joseph B. Fay, Co. and relating to the I-64 and I-464 Interchange Exit 291 Ramp Improvements (the contracts described in clauses (i), (ii) and (iii) being the “**Executed Contracts**”) and (b) expects to enter into a construction contract for Segment 1B (such construction contract, when so entered into, the “**Segment 1B Contract**” and, together with the Executed Contracts, the “**HRELN Project Construction Contracts**”);

(3) VDOT, the Borrower, and the Commonwealth Transportation Board have entered into that certain Master Agreement for Development and Tolling of the Express Lanes

Network, dated August 18, 2020, as it may be modified or amended from time to time in accordance with its terms (the “**MTA**”);

(4) VDOT has entered into that certain Standard Contract for VDOT I-64 Express Lanes Toll System and Services, dated as of March 21, 2017, with TransCore, LP, as it may be modified or amended from time to time in accordance with its terms; and

(5) VDOT has entered into that certain Standard Contract for VDOT I-64 Express Lanes Toll System and Services, dated as of June 17, 2021, with Conduent State and Local Solutions, Inc. , as it may be modified or amended from time to time in accordance with its terms.

The foregoing agreements in paragraphs (1) through (5) above, together with any Electronic Toll Collection Agreement, Violation Processing Services Agreement and any other agreement entered into from time to time by VDOT and the Borrower that is treated as an Additional Project Contract pursuant to the TIFIA Loan Agreement (as defined below) are herein collectively referred to as the “**VDOT Agreements**” (and each, individually, is a “**VDOT Agreement**”).

WHEREAS, in reliance on the support for the Project provided by VDOT pursuant to the VDOT Agreements, the Borrower and the TIFIA Lender are entering into that certain TIFIA Loan Agreement, dated as of the date hereof, pursuant to which the TIFIA Lender will (subject to the terms and conditions of the loan agreement) make a loan in a principal amount not to exceed \$[310,194,800] (excluding interest that is capitalized), which loan shall be repaid from toll revenues collected by the Borrower (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**TIFIA Loan Agreement**”);

WHEREAS, the TIFIA Loan Agreement is being entered into for the purpose of financing certain costs in connection with the construction and development of the Project.

WHEREAS, the Borrower has entered into that certain Master Indenture (Toll Roads System Revenue Bonds), dated as of September 15, 2021, with U.S. Bank Trust Company, National Association (the “**Trustee**”), as such indenture may be modified or amended from time to time in accordance with its terms (the “**Indenture**”);

WHEREAS, it is a condition to the consummation of the transactions contemplated by the TIFIA Loan Agreement that VDOT and the Borrower enter into this Agreement with the TIFIA Lender to provide certain assurances and agreements, as further described below, in connection with the VDOT Agreements and the transactions contemplated thereby.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT, the Borrower, and the TIFIA Lender (each, a “**Party**” and, collectively, the “**Parties**”) hereby agree as follows:

ARTICLE I

DEFINED TERMS; INTERPRETATION

Section 1.1 Capitalized Terms.

(a) Except as provided in Section 1.1(b), all capitalized terms not defined herein shall have the meanings given to them in the TIFIA Loan Agreement.

(b) All capitalized terms used in Article VI (VDOT Agreement Modifications and Clarifications) (other than Section 6.2 (Agreements Relating to Toll System Contracts)) shall have the meanings given to them in the applicable VDOT Agreement.

Section 1.2 Defined Terms. The following terms shall have the meanings specified below.

“Electronic Toll Collection Agreement” means any Electronic Toll Collection Agreement entered into between the Borrower and VDOT.

“Express Lanes Network” has the meaning set forth in the MTA.

“TIFIA Loan” means the loan provided under the TIFIA Loan Agreement.

“Permitted Liens” means:

- (a) Liens imposed pursuant to the Indenture;
- (b) Liens imposed by law for taxes that are not yet due or are being contested;
- (c) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested;
- (d) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;
- (e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;
- (f) judgment Liens in respect of judgments that do not constitute an Event of Default under the TIFIA Loan Agreement;
- (g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower;

(h) any Lien on any property or asset of the Borrower existing on the Effective Date; provided that (i) such Lien shall not apply to any other property or asset of the Borrower and (ii) such Lien shall secure only those obligations which it secures on the Effective Date and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(i) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall apply solely to the acquired asset and not to any other property or assets of the Borrower, and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition, and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof; and

(j) purchase money security interests in equipment hereafter acquired by the Borrower; provided that (i) such security interests secure indebtedness for borrowed money permitted under the TIFIA Loan Agreement, (ii) such security interests are incurred, and the indebtedness secured thereby is created, within ninety (90) days after such acquisition, (iii) the indebtedness secured thereby does not exceed the fair market value of such equipment at the time of such acquisition, and (iv) such security interests do not apply to any other property or assets (other than accessions to such equipment) of the Borrower.

“Violation Processing Services Agreement” means any Violation Processing Services Agreement entered into between the Borrower and VDOT.

Section 1.3 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 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 VDOT’s knowledge is implicated in this Agreement or the phrase “to VDOT’s knowledge” or a similar phrase is used in this Agreement, VDOT’s knowledge or such phrase(s) shall be interpreted to mean to the best of VDOT’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 9.1 and signed by a duly authorized representative of such party.

ARTICLE II

CONDITIONS PRECEDENT

Section 2.1 Conditions Precedent. Notwithstanding anything herein to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied:

(a) Legal Opinion. Legal counsel to VDOT shall have delivered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on Exhibit A).

(b) Non-Debarment Certificate. VDOT shall have provided a certificate from VDOT's Authorized Representative (as defined below) as to the absence of debarment, suspension or voluntary exclusion from participation in Government contracts, procurement and non-procurement matters substantially in the form attached hereto as Exhibit B with respect to VDOT and its principals (as defined in 2 CFR § 180.995).

(c) Certification Regarding Lobbying. VDOT shall have provided a certificate from VDOT's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as Exhibit C in accordance with 49 CFR §20.100(b).

(d) Officer's Certificate. VDOT shall have delivered to the TIFIA Lender a certificate from VDOT's Authorized Representative in the form attached hereto as Exhibit D (i) as to the satisfaction of certain conditions precedent set forth in this Article II as required by the TIFIA Lender, (ii) designating VDOT's Authorized Representative, and (iii) confirming such person's position and incumbency.

(e) Organizational Documents. VDOT shall have provided to the TIFIA Lender evidence that VDOT 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 VDOT's Authorized Representative: (i) a copy of all resolutions authorizing VDOT to execute and deliver, and to perform its respective obligations under, the VDOT Agreements in effect as of the Effective Date, 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 VDOT relating to the matters described therein, and (ii) 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 VDOT Agreements in effect as of the Effective Date.

(f) Insurance Certificates. VDOT shall have delivered to the TIFIA Lender copies of certificates of insurance evidencing the property damage and liability insurance policies maintained by VDOT and by each of the Principal Project Parties as of the date of this Agreement.

(g) Accuracy of Representations and Warranties. The representations and warranties of VDOT set forth in this Agreement and in each other VDOT Agreement 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).

(h) Other Requested Documentation. VDOT shall have delivered such other agreements, documents, instruments, opinions and other items reasonably required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender.

ARTICLE III

VDOT ACKNOWLEDGMENTS AND UNDERTAKINGS: **NO LIABILITY FOR TIFIA LOAN**

Section 3.1 Acknowledgement of Pledge and Assignment. VDOT acknowledges the pledge and assignment to each Trustee of, and the grant to such Trustee of a lien on and security interest in, all of the Borrower's right, title and interest in, to and under the trust estate established pursuant to the Indenture, pursuant to the terms and conditions of the Indenture, as security for all of the obligations secured or purported to be secured by the Indenture.

Section 3.2 Sovereign Immunity. VDOT specifically, and the Commonwealth of Virginia generally, neither waive nor abrogate their sovereign immunity, in part or in whole, in any manner, under any theory, hereunder. Notwithstanding the foregoing, VDOT acknowledges and agrees that this Agreement and the VDOT Agreements in effect from time to time constitute legal, valid, and binding obligations of VDOT, enforceable against VDOT in accordance with their terms, except as enforceability may be limited or otherwise affected by (a) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (b) principles of equity, whether considered at law or in equity, and (c) the sovereign immunity of the Commonwealth of Virginia; provided that sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement or the VDOT Agreements in effect from time to time presented in accordance with the laws of the Commonwealth of Virginia.

Section 3.3 Reserve Funds. VDOT acknowledges and agrees that each of the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund, the Subordinate Obligations Reserve Fund, the Operation and Maintenance Reserve Fund, and the Major Maintenance and Renewal Fund, including any accounts and sub-accounts under any of the foregoing, shall be deemed a "reserve," as such term is used in Section 6.03(a)(ii) of the MTA.

Section 3.4 Insurance. VDOT understands and acknowledges that VDOT's failure to, and failure to cause its contractors to, at all times, maintain with responsible insurers, to the extent available from responsible insurers at reasonable rates, or through a program of self-insurance (or a combination thereof), all such insurance on the Project that is required under the VDOT Agreements in effect from time to time, subject to the cure provisions of the TIFIA Loan Agreement, constitutes an Event of Default under the TIFIA Loan Agreement.

Section 3.5 Cooperation. VDOT shall fully cooperate with the TIFIA Lender and perform all additional acts reasonably requested by the TIFIA Lender to effect the purposes of this Agreement. VDOT and the Borrower agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the TIFIA Lender may reasonably request to effectuate the terms of this Agreement.

Section 3.6 No Liability for TIFIA Loan. Nothing in this Agreement shall be construed to mean that VDOT is liable under the TIFIA Loan Agreement for the debt of the Borrower thereunder.

Section 3.7 Assignment of Toll System Contracts to Borrower. The Parties acknowledge that, pursuant to the terms of each Toll System Contract, such Toll System Contract may, during the term thereof, be assigned to the Borrower. The Parties further acknowledge and agree that, as of the effective date of any such assignment of any Toll System Contract to the Borrower, such Toll System Contract will cease to be considered a VDOT Agreement for purposes of this Agreement and any and all obligations of VDOT hereunder with respect to such Toll System Contract and the applicable Toll System Contractor (other than (a) the acknowledgement and agreement of VDOT relating to certain liquidated damages set forth in Section Section 6.2 hereof and (b) any obligations of VDOT under any Toll System Contract which by the terms of such Toll System Contract or the instrument of assignment are intended to survive such assignment) will be of no further force and effect.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties of VDOT. VDOT hereby represents and warrants as of the date of execution of this Agreement and as of each date on which any disbursement under the TIFIA Loan Agreement is made:

(a) Organization; Power and Authority. VDOT is an agency of the State, duly created and validly existing and in good standing under the laws of the State, has full legal right, power and authority to enter into or become a signatory to this Agreement and the VDOT Agreements in effect as of any date on which this representation and warranty is made and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery, and performance of this Agreement and the VDOT Agreements in effect as of any date on which this representation and warranty is made.

(b) VDOT's Officers' Authorization. As of the Effective Date, the officers of VDOT executing (or that previously executed) this Agreement and the VDOT Agreements in effect as of the Effective Date, and any certifications or instruments related thereto, 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 this Agreement and each of the VDOT Agreements in effect as of any date on which this representation and warranty is made, has been duly authorized, executed and delivered by VDOT and constitutes the legal, valid, and binding agreement of VDOT 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); provided that all payments from VDOT under each such VDOT Agreement (other than any liquidated damages or other damages and recoveries payable by a third party contractor thereunder) are subject to appropriation by the Virginia General Assembly and allocation by the Commonwealth Transportation Board.

(d) Non-Contravention. The execution and delivery of this Agreement and the VDOT Agreements in effect as of any date on which this representation and warranty is made, the consummation of the transactions contemplated herein and therein and the fulfillment of or compliance with the terms and conditions hereof and thereof will not (i) conflict with VDOT's Organizational Documents or (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 VDOT 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 VDOT is a party and/or signatory or by which it or its properties or assets are otherwise subject or bound.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of VDOT 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 VDOT of this Agreement and the VDOT Agreements then in effect, 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 this Agreement or the VDOT Agreements then in effect or (B) the fulfillment of or compliance by VDOT with the terms and conditions of this Agreement and the VDOT Agreements then in effect, 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 VDOT, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of VDOT, threatened against or affecting the Project or the ability of VDOT to execute, deliver and perform its obligations under this Agreement or the VDOT Agreements then in effect. 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 VDOT, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of VDOT, threatened against or affecting the Project, VDOT or the assets, properties or operations of VDOT, that in any case could reasonably be expected to result in a Material Adverse Effect. To VDOT'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 result in a Material Adverse Effect. VDOT 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) No Debarment. VDOT has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither VDOT nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended, or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 2.1(b). VDOT has complied with the disclosure requirements set forth in 2 CFR § 180.355. Further, VDOT has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. VDOT is not aware of any non-compliance by any Principal Project Party or any of VDOT's other contractors or subcontractors performing work related to the Project with the applicable requirements of 2 CFR Part 180.

(h) Accuracy of Representations and Warranties. The representations, warranties and certifications of VDOT set forth in this Agreement and in each VDOT Agreement in effect as of any date on which this representation and warranty is made 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).

(i) Compliance with Federal Requirements. With respect to the Project, VDOT has 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.).

(j) No Defaults. VDOT is not in default under the terms of this Agreement or any VDOT Agreement in effect as of any date on which this representation and warranty is made, and no event has occurred or condition exists that, with the giving of notice or the passage of time or both, would constitute an event of default under this Agreement or any VDOT Agreement in effect as of any date on which this representation and warranty is made. To VDOT's knowledge, no other party to a VDOT Agreement is in breach of, or in default under, any material term of such VDOT Agreement.

(k) 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 by VDOT 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.

(l) VDOT Agreements. Each VDOT Agreement 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 VDOT Agreement have been satisfied. To the extent not previously delivered to the TIFIA Lender, VDOT or the Borrower has delivered to the TIFIA Lender (i) as of the Effective Date, a fully executed, complete, and correct copy of each such VDOT Agreement in effect as of the Effective Date and (ii) as of any other date on which this representation and warranty is made, a fully executed, complete, and correct copy of each such VDOT Agreement entered into after the Effective Date and prior to such other date, including, in each case in clauses (i) and (ii), (A) all exhibits, schedules and other attachments, (B)

any amendments or modifications thereto and (C) any related credit support instruments or side letters. No event has occurred that gives VDOT or, to the knowledge of VDOT, any counterparty thereto the right to terminate any VDOT Agreement.

(m) Information. The information furnished by VDOT 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 VDOT.

(n) OFAC; Anti-Corruption Laws.

- (i) Neither VDOT nor, to VDOT's knowledge, any other party to a VDOT Agreement is a Sanctioned Person.
- (ii) Neither VDOT nor, to VDOT's knowledge, any other party to a VDOT Agreement 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, civil or criminal.
- (iii) There are no pending or, to the knowledge of VDOT, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, VDOT or, to VDOT's knowledge, any other party to a VDOT Agreement, in each case with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any 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 VDOT Agreement will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws

(o) Compliance with Law. VDOT 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 4.1(p) below), including those set forth on Exhibit E to the TIFIA Loan Agreement, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by VDOT or, to the knowledge of VDOT and solely in respect of the Project or any VDOT Agreement, any other party to such VDOT Agreement, other than, in each case, notices of violations that are immaterial.

(p) Environmental Matters. VDOT and, to the knowledge of VDOT, 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. VDOT has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that VDOT or any other party to a VDOT Agreement is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to VDOT’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by VDOT or any other party to a VDOT Agreement with any such Environmental Law or Governmental Approval.

(q) Sufficient Rights and Utilities. VDOT possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real and personal property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Project. The VDOT Agreements in effect and the Governmental Approvals that have been obtained and are 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 each of the VDOT Agreements 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.

(r) Insurance. VDOT is in compliance with all insurance obligations under, and maintains or causes to be maintained at all times and with reasonable insurers all insurance required by, each of the VDOT Agreements in effect as of any date on which this representation and warranty is made. To VDOT’s knowledge, each Principal Project Party that is party to a VDOT Agreement is in compliance with all insurance obligations under, and maintains or causes to be maintained at all times and with reasonable insurers all insurance required by, the applicable VDOT Agreement.

(s) No Liens. Except for Permitted Liens, VDOT 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 Project, the Express Lanes Network, the properties or assets in relation to the Project or the Express Lanes Network. Except for Permitted Liens described in clause (a) of the definition thereof, there are no Liens on the toll revenues to be produced from the operation of the Project or the Express Lanes Network.

(t) Intellectual Property. 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, the Express Lanes Network, and the operation of its business. To VDOT'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 VDOT'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 or the Express Lanes Network infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(u) Investment Company Act. VDOT 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.

(v) Taxes. VDOT is not required to file tax returns with any Governmental Authority.

(w) ERISA. Neither VDOT 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 Code.

(x) Patriot Act. VDOT is not required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

Section 4.2 Representations and Warranties of the TIFIA Lender. The TIFIA Lender hereby makes the following representations and warranties as of the Effective Date:

(a) The TIFIA Lender has all requisite power and authority to perform all transactions contemplated by this Agreement.

(b) This Agreement has been duly authorized, executed and delivered by the TIFIA Lender, and is a legally valid and binding agreement of the TIFIA Lender, enforceable in accordance with its terms.

(c) The officer of the TIFIA Lender executing this Agreement is duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

ARTICLE V

VDOT PROJECT-RELATED COVENANTS

Section 5.1 VDOT Affirmative Covenants related to TIFIA Loan Agreement. VDOT covenants and agrees as follows until the date the TIFIA Loan and the obligations of the Borrower under the TIFIA Loan 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) Copies of Documents. VDOT shall provide written notice to the TIFIA Lender of VDOT's intent to enter into any Principal Project Contract or Additional Project Contract to be entered into by VDOT and, if such Additional Project Contract is subject to approval by the TIFIA Lender pursuant to Section 16(e) (*Principal Project Contracts; Additional Project Contracts*) of the TIFIA Loan Agreement, shall provide drafts of any such 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, VDOT 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). VDOT shall provide a complete and fully executed version of each Principal Project Contract entered into by VDOT (together with any credit support instruments provided in connection therewith) and, if requested by the TIFIA Lender, VDOT shall provide to the TIFIA Lender an executed version of any Additional Project Contract entered into by VDOT, together with any related contracts, side letters or other understandings, promptly following the full execution thereof.

(b) Prosecution of Work; Verification Requirements.

- (i) VDOT shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with good engineering practices.
- (ii) VDOT shall ensure that the Design-Builder and its subcontractors comply with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by the Design-Builder to VDOT and shall ensure that any letter of credit provided pursuant to the Design-Builder meets the requirements therefor set forth therein.
- (iii) VDOT shall comply with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(c) Roadway Operation and Maintenance. VDOT shall perform all Roadway O&M Work (as defined in the MTA) for the Project and the Express Lanes Network (i) in a reasonable and prudent manner, (ii) substantially in accordance with the Maintenance Protocol (as defined in the MTA) (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the Project), and (iii) in accordance with the requirements of all applicable laws and each applicable VDOT Agreement. VDOT 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.

(d) Compliance with VDOT Agreements. VDOT agrees to take all action necessary to comply with its obligations, covenants and responsibilities set forth in the VDOT Agreements.

(e) Compliance with Law. VDOT shall comply in all material respects with all applicable federal and State laws, including all items set forth in Exhibit E of the TIFIA Loan Agreement, to the extent applicable.

(f) Insurance.

(i) VDOT shall maintain or cause to be maintained insurance for the construction and operation of the Project, with responsible insurers and, in any event, as required by the VDOT Agreements and any other Principal Project Contracts to which VDOT is a party and, to the extent VDOT self-insures, VDOT shall maintain self-insurance retentions with respect to the Project and any operating portion of the Express Lanes Network as is customarily maintained by VDOT with respect to works and properties of like character against accident to, loss of or damage to, such works or properties, which shall include retentions for liability coverage and pollution and other environmental liability and remediation related coverage. VDOT shall cause each Principal Project Party under a Principal Project Contract to which VDOT is a party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

(ii) Promptly upon request by the TIFIA Lender, VDOT shall deliver to the TIFIA Lender copies of any underlying insurance policies obtained by or on behalf of VDOT in respect of construction of the Project. All such policies shall be available at all reasonable times for inspection by the TIFIA Lender, its agents and representatives.

(g) Notices.

(i) VDOT shall, within five (5) Business Days after VDOT learns of the occurrence, give the TIFIA Lender and the Borrower written 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) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against VDOT before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by VDOT in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against 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 VDOT with respect to the Project with individual award amounts in excess of \$5,000,000, either individually or in the aggregate;

(B) 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 VDOT's plans to remedy or mitigate the effects of such failure or delay;

(C) Environmental Notices: any material notice of violation under any Environmental Law related to the Project or any material changes to the NEPA Determination;

(D) Insurance Claims: any insurance claims made by VDOT, the contractor under any of the HRELN Project Construction Contracts, any Toll System Contractor or any contractor pursuant to any other Principal Project Contract or Additional Project Contract in respect of the Project in excess of \$1,000,000, either individually or in the aggregate, to the extent related to the Project;

(E) Amendments: except as otherwise agreed by the TIFIA Lender in writing, copies of (1) any proposed amendments to any VDOT Agreement or other Principal Project Contract to which VDOT is a party at least thirty (30) days prior to the effective date thereof and (2) fully executed amendments within ten (10) days following execution thereof (excluding, for clarity, Work Orders under the HRELN Project Construction Contracts or any Toll System Contract issued by VDOT pursuant to the terms thereof);

(F) Defaults under VDOT Agreements, etc.: any event of default on the part of VDOT or any other party under any VDOT Agreement, any other Principal Project Contract to which VDOT is a party or any Additional Project Contract related to the operation and maintenance of the Project to which VDOT is a party;

(G) Uncontrollable Force: the occurrence of any event of Uncontrollable Force (as defined in the TIFIA Loan Agreement) with respect to the Project or the Express Lanes Network that, in either case, could reasonably be expected to result in a Material Adverse Effect;

(H) Project Changes: any (1) change to the forecasted Total Project Costs 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 VDOT or the Borrower to pay for such increased Total Project Costs; or (2) material change to the Construction Schedule, together with a proposed revised Construction Schedule;

(I) 2 CFR Notices: (1) that any of the information set forth in the certificate provided by VDOT pursuant to Section 2.1(b) was incorrect at the time the certificate was delivered or there has been a change in status of VDOT 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 Agreement as described in 2 CFR § 200.113; and

(J) 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) VDOT shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described in this Section 5.1(g).

(iii) Remedial Action. Within thirty (30) calendar days after VDOT learns of the occurrence of an event specified in Section 5.1(g)(i) (other than in Section 5.1(g)(i)(E) (Amendments)), VDOT's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions VDOT proposes to take with respect thereto.

(h) Maintain Legal Structure. VDOT shall maintain its existence as an agency of the Commonwealth of Virginia.

(i) Payments to the Commission. Notwithstanding any provision contained in the VDOT Agreements to the contrary, VDOT shall pay by wire transfer to the Trustee (using the wire transfer information provided from time to time by the Borrower) for deposit to the Toll Revenue Fund or other appropriate account under the Indenture (i) all liquidated damages and other damages and recoveries with respect to the Project or the Express Lanes Network that VDOT receives from any Principal Project Party or any other Person that are payable to the Commission and (ii) all other amounts with respect to the Project or the Express Lanes Network payable directly by VDOT to the Commission (in each case of clauses (i) and (ii), excluding amounts that the Commission has elected to apply as a credit against amounts that are payable by the Commission to VDOT and do not represent a payment to VDOT that is subject to the restrictions set forth in Section 16(d) of the TIFIA Loan Agreement).

VDOT shall make all such payments without any offset, abatement, withholding or reduction. By its acceptance and agreement to this Agreement, the Commission, for itself and its successors and permitted assigns, irrevocably consents to the making by VDOT of payments as provided in this Section 5.1(i).

(j) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to any segment of the Express Lanes Network or any part thereof, VDOT shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental

Authorities, as applicable, in respect of such event and (B) except as otherwise required by the Indenture, pay or apply all Loss Proceeds stemming from such event to repair or replace the affected portion of the Express Lanes Network (or reimburse VDOT for costs it has incurred to repair or replace the Project or the affected portion thereof).

(k) Immunity. VDOT specifically, and the Commonwealth of Virginia generally, neither waive nor abrogate their sovereign immunity, in part or in whole, in any manner, under any theory, hereunder. Notwithstanding the foregoing, VDOT agrees that, to the fullest extent permitted by applicable law, VDOT will not assert any immunity it may have as a governmental entity from lawsuits and other actions and claims presented in accordance with the laws of the Commonwealth of Virginia and any judgments with respect to the enforcement of any of the contractual obligations of VDOT under this Agreement.

(l) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to VDOT, then VDOT 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 applicable requirements of the Patriot Act.

(m) Cargo Preference Act. Pursuant to 46 CFR Part 381, VDOT hereby agrees as follows, and shall insert the following clauses in contracts entered into by VDOT 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.

(n) Lobbying. VDOT shall comply with all applicable certification, declaration and/or disclosure requirements under 49 CFR Part 20.

(o) Reporting Subawards and Executive Compensation. To the extent applicable, VDOT shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in Exhibit Q to the TIFIA Loan Agreement.

Section 5.2 VDOT Negative Covenants related to TIFIA Loan Agreement. VDOT 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) No Lien Extinguishment or Adverse Amendments. VDOT shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, either (i) amend, modify, replace, or supplement any VDOT Agreement or any other Principal Project Contract or Additional Project Contract to which VDOT is a party in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, (ii) waive or permit a waiver of any provision of any VDOT Agreement or any other Principal Project Contract or Additional Project Contract in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan or (iii) terminate, assign, amend or modify, or waive timely performance by any party of material covenants under any VDOT Agreement or any other Principal Project Contract or Additional Project Contract except for termination, assignment, amendment, modification or waiver of timely performance that could not reasonably be expected to have a Material Adverse Effect (in the TIFIA Lender's determination). Except as otherwise agreed by the TIFIA Lender in writing, VDOT will provide to the TIFIA Lender (x) copies of any proposed amendments, modifications, replacements or waivers of, or supplements to any VDOT Agreement or any other Principal Project Contract or Additional Project Contract at least thirty (30) days prior to the effective date thereof, and (y) complete, correct and fully executed copies of any amendment, modification, replacement, waiver or supplement to any VDOT Agreement, within ten (10) days after execution thereof.

(b) No Prohibited Liens. Except for Permitted Liens, VDOT shall not create, incur, assume or permit to exist any Lien on the Project, the Express Lanes Network, the trust estate under either Indenture, the Pledged Revenues (as defined in the TIFIA Loan Agreement or VDOT's respective rights in any of the foregoing. VDOT shall not collaterally assign any of its rights under or pursuant to any VDOT Agreement or any Principal Project Contract or Additional Project Contract to which it is a party and shall not permit a Lien to encumber VDOT's rights or privileges under any VDOT Agreement or any Principal Project Contract or Additional Project Contract to which VDOT is a party.

(c) Principal Project Contracts; Additional Project Contracts. VDOT shall not, 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 Collection 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)]. VDOT shall not, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts) allocable to the Project 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 Operation and Maintenance Expenses, 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 Operation and Maintenance Expenses, 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 mostly recently submitted to the TIFIA Lender.

(d) No Prohibited Sale, Lease or Assignment. VDOT shall not sell, lease, or assign its rights in and to the Project, a substantial portion of the assets included in the Project or the Express Lanes Network, or its rights and obligations under any VDOT Agreement, in each case unless such sale, lease or assignment (or group of sales or disposals) (i) could not reasonably be expected to result in a Material Adverse Effect, (ii) could not reasonably be expected to result in a reduction to the Toll Revenues in any material respect, (iii) could not reasonably be expected to increase Tolling O&M Costs (as defined in the MTA) in any material respect, and (iv) is made by VDOT in the ordinary course of business.

(e) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the VDOT Agreements, VDOT 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 VDOT, the Borrower or the Project or that could reasonably be expected to result in a Material Adverse Effect.

(f) OFAC Compliance. VDOT:

- (i) shall not violate (A) any applicable Anti-Money Laundering Laws, (B) any applicable Sanctions, (C) Anti-Corruption Laws or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;
- (ii) shall not use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under the TIFIA Loan Agreement and the VDOT Agreements;
- (iii) 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); and
- (iv) shall not make a payment, directly or indirectly, to any Principal Project Party that, to VDOT's knowledge, has violated any of the laws referenced in clause (i) above or that is a Sanctioned Person.

Section 5.3 Reports and Records; Required Audit; Financial Plan.

(a) Reports and Records. VDOT shall maintain and retain all files relating to the Project and the Express Lanes Network until three (3) years after the later of the date on which (i) all rights and duties hereunder and under the TIFIA Loan Agreement (including payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Express Lanes Network or the VDOT Agreements 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 VDOT. VDOT shall provide to the TIFIA Lender in a timely manner all records and documentation relating to the Project, the Express Lanes Network or the VDOT Agreements that the TIFIA Lender may reasonably request from time to time.

(b) Required Audit. VDOT 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 VDOT pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, VDOT 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, the Express Lanes Network or the VDOT Agreements, to the Secretary, or the designee thereof, for any such project or programmatic audit.

(c) Financial Plan. VDOT agrees to furnish the required information under Section 21(a) of the TIFIA Loan Agreement with respect to the Financial Plan and the statements and reports related thereto to enable the Borrower to fully comply with the Financial Plan requirements.

ARTICLE VI

VDOT AGREEMENT MODIFICATIONS AND CLARIFICATIONS

Section 6.1 Agreements and Undertakings Relating to the Master Tolling Agreement. VDOT acknowledges and agrees that the license to use the Tolling Infrastructure and System and access the roadway to perform Tolling O&M Duties granted by VDOT to the Commission pursuant to Section 3.08(b) of the Master Tolling Agreement is irrevocable during the term of the Master Tolling Agreement.

Section 6.2 Agreements Relating to Toll System Contracts. VDOT hereby acknowledges and agrees that the Borrower shall be entitled to one hundred percent (100%) of any liquidated damages payable by the Toll System Contractor pursuant to or in connection with any Toll System Contract to which VDOT is a party and pursuant to which the Borrower has an obligation to pay the costs and expenses payable to the Toll System Contractor thereunder.

ARTICLE VII

TIFIA LENDER RIGHTS AND PROTECTIONS

Section 7.1 Project Monitoring. 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. VDOT agrees to cooperate in good faith with the TIFIA Lender and the FHWA Division Office in the conduct of such monitoring by providing 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.

Section 7.2 Specific Performance. The TIFIA Lender may seek specific performance of this Agreement, whether or not the Borrower shall have complied with any of the provisions hereof or of any VDOT Agreement applicable to it, at any time when VDOT shall have failed to comply with any of the provisions of this Agreement applicable to it. Notice of such demand for specific performance shall be made concurrently to each Party.

Section 7.3 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 7.4 Delay or Omission Not Waiver. No waiver by the TIFIA Lender of any breach by VDOT of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of VDOT (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 7.5 No Third Party Rights. The Parties hereby agree that this Agreement creates no third party rights against the United States Government or the TIFIA Lender solely by virtue of this Agreement.

ARTICLE VIII

DAMAGES

Section 8.1 Waiver of Consequential Damages. To the extent permitted by applicable law, neither VDOT nor the TIFIA Lender shall assert, and both VDOT and the TIFIA Lender hereby waives, any claim 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, the other transactions contemplated hereby, the TIFIA Loan Agreement, or the use of the proceeds of any draws thereunder.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices. 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 VDOT: Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219
Attention: Chief Financial Officer
Facsimile: (804) 786-2940

with copies to: Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
Attention: Chief, Transportation Section
Facsimile: (804) 786-9136

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, by VDOT's Authorized Representative, with respect to notices to VDOT, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. 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 9.1 (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 9.1 (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 9.2 No Personal Recourse. No official, employee or agent of the TIFIA Lender, the Borrower or VDOT or any person executing this Agreement shall be personally liable under this Agreement by reason of the issuance, delivery, execution or performance hereof.

Section 9.3 Authorized Representatives.

(a) VDOT's Authorized Representative. VDOT shall at all times have appointed an authorized representative by designating such person or persons from time to time to act on VDOT's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer (as defined in the TIFIA Loan Agreement), if any, containing the specimen signature or signatures of such person or persons and signed by VDOT (each such person, "**VDOT's Authorized Representative**").

(b) TIFIA Lender's Authorized Representative. 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.

Section 9.4 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 the Parties.

Section 9.5 Governing Law. This Agreement shall be governed by the federal laws of the United States 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 9.6 Severability. 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.

Section 9.7 Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall inure to the benefit of the

Parties hereto and the successors and assigns of the TIFIA Lender. None of VDOT or the Borrower may sell, assign, transfer or delegate any of its rights or obligations under this Direct Agreement without the prior written consent of the TIFIA Lender.

Section 9.8 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 Parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but 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. Each Party agrees that the transaction consisting of this Agreement may be conducted by electronic means. Each Party agrees, and acknowledges that it is such Party's intent, that if such Party signs this Agreement using an electronic signature, it is signing, adopting, and accepting this Agreement and that signing this Agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Agreement on paper. Each Party acknowledges that it is being provided with an electronic or paper copy of this Agreement in a usable format.

Section 9.9 Effectiveness. This Agreement shall be effective as of the Effective Date and shall remain in effect until all amounts borrowed under the TIFIA Loan has been irrevocably paid in full, together with any interest accrued thereon, and all other amounts and other obligations under the TIFIA Loan Agreement has been satisfied in full.

[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Name:

Title:

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

By: _____
Name: Stephen C. Brich, P.E.
Title: Commissioner of Highways

**UNITED STATES DEPARTMENT OF
TRANSPORTATION, acting by and through the
Executive Director of the Build America Bureau**

By: _____

Name: Morteza Farajian

Title: Executive Director

EXHIBIT A

OPINIONS REQUIRED OF COUNSEL TO VDOT

An opinion of the counsel of VDOT, dated as of the Effective Date, to the effect that: (a) VDOT is duly formed, validly existing, and in good standing under the laws of the Commonwealth of Virginia; (b) VDOT has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Agreement and each of the VDOT Agreements; (c) the execution and delivery by VDOT of, and the performance of its respective obligations under, the Agreement and each of the VDOT Agreements, have been duly authorized by all necessary organizational or regulatory action; (d) VDOT has duly executed and delivered Agreement and each of the VDOT Agreements and each such document constitutes the legal, valid and binding obligation of VDOT; enforceable against VDOT 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 VDOT for the execution and delivery by VDOT of, and the performance of VDOT under, the Agreement and each of the VDOT Agreements other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by VDOT; (f) the execution and delivery by VDOT of, and compliance with the provisions of, the Agreement and each of the VDOT Agreements in each case do not (i) violate the Organizational Documents of VDOT, (ii) violate the law of the State, (iii) violate the laws of the United States that are customarily applicable to transactions of the type contemplated, except that no opinion shall be required with respect to Federal securities, banking, insurance, or tax laws, or (iv) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which VDOT 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 VDOT is subject; and (g) to counsel's knowledge after due inquiry, there are no pending actions, suits, proceedings or investigations against VDOT or any other party by or before any court, arbitrator or any other governmental authority in connection with the Agreement, the VDOT Agreements, or the Project.

EXHIBIT B

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS— PRIMARY COVERED TRANSACTIONS

The undersigned, on behalf of the VIRGINIA DEPARTMENT OF TRANSPORTATION, hereby certifies that the VIRGINIA DEPARTMENT OF TRANSPORTATION has fully complied with its verification obligations under 2 CFR § 180.320 and hereby further confirms, in accordance with 2 CFR § 180.335, that the VIRGINIA DEPARTMENT OF TRANSPORTATION 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.

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain Direct Agreement, dated as of [____], 2025 between the TIFIA Lender, the Virginia Department of Transportation, and the Borrower, as the same may be amended from time to time.

Dated: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name:

Title:

EXHIBIT C

CERTIFICATION REGARDING THE PROHIBITION ON THE USE OF APPROPRIATED FUNDS FOR LOBBYING

The undersigned, on behalf of the VIRGINIA DEPARTMENT OF TRANSPORTATION, hereby certifies, to the best of his or her knowledge and belief, that the VIRGINIA DEPARTMENT OF TRANSPORTATION:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of VDOT, 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, VDOT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) VDOT 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 this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by section 1352, title 31, U.S. 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: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name:

Title:

EXHIBIT D

FORM OF VDOT'S OFFICER'S CERTIFICATE

Reference is made to that certain Direct Agreement, dated as of [____], 2025 (the “Direct Agreement”), by and among the Virginia Department of Transportation (“VDOT”), 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 Direct Agreement.

Pursuant to Section 2.1(c) (*Conditions Precedent*) of the Direct Agreement, the undersigned, [____], as VDOT's Authorized Representative, does hereby certify on behalf of VDOT and not in his/her personal capacity, as of the date hereof:

1. 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 VDOT to execute the Direct Agreement, and who have been appointed VDOT's Authorized Representative in accordance with Section 9.3(a) (*VDOT's Authorized Representative*) of the Direct Agreement;
2. VDOT hereby certifies that it 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 Project Construction Contracts;
3. VDOT hereby certifies that:
 - a. all Governmental Approvals necessary to commence construction of the Project have been obtained and all such Governmental Approvals 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;
 - b. with respect to the Project, VDOT has complied with NEPA;
 - c. 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.*);
 - d. 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) of the TIFIA Loan Agreement; and

- e. 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.
- 4. Pursuant to Section 2.1(e) (*Conditions Precedent*) of the Direct Agreement, attached hereto as **Exhibit B** is evidence that VDOT is duly created and validly existing under the laws of the Commonwealth;
- 5. Pursuant to Section 2.1(e) (*Conditions Precedent*) of the Direct Agreement, attached hereto as **Exhibit C** is a certified copy of the resolutions authorizing the execution of the Direct Agreement;
- 6. Pursuant to Section 2.1(f) (*Conditions Precedent*) of the Direct Agreement attached hereto as **Exhibit D** are copies of certificates of insurance evidencing the property damage and liability insurance policies maintained by VDOT and by each of the Principal Project Parties as of the date of the Direct Agreement; and
- 7. Pursuant to Section 2.1(g) (*Conditions Precedent*) of the Direct Agreement, VDOT hereby certifies that the representations and warranties of VDOT set forth in the Direct Agreement and in each other VDOT Agreement in effect as of the Effective Date 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.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the date first mentioned above.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name:

Title: Authorized Representative

EXHIBIT A TO EXHIBIT D

INCUMBENCY CERTIFICATE

The undersigned certifies that she is the [____] of the Virginia Department of Transportation, an agency of the Commonwealth of Virginia (“VDOT”), and as such s/he 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. [Sh][H]e further certifies that any of the officer or authorized person listed below is authorized to sign the Direct Agreement as VDOT’s Authorized Representative (as defined in that certain Direct Agreement, dated as of the date hereof, among VDOT, the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

Name	Title	Signature
[_____]	[_____]	_____
[_____]	[_____]	_____
[_____]	[_____]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of _____, 2025.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title:

**FIRST AMENDATORY SUPPLEMENT TO
FIFTH SUPPLEMENTAL SERIES INDENTURE OF TRUST**

between

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

and

**WILMINGTON TRUST, NATIONAL ASSOCIATION,
as Trustee**

Dated as of _____ 1, 2025

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[To Be Updated]

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**FIRST AMENDATORY SUPPLEMENT TO
FIFTH SUPPLEMENTAL SERIES INDENTURE OF TRUST**

THIS FIRST AMENDATORY SUPPLEMENT TO FIFTH SUPPLEMENTAL SERIES INDENTURE OF TRUST (the “Amendatory Supplement”), is made as of _____ 1, 2025, 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, the Commission has been duly created and is existing and operating as a body politic and a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) under Chapter 26 of Title 33.2 of the Code of Virginia of 1950, as amended and in effect from time to time (the “HRTAC Act”);

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 for any of the Commission’s purposes;

WHEREAS, the Code of Virginia of 1950, as amended (the “Virginia Code”) authorizes the Commission to receive 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, HRTAC has executed and delivered to the Trustee a Master Indenture of Trust dated as of February 1, 2018 (as amended and in effect from time to time, the “HRTF Master Indenture”), between HRTAC and the Trustee, under which, among other things, HRTAC has provided for the financing and refinancing of the costs of certain projects through the issuance from time to time of bonds, payable from and secured by the HRTAC Revenues (as described in the HRTF Master Indenture);

WHEREAS, HRTAC and the Trustee entered into the Fifth Supplemental Series Indenture of Trust dated as of September 1, 2021 (the “Fifth Series Supplement”) in connection with certain indebtedness issued pursuant to the HRTAC Act and the HRTF Master Indenture to 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”);

WHEREAS, HRTAC and the TIFIA Lender also entered into a TIFIA Loan Agreement (Toll Revenues) dated as of September 21, 2021 (the “2021 Toll TIFIA Loan Agreement”), pursuant to which the TIFIA Lender extended a loan to HRTAC, and in connection therewith, the Commission issued its Toll Revenue Bonds – Senior Lien Revenue Bond, TIFIA Series 2021 (the “2021 TIFIA Bond”) pursuant to a Master Indenture dated as of September 1, 2021, between

the Commission and U.S. Bank Trust Company, National Association, as trustee (the “Toll Trustee”), as amended and in effect from time to time (the “Toll Indenture”), and a First Supplemental Indenture dated as of September 1, 2021 (the “Toll First Supplement”), between the Commission and the Toll Trustee;

WHEREAS, the Commission and the TIFIA Lender entered into a TIFIA Loan Agreement (Toll Revenues), dated as of _____, 2025 (the “2025 TIFIA Toll Loan Agreement”) pursuant to which the TIFIA Lender extended a loan to the Commission to finance certain costs and expenses of the Hampton Roads Express Lanes;

WHEREAS, to evidence such loan, HRTAC is issuing its Toll Revenue Bonds – Senior Lien Revenue Bond, TIFIA Series 2025 (the “2025 TIFIA Bond”) under the Toll Indenture and a Second Supplemental Indenture dated as of _____ 1, 2025 (the “Toll Second Supplement”);

WHEREAS, the Fifth Series Supplement provided for “HRTF Transfers” (as defined in the Fifth Series Supplement) to certain funds established and maintained under the Toll Indenture in order to support obligations issued under the Toll Indenture, all as described and provided for in the Fifth Series Supplement;

WHEREAS, in connection with the issuance of the 2025 TIFIA Bond, the Commission and the TIFIA Lender desire to make certain supplements and amendments to the Fifth Series Supplement with respect to the HRTF Transfers;

WHEREAS, Section 15.1 of the HRTF Master Indenture provides that the Commission and the Trustee are permitted to, 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 HRTF Master Indenture or any Series Supplement as and to the extent set forth in such Section 15.1;

WHEREAS, all acts, conditions and things required by the Constitution and the laws of the Commonwealth of Virginia to happen, exist and be performed precedent to and in the execution and delivery of this Amendatory Supplement to have happened, exist and have been performed as so required in order to make this Amendatory Supplement a valid and binding agreement in accordance with its terms; and

WHEREAS, the Trustee has accepted the trusts created by the HRTF Master Indenture and this Amendatory Supplement and in evidence thereof has joined in the execution hereof.

NOW, THEREFORE, the Commission hereby agrees and covenants with the Trustee and with the respective owners from time to time of the Bonds as follows:

ARTICLE I AMENDATORY SUPPLEMENT

Section 1.1 Amendatory Supplement. This Amendatory Supplement is authorized and executed by HRTAC and delivered to the Trustee pursuant to and in accordance with Article XV of the HRTF Master Indenture.

Section 1.2 Definitions. All capitalized words and terms used in this Amendatory Supplement, including in the recitals, shall have the meanings set forth in the HRTF Master Indenture or the Fifth Series Supplement unless the context clearly requires a different or separate meaning.

ARTICLE II AMENDMENTS

Section 2.1 Amendments to Definitions in Fifth Series Supplement. For so long as either of the 2021 TIFIA Bond or the 2025 TIFIA Bond is Outstanding, and in accordance with Section 15.1(k) and (m) of the HRTF Master Indenture, Section 1.1 of the Fifth Series Supplement is hereby amended by adding or amending the following definitions:

- (a) The following definitions are added to Article 1.2 of the Fifth Series Supplement:

[To be updated with definitions conforming to the 2025 TIFIA Toll Loan Agreement.]

- (b) The following definitions are amended in their entirety as follows:

[To be updated with definitional amendments conforming to changes from the 2021 Toll TIFIA Loan Agreement to the 2025 TIFIA Toll Loan Agreement.]

Section 2.2 Amendment to Section 6.4 of the HRTF Master Indenture. For so long as either of the 2021 TIFIA Bond or the 2025 TIFIA Bond is Outstanding, and in accordance with Section 15.1(k) and (m) of the HRTF Master Indenture, Section 6.4 of the Fifth Series Supplement is amended and restated as follows:

Section 6.4 HRTF Transfers to Toll Indenture.

[The following sections to be updated to conform to the 2025 TIFIA Toll Loan Agreement.]

- (a) [For so long as the 2021 TIFIA Toll Obligation and the 2025 TIFIA Toll Obligation are 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, (A) the amount of \$10,000,000, by no later than the 2021 TIFIA Toll Debt Service Payment Commencement Date, and (B) the amount needed to bring the aggregate amount on deposit therein to the amount of \$15,000,000, by no later than the 2025 TIFIA Toll Debt Service Payment Commencement Date.

(2) For transfer and deposit to (A) the TIFIA Loan Reserve Account established under the Toll First Supplement, by no later than the 2021 TIFIA Toll Debt Service Payment Commencement Date, an amount equal to the TIFIA Loan Reserve Account Reserve Requirement (as defined in the Toll First Supplement)

with respect to the 2021 TIFIA Toll Obligation (\$[19,239,221.97]), and (B) the 2025 TIFIA Loan Reserve Account established under the Toll Second Supplement, by no later than the 2025 TIFIA Toll Debt Service Payment Commencement Date, an amount equal to the 2025 TIFIA Loan Reserve Account Reserve Requirement (as defined in the Toll Second Supplement) with respect to the 2025 TIFIA Toll Obligation (\$[_____]).

(3) For transfer and deposit to the Toll Major Maintenance and Renewal Fund established under the Toll Indenture, (A) the amount of \$5,000,000 by no later than the later of (i) the 2021 TIFIA Substantial Completion Date, and (ii) the date on which the Commission makes the first draw under the 2021 TIFIA Toll Obligation, and (B) the amount needed to bring the aggregate amount on deposit therein to the amount of \$10,000,000 by no later than the later of (i) the 2025 TIFIA Substantial Completion Date, and (ii) the date on which the Commission makes the first draw under the 2025 TIFIA Toll Obligation.]

(b) [Subject to the provisions of Section 6.4(c) below, and for so long as either the 2021 TIFIA Toll Obligation or the 2025 TIFIA Toll Obligation are outstanding, the Commission shall make the following transfers from the General Fund upon receipt of the written instructions or request of the Toll Trustee:

(1) Pursuant to Section 4.01(d)(2) of the Toll Second Supplement, beginning on July 15 of the year following the applicable year in which the 2021 TIFIA Toll Debt Service Payment Commencement Date or the 2025 TIFIA Toll Debt Service Payment Commencement Date occurs (or if such day is not a Business Day, then the Business Day succeeding such date) and continuing on each July 15 thereafter (or if such day is not a Business Day, then the Business Day succeeding such date) through the applicable maturity of the 2021 TIFIA Toll Obligation or the 2025 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(e)(2) of the Toll Second Supplement, beginning July 15 in the year following the year in which the initial deposit is made per paragraph (b)(1) above and continuing on each July 15 thereafter through the later to mature of the 2021 TIFIA Toll Obligation or the 2025 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 either the 2021 TIFIA Toll Obligation or the 2025 TIFIA Toll Obligation are outstanding for

deposit to the Toll Major Maintenance and Renewal Fund shall not exceed the Toll Major M & R HRTF Cumulative Transfer Cap.]

(c) No Event of Default will exist under Section 6.4(b) unless the Commission's failure to make the specified HRTF Transfer extends to the December 30th next following the July 15th as of which such HRTF Transfer was required to be made. Pursuant to Section 13.1(c) of the HRTF 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.

(d) The Trustee shall have no duties or responsibilities relating to the transfers under this Section 6.4 and shall be entitled to rely on a confirmation from the Toll Trustee as to any transfers and deposits made under this Section 6.4.

Section 2.3 Affirmation of Amendments. HRTAC hereby finds and affirms that the amendments set forth in this Article II do not prejudice in any material respect the rights of the Owners of the Bonds then Outstanding. For the avoidance of doubt, to the extent any amendments or other provisions set forth herein conflict with any provision of the Toll Second Supplement, the provisions of the Toll Second Supplement shall control.

ARTICLE III MISCELLANEOUS

Section 3.1 Ratification. Except as amended hereby, the Fifth Series Supplement and the HRTF Master Indenture are in all respects ratified and confirmed, and all terms, provisions and conditions thereof shall be and remain in full force and effect. Nothing contained in this Amendatory Supplement shall constitute or be construed as a novation of any of the parties' obligations hereunder.

Section 3.2 Enforceability. This Amendatory Supplement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

Section 3.3 Severability. If any provision of this Amendatory Supplement is held invalid by any court of competent jurisdiction, such holding will not invalidate any other provision.

Section 3.4 Governing Law. This Amendatory Supplement will be governed by and construed under the applicable laws of the Commonwealth.

Section 3.5 Counterparts. This Amendatory 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 3.6 Parties Interested. Except as and to the extent provided in Article II hereof, nothing in this Amendatory 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 2021 TIFIA Bond and the 2025 TIFIA Bond, any right, remedy or claim under or by reason of this Amendatory Supplement, this Amendatory Supplement being intended for the sole and exclusive benefit of HRTAC, the Trustee and the Owner(s) of the 2021 TIFIA Bond and the TIFIA Series 2025 Bond.

[Signature Page Follows]

IN WITNESS WHEREOF, HRTAC and the Trustee have caused this First Amendatory Supplement to Fifth Supplemental Series Indenture of Trust 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: _____

**ACKNOWLEDGED AND CONSENTED TO,
AND WITH RESPECT TO AMENDMENTS
SET FORTH HEREIN, AGREED TO, BY:**

**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

**5. C. Fiscal Year 2025 Annual Report to the Joint Commission on
Transportation Accountability Relating to the Hampton Roads
Transportation Fund**

Agenda Item 5C
Action Item

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

From: Kevin B. Page, Executive Director

Date: September 18, 2025

**Re: Fiscal Year 2025 Annual Report to the Joint Commission on Transportation
Accountability Relating to the Hampton Roads Transportation Fund**

Recommendation:

HRTAC Staff recommends that the Finance Committee recommend to the Commission to authorize the Executive Director to finalize and submit the legislatively mandated Fiscal Year 2025 Hampton Roads Transportation Fund (HRTF) Report to the Joint Commission on Transportation Accountability (Attachment 5C).

Background:

Item 1. I. of Chapter 725 of the 2025 Regular Session included the requirement for the Joint Commission on Transportation Accountability to regularly review and provide oversight of the usage of funding generated pursuant to the provisions of House Bill 2313, 2013 Session of the General Assembly. To this end, by November 15 the Director of the Department of Rail and Public Transportation, the Northern Virginia Transportation Authority and the Hampton Roads Transportation Accountability Commission shall each prepare a report on the uses of the Commonwealth Rail Fund, the Northern Virginia Transportation Authority Fund, and the Hampton Roads Transportation Fund, respectively, each year to be presented to the Joint Commission on Transportation Accountability. To meet this requirement, HRTAC Staff has prepared the draft Fiscal Year 2025 Annual Report to the Joint Commission on Transportation Accountability Relating to the Hampton Roads Transportation Fund.

Fiscal Impact:

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

Suggested Motion:

Motion: The Finance Committee: i. recommends to the Commission that it authorize the Executive Director to finalize and submit to the Joint Commission on Transportation Accountability the Fiscal Year 2025 Annual Report to the Joint Commission on



Transportation Accountability Relating to the Hampton Roads Transportation Fund; and ii, authorizes the Finance Committee Chair to communicate said recommendation to the Commission at its next meeting.



Fiscal Year 2025 Annual Report to the Joint Commission on Transportation Accountability Relating to the Hampton Roads Transportation Fund

Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, Virginia 23320
www.hrtac.org

Executive Summary

Item 1. I. of Chapter 725 of the Acts of Assembly of the 2025 Regular Session of the General Assembly included the requirement that the Joint Commission on Transportation Accountability shall regularly review and provide oversight of the usage of funding generated pursuant to the provisions of House Bill 2313, 2013 Session of the General Assembly. To this end, by November 15 the Director of the Department of Rail and Public Transportation, the Northern Virginia Transportation Authority and the Hampton Roads Transportation Accountability Commission shall each prepare a report on the uses of the Commonwealth Rail Fund, the Northern Virginia Transportation Authority Fund, and the Hampton Roads Transportation Fund, respectively, each year to be presented to the Joint Commission on Transportation Accountability.

During FY2025, the Hampton Roads Transportation Accountability Commission ('HRTAC') took actions and executed project agreements or project amendments with the Virginia Department of Transportation ('VDOT') to advance project readiness and to provide financing and project delivery. During the fiscal year, HRTAC issued its \$7.582 billion FY2026 through FY2031 Funding Plan Update and its \$11.94 billion Long-Range Funding Plan Update through FY2045; further advanced project development and construction with VDOT supported by the Hampton Roads Transportation Fund ('HRTF'). HRTAC also advanced project agreements with the Transportation District Commission of Hampton Roads (Hampton Roads Transit) supported by the Hampton Roads Regional Transit Fund ('HRRTF'). The major work activity of FY2025 was relating to the continued execution of the Commission's debt financing and funding plan for HRTF supported projects, administration of the Master Tolling Agreement for the Hampton Roads Express Lanes Network ('HRELN'), and the administration of the fourth funding year of the Hampton Roads Regional Transit Fund and Program. Of the total HRTF and toll revenue supported project costs under agreement, \$5.3 billion is sourced by HRTAC controlled monies. The Commonwealth of Virginia's SMART SCALE Program has provided approximately \$463.8 million toward HRTAC projects including the I-64 Peninsula Widening, the I-64 Southside Widening/High Rise Bridge Phase I, the I-64/I-264 Interchange Improvements (Phase II) and the HRBT Expansion Project. Figure 1 provides a graphic showing the locations and the activities of the HRTAC HRTF and toll revenue funded projects. HRTAC does not allow balances to sit on projects that will not fully utilize the allocated funds in a timely manner. VDOT and HRTAC work together to identify projects that could release project contingency funds or allocations deemed surplus to allow other projects to advance.

Background

Prior Legislative Actions

On April 3, 2013, the Governor's substitute for House Bill 2313 (HB 2313) was adopted by the Virginia General Assembly. Based on criteria set forth in HB 2313, several new taxes dedicated to transportation were imposed in Planning District 23, (located in Hampton Roads), thereby providing permanent, annual sources of revenue dedicated to transportation projects to reduce congestion in the region. These new revenue sources became effective on July 1, 2013 (FY 2014), with the new taxes being imposed in the localities comprising Planning District 23: 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 legislation established the Hampton Roads Transportation Fund ('HRTF') which is funded with the new taxes imposed in Planning District 23. Pursuant to HB 2313, the Hampton Roads Transportation Planning Organization ('HRTPO') was given authority over the use of funds in the HRTF. Beginning in June 2015, monthly revenue collections from the previous accounting period were transferred to HRTAC by VDOT.

During the 2014 General Assembly Session, the Hampton Roads Transportation Accountability Commission (HRTAC) was created to administer the funding in the HRTF. House Bill 1253 and Senate Bill 513, (Chapters 678 and 545 respectively), created HRTAC as a political subdivision of the Commonwealth to procure, finance, build, and operate critical projects in the region. The Commission has 23 Members, consisting of the Chief Elected Officers of the governing bodies of the 14 localities in Planning District 23, two members of the Virginia Senate, three members of the House of Delegates, and four nonvoting ex officio members (Commissioner of Highways, Director of Rail and Public Transportation, Executive Director of the Virginia Port Authority, and a member of the Commonwealth Transportation Board). HRTAC was authorized to issue bonds and use the revenue generated by HB2313 in Planning District 23 to, among other things, support the debt service. HRTAC would not replace the planning functions that are provided by the HRTPO. However, the Commission will utilize the HRTPO prioritized projects as its program of projects. The authority of the funding for the HRTF transitioned on July 1, 2014 to the HRTAC from the HRTPO.

During the 2016 General Assembly Session, changes were made to HRTAC's enabling legislation to improve the business operations of HRTAC. House Bill 1111 (Chapter 603) allows for HRTAC to invest the Hampton Roads Transportation Fund (HRTF) revenues and provides liability protections to HRTAC while investing the funds. The enacted legislation also allows counties to designate a representative to the Board in lieu of the Chief Elected Official, and allows all localities to have representation at the meetings if Chief Elected Officer or County Designee is unable to attend. HB1111 also provided that administrative and operating expenses shall be paid by HRTAC Revenues.

During the 2018 General Assembly Session, changes were made to the regional motor fuels tax that will stabilize the revenues, assist in bonding, and generate near \$20M in additional annual revenues for the Hampton Roads Transportation Fund. Senate Bill 896 (Chapter 797) established a floor on the 2.1 percent sales tax imposed on motor vehicle fuels sold in Northern Virginia and Hampton Roads by requiring that the average distributor price upon which the tax is based be no less than what the statewide average distributor price would have been on February 20, 2013. Also during the 2018 Session, the General Assembly included State Budget language (Chapter 2, Item 442 R.) authorizing the Commissioner of DMV to share tax collection data with HRTAC's Executive Director and included language (Chapter 2, Item 452 B.) that expressed the intent of the General Assembly that the toll revenues, and any bond proceeds or concession payments backed by such toll revenues, derived from the express lanes on Interstate 64 between the interchange of Interstate 64 with Interstate 664 and the interchange of Interstate 64 with Interstate 564 be used to reduce the necessary contribution from the Hampton Roads Transportation Accountability Commission established pursuant Chapter 26 of Title 33.2, Code of Virginia, for a project to expand the capacity of Interstate 64 between the interchange of Interstate 64 with Interstate 664 and the interchange of Interstate 64 with Interstate 564.

During the 2020 General Assembly Session, HB1726/SB1038 created the Hampton Roads Regional Transit Program and Fund to develop, maintain, and improve a regional network of transit routes and related infrastructure, rolling stock, and support facilities. 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) regional transient occupancy tax at a rate of one percent of the charge for the occupancy, both imposed in localities in the Hampton Roads Transportation District. The legislation also dedicated \$20 million of revenues from existing recordation taxes to funding the program. The moneys will be deposited into the Hampton Roads Regional Transit Fund, created by the bill, and will be administered by HRTAC. Use of the funds would require a two-thirds vote of the HRTAC localities in which the new taxes were imposed. HB1438 authorized the Hampton Roads Transportation Accountability Commission to impose and collect tolls in high-occupancy toll lanes on certain portions of Interstate 64. The area of Interstate 64 in which such tolls may be imposed is the vicinity of the interchange of Interstate 64 and Jefferson Avenue to the interchange of Interstate 64, Interstate 264, and Interstate 664. The bill directs the Commission to enter into an agreement with the Commonwealth Transportation Board and the Department of Transportation regarding the standards for operating the facility and use of toll proceeds. Other legislation involving adjustments to state and regional motor fuels tax revenues included for HRTAC the conversion of the calculation of

gasoline tax revenue from a 2.1 percentage of wholesale cost per gallon to a new 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.

During the 2021 General Assembly Session, legislative actions that impacted HRTAC included the following state budget language (HB 1800, Chapter 552, Item 447.1, B. 3 and HB 1800, Chapter 552, Item 447.1, F.):

B. 3. Up to \$93,100,000 shall be transferred to Item 447 for improvements to the Interstate 64 Corridor as follows: (i) to provide any amounts necessary to complete the funding plan for the Hampton Roads Express Lanes as identified in the Master Agreement for Development and Tolling of the Hampton Roads Express Lanes Network executed pursuant to Chapter 703 of the 2020 Acts of Assembly, and (ii) any remaining amounts to improve Interstate 64 between exit 205 and exit 234 as determined by the Commonwealth Transportation Board.

F. For amounts available pursuant to subsection B.3. of this item, the Board shall not distribute any funds for the Hampton Roads Express Lanes Network until updated traffic and revenue modeling considering summer weekend traffic volumes is completed and the amount necessary to complete the funding plan, if any, is determined by the Hampton Roads Transportation Accountability Commission in coordination with the Board. In the event that funds are available to improve the Interstate 64 corridor between exit 205 and exit 234, the Board shall coordinate with the Central Virginia Transportation Authority to determine whether there is an opportunity to partner with the Authority on such improvements.

During the 2022 General Assembly Session, legislative actions that impacted HRTAC included the following state budget language (HB 29, Chapter 1, Item 447.1, F. of Special Session 1):

F. For amounts available pursuant to subsection B.3. of this item, the Board shall not distribute any funds for the Hampton Roads Express Lanes Network until updated traffic and revenue modeling considering summer weekend traffic volumes is completed and the amount necessary to complete the funding plan, if any, is determined by the Hampton Roads Transportation Accountability Commission in coordination with the Board. In the event that funds are available to improve the Interstate 64 corridor between exit 205 and exit 234, the Board shall coordinate with the Central Virginia Transportation Authority to determine whether there is an opportunity to partner with the Authority on such improvements.

During the 2025 General Assembly Session, legislative actions that impacted HRTAC included HB2466, the Hampton Roads Interstate Highway Corridor Improvement Program and Fund; Hampton Roads Highway Coastal Resilience Program and Fund; Planning District 23. HB2466 was to create (i) the Hampton Roads Interstate Highway Corridor Improvement Program for the purpose of planning, developing, financing, building, constructing, and otherwise making infrastructure and safety improvements to, or maintaining the infrastructure of, certain new or existing highway corridors, highways, bridges, and tunnels in Planning District 23 (Hampton Roads) and (ii) the Hampton Roads Highway Coastal Resilience Program for the purpose of planning, developing, financing, building, constructing, and maintaining infrastructure to address transportation infrastructure that is at risk due to recurrent and coastal flooding in Planning District 23. HB2466 passed in the House and Senate and was vetoed by the Governor.

Hampton Roads Regional Transportation Priority Projects

\$5.3 Billion HRTAC Funded Under Construction

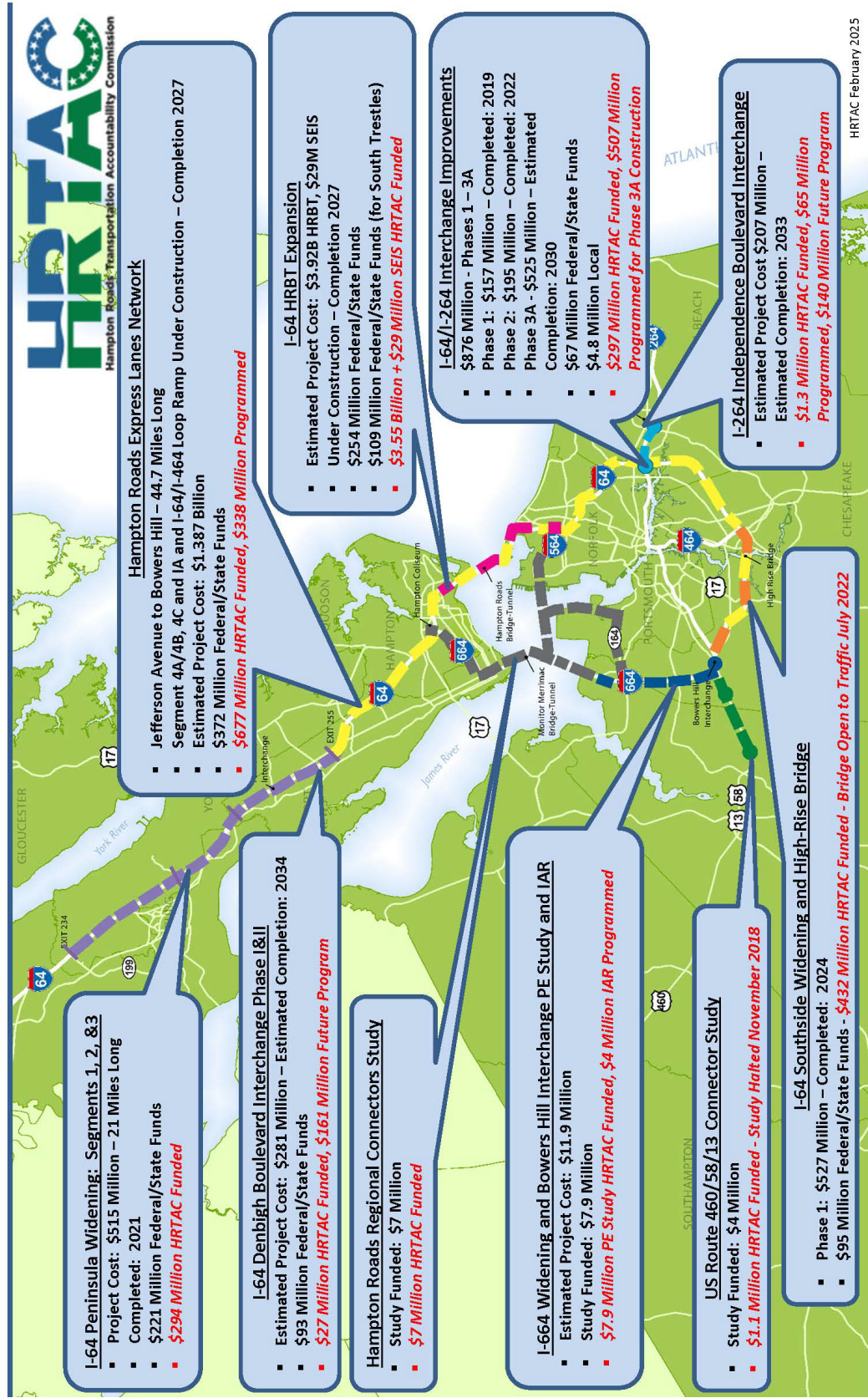


Figure 1 – Activities of HRTAC/HRTF Funded Projects

Revenue Sources and Collections

Retail Sales and Use Tax

In 2013, an additional state Retail Sales and Use Tax was imposed in Planning District 23 at the rate of 0.7 percent and dedicated to the HRTF. Accordingly, the total rate of the state and local Retail Sales and Use Tax became 6 percent in localities that fall within the District (4.3 percent state, 0.7 percent regional, and 1 percent local).

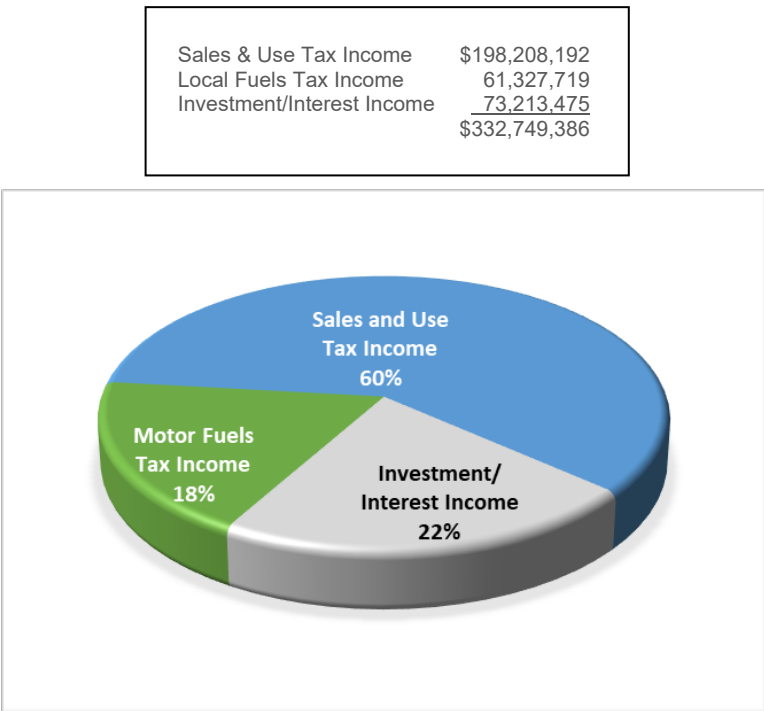
Local Fuels Tax

In 2013, Planning District 23, an additional fuels tax was added at the wholesale level of 2.1 percent. During the 2020 Acts of Assembly, legislative action involving adjustments to state and regional motor fuels tax revenues included for HRTAC the conversion of the calculation of gasoline tax revenue from a 2.1 percentage of wholesale cost per gallon to a new 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. On July 1, 2024, through June 30, 2025, the regional tax per gallon of gasoline and gasohol was 9.0 cents (and 9.1 cents per gallon of diesel). These funds were also dedicated to the HRTF.

Total Collections

Revenue collected from the Region’s Retail Sales and Use and Fuels taxes plus interest and investment income earned in FY 2025 totaled \$332.7 million. Figure 2 provides a detail and graphic of the collections by revenue source and percentage of total collections. Year-end cash balances of the HRTAC totaled \$1.6 billion including bond proceeds, operating, and investment accounts.

Figure 2 - HRTAC Revenue Collections FY2025



Expenditures

From July 1, 2024 through June 30, 2025, HRTAC incurred the following administrative and project expenditures:

Description	Amount
Legal Fees	\$ 401,297
Investment Fees	216,814
HRPDC/HRTPO Assistance	103,032
Financial Advisor	0
Payroll/Fringes	896,168
Pension Expense	(25,599)
Bond Issuance Costs	1,321,700
Interest Expense	56,812,612
DMV Fees	99,545
Operating	198,701
Capital Outlay	0
Project Related	466,087,129
Total	\$ 526,111,399

Expenditures (continued)

HRTAC project-related expenditures are provided in detail below (inception through June 30, 2025):

Hampton Roads Transportation Fund (HRTF)
Total Project-Related Expenditures as of June 30, 2025

Project	Total
I-64 Peninsula Widening	
UPC 104905/111926 - Segment 1 - PE/Construction	\$ 11,608,384
UPC 106665 - Segment 2 - PE/ROW/Construction	159,559,703
UPC 109790/106689 - Segment 3 - PE	5,766,837
UPC 109790/106689 - Segment 3 - Construction	91,906,144
UPC 123656 - Denbigh Blvd Interchange Phase 2 East Bound - Design/ROW	1,825,497
I-64/264 Interchange Improvement	
UPC 57048/108042 - Phase I - PE/ROW	15,071,063
UPC 57048/108042 - Phase I - Construction	135,151,747
UPC 17630/108041 - Phase II - PE/ROW	54,592,576
UPC 17630/108041 - Phase II - Construction	73,157,062
UPC 106693 - Phase III - PE & ROW	7,500,000
UPC 125602 - Phase IIIA - PE & ROW	-
I-64 Southside Widening/High-Rise Bridge	
UPC 106692 - Phase I - PE	12,189,098
UPC 106692/108990 - Phase I - ROW/Construction	338,104,375
I-64 HRBT Expansion Project	
UPC 115008 - I-64 HRBT Expansion Project D-B Contract	2,257,331,721
UPC 115009 - I-64 HRBT Expansion Project Owners Oversight	288,535,151
HRELN Segment 1 Phase 1 PE - UPC	
UPC 117840 - Segment 1 Phase 1 - PE	5,621,500
UPC 117839 - Segment 4A/4B Phase 1 - PE	5,916,425
UPC 117841 - Segment 4C Phase 1 - PE	6,062,743
UPC 119637 - Segment 1A - PE/ROW/Construction	2,710,319
UPC 120863 - Segment 1B - PE/ROW/Construction	5,360,180
UPC 119824 - Segment 4A/4B - PE/ROW/Construction	43,516,289
UPC 119638 - Segment 4C - PE/ROW/Construction	226,936,131
UPC 122999 - Transportation Management Plan	192,667
UPC 122714 - I-464/I-64 Interchange Improvements - Full Interchange Access Report Development Project	1,510,767
UPC 120375 & 123322 - I-64/I-464 Interchange Exit 291 Flyover Ramp Improvements	-
HRCS Preferred Alternative Refinement - HRBT UPC 110577 - SEIS	28,800,287
460/58/13 Connector Study - UPC 106694 - PE	1,095,368
Bowers Hill Interchange Study - UPC 111427	8,819,668
UPC 122761 - I-264 Independence Blvd Interchange IAR	692,207
HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)	7,000,000
Total	\$ 3,796,533,908

Allocations

Project allocations as of June 30, 2025 are provided in detail below (inception through June 30, 2025):

Hampton Roads Transportation Fund (HRTF)
Total Allocations as of June 30, 2025

Project	Total FY2014 - FY2024	FY 2025 YTD	Total
I-64 Peninsula Widening			
UPC 104905 - Segment 1 - Construction	\$ 11,608,385	\$ -	\$ 11,608,385
UPC 106665 - Segment 2 - PE/ROW/Construction	159,559,703	-	159,559,703
UPC 109790/106689 - Segment 3 - PE	10,000,000	-	10,000,000
UPC 109790/106689 - Segment 3 - Construction	112,893,996	-	112,893,996
UPC 123656 - Denbigh Blvd Interchange Phase 2 East Bound	26,643,026	-	26,643,026
I-64/264 Interchange Improvement			
UPC 57048/108042 - Phase I - PE/ROW	15,071,063	-	15,071,063
UPC 57048/108042 - Phase I - Construction	137,023,653	-	137,023,653
UPC 17630/108041 - Phase II - PE/ROW	54,592,576	-	54,592,576
UPC 17630/108041 - Phase II - Construction	73,157,062	-	73,157,062
UPC 106693 - Phase III - PE & ROW	7,500,000	-	7,500,000
UPC 125602 - Phase IIIA - PE & ROW	-	9,917,000	9,917,000
I-64 Southside Widening/High-Rise Bridge			
UPC 106692 - Phase I - PE	12,200,000	-	12,200,000
UPC 106692/108990 - Phase I - ROW/Construction	419,756,220	-	419,756,220
I-64 HRBT Expansion Project			
UPC 115008 - I-64 HRBT Expansion Project D-B Contract	3,004,569,251	-	3,004,569,251
UPC 115009 - I-64 HRBT Expansion Project Owners Oversight	548,900,330	-	548,900,330
Hampton Roads Express Lanes Network (HRELN)			
UPC 117840 - Segment 1 Phase 1 - PE	5,621,500	-	5,621,500
UPC 117839 - Segment 4A/4B Phase 1 - PE	5,916,425	-	5,916,425
UPC 117841 - Segment 4C Phase 1 - PE	6,062,743	-	6,062,743
UPC 119637 - Segment 1A - PE/ROW/Construction	92,079,565	-	92,079,565
UPC 120863 - Segment 1B - PE/ROW/Construction	5,860,180	-	5,860,180
UPC 119824 -Segment 4A/4B - PE/ROW/Construction	136,611,494	-	136,611,494
UPC 119638 - Segment 4C - PE/ROW/Construction	399,153,311	-	399,153,311
UPC 122999 - Transportation Management Plan	8,000,000	-	8,000,000
UPC 122714 - I-464/I-64 Interchange Improvements - Full Interchange Access Report Development Project	2,500,000	-	2,500,000
UPC 120375 & 123322 - I-64/I-464 Interchange Exit 291 Flyover Ramp Improvements	15,380,374	-	15,380,374
HRCS Preferred Alternative Refinement - HRBT UPC 110577 - SEIS	30,000,000	-	30,000,000
UPC 106694 - 460/58/13 Connector Study - PE	1,095,368	-	1,095,368
UPC 111427 - Bowers Hill Interchange Study	11,904,630	-	11,904,630
UPC 122761 - I-264 Independence Blvd Interchange IAR	1,250,000	-	1,250,000
HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)	7,000,000	-	7,000,000
Total	\$ 5,321,910,855	\$ 9,917,000	\$ 5,331,827,855

5. D. HRTAC Accounting Manual Update – Credit Card, Small Purchases, and Fixed Asset Threshold Policies

Agenda Item 5D
Action Item

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

From: Kevin B. Page, Executive Director

Date: September 18, 2025

Re: HRTAC Accounting Manual Update – Credit Card, Small Purchases, and Fixed Asset Threshold Policies

Recommendation:

The Finance Committee is asked to: i. Endorse and recommend to the Commission for approval the proposed update to the HRTAC Accounting Policies and Accounting Manual; and, ii. Authorize the Finance Committee Chair to communicate the Committee's recommendation to the Commission at its next meeting.

Background:

The Commission adopted the HRTAC Accounting Policy and Accounting Manual on June 21, 2018. The Commission Staff continues to monitor and propose updates as necessary, and the Commission has amended the Adopted HRTAC Accounting Manual on December 13, 2018, June 20, 2019, September 19, 2019, October 17, 2019, December 10, 2020, June 17, 2021, and September 21, 2023. HRTAC Staff has identified a need to amend the HRTAC Credit Card, Small Purchases, and Fixed Asset Threshold Policies. The Commission's staff has updated its Accounting Policies and Procedures manual in several areas, as follows:

- Wording throughout the manual has been updated to reflect the addition of HRTAC's first full-time Chief Financial Officer and Controller
- Dollar limits for Small Purchase policies and for capitalization of fixed assets were increased to better align with inflation and with industry standards
- The policy on Credit/Debit cards was updated to authorize the Chief Financial Officer, in addition to the Executive Director, to obtain a credit card account for the Commission
- A description of the Commission's requirement to verify that all bank accounts held as Public Deposits are verified quarterly and annually in compliance with SPDA and related guidelines.

Fiscal Impact:

There is no impact in relation to this Action Item.



Suggested Motion:

Motion is that the Finance Committee: i. Endorses and recommends to the Commission for approval the proposed update to the HRTAC Accounting Policies and Accounting Manual; and, ii. Authorizes the Finance Committee Chair to communicate the Committee's recommendation to the Commission at its next meeting.



ACCOUNTING POLICIES AND PROCEDURES

Adopted June 21, 2018

**Revised December 13, 2018, June 20, 2019, September 19, 2019,
October 17, 2019, December 10, 2020, June 17, 2021,
~~and~~ September 21, 2023, and September 18, 2025**

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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 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 June 17, 2021
Statement of Investment Policy	Adoption, Revised Revised Revised Revised Incorporation	June 16, 2016 December 13, 2018 June 20, 2019 December 10, 2020 September 21, 2023
Hampton Roads Transportation Fund Revenue Bonds Post-Issuance Bond Compliance Policy	Adoption, Incorporation	April 19, 2018
Federal Programs Procedures	Adoption, Incorporation	June 17, 2021
Verification of Deposits	Adoption, Incorporation	September 21, 2023
Credit Card, Small Purchases, and Fixed Asset Threshold Policies	Proposed Changes	September 18, 2025

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.
7. Reviews completed monthly bank reconciliations, journal entries and check register.

Deputy Executive Director

1. Assists Executive Director with the development of annual and program budgets.
2. Carries out responsibilities of the Executive Director in the Executive Director's absence, as delegated by the Executive Director.
- ~~1.~~

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.
- ~~4.~~ Reviews completed monthly bank reconciliations, journal entries and check register.
- ~~5.~~ Assists Executive Director with the development of annual and program budgets.
- ~~6.~~ Verifies the bank balances on the VA Treasury site quarterly.

Controller

1. Processes payroll.
2. Processes all wire transfers.
3. Maintains general ledger.
- ~~1.~~ Prepares monthly and year-end financial reports.
- ~~4.~~
- ~~2.~~ Manages Accounts Receivable
- ~~5.~~
6. Reviews completed monthly bank reconciliations, journal entries and check register.

~~5.~~

~~Accounting Manager~~**Senior Accounting Manager**

1. Overall responsibility for data entry into accounting system and integrity of accounting system data.

2. Processes invoices, prepares checks for signature and mails vendor checks.

~~Processes invoices and prepares checks for signature.~~

3. Makes bank deposits.

4. Reconciles all bank accounts.

~~Makes bank deposits.~~

~~1. Processes payroll.~~

~~2. Processes all wire transfers.~~

~~3. Maintains general ledger.~~

~~4. Prepares monthly and year-end financial reports.~~

~~2. Reconciles all bank accounts.~~

~~5. Mails vendor checks.~~

~~6. 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~~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, State Recordation Tax, Regional Transportation Improvement Fees, and Transportation District Transient Occupancy 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~~Controller will receive an email from Virginia Department of Accounts confirming a wire transfer.
4. The HRTAC ~~Accounting Manager~~Controller 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~~Controller 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~~Controller 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.
- 7-8. 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.

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~~Controller 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~~Controller 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/effectuated 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. Cash disbursements are made by check, wire, ACH debit or ACH. ~~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.

5. -All requests for payment will be reviewed by the designated staff for:

a) 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.

b) All documentation will be appropriately filed.

6. 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

7. Requests for cash disbursements are submitted to Accounting in two ways:

1. Original invoice
2. Employee expense report or reimbursement request

8. 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.

Checks

When made, checks shall be copied and recorded in the Commission's books and records, including its check ledger.

a) All checks require a second signature from an authorized Commission member or staff member.

~~Cash disbursements are generally made for:~~

- ~~1. Payments to vendors for goods and services~~
- ~~2.1. Taxes/license fees~~
- ~~3.1. Staff training and development~~
- ~~4.1. Memberships and subscriptions~~
- ~~5.1. Meeting expenses~~
- ~~6.1. Employee reimbursements~~

Checks are processed ~~monthly~~ every two weeks and invoices submitted to the HRTAC ~~Accounting Manager~~ Senior Accounting Manager by ~~the first of the third week of the month~~ Wednesday will be processed and paid by Friday of the ~~following~~ same week. The HRTAC ~~Accounting Manager~~ Chief Financial Officer will assign the general ledger account code.

~~Requests for cash disbursements are submitted to Accounting in two ways:~~

- ~~1. Original invoice~~
- ~~2.1. 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. All documentation will be appropriately filed.~~

Wire

Electronic funds transfers, using the electronic wire transfer from the Commission's bank accounts are subject to the following:

1. Wire transfers must have the Finance Chair, Executive Director, and the Chief Financial Officer's approval.
2. All wire transfer payments must be loaded in the Commission's bank account website by the Controller and approved by the CFO, or the Executive Director in the CFO's absence.

ACH Debit/ ACH

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/effectuated 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. The Chair of the Finance Committee may issue a blanket approval for the payment of recurring monthly operating expenses.
4. All ACH transfers/direct debit payments will be tracked through the monthly bank statements and reconciled to the accounting system transactions.

~~2.~~

VII. Procurement of Goods and Services, Including Procedures for Certain Small Purchases (Adopted October 15, 2015, Amended June 17, 2021)

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 \$1,500</u>	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 \$1,500 and \$1,4994,999</u>	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 \$1,500-5,000 and \$4,9999,999</u>	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.

When the aggregate or the sum of all phases is expected to be between \$5,000 <u>10,000</u> and \$25,000 <u>50,000</u>	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. 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.
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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



CREDIT CARD FORM

Today's Date: _____

Requester/ Purchaser: _____

Credit Card Holders Name: _____

Purchase Date _____

Item/Service Purchased:

Vendor:

Fund	Account	Object	Amount

Total

-

Requester/Purchaser Signature

Executive Director Signature

Attach all receipts and supporting documentation to the approved form; submit the package to the CFO.

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. ~~2.~~ The Executive Director or the Chief Financial Officer shall be authorized to obtain one credit card account 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. Commission accounting staff may be designated by the Executive Director or Chief Financial Officer as an authorized user of the credit card to facilitate approved transactions in accordance with the Credit Card policy.
 - a. All credit card purchases must be submitted on a Credit Card Form and approved by the Executive Director.
 - b. The CFO reviews all credit card purchases on the monthly credit card statement before payment is made.
3. The Executive Director and the Chief Financial Officer ~~is~~are 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 CFO reviews all credit card purchases on the credit card statement ~~the cardholder shall deliver the documentation to the CFO together with a written certification~~ ensure 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~~ downloaded by the Senior 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~~Controller for review and approval. Once approved, it is returned to the ~~Accounting Manager~~Senior 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-ten~~ thousand dollars (\$~~5~~10,000). Items purchased with a value or cost less than ~~five-ten~~ thousand dollars (\$~~5~~10,000) 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	36 months
Leasehold improvements	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~~Executive Assistant.
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~~Controller will prepare the monthly Hampton Roads Transportation Fund (HRTF) and Hampton Roads Regional Transit Fund (HRRTF) financial report for review by the Executive Director and CFO. The ~~HRTF~~ Report will be included in the HRTAC agendas and include: Totals Sheet, Regional Sales and Use Tax received, Regional Fuels Tax received, -State Recordation Tax, Regional Transportation Improvement Fees, and Transportation District Transient Occupancy Tax, 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:	Executive Director
	Bond Counsel:	Kaufman & Canoles
	Trustee:	Wilmington Trust
	Paying Agent:	Wilmington Trust
	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 or 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.		

4. Local Disclosure. Any Virginia and/or local requirements.		
C. MISCELLANEOUS REQUIREMENTS		
1. Investments. Compliance with permitted investments.		
2. Derivatives. Ongoing compliance with derivatives contracts, including any posting of collateral.		

XV. Investment Policy

STATEMENT OF INVESTMENT POLICY

**(Adopted June 16, 2016, Revised December 13, 2018, June 20, 2019,
December 10, 2020, and September 21, 2023)**

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 funds and monies that are under the Commission’s supervision including, but not limited to, all financial assets and funds related to the HRTF and all financial assets and funds related to the Hampton Roads Regional Transit Fund (“HRRTF”). This Policy does not apply to any monies in trust for the funding of post-employment employee benefits. Funds from all sources related to HRTF may be pooled for investment purposes, and funds from all sources related to HRRTF may be pooled for investment purposes, but all deposits and investments related to the HRRTF shall be fully segregated from the deposits and investments of the HRTF. 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. For all Authorized Investments the "time of purchase" or "date of purchase" shall be interpreted as the transaction settlement date.

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.
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 of the following NRSROs: Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's ("S&P"), or Fitch Ratings, Inc. ("Fitch"). 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, with a rating of at least AA (or its equivalent) by at least two of the following NRSROs: S&P, Moody's, or Fitch, 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 from the date of purchase, 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, A-1 by S&P, or F1 by Fitch, 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 from at least two of the following: P-1 by Moody's, A-1 by S&P, or F1 by Fitch.

6. **Corporate Notes.** High quality corporate notes with a final maturity from the time of purchase of five (5) years or less and that meet the following requirements:
 - a. Notes with maturities of no more than three (3) years from the time of purchase shall have received at least two of the following ratings: A by S&P, A by Moody's, or A by Fitch.
 - b. Notes with maturities of no more than five (5) years from the time of purchase shall have received at least two of the following ratings: AA by S&P, Aa by Moody's, or AA by Fitch.
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 that meet the following requirements:
 - a. Notes with maturities or no more than one (1) year from the time of purchase shall have received at least two of the following ratings: A-1 by S&P, P-1 by Moody's, or F1 by Fitch.
 - b. Notes with maturities exceeding one year and not exceeding five (5) years from the time of purchase shall have received at least two of the following ratings: AA by S&P, Aa by Moody's, or AA by Fitch.
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 more 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 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%
Virginia SNAP-SNAP Fund (Proceeds of Tax Exempt Bonds Only)	100%	100%

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 Manager 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. VERIFICATION OF DEPOSITS

The Executive Director shall regularly verify that all bank deposits are held in compliance with the SPDA and related guidelines. On an annual basis, the Executive Director shall require all depositories to confirm that all bank accounts are being held as Public Deposits as defined by Code of Virginia 2.2-4401 and shall require all depositories to continue to provide monthly account reports. On a quarterly basis, the Executive Director shall utilize the Public Fund Accounts system provided on the Department of the Treasury's website to confirm that all quarter-end bank account balances are being reported as Public Deposits. The Executive Director

shall report any discrepancies identified during the quarterly verification to the Treasurer of the Commonwealth of Virginia.

Q. 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.

R. 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.

S. INVESTMENT POLICY ADOPTION

This policy is enacted by the Hampton Roads Transportation Accountability Commission, this 16th day of June, 2016, and was revised by the Hampton Roads Transportation Accountability Commission on the 13th day of December, 2018 the 20th day of June, 2019, the 10th day of December 2020 and the 21st day of September 2023. This policy with revised changes will become effective September 21, 2023.

Glossary of Terms

Bankers' Acceptance: a draft or bill or 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.

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~~ten thousand dollars (\$~~5~~10,000) 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~~CFO is responsible for compiling the SEFA, which is reviewed by the ~~Senior Accounting Manager~~Controller.

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 (\$~~105~~100,000). 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 (\$~~102~~250,000). 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

agree with the recipient to close an award using the current or most recently negotiated rate. However, the recipient is not required to agree to a final rate for a Federal award for the purpose of prompt closeout.

(i) If the recipient does not comply with the requirements of this section, including submitting all final reports, the Federal agency must report the recipient's material failure to comply with the terms and conditions of the Federal award in *SAM.gov*. A Federal agency must use the Contractor Performance Assessment Reporting System (CPARS) to enter or amend information in *SAM.gov*. Federal agencies may also pursue other enforcement actions as appropriate. See § 200.339.

POST-CLOSEOUT ADJUSTMENTS AND CONTINUING RESPONSIBILITIES

§ 200.345 Post-closeout adjustments and continuing responsibilities.

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

(1) The right of the Federal agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or review. However, the Federal agency or pass-through entity must make determinations to disallow costs and notify the recipient or subrecipient within the record retention period.

(2) The recipient's or subrecipient's requirement to return funds or right to receive any remaining and available funds as a result of refunds, corrections, final indirect cost rate adjustments (unless the Federal award is closed in accordance with § 200.344(h)), or other transactions.

(3) The ability of the Federal agency or pass-through entity to make financial adjustments to a previously closed Federal award, such as resolving indirect cost payments and making final payments.

(4) Audit requirements in subpart F of this part.

(5) Property management and disposition requirements in §§ 200.310 through 200.316.

(6) Records retention as required in §§ 200.334 through 200.337.

(b) After the closeout of the Federal award, a relationship created under the

Federal award may be modified or ended in whole or in part. This may only be done with the consent of the awarding Federal agency or pass-through entity and the recipient or subrecipient, provided the responsibilities of the recipient or subrecipient referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions are made for continuing responsibilities of the recipient or subrecipient, as appropriate.

COLLECTION OF AMOUNTS DUE

§ 200.346 Collection of amounts due.

Any Federal funds paid to the recipient or subrecipient in excess of the amount that the recipient or subrecipient is determined to be entitled to under the Federal award constitute a debt to the Federal Government. The Federal agency must collect all debts arising out of its Federal awards in accordance with the Standards for the Administrative Collection of Claims (31 CFR part 901).

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 recipient and subrecipient are responsible for the efficient and effective administration of the Federal award through sound management practices.

(b) The recipient and subrecipient are responsible for administering Federal funds in a manner consistent with Federal statutes, regulations, and the terms and conditions of the Federal award.

(c) The recipient and subrecipient, in recognition of their unique combination of staff, facilities, and experience, are responsible for employing organization and management techniques necessary to ensure the proper and efficient administration of the Federal award.

(d) The accounting practices of the recipient and subrecipient must be consistent with these cost principles and

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support the accumulation of costs as required by these cost principles, including maintaining adequate documentation to support costs charged to the Federal award.

(e) When reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, the cognizant agency for indirect costs should ensure that the recipient consistently applies these cost principles. Where wide variations exist in the treatment of a given cost item by the recipient, the reasonableness and equity of such treatments should be fully considered. See the definition of *indirect costs* in § 200.1.

(f) For recipients and subrecipients 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 recipient or subrecipient must 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. When the required activities of a fixed amount award were completed in accordance with the terms and conditions of the award, the unexpended funds retained by the recipient or subrecipient are not considered profit.

§ 200.401 Application.

(a) *General.* The recipient and subrecipient must apply these principles in determining allowable costs under Federal awards. The recipient and subrecipient must also use these principles as a guide in pricing fixed-price contracts and subcontracts when costs are used in determining the appropriate price. These cost 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 items such as education allowance or published tuition rates and fees.

(2) Capitation awards based on case counts or the number of beneficiaries.

(3) Fixed amount awards, except as provided in § 200.101(b). See also § 200.201.

(4) Federal awards to hospitals (see Appendix IX of this part).

(5) Food commodities provided through grants and cooperative agreements.

(6) Other awards under which the recipient or subrecipient is not required to account for actual costs incurred.

(b) *Federal contract.* A Federal contract awarded to a recipient is subject to the Cost Accounting Standards (CAS). It must incorporate the applicable CAS requirements per 48 CFR Chapter 99 and 48 CFR part 30 (FAR Part 30). With respect to the allocation of costs, the Cost Accounting Standards at 48 CFR parts 9904 or 9905 take precedence over the cost principles in subpart E. When a contract with a recipient 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 (for example, 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 instead of the allowability provisions of § 200.449). For example, the allowability of costs in CAS-covered contracts is determined first by the allocation provisions of the Cost Accounting Standards rather than the allowability provisions in § 200.449 (unless the CAS does not address the specific costs). In complying with those requirements, the recipient's application of cost accounting practices for estimating, accumulating, and reporting costs for Federal awards and CAS-covered contracts must be consistent with 48 CFR. The recipient only needs to maintain one set of accounting records supporting the allocation of costs if the recipient administers both Federal awards and CAS-covered contracts.

(c) *Exemptions.* Some nonprofit organizations, because of their size and nature of operations, can be considered to be similar to for-profit organizations in terms of the applicability of cost principles. These nonprofit organizations must operate under Federal cost principles that apply to for-profit organizations located at 48 CFR 31.2. Appendix VIII contains a list of these nonprofit organizations. Other organizations

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may be added to this list if approved by the cognizant agency for indirect costs.

BASIC CONSIDERATIONS

§ 200.402 Composition of costs.

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

§ 200.403 Factors affecting allowability of costs.

Except where otherwise authorized by statute, costs must meet the following criteria 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 recipient or subrecipient.

(d) Be accorded consistent treatment. For example, a cost must 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 requirements of any other federally-financed program in either the current or a prior period. See § 200.306(b).

(g) Be adequately documented. See §§ 200.300 through 200.309.

(h) Administrative closeout costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency. All other costs must be incurred during the approved

budget period. At its discretion, the Federal agency is authorized to waive prior written approvals to carry forward unobligated balances to subsequent budget periods. See § 200.308(g)(3).

§ 200.404 Reasonable costs.

A cost is reasonable if it does not exceed an amount that a prudent person would incur under the circumstances prevailing when the decision was made to incur the cost. In determining the reasonableness of a given cost, consideration must be given to the following:

(a) Whether the cost is generally recognized as ordinary and necessary for the recipient's or subrecipient's operation 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 costs for the geographic area;

(d) Whether the individuals concerned acted with prudence in the circumstances considering their responsibilities to the recipient or subrecipient, its employees, its students or membership (if applicable), the public at large, and the Federal Government; and

(e) Whether the cost represents a deviation from the recipient's or subrecipient's established written policies and procedures for incurring costs.

§ 200.405 Allocable costs.

(a) *Allocable costs in general.* A cost is allocable to a Federal award or other cost objective if the cost is assignable to that Federal award or other cost objective in accordance with the relative benefits received. This standard is met if the cost satisfies any of the following criteria:

(1) Is incurred specifically for the Federal award;

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

(3) Is necessary to the overall operation of the recipient or subrecipient

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and is assignable in part to the Federal award in accordance with these cost principles.

(b) *Allocation of indirect costs.* All activities which benefit from the recipient's or subrecipient's indirect cost, including unallowable activities and donated services by the recipient or subrecipient or third parties, will receive an appropriate allocation of indirect costs.

(c) *Limitation on charging certain allocable costs to other Federal awards.* A cost allocable to a particular Federal award may not be charged to other Federal awards (for example, to overcome fund deficiencies or to avoid restrictions imposed by Federal statutes, regulations, or the terms and conditions of the Federal awards). However, this prohibition would not preclude the recipient or subrecipient 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. However, when those proportions cannot be determined because of the interrelationship of the work involved, then, notwithstanding paragraph (c), the costs may be allocated or transferred to benefitted 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 through 200.316 and 200.439.

(e) *Costs of contracts subject to CAS.* If a contract is subject to CAS, costs must be allocated to that contract according to the Cost Accounting Standards, which take precedence over the allocation provisions in this part.

§ 200.406 Applicable credits.

(a) Applicable credits refer to transactions that offset or reduce direct or indirect costs allocable to a Federal award. 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 recipient or subrecipient 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 recipient or subrecipient should be treated as applicable credits. Specifically, the concept of netting such credit items (including any amounts used to meet cost sharing requirements) must be recognized in determining the rates or amounts to be charged to the Federal award. See §§ 200.436 and 200.468 for potential application areas.

§ 200.407 Prior written approval (prior approval).

The reasonableness and allocability of certain costs under Federal awards may be difficult to determine. To avoid subsequent disallowance or dispute based on unreasonableness or nonallocability, the recipient may seek the prior written approval of the Federal agency (or, for indirect costs, the cognizant agency for indirect costs) before incurring the cost. The absence of prior written approval on any element of cost will not, in itself, affect the reasonableness or allocability of that cost unless prior approval is specifically required for allowability as described under certain circumstances in the following sections:

- (a) Section 200.306 Cost sharing;
- (b) Section 200.307 Program income;
- (c) Section 200.308 Revision of budget and program plans;
- (d) Section 200.333 Fixed amount subawards;
- (e) Section 200.430 Compensation—personal services, paragraph (h);
- (f) Section 200.431 Compensation—fringe benefits;

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- (g) Section 200.439 Equipment and other capital expenditures;
- (h) Section 200.440 Exchange rates;
- (i) Section 200.441 Fines, penalties, damages and other settlements;
- (j) Section 200.442 Fund raising and investment management costs;
- (k) Section 200.445 Goods or services for personal use;
- (l) Section 200.447 Insurance and indemnification;
- (m) Section 200.455 Organization costs;
- (n) Section 200.458 Pre-award costs;
- (o) Section 200.462 Rearrangement and reconversion costs;
- (p) Section 200.475 Travel costs.

§ 200.408 Limitation on allowance of costs.

Statutory requirements may limit the allowability of costs. Any costs that exceed the maximum amount allowed by statute may not be charged to the Federal award. Only the amount allowable by statute may be charged to the Federal award.

§ 200.409 Special considerations.

Other sections 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 recipients and subrecipients, as specified in the following sections:

- (a) Direct and Indirect Costs (§§ 200.412–200.415);
- (b) Special Considerations for States, Local Governments and Indian Tribes (§§ 200.416 and 200.417); and
- (c) Special Considerations for Institutions of Higher Education (§§ 200.418 and 200.419).

§ 200.410 Collection of unallowable costs.

Payments made for costs determined to be unallowable by either the awarding Federal agency, cognizant agency for indirect costs, or pass-through entity must be refunded with interest to the Federal Government. Unless directed by Federal statute or regulation, repayments must be made in accordance with the instructions provided by the Federal agency or pass-

through entity that made the allowability determination. See §§ 200.300 through 200.309, and § 200.346.

§ 200.411 Adjustment of previously negotiated indirect cost rates containing unallowable costs.

(a) Negotiated indirect 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 intended to correct the proposals used to establish the rates and do not constitute a reopening of the rate negotiation. The adjustments or refunds must 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 recipient or subrecipient, the unallowable costs must be removed from the indirect cost pools and the rates must be adjusted.

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

(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

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the amount or proportion of unallowable costs included in the base year proposal used to establish the rate.

DIRECT AND INDIRECT COSTS

§ 200.412 Classification of costs.

There is no universal rule for classifying certain costs as direct or indirect costs. A cost may be direct for some specific service or function but indirect for the Federal award or other final cost objective. Therefore, each cost incurred for the same purpose in like circumstances must be treated consistently either as a direct or an indirect cost to avoid possible double-charging of Federal awards. Guidelines for determining direct and indirect 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 direct or indirect costs. See § 200.405.

(b) *Application to Federal awards.* The association of costs with a Federal award determines whether costs are direct or indirect. Costs charged directly to a Federal award are typically incurred specifically for that Federal award (including, for example, supplies needed to achieve the award's objectives and the proportion of employee compensation and fringe benefits expended in relation to that specific award). Costs that otherwise would be treated as indirect costs may also be considered direct costs if they are directly related to a specific award (including, for example, extraordinary utility consumption, the cost of materials supplied from stock or services rendered by specialized facilities, cybersecurity, integrated data systems, asset management systems, performance management costs, program evaluation costs, or other institutional service operations).

(c) *Administrative and clerical staff salaries.* Administrative and clerical staff salaries should normally be treated as indirect costs. Direct charging of these costs may be appropriate only if they meet all of the following conditions:

(1) The administrative or clerical services are integral to a Federal award;

(2) Individuals involved can be specifically identified with a Federal award; and

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

(d) *Minor items.* A direct cost of a minor amount may be treated as an indirect cost, for reasons of practicality, provided that it is treated consistently for all Federal and non-Federal purposes.

(e) *Treatment of unallowable costs in determining indirect cost rates.* The costs of certain activities are not allowable as charges to Federal awards. Even though these costs are unallowable, they must be treated as direct costs for purposes of determining indirect cost rates and be allocated their equitable share of the recipient's or subrecipient's indirect costs if they represent activities which:

(1) Include the salaries of personnel;

(2) Occupy space; and

(3) Benefit from the recipient's or subrecipient's indirect costs.

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

(1) Maintenance of membership rolls, subscriptions, publications, and related functions. See § 200.454.

(2) Providing services and information to members, the government, or the public. See §§ 200.454 and 200.450.

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

(4) Conferences (except those held to conduct the general administration of

the recipient or subrecipient). See also § 200.432.

(5) Maintenance, protection, and investment of special funds not used in the recipient's or subrecipient's operation. See also § 200.442.

(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.

§ 200.414 Indirect costs.

(a) *Facilities and administration classification.* For major Institutions of Higher Education (IHE) and major nonprofit organizations, indirect costs must be classified within two broad categories: "Facilities" and "Administration." "Facilities" is defined as depreciation on buildings, equipment and capital improvements, 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 IHEs, 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. Major nonprofit organizations are those which receive more than \$10 million in direct Federal funding.

(b) *Diversity of nonprofit organizations.* It is not always possible to specify the types of costs that may be classified as indirect costs for nonprofit organizations due to the diversity of their accounting practices. The association of a cost with a Federal award is the determining factor in distinguishing direct from indirect costs. However, typical examples of indirect 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 § 200.306.)

(1) Negotiated indirect cost rates must be accepted by all Federal agencies. A Federal agency may use a rate different from the negotiated rate for either a class of Federal awards or a single Federal award only when required by Federal statute or regulation, or when approved by the awarding Federal agency in accordance with paragraph (c)(3) of this section.

(2) The Federal agency must notify OMB of any approved deviations. The recipient or subrecipient may notify OMB of any disputes with Federal agencies regarding the application of a federally negotiated indirect cost rate.

(3) The Federal 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) The Federal agency must include, in the notice of funding opportunity, the policies relating to indirect cost rate reimbursement or cost share as approved under paragraph (e). As appropriate, the Federal agency should incorporate discussion of these policies into its outreach activities with applicants before posting a notice of funding opportunity. See § 200.204.

(d) *Pass-through entities.* Pass-through entities are subject to the requirements in § 200.332(b)(4) and must accept all federally negotiated indirect costs rates for subrecipients.

(e) *Appendices.* Requirements for development and submission of indirect cost rate proposals and cost allocation plans are contained in the following Appendices:

(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 Nonprofit Organizations;

(3) Appendix V to Part 200—State/Local Government-wide 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) *De minimis rate*. Recipients and subrecipients that do not have a current Federal negotiated indirect cost rate (including provisional rate) may elect to charge a de minimis rate of up to 15 percent of modified total direct costs (MTDC). The recipient or subrecipient is authorized to determine the appropriate rate up to this limit. Federal agencies and pass-through entities may not require recipients and subrecipients to use a de minimis rate lower than the negotiated indirect cost rate or the rate elected pursuant to this subsection unless required by Federal statute or regulation. The de minimis rate must not be applied to cost reimbursement contracts issued directly by the Federal Government in accordance with the FAR. Recipients and subrecipients are not required to use the de minimis rate. When applying the de minimis rate, costs must be consistently charged as either direct or indirect costs and may not be double charged or inconsistently charged as both. The de minimis rate does not require documentation to justify its use and may be used indefinitely. Once elected, the recipient or subrecipient must use the de minimis rate for all Federal awards until the recipient or subrecipient chooses to receive a negotiated rate.

(g) *One-time extension of indirect rates*. A recipient or subrecipient with a current Federal negotiated indirect cost rate may apply for a one-time extension of that agreement for up to four years. This extension will be subject to review and approval by the cognizant agency for indirect costs. If this extension is granted, the recipient or subrecipient may not request a rate review until the extension period ends. The recipient or subrecipient must re-apply to negotiate a new rate when the extension ends. After a new rate has been negotiated, the recipient or subrecipient may again apply for a one-time extension of the new rate in accordance with this paragraph.

§ 200.415 Required certifications.

(a) Financial reports must include a certification, signed by an official who is authorized to legally bind the recipient, 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) Subrecipients under the Federal award must certify to the pass-through entity whenever applying for funds, requesting payment, and submitting financial reports: “I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729–3730 and 3801–3812.” Each such certification must be maintained pursuant to the requirements of § 200.334. This paragraph applies to all tiers of subrecipients.

(c) Certification of cost allocation plan or indirect cost rate proposal. Each cost allocation plan or indirect cost rate proposal must comply with the following:

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

of the recipient that submits the proposal.

(2) The Federal Government may either disallow all indirect costs or unilaterally establish an indirect cost rate when the recipient fails to submit a certified proposal for establishing a rate. This rate should be based upon audited historical data or other data furnished to the cognizant agency for indirect costs and for which it can be demonstrated that all unallowable costs have been excluded. The rate established must ensure that potentially unallowable costs are not reimbursed. Alternatively, the recipient may use the de minimis indirect cost rate. See § 200.414(f).

(d) Nonprofit organizations must certify that they did not meet the definition of a major nonprofit organization as defined in § 200.414(a), if applicable.

(e) The recipient must certify that the requirements and standards for lobbying (see § 200.450) have been met when submitting its indirect cost rate proposal.

SPECIAL CONSIDERATIONS FOR STATES, LOCAL GOVERNMENTS AND INDIAN TRIBES

§ 200.416 Cost allocation plans and indirect cost proposals.

(a) Awards to states, local governments, and Indian Tribes are often implemented at the level of department within the State, local government, or Indian Tribe. A central service cost allocation plan is established to allow such department to claim a portion of centralized service costs that are incurred in proportion to the award's activities. Examples of centralized service costs may include motor pools, computer centers, purchasing, and accounting. 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 establishes this process.

(b) Individual departments typically charge Federal awards for indirect costs through an indirect cost rate. A separate indirect cost rate proposal for

each operating department is usually necessary to claim indirect costs under Federal awards. Indirect costs include:

(1) The indirect costs originating in each operating department of the State, local government, or Indian Tribe 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 developing and submitting cost allocation plans (for central service costs and public assistance programs) and indirect cost rate proposals are contained in appendices V, VI, and VII of this part.

§ 200.417 Interagency service.

An operating department may provide services to another operating department of the same State, local government, or Indian Tribe. In these instances, the cost of services provided may include allowable direct costs of the service plus a pro-rated share of indirect costs. A standard indirect cost rate equal to 15 percent of the direct salaries and wages for providing the service (excluding overtime, shift premiums, and fringe benefits) may be used instead of determining the actual indirect costs of the service. These services do not include centralized services that are included in central service cost allocation plans described in Appendix V of this part.

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 and in direct benefit to its IHEs are allowable. These costs include but are not limited to fringe benefit programs such as pension costs and Federal Insurance Contributions Act (FICA) costs. These costs are allowable regardless of whether they are recorded in the accounting records of the institutions, subject to the following conditions:

(a) The costs meet the requirements of § 200.402–200.411;

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

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

§ 200.419 Cost accounting standards.

An IHE that receive an aggregate total \$50 million or more in Federal awards and instruments subject to this subpart (as specified in §200.101) 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 and subcontracts awarded to the IHEs are subject to the broader range of CAS requirements at 48 CFR 9900 through 9999 and 48 CFR part 30 (FAR Part 30).

GENERAL PROVISIONS FOR SELECTED ITEMS OF COST

§ 200.420 Considerations for selected items of cost.

(a) This section provides principles to be applied in establishing the allowability of certain items involved in determining cost, in addition to other requirements of this subpart. These principles apply whether or not a particular cost item is properly treated as a direct or indirect cost.

(b) The following sections are not intended to be a comprehensive list of potential items of cost encountered under Federal awards. Failure to mention a particular item of cost, including as an example in certain sections, is not intended to imply that it is either allowable or unallowable. When determining the allowability for an item of cost, 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 through 200.411. 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 must be applied in determining allowability.

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§ 200.421 Advertising and public relations.

(a) The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media includes, but is not limited to, magazines, newspapers, radio and television, direct mail, exhibits, and electronic or computer transmittals.

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

(1) The recruitment of personnel required by the recipient or subrecipient for the performance of a Federal award (See also §200.463);

(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 the recipient or subrecipient is reimbursed for disposal costs at a predetermined amount; or

(4) Program outreach (for example, recruiting project participants) and other specific purposes necessary to meet the Federal award requirements.

(c) The term “public relations” includes community relations and means those activities dedicated to maintaining the recipient's or subrecipient's image 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 about specific activities or accomplishments which result from the 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 or financial matters.

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

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

(2) Costs of meetings, conventions, conferences, or other events related to other activities of the entity (see also § 200.432), 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;

(4) Costs of advertising and public relations designed solely to promote the recipient or subrecipient.

§ 200.422 Advisory councils.

An advisory council or committee is a body that provides advice to the management of such entities as corporations, organizations, or foundations. Costs incurred by both internal and external advisory councils or committees are allowable if authorized by statute, the Federal agency, or as an indirect cost where allocable to Federal awards. See § 200.444, which applies to States, local governments, and Indian Tribes.

§ 200.423 Alcoholic beverages.

The cost of alcoholic beverages is unallowable.

§ 200.424 Alumni activities.

Costs incurred by IHEs for, or in support of, alumni 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), and the 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 of this part have not been conducted, or have been conducted but not in accordance with the requirements; and

(2) Except as provided for in paragraph (c) of this section, any costs of auditing a non-Federal entity that is exempted from having an audit conducted under the Single Audit Act and subpart F of this part because its expenditures under Federal awards are less than \$1,000,000 during its fiscal year.”

(b) The costs of a financial statement audit of a recipient or subrecipient 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 §§ 200.331-333) exempt from having an audit conducted under the Single Audit Act and the *requirements of this part*. This cost is allowable only if the agreed-upon procedures engagements are:

(1) Conducted in accordance with GAGAS or applicable international attestation standards, as appropriate;

(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 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 are also unallowable. See § 200.428.

§ 200.427 Bonding costs.

(a) Bonding costs arise when the Federal agency requires assurance against financial loss to itself or others because of an act or default of the recipient or subrecipient. They also arise when the recipient or subrecipient requires similar assurance, including bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds for employees and officials.

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(b) Costs of bonding required under the Federal award's terms and conditions are allowable.

(c) Costs of bonding required by the recipient or subrecipient 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 recipient or subrecipient to recover improper payments, including improper overpayments, are allowable as either direct or indirect costs, as appropriate. The recipient or subrecipient may use the amounts collected in accordance with cash management standards described in § 200.305.

§ 200.429 Commencement and convocation costs.

For IHEs, costs incurred for commencements and convocations are unallowable, except as activity costs provided for in Appendix III, (B)(9) Student Administration and Services.

§ 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 addressed in § 200.431. 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 recipient or subrecipient consistently applied to both Federal and non-Federal activities;

(2) Follows an appointment made in accordance with the recipient's or subrecipient's laws, rules, or written policies and meets the requirements of Federal statute, where applicable; and

(3) Is determined and supported as provided in paragraph (g) of this section, when applicable.

(b) *Reasonableness.* Compensation for employees engaged in work on Federal awards will be reasonable to the extent that it is consistent with that paid for similar work in other activities of the recipient or subrecipient. In cases where the kinds of employees required for Federal awards are not found in the other activities of the recipient or subrecipient, 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 recipient or subrecipient competes for the kind of employees involved.

(c) *Professional activities outside the recipient or subrecipient.* Unless the Federal agency expressly authorizes an arrangement, a recipient or subrecipient must follow its written policies and procedures concerning the permissible extent of professional services that can be provided outside the recipient or subrecipient for non-organizational compensation. Where the recipient or subrecipient does not have written policies or procedures, or they do not adequately define the permissible extent of consulting or other non-organizational activities undertaken for extra outside pay, the Federal Government may require the recipient or subrecipient to allocate the effort of professional staff working on Federal awards between:

(1) Recipient or subrecipient activities, and

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

(d) *Unallowable costs.* (1) Costs unallowable under other sections of these principles must not be allowable under this section solely because they constitute personnel compensation.

(2) The allowable compensation for certain employees is subject to a ceiling in accordance with Federal statute. See 10 U.S.C. 3744(a)(16), 41 U.S.C. 1127, and 41 U.S.C. 4304(a)(16) for the ceiling

amount, covered compensation subject to the ceiling, covered employees, and other relevant provisions for cost-reimbursement contracts. For other types of Federal awards, other statutory ceilings may apply.

(e) *Special considerations.* Special considerations in determining the allowability of compensation will be given to any change in a recipient's or subrecipient'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, efficient performance, suggestion awards, or safety awards is allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued according to an agreement entered into in good faith between the recipient or subrecipient and the employees before the services were rendered, or according to an established plan followed by the recipient or subrecipient so consistently as to imply, in effect, an agreement to make such payment.

(g) *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 that provides reasonable assurance that the charges are accurate, allowable, and properly allocated;
- (ii) Be incorporated into the official records of the recipient or subrecipient;
- (iii) Reasonably reflect the total activity for which the employee is compensated by the recipient or subrecipient, not exceeding 100 percent of compensated activities (for IHEs, this is the IBS);
- (iv) Encompass federally-assisted and all other activities compensated by the recipient or subrecipient on an integrated basis but may include the use of subsidiary records as defined in the recipient's or subrecipient's written policy;

(v) Comply with the established accounting policies and procedures of the recipient or subrecipient (See paragraph (i)(1)(ii) of this section for treatment of incidental work for IHEs.); and

(vi) 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 allocated using different allocation bases; or an unallowable activity and a direct or indirect cost activity.

(vii) Budget estimates (meaning, 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 performed;

(B) Significant changes in the related work activity (as defined by the recipient's or subrecipient's written policies) are promptly identified and entered into the records. Short-term (such as one or two months) fluctuations between workload categories do not need to be considered as long as the distribution of salaries and wages is reasonable over the longer term; and

(C) The recipient's or subrecipient's system of internal controls includes processes to perform periodic after-the-fact reviews of interim charges made to a Federal award based on budget estimates. All necessary adjustments must be made so that the final amount charged to the Federal award is accurate, allowable, and properly allocated.

(viii) Because practices vary as to the activity constituting a full workload (for example, the Institutional Base Salary (IBS) for IHEs), records may reflect categories of activities expressed as a percentage distribution of total activities.

(ix) It is recognized that teaching, research, service, and administration are often inextricably intermingled in an academic setting. Therefore, a precise assessment of factors contributing to costs is not required when IHEs record salaries and wages charged to Federal awards.

(2) For records that meet the standards required in paragraph (g)(1) of this section, the recipient or subrecipient is not required to provide additional support or documentation for the work performed other than that referenced in paragraph (g)(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 requirements on Federal awards must be supported in the same manner as salaries and wages claimed for reimbursement from Federal awards.

(5) States, local governments, and Indian Tribes may use substitute processes or systems for allocating salaries and wages to Federal awards either in place of or in addition to the records described in paragraph (g)(1) of this section 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 that 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 provided in paragraph (g)(5)(iii);

(B) The sample must cover the entire period involved; and

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

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

(iii) Less than full compliance with the statistical sampling standards noted in paragraph (5)(i) may be accepted by the cognizant agency for indirect costs if it concludes that the amounts allocated to Federal awards will be minimal or if it concludes that the system proposed by the recipient or subrecipient 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 when these are clearly documented. These plans are acceptable as an alternative to requirements in paragraph (g)(1) of this section when approved by the cognizant agency for indirect costs.

(7) For Federal awards of similar purpose activity or instances of approved blended funding, a recipient or subrecipient may submit performance plans that incorporate funds from multiple Federal awards and account for their combined use based on performance-oriented metrics, provided the plans are approved in advance by all involved Federal agencies. In these instances, the recipient or subrecipient 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 recipient or subrecipient whose records do not meet the standards described in this section, the Federal Government may require personnel activity reports, including prescribed certifications, or equivalent documentation supporting the records as required in this section.

(h) *Nonprofit organizations.* This paragraph (h) provides guidance specific to only nonprofit organizations. For compensation to members of nonprofit organizations, trustees, directors, associates, officers, or the immediate families thereof, a determination must be made that the compensation is reasonable for the actual personal services rendered rather than a distribution of

earnings above actual costs. Compensation may include director's and executive committee member's fees, incentive awards, off-site or incentive pay, location allowances, hardship pay, and cost-of-living differentials.

(i) *Institutions of Higher Education (IHEs)*. This paragraph provides guidance specific to only IHEs.

(1) *Determining allowable personnel costs*. 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, etcetera), 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 the written institutional policy (at a rate not to exceed institutional base salary) do not need to be included in the records described in paragraph (g). To charge payments of incidental activities directly, such activities must either be expressly authorized in the Federal award budget or receive prior written approval by the Federal agency.

(2) *Salary basis*. Charges for work performed on Federal awards by faculty members during the academic year are allowable at the institutional base salary (IBS) rate. Except as noted in paragraph (i)(1)(ii), 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 the faculty at an institution. IBS is the annual compensation paid by an IHE for an individual's appointment, whether that individual's time is spent on research, instruction, admin-

istration, or other activities. IBS excludes any income an individual earns outside of duties performed for the IHE. Unless there is prior approval by the Federal agency, charges of a faculty member's salary to a Federal award may not exceed the proportionate share of the IBS for the period during which the faculty member worked on the Federal award.

(3) *Intra-Institution of Higher Education (IHE) consulting*. Intra-IHE consulting by faculty should be undertaken as an IHE responsibility 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 members is in addition to their regular responsibilities, any charges for such work representing additional compensation above IBS are allowable provided that such consulting arrangements are expressly authorized in the Federal award or approved in writing by the Federal agency.

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

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

(ii) The IHE 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 definition may be described in appointment letters or other documentation.

(iii) The supplementation amount paid is commensurate with the IBS pay rate and additional work performed. See paragraph (i)(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 IHE.

(v) The total salaries charged to Federal awards, including extra service payments, are subject to the standards of documentation as described in paragraph (g).

(5) *Periods outside the academic year.*

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

(ii) Charges for teaching activities performed by faculty members on Federal awards during periods not included in IBS period must be based on the 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 must be determined at a rate not more than 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. These costs must be allocated equitably 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 IHE's written policy and paragraph (i)(1)(i).

§ 200.431 Compensation—fringe benefits.

(a) *General.* Fringe benefits are allowances and services employers provide to their employees as compensation in

addition to regular salaries and wages. Fringe benefits include, but are not limited to, the costs of leave, employee insurance, pensions, and unemployment benefits. 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, an organization-employee agreement, or an established policy of the recipient or subrecipient.

(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 recipient or subrecipient or a specified grouping of employees.

(i) When a recipient or subrecipient 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 and should be allocated as a general administrative expense to all activities or included in the fringe benefit rate.

(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 recipient or subrecipient uses the accrual basis of accounting, allowable leave costs are the lesser of the amount accrued or funded.

(c) *Fringe benefits.* 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); pension plan costs; and other similar benefits are allowable, provided

such benefits are permitted under established written policies. The recipient or subrecipient must allocate fringe benefits 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 following the recipient's or subrecipient's accounting practices.

(d) *Cost objectives.* The recipient or subrecipient may assign fringe benefits to cost objectives by identifying specific benefits to specific individual employees or by allocating them based on 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 recipient or subrecipient demonstrates that costs in relationship to salaries and wages do not differ significantly for different groups of employees.

(e) *Insurance.* See also § 200.447(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, the 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) Insurance costs 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 cost of such insurance is unallowable when the recipient or subrecipient is named as beneficiary.

(3) Actual claims paid to or on behalf of employees or former employees for workers' compensation, unemployment compensation, severance pay, and similar employee benefits (*for example,*

post-retirement health benefits) are allowable in the year of payment provided that the recipient or subrecipient follows a consistent costing policy.

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

(g) *Pension plan costs.* Pension plan costs incurred in accordance with the established written policies of the recipient or subrecipient are allowable, provided that:

(1) Such policies meet the test of reasonableness.

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

(3) The cost assigned to each fiscal year should be determined in accordance with GAAP, except for State and local governments.

(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. The recipient or subrecipient may follow the "Cost Accounting Standard for Composition and Measurement of Pension Costs" (48 CFR 9904.412).

(5) Premiums for pension plan termination insurance that are paid according 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 actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(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 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 six months (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 if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient'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 recipient or subrecipient in excess of the actuarially determined amount for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(iv) When a recipient or subrecipient establishes or 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) Payments for unfunded pension costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded pension costs directly to a Federal award if those unfunded pension costs are not allocable to that award.

(vi) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed pension costs (including subsequent earnings) that revert or inure to the recipient or subrecipient through a refund, withdrawal, or other credit.

(h) *Post-retirement health.* A post-retirement health plan (PRHP) refers to the costs of health insurance or health services not included in a pension plan covered by paragraph (g) for retirees

and their spouses, dependents, and survivors. PRHP costs may be computed using a pay-as-you-go method or an actuarial cost method recognized by GAAP and following the recipient's or subrecipient's established written policies.

(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 for a given fiscal year if they are funded for that year within six months after the end of that year. Costs funded after six months (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 if an appropriate adjustment is made to compensate for the timing of the charges to the Federal Government and related Federal reimbursement and the recipient's or subrecipient's contributions to the PRHP fund. Adjustments may be made by cash refund, reduction in the 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 by the recipient or subrecipient in excess of the actuarially determined amount for a fiscal year may be used as the recipient's or subrecipient's contribution in future periods.

(4) If a recipient or subrecipient establishes or converts to an 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) Payments for unfunded PRHP costs must be charged in accordance with the allocation principles of this subpart. Specifically, the recipient or subrecipient may not charge unfunded PRHP costs directly to a Federal award if those unfunded PRHP costs are not allocable to that award.

(6) 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 that will maintain a trust fund or reserve for the sole purpose of providing post-retirement benefits to retirees and other beneficiaries.

(7) The recipient or subrecipient must provide the Federal Government an equitable share of any previously allowed post-retirement benefit costs (including subsequent earnings) that revert or inure to the recipient or subrecipient through 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 recipients and subrecipients to workers whose employment is being terminated. Severance pay is allowable only to the extent that, in each case, it is required by:

(i) Law;

(ii) Employer-employee agreement;

(iii) Established policy that constitutes, in effect, an implied agreement on the recipient's or subrecipient's part; or

(iv) Circumstances of the particular employment.

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

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

(ii) Measuring the costs of abnormal or mass severance pay by means of an accrual method will not achieve equity for both parties. Therefore, accruals are not allowable. However, the Federal Government recognizes its responsibility to contribute its fair share toward a specific payment. Prior approval by the Federal agency or cognizant agency for indirect cost, as appropriate, is required.

nizant agency for indirect cost, as appropriate, is required.

(3) Costs incurred in severance pay packages that are in excess of the standard severance pay provided by the recipient or subrecipient to an employee upon termination of employment and that are paid to the employee contingent upon a change in management control over, or ownership of, the recipient's or subrecipient's assets, are unallowable.

(4) Severance payments to foreign nationals employed by the recipient or subrecipient outside the United States, to the extent that the amount exceeds the customary or prevailing practices for the recipient or subrecipient in the United States, are unallowable unless they are required by applicable foreign law or necessary for the performance of Federal programs and approved by the Federal agency.

(5) Severance payments to foreign nationals employed by the recipient or subrecipient 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 recipient or subrecipient in that country, are unallowable unless they are either:

(i) Required by applicable foreign law; or

(ii) Necessary for the performance of Federal programs and approved by the Federal agency.

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

(2) Fringe benefits in the form of undergraduate and graduate tuition or tuition remission for individual employees not employed by the IHE are limited to the tax-free amount allowed by the Internal Revenue Code as amended (26 U.S.C. 127).

(3) IHEs may offer employees tuition waivers or 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, for treatment of tuition remission provided to students.

(k) *Fringe benefit programs and other benefit costs.* (1) For IHEs whose costs are paid by a State or local government, fringe benefit programs (such as pension costs and FICA) and any other benefits costs incurred specifically on behalf of, and in direct benefit to, the IHE, are allowable, subject to the following:

(i) The costs meet the requirements of Basic Considerations in §§ 200.402 through 200.411;

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

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

(2) The allowability of these costs for the IHE does not depend on whether they are recorded in the accounting records of the IHE.

[89 FR 30136, Apr. 22, 2024, as amended at 89 FR 79732, Oct. 1, 2024]

§ 200.432 Conferences.

A conference means an event whose primary purpose is to disseminate technical information beyond the recipient or subrecipient and is necessary and reasonable for successful performance under the Federal award. Allowable conference costs may include the rental of facilities, speakers' fees, attendance 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. The costs of identifying and providing locally available dependent-care resources for participants are allowable as needed. Conference hosts/sponsors must exercise discretion and judgment in ensuring that conference costs are appropriate, necessary, and managed to minimize costs to the Federal award. The Federal agency may authorize exceptions for programs including Indian Tribes, children, and the elderly. See also §§ 200.438, 200.456, and 200.475.

§ 200.433 Contingency provisions.

(a) Contingency provisions are part of a budget estimate of future costs (typically of large construction projects, IT systems, or other items approved by the Federal agency) which are associated with possible events or conditions arising from causes for which the precise outcome is indeterminable at the time of estimate and that are likely to result, in the aggregate, in additional costs for the approved activity or project. Contingency amounts for major project scope changes, unforeseen risks, or extraordinary events must not be included in the budget estimates for a Federal award.

(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 necessary to improve their precision. Contingency amounts must be estimated using broadly-accepted cost estimating methodologies, specified in the budget documentation of the Federal award, and accepted by the Federal 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 of this part (see §§ 200.300 and 200.403), be necessary and reasonable for proper and efficient accomplishment of project or program objectives, and be verifiable from the recipient's or subrecipient's records.

(c) Payments to a recipient's or subrecipient'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 and 200.447.

§ 200.434 Contributions and donations.

(a) Costs of contributions and donations, including cash, property, and services, from the recipient or subrecipient to other entities are unallowable.

(b) The value of services and property donated (that is, in-kind donations) to the recipient or subrecipient may not be charged to the Federal award either as a direct or indirect cost. The value

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of donated services and property may be used to meet cost sharing requirements (see § 200.306). Depreciation on donated assets is permitted so long as the donated property is not counted towards meeting cost sharing requirements (see § 200.436).

(c) Services donated or volunteered to the recipient or subrecipient may be provided 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 as a direct or indirect cost. However, the value of donated services may be used to meet cost sharing requirements in accordance with the provisions of § 200.306.

(d) To the extent feasible, services donated to the recipient or subrecipient 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 a nonprofit organization and used in the performance of a direct cost activity must be considered in the determination of the recipient's or subrecipient'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 recipient or subrecipient;

(i) In those instances where there is no basis for determining the fair market value of the services rendered, the recipient or subrecipient 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 project's total costs. Such indirect costs may be reimbursed under the Federal award or used to meet cost sharing requirements.

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

(g) Personal property and use of space.

(1) Donated personal property and use of space may be furnished to a recipient or subrecipient. 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 of personal property and use of space may be used to meet cost sharing requirements described in § 200.300. The recipient or subrecipient must value the donations in accordance with § 200.300. Where the recipient or subrecipient treats donations as indirect costs, indirect cost rates must separate the value of the donations so that reimbursement is not made.

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

(a) *Definitions for 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 that bear a direct relationship to a judicial or administrative proceeding and provided by in-house or private counsel, accountants, consultants, or others engaged to assist the recipient or subrecipient before, during, or after the commencement of that 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 that violate the False Claims Act (31 U.S.C. 3729-3732) or the Anti-kickback Act (42 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 the

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 recipient or subrecipient, (or commenced by third parties or a current or former employee of the recipient or subrecipient who submits a whistleblower complaint of reprisal in accordance with 10 U.S.C. 4701 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 recipient or subrecipient (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 recipient or subrecipient liability.

(C) In the case of any civil or administrative proceeding, the disallowance of costs, the imposition of a monetary penalty, or an order issued by the Federal agency head or delegate to the recipient or subrecipient to take corrective action under 10 U.S.C. 4701 or 41 U.S.C. 4712.

(D) A final decision by an appropriate Federal official to debar or suspend the recipient or subrecipient, to rescind or void a Federal award, or to terminate a Federal award because 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) *Allowability of costs for proceeding commenced by Federal Government.* 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 recipient or subrecipient and the Federal Government, then the costs incurred may be allowed to the extent expressly authorized in the agreement.

(d) *Allowability of costs for proceeding commenced by State, local, or foreign government.* If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign government, then the costs incurred may be allowed if the authorized Federal 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 agency.

(e) *Allowability of costs in general.* Costs incurred in connection with proceedings described in paragraph (b), and not made unallowable by that paragraph, may be allowed to the extent that:

(1) The costs are reasonable and necessary for 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 has determined 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 other factors that may be appropriate. This percentage must not exceed 80 percent unless an agreement under paragraph (c) has explicitly considered this limitation and permitted a higher percentage. In that case, the total amount of costs incurred may be allowable.

(f) *Major Fraud Act.* Costs incurred by the recipient or subrecipient 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 the employee whole, where the recipient or subrecipient was found liable or settled, are unallowable.

(g) *Un-allowability of costs for prosecuting claims against Federal Government.* Costs for prosecuting claims against the Federal Government, including appeals of final Federal agency decisions, are unallowable.

(h) *Patent infringement litigation.* 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) *Potentially unallowable costs.* Costs that 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.

§ 200.436 Depreciation.

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

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

(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 recipient or subrecipient 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 cost sharing but not both. When computing depreciation charges, 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 the title was originally vested or is presently located;

(3) Any portion of the cost of buildings and equipment contributed by or for the recipient or subrecipient that is already claimed as cost sharing or 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 the 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. Once used, depreciation methods may not be changed unless approved in advance by the cognizant agency for indirect costs. The depreciation methods used to calculate the depreciation amounts for indirect cost rate purposes must be the same

methods used by the recipient or subrecipient 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 may be depreciated over its estimated useful life in this case. The building components must be grouped into three general components: building shell (including construction and design costs), building services systems (for example, elevators, HVAC, and plumbing system), and fixed equipment (for example, sterilizers, casework, fume hoods, cold rooms, and glassware/washers). A cognizant agency for indirect costs may authorize a recipient or subrecipient to use more than these three groupings in exceptional cases. When a recipient or subrecipient elects to depreciate its buildings by their components, the same depreciation method must be used for indirect and financial statements purposes, as described in paragraphs (d)(1) and (2).

(4) No depreciation may be allowed on 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 (meaning, 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 before the conversion from the use allowance method and depreciation after the conversion) may not exceed the total acquisition cost of the asset.

(e) Adequate property records must support depreciation charges, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable, used, and needed. The recipient or subrecipient may use statistical sampling techniques when taking these inventories. In addition, the recipient or subrecipient must maintain adequate depreciation records showing the amount of depreciation.

§ 200.437 Employee health and welfare costs.

(a) Costs incurred in accordance with the recipient's or subrecipient's established written policies for improving working conditions, employer-employee relations, employee health, and employee performance are allowable.

(b) These costs must be equitably apportioned to all activities of the recipient or subrecipient. Income generated from these activities must 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 recipient's or subrecipient's objective is to operate food services on a break-even basis. Losses sustained because of operating objectives other than the above are allowable only when:

(1) The recipient or subrecipient can demonstrate unusual circumstances; and

(2) Approved by the cognizant agency for indirect costs.

§ 200.438 Entertainment and prizes.

(a) *Entertainment costs.* Costs of entertainment, including amusement, diversion, and social activities and any associated costs (such as gifts), are unallowable unless they have a specific and direct programmatic purpose and are included in a Federal award.

(b) *Prizes.* Costs of prizes or challenges are allowable if they have a specific and direct programmatic purpose and are included in the Federal award. Federal agencies should refer to OMB guidance in M-10-11 "Guidance on the Use of Challenges and Prizes to Promote Open Government," issued March 8, 2010, or its successor.

§ 200.439 Equipment and other capital expenditures.

(a) See § 200.1 for the definitions of *capital expenditures*, *equipment*, *special purpose equipment*, *general purpose equipment*, *acquisition cost*, and *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 allowable as direct costs, but only

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with the prior written approval of the Federal agency or pass-through entity.

(2) Capital expenditures for special purpose equipment are allowable as direct costs, provided that items with a unit cost of \$10,000 or more have the prior written approval of the Federal agency or pass-through entity.

(3) Capital expenditures for improvements to land, buildings, or equipment that materially increase their value or useful life are allowable as a direct cost, but only with the prior written approval of the Federal agency or pass-through entity. See § 200.436 on the allowability of depreciation on buildings, capital improvements, and equipment. See § 200.465 on the allowability of real property and equipment rental costs.

(4) When approved as a direct cost in accordance with paragraphs (b)(1) through (3), capital expenditures must be charged in the period in which the expenditure is incurred or as otherwise determined appropriate and negotiated with the Federal agency.

(5) The recipient or subrecipient may claim the unamortized portion of any equipment written off as a result of a change in capitalization levels 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 cognizant agency for indirect cost.

(6) Cost of equipment disposal. If the Federal agency instructs the recipient or subrecipient to otherwise dispose of or transfer the equipment, the costs of disposal or transfer are allowable.

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

§ 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. Before providing approval, the Federal agency must ensure that adequate funds are available to cover cur-

rency fluctuations in order to avoid a violation of the Antideficiency Act.

(b) The recipient or subrecipient 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 recipient or subrecipient provides the Federal 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.

§ 200.441 Fines, penalties, damages and other settlements.

Costs resulting from recipient or subrecipient violations of, alleged violations of, or failure to comply with, Federal, State, local, tribal, or foreign laws and regulations are unallowable, except when incurred as a result of compliance with specific provisions of the Federal award, or with the prior written approval of the Federal agency. See § 200.435.

§ 200.442 Fundraising and investment management costs.

(a) Costs of organized fundraising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred to raise capital or obtain contributions, are unallowable. Fundraising costs for meeting the Federal program objectives are allowable with the prior written approval of the Federal agency.

(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 fundraising and investment activities must be allocated an appropriate share of indirect costs in accordance with § 200.413.

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§ 200.443 Gains and losses on the disposition of depreciable assets.

(a) The recipient or subrecipient must include gains and losses on the sale, retirement, or other disposition of depreciable property in the year they occur as credits or charges to the asset cost grouping(s) of the property. The amount of the gain or loss 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 and 200.439.

(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 failing to maintain proper insurance, except as provided in § 200.447.

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

(5) Gains and losses arising from extraordinary or bulk 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 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 §§ 200.310 through 200.316.

§ 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 § 200.475. 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, or school board, 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; and

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

(b) Indian Tribes and Councils of Governments (COGs) (see definition for *Local government* in § 200.1) may include up to 50 percent of salaries and expenses directly attributable to managing and operating Federal programs by the chief executive and their staff in the indirect cost calculation without documentation.

§ 200.445 Goods or services for personal use.

(a) Costs of goods or services for the personal use of the recipient's or subrecipient's employees are unallowable regardless of whether the cost is reported as taxable income to the employees.

(b) Housing costs (for example, depreciation, maintenance, utilities, furnishings, rent), housing allowances, and personal living expenses for the recipient's or subrecipient's employees are only allowable as direct costs and must be approved in advance by the Federal agency.

§ 200.446 Idle facilities and idle capacity.

(a) Definitions for the purpose of 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 recipient or subrecipient.

(2) Idle facilities mean completely unused facilities that exceed the recipient's or subrecipient's current needs.

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(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 maintenance, repair, housing, rent, and other related costs (for example, 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 (for example, 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 this exception, costs of idle facilities are allowable for a reasonable period, 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. These 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 accord-

ance 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 by the terms and conditions of 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) The types, extent, and cost of coverage are in accordance with the recipient's or subrecipient's established written policy and sound business practices.

(2) Costs of insurance or 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 agency has approved the costs.

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

(4) Insurance costs on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only when the insurance represents additional compensation (see § 200.431). This insurance is unallowable when the recipient or subrecipient is identified as the beneficiary.

(5) Insurance costs to correct defects in the recipient's or subrecipient's materials or workmanship are unallowable.

(6) Medical liability (malpractice) insurance is an allowable cost of a Federal research program only when the program involves human subjects or training of participants in research techniques. Medical liability insurance costs must be treated as a direct cost and assigned to individual projects based on how 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 authorized 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 a self-insurance program, including workers' compensation, unemployment compensation, and severance pay, are allowable subject to the following requirements:

(1) The type, extent, and cost of coverage and the rates and premiums would have been allowed had insurance (including reinsurance) been purchased to cover the risks. However, a 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 discounting the liability must be determined by considering factors such as the recipient's or subrecipient'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, and other relevant factors or information. Reserve levels related to employee-related coverages must 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 exceeding the levels described in paragraph (d)(3)(i) of this section 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 the types of insured risk and losses generated by the various insured activities or agencies of the recipient or subrecipient. If individual departments or agencies of the recipient or subrecipient experience significantly different levels of claims for a particular risk, those differences must be recognized by using separate allocations or other techniques resulting in an equitable allocation.

(5) Whenever funds are transferred from a self-insurance reserve to other accounts (for example, 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 the claims collection regulations of the cognizant agency for indirect cost.

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

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

§ 200.448 Intellectual property.

(a) *Patent and copyright 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 the Federal Government requires that a title or a royalty-free license 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 § 200.459).

(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 the 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 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 when the royalties may have been obtained as a result of less-than-arm's-length bargaining, such as:

(i) Royalties paid to persons, including corporations, affiliated with the recipient or subrecipient.

(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 recipient or subrecipient.

(3) In any case involving a patent or copyright formerly owned by the recipient or subrecipient, the amount of royalty allowed must not exceed the cost which would have been allowed had the recipient or subrecipient retained ownership.

§ 200.449 Interest.

(a) *General.* Costs incurred for interest on borrowed capital, temporary use of endowment funds, or the use of the recipient's or subrecipient's own funds are unallowable. Financing costs (including interest) to acquire, construct, or replace capital assets are allowable, subject to the requirements of this section.

(b) *Capital assets.* (1) Capital assets is defined in § 200.1. An asset cost includes (as applicable) acquisition costs, construction costs, and other costs capitalized in accordance with GAAP.

(2) For recipient or subrecipient 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) *Requirements for all recipients and subrecipients.* (1) The recipient or subrecipient 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 recipient or subrecipient from an unrelated (arm's length) third party.

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

(4) The recipient or subrecipient limits claims for Federal reimbursement of interest costs to the least expensive alternative. For example, a lease contract that transfers ownership by the end of the contract may be determined less costly than purchasing through other types of debt financing, in which case reimbursement must be limited to the amount of interest determined if leasing had been used.

(5) The recipient or subrecipient expends 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

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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 recipient or subrecipient 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 recipient or subrecipient for the acquisition of facilities prior to occupancy.

(i) The recipient or subrecipient 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 recipient or subrecipient must impute interest on excess cash flow as follows:

(A) Annually, the recipient or subrecipient must prepare a cumulative (from the project’s inception) report of 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 recipient or subrecipient must divide the above-mentioned annual amounts by the 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 interest rate 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 requirements for states, local governments and Indian Tribes.* For interest costs to be allowable for states, local governments, and Indian

Tribes, the recipient or subrecipient must have incurred the interest costs for buildings after October 1, 1980, or after September 1, 1995, for land and equipment.

(1) The requirement to offset the interest earned on borrowed funds against allowable interest cost (paragraph (c)(5) of this section) also applies to earnings on debt service reserve funds.

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

(e) *Additional requirements for IHEs.* For interest 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 requirements for nonprofit organizations.* For interest costs to be allowable, the nonprofit organization must have incurred the interest costs after September 29, 1995, in connection with acquisitions of capital assets that occurred after that date.

(g) *Requirements for nonprofit organizations subject to full coverage under CAS.* 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 nonprofit organization’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.”

§ 200.450 Lobbying.

(a) *Lobbying costs associated with obtaining Federal assistance awards.* The costs of certain influencing activities associated with obtaining grants, cooperative agreements, contracts, or loans are unallowable. Lobbying with respect

to certain grants, cooperative agreements, contracts, and loans is governed by relevant statutes, including the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying,” published on February 26, 1990, including definitions, and the Office of Management and Budget “Government-wide Guidance for New Restrictions on Lobbying” and notices published on December 20, 1989, June 15, 1990, January 15, 1992, and 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 merit.

(c) *Restrictions on nonprofit organizations and IHEs.* In addition, the following restrictions apply 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 to influence 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, fundraising 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 recipient's or subrecipient's member of congress, legislative body, 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 to directly reduce the cost, or to avoid material impairment of the recipient's or subrecipient's authority to perform the grant, contract, or other agreement;

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

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(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 to retain their charitable deduction status and avoid punitive excise taxes, 26 U.S.C. (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) through (c)(3).

(3) When a recipient or subrecipient seeks reimbursement for indirect costs, total lobbying costs must be identified separately in the indirect cost rate proposal and thereafter be treated as other unallowable activity costs in accordance with § 200.413.

(4) The recipient or subrecipient must submit a certification that the requirements and standards of this section have been complied with as part of its annual indirect cost rate proposal. (See § 200.415.)

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

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

(B) Within the preceding five-year period, the recipient or subrecipient has not materially misstated allowable or unallowable costs of any nature, including legislative lobbying costs.

(ii) When conditions in paragraph (c)(5)(i)(A) and (B) of this section are met, recipients and subrecipients 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)(5)(i)(A) and

(B) 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.

(iii) In consultation with OMB, the Federal agency must establish procedures for resolving, in advance, 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 recipient or subrecipient from contesting the lawfulness of such a determination.

§ 200.451 Losses on other awards or contracts.

Any excess costs over income under any other award or contract of any nature is unallowable. This includes, but is not limited to, the recipient’s or subrecipient’s contributed portion by reason of cost sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs. Also, any excess of costs over authorized funding levels transferred from any award or contract to another is unallowable. All losses are not allowable indirect costs and must be included in the appropriate indirect cost rate base for allocating 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 that 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). 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 for the performance of 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 an allowable part of materials and supplies costs.

(c) Materials and supplies used for the performance of a Federal award may be charged as direct costs. Charging computing devices 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, the materials will be used without charge.

§ 200.454 Memberships, subscriptions, and professional activity costs.

(a) Costs of the recipient's or subrecipient's membership in business, technical, and professional organizations are allowable.

(b) Costs of the recipient's or subrecipient's subscriptions to business, professional, and technical periodicals are allowable.

(c) Costs of membership in any civic or community organization are allowable.

(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 § 200.450.

§ 200.455 Organization costs.

(a) Costs such as incorporation fees, brokers' fees, fees to promoters, organizers or management consultants, attorneys, accountants, or investment counselors, whether or not employees of the recipient or subrecipient in con-

nection with the establishment or reorganization of an organization, are unallowable except with prior approval of the Federal agency.

(b) The costs of any of the following activities are unallowable: activities undertaken to persuade employees of the recipient or subrecipient, or any other entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing.

(c) The costs related to data and evaluation are allowable. Data costs include (but are not limited to) the expenditures needed to gather, store, track, manage, analyze, disaggregate, secure, share, publish, or otherwise use data to administer or improve the program, such as data systems, personnel, data dashboards, cybersecurity, and related items. Data costs may also include direct or indirect costs associated with building integrated data systems—data systems that link individual-level data from multiple State and local government agencies for purposes of management, research, and evaluation. Evaluation costs include (but are not limited to) evidence reviews, evaluation planning and feasibility assessment, conducting evaluations, sharing evaluation results, and other personnel or materials costs related to the effective building and use of evidence and evaluation for program design, administration, or improvement.

§ 200.456 Participant support costs.

Participant support costs are allowable (see § 200.1). The classification of items as participant support costs must be documented in the recipient's or subrecipient's written policies and procedures and treated consistently across all Federal awards.

§ 200.457 Plant and security costs.

Necessary and reasonable expenses incurred for the 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,

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devices, and equipment; contractual security services; and consultants. Capital expenditures for plant security purposes are subject to § 200.439.

§ 200.458 Pre-award costs.

Pre-award costs are those incurred before the start date of the Federal award or subaward 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. These costs are allowable only to the extent that they would have been allowed if incurred after the start date of the Federal award and only with the written approval of the Federal agency. If approved, these costs must be charged to the initial budget period of the Federal award unless otherwise specified by the Federal agency or pass-through entity.

§ 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 recipient or subrecipient are allowable, subject to paragraphs (b) and (c) of this section 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.

(b) In determining the allowability of costs in a particular case, no single factor or any 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 recipient's or subrecipient's capability in the particular area.

(3) The past pattern of such costs, particularly in the years prior to receiving a Federal award(s).

(4) The impact of Federal awards on the recipient's or subrecipient's business (meaning, what new problems have arisen).

(5) Whether the proportion of Federal work to the recipient's or subrecipient's

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ent's total business influences the recipient or subrecipient in favor of incurring the cost, particularly where the 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 entity providing the service and the customary fees charged, especially on non-federally funded activities.

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

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

§ 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 developing data necessary to support the recipient's or subrecipient'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 costs and allocated to all current activities of the recipient or subrecipient. No proposal costs of past accounting periods may be allocated 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. These costs should be allocated as indirect costs to all benefiting activities of the recipient or subrecipient if they are not identifiable with a particular cost objective.

(b) Page charges, article processing charges (APCs), or similar fees such as open access fees for professional journal publications and other peer-reviewed publications resulting from a Federal award 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 recipient or subrecipient may charge the Federal award during close-out for the costs of publication or sharing of research results if the costs were not incurred during the period of performance of the Federal award. These costs must be charged to the final budget period of the award unless otherwise specified by the Federal agency.

§ 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 are allowable as a direct cost if the costs are incurred specifically for a Federal award and with the prior approval of the Federal agency or pass-through entity.

(b) Costs incurred in restoring or rehabilitating the recipient's or subrecipient's facilities to approximately the same condition existing immediately before the commencement of a Federal award(s), 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 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 recipient's or subrecipient's standard recruitment program. When the recipient or subrecipient 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 recipient or subrecipient, are unallowable.

(c) If relocation costs incurred incident to recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of those relocation costs. See § 200.464.

(d) Short-term visas (as opposed to longer-term immigration visas) are generally an allowable cost and they may be proposed as a direct cost because they are issued for a specific period and purpose and 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 recipient's or subrecipient's cost accounting practices and established written policy; and

(4) Meet the definition of "direct cost" as described in the applicable cost principles.

§ 200.464 Relocation costs of employees.

(a) Relocation costs are costs incident to the permanent change of duty assignment (for an indefinite period or 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.

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(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 their immediate family and their 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 a maximum period of 30 calendar days.

(3) Closing costs, such as brokerage, legal, and appraisal fees, incidental to the disposition of the employee's former home. These costs, together with those described in paragraph (b)(4) of this section, are limited to eight percent 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 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. If relocation costs incurred incident to the recruitment of a new employee have been funded in whole or in part by a Federal award, and the newly hired employee resigns for reasons within the employee's control within 12 months after hire, the recipient or subrecipient must refund or credit the Federal Government for its share of the cost. If a new employee is relocating to an overseas location and dependents are not permitted for any reason, and the costs do not include transporting household goods, the costs must be considered travel costs

in accordance with § 200.474, *not relocation costs under this section*.

(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.

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

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

§ 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 costs of comparable rental properties; 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 if other options are available.

(b) Rental costs under "sale and lease back" arrangements are allowable only up to the amount that would have been allowed if the recipient or subrecipient had 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 described 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 can control or substantially influence the actions of the other. Such leases include, but are not limited to, those between:

(1) Divisions of the recipient or subrecipient;

(2) The recipient or subrecipient and another entity under common control through common officers, directors, or members; and

(3) The recipient or subrecipient and a director, trustee, officer, or key employee of the recipient or subrecipient or an immediate family member, either directly or through corporations, trusts, or similar arrangements in

which they hold a controlling interest. For example, the recipient or subrecipient may establish a separate corporation to own property and lease it back to the recipient or subrecipient.

(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.

(d) Rental costs under leases which are required to be accounted for as a financed purchase under GASB standards or a finance lease under FASB standards are allowable only up to the amount (described in paragraph (b) of this section) that would have been allowed if the recipient or subrecipient had purchased the property on the date the lease agreement was executed. Interest costs related to these leases are allowable if they meet the criteria in § 200.449. Unallowable costs include costs that would not have been incurred if the recipient or subrecipient had purchased the property, such as amounts paid for profit, management fees, and taxes.

(e) Rental or lease payments are allowable under lease contracts where the recipient or subrecipient is required to recognize an intangible right-to-use lease asset under GASB standards or right-of-use operating lease asset under FASB standards for purposes of financial reporting in accordance with GAAP.

(f) The rental of any property owned by any individuals or entities affiliated with the recipient or subrecipient, including commercial or residential real estate, for purposes such as the home office is unallowable.

§ 200.466 Scholarships, student aid costs, and tuition remission.

(a) Costs of scholarships, fellowships, and student aid programs at IHEs are allowable only when the purpose of the Federal award is to provide training to participants, and the Federal agency approves the cost.

(b) Tuition remission and other forms of compensation paid as, or instead 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 the established written 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) The student is enrolled in an advanced degree program at the IHE or an affiliated institution during the academic period and the student's activities under the Federal award are related to their 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) The IHE compensates students under Federal awards as well as other activities in similar manners.

(c) Charges for tuition remission and other forms of compensation paid to students as, or instead of, salaries and wages are subject to the reporting requirements in § 200.430. The charges must be treated as a direct or indirect cost in accordance with the actual work performed. Tuition remission may be charged on an average rate basis. See § 200.431.

§ 200.467 Selling and marketing costs.

Costs of selling and marketing any products or services of the recipient or subrecipient are unallowable unless they are allowed under § 200.421 *and are necessary to meet the requirements of the Federal award.*

§ 200.468 Specialized service facilities.

(a) The costs of services provided by highly complex or specialized facilities

operated by the recipient or subrecipient are allowable provided the charges for the services meet the conditions of either paragraph (b) or (c) of this section *and* take into account any items of income or Federal financing that qualify as applicable credits under § 200.406. These costs include charges for facilities such as computing facilities, wind tunnels, and reactors.

(b) The costs of such services, when material, must be charged directly to the applicable Federal 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 recipient or subrecipient, including usage by the recipient or subrecipient for internal purposes; and

(2) Is designed to recover only the aggregate costs of the services. Each service's costs must normally consist of its direct costs and an allocable share of all indirect costs. Rates must be adjusted at least biennially and must consider any over or 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 costs.

(d) Under extraordinary circumstances, the cognizant agency for indirect costs and the recipient or subrecipient may negotiate and establish an alternative costing arrangement if it is in the Federal Government's best interest.

§ 200.469 Student activity costs.

Costs incurred for intramural activities, student publications, student clubs, and other student activities are unallowable unless expressly authorized 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 agency to identify taxes where Federal participation is inappropriate. The cognizant agency for indirect costs may accept a reasonable approximation in circumstances where determining the amount of unallowable taxes would require an excessive amount of effort.

(b) *For nonprofit organizations and IHEs.* (1) Taxes that the recipient or subrecipient is required to pay and which are paid or accrued in accordance with GAAP are generally allowable. These costs include payments made to local governments instead of taxes and that are commensurate with the local government services received. The following taxes are unallowable:

(i) Taxes for which exemptions are available to the recipient or subrecipient directly or which are available to the recipient or subrecipient based on an exemption afforded the Federal Government and, in the latter case, when the Federal agency makes available the necessary exemption certificates;

(ii) Special assessments on land which represent capital improvements; and

(iii) Federal income taxes.

(2) Any refund of taxes and interest thereon, which were allowed as Federal award costs, must be credited to the Federal Government as a cost reduction or cash refund, as appropriate. However, any interest paid or credited to a recipient or subrecipient 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 Federal Government has reimbursed the recipient or subrecipient for the taxes, interest, and penalties.

(c) *Value Added Tax (VAT).* Foreign taxes charged for procurement transactions that a recipient or subrecipient is legally required to pay in a country are allowable. 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 recipient or subrecipient relate to allowable cost, these costs must be credited to the Federal agency as a cost reduction or cash refunds, as appropriate. In cases where the costs are credited back to the Federal award, the recipient or subrecipient may reduce the Federal share of costs by the amount of the foreign tax reimbursement, or where Federal award has not expired, the Federal agency may allow the recipient or subrecipient to use the foreign government tax refund for approved activities under the Federal award.

§ 200.471 Telecommunication and video surveillance costs.

(a) Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

(b) Obligor or expending covered telecommunications and video surveillance services or equipment or services as described in § 200.216 to:

- (1) Procure or obtain, extend or renew a contract to procure or obtain;
- (2) Enter into a contract (or extend or renew a contract) to procure; or
- (3) Obtain the equipment, services, or systems.

§ 200.472 Termination and standard closeout costs.

(a) *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 must be used in conjunction with the other termination requirements of this part.

(1) The cost of items reasonably usable on the recipient's or subrecipient's other work is unallowable unless the recipient or subrecipient submits evidence that it would not retain such items without sustaining a loss. In deciding whether such items are reasonably usable on other work of the recipient or subrecipient, the Federal agency

or pass-through entity should consider the recipient's or subrecipient's plans and orders for current and scheduled activity. Contemporaneous purchases of common items by the recipient or subrecipient must be considered evidence that the items are reasonably usable on the recipient's or subrecipient'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 do not exceed the reasonable quantitative requirements of other work.

(2) If the recipient or subrecipient cannot discontinue certain costs immediately after the effective termination date, despite making all reasonable efforts, then the costs are generally allowable within the limitations of this part. Any costs continuing after termination due to the negligent or willful failure of the recipient or subrecipient to immediately discontinue the costs are unallowable.

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

(i) Such special tooling, special machinery, or equipment is not reasonably capable of use in the other work of the recipient or subrecipient;

(ii) The interest of the Federal Government is protected by transfer of title or by other means deemed appropriate by the Federal agency (see § 200.313 (d)); and

(iii) The loss of useful value for any one terminated Federal award is limited to the 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.

(4) If paragraph (a)(4)(i) and (ii) below are satisfied, rental costs under unexpired leases (less the residual value of such leases) are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated Federal award. These rental costs may include the cost of alterations of the leased property and

§ 200.473

the cost of reasonable restoration required by the lease, provided the alterations were necessary for the performance of the Federal award.

(i) The amount of claimed rental costs does not exceed the reasonable use value of the property leased for the period of the Federal award and a further period as may be reasonable; and

(ii) The recipient or subrecipient makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of the lease.

(5) The following settlement expenses are generally allowable.

(i) Accounting, legal, clerical, and similar costs that are reasonably necessary for:

(A) The preparation and presentation to the Federal agency or pass-through entity of settlement claims and supporting data with respect to the terminated portion of the Federal award, unless the termination is for cause (see §§ 200.339–200.343); and

(B) The termination and settlement of subawards.

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

(6) Claims under subawards, including the allocable portion of claims common to the Federal award and other work of the recipient or subrecipient, are generally allowable. An appropriate share of the recipient's or subrecipient's indirect costs may be allocated to the amount of settlements with contractors and subrecipients, provided that the amount allocated is consistent with the requirements of § 200.414. These allocated indirect costs must exclude the same and similar costs claimed directly or indirectly as settlement expenses.

(b) *Closeout Costs.* Administrative costs associated with the closeout activities of a Federal award are allowable. The recipient or subrecipient may charge the Federal award during the closeout for the necessary administrative costs of that Federal award (for example, salaries of personnel preparing final reports, publication and printing costs, costs associated with the disposition of equipment and property, and related indirect costs). These

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costs may be incurred until the due date of the final report(s). If incurred, these costs must be liquidated prior to the due date of the final report(s) and charged to the final budget period of the award unless otherwise specified by the Federal agency.

§ 200.473 Training and education costs.

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

§ 200.474 Transportation costs.

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

§ 200.475 Travel costs.

(a) *General.* Travel costs include the transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the recipient or subrecipient. These costs may be charged on an actual cost basis, on a per diem or mileage basis, 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. The method used must be consistent with those normally allowed in like circumstances in the recipient's or subrecipient's other activities and in accordance with the recipient's or subrecipient's established written policies. Notwithstanding the provisions of § 200.444, travel costs of officials covered by that section are allowable with the prior written approval of the Federal agency or pass-through entity when they are specifically related to the Federal award.

OMB Guidance

§ 200.501

(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 recipient or subrecipient in its regular operations as the result of the recipient's or subrecipient's established written policy. In addition, if these costs are charged directly to the Federal award documentation must justify that:

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

(2) The costs are reasonable and consistent with the recipient's or subrecipient's established written policy.

(c) *Dependents.* (1) Temporary dependent care costs (dependent is defined in 26 U.S.C. 152) above and beyond regular dependent care are allowable provided that these costs:

(i) Are a direct result of the individual's travel to a conference for the Federal award;

(ii) Are consistent with the recipient's or subrecipient's established written policy for all travel; and

(iii) Are only temporary during the travel period.

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

(d) *Establishing rates and amounts.* In the absence of an established written policy regarding travel costs, the rates and amounts established under 5 U.S.C. 5701–11 (“Travel and Subsistence Expenses; Mileage Allowances”), by the Administrator of General Services, or by the President (or their 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 recipient or subrecipient must justify and document these conditions on a case-by-case basis 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 recipient's or subrecipient's determinations that customary standard airfare or other discount airfare is unavailable for specific trips if the recipient or subrecipient can demonstrate that such airfare was not available in the specific case.

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

§ 200.476 Trustees.

Travel and subsistence costs of trustees (or directors) at IHEs and nonprofit organizations are allowable. See § 200.475.

Subpart F—Audit Requirements

GENERAL

§ 200.500 Purpose.

This part sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of non-Federal entities expending Federal awards.

AUDITS

§ 200.501 Audit requirements.

(a) *Audit required.* A non-Federal entity that expends \$1,000,000 or more during the non-Federal entity's fiscal year in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part.

XVIII. Glossary of Terms

Bankers' Acceptance: ~~a draft or bill or 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.

5. E. HRTAC Investment Policy Update – Investment Guidelines

Agenda Item 5E
Action Item

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

From: Kevin B. Page, Executive Director

Date: September 18, 2025

Re: HRTAC Investment Policy Update – Investment Guidelines

Recommendation:

The Finance Committee is asked to: i. Endorse and recommend to the Commission for approval the proposed amendment to the HRTAC Investment Policy; and, ii. Authorize the Finance Committee Chair to communicate the Committee's recommendation to the Commission at its next meeting.

Background:

The Commission adopted the HRTAC Investment Policy on June 16, 2016. The Commission Staff and professional investment advisors continue to monitor and propose updates as necessary, and the Commission has amended the Adopted HRTAC Investment Policy on December 13, 2018, June 20, 2019, December 10, 2020, and September 21, 2023. HRTAC Staff and professional advisors have identified a need to amend the HRTAC Investment Policy. Specifically:

- Separately define Supranationals – HRTAC has been actively purchasing these types of bonds and other obligations for the portfolios as they fit into the category of Federal Agency/GSE's. The proposed change provides additional transparency.
- Changes to Municipal Obligations – to buy A-rated notes out to 5 years rather than the current 3-year limit to potentially enhance yield and portfolio diversification.
- Changes to Corporate Notes – to allow A-rated notes with maturities out to 5 years, rather than the current 3-year limit to potentially enhance returns and help diversify the portfolios.
- Changes to sector and issuer diversification guidelines to:
 - Separately assign sector and issuer limits to Agency/GSE Mortgage-Backed Securities. This is a more restrictive guideline than existing policy.
 - Assign some sector/issuer restrictions on Agency/GSE MBS/bonds in general. This is a more restrictive guideline than existing policy.
 - Separately assigns sector and issuer limits to Supranationals. This is a more restrictive guideline than existing policy.



Fiscal Impact:

There is no impact in relation to this Action Item.

Suggested Motion:

Motion is that the Finance Committee: i. Endorses and recommends to the Commission for approval the proposed amendments to the HRTAC Investment Policy; and, ii. Authorizes the Finance Committee Chair to communicate the Committee's recommendation to the Commission at its next meeting.



Hampton Roads Transportation Accountability Commission

Statement of Investment Policy

Effective September ~~21, 2023~~ 18, 2025

Originally Adopted: June 16, 2016

Revised: December 13, 2018, June 20, 2019, December 10, 2020, ~~and~~
September 21, 2023, and September 18, 2025



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GLOSSARY

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION STATEMENT OF INVESTMENT POLICY

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 funds and monies that are under the Commission’s supervision including, but not limited to, all financial assets and funds related to the HRTF and all financial assets and funds related to the Hampton Roads Regional Transit Fund (“HRRTF”). This Policy does not apply to any monies in trust for the funding of post-employment employee benefits. Funds from all sources related to HRTF may be pooled for investment purposes, and funds from all sources related to HRRTF may be pooled for investment purposes, but all deposits and investments related to the HRRTF shall be fully segregated from the deposits and investments of the HRTF. 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. For all Authorized Investments the "time of purchase" or "date of purchase" shall be interpreted as the transaction settlement date.

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.
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 of the following NRSROs: Moody's Investors Service, Inc. ("Moody's"), Standard & Poor's ("S&P"), or Fitch Ratings, Inc. ("Fitch"). 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. **U.S. Dollar Denominated Supranational Agency Bonds.** Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, by the Asian Development Bank or by the African Development Bank. The final maturity shall not exceed a period of five (5) years from the time of purchase.

3.4. 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, with a rating of at least AA (or its equivalent) by at least two of the following NRSROs: S&P, Moody's, or Fitch, matures within ~~three-five~~ (35) years of the date of purchase, and otherwise meets the requirements of Code of Virginia §2.2-4501.

4.5. Commercial Paper. "Prime quality" commercial paper, with a maturity of 270 days or less from the date of purchase, 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, A-1 by S&P, or F1 by Fitch, and that otherwise meets the requirements of Code of Virginia §2.2-4502.

5.6. 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 from at least two of the following: P-1 by Moody's, A-1 by S&P, or F1 by Fitch.

6.7. Corporate Notes. High quality corporate notes with a final maturity from the time of purchase of five (5) years or less and that have received at least two of the following ratings: A by S&P, A by Moody's, or A by Fitch.~~meet the following requirements:~~

- ~~a. Notes with maturities of no more than three (3) years from the time of purchase shall have received at least two of the following ratings: A by S&P, A by Moody's, or A by Fitch.~~
- ~~b. Notes with maturities of no more than five (5) years from the time of purchase shall have received at least two of the following ratings: AA by S&P, Aa by Moody's, or AA by Fitch.~~

7.8. 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 that meet the following requirements:

- a. Notes with maturities or no more than one (1) year from the time of purchase shall have received at least two of the following ratings: A-1 by S&P, P-1 by Moody's, or F1 by Fitch.
- b. Notes with maturities exceeding one year and not exceeding five (5) years from the time of purchase shall have received at least two of the following ratings: AA by S&P, Aa by Moody's, or AA by Fitch.

8.9. 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 more than two (2) years.

9.10. 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.

10.11. 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.

11.12. 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.

12.13. 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 Limit³	Issuer Limit³
U.S. Treasury Obligations	100%	100%
Federal Agency/GSE Obligations ¹	100%	35%
Federal Agency/GSE Mortgage-Backed Securities¹	40%	35%
Supranationals	30%	10%
Municipal Obligations	15%	5%
Commercial Paper ²	35%	5%
Bankers' Acceptances ²	35%	5%
Corporate Notes ²	25%	5%
Negotiable Certificates of Deposit and Bank Deposit Notes ²	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%
Virginia SNAP-SNAP Fund (Proceeds of Tax Exempt Bonds Only)	100%	100%

Notes:

- 1) Maximum exposure to any one Federal Agency, including the combined holdings of Agency debt and Agency MBS, is 35%.
- 2) Maximum allocation across all non-governmental permitted investment sectors in 5% combined per issuer.
- 3) Sector and issuer concentration limits apply at the time of purchase measured from the transaction's trade date.

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 Manager 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. VERIFICATION OF DEPOSITS

The Executive Director shall regularly verify that all bank deposits are held in compliance with the SPDA and related guidelines. On an annual basis, the Executive Director shall require all depositories to confirm that all bank accounts are being held as Public Deposits as defined by Code of Virginia Section 2.2-4401 and shall require all depositories to continue to provide monthly account reports. On a quarterly basis, the Executive Director shall utilize the Public Fund Accounts system provided on the Department of the Treasury's website to confirm that all quarter-end bank account balances are being reported as Public Deposits. The Executive Director shall report any discrepancies identified during the quarterly verification to the Treasurer of the Commonwealth of Virginia.

Q. 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.

R. 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.

S. INVESTMENT POLICY ADOPTION

This policy is enacted by the Hampton Roads Transportation Accountability Commission, this 16th day of June, 2016, and was revised by the Hampton Roads Transportation Accountability Commission on the 13th day of December, 2018 the 20th day of June, 2019, the 10th day of December 2020, and the 21st day of September 2023. This policy with revised changes will become effective September 21, 2023.

Glossary of Terms

Bankers' Acceptance: a draft or bill or 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.

5. F. HRTAC Engagement of Court Stenographer/Court Reporter Services

Agenda Item 5F
Action Item

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

From: Kevin B. Page, Executive Director

Date: September 18, 2025

Re: HRTAC Engagement of Court Stenographer/Court Reporter Services

Recommendation:

HRTAC Staff recommends that the Finance Committee endorse HRTAC Staff's recommendation that HRTAC engage Ortega International Reporting, LLC to provide Court Stenographer/Court Reporter Services.

Background:

In accordance with the HRTAC Policy Relating to Procurement of Goods and Services, Including Procedures for Certain Small Purchases and the Virginia Public Procurement Act, quotes for Court Stenographer/Court Reporter Services were solicited in August 2025. HRTAC Staff evaluated the quotes received and recommends that HRTAC engage Ortega International Reporting, LLC to provide Court Stenographer/Court Reporter Services and award a term contract to such entity for such services.

To help evaluate whether any potential conflict of interest may exist relating to Agenda Item 5F, each Committee Member is asked to consider whether he or she (or an immediate family member) has any personal or financial relationship with Ortega International Reporting, LLC. If a Committee Member believes that he or she (or an immediate family member) may have a personal or financial relationship with Ortega International Reporting, LLC, (1) the Committee Member is asked to notify the Executive Director and HRTAC General Counsel as soon as possible (but no later than before this meeting), and (2) the Committee Member should refrain from participating in voting on this Agenda Item.

Fiscal Impact:

The cost of Court Stenographer/Court Reporter Services, determined on a per meeting basis, is included in the current approved FY26 Administrative and Project Development Budget and is expected to be less than \$9,400 per year.



Suggested Motion:

Motion is the Finance Committee (i) endorses HRTAC Staff's recommendation that HRTAC engage Ortega International Reporting, LLC to provide Court Stenographer/Court Reporter Services and award a term contract for such services, and (ii) authorizes the Finance Committee Chair to communicate the Finance Committee's endorsement of such recommendation to the Commission.

CONTRACT

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION CONTRACT WITH ORTEGA INTERNATIONAL REPORTING, LLC

Contract Number: C202601

This Contract is made this ____ day of _____ 2025, by and between the HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (hereinafter referred to as the "Organization" or "HRTAC") and ORTEGA INTERNATIONAL REPORTING, LLC, a Virginia limited liability company (hereinafter referred to as the "Contractor"), in accordance with the provisions of the HRTAC Policy Relating to Procurement of Goods and Services, Including Procedures for Certain Small Purchases and the Virginia Public Procurement Act. The parties to this Contract, in consideration of the mutual covenants and stipulations set out herein, including all Attachments, agree as follows:

TIME OF PERFORMANCE:

The initial period of the Contract shall be one (1) year from the date first listed above. HRTAC reserves the right to exercise up to four (4) successive, one (1) year optional renewal periods. Automatic contract renewals are prohibited. Notice of intent to renew will be given to the Contractor in writing at least 60 days before the expiration of the then-current contract period.

SCOPE:

The purpose of this Contract is to establish a ready, "as required" source for the items listed in this Contract. The Contractor will provide services on an "as needed" basis as requested by HRTAC. Tasks to be performed are specified in ATTACHMENT 1 - TECHNICAL SPECIFICATIONS and are subject to the terms of ATTACHMENT 2 - GENERAL TERMS AND CONDITIONS.

PRICES AND PRICE ADJUSTMENT:

The pricing schedule for this Contract is included as ATTACHMENT 3. Prices and price adjustments are subject to the terms of ATTACHMENT 2 - GENERAL TERMS AND CONDITIONS.

SPECIAL CONDITIONS:

The Special Conditions applicable to this Contract are specified in ATTACHMENT 1.

GENERAL TERMS AND CONDITIONS:

The General Terms and Conditions applicable to this Contract are specified in ATTACHMENT 2.

HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION

ORTEGA INTERNATIONAL REPORTING, LLC,
a Virginia limited liability company

Kevin B. Page, Executive Director

Juan Ortega, President

Date

Date

ATTACHMENT 1

TECHNICAL SPECIFICATIONS

I. DEFINITIONS

For the purposes of this Attachment 1, the following definitions shall apply.

1. **Appearance:** The formal attendance by the Contractor's personnel at a board, advisory committee, administrative, public, or other meeting or hearing for HRTAC.
2. **Appearance Fee:** A fee paid by HRTAC to the Contractor for its formal attendance at an Appearance.
3. **Commission:** The Hampton Roads Transportation Accountability Commission.
4. **Contractor:** The individual or firm that has entered into an agreement to provide services to HRTAC.
5. **Copy:** A duplicate of an original transcript provided by the Contractor.
6. **Day:** A calendar day. As it relates to transcripts, calendar days will commence on the first day following the hearing or meeting and will end at 4:00 p.m. on the requested day.
7. **Due Date:** The day the transcript is due as requested. If the due date falls on a day the office is closed, the transcript will be due by 4:00 p.m. on the next business day.
8. **Meeting(s):** Includes, but is not limited to, board meetings, advisory committee meetings, and public hearings.
9. **Original:** The transcript containing a signed certification page.
10. **Substantive Error:** A significant deviation from accuracy or correctness that changes the context of testimony or factual information. It shall also include legally significant errors, including but not limited to, incorrectly referencing the name of the Board, Board Member, Stakeholder, or date of the proceeding.
11. **Terminology:** The terms "must", "shall", "should", and "may" are used to identify the criticality of the requirements. "Must" and "shall" identify requirements whose absence will have a major negative impact on the suitability of the Contractor to provide required goods and services. Items labeled as "should" are highly desirable, although their absence will not have as large an impact. Items labeled "may" will be useful but are not necessary.
12. **Transcript:** A verbatim transcription of the proceedings containing a signature of the Contractor on the certification page.

13. Work hours:

- a. "Normal business hours" is defined as 8:00 a.m. to 4:30 p.m. Monday through Friday
- b. "Non-business hours" is defined as before 8:00 a.m. and after 4:30 p.m. on weekdays and anytime during weekends and holidays.

II. SCOPE OF WORK

A. General Requirements

The Contractor's personnel shall:

1. Be State or Nationally Certified by the Virginia (VCRA) or National (NCRA) Court Reporters Association (a copy of such certification shall be submitted to HRTAC at least 10 business days prior to the scheduled Appearance) and provide services in Chesapeake, Virginia.
2. Use current industry-standard stenography, audio recording, and transcription technology and equipment to render services; must use **both** a steno machine and a recording device or other form of backup equipment.
3. Have knowledge and experience of local government to understand what is to be transcribed.
4. Be familiar with procedures and protocols at meetings.
5. Be able to accurately capture comments from a variety of speakers, which may include the use of technical language regarding transportation topics.
6. Be professionally attired and maintain a professional demeanor.
7. Report at least 30 minutes prior to the scheduled start time of each day of the meetings and be present for the entire meeting. In the event the Contractor personnel arrives late, HRTAC reserves the right to deduct, per meeting day, up to 5% of the Contractor's total price for the meeting.
8. Be available to work during non-business hours, when applicable.
9. Be responsible for the quality of their services and for the quality of work produced by their employees and subcontractors.

B. Board Meeting, Advisory Committee Meeting, and Public Hearing Appearances

The Contractor shall provide and furnish all labor, supervision, equipment, tools, materials, paper, supplies, travel to and from meeting destination, resources, and incidentals, etc. necessary to provide Court Stenographer/Reporter Services and meeting Transcripts for all scheduled Appearances as specified herein.

C. Deliverables

For each scheduled Appearance, the Contractor shall provide Court Stenographer/Court Reporter Services and furnish the Transcript.

1. Transcript(s) shall be submitted in the following formats:
 - a. One digital Transcript submitted via email in a searchable, PDF format and containing the Contractor's digital (electronic) signature. Digital protection of the file must allow HRTAC to bookmark, copy, extract and print text and pages as required.
 - b. One digital Copy of the Transcript submitted via email in Microsoft Word format for HRTAC internal use.
 - c. One original paper Transcript signed by the Contractor and submitted via mail absent of any cover or binder; pages are to be stapled in the upper left-hand corner.
 - d. One audio recording of the meeting submitted in mp3 format via email or other mutually agreed upon means of digital delivery or via USB-compatible flash drive.
2. Email submissions of Transcript(s) and audio recordings shall be sent to HRTAC's Executive Assistant.
3. Transcript(s) must be submitted within 10 calendar Days after the Appearance, unless otherwise requested. If the 10th calendar Day falls on an internal deadline HRTAC reserves the right to request advance delivery of the Transcript(s) related to the deadline.
4. Transcript(s) must be submitted no later than 4:00 p.m. (EST) on the Due Date.

D. Scheduling

In all cases, HRTAC staff will endeavor to provide advance notification to the Contractor of the Appearance date, meeting name, time and location 30 calendar Days prior to the meeting date. If however, HRTAC staff is unable to provide advance notification, the contractor must provide the requested services within 7 calendar Days of notification by HRTAC staff.

E. Invoicing and Payment

1. The Contractor may submit invoices per Appearance upon completion of all deliverables. Invoices must correctly identify the Appearance date, meeting/hearing name, and time as scheduled. Invoices shall be delivered via email to the HRTAC Executive Assistant.
2. No index pages will be included with, or billed for, in the transcript.
3. Invoicing must be in accordance with Attachment 2, "General Terms and Conditions."
4. Payment will be in accordance with Attachment 2, "General Terms and Conditions."

III. SPECIAL CONDITIONS

- A.** Transcripts received after the Due Date will be subject to a 10% penalty. The penalty shall increase by 2% for each day the Transcript(s) is/are delivered past the due date, not to exceed 25% of the total cost of the Transcript(s).
- B.** The Contractor must inform HRTAC in writing in advance and no later than 3 days prior to the due date in the event transcripts will be delivered after the Due Date; the Contractor must provide the anticipated delivery date. With prior approval, the late fee penalty may be waived.
- C.** Transcript(s) containing Substantive Errors are subject to a 10% penalty. Corrected transcripts received within the Due Date will not be subject to additional late penalty. Corrected transcripts received after the due date shall be subject to a 2% penalty for each day past the due date, not to exceed 25% of the total cost of the late Transcript(s).
- D.** In all cases, the HRTAC staff will endeavor to provide advance notification to the contractor of the need for expedited Transcript(s). If however, HRTAC staff is unable to provide advance notification, HRTAC staff and the Contractor must agree on delivery date. The Department and the contractor shall only request delivery and payment of expedited Transcript(s) in accordance with the terms of the contract.
- E.** HRTAC reserves the right to make copies of Transcripts as necessary for HRTAC purposes at no additional cost. The Contractor understands that the Commission will comply with the Virginia Freedom of Information Act (Section 2.2-3700 et. Seq. of the Code of Virginia) and may copy and distribute transcripts to comply with FOIA with no additional cost.
- F.** HRTAC may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the services/furnish the goods, and the Contractor shall furnish to HRTAC all such information and data for this purpose as may be requested.
- G.** HRTAC reserves the right to conduct any test/inspection it deems advisable to ensure goods and services conform to the specifications of this Attachment 1.
- H.** The Contractor shall retain all books, records, and other documents relative to this contract for five years after final payment. HRTAC shall have full access to and the right to examine any of said materials during said period.
- I.** The Contractor shall be responsible for performing in accordance with the specifications, requirements, terms and conditions of the contract. The Contractor shall be liable for any damages or claims and legal costs resulting from the

Contractor's failure to perform such services and shall indemnify and hold HRTAC harmless from liability resulting from the Contractor's failure to perform.

- J.** HRTAC reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 days written notice to the Contractor. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of the cancellation.
- K.** The Contractor acknowledges and agrees that the relationship between the Contractor and HRTAC is non-exclusive and, without limiting the foregoing, HRTAC may select other contractors to perform Court Stenographer/Court Reporter Services.

ATTACHMENT 2

GENERAL TERMS AND CONDITIONS

SCOPE:

The purpose of this contract is to establish a ready “as required” source for the items listed in this contract. The Contractor will provide services on an “as needed” basis as requested by the Hampton Roads Transportation Accountability Commission (HRTAC). Tasks to be performed are described in the Technical Specifications (Attachment 1).

TIME OF PERFORMANCE:

The initial period of the contract shall be one (1) year from the date first listed in the contract. HRTAC reserves the right to exercise up to four (4) successive, one (1) year optional renewal periods. Automatic contract renewals are prohibited. Notice of intent to renew will be given to the Contractor in writing at least 60 days before the expiration of the then-current contract period.

PRICES AND PRICE ADJUSTMENT:

All prices/discounts shall be F.O.B. Destination and shall include all charges that may be imposed in fulfilling the terms of this contract.

If labor rates are requested, the rates specified by the Contractor shall include all direct and indirect overhead costs including but not limited to transportation, general and administrative cost, etc. Labor rates will be paid on the basis of time at the site.

The Contractor agrees that for unit price contracts, prices shall remain firm for 365 days. If the price is increased after 365 days, the unit price may be increased only upon approval of a written request to the HRTAC Executive Director. Upon receipt of the Contractor’s request, HRTAC shall make a determination to approve or adjust the requested price increase based upon its investigations and the information provided by the Contractor.

The request for a change in the unit price shall include as a minimum:

- (1) the cause for the adjustment;
- (2) proposed effective date; and
- (3) the amount of the change requested with documentation to support the requested adjustment (i.e., appropriate Bureau of Labor Statistics index, change in manufacturer's price, etc.)

The request must be received at least 30 days prior to the effective date and shall become effective only upon approval by the HRTAC Executive Director. The increased contract unit price shall not apply to orders received by the Contractor prior to the effective date of the approved increased contract unit price.

PROJECTED REQUIREMENTS/ESTIMATED QUANTITIES:

HRTAC’s Executive Director or the Executive Director’s designee will place orders for specific quantities of items covered in the resultant contract, as requirements arise. Please refer to the paragraph entitled METHOD OF ORDERING.

METHOD OF ORDERING:

HRTAC may use two (2) different methods of placing orders from the final contract: (1) a written order or (2) a Purchase Order (PO) for any order \$5,000 and higher. Purchase Orders shall be considered to have been received by the Contractor after the fifth (5th) calendar day following the date of issuance.

Performance under this contract is not to begin until receipt of the written order or purchase order. HRTAC may cancel, without liability to either party, any portion of the contract affected by the requested increase and any materials, supplies or services undelivered at the time of such cancellation.

DELIVERY/TIME OF PERFORMANCE:

HRTAC requires that delivery be made to its destination within the shortest time frame possible. The location of services performed under this contract shall be agreed upon between the authorized representative requesting services and the

Contractor at the time the services are requested. Services will be performed between the hours of 8:00 A.M. and 8:00 P.M. on business days unless other arrangements have been made.

REPORTS AND INVOICING:

The Contractor must submit to HRTAC Executive Director or the Executive Director's designee the contract deliverables. The Contractor must submit an itemized invoice to the HRTAC Executive Director or the Executive Director's designee. Invoices must include the information listed below:

- Contractor Company Name
- Purchase Order number (if applicable)
- Date of service, including beginning and ending time for each assignment
- The type of service
- Location of service
- The itemized cost for each item/service per assignment

Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the Hampton Roads Transportation Accountability Commission at 723 Woodlake Drive, Chesapeake, VA 23320. All invoices shall show the Organization contract number and the Contractor's federal employer identification number.

PAYMENT:

The Organization shall pay the Contractor as deliverables are accepted as satisfactorily complete and invoices are accepted as accurate. The method of payment will be by check.

Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment of less than 30 days, however.

All goods or services provided under this contract or purchase order that are to be paid for with public funds shall be billed by the Contractor at the contract price.

COMMONWEALTH OF VIRGINIA PUBLIC PROCUREMENT ACT:

This contract is subject to the provisions of the Commonwealth of Virginia Public Procurement Act (VPPA), and any revisions thereto in effect at the time of this contract.

KICKBACK:

By signing this contract, the Contractor certifies that the Contractor has not offered or received any kickback from any other proposer, supplier, manufacturer, or subcontractor in connection with this proposal. A kickback is defined as an inducement for the award of the contract, subcontract, or order through any payment, loan, subscription, advance, deposit of money, services, or anything of value in return for an agreement not to compete on a public contract.

LIABILITY:

The Contractor will maintain appropriate liability insurance coverage throughout the term of this Agreement, as follows:

- Name the Organization as an additional insured and provide certificates or other evidence that the required insurance is in force.
- Worker's compensation and employer's liability insurance as required by the Commonwealth of Virginia.
- Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, and owned, non-owned or hired vehicles with \$1,000,000 combined single limits.
- Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission of the Contractor or of any of its employees, agents, or subcontractors, with \$1,000,000 per occurrence and in the aggregate.
- All insurance policies affected by this contract will be primary and noncontributory to any other insurance or self-insurance maintained by the Organization. Before performing any services under this contract, the Contractor shall furnish to the Organization insurance certificates or other evidence acceptable to the Organization that the above insurance coverages

- have been obtained. If Contractor fails to maintain insurance as set forth in this contract, the Organization has the right, but not the obligation, to purchase such insurance at Contractor's expense. Contractor shall provide at least thirty (30) days' advance written notice to the Organization of any cancellation, change or modification to its insurance policies.
- Contractor will require each of its subcontractors for work performed under this contract to take out and maintain during the life of the subcontract insurance coverage of the same type and limits required of Contractor for work performed by the subcontractor.
 - It is the intent of the parties to this contract that the Organization shall not be held liable for any damages of any kind to the extent they are caused by the fault or negligence of the Contractor, its employees or agents.

NON-DISCRIMINATION and DEBARMENT:

It is the policy of the Organization that Small, Women- and Minority-Owned (SWaM) and Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of federally funded Contractor contracts. The Commonwealth's new Department of Small Business and Supplier Diversity (SBSD) has encompassed both SWaMs and DBEs. This department can be found at <https://sbsd.virginia.gov/>. This department will coordinate certification for these types of vendors. Contractors are encouraged to take all necessary and reasonable steps to ensure that SWaMs and DBEs have the maximum opportunity to compete for and perform services on the contract, including participation in any subsequent supplemental contracts. If the Contractor intends to subcontract a portion of the services on the project, the Contractor is encouraged to seek out and consider SWaMs and DBEs as potential subcontractors. The Contractor is encouraged to contact SWaMs and DBEs to solicit their interest, capability and qualifications. Any agreement between the Contractor and a SWaM/DBE whereby the SWaM/DBE promises not to provide services to other Contractors is prohibited. The Organization believes that these services support 6% SWaM/DBE participation. If a SWaM/DBE is not certified, the SWaM/DBE must become certified (with the Virginia Department of Small Business and Supplier Diversity) prior to your response being submitted. If a SWaM/DBE is the prime Contractor, the firm will receive full credit for planned involvement of their own forces, as well as the work that they commit to be performed by SWaM/DBE subContractors. SWaM/DBE prime Contractors are encouraged to make the same outreach efforts as other Contractors. SWaM/DBE credit will be awarded only for work actually being performed by the SBSD themselves. When a SWaM/DBE prime Contractor, or subcontractor, subcontracts work to another firm, the work counts toward SWaM/DBE goals only if the other firm is itself a SWaM/DBE. A SWaM/DBE must perform or exercise responsibility for at least 30% of the total cost of the contract with its own force.

DEBARMENT: Certification of Eligibility: A signed statement, on Contractor's letterhead, stating that: *"The firm is not ineligible to receive award of a contract due to the firm's inclusion on any Federal or Virginia State lists of debarred contractors, or otherwise ineligible to be awarded a contract using Federal or State funds."*

In its performance of work activities under this Contract, the Contractor, or subcontractor, warrants that it will not discriminate against any employee, or other person, on account of race, color, sex, religious creed, ancestry, age, national origin or handicapped status. The Contractor shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of DOT assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy, as the recipient deems appropriate. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this non-discrimination clause.

The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Organization, state that the Contractor is an equal opportunity employer; provided, however, that notices, advertisements and solicitations placed in accordance with federal law, rules, or regulations shall be deemed sufficient for the purpose of meeting the requirements of the Contract.

The Contractor shall include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that such provision shall be binding upon each subcontractor or vendor.

All Contractors shall abide by applicable state and federal laws including, but not limited to, all provisions of the Americans with Disabilities Act. Each Contractor agrees to hold the Organization harmless regarding all claims in connection with the Contractor's failure to comply with applicable laws and regulations.

"The Hampton Roads Transportation Accountability Commission in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."

CHANGES:

HRTAC reserves the right to add similar items/services or delete items/services specified in the resultant contract as requirements change during the period of the contract. HRTAC and the Contractor will mutually agree to prices for items/services to be added to the contract. Contract amendments will be issued for all additions or deletions.

CANCELLATION OF SERVICES:

Services performed under this contract are based upon completion, acceptance, and approval by HRTAC of each task outlined in Attachment 1 (Technical Specifications). HRTAC reserves the right to cancel, suspend or delay services that are not performed as outlined in Attachment 1 (Technical Specifications).

ACCESS TO AN INSPECTION OF WORK:

HRTAC and using agencies will, at all times, have access to the work being performed under this contract whenever it may be in progress or preparation.

COLLATERAL CONTRACTS:

Where there exists any inconsistency between this contract and other provisions of collateral contractual agreements which are made a part of this contract by reference or otherwise, the provisions of this contract shall control.

PRIME CONTRACTOR RESPONSIBILITIES:

The Contractor shall be responsible for completely supervising and directing the work under this contract and all subcontractors that it may utilize, using its best skill and attention. Subcontractors who perform work under this contract shall be responsible to the Contractor. The Contractor agrees that it is as fully responsible for the acts and omissions of its subcontractors and of people employed by them as it is for the acts and omissions of its own employees.

SUBCONTRACTING:

If one or more subcontractors are required, the Contractor is encouraged to utilize small, minority-owned, and women-owned business enterprises. For assistance in finding subcontractors, contact the Virginia Department of Business Assistance <http://www.dba.state.va.us>; the Virginia Department of Minority Business Enterprise <http://www.dmb.e.state.va.us>; local chambers of commerce and other business organizations.

As part of the contract award, the prime Contractor agrees to provide the names and addresses of each subcontractor, that subcontractor's status as defined by the state of Virginia, as a small, minority-owned and/or woman-owned business, and the type and dollar value of the subcontracted goods/services provided.

INTEGRATION AND MODIFICATION:

This contract constitutes the entire contract between the Organization and the Contractor. No alteration, amendment, or modification in the provisions of the contract shall be effective unless it is reduced to writing, signed by the parties and attached hereto.

INDEMNIFICATION:

Contractor agrees to indemnify, defend and hold harmless the Organization, its officers, agents, and employees for any and all damages, to the proportionate extent, resulting from or arising out of the negligent acts, errors or omissions, recklessness or intentionally wrongful conduct of the Contractor or its employees or agents.

OWNERSHIP OF MATERIALS:

The Contractor acknowledges and agrees that the Organization has and shall have ownership of any and all materials prepared by the Contractor in the performance of its obligations under this contract. The Contractor shall promptly disclose to the Organization any and all Materials and, at the Organization's request, shall provide the Organization with one or, if so, requested by the Organization, more electronic, magnetic/optical-media, and/or printed copies of each of the materials. The Contractor may retain electronic, magnetic/optical-media, and/or printed copies of the materials and with the Organization's prior written consent on a case-by-case basis, use such copies, but only in the course of the Contractor's business and provided that the Contractor includes on any and all such materials, regardless of form, any and all appropriate notices of the Organization's rights, including without limitation its intellectual property rights, in and to the materials.

CONFIDENTIALITY:

The Contractor expressly acknowledges and agrees that all reports, documents, and communications of every kind, whether written or oral, concerning specific contractual matters, planning or assumptions received in the performance of the work from the Organization, its staff, Board, legal counsel, or other agents or advisors (collectively "Confidential Information") shall be held in strictest confidence and maintained as strictly confidential. Confidential Information shall include information that, when taking into consideration the circumstances surrounding disclosure of the same, a reasonable person would consider being confidential or proprietary. This provision shall not apply to information which (1) has been published and is in the public domain, (2) has been provided to Contractor by third parties who have the legal right to possess and disclose the information, (3) was in the possession of Contractor prior to the disclosure of such information to Contractor by the Organization, (4) is required by law or any governmental agency to be disclosed, or (5) would require disclosure to comply with the ethical obligations of Contractor to protect the public.

No Confidential Information shall be disclosed to other clients of the Contractor, other contractors, private companies, public entities, the media, the general public, or any other third party unless directed to do so by the Organization's Executive Director. However, such Confidential Information may be documented in briefing materials provided to the Organization and its staff; provided such briefing materials are clearly annotated as Confidential Information.

The Contractor shall take all appropriate and necessary steps to protect Confidential Information and to limit access to Confidential Information in its possession to those of its employees, agents and subcontractors required to have access to the Confidential Information in the performance of this work and who are bound in writing to keep the information confidential pursuant to confidentiality agreements with terms no less restrictive than those contained in this contract. The Contractor shall include these confidentiality provisions in any agreement between the Contractor and a subcontractor or agent related to the performance of the work so that these provisions will be binding upon them with equal and like effect. The Contractor shall be responsible for communicating to each party identified in this paragraph who receives or is given access to Confidential Information the terms of these provisions and the obligations of that party to abide by the requirements hereof.

Upon completion of performance of the work, the Contractor, its agents and any subcontractors, agree to deliver to the Organization all Confidential Information obtained during performance of the work, in any medium, and, if requested by the Organization, to provide written confirmation that all such Confidential Information has been delivered to the Organization; provided, however, Contractor may retain a record copy of its work product.

The Contractor shall immediately notify the Organization if the Contractor learns of any unauthorized use or disclosure of Confidential Information and will cooperate in good faith to remedy such occurrence immediately to the extent reasonably possible.

In the event that Contractor becomes legally compelled to disclose any such Confidential Information, Contractor will provide the Commission/Organization with prompt notice so that the Organization may seek a protective order or other appropriate remedy; in the event that such protective order or other remedy is not obtained, Contractor will furnish only that portion of the Confidential Information which Contractor is advised by opinion of counsel is legally required and will cooperate with the Organization in seeking reliable assurance that confidential treatment will be accorded the Confidential Information.

The Contractor acknowledges and agrees that a violation of the provisions of this confidentiality requirement may cause irreparable damage to the Organization, and these confidentiality provisions are made for the express benefit of and shall be

enforceable by any of the affected parties. Contractor agrees that these provisions may be specifically enforced in any court of law having jurisdiction. In addition to and not in limitation of any other rights or remedies the affected party may have for a breach of the provisions of this confidentiality requirement, the affected party may recover money damages; and in addition to money damages, the affected party shall be entitled to obtain equitable relief for any such breach (without requirement of bond or corporate surety) so that Contractor shall be required to cease and desist immediately from breaching such provision (it being agreed that damages alone would be inadequate to compensate the affected parties and would be an inadequate remedy for such breach).

These provisions shall expressly apply to and bind the Contractor, its agents, officers, employees, subcontractors and any permitted assigns.

CONFIDENTIALITY OF PERSONALLY IDENTIFIABLE INFORMATION:

The Contractor assures that information and data obtained as to personal facts and circumstances related to employees or localities will be collected and held confidential, during and following the term of this agreement, and will not be divulged without the individual's and the agency's written consent and only in accordance with federal law or the Code of Virginia. Contractors who utilize, access, or store personally identifiable information as part of the performance of a contract are required to safeguard this information and immediately notify the agency of any breach or suspected breach in the security of such information. Contractors shall allow the agency to both participate in the investigation of incidents and exercise control over decisions regarding external reporting. Contractors and their employees working on this project may be required to sign a confidentiality statement.

CONTINGENT FEE WARRANTY:

The Contractor warrants that it has not employed or retained any person or persons for the purpose of soliciting or securing this contract. The Contractor further warrants that it has not paid or agreed to pay any company or person any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon the award or making of this contract. For breach of one or both of the foregoing warranties, the Organization shall have the right to terminate this contract without liability, or in its discretion, to deduct from the agreed fee, amount of said prohibited fee, commission, percentage, brokerage fee, gift, or contingent fee.

CONFLICT OF INTEREST:

The Contractor warrants that it has fully complied with the State and Local Government Conflict of Interests Act.

DISCLAIMER:

Nothing in this contract shall be construed as authority for either party to make commitments, which will bind the other party beyond the project contained herein.

STANDARD OF CARE:

The standard of care applicable to the Contractor's services will be the highest degree of skill and diligence employed by professional Contractors performing the same or similar services at the time said services are performed. The Contractor will re-perform, without additional compensation, any services not meeting this standard.

FORCE MAJEURE:

If performance of the Services is affected by causes beyond the Contractor's reasonable control, project schedule and compensation shall be equitably adjusted.

DISPUTE RESOLUTION:

The parties will use their best efforts to resolve amicably any dispute, including use of alternative dispute resolution options.

GOVERNING LAW AND VENUE:

This contract is made under and shall be construed according to the laws of the Commonwealth of Virginia. Venue, in the event of litigation, shall be in the City of Chesapeake, Virginia.

APPENDIX A
Contractor/Supplier Agreement: U.S. DOT 1050.2A -- Appendix A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes Contractors) will comply with the Acts and the Regulations relative to Nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation, the Federal Highway Administration, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or the Federal Highway Administration to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the Federal Highway Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the Federal Highway Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B
Contractor/Supplier Agreements: U.S. DOT 1050.2A -- Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Nondiscrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 -- 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).



ORTEGA
International Reporting

www.ortegainternationalreporting.com | juan@ortegainternationalreporting.com | (202) 681-5140

August 19, 2025

Jennifer Hodnett
Executive Assistant
Hampton Roads Transportation Accountability Commission
723 Woodlake Drive, Chesapeake, VA 23320
D: (757) 413-9319
P: (757) 420-8300
jhodnett@hrtac.org
hrtac.org

Proposal for Court Reporting Services – August 19, 2025 (96124)

Dear Ms. Hodnett:

Thank you for your e-mail and for the opportunity to provide a proposal for the requested court reporting services. Below, I have outlined my rates for your review:

- **Appearance Fee:** \$450.00 (includes up to half a day or 4 hours).
- **Transcript Fee:** \$7.50 per page for regular turnaround (10 business days). For example, a 100-page transcript would total \$750.00.
- **Shipping Fee:** Hard copy transcripts sent via FedEx 2-Day Anywhere service are \$17.99. If only an electronic version is required, no shipping fee will apply.
- **Credit Card Payment Fee:** If paying by credit card, a processing fee of \$25.00 will be applied.

Please let me know if you require any additional information or adjustments to this proposal.

Thank you again for your consideration. I look forward to hearing from you soon.

Best regards,

Juan Ortega

Juan Ortega
Ortega International Reporting
(202) 681-5140

From: [Juan Ortega](#)
To: [Tiffany Smith](#)
Cc: [Jennifer Hodnett](#)
Subject: Re: Request for Quote - Court Stenographer/ Court Reporter Services
Date: Thursday, August 21, 2025 3:40:24 PM
Attachments: [image002.png](#)

Good afternoon, Ms. Smith:

Thank you for your e-mail and for the opportunity to clarify.

In standard practice, the certified transcript is the official record of the proceedings. While I do not typically provide audio recordings, I understand that the RFQ specifies submission of an MP3 audio recording along with the transcript.

To meet this requirement, I can provide the audio recording via e-mail or through a secure shared folder. The fee for supplying the MP3 audio file will be \$50.00 per meeting. Please note that the transcript remains the official record of the meeting, and the audio is supplied as a supplemental reference.

I hope this addresses your question and I would be glad to provide any additional information you may need. I look forward to working with HRTAC.

Sincerely,

JUAN ORTEGA

Freelance Court Reporter
On-site & Remote CART Captioner

☐ (202) 681-5140
☐ juan@ortegainternationalreporting.com
☐ www.ortegainternationalreporting.com

6. A. HRTAC Monthly Financial Report



HAMPTON ROADS TRANSPORTATION FUND and
HAMPTON ROADS REGIONAL TRANSIT FUND
FINANCIAL REPORTS
FY2014 – FY2025
Period Ending May 31, 2025

The HRTAC staff has prepared the attached May 2025 financial report based on data received to date from the Virginia Department of Transportation.

Revenues

	<u>Inception to</u> <u>May 2025</u>	<u>FY2025 YTD</u>	<u>May 2025</u>
Total Gross Revenues¹	\$ 6,064,856,117	\$ 515,567,594	\$ 29,676,382
HRTF - State Sales Tax & Local Fuels Tax	2,450,952,606	241,563,506	23,001,477
HRRTF – Fees, Taxes & other Revenue	172,680,309	34,034,016	1,439,235
Interest and Investment Income	306,498,393	71,916,865	5,235,670
Other Income	819,274	10,000	-
Bond and Debt Net Proceeds	3,133,905,535	168,043,207	-

Expenditures

Total Expenditures	\$ 4,089,127,469	\$ 420,378,900	\$ 45,812,186
Projects	3,748,567,912	365,555,783	40,644,540
Operating Expenses & Investment Fees	33,167,569	2,928,697	249,454
Bond Interest Expenses	307,391,988	51,894,420	4,918,192

Modified Cash Position at May 31, 2025 **\$ 1,975,728,648**

Items not using or providing cash since inception:

Amortization - Bond Premium and Gain on Defeasance	(176,323,478)
Purchase of Capital Assets	(12,953)
Gain not affecting cash	(759,274)
Capitalized interest added to long-term debt	47,316,081
Assets not requiring current use of cash	(236,218,825)
Liabilities not providing current sources of cash	<u>5,122,435</u>

Actual Cash and Investments at May 31, 2025 **\$ 1,614,852,634**

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.

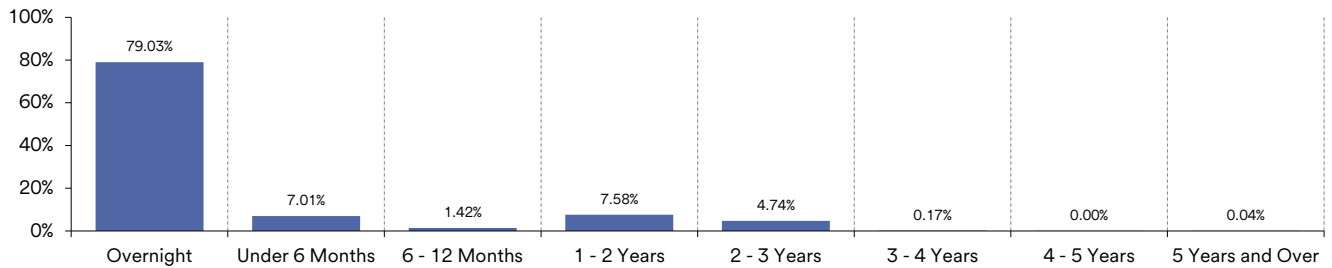
Hampton Roads Transportation Fund

Summary of Cash and Investments

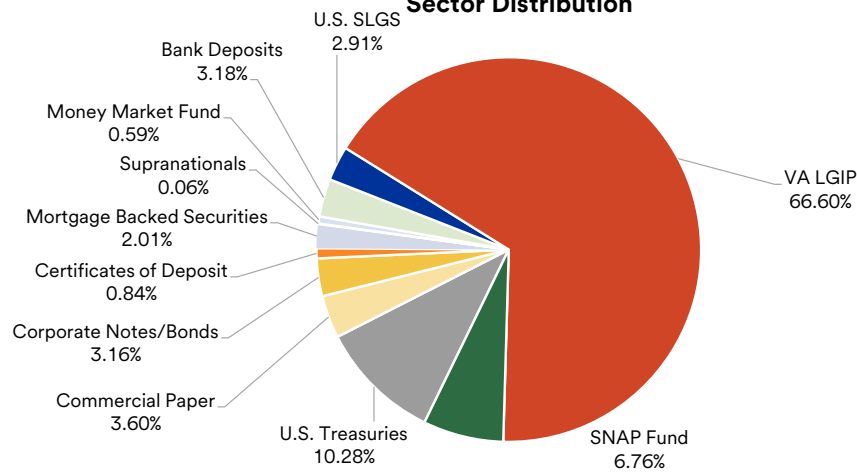
For May 2025

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	0.07%
Union Sweep	4.12%	4.12%	7,740,596	7,740,596	0.54%
Union Money Market	4.07%	4.07%	18,770	18,770	0.00%
Union General	4.18%	4.18%	36,454,033	36,454,033	2.53%
Wilmington Trust	Variable	Variable	41,334,321	41,334,321	2.87%
VA LGIP	4.41%	4.41%	946,231,507	946,231,507	65.75%
Enhanced Cash Portfolio	4.42%	4.16%	159,980,361	161,232,875	11.20%
Core Portfolio	4.39%	4.39%	147,772,562	148,923,410	10.35%
SNAP Fund	4.44%	4.44%	96,095,102	96,095,102	6.68%
Total			\$ 1,436,627,253	\$ 1,439,030,614	100.00%

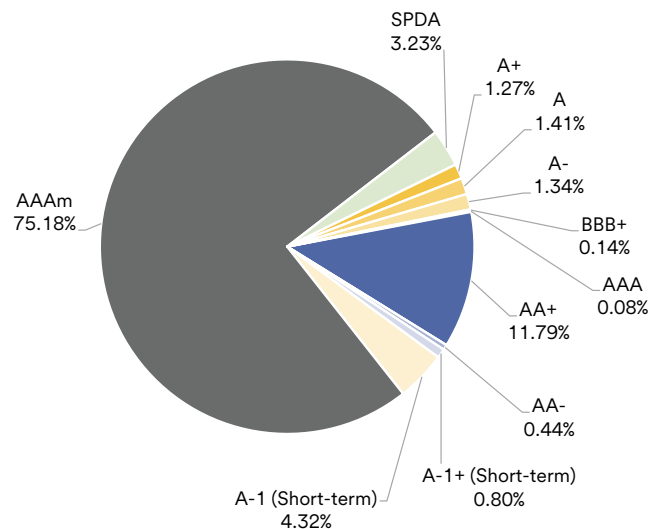
Total Maturity Distribution



Sector Distribution



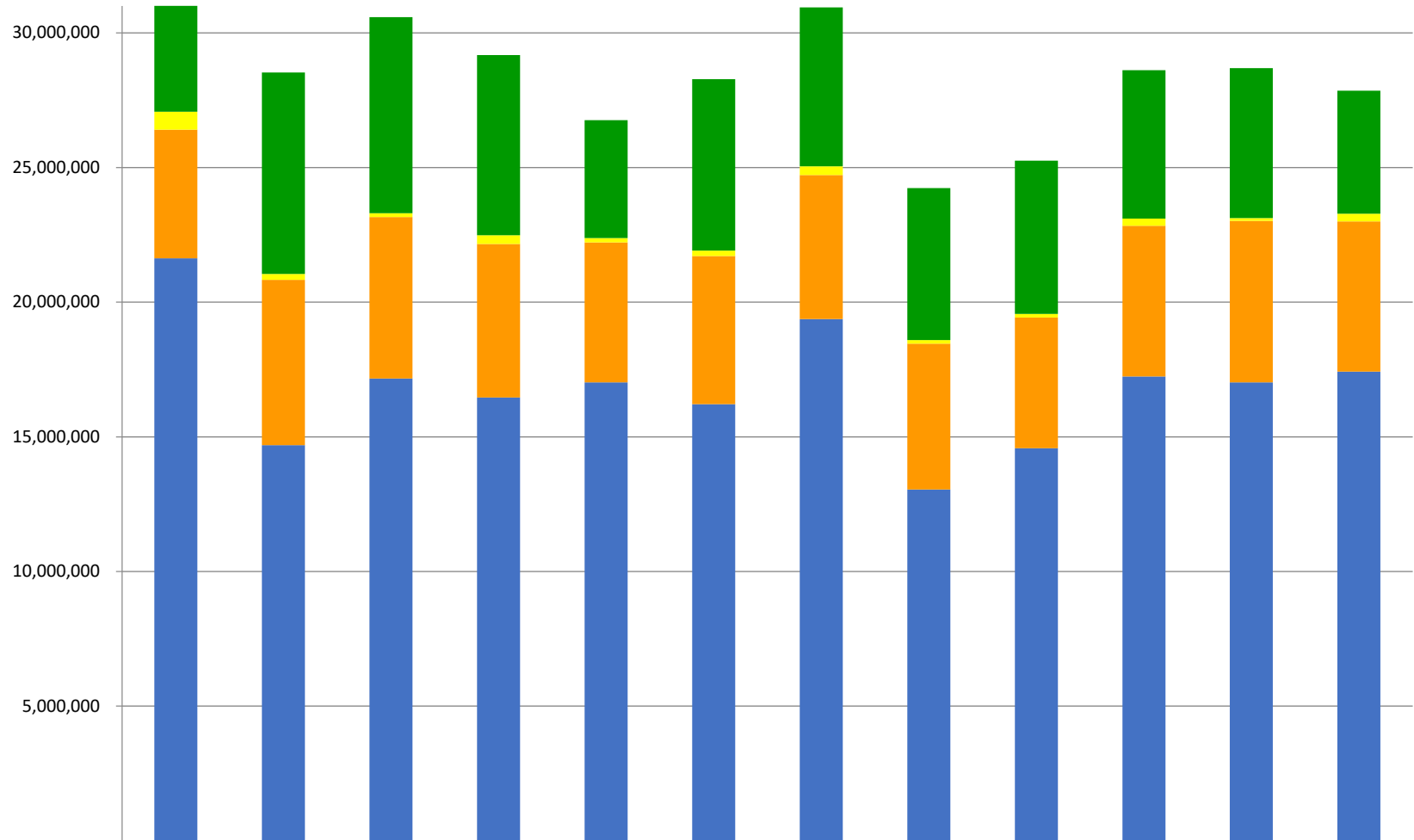
Credit Distribution



All charts are based on market value as of May 31, 2025

This material is for general informational purposes only and is not intended to provide specific advice or a specific recommendation.

HRTF Revenue



	June 2024	July 2024	August 2024	September 2024	October 2024	November 2024	December 2024	January 2025	February 2025	March 2025	April 2025	May 2025
Total	33,815,433	28,534,175	30,583,018	29,176,228	26,759,641	28,279,394	30,946,834	24,237,374	25,251,996	28,615,110	28,689,611	27,850,582
Investment Income	6,746,157	7,485,149	7,277,765	6,686,209	4,376,543	6,367,186	5,898,237	5,639,669	5,692,239	5,514,623	5,563,881	4,568,096
Interest	665,440	216,387	141,652	324,270	159,891	200,973	327,260	137,702	129,467	266,526	105,724	281,009
Fuel Tax	4,770,439	6,140,626	5,998,404	5,706,811	5,199,659	5,497,791	5,347,466	5,418,486	4,857,480	5,587,714	5,997,914	5,575,366
Sales & Use Tax	21,633,397	14,692,012	17,165,196	16,458,938	17,023,548	16,213,444	19,373,871	13,041,517	14,572,810	17,246,248	17,022,092	17,426,111

Hampton Roads Transportation Fund (HRTF)
Interest and Investment Income
Inception - May 2025

	FY2014 - FY2018	FY2019	FY2020	FY2021	FY2022	FY2023	FY2024	FY2025	Total
HRTF Interest Income	\$ 2,277,312	\$ 1,000,093	\$ 669,108	\$ 363,661	\$ 296,307	\$ 3,273,956	\$ 5,202,784	\$ 2,290,860	\$ 15,374,080
HRTF Investment Income	<u>14,211,356</u>	<u>29,869,111</u>	<u>26,275,750</u>	<u>3,240,310</u>	<u>(3,394,409)</u>	<u>61,182,839</u>	<u>82,726,184</u>	<u>65,069,596</u>	<u>279,180,736</u>
Total	<u>\$ 16,488,667</u>	<u>\$ 30,869,204</u>	<u>\$ 26,944,858</u>	<u>\$ 3,603,971</u>	<u>\$ (3,098,103)</u>	<u>\$ 64,456,795</u>	<u>\$ 87,928,968</u>	<u>\$ 67,360,456</u>	<u>\$ 294,554,816</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 includes income from PFMAM (US Bank & TD Wealth) core and enhanced cash, LGIP, and SNAP accounts. FY2014-2018 totals also include income from Sterling and Union Bank.

Hampton Roads Transportation Fund (HRTF)
Total of HRTF Revenue and Expenditures Activities
Summary

	Revenue							Expenditures						Cumulative Balance
	Sales & Use Tax	Fuels Tax	Interest	Investment Income	Other Income	Bond Proceeds	Total	Projects	Dept of Tax Admin Fee	Investment Fees	Bond Expenses	Operating Expenses	Total	7/1/13 - 5/31/25
<i>July 2013 - May 2024</i>	\$ 1,646,474,692	\$ 536,510,573	\$ 12,417,779	\$ 207,364,983	\$ 784,274	\$ 2,965,862,328	\$ 5,369,414,627	\$ 3,206,753,177	\$ 1,152,271	\$ 2,495,400	\$ 251,158,610	\$ 24,146,774	\$ 3,485,706,234	\$ 1,883,708,394
<i>June 2024</i>	21,633,397	4,770,439	665,440	6,746,157	25,000	-	33,840,433	123,693,603	-	70,947	4,338,958	1,517,778	129,621,286	1,787,927,540
<i>July 2024</i>	14,692,012	6,140,626	216,387	7,485,149	-	-	28,534,175	-	-	19,991	4,320,506	177,332	4,517,830	1,811,943,886
<i>August 2024</i>	17,165,196	5,998,404	141,652	7,277,765	-	-	30,583,018	14,191,713	-	18,907	4,320,506	33,895	18,565,021	1,823,961,882
<i>September 2024</i>	16,458,938	5,706,811	324,270	6,686,209	-	-	29,176,228	3,664,879	-	17,456	4,320,506	160,191	8,163,032	1,844,975,077
<i>October 2024</i>	17,023,548	5,199,659	159,891	4,376,543	-	168,043,207	194,802,848	10,097,078	-	17,497	4,780,647	900,824	15,796,045	2,023,981,880
<i>November 2024</i>	16,213,444	5,497,791	200,973	6,367,186	-	-	28,279,394	31,548,898	-	15,802	4,780,647	213,368	36,558,714	2,015,702,559
<i>December 2024</i>	19,373,871	5,347,466	327,260	5,898,237	-	-	30,946,834	49,658,544	-	14,353	4,780,647	127,588	54,581,132	1,992,068,261
<i>January 2025</i>	13,041,517	5,418,486	137,702	5,639,669	5,000	-	24,242,374	54,374,575	-	13,365	4,918,192	280,735	59,586,868	1,956,723,767
<i>February 2025</i>	14,572,810	4,857,480	129,467	5,692,239	-	-	25,251,996	31,224,026	-	13,129	4,918,192	127,540	36,282,887	1,945,692,876
<i>March 2025</i>	17,246,248	5,587,714	266,526	5,514,623	-	-	28,615,111	76,267,296	-	15,546	4,918,192	85,837	81,286,870	1,893,021,116
<i>April 2025</i>	17,022,092	5,997,914	105,724	5,563,881	5,000	-	28,694,611	35,934,925	-	14,041	4,918,192	251,614	41,118,772	1,880,596,956
<i>May 2025</i>	17,426,111	5,575,366	281,009	4,568,096	-	-	27,850,582	39,857,588	99,545	14,527	4,918,192	132,968	45,022,820	1,863,424,717
Total 12 Months	<u>\$ 201,869,183</u>	<u>\$ 66,098,158</u>	<u>\$ 2,956,301</u>	<u>\$ 71,815,753</u>	<u>\$ 35,000</u>	<u>\$ 168,043,207</u>	<u>\$ 510,817,602</u>	<u>\$ 470,513,124</u>	<u>\$ 99,545</u>	<u>\$ 245,561</u>	<u>\$ 56,233,378</u>	<u>\$ 4,009,670</u>	<u>\$ 531,101,279</u>	
Grand Totals	<u>\$ 1,848,343,875</u>	<u>\$ 602,608,731</u>	<u>\$ 15,374,080</u>	<u>\$ 279,180,736</u>	<u>\$ 819,274</u>	<u>\$ 3,133,905,535</u>	<u>\$ 5,880,232,231</u>	<u>\$ 3,677,266,302</u>	<u>\$ 1,251,816</u>	<u>\$ 2,740,961</u>	<u>\$ 307,391,988</u>	<u>\$ 28,156,446</u>	<u>\$ 4,016,807,513</u>	
Less Balance of Encumbered (through FY2030)														(1,654,561,554)
Total Net Available *														<u>208,863,163</u>

Notes:

* Total Net Available does not include TIFIA loans not drawn on or HRTF future revenues through FY2030.

Table 1 - Total HRTF Revenues

Hampton Roads Transportation Fund (HRTF)

Total of Sales & Use Taxes and Fuels Taxes

Fiscal Year 2025

Locality	Total FY2014 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
Chesapeake	\$ 403,428,728	\$ 39,131,685	\$ 4,148,985	\$ 43,280,670	\$ 446,709,398
Franklin	24,010,790	2,222,070	224,423	2,446,493	26,457,283
Hampton	161,227,344	15,953,409	1,653,676	17,607,085	178,834,430
Isle of Wight	35,578,122	4,041,596	401,587	4,443,183	40,021,305
James City	97,300,267	10,032,051	1,023,479	11,055,530	108,355,797
Newport News	234,185,647	22,484,586	2,299,020	24,783,606	258,969,254
Norfolk	309,973,862	30,960,598	3,225,960	34,186,557	344,160,420
Poquoson	6,107,904	619,657	64,798	684,455	6,792,359
Portsmouth	80,064,008	8,324,876	914,482	9,239,358	89,303,366
Southampton	11,619,210	1,890,912	117,179	2,008,091	13,627,301
Suffolk	120,494,177	12,421,505	1,372,668	13,794,173	134,288,351
Virginia Beach	588,358,783	57,949,890	6,217,659	64,167,550	652,526,333
Williamsburg	40,593,836	3,336,567	359,982	3,696,548	44,290,384
York	96,446,419	9,192,626	977,578	10,170,204	106,616,623
Total ^d	\$ 2,209,389,100	\$ 218,562,029	\$ 23,001,477	\$ 241,563,506	\$ 2,450,952,606
Interest ^a	13,083,220	2,009,851	281,009	2,290,860	15,374,080
Investment Income(Loss) ^b	214,111,140	60,501,500	4,568,096	65,069,596	279,180,736
Other Income	809,274	10,000	-	10,000	819,274
Bond & TIFIA Proceeds	2,965,862,328	168,043,207	-	168,043,207	3,133,905,535
Total Revenues	\$ 5,403,255,061	\$ 449,126,587	\$ 27,850,582	\$ 476,977,169	\$ 5,880,232,231
Project Expenses	(3,330,446,780)	(306,961,934)	(39,857,588)	(346,819,521)	(3,677,266,302)
DMV & Dept. of Tax Admin Fees	(1,152,271)	-	(99,545)	(99,545)	(1,251,816)
Investment Fees (Sterling&PFMAM)	(2,566,348)	(160,086)	(14,527)	(174,613)	(2,740,961)
Bond Interest Expense	(255,497,568)	(46,976,228)	(4,918,192)	(51,894,420)	(307,391,988)
Operating Expense	(25,664,553)	(2,358,925)	(132,968)	(2,491,893)	(28,156,446)
Modified Cash Position	\$ 1,787,927,540	\$ 92,669,415	\$ (17,172,238)	\$ 75,497,177	\$ 1,863,424,717
Less Balance of Encumbered	(1,991,464,075)				(1,654,561,554)
Net Modified Cash Position	\$ (203,536,535)				\$ 208,863,163
Updated Forecast	2,121,638,518	221,470,440	22,126,416	243,596,856	2,365,235,374
Total Revenue - Forecast (under)/over	87,750,582	(2,908,411)	875,061	(2,033,350)	85,717,232

a Includes interest from Union Bank money market, sweep, and general accounts, as well as Regional Tax Interest/Interest Refund Adjustments.

b FY2019 - FY2025 include income from PFMAM (TD Wealth), 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)

Fiscal Year 2025

Locality	Total FY2014 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
<i>Chesapeake</i>	\$ 302,801,678	\$ 29,261,476	\$ 3,143,098	\$ 32,404,574	\$ 335,206,252
<i>Franklin</i>	12,230,709	1,080,130	116,241	1,196,371	13,427,080
<i>Hampton</i>	116,514,150	11,232,466	1,141,884	12,374,350	128,888,500
<i>Isle of Wight</i>	21,527,789	2,693,741	258,822	2,952,563	24,480,352
<i>James City</i>	78,424,755	7,490,898	826,026	8,316,924	86,741,679
<i>Newport News</i>	180,733,684	16,856,004	1,737,026	18,593,029	199,326,713
<i>Norfolk</i>	241,438,192	23,741,899	2,538,632	26,280,531	267,718,722
<i>Poquoson</i>	4,584,055	553,735	60,328	614,062	5,198,118
<i>Portsmouth</i>	56,552,182	6,069,630	683,505	6,753,135	63,305,317
<i>Southampton</i>	5,113,345	1,377,950	55,086	1,433,035	6,546,380
<i>Suffolk</i>	78,946,841	7,744,883	895,257	8,640,140	87,586,981
<i>Virginia Beach</i>	464,248,484	45,116,389	4,912,447	50,028,836	514,277,319
<i>Williamsburg</i>	32,335,699	2,903,758	322,860	3,226,617	35,562,316
<i>York</i>	72,656,528	6,686,717	734,900	7,421,617	80,078,145
Total ¹	<u>\$ 1,668,108,088</u>	<u>\$ 162,809,676</u>	<u>17,426,111</u>	<u>\$ 180,235,787</u>	<u>\$ 1,848,343,875</u>
Updated Forecast	<u>1,576,344,223</u>	<u>165,197,316</u>	<u>16,730,221</u>	<u>181,927,537</u>	<u>1,758,271,760</u>
Diff(under)/over	91,763,865	(2,387,640)	695,890	(1,691,750)	90,072,115

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)
Fiscal Year 2025

Locality	Total FY2014 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
<i>Chesapeake</i>	\$ 100,627,055	\$ 9,870,209	\$ 1,005,887	\$ 10,876,096	\$ 111,503,151
<i>Franklin</i>	11,780,082	1,141,940	108,182	1,250,122	13,030,204
<i>Hampton</i>	44,713,197	4,720,943	511,792	5,232,735	49,945,932
<i>Isle of Wight</i>	14,050,333	1,347,855	142,765	1,490,620	15,540,953
<i>James City</i>	18,875,509	2,541,153	197,452	2,738,605	21,614,114
<i>Newport News</i>	53,451,967	5,628,583	561,994	6,190,577	59,642,543
<i>Norfolk</i>	68,535,669	7,218,699	687,328	7,906,027	76,441,696
<i>Poquoson</i>	1,523,849	65,922	4,471	70,393	1,594,242
<i>Portsmouth</i>	23,511,832	2,255,246	230,977	2,486,223	25,998,055
<i>Southampton</i>	6,505,866	512,962	62,094	575,056	7,080,922
<i>Suffolk</i>	41,547,347	4,676,622	477,411	5,154,033	46,701,380
<i>Virginia Beach</i>	124,110,290	12,833,501	1,305,212	14,138,714	138,249,004
<i>Williamsburg</i>	8,258,132	432,809	37,122	469,931	8,728,063
York	23,789,885	2,505,909	242,678	2,748,587	26,538,472
Total¹	<u>\$ 541,281,011</u>	<u>\$ 55,752,353</u>	<u>\$ 5,575,366</u>	<u>\$ 61,327,719</u>	<u>\$ 602,608,731</u>
Updated Forecast	545,294,294	56,273,124	5,396,195	61,669,319	606,963,613
Diff(under)/over	(4,013,283)	(520,771)	179,171	(341,600)	(4,354,882)

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)

Fiscal Year 2025

Project	Total FY2014 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
I-64 Peninsula Widening					
UPC 104905 - Segment 1 - Construction	\$ 11,608,385	\$ -	\$ -	\$ -	\$ 11,608,385
UPC 106665 - Segment 2 - PE/ROW/Construction	159,559,703	-	-	-	159,559,703
UPC 109790/106689 - Segment 3 - PE	10,000,000	-	-	-	10,000,000
UPC 109790/106689 - Segment 3 - Construction	112,893,996	-	-	-	112,893,996
UPC 123656 - Denbigh Blvd Interchange Phase 2 East Bound	26,643,026	-	-	-	26,643,026
I-64/264 Interchange Improvement					
UPC 57048/108042 - Phase I - PE/ROW	15,071,063	-	-	-	15,071,063
UPC 57048/108042 - Phase I - Construction	137,023,653	-	-	-	137,023,653
UPC 17630/108041 - Phase II - PE/ROW	54,592,576	-	-	-	54,592,576
UPC 17630/108041 - Phase II - Construction	73,157,062	-	-	-	73,157,062
UPC 106693 - Phase III - PE & ROW	7,500,000	-	-	-	7,500,000
UPC 125602 - Phase IIIA - PE & ROW	-	9,917,000	-	9,917,000	9,917,000
I-64 Southside Widening/High-Rise Bridge					
UPC 106692 - Phase I - PE	12,200,000	-	-	-	12,200,000
UPC 106692/108990 - Phase I - ROW/Construction	419,756,220	-	-	-	419,756,220
I-64 HRBT Expansion Project					
UPC 115008 - I-64 HRBT Expansion Project D-B Contract	3,004,569,251	-	-	-	3,004,569,251
UPC 115009 - I-64 HRBT Expansion Project Owners Oversight	548,900,330	-	-	-	548,900,330
Hampton Roads Express Lanes Network (HRELN)					
UPC 117840 - Segment 1 Phase 1 - PE	5,621,500	-	-	-	5,621,500
UPC 117839 - Segment 4A/4B Phase 1 - PE	5,916,425	-	-	-	5,916,425
UPC 117841 - Segment 4C Phase 1 - PE	6,062,743	-	-	-	6,062,743
UPC 119637 - Segment 1A - PE/ROW/Construction	92,079,565	-	-	-	92,079,565
UPC 120863 - Segment 1B - PE/ROW/Construction	5,860,180	-	-	-	5,860,180
UPC 119824 - Segment 4A/4B - PE/ROW/Construction	136,611,494	-	-	-	136,611,494
UPC 119638 - Segment 4C - PE/ROW/Construction	399,153,311	-	-	-	399,153,311
UPC 122999 - Transportation Management Plan	8,000,000	-	-	-	8,000,000
UPC 122714 - I-464/I-64 Interchange Improvements - Full Interchange Access Report Development Project	2,500,000	-	-	-	2,500,000
UPC 120375 & 123322 - I-64/I-464 Interchange Exit 291 Flyover Ramp Improvements	15,380,374	-	-	-	15,380,374
HRCS Preferred Alternative Refinement - HRBT UPC 110577 - SEIS	30,000,000	-	-	-	30,000,000
UPC 106694 - 460/58/13 Connector Study - PE	1,095,368	-	-	-	1,095,368
UPC 111427 - Bowers Hill Interchange Study	11,904,630	-	-	-	11,904,630
UPC 122761 - I-264 Independence Blvd Interchange IAR	1,250,000	-	-	-	1,250,000
HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)	7,000,000	-	-	-	7,000,000
Total	\$ 5,321,910,855	\$ 9,917,000	\$ -	\$ 9,917,000	\$ 5,331,827,855

Table 3 - Expenditures
Hampton Roads Transportation Fund (HRTF)
Fiscal Year 2025

Project	Total FY2014 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
<i>I-64 Peninsula Widening</i>					
UPC 104905/111926 - Segment 1 - PE/Construction	\$ 11,608,384	\$ -	\$ -	\$ -	\$ 11,608,384
UPC 106665 - Segment 2 - PE/ROW/Construction	159,559,703	-	-	-	159,559,703
UPC 109790/106689 - Segment 3 - PE	5,762,848	3,990	-	3,990	5,766,837
UPC 109790/106689 - Segment 3 - Construction	91,887,556	16,177	-	16,177	91,903,733
UPC 123656 - Denbigh Blvd Interchange Phase 2 East Bound - Design/ROW	1,032,299	382,850	145,477	528,327	1,560,627
<i>I-64/264 Interchange Improvement</i>					
UPC 57048/108042 - Phase I - PE/ROW	15,071,063	-	-	-	15,071,063
UPC 57048/108042 - Phase I - Construction	125,024,039	9,785,547	11,493	9,797,040	134,821,079
UPC 17630/108041 - Phase II - PE/ROW	54,592,576	-	-	-	54,592,576
UPC 17630/108041 - Phase II - Construction	73,157,062	-	-	-	73,157,062
UPC 106693 - Phase III - PE & ROW	7,484,554	15,446	-	15,446	7,500,000
UPC 125602 - Phase IIIA - PE & ROW	-	-	-	-	-
<i>I-64 Southside Widening/High-Rise Bridge</i>					
UPC 106692 - Phase I - PE	12,189,098	-	-	-	12,189,098
UPC 106692/108990 - Phase I - ROW/Construction	355,441,980	(17,337,604)	-	(17,337,604)	338,104,375
<i>I-64 HRBT Expansion Project</i>					
UPC 115008 - I-64 HRBT Expansion Project D-B Contract	1,985,096,067	192,485,612	29,258,997	221,744,609	2,206,840,675
UPC 115009 - I-64 HRBT Expansion Project Owners Oversight	227,755,669	41,494,211	-	41,494,211	269,249,880
<i>HRELN Segment 1 Phase 1 PE - UPC</i>					
UPC 117840 - Segment 1 Phase 1 - PE	5,621,500	-	-	-	5,621,500
UPC 117839 - Segment 4A/4B Phase 1 - PE	5,916,425	-	-	-	5,916,425
UPC 117841 - Segment 4C Phase 1 - PE	6,062,743	-	-	-	6,062,743
UPC 119637 - Segment 1A - PE/ROW/Construction	2,708,292	1,908	82	1,990	2,710,281
UPC 120863 - Segment 1B - PE/ROW/Construction	2,841,379	646,659	573,970	1,220,628	4,062,007
UPC 119824 - Segment 4A/4B - PE/ROW/Construction	12,229,024	21,062,418	340,761	21,403,179	33,632,203
UPC 119638 - Segment 4C - PE/ROW/Construction	124,231,140	57,020,183	9,090,996	66,111,179	190,342,319
UPC 122999 - Transportation Management Plan	-	132,666	-	132,666	132,666
UPC 122714 - I-464/I-64 Interchange Improvements - Full Interchange Access Report Development Project	928,675	358,369	3,807	362,175	1,290,850
UPC 120375 & 123322 - I-64/I-464 Interchange Exit 291 Flyover Ramp Improvements	-	-	-	-	-
<i>HRCS Preferred Alternative Refinement - HRBT 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>	7,013,201	795,905	421,430	1,217,335	8,230,536
<i>UPC 122761 - I-264 Independence Blvd Interchange IAR</i>	335,848	97,599	10,575	108,174	444,022
<i>HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)</i>	7,000,000	-	-	-	7,000,000
Total	\$ 3,330,446,780	\$ 306,961,934	\$ 39,857,588	\$ 346,819,521	\$ 3,677,266,301

Table 3A - Bond-Reimbursed Expenditures

Hampton Roads Transportation Fund (HRTF)

Fiscal Year 2025

Project	Total FY2014 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
I-64 Peninsula Widening					
UPC 104905/111926 - Segment 1 - PE/Construction	\$ 10,063,882	\$ -	\$ -	\$ -	\$ 10,063,882
UPC 106665 - Segment 2 - PE/ROW/Construction	159,559,703	-	-	-	159,559,703
UPC 109790/106689 - Segment 3 - PE	5,693,804	-	-	-	5,693,804
UPC 109790/106689 - Segment 3 - Construction	87,210,472	-	-	-	87,210,472
UPC 123656 - Denbigh Blvd Interchange Phase 2 East Bound	-	-	-	-	-
I-64/264 Interchange Improvement					
UPC 57048/108042 - Phase I - PE/ROW	15,071,063	-	-	-	15,071,063
UPC 57048/108042 - Phase I - Construction	121,364,711	-	-	-	121,364,711
UPC 17630/108041 - Phase II - PE/ROW	54,592,576	-	-	-	54,592,576
UPC 17630/108041 - Phase II - Construction	65,786,903	-	-	-	65,786,903
UPC 106693 - Phase III - PE & ROW	-	-	-	-	-
UPC 125602 - Phase IIIA - PE & ROW	-	-	-	-	-
I-64 Southside Widening/High-Rise Bridge					
UPC 106692 - Phase I - PE	12,189,098	-	-	-	12,189,098
UPC 106692/108990 - Phase I - ROW/Construction	257,901,644	-	-	-	257,901,644
I-64 HRBT Expansion Project					
UPC 115008 - I-64 HRBT Expansion Project D-B Contract	1,316,824,662	-	-	-	1,316,824,662
UPC 115009 - I-64 HRBT Expansion Project Owners Oversight	99,280,854	-	-	-	99,280,854
HRELN Segment 1 Phase 1 PE - UPC					
UPC 117840 - Segment 1 Phase 1 - PE	-	-	-	-	-
UPC 117839 - Segment 4A/4B Phase 1 - PE	-	-	-	-	-
UPC 117841 - Segment 4C Phase 1 - PE	-	-	-	-	-
UPC 119637 - Segment 1A - PE/ROW/Construction	-	-	-	-	-
UPC 120863 - Segment 1B - PE/ROW/Construction	-	-	-	-	-
UPC 119824 - Segment 4A/4B - PE/ROW/Construction	-	29,843,109	340,356	30,183,465	30,183,465
UPC 119638 - Segment 4C - PE/ROW/Construction	57,971,938	74,199,264	9,090,996	83,290,260	141,262,198
UPC 122999 - Transportation Management Plan	-	-	-	-	-
UPC 122714 - I-464/I-64 Interchange Improvements - Full Interchange Access Report Development Project	-	-	-	-	-
UPC 120375 & 123322 - I-64/I-464 Interchange Exit 291 Flyover Ramp Improvements	-	-	-	-	-
HRCS Preferred Alternative Refinement - HRBT					
UPC 110577 - SEIS	-	-	-	-	-
460/58/13 Connector Study - UPC 106694 - PE					
	-	-	-	-	-
Bowers Hill Interchange Study - UPC 111427					
	-	-	-	-	-
UPC 122761 - I-264 Independence Blvd Interchange IAR					
	-	-	-	-	-
HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)					
	-	-	-	-	-
Total	\$ 2,263,511,311	\$ 104,042,373	\$ 9,431,353	\$ 113,473,725	\$ 2,376,985,036

Table 3B - Non-Bond Reimbursed Expenditures

Hampton Roads Transportation Fund (HRTF)

Fiscal Year 2025

Project	Total FY2014 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
I-64 Peninsula Widening					
UPC 104905/111926 - Segment 1 - PE/Construction	\$ 1,544,502	\$ -	\$ -	\$ -	\$ 1,544,502
UPC 106665 - Segment 2 - PE/ROW/Construction	-	-	-	-	-
UPC 109790/106689 - Segment 3 - PE	69,043	3,990	-	3,990	73,033
UPC 109790/106689 - Segment 3 - Construction	4,677,083	16,177	-	16,177	4,693,261
UPC 123656 - Denbigh Blvd Interchange Phase 2 East Bound	1,032,299	382,850	145,477	528,327	1,560,627
I-64/264 Interchange Improvement			-		
UPC 57048/108042 - Phase I - PE/ROW	-	-	-	-	-
UPC 57048/108042 - Phase I - Construction	3,659,328	9,785,547	11,493	9,797,040	13,456,368
UPC 17630/108041 - Phase II - PE/ROW	-	-	-	-	-
UPC 17630/108041 - Phase II - Construction	7,370,159	-	-	-	7,370,159
UPC 106693 - Phase III - PE & ROW	7,484,554	15,446	-	15,446	7,500,000
UPC 125602 - Phase IIIA - PE & ROW	-	-	-	-	-
I-64 Southside Widening/High-Rise Bridge			-		
UPC 106692 - Phase I - PE	-	-	-	-	-
UPC 106692/108990 - Phase I - ROW/Construction	97,540,336	(17,337,604)	-	(17,337,604)	80,202,731
I-64 HRBT Expansion Project			-		
UPC 115008 - I-64 HRBT Expansion Project D-B Contract	668,271,404	192,485,612	29,258,997	221,744,609	890,016,013
UPC 115009 - I-64 HRBT Expansion Project Owners Oversight	128,474,816	41,494,211	-	41,494,211	169,969,027
HRELN Segment 1 Phase 1 PE - UPC		0			
UPC 117840 - Segment 1 Phase 1 - PE	5,621,500	-	-	-	5,621,500
UPC 117839 - Segment 4A/4B Phase 1 - PE	5,916,425	-	-	-	5,916,425
UPC 117841 - Segment 4C Phase 1 - PE	6,062,743	-	-	-	6,062,743
UPC 119637 - Segment 1A - PE/ROW/Construction	2,708,292	1,908	82	1,990	2,710,281
UPC 120863 - Segment 1B - PE/ROW/Construction	2,841,379	646,659	573,970	1,220,628	4,062,007
UPC 119824 -Segment 4A/4B - PE/ROW/Construction	12,229,024	(8,780,691)	404	(8,780,286)	3,448,738
UPC 119638 - Segment 4C - PE/ROW/Construction	66,259,202	(17,179,081)	-	(17,179,081)	49,080,121
UPC 122999 - Transportation Management Plan	-	132,666	-	132,666	132,666
UPC 122714 - I-464/I-64 Interchange Improvements - Full Interchange Access Report Development Project	928,675	358,369	3,807	362,175	1,290,850
UPC 120375 & 123322 - I-64/I-464 Interchange Exit 291 Flyover Ramp Improvements	-	-	-	-	-
HRCS Preferred Alternative Refinement - HRBT					
UPC 110577 - SEIS	28,800,287	-	-	-	28,800,287
460/58/13 Connector Study - UPC 106694 - PE					
	1,095,368	-	-	-	1,095,368
Bowers Hill Interchange Study - UPC 111427					
	7,013,201	795,905	421,430	1,217,335	8,230,536
UPC 122761 - I-264 Independence Blvd Interchange IAR					
	335,848	97,599	10,575	108,174	444,022
HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)					
	7,000,000	-	-	-	7,000,000
Total	\$ 1,066,935,469	\$ 202,919,561	\$ 30,426,235	\$ 233,345,796	\$ 1,300,281,265

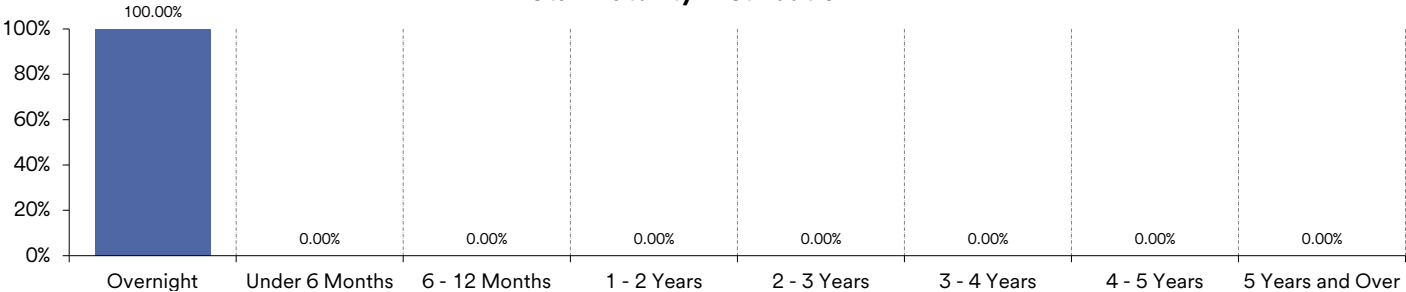
Hampton Roads Regional Transit Fund

Summary of Cash and Investments

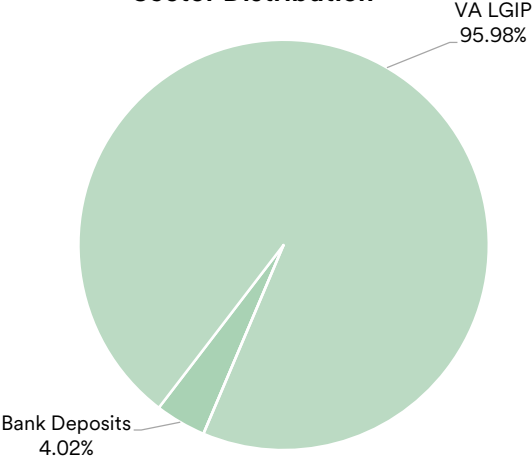
For May 2025

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	0.95%
Union Sweep	4.12%	4.12%	3,232,037	3,232,037	3.07%
VA LGIP	4.41%	4.41%	101,034,149	101,034,149	95.98%
Total			\$ 105,266,186	\$ 105,266,186	100.00%

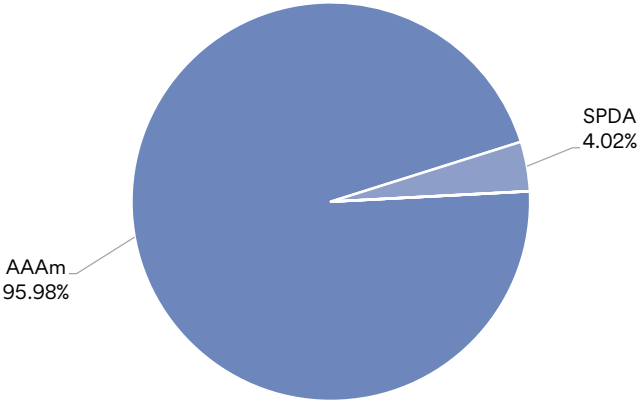
Total Maturity Distribution



Sector Distribution

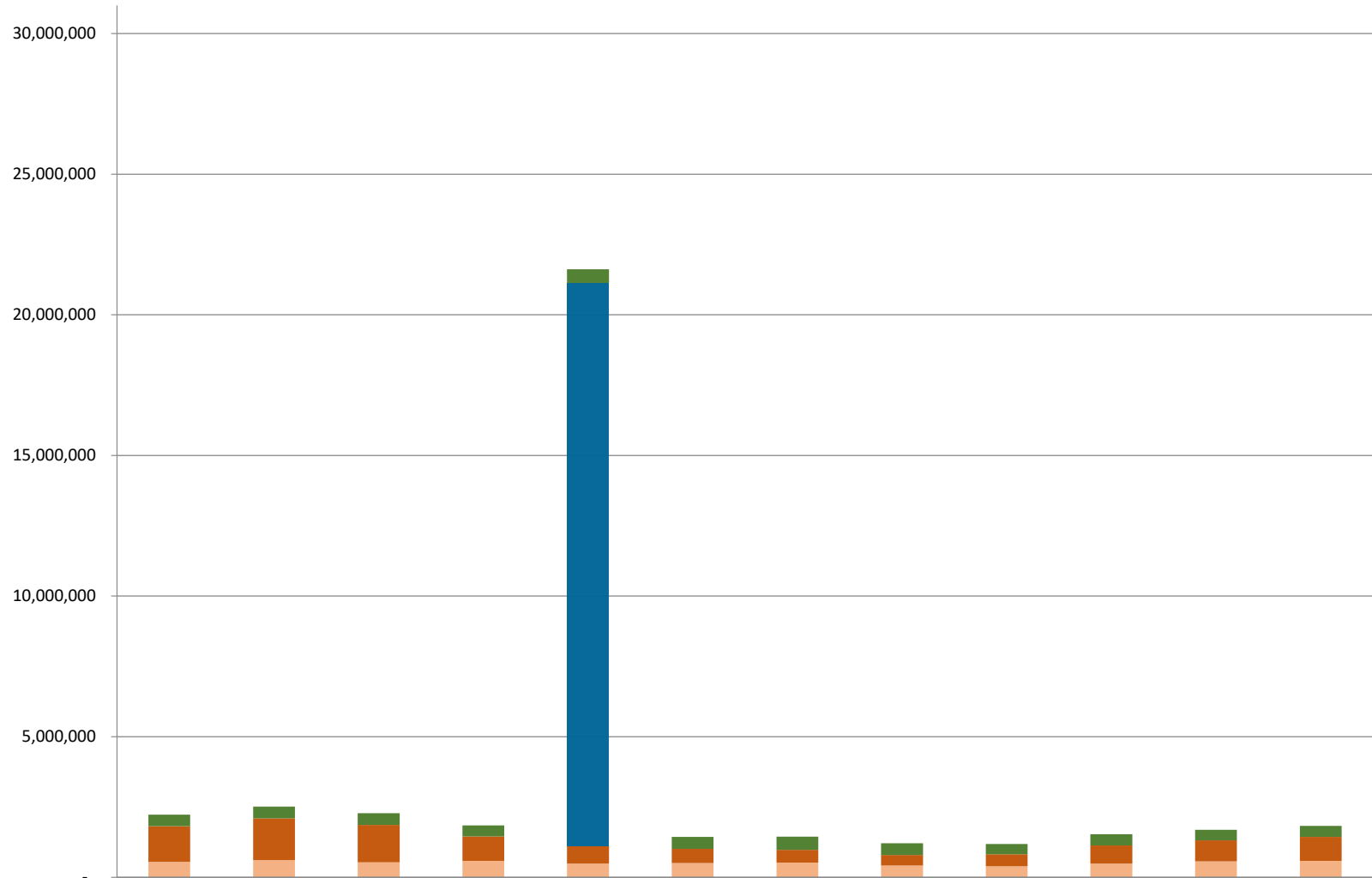


Credit Distribution



All charts are based on market value as of May 31, 2025.
 This material is for general informational purposes only and is not intended to provide specific advice or a specific recommendation.

HRRTF Revenue



	June 2024	July 2024	August 2024	September 2024	October 2024	November 2024	December 2024	January 2025	February 2025	March 2025	April 2025	May 2025
Total	2,230,878	2,515,625	2,282,376	1,849,491	21,618,309	1,438,690	1,445,175	1,207,567	1,183,101	1,531,700	1,692,588	1,825,801
Interest & Investments	409,694	416,630	422,914	393,030	490,602	430,323	471,953	411,856	359,854	397,409	375,271	386,566
Annual Recordation Tax Distribution	-	-	-	-	20,000,000	-	-	-	-	-	-	-
Transient Occupancy Tax	1,272,517	1,490,838	1,328,982	867,043	633,634	498,450	446,631	375,477	429,462	640,604	750,545	853,899
Regional Transportation Improv. Fees	548,667	608,157	530,480	589,418	494,073	509,917	526,591	420,234	393,785	493,687	566,772	585,336

Hampton Roads Regional Transit Fund (HRRTF)
Interest and Investment Income
Inception - May 2025

	FY2021	FY2022	FY2023	FY2024	FY2025	Total
HRRTF Interest Income	57,044	97,432	2,500,324	2,712,127	542,502	5,909,428
HRRTF Investment Income	<u>-</u>	<u>-</u>	<u>-</u>	<u>2,020,242</u>	<u>4,013,907</u>	<u>6,034,149</u>
Total	<u>\$ 57,044</u>	<u>\$ 97,432</u>	<u>\$ 2,500,324</u>	<u>\$ 4,732,369</u>	<u>\$ 4,556,409</u>	<u>\$ 11,943,577</u>

Summary

Gross Revenue							Expenditures			Cumulative Balance
Regional Transportation	Transient	Annual Recordation Tax					Operating			
Improv. Fees	Occupancy Tax	Distribution	Interest	Investments	Total Revenue	Project Expenses	Expenses	Total	7/1/20 - 5/31/25	
\$ 28,848,130	\$ 27,976,980	\$ 80,000,000	\$ 5,320,482	\$ 1,656,993	\$ 143,802,584	\$ 49,425,357	\$ 784,669	\$ 50,210,026	\$ 93,592,559	
548,667	1,272,517	-	46,445	363,249	2,230,878	3,139,994	71,031	3,211,025	92,612,411	
608,157	1,490,838	-	39,643	376,988	2,515,625	-	827	827	95,127,210	
530,480	1,328,982	-	44,873	378,041	2,282,376	-	4,745	4,745	97,404,841	
589,418	867,043	-	34,253	358,777	1,849,491	-	35,999	35,999	99,218,333	
494,073	633,634	20,000,000	136,188	354,414	21,618,309	4,919,578	2,880	4,922,458	115,914,185	
509,917	498,450		99,905	330,418	1,438,690	292,655	600	293,255	117,059,620	
526,591	446,631		127,964	343,989	1,445,175	4,824,759	41,492	4,866,251	113,638,543	
420,234	375,477		14,749	397,107	1,207,567	3,198,319	3,010	3,201,329	111,644,781	
393,785	429,462		4,011	355,843	1,183,101	2,550,634	4,579	2,555,213	110,272,669	
493,687	640,604		21,081	376,328	1,531,700	893,451	47,622	941,073	110,863,296	
566,772	750,545		10,044	365,228	1,692,588	1,269,913	18,478	1,288,391	111,267,494	
585,336	853,899		9,793	376,773	1,825,801	786,952	2,414	789,366	112,303,929	
6,267,118	9,588,082	20,000,000	588,946	4,377,156	40,821,302	21,876,255	233,677	22,109,931		
\$ 35,115,247	\$ 37,565,062	\$ 100,000,000	\$ 5,909,428	\$ 6,034,149	\$ 184,623,886	\$ 71,301,611	\$ 1,018,346	\$ 72,319,957		
									(79,276,013)	
									\$ 33,027,917	

Table 1 - Revenues

Hampton Roads Regional Transit Fund (HRRTF)

Fiscal Year 2025

Locality	Total FY2020 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
<i>Regional Taxes and Fees</i>					
<i>Chesapeake</i>	\$ 9,327,019	\$ 1,816,646	\$ 198,965	\$ 2,015,611	\$ 11,342,630
<i>Hampton</i>	4,618,670	1,013,266	106,578	1,119,844	5,738,514
<i>Newport News</i>	4,827,142	1,008,875	105,110	1,113,985	5,941,127
<i>Norfolk</i>	9,074,825	2,202,849	226,074	2,428,923	11,503,748
<i>Portsmouth</i>	2,284,757	485,738	49,056	534,794	2,819,551
<i>Virginia Beach</i>	28,513,878	6,067,406	753,452	6,820,859	35,334,737
Total	\$ 58,646,294	\$ 12,594,780	\$ 1,439,235	\$ 14,034,016	\$ 72,680,309
Annual Recordation Tax Distribution	80,000,000	20,000,000	-	20,000,000	100,000,000
Total Tax and Fees Revenue	\$ 138,646,294	\$ 32,594,780	\$ 1,439,235	\$ 34,034,016	\$ 172,680,309
Interest	5,366,927	532,709	9,793	542,502	5,909,428
Investments	2,020,242	3,637,134	376,773	4,013,907	6,034,149
Total Revenue	\$ 146,033,463	\$ 36,764,623	\$ 1,825,801	\$ 38,590,424	\$ 184,623,886
Project Expenses	(52,565,350)	(17,949,308)	(786,952)	(18,736,260)	(71,301,611)
Operating Expense	(855,700)	(160,232)	(2,414)	(162,646)	(1,018,346)
Modified Cash Position	\$ 92,612,413	\$ 18,655,083	\$ 1,036,436	\$ 19,691,518	\$ 112,303,929
Less Balance of Encumbered	(33,385,143)				(79,276,013)
Net Modified Cash Position	\$ 59,227,270				\$ 33,027,917
Forecast	137,087,920	31,698,599	1,564,268	35,405,366	172,493,286
Total Revenue - Forecast (under)/over	1,558,374	896,181	(125,033)	(1,371,350)	187,023

Table 1A - Regional Transportation Improvement Fees
Hampton Roads Regional Transit Fund (HRRTF)
Fiscal Year 2025

Locality	Total FY2020 FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
<i>Regional Transit Improvement Fees</i>					
<i>Chesapeake</i>	\$ 6,473,029	\$ 1,057,497	\$ 117,272	\$ 1,174,769	\$ 7,647,798
<i>Hampton</i>	2,607,605	480,319	52,861	533,180	3,140,785
<i>Newport News</i>	2,958,146	557,944	62,267	620,211	3,578,357
<i>Norfolk</i>	4,688,449	880,669	85,679	966,348	5,654,797
<i>Portsmouth</i>	1,842,016	358,228	33,781	392,009	2,234,025
<i>Virginia Beach</i>	10,827,551	1,798,457	233,476	2,031,934	12,859,485
Total RTI Fees	<u>\$ 29,396,797</u>	<u>\$ 5,133,114</u>	<u>\$ 585,336</u>	<u>\$ 5,718,451</u>	<u>\$ 35,115,247</u>
<i>Forecast</i>	<u>27,996,817</u>	<u>5,152,786</u>	<u>516,170</u>	<u>5,668,956</u>	<u>33,665,773</u>
Total Revenue - Forecast (under)/over	1,399,980	(19,672)	69,166	49,495	1,449,474

Table 1B - Transient Occupancy Tax
Hampton Roads Regional Transit Fund (HRRTF)
Fiscal Year 2025

Locality	Total FY2020 FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
<i>Transient Occupancy Tax</i>					
<i>Chesapeake</i>	\$ 2,853,990	\$ 759,149	\$ 81,693	\$ 840,842	\$ 3,694,832
<i>Hampton</i>	2,011,065	532,947	53,717	586,664	2,597,729
<i>Newport News</i>	1,868,996	450,931	42,843	493,774	2,362,770
<i>Norfolk</i>	4,386,376	1,322,180	140,395	1,462,575	5,848,951
<i>Portsmouth</i>	442,741	127,510	15,275	142,785	585,526
<i>Virginia Beach</i>	<u>17,686,329</u>	<u>4,268,949</u>	<u>519,976</u>	<u>4,788,925</u>	<u>22,475,254</u>
Total	<u>\$ 29,249,497</u>	<u>\$ 7,461,666</u>	<u>\$ 853,899</u>	<u>\$ 8,315,565</u>	<u>\$ 37,565,062</u>
<i>Forecast</i>	<u>29,091,102</u>	<u>8,688,312</u>	<u>1,048,098</u>	<u>9,736,410</u>	<u>38,827,512</u>
Total Revenue - Forecast (under)/over	158,395	(1,226,646)	(194,199)	(1,420,845)	(1,262,450)

Table 2 - Allocations
Hampton Roads Regional Transit Fund (HRRTF)
Fiscal Year 2025

Project	Total FY2020 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
<i>Regional Transit System - 757 Express</i>					
Transit Bus Expansion (Group A) - Project 202101A	\$ 9,306,000	\$ -	\$ -	\$ -	\$ 9,306,000
Transit Bus Expansion (Group B) - Project 202301H	5,149,662	-	-	-	5,149,662
Transit Bus Expansion - Project 202402H	2,936,431	-	-	-	2,936,431
Transit Bus Expansion - Project 202501H	-	2,198,000	-	2,198,000	2,198,000
<i>Bus Stop Amenity Program</i>					
- Project 202101B	3,265,000	-	-	-	3,265,000
- Project 202201F	5,326,000	-	-	-	5,326,000
- Project 202401F	1,065,000	-	-	-	1,065,000
- Project 202501F	-	2,753,000		2,753,000	2,753,000
<i>Regional Transit System Technology</i>					
- Project 202101C	80,000	-	-	-	80,000
- Project 202201G	518,000	-	-	-	518,000
<i>Regional Transit Services</i>					
Operations & Maintenance RTS - Project 202201C	3,523,222	-	-	-	3,523,222
Development & Support Services RTS - Project 202201D	1,923,442	-	-	-	1,923,442
Operations & Maintenance RTS - Project 202301C	7,993,505	1,316,781	-	1,316,781	9,310,285
Operations & Maintenance RTS - Project 202401C	25,975,300	-	-	-	25,975,300
Operations & Maintenance RTS - Project 202501C	-	25,307,000	-	25,307,000	25,307,000
<i>Net Center Replacement</i>					
- Project 202101D	62,000	-	-	-	62,000
Robert Hall Blvd (Chesapeake) - Project 202201A	100,000	-	-	-	100,000
Robert Hall Blvd (Chesapeake) - Project 202501A	-	500,000		500,000	500,000
Evelyn T. Butts (Norfolk) - Project 202201B	100,000	-	-	-	100,000
Evelyn T. Butts (Norfolk) - Project 202402B	4,500,000	-	-	-	4,500,000
Evelyn T. Butts (Norfolk) - Project 202501B	-	2,000,000		2,000,000	2,000,000
Orcutt Transfer Center - Project 202501D	-	258,000		258,000	258,000
<i>New Bus Operating Division - Southside</i>					
- Project 202101E	1,000,000	-	-	-	1,000,000
- Project 202201E	6,708,000	-	-	-	6,708,000
- Project 202301E	597,000	-	-	-	597,000
- Project 202401E	11,514,000	-	-	-	11,514,000
- Project 202501E	-	22,852,000	-	22,852,000	22,852,000
<i>Non-Revenue Fleet</i>					
- Project 202301J	1,243,421	-	-	-	1,243,421
- Project 202401J	35,941	-	-	-	35,941
- Project 202501J	-	5,920		5,920	5,920
<i>Paratransit Fleet</i>					
- Project 202301I	465,000	-	-	-	465,000
Total Allocations	\$ 93,386,924	\$ 57,190,701	\$ -	\$ 57,190,701	\$ 150,577,624

Table 3 - Expenditures
Hampton Roads Regional Transit Fund (HRRTF)
Fiscal Year 2025

Project	Total FY2020 - FY2024	Previous FY2025	May 2025	FY 2025 YTD	Total
<i>Regional Transit System - 757 Express</i>					
Transit Bus Expansion (Group A) - Project 202101A	\$ 9,099,298	\$ -	\$ -	\$ -	\$ 9,099,298
Transit Bus Expansion (Group B) - Project 202301H	4,487,893	609,725	-	609,725	5,097,618
Transit Bus Expansion - Project 202402H	-	-	-	-	-
Transit Bus Expansion - Project 202501H	-	-	-	-	-
<i>Bus Stop Amenity Program</i>					
- Project 202101B	3,265,000	-	-	-	3,265,000
- Project 202201F	3,417,711	816,393	12,759	829,151	4,246,862
- Project 202401F	-	-	-	-	-
- Project 202501F	-	-	-	-	-
<i>Regional Transit System Technology</i>					
- Project 202101C	79,732	-	-	-	79,732
- Project 202201G	438,865	-	-	-	438,865
<i>Regional Transit Services</i>					
Operations & Maintenance RTS - Project 202201C	3,523,222	-	-	-	3,523,222
Development & Support Services RTS - Project 202201D	1,923,442	-	-	-	1,923,442
Operations & Maintenance RTS - Project 202301C	7,993,505	1,316,781	-	1,316,781	9,310,285
Operations & Maintenance RTS - Project 202401C	12,556,013	3,904,193	-	3,904,193	16,460,206
Operations & Maintenance RTS - Project 202501C	-	10,684,360	748,500	11,432,860	11,432,860
<i>Net Center Replacement</i>					
- Project 202101D	61,869	-	-	-	61,869
Robert Hall Blvd (Chesapeake) - Project 202201A	-	-	-	-	-
Robert Hall Blvd (Chesapeake) - Project 202501A	-	-	-	-	-
Evelyn T. Butts (Norfolk) - Project 202201B	42,521	35,173	-	35,173	77,694
Evelyn T. Butts (Norfolk) - Project 202402B	-	-	-	-	-
Evelyn T. Butts (Norfolk) - Project 202501B	-	-	-	-	-
Orcutt Transfer Center - Project 202501D	-	-	-	-	-
<i>New Bus Operating Division - Southside</i>					
- Project 202101E	1,000,000	-	-	-	1,000,000
- Project 202201E	3,455,307	402,819	-	402,819	3,858,126
- Project 202301E	-	-	-	-	-
- Project 202401E	-	-	-	-	-
- Project 202501E	-	-	-	-	-
<i>Non-Revenue Fleet</i>					
- Project 202301I	786,960	179,865	35	179,900	966,859
- Project 202401I	-	-	25,658	25,658	25,658
- Project 202501I	-	-	-	-	-
<i>Paratransit Fleet</i>					
- Project 202301I	434,014	-	-	-	434,014
Total Expenditures	\$ 52,565,350	\$ 17,949,308	\$ 786,952	\$ 18,736,261	\$ 71,301,611