

# Ancillary Agreements to Support TIFIA Financing for HRBT Project and HRELN

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# Direct Agreement: Why Needed

- **HRTAC is pursuing two TIFIA loans to support construction of the HRBT Expansion Project & HRELN**
  - **One loan to be repaid from HRELN toll revenues (~\$345 million)**
  - **Second loan to be repaid from HRTF revenues (~\$818 million)**
  - **VDOT not liable for repayment of either TIFIA loan**
- **Direct Agreement is a tri-party agreement among VDOT, HRTAC and USDOT (acting through the Build America Bureau)**
  - **VDOT provides certain customary representations and warranties to USDOT relating to HRBT Expansion Project and HRELN**
- **Per Section 3.06 of the Master Agreement for Development and Tolling of the Express Lanes (“MTA”), VDOT committed to negotiate and enter into the Direct Agreement to support HRTAC’s pursuit of TIFIA financing**

# Agreements to be Executed by VDOT

- **Direct Agreement**
- **Amendment to Project Agreement for Funding and Administration for the HRBT Expansion Project dated April 2, 2019 (“PAFA Amendment”)**
- **Standard Project Agreement for Funding and Administration for Segment 3 (Capital Improvements – Tolling Infrastructure) (“Segment 3 SPA”)**

# DIRECT AGREEMENT

# Direct Agreement: Key Terms

- **HRTAC is the borrower under each of the TIFIA Loans; the Direct Agreement does not make VDOT liable to repay either TIFIA Loan**
- **VDOT to make a series of usual and customary representations and warranties relating to the status of the agreements to which VDOT is a party that support construction of the HRBT Project, including:**
  - **Agreements remain in effect; no default(s)**
  - **VDOT is in compliance with applicable federal law (including environmental laws)**
  - **VDOT has and otherwise is in compliance with governmental approvals required to construct and operate the HRBT project**

# Direct Agreement: Key Terms (cont.)

- **VDOT to make a series of covenants relating to HRBT Project, including:**
  - Provide advance notice to USDOT before executing additional contracts relating to HRBT Project
  - Carry out construction work in accordance with construction schedule
  - Perform roadway O&M work in accordance with its obligations under MTA
  - Maintain insurance relating to HRBT Project pursuant to the terms of VDOT's existing contracts
  - Notify USDOT of the occurrence of specified events that could adversely impact delivery of the HRBT Project
- **Covenants generally confirm VDOT's existing contractual and legal obligations**

# Direct Agreement: Key Terms (cont.)

- **VDOT agrees to refrain from taking certain actions without USDOT's consent that could adversely impact USDOT, including:**
  - **Modifying or waiving provisions of HRBT Project-related contracts if such modifications or waivers could adversely impact USDOT**
  - **Creating liens (other than permitted liens) on the HRBT Project or HRELN**
  - **Entering into any additional HRBT Project-related contracts that commit HRTAC to expend additional funds in excess of specified thresholds**
  - **Selling or leasing the HRBT Project or HRELN**
- **These so-called negative covenants typically relate to legal or commercial matters that VDOT is unlikely to undertake in the ordinary course of administering its HRBT Project-related contracts**

# Direct Agreement: Key Terms (cont.)

- **VDOT agrees to undertake certain administrative tasks, including:**
  - **Maintaining files relating to HRBT Project and HRELN**
  - **Carrying out audits in accordance with applicable federal law**
  - **Providing information to HRTAC to assist with HRTAC's preparation of its financial plan and reports (required under the TIFIA Loan Agreements)**
- **Tasks are typical for a project receiving federal-aid funds and/or federal credit support**



# Direct Agreement: Key Terms (cont.)

- **Related to HRBT Project-related covenants, Direct Agreement requires VDOT and HRTAC to amend PAFA to make certain clarifications, including:**
  - **Design-Builder's termination of Comprehensive Agreement for VDOT default constitutes a material breach under the PAFA (except if such termination arises from events outside VDOT's control)**
  - **VDOT will not release Design-Builder's or Toll System Contractor's performance security without HRTAC's consent (except for step-downs provided for in Comprehensive Agreement or Toll System Contract, as applicable)**
  - **VDOT will not waive delay liquidated damages and other damages under the Comprehensive Agreement (which VDOT is required to share with HRTAC *pro rata* under the PAFA) without HRTAC's consent**

# Direct Agreement: Key Terms (cont.)

- **Related to HRBT Project-related covenants, Direct Agreement requires VDOT to make certain acknowledgments, including:**
  - **VDOT will use insurance proceeds received from insurance policies maintained under the Comprehensive Agreement to repair the HRBT Project**
  - **VDOT acknowledges the license to use the tolling infrastructure and to access the roadway to perform tolling O&M granted to HRTAC under the MTA is irrevocable during the terms of MTA**
  - **HRTAC is entitled to 100% of delay liquidated damages payable under the Toll System Contract**
- **Acknowledgements do not require amendments to other VDOT agreements**

# PAFA AMENDMENT

# PAFA Amendment: Why Needed

- **Address requirement from USDOT that certain PAFA terms be clarified in order to receive TIFIA Loans**
- **Provide additional flexibility to use Commission-Supported Contingency Funds to pay costs of Segment 3 tolling infrastructure**

# PAFA Amendment: Key Terms

- **USDOT-required amendments**
  - See summary on previous slides
- **Segment 3 tolling infrastructure**
  - Use portion of Commission-Supported Contingency Funds to pay for Segment 3 tolling infrastructure
  - Should additional costs be identified after Commission-Supported Contingency Funds are expended on Segment 3 tolling infrastructure, HRTAC to provide up to \$8,530,419 to fund such additional costs (until HRTAC has met its maximum financial commitment specified in the PAFA)
  - If additional costs remain, process set forth in Section 3.09 of PAFA will apply

# SEGMENT 3 SPA

# Segment 3 SPA: Key Terms

- **Segment 3 SPA based on standard form agreement used by VDOT and HRTAC to deliver other components of HRELN**
- **Scope of Work**
  - **Design and construction of tolling infrastructure for Segment 3 of HRELN (approx. 10-mile segment along I-64 in Hampton and Norfolk between Mallory Street and Patrol Road)**
  - **No additional ROW**
  - **Work required in order to toll HRBT Project**
  - **Toll system integration to be delivered via separate agreement**
- **Estimated total cost (including PE and construction) – \$18,789,474**
- **Schedule**
  - **Construction start – October 2022**
  - **Construction complete – March 2025**

