



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

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Agenda item # 15

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: Mr. Malbon, Seconded By: Mr. Miller
Action: Motion carried, unanimously

Title: Approval and Authorization for the Commissioner of Highways to Execute a TIFIA Direct Agreement Between the Virginia Department of Transportation, the Hampton Roads Transportation Accountability Commission and the United States Department of Transportation and Related Amendments to the PAFA for the Hampton Roads Bridge Tunnel Expansion Project

WHEREAS, the Virginia Department of Transportation (VDOT) and Hampton Roads Transportation Accountability Commission (HRTAC) have entered into the Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (HRBT Expansion Project), dated as of April 2, 2019 (HRBT PAFA); and

WHEREAS, VDOT has entered into the Comprehensive Agreement Relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 3, 2019, with Hampton Roads Connector Partners; and

WHEREAS, VDOT, HRTAC, and the Commonwealth Transportation Board (CTB) have entered into the Master Agreement for Development and Tolling of the Express Lanes Network, dated August 18, 2020, (MTA); and

WHEREAS, VDOT has entered into a Contract for VDOT I-64 Express Lanes Toll System and Services, dated as of March 21, 2017, with TransCore, LP (the Segment 1 Toll System Contract); and

WHEREAS, VDOT has entered into the Contract Relating to the I-64 Express Lanes Expansion, dated as of June 17, 2021, with Conduent State & Local Solutions, Inc. (the Segment 2 Toll System Contract); and

Board Resolution

Approval and Authorization for the Commissioner of Highways to Execute a TIFIA Direct Agreement Between the Virginia Department of Transportation, the Hampton Roads Transportation Accountability Commission and the United States Department of Transportation and Related Amendments to the PAFA for the Hampton Roads Bridge Tunnel Expansion Project
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WHEREAS, in reliance on the support for the HRBT Expansion Project provided byVDOT pursuant to the foregoing agreements, together with each electronic toll collection agreement and each violation processing services agreement entered into by HRTAC and VDOT pursuant to the MTA (collectively the VDOT Support Agreements), the United States Department of Transportation (USDOT) will grant to HRTAC two loans under the Transportation Infrastructure Finance and Innovation Act Program (TIFIA Loans) for the purpose of financing certain costs in connection with the construction and development of the HRBT Expansion Project and which will be repaid from toll revenues of the Hampton Roads Express Lane (HREL) Network and sales tax revenues dedicated to the Hampton Roads Transportation Fund, respectively; and

WHEREAS, as a condition of granting HRTAC the two TIFIA Loans, USDOT requires VDOT and HRTAC to agree to and execute a Direct Agreement (a draft of which is attached hereto as Exhibit A) whereby, among other things, VDOT makes certain warranties and representations with regard to the VDOT Support Agreements and VDOT's roles relating to the HRBT Expansion Project and HREL Network, but is not liable for repayment of the TIFIA loans; and

WHEREAS, requirements in the Direct Agreement necessitate certain modifications to the HRBT PAFA, the substance of which are illustrated in the attached "illustrative" HRBT PAFA (Exhibit B), and

WHEREAS, HRTAC and VDOT also seek to modify the HRBT PAFA to provide that a portion of HRTAC-supported contingency funds from the HRBT Expansion Project will be used to pay for tolling infrastructure pursuant to the Standard Project Agreement for the Segment 3 Capital Improvements-Tolling Infrastructure Project - UPC 118376; and that should additional HRBT Expansion Project costs be identified after the contingency funds are expended, the additional costs will be funded using specified funds and the process set out in Section 3.09 of the PAFA, with said modifications also reflected in the attached "illustrative" HRBT PAFA (Exhibit B); and

WHEREAS, the above-referenced modifications to the HRBT PAFA will be incorporated into a separate, stand-alone amendment to the PAFA for purposes of execution by VDOT and HRTAC (HRBT PAFA Amendment); and

WHEREAS, at the July 2021 CTB Workshop, the CTB was briefed on the Direct Agreement relating to the TIFIA Loans to HRTAC for the HRBT Expansion Project as well as the amendments to the HRBT PAFA.

NOW THEREFORE BE IT RESOLVED, that the CTB hereby approves and authorizes the Commissioner of Highways to execute, and take all actions necessary under, the Direct Agreement between VDOT, HRTAC and USDOT relating to the TIFIA Loans to HRTAC for the HRBT Expansion Project, a draft of which is set forth in Exhibit A, with such changes and modifications deemed necessary by the Commissioner.

Board Resolution

Approval and Authorization for the Commissioner of Highways to Execute a TIFIA Direct Agreement Between the Virginia Department of Transportation, the Hampton Roads Transportation Accountability Commission and the United States Department of Transportation and Related Amendments to the PAFA for the Hampton Roads Bridge Tunnel Expansion Project
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BE IT FURTHER RESOLVED, that the CTB hereby approves, and authorizes the Commissioner of Highways to execute, a separate, stand-alone HRBT PAFA Amendment, which incorporates modifications to the HRBT PAFA substantially similar to those set forth in Exhibit B, with such changes and modifications deemed necessary by the Commissioner.

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DIRECT AGREEMENT (VDOT)

This **DIRECT AGREEMENT** (this “**Agreement**”) dated as of [___], 2021 (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 HRTAC have entered into that certain Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 2, 2019, as it may be modified or amended from time to time in accordance with its terms (the “**PAFA**”), relating to the Project (as defined in the HRBT Toll TIFIA Loan Agreement (as defined below));

(2) VDOT has entered into that certain Comprehensive Agreement Relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 3, 2019, with Hampton Roads Connector Partners (the “**Design-Builder**”), an unincorporated joint venture comprised of Dragados USA, Inc., Vinci Construction Grands Projets, Flatiron Constructors, Inc., and Dodin Campenon Bernard, as it may be modified or amended from time to time in accordance with its terms (the “**Comprehensive Agreement**”);

(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 (the “**Segment 1 Toll System Contract**”), dated as of March 21, 2017, with TransCore, LP (the “**Segment 1 Toll System Contractor**”), 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 Relating to the I-64 Express Lanes Expansion (the “**Segment 2 Toll System Contract**” and, together with the Segment 1 Toll System Contract, the “**Toll System Contracts**”), dated as of June 17, 2021, with Conduent State & Local Solutions, Inc. (the “**Segment 2 Toll System Contractor**” and, together with the Segment 1 Toll System Contractor, the “**Toll System Contractors**”), 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 each Electronic Toll Collection Agreement and each Violation Processing Services Agreement, are herein collectively referred to as the “**VDOT Agreements.**”

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:

(1) 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 \$[_____] (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 “**HRBT Toll TIFIA Loan Agreement**”), and

(2) 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 \$[_____] (excluding interest that is capitalized), which loan shall be repaid from sales tax revenues dedicated to the Hampton Roads Transportation Fund (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**HRBT HRTF TIFIA Loan Agreement**” and, together with the Toll TIFIA Loan Agreement, the “**HRBT TIFIA Loan Agreements**”).

Each HRBT 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:

(1) the Borrower has entered into that certain Master Indenture of Trust (the “**HRTF Indenture**”), dated as of February 1, 2018, with Wilmington Trust, National Association (the “**HRTF Trustee**”), as such indenture may be modified or amended from time to time in accordance with its terms, and

(2) the Borrower has entered into that certain Master Indenture (the “**Toll Indenture**” and, together with the HRTF Indenture, the “**Indentures**”), dated as of [____], 2021, with [____] (the “**Toll Trustee**” and, together with the HRTF Trustee, the “**Trustees**”), as such indenture may be modified or amended from time to time in accordance with its terms.

WHEREAS, in consideration for the TIFIA Lender’s willingness to enter into the HRBT TIFIA Loan Agreements, among other consideration, VDOT and the Borrower wish to amend and clarify certain provisions of the VDOT Agreements as set forth in this Agreement.

WHEREAS, it is a condition to the consummation of the transactions contemplated by the HRBT TIFIA Loan Agreements 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 HRBT Toll TIFIA Loan Agreement.

(b) All capitalized terms used in Article VI (VDOT Agreement Modifications and Clarifications) (other than Section 6.4 (Agreements Relating to Toll System Contract)) 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, substantially in the form of Exhibit 14 to the MTA.

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

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

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

“HRBT TIFIA Loan” means either or both of the HRBT HRTF TIFIA Loan and the HRBT Toll TIFIA Loan, as applicable.

“Permitted Liens” means:

- (a) Liens imposed pursuant to the HRBT TIFIA Loan Agreements;
- (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 either HRBT 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 HRBT TIFIA Loan Agreements, (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, substantially in the form of Exhibit 15 to the MTA.

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 organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified

by 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, 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.

(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 HRBT TIFIA LOANS

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 applicable Indenture, pursuant to the terms and conditions of such Indenture, as security for all of the obligations secured or purported to be secured by such 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 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 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, subject to the cure provisions of the HRBT TIFIA Loan Agreements, constitutes an Event of Default under each HRBT 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 HRBT TIFIA Loans. Nothing in this Agreement shall be construed to mean that VDOT is liable under either HRBT 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 6.4 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 either HRBT TIFIA Loan Agreement is made:

(a) Organization; Power and Authority. VDOT is an agency of the State, duly organized 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 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.

(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, 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 of the VDOT Agreements 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, 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, 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 or (B) the fulfillment of or compliance by VDOT with the terms and conditions of this Agreement and the VDOT Agreements, 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. 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). 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 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, 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. 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. 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 either HRBT 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 each HRBT 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. 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 HRBT TIFIA Loans 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 HRBT TIFIA Loan Agreements. VDOT covenants and agrees as follows until the date the HRBT TIFIA Loans and the obligations of the Borrower under the HRBT TIFIA Loan Agreements (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 HRBT Toll 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 each HRBT 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.¹ 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:

¹ **Note to Draft:** Term remains subject to discussion with USDOT, as USDOT seeks to expand term to require VDOT to maintain insurance coverages usual and customary for similar projects in the United States. VDOT believes this standard is too broad, and the term should instead focus on the insurance relating to the Project required by the VDOT Agreements and any other Principal Project Contracts to which VDOT is a party (as the drafting above currently reflects).

(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 Design-Builder, either 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 Comprehensive Agreement or the Toll System Contracts 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) Force Majeure: the occurrence of any Force Majeure Event (as defined in the Comprehensive 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 either HRBT 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 8(a)(i)]² (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) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the Project 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 Toll Indenture, pay or apply all Loss Proceeds stemming from such event to repair or replace the Project or the affected portion thereof

² **Note to Draft:** Cross-reference to be confirmed.

(or reimburse VDOT for costs it has incurred to repair or replace the Project or the affected portion thereof).

(j) 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.

(k) 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.

(l) 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 HRBT 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.

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

(n) 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 P to the HRBT HRTF TIFIA Loan Agreement and Exhibit Q to the HRBT Toll TIFIA Loan Agreement.

Section 5.2 VDOT Negative Covenants related to HRBT TIFIA Loan Agreements. 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 HRBT TIFIA Loans, (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 HRBT TIFIA Loans 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 under each HRBT 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. 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 either HRBT TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under the HRBT TIFIA Loan Agreements 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 either HRBT 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 each HRBT 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 each HRBT 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 Amendments and Clarifications Relating to the PAFA.

(a) Section 4.08(c) (*Delay Liquidated Damages and Other Damages and Recoveries*) of the PAFA is hereby amended by inserting the text “(including any payments received under any guarantee, letter of credit, surety bond or other performance security instrument in respect of such Delay Liquidated Damages or Other Damages and Recoveries)” immediately after the text “received by the Department”.

(b) Section 4.12 (*Early Termination of Comprehensive Agreement*) of the PAFA is hereby amended by adding the following new sub-section (e):

“(e) Following the termination of the Comprehensive Agreement, if the Department negotiates a new comprehensive agreement, the Department shall obtain the prior written consent of the Commission before entering into such new comprehensive agreement if (i) the commercial terms and conditions of the new comprehensive agreement differ in an adverse way in any material respect (to the Department or the Commission) from those of the Comprehensive Agreement, (ii) the performance security requirements under the new comprehensive agreement differ from those under the Comprehensive Agreement in a way that is adverse in

any material respect to the Department or the Commission and/or (iii) the replacement design-builder does not have substantially the same financial capacity and technical capability as the Design-Builder.”

(c) Section 7.01(c) of the PAFA is hereby amended by adding the following sentence as the new second sentence of such section: “For purposes of this Section 7.01(c) and without limiting matters that may constitute a material breach, the termination of the Comprehensive Agreement by the Design-Builder pursuant to Section 11.4.1.1 (except with respect to delays due to court orders that are not attributable to any fault by the Department), Section 11.4.1.2 or Section 11.4.1.3 of Exhibit 1 to the Comprehensive Agreement shall be considered a material breach by the Department.”

(d) Exhibit 1 of the PAFA is hereby amended by adding the following additional defined terms:

- (i) “**Direct Agreement**” means that certain Direct Agreement dated as of [____], 2021, by and among the Department, the Commission, and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, as it may be modified or amended from time to time in accordance with its terms.
- (ii) “**Segment 2 Toll System Contract**” has the meaning given in the Direct Agreement.
- (iii) “**VDOT Agreement**” has the meaning given in the Direct Agreement.

(e) Exhibit 13 of the PAFA is hereby amended by:

- (i) Adding a new clause “B” to Section 1 of Exhibit 13 that reads:

“B. The Department’s termination, release, waiver or amendment of any guarantee, letter of credit, surety bond or other performance security instrument issued or provided by or on behalf of either the Design-Builder pursuant to the Comprehensive Agreement or the Toll System Contractor pursuant to the Segment 2 Toll System Contract; provided, that any step-down in the value of any performance security instrument in accordance with the terms of the applicable VDOT Agreement shall not be subject to Commission consent.”

- (ii) Adding a new clause “C” to Section 1 of Exhibit 13 that reads:

“C. The Department’s decision to waive or otherwise determine or agree not to demand, enforce, collect and/or receive any Delay Liquidated Damages or Other Damages and Recoveries (but excluding any damages which are not required by Section 4.08 to be

shared by the Parties *pro rata*) or other amounts or recoveries to which the Department is contractually or otherwise entitled to receive from the Design-Builder in connection with any dispute under or with respect to the Comprehensive Agreement, whether in the context of any settlement discussions or any demands, claims or counter-claims related to the adjudication or arbitration of any such dispute.”

- (iii) Deleting clause “F” in Section 2 of Exhibit 13 in its entirety and inserting the text “[Reserved]” in lieu thereof.

(f) Except as amended by this Section 6.1, all other terms of the PAFA shall remain in full force and effect.

Section 6.2 Undertakings and Clarifications Relating to the Use of Insurance Proceeds Received in Respect of the Comprehensive Agreement. Except as otherwise required by the Toll Indenture, VDOT shall cause all insurance proceeds received from insurance policies required to be maintained under the Comprehensive Agreement relating to physical damage to the Project to be applied to repair the damaged portion of the Project.

Section 6.3 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 6.4 Agreements Relating to the Segment 2 Toll System Contract. VDOT hereby acknowledges and agrees that the Borrower shall be entitled to one hundred percent (100%) of any delay liquidated damages payable by the Toll System Contractor pursuant to or in connection with the Segment 2 Toll System Contract.

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 HRBT TIFIA Loan Agreements, 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 HRBT TIFIA Loan Agreements), 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 each HRBT TIFIA Loan has been irrevocably paid in full, together with any interest accrued thereon, and all other amounts and other obligations under either of the HRBT TIFIA Loan Agreements 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 [____], 2021 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 HRBT TIFIA Loans.

(b) If any funds other than proceeds of the HRBT TIFIA Loans 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 HRBT TIFIA Loans, 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 [____], 2021 (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:

- (a) 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;
- (b) VDOT 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;
- (c) VDOT hereby certifies that:
 - a. With respect to the Project, VDOT has complied with NEPA; and
 - b. 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) 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;
- (e) 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;
- (f) 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
- (g) 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 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 _____, 2021.

VIRGINIA DEPARTMENT OF
TRANSPORTATION

By: _____
Name:
Title:

THIS REDLINE SHOWS THE CHANGES TO THE PAFA TO BE SET FORTH IN THE PROPOSED PAFA AMENDMENT. THIS REDLINE IS INTENDED FOR INFORMATIONAL PURPOSES ONLY, AS THE PROPOSED PAFA AMENDMENT WILL BE A STANDALONE DOCUMENT.
~~EXECUTION VERSION~~

PROPOSED AMENDMENTS TO

PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION

for the

I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION PROJECT

Dated April 2, 2019

between

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION,
as Commission

and

VIRGINIA DEPARTMENT OF TRANSPORTATION,
as Department

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PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION

This PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (this “Agreement”) is made and entered into as of April 2, 2019, and effective as of the date set forth in Section 7.01 (Term; Termination), by and between the HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (the “Commission”), a body politic and a political subdivision of the Commonwealth of Virginia; and the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia, (each a “Party” and, together, the “Parties”).

RECITALS

WHEREAS, Va. Code §§ 33.2-2600 *et seq.* (the “HRTAC Act”) established the Hampton Roads Transportation Fund (the “HRTF”), and provides that moneys deposited in the HRTF are to be used solely for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, the HRTAC Act created the Commission as a political subdivision of the Commonwealth of Virginia, and moved the responsibility for approving the projects that will be funded by the HRTF from the Hampton Roads Transportation Planning Organization, the metropolitan planning organization for Planning District 23 (the “HRTPO”), to the Commission;

WHEREAS, the HRTAC Act authorizes the Commission to issue bonds and other evidences of debt, and to impose and collect certain tolls;

WHEREAS, the Commission is required to use all moneys that it receives (the “Commission-Controlled Moneys”), including, without limitation, moneys from the HRTF as well as any bond proceeds and collections from any tolls imposed by the Commission, solely for the benefit of those counties and cities that are embraced by the Commission, and in a manner that is consistent with the purposes of the HRTAC Act;

WHEREAS, the Department is the agency of the Commonwealth responsible for building, maintaining and operating the interstate, primary, and secondary state highway systems (the “Department Highways”);

WHEREAS, in light of the Department’s responsibilities with respect to the Department Highways, and the Commission’s responsibilities with respect to the application of Commission-Controlled Moneys, the Department and the Commission entered into a Memorandum of Agreement dated March 30, 2015 (the “MOA”);

WHEREAS, the MOA contemplates that the Commission may from time to time enter into agreements for funding and administration of projects that the Commission selects and the Commission requests the Department to administer and/or develop with Commission-Controlled Moneys;

WHEREAS, on October 20, 2016, the HRTPO selected the Hampton Roads Crossing Study SEIS Preferred Alternative - A, known today as the I-64 Hampton Roads Bridge-Tunnel Expansion Project (the “Project”), as further described in Exhibit 2 (Project Scope) hereto, and

recommended that the Commission take action to implement the Project as part of the prioritized congestion relief projects for the Hampton Roads region;

WHEREAS, in accordance with the HRTAC Act, the Commission has approved the Project;

WHEREAS, the Commission has further developed and approved a funding plan for the Project and a related debt management plan;

WHEREAS, the Department desires, and agrees to, procure, develop, and construct the Project in accordance with the budget (the “Project Budget”), as further described in Exhibit 3 (Project Budget) and Exhibit 5, (Estimated Costs and Payout Schedule), hereto;

WHEREAS, in order to advance development of the Project, the Department issued the Request for Proposals (the “RFP”) dated as of September 27, 2018, as amended, pursuant to which the Department requested the submittal of proposals for the design and construction of the Project from offerors (each such entity, as “Offeror”) determined to be qualified following the submission of Statements of Qualification pursuant to the Department’s Request for Qualifications dated as of December 15, 2017, as amended;

WHEREAS, the purpose of the RFP is to determine the Offeror to be awarded a comprehensive agreement for the Project (the “Comprehensive Agreement”) pursuant to the Public-Private Transportation Act of 1995, as amended (Va. Code §§ 33.2-1800 *et seq.*) (the “PPTA”), and the Department’s 2017 PPTA Implementation Manual and Guidelines (the “Guidelines”);

WHEREAS, the Department has evaluated the proposals submitted by each Offeror in accordance with the terms of the RFP, and has selected Hampton Roads Connector Partners as the Offeror whose proposal offers the best overall value (such Offeror, the “Successful Offeror”), as further described in the RFP;

WHEREAS, the Department desires to enter into the Comprehensive Agreement with the Successful Offeror, whereupon the Successful Offeror shall become the design-build contractor (the “Design-Builder”) responsible for the design and construction of the Project pursuant to the terms of the Comprehensive Agreement;

WHEREAS, the Commission desires to provide the primary portion of the funding for the procurement, development, and construction of the Project using Commission-Controlled Moneys, subject to the terms, conditions and limitations set forth herein;

WHEREAS, Commissioner Stephen C. Brich, P.E. of the Department sent a letter to Commission Chairman Hipple dated January 22, 2019 (the “January 22, 2019 Letter”) committing to working with the Commission and the HRTPO to find, relative to tolling in the Hampton Roads region, the best operational solutions, define the appropriate tolling policies, and investigate the financial mechanisms available to the Commonwealth Transportation Board (the “CTB”) and the Commission to best address the Parties’ collective objectives, priorities, and policies through an agreement among the Commission, the CTB, and the Department on these matters (the “Master Tolling Agreement”); and

WHEREAS, pursuant to Va. Code § 33.2-214, the CTB has authorized the Commissioner to enter into this Agreement and, pursuant to Va. Code § 33.2-2608, the Commission has authorized its officers to enter into this Agreement, as evidenced by copies of each such entity's clerk's approved minutes or such other official authorizing documents which are, or will be (promptly after approval), appended hereto as Exhibit 4 (Official Authorizing Documents).

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1.

DEFINITIONS, INTERPRETATION, AND PRECEDENCE; REPRESENTATIONS AND WARRANTIES

Section 1.01 Definitions

Unless the context otherwise requires, all capitalized terms and acronyms used in this Agreement have the meanings given in Exhibit 1 (Definitions).

Section 1.02 Interpretation

(a) In this Agreement:

(i) headings are for convenience only and do not affect interpretation;

(ii) unless otherwise stated, a reference to any agreement, instrument, or other document is to such agreement, instrument, or other document as amended or supplemented from time to time in accordance with its terms;

(iii) a reference to this Agreement or any other agreement includes all exhibits, schedules, forms, appendices, addenda, attachments, or other documents attached to or otherwise expressly incorporated in this Agreement or any such other agreement (as applicable);

(iv) subject to Section 1.02(a)(v) (Interpretation), a reference to an Article, Section, subsection, clause, Exhibit, schedule, form, or appendix is to the Article, Section, subsection, clause, Exhibit, schedule, form, or appendix in or attached to this Agreement, unless expressly provided otherwise;

(v) a reference in the main body of this Agreement, or in an Exhibit, to an Article, Section, subsection, or clause is to the Article, Section, subsection, or clause of the main body of this Agreement, or of that Exhibit (as applicable);

(vi) a reference to a person includes such person's permitted successors and assigns;

(vii) a reference to a singular word includes the plural and vice versa (as the context may require);

(viii) the words “including”, “includes”, and “include” mean “including, without limitation”, “includes, without limitation” and “include, without limitation”, respectively;

(ix) an obligation to do something “promptly” means an obligation to do so as soon as the circumstances permit, avoiding any delay; and

(x) in the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” mean “to and including”.

(b) This Agreement is not to be interpreted or construed against the interests of a Party merely because that Party proposed this Agreement or some provision of it, or because that Party relies on a provision of this Agreement to protect itself.

(c) The Parties acknowledge and agree that this Agreement has been prepared jointly by the Parties and has been the subject of arm’s length and careful negotiation, that each Party has been given the opportunity to independently review this Agreement with legal counsel, and that each Party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions of this Agreement. Accordingly, in the event of any ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement will not be interpreted or construed against the Party preparing it simply as a consequence of preparing it, and instead the other applicable rules of interpretation and construction set out herein shall be used.

Section 1.03 Order of Precedence

(a) Except as otherwise expressly provided in this Section 1.03 (Order of Precedence), if there is any conflict between the provisions of this Agreement (including all Exhibits), the order of precedence will be as follows, from highest to lowest:

(i) amendments to the provisions of the main body of this Agreement;

(ii) the provisions of the main body of this Agreement and Exhibit 1 (Definitions); and

(iii) the provisions of the Exhibits to this Agreement, as amended, other than Exhibit 1 (Definitions).

(b) Additional or supplemental details or requirements in a provision of this Agreement with lower priority will be given effect, except to the extent that they irreconcilably conflict with any provisions of this Agreement with higher priority.

Section 1.04 Representations and Warranties of the Department

The Department hereby represents and warrants to the Commission as of the date hereof and, except in the case of Section 1.04(e) (Representations and Warranties of the Department)

below, as of the date on which this Agreement becomes effective pursuant to Section 7.01(a) (Term; Termination), as follows:

(a) the Department is an agency of the Commonwealth, and has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement and the Comprehensive Agreement;

(b) each person executing this Agreement and the Comprehensive Agreement on behalf of the Department has been or at such time will be duly authorized to execute and deliver each such document on behalf of the Department;

(c) the execution and delivery by the Department of this Agreement and the Comprehensive Agreement, and the performance of its obligations hereunder and thereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any Legal Requirement, where such violation will have a material adverse effect on the ability of the Department to perform its obligations under this Agreement;

(d) this Agreement has been duly authorized, executed, and delivered by the Department and constitutes a valid and legally binding obligation of the Department, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(e) there is no action, suit, proceeding, investigation, or litigation pending and served on the Department which challenges the Department's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement and the Comprehensive Agreement, or which challenges the authority of the Department official executing this Agreement or the Comprehensive Agreement, and the Department has disclosed to the Commission any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which the Department is aware;

(f) the Department has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement and the Comprehensive Agreement and is otherwise in material compliance with the Legal Requirements applicable to the Department's procurement of the Comprehensive Agreement and the terms of the RFP; and

(g) the Department has developed Parts 2 and 5 of the RFP and the Project Budget, including, without limitation, the contingency reserves, with requisite diligence and otherwise in a manner consistent with the Department's standard policies, procedures, and protocols applicable to its development of technical requirements, specifications and budgets for (x) large-scale design-build projects and (y) major highway, bridge and tunnel projects where the Commonwealth or the Department bears the cost of the project.

Section 1.05 Representations and Warranties of the Commission

The Commission hereby represents and warrants to the Department as of the date hereof and, except in the case of Section 1.05(e) (*Representations and Warranties of the Commission*) below, as of the date on which this Agreement becomes effective pursuant to Section 7.01(a) (*Term; Termination*), as follows:

(a) the Commission is a body politic and a political subdivision of the Commonwealth, and has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;

(b) each person executing this Agreement on behalf of the Commission has been or at such time will be duly authorized to execute and deliver this Agreement on behalf of the Commission;

(c) the execution and delivery by the Commission of this Agreement, and the performance of its obligations hereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any Legal Requirement, where such violation will have a material adverse effect on the ability of the Commission to perform its obligations under this Agreement;

(d) this Agreement has been duly authorized, executed, and delivered by the Commission and constitutes a valid and legally binding obligation of the Commission, enforceable against it in accordance with the terms hereof, subject only to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity;

(e) there is no action, suit, proceeding, investigation, or litigation pending and served on the Commission which challenges the Commission's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the Commission official executing this Agreement, and the Commission has disclosed to the Department any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which the Commission is aware; and

(f) the Commission has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under this Agreement, and is otherwise in material compliance with all Legal Requirements applicable to the Commission or its activities in connection with this Agreement.

ARTICLE 2.

PROCUREMENT OF THE PROJECT

Section 2.01 General Obligations of the Department (Procurement)

(a) The Department shall procure all work necessary to design and construct the Project, which is generally described in Exhibit 2 (*Project Scope*), in accordance with (i) any and

all applicable federal, state, and local laws and regulations (including, without limitation, the PPTA) and (ii) all terms and conditions of this Agreement, including, without limitation, the Project Budget, which Project Budget may be amended from time to time by (and only by) mutual written agreement of the Parties.

(b) The Department shall select contractors and contract with contractors in a manner that is consistent in all material respects with the policies, procedures and practices that the Department uses where the Commonwealth or the Department bears the cost of a project. For example, the Department shall use its customary policies, procedures and practices relating to requesting bids/proposals, negotiating/finalizing terms and conditions of contracts (using, where applicable, standard terms/forms).

Section 2.02 Commission Involvement in Procurement Activities

The Department has, and shall continue to, involve the Commission in the procurement of the Project, including by:

(a) providing updates on at least a weekly basis to the Executive Director regarding the status of the procurement process;

(b) providing briefings to the Commission, as requested; *provided* that the Department may conduct such briefings after briefing CTB on the same topics if the Department determines it must make such a briefing to CTB before making the requested briefing to the Commission;

(c) providing the Commission an opportunity to participate in proprietary meetings with each Offeror to discuss commercial terms, technical requirements, alternative technical concepts, or other matters relating to the development of proposals by the Offerors;

(d) providing the Commission an opportunity to provide feedback on the terms of the RFP prior to the deadline set forth in the RFP for the Department to issue addenda or supplements to the RFP;

(e) providing the Commission an opportunity to review proposals, provide input to the Department's evaluation team, and observe the scoring of proposals (on a non-voting basis); and

(f) providing the Commission with the final, complete form of the Comprehensive Agreement (including all exhibits, appendices and attachments thereto) in accordance with Section 4.01 (General Obligations of the Department (Delivery)) below.

Section 2.03 Cancellation of the Procurement

Pursuant to the terms of the RFP, the Department reserves the right to, among other things, cancel or withdraw the RFP at any time. The Department acknowledges and agrees that, should the Department determine that cancelling or withdrawing the RFP is in its best interests, the Department shall consult with the Commission regarding such determination. If the Commission disagrees with the Department's determination to cancel or withdraw the RFP, the Department and the Commission will resolve the disagreement in accordance with dispute resolution procedures set forth in Article 6 (Dispute Resolution). If the Commission agrees with the Department's

determination to cancel or withdraw the RFP or the Department's action is authorized pursuant to the dispute resolution procedures, then the Department may proceed to cancel or withdraw the RFP after giving prior notice to the Commission.

ARTICLE 3.

PROJECT FUNDING

Section 3.01 General Rights and Obligations of the Commission

(a) Subject to Section 3.01(b) (General Rights and Obligations of the Commission), the limitations as to amounts set forth in Section 3.03 (Maximum Commission Financial Commitment) and Section 3.04 (Maximum Cumulative Compensation Amount Under Comprehensive Agreement), and the limitations set forth in Section 7.02 (Appropriations Requirements), the Commission shall:

(i) Subject to Section 5.02 (Payment Requisitions), reimburse the Department for the payments made by the Department to the Design-Builder under the Comprehensive Agreement in respect of:

- (A) Commission-Funded Design-Build Costs;
- (B) Authorized Commission-Funded Work Order Costs;
- (C) Authorized Commission-Funded Claims Costs;
- (D) No Excuses Incentive Payment; and
- (E) Commission-Funded ROW Costs.

(ii) Subject to Section 3.07 (Administration Costs), satisfy the Commission-Funded Administration Costs; and

(iii) Reimburse the Department for the Unsuccessful Offeror Proposal Payment (which payment shall be paid from the Commission-Supported Contingency Reserve).

(b) Notwithstanding anything to the contrary set forth in this Agreement, the Commission shall not have any obligation to pay or reimburse the Department for any of the following:

(i) any cost or expense, whether budgeted or not, arising from or relating to the South Island Trestle Bridge Replacement Work or Deferred/Preventive Maintenance Work, including, without limitation, (A) compensation payable to the Design-Builder under the Comprehensive Agreement for the performance of such work, (B) amounts payable pursuant to Work Orders or claims arising from or relating to such work under the Comprehensive Agreement, or (C) the Department-Funded Administration Costs;

(ii) any amounts due to the Design-Builder under the Comprehensive Agreement to the extent the payment of such amounts, when combined with any other amounts paid by the Commission under this Agreement (including Administration Costs), would cause the aggregate amount of all the Commission's payments in relation to the Project to exceed the Maximum Commission Financial Commitment, unless and then solely to the extent the Commission expressly agrees under Section 3.09 (Additional Costs; Claims) to pay such amounts;

(iii) any cost or expense arising from or relating to the Early Work in excess of the limitations set forth in Section 3.12 (Early Work Funding);

(iv) any cost or expense arising from or relating to the I-564 Direct Connections unless and then solely to the extent the Commission expressly agrees (A) to the addition of the I-564 Direct Connections to the Design-Builder's scope of work under the Comprehensive Agreement in accordance with Section 4.09 (Optional Work: I-564 Direct Connections; Bridge Repair Option Work) and (B) to fund such cost or expense;

(v) the payment of the No Excuses Incentive Payment unless the Department is in compliance with its obligations set forth in Section 4.07 (No Excuses Incentive Payment);

(vi) any cost or expense arising from or relating to any Work Order or resolution of any claim that was required to be approved by the Commission pursuant to the terms of this Agreement but for which the Department did not receive the Commission's approval prior to the Department's execution of such Work Order; or

(vii) any cost or expense (including, without limitation, any compensation to the Design-Builder) arising out of or resulting from the Department's negligence, willful misconduct, violation of law, or breach of the Comprehensive Agreement or this Agreement (any such negligence, willful misconduct, violation, or breach constituting "Department Fault").

(c) The Commission shall be the sole determinant of the source of the Commission-Controlled Moneys to be provided and allocated to the Project and the amounts of any Commission-Controlled Moneys, if any, to be provided in excess of the Maximum Commission Financial Commitment.

(d) If funding from an additional federal or Commonwealth source is rescinded or otherwise becomes unavailable, the Commission (i) shall not be responsible for any amount in excess of the Maximum Commission Financial Commitment and (ii) may, at its option and in its sole discretion, (A) replace said reduced funding with Commission Controlled-Moneys or (B) request the Department to immediately suspend all work relating to the Project, whereupon the Parties will collaborate and consider the solutions (in order of priority) identified in clauses (i) through (iv) of Section 3.09 (Additional Costs; Claims); provided that, if (x) the Commission requests suspension, (y) the funding was not scheduled to be applied to a Department-Funded Design-Build Cost, and (z) the unavailability of the funding does not arise out of or result from Department Fault, the Commission shall be responsible for the costs reasonably incurred in

connection with such suspension. If the reduced funding was scheduled to be applied to a Department-Funded Design-Build Cost, the Department will use its best efforts to replace the reduced funding. If the Commission or the Department does not replace the reduced funding or the Commission does not request the Department to suspend or discontinue work, the Department may reduce the Project scope or take any other actions needed to reduce Project costs.

(e) The Commission-Funded Budget assumes the inclusion of \$345,000,000 of toll-backed debt, and otherwise has been prepared without applying any Applicable Additional Funds. As soon as practicable after any Applicable Additional Funds are made available to the Project, Exhibit 3 (Project Budget) shall be updated by the Parties in a mutually acceptable manner to apply the Applicable Additional Funds to the Commission-Funded Budget by reducing the amount of Commission-Controlled Moneys assumed in the Commission-Funded Budget by an amount equal to the Applicable Additional Funds. The Parties shall undertake such update in good faith with the goal of producing a schedule that fairly accounts for when the Applicable Additional Funds will be available and will reduce the amounts that would otherwise be due from the Commission.

Section 3.02 General Obligations of the Department (Funding)

(a) The Department shall not use any funds provided by the Commission, including the funds specified in Exhibit 3 (Project Budget), to pay any Project cost if (i) the HRTAC Act does not permit such Project cost to be paid with Commission-Controlled Moneys or (ii) such application of funds is not authorized by the terms of this Agreement.

(b) The Department (i) acknowledges that federal and Commonwealth funds and loans are being solicited or applied for by the Commission and/or the HRTPO for the Project, (ii) agrees to provide the Commission and the HRTPO with such support as may reasonably be requested in connection therewith, and (iii) agrees that if federal and/or Commonwealth funds are or have been awarded or committed to the Project (in addition to Commission Controlled-Moneys), the Department shall (A) take any and all necessary actions to satisfy any conditions to such additional federal and/or Commonwealth funding (provided that such actions are within the control of the Department) and to enforce any commitments made in connection therewith and (B) comply with all applicable federal and Commonwealth funding requirements within the control or purview of the Department.

(c) No later than ninety (90) days after the date on which the Department makes final payment to the Design-Builder, and all claims relating to the Project have been resolved or are barred, in accordance with the Comprehensive Agreement, (i) the Department shall release or return to the Commission any unexpended funds that were to be supplied, or have been supplied, by the Commission, and (ii) the Commission shall not have any further obligations under this Agreement.

(d) The Department shall reimburse the Commission (or, at the direction of the Commission, such other entity as may have provided funds) for all funds provided by the Commission (or on behalf of the Commission) and, to the extent applicable and permitted by law, with interest for the period between the advancement date and the reimbursement date, calculated using the Applicable Rate, that (i) the Department misapplied, used or requisitioned in contravention of the HRTAC Act or any other applicable law, any term or condition of this

Agreement, or any term or condition of the Comprehensive Agreement, or (ii) the Department paid to the Design-Builder or other third party and subsequently recouped.

(e) No later than ninety (90) days following the date on which the Department makes final payment to the Design-Builder pursuant to the Comprehensive Agreement, the Department shall certify to the Commission that that the Department has adhered to all applicable laws and regulations and all requirements of this Agreement.

Section 3.03 Maximum Commission Financial Commitment

(a) Notwithstanding anything to the contrary set forth in this Agreement, the Commission's maximum financial commitment to the Project pursuant to this Agreement (which is subject to Section 7.02 (Appropriations Requirements)), shall not exceed an amount equal to the difference of (i) (A) three billion two-hundred seventeen million dollars (\$3,217,000,000) (as determined in year-of-expenditure dollars) *plus* (B) if the three hundred forty-five million dollars (\$345,000,000) in toll-backed financing contemplated by the Commission's funding plan is received by the Commission, three hundred forty-five million dollars (\$345,000,000), *minus* (ii) the Applicable Award Funds and Excess CTB-Sourced Toll Funds (the difference of (i) and (ii), the "Maximum Commission Financial Commitment"). (For example, (x) if the Commission does not receive the \$345,000,000 in toll-backed financing and does not receive any Applicable Award Funds, the Maximum Commission Financial Commitment would be \$3,217,000,000, (y) if the Commission receives the \$345,000,000 in toll-backed financing, but does not receive any Applicable Award Funds, the Maximum Commission Financial Commitment would be \$3,562,000,000, and (z) if the Commission receives the \$345,000,000 in toll-backed financing and Applicable Award Funds of \$100,000,000 are allocated to the Project, the Maximum Commission Financial Commitment would be \$3,462,000,000.)

(b) Subject to the terms and conditions otherwise set forth in this Agreement, the Maximum Commission Financial Commitment shall be available for the following (and solely the following) purposes (all dollar amounts are year-of-expenditures):

(i) amounts to pay in accordance with Section 3.01(a) (General Rights and Obligations of the Commission) the costs of designing and constructing the Base Scope, other than (A) the South Island Trestle Bridge Replacement Work and (B) Deferred/Preventive Maintenance Work;

(ii) Commission-Funded ROW Costs;

(iii) the No Excuses Incentive Payment, if any, earned by the Design-Builder pursuant to the Comprehensive Agreement, in an amount not to exceed ninety million dollars (\$90,000,000);

(iv) the Commission's *pro rata* share of the Administration Costs;

(v) the Commission-Supported Contingency Reserve, as further described in Section 3.08(b) (Availability of Contingency Reserves; Tracking); and

(vi) the Proposal Payment (as defined in the RFP), if any, to be made to the unsuccessful Offeror pursuant to the RFP, in an amount not to exceed four million dollars (\$4,000,000) (the “Unsuccessful Offeror Proposal Payment”).

Section 3.04 Maximum Cumulative Compensation Amount Under Comprehensive Agreement

(a) The Parties acknowledge and agree that the Comprehensive Agreement will set forth a maximum cumulative compensation amount (the “Maximum Cumulative Compensation Amount”) for each month of construction of the Project and that, in any given month, the Design-Builder shall not be entitled to receive payments from the Department in excess of the Maximum Cumulative Compensation Amount for such month, unless otherwise agreed by the Parties.

(b) The Parties further acknowledge and agree that the Maximum Cumulative Compensation Amounts will be aligned with Exhibit 3 (Project Budget) and Exhibit 5, (Estimated Costs and Payout Schedule) to ensure that the Commission will have sufficient cash flows to pay for work performed in a given month up to the difference of (i) the Maximum Cumulative Compensation Amount for such month minus (ii) any Accelerated Payment (defined below) not previously deducted through application of this clause (ii).

(c) In any circumstance where the Department seeks to advance the funding schedule for the Project by exceeding the Maximum Cumulative Compensation Amount in one or more months, the Department shall submit a written request to the Executive Director explaining the Department’s reasons why the acceleration of the funding schedule is in the best interests of the Project. Within seven (7) days of such written request, the Commission will evaluate the request and determine whether to provide any of the accelerated funding (the Commission’s decision will be made by the Chair and Executive Director, if the amount to be provided is less than twenty million dollars (\$20,000,000)). Any funding provided on an accelerated basis shall be an “Accelerated Payment.”

(d) The foregoing shall not prohibit the Department from providing its own funds to pay the costs of work for which the Commission is responsible under this Agreement in excess of the applicable Maximum Cumulative Compensation Amount(s) and from requesting reimbursement from the Commission of the funds advanced (without interest). The Department recognizes that the Commission’s reimbursement to the Department for having advanced any such funds will be dependent upon (i) the Commission’s cash flow position at the time such a request for reimbursement is submitted and (ii) the extent to which the reimbursement of any such advanced funding is otherwise consistent with the terms of this Agreement, including Exhibit 3 (Project Budget) and Exhibit 5 (Estimated Costs and Payout Schedule).

Section 3.05 Commission Cash Flow Estimates; Reporting; Cash Flow Reserve

(a) The Department shall assist the Commission to periodically update its cash flow estimates for the Project, with the objective of keeping such estimates accurate throughout the performance of the Project; *provided* that any such updates shall not reduce the Maximum Cumulative Compensation Amounts for any month as set forth in the Comprehensive Agreement. The Department shall provide all available information reasonably required by the Commission so

as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the construction of the Project; without limiting the foregoing, the Department shall provide the Commission in a timely manner the reports set forth on Exhibit 6 (Reports to be Provided by the Department).

(b) Beginning with the first month following the Department's issuance of LNTP1 and continuing each month thereafter until the Final Completion Date, the Department shall provide the Executive Director with a monthly report that includes the information described in Exhibit 6 (Reports to be Provided by the Department).

Section 3.06 Development and Procurement Costs

The Department and the Commission have entered into a Standard Project Agreement for the Funding and Administration for the HRCS Preferred Alternative Refinement (UPC 110577) dated March 16, 2017, as amended on December 13, 2018, pursuant to which the Commission agreed to reimburse the Department for up to thirty million dollars (\$30,000,000) in costs incurred with respect to the development and procurement of the Project. Such commitment has been separately fulfilled and does not have any effect on the Maximum Commission Financial Commitment under this Agreement.

Section 3.07 Administration Costs

(a) The Parties shall be responsible for the Administration Costs *pro rata*. For purposes of this Agreement, "Administration Costs" means those costs incurred by the Department following the execution of the Comprehensive Agreement that relate to the administration of the Comprehensive Agreement (other than any compensation or other payments to the Design-Builder pursuant to the Comprehensive Agreement) and are of the type customarily incurred by public owners to administer projects of similar size and scope to the Project, such as, without limitation, the costs described on Exhibit 7 (Examples of Administration Costs). The Department will use best efforts to keep Administration Costs below one hundred twenty-two million dollars (\$122,000,000) in the aggregate (for the avoidance of doubt, costs below such threshold shall be borne ratably). If aggregated Administration Costs exceed one hundred twenty-two million dollars (\$122,000,000), but are less than one hundred thirty-six million dollars (\$136,000,000), the Department will provide written notice and justification to the Commission for the additional Administration Costs (which shall be borne ratably), and such additional Administration Costs shall be paid from the Commission-Supported Contingency Reserve and the Department-Supported Contingency Reserve, as applicable. If Administration Costs exceed one hundred thirty-six million dollars (\$136,000,000) in the aggregate (the "Admin Cost Subcap"), then the Department will be financially responsible for all Administration Costs above the Admin Cost Subcap, *provided that*, the Department may seek, and will be entitled to receive, reimbursement from the Commission for the Commission's ratable share of Administration Costs above the Admin Cost Subcap when the Project has achieved Final Completion and all claims relating to the Project have been resolved or are barred, but only to the extent there is a remaining balance in the Commission-Supported Contingency Reserve. Notwithstanding any other provision of this Agreement, the Administration Costs shall not exceed one hundred fifty million dollars (\$150,000,000) in the aggregate (the "Admin Cost Cap").

(b) Notwithstanding anything to the contrary in Section 3.07(a) (Administrative Costs), the Admin Cost Subcap shall be subject to reduction (and not increase) as follows: if the incurrence by the Department of Administration Costs in excess of one hundred twenty-two million dollars (\$122,000,000) in the aggregate would, after apportioning a ratable share to the Commission, cause the remaining balance of the Commission-Supported Contingency Reserve to fall below the then-applicable Minimum Commission-Supported Contingency Amount, then, for purposes of Section 3.07(a) (Administrative Costs), the ratable share of Administrative Costs in excess of the one hundred twenty-two million dollars (\$122,000,000) threshold that are reimbursable by the Commission shall be limited to those excess costs (the “Covered Excess Costs”) that would not cause the remaining balance of the Commission-Supported Contingency Reserve to fall below the then-applicable Minimum Commission Supported Contingency Amount, and the Admin Cost Subcap will be reduced to an amount equal to the sum of (i) one hundred twenty-two million dollars (\$122,000,000), plus (ii) the quotient determined by dividing (A) the Covered Excess Costs, by (B) the Commission’s *pro rata* share.

Section 3.08 Availability of Contingency Reserves; Tracking

(a) As part of its allocations to the Project for the South Island Trestle Bridge Replacement Work, the Department shall allocate, as a contingency reserve, an amount equal to nine million five hundred seventy-one thousand seven hundred twenty-three dollars (\$9,571,723) (the “Department-Supported Contingency Reserve”), to preserve funding capacity if the costs relating to the South Island Trestle Bridge Replacement Work exceed the costs for that work identified in the Department-Funded Budget.

(b) (i) As part of its allocations to the Project (and a component part of the Maximum Commission Financial Commitment), the Commission shall allocate, as a contingency reserve, an amount equal to three hundred twenty-five million four hundred twenty-eight thousand two hundred seventy-seven dollars (\$325,428,277) (the “Commission-Supported Contingency Reserve”), to preserve funding capacity if the Project costs for which the Commission is responsible under this Agreement (the payment of which is subject to Section 3.01 (General Rights and Obligations of the Commission) and the limitations referenced therein), exceed the costs for that work identified in the Commission-Funded Budget. The Commission-Supported Contingency Reserve shall be allocated initially as follows: (A) one hundred twenty-five million four hundred twenty-eight thousand two hundred seventy-seven dollars (\$125,428,277) from Commission-Controlled Moneys made available by the Commission and (B) two hundred million dollars (\$200,000,000) made available by the Department, pursuant to action by the CTB on March 21, 2019 of its intent to award, on or before July 1, 2019, a SMART SCALE award to the Project in the amount of two hundred million dollars (\$200,000,000) (the “SMART SCALE Funds”) anticipated by Exhibit 3 (Project Budget). Following final action by the CTB to award the SMART SCALE Funds to the Project, the Parties shall allocate the SMART SCALE Funds to the payment of Commission-Funded Design-Build Costs, and the Commission-Controlled Moneys displaced by such allocation will continue to be available as part of the Maximum Commission Financial Commitment, but through the Commission-Supported Contingency Reserve.

(ii) If SMART SCALE Funds are not awarded or the amount awarded is less than the full two hundred million dollars (\$200,000,000), the Department shall make available funds, as and when needed, to replace the SMART SCALE Funds not received (i.e., the

difference), from such other funds lawfully available to the Department for such purpose; the Parties will allocate the replacement funds to the payment of Commission-Funded Design-Build Costs and the Commission-Controlled Moneys displaced by such allocation will continue to be available as part of the Maximum Commission Financial Commitment, but through the Commission-Supported Contingency Reserve.

(c) For the avoidance of doubt, the Department-Supported Contingency Reserve and the Commission-Supported Contingency Reserve are separate, independent reserves and each reserve is available only for the purposes specified in this Agreement for that reserve (and may not be used for any purpose for which the other reserve has been established).

(d) At regular intervals during construction of the Project, including at the expiration of the Scope Validation Period, the Department will reassess in good faith and in consultation with the Commission, taking into account all material information (including, without limitation, any net savings), whether the contingency reserve amounts established pursuant to this Section 3.08 (Availability of Contingency Reserves; Tracking) may be reduced. Within ninety (90) days of determining that the Commission-Supported Contingency Reserve may be reduced, the Department will notify the Commission and the Commission will be entitled to the benefit of the entire reduction in the Commission-Supported Contingency Reserve to the extent permitted by applicable law.

(e) The Department shall maintain an account ledger for each of the Department-Supported Contingency Reserve and the Commission-Supported Contingency Reserve. The beginning balance in each reserve shall be the full amount established under this Agreement. The Department shall reduce the balance maintained with respect to a reserve to account for each payment made out of that reserve under the terms of this Agreement. The Department shall provide the Commission with a monthly report (in such format as the Parties may reasonably agree) identifying, for that month and cumulatively, the adjustments to the balance.

(f) Notwithstanding any other provision of this Agreement that may appear or be construed to the contrary, the Department shall reduce the available balance of the Commission-Supported Contingency Reserve, dollar-for-dollar, by each dollar for which the Commission reimburses the Department under the Standard Project Agreement for the Segment 3 (Capital Improvements) Project - UPC 118376 (also referred to as the Segment 3 Tolling Infrastructure SPA), just as if each such dollar had been expended for a cost of the Project under this Agreement. If Additional Costs are identified in accordance with Section 3.09 (and not otherwise excluded under clause (d) of Section 3.09) and the Commission has funded the entire Commission-Funded Budget, then before the Parties collaborate to consider the solutions enumerated in Section 3.09 (Additional Costs; Claims), the Commission shall make available up to \$8,530,419 to fund such Additional Costs until the Commission has met its Maximum Commission Financial Commitment.

Section 3.09 Additional Costs; Claims

(a) On a quarterly basis, or monthly, if the remaining balance of the Commission-Supported Contingency Reserve is less than the Minimum Commission-Supported Contingency Amount then-required, the Department shall evaluate whether the costs to complete the Project

(that are subject to payment by the Commission), when combined with payments that have been made or that are then pending, could reasonably be expected to exceed the Commission-Funded Budget (such that the Commission will have funded its entire Maximum Commission Financial Commitment). Following completion of this analysis, the Department shall promptly notify the Executive Director of the results of its analysis, and if the Department determines that additional unbudgeted costs may be incurred to complete the Project (“Additional Costs”), the notice shall include (w) a description and itemization of the Additional Costs, (x) an explanation of how the Additional Costs arose and the assumptions in the Commission-Funded Budget and Department-Funded Budget, as applicable, regarding such costs, (y) an itemized estimate of the Additional Costs, and (z) if applicable, the certification required by clause (e) below. If the Department notifies the Commission that Additional Costs may be incurred, then, subject to clause (d) below, the Parties will collaborate and consider the following solutions (in order of priority):

- (i) reducing the Project scope, re-engineering, and/or considering value engineering options;
- (ii) re-applying to the Project any Commission-Controlled Moneys that have been supplanted in the Commission-Funded Budget by any Applicable Award Funds;
- (iii) identifying other funding sources; and
- (iv) terminating the Comprehensive Agreement.

(b) The Parties will implement any mutually-agreed solution. If the respective obligations of the Department and the Commission are modified by the mutually-agreed solution, then such modifications shall be set forth in a mutually acceptable amendment to this Agreement. If the Additional Costs can be offset dollar-for-dollar within the Commission-Funded Budget by effecting adjustments to the scope or design of the Project (and the Commission agrees to the option set forth in clause (i) of Section 3.09(a) (Additional Costs; Claims), then, subject to the other terms and limitations in this Agreement, such Additional Costs shall be paid from Commission-Controlled Moneys.

(c) The Parties acknowledge and agree that Additional Costs could result from one or more claims made by the Design-Builder pursuant to the Comprehensive Agreement. The Department shall promptly notify the Commission if any such claims are made or the Department receives a notice of intent to file a claim or other written communication from the Design-Builder relating to a claim or contractual dispute that could result in increased contract costs, and whether in each such case the claimed amount is expected to become, or result in, Additional Costs (and the estimate thereof) or is expected to have a material adverse effect on the Commission-Supported Contingency Reserve or the Department-Supported Contingency Reserve (and the estimated effect thereon). The Department shall be responsible to handle all such claims and notices of intent, but the Department may not settle any claim or notice of intent to file a claim and thereafter submit it as an Additional Cost pursuant to Section 3.09(a) (Additional Costs; Claims) unless the settlement has been approved by the Commission.

(d) Notwithstanding anything to the contrary set forth herein, if any Additional Cost (including, without limitation, any Additional Cost relating to a Design-Builder claim described

in Section 3.09(c) (Additional Costs; Claims) or other third party claim) either (i) arises out of or relates to the South Island Trestle Bridge Replacement Work or the Deferred/Preventive Maintenance Work, or both; or (ii) arises out of or results from Department Fault, the Department, not the Commission, shall be responsible for such costs.

(e) To the extent that neither item (i) nor item (ii) of Section 3.09(d) (Additional Costs; Claims) applies to any Additional Cost, then the notice required by Section 3.09(a) (Additional Costs; Claims) with respect to such Additional Cost shall be accompanied by a certification from the Department that it has determined in good faith that such Additional Cost neither (i) arises out of or relates to the South Island Trestle Bridge Replacement Work or the Deferred/Preventive Maintenance Work, or both, nor (ii) arises out of or results from Department Fault.

Section 3.10 SMART SCALE and other Award Funding

(a) Upon the award of the SMART SCALE Funds referenced in Section 3.08(b) (Availability of Contingency Reserves; Tracking) and anticipated by Exhibit 3 (Project Budget) (and for which the CTB has evidenced its intent to award), the SMART SCALE Funds will be allocated to the Commission-Funded Design-Build Costs, but the SMART SCALE Funds will not be factored into the calculation of the Maximum Commission Financial Commitment, nor will payments in respect of such award be counted as funds provided by the Commission against the Maximum Commission Financial Commitment.

(b) If the Project receives any funding in addition to the SMART SCALE award of two hundred million dollars (\$200,000,000) anticipated by Exhibit 3 (Project Budget) from sources not already identified in Exhibit 3 (Project Budget) (e.g., INFRA), such award will reduce on a dollar-for-dollar basis the Commission-Controlled Moneys allocated to the Project or required to be funded by the Commission against the Maximum Commission Financial Commitment, except to the extent the Parties agree the basis or the lawful use of such award is to support or replace funding for any Project cost that is not the Commission's responsibility (such as the South Island Trestle Bridge Replacement Work) or to fund Additional Costs, in which case the Department and the Commission shall work together in good faith to determine how such additional funding should be applied to the Project, taking into consideration the reasons why such additional funding became available, and determine if and to what extent such additional funding should replace funding previously committed to the Project by the Commission and/or the Department pursuant to this Agreement.

Section 3.11 Funding the South Island Trestle Bridge Replacement Work

(a) The Department shall be responsible to (i) pay the costs of designing and constructing the South Island Trestle Bridge Replacement Work, (ii) pay its *pro rata* share of the Administration Costs, and (iii) allocate the Department-Supported Contingency Reserve (such costs, which are set forth on Exhibit 3 (Project Budget) collectively, the "South Island Trestle Bridge Replacement Costs").

(b) The Department shall be solely responsible for paying the South Island Trestle Bridge Replacement Costs. For the avoidance of doubt, the South Island Trestle Bridge Replacement Costs will not be supported by the Commission or the HRTF, or by any toll revenues

collected with respect to any facility constructed or improved with funding provided by or from the Commission or the HRTF, including, without limitation, the Project.

(c) The Comprehensive Agreement includes a provision that gives the Department the right, exercisable at any time within one hundred eighty (180) days following execution of the Comprehensive Agreement and without additional consideration, to remove the South Island Trestle Bridge Replacement Work from the Project scope (the “Opt-Out Right”).

(d) The Department has identified a funding source for the South Island Trestle Bridge Replacement Work, other than Commission-Controlled Moneys, toll backed financing, or the anticipated SMART SCALE award, and agrees not to exercise the Opt-Out Right.

Section 3.12 Early Work Funding

(a) The Department acknowledges and agrees that, in no event shall the total aggregate amount of compensation paid by the Commission in respect of Early Work exceed two hundred fifty million dollars (\$250,000,000), unless each of the conditions for the additional Early Work funding set forth in Section 5.1.1.4 of the Comprehensive Agreement are satisfied, in which case the total amount of compensation paid by the Commission in respect of Early Work shall be increased by an additional aggregate amount up to but not in excess of seventy-five million dollars (\$75,000,000) (such amount, the “Additional Early Work Funding”). (For the avoidance of doubt, any Additional Early Work Funding provided by the Commission shall reduce dollar-for-dollar the Commission-Funded Design-Build Costs that would otherwise be payable after NTP.)

(b) In the event the Department terminates the Comprehensive Agreement the Department will refund any Additional Early Work Funding actually paid by the Commission toward the Project if (i) the termination occurred prior to the issuance of NTP or (ii) the termination occurred within ninety (90) days of issuing NTP and, at the time NTP was issued, the Department had actual knowledge of the event or circumstance that was the primary reason for termination.

Section 3.13 Proportionality

(a) Whenever this Agreement requires costs, savings, or payments to be shared by the Parties *pro rata*, the portion of such costs, savings, or payments, as applicable, shared by each Party shall be calculated as follows:

(i) the Department’s share will be measured by applying the Department Sharing Percentage; and

(ii) the Commission’s share will be measured by applying a percentage equal to one hundred percent (100%) minus the Department Sharing Percentage.

Section 3.14 Department’s Covenants for Bond-Related Projects

The Department shall comply in all material respects with the Tax Covenants for Bond-Funded Projects set forth in Exhibit 14 (Tax Covenants for Bond-Funded Projects).

ARTICLE 4.

DELIVERY OF THE PROJECT

Section 4.01 General Obligations of the Department (Delivery)

(a) The Department shall perform or shall cause to be performed in accordance with the Department's standards for highways, bridges and tunnels (and all applicable federal, state, and local laws and regulations) all design and engineering, all environmental work, and all permitting, right of way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions that may be necessary for completion of the Project.

(b) The Department acknowledges and agrees that it is solely responsible for the development, design, construction, and administration of the Project and all engagements, commitments and agreements with the Design-Builder. All such engagements, commitments and agreements with the Design-Builder shall be integrated into and evidenced by the Comprehensive Agreement. The Department shall enter into the Comprehensive Agreement with the Design-Builder on or before May 15, 2019. The final, complete form of the Comprehensive Agreement (including all exhibits, appendices and attachments thereto) shall reflect a fixed price for the Base Scope (Contract Price) of three billion two hundred ninety-nine million nine hundred ninety-seven thousand two hundred twenty-seven dollars (\$3,299,997,227) and shall be in substantially the form attached hereto as Exhibit 8 (Form of Comprehensive Agreement). Before executing and delivering the Comprehensive Agreement, the Department shall provide the Commission with the final, complete form of the Comprehensive Agreement (including all exhibits, appendices and attachments thereto) and shall identify all modifications to the form attached as Exhibit 8 (Form of Comprehensive Agreement). The Department shall not incorporate any material modification into the final, complete form of the Comprehensive Agreement, or thereafter make any material amendment to the Comprehensive Agreement, except for any Work Order permitted under Section 4.03 (Work Orders Increasing the Contract Price; Claims).

(c) The Department shall perform its responsibilities in accordance with the terms of the Comprehensive Agreement, applicable law, and in a manner that is consistent in all material respects with the policies, procedures and practices that the Department uses where the Commonwealth or Department bears the cost of a project. Without limiting the foregoing, the Department shall (i) administer and enforce all contracts with contractors, including, without limitation, the Comprehensive Agreement, and (ii) ensure that the Design-Builder maintains the payment and performance security and insurance in the amounts and with the terms and coverages required by the Comprehensive Agreement. Without limiting the foregoing, the Department shall ensure that the Design-Builder names the Commission, its members, officers, employees, agents and the Commission's bond trustee, Wilmington Trust National Association (or its successor as Commission shall identify in writing to the Department) as additional insureds under all insurance policies.

(d) If the Department determines that a delay will more likely than not prevent the timely completion of a material phase of the Project (e.g., preliminary engineering or right-of-way acquisition), or achievement of Substantial Completion by the Substantial Completion Deadline

or achievement of Final Completion by the Final Completion Deadline, the Department shall notify the Commission in writing and provide the Commission with such information as the Commission may reasonably request, including information pertaining to potential corrective measures and remedies against the Design-Builder. If the Department and the Commission mutually develop a model notice for such purposes, the Department's notice will follow the format of the model.

(e) The Department acknowledges and agrees that the Department is solely responsible to obtain or cause its contractors to obtain, and shall obtain, all permits, permissions and approvals necessary to design, construct and operate the Project, whether before, upon or following Final Completion, including, but not limited to, all those required by the Department and all local land use permits, zoning approvals, environmental permits, and regulatory approvals.

(f) With respect to the management of the Comprehensive Agreement, the Department acknowledges and agrees that it shall:

(i) refrain from taking any of the actions set forth in Section 1 of Exhibit 13 (Limitations on Actions under Comprehensive Agreement) without the prior written consent of the Commission, which consent shall not be unreasonably withheld;

(ii) refrain from taking any of the actions set forth in Section 2 of Exhibit 13 (Limitations on Actions under Comprehensive Agreement) without first consulting the Commission and permitting the Commission a reasonable opportunity to provide input on the advisability of the proposed action, the potential ramifications thereof, and any viable alternatives to the proposed action; and

(iii) either take or refrain from taking, as applicable, any of the actions set forth Section 3 of Exhibit 13 (Limitations on Actions under Comprehensive Agreement) upon its receipt of written request from the Commission;

provided that, with respect to any action that is subject to the requirements of this Section 4.01(f) (General Obligations of the Department (Delivery)), the Commission, acting through the Executive Director, shall have the right to discuss such action directly with the Commissioner.

Section 4.02 Ownership and Use of the Project Following Final Completion

(a) Subject to and consistent with the requirements of Section 7.02 (Appropriations Requirements), upon final payment to the Design-Builder, the Department will own and use the Project for its intended purposes for the duration of the Project's useful life.

(b) Following Final Completion, the Department shall be responsible to operate and maintain the Project at its own cost and expense and without the use of any toll revenues generated by the Project; *provided* that under, and subject to the terms of, the Master Tolling Agreement, the Department may be entitled to use any such toll revenues to pay (i) the costs of collecting and enforcing tolls on the Project (including related back office costs) and (ii) for the installation, operation, and maintenance of the Project's toll collections operating system and equipment.

(c) For the avoidance of doubt, the Commission shall not, under any circumstance, have any responsibility or obligation to operate or maintain the Project, whether before, upon or following Final Completion, to provide funding for roadway operations or maintenance, or to provide funding to correct any defects.

Section 4.03 Work Orders Increasing the Contract Price; Claims

Subject to Section 4.03(f) (*Work Orders Increasing the Contract Price; Claims*), prior to issuing to the Design-Builder any Work Order increasing the Contract Price, the Department shall coordinate with the Commission and, if required under this Section 4.03 (*Work Orders Increasing the Contract Price; Claims*), secure the Commission's approval in accordance with the protocols set forth in this Section 4.03 (*Work Orders Increasing the Contract Price; Claims*). Similarly, subject to Section 4.03(i) (*Work Orders Increasing the Contract Price; Claims*), prior to resolving any claim, the Department shall coordinate with the Commission and, if required under this Section 4.03 (*Work Orders Increasing the Contract Price; Claims*), secure the Commission's approval in accordance with the protocols set forth in this Section 4.03 (*Work Orders Increasing the Contract Price; Claims*).

(a) With respect to proposed Work Orders arising from any Differing Roadway and Bridge Improvements Scope Issues identified by Design-Builder during the Scope Validation Period, the Department shall have sole authority to execute any such proposed Work Orders up to a total aggregate value of twenty percent (20%) of the Commission-Supported Contingency Reserve; *provided that*, prior to executing a proposed Work Order with a value exceeding twenty million dollars (\$20,000,000) (net increase), the Department shall (x) provide to the Chair and the Executive Director a written briefing report regarding the nature of such proposed Work Order and the basis for the Department's desire to execute it, (y) timely respond to any reasonable requests by the Commission for additional information, and (z) allow the Chair and/or Executive Director (along with the Commission's advisors) a reasonable opportunity to provide input on the proposed Work Order. Should the value of any Work Order arising from any Differing Roadway and Bridge Improvements Scope Issues identified during the Scope Validation Period, when taken together with all other Work Orders arising from issues encountered during the Scope Validation Period, cause the total aggregate value to exceed twenty percent (20%) of the Commission-Supported Contingency Reserve Amount, the Department shall obtain the written approval of Commission in accordance with clause (e) below prior to executing any additional Work Orders arising from any Differing Roadway and Bridge Improvements Scope Issues identified by the Design-Builder during the Scope Validation Period.

(b) With respect to proposed Work Orders arising either (i) from issues other than Differing Roadway and Bridge Improvements Scope Issues identified by the Design-Builder during the Scope Validation Period or (ii) after the Scope Validation Period, the Department shall have sole authority to execute such Work Orders up to a value of twenty million dollars (\$20,000,000) (net increase) per Work Order; *provided that*, prior to executing a proposed Work Order with a value exceeding five million dollars (\$5,000,000) (net increase), the Department shall (x) provide to the Chair and/or the Executive Director a written briefing report regarding the nature of such proposed Work Order and the basis for the Department's desire to execute it, (y) timely respond to any reasonable requests by the Commission for additional information, and (z) allow the Chair and/or Executive Director (along with the Commission's advisors) a reasonable

opportunity to provide input on the proposed Work Order. Should the value of any proposed Work Order exceed twenty million dollars (\$20,000,000), the Department shall obtain the written approval of the Commission in accordance with clause (e) below prior to executing such proposed Work Order.

(c) In addition to the requirements of clause (a) and clause (b) above, if the execution of any proposed Work Order would cause the remaining balance of the Commission-Supported Contingency Reserve to fall below the then-applicable Minimum Commission-Supported Contingency Amount (as defined in clause (d) below), then the Department shall obtain the written approval of the Commission in accordance with clause (e) below prior to executing such proposed Work Order.

(d) The “Minimum Commission-Supported Contingency Amount” shall be determined as follows:

(i) for the period between the date on which the Department issues LNTP1 and the date that is ninety (90) days following the expiration of the Scope Validation Period, the Minimum Commission-Supported Contingency Amount shall be equal to eighty percent (80%) of the Commission-Supported Contingency Reserve;

(ii) for the period between the ninety-first (91st) day following the expiration of the Scope Validation Period and the date on which the Department issues NTP, the Minimum Commission-Supported Contingency Amount shall be equal to sixty percent (60%) of the Commission-Supported Contingency Reserve;

(iii) for the period between the Department’s issuance of NTP and the date on which the Design-Builder completes tunnel excavation work the Minimum Commission-Supported Contingency Amount shall be equal to fifteen percent (15%) of the Commission-Supported Contingency Reserve;

(iv) for the period between the Design-Builder’s completion of the tunnel excavation work and the Final Completion Date, the Minimum Commission-Supported Contingency Amount shall be equal to seven percent (7%) of the Commission-Supported Contingency Reserve; and

(v) for the period between the Final Completion Date and the date on which all claims relating to the Project are resolved, the Minimum Commission-Supported Contingency Amount shall be equal to zero percent (0%) of the Commission-Supported Contingency Reserve.

(e) Whenever written approval from the Commission is required pursuant to this Section 4.03 (Work Orders Increasing the Contract Price; Claims) prior to the Department’s execution of a proposed Work Order, the Department’s request for such approval will be processed by the Commission in accordance with the following procedures.

(i) Written approval of the Chair and the Executive Director, delivered after obtaining specific authorization from the Commission’s governing body, shall be required with respect to any proposed Work Order that either (x) exceeds twenty million dollars

(\$20,000,000) or (y) would surpass the aggregate limit set forth in clause (ii) below. The Commission's governing body will meet to consider on the Department's request for approval for any such Work Order within fifteen (15) calendar days of the Department's written request to the Commission for approval.

(ii) Written approval of the Chair and the Executive Director (without the necessity of specific authorization from the Commission's governing body) shall be required with respect to any proposed Work Order with a value equal to or less than twenty million dollars (\$20,000,000) (up to an aggregate limit of fifty million dollars (\$50,000,000) per project year for all such Work Orders, subject only to adjustments as set forth in Section 4.03(e)(iii) (*Work Orders Increasing the Contract Price; Claims*)). The Chair and the Executive Director will act on the Department's request for approval of any such Work Order within seven (7) calendar days of Department's written request to Commission for approval.

(iii) With respect to any proposed Work Order requiring the prior approval of Commission's full governing body, if a meeting of the Commission governing body is called within fifteen (15) calendar days of the Department's written request to the Commission for approval but the Commission's governing body is unable to consider the proposed Work Order at the meeting because a quorum is not present or the members present do not have the requisite voting power to act, then, within an additional fifteen (15) days, the Commission's governing body shall call another meeting to consider such proposed Work Order. If the Commission still is unable to consider the proposed Work Order at the meeting within such additional fifteen (15) days,, then for that Work Order, the aggregate annual limit of fifty million dollars (\$50,000,000) under Section 4.03(e)(ii) (*Work Orders Increasing the Contract Price; Claims*) with respect to decisions by the Chair and the Executive Director shall be deemed to have been increased by an additional fifty million dollars (\$50,000,000) (to an aggregate of one hundred million dollars (\$100,000,000)) and such proposed Work Order shall then be treated as a Work Order that is subject to review and approval by the Chair and the Executive Director under Section 4.03(e)(ii) (*Work Orders Increasing the Contract Price; Claims*) provided the value of such proposed Work Order is within the new aggregate limit established pursuant to this Section 4.03(e)(iii) (*Work Orders Increasing the Contract Price; Claims*).

(iv) With respect to any proposed Work Order requiring the prior approval of the Chair and the Executive Director, if the Chair and the Executive Director do not provide the Department with an approval or rejection of the proposed Work Order within seven (7) calendar days of the Department's request to the Commission for approval, the proposed Work Order will be deemed approved by the Commission.

(v) For any proposed Work Order requiring prior written approval of the Commission, the Department shall (x) provide to the Commission a written briefing report regarding the nature of such proposed Work Order and the basis for the Department's desire to execute it and (y) timely respond to any reasonable requests by the Commission for additional information.

(f) Except as provided in Section 4.03(g) (Work Orders Increasing the Contract Price; Claims), the requirements of this Section 4.03 (Work Orders Increasing the Contract Price; Claims) shall not apply with respect to any Work Order either (i) arising out of or relating to the South Island Trestle Bridge Replacement Work or the Deferred/Preventive Maintenance Work, or both, or (ii) arising out of or resulting from Department Fault. For those Work Orders, however, the Department shall keep the Commission informed in a timely manner when such a Work Order is being considered and of its ultimate disposition, and shall provide the Commission such information concerning such Work Orders as the Commission may reasonably request, including, without limitation: work description; cost and delay implications of the Work Order; and effect on Administration Costs and reserves.

(g) To the extent that Section 4.03(f) (Work Orders Increasing the Contract Price; Claims) does not apply to a Work Order, then, for each such Work Order, the Department shall provide to the Commission a certification that the Department has determined in good faith that the Work Order neither (i) arises out of or relates to the South Island Trestle Bridge Replacement Work or the Deferred/Preventive Maintenance Work, or both, nor (ii) arises out of or results from Department Fault.

(h) The Department shall promptly notify the Commission if any claim is made or the Department receives a notice of intent to file a claim or other written communication from the Design-Builder relating to a claim or contractual dispute (whether during or after the Scope Validation Period) that could result in increased contract costs, and whether in each such case the claimed amount is expected to have a material adverse effect on the Commission-Supported Contingency Reserve or the Department-Supported Contingency Reserve (and the estimated effect thereon). Any resolution of such claim proposed by the Department shall be subject to clause (a), clause (b) and clause (c) above as if the amount to be paid under the proposed resolution was a proposed Work Order in an equivalent amount.

(i) Except as provided in Section 4.03(j) (Work Orders Increasing the Contract Price; Claims), the requirements of this Section 4.03 (Work Orders Increasing the Contract Price; Claims) shall not apply with respect to any claim either (i) arising out of or relating to the South Island Trestle Bridge Replacement Work or the Deferred/Preventive Maintenance Work, or both, or (ii) arising out of or resulting from Department Fault. For those claims, however, the Department shall keep the Commission informed in a timely manner when such a claim is being considered and of its ultimate disposition, and shall provide the Commission such information concerning such claims as the Commission may reasonably request.

(j) To the extent that Section 4.03(i) (Work Orders Increasing the Contract Price; Claims) does not apply to a claim, then, for each such claim, the Department shall provide to the Commission a certification that the Department has determined in good faith that the claim neither (i) arises out of or relates to the South Island Trestle Bridge Replacement Work or the Deferred/Preventive Maintenance Work, or both, nor (ii) arises out of or results from Department Fault.

Section 4.04 [Intentionally Omitted.]

Section 4.05 Contract Price Increases from Unit Price Work or Commodities Adjustments

The Comprehensive Agreement contains certain items, which are summarized on Exhibit 9 (Unit Price Work and Commodity Adjustment Items), for which actual corresponding compensation under the Comprehensive Agreement will fluctuate, without a corresponding Work Order, based on, as applicable (and as described on Exhibit 9 (Unit Price Work and Commodity Adjustment Items)), the actual units of work undertaken by the Design-Builder or the pricing of the applicable commodity. For such items, to the extent the cost of such items exceeds the amount estimated in the Design-Builder's price proposal, such excess will be paid out of the Commission-Supported Contingency Reserve or the Department-Supported Contingency Reserve, as applicable. In order to properly account for the effect of such excess costs, with each payment requisition under Section 5.02 (Payment Requisitions), the Department shall provide reasonable detail regarding increases resulting from unit pricing or commodities adjustments, including with respect thereto an identification of the aggregate amount invoiced that is payable out of the Commission-Supported Contingency Reserve or the Department-Supported Contingency Reserve. Solely for purposes of this Section 4.05 (Contract Price Increases from Unit Price Work or Commodities Adjustments), the Bridge Repair Option Work shall not be treated as unit price work and the payment of the cost of such work shall be in accordance with Section 4.09 (Optional Work: I-564 Direct Connections; Bridge Repair Option Work).

Section 4.06 Changes to Comprehensive Agreement that Reduce Contract Price

(a) With respect to modifications to the Comprehensive Agreement that reduce the Contract Price, (i) the Department will be entitled to any savings arising from reductions in costs relating to the South Island Trestle Bridge Replacement Work and (ii) the Commission will be entitled to any savings arising from reductions in costs relating to work other than the South Island Trestle Bridge Replacement Work. For modifications to the Comprehensive Agreement that reduce the Contract Price, the Parties will meet and confer to arrive at an equitable allocation in accordance with (i) and (ii) above, and if the Parties determine the savings are not reasonably divisible between (i) and (ii) above, the Parties will share such savings *pro rata* unless otherwise mutually agreed. If such a modification results in savings to the Commission, the Commission-Funded Design-Build Costs shall be reduced by the amount thereof (the "Commission-Cost Reduction Amount").

(b) The Commission-Cost Reduction Amount shall be available to pay the cost of the Required Work, if any, in accordance with Section 4.09(b) (Optional Work: I-564 Direct Connections; Bridge Repair Option Work). If all or any portion of the Commission-Cost Reduction Amount remains following the use of such funds to pay the cost of Required Work the Commission-Supported Contingency Reserve will be increased by the amount of any remaining Commission-Cost Reduction Amount. For the avoidance of doubt, neither (i) the use of the Commission-Cost Reduction Amount to pay the cost of Required Work nor (ii) any increase to the Commission-Supported Contingency Reserve funded using the Commission-Cost Reduction Amount shall result in an increase to the Maximum Commission Financial Commitment.

Section 4.07 No Excuses Incentive Payment

(a) The Department shall include in the Comprehensive Agreement a mechanism by which the Design-Builder may earn a no excuses incentive payment for the early achievement of Substantial Completion (the “No Excuses Incentive Payment”) in an amount not to exceed ninety million dollars (\$90,000,000). The amount of the No Excuses Incentive Payment shall decline, progressively to zero dollars (\$0) over a five-month period during which the Design-Builder may achieve Substantial Completion, with no incentive payable if Substantial Completion is achieved on or after September 1, 2025.

(b) Notwithstanding any potential adjustments to the Contract Times under the Comprehensive Agreement to which the Design-Builder may be entitled, the deadlines relating to the calculation and payment of the No Excuses Incentive Payment shall not be adjusted for any cause, reason, or circumstance whatsoever, except upon the mutual agreement of the Department and the Commission. The Department shall not pay the No Excuses Incentive Payment (and the Commission shall not be liable therefor under Section 3.01(a) (General Rights and Obligations of the Commission)) unless all applicable conditions under the Comprehensive Agreement, including, without limitation, the Design-Builder’s release of all claims relating to the Project in accordance with the terms thereof, have been satisfied in full.

Section 4.08 Delay Liquidated Damages and Other Damages and Recoveries

(a) The Department shall include in the Comprehensive Agreement a liquidated damages regime whereby the Design-Builder is assessed liquidated damages if (i) Substantial Completion is not achieved by the Substantial Completion Deadline or (ii) Final Completion is not achieved by the Final Completion Deadline (such liquidated damages, the “Delay Liquidated Damages”).

(b) In the administration or enforcement of the Comprehensive Agreement, the Department may also receive certain other damages payments, insurance proceeds or recoveries from third parties, including, without limitation, payments from guarantors, sureties or insurers (collectively, “Other Damages and Recoveries”).

(c) Unless otherwise agreed by the Parties, the Delay Liquidated Damages paid by the Design-Builder to the Department and any Other Damages and Recoveries received by the Department (including any payments received under any guarantee, letter of credit, surety bond or other performance security instrument in respect of such Delay Liquidated Damages or Other Damages and Recoveries) will be shared by the Parties *pro rata*.

Section 4.09 Optional Work: I-564 Direct Connections; Bridge Repair Option Work

(a) Pursuant to the RFP, the Department has solicited pricing for the design and construction of the I-564 Direct Connections, as further described in Exhibit 2 (Project Scope), as a discrete line item in the price proposals submitted by the Offerors. Under the Comprehensive Agreement, the I-564 Direct Connections work shall be an option and shall not be added to the scope of work to be performed by the Design-Builder unless mutually-agreed by the Parties (and subject to the identification of a funding mechanism for the I-564 Direct Connections).

(b) Under the Comprehensive Agreement, the Bridge Repair Option Work shall be an option and shall not be added to the scope of work to be performed by the Design-Builder unless and until that work is addressed in the manner described in this Section 4.09(b) (Optional Work: I-564 Direct Connections; Bridge Repair Option Work).

(i) The Department shall give the Commission not less than thirty (30) days' notice of the Department's intent to exercise the option. Promptly following the Commission's receipt of such notice, the parties shall meet to review the scope of the Bridge Repair Option Work and to mutually determine, acting reasonably, which components, if any, of the Bridge Repair Option Work constitute Deferred/Preventive Maintenance Work and which components, if any, of the Bridge Repair Option Work constitute work that is required to be completed in order to achieve Final Completion in accordance with the standards and specifications applicable to the Project and is not otherwise Deferred/Preventive Maintenance Work (such work required to achieve Final Completion, the "Required Work").

(ii) The Department shall be entitled to add to the scope of work to be performed by the Design-Builder, via Work Order, the Bridge Repair Option Work that the parties determine constitutes Required Work and the cost of such work shall be funded in accordance with clause (iii) below. The Department shall be entitled to add to the scope of work to be performed by the Design-Builder, via Work Order, the Bridge Repair Option Work that the parties determine constitutes Deferred/Preventive Maintenance Work if and only to the extent the Department assumes responsibility to pay the costs of such work from funds other than Commission-Controlled Moneys. For the avoidance of doubt, the Commission shall not be responsible in any manner for any costs associated with any Deferred/Preventive Maintenance Work; instead, all such costs shall be the sole responsibility of the Department.

(iii) The cost of the Required Work shall be funded as follows:

(A) *first*, from the savings, if any, to the Department arising from reductions in costs relating to the South Island Trestle Bridge Replacement Work pursuant to Section 4.06(a) (Changes to Comprehensive Agreement that Reduce Contract Price);

(B) *second*, to the extent the funds described in clause (A) above are not sufficient to pay the cost of the Required Work, from the savings, if any, to the Commission arising from reductions in costs relating to work other than South Island Trestle Bridge Replacement Work pursuant to Section 4.06(a) (Changes to Comprehensive Agreement that Reduce Contract Price); and

(C) *third*, to the extent the funds described in clause (A) and clause (B) are not sufficient to pay the cost of the Required Work, by the Department; *provided*, that upon Final Completion, the Department shall be entitled to request reimbursement of such costs in accordance with clause (iv) below.

(iv) If (x) the Project achieves Final Completion, (y) all claims relating to the Project have been resolved or are barred, and (z) the Commission has satisfied all of its payment obligations under this Agreement, expressly including all of its obligations under Section 3.01(a) (General Rights and Obligations of the Commission) and Section 3.07 (Administration Costs), there is still a remaining balance in the Commission-Supported Contingency Reserve, the Department may request reimbursement from the Commission of the amounts paid by the Department to the Design-Builder for the Required Work in accordance with Section 4.09(b)(iii)(C) (Optional Work: I-564 Direct Connections; Bridge Repair Option Work), not to exceed the remaining balance in the Commission-Supported Contingency Reserve. Upon receipt of such request, the parties will meet and confer in good faith to confirm that the Department is entitled to request reimbursement pursuant to the preceding sentence. In connection therewith, the Department shall deliver such certifications as the Commission may reasonably request. If (and to the extent) the Commission determines, in its reasonable discretion, that the reimbursement request has been properly made (and, for the avoidance of doubt, does not exceed the remaining balance in the Commission-Supported Contingency Reserve), the Commission will reimburse the Department the amount properly requested.

Section 4.10 Books and Records

(a) The Department shall maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as-built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations.

(b) The Department shall maintain complete and accurate financial records relating to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable Commonwealth or federal records retention laws or regulations.

(c) The Department shall provide the Commission with electronic copies of (i) all monthly reports prepared by Design-Builder and submitted to the Department pursuant to the Comprehensive Agreement and (ii) upon the request of the Commission, copies of any investigation or inspection reports that the Department may have produced in connection with a review of the Design-Builder's books and records.

(d) The Department acknowledges and agrees that the Commission shall, upon reasonable notice, be afforded access to the Design-Builder's Books and Records in accordance with Section 7.5 (*Record Maintenance and Retention of Records*) of the Comprehensive Agreement.

(e) The Commission shall, upon making final payment to the Department for the Project, retain copies of all contracts, financial records, design, construction, and as-built Project drawings and plans, if any, developed pursuant to or in association with the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.

Section 4.11 Commission Interest in Project Assets

(a) The Department agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by the Commission under this Agreement (“Assets”) for the designated transportation purposes of the Project and in accordance with applicable law throughout the useful life of each such Asset. If the Department intends to sell, convey, or dispose any Asset funded with the Commission funds or intends to use any Asset for a purpose inconsistent with this Agreement, the Department shall notify the Executive Director in writing of any such intent before further action is taken by the Department in furtherance thereof. Upon receiving notification from the Department, the Executive Director shall notify the Commission’s governing body of the Department’s intended action(s). The Parties shall, thereafter, meet and confer to discuss what measures need to be taken regarding the Department’s proposed sale, conveyance, disposition, or use of any such Asset(s) so as to ensure compliance with all applicable requirements of the HRTAC Act (without limiting the foregoing, the Department acknowledges that under the HRTAC Act and applicable law, the Commission is vested with the right to impose and collect tolls on facilities constructed by the Commission). All recommendations, proposed remedial actions developed by the Parties’ designated representatives, and/or any proposed sale, conveyance or disposal of any Asset agreed upon during the meet and confer process shall be formally presented to the Commission and the Commissioner for their respective approval. Notwithstanding anything to the contrary in this Agreement, the Department acknowledges and agrees that (i) any concession agreement or similar arrangement related to or impacting the Project (or any part thereof) in any manner will be implemented only upon the parties’ mutual agreement and (ii) the Commission shall be entitled to withhold its approval for such a concession agreement or similar arrangement, whether initiated or to be implemented in accordance with the PPTA or otherwise, for any reason whatsoever as may be determined in the Commission’s sole discretion, including but not limited to any other arrangement that would reasonably be expected to cause any of the Commission’s outstanding bonds to be treated as taxable bonds or private activity bonds.

(b) If the Willoughby Spit Staging Area is acquired for the Project, then, promptly following the achievement of Final Completion, the Department shall ensure that all equipment is removed from the Willoughby Spit Staging Area (and that any other effects of the use are eliminated) and shall convey such property to the Commission at no further cost and expense to the Commission, unless the Commission otherwise directs.

Section 4.12 Early Termination of Comprehensive Agreement

(a) If the Department determines that termination of the Comprehensive Agreement is in the best interests of the Department and the Commission, the Department shall consult with the Commission regarding such determination. If the Commission disagrees with the Department’s determination, the Parties shall resolve such disagreement in accordance with the dispute resolution procedures set forth in Article 6 (Dispute Resolution). If the Commission agrees with the Department’s determination or the Department’s termination of the Comprehensive Agreement is otherwise authorized through the dispute resolution procedures, then the Department may proceed to terminate the Comprehensive Agreement.

(b) The Department shall not finalize any settlement with the Design-Builder relating to a termination of the Comprehensive Agreement for the Department's convenience without the Commission's prior approval of any such settlement. Unless the Parties otherwise agree, each Party shall be responsible for paying its share of any such settlement on a *pro rata* basis.

(c) The Department shall terminate the Comprehensive Agreement upon the written request of the Commission if such request is due to any of the following circumstances:

(i) The Department has the right to terminate the Comprehensive Agreement for cause pursuant to Section 11.2 of Exhibit 1 to the Comprehensive Agreement (*General Conditions of Contract Between Department and Design-Builder*) but the Department has failed to exercise such right, and such failure is reasonably expected to have a material adverse effect on the Commission, following consultation between the Commission and the Department regarding the reasons, if any, for the Department's failure to exercise such right.

(ii) The Commission determines in good faith that (A) either (1) the Commission has suffered a material adverse change in its ability to satisfy its obligations under this Agreement or (2) the Commission's funding plan for the Project is unsustainable, and (B) it is in the best interests of the Commission that the Department terminate the Comprehensive Agreement for convenience pursuant to Article 8 of the Comprehensive Agreement; *provided* the Department shall have no obligation to terminate the Comprehensive Agreement pursuant to this Section 4.12(c)(ii) *Early Termination of Comprehensive Agreement* if and only if the Department assumes responsibility to pay the cost of the Project using funding sources other than Commission-Controlled Moneys.

(iii) (A) The Department fails or refuses either to (1) enforce any of its material rights under the Comprehensive Agreement or (2) require compliance by the Successful Offeror of any of its material obligations thereunder, in either case, despite repeated Commission requests to the Department that it do so; (B) such failure or refusal of the Department is reasonably expected to have a material adverse effect on the Commission; and (C) the Commission determines in good faith that it is in the Commission's best interests that the Department terminate the Comprehensive Agreement for convenience pursuant to Article 8 of the Comprehensive Agreement. The Department shall have sixty (60) days following the written request of the Commission to terminate the Comprehensive Agreement to remedy such failure before the Department's duty to terminate the Comprehensive Agreement is effective.

(iv) The Commission determines, following the parties inability to reach agreement on the Master Tolling Agreement (i) on or before the later of (a) October 31, 2019, or (b) the Design-Builder's achievement of the LNTP1 Completion Milestone under the Comprehensive Agreement, or (ii) by April 30, 2020 without regard to the Design-Builder's achievement of the LNTP1 Completion Milestone under the Comprehensive Agreement, that it is in its interest to terminate the Comprehensive Agreement; *provided* that the Commission shall be responsible for all Project costs through the date of termination and all reasonable costs incurred by the Department pursuant to the terms of the Comprehensive Agreement to terminate the Comprehensive Agreement.

(d) If, upon terminating the Comprehensive Agreement, the Department takes possession of any materials, equipment (including, for the avoidance of doubt, the tunnel boring machine), scaffolds, tools, appliance, or other assets, the Department shall hold such assets in trust for the benefit of the Commission and the Department will liquidate such assets in such manner as the Parties may reasonably agree.

(e) Following the termination of the Comprehensive Agreement, if the Department negotiates a new comprehensive agreement, the Department shall obtain the prior written consent of the Commission before entering into such new comprehensive agreement if (i) the commercial terms and conditions of the new comprehensive agreement differ in an adverse way in any material respect (to the Department or the Commission) from those of the Comprehensive Agreement, (ii) the performance security requirements under the new comprehensive agreement differ from those under the Comprehensive Agreement in a way that is adverse in any material respect to the Department or the Commission and/or (iii) the replacement design-builder does not have substantially the same financial capacity and technical capability as the Design-Builder.

ARTICLE 5.

ADMINISTRATION OF THE AGREEMENT

Section 5.01 Program Coordinators

Each Party shall assign a person to serve as its program coordinator (the “Program Coordinator”) for the Project, who will be responsible for review of the Project on behalf of it for purposes of ensuring the Project is being undertaken in compliance with this Agreement. Unless a different person is assigned, the Department’s Senior Representative shall serve as its Program Coordinator, and the Commission’s Executive Director shall serve as its Program Coordinator. The Commission’s Program Coordinator will be responsible for overseeing, managing, reviewing, and processing, in consultation with the Executive Director and the CFO (assuming other persons are serving in those capacities), all payment requisitions submitted by the Department for the Project. The Commission’s Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the scope of the Project or the Exhibit 3 (Project Budget).

Section 5.02 Payment Requisitions

Subject to Section 3.03 (Maximum Commission Financial Commitment) and Section 3.04 (Maximum Cumulative Compensation Amount Under Comprehensive Agreement):

(a) Design-Build Requisitions

(i) Upon the Department’s receipt of each request for payment from the Design-Builder (each a “DB Payment Request”), the Department shall provide to the Executive Director such DB Payment Request along with a request for payment in the form set forth in Exhibit 10 (Form of Payment Requisition – Design-Build) (each, a “Department DB Payment Request”). The Department DB Payment Request will request the entire amount shown in the DB Payment Request for which the Commission may be responsible

under this Agreement (the “Initial DB Commission Payment Amount”), and set forth the date by which the Department will make payment to the Design-Builder, which date shall be no earlier than five (5) Business Days following the Executive Director’s receipt of the Department DB Payment Request. On or before the date that is three (3) Business Days prior to the date on which the Department will make payment to the Design-Builder, the Commission shall pay to the Department the Initial DB Commission Payment Amount.

(ii) Prior to and after its receipt of the Initial DB Commission Payment Amount, the Department shall review in detail the DB Payment Request consistent with its standard practices, procedures, and protocols for review of a request for payment. After review, the Department will pay to the Design-Builder any compensation due to the Design-Builder under the terms of the Comprehensive Agreement, consistent with the Department’s detailed review of the corresponding DB Payment Request. Thereafter, the Department shall provide to the Commission for each payment made by the Department to the Design-Builder (i) detailed summaries of actual project costs incurred with supporting documentation as determined by the Commission and (ii) a certification in the form of Exhibit 11 (Form of Payment Certification – Design-Build).

(iii) If the Initial DB Commission Payment Amount is greater than the amount actually forwarded by the Department to the Design-Builder covering costs for which the Commission is responsible under this Agreement for any given Department DB Payment Request, the Department shall notify the Commission in writing and such additional amount shall be credited to the Commission for the purposes of the next-occurring Department DB Payment Request (and may be used by the Commission to offset its payment of the Initial DB Commission Payment Amount corresponding to such next-occurring Department DB Payment Request) or refunded to the Commission if there is no such next-occurring Department DB Payment Request.

(b) Administration Cost Requisitions

(i) The Department shall provide to the Executive Director requests for payment of Administration Costs in the form set forth in Exhibit 12 (Form of Payment Requisition – Administration Costs) (each, a “Department Admin Payment Request”) that include (i) the Commission’s standard payment requisition(s), containing detailed summaries of actual Administration Costs incurred with supporting documentation as determined by the Commission and (ii) certifications that all Administration Costs were incurred in the performance of work for the Project as authorized by this Agreement.

(ii) The Commission shall route to the Program Coordinator all Department Admin Payment Requests and the summaries of actual costs submitted to the Commission for the Project. After submission to the Commission, the Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission’s compliance with the terms of this Agreement. The Program Coordinator will then make a recommendation to the CFO, if different than the Executive Director, and the Executive Director whether to authorize payment, refuse payment, or seek additional information from the Department. If the payment requisition is sufficient as submitted, the undisputed portion of the payment will

be made within fifteen (15) days of receipt. If the payment requisition is, in the Commission's reasonable judgment, deemed insufficient or is otherwise disputed, within ten (10) days of receipt, the Program Coordinator will notify the Department in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed in order to authorize the payment request. The Commission will make payment of all undisputed amounts within fifteen (15) days of the date on which the Commission determines that the Department has corrected all deficiencies or inaccuracies to the Commission's reasonable satisfaction.

(c) The Commission shall not, under any circumstances, be required to authorize payment for any work performed by or on behalf of the Department, including any Administrative Costs, that are not in conformity with the requirements of the HRTAC Act or this Agreement.

(d) The Commission shall route all of the Department's accelerated or supplemental requests for funding from the Commission under Section 3.04 (Maximum Cumulative Compensation Amount Under Comprehensive Agreement) and Section 3.09 (Additional Costs; Claims) to the Executive Director.

(e) The Commission acknowledges and agrees that if, as a result of either the Commission's review of any payment requisition or any Commission compliance review, the Commission staff determines that the Department is required under Section 3.02(d) (General Obligations of the Department (Funding)) to reimburse funds to the Commission, the Commission staff will promptly advise the Executive Director, who in turn will advise the Department in writing. The Department will thereafter have thirty (30) days to respond in writing to the Commission's initial findings. If the Commission makes a final determination that the Department is required under Section 3.02(d) (General Obligations of the Department (Funding)) to reimburse funds to the Commission, the Parties shall engage in dispute resolution as provided in Article 6 (Dispute Resolution). Pending final resolution of the matter, the Commission will withhold further funding on the Project. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either Party's legal rights or available legal remedies.

Section 5.03 Periodic Compliance Reviews

Upon advance notice to the Department, the Commission shall have the right to conduct periodic compliance reviews of the Project so as to assess whether the work being performed likely remains within the scope of this Agreement, the HRTAC Act, and other applicable law. Such compliance reviews may include review of the Department's financial records for the Project and on-Project site inspections. The Department shall provide such assistance with on-Project site inspections as the Commission may reasonably request.

ARTICLE 6.

DISPUTE RESOLUTION

Section 6.01 Disputes under the Agreement

(a) The Parties agree to use reasonable efforts to promptly resolve any dispute under this Agreement pursuant to this Section 6.01 (Disputes under the Agreement).

(b) If any dispute arises in relation to any aspect of this Agreement, the Parties shall consult in good faith in an attempt to come to an agreement. If the dispute cannot be resolved through such consultation, then, upon the request of either Party, the Chair and the Commissioner shall meet as soon as possible, but in no event later than sixty (60) days after such request is made, to attempt to resolve such dispute. Prior to any meeting(s) between the Chair and the Commissioner, the Parties will exchange relevant information that will assist the Parties in resolving the dispute or disagreement. If the Chair and the Commissioner determine that the dispute cannot be resolved to the mutual satisfaction of both Parties within sixty (60) days after their consultation and attempt to come to an agreement (or such other period as they may mutually agree), despite their good faith efforts, then either Party may file a legal action pursuant to Section 6.01(c) (Disputes under the Agreement) below.

(c) All litigation between the Parties arising out of or pertaining to this Agreement shall be filed, heard, and decided in either the Circuit Court for the City of Richmond, Virginia, Division I or the Circuit Court for the City of Chesapeake, Virginia, which courts will have exclusive jurisdiction and venue. Satisfaction of the procedures set forth in this Section 6.01 (Disputes under the Agreement) shall be a condition precedent to instituting a legal action in court except with respect to legal action seeking injunctive or equitable relief on an emergency basis.

(d) Pending final resolution of any dispute (except with respect to disputes regarding the cause for terminating this Agreement or arising under Section 3.02(d) (General Obligations of the Department (Funding))), the Parties will continue to fulfill their respective obligations under this Agreement.

(e) Neither Party will seek or accept an award of attorneys' fees or costs incurred in connection with the resolution of a dispute pursuant to the provisions of this Section 6.01 (Disputes under the Agreement).

(f) THE PARTIES HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHTS THAT ANY MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY ACTION, PROCEEDING, COUNTERCLAIM OR DEFENSE BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN ANY CONNECTION WITH THIS AGREEMENT, OR WITH RESPECT TO ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO RELATING TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR ALL PARTIES ENTERING INTO THIS AGREEMENT. THIS PROVISION APPLIES ONLY TO SUITS BETWEEN THE PARTIES ARISING OUT OF OR RELATED TO THE AGREEMENT AND DOES NOT APPLY TO THIRD-PARTY CLAIMS OR SUITS. Each of the Parties (i) certifies that no representative, agent, attorney or any other Person has represented, expressly or otherwise, that such other Person would not, in the event of any suit, action or proceedings relating to this Agreement, seek to enforce the foregoing waiver and (ii) acknowledges that it has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 6.01(f) Disputes under the Agreement).

Section 6.02 Disputes under the Comprehensive Agreement

If, under the Comprehensive Agreement, the Department and Design-Builder engage in dispute resolution, (a) any and all terms of any settlement of that dispute (whether arising prior to or after the initiation of litigation) shall be subject to Commission approval if any such terms (i) would result in any Additional Cost, in which case the procedures in Section 3.09(c) (Additional Costs; Claims) shall apply, or (ii) would require Commission approval under Section 4.03 (Work Orders Increasing the Contract Price; Claims), if treated as a Work Order or claim, as applicable, under Section 4.03 (Work Orders Increasing the Contract Price; Claims) those Sections, and (b) responsibility for the Department's financial obligations pursuant to such settlement shall be apportioned between the Commission and the Department in a manner consistent with how the responsibility for such costs is determined pursuant to Section 3.09(c) (Additional Costs; Claims), or Section 4.03 (Work Orders Increasing the Contract Price; Claims), as applicable. If, under the Comprehensive Agreement, any dispute between the Department and the Design-Builder proceeds to litigation, the Department shall provide the Commission with regular updates regarding such litigation. The Commission shall abide by any non-appealable, final judgment rendered as a result of any such litigation and be responsible for any amounts awarded to the Design-Builder pursuant to such non-appealable, final judgment to the extent consistent with the Commission's responsibilities to pay Project costs in accordance with this Agreement. Notwithstanding anything in this Section 6.02 (Disputes under the Comprehensive Agreement) to the contrary, under no circumstances shall the Commission be responsible for any damages awarded to the Design-Builder or any other party if such damages arise out of or result from the Department's negligence, willful misconduct, violation of law, or breach of contract.

ARTICLE 7.

MISCELLANEOUS

Section 7.01 Term; Termination

(a) This Agreement shall be effective upon: (i) the adoption, execution and delivery of this Agreement by both Parties and (ii) the execution and delivery of the Comprehensive Agreement by the Department and the Design-Builder and the satisfaction of any conditions to the effectiveness of the Comprehensive Agreement. This Agreement shall expire ninety (90) days after the date on which the Department makes final payment to the Design-Builder and all claims relating to the Project have been resolved or are barred in accordance with the Comprehensive Agreement if this Agreement is not terminated earlier in accordance with its terms.

(b) The Department may terminate this Agreement, for cause, in the event of a material breach by the Commission of this Agreement. If so terminated, the Commission shall pay for all Project costs incurred in accordance with the terms of this Agreement through the date of termination and all reasonable costs incurred by the Department pursuant to the terms of the Comprehensive Agreement to terminate the Comprehensive Agreement. The Virginia General Assembly's failure to appropriate funds to the Commission as described in Section 7.02 (Appropriations Requirements) of this Agreement and/or repeal or amendment of the legislation establishing the HRTF or the Commission's powers shall not be considered material breaches of this Agreement by the Commission if such failure to appropriate or such repeal or amendment

eliminates funds that under the Commission's funding plan were scheduled to be used for the Project or renders the Commission without legal authority to provide any of that funding for the Project. Before initiating any proceedings to terminate under this Section 7.01 (Term; Termination), the Department shall give the Commission sixty (60) days' written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing the Commission an opportunity to investigate and a reasonable opportunity to cure (within such 60-day period or within a reasonable time thereafter) any such alleged breach.

(c) The Commission may terminate this Agreement, for cause, resulting from the Department's material breach of this Agreement. For purposes of this Section 7.01(c) and without limiting matters that may constitute a material breach, the termination of the Comprehensive Agreement by the Design-Builder pursuant to Section 11.4.1.1 (except with respect to delays due to court orders that are not attributable to any fault by the Department), Section 11.4.1.2 or Section 11.4.1.3 of Exhibit 1 to the Comprehensive Agreement shall be considered a material breach by the Department. If so terminated, the Department shall refund to the Commission all funds the Commission provided to the Department for the Project and, to the extent permitted by law, with interest at the Applicable Rate. The Commission will provide the Department with sixty (60) days' written notice that the Commission is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, if the Department has substantially completed the Project or a portion that is severable (meaning it is subject to independent use), the Department may request that the Commission excuse the Department from refunding funds paid in respect of the substantially completed Project or portion, and the Commission may, in its sole discretion, excuse the Department from refunding all or a portion of the funds the Commission provided to the Department for the substantially completed Project or portion thereof. No such request to be excused from refunding will be allowed where the Department is liable for negligence, willful misconduct, violation of law, or breach of the Comprehensive Agreement or this Agreement.

(d) Upon termination, the Department will release or return to the Commission all unexpended Commission funds and, to the extent permitted by law, with interest at the Applicable Rate, no later than sixty (60) days after the date of termination.

(e) The following provisions shall survive the expiration or early termination of this Agreement: (i) Section 3.02(a) (General Obligations of the Department (Funding)); (ii) Section 3.02(c) (General Obligations of the Department (Funding)); (iii) Section 3.02(d) (General Obligations of the Department (Funding)); (iv) Section 3.02(e)(iii) (General Obligations of the Department (Funding)); (v) Section 4.01(e) (General Obligations of the Department (Delivery)); (vi) Section 4.02 (Ownership and Use of the Project Following Final Completion); (vii) Section 4.10 (Books and Records); (viii) Section 4.11 (Commission Interest in Project Assets); (ix) Section 4.12(d) (Early Termination of Comprehensive Agreement); (x) Section 5.02(e) (Payment Requisitions); (xi) Section 5.03 (Periodic Compliance Reviews); (xii) Article 6 (Dispute Resolution); and (xiii) Article 7 (Miscellaneous) (with the exception of Section 7.08 (Engagement of Counsel)).

Section 7.02 Appropriations Requirements

(a) Nothing herein shall require or obligate the Commission to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by its governing body for the Project.

(b) The Parties acknowledge that all funding provided by the Commission pursuant to the HRTAC Act is subject to appropriation by the Virginia General Assembly. The Parties further acknowledge that: (i) the moneys allocated to the HRTF pursuant to applicable provisions of the Code of Virginia and any other moneys that the General Assembly appropriates for deposit into the HRTF are subject to appropriation by the General Assembly and (ii) the Commission's obligations under this Agreement are subject to such moneys being appropriated to the HRTF by the General Assembly.

(c) The Parties agree that the Department's obligations under this Agreement are subject to funds being appropriated by the General Assembly and allocated by the CTB and otherwise legally available to the Department for the Project.

(d) Should the Department be required to provide additional funds in order to proceed or complete the funding necessary for the Project, the Department shall certify to the Commission that such additional funds have been allocated and authorized by the CTB and/or appropriated by the Virginia General Assembly as may be applicable or have been obtained through another independent, lawful source.

Section 7.03 Commitments Relating to Master Tolling Agreement

The Department hereby reaffirms its commitments made in the January 22, 2019 Letter, and further commits to work in good faith with the Commission to finalize the Master Tolling Agreement. The parties will use their best efforts and use all reasonable means to reach agreement on the Master Tolling Agreement on or before October 31, 2019.

Section 7.04 Federal Credit Assistance for Project

The Department shall provide reasonable assistance to the Commission in the Commission's pursuit of federal credit assistance for the Project from the United States Department of Transportation.

Section 7.05 Assignment

This Agreement shall not be assigned by either Party unless express written consent is given by the other Party.

Section 7.06 Notices

All notices under this Agreement shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

If to the Commission:

Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, Virginia 23320
Attention: Executive Director and Chairman

With copies to (which shall not constitute notice):

The office of record of the Commission's general counsel

If to the Department:

Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attention: Commissioner of Highways

With copies to (which shall not constitute notice):

Office of the Attorney General
202 North 9th Street
Richmond, Virginia 23219
Attention: Transportation Section Chief

Section 7.07 Modification or Amendment

(a) This Agreement may not be modified or amended, except pursuant a written agreement that is duly authorized, executed and delivered by both Parties.

(b) The Department acknowledges that the Commission's funding plan is supported by bond financing. The Department and the Commission will work in good faith to adopt such amendments to this Agreement as may be necessary and desirable in connection with any bond offering. The Department further acknowledges that implementing such amendments, when applicable, will be a condition precedent to the Commission's consummation of any such bond financing.

Section 7.08 Engagement of Counsel

If, in connection with the work, the Department engages outside legal counsel approved by the Office of the Attorney General (as opposed to utilizing the services of the Office of the Attorney General), the Department will give the Commission notice of the engagement so as to ensure that no conflict of interest may arise from any such representation.

Section 7.09 No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, member, employee, or agent of either of the Parties. No provision of this Agreement shall inure to the benefit of, or be enforceable by, any third party, including any creditor of either Party.

Section 7.10 No Agency

- (a) The Department represents that it is not acting as a partner or agent of Commission.
- (b) Nothing in this Agreement shall be construed as making any Party a partner or agent of any other Party.

Section 7.11 Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia, without regard to conflict of law principles.

Section 7.12 Sovereign Immunity

This Agreement shall not be construed as a waiver of either Party's sovereign immunity rights.

Section 7.13 Counterparts

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[SIGNATURE PAGE(S) TO FOLLOW]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project as of the date first written above.

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION,
a body politic and a political subdivision of the Commonwealth of Virginia

By: _____

Name: _____

Title: _____

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

By: _____

Stephen C. Brich, P.E.

Commissioner of Highways

EXHIBIT 1

DEFINITIONS

All capitalized terms used herein but not otherwise defined herein shall have the respective meanings given to such terms in that certain Comprehensive Agreement Relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project dated as of April 2, 2019, by and between the Department and the Design-Builder, as amended. In addition, the following terms used in this Agreement shall have the following meanings:

“Accelerated Payment” is defined in Section 3.04(c) (Maximum Cumulative Compensation Amount Under Comprehensive Agreement).

“Additional Costs” is defined in Section 3.09(a) (Additional Costs; Claims).

“Additional Early Work Funding” is defined in Section 3.12(a) (Early Work Funding).

“Admin Cost Cap” is defined in Section 3.07(a) (Administration Costs).

“Admin Cost Subcap” is defined in Section 3.07(a) (Administration Costs).

“Administration Costs” is defined in Section 3.07(a) (Administration Costs).

“Agreement” means the Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 2, 2019, and all exhibits and schedules thereto, as supplemented or further amended from time to time.

“Applicable Additional Funds” means, collectively, Applicable Award Funds and CTB- Sourced Toll Funds.

“Applicable Award Funds” means funding for the Project from sources not already identified in the “Sources” table in Exhibit 3 (Project Budget), except to the extent the Parties agree the basis or the lawful use of such award is to support or replace funding for any Project cost that is not the Commission’s responsibility (such as the South Island Trestle Bridge Replacement Work or the Deferred/Preventive Maintenance Work) or to fund Additional Costs.

“Applicable Rate” means, with respect to an applicable measurement period, the interest rate that would have been earned by the Commission on the subject funds during such period if they had been invested in the Virginia Local Government Investment Pool.

“Assets” is defined in Section 4.11 (Commission Interest in Project Assets).

“Authorized Commission-Funded Work Order Costs” means costs covered by a Work Order to the Comprehensive Agreement that increases the Contract Price, provided that such Work Order (i) is not the Department’s responsibility under Section 4.03(f) (Work Orders Increasing the Contract Price; Claims), and (ii) is authorized by the Department in accordance with, and subject

to, the provisions of Section 4.03 (Work Orders Increasing the Contract Price), or is approved by the Commission in accordance with the provisions of such Sections.

“Authorized Commission-Funded Claims Costs” means those costs covered by a settlement of a claim under the Comprehensive Agreement that increases the Contract Price (and is not otherwise covered by a Work Order); *provided* that such settlement (i) is not the Department’s responsibility under Section 4.03(f)(Work Orders Increasing the Contract Price), and (ii) is approved by the Commission in accordance with Section 4.03(h)(Work Orders Increasing the Contract Price; Claims) (and clauses (a), (b) and (c), of Section 4.03 (Work Orders Increasing the Contract Price; Claims)), as applicable.

“Base Scope” is defined in Exhibit 2 (Project Scope).

“Bridge Repair Option Work” means the work referred to as Bridge Repair Work in the Comprehensive Agreement and shown in Exhibit 18 (*Bridge Repair Work Quantities and Unit Costs*) thereto.

“Chair” means the chair of the Commission.

“Chief Financial Officer” or **“CFO”** means the chief financial officer of the Commission, if different than the Executive Director.

“Commission” means the Hampton Roads Transportation Accountability Commission.

“Commission-Controlled Moneys” has the meaning given in the fourth recital.

“Commission-Cost Reduction Amount” is defined in Section 4.06(a) (Changes to Comprehensive Agreement that Reduce Contract Price).

“Commission-Funded Administration Costs” means the Commission’s *pro rata* share of the Administration Costs.

“Commission-Funded Budget” means the three billion five hundred fifty-three million four hundred sixty-nine thousand five hundred eighty-one dollars (\$3,553,469,581) shown in Exhibit 3 (Project Budget), which estimates those costs for which the Commission is responsible under this Agreement, and which the Parties anticipate may be reduced in accordance with Section 3.01(e) (General Rights and Obligations of the Commission). (For the avoidance of doubt, the figure above assumes three hundred forty-five million dollars (\$345,000,000) in toll-backed financing contemplated by the Commission’s funding plan is received by the Commission; if such amount is not received by the Commission, the inclusion of such amount in the Commission-Funded Budget shall not be deemed or construed to increase the Maximum Commission Financial Commitment.)

“Commission-Funded Design-Build Costs” means the costs scheduled to be paid to the Design-Builder under the Comprehensive Agreement in respect of the Contract Price, excluding the South Island Trestle Bridge Replacement Costs. For the avoidance of doubt, the Commission-Funded

Design-Build Costs budgeted in Exhibit 3 (Project Budget), before giving effect to any adjustments required pursuant to Section 3.10 (SMART SCALE and other Award Funding), total three billion two hundred four million five hundred sixty-nine thousand two hundred fifty-one dollars (\$3,204,569,251).

“Commission-Funded ROW Costs” means up to fifteen million dollars (\$15,000,000) of Right-of-Way Costs. For the avoidance of doubt, any such costs in excess of fifteen million dollars (\$15,000,000) shall be treated as Additional Costs.

“Commission-Supported Contingency Reserve” is defined in Section 3.08(b)(ii) (Availability of Contingency Reserves; Tracking).

“Commissioner” means the Commissioner of Highways for the Commonwealth.

“Commonwealth” means the Commonwealth of Virginia.

“Commonwealth Transportation Board” or **“CTB”** means a board of the Commonwealth affiliated with the Department.

“Comprehensive Agreement” means that certain Comprehensive Agreement Relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project dated as of April 2, 2019, by and between the Department and the Design-Builder, as amended consistent with its terms and the terms of this Agreement.

“Contract Price” is defined in Section 4.01(b) (General Obligations of the Department Delivery).

“Covered Excess Costs” is defined in Section 3.07(b) (Administration Costs).

“CTB-Sourced Toll Funds” means, if the CTB, Treasury Board or other Commonwealth issuer is the agreed issuer of any toll-backed financing under the terms of the Master Tolling Agreement, the proceeds of such financing that, under the terms of the Master Tolling Agreement, are to be applied to pay costs under the Project Budget (which costs, for the avoidance of doubt, exclude costs that are the responsibility of the Department).

“DB Payment Request” is defined in Section 5.02(a)(i) (Payment Requisitions).

“Deferred/Preventive Maintenance Work” means any of the Bridge Repair Option Work performed by the Design-Builder under the Comprehensive Agreement that is performed for purposes other than those necessary to achieve Final Completion in accordance with any Legal Requirement applicable to the Project but otherwise inapplicable to existing structures which make up the I-64 Hampton Roads Bridge-Tunnel facility as it exists as of the date of this Agreement (each such Legal Requirement an “Increased Capacity Standard”). Deferred/Preventive Maintenance Work shall include, by way of example and not limitation, Bridge Repair Option Work that is performed for the purpose of (i) rehabilitating or repairing an existing structure that has become deficient or in need of improvement and, absent the Project, such rehabilitation or

repair would be the responsibility of the Department through its State of Good Repair or other programs, or (ii) minimizing or reducing future maintenance costs and efforts relating to such structure. A Legal Requirement shall be considered an Increased Capacity Standard if it is a Legal Requirement that must be complied with by the Design-Builder in constructing or improving a structure necessary to support increased capacity.

“Delay Liquidated Damages” is defined in Section 4.08 (Delay Liquidated Damages and Other Damages and Recoveries).

“Department” means the Virginia Department of Transportation.

“Department Admin Payment Requests” is defined in Section 5.02 (Payment Requisitions).

“Department DB Payment Requests” is defined in Section 5.02(a)(i) (Payment Requisitions).

“Department Fault” is defined in Section 3.01(b)(vii) (General Rights and Obligations of the Commission).

“Department-Funded Administration Costs” means the Department’s *pro rata* share of the Administration Costs.

“Department-Funded Budget” the one hundred eight million five hundred twenty-seven thousand six hundred forty-six dollars (\$108,527,646) shown in Exhibit 3 (Project Budget), which estimates those costs (excluding costs relating to the exercise of any option) for which the Department is responsible under this Agreement in respect of the South Island Trestle Bridge Replacement Work.

“Department-Funded Design-Build Cost” means the costs scheduled to be paid to the Design-Builder under the Comprehensive Agreement in respect of the South Island Trestle Bridge Replacement Costs. For the avoidance of doubt, the Department-Funded Design-Build Costs budgeted in Exhibit 3 (Project Budget) total ninety-five million four hundred twenty-seven thousand nine hundred seventy-six dollars (\$95,427,976).

“Department Highways” has the meaning given in the fifth recital.

“Department Sharing Percentage” means 2.89%, which percentage will be reestablished by mutual agreement of the Parties to reflect the addition or deduction of work under the Comprehensive Agreement.

“Department-Supported Contingency Reserve” is defined in Section 3.08(a) (Availability of Contingency Reserves; Tracking).

“Department’s Senior Representative” means the person identified as such under Section 9.1.1 of the Comprehensive Agreement.

“Design-Builder” means the Department’s counterparty to the Comprehensive Agreement.

“Direct Agreement” means that certain Direct Agreement dated as of [_____] , 2021, by and among the Department, the Commission, and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau, as it may be modified or amended from time to time in accordance with its terms.

“**Early Work**” has the meaning given in the Comprehensive Agreement.

“**Excess CTB-Sourced Toll Funds**” the CTB-Sourced Toll Funds, but only to the extent they exceed the three hundred forty-five million dollars (\$345,000,000).

“**Executive Director**” means the executive director of the Commission.

“**Guidelines**” means the Department’s 2017 PPTA Implementation Manual and Guidelines.

“**HRTAC Act**” means Va. Code §§ 33.2-2600 *et seq.*

“**HRTPO**” means the Hampton Roads Transportation Planning Organization.

“**Hampton Roads Transportation Fund**” or “**HRTF**” has the meaning given in the first recital.

“**I-564 Direct Connections**” is defined in Exhibit 2 (Project Scope).

“**Initial DB Commission Payment Amount**” is defined in Section 5.02(a)(i) (Payment Requisitions).

“**January 22, 2019 Letter**” has the meaning given in the seventeenth recital.

“**Legal Requirements**” has the meaning given in the Comprehensive Agreement.

“**Master Tolling Agreement**” has the meaning given in the seventeenth recital.

“**Maximum Commission Financial Commitment**” is defined in Section 3.03(a) (Maximum Commission Financial Commitment).

“**Maximum Cumulative Compensation Amount**” is defined in Section 3.04(a) (Maximum Cumulative Compensation Amount Under Comprehensive Agreement).

“**Memorandum of Agreement**” or “**MOA**” has the meaning given in the sixth recital.

“**Minimum Commission-Supported Contingency Amount**” means, at any given time during the term of this Agreement, the amount calculated in accordance with Section 4.03(d) (Work Orders Increasing Contract Price; Claims).

“**No Excuses Incentive Payment**” is defined in Section 4.07(a) (No Excuses Incentive Payment).

“**Offeror**” has the meaning given in the twelfth recital.

“Opt-Out Right” is defined in Section 3.11(c) (Funding for the South Island Trestle Bridge Replacement Work).

“Other Damages and Recoveries” is defined in Section 4.08(b) (Delay Liquidated Damages and Other Damages and Recoveries).

“Party” or **“Parties”** has the meaning given in the Preamble.

“PPTA” means the Public-Private Transportation Act of 1995, as amended (Va. Code §§ 33.2-1800 *et seq.*).

“Program Coordinator” is defined in Section 5.01 (Program Coordinators).

“Project” has the meaning given in the eighth recital.

“Project Budget” means the sum of the (i) Commission-Funded Budget, and (ii) the SMART SCALE Funds or other funds under Section 3.08(b)(ii) (Availability of Contingency Reserves; Tracking), and (iii) Department-Funded Budget, reflected in Exhibit 3 (Project Budget), and as may be amended from time to time in accordance with Section 2.01 (General Obligations of the Department (Procurement)).

“Request for Proposals” or **“RFP”** means that certain Request for Proposals for the Project issued by the Department dated as of September 27, 2018, as amended by Addendum No. 1 dated November 28, 2018, Addendum No. 2 dated December 14, 2018, Addendum No. 3 dated December 19, 2018, the Statement of Clarification Relating to Final RFP Addendum No. 3 dated January 8, 2019, and Statement of Clarification Relating to Final RFP Addendum No. 3 dated January 10, 2019.

“Required Work” is defined in Section 4.09 (Optional Work: I-564 Direct Connections; Bridge Repair Option Work).

“Right-of-Way Costs” means amounts paid or payable to a property owner for the acquisition of real property and real property rights (including any and all easements) needed for facets of the Project that are Commission-Funded Design-Build Costs, (including fees and the Department’s reasonable and documented internal and external costs associated with such acquisition).

“Segment 2 Toll System Contract” has the meaning given in the Direct Agreement.

“SMART SCALE” means the statewide prioritization process developed pursuant to Va. Code § 33.2-214.1 for the use of funds with respect to projects funded by the CTB.

“SMART SCALE Funds” is defined in Section 3.08(b)(i) (Availability of Contingency Reserves; Tracking).

“South Island Trestle Bridge Replacement Costs” is defined in Section 3.11(a) (*Funding the South Island Trestle Bridge Replacement Work*).

“South Island Trestle Bridge Replacement Work” is defined in Exhibit 2 (*Project Scope*).

“Successful Offeror” has the meaning given in the fourteenth recital.

“Unsuccessful Offeror Proposal Payment” is defined in Section 3.03(b)(vi) (*Maximum Commission Financial Commitment*).

“VDOT Agreement” has the meaning given in the Direct Agreement.

EXHIBIT 2

PROJECT SCOPE

1. Base Scope

The base scope (“Base Scope”) of the Project consists of the design and construction of the following improvements on I-64 beginning west of Settlers Landing Road in Hampton (Exit 267) and ending at I-564 in Norfolk (Exit 276) pursuant to the terms of the Comprehensive Agreement:

(a) across the water, a new bridge-tunnel crossing approximately 3.5 miles long and generally parallel to the existing Hampton Roads Bridge-Tunnel, which new bridge-tunnel will have two new tunnels that provide four lanes of capacity for eastbound traffic and allow four lanes of capacity to be dedicated to westbound traffic (the new bridge-tunnel crossing described above excludes the South Island Trestle Bridge Replacement Work described below);

(b) the construction of new marine approach bridges to carry westbound I-64 across the water between Norfolk and the south island of the Hampton Roads Bridge-Tunnel, including the demolition (with removal and disposal) of the existing marine approach bridges between Norfolk and such south island (the “South Island Trestle Bridge Replacement Work”); and

(c) on land, a new third lane to I-64 in each direction, with a roadway section sufficient to accommodate a part-time median shoulder lane.

When completed, the Project corridor will include one or more lanes designated as high-occupancy toll lanes.

2. Scope Options

As part of the RFP, the Department will require that each Offeror shall develop as part of its Proposal a technical solution to provide direct connections (eastbound and westbound) from the new high-occupancy toll lanes to be developed as part of the Base Scope to I-564 in order to promote efficient traffic flow at interfaces with adjoining regional transportation network elements (the “I-564 Direct Connections”).

The I-564 Direct Connections are not part of the Base Scope but may be added to the scope of the Project following execution of the Comprehensive Agreement pursuant to the terms of this Agreement.

In addition, the Bridge Repair Option Work is not in the Base Scope but may be added to the scope of the Project following execution of the Comprehensive Agreement pursuant to the terms of this Agreement.

EXHIBIT 3
PROJECT BUDGET

[To be attached]

EXHIBIT 4
OFFICIAL AUTHORIZING DOCUMENTS

[To be attached]

EXHIBIT 5

ESTIMATED COSTS AND PAYOUT SCHEDULE

EXHIBIT 6

REPORTS TO BE PROVIDED BY THE DEPARTMENT

1. Monthly Project Expenditure Report

The monthly project expenditure report will list, by category of expense (*e.g.*, engineering, right-of-way acquisition, utility relocations, construction): (i) information regarding expenditures to date against the Project Budget, both monthly and for the life of the project, and a statement of the percent completed and (ii) such other information as the Department customarily provides with monthly expenditure reports

2. Monthly Project Report

The monthly project report will include: (i) an overview of progress on major project tasks; (b) information regarding the Project Budget (such as, the baseline planned forecast, any approved changes thereto, the monthly expenditures, the cumulative expenditures, and the cumulative forecasted expenditures); (c) future key tasks; and (d) significant issues.

EXHIBIT 7

EXAMPLES OF ADMINISTRATION COSTS

1. preliminary engineering costs (to the extent necessary following selection of a Successful Offeror)
2. construction engineering and inspection costs

EXHIBIT 8
FORM OF COMPREHENSIVE AGREEMENT

[To be attached]

EXHIBIT 9

UNIT PRICE WORK AND COMMODITY ADJUSTMENT ITEMS

Section 1. Unit Price Work

- A. The installation of sound barrier walls as further described in Section 5.3.9 (*Noise Mitigation*) of Exhibit 2 (*Technical Requirements*) to the Comprehensive Agreement
- B. The Bridge Repair Option Work; *provided*, that if the Bridge Repair Option Work is added to the scope of work to be performed by the Design-Builder, the cost of such work will be paid in accordance with Section 4.09 (*Optional Work: I-564 Direct Connections; Bridge Repair Option Work*) of this Agreement

Section 2. Commodity Adjustment Items

- A. Asphalt, as further described in Exhibit 9 (*Price Adjustment for Asphalt*) to the Comprehensive Agreement
- B. Fuel, as further described in Exhibit 10 (*Price Adjustment for Fuel*) to the Comprehensive Agreement
- C. Steel, as further described in Exhibit 11 (*Price Adjustment for Steel*) to the Comprehensive Agreement

EXHIBIT 10

FORM OF PAYMENT REQUISITION – DESIGN-BUILD

I-64 Hampton Roads Bridge Tunnel Expansion Project

Commission Project Number: _____

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission

723 Woodlake Drive

Chesapeake, VA 23320

Attention _____, Program Coordinator:

This requisition is submitted in connection with the Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge Tunnel Expansion Project dated _____, 20__ (the "Agreement") between the Hampton Roads Transportation Accountability Commission (the "Commission") and the Virginia Department of Transportation (the "Department"). The Department hereby requests \$ _____ of Commission funds, as the Initial DB Commission Payment Amount, payable not later than [____], 20[___] in accordance with Section 5.02 (Payment Requisitions) of the Agreement.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Recommended For Payment

By: _____

Name: _____

Title: HRTAC Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____

Request Date: _____

HRTAC Project Number: _____

Project Title: _____

Cost Category	Column B- HRTAC Approved Project Costs	Column C- Total PayGo Requests Previously Received	Column D- PayGo Requisition Amount this Period	Column E - Remaining PAYGO Project Budget (Calculation)
Project Starting Balance	\$ -			\$ -
Design Work	\$ -	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Acquisition	-	-	-	\$ -
Construction	-	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Column A - Vendor/Contractor Name	Column B- Item Number	Column C - Invoice Number	Column D - Cost Category	Column E - Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-

Requisition Amount		\$ -
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Instructions

1. Column B-Please list approved PayGo Project Cost per category.
2. Column C-Please list Total PayGo Amounts per Category Previously Reimbursed by HRTAC
3. Column D- Please list invoice amounts summarized by Category from the Listing of Attached Invoices
4. Column E - Is a calculation of the Remaining PAYGO Budget per Category

Instructions-Listing of Attached Invoices: (please list each invoice separately)

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please manually number the invoices attached with the corresponding Item number in this schedule.
3. Column C- Please list the invoice number as it appears on the Invoice
4. Column D- Please list the appropriate Cost Category based on the Project Category breakout above
5. Column E- Please enter the dollar amount listed on the invoice.
6. The calculated Requisition Amount should equal the total in Column E in the Schedule above.

EXHIBIT 11

FORM OF PAYMENT CERTIFICATION – DESIGN-BUILD

I-64 Hampton Roads Bridge Tunnel Expansion Project

Commission Project Number: _____

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission

723 Woodlake Drive

Chesapeake, VA 23320

Attention _____, Program Coordinator:

This certification is submitted in connection with the Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge Tunnel Expansion Project dated _____, 20__ (the "Agreement") between the Hampton Roads Transportation Accountability Commission (the "Commission") and the Virginia Department of Transportation (the "Department"). Capitalized terms used in this certification and not otherwise defined herein have the meanings set forth in the Agreement.

On [●], 20[●], the Commission paid \$[●] as the as the Initial Commission Payment Amount relating to invoice number [●], in accordance with Section 5.02 (Payment Requisitions) of the Agreement. After a detailed review, the Department has determined that \$[●] was properly payable by the Commission under the terms of the Agreement in respect of invoice number [●], and forwarded such payment to the Design-Builder under the terms of the Comprehensive Agreement. Accordingly, \$[●] shall be credited to the Commission for the purposes of the next-occurring Department DB Payment Request.

The undersigned certifies (i) the amounts forwarded by the Department to the Design-Builder relating to invoice number [●] were applied solely and exclusively for the payment or the reimbursement of the Department's costs of the project services described and set forth in Exhibits 2 and 3 of the Agreement, (ii) the Department is responsible for payment to vendors/contractors, (iii) the Department is not in breach or default with respect to any of its obligations under the Agreement, (iv) the representations and warranties made by the Department in the Agreement are true and correct as of the date of this certification, and (v) to the knowledge of the Department, no condition exists under the Agreement that would allow the Commission to withhold the amounts forwarded. Also included are copies of each invoice relating to the items which this certification covers.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

EXHIBIT 12

FORM OF PAYMENT REQUISITION – ADMINISTRATION COSTS

I-64 Hampton Roads Bridge Tunnel Expansion Project

Commission Project Number: _____

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission

723 Woodlake Drive

Chesapeake, VA 23320

Attention _____, Program Coordinator:

This requisition is submitted in connection with the Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge Tunnel Expansion Project dated _____, 20__ (the "Agreement") between the Hampton Roads Transportation Accountability Commission (the "Commission") and the Virginia Department of Transportation (the "Department"). The Department hereby requests \$_____ of Commission funds, to pay the costs of the Administration Costs in accordance with the Agreement. Also included are copies of each invoice relating to the items for which this requisition is requested.

The undersigned certifies (i) the amounts included within this requisition will be applied solely and exclusively for the payment or the reimbursement of the Department's costs of Administration Costs that were incurred in the performance of work for the Project as authorized by the Agreement, (ii) the Department is responsible for payment to vendors/contractors, (iii) the Department is not in breach or default with respect to any of its obligations under the Agreement, (iv) the representations and warranties made by the Department in the Agreement are true and correct as of the date of this requisition, and (v) to the knowledge of the Department, no condition exists under the Agreement that would allow the Commission to withhold the requested advance.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Recommended For Payment

By: _____

Name: _____

Title: HRTAC Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____

Request Date: _____

HRTAC Project Number: _____

Project Title: _____

Cost Category	Column B - HRTAC Approved Project Costs	Column C - Total PayGo Requests Previously Received	Column D - PayGo Requisition Amount this Period	Column E - Remaining PAYGO Project Budget (Calculation)
Project Starting Balance	\$ -			\$ -
Design Work	\$ -	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Acquisition	-	-	-	\$ -
Construction	-	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Column A - Vendor/Contractor Name	Column B - Item Number	Column C - Invoice Number	Column D - Cost Category	Column E - Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-

Requisition Amount		\$ -
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Instructions

1. Column B-Please list approved PayGo Project Cost per category.
2. Column C-Please list Total PayGo Amounts per Category Previously Reimbursed by HRTAC
3. Column D- Please list invoice amounts summarized by Category from the Listing of Attached Invoices
4. Column E - Is a calculation of the Remaining PAYGO Budget per Category

Instructions-Listing of Attached Invoices: (please list each invoice separately)

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please manually number the invoices attached with the corresponding Item number in this schedule.
3. Column C- Please list the invoice number as it appears on the Invoice
4. Column D- Please list the appropriate Cost Category based on the Project Category breakout above
5. Column E- Please enter the dollar amount listed on the invoice.
6. The calculated Requisition Amount should equal the total in Column E in the Schedule above.

EXHIBIT 13

LIMITATION ON ACTIONS UNDER COMPREHENSIVE AGREEMENT

Section 1. Actions Requiring Prior Written Consent of Commission

- A. The Department's approval of the Design-Builder's acquisition of Additional Right-of-Way pursuant to Section 2.1.6 (*General*) of Exhibit 1 (*General Conditions of Contract*) to the Comprehensive Agreement
- B. The Department's termination, release, waiver or amendment of any guarantee, letter of credit, surety bond or other performance security instrument issued or provided by or on behalf of either the Design-Builder pursuant to the Comprehensive Agreement or the Toll System Contractor pursuant to the Segment 2 Toll System Contract; provided, that any step-down in the value of any performance security instrument in accordance with the terms of the applicable VDOT Agreement shall not be subject to Commission consent
- C. The Department's decision to waive or otherwise determine or agree not to demand, enforce, collect and/or receive any Delay Liquidated Damages or Other Damages and Recoveries (but excluding any damages which are not required by Section 4.08 to be shared by the Parties *pro rata*) or other amounts or recoveries to which the Department is contractually or otherwise entitled to receive from the Design-Builder in connection with any dispute under or with respect to the Comprehensive Agreement, whether in the context of any settlement discussions or any demands, claims or counter-claims related to the adjudication or arbitration of any such dispute

Section 2. Actions Requiring Consultation with the Commission

- A. The Department's waiver of any conditions to the issuance of NTP pursuant to Section 5.1.2 (Notice to Proceed) of the Comprehensive Agreement
- B. With respect to Section 5.1.3.2 (Delays to Notice to Proceed) of the Comprehensive Agreement, the Department's: (i) determination not to issue NTP on or before the Extended NTP Delay Date; (ii) agreement on a revised Contract Price, Substantial Completion Deadline, or Final Completion Deadline; or (iii) delivery of an Extended NTP Delay Termination notice pursuant to subdivision (c) thereof
- C. The Department's waiver of any conditions to Substantial Completion pursuant to Section 6.7.7 (Substantial Completion) of the Comprehensive Agreement
- D. The Department's exercise of discretion in relation to minor deliverables and retained amounts pursuant to Section 6.8.5 (Final Completion) of the Comprehensive Agreement

- E. The Department's exercise of discretion to make partial payments pursuant to Section 8.8 (Termination for Convenience) of the Comprehensive Agreement
- F. ~~The Department's (i) determination that remaining Guarantor(s) can sufficiently guarantee the Design-Builder's obligations or (ii) acceptance of a replacement Guarantee with a reputable counterparty, pursuant to Section 11.2.1.11 (Department's Right to Perform and Terminate for Cause) of Exhibit 1 (General Conditions of Contract) to the Comprehensive Agreement~~ [Reserved](#)
- G. With respect to Exhibit 5 (Early Work Scope Document) to the Comprehensive Agreement, the Department's exercise of discretion pursuant to (i) the second paragraph of Section 2 and (iii) subsection 3(C) thereof
- H. With respect to Exhibit 9 (Price Adjustment for Asphalt), the Department's exercise of discretion pursuant to the last sentence of the second paragraph thereof
- I. With respect to Exhibit 17 (Dispute Resolution Board), the Department's appointment of members of the DRB or execution of the DRB Agreement pursuant to Section 2.2 thereof
- J. With respect to any Guarantee, the Department's discretion pursuant to Section 1.3.15 thereof
- K. With respect to any Guarantee, the Department's exercise of rights pursuant to Section 1.4.3

Section 3. Actions Department is to Take or Refrain from Taking Upon Request of Commission

- A. The Department's enforcement of the Commission's right to access the Design-Builder's books and records pursuant to Section 7.5 (*Record Maintenance and Retention of Records*) of the Comprehensive Agreement

EXHIBIT 14

TAX COVENANTS FOR BOND-FUNDED PROJECTS

1. (A) the Department shall not permit the “Proceeds” of any “Commission Bonds” or any “Financed Property” to be used in any manner that would result in either: (1) 5% or more of such proceeds being considered as having been used in any trade or business carried on by any person other than a governmental unit as provided in Section 141(b) of the “Code;” (2) 5% or more of such Proceeds being used with respect to any “output facility” (other than a facility for the furnishing of water) within the meaning of Section 141(b)(4) of the Code; (3) 5% or more of such Proceeds being considered as having been used directly or indirectly to make or finance loans to any person other than a governmental unit, as provided in Section 141(c) of the Code; or (4) more than an aggregate of \$15,000,000 of Proceeds of any single Commission Bond issue being considered as having been used in any trade or business, any output facility or to make or finance loans as described in (1), (2) or (3) above; ***provided, however,*** that if the Commission and the Department receive an opinion of nationally recognized bond counsel concluding that such use or action will not affect the exclusion of interest on the Commission Bonds from gross income of the holders thereof for federal tax purposes under existing law, the Department need not comply with such restrictions.

(B) Notwithstanding the foregoing, the Department and THE Commission agree that the provisions herein shall not apply to Proceeds of Commission Bonds derived from “qualified bonds” (as defined in Section 141(e) of the Code (or any successor provisions thereto or regulations thereunder)) THE Commission may from time to time issue. In the event any such “qualified bonds” are issued by THE Commission, the Department agrees that it will not permit Proceeds of Commission Bond derived from such “qualified bonds” to be used in a manner that fails to comply with the provisions of Section 141(e) and 142(a) of the Code (or any successor provisions thereto or regulations thereunder). The provisions of this subparagraph (B) shall not negate any provision in the Agreement or other agreement between THE Commission and the Department that requires mutual consent of the parties or Commission approval of a concession arrangement in respect of the Project.

2. the Department agrees not to requisition or spend the proceeds of any THE Commission Bond for any cost of the Project not constituting a “Capital Expenditure.”

3. Except as may be described in writing to the Commission, the Department neither has on the date of this Agreement nor expects to have after this date any funds that are restricted, segregated, legally required or otherwise intended to be used, directly or indirectly, for the purposes for which the Department is receiving or may receive Proceeds of Commission Bonds.

4. The Department acknowledges that it may have to provide detailed information about the investment of the amount of any requisition unless (i) payments are remitted directly by the Commission to the contractors/vendors, or (ii) the Department remits payment to the contractors/vendors within five banking days after the date on which the Commission advances the amount of the requisition. The Commission may request the detailed information in order to compute the rebate liability to the U.S. Treasury on the Commission’s bonds or other debt financing pursuant to Section 148 of the Code. In addition, the Department shall provide the

Commission with any further information reasonably requested by the Commission from time to time concerning the matters described in this Exhibit 14.

5. The following terms have the meanings assigned to them below whenever they are used in this Exhibit 14.

“Capital Expenditure” means any cost of a type that is properly chargeable to capital account (or would be so chargeable with (or but for) a proper election or the application of the definition of “placed in service” under Treas. Reg. § 1.150-2(c)) under general federal income tax principles, determined at the time the expenditure is paid.

“Code” means the Internal Revenue Code of 1986, as amended.

“Financed Property” means any property financed in whole or in part by any allocation of Commission Bond Proceeds.

“Commission Bond” means any Commission bond or other debt instrument that is a “tax-exempt bond” or a “tax-advantaged bond” (as defined in Treasury Regulations Section 1.150-1(a)).

“Proceeds” means the sale proceeds of any Commission Bond, together with the investment earnings on such proceeds, to the extent allocated to the Project.