



*Vice-Chair (Acting Chair), DONNIE R. TUCK*

*Executive Director, KEVIN B. PAGE*

## **AGENDA**

### **Hampton Roads Transportation Accountability Commission Special Meeting**

#### **Meeting by Conference Call\***

**January 21, 2021  
8:30 a.m.**

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

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

- 1. Declaration re: Purpose of Meeting, Call to Order and Roll Call**
- 2. Approval of Agenda**  
- Recommended Action: Approval
- 3. Public Comment Period**  
- Limit 3 minutes per individual\*\*
- 4. Chair Comments**
  - A. Welcome** – Vice-Chair Tuck (Acting Chair)
- 5. Consent Items**  
- Recommended Action: Approval
  - A. Minutes of the December 10, 2020 Regular Meeting (Attachment 5A)**
  - B. Amendment to the Approved HRTAC FY2021 Administrative and Project Development Budget – Investment Grade Traffic and Revenue Study and TIFIA Loan Application Costs (Attachment 5B)**
  - C. Amendment to the Approved FY2021-2026 HRTAC Six Year Improvement Plan – HRBT Project Toll Facility Collection Equipment Construction and Integration (Attachment 5C)**
  - D. Amendment to the Approved FY2021-2026 HRTAC Six Year Improvement Plan – Phase 1 Preliminary Engineering for Hampton Roads Express Lanes Network Segments 1, 4A, 4B, and 4C (Attachment 5D)**

**E. Official Intent for Allocation of Bond Proceeds to Reimburse HRTAC Expenditures on Hampton Roads Express Lanes Project (Attachment 5E)**

**6. Action Items**

*- Recommended Action: Discussion/Endorsement/Recommendation/Direction*

- A. Special Election of Chair and, if necessary, Vice Chair of the Commission (Attachment 6A)** – General Counselor Inglima and Nominating Committee Chair Hipple - Recommended Action: Nominations/Discussion/Voting
- B. Briefing re: Hampton Roads Bridge Tunnel Project Financing and HRTAC Hampton Roads Express Lanes Network Funding Plan Update (Attachment 6B)** Executive Director Page and David Miller, Liang Shan PFM Financial Advisors - Recommended Action: Discussion
- C. Hampton Roads Express Lanes Network Initial Tolling Policy (Attachment 6C)** Executive Director Page, General Counselor Inglima, Bond Counselor Ballou, Scott Allaire CDM Smith, David Miller, Liang Shan PFM Financial Advisors - Recommended Action: Discussion/Approval
- D. HRTAC Toll Revenue Bond Resolution – Toll Revenue Bond Indenture and Financings Structure (Attachment 6D)** - Executive Director Page, Bond Counselor Ballou, and General Counselor Inglima - Recommended Action: Discussion/Approval

**7. Information Items**

- A. HRTAC Monthly Financial Report – (Attachment 7A)** – Finance Committee Chair Hipple
- B. VDOT Project Updates - (Attachment 7B)** – VDOT Hampton Roads Administrator Hall
- C. Commission Meeting Schedule for Calendar Year 2021**
- D. HRTAC Regular Meeting – March, 18, 2021, 12:30 p.m.**

**8. Adjournment**

\*\*Anyone wishing to make a public comment should contact Executive Director Page at [kpae@hrtac.org](mailto:kpage@hrtac.org) 24 hours in advance of the meeting to register. Please do so by 8:30 a.m. on Wednesday, January 20, 2021.

**Agenda Item 5A**  
**Consent Item**

**To: Vice Chair Tuck (Acting Chair) and the other members of HRTAC**

**From: Kevin B. Page, Executive Director**

**Date: January 21, 2021**

**Re: December 10, 2020 Regular Meeting Minutes**

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**Recommendation:**

The Commission is asked to approve the Commission's December 10, 2020 Regular Meeting minutes.

**Background:**

The Commission approves meeting minutes for the permanent record of the Commission.

**Fiscal Impact:**

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

**Suggested Motion:**

**Motion:** The Commission approves and adopts the minutes of the Commission's Regular Meeting on December 10, 2020.



**Hampton Roads Transportation  
Accountability Commission (HRTAC)**  
**Summary Minutes of the December 10, 2020 Regular Commission  
Meeting**

The Hampton Roads Transportation Accountability Commission (HRTAC) Regular Meeting was called to order at 12:30 p.m. by conference call due to COVID-19, with the following in attendance by telephone:

**HRTAC Members in Attendance:**

Linda T. Johnson, Chair	Christopher Cornwell, SH
Donnie Tuck, Vice Chair	Thomas G. Shepperd, YK
Rick West, CH	Robert Dyer, VB
Frank Rabil, FR	Doug Pons, WM
William McCarty, IW	Delegate Clint Jenkins, VGA
David Jenkins (in for) McKinley Price, NN*	Senator Louise Lucas, VGA
Kenneth Alexander, NO	Senator Monty Mason, VGA
John Rowe, PO	Delegate Mike Mullin, VGA

**HRTAC Executive Director:**

Kevin Page

**HRTAC Ex-Officio Members in Attendance:**

John Malbon, CTB	Barb Nelson, VPA
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**Other Participants:**

Chris Price, CH	Michael Johnson, SH
Amanda Jarratt, FR	Al Moor, SU
William Harrell, HRT	Neil Morgan, YK
Randy Keaton, IW	Christopher Hall, VDOT
Scott Stevens, JC	Andrew Trivette, WM
Chip Filer, NO	Tom Inglima, Willcox & Savage
J. Randall Wheeler, PQ	

**HRTAC Voting Members Absent:**

Michael Hipple, JC	Delegate Joseph Lindsey, VGA
Eugene Hunt, PQ	

**HRTAC Ex-Officio Members Absent:**

Jennifer Mitchell, DRPT	Stephen Brich, VDOT
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\* Denotes Late Arrival or Early Departure

**Others Recorded Attending:**

Earl Sorey (CH); Scott Detar (Bank of America/Merrill Lynch); Scott Allaire (CDM Smith); Eric Ballou (Kaufman and Canoles); Danetta Jankosky, Tiffany Smith, Sheila Wilson (HRPDC); Lynn Coen, Jennifer Hodnett (HRTAC); John Mihaly (HRTPO); Liang Shan (PFM); Victoria Burnside (Veteran Reporters)

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

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

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

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

Mayor Rick West: Present  
Mayor Frank Rabil: Present  
Mayor Donnie Tuck: Present  
Mr. Michael McCarty: Present  
Mr. Michael Hipple: No Response  
Mr. David Jenkins: Present  
Mayor Kenneth Alexander: Present  
Mayor Eugene Hunt: No Response  
Mayor John Rowe: Present  
Mr. Christopher Cornwell: Present  
Chair Linda Johnson: Present  
Mayor Robert Dyer: Present  
Mayor Doug Pons: Present  
Mr. Thomas Shepperd: Present  
Senator Louise Lucas: Present  
Senator Monty Mason: Present  
Delegate Clint Jenkins: Present  
Delegate Joseph Lindsey: No Response  
Delegate Mike Mullin: Present  
Mr. John Malbon: Present  
Ms. Jennifer Mitchell: No Response  
Ms. Barb Nelson: Present  
Mr. Stephen Brich: No Response

The quorum was confirmed by Mr. John Mihaly.

## **Approval of Agenda**

Mayor Bobby Dyer Moved to approve the agenda; Seconded by Senator Louise Lucas. A roll call vote of the voting Members was taken:

Mayor Rick West: Yes  
Mayor Frank Rabil: Yes  
Mayor Donnie Tuck: Yes  
Mr. William McCarty: Yes  
Mr. Michael Hipple: No Response  
Mr. David Jenkins: No Response  
Mayor Kenneth Alexander: Yes  
Mayor Eugene Hunt: No Response  
Mayor John Rowe: Yes  
Mr. Christopher Cornwell: Yes  
Chair Linda Johnson: Yes  
Mayor Robert Dyer: Yes  
Mayor Doug Pons: Yes  
Mr. Thomas Shepperd: Yes  
Senator Louise Lucas: Yes  
Senator Monty Mason: Yes  
Delegate Clint Jenkins: Yes  
Delegate Joseph Lindsey: No Response  
Delegate Mike Mullin: Yes

Mr. John Mihaly confirmed The Motion Carried.

## **Public Comment Period (limit 5 minutes per individual)**

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

## **Chair's Comments**

HRTAC Chair, Linda T. Johnson, welcomed Members and announced the Chair and Vice Chair of the Regional Transit Committee were:

Mayor Rick West, Chair  
Mayor Donnie Tuck, Vice Chair

Chair Johnson announced a Special Meeting would occur on January 21, 2021 and appointed the following members to the HRTAC Nominating Committee relating to filling the vacancy that will exist when her term as mayor of Suffolk ends December 31, 2020:

Mayor Kenneth Alexander  
Mr. Michael Hipple  
Mayor Frank Rabil

## **Consent Items**

- A. Minutes of the September 17, 2020 Regular Meeting
- B. Amendment to the HRTAC Investment Policy

- C. Cost of Living Adjustment for HRTAC Staff
- D. Amendment to the Approved FY2021-2026 HRTAC Six Year Improvement Plan – Bowers Hill Study Extension to College Drive UPC 111427
- E. Amendment to the Approved HRTAC FY2021 Administrative and Project Development Budget – Investment Grade Traffic and Revenue Study and TIFIA Loan Application Costs – Recommendation to Endorse and Request Authorization to Conduct a Public Hearing
- F. Amendment to the Approved FY2021-2026 HRTAC Six Year Improvement Plan – Recommendation to Fund HRBT Project Toll Facility Collection Equipment Construction and Integration and Requests Authorization to Conduct a Public Hearing
- G. Amendment to the Approved FY2021-FY2026 HRTAC Six Year Improvement Plan – Recommendation to Fund Phase 1 Preliminary Engineering for Hampton Roads Express Lanes Network Segments 1, 4A, 4B, and 4C and Request Authorization to Conduct a Public Hearing

*Mr. David Jenkins arrived.*

Mayor John Rowe Moved to approve the consent agenda items; Seconded by Mr. Thomas Shepperd. A roll call vote of the voting Members was taken:

Mayor Rick West: Yes  
Mayor Frank Rabil: Yes  
Mayor Donnie Tuck: Yes  
Mr. William McCarty: Yes  
Mr. Michael Hipple: No Response  
Mr. David Jenkins: Yes  
Mayor Kenneth Alexander: Yes  
Mayor Eugene Hunt: No Response  
Mayor John Rowe: Yes  
Mr. Christopher Cornwell: Yes  
Chair Linda Johnson: Yes  
Mayor Robert Dyer: Yes  
Mayor Doug Pons: Yes  
Mr. Thomas Shepperd: Yes  
Senator Louise Lucas: Yes  
Senator Monty Mason: Yes  
Delegate Clint Jenkins: Yes  
Delegate Joseph Lindsey: No Response  
Delegate Mike Mullin: Yes

Mr. John Mihaly confirmed The Motion Carried.

#### **Action Item**

- A. Hampton Roads Regional Transit Fund – Transportation District Commission of Hampton Roads FY2021 Application for Funding**

Kevin Page, HRTAC Executive Director, highlighted the historic moment for HRTAC and the Region by virtue of the recent legislation creating the Regional Transit Fund. He noted the positive working relationship between HRTAC and HRT and stated that the future opportunities were bright.

Mayor West, Chair of the HRTAC Regional Transit Committee, explained to the Commission that the inaugural meeting of the Regional Transit Committee was held on December 1, 2020. He proceeded to review the actions and discussion of the meeting and highlighted the application submitted by HRT for Hampton Roads Regional Transit Fund (HRRTF) monies. The Regional Transit Committee had begun working on the development of the HRRTF Program Policy and Procedures and a Memorandum of Understanding between HRTAC and HRT. He stated the Committee recommended approval of HRT's application for funds.

Mr. Page stated the Fiscal Impact to the HRRTF would be \$13.713M and noted the FY2021 Funding Agreement was being finalized. He also clarified that the only Members voting on this action would be the six localities of which HRT is comprised.

Mayor John Rowe Moved the Commissioners of the Member Jurisdictions of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach (the Six Cities of HRT), (i) approve the Transportation District Commission of Hampton Roads FY2021 Application for Funding from the Hampton Roads Regional Transit Fund; (ii) allocate \$13.717M of the Hampton Roads Regional Transit Fund to support disbursements to the Transportation District Commission of Hampton Roads in respect of such application; (iii) authorize the HRTAC Regional Transit Committee Chair to supervise the finalization of the project funding agreement between HRTAC and the Transportation District Commission of Hampton Roads with respect to such application and authorize and direct the Chair to execute and deliver such agreement on behalf of HRTAC; and (iv) authorize the Executive Director of HRTAC to make disbursements from the Hampton Roads Regional Transit Fund in fulfillment of the foregoing; Seconded by Mayor Donnie Tuck. A roll call vote of the six Member cities was taken:

Mayor Rick West: Yes  
Mayor Donnie Tuck: Yes  
Mr. David Jenkins: Yes  
Mayor Kenneth Alexander: Yes  
Mayor John Rowe: Yes  
Mayor Bobby Dyer: Yes

Mr. John Mihaly confirmed The Motion Carried.

## **Discussion Items**

### **A. HRBT Funding Plan of Finance and Debt Management Plan Status Update**

Mr. Kevin Page, HRTAC Executive Director, stated the presentation was given to the Finance Committee at an earlier meeting and the high level information was for discussion only. He reiterated the HRTAC policy of full transparency.

Mr. Page reviewed the status of the Hampton Roads Express Lane Network (HRELN). He reminded the Commissioners that the project was a HOT managed lane contiguous network that would run from Jefferson Avenue in Newport News through the HRBT to Bowers Hill in Chesapeake. He highlighted the segments and the timeline in regards to sufficiency of funds and project readiness.

Mr. Page focused on Phase I and stated the toll revenue from these HOT lanes would support part of the HRBT project funding.

He outlined the progress of the HRBT project and stated the total of construction costs to date.

Mr. Scott Allaire, CDM Smith, explained the Traffic and Revenue Study. He explained that the existing Segment 1 express lanes were converted in January 2018 to HOT from HOV with dynamic tolling to ensure high level of service for drivers. He provided traffic counts and tolled traffic counts for 2018-2020.

He explained the key assumptions and policies, which are in use in Segment 1, and reiterated that the priority is for maximum throughput, not revenue maximization. He outlined the study approach and noted the aspects were industry accepted and approved approaches.

Mr. Allaire outlined estimated traffic growth for 2022-2060 and the corresponding average weekday revenue estimates. Additionally, he provided a graph detailed the annual revenue provided by each segment.

The Commission was given an overview of the planned summer weekend traffic and revenue study. He emphasized the value in collecting this data and considering the effects of the high level of potential travelers that would qualify for free travel in the HOT lanes.

The Commissioners viewed a series of heat maps depicting the traffic congestion on 64 Eastbound and Westbound between I-664 and Tidewater Drive.

Mr. David Miller, PFM, reviewed the construction budget for the HRBT project and all the sources of funds for the project. He reminded Commissioners that the Commission typically aimed to maintain a cash balance of \$100M, and noted that the lowest forecasted cash balance amount was in 2026 at \$200M.

Mr. Miller highlighted the 2020A Bond Sale. He stated that \$743M in net proceeds were collected and the series received high quality credit ratings from both Moody's and S&P. Additionally, he outlined the 2021 HRTF TIFIA loan requirements and stated that expectations would remain the same with respect to the quality credit rating and debt provisions with a lower interest rate.

He explained the TIFIA Bond Anticipation Notes and their purpose. Mr. Miller explained the potential benefits of these and indicated that using BANs in June 2021 may generate a potential savings of \$22M.

Commissioners were given an update on the HRTF Revenue performance and forecast and were told it was doing better than projected by the COVID 19 Stress Tests.

Mr. Miller stated the 2021 Toll TIFIA Loan was anticipated to be \$345M, in line with the amount scheduled under the PAFA, although that number could change. Mr. Miller explained a series of reserves were being funded which are common and ordinary in toll revenue finance. A Toll Revenue Stabilization Fund has been added and if there is a draw on the debt service reserve fund, the HRTF would be used to replenish that debt service reserve, capped at \$4 million per year.

Mr. Eric Ballou, HRTAC's bond counsel from Kaufman and Canoles, outlined the bond documents needed for the 2021 Toll TIFIA Loan. He explained the process was similar to the HRTF Loan series, including a Master Toll Indenture and Bond Validation. He detailed the next steps by Commission action and the corresponding monthly milestones.

Mr. Kevin Page gave the Commissioners an update on the HRTAC Six Year Improvement Plan and informed Members about upcoming public hearings.

## **Information Items**

### **A. HRTAC Monthly Financial Report**

The HRTAC Monthly Financial Report was included in the agenda packet for the Commissioners.

### **B. VDOT/HRTAC Project Updates, HRBT/Other**

VDOT Project Reports were included in the agenda packet for the Commissioners.

### **C Next HRTAC Special Meeting – January 21, 2021 8:30 a.m., (Meeting by Conference Call unless the Governor lifts the State of Emergency),**

HRTAC Chair, Linda Johnson thanked and congratulated Mayor John Rowe of Portsmouth for his service to the region and the HRTAC Board. Additionally, she thanked HRTAC Executive Director Kevin Page and asked the Finance Committee to review his contract and consider a financial compensation adjustment to match the duties that he performs for HRTAC.

Finally, Chair Johnson thanked the Commission for the opportunity to be Chair and the ability to be included in a regional organization that moves Hampton Roads forward.

HRTAC Members emphasized their support and admiration for the Chair and wished her well in her future endeavors.

**Adjournment**

With no further business to come before the Hampton Roads Transportation Accountability Commission, the meeting adjourned at 1:48 p.m.

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Donnie Tuck  
HRTAC Vice Chair

**Agenda Item 5B**  
**Consent Item**

**To: Vice Chair Tuck (Acting Chair) and the other members of HRTAC**

**From: Kevin B. Page, Executive Director**

**Date: January 21, 2021**

**Re: Amendment to the Approved HRTAC FY2021 Administrative and Project Development Budget – Investment Grade Traffic and Revenue Study and TIFIA Loan Application Costs**

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**Recommendation:**

The Finance Committee recommends Commission approval of the proposed amendment to the Approved HRTAC FY2021 Administrative and Project Development Budget to include an additional \$702,500.00 to support costs of the Investment Grade Traffic and Revenue Study and the costs associated with the Hampton Roads Bridge Tunnel ('HRBT') Project TIFIA loan application.

**Background:**

At its December 10, 2020 Regular Meeting, the Commission took action and: i. Endorsed amendment to the Approved HRTAC FY2021 Administrative and Project Development Budget to include an additional \$702,500.00 to support costs of the Investment Grade Traffic and Revenue Study and the costs associated with the Hampton Roads Bridge Tunnel ('HRBT') Project TIFIA loan application; and, ii. Authorized the Executive Director to conduct a Public Hearing to receive public comments on the proposed amendment. Executive Director Page conducted the Public Hearing on this matter on Monday, January 11, 2021 at 10:00 a.m. and no public comments were received.

**Fiscal Impact:**

There is an estimated fiscal impact of \$702,500.00 in relation to this Action Item that will be sourced though available unobligated Hampton Roads Transportation fund balances.

**Suggested Motion:**

Motion is that the Commission approves amendment to the Approved HRTAC FY2021 Administrative and Project Development Budget to include an additional \$702,500.00 to support costs of the Investment Grade Traffic and Revenue Study and the costs associated with the Hampton Roads Bridge Tunnel ('HRBT') Project TIFIA loan application.



**Agenda Item 5C**  
**Consent Item**

**To: Vice Chair Tuck (Acting Chair) and the other members of HRTAC**

**From: Kevin B. Page, Executive Director**

**Date: January 21, 2021**

**Re: Amendment to the Approved FY2021-2026 HRTAC Six Year Improvement Plan  
– HRBT Project Toll Facility Collection Equipment Construction and Integration**

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**Recommendation:**

The Finance Committee recommends that the Commission approve amendment to the Approved FY2021-2026 HRTAC Six Year Improvement Plan to add the Hampton Roads Bridge Tunnel Toll Facility Collection Equipment Construction and Integration as a project of the I-64 Hampton Roads Bridge Tunnel Expansion Project.

**Background:**

At the December 10, 2020, Regular Meeting, the Commission took action and: i. Amended the Approved FY2021-2026 HRTAC Six Year Improvement Plan to add the Hampton Roads Bridge Tunnel Toll Facility Collection Equipment Construction and Integration as a project of the I-64 Hampton Roads Bridge Tunnel Expansion Project; and, ii. Authorized the Executive Director to conduct a public hearing. Executive Director Page conducted the Public Hearing on this matter on Monday, January 11, 2021 at 10:15 a.m. and no public comments were received.

**Fiscal Impact**

There is a \$23,500,000.00 initial fiscal impact relating to this action item that will be sourced through the HRBT project contingency line item identified in the HRBT Project PAFA. HRTAC and VDOT are working together to determine the best path for the release of HRBT project contingency funds to be redirected to this project. Future actions to provide funding for the integration of the tolling system will result in fiscal impacts that will be brought to the Commission on a case by case basis.

**Suggested Motion**

**Motion.** Motion is the Commission: i. Amends the Approved FY2021-2026 HRTAC Six Year Improvement Plan to add the Hampton Roads Bridge Tunnel Toll Facility Collection Equipment Construction and Integration as a project of the I-64 Hampton Roads Bridge Tunnel Expansion Project; and ii. Authorizes the Chair to finalize, execute and deliver a



funding agreement (and make any necessary or appropriate amendments to existing funding agreements) related to this action between the Virginia Department of Transportation and the Commission.



**Agenda Item 5D**  
**Consent Item**

**To: Vice Chair Tuck (Acting Chair) and the other members of HRTAC**

**From: Kevin B. Page, Executive Director**

**Date: January 21, 2021**

**Amendment to the Approved FY2021-2026 HRTAC Six Year Improvement Plan –  
Phase 1 Preliminary Engineering for Hampton Roads Express Lanes Network  
Segments 1, 4A, 4B, and 4C**

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**Recommendation:**

The Finance Committee recommends the Commission approve the proposed amendment to the Approved FY2021-FY2026 HRTAC Six Year Improvement Plan to fund Phase 1 Preliminary Engineering for Hampton Roads Express Lanes Network Segments 1, 4A, 4B, and 4C.

**Background:**

At its December 10, 2020 Regular Meeting, the Commission took action and: i. approved the proposed amendment to the Approved FY2021-FY2026 HRTAC Six Year Improvement Plan to fund Phase 1 Preliminary Engineering for Hampton Roads Express Lanes Network Segments 1, 4A, 4B, and 4C; and, ii. Authorized the Executive Director to conduct a Public Hearing to receive public comments on the proposed amendment. Executive Director Page conducted the Public Hearing on this matter on Monday, January 11, 2021 at 10:45 a.m. and one public comment was received by a representative of VDOT who spoke in support of the Commission funding the project.

**Fiscal Impact:**

There is a combined fiscal impact to the Hampton Roads Transportation Fund of \$26,959,125.00 associated with this Action Item. VDOT proposes accomplishing Phase 1 Preliminary Engineering through three project agreements:

Segment 1 – UPC 117840 - \$5,621,500.00  
Segment 4A/4B – UPC 117839 - \$5,916,425.00  
Segment 4C – UPC 117841 - \$15,421,200.00

**Suggested Motion:**

Motion is that the Commission: i. Amends the Approved FY2021-FY2026 HRTAC Six Year



Improvement Plan to address the funding of Phase 1 Preliminary Engineering for Hampton Roads Express Lanes Network Segments 1, 4A, 4B, and 4C; and, ii. Authorizes the Chair to finalize, execute and deliver a funding agreement related to this action between the Virginia Department of Transportation and the Commission.



**Agenda Item 5E**  
**Consent Item**

**To: Vice Chair Tuck (Acting Chair) and the other members of HRTAC**

**From: Kevin B. Page, Executive Director**

**Date: January 21, 2021**

**Re: Official Intent for Allocation of Bond Proceeds to Reimburse HRTAC Expenditures on Hampton Roads Express Lanes Project**

**Recommendation:**

The Commission is asked to adopt Resolution 2021-01 “Official Intent for Allocation of Bond Proceeds to Reimburse HRTAC Expenditures on Hampton Roads Express Lanes Project” which is attached hereto as Attachment 5E, in order to preserve the option to reimburse itself for the costs of such project from proceeds of a future bond issue.

**Background:**

The Commission may adopt a written “official intent” to preserve its flexibility under bond regulations to advance funds for current project expenses and later reimburse those advances out of proceeds of a future tax-exempt bond issue. An “official intent” resolution must set forth a general description of the applicable projects and the maximum principal amount of bonds expected to be applied to reimburse project costs. By adopting such resolution at this time, the Commission will preserve the option to allocate bond proceeds to expenditures made on the project, if they were spent no earlier than 60 days before the date of the resolution, and if the Bonds are issued no later than 3 years after the first expenditure being reimbursed. Adopting the “official intent” resolution does not obligate the Commission to use bonds instead of pay-go for the project.

**Fiscal Impact:**

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

**Suggested Motion:**

Motion is to adopt Resolution 2021-01, “Official Intent for Allocation of Bond Proceeds to Reimburse HRTAC Expenditures on Hampton Roads Express Lanes Project.”



## **HRTAC RESOLUTION 2021-01**

### **RESOLUTION OF OFFICIAL INTENT FOR ALLOCATION OF BOND PROCEEDS TO REIMBURSE HRTAC EXPENDITURES ON HAMPTON ROADS EXPRESS LANES PROJECT**

**WHEREAS**, in accordance with its statutory powers and purposes, the Hampton Roads Transportation Accountability Commission (the “Commission”) has resolved and agreed to pay portions of the costs related to the Hampton Roads Express Lanes Network, as generally described in the Master Agreement for Development and Tolling Of Hampton Roads Express Lanes Network dated August 18, 2020 (collectively, the “Project”, as further described in Exhibit A);

**WHEREAS**, plans for the Project have proceeded and it is expected that the Commission will cause funds under its control to be advanced to pay expenditures related to the Project (each, an “Expenditure” and, collectively, the “Expenditures”) prior to such time as the Commission may be prepared to issue one or more series of tax-exempt bonds (“Bonds”) to finance such Project;

**WHEREAS**, the Commission intends for a portion of the proceeds of a future issue of Bonds to be available to reimburse the Commission for the payment of Expenditures; and

**WHEREAS**, Section 1.150-2 of the Treasury Regulations, promulgated under the Internal Revenue Code of 1986, as amended (the “Code”), provides that to allocate proceeds of Bonds to reimbursement of Expenditures paid in advance of an issue of Bonds, the Commission must declare its official intent to allocate proceeds of Bonds to reimbursement of Expenditures;

### **NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION:**

1. The Commission intends to issue Bonds in a future period and allocate a portion of the proceeds thereof, in a maximum principal amount of \$780,000,000, to the reimbursement of Expenditures.

2. Each Expenditure to be reimbursed with Bond proceeds was or shall be either (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of such Expenditure), or (b) a cost of issuance with respect to the Bonds.

3. The Commission intends to make a reimbursement allocation, which is a written allocation by the Commission that evidences the Commission’s use of proceeds of the Bonds to reimburse Expenditures, no later than 18 months after the later of (a) the date on which the first Expenditure for the Project was paid, or (b) the date the Project is placed in service or abandoned, but in no event more than three (3) years after the date on which the first Expenditure was paid with respect to the Project, which period may be extended to five (5) years as and to the extent permitted under the applicable Treasury Regulations.

4. The Commission intends that the adoption of this resolution shall confirm the “official intent” of the Commission within the meaning of Treasury Regulations Section 1.150-2

to reimburse Expenditures paid not earlier than sixty (60) days prior to the date of adoption of this resolution and not later than the date of the final allocation described in paragraph 3 above.

5. This resolution shall take effect immediately upon its adoption.

\* \* \*

The undersigned hereby certify that this is a true and correct copy of a resolution duly adopted at a meeting of the Hampton Roads Transportation Accountability Commission held on January 21, 2021.

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Chair, Hampton Roads Transportation  
Accountability Commission

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Vice Chair, Hampton Roads Transportation  
Accountability Commission

## Exhibit A

### General Description of Hampton Roads Express Lane Network

The Hampton Roads Express Lanes Network is planned to consist at full build-out of a tolling network of contiguous high-occupancy toll lanes or other dynamically-priced travel lanes (HOT lanes), in each direction, between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake (approximately 45 miles in length), which ultimately would enable continuous HOT lane travel throughout such corridor.

The HREL Network is expected to be constructed and integrated in a phased approach consisting of several separate phases as determined by the Virginia Department of Transportation and HRTAC. The project includes development, design, construction, equipping, financing and administration costs, or any combination of these (including the establishment of reserves for such purposes), and the development, undertaking, installation and equipping of an electronic toll collection and enforcement system and related toll integration costs, all with respect to the Hampton Roads Express Lanes Network.

**To: Vice Chair Tuck (Acting Chair) and the other members of HRTAC**

**From: Kevin B. Page, Executive Director**

**Date: January 21, 2021**

**Re: Special Election of Chair and, if necessary, Vice Chair of the Commission**

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**Recommendation:**

The Nominating Committee recommends that the Commission adopt the proposed Slate of Officers for the remainder of FY2021.

**Background:**

Sections III.A., III.B. and IV.A. of the HRTAC Amended and Restated Bylaws of the Commission require that the Commission annually elect from its voting Members a Chair and a Vice-Chair at its Annual Organizational Meeting. Further, any vacancy occurring in an office will be filled for the unexpired term by the Commission at the next regular meeting (or at an earlier special meeting called for that purpose) following the occurrence of such vacancy. At the December 10, 2020 Regular Meeting, Chair Johnson noted that she would not be able to complete her FY2021 unexpired term as the Chair as she did not succeed in re-election as Mayor of the City of Suffolk. Statutorily, Mayor Johnson could no longer serve as the Commission Chair past December 31, 2020, her term of elected office. The HRTAC Chair appointed a Nominating Committee and announced that the Commission would conduct an election to fill the Chair's unexpired term at a Special Meeting on January 21, 2021, beginning at 8:30 a.m. The chair of the Nominating Committee conferred informally with committee members to discuss who should be invited to serve as Chair and, if necessary, Vice Chair to serve the remainder of the FY2021 term. The consensus view of the Nominating Committee members is to nominate as the proposed Slate of Officers for the remainder of FY2021 the following: Donnie Tuck (Hampton Mayor), as Chair, and Rick West (Chesapeake Mayor), as Vice Chair.

**Fiscal Impact:**

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

**Suggested Motion:**

Motion is the Commission approve the election of Donnie Tuck as Chair and Rick West as Vice Chair, each to serve for the remainder of FY2021 or until a successor is elected.



**Agenda Item 6B**  
**Discussion Item**

**To: Vice Chair Tuck (Acting Chair) and the other members of HRTAC**

**From: Kevin B. Page, Executive Director**

**Date: January 21, 2021**

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

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**Recommendation:**

The Finance Committee recommends that the Commission hear the presentation regarding, and engage in discussion of, the HRBT Financing and the Hampton Roads Express Lanes Network Funding Plan update that will be provided by the Commission's staff and advisors.

**Background:**

HRTAC Staff, legal team, and professional advisors continue to implement the Approved HRTAC Plan of Finance and Debt Management Plan. Since the Commission's December 10, 2020 Regular Meeting, progress has been made in project finance and delivery. The HRTAC financing team will provide a presentation to bring the Commission up to date on Commission's financing activities and progress, to include discussion on the development of the Hampton Roads Express Lanes Network Funding Plan, and the decisions that the Commission will be making over the next six months. The presentation is attached to this briefing memo.

**Fiscal Impact**

There is no specific fiscal impact to this discussion item. Future actions will result in fiscal impacts that will be brought to the Commission on a case by case basis.

**Suggested Motion:**

Not applicable.





# Hampton Roads Bridge Tunnel Project Financing and HRTAC Hampton Roads Express Lanes Network Funding Plan Update

## Special Commission Meeting

January 21, 2021

# Hampton Roads Express Lane Network (HRELN)

*HRELN is a high occupancy toll network (HOT 2), contiguous and in each traffic direction on I-64 from Jefferson Avenue Interchange in Newport News to the I-64, I-264 and I-664 Bowers Hill Interchange in Chesapeake. It is divided into four segments and will be delivered in three phases:*

**Existing:** Segment 1 (two HOT reversible lanes)

## **Phase I (Under Construction)**

- Segment 2 - under construction & fully funded (one HOT lane in each direction, completion Fall 2022)
- **Segment 3 (HRBT Expansion Project) – additional capacity under construction**

## **Phase II (Pending Project Readiness and Funding**

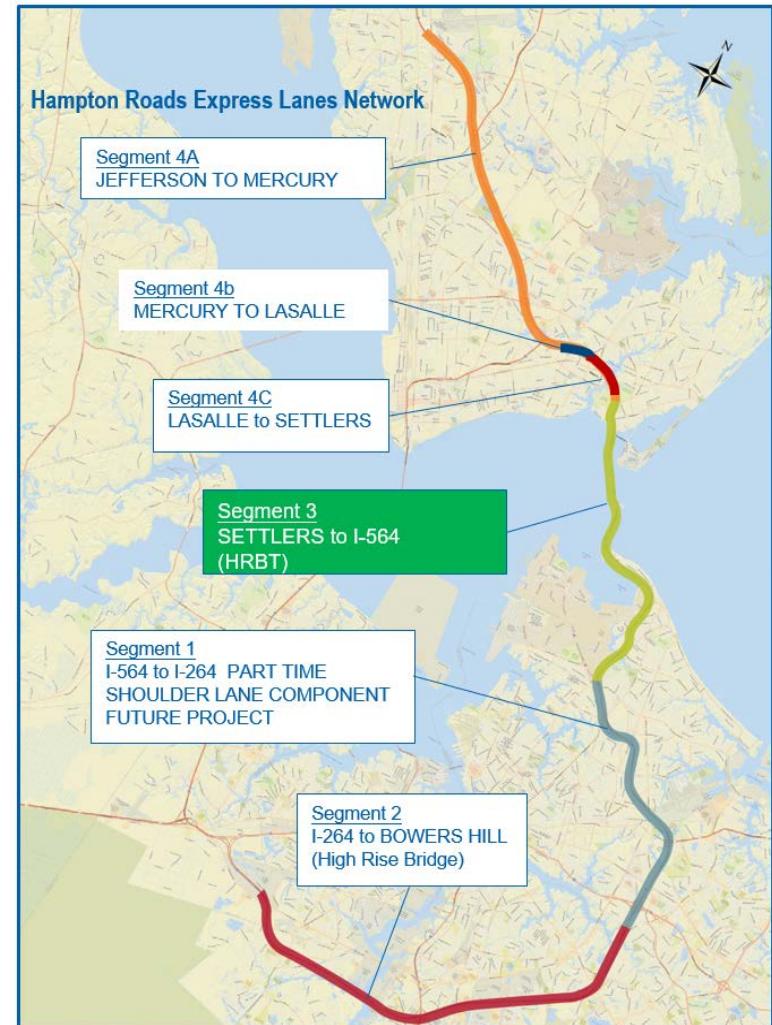
**Availability – High Priority – Targeting 2025 Operational)**

- Segment 1 – currently in preliminary design (completes modifications to 564 interchange to facilitate 2 lane HOT2 WB transition)
- Segment 4b - currently in preliminary design (one HOT2 lane in each direction Lasalle Ave to Mercury Blvd interchange)
- Segment 4c – currently in preliminary design (provides 2 lane HOT2 entrance EB transition)

## **Phase III (Pending Project Readiness and Funding**

**Availability – Future Project)**

- Segment 1 - (Part Time Shoulder Lanes) provides single bi-directional HOT2 part time shoulder lane to operate in concert with reversible lanes
- Segment 4a – currently in preliminary design (converts existing HOV lanes to one HOT2 lane in each direction)



# HRBT Financing Status Update

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- Seeking approvals on various documents on January 21, 2021 Commission Meeting to move forward with the financing
  - Approvals do not authorize debt issuance; Authority to issue comes later
- Toll revenue debt indicative rating
  - In December 2020, received one investment grade rating;
  - by January 22, 2021, expect to receive a second rating
- TIFIA Loans
  - A full creditworthiness review meeting expected in early February 2021
  - On track to close the loans by July 2021
- T&R Study – CDM Smith authorized to conduct summer peak study

# HRBT Funding Update

## Construction Budget

(in \$ millions)

<b>Construction Budget</b>	\$3,758
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## Funds

VDOT SMART SCALE	\$200
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HRTAC Funding

HRTF Paygo	\$1,710
HRTF Senior 2020A Bonds	\$743
HRTF 2021 TIFIA Loan	\$760
Toll 2021 TIFIA Loan	\$345
<b>Total</b>	<b>\$3,758</b>

## Financing Reserve Budget (Initial Deposits)

	<b>Amount</b>	<b>Sources</b>
Tolling O&M Reserve	\$2.9M	VDOT
Tolling M&R Reserve	\$5.0M	HRTAC HRTF
Toll Revenue Debt Service Reserve Fund	\$22.4M	HRTAC HRTF
Toll Revenue Stabilization Fund	\$10M	HRTAC HRTF
HRTF Debt Service Reserve Fund	\$37.0M	HRTAC HRTF

*\*Subject to change*

## Updates:

- Toll Revenue Stabilization Fund: increase from \$4M to \$10M due to rating agencies' feedback (\$10M for both initial deposit and the annual commitment cap); The RSF is for credit enhancement and in the base case is not expected to be used
- \$20.6M Segment 3 tolling capex cost that would be funded by HRTAC's HRBT contingency funding; \$3.0M Segment 3 tolling integration cost would be funded by VDOT TRFA (reimbursable with toll revenues)

# HRELN Phase II and Phase III

- Phase II Projects:
  - Segment 1 – modifications to 564 interchange to facilitate 2 lane HOT2 WB transition
  - Segment 4b – one HOT2 lane in each direction Lasalle Ave to Mercury Blvd interchange
  - Segment 4c – provides 2 lane HOT2 entrance EB transition
- Phase III Projects:
  - Segment 1 - provides single bi-directional HOT2 part time shoulder lane to operate in concert with reversible lanes
  - Segment 4a – converts existing HOV lanes to one HOT2 lane in each direction
- In December 2020, HRTAC received preliminary toll revenue projections and project budgets & tolling expenses estimates (*assuming FY 2026 completion*).

Project Budgets (in millions)

Phase II		Phase III		Phase II & III Combined
Projects	Costs	Projects	Costs	Costs
Seg. 1 Modification	\$54	Seg. 1 PTSI	\$138	
Seg. 4b	\$95	Seg 4a	\$63	
Seg. 4c	\$430			
<b>Sub-total</b>	<b>\$579</b>	<b>Sub-total</b>	<b>\$201</b>	<b>\$780</b>
Toll Integration	\$13	Toll Integration	\$13	\$26
<b>Total</b>	<b>\$592</b>	<b>Total</b>	<b>\$214</b>	<b>\$806</b>

# HRELN Phase II and Phase III – Preliminary Funding Plan

- VDOT indicated they would use TFRA monies to pay toll integration costs which shall be reimbursed with toll revenues.
- Based on preliminary cost and revenue estimates:
  - Phase II and Seg. 4a could be completed by FY 2026
  - Adding Seg. 1 Part Time Shoulder Lanes, the full build out scenario – Phase II and Phase III will need an additional \$93.13M funding in FY 2024-FY 2025 in order to complete by FY 2026 opening day of HRBT.

	<b>HRBT</b>	<b>Phase II Projects</b>	<b>Phase II Plus Seg. 4a</b>	<b>Phase II Plus Phase III</b>
Costs	\$3,861,997,227	\$592,000,000	\$661,000,000	\$806,000,000
HRTAC Funding				
HRTF Debt	\$1,502,940,898	\$247,899,065	\$293,815,900	\$293,815,900
HRTF Paygo	\$1,705,528,683	\$133,107,930	\$127,448,779	\$127,448,779
Toll Revenue Debt	\$345,000,000	\$197,993,005	\$219,735,321	\$265,605,321
SMART Scale	\$200,000,000	\$0	\$0	\$0
Total	\$3,753,469,581	\$579,000,000	\$641,000,000	\$686,870,000
VDOT Funding	\$108,527,646 <i>(South Island Trestle)</i>	\$13,000,000 <i>(toll integration)</i>	\$20,000,000 <i>(toll integration)</i>	\$26,000,000 <i>(toll integration)</i>
Funding Gap	0	0	0	\$93,130,000



**Agenda Item 6C**  
**Action Item**

**To: Vice Chair Tuck (Acting Chair) and the other members of HRTAC**

**From: Kevin B. Page, Executive Director**

**Date: January 21, 2021**

**Hampton Roads Express Lanes Network Initial Tolling Policy**

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**Recommendation:**

The Finance Committee recommends that the Commission adopt the Initial Tolling Policies of the Hampton Roads Express Lanes Network, Resolution 2021-02.

**Background:**

The Commission has been empowered to impose and collect tolls under Virginia Code Sections § 33.2-2607 and § 33.2-2612. At the Commission's December 10, 2020 Regular Meeting, the Commission was provided a briefing of a substantially final investment grade traffic and revenue study prepared by CDM Smith in support of the Hampton Roads Bridge Tunnel ("HRBT") funding plan and subsequent phases of the Hampton Roads Express Lanes Network ("HRELN"). The briefing addressed the assumptions made regarding the Commission's initial tolling policies with respect to the HRELN. On August 18, 2020, the Commission entered into the required Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network Tolling Agreement (the "Master Tolling Agreement" or "MTA"), which serves as the agreement required under Virginia Code § 33.2-2612. Under the MTA, prior to imposing tolls, the Commission is required to set the initial tolling policies for the Initial Network (referred to hereinafter and in the MTA as the "Initial Tolling Policies") in accordance with the terms and procedures of the MTA. In furtherance of finalizing the investment grade traffic and revenue study and developing and implementing the Commission's financing plan, the Commission will have to approve, adopt and set the Initial Tolling Policies.

HRTAC Staff, counsels, and professional advisors have reviewed the parameters and procedures that the Commission is required to observe under the Master Tolling Agreement and have developed resolution 2021-02 for the Commission's consideration for approval based on the following parameters:

*[continued next page]*



Covered Lanes: HOT lanes in the Initial Network created under MTA.

Hours of Operation: HOT lane tolling will be in effect 24 hours daily (24/7/365) (excluding traffic reversal periods in Segment 1).

Tolling Points: Tolling points within the Initial Network, generally expected to be not more than one per segment (as delineated in the MTA), will be established in accordance with the concept of operations plan developed collaboratively between HRTAC and VDOT team.

Toll Collection Methods: Toll collection will employ open road (nonstop) tolling technology (no toll booths); electronic only; enforcement consistent with Virginia Code Section 33.2-503; E-ZPass or E-ZPass Flex transponder required (does not preclude the use of pre-arranged payment accounts approved by the Commission, such as mobile apps).

Reporting/Billing: User tolls will be assessed by combining contiguous gantry records into a single trip transaction (trip-building), with rounding up to the nearest penny.

Rates/Pricing: HOT lane usage (tolls) will be priced using Congestion Pricing, applying dynamic toll setting in relation to traffic density with amounts charged not less than the applicable minimums. The applicable minimums will be \$0.06 per mile or \$0.25 per gantry, whichever is greater, which amounts will be increased annually, effective July 1 of every year, beginning July 1, 2021, based on the greater of (i) the year-over-year change in the United States Average Consumer Price Index (All Cities, All Urban Consumers, All Items, 1982-1984=100) (CPI-U) or its successor Consumer Price Index, as published by the Bureau of Labor Statistics for the U.S. Department of Labor for the most recently available preceding twelve month period, or (ii) 2.5%. Such dynamic toll setting shall be administered in a manner that ensures compliance with 23 U.S.C. Section 166.

Permitted Vehicles/Toll Exemptions: All eligible vehicles may use the HOT lanes, and each vehicle using the HOT lanes will be tolled unless an exemption below applies:

- Vehicles meeting the applicable high occupancy requirement set by the Commission; initially HOV2+ (self-declared via E-ZPass “Flex” transponder; HOV drivers will need E-ZPass Flex switched to HOV mode to use the lanes for free).
- Motorcycles
- Buses
- Emergency vehicles - firefighting vehicles and emergency medical services vehicles (on duty)
- Law enforcement vehicles (on duty)
- Contractors providing services directly for the facility



**Vehicles Prohibited from Using HOT Lanes:** Trucks, as defined in accordance with the MTA

Following adoption of the Initial Tolling Policies, the Commission must present the Initial Tolling Policies to the Commissioner of Highways and request, in accordance with Section 5.02(a)(iii) of the Master Tolling Agreement, that the Commissioner review the policies as required under the MTA and present them to the CTB with the Commissioner's analysis and findings as to whether he or she intends to issue an Exception Notice or a No Exception Notice (as each is defined in the MTA).

**Fiscal Impact**

There is no specific fiscal impact to this action item.

**Suggested Motion:**

Motion is that the Commission (i) adopts the Resolution Authorizing the Initial Tolling Policies of the Hampton Roads Express Lanes Network, Resolution 2021-02, and (ii) authorizes and directs the Executive Director, for and on behalf of the Commission, to provide the Initial Tolling Policies to the Commissioner of Highways and request, in accordance with Section 5.02(a)(iii) of the Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network, the issuance of a No Exception Notice under such agreement.

## HRTAC RESOLUTION 2021-02

### **RESOLUTION AUTHORIZING INITIAL TOLLING POLICIES OF THE HAMPTON ROADS EXPRESS LANES NETWORK**

**WHEREAS**, the Hampton Roads Transportation Accountability Commission (the “Commission”), has been empowered under the Code of Virginia of 1950, as amended (the “Virginia Code”), pursuant to Virginia Code § 33.2-2607 and as set forth in Chapter 26, Title 33.2 of the Virginia Code (the “HRTAC Act”), to impose and collect tolls in amounts established by the Commission for the use of any new or improved highway, bridge or tunnel, to increase capacity on such facility or to address congestion within Planning District 23 as long as such facilities are constructed by the Commission (i) with federal, state, or local funds, (ii) solely with revenues of the Commission, or (iii) with revenues under the control of the Commission;

**WHEREAS**, the Commission has been further empowered under Virginia Code § 33.2-2612 to impose and collect tolls on high-occupancy toll lanes on Interstate 64 in the “facility”, being the vicinity of the interchange of Interstate 64 and Jefferson Avenue in Newport News to the Bowers Hill interchange of Interstate 64, Interstate 264, and Interstate 664 in Chesapeake (the “Initial Interstate 64 Express Lanes Network” or “Initial Network” as further described and defined in the Master Tolling Agreement, as later defined herein), provided that such tolls shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the Initial Network and may only be imposed on a portion of the Initial Network that has been designated as high-occupancy toll lanes by the Commonwealth Transportation Board (the “CTB”) pursuant to Virginia Code § 33.2-502, with the amount of the tolls to be varied by congestion level;

**WHEREAS**, the CTB has designated certain segments of the Initial Network as high-occupancy toll lanes pursuant to resolutions duly adopted on October 19, 2016, September 20, 2017, and on January 10, 2018;

**WHEREAS**, the Hampton Roads Transportation Planning Organization (the “HRTPO”), in its Resolution No. 2020-04, identified and adopted the Initial Network as a component of the Regional Priority Projects (added to its current version dated January 2020) identified by the HRTPO in its 2040 Long-Range Transportation Plan to collectively provide the greatest impact on reducing congestion for the greatest number of citizens residing in Hampton Roads and requested that the Commission pursue development of a funding, development, and implementation plan for the Initial Network to be advanced by the Commission based on project readiness;

**WHEREAS**, prior to the imposition of tolls under Virginia Code § 33.2-2612, the Commission is required to enter into an agreement with the CTB and the Virginia Department of Transportation (“VDOT” or the “Department”), an agency of the Commonwealth of Virginia, that addresses certain matters described in such Code section;

**WHEREAS**, the Commission, the CTB and the Department have entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network Tolling Agreement dated August 18, 2020 (the “Master Tolling Agreement” or “MTA”), which serves as the agreement required under Virginia Code § 33.2-2612;

**WHEREAS**, under the Master Tolling Agreement, prior to imposing tolls, the Commission is required to set the initial tolling policies for the Initial Network (referred to hereinafter and in the MTA as the “Initial Tolling Policies”) in accordance with the terms and procedures of the MTA;

**WHEREAS**, CDM Smith has been engaged to produce an investment grade traffic and revenue (“T&R”) study relating to the Initial Network (the “T&R Study”), which will provide traffic and revenue information that will be essential for developing and implementing a financing plan for the construction and implementation of the Initial Network;

**WHEREAS**, in furtherance of the finalization of the initial T&R Study and the Commission’s financing efforts, the Commission now desires to approve, adopt and set the Initial Tolling Policies;

**WHEREAS**, in connection with the foregoing, the Commission has reviewed the parameters and procedures that the Commission is required to observe under the Master Tolling Agreement and, at its December 10, 2020 meeting, the Commission was briefed by CDM Smith on the tolling and operations assumptions that CDM Smith is using in connection with the T&R Study;

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

**1. Approval, Adoption and Setting of Initial Tolling Policies.** The Commission hereby approves, adopts and sets the policies set forth on Exhibit A attached hereto as the Commission’s Initial Tolling Policies, which, subject to the issuance or deemed issuance of a No Exception Notice (described below), will be effective and implemented in accordance with Section 5.2(a)(vii) of the Master Tolling Agreement, which reads as follows: “The Initial Tolling Policies will be effective and implemented on the first day that the first new segment (*i.e.*, a segment other than the Reversible HOT Lanes Segment) is opened (the “Initial Tolling Policies Effective Date”)”.

**2. Additional Actions and Findings.** The Commission hereby authorizes each officer and authorized representative of the Commission, including the Executive Director, to (i) present the Initial Tolling Policies to the Commissioner of Highways and request, in accordance with Section 5.02(a)(iii) of the Master Tolling Agreement, that the Commissioner review such policies as required under the MTA and present them to the CTB with the Commissioner’s analysis and findings as to whether he or she intends to issue an Exception Notice or a No Exception Notice (as each is defined in the MTA), (ii) execute and deliver on the Commission’s behalf such other instruments, documents or certificates, and to do and perform such things and acts, as he or she shall deem necessary or appropriate to cause the issuance or deemed issuance of a No Exception Notice with respect to the Initial Tolling Policies, and (iii) report to the Commission at such time as a No Exception Notice has been issued or has been deemed to have been issued with respect to the Initial Tolling Policies in accordance with the terms of the MTA.

**3. Effective Date.** This Resolution shall take effect immediately.

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The undersigned hereby certify that this is a true and correct copy of a resolution duly adopted at a meeting of the Hampton Roads Transportation Accountability Commission held on January 21, 2021.

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Chair, Hampton Roads Transportation  
Accountability Commission

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Vice Chair, Hampton Roads Transportation  
Accountability Commission

## EXHIBIT A to HRTAC RESOLUTION 2021-02

### Initial Tolling Policies

1. Covered Lanes: HOT lanes in the Initial Network created under MTA.
2. Hours of Operation: HOT lane tolling will be in effect 24 hours daily (24/7/365) (excluding traffic reversal periods in Segment 1).
3. Tolling Points: Tolling points within the Initial Network, generally expected to be not more than one per segment (as delineated in the MTA), will be established in accordance with the concept of operations plan developed collaboratively between HRTAC and VDOT team.
4. Toll Collection Methods: Toll collection will employ open road (nonstop) tolling technology (no toll booths); electronic only; enforcement consistent with Virginia Code Section 33.2-503; E-ZPass or E-ZPass Flex transponder required (does not preclude the use of pre-arranged payment accounts approved by the Commission, such as mobile apps).
5. Reporting/Billing: User tolls will be assessed by combining contiguous gantry records into a single trip transaction (trip-building), with rounding up to the nearest penny.
6. Rates/Pricing: HOT lane usage (tolls) will be priced using Congestion Pricing, applying dynamic toll setting in relation to traffic density with amounts charged not less than the applicable minimums. The applicable minimums will be \$0.06 per mile or \$0.25 per gantry, whichever is greater, which amounts will be increased annually, effective July 1 of every year, beginning July 1, 2021, based on the greater of (i) the year-over-year change in the United States Average Consumer Price Index (All Cities, All Urban Consumers, All Items, 1982-1984=100) (CPI-U) or its successor Consumer Price Index, as published by the Bureau of Labor Statistics for the U.S. Department of Labor for the most recently available preceding twelve month period, or (ii) 2.5%. Such dynamic toll setting shall be administered in a manner that ensures compliance with 23 U.S.C. Section 166.
7. Permitted Vehicles/Toll Exemptions: All eligible vehicles may use the HOT lanes, and each vehicle using the HOT lanes will be tolled unless an exemption below applies:
  - Vehicles meeting the applicable high occupancy requirement set by the Commission; initially HOV2+ (self-declared via E-ZPass “Flex” transponder; HOV drivers will need E-ZPass Flex switched to HOV mode to use the lanes for free).
  - Motorcycles
  - Buses
  - Emergency vehicles - firefighting vehicles and emergency medical services vehicles (on duty)
  - Law enforcement vehicles (on duty)

- Contractors providing services directly for the facility

8. Vehicles Prohibited from Using HOT Lanes: Trucks, as defined in accordance with the MTA

**Agenda Item 6D**  
**Action Item**

**To: Vice Chair Tuck (Acting Chair) and the other members of HRTAC**

**From: Kevin B. Page, Executive Director**

**Date: January 21, 2021**

**HRTAC Toll Revenue Bond Resolution – Toll Revenue Bond Indenture and Financings Structure**

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**Recommendation:**

The Finance Committee recommends that the Commission endorse the proposed Legal Structure for Future Toll Revenue Bonds, as set forth in draft financing instruments, and also authorize bond counsel to file a motion for judgment in an appropriate Virginia Circuit Court to validate such financing structure and related matters. In connection with this recommendation, a draft Master Indenture and form of Supplemental Indenture providing for the legal structure of Toll Revenue Bonds (as defined below) has been prepared, along with appropriate papers seeking judicial validation of such structure.

**Background:**

Virginia Code §§ 33.2-2606, -2607 and -2612 together authorize the Commission to impose tolls and to issue bonds supported by toll revenues ("Toll Revenue Bonds"). The Commission is working on the financing of the initial segment of the Hampton Roads Express Lanes project and the portion of the HRBT project supported by toll revenues, and the lead time involved in preparing and judicially validating the legal/contractual structure for the Toll Revenue Bonds makes it advisable for the Commission to authorize those preparatory steps at this time. This action would preserve and strengthen the Commission's ability to issue Toll Revenue Bonds for purposes of reimbursing/refinancing pay go expenditures it has previously made for the foregoing projects, or to allocate bond proceeds for such projects. Notably, there would be no actual bond issue without further review and formal approval by the Commission of the terms and conditions of such issuance. Bond counsel has drafted the Master Indenture and form of Supplemental Indenture providing for the legal structure of Toll Revenue Bonds and related HRTAC authorizing resolutions to proceed with obtaining judicial validation of the statutorily-authorized financing structure. Please note that the issuance of any Toll Revenue Bonds is subject to further review and approval by the Commission.

**Fiscal Impact:**

The fiscal impact in relation to this Action Item is included in the FY 2021 HRTAC Adopted



Budget.

**Suggested Motion:**

Motion is the Commission: (i.) approves the prepared resolution 2021-03 for Authorizing Indenture for Toll Roads System Revenue Bonds; (ii.) approves the prepared resolution 2021-04 for Authorizing Certain Legal Proceedings to Establish the Validity of Toll Roads System Revenue Bonds.

**HRTAC RESOLUTION 2021-03**

**RESOLUTION AUTHORIZING INDENTURE FOR**

**TOLL ROADS SYSTEM REVENUE BONDS**

**WHEREAS**, the Hampton Roads Transportation Accountability Commission (the “Commission”), has been empowered under the Code of Virginia of 1950, as amended (the “Virginia Code”), pursuant to Virginia Code § 33.2-2607 and as set forth in Chapter 26, Title 33.2 of the Virginia Code (the “HRTAC Act”), to impose and collect tolls in amounts established by the Commission for the use of any new or improved highway, bridge or tunnel, to increase capacity on such facility or to address congestion within Planning District 23 as long as such facilities are constructed by the Commission (i) with federal, state, or local funds, (ii) solely with revenues of the Commission, or (iii) with revenues under the control of the Commission;

**WHEREAS**, the Commission has been further empowered under Virginia Code § 33.2-2612 to impose and collect tolls on high-occupancy toll lanes on Interstate 64 in the “facility”, being the vicinity of the interchange of Interstate 64 and Jefferson Avenue in Newport News to the Bowers Hill interchange of Interstate 64, Interstate 264, and Interstate 664 in Chesapeake (the “Express Lanes Network,” as further described and defined in the Master Indenture, as later defined herein; all capitalized terms used but not otherwise defined herein shall have the same meanings as set forth in the Master Indenture), provided that such tolls shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the Express Lanes Network and may only be imposed on a portion of the Express Lanes Network that has been designated as high-occupancy toll lanes by the Commonwealth Transportation Board (the “CTB”) pursuant to Virginia Code § 33.2-502, with the amount of the tolls to be varied by congestion level;

**WHEREAS**, the CTB has designated certain segments of the Express Lanes Network as high-occupancy toll lanes pursuant to resolutions duly adopted on October 19, 2016, September 20, 2017, and on January 10, 2018;

**WHEREAS**, all tolls imposed by the Commission under Virginia Code § 33.2-2612 may be used for programs and projects that are reasonably related to or that benefit users of the Express Lanes Network and, without limiting the foregoing, may be used to pay the debt service on and related reserves and financing costs for, and pledged to support, bonds and other evidences of indebtedness the proceeds of which are or were used for construction or improvement of the Express Lanes Network (collectively, the “Projects”);

**WHEREAS**, the Hampton Roads Transportation Planning Organization (the “HRTPO”), in its Resolution No. 2020-04, identified and adopted the Express Lanes Network as a component of the Regional Priority Projects (added to its current version dated January 2020) identified by the HRTPO in its 2040 Long-Range Transportation Plan to collectively provide the greatest impact on reducing congestion for the greatest number of citizens residing in Hampton Roads and requested that the Commission pursue development of a funding, development, and implementation plan for the Express Lanes Network to be advanced by the Commission based on project readiness;

**WHEREAS**, prior to the imposition of tolls under Virginia Code § 33.2-2612, the Commission is required to enter into an agreement with the CTB and the Virginia Department of Transportation (“VDOT” or the “Department”), an agency of the Commonwealth of Virginia, that addresses certain matters described in such Code section (the “Required Tolling Agreement”);

**WHEREAS**, the Commission, the CTB and the Department have entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network Tolling Agreement dated August 18, 2020 (the “Master Tolling Agreement” or “MTA”), which serves as the Required Tolling Agreement;

**WHEREAS**, under the Master Tolling Agreement, prior to imposing tolls (which shall become effective upon the substantial completion or transition date for the appropriate segment, phase or portion of the Hampton Roads Express Lanes Network), the Commission is required to set the initial tolling policies for the Express Lanes Network;

**WHEREAS**, in a resolution adopted the date hereof titled “Resolution Authorizing Initial Tolling Policies for the Hampton Roads Express Lanes Network,” the Commission has approved and set the tolling policies that, subject to the issuance or deemed issuance of a No Exception Notice (as defined in the MTA) by the Commissioner of Highways, will serve as the initial tolling policies for the Express Lanes Network;

**WHEREAS**, pursuant to the requirements set forth in the MTA and the HRTAC Act, the Commission has determined to provide for the imposition of tolls on the initial segments or phases of the Express Lane Network, *inter alia*, in amounts required to provide Toll Revenues to make payments of debt service on the Obligations (as defined in the Master Indenture, defined below) and to make other payments related thereto;

**WHEREAS**, Section 33.2-2606 of the HRTAC Act authorizes and empowers the Commission to issue bonds and other evidences of debt and provides that the provisions of Article 5 (Section 33.2-1920 *et seq.*) of Chapter 19 of Title 33.2 of the Virginia Code shall apply, *mutatis mutandis*, to the issuance of such bonds and other evidences of debt, including Obligations (collectively, the “Bonds”) for any of the Commission’s purposes;

**WHEREAS**, Section 33.2-1920 of the Virginia Code permits the Commission’s Bonds to be payable from and secured by a pledge of all or any part of the revenues, moneys or funds of the Commission as specified in a resolution adopted or indenture entered into by the Commission, but that such Bonds shall not constitute debt of the Commonwealth of Virginia (the “Commonwealth”), or any political subdivision thereof, including the localities comprising Planning District 23 established pursuant to Chapter 42, Title 15.2, of the Virginia Code (collectively, the “Member Localities”), other than the Commission, and that such Bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction, except as provided under Section 33.2-1920 of the Virginia Code;

**WHEREAS**, the Virginia Code authorizes the Commission to receive all of the amounts dedicated to the Hampton Roads Transportation Fund (the “HRTF”) from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional

wholesale motor vehicle fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code;

**WHEREAS**, as provided in the HRTAC Act, the Commission shall use the moneys deposited in the HRTF solely for the purposes of (i) funding new construction projects on new or existing highways, bridges, and tunnels in the Member Localities, giving priority to projects expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within the Member Localities, and (ii) paying the Commission's administrative and operating expenses as provided in its annual budget;

**WHEREAS**, the Commission has previously issued its HRTF revenue bonds pursuant to a Master Indenture, dated as of February 1, 2018, as supplemented by a First Supplemental Indenture, dated as of February 1, 2018, a Second Supplemental Indenture, dated as of December 1, 2019, a Third Supplemental Indenture, dated as of December 15, 2019, and a Fourth Supplemental Indenture, dated as of October 1, 2020 (together, and including such supplemental indentures as may be entered into from time to time, the "HRTF Indenture"), in order to provide for the funding and refunding of such construction projects, all as more fully described in such HRTF Indenture;

**WHEREAS**, Section 8.5 of the HRTF Indenture provides that amounts in the General Fund established under the HRTF Indenture may be applied to any lawful purpose approved by resolution of the Commission, including, without limitation, expenditures for capital improvements with respect to any transportation facility or project that the Commission may finance or refinance pursuant to the Virginia Code;

**WHEREAS**, the toll revenue Bonds are to be issued and secured under a separate indenture from the HRTF revenue bonds;

**WHEREAS**, the Commission has been advised that by the execution and delivery of a Master Indenture to be dated as of a date as determined by the Commission (the "Master Indenture"), with a bank or trust company (the "Trustee"), the Commission may provide for the financing and refinancing of the costs of Projects through the issuance from time to time of its Bonds payable from and secured by the Toll Revenues (as defined in the Master Indenture) and other revenues available under the HRTAC Act, including certain limited HRTF revenues as set forth in the Master Indenture and Supplemental Indenture;

**WHEREAS**, the Master Indenture provides that, as a condition to the issuance of any series of Bonds, the Commission shall deliver to the Trustee, among other documents, certificates and opinions, a related Supplemental Indenture ("Supplemental Indenture");

**WHEREAS**, the Master Indenture and form of Supplemental Indenture have been presented to this meeting for review and approval by the Commission; and

**WHEREAS**, in addition to the conditions described above, the issuance of any series of the Bonds shall be conditioned upon further approving resolutions of the Commission.

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

**1. Authorization and Findings Regarding Bonds.** The Commission hereby authorizes the issuance of its Bonds as hereinafter provided, in one or more series from time to time in accordance with the terms of this Resolution, to be known as the “Toll Roads System Revenue Bonds,” with appropriate series designations. The Bonds shall be substantially in the form attached as an exhibit to the form of the Supplemental Indenture. The Commission shall use the proceeds of the issuance of the Bonds for Projects approved in accordance with the HRTAC Act. The Commission hereby finds and determines that (i) the purposes of the Commission and the HRTAC Act will be furthered by the issuance of Bonds as described in the above Recitals, (ii) the financing and refinancing of the costs of Projects with proceeds of the Bonds will benefit of the citizens of the Commonwealth and the Member Localities and promote their safety, health, welfare, convenience and prosperity and will constitute the performance of an essential governmental function in accordance with Section 33.2-1920 of the Virginia Code, (iii) the MTA satisfies the requirement of the Required Tolling Agreement, (iv) the imposition and collection of tolls on the Express Lanes Network and the use of such tolls for programs and projects as set forth herein and the Master Indenture are reasonably related to and/or benefit users of the Express Lanes Network, (v) the Express Lanes Network, comprised of the various segments thereof and including the Hampton Roads Bridge Tunnel Expansion Project, as defined in the Master Indenture, constitutes the “facility” described in Virginia Code § 33.2-2612, (vi) the Express Lanes Network, and the several segments thereof including the Hampton Roads Bridge Tunnel, are functionally related to one other and comprise an integrated network and a single project, and (vii) the imposition and application of the tolls, the application of HRTF revenues, and the use of proceeds of the Bonds as described above and in the MTA and the Master Indenture will otherwise be in accordance with the HRTAC Act and applicable law, including the Constitution of Virginia.

**2. Details of Bonds.** The final details of each series of the Bonds, including without limitation, their series designation, dated date, aggregate principal amount, interest rates, maturity dates, redemption provisions, sale prices, and the principal amount of each maturity, shall be established in accordance with the requirements of 33.2-1920 of the Virginia Code in further resolutions of the Commission.

**3. Approval of Indenture.** The Master Indenture and the form of Supplemental Indenture are approved. The Chair or Vice Chair of the Commission, either of whom may act (the “HRTAC Representative”), is authorized to execute and deliver on the Commission’s behalf the Master Indenture in substantially the form submitted to this meeting, with such changes, insertions or omissions as may be approved by such HRTAC Representative with advice of counsel. Such approval shall be evidenced conclusively by the execution and delivery of such documents on the Commission’s behalf. The issuance of any series of Bonds shall be conditioned upon further approving resolutions of the Commission whereby the Commission would approve the related Supplemental Indenture for such series of Bonds.

**4. Pledge of Revenues.** The Toll Revenues are hereby pledged to secure the payment of the principal of and premium, if any, and interest on the Bonds in such amounts and under such terms and conditions as provided in the Master Indenture. Neither the members, commissioners, officers, employees or agents of the Commission nor any person executing the Bonds on behalf of the Commission shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not constitute a debt of the Commonwealth or any political subdivision thereof (including any Member Locality) other than the Commission, and shall not constitute an

indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code.

**5. Sale of Bonds.** The Bonds may be sold in such manner, either at public or private sale or on a competitive or negotiated basis, as may be determined by the Commission by subsequent resolution to be in the best interests of the Commission. The Commission authorizes the Executive Director to continue discussions with 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”), regarding the terms and conditions of a loan (the “TIFIA Loan”) from the TIFIA Lender to the Commission, the proceeds of which shall be used to finance the Initial Express Lane Project. To evidence the TIFIA Loan and to provide for its repayment, the Commission would issue and deliver a Series of Obligations under the Master Indenture, with the specific terms of the TIFIA Loan and the related Supplemental Indenture subject to the further approval of the Commission. The Commission further authorizes the Executive Director, with the advice of its financial advisor, to appoint one or more underwriters from time to time from the Commission’s current underwriting pool or as may be provided following a competitive solicitation therefor, including one or more senior and/or co-managers, to serve as the underwriters with respect to any series of the Bonds, and authorizes the sale of each series of the Bonds to any or all of such underwriters appointed by the Executive Director for any particular issuance of the Bonds by negotiated sale, subject to further Commission approval as provided in this Resolution.

**6. Preparation, Execution, Authentication and Delivery of Bonds.** After Bonds are sold or awarded, the HRTAC Representative is authorized and directed to take all proper steps to have the Bonds prepared and executed in accordance with the terms of the Master Indenture and the related Supplemental Indenture, to deliver the Bonds to the Trustee for authentication, and to cause the Bonds so executed and authenticated to be delivered to or for the account of the first purchasers thereof upon payment of the purchase price thereof as provided in Master Indenture or the related Supplemental Indenture. The Bonds shall be prepared, executed, authenticated and delivered as provided in the Master Indenture or the related Supplemental Indenture.

**7. Approval of Use of Certain HRTF Funds.** As provided in Section 8.5 of the HRTF Indenture, the Commission approves the use of funds from the General Fund established under the HRTF Indenture for the specific uses set forth in the Master Indenture and the form of the Supplemental Indenture and in accordance with the HRTAC Act, including the deposit from time to time in the Revenue Stabilization Fund, any debt service reserve fund, and the Major Maintenance and Renewal Fund.

**8. Securities Disclosure Matters Relating to Bonds.** The HRTAC Representative is authorized and directed to approve and deem final in connection with the sale of each series of Bonds such disclosure documents as may be required in accordance the Securities Exchange Act of 1934, as amended, including, without limitation, Rule 15c2-12, as amended, promulgated thereunder (the “Municipal Securities Rule”). The HRTAC Representative is further authorized and directed to execute and deliver on the Commission’s behalf simultaneously with the issuance of each series of Bonds such continuing disclosure agreements as may be required in accordance with the Municipal Securities Rule.

**9. Tax Matters Relating to Bonds.** The HRTAC Representative is authorized and directed to execute and deliver on the Commission's behalf simultaneously with the issuance of each series of Bonds, the interest on which is intended to be exempt from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations (collectively, the "Tax Code"), a tax and non-arbitrage agreement ("Tax Agreement") and/or similar agreements or certificates. The Tax Agreement and/or similar agreements or certificates shall set forth the expected use of and investment of all or any portion of the proceeds of such Bonds and include such covenants as may be necessary to qualify the interest on all or any portion of such Bonds for exemption from gross income for federal income tax purposes under the Tax Code, to maintain such exemption, and to provide that the expected use and investment of the proceeds of such Bonds will comply with the non-arbitrage regulations of Section 148 of the Tax Code. The HRTAC Representative is further authorized to make on behalf of the Commission such elections under the Tax Code with respect to such Bonds as he or she may deem to be in the best interests of the Commission after consultation with Bond Counsel, as defined in the Master Indenture.

**10. Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of, or project referenced by, this Resolution is for any reason held or decided to be unconstitutional or invalid, such decision of unconstitutionality or invalidity shall not affect the validity of the remaining portions. The Commission hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause and phrase thereof and each project referenced therein even though any one or more sections, subsections, sentences, clauses, phrases or projects might be declared unconstitutional or invalid.

**11. Additional Actions.** The Commission authorizes the Executive Director to issue requests for proposals or other competitive procurement solicitations for a bond trustee, consulting engineer, and traffic and revenue consultant with respect to the performance of the respective specified responsibilities under the Master Indenture. Additionally, each officer and authorized representative of the Commission is authorized to execute and deliver on the Commission's behalf such other instruments, documents or certificates, and to do and perform such things and acts as he or she shall deem necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Master Indenture. Any of the foregoing previously done or performed by any officer or authorized representative of the Commission is in all respects approved, ratified and confirmed.

**12. Effective Date.** This Resolution shall take effect immediately.

\* \* \*

The undersigned hereby certify that this is a true and correct copy of a resolution duly adopted at a meeting of the Hampton Roads Transportation Accountability Commission held on January 21, 2021.

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Chair, Hampton Roads Transportation  
Accountability Commission

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Vice Chair, Hampton Roads Transportation  
Accountability Commission

## HRTAC RESOLUTION 2021-04

### **RESOLUTION AUTHORIZING CERTAIN LEGAL PROCEEDINGS TO ESTABLISH THE VALIDITY OF TOLL ROADS SYSTEM REVENUE BONDS**

**WHEREAS**, the Hampton Roads Transportation Accountability Commission (the “Commission”), has been empowered under the Code of Virginia of 1950, as amended (the “Virginia Code”), pursuant to Virginia Code § 33.2-2612 and as set forth in Chapter 26, Title 33.2 (the “HRTAC Act”) of the Virginia Code, to impose and collect tolls on high-occupancy toll lanes on Interstate 64 in the “facility”, being the vicinity of the interchange of Interstate 64 and Jefferson Avenue in Newport News to the Bowers Hill interchange of Interstate 64, Interstate 264, and Interstate 664 in Chesapeake (the “Express Lanes Network,” as further described and defined in the Master Indenture, as later defined herein), provided that such tolls shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the Express Lanes Network and may only be imposed on a portion of the Express Lanes Network that has been designated as high-occupancy toll lanes by the Commonwealth Transportation Board (the “CTB”) pursuant to Virginia Code § 33.2-502, with the amount of the tolls to be varied by congestion level;

**WHEREAS**, the CTB has designated certain segments of the Express Lanes Network as high-occupancy toll lanes pursuant to resolutions duly adopted on October 19, 2016, September 20, 2017, and on January 10, 2018;

**WHEREAS**, all tolls imposed by the Commission under Virginia Code § 33.2-2612 may be used for programs and projects that are reasonably related to or that benefit users of the Express Lanes Network and, without limiting the foregoing, may be used to pay the debt service on and related reserves and financing costs for, and pledged to support, bonds and other evidences of indebtedness the proceeds of which are or were used for construction or improvement of the Express Lanes Network (collectively, the “Projects”);

**WHEREAS**, prior to the imposition of tolls pursuant to Virginia Code § 33.2-2612, the Commission is required to enter into an agreement with the CTB and the Virginia Department of Transportation (“VDOT” or the “Department”), an agency of the Commonwealth of Virginia, that addresses certain matters described in such Code section (the “Required Tolling Agreement”);

**WHEREAS**, the Commission, the CTB and the Department have entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network Tolling Agreement dated August 18, 2020 (the “Master Tolling Agreement” or “MTA”), which serves as the Required Tolling Agreement;

**WHEREAS**, under the Master Tolling Agreement, prior to imposing tolls, the Commission is required to set the initial tolling policies for the Express Lanes Network;

**WHEREAS**, in a resolution adopted the date hereof titled “Resolution Authorizing Initial Tolling Policies for the Hampton Roads Express Lanes Network,” the Commission has approved and set the tolling policies that, subject to the issuance or deemed issuance of a No Exception Notice (as defined in the MTA) by the Commissioner of Highways, will serve as the initial tolling policies for the Express Lanes Network;

**WHEREAS**, Section 33.2-2606 of the HRTAC Act authorizes and empowers the Commission to issue bonds and other evidences of debt and provides that the provisions of Article 5 (Section 33.2-1920 *et seq.*) of Chapter 19 of Title 33.2 of the Virginia Code shall apply, *mutatis mutandis*, to the issuance of such bonds and other evidences of debt, including Obligations (as defined in the Master Indenture defined below) (collectively, the “Bonds”) for any of the Commission’s purposes;

**WHEREAS**, Section 33.2-1920 of the Virginia Code permits the Commission’s Bonds to be payable from and secured by a pledge of all or any part of the revenues, moneys or funds of the Commission as specified in a resolution adopted or indenture entered into by the Commission, but that such Bonds shall not constitute debt of the Commonwealth of Virginia (the “Commonwealth”), or any political subdivision thereof, including the localities comprising Planning District 23 established pursuant to Chapter 42, Title 15.2, of the Virginia Code (collectively, the “Member Localities”), other than the Commission, and that such Bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code;

**WHEREAS**, the Virginia Code authorizes the Commission to receive all of the amounts dedicated to the Hampton Roads Transportation Fund (the “HRTF”) from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code;

**WHEREAS**, in a resolution adopted the date hereof titled “Resolution Authorizing Toll Roads System Revenue Bonds” (the “Bond Authorizing Resolution”), the Commission has approved a Master Indenture (the “Master Indenture”), between the Commission and a bank or trust company (the “Trustee”), together with a [form of Supplemental Series Indenture], to provide for the financing and refinancing of the costs of Projects through the issuance from time to time of its Bonds payable from and secured by the Toll Revenues (as defined in the Master Indenture) and other revenues available under the HRTAC Act, including certain limited HRTF revenues as set forth in the Master Indenture;

**WHEREAS**, in the Bond Authorizing Resolution the Commission has found and determined that (i) the purposes of the Commission and the HRTAC Act will be furthered by the issuance of Bonds as described in the above Recitals, (ii) the financing and refinancing of the costs of Projects with proceeds of the Bonds will benefit of the citizens of the Commonwealth and the Member Localities and promote their safety, health, welfare, convenience and prosperity and will constitute the performance of an essential governmental function in accordance with Section 33.2-1920 of the Virginia Code, (iii) the MTA satisfies the requirement of the Required Tolling Agreement under Virginia Code § 33.2-2612, (iv) the imposition and collection of tolls on the Express Lanes Network and the use of such tolls for programs and projects as set forth in the Bond Resolution and the Master Indenture are reasonably related to and/or benefit users of the Express Lanes Network, (v) the Express Lanes Network, comprised of the various segments thereof and including the Hampton Roads Bridge Tunnel Expansion Project, as defined in the Master Indenture, constitutes the “facility” described in Virginia Code § 33.2-2612, (vi) the Express Lanes Network, and the several segments thereof including the Hampton Roads Bridge Tunnel, are functionally related to one other and comprise an integrated network and a single project, and (vii)

the imposition and application of the tolls, the application of HRTF revenues, and the use of proceeds of the Bonds as described in the Bond Resolution and in the Master Indenture will otherwise be in accordance with the HRTAC Act and applicable law, including the Constitution of Virginia; and

**WHEREAS**, Section 33.2-1921 of the Virginia Code provides that the provisions of Article 6, Chapter 26, Title 15.2 of the Virginia Code pertaining to the judicial determination of validity of bonds (the “Validation Procedures”) shall apply to all suits, actions and proceedings of whatever nature involving the validity of bonds issued by the Commission under the HRTAC Act, and the Validation Procedures may, among other things, establish the validity of the Bonds, the legality of all proceedings taken in connection with the authorization or issuance of the Bonds, the validity of the means provided for the payment of the Bonds, the validity of the powers granted to the Commission under the HRTAC Act, and the validity of all pledges of revenues and of all the covenants and provisions that constitute a part of the contract between the Commission and the owners of the Bonds.

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

**1. Authorization of Validation.** In consultation with and with the approval of Willcox & Savage, P.C., as the Commission’s general counsel, Kaufman & Canoles, P.C., as the Commission’s Bond Counsel, is authorized on the Commission’s behalf to initiate a validation proceeding in a circuit court within Planning District 23, with respect to the Bonds under the Validation Procedures to establish the validity of the Bonds and any or all of the other matters permitted under the Validation Procedures. Bond Counsel is also authorized on the Commission’s behalf and in consultation with and with the approval of the Commission’s general counsel to continue all proceedings and undertake all acts (including, without limitation, the preparation and filing of required motions and documents and the giving of required notices) as it may deem necessary and proper in connection with the validation proceeding.

**2. Authorization of Defense.** In consultation with and with the approval of the Commission’s general counsel, Bond Counsel is also authorized to undertake the defense of the Commission in any legal challenge of the validity of the Bonds, the HRTAC Act, the organization or composition of the Commission, the powers granted to the Commission, the composition of the Toll Revenues or the other funds available under the Master Indenture, the selection or approval of the Projects, the consideration or approval of the Bond Authorization Resolution, the validity of the Master Indenture or any supplement thereto, or the pledge of the HRTAC Revenues thereunder, or any related matters or proceedings.

**3. Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of this Resolution is for any reason held or decided to be unconstitutional or invalid, such decision of unconstitutionality or invalidity shall not affect the validity of the remaining portions. The Commission hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause and phrase thereof even though any one or more sections, subsections, sentences, clauses, or phrases might be declared unconstitutional or invalid.

**4. Effective Date.** This Resolution shall take effect immediately.

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The undersigned hereby certify that this is a true and correct copy of a resolution duly adopted at a meeting of the Hampton Roads Transportation Accountability Commission held on January 21, 2021.

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Chair, Hampton Roads Transportation  
Accountability Commission

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Vice Chair, Hampton Roads Transportation  
Accountability Commission

**FIRST SUPPLEMENTAL INDENTURE**

**between**

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**

**and**

\_\_\_\_\_ ,  
as Trustee

**Dated as of [\_\_\_\_\_] 1, 2021**

**Relating to the**

**Hampton Roads Transportation Accountability Commission  
Toll Roads System Revenue Bonds, 2021 TIFIA Series – Senior Lien Obligation**

**(Supplementing the Master Indenture Dated as of [\_\_\_\_\_] 1, 2021)**

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APPENDIX ONE DISBURSEMENTS AND PAYMENTS OF PRINCIPAL HAMPTON  
ROADS EXPRESS LANES PROJECT      A-1-1

**THIS FIRST SUPPLEMENTAL INDENTURE**, dated as of [ ] 1, 2021 (this “First Supplemental Indenture”), between the **HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a body politic and a political subdivision of the Commonwealth of Virginia (“**HRTAC**” or the “**Commission**”), and \_\_\_\_\_, a national banking association duly organized and existing under [the laws of the United States of America,] as trustee (together with any successor thereto the “**Trustee**”).

**WITNESSETH:**

**WHEREAS**, the Commission has executed and delivered to the Trustee a Master Indenture dated as of [ ] 1, 2021 (the “**Master Indenture**” and, as supplemented and amended from time to time pursuant to its terms, the “**Indenture**”), under which, among other things, the Commission has provided for the financing and refinancing of the costs of projects through the issuance from time to time of Obligations payable from and secured by Toll Revenues;

**WHEREAS**, the Indenture provides that the Commission may issue Senior Lien Obligations from time to time as authorized by a Supplemental Indenture, which Senior Lien Obligations are to be secured by the Trust Estate in accordance with the Indenture;

**WHEREAS**, the Commission and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), propose to enter into a TIFIA Loan Agreement, dated as of [ ] 1, 2021 (the “**TIFIA Loan Agreement**”), authorizing and setting forth the terms and conditions of a TIFIA Loan (the “**TIFIA Loan**”) from the TIFIA Lender to the Commission; the proceeds of which shall be used to finance the Initial Express Lane Project (as defined in the Indenture);

**WHEREAS**, as evidence of the loan extended by the TIFIA Lender under the TIFIA Loan Agreement, and to provide for the repayment thereof, the Commission has determined to issue and deliver a Series of Obligations under the Master Indenture, to be issued as a Senior Lien Obligation thereunder and designated the Hampton Roads Transportation Accountability Commission Toll Revenue Bonds, 2021 TIFIA Series – Senior Lien Obligation” (the “**TIFIA Bond**”), to be issued to the TIFIA Lender in an aggregate principal amount not to exceed \$[ ];

**WHEREAS**, the TIFIA Loan Agreement is being entered into and the TIFIA Bond is issued under, pursuant to and in accordance with Chapter 26, Title 33.2 (and including the provisions of Va. Code 33.2-1920 as applicable to the issuance of the TIFIA Bond, the “**HRTAC Act**”) of the Code of Virginia of 1950; and

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

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

## **ARTICLE I** **DEFINITIONS**

### **Section 1.01 Supplemental Indenture.**

(a) This First Supplemental Indenture is authorized and executed by the Commission and delivered to the Trustee pursuant to and in accordance with Articles II and III of the Master Indenture. All terms, covenants, conditions and agreements of the Master Indenture apply with full force and effect to the TIFIA Bond, except as otherwise expressly stated in this First Supplemental Indenture.

### **Section 1.02 Definitions.**

(a) **Definitions.** Unless the context otherwise requires, or as otherwise provided in subsection (b) of this Section, all terms defined in the Indenture shall have the same meanings, respectively, in this First Supplemental Indenture.

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

**“Authorized Denominations”** means, with respect to the TIFIA Bond, \$[\_\_\_\_\_] principal amount and any integral multiple of \$[\_\_\_\_\_] in excess thereof.

**“Interest Payment Date”** means, with respect to the TIFIA Bond, each [July 1] and [January 1] (and, if applicable, each Interim Payment Date) of each applicable year on and after the TIFIA Debt Service Payment Commencement Date, or if such day is not a Business Day, then the next succeeding Business Day.

**“Interim Payment Date”** means any date (a) on which interest on or principal of any Obligations is payable, and (b) that is not a [July 1] or [January 1] occurring on or after the TIFIA Debt Service Payment Commencement Date.

**“Issue Date”** means the date of delivery of the TIFIA Bond to the TIFIA Lender.

**“Principal Payment Date”** means, with respect to the TIFIA Bond, each principal payment date as set forth in the Loan Amortization Schedule (as defined in the TIFIA Loan Agreement), which shall occur on June 30 of each applicable year on and after the TIFIA Debt Service Payment Commencement Date, or if such day is not a Business Day, then the next succeeding Business Day.

**“Record Date”** means, with respect to the TIFIA Bonds, the fifteenth (15th) day (whether or not a Business Day) of the month preceding the month in which such Interest Payment Date occurs.

**“First Supplemental Indenture”** means this First Supplemental Indenture, dated as of [ ] 1, 2021.

**“TIFIA Loan Prepayment Commencement Date”** means

**“TIFIA Loan Reserve Account”** means the TIFIA Loan Reserve Account established within the Senior Lien Obligations Reserve Fund pursuant to Sections 5.02(a) and 5.09 of the Indenture.

**“TIFIA Loan Reserve Account Reserve Requirement”** means an amount which is equal to the lesser of (x) ten percent (10%) of the maximum loan amount under the TIFIA Bond, (y) one hundred percent (100%) of the Maximum Annual Debt Service, and (z) one hundred and twenty-five percent (125%) of the average annual TIFIA Debt Service through the Final Maturity Date. If there are any Additional TIFIA Loans (as defined in the TIFIA Loan Agreement) outstanding at any time, then the amounts set forth in clauses (x) through (z) will be calculated using the summation of the TIFIA Loan and all of the Additional TIFIA Loans as if there were one TIFIA loan.

The TIFIA Loan Reserve Account Reserve Requirement shall be the Senior Lien Obligations Reserve Requirement with respect to the TIFIA Bond under the Indenture and any other bonds or other obligations issued to the TIFIA Lender under the Master Indenture and secured by a pledge of Toll Revenues thereunder..

**Section 1.03 Rules of Construction.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number and vice versa, and words importing persons shall include corporations and associations, including public bodies, as well as natural persons. Defined terms shall include any variant of the terms set forth in this Article XVIII.

The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder,” and any similar terms, as used in this First Supplemental Indenture, refer to the Indenture.

## **ARTICLE II** **FINDINGS, DETERMINATIONS AND DIRECTIONS**

**Section 2.01 Findings and Determinations.** The Commission hereby finds and determines that the TIFIA Bond shall be issued pursuant to Article III hereof and upon the issuance of the TIFIA Bond, any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the issuance thereof, will exist, will have happened and will have been performed, in due time, form and manner, as required by the Virginia Constitution and statutes of the Commonwealth.

**Section 2.02 Recital in Bonds.** There shall be included in the definitive TIFIA Bond, and also in the temporary TIFIA Bond, if any is issued, a certification and recital that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by that TIFIA Bond, and in the issuing of that TIFIA Bond, exist, have happened and have been performed in due time, form and manner, as required by the Virginia Constitution and statutes of the Commonwealth and the HRTAC Act, and that the TIFIA Bond, shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any

political subdivision thereof (including any Member Locality) other than the Commission, nor shall the TIFIA Bond constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code.

**Section 2.03 Effect of Findings and Recitals.** From and after the issuance of the TIFIA Bond, the findings and determinations herein shall be conclusive evidence of the existence of the facts so found and determined in any action or proceeding in any court in which the validity of the TIFIA Bond is at issue, and no bona fide purchaser of any such TIFIA Bond containing the certification and recital shall be required to see to the existence of any fact, or to the performance of any condition, or to the taking of any proceeding, required prior to such issuance, or to the application of the proceeds of such TIFIA Bond.

### **ARTICLE III** **AUTHORIZATION OF THE TIFIA BOND**

**Section 3.01 Authorization; Principal Amount, Designation and Series.** The Commission hereby approves the terms and provisions of the TIFIA Loan Agreement. Pursuant to the provisions of the Indenture and the provisions of the HRTAC Act, and to evidence the principal and interest payment obligations of the Commission under the TIFIA Loan Agreement, a Senior Lien Obligation entitled to the benefit, protection and security of such provisions, including without limitation the grant of the Trust Estate in the Indenture subject to the provisions of the Indenture, is hereby authorized in the aggregate principal amount not to exceed \$[ ] (excluding compounded interest). Such Senior Lien Obligation shall be designated as, and shall be distinguished from the Senior Lien Obligations of all other Series by the title, “Hampton Roads Transportation Accountability Commission (Toll Roads System), 2021 TIFIA Series – Senior Lien Obligation.”

**Section 3.02 Priority and Lien.** The principal and interest payment obligations pursuant to the TIFIA Loan Agreement and evidenced by the TIFIA Bond shall constitute Senior Lien Obligations under the Indenture. Payment obligations other than the obligation to pay principal and interest under the TIFIA Loan Agreement (evidenced by the corresponding obligation to pay principal of and interest on the TIFIA Bond), including but not limited to fees and expenses payable to the TIFIA Lender under the TIFIA Loan Agreement, shall constitute either Operation and Maintenance Expenses or, to the extent such obligations are not Operation and Maintenance Expenses, Senior Lien Obligations.

**Section 3.03 Purpose.** The TIFIA Bond is issued for the purpose of financing the Express Lanes Initial Project.

**Section 3.04 Form, Denomination, Numbers and Letters.** The TIFIA Bond shall not be issued as a book-entry-only Obligation. Initially there shall be delivered hereunder one fully registered TIFIA Bond numbered R-1, without interest coupons. Any TIFIA Bonds issued in replacement thereof upon transfer or exchange shall be numbered consecutively from R-2 upward, payable to the Owner thereof. The TIFIA Bond and the certificate of authentication shall be substantially in the form attached hereto as Exhibit B, which form is hereby approved and adopted as the form of the TIFIA Bond and as the form of the certificate of authentication. The TIFIA

Bond shall be issued as one or more single TIFIA Bonds for each Owner, and each such TIFIA Bond shall be in an Authorized Denomination.

**Section 3.05 Date, Maturities and Interest Rates.**

(a) The TIFIA Bond shall be dated the Issue Date. The principal amount of the TIFIA Bond will increase from time to time by the amount disbursed by the TIFIA Lender to the Commission pursuant to the TIFIA Loan Agreement, as noted by the TIFIA Lender on the grid attached to the TIFIA Bond as Appendix One, with a copy to the Commission and the Trustee. The Commission shall copy the Trustee on each request to the TIFIA Lender for a disbursement under the TIFIA Loan Agreement. Interest on such principal amount of the TIFIA Bond will accrue on the basis of a 365-day or 366-day year, as appropriate for the actual number of days elapsed, and will be compounded on [July 1] and [January 1] of each year following the initial disbursement and capitalized in accordance with the provisions of the TIFIA Loan Agreement. The TIFIA Bond (i) may and shall be prepaid prior to the respective payment dates, in whole or in part, and at such time, in such amounts and with such notice as may be provided in the TIFIA Loan Agreement and the form of TIFIA Bond set forth herein, and (ii) the principal of and interest on the TIFIA Bond shall be payable, all as provided, and in the manner required or indicated, herein and in the form of TIFIA Bond set forth herein and as set forth in the TIFIA Loan Agreement, including Section [9] thereof.

(b) The TIFIA Loan as evidenced by the TIFIA Bond shall mature on the earlier of (i) June 30, 20[ ], and (ii) the [July 1] or [January 1] (whichever is more recent) occurring immediately prior to the date that is 35 years after the Substantial Completion Date, and shall bear interest at the rate of [ ]% per annum (or the TIFIA Default Rate (as defined in the TIFIA Loan Agreement), if applicable), compounded and payable on the dates and in accordance with the form of TIFIA Bond set forth herein and in the TIFIA Loan Agreement.

(c) [For purposes of calculations of Annual Debt Service, debt service on the TIFIA Bond shall include only TIFIA Mandatory Debt Service (for calculations during the period prior to the TIFIA Debt Service Payment Commencement Date, the TIFIA Mandatory Debt Service shall be deemed to be zero); provided, that in the case of determinations required for the issuance of additional Bonds, the TIFIA Bond shall include both TIFIA Scheduled Debt Service and TIFIA Mandatory Debt Service.]

(d) The entity in whose name the TIFIA Bond shall be registered in the registration books of the Trustee at any time shall be deemed and treated as the absolute Owner thereof for all purposes of the Indenture, whether or not the TIFIA Bond shall be overdue, and the Commission and the Trustee shall not be affected by any notice to the contrary, but such registration may be changed as herein provided. Payment of, or on account of, the principal of, premium, if any, and interest on the TIFIA Bond shall be made only to such Owner. All such payments shall be valid and effectual to satisfy and discharge the liability upon the TIFIA Bond to the extent of the sum or sums so paid. Pursuant to the TIFIA Loan Agreement, the TIFIA Lender may sell the TIFIA Bond but may not change the terms and conditions of the TIFIA Loan without the consent of the Commission. The Trustee shall not register any transfer or exchange of the TIFIA Bond unless the Owner's prospective transferee delivers to the Trustee (i) a letter substantially in the form as set forth in Exhibit A attached hereto and (ii) confirmation from the

Commission that it has consented to any amendments to the TIFIA Loan Agreement necessitated by such sale and transfer. The Trustee may rely on such confirmation and the letter in making a transfer or exchange of the TIFIA Bond without any investigation. In the event there is more than one Owner of the TIFIA Bond, payments of principal of and interest on the TIFIA Bond shall be made ratably, based on the aggregate principal amount of TIFIA Bond held by each such Owner.

(e) The Commission appoints the Trustee to act as the paying agent for paying the principal of and interest on the TIFIA Bond and any other amounts under the TIFIA Loan Agreement, and hereby instructs the Trustee to make the payments when due to the TIFIA Lender in accordance with this Section 3.05 and Section 4.01. The Trustee shall keep proper records of all payments made by the Commission and the Trustee with respect to the TIFIA Bond, and of all exchanges and replacements of TIFIA Bond, as provided in the Indenture.

**Section 3.06 Conditions To Delivery of TIFIA Bonds.** The TIFIA Bond shall be executed and delivered as authorized by this First Supplemental Indenture and the Indenture, including Article II thereof, upon execution and delivery of the TIFIA Loan Agreement.

**Section 3.07 Disposition of Proceeds of TIFIA Bonds.** The proceeds from the sale of the TIFIA Bond shall be received by the Commission and applied by the Commission in accordance with the TIFIA Loan Agreement.

## **ARTICLE IV** **HRTF AND DEBT SERVICE TRANSFERS; TIFIA LOAN RESERVE ACCOUNT**

### **Section 4.01 HRTF Transfers.**

(a) As and to the extent the Commission has authorized HRTF Transfers pursuant to the applicable provisions of the HRTF Indenture, the Commission will make available HRTF Funds for transfer and deposit to the Revenue Stabilization Fund and the Major Maintenance and Renewal Fund, as follows:

(1) for transfer and deposit to the Revenue Stabilization Fund, the amount of \$10,000,000, [on the later of (i) the Substantial Completion Date of the first segment of the Express Lanes Initial Project, or (ii) the date of the first advance of principal with respect to the first series of Obligations under this Master Indenture];

(2) for transfer and deposit to the Major Maintenance and Renewal Fund the amount of \$5,000,000 [on the later of (i) the Substantial Completion Date of the first segment of the Express Lanes Initial Project, or (ii) the date of the first advance of principal with respect to the first series of Obligations under this Master Indenture];

(b) As and to the extent that the Commission has agreed to make HRTF Transfers to the Revenue Stabilization Fund and to the Major Maintenance and Renewal Fund, as set forth in Section 5.06 of the Master Indenture, the Trustee shall deposit any such HRTF Transfer to the Revenue Stabilization Fund or the Major Maintenance and Renewal Fund, as appropriate. Such HRTF Transfers are subject to the specific limitations set forth in Section 5.06 of the Master Indenture, subject to any reimbursement of such amounts to the Commission pursuant to Section 5.15(c).

In the event amounts available in the Toll Revenue Fund would be insufficient to make any of the transfers required by [Clauses First through Tenth and/or Clause Fifteenth of Section 5.03(b)] on the Business Day immediately prior to a Monthly Funding Date, the Trustee shall notify the Commission of the amount of such shortfall by 10:00 a.m. (Eastern time) on such day.

(c) As provided in Section 5.06 of the Master Indenture, (i) all outstanding (*i.e.*, unreimbursed) HRTF Transfers shall be deemed to bear interest at a rate of [TIFIA Interest Rate plus \_\_%] for purposes of reimbursements to the Commission pursuant to Section 5.15(c) of the Master Indenture, and (ii) HRTF Transfers may only be used to pay HRTF Eligible Costs.

**Section 4.02 Transfers to the Debt Service Fund.** Transfers to the Senior Lien Obligations Fund with respect to the TIFIA Bond shall commence on the sixth Monthly Funding Date prior to the TIFIA Debt Service Payment Commencement Date. On each Interest Payment Date and each Principal Payment Date thereafter, the Trustee shall transfer to the Owner of the TIFIA Bond money on deposit in the Senior Lien Obligations Fund to pay principal of and interest on the TIFIA Bond due and payable on such Interest Payment Date or Principal Payment Date. On each [July 1] and [January 1] (or if such day is not a Business Day, then the Business Day succeeding such date) on and after the [TIFIA Loan Prepayment Commencement Date] and on any date of prepayment specified by the Commission pursuant to Section [ ], the Trustee shall transfer the amount then on deposit in the TIFIA Loan Prepayment Account to the Owner of the TIFIA Bond to prepay principal of the TIFIA Bond.

**Section 4.03 TIFIA Loan Reserve Account.** There is hereby established the TIFIA Loan Reserve Account within the Senior Lien Obligations Reserve Fund, such account to be held by the Trustee.

As and to the extent the Commission has authorized HRTF Transfers pursuant to the applicable provisions of the HRTF Indenture, the Commission will make available HRTF Funds, for transfer and deposit to the TIFIA Loan Reserve Account, in the amount equal to the TIFIA Loan Reserve Account Reserve Requirement (\$\_\_\_\_\_\_). The TIFIA Loan Reserve Account shall be funded at the later of the (i) Substantial Completion of the [Project], or (ii) the date on which the Commission makes the first draw under the TIFIA Loan.

On or before June 30, of each Fiscal Year (beginning on June 30, 20[\_\_]), the Trustee shall deposit to the TIFIA Loan Reserve Account funds in the amount required such that an aggregate amount equal to the TIFIA Loan Reserve Account Reserve Requirement is on deposit therein. The funds set aside and placed in the TIFIA Loan Reserve Account on account of the TIFIA Loan Reserve Account Reserve Requirement shall be held solely for the benefit of the Owner of the TIFIA Bond, and shall be used, withdrawn, and replenished as provided herein and in Article V of the Indenture. If, on any date of valuation of Permitted Investments credited to the TIFIA Loan Reserve Account pursuant to Section 5.26 of the Master Indenture, the amount on deposit in the TIFIA Loan Reserve Account exceeds the TIFIA Loan Reserve Account Reserve Requirement as of the later of June 30, 20[\_\_] or such date, the Trustee shall transfer such excess amount to the Toll Revenue Fund.

## **ARTICLE V** **OTHER PROVISIONS**

**Section 5.01 Tax Status.** It is the intention of the Commission that the interest on the TIFIA Bond is not excluded from the gross income of the holders and in that regard the Commission agrees not to file a form 8038-G, or any comparable information return relating to tax-exempt obligations, with the Internal Revenue Service.

**Section 5.02 No Amendment without Consent of the TIFIA Lender.** The Commission shall not enter into a Supplemental Indenture (other than this First Supplemental Indenture) pursuant to the Indenture without the prior written consent of the TIFIA Lender (or its successors or assigns) as set forth in the Indenture except to provide for the authorization and issuance of additional Obligations for which, under the provisions of the TIFIA Loan Agreement and the Indenture, the consent of the TIFIA Lender is not required.

## **ARTICLE VI** **MISCELLANEOUS**

**Section 6.01 Severability.** If any covenant, agreement or provision, or any portion thereof, contained in this First Supplemental Indenture, or the application thereof to any person or circumstance, is held to be unconstitutional, invalid or unenforceable, the remainder of this First Supplemental Indenture, and the application of any such covenant, agreement or provision, or portion thereof, to other persons or circumstances, shall be deemed severable and shall not be affected thereby, and this First Supplemental Indenture shall remain valid.

**Section 6.02 Parties Interested Herein.** Nothing in this First Supplemental Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person or entity, other than the Commission, the Trustee, and the Owners of the TIFIA Bond, any right, remedy or claim under or by reason of this First Supplemental Indenture or any covenant, condition or stipulation hereof; and all the covenants, stipulations, promises and agreements in this First Supplemental Indenture contained by and on behalf of the Commission shall be for the sole and exclusive benefit of the Commission, the Trustee and the Owners.

**Section 6.03 Headings Not Binding.** The headings in this First Supplemental Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this First Supplemental Indenture.

**Section 6.04 Indenture to Remain in Effect.** Save and except as supplemented by this First Supplemental Indenture, the Master Indenture shall remain in full force and effect.

**Section 6.05 Effective Date of First Supplemental Indenture.** This First Supplemental Indenture shall take effect upon its execution and delivery.

**Section 6.06 Execution in Counterparts.** This First Supplemental Indenture may be executed in several counterparts, each of which shall be deemed an original, and all of which shall constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have executed this First Supplemental Indenture by their officers thereunto duly authorized as of the day and year first written above.

**HAMPTON ROADS  
TRANSPORTATION  
ACCOUNTABILITY COMMISSION**

By: \_\_\_\_\_  
[Title]

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**  
**FORM OF TRANSFeree'S LETTER**

[NAME OF BOND TRUSTEE]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Hampton Roads Transportation Accountability Commission  
Toll Revenue Senior Lien Obligation, 2021 TIFIA Series

Ladies and Gentlemen:

The undersigned representatives of \_\_\_\_\_ (the “Purchaser”), do hereby certify, represent and warrant for the benefit of \_\_\_\_\_ as trustee (the “Trustee”), that the Purchaser is not a party to the TIFIA Loan Agreement and does not have the rights or obligations of the “TIFIA Lender” thereunder. The Purchaser understands that in connection with any future transfer or exchange of the TIFIA Bond by the Purchaser, there must be delivered to the Trustee a letter of the transferee in substantially the form of Exhibit A to the First Supplemental Indenture.

The undersigned Purchaser hereby further represents as follows:

1. The Purchaser has full power and authority to carry on its business as now conducted, deliver this letter and make the representations contained herein.
2. The Purchaser has knowledge and experience in financial and business matters that make it capable of evaluating the TIFIA Bond and the risks associated with the purchase of the TIFIA Bond; has the ability to bear the economic risk of an investment in the TIFIA Bond; and is an “accredited investor” as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended.
3. The Purchaser has conducted its own investigation of the financial condition of the Commission, the TIFIA Bond, the Indenture, the Toll Roads System, the Revenues and the Trust Estate, and has obtained such information regarding the TIFIA Bond, such facilities and the Commission and its operations, financial condition and financial prospects as the Purchaser deems necessary to make an informed investment decision with respect to the purchase of the TIFIA Bond.
4. The Purchaser is purchasing the TIFIA Bond for its own account solely and not with a present view to any distribution of the TIFIA Bond or any interest therein or portion thereof or without a present intention of distributing or reselling the TIFIA Bond or any interest therein or portion thereof, provided that the Purchaser retains the right at any time to dispose of the TIFIA Bond or any interest therein or portion thereof as it may determine to be in its best interests, subject to the requirements and provisions of the Indenture. In the event that the Purchaser disposes of the TIFIA Bond or any part thereof in the future, the Purchaser understands that it has the responsibility for complying with any applicable

federal and state securities laws and all rules and regulations promulgated pursuant thereto.

5. The Purchaser understands that the TIFIA Bond is a limited obligation of the Commission secured solely by the Trust Estate as defined and provided in the Indenture and the Commission is not obligated to pay the TIFIA Bond except from the Trust Estate. The TIFIA Bond does not constitute a debt or liability of the Commonwealth of Virginia or any political subdivision of the State other than the Commission. Neither the full faith and credit nor the taxing power of the Commonwealth of Virginia or any political subdivision of the Commonwealth of Virginia is pledged to the payment of principal of or interest on the TIFIA Bond.

6. The Purchaser acknowledges that the TIFIA Bond has not been registered under the under the Securities Act of 1933, as amended, and that such registration is not legally required. The Purchaser agrees that it will comply with any applicable state and federal securities laws then in effect with respect to any subsequent disposition of the TIFIA Bond, and further acknowledges that any current exemption from registration of the TIFIA Bond does not affect or diminish this requirement.

7. In entering into this transaction, the Purchaser has not relied upon any representations or opinions of the Commission (except as with respect to representations, warranties and covenants made by the Commission in the Indenture), its counsel or its bond counsel, or other counsel to the Commission relating to the legal consequences or other aspects of its investment in the TIFIA Bond.

9. The Purchaser has been informed that the TIFIA Bond (i) has not been and will not be registered or otherwise qualified for sale under the “Blue Sky” laws and regulations of any jurisdiction, and (ii) will not be listed on any stock or other securities exchange.

10. None of the Commission, its governing body, or any of its employees, counsel or agents will have any responsibility to the Purchaser for the accuracy or completeness of information obtained by the Purchaser from any source regarding the Commission or its financial condition or regarding the TIFIA Bond, the provision for payment thereof, or the sufficiency of any security therefor. No written information has been provided by the Commission to the Purchaser with respect to the TIFIA Bond. The Purchaser acknowledges that, as between the Purchaser and all of such parties, the Purchaser has assumed responsibility for obtaining such information and making such review as the Purchaser deemed necessary or desirable in connection with its decision to purchase the TIFIA Bond.

Terms not defined herein shall have the meanings given to them under the Master Indenture, dated as of 1, 2021, as supplemented, including as supplemented by the First Supplemental Indenture, dated as of 1, 2021 (as so supplemented, the “Indenture”), each by and between Hampton Roads Transportation Accountability Commission and \_\_\_\_\_, as Trustee.

IN WITNESS WHEREOF, the undersigned representative has hereunto executed this letter as of the      day of , 20\_\_\_.

[PURCHASER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[MUST BE SIGNED BY ACTUAL PURCHASER  
MAY NOT BE SIGNED BY NOMINEE OR AGENT]

**EXHIBIT B**  
**FORM OF TIFIA BOND**

**Number R-1**

**Not to Exceed \$**  
**(plus compounded interest added to principal)**

**UNITED STATES OF AMERICA**

**COMMONWEALTH OF VIRGINIA**

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION  
TOLL REVENUE BONDS, 2021 TIFIA SERIES – SENIOR LIEN OBLIGATION**

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

**Maturity Date:** **June 30, 20**  **or such earlier date determined pursuant to the**  
**TIFIA**  
**Loan Agreement**

**Maximum**  
**Principal Amount:** **DOLLARS (PLUS COMPOUNDED INTEREST ADDED TO**  
**PRINCIPAL)**

**Interest Rate:**

**Issue Date:**                   , 2021

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a public entity duly organized and existing under the laws of the Commonwealth of Virginia (the “Commission”) for value received, hereby promises to pay (but solely from the Trust Estate hereinafter referred to) to the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender” or “Registered Owner”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “Disbursements”) made by the TIFIA Lender (such lesser amount, together with any interest at the rate set forth above that is compounded on [July 1] and [January 1] of each year following the initial disbursement and capitalized in accordance with the provisions of the TIFIA Loan Agreement, dated , 2021, by and between the Commission and the TIFIA Lender (the “TIFIA Loan Agreement”), being hereinafter referred to as the “Outstanding TIFIA Loan Balance”), together with accrued and unpaid interest (including, if applicable, interest at the TIFIA Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding TIFIA Loan Balance from the last compounding date, compounded on the basis of a 365-day or 366-day year, as appropriate, all as more fully described in the above-referenced TIFIA Loan Agreement. Each Disbursement made by the TIFIA Lender to the Commission pursuant to

the TIFIA Loan Agreement and each prepayment made on account of the Outstanding TIFIA Loan Balance shall be recorded by or on behalf of the TIFIA Lender and endorsed on the grid attached hereto as Appendix One, which will correspond to [Exhibit G-1 in the TIFIA Loan Agreement]; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The Commission shall provide notice to the Trustee of the same. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement and shall be paid in accordance with [Exhibit G-1 to the TIFIA Loan Agreement], as revised from time-to-time in accordance with the TIFIA Loan Agreement, until paid in full. Such [Exhibit G-1 to the TIFIA Loan Agreement] shall be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the TIFIA Loan Agreement, provided that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Commission's obligations hereunder or under any other TIFIA Loan Document. Payments of interest hereon are to be made in accordance with Sections [9 and 10] of the TIFIA Loan Agreement as the same become due. Principal of and interest on this Bond shall be paid in funds available on the due date and in any lawful coin or currency of the United States of America which at the date of payment is legal tender for the payment of public and private debts.

This Bond is a fully registered Bond and the principal of and interest on the Bond shall be payable by wire transfer to the Registered Owner hereof in accordance with the TIFIA Loan Agreement.

This Bond is one of a duly authorized issue of bonds of the Commission, designated as "Hampton Roads Transportation Accountability Commission Toll Revenue Bonds, 2021 TIFIA Series – Senior Lien Obligation" (the "Bond"), of the series designated above, all of which are being issued pursuant to Virginia Code 33.2-2612, is set forth in Chapter 26, Title 33.2 (the "Commission Act") and a Master Indenture, dated as of \_\_\_\_\_ 1, 2021 (the "Master Indenture"), as supplemented by a First Supplemental Indenture, dated as of \_\_\_\_\_ 1, 2021 (the "First Supplemental Indenture"), each between the Commission and \_\_\_\_\_, as trustee (the "Trustee"). The Master Indenture, as supplemented and amended from time to time pursuant to its terms, including as supplemented by the First Supplemental Indenture, is hereinafter referred to as the "Indenture." Capitalized terms used herein and not otherwise defined shall have the meaning given such terms in the Indenture, and if not defined in the Indenture, as defined in the TIFIA Loan Agreement.

**This Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision thereof (including any Member Locality) other than the Borrower. This TIFIA Bond shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code. The Borrower's authority to receive any or all of the taxes or other revenues pledged to the Trustee for payment of this Bond (as defined below) pursuant to the Indenture is subject to appropriation by the General Assembly of the Commonwealth, and neither the General Assembly nor the Commission can or will pledge, covenant or agree to impose or maintain at any particular rate or level any of such taxes or other revenues.**

Reference is hereby made to the Indenture, the Commission Act, the Toll Act and the TIFIA Loan Agreement for a description of the terms on which the Bonds are issued and to be issued, the provisions with regard to the nature and extent of the Trust Estate and the rights of the registered owners of the Bonds and all the terms of the Indenture and the TIFIA Loan Agreement are hereby incorporated herein and constitute a contract between the Commission and the registered owner from time to time of this Bond, and to all the provisions thereof of the registered owner of this Bond, by its acceptance hereof, consents and agrees. Additional Bonds may be issued and other indebtedness may be incurred on a parity basis with the Series of Bonds of which this Bond is a part, but only subject to the conditions and limitations contained in the Indenture and the TIFIA Loan Agreement. Fees, costs and other amounts are payable from time to time by the Commission to the TIFIA Lender in connection with and pursuant to the terms of the TIFIA Loan Agreement and the Indenture.

This Bond is secured by and payable both as to principal and interest, and as to any premium upon the redemption hereof, solely from the Trust Estate as defined in the Indenture, subject only to the provisions of the Indenture permitting application thereof for the purposes and on the terms and conditions set forth therein, and the Commission is not obligated to pay this Bond except from such Trust Estate.

**THIS BOND SHALL AND MAY BE PREPAID** in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid to be determined in accordance with the TIFIA Loan Agreement and the Indenture; provided, however, that any prepayment shall be in principal amounts of \$[1,000,000] or any integral multiple of \$[1.00] in excess thereof), at any time or from time to time, without penalty or premium, by paying to the Owner all or part of the principal amount of this Bond in accordance with the TIFIA Loan Agreement.

**THIS BOND SHALL BE SUBJECT TO MANDATORY PREPAYMENT** in accordance with the TIFIA Loan Agreement and the Indenture.

The rights and obligations of the Commission and of the holders and registered owners of the Bonds of the Series of Bonds of which this Bond is a part may be modified or amended at any time in the manner, to the extent, and upon the terms provided in the TIFIA Loan Agreement.

This Bond is transferable or exchangeable as provided in Section [19] of the TIFIA Loan Agreement and Section 2.08 of the Indenture, upon surrender by the registered owner hereof in person, or by such owner's duly authorized attorney, of this Bond at the Principal Office of the Trustee, together with a written instrument of transfer satisfactory to the Trustee duly executed by the registered owner or such owner's duly authorized attorney, and thereupon a new Bond or Bonds of the same series, maturity, interest rate and in the aggregate maximum principal amount, shall be issued to the registered owner or owners in exchange therefor as provided in the Indenture, upon payment of any charges therein prescribed.

The person in whose name this Bond is registered shall be deemed and regarded as the absolute owner hereof for all purposes, including receiving payment of, or on account of, the principal of and premium and interest due hereon.

The Trustee shall not register any transfer or exchange of this Bond unless the Owner's prospective transferee delivers to the Trustee a letter substantially in the form as set forth in Exhibit A attached to the First Supplemental Indenture.

Any delay on the part of the TIFIA Lender in exercising any right hereunder or under the TIFIA Loan Agreement shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default. The Commission hereby waives presentment, demand, protest and notice of any kind.

It is hereby certified and recited by the Commission that any and all acts, conditions and things required to exist, to happen and to be performed, precedent to and in the incurring of the indebtedness evidenced by this Bond, and in the issuing of this Bond, exist, have happened and have been performed in due time, form and manner, as required by the Constitution and statutes of the Commonwealth of Virginia and the Commission Act, and that this Bond, together with all other indebtedness of the Commission secured by the Trust Estate, is within every debt and other limit prescribed by the Constitution and statutes of the Commonwealth of Virginia.

This Bond shall not be entitled to any benefit under the Indenture, or become valid or obligatory for any purpose, until the certificate of authentication hereon endorsed shall have been manually signed by the Trustee.

IN WITNESS WHEREOF the Hampton Roads Transportation Accountability Commission has caused this Bond to be executed in its name and on its behalf by the manual or facsimile signature of its duly authorized representatives all as of the Issue Date set forth above.

HAMPTON ROADS TRANSPORTATION  
ACCOUNTABILITY COMMISSION

By: \_\_\_\_\_  
[Chair]

**[FORM OF CERTIFICATE OF AUTHENTICATION]**

It is hereby certified that this Bond has been issued under the provisions of the Indenture described in this Bond.

Dated of Authentication:

\_\_\_\_\_, as  
Trustee

By: \_\_\_\_\_  
Authorized Officer

**[FORM OF ASSIGNMENT]**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

---

(Please print or Type Name and Address of Assignee)

**PLEASE INSERT SOCIAL SECURITY OR OTHER  
TAX IDENTIFICATION NUMBER OF ASSIGNEE**

---

the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints

---

to transfer the Bond on the books kept for registration thereof with full power of substitution in  
the premises.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_  
(Signature of Assignor)

**APPENDIX ONE**  
**HAMPTON ROADS TRANSPORTATION AUTHORITY**  
**TOLL REVENUE BONDS, 2021 TIFIA SERIES – SENIOR LIEN OBLIGATION**  
**(TIFIA – 20\_\_- \_\_\_\_ )**

# HAMPTON ROADS EXPRESS LANES PROJECT

Maximum Principal Sum: \$ \_\_\_\_\_ Maturity Date: June 30, 20[\_\_\_\_] (or such  
(plus compounded interest earlier date determined pursuant  
added to principal) to the TIFIA Loan Agreement)

Borrower: Hampton Roads Transportation Accountability Commission

TIFIA Lender: The United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau

## DISBURSEMENTS AND PAYMENTS OF PRINCIPAL<sup>1</sup>

1 This Grid may be extended if the number of Disbursements, payments and extensions so requires.



**MASTER INDENTURE**

**between**

**HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**

**and**

\_\_\_\_\_ ,  
**as Trustee**

**Dated as of \_\_\_\_\_ 1, 2021**

**Hampton Roads Transportation  
Accountability Commission**

**Toll Roads System Revenue Bonds**

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*(to be updated)*

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This **MASTER INDENTURE**, dated as of \_\_\_\_\_, 2021 (this “**Master Indenture**”), between the **HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION**, a body politic and a political subdivision of the Commonwealth of Virginia (“**HRTAC**” or the “**Commission**”), and \_\_\_\_\_, a national banking association duly organized and existing under [the laws of the United States of America,] as trustee (together with any successor thereto the “**Trustee**”);

**W I T N E S S E T H:**

**WHEREAS**, HRTAC is a body politic and a political subdivision of the Commonwealth of Virginia (the “**Commonwealth**”);

**WHEREAS**, pursuant to Va. Code § 33.2-2612, as set forth in Chapter 26, Title 33.2 (the “**HRTAC Act**”) of the Code of Virginia of 1950, as amended (the “**Virginia Code**”), the Commission is empowered to impose and collect tolls on high-occupancy toll lanes on Interstate 64 in the vicinity of the interchange of Interstate 64 and Jefferson Avenue in Newport News to the Bowers Hills interchange of Interstate 64, Interstate 264, and Interstate 664 in Chesapeake (further described and defined herein as the “**Express Lanes Network**”), provided that such tolls shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the Express Lanes Network and may only be imposed on a portion of the Express Lanes Network that has been designated as high-occupancy toll lanes by the Commonwealth Transportation Board (the “**CTB**”) pursuant to Virginia Code § 33.2-502, with the amount of the tolls to be varied by congestion level;

**WHEREAS**, under the provisions of Virginia Code § 33.2 -2612, all such tolls may be used for programs and projects that are reasonably related to or that benefit users of the Express Lanes Network and, without limiting the foregoing, may be used to pay the debt service on and related reserves and financing costs for, and pledged to support, bonds and other evidences of indebtedness the proceeds of which are or were used for construction or improvement of the Express Lanes Network;

**WHEREAS**, the HRTAC Act, in addition to authorizing the imposition of tolls on the Express Lanes Network and the various segments, phases and portions thereof, authorizes the Commission pursuant to Va. Code § 33.2-2607 to impose and collect tolls in amounts established by the Commission for the use of any new or improved highway, bridge or tunnel, to increase capacity on such facility or to address congestion within Planning District 23, as long as such facilities are constructed by the Commission (i) with federal, state, or local funds, (ii) solely with revenues of the Commission, or (iii) with revenues under the control of the Commission;

**WHEREAS**, the CTB has designated segments of the Express Lanes Network as high-occupancy toll lanes;

**WHEREAS**, HRTAC, CTB and the Virginia Department of Transportation (“**VDOT**” or the “**Department**”), an agency of the Commonwealth of Virginia, have entered into a Master Agreement for Development and Tolling Of Hampton Roads Express Lanes Network dated August 18, 2020 (the “**Master Tolling Agreement**” or “**MTA**”) in order to coordinate their efforts and actions with respect to, and to establish protocols and procedures to govern, among other

things, (i) the procurement, financing, and delivery of the additional facilities to support the Express Lanes Network, including the design, construction, installation, testing and implementation of the tolling infrastructure and system for the Express Lanes Network, as well as its operation and maintenance and that of the HOT Lanes and the Express Lanes Corridor (as such terms are defined below), (ii) the tolling policies applicable to the Express Lane Network, (iii) the imposition, collection, and enforcement of tolls on the Express Lanes Network, and (iv) the uses of Toll Revenues (defined below) and the proceeds of the Obligations (defined below);

**WHEREAS**, the Hampton Roads Transportation Planning Organization (the “**HRTPO**”), in its Resolution No. 2020-04, identified and adopted the Express Lanes Network as a component of the Regional Priority Projects (added to its current version dated January 2020) identified by the HRTPO in its 2040 Long-Range Transportation Plan to collectively provide the greatest impact on reducing congestion for the greatest number of citizens residing in Hampton Roads and requested that HRTAC pursue development of a funding, development, and implementation plan for the Express Lanes Network to be advanced by HRTAC based on project readiness;

**WHEREAS**, pursuant to the requirements set forth in the Master Tolling Agreement and the HRTAC Act, the Commission has determined to provide for the imposition of tolls on the initial segments or phases of the Express Lane Network in amounts required to provide Toll Revenues to make payments of debt service on the Obligations (defined herein), as well as to satisfy related payment and other obligations related thereto;

**WHEREAS**, Section 33.2-2606 of the HRTAC Act authorizes and empowers HRTAC to issue bonds and other evidences of debt, including the Obligations, and also provides that the provisions of Article 5 (Section 33.2-1920 *et seq.*) of Chapter 19 of Title 33.2 of the Virginia Code shall apply, *mutatis mutandis*, to the issuance of such bonds, Obligations and other evidences of debt for any of the Commission’s purposes;

**WHEREAS**, Section 33.2-1920 of the Virginia Code permits the Obligations to be payable from and secured by a pledge of all or any part of the revenues, moneys or funds of HRTAC as specified in a resolution adopted or indenture entered into by HRTAC, but that such Obligations shall not constitute a debt of the Commonwealth or any political subdivision thereof (including any Member Locality (as defined herein) other than HRTAC, and that such Obligations shall not constitute an indebtedness within the meaning of any debt limitation or restriction, and only the Commission shall be liable thereon as provided under Section 33.2-1920 of the Virginia Code;

**WHEREAS**, HRTAC has found and determined that the purposes of HRTAC and the HRTAC Act will be furthered by providing, by the execution and delivery of this Master Indenture, for the financing and refinancing of the costs of the Toll Roads System, including the Express Lanes Network, through the issuance from time to time of Obligations payable from and secured by the Toll Revenues and certain other sources of revenues available to the Commission for such purpose;

**WHEREAS**, the Virginia Code specifies that the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle

fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code are to be deposited to the Hampton Roads Transportation Fund (the “**HRTF**”);

**WHEREAS**, as provided in the HRTAC Act, the amounts in the HRTF shall be used solely for the purposes of (i) funding new construction projects on new or existing highways, bridges, and tunnels in the Member Localities, giving priority to projects expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within the Member Localities, and (ii) paying HRTAC’s administrative and operating expenses as provided in its annual budget;

**WHEREAS**, the Commission has previously issued its HRTF revenue bonds pursuant to a Master Indenture, dated as of February 1, 2018, as supplemented by a First Supplemental Indenture, dated as of February 1, 2018, a Second Supplemental Indenture, dated as of December 1, 2019, a Third Supplemental Indenture, dated as of December 15, 2019, and a Fourth Supplemental Indenture, dated as of October 1, 2020 (together, and including such supplemental indentures as may be entered into from time to time, the “**HRTF Indenture**”), in order to provide for the funding and refunding of such construction projects, all as more fully described in such HRTF Indenture;

**WHEREAS**, the Obligations issued hereunder are issued and secured separately from the HRTF revenue bonds;

**WHEREAS**, the Commission has determined to enter into this Master Indenture and one or more Supplemental Indentures (collectively, the “**Indenture**”) to provide for (i) the issuance from time to time of Obligations designated as “Hampton Roads Transportation Accountability Commission Toll Roads System Revenue Bonds Senior Lien Bonds” (the “**Senior Lien Bonds**”), to establish and declare the terms and conditions upon which the Senior Lien Bonds and other obligations secured by Toll Revenues and other sources of funds shall be issued and secured and to secure the payment of the principal, premium (if any), and interest on the Senior Lien Bonds and other Obligations secured by Toll Revenues on parity with the Senior Lien Bonds (the “**Parity Obligations**” and, together with the Senior Lien Bonds, the “**Senior Lien Obligations**”); (ii) the issuance of Obligations designated as “Hampton Roads Transportation Accountability Commission Toll Roads System Revenue Second Lien Obligations” (the “**Second Lien Obligations**”), to establish and declare the terms and conditions upon which the Second Lien Obligations shall be issued and secured and to secure the payment of the principal, premium (if any), and interest on the Second Lien Obligations, and (iii) the issuance of Obligations designated as “Hampton Roads Transportation Accountability Commission Toll Roads System Revenue Subordinate Obligations” (the “**Subordinate Obligations**”), to establish and declare the terms and conditions upon which the Subordinate Obligations shall be issued and secured and to secure the payment of the principal, premium (if any), and interest on the Subordinate Obligations;

**WHEREAS**, the execution and delivery of this Master Indenture has in all respects been duly and validly authorized by resolution duly passed and approved by the Commission; and

**WHEREAS**, the Commission certifies that all acts that are necessary to make the Obligations, when executed by the Commission and authenticated and delivered by the Trustee,

duly issued and the valid, legal and binding obligations of the Commission payable in accordance with their terms, and to constitute this Master Indenture a valid and binding agreement of the parties hereto, have been done and taken, and the execution and delivery of this Master Indenture have been duly authorized;

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

The Commission, to secure the payment of the Obligations as the same become due and payable, whether at maturity or by prior redemption, and the performance and observance of all of the covenants and conditions herein contained, and in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Obligations by the Holders thereof and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commission does hereby grant, mortgage, grant a security interest in, assign, transfer in trust, and pledge to the Trustee, and to its successors in trust hereunder, and to them and their assigns forever, all rights, title, interest and privileges of the Commission in, to and under (i) the Toll Revenues, (ii) all interest or other income from investment of money in the Funds and Accounts established hereunder (excluding the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument), (iii) all Swap Revenues, and (iv) all amounts (including the proceeds of Obligations) held in each Fund and Account established under this Indenture (except for amounts on deposit in the Rebate Fund and amounts on deposit in any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument);

**TO HAVE AND TO HOLD** all the same (herein called the “Trust Estate”) with all privileges and appurtenances hereby granted and assigned, or agreed or intended so to be, to the Trustee and its successors in trust and to them and their assigns forever;

**IN TRUST NEVERTHELESS**, upon the terms and trusts herein set forth,

**FIRST:** for the equal and proportionate benefit and security of all Senior Lien Obligations, all of which, regardless of the time or times of their delivery, maturity or other due date, shall be of equal rank without preference, priority or distinction as to lien or otherwise of any Senior Lien Obligation over any other Senior Lien Obligation, except as otherwise permitted by or provided for in this Indenture or in a Supplemental Indenture; provided, that any funds held by the Trustee for the payment of specific Senior Lien Obligations which are deemed to have been paid pursuant to the provisions of Article X and any funds deposited with the Trustee hereunder specifically to be held in escrow or otherwise to provide additional security or an additional source of payment for specified Senior Lien Obligations shall be held and used only to pay or provide security for the Senior Lien Obligations for which such deposit was made and shall not be held as security on a parity for any other Senior Lien Obligations; and provided further, that the Trustee shall apply the Trust Estate hereunder to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to the Senior Lien Obligations and for the purposes and uses and in the order of priority set forth herein prior to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to Second Lien Obligations, or Subordinate Obligations; and

**SECOND:** subject to the prior security interest in the Trust Estate pledged for the security and payment of the Senior Lien Obligations, for the equal and proportionate benefit and security of all Second Lien Obligations, all of which, regardless of the time or times of their delivery, maturity or other due date, shall be of equal rank without preference, priority or distinction as to lien or otherwise of any Second Lien Obligation over any other Second Lien Obligation, except as otherwise permitted by or provided for in this Indenture or in a Supplemental Indenture; provided, that any funds held by the Trustee for the payment of specific Second Lien Obligations that are deemed to have been paid pursuant hereto and any funds deposited with the Trustee hereunder specifically to be held in escrow or otherwise to provide additional security or an additional source of payment for specified Second Lien Obligations shall be held and used only to pay or provide security for the Second Lien Obligations for which such deposit was made and shall not be held as security on a parity for any other Second Lien Obligations; and provided further, that the Trustee shall apply the Trust Estate hereunder to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to the Second Lien Obligations and for the purposes and uses and in the order of priority set forth herein subordinate to the payment of the Senior Lien Obligations but prior to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to Subordinate Obligations and other Obligations; and

**THIRD:** subject to the security interest in the Trust Estate pledged for the security and payment of the Senior Lien Obligations and the Second Lien Obligations, for the equal and proportionate benefit and security of all Subordinate Obligations, all of which, regardless of the time or times of their delivery, maturity or other due date, shall be of equal rank without preference, priority or distinction as to lien or otherwise of any Subordinate Obligation over any other Subordinate Obligation, except as otherwise permitted by or provided for in this Indenture or in a Supplemental Indenture; provided, that any funds held by the Trustee for the payment of specific Subordinate Obligations which are deemed to have been paid pursuant to the provisions hereof and any funds deposited with the Trustee hereunder specifically to be held in escrow or otherwise to provide additional security or an additional source of payment for specified Subordinate Obligations shall be held and used only to pay or provide security for the Subordinate Obligations for which such deposit was made and shall not be held as security on a parity for any other Subordinate Obligations; and provided further, that the Trustee shall apply the Trust Estate hereunder to the payment of the principal of, and interest on, or Maturity Value of, and other payments with respect to the Subordinate Obligations and for the purposes and uses and in the order of priority set forth herein subordinate to the payment of the Senior Lien Obligations and the Second Lien Obligations but prior to the payment of the principal of and interest on, or Maturity Value of, and other payments with respect to other Obligations;

**PROVIDED, HOWEVER,** that if the Commission, its successors or assigns, shall well and truly pay, or cause to be paid, or provide fully for payment as herein provided of the principal of the Obligations and the interest due or to become due thereon (together with premium, if any), at the time and in the manner set forth in the Obligations according to the true intent and meaning thereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee sums sufficient for payment of the entire amount due or to become due thereon as herein provided, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay to the Trustee all sums of money due or to become due to it in accordance with the terms and

provisions hereof, then this Indenture and the rights hereby granted shall cease, terminate and be void except as otherwise provided herein.

**THIS INDENTURE FURTHER WITNESSETH**, and it is expressly declared, that all Obligations issued and secured hereunder are to be issued, authenticated and delivered and all payments, revenues, income and funds hereby pledged and assigned, and are subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes as hereinafter expressed, and the Commission has agreed and covenanted, and does hereby covenant and agree with the Trustee, for the benefit of the Owners from time to time of the Obligations issued hereunder and the Secured Creditors, as follows:

## **ARTICLE I DEFINITIONS**

**Section 1.01 Definitions.** In addition to terms elsewhere defined in this Indenture, the following terms shall have the following meanings unless the context or use clearly indicates another meaning. These definitions shall apply to the singular and plural forms of these defined terms.

**“Acceptable Credit Rating”** means, with respect to any Reserve Facility Provider and any Credit Provider, (i) the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Reserve Facility Provider or Credit Provider executes, delivers or issues a Credit Support Instrument, [ “A”, “A2” ] or the equivalent rating from each Rating Agency that provides a rating on such Reserve Facility Provider’s or Credit Provider’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Reserve Facility Provider or Credit Provider, as applicable, and (ii) while the Obligation in the form of the TIFIA Loan is Outstanding, the additional requirements in the definition of Acceptable Credit Rating set forth in the TIFIA Loan Agreement.

**“Account”** means each account established in accordance with the terms of this Indenture.

**“Accreted Value”** means, with respect to any Capital Appreciation Obligations or Convertible Capital Appreciation Obligations, the principal amount thereof plus the interest accrued thereon at and prior to the maturity or earlier redemption thereof, in the case of a Capital Appreciation Obligation, or at and prior to the date of conversion of such Obligation to a Current Interest Obligation, in the case of a Convertible Capital Appreciation Obligation, compounded on the basis of a 360-day year of twelve 30-day months at the approximate interest rate thereon on each compounding date specified therein. The Accreted Value of an Obligation at any date of computation shall be an amount equal to the principal amount of such Obligation plus interest accrued thereon from the date of issuance, such interest to accrue at the rate per annum established as provided in a Supplemental Indenture and be compounded periodically, plus, if such date of computation shall not be a compounding date, the ratable portion of the difference between the Accreted Value computed as of the immediately preceding compounding date (or the date of issuance thereof if the date of computation is prior to the first compounding date succeeding the date of issuance) and the Accreted Value computed as of the immediately succeeding

compounding date, calculated based on the assumption that the Accreted Value increases during any period in equal daily amounts (with straight-line interpolation between compounding dates). Notwithstanding the foregoing, interest on the TIFIA Loan shall accrue and compound in accordance with the terms of the TIFIA Loan Agreement.

**“Additional Network Cost Payment Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Additional Tolled Lanes”** means any lane, other than those lanes that are already part of the Express Lanes Initial Project, on I-64 or other roadways within Hampton Roads that (i) is part of a segment that has been expanded, constructed, or improved with “Commission-Controlled Money” (as defined in the MTA), or (ii) would be within the Hampton Roads Beltway (as defined in the MTA), if any, added under the provisions of the MTA.

**“Agency Obligations”** means senior debt obligations of U.S. government-sponsored agencies, corporations, and enterprises that are not backed by the full faith and credit of the U.S. government, including, but not limited to, Federal Home Loan Mortgage Corporation debt obligations, Farm Credit System consolidated system wide bonds and notes, Federal Home Loan Banks consolidated debt obligations, Federal National Mortgage Association debt obligations, Student Loan Marketing Association debt obligations, Tennessee Valley Authority debt obligations, Resolution Funding Corporation debt obligations (including principal and interest strips), and U.S. Agency for International Development guaranteed notes (including stripped securities).

**“All-in Cost Coverage Ratio”** means, for any Calculation Period, the ratio of (a) (i) projected Net Revenue for such Calculation Period, plus any Available General Reserve Fund Balance to (b) (i) aggregate Annual Debt Service with respect to all Obligations for such Calculation Period plus (ii) the Major Maintenance and Renewal Fund Required Amount for such Calculation Period; provided that the Major Maintenance and Renewal Fund Required Amount, for purposes of the foregoing calculation, shall take into account amounts during any Fiscal Year that are (y) paid by HRTAC for the purpose of funding or pre-funding Major Maintenance and Renewal Fund Permitted Expenditures that are in excess of required HRTF Transfers under this Indenture, and (z) paid by VDOT for the purpose of funding or pre-funding Major Maintenance and Renewal Fund Permitted Expenditures.

**“Annual Debt Service”** means the amount of payments due on the applicable Outstanding Obligations for any Calculation Period, as calculated by the Commission, utilizing the following assumptions about payments on such Obligations (and if more than one such assumption may apply, using the relevant assumptions selected by the Commission):

(i) in determining the principal amount of an Obligation due in each year, payment shall be assumed to be made in accordance with the amortization schedule established for such Obligation, including any minimum sinking fund or account payments;

(ii) if the Obligation is supported by a Credit Support Instrument, principal may be treated as if it were due based upon the level amortization of such principal over the maximum term of repayment of borrowings under such Credit Support Instrument;

(iii) if an Outstanding Obligation bears a variable interest rate, the interest rate on such Obligations shall be assumed to be a Certified Interest Rate; provided, however, while the Obligation in the form of the TIFIA Loan is Outstanding, if an Outstanding Obligation bears a variable interest rate, the interest rate shall be calculated in accordance with the TIFIA Loan Agreement;

(iv) if Obligations proposed to be issued will be variable interest rate obligations, the interest on which is excluded from gross income for federal income tax purposes, then such Obligations shall be assumed to bear interest at a Certified Interest Rate; provided, however, while the Obligation in the form of the TIFIA Loan is Outstanding, if an Outstanding Obligation bears a variable interest rate, the interest on which is excluded from gross income for federal income tax purposes, then such Obligations shall be assumed to bear interest at an interest rate calculated in accordance with the TIFIA Loan Agreement;

(v) if Obligations proposed to be issued will be variable interest rate obligations the interest on which is included in gross income for federal income tax purposes, then such Obligations shall be assumed to bear interest at a Certified Interest Rate; provided, however, while the Obligation in the form of the TIFIA Loan is Outstanding, if an Outstanding Obligation bears a variable interest rate, the interest on which is included in gross income for federal income tax purposes, then such Obligations shall be assumed to bear interest at an interest rate calculated in accordance with the TIFIA Loan Agreement;

(vi) if Obligations proposed to be issued are part of a Commercial Paper Program, the principal of such Obligations may be treated as if such principal were due based upon a 30-year level amortization of principal from the date of calculation and the interest on such Obligations shall be calculated as if such Obligations were variable interest rate Obligations;

(vii) if the variable interest on any Obligation plus the variable payments due to the Commission and fixed payments due from the Commission under a Swap designated by the Commission are treated by the Commission as synthetic fixed rate debt, the variable interest rate Obligation may be treated as bearing such synthetic fixed rate for the duration of the synthetic fixed rate;

(viii) if the fixed interest on any Obligation plus the fixed payments due to the Commission and variable payments due from the Commission under a Swap designated by the Commission are treated by the Commission as synthetic variable rate debt, the fixed interest rate Obligation may be treated as bearing such synthetic variable rate for the duration of the synthetic variable rate and such synthetic variable rate shall be calculated using the principles of clauses (iii), (iv) or (v) hereof;

(ix) if any of the Obligations are Short-Term/Put Obligations, the principal of such Obligations may be treated as if such principal were due based upon a 30-year level amortization of principal from the date of calculation and the interest on such Obligations may be calculated as if such Obligations were variable interest rate Obligations;

(x) principal and interest payments on Obligations may be excluded (a) to the extent such payments are to be paid from amounts (from sources other than Revenues) then currently on

deposit with the Trustee or another fiduciary in escrow specifically and irrevocably therefor, and (b) to the extent that such payments are to be paid from capitalized interest or other amounts held by the Trustee or another fiduciary specifically to pay such principal or interest (from sources other than Revenues);

(xi) if any of the Obligations are, or upon issuance will be, obligations for which the Commission is entitled to receive Subsidy Payments, as evidenced by an Opinion of Bond Counsel delivered with respect to such Obligations, such Obligations may be treated as bearing an interest rate equal to the rate of interest borne or assumed to be borne, as applicable, by the Obligations for the period of determination minus a rate equal to the Subsidy Payments to which the Commission is entitled for such period; and

(xii) any payment obligation under an Obligation that was or is optional or contingent (such as the obligation to make a termination payment under a Swap), whether or not the option is exercised or the contingency occurs, and any payments that are not scheduled payments, may be excluded;

(xiii) with respect to the TIFIA Loan, Annual Debt Service on such Obligations shall include TIFIA Debt Service.

**“Annual Operating Budget”** means the annual budget required by Section 6.04 hereof.

**“Authorized Denominations”** means, with respect to a Series of Obligations, the denomination or denominations designated as such in a Supplemental Indenture providing for the issuance of such Obligations.

**“Authorized Representative”** means (i) the Chair or Vice Chair [or Executive Director] of the Commission, and (ii) any other commissioner, officer or employee of the Commission authorized at the time by resolution of HRTAC to act on behalf of the Commission as set forth in a Certificate of the Commission filed with the Trustee, which Certificate shall contain such commissioner’s, officer’s, or employee’s specimen signature.

**“Available General Reserve Fund Balance”** means, subject to the provisions of Section 5.16(b) of this Master Indenture, “uncommitted amounts” in the General Reserve Fund, which shall consist of amounts in the General Reserve Fund that are not programmed or committed for the funding of any project or other purpose. Such “uncommitted amounts” are only deemed to be part of the Available General Reserve Fund Balance if the balance in the General Fund as of the end of the immediately preceding Fiscal Year is greater than \$20,000,000, (ii) if any outstanding Obligation is in the form of or securing payment of a TIFIA Loan, the Commission has commenced principal payments of such TIFIA Loan, (iii) no payment default or default in the payment of any Outstanding Obligations shall have occurred and be continuing, and all amounts due on all Outstanding Obligations up to and including the next preceding Calculation Date shall have been paid (including any amounts remaining unpaid from any prior period).

**“Bankruptcy Related Event”** means (a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of the Commission or any of its debts, or of a substantial part of the assets of the

Commission, under any Insolvency Law, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Commission for a substantial part of the assets of the Commission, and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered; (b) the Commission shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for the Commission or for a substantial part of the assets of the Commission, or (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, or (iii) make a general assignment for the benefit of creditors, or (iv) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, or (v) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, or (vi) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (v), inclusive, of this clause (b), or (vii) take any action for the purpose of effecting any of the foregoing; or (c) (i) all or a substantial part of the Trust Estate shall be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the lien thereon securing any Obligations, or (ii) all or a substantial part of the Trust Estate shall be transferred pursuant to a sale or disposition of such Trust Estate in lieu of foreclosure.

**“Beneficial Owner”** means, with respect to any Book-Entry Obligation, the beneficial owner of such Book-Entry Obligation as determined in accordance with the applicable rules of the Securities Depository for such Book-Entry Obligations.

**“Bond Anticipation Obligations”** means Obligations issued in anticipation of the sale of a Series of Obligations in a principal amount not exceeding the principal amount of such Series of Obligations and payable from the proceeds of the sale of the Series of Obligations in anticipation of which such Bond Anticipation Obligations are issued, which may be payable, in whole or in part, from Toll Revenues, at the discretion of the Commission, as set forth in a Supplemental Indenture.

**“Bond Counsel”** means a firm of nationally-recognized attorneys-at-law experienced in legal work relating to the issuance of municipal bonds selected by the Commission.

**“Bond Obligation”** means, as of any given date of calculation, (a) with respect to any Outstanding Current Interest Obligation, the principal amount of such Obligation, and (b) with respect to any Outstanding Capital Appreciation Obligation or Convertible Capital Appreciation Obligation, the Accreted Value thereof.

**“Bond Register”** means the registration books for the ownership of Obligations maintained by the Trustee pursuant to Section 2.08.

**“Bondholder”** or **“Holder”** or **“Owner”** means the record owner of any Obligation shown on the books of registration kept by the Trustee, which, during any period when such Obligation is a Book-Entry Obligation, shall be the Securities Depository or its Nominee.

**“Book-Entry Obligations”** means Obligations issued under a book-entry only depository system as provided in Section 2.13.

**“Business Day”** means any day, other than a Saturday, Sunday or other day on which the Government or banks are authorized or obligated by law or executive order to be closed in the Commonwealth or the State of New York or in any city in which the Principal Office of the Trustee or, with respect to any Obligations secured by a Credit Support Instrument, the office where draws are to be made on a Credit Provider is located.

**“Calculation Date”** means each June 30 and December 31, commencing with the first such date following the Substantial Completion Date.

**“Calculation Period”** means a period of consecutive twelve (12) months.

**“Capital Appreciation Obligations”** means the Obligations designated as Capital Appreciation Obligations in the Supplemental Indenture providing for the issuance of such Obligations and on which interest is compounded and paid at maturity or on a redemption date.

**“Capital Expenditures”** means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with generally accepted accounting principles as defined by the American Institute of Certified Public Accountants or such other nationally recognized professional body, in effect from time to time in the United States of America.

**“Certificate of the Commission”** means an instrument in writing signed by an Authorized Representative of the Commission.

**“Certified Interest Rate”** means a fixed rate of interest, determined by a qualified municipal adviser or investment bank with expertise in municipal bonds and selected by the Commission, and determined based on the amortization and credit rating of the debt to which such interest rate is being applied.

**“Code”** means the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder.

**“Commercial Paper Program”** means a program of short-term Obligations (secured, at the option of the Commission, on a parity with Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations) having the characteristics of commercial paper in that (i) such Obligations have a stated maturity not later than 270 days from their date of issue, and (ii) maturing Obligations of such program may be paid with the proceeds of renewal Obligations.

**“Commonwealth”** means the Commonwealth of Virginia.

**“Commonwealth Transportation Board”** or **“CTB”** means the policy board of the Commonwealth, with the power and authority set forth in Article 4, Chapter 15, Title 33.2 of the Virginia Code, as amended and in effect from time to time, or successor entity.

**“Completion Obligations”** means any Obligations, in an aggregate principal amount not to exceed 10% of the aggregate principal amount of Obligations originally incurred by the Commission to finance a Toll System Network Project, issued for the purpose of financing the completion of such Toll System Network Project, to the extent necessary to complete such Toll System Network Project, in the manner and scope contemplated at the time that such Obligations theretofore incurred were originally incurred, and, to the extent the same shall be applicable, in accordance with the general plans and specifications contained in a Construction Plan, with such changes as have been made in conformance with the Financing Documents pursuant to which such Obligations theretofore incurred were originally incurred. The 10% limitation is subject to the provisions of Sections 3.03(c)(3) and 3.04(e)(3) of this Master Indenture.

**“Construction Plan”** means the plan for transportation improvements relating to a Toll System Network Project, including projected costs, the use of Toll Revenues, and a proposed completion schedule.

**“Consulting Engineer”** means, initially, [ ] or VDOT, and at any time thereafter means an independent engineer or engineering firm, or an affiliate thereof, experienced with planning and estimating the costs of construction, operation, maintenance, repair, and/or replacement of facilities similar to the Toll System Network Project, who is appointed by the Commission or, with the approval of the Commission, by VDOT; provided, while the Obligation in the form of the TIFIA Loan is Outstanding, such appointment is not objected to in written notice to the Commission by the TIFIA Lender within 15 Business Days after receiving written notice from the Commission of the name of the proposed engineering firm and supporting information regarding the qualifications of the proposed engineering firm.

**“Continuing Disclosure Agreement”** means, with respect to each Series of Obligations requiring an undertaking regarding disclosure under Rule 15c2-12, the continuing disclosure undertaking entered into by the Commission and, if applicable, the Trustee or a Dissemination Agent or both, as the same may be supplemented, modified or amended in accordance with its terms.

**“Convertible Capital Appreciation Obligations”** means Obligations that initially are issued as Capital Appreciation Obligations (including the Obligation in the form of the TIFIA Loan), but convert on a certain date to Obligations on which interest is paid periodically (“conversion date”). Convertible Capital Appreciation Obligations shall be Capital Appreciation Obligations until the conversion date and from and after such conversion date shall no longer be Capital Appreciation Obligations, but shall be treated as Current Interest Obligations having a principal amount equal to their Accreted Value on the conversion date; provided that the principal amount of the TIFIA Loan on a conversion date shall be determined as provided in the TIFIA Loan Agreement.

**“Costs of Issuance”** means all items of expense directly or indirectly payable by or reimbursable to the Commission and related to the authorization, execution, sale and delivery of Obligations, including, but not limited to, advertising and printing costs, costs of preparation and reproduction of documents, filing and recording fees, initial fees and charges of the Trustee, legal fees and charges, fees and disbursements of consultants and professionals, financial advisor fees

and expenses, underwriting fees and discounts, rating agency fees, fees and charges for preparation, execution, transportation and safekeeping of such Obligations, surety, insurance, liquidity and credit enhancements costs, and any other cost, charge or fee incurred in connection with the issuance of Obligations.

**“Coverage Calculation Date”** has the meaning assigned in Section 6.03(b).

**“Coverage Ratio”** has the meaning assigned in Section 6.03(b).

**“Credit Provider”** means any municipal bond insurance company, bank or other financial institution or organization or group of financial institutions or organizations that provides a Credit Support Instrument for a Series of Obligations and, that has an Acceptable Credit Rating.

**“Credit Support Instrument”** means a policy of insurance, letter of credit, line of credit, standby purchase agreement, revolving credit agreement or other credit arrangement pursuant to which a Credit Provider provides credit or liquidity support with respect to, or available for, the payment of interest, principal or Purchase Price of any Series of Obligations, as the same may be amended from time to time pursuant to its terms, and any replacement therefor.

**“Current Interest Obligations”** means Obligations designated as Current Interest Obligations in the Supplemental Indenture providing for the issuance of such Obligations and that pay interest to the Holders thereof on a periodic basis prior to maturity. Current Interest Obligations also include Convertible Capital Appreciation Obligations after their conversion date.

**“DBRS”** means DBRS Limited, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “DBRS” shall be deemed to refer to any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

**“Deemed Event of Default”** means an Event of Default as such term is defined in the TIFIA Loan Agreement.

**“Defeasance Obligations”** means noncallable (i) Agency Obligations, (ii) Government Obligations, (iii) Government Certificates, (iv) Defeased Municipal Obligations, and (v) Defeased Municipal Obligation Certificates.

**“Defeased Municipal Obligation Certificates”** means evidence of ownership of a proportionate interest in specified Defeased Municipal Obligations, which Defeased Municipal Obligations are held by a custodian.

**“Defeased Municipal Obligations”** means obligations of the Commonwealth or any county, city, town, district, authority, agency, political subdivision or other public body of the Commonwealth that are rated in the highest rating category by any Rating Agency and provision for the payment of the principal of and redemption premium, if any, and interest on which has been made by the deposit with a trustee or escrow agent of Government Obligations or Government Certificates, the maturing principal of and interest on which, when due and payable, will along

with any cash held by the trustee or escrow agent provide sufficient money to pay the principal of and redemption premium, if any, and interest on such Obligations.

**“Dissemination Agent”** means, with respect to each Series of Obligations requiring an undertaking regarding disclosure under Rule 15c2-12, the party (which may be the Commission) acting as dissemination agent under the applicable Continuing Disclosure Agreement, or any successor dissemination agent designated in writing by the Commission and which has filed a written acceptance with the Commission and the Trustee.

**“DTC”** means The Depository Trust Company, New York, New York or any successor thereto.

**“Electronic”** means, with respect to notice, notice through the internet or through a time-sharing terminal.

**“EMMA”** means the Electronic Municipal Market Access website of the MSRB located at <http://emma.msrb.org>.

**“Event of Default”** means any of the events specified in Section 7.01.

**“Express Lanes Corridor”** means the I-64 corridor (together with certain connecting facilities, as applicable), located within the Member Localities and between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake, together with any additional transportation corridor in which the Commission is empowered to operate an express lanes toll program.

**“Express Lanes Initial Project”** means the development, design, construction, right-of-way acquisition, utilities adjustment, operation and maintenance, equipping, repair, rehabilitation, reconstruction, financing, administration, or any combination of these including the establishment of reserves for such purposes, and the installation of an electronic toll collection and enforcement system, all with respect to the development, construction or equipping of Phase I of the Express Lanes Network, as depicted on Exhibit B, comprising tolled express lanes in the Express Lanes Corridor extending from Settlers Landing Road in the City of Hampton to Interstate 564 in the City of Norfolk, and including all costs, elements, segments, phases or portions of the Hampton Roads Bridge Tunnel Expansion Project that are reasonably related thereto or that benefit users of the Express Lanes Network.

**“Express Lanes Network”** or the **“Hampton Roads Express Lanes Network”** means a network of contiguous HOT lanes, in each direction, between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake, which ultimately would enable continuous HOT lane travel throughout such corridor (the foregoing constituting the “Initial Interstate 64 Express Lanes Network” or “Initial Network” as described in the MTA), as depicted on Exhibit B, and consisting of the Express Lanes Initial Project and subsequent Express Lanes Future Project(s) that comprise a segment, phase or portion of the Express Lanes Network, including but not limited to any Additional Tolled Lanes.

**“Express Lanes Future Project”** means the development, design, construction, right-of-way acquisition, utilities adjustment, operation and maintenance, equipping, repair, rehabilitation, reconstruction, financing, administration, or any combination of these including the establishment of reserves for such purposes, and the installation of an electronic toll collection and enforcement system, all with respect to the development, construction or equipping of subsequent phases of the Express Lanes Network following the Express Lanes Initial Project, as depicted on Exhibit B, such subsequent phases consisting of all or any of the following: (i) Phase II, comprised of Segment 1, Segment 4b, and Segment 4c), (ii) Phase III, comprised of Segment 1 (part time shoulder lanes) and Segment 4a, and (iii) Additional Tolled Lane(s), if any, added under the provisions of the Master Tolling Agreement.

**“Federal Funds Rate”** means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day.

**“Financing Documents”** means this Indenture, any Swaps, and any documents and/or instruments evidencing, documenting, securing or otherwise relating to any or all of the Obligations (including each TIFIA Loan Agreement), all as the same may from time to time be amended, modified, extended, renewed and/or restated, and each other document or instrument required to be executed and delivered by the aforementioned agreements.

**“Fiscal Year”** means the period of twelve months terminating on June 30 of each year, or any other annual period hereafter selected and designated by the Commission as its Fiscal Year in accordance with applicable law and, if applicable, the applicable TIFIA Loan Agreement.

**“Fitch”** means Fitch Ratings, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, then the term “Fitch” shall be deemed to refer to any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

**“Fund”** means each fund established in accordance with the terms of this Indenture.

**“Funds Transfer Certificate”** means a certificate prepared by the Commission in accordance with the terms of this Indenture substantially in the form of Exhibit A attached hereto containing the certifications by the Commission required by this Indenture with respect to a requested transfer of funds from a Fund or Account.

**“General Reserve Fund”** means the Fund by that name created pursuant to Section 5.02. **“General Reserve Fund Release Conditions”** means the conditions set forth in Section 5.11(b).

**“Government”** means the United States of America and its departments and agencies.

**“Government Certificates”** means certificates representing an ownership interest in United States Treasury bond principal at maturity or interest coupons for accrued periods, which bonds or coupons are held in the capacity of custodian by a bank or trust company that is organized

and existing under the laws of the United States or any of its states that is independent of the seller of such certificates.

**“Government Obligations”** means direct obligations of, or obligations the payment of the principal of and interest on which is guaranteed by, the United States of America.

**“Hampton Roads Bridge Tunnel Expansion Project”** means the following improvements to the I-64 corridor between the Settlers Landing interchange lying east of the I-64/I-664 interchange in the City of Hampton and the I-564 interchange in the City of Norfolk, that are intended to provide at least six lanes of capacity along such corridor: (i) the design and construction of a new tunnel generally parallel to the existing Hampton Roads Bridge-Tunnel; and (ii) the design and construction of additional highway capacity on portions of the I-64 corridor that currently have only two lanes in each direction, to include one or more lanes designated as HOT lanes and comprising a segment of the Express Lanes Initial Project.

**“Hedging Obligations”** means, collectively, the payment of (a) all scheduled amounts payable to the Swap Parties by the Commission under the Swaps (including interest accruing after the date of any filing by the Commission of any bankruptcy, insolvency or similar proceeding with respect to the Commission), net of all scheduled amounts payable to the Commission by such Swap Parties, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Commission to the Swap Parties under such Swaps, net of all other indebtedness, fees, indemnities and other amounts payable by the Swap Parties to the Commission under such Swaps; provided, that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Swaps shall be made in accordance with the terms of the applicable Swaps.

**“Hedging Termination Obligations”** means the aggregate amount payable to the Swap Parties by the Commission upon the early unwind of all or a portion of the Swaps, net of all amounts payable to the Commission by such Swap Parties upon the early unwind of all or a portion of such Swaps. For the avoidance of doubt, all calculations of such amounts payable under the Swaps shall be made in accordance with the terms of the applicable Swaps.

**“Highest Priority Obligations”** means, as of any date, Senior Lien Obligations, unless and until there are no Senior Lien Obligations Outstanding hereunder, in which case it means Second Lien Obligations, unless and until there are also no Second Lien Obligations Outstanding hereunder, in which case it means Subordinate Obligations.

**“HRTAC”** or **“Commission”** means the Hampton Roads Transportation Accountability Commission, a body politic and a political subdivision of the Commonwealth.

**“HRTAC Act”** means Chapter 26, Title 33.2 of the Virginia Code, as the same may be amended from time to time, and any successor statutes, and such other provisions of law applicable to the Commission’s authority to issue Obligations to provide for the financing of the Toll Roads System or any phase, portion or segment thereof, including setting, levying and collecting tolls and other charges for such purpose.

**“HRTAC Board”** means the governing body of the Commission.

**“HOT Lanes”** means high-occupancy toll lanes or other dynamically-priced travel lane.

**“HRTF”** means, for purposes of this Indenture, amounts received in the Hampton Roads Transportation Fund established under Section 33.2-2600 of the Virginia Code from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional wholesale motor vehicle fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code, as provided in the HRTAC Act, as such Virginia Code sections are in amended and in effect from time to time.

**“HRTF Funds”** means available amounts available for distribution from the HRTF and, as applicable, the HRTF Indenture.

**“HRTF Eligible Costs”** means Project Costs or other use or uses of funds that may lawfully be paid with or from HRTF Funds (or the proceeds of HRTF revenue bonds) in accordance with the provisions of the HRTAC Act and, as applicable, the HRTF Indenture.

**“HRTF Repayment Fund”** means the account by the name created pursuant to Section 5.02.

**“HRTF Transfer”** means any transfer or payment of HRTF Funds by or on behalf of the Commission to a Fund or Account pursuant to the provisions of this Master Indenture or any Supplemental Indenture.

**“I-64”** means Interstate 64.

**“Indenture”** means this Master Indenture as the same may be amended or supplemented from time to time as permitted hereby.

**“Independent Certified Public Accountant”** means any certified public accountant or firm of such accountants appointed by the Commission, and who, or each of whom, is independent with respect to the Commission, pursuant to the Statement on Auditing Standards No. 1 of the American Institute of Certified Public Accountants.

**“Insolvency Law”** means the United States Bankruptcy Code, including 11 U.S.C. § 101 *et seq.*, as from time-to-time amended and in effect, and any state bankruptcy, insolvency, receivership or similar law now or hereafter in effect.

**“Insurance and Condemnation Proceeds Account”** means the Account by that name created within the Project Fund pursuant to Section 5.02.

**“Interest Payment Date”** means, with respect to a Series of Obligations, the date or dates for the payment of interest on such Obligations set forth in a Supplemental Indenture providing for the issuance of such Obligations.

**“Kroll”** means Kroll Bond Rating Agency, Inc., and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, the term “Kroll” shall be deemed to refer to any other nationally

recognized statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

**“Major Maintenance and Renewal Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Major Maintenance and Renewal Fund Permitted Expenditures”** means Capital Expenditures reasonably necessary for the construction, reconstruction, preservation, replacement, renewal or modification of the toll collection facilities and equipment needed for the Toll Roads System or any segment, phase or portion thereof, constituting real or personal property, so that it remains in operating condition.

**“Major Maintenance and Renewal Fund Required Amount”** means, for any Calculation Date, an amount equal to the greater of (a) \$5,000,000, and (b) the aggregate of one hundred percent (100%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the following 12 month period, (b) eighty percent (80%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next following 12 month period (*i.e.*, year 2), (c) sixty percent (60%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding 12 month period (*i.e.*, year 3), (d) forty percent (40%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding 12 month period (*i.e.*, year 4), and (e) twenty percent (20%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding 12 month period (*i.e.*, year 5), in each case initially based on the forecast of estimated life cycle maintenance costs with respect to the toll collection facilities and equipment needed for the Toll Roads System as set forth in the base case financial model delivered to the TIFIA Lender on the effective date of the TIFIA Loan Agreement and thereafter based on the then-current information regarding Major Maintenance and Renewal Fund Permitted Expenditures prepared by the Commission and certified by the Consulting Engineer.

**“Major M & R HRTF Cumulative Transfer Cap”** means, as of a measurement date, the total of expected Major Maintenance and Renewal Fund Permitted Expenditures from such measurement date to the final maturity of Obligations, as estimated by the Consulting Engineer and initially based, using an initial measurement date in Fiscal Year 2026, on the forecast of estimated life cycle maintenance costs with respect to the toll collection facilities and equipment needed for the Toll Roads System in its then-current state. The Major M & R HRTF Cumulative Transfer Cap is subject to change based on the nature and extent of the Toll Roads System and then-current information regarding Major Maintenance and Renewal Fund Permitted Expenditures prepared by the Commission and certified by the Consulting Engineer.

**Major Maintenance and Renewal Fund Required Amount”** means, for any Calculation Date, an amount equal to the greater of (a) \$5,000,000, and (b) the aggregate of (i) one hundred percent (100%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the following 12 month period, (ii) eighty percent (80%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next following 12 month period (*i.e.*, year 2), (iii) sixty percent (60%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding 12 month period (*i.e.*, year 3), (iv) forty percent (40%) of expected Major

Maintenance and Renewal Fund Permitted Expenditures for the next succeeding 12 month period (*i.e.*, year 4) and (v) twenty percent (20%) of expected Major Maintenance and Renewal Fund Permitted Expenditures for the next succeeding 12 month period (*i.e.*, year 5), in each case, based on, initially, the forecast of estimated life cycle maintenance costs with respect to the toll collection facilities and equipment needed for the Toll Roads System as set forth in the base case financial model delivered to the TIFIA Lender on the effective date of the TIFIA Loan Agreement and, thereafter, based on the then-current information regarding Major Maintenance and Renewal Fund Permitted Expenditures prepared by the Commission and certified by the Consulting Engineer.

**“Master Indenture”** has the meaning assigned in the first paragraph hereof.

**“Maturity Value,”** with respect to any Capital Appreciation Obligation, shall mean the Accreted Value of such Obligation at the maturity thereof and, with respect to a Convertible Capital Appreciation Obligation, shall mean the Accreted Value of such Obligation on the conversion date.

**“Maximum Annual Debt Service”** means the highest amount of Annual Debt Service due on all Obligations of the Commission of the same lien ranking as the applicable additional Obligations proposed to be issued for any Calculation Period during the period from the date of such determination through the final maturity date of the applicable Obligations then Outstanding and proposed to be issued.

**“Member Localities”** means, collectively, each county and city located in Planning District 23, established pursuant to Chapter 42, Title 15.2, of the Virginia Code, currently consisting of the Counties of Isle of Wight, James City, Southampton and York, and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg, and any other localities that may hereafter be added to HRTAC by amendment to the Virginia Code.

**“Monthly Funding Date”** means the last day of each calendar month or, if such day is not a Business Day, the next preceding Business Day.

**“Moody’s”** means Moody’s Investors Service, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, the term “Moody’s” shall be deemed to refer to any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

**“MSRB”** means the Municipal Securities Rulemaking Board, and its successors and assigns. Until otherwise designated by the MSRB, filings with the MSRB are to be made through EMMA.

**“Master Tolling Agreement”** or **“MTA”** means the Master Agreement for Development and Tolling Of Hampton Roads Express Lanes Network dated August 18, 2020 among HRTAC, CTB and the Virginia Department of Transportation, as amended and in effect from time to time.

**“Net Revenue”** means, for any Fiscal Year or Calculation Period ending on a Calculation Date (a) Revenue less (b) Operation and Maintenance Expenses for that period (excluding, in such calculations, ), less (c) any additional Revenue deposited to the Operation and Maintenance Fund in order to maintain the Operation and Maintenance Fund Required Amount therein, less (d) deposits to the Rebate Fund made from Revenues, and less (e) deposits into any Fund or Account made from Revenues during such period (other than the Toll Revenue Fund) to the extent that disbursements from such Fund or Account will be treated as Revenues. In addition the following shall be excluded from the calculation of Net Revenue, (i) any extraordinary or one-time revenues from Revenue for such period, and (ii) any extraordinary or one-time expenses from Operation and Maintenance Expenses for such period, but only if and to the extent such extraordinary or one-time expenses are paid or payable from extraordinary or one-time revenues being excluded from Revenue for such period. When calculating projected Net Revenue for purposes of Sections 3.01(b), Sections 3.03 (b), and Section 6.03, Revenue shall not include the amounts received under clauses (ii) and (iii) of the definition of Toll Revenues.

**“Nominee”** means the nominee of the Securities Depository for the Book-Entry Obligations, in whose name such Book-Entry Obligations are to be registered. The initial Nominee shall be Cede & Co., the partnership nominee of DTC.

**“Obligations”** means all indebtedness of the Commission payable from Revenue and other collateral in the Trust Estate incurred or assumed by the Commission for borrowed money (including indebtedness arising under Credit Support Instruments) and all other financing obligations of the Commission relating to the Toll Roads System that, in accordance with generally accepted accounting principles, are included as a liability on a balance sheet for the Toll Roads System books and records, including any bonds, notes, certificates or other obligations, as the case may be, authenticated and delivered under and pursuant to this Indenture as Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations. For the purpose of determining the “Obligations” payable from Revenue, Obligations that are no longer Outstanding shall be excluded.

**“Operation and Maintenance Expenses”** means all reasonable current expenses incurred and paid or payable by the Commission for the operation and maintenance of the toll collection facilities and equipment needed for the Toll Roads System payable from Revenue, including, without limitation, all amounts paid or payable under toll collection service agreements and similar agreements, costs for operation, maintenance and repair, consumables, payments under any lease or rental payments properly considered to be operating expenses, payments pursuant to agreements for the management of the Toll Roads System, taxes, premiums paid or payable on any insurance, payments for oversight services, all administrative, engineering and policing costs, costs for any security, toll collection and enforcement expenses, fees and expenses of the Traffic Consultant, the Trustee, each trustee of Obligations, and the TIFIA Lender, any other Secured Creditor (for the avoidance of doubt, such fees, administrative costs and expenses do not include any commitment fees, termination fees, fines or other penalties or any payments to be made to Swap Parties including Hedging Obligations and Hedging Termination Obligations), any rating agency, any insurance consultant, legal and accounting expenses, and any other reasonable and necessary expense paid or payable for the operation and maintenance of the Toll Roads System, but excluding Capital Expenditures, expenditures for rehabilitation and operational improvement projects on the

Toll Roads System, Reserve Facility Costs, any costs, fees or reimbursements in respect of any Credit Support Instrument, depreciation or obsolescence charges or reserves therefore, debt service for Obligations, and any non-cash charges, such as depreciation, amortization of intangibles and other bookkeeping entries of a similar nature.

**“Operation and Maintenance Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Operation and Maintenance Fund Required Amount”** means the amount described in and required to be maintained pursuant to Section 5.07.

**“Operation and Maintenance Reserve Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Operation and Maintenance Reserve Fund Requirement”** means an amount equal to 25% of the amount of Operation and Maintenance Expenses projected by the Commission at such time to be due and payable in the Fiscal Year in question, as reflected in the Annual Operating Budget for such Fiscal Year, including any revisions thereto.

**“Opinion of Bond Counsel”** means a written opinion of Bond Counsel.

**“Outstanding.”** when used with reference to Obligations hereunder means all Obligations that have been issued by the Commission hereunder or pursuant hereto, except such Obligations: (i) canceled or delivered for cancellation; (ii) deemed to be paid in accordance with Section 10.02 or any similar provisions in the constituent instruments defining the rights of the Holders of such Obligations; (iii) in lieu of which other Obligations have been authenticated under Sections 2.07 or 2.08 or any similar provisions in the constituent instruments defining the rights of the Holders of such Obligations; and (iv) to the extent described in Section 9.05, Obligations held by or for the account of the Commission.

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

**“Participating Underwriter”** means any of the original underwriters of any Series of Obligations required to comply with Rule 15c2-12.

**“Permitted Investments”** means, subject to the provisions of any Supplemental Indenture, any amounts held in any Fund or Account established by this Master Indenture or any Supplemental Indenture may be separately invested and reinvested by the Trustee, at the request of and as directed in writing by an Authorized Representative, in any investments that are at the time (i) legal investments for public funds of the type to be invested under Virginia law, including without limitation the Investment of Public Funds Act, Chapter 45 of Title 2.2 of the Virginia Code or any successor provision of law and the Government Non-Arbitrage Investment Act, Chapter 47 of Title 2.2 of the Virginia Code or any successor provision of law, (ii) authorized by HRTAC’s Statement of Investment Policy then in effect, and (iii) structured to permit adequate liquidity to permit the purpose of such Fund or Account to be satisfied.

**“Person”** means any natural person, firm, partnership, association, corporation, or public body.

**“Principal Office”** means, with respect to the Trustee, the corporate trust office of the Trustee at [ \_\_\_\_\_, \_\_\_\_\_ ], Attention: [ \_\_\_\_\_ ], and solely for purposes of the presentation of Obligations for transfer, exchange or payment, such other or additional offices as may be designated by the Trustee from time to time.

**“Project Costs”** means all or any part of the following with respect to a Toll System Network Project:

(a) the cost of program and project management, design, construction, right-of-way acquisition, and utilities adjustment, repair, rehabilitation and reconstruction, including, but not limited to:

(1) construction, expansion, enlargement, extension, reconstruction, restoration, repair and rehabilitation of the Toll System Network Project or any segment, phase or portion thereof (including, but not limited to, indemnity and surety bonds, permits, taxes, licenses, insurance premiums, or other municipal or governmental charges lawfully levied or assessed during construction);

(2) the cost of acquisition of all real or personal property, rights, rights-of-way, franchises, easements and interests acquired or used for the Toll System Network Project or any segment, phase or portion thereof;;

(3) the cost of site preparation, including demolishing or removing any structures on land so acquired and the cost of acquiring any land to which the structures may be removed;

(4) any cost of borings and other preliminary investigations necessary or incident to determining the feasibility or practicability of constructing the Toll System Network Project or any segment, phase or portion thereof and any cost necessary or desirable to satisfy conditions associated with the issuance of any permit for the construction thereof (including the costs of environmental related mitigation required in connection therewith);

(5) the cost of architectural, engineering, environmental feasibility, traffic and revenue, economic and demographic, appraisal, financial, and legal services;

(6) the cost of planning, investigations, studies, evaluations, plans, specifications, estimates, and administrative and other expenses that are necessary or incidental to the determination of the feasibility of constructing the Toll System Network Project or any segment, phase or portion thereof or incidental to the obtaining of construction contracts or to the construction (including construction administration and inspection), acquisition or financing thereof and that constitute capital costs;

(7) the cost of all machinery and equipment, vehicles, materials and rolling stock;

(b) Costs of Issuance;

(c) interest on Obligations or other debt of the Commission issued for the Toll System Network Project for the period prior to and during acquisition or completion of construction (or such longer period as may be allowed by applicable law), as determined by the Commission;

(d) Operation and Maintenance Expenses occurring during and for a period of up to one year after acquisition or completion of construction, as determined by the Commission, provided that, if applicable, the Trustee has received an Opinion of Bond Counsel (which opinion may address either specific Operation and Maintenance Expenses or categories of Operation and Maintenance Expenses) to the effect that the treatment of such Operation and Maintenance Expenses as a Project Cost will not adversely affect the exclusion of interest on any Outstanding Obligations intended to be tax-exempt from gross income for federal income tax purposes;

(e) the repayment or reimbursement of any Obligation, loan or advance for any of the foregoing; and

(f) such other costs and expenses as are permitted by the HRTAC Act or other applicable law at the time such Obligations are issued.

**“Project Fund”** means the Fund by that name established pursuant to Section 5.02.

**“Purchase Price”** means, with respect to Obligations, the amount set forth in this Indenture as the amount to be paid when such Obligations are tendered for purchase or deemed tendered for purchase in accordance with the provisions of this Indenture.

**“Rating Agency”** means, as and to the extent applicable to a Series of Obligations, each of DBRS, Fitch, Moody’s, S&P, or Kroll then maintaining a rating on such Series of Obligations.

**“Rating Category”** means: (i) with respect to any long-term rating category, all ratings designated by a particular letter or combination of letters, without regard to any numerical modifier, plus or minus sign or other modifier; and (ii) with respect to any short-term or commercial paper rating category, all ratings designated by a particular letter or combination of letters and taking into account any numerical modifier, but not any plus or minus sign or other modifier.

**“Rebate Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Rebate Requirement”** means, subject to any Supplemental Indenture or the provisions of a Tax Certificate, the collective requirements applicable to tax-exempt bonds under Section 148(f)(2) and (3) of the Internal Revenue Code of 1986, as amended and in effect from time to time.

**“Redemption Fund”** means the Fund by that name created pursuant to Section 5.24.

**“Representation Letter”** means the letter or letters of representation from the Commission to, or other instrument or agreement with, a Securities Depository for Book-Entry Obligations, in which the Commission, among other things, makes certain representations to the Securities Depository with respect to the Book-Entry Obligations, the payment thereof and delivery of notices with respect thereto.

**“Reserve Facility”** means a letter of credit, surety bond or insurance policy issued to the Trustee by a bank or company licensed to issue a surety bond or insurance policy in substitution or in lieu of cash deposits in a reserve fund guaranteeing the timely payment of the principal of and interest on the Obligations supported by the Reserve Facility.

**“Reserve Facility Costs”** means amounts owed with respect to repayment of draws on a Reserve Facility, including interest thereon at the rate specified in the agreement pertaining to such Reserve Facility and expenses owed to the Reserve Facility Provider in connection with such Reserve Facility.

**“Reserve Facility Provider”** means any provider of a Reserve Facility, any successor thereto or any replacement therefor.

**“Reserve Funds”** means the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund and the Subordinate Obligations Reserve Fund, including any accounts and sub-accounts under any of the foregoing.

**“Revenue”** means: (i) Toll Revenues; (ii) all interest or other income from investment of money in the Funds and Accounts established hereunder (excluding the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument); and (iii) all Swap Revenues; provided that for any calculations required by Article III hereof, “Revenue” shall not include Subsidy Payments.

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

**“Reversible HOT Lanes”** means the HOT lanes in the Reversible HOT Lanes Segment.

**“Reversible HOT Lanes Segment”** the segment of I-64 from the interchange of Interstate 64 and Interstate 264, presently tolled as HOT Lanes as a result of work undertaken by VDOT and funded out of the Commonwealth’s Toll Facilities Revolving Account, to convert the reversible high-occupancy vehicle (“HOV”) lanes that existed on such segment of Interstate 64 into HOT Lanes.

**“Rule 15c2-12”** means Securities and Exchange Commission Rule 15c2-12, adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

**“S&P”** means Standard & Poor’s Ratings Services, a division of Standard & Poor’s Financial Services LLC, a subsidiary of The McGraw-Hill Companies, and its successors and assigns, except that if such corporation shall be dissolved or liquidated or shall no longer perform

the functions of a securities rating agency, the term “S&P” shall be deemed to refer to any other nationally recognized statistical rating organization identified as such by the Securities and Exchange Commission and selected by the Commission.

**“Second Lien Obligations”** means any Obligations issued or incurred hereunder that are subordinated in right of payment and lien priority to the Senior Lien Obligations and senior in right of payment and lien priority to the Subordinate Obligations, including Second Lien Obligations in the form of or securing payment of any TIFIA Loans prior to the occurrence of a Bankruptcy Related Event; provided, however, that upon the occurrence of a Bankruptcy Related Event, Second Lien Obligations in the form of or securing payment of a TIFIA Loan shall be Senior Lien Obligations.

**“Second Lien Obligations Account”** means the Account by that name created within the Project Fund pursuant to Section 5.02.

**“Second Lien Obligations Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Second Lien Obligations Interest Account”** means the Account by that name created within the Second Lien Obligations Fund pursuant to Section 5.02.

**“Second Lien Obligations Principal Account”** means the Account by that name created within the Second Lien Obligations Fund pursuant to Section 5.02.

**“Second Lien Obligations Reserve Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Second Lien Obligations Reserve Requirement”** for any Second Lien Obligations means the amount, if any, specified by a Supplemental Indenture as the amount required to be held in the Second Lien Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Second Lien Obligations secured by such Fund or Account.

**“Secured Creditors”** means, collectively, (i) the Trustee on behalf of the Bondholders, (ii) any Swap Party, and (iii) any other trustee, holder or creditor of any Obligations.

**“Securities Depository”** means DTC or any other trust company or other entity that provides a book-entry system for the registration of ownership interests in securities and which is acting as security depository for Book-Entry Obligations.

**“Senior Debt Service Coverage Ratio”** means, for any Calculation Period, the ratio of (a) projected Net Revenue for such Calculation Period, to (b) Annual Debt Service in respect of all Senior Lien Obligations for such Calculation Period.

**“Senior Lien Bonds”** means the bonds or commercial paper identified as the Hampton Roads Transportation Accountability Commission Toll Revenue Senior Lien Bonds authorized by, issued in accordance with, and at any time Outstanding pursuant to, this Indenture.

**“Senior Lien Obligations”** means collectively, Senior Lien Bonds and Parity Obligations issued or incurred hereunder and, upon the occurrence of a Bankruptcy Related Event, Second Lien Obligations in the form of or securing payment of a TIFIA Loan.

**“Senior Lien Obligations Account”** means the Account by that name created within the Project Fund pursuant to Section 5.02.

**“Senior Lien Obligations Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Senior Lien Obligations Interest Account”** means the Account by that name created within the Senior Lien Obligations Fund pursuant to Section 5.02.

**“Senior Lien Obligations Principal Account”** means the Account by that name created within the Senior Lien Obligations Fund pursuant to Section 5.02.

**“Senior Lien Obligations Reserve Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Senior Lien Obligations Reserve Requirement”** for any Senior Lien Obligations means the amount, if any, specified by a Supplemental Indenture as the amount required to be held in the Senior Lien Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Senior Lien Obligations secured by such Fund or Account.

**“Series”** means all Obligations identified in this Indenture or any Supplemental Indenture as a separate Series.

**“Short-Term/Put Obligation”** means an Obligation, including any Bond Anticipation Obligation, with a stated maturity of ten years or less, the principal of which the Commission determines on or before the date of issuance that it intends to pay from remarketing proceeds or proceeds of refunding obligations.

**“SIFMA Index”** means Securities Industry and Financial Markets Association Municipal Swap Index as of the most recent date such index was published by the Securities Industry and Financial Markets Association or any successor thereto, or in the event such index is no longer published by the Securities Industry and Financial Markets Association or any successor thereto, such comparable replacement index as shall be published by the Securities Industry and Financial Markets Association or any successor thereto. In the event that such comparable replacement index is no longer published by the Securities Industry and Financial Markets Association or any successor thereto, an alternative index shall be selected by the Commission.

**“Sinking Fund Installment”** means, with respect to any Series of Obligations, each amount so designated for the Term Bonds of such Series in the Supplemental Indenture providing for the issuance of such Series of Obligations requiring payments by the Commission to be applied to the retirement of such Series of Obligations on and prior to the stated maturity date thereof.

**“Subordinate Obligations”** means any Obligations that are subordinated in right of payment and lien priority to the Senior Lien Obligations and the Second Lien Obligations.

**“Subordinate Obligations Account”** means the Account by that name created within the Project Fund pursuant to Section 5.02.

**“Subordinate Obligations Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Subordinate Obligations Interest Account”** means the Account by that name created within the Subordinate Obligations Fund pursuant to Section 5.02.

**“Subordinate Obligations Principal Account”** means the Account by that name created within the Subordinate Obligations Fund pursuant to Section 5.02.

**“Subordinate Obligations Reserve Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Subordinate Obligations Reserve Requirement”** for any Subordinate Obligations means the amount, if any, specified by a Supplemental Indenture as the amount required to be held in the Subordinate Obligations Reserve Fund, or an Account thereof, for the payment of principal of and interest on the Outstanding Subordinate Obligations secured by such Fund or Account.

**“Subsidy Payments”** means, (a) with respect to a Series of Obligations issued under Section 54AA of the Code, the amounts relating to such Series of Obligations which are payable by the Federal government under Section 6431 of the Code, which the Commission has elected to receive under Section 54AA(g)(1) of the Code, and (b) with respect to a Series of Obligations issued under any other provision of the Code that creates a substantially similar direct-pay subsidy program, the amounts relating to such Series of Obligations which are payable by the Federal government under the applicable provision of the Code which the Commission has elected to receive under the applicable provisions of the Code.

**“Substantial Completion”** means the opening of any portion, phase or segment of the Toll Roads System to revenue service.

**“Substantial Completion Date”** means, with respect to any Toll System Network Project, the date on which a portion, phase or segment of such Toll System Network Project opens for revenue service. The “Transition Date” as defined in the Master Tolling Agreement shall be a Substantial Completion Date with respect to the applicable portion, phase or segment of the Express Lanes Network.

**“Supplemental Indenture”** means any indenture executed and delivered by the Commission and the Trustee in accordance with this Indenture that is stated to be a supplemental indenture hereto.

**“Swap”** means any interest rate swap agreement, currency swap agreement, forward payment conversion agreement or futures contract, any contract providing for payments based on

levels of, or changes in, interest rates, currency exchange rates, stock or other indices, any contract to exchange cash flows or a series of payments, or any contract, including, without limitation, an interest rate floor or cap, or an option, put or call, to hedge payment, currency, rate, spread or similar exposure, between the Commission and a Swap Party.

**“Swap Party”** means each entity that is a party to a Swap entered into with the Commission.

**“Swap Revenues”** means any amount paid by a Swap Party to the Commission pursuant to any Swap, after any netting of payments required by such Swap, and any payments paid to the Commission by a Swap Party as consideration for termination or amendment of a Swap.

**“Tax Certificate”** means the Tax Certificate delivered by the Commission at the time of the issuance of a Series of Obligations the interest on which is intended to be tax-exempt or for which the Commission is eligible to receive Subsidy Payments, as the same may be amended and supplemented in accordance with its terms.

**“Term Bonds”** means Obligations of any Series that are payable on or before their specified maturity dates from Sinking Fund Installments established for that purpose in the Supplemental Indenture providing for the issuance of such Series of Obligations, which Sinking Fund Installments are calculated to retire such Obligations on or before their specified maturity dates.

**“TIFIA Debt Service Payment Commencement Date”** means (a) the earlier of (i) the Calculation Date occurring on or immediately prior to the fifth anniversary of the Substantial Completion Date and (ii) [\_\_\_\_\_], or (b) if the Commission elects an earlier date pursuant to the TIFIA Loan Agreement, such earlier date.

**“TIFIA Lender”** means the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau.

**“TIFIA Loan”** means the loan made to the Commission by the TIFIA Lender pursuant to the TIFIA Loan Agreement and secured by the Trust Estate.

**“TIFIA Loan Agreement”** means the Loan Agreement, dated as of [\_\_\_\_], 2021, by and between the Commission and the TIFIA Lender, and any amendments or supplements thereto permitted hereby and thereby.

**“TIFIA Loan Prepayment Account”** means the account of such name created pursuant to Section 5.02.

**“TIFIA Loan Reserve Account”** mean the account of such name created pursuant to Section 5.02.

**“TIFIA Debt Service”** has the meaning specified for the term “TIFIA Debt Service” (or any similar term) in the applicable TIFIA Loan Agreement.

**“TIFIA Payment Date”** has the meaning specified for the term “Payment Date” (or any similar term) in the applicable TIFIA Loan Agreement.

**“TIFIA Scheduled Prepayment Amount”** has the meaning set forth in the TIFIA Loan Agreement.

**“Toll Agreements”** means [... compile appropriate toll related agreements such as MTA or the related toll related agreements, e.g., ancillary agreements exhibits to MTA].

**“Toll Operator”** means initially VDOT, or any successor, as operator of the applicable segment, phase or portion of the Toll Roads System, responsible for the collection of tolls and fees and the establishment and maintenance of customer accounts and records, pursuant to the Master Tolling Agreement or other applicable Toll Agreement.

**“Toll Revenue Fund”** means the Fund by that name created pursuant to Section 5.01.

**“Toll Revenues”** means (i) all amounts received by or on behalf of the Commission for use of any segment, phase or portion of the Toll Roads System, including without limitation fees, tolls, rates, incidental charges, and other charges (including administrative charges such as late fees, insufficient funds fees, etc.), (ii) amounts received by or on behalf of the Commission pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues, including fines and penalties and interest thereon collected as a result of failure to pay any such amounts; (iii) amounts received by or on behalf of the Commission as contractual liquidated, other contract damages, insurance proceeds, third party recoveries, condemnation awards or any other amounts in lieu of or with respect to the Toll Roads System or any of the foregoing revenues; and (iv) all other amounts received by or on behalf of the Commission that are derived from or with respect to the operation of the Toll Roads System or any part thereof. Amounts received by the CTB or VDOT with respect to the Reversible HOT Lanes shall constitute Toll Revenues to the extent such amounts are payable to the Commission under the MTA.

**“Toll Road”** means a lane or lanes of a street, road or highway upon which the Commission has all right, power and authority pursuant to applicable law to impose tolls, and upon which tolls are imposed by the Commission using any of the following tolling strategies: (a) general purpose or generally-applicable tolls, (b) tolls that may be levied and may vary according to levels of congestion anticipated or experienced or according to the occupancy of the vehicle, (c) any combination of (a) and (b), and (d) any other tolling strategy the Commission may determine appropriate on a facility-by-facility basis; and the related tolling facilities, as such tolled lanes and related facilities may from time to time be expanded, improved, upgraded, enlarged, or enhanced, but only to the extent that: (i) the Commission irrevocably designates in writing that such toll lanes and related facilities, and any expansion, improvement, upgrade, enlargement or enhancement constitute a Toll Road generating Toll Revenues hereunder, and (ii) that (x) the additional Operation and Maintenance Expenses associated with any such expansion, improvement, upgrade, enlargement or enhancement, and (y) any additional Obligations issued to finance the costs of any such expansion, improvement, upgrade, enlargement or enhancements satisfy all of the requirements applicable thereto in the TIFIA Loan Agreement for so long as the TIFIA Loan is Outstanding. “Toll Road” initially means the Express Lanes Initial Project, and shall include, upon

Substantial Completion thereof, any subsequent portion, phase or segment of the Toll Roads System in accordance with a Written Request of the Commission.

**“Toll Roads System”** means the Express Lanes Initial Project, any Express Lanes Future Project that may be undertaken (which together with the Express Lanes Initial Project forms the Express Lanes Network), and any other Toll System Network Project, all as the same may exist from time to time, and including without limitation any new or improved highway, bridge or tunnel, or portion, phase or segment thereof, in which the Commission is empowered to impose and collect tolls.

**“Toll System Network Project”** means the Express Lanes Initial Project, any Express Lanes Future Project, and any addition, the acquisition, development, construction, reconstruction, improvement, betterment, extension or equipping of or relating to a tolled road or facility, or any additional capital project extending, improving or otherwise related to the Toll Roads System that the Commission determines or proposes to finance pursuant to this Indenture, provided that, (a) such capital project or addition, acquisition, improvement, betterment, extension or equipping shall be a Toll Road or any part, segment, portion or phase thereof, or substantially related thereto, (b) such addition complies with the terms of Section 3.01(b) hereof, and (c) while any Obligation in the form of the TIFIA Loan is Outstanding, any Toll System Network Project other than Phases I (the Express Lanes Initial Project), II and III of the Express Lanes Network, shall first be approved by the TIFIA Lender.

**“Traffic Consultant”** means [CDM Smith] or such other traffic and revenue consultant or firm of nationally-recognized traffic and revenue consultants experienced in performing the duties for which a Traffic Consultant is required to be employed pursuant to the provisions of this Indenture, who is appointed by the Commission or, with the approval of the Commission, by VDOT; provided that while the Obligation in the form of the TIFIA Loan is Outstanding, such appointment is not objected to in written notice to the Commission by the TIFIA Lender within 15 Business Days after receiving written notice from the Commission of the name of the proposed replacement traffic consulting firm and supporting information regarding the qualifications of the proposed replacement traffic consulting firm.

**“Trust Estate”** has the meaning specified in the Granting Clauses herein.

**“VDOT”** or the **“Department”** means the Virginia Department of Transportation, an agency of the Commonwealth of Virginia.

**“VDOT Repayment Fund”** means the Fund by that name created pursuant to Section 5.02.

**“Written Request of the Commission”** means an instrument in writing signed by an Authorized Representative.

## ARTICLE II THE OBLIGATIONS

**Section 2.01 Authorization and Purposes.** Obligations in the form of Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations may be issued hereunder, in book-entry form or otherwise, from time to time as the issuance thereof is approved by the Commission. The maximum Bond Obligation of Obligations that may be issued hereunder is not limited; subject, however, to any limitations contained in the HRTAC Act and to the right of the Commission, which is hereby reserved, to limit the initial Bond Obligation of Obligations that may be issued or Outstanding hereunder. The Senior Lien Bonds are designated generally as “**Hampton Roads Transportation Accountability Commission Toll Revenue Senior Lien Bonds (Hampton Roads Express Lanes)**,” each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Senior Lien Obligations. The Second Lien Obligations are designated generally as “**Hampton Roads Transportation Accountability Commission Toll Revenue Second Lien Obligations (Hampton Roads Express Lanes)**,” each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Second Lien Obligations. The Subordinate Obligations are designated generally as “**Hampton Roads Transportation Accountability Commission Toll Revenue Subordinate Obligations (Hampton Roads Express Lanes)**,” each Series thereof to bear such additional designation as may be necessary or appropriate to distinguish such Series from every other Series of Subordinate Obligations. The Obligations may be issued in such Series as from time to time shall be established and authorized by the Commission, subject to the covenants, provisions and conditions herein. Each separate Series of Obligations shall be authorized by the Commission in a Supplemental Indenture. No Obligations may be issued under the provisions of this Indenture except in accordance with this Article and Article III.

Obligations may be issued for the purpose of financing or refinancing any Toll System Network Project, or for any other purpose authorized by the HRTAC Act.

**Section 2.02 General Terms of Obligations.** Each Obligation shall be secured hereby and shall bear interest and shall be payable and be additionally secured and have such other terms as shall be specified in its Supplemental Indenture, or if not specified therein, as specified by an Authorized Representative pursuant to Section 2.06.

The principal and Purchase Price of, premium, if any, and interest on the Obligations shall be payable in lawful currency of the United States of America. During any period in which any Obligations are Book-Entry Obligations, payment of debt service on such Book-Entry Obligations shall be made to the Securities Depository, or its Nominee, and in accordance with arrangements among the Commission, the Trustee and the Securities Depository. During any period in which any Obligations are not Book-Entry Obligations, unless otherwise specified in a Supplemental Indenture, the principal and Purchase Price of and premium, if any, on all such Obligations shall be payable by wire or check at the Principal Office of the Trustee upon the presentation and surrender of such Obligations as the same become due and payable, and the interest on such Obligations shall be paid by wire or check drawn upon the Trustee and mailed on the applicable Interest Payment Date to the persons in whose names the Obligations are registered on the

registration books maintained by the Trustee at the close of business on the record date for such interest payment.

**Section 2.03 Execution.** Except as may otherwise specified in a Supplemental Indenture, the Obligations shall be executed in the name and on behalf of the Commission by the facsimile or manual signature of the Chair or Vice Chair of the HRTAC Board. Unless otherwise provided in any Supplemental Indenture, the Obligations shall then be delivered to the Trustee for authentication by the Trustee. In case any of the officers who shall have signed any of the Obligations shall cease to be such officer or officers of the Commission before the Obligations so signed or attested shall have been authenticated or delivered by the Trustee or issued by the Commission, such Obligations may nevertheless be authenticated, delivered and issued and, upon such authentication, delivery and issue, shall be as binding upon the Commission as though those who signed the same had continued to be such officers of the Commission, and also any Obligation may be signed on behalf of the Commission by such persons as at the actual date of execution of such Obligation shall be the proper officers of the Commission although at the nominal date of such Obligation any such person shall not have been such officer of the Commission.

**Section 2.04 Certificate of Authentication.** No Obligations shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless there shall be endorsed thereon a certificate of authentication, substantially in the form set forth in the form of Obligation referred to in Section 2.05 hereof, executed by the Trustee; and such certificate on any Obligation issued by the Commission shall be conclusive evidence that such Obligation has been duly authenticated and delivered hereunder.

**Section 2.05 Forms of Obligations.** The Obligations, the Trustee's certificate of authentication and the form of assignment shall be in substantially the forms specified in a Supplemental Indenture or if not specified therein, as specified by an Authorized Representative pursuant to Section 2.06, and may have such letters, numbers or other marks of identification (including, but not limited to, the Series designation provided for in Section 2.01) and such legends and endorsements placed thereon as may be required to comply with any applicable laws or rules or regulations, or as may, consistent herewith, be determined by an Authorized Representative. The Obligations shall be in either typewritten or printed form, as an Authorized Representative shall direct, provided that any expenses incurred in connection therewith shall be paid by the Commission.

**Section 2.06 Issuance, Sale and Delivery of Obligations; Application of Proceeds.** The Obligations of each Series shall be delivered by the Trustee in accordance with a Written Request of the Commission, which may be Electronic, in the manner specified herein and the applicable Supplemental Indenture. Such Written Request of the Commission shall specify the following terms for the Obligations then being issued to the extent such terms are not set forth in the Supplemental Indenture creating such Series of Obligations and are applicable to such Obligations: whether such Obligation is a Senior Lien Bond, Parity Obligation, Second Lien Obligation or Subordinate Obligation hereunder; Series designation; Authorized Denominations; form of such Obligation; book-entry provisions, if any; maturity date or dates or maturity determination method, which may vary for Obligations within such Series; principal amount;

issue date; interest rate or interest rate determination method, which may vary for Obligations within such Series; record date for interest payments; sinking fund provisions, if any; required reserves, if any; redemption provisions, if any; tender provisions, if any; additional security, if any; and any other terms and conditions that are not inconsistent with this Indenture. Upon the delivery of each Series of Obligations, the proceeds shall immediately be applied and deposited as set forth in the applicable Supplemental Indenture.

**Section 2.07 Mutilated, Lost, Stolen or Destroyed Obligations.** If any Obligation is mutilated, lost, stolen or destroyed, the Commission shall execute and the Trustee shall authenticate and deliver a new Obligation of the same Series, maturity date, principal amount and tenor in lieu of and in substitution for the Obligation mutilated, lost, stolen or destroyed; provided that there shall be first furnished to the Trustee evidence satisfactory to the Trustee of the ownership of such Obligation and of such loss, theft or destruction (or, in the case of a mutilated Obligation, such mutilated Obligation shall first be surrendered to the Trustee), together with indemnity satisfactory to the Trustee (subject to Section 8.01(c)) and compliance with such other reasonable regulations as the Commission and Trustee may prescribe. Subject to the proviso set forth in the preceding sentence, if any such Obligation shall have matured or a redemption date pertaining thereto shall have passed, instead of issuing a new Obligation, the Commission may pay the same without surrender thereof. Subject to Section 8.01(c), the Commission and the Trustee may charge the Holder of such Obligation with their reasonable fees and expenses in this connection.

**Section 2.08 Exchangeability and Transfer of Obligations; Persons Treated as Holders.** The Commission hereby directs the Trustee, which is hereby constituted and appointed the bond registrar for the Obligations, to keep books for the registration of the Obligations and for the registration of transfer of the Obligations as provided herein.

Any registered owner of an Obligation, in person or by its duly authorized attorney, may transfer title to its Obligation on the books of registration kept by the Trustee, upon surrender thereof at the Principal Office of the Trustee, together with a written instrument of transfer (in substantially the form of assignment attached to the Obligation or as provided in its Supplemental Indenture) executed by the registered owner or its duly authorized attorney, and upon surrender for registration of transfer of any Obligation, the Commission shall execute, and the Trustee shall authenticate and deliver in the name of the transferee or transferees, a new Obligation or Obligations of the same Series, maturity date, and tenor as the Obligation surrendered.

Obligations may be exchanged upon surrender thereof at the Principal Office of the Trustee for Obligations of the same Series, maturity date, and tenor as the Obligations being exchanged. The Commission shall execute and the Trustee shall authenticate and deliver Obligations that the registered owner making the exchange is entitled to receive, bearing numbers not contemporaneously then outstanding.

Such registrations of transfers or exchanges of Obligations shall be without charge to the registered owner of such Obligations, but any taxes or other governmental charges required to be paid with respect to the same shall be paid by the registered owner of the Obligation requesting such registration of transfer or exchange as a condition precedent to the exercise of such privilege.

Any service charge made by the Trustee for any such registration, transfer or exchange shall be paid by the Commission.

The Trustee shall not register any transfer of any Obligation after notice calling such Obligation (or portion thereof) for redemption or partial redemption or notice of mandatory tender with respect thereto has been given and prior to such redemption or mandatory tender, as the case may be, except, in the case of any Obligation to be redeemed in part, the portion thereof not to be redeemed.

The person in whose name any Obligation shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of or on account of either principal, premium, if any, or interest shall be made only to or upon the order of the registered owner thereof or his duly authorized attorney, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Obligation to the extent of the sum or sums so paid.

All Obligations issued upon any transfer or exchange of Obligations shall be legal, valid and binding obligations of the Commission, evidencing the same debt, and entitled to the same security and benefits under this Indenture, as the Obligations surrendered upon such transfer or exchange.

**Section 2.09 Cancellation.** All Obligations that have been surrendered to the Trustee pursuant to Section 2.07 or 2.08 of this Indenture and all Obligations that have been paid or redeemed, either at or prior to maturity, except as otherwise provided in a Supplemental Indenture, shall be cancelled and destroyed by the Trustee and a certificate of destruction shall be delivered to the Commission upon its request.

**Section 2.10 Senior Lien Obligations Ratably Secured.** All Senior Lien Obligations issued hereunder that by their terms are stated to be equally and ratably secured by this Indenture without preference, priority or distinction on account of the Series or the actual time or times of the authentication, delivery or maturity of such Senior Lien Obligations shall be so equally and ratably secured so that, subject to any differences specified in this Indenture, all such Senior Lien Obligations at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they were of the same Series and they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date; provided, however, that the moneys in any Account within the Senior Lien Obligations Reserve Fund shall only secure the Series of Senior Lien Obligations to which such Account relates. The Senior Lien Obligation in the form of or securing payment of a TIFIA Loan will not be secured by any other Account within the Senior Lien Obligations Reserve Fund.

**Section 2.11 Second Lien Obligations Ratably Secured.** All Second Lien Obligations issued hereunder that by their terms are stated to be equally and ratably secured by this Indenture without preference, priority or distinction on account of the Series or the actual time or times of the authentication, delivery or maturity of such Second Lien Obligations shall be so equally and

ratably secured so that, subject to any differences specified in this Indenture, all such Second Lien Obligations at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they were of the same Series and they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date; provided, however, that the moneys in any Account within the Second Lien Obligations Reserve Fund shall only secure the Series of Second Lien Obligations to which such Account relates. Upon the occurrence of a Bankruptcy Related Event of which the Trustee shall be notified in writing, any Account within the Second Lien Obligations Reserve Fund that secures payment of the principal and interest on a Second Lien Obligation in the form of or securing payment of a TIFIA Loan, will become an Account within the Senior Lien Obligations Reserve Fund, will be funded on a parity with any other Accounts within the Senior Lien Obligations Reserve Fund and will be available only to pay principal and interest on the Second Lien Obligation in the form of or securing payment of such TIFIA Loan.

**Section 2.12 Subordinate Obligations Ratably Secured.** All Subordinate Obligations issued hereunder that by their terms are stated to be equally and ratably secured by this Indenture without preference, priority or distinction on account of the Series or the actual time or times of the authentication, delivery or maturity of such Subordinate Obligations shall be so equally and ratably secured so that, subject to any differences specified in this Indenture, all such Subordinate Obligations at any time Outstanding hereunder shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as if they were of the same Series and they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date; provided, however, that the moneys in any Account within the Subordinate Obligations Reserve Fund shall only secure the Series of Subordinate Obligations to which such Account relates.

**Section 2.13 Book-Entry Only System.** Unless an Authorized Representative shall otherwise direct or unless otherwise specified in a Supplemental Indenture, all Obligations issued hereunder shall be issued as Book-Entry Obligations in fully registered form. Book-Entry Obligations shall be registered in the name of the Securities Depository or its Nominee as directed by such Securities Depository. DTC shall act as the initial Securities Depository and has designated Cede & Co. as its Nominee. Beneficial Owners of Obligations will not receive physical delivery of bond certificates except as provided hereinafter. For so long as DTC shall continue to serve as Securities Depository for the Obligations as provided herein, all transfers of beneficial ownership interests will be made by book-entry only, and no person purchasing, selling or otherwise transferring beneficial ownership of Obligations is to receive, hold or deliver any Obligation certificate.

With respect to Obligations registered in the name of Cede & Co., as Nominee of DTC, the Commission and the Trustee shall have no responsibility or obligation to any participant in DTC (each, a “DTC Participant”) or to any person on whose behalf a DTC Participant holds an interest in the Obligations. Without limiting the immediately preceding sentence, the Commission and the Trustee shall have no responsibility or obligation with respect to (i) the accuracy of the

records of DTC, Cede & Co. or any DTC Participant with respect to any ownership interest in the Obligations, (ii) the delivery to any DTC Participant or any other person, other than a registered owner of the Obligations, as shown on the registration books, of any notice with respect to the Obligations, including any notice of redemption or mandatory tender, or (iii) the payment to any DTC Participant or any other person, other than a registered owner of the Obligations, as shown in the registration books, of any amount with respect to principal or Purchase Price of, or premium, if any, or interest on, the Obligations.

Replacement Obligations may be issued directly to Beneficial Owners of Obligations other than DTC, or its Nominee, but only in the event that: (i) DTC determines not to continue to act as Securities Depository for the Obligations (which determination shall become effective no less than 90 days after written notice to such effect to the Commission and the Trustee); or (ii) an Authorized Representative has advised DTC of its determination (which determination is conclusive as to DTC and Beneficial Owners of the Obligations) that DTC is incapable of discharging its duties as Securities Depository for the Obligations; or (iii) the Commission has determined (which determination is conclusive as to DTC and the Beneficial Owners of the Obligations) that the interests of the Beneficial Owners of the Obligations might be adversely affected if such book-entry only system of registration and transfer is continued. Upon occurrence of any of the foregoing events, the Commission shall use its best efforts to attempt to locate another qualified Securities Depository. If the Commission fails to locate another qualified Securities Depository to replace DTC, the Commission shall cause to be authenticated and delivered replacement Obligations, in certificate form, to the Beneficial Owners of the Obligations. In the event that the Commission makes the determination noted in (ii) or (iii) above (provided that the Commission undertakes no obligation to make any investigation to determine the occurrence of any events that would permit the Commission to make any such determination), and has made provisions to notify the Beneficial Owners of Obligations of such determination by mailing an appropriate notice to DTC and its Nominee, the Commission shall cause to be issued replacement Obligations in certificate form to Beneficial Owners of the Obligations as shown on the records of DTC provided to the Commission.

Whenever, during the term of the Obligations, the Beneficial Ownership thereof is determined by book-entry at DTC, (i) the requirements in this Indenture of holding, delivering or transferring Obligations shall be deemed modified to require the appropriate person or entity to meet the requirements of DTC as to registering or transferring the book entry to produce the same effect and (ii) delivery of the Obligations and notices to Bondholders will be in accordance with arrangements among the Commission, the Trustee and DTC notwithstanding any provision of this Indenture to the contrary.

The Trustee and the Commission, acting by and through an Authorized Representative, are authorized to enter into a letter of representations with DTC to implement the book-entry only system of Obligation registration described above and all payments of principal, Purchase Price, interest and premium, if any, shall be made in accordance with the letter of representations with DTC.

If at any time, DTC ceases to hold the Obligations in book-entry form, all references herein to DTC shall be of no further force or effect.

The provisions of this Section 2.13 shall not apply to the Obligation in the form of the TIFIA Loan.

## ARTICLE III ADDITIONAL OBLIGATIONS

**Section 3.01 Restrictions on Issuance of Senior Lien Obligations.** Subsequent to the initial issuance of Obligations pursuant to this Indenture, Senior Lien Obligations may be issued if the requirements of (a), (b), (c), or (d) below and of Section 3.02 are met.

(a) Refundings. Senior Lien Obligations may be issued for purposes of refunding Outstanding Senior Lien Obligations by providing funds for the payment of any or all of the following:

- (1) the Bond Obligation, redemption or purchase price (including premium, if any) of the Outstanding Senior Lien Obligations to be refunded;
- (2) all expenses incident to the calling, retiring or paying of such Outstanding Senior Lien Obligations, and the Costs of Issuance of such refunding Senior Lien Obligations;
- (3) interest on all Outstanding Senior Lien Obligations to be refunded to the date such Senior Lien Obligations will be called for redemption or paid at maturity;
- (4) interest on the refunding Senior Lien Obligations from the date thereof to the date of payment or redemption of the Senior Lien Obligations or to be refunded; and
- (5) amounts necessary to fund a Senior Lien Obligations Reserve Fund.

In connection with the issuance of Senior Lien Obligations pursuant to this Section 3.01(a), the Commission shall deliver a Certificate of the Commission to the effect that the Commission projects that the Annual Debt Service on all Outstanding Obligations after the issuance of the proposed additional Senior Lien Obligations will be less than the Annual Debt Service on all Outstanding Obligations prior to such issuance in each year through the stated maturity date of the Senior Lien Obligations being refunded.

If the TIFIA Loan is outstanding, the Commission shall deliver a Certificate of the Commission demonstrating that each of the requirements set forth in clauses (1)-(3) in paragraph (b) below and in [the proviso of] the definition of "Additional Obligations" in the TIFIA Loan Agreement has been satisfied in connection with the issuance of Senior Lien Obligations pursuant to this Section 3.01(a) unless waived by the TIFIA Lender.

(b) Additional Toll System Network Project. Senior Lien Obligations may be issued to pay for any Toll System Network Project or improvements, extensions, betterments,

enhancements or expansions to the Toll Roads System, provided that the Commission delivers to the Trustee:

(1) a certified copy of a resolution of the HRTAC Board approving such Additional Toll System Network Project as a part of the Toll Roads System, or any phase, portion, segment thereof;

(2) a Certificate of the Commission supported by a report of the Traffic Consultant to the effect that, as of the date of issuance of the additional Senior Lien Obligations, (i) Net Revenue during the preceding Calculation Period ending not more than ninety (90) days prior to the date of delivery of the proposed additional Senior Lien Obligations, was sufficient to satisfy the requirements of Section 6.03(a) of this Indenture; (ii) projected Net Revenue is expected to be sufficient to produce (A) a Senior Debt Service Coverage Ratio for each Calculation Period from the date of issuance of such Senior Lien Obligations through the final maturity date of all outstanding Senior Lien Obligations of not less than 1.45:1.00, and (B) an All-in Cost Coverage Ratio for each Calculation Period from the date of issuance of Senior Lien Obligations through the final maturity date of all outstanding Obligations of not less than 1.10:1.00. In calculating projected Net Revenue, the Traffic Consultant shall: (i) take into account (A) amounts projected to be received from any adopted toll increase or increases (provided that no additional approvals need to be obtained and no additional requirements need to be satisfied in order to implement any such increase or increases), and (B) any additional toll lanes and facilities to be designated as included within the definition of the Toll Roads System;

(3) written evidence from the applicable Rating Agency or Rating Agencies that such Senior Lien Obligations will be rated at an investment grade rating by such Rating Agency;

(4) if the TIFIA Loan is outstanding, each of the requirements to the issuance of such Senior Lien Obligations set forth in paragraph (c) and in [the proviso of] the definition of Additional Obligations in the TIFIA Loan Agreement has been satisfied in connection with the issuance of Senior Lien Obligations pursuant to this Section 3.01(b) unless waived by the TIFIA Lender; and

(5) an opinion of counsel, who may be counsel to the Commission, that such Toll System Network Project or the proposed improvements, extensions, betterments, enhancements or expansions to the Toll Roads System may lawfully be undertaken as a part of the Toll Roads System, or any phase, portion, segment thereof.

(c) Completion Obligations. Senior Lien Obligations constituting Completion Obligations may be issued; provided, however, that prior to the incurrence of such Completion Obligations, the Commission shall furnish to the Trustee:

(1) a Certificate of the Commission, confirmed in writing by the Consulting Engineer, certifying the estimated costs of completing the facilities for which such Completion Obligations are to be incurred and confirming that such Completion Obligations are necessary for completing such Project;

(2) a Certificate of the Commission, confirmed in writing by the Consulting Engineer, certifying that the amount of such Completion Obligations to be incurred will be sufficient, together with other funds, if applicable, to complete the applicable Toll System Network Project as estimated by the Consulting Engineer in respect of which such Completion Obligations are to be incurred and to pay capitalized interest, if any, on Obligations Outstanding during the period of time needed to complete such Toll System Network Project; and

(3) written evidence from the applicable credit rating agency or agencies that such Senior Lien Obligations will be rated at an investment grade rating by such credit rating agency, unless, while the Commission has outstanding Obligations in the form of or securing payment of a TIFIA Loan held by the TIFIA Lender, the TIFIA Lender consents to waive this requirement.

### **Section 3.02 Proceedings for and Conditions of Issuance of Additional Senior Lien Obligations.**

Whenever the Commission determines to issue Senior Lien Obligations subsequent to the initial issuance of Obligations pursuant to this Indenture and all Supplemental Indentures executed as of the same date, the Commission shall, in addition to fulfilling the requirements of Article II and Section 3.01, file with or provide to the Trustee:

(a) a Certificate of the Commission stating that no Event of Default specified in Section 7.01 has occurred and is then continuing and, if the TIFIA Loan is outstanding, that no Event of Default specified under the TIFIA Loan Agreement has occurred and is then continuing;

(b) a Certificate of the Commission stating that the applicable requirements of Section 3.01 and, if the TIFIA Loan is outstanding and unless waived by the TIFIA Lender, the TIFIA Loan Agreement have been satisfied;

(c) if the TIFIA Loan is outstanding, each Reserve Fund established hereunder shall be fully funded as and to the extent required in any applicable Supplemental Indenture, and all Accounts or Funds with minimum required balances or target balances hereunder shall be funded to 100% of the minimum required balance or target balance, as applicable;

(d) such amount, in cash or in the form of a Reserve Facility, as shall equal the Senior Lien Obligations Reserve Requirement, if any, for such Senior Lien Obligations for deposit in the Senior Lien Obligations Reserve Fund, as calculated by the Commission; and

(e) an Opinion of Bond Counsel to the effect that the Supplemental Indenture creating such Senior Lien Obligations has been executed and delivered by the Commission in accordance with this Indenture and that such Senior Lien Obligations, when duly executed by the Commission and authenticated and delivered by the Trustee, will be valid and binding obligations of the Commission.

### **Section 3.03 Restrictions on Issuance of Second Lien Obligations or Additional Subordinate Obligations.**

Subsequent to the initial issuance of Obligations pursuant to this Indenture, Second Lien Obligations or additional Subordinate Obligations may be issued if the requirements of (a), (b), or (c) below and Section 3.04 are met.

(a) The Second Lien Obligations or Subordinate Obligations, as applicable, are issued for purposes of refunding Outstanding Obligations by providing funds for the payment of any or all of the following:

(1) the Bond Obligation, redemption or purchase price (including premium, if any) of the Outstanding Obligations to be refunded;

(2) all expenses incident to the calling, retiring or paying of such Outstanding Second Lien Obligations or Outstanding Subordinate Obligations, the Costs of Issuance of such refunding Second Lien Obligations or Subordinate Obligations;

(3) interest on all Outstanding Obligations to be refunded to the date such Obligations will be called for redemption or paid at maturity;

(4) interest on the refunding Second Lien Obligations or Subordinate Obligations from the date thereof to the date of payment or redemption of the Obligations to be refunded; and

(5) any amounts necessary to fund a Second Lien Obligations Reserve Fund or Subordinate Obligations Reserve Fund, as applicable; and

the Commission delivers to the Trustee a Certificate of the Commission to the effect that the Annual Debt Service on all Outstanding Obligations after the issuance of the proposed additional Second Lien Obligations or Subordinate Obligations will be less than the Annual Debt Service on all Outstanding Obligations prior to the issuance of such proposed Second Lien Obligations or Subordinate Obligations in each year through the stated maturity date of such refunded Obligations; and

if the TIFIA Loan is outstanding, the Commission shall deliver a Certificate of the Commission demonstrating that each of the requirements set forth in clauses (1) and (2) of paragraph (b) below and in [the proviso of] the definition of Additional Obligations in the TIFIA Loan Agreement has been satisfied in connection with the issuance of Second Lien Obligations or Subordinate Obligations, as applicable, pursuant to this Section 3.03(a) unless waived by the TIFIA Lender.

(b) The Second Lien Obligations or Subordinate Obligations, as applicable, may be issued to pay for any Toll System Network Project or improvements, extensions, betterments, enhancements or expansions to the Toll Roads System, provided that the Commission delivers to the Trustee:

(1) a certified copy of a resolution of the HRTAC Board approving such Additional Toll System Network Project as a part of the Toll Roads System, or any phase, portion, segment thereof;

(2) a Certificate of the Commission supported by a report of the Traffic Consultant to the effect that, as of the date of issuance of the additional Second Lien Obligations or Subordinate Obligations, as applicable: (i) Net Revenue during the preceding Calculation Period ending on the most recent Calculation Date prior to the date

of delivery of the proposed additional Second Lien Obligations or Subordinate Obligations, was sufficient to satisfy the requirements of Section 6.03(a) of this Indenture; (ii) projected Net Revenue for each Calculation Period over the term of the proposed additional Second Lien Obligations or Subordinate Obligations is expected to be sufficient to satisfy the requirements of Section 6.03(a) of this Indenture in each Calculation Period and produce an All-in Cost Coverage Ratio for each Calculation Period from the date of issuance of such Obligation through the final maturity date of all outstanding Obligations of not less than [1.10]:1.00. In calculating projected Net Revenue, the Traffic Consultant shall take into account amounts projected to be received from any adopted toll increase or increases (provided that no additional approvals need to be obtained and no additional requirements need to be satisfied in order to implement any such increase or increases) and any additional toll lanes and facilities to be designated as included within the definition of the Toll Roads System;

(3) if the TIFIA Loan is outstanding, each of the requirements to the issuance of such Second Lien Obligations or Subordinate Obligations, as applicable, set forth in paragraph (c) and in [the proviso of] the definition of Additional Obligations in the TIFIA Loan Agreement has been satisfied in connection with the issuance of Second Lien Obligations or Subordinate Obligations, as applicable, pursuant to this Section 3.03(b) unless waived by the TIFIA Lender; and

(4) an opinion of counsel, who may be counsel to the Commission, that such Toll System Network Project or the proposed improvements, extensions, betterments, enhancements or expansions to the Toll Roads System may lawfully be undertaken as a part of the Toll Roads System, or any phase, portion, segment thereof.

(c) Second Lien Obligations or Subordinate Obligations constituting Completion Obligations may be issued; provided, however, that prior to the incurrence of such Completion Obligations, the Commission shall furnish to the Trustee:

(1) a certificate of the Commission, confirmed in writing by the Consulting Engineer, certifying the estimated costs of completing the facilities for which such Completion Obligations are to be incurred and confirming that such Completion Obligations are necessary for completing such Project;

(2) a Certificate of the Commission, confirmed in writing by the Consulting Engineer, certifying that the amount of such Completion Obligations to be incurred will be sufficient, together with other funds, if applicable, to complete the Toll System Network Project as estimated by the Consulting Engineer in respect of which such Completion Obligations is to be incurred and pay capitalized interest, if any, on Obligations Outstanding during the period of time needed to complete the Toll System Network Project; and

(3) if the TIFIA Loan is outstanding, a Certificate of the Commission to the effect that the principal amount of such Completion Obligations, when aggregated with any Completion Obligations previously issued with respect to the applicable Toll System

Network Project, shall not exceed 10% of the aggregate principal amount of Obligations originally incurred by the Commission to finance such Toll System Network Project (unless the TIFIA Lender consents to an increased amount) and written evidence from the applicable Rating Agency or Rating Agencies that such Second Lien Obligations or Subordinate Obligations, as applicable, will be rated at an investment grade rating by such Rating Agency, unless the TIFIA Lender consents to waive this requirement.

**Section 3.04 Proceedings and Additional Conditions for Issuance of Second Lien Obligations or Subordinate Obligations.** Whenever the Commission determines to issue Second Lien Obligations or Subordinate Obligations subsequent to the initial issuance of Obligations pursuant to this Indenture and all Supplemental Indentures executed as of the same date, the Commission shall, in addition to fulfilling the requirements of Article II and Section 3.03, file with or provide to the Trustee:

(a) a Certificate of the Commission stating that no Event of Default specified in Section 7.01 has occurred and is then continuing and, if the TIFIA Loan is outstanding, that no Event of Default specified under the TIFIA Loan Agreement has occurred and is then continuing;

(b) a Certificate of the Commission stating that the applicable requirements of Section 3.03 and, if the TIFIA Loan is outstanding and unless waived by the TIFIA Lender, the TIFIA Loan Agreement have been satisfied;

(c) such amount, in cash or in the form of a Reserve Facility, as shall equal the Second Lien Obligations Reserve Requirement or Subordinate Obligations Reserve Requirement, if any, as of the date of issuance of such Series of Second Lien Obligations or Subordinate Obligations, for deposit in the Second Lien Obligations Reserve Fund or Subordinate Obligations Reserve Fund as applicable, as calculated by the Commission;

(d) an Opinion of Bond Counsel to the effect that the Supplemental Indenture creating such Series of Second Lien Obligations or Subordinate Obligations has been executed and delivered by the Commission in accordance with this Indenture and that such Series of Second Lien Obligations or Subordinate Obligations, when duly executed by the Commission and authenticated and delivered by the Trustee, will be valid and binding obligations of the Commission; and

(e) if the TIFIA Loan is outstanding, the following additional restrictions shall apply:

(1) the Commission shall provide written evidence from the applicable Rating Agency or Rating Agencies that the issuance of such Obligations shall not result in a downgrade in the public credit ratings of the Obligations in the form of or securing payment of the TIFIA Loan or any other Senior Lien Obligations then Outstanding to the lower of (A) the then-existing credit ratings of the Obligations in the form of or securing payment of the TIFIA Loan and such Outstanding Senior Lien Obligations, respectively, and (B) the credit ratings, respectively, of the Obligations in the form of or securing payment of the TIFIA Loan as of the respective issuance dates of the Obligations in the form of or securing payment of the TIFIA Loan and such other Senior Lien Obligations;

(2) each Reserve Fund established hereunder shall be fully funded, and all Accounts or Funds with minimum required balances or target balances hereunder shall be funded to 100% of the minimum required balance or target balance, as applicable;

(3) if the Obligations are Completion Obligations, then the aggregate principal amount of such Obligations, when aggregated with any Completion Obligations previously issued with respect to the applicable Toll System Network Project, shall not exceed 10% of the aggregate principal amount of Obligations originally incurred by the Commission to finance such Toll System Network Project, without the consent of the TIFIA Lender to such increased amount; and

(4) written evidence from the applicable Rating Agency or Rating Agencies that such Obligations will be rated at an investment grade rating by such Rating Agency.

## **ARTICLE IV REDEMPTION**

**Section 4.01 Redemption and Purchase of Obligations.** Each Series of Obligations may be made subject to mandatory or optional redemption or mandatory or optional tender and purchase prior to their respective stated maturities, as a whole or in part, at such time or times, upon such terms and conditions, at such prices, upon such notice and with such effect as may be provided in the Supplemental Indenture creating such Series of Obligations.

**Section 4.02 Notice of Redemption.** Unless otherwise specified in a Supplemental Indenture creating a Series of Obligations, each notice of redemption shall be mailed by the Trustee, not less than twenty (20) nor more than sixty (60) days prior to the redemption date, to each Owner, to all organizations registered with the Securities and Exchange Commission as securities depositories, and to the MSRB. Notice of redemption to the Owners shall be given by first class mail. Each notice of redemption shall state the date of such notice, the date of issue of the Series of Obligations to which such notice relates, the redemption date, the redemption price, the place or places of redemption (including the name and appropriate address or addresses of the Trustee), the CUSIP number (if any) of the maturity or maturities, and, in the case of a Series of Obligations to be redeemed in part only, the identity of the Obligations to be redeemed. Except as provided in Section 4.03 in the case of conditional optional redemption, each such notice shall also state that on such date there will become due and payable on each of such Obligations the redemption price thereof, together with interest accrued thereon to the date fixed for redemption, and that from and after such redemption date interest thereon shall cease to accrue, and shall require that such Obligations be then surrendered at the address or addresses of the Trustee specified in the redemption notice. Neither the Commission nor the Trustee shall have any responsibility for any defect in the CUSIP number that appears on any Obligation or in any redemption notice with respect thereto, and any such redemption notice may contain a statement to the effect that CUSIP numbers have been assigned by an independent service for convenience of reference and that neither the Commission nor the Trustee shall be liable for any inaccuracy in such numbers. Failure of any Owner to receive any notice of redemption or any defect therein

shall not affect the sufficiency of any proceedings for redemption. This Section 4.02 shall not apply to the TIFIA Loan.

**Section 4.03 Conditional Notice of Redemption; Rescission.** Any notice of optional redemption of the Obligations delivered in accordance with Section 4.02 may be conditional, and if any condition stated in the notice of redemption shall not have been satisfied on or prior to the redemption date, such notice shall be of no force and effect and the Commission shall not be required to redeem the Obligations thereby called for redemption, such Obligations shall not become due and payable, and the redemption shall be cancelled and the Trustee shall within a reasonable time thereafter give notice, to the persons and in the manner in which the notice of redemption was given, that such condition or conditions were not met and that the redemption was cancelled. In addition, the Commission may, at its option, on or prior to the date fixed for optional redemption in any notice of redemption of the Obligations, rescind and cancel such notice of redemption by Written Request of the Commission to the Trustee, and any optional redemption of Obligations and notice thereof shall be rescinded and cancelled and the Trustee shall mail notice of such cancellation to the recipients of the notice of redemption being cancelled pursuant to the provisions of Section 4.02. Any optional redemption of Obligations and notice thereof shall be rescinded and cancelled if for any reason on the date fixed for optional redemption moneys are not available in the Redemption Fund or otherwise held in trust for such purpose in an amount sufficient to pay in full on such date the principal of, interest, and any premium due on the Obligations called for optional redemption and such failure to optionally redeem the Obligations called for redemption shall not be a default hereunder.

**Section 4.04 Effect of Redemption.** Notice of redemption having been duly given as aforesaid or as otherwise provided in a Supplemental Indenture, and moneys for payment of the redemption price of, together with interest accrued to the redemption date on, the Obligations (or portions thereof) so called for redemption having been irrevocably deposited with the Trustee, on the redemption date designated in such notice, the Obligations (or portions thereof) so called for redemption shall become due and payable at the redemption price specified in this Indenture, together with interest accrued thereon to the date fixed for redemption, interest on the Obligations so called for redemption shall cease to accrue, such Obligations (or portions thereof) shall cease to be entitled to any benefit or security under this Indenture, and the Owners of such Obligations shall have no rights in respect thereof except to receive payment of such redemption price and accrued interest to the date fixed for redemption.

**Section 4.05 Partial Redemption of Obligations.** Upon surrender of any Obligation to be redeemed in part only, the Commission shall execute, and the Trustee shall authenticate and deliver to the Owner of such Obligation, at the expense of the Commission, a new Obligation or Obligations of Authorized Denominations equal in Bond Obligation to the unredeemed portion of the Obligation surrendered, of the same Series, maturity and terms as the surrendered Obligation.

## ARTICLE V

### PLEDGE; FUNDS AND ACCOUNTS

#### **Section 5.01 Deposit of Revenue by Trustee; Establishment of Toll Revenue Fund.**

(a) All Toll Revenues received and receivable by the Commission and pledged and assigned by this Indenture to the Trustee, together with the balance of the Trust Estate, are to be paid by or on behalf of the Commission to the Trustee and deposited by the Trustee in the Funds and Accounts described in this Article V and held in trust for the purposes set forth herein, and, except as otherwise provided herein, shall not be subject to any lien, levy, garnishment or attachment by any creditor of the Commission nor shall they be subject to any assignment or hypothecation by the Commission. Subject only to the provisions of this Indenture permitting the application thereof for or to the purposes and on the terms and conditions set forth herein, the Trustee shall be entitled to and shall collect and receive all of the Toll Revenues, and any Toll Revenues collected or received by or on behalf of the Commission shall be deemed to be held, and to have been collected or received, by the Commission as the agent of the Trustee and shall forthwith be paid by the Commission to the Trustee. Moneys on deposit in the Funds and Accounts described in this Article V (excluding the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument) shall be held by the Trustee or the Commission, as applicable, in trust, and pending application in accordance with the provisions of this Article V shall be subject to a lien and charge in favor of the Holders until applied as hereinafter provided. The Trustee shall at all times maintain accurate records of deposits into such Funds and Accounts and the sources and timing of such deposits.

(b) As long as any Obligations remain unpaid, the Commission hereby assigns and shall cause Toll Revenues to be transmitted by the Toll Operator on at least a weekly basis directly to the Trustee for deposit in a trust fund, designated as the "Toll Revenue Fund," which Fund the Trustee shall establish and maintain in trust. Investment income on amounts held by the Trustee in the Toll Revenue Fund shall also be deposited in the Toll Revenue Fund. All moneys at any time held in the Toll Revenue Fund shall be held in trust for the benefit of the Holders of the Obligations and shall be disbursed, allocated and applied solely for the uses and purposes set forth in this Indenture.

#### **Section 5.02 Establishment of Other Funds and Accounts.**

(a) In addition to the Toll Revenue Fund established pursuant to Section 5.01, the following Funds and Accounts are hereby established and created and shall be maintained in trust by the Trustee:

- (1) the Project Fund, and within the Project Fund, the Senior Lien Obligations Account, the Second Lien Obligations Account, the Subordinate Obligations Account, and the Insurance and Condemnation Proceeds Account;
- (2) the Rebate Fund;
- (3) the Revenue Stabilization Fund;

- (4) the Operation and Maintenance Reserve Fund;
- (5) the Senior Lien Obligations Fund and, within the Senior Lien Obligations Fund, the Senior Lien Obligations Interest Account, the Senior Lien Obligations Principal Account, and the TIFIA Loan Prepayment Account;
- (6) the Senior Lien Obligations Reserve Fund and, within the Senior Lien Obligations Reserve Fund, the TIFIA Loan Reserve Account;
- (7) the Second Lien Obligations Fund and, within the Second Lien Obligations Fund, the Second Lien Obligations Interest Account, and the Second Lien Obligations Principal Account;
- (8) the Second Lien Obligations Reserve Fund;
- (9) the Subordinate Obligations Fund and, within the Subordinate Obligations Fund, the Subordinate Obligations Interest Account and the Subordinate Obligations Principal Account;
- (10) the Subordinate Obligations Reserve Fund;
- (11) the Major Maintenance and Renewal Fund;
- (12) the Additional Toll System Payment Fund;
- (13) the VDOT Repayment Fund;
- (14) the HRTF Repayment Fund; and
- (15) the General Reserve Fund.

and the following Fund(s) are hereby established and created and shall be maintained by the Commission:

- (16) the Operation and Maintenance Fund.

In addition, upon the written request of the Commission or as may be specified in a Supplemental Indenture, the Trustee shall establish and maintain additional temporary Funds or Accounts or sub-accounts for the purposes specified in any such request.

(b) All of the Funds and Accounts (other than the Operation and Maintenance Fund) shall be held by the Trustee and, except as expressly provided herein, the Commission shall not have any right to withdraw funds from any Fund or Account established pursuant to Section 5.02(a). The Commission hereby irrevocably authorizes the Trustee to credit funds to or deposit funds in, and to withdraw and transfer funds from, each Fund or Account in accordance with the terms of this Indenture.

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

(a) From and after the Substantial Completion Date of any portion, phase or segment of the Toll System Network Project, except for amounts to be deposited in other Funds or Accounts pursuant to this Article or the provisions of any Supplemental Indenture, the Commission shall promptly deposit or cause to be deposited into the Toll Revenue Fund all Revenue, all HRTF Transfers, and transfers from other Funds or Accounts as required by the terms of this Indenture.

(b) From and after the Substantial Completion Date of any portion, phase or segment of the Toll System Network Project, subject to Section 5.28 hereof, including the delivery of a Funds Transfer Certificate by the Commission (to the extent required by such Section 5.28), the Trustee shall make the following transfers and payments from the Toll Revenue Fund in the amounts, at the times and only for the purposes specified below and in the following order of priority (it being agreed that no amount shall be transferred on any date pursuant to any clause below until amounts sufficient as of the Monthly Funding Date falling on or most recently prior to such date (to the extent applicable) for all the purposes specified under the prior clauses shall have been transferred or set aside):

First, on each Monthly Funding Date, to the Operation and Maintenance Fund, the amount necessary to increase the balance of the Operation and Maintenance Fund to an amount equal to the Operation and Maintenance Expenses then due and payable on the day after such Monthly Funding Date, as reflected in the Annual Operating Budget for such Fiscal Year, including any revisions thereto; provided, that in the event amounts available in the Toll Revenue Fund would be insufficient to make any of the transfers required by this clause on such Monthly Funding Date, funds available from the Operation and Maintenance Reserve Fund shall first be transferred to the Operation and Maintenance Fund up to an amount equal to the lesser of (a) the amount of such shortfall on such Monthly Funding Date, and (b) the amount required to be deposited to the Operation and Maintenance Fund on such Monthly Funding Date, in each case offsetting in an equal amount the obligation to transfer funds from the Toll Revenue Fund on such Monthly Funding Date;

Second, on each Monthly Funding Date, any payments then due and payable by the Commission to the Rebate Fund or any similar rebate fund established with respect to any future tax-exempt borrowing transaction under this Indenture;

Third, on each Monthly Funding Date, to the Operation and Maintenance Reserve Fund any remaining amounts as may be necessary to increase the amount on deposit therein to equal the Operation and Maintenance Reserve Fund Requirement;

Fourth, (x) on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, to the Senior Lien Obligations Interest Account the sum of (A)(1) in the case of Outstanding Senior Lien Obligations with semiannual Interest Payment Dates, one-sixth (1/6) of the amount of the interest payable on such Senior Lien Obligations on the next Interest Payment Date; (2) in the case of Outstanding Senior Lien Obligations with quarterly Interest Payment Dates, one-third (1/3) of the amount of the interest payable on such Senior Lien Obligations on the next Interest Payment Date; and (3) in the case of Outstanding Senior Lien Obligations with monthly Interest Payment Dates, the amount of interest payable on such Senior Lien Obligations on the next Interest Payment Date; plus (B) the sum of

any continuing shortfall in transfers required to have been made to the Senior Lien Obligations Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on any Senior Lien Obligations, any other amount required to make the amount credited to the Senior Lien Obligations Interest Account equal to the amount payable on such Senior Lien Obligations on such Interest Payment Date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Revenue Stabilization Fund, the General Reserve Fund, and the applicable Account in the Senior Lien Obligations Reserve Fund (in that order) shall be transferred to the Senior Lien Obligations Interest Account up to an amount equal to such shortfall; and (y) on each Monthly Funding Date, to the applicable Swap Parties, scheduled payments due under any Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to such scheduled Hedging Obligations, under any Swaps entered into in connection with such Senior Lien Obligations; , and provided further, however, that with respect to Senior Lien Obligations in the form of or securing payment of the TIFIA Loan, only the interest component of TIFIA Debt Service shall be set aside pursuant to this Fourth clause;

Fifth, on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, commencing twelve (12) months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six (6) months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Senior Lien Obligations Principal Account, the sum of (A)(1) in the case of Outstanding Senior Lien Obligations with annual principal or mandatory sinking fund payment dates, one-twelfth (1/12) of the principal and mandatory sinking fund redemptions due on such Senior Lien Obligations; and (2) in the case of Outstanding Senior Lien Obligations with semi-annual principal or mandatory sinking fund payment dates, one-sixth (1/6) of the principal and mandatory sinking fund redemptions due on such Senior Lien Obligations; (B) the sum of any shortfall in transfers required to have been made to the Senior Lien Obligations Principal Account on any previous Monthly Funding Date; and (C) if the Monthly Funding Date is also a principal payment date (or mandatory sinking fund redemption date) or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Senior Lien Obligations, any other amount required to make the amount credited to the Senior Lien Obligations Principal Account equal to the amount of principal due on such Senior Lien Obligations on such principal payment date or mandatory sinking fund redemption date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Revenue Stabilization Fund, the General Reserve Fund, and the applicable Account in the Senior Lien Obligations Reserve Fund (in that order) shall be transferred to the Senior Lien Obligations Principal Account up to an amount equal to such shortfall, and provided further, however, that with respect to Senior Lien Obligations in the form of or securing payment of the TIFIA Loan, only the principal component of TIFIA Debt Service shall be set aside pursuant to this Fifth clause;

[Sixth], for so long as Senior Lien Obligations in the form of or securing the TIFIA Loan are outstanding, on each Monthly Funding Date commencing on the Monthly Funding Date that is six (6) months prior to the date on which TIFIA Debt Service is first due and payable, to the Senior Lien Obligations Interest Account, an amount which equals the sum of (A) one-sixth

(1/6) of the TIFIA Debt Service due and payable on the immediately succeeding TIFIA Payment Date for the TIFIA Loan; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Senior Lien Obligations Interest Account in respect of TIFIA Debt Service on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on the Senior Lien Obligations in the form of or securing payment of the TIFIA Loan, any other amount required to make the amount credited to the Senior Lien Obligations Interest Account equal to the amount payable on such Senior Lien Obligations in respect of TIFIA Debt Service on such Interest Payment Date; *(drafting note: to be used if "Scheduled" rather than "Mandatory" debt service on TIFIA, which is still TBD)*

Seventh, on each Monthly Funding Date, to the Senior Lien Obligations Reserve Fund (or the applicable Account therein), the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein) to the Senior Lien Obligations Reserve Requirement; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, (A) funds available in the General Reserve Fund shall be transferred to the Senior Lien Obligations Reserve Fund up to an amount equal to such shortfall, and (B) the funds available for such transfer(s) shall be transferred to each Account in the Senior Lien Obligations Reserve Fund ratably in accordance with its respective shortfall;

Eighth, (x) on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, to the Second Lien Obligations Interest Account the sum of (A)(1) in the case of Outstanding Second Lien Obligations with semiannual Interest Payment Dates, one-sixth (1/6) of the amount of the interest payable on such Second Lien Obligations on the next Interest Payment Date; (2) in the case of Outstanding Second Lien Obligations with quarterly Interest Payment Dates, one-third (1/3) of the amount of the interest payable on such Second Lien Obligations on the next Interest Payment Date; and (3) in the case of Outstanding Second Lien Obligations with monthly Interest Payment Dates, the amount of interest payable on such Second Lien Obligations on the next Interest Payment Date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Second Lien Obligations Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on any Second Lien Obligations, any other amount required to make the amount credited to the Second Lien Obligations Interest Account equal to the amount payable on such Second Lien Obligations on such Interest Payment Date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Revenue Stabilization Fund, the General Reserve Fund, and the applicable Account in the Second Lien Obligations Reserve Fund (in that order) shall be transferred to the Second Lien Obligations Interest Account up to an amount equal to such shortfall; and (y) on each Monthly Funding Date, to the applicable Swap Parties, scheduled payments due under any Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to such scheduled Hedging Obligations, under any Swaps entered into in connection with such Second Lien Obligations; provided, however, that with respect to Second Lien Obligations in the form of or securing payment of the TIFIA Loan, only the interest component of TIFIA Debt Service shall be set aside pursuant to this Eighth clause;

Ninth, on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, commencing twelve (12) months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six (6) months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Second Lien Obligations Principal Account, the sum of (A)(1) in the case of Outstanding Second Lien Obligations with annual principal or mandatory sinking fund payment dates, one-twelfth (1/12) of the principal and mandatory sinking fund redemptions due on such Second Lien Obligations; and (2) in the case of Outstanding Second Lien Obligations with semi-annual principal or mandatory sinking fund payment dates, one-sixth (1/6) of the principal and mandatory sinking fund redemptions due on such Second Lien Obligations; (B) the sum of any shortfall in transfers required to have been made to the Second Lien Obligations Principal Account on any previous Monthly Funding Date; and (C) if the Monthly Funding Date is also a principal payment date (or mandatory sinking fund redemption date) or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Second Lien Obligations, any other amount required to make the amount credited to the Second Lien Obligations Principal Account equal to the amount of principal due on such Second Lien Obligations on such principal payment date or mandatory sinking fund redemption date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Revenue Stabilization Fund, the General Reserve Fund, and the applicable Account in the Second Lien Obligations Reserve Fund (in that order) shall be transferred to the Second Lien Obligations Principal Account up to an amount equal to such shortfall; provided, however, that with respect to Second Lien Obligations in the form of or securing payment of the TIFIA Loan, only the principal component of TIFIA Debt Service shall be set aside pursuant to this Ninth clause;

Tenth, on each Monthly Funding Date, to the Second Lien Obligations Reserve Fund (or the applicable Account therein), the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein and any amounts to be transferred from the General Reserve Fund) to the Second Lien Obligations Reserve Requirement; provided, however, that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Second Lien Obligations Reserve Fund ratably in accordance with its respective shortfall;

Eleventh, for so long as Second Lien Obligations in the form of or securing the TIFIA Loan are outstanding, on each Monthly Funding Date commencing on the Monthly Funding Date that is six (6) months prior to the date on which TIFIA Debt Service is first due and payable, to the Second Lien Obligations Interest Account, an amount which equals the sum of (A) one-sixth (1/6) of the TIFIA Debt Service due and payable on the immediately succeeding TIFIA Payment Date for the TIFIA Loan; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Second Lien Obligations Interest Account in respect of TIFIA Debt Service on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on the Second Lien Obligations in the form of or securing payment of the TIFIA Loan, any other amount required to make the amount credited to the Second Lien Obligations Interest Account equal to the amount payable on such Second Lien Obligations in respect of TIFIA Debt Service on such Interest

Payment Date; (*drafting note: to be used if “Scheduled” rather than “Mandatory” debt service on TIFIA, which is still TBD*)

Twelfth, (x) on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, to the Subordinate Obligations Interest Account the sum of (A)(1) in the case of Outstanding Subordinate Obligations with semi-annual Interest Payment Dates, one-sixth (1/6) of the interest payable on such Subordinate Obligations on the next Interest Payment Date; (2) in the case of Outstanding Subordinate Obligations with quarterly Interest Payment Dates, one-third (1/3) of the amount of the interest payable on such Subordinate Obligations on the next Interest Payment Date; and (3) in the case of Outstanding Subordinate Obligations with monthly Interest Payment Dates, the interest payable on such Subordinate Obligations on the next Interest Payment Date; plus (B) the sum of any continuing shortfall in transfers required to have been made to the Subordinate Obligations Interest Account on any preceding Monthly Funding Date; plus (C) if such Monthly Funding Date is also an Interest Payment Date or the last Monthly Funding Date before an Interest Payment Date on any Subordinate Obligations, any other amount required to make the amount credited to the Subordinate Obligations Interest Account equal to the interest payable on such Subordinate Obligations on such Interest Payment Date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Revenue Stabilization Fund, the General Reserve Fund, and the applicable Account in the Subordinate Obligations Reserve Fund (in that order) shall be transferred to the Subordinate Obligations Interest Account up to an amount equal to such shortfall, and (y) on each Monthly Funding Date, to the applicable Swap Parties, scheduled payments due under any Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to such scheduled Hedging Obligations, under any Swaps entered into in connection with such Subordinate Obligations;

Thirteenth, on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, commencing twelve (12) months before the first annual principal payment date (including any mandatory sinking fund redemption date) or six (6) months before the first semi-annual principal payment date (including any mandatory sinking fund redemption date), to the Subordinate Obligations Principal Account the sum of (A)(1) in the case of Outstanding Subordinate Obligations with annual principal payment date, one-twelfth (1/12) of the principal due on such Subordinate Obligations on the next principal payment date; and (2) in the case of Outstanding Subordinate Obligations with semi-annual principal payment dates, one-sixth (1/6) of the principal redemptions due on such Subordinate Obligation on the next principal payment date; plus (B) the sum of any shortfall in transfers required to have been made to the Subordinate Obligations Principal Account on any previous Monthly Funding Date; plus (C) if the Monthly Funding Date is also a principal payment date or the last Monthly Funding Date before a principal payment date (or mandatory sinking fund redemption date) on any Subordinate Obligations, any other amount required to make the amount credited to the Subordinate Obligations Principal Account equal to the amount of principal due on such Subordinate Obligation on such principal payment date or mandatory sinking fund redemption date; provided, that in the event such requirements cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the Revenue Stabilization Fund, the General Reserve Fund, and the applicable Account in the Subordinate Obligations Reserve Fund (in that order) shall be

transferred to the Subordinate Obligations Principal Account up to an amount equal to such shortfall.

Fourteenth, on each Monthly Funding Date, to the Subordinate Obligations Reserve Fund (or the applicable Account therein), the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit therein) to the Subordinate Obligations Reserve Requirement; provided, that in the event such requirements cannot be fully funded, the funds available shall be transferred to each Account in the Subordinate Obligations Reserve Fund ratably in accordance with its respective shortfall;

Fifteenth, on each Monthly Funding Date solely to the extent sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 5.03(b), to the Major Maintenance and Renewal Fund, the amount, if any, necessary to increase the balance therein (taking into account amounts then on deposit) to the Major Maintenance and Renewal Fund Required Amount; provided, that in the event such requirement cannot be fully funded with amounts available in the Toll Revenue Fund, funds available in the General Reserve Fund shall be transferred to the Major Maintenance and Renewal Fund up to an amount equal to such shortfall;

Sixteenth, on each Monthly Funding Date and on each other date on which the following amounts shall be due and payable, to the counterparties to Swaps, an amount equal to any Hedging Termination Obligations then due or due prior to the next Monthly Funding Date with respect to a termination of any such Swaps and to any Credit Provider or Reserve Facility Provider any fees, fines or other penalties, or additional interest owed as a result of a default on any applicable Credit Support Instrument or Reserve Facility;

Seventeenth, on each Monthly Funding Date solely to the extent (i) sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 5.03(b) and (ii) the “Additional Toll Roads Network Cost Payment Fund Funding Conditions” (as defined in Section 5.13) are met, to the Additional Toll Roads Cost Payment Fund to cause the amount on deposit in the Additional Toll Roads Cost Payment Fund to equal the amount specified in Section 5.13;

Eighteenth, on each Monthly Funding Date solely to the extent (i) sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 5.03(b) and (ii) the “VDOT Repayment Fund Funding Conditions” (as defined in Section 5.14) are satisfied, to the VDOT Repayment Fund;

Nineteenth, on each Monthly Funding Date solely to the extent (i) sufficient funds are then available after application of funds for the purposes specified in the prior clauses of this Section 5.03(b) and (ii) the “HRTF Repayment Fund Funding Conditions” (as defined in Section 5.15) are satisfied, to the HRTF Repayment Fund in accordance with Section 5.15(a); and

Twentieth, on each Monthly Funding Date, any amount remaining after the deposits and transfers described in clauses First through Nineteenth above shall be deposited to the General Fund; provided, however, that to the extent the applicable funding conditions specified or

referenced in Clauses Seventeenth through Nineteenth are not met or satisfied, no deposit shall be made to the applicable Fund on the Monthly Funding Date.

(c) In the event amounts available in the Toll Revenue Fund would be insufficient to make any of the transfers required by Clauses First through [Fifteenth] and/or Clause Fifteenth of Section 5.03(b) on the Business Day immediately prior to a Monthly Funding Date, the Trustee shall notify the Commission of the amount of such shortfall by 10:00 a.m. (Eastern time) on such day.

(d) To the extent that on any Calculation Date or any other date of determination requested by the Commission, the Commission determines that (i) the amounts on deposit in the Senior Lien Obligations Reserve Fund are in excess of the Senior Lien Obligations Reserve Requirement with respect to all Outstanding Senior Lien Obligations, (ii) the amounts on deposit in the Second Lien Obligations Reserve Fund are in excess of the Second Lien Obligations Reserve Requirement with respect to all Outstanding Second Lien Obligations, (iii) amounts on deposit in the Subordinate Obligations Reserve Fund are in excess of the Subordinate Obligations Reserve Requirement with respect to all Outstanding Subordinate Obligations, or (iv) the amounts on deposit in the Major Maintenance and Renewal Fund are certified by the Commission to be in excess of what is required for expected Major Maintenance and Renewal Fund Permitted Expenditures and the Major Maintenance and Renewal Fund Required Amount, then in each such case, as applicable, the Trustee shall transfer the excess amounts to the Toll Revenue Fund.

#### **Section 5.04 Project Fund.**

(a) Accounts. Pursuant to Section 5.02(a) hereof, the Trustee is to establish and create and maintain in trust the following separate Accounts within the Project Fund:

- (1) the Senior Lien Obligations Account;
- (2) the Second Lien Obligations Account;
- (3) the Subordinate Obligations Account; and
- (4) the Insurance and Condemnation Proceeds Account.

Project Costs shall be paid from the Project Fund and its Accounts, including the Senior Lien Obligations Account, the Second Lien Obligations Account, the Subordinate Obligations Account, and the Insurance and Condemnation Proceeds Account as described below. The Commission shall be entitled to open new Accounts of the Project Fund for such purposes as may be set forth in a Supplemental Indenture.

(b) Senior Lien Obligations Account. The net proceeds of each Series of the Senior Lien Obligations shall be deposited by the Trustee into the applicable sub-account of the Senior Lien Obligations Account as provided by the applicable Supplemental Indenture. The Senior Lien Obligations Account and all sub-accounts therein shall be maintained in order to account for the receipt and disbursement of proceeds (and all earnings thereon) of the Senior Lien Obligations, including but not limited to, the payment of, or reimbursement for a prior payment

of, Costs of Issuance of Senior Lien Obligations and other Project Costs permitted to be paid with the proceeds of such Senior Lien Obligations. Funds therein shall be disbursed pursuant to a Funds Transfer Certificate in accordance with the provisions of Section 5.28. Notwithstanding anything to the contrary set forth herein, the amounts on deposit in any such sub-account of the Senior Lien Obligations Account (and all earnings thereon) shall secure only the Senior Lien Obligations issued to fund the initial deposit to such sub-account, and such amounts shall be held by the Trustee hereunder solely for the benefit of the Holders of such Senior Lien Obligations until such funds have been disbursed in accordance with this Section.

(c) Second Lien Obligations Account. The net proceeds of Second Lien Obligations shall be deposited by the Trustee into the applicable sub-account of the Second Lien Obligations Account as provided by the applicable Supplemental Indenture. The Second Lien Obligations Account and all sub-accounts therein shall be maintained in order to account for the receipt and disbursement of proceeds (and all earnings thereon) of the Second Lien Obligations, including but not limited to, the payment of, or reimbursement for a prior payment of, Costs of Issuance of Second Lien Obligations and other Project Costs permitted to be paid with the proceeds of such Second Lien Obligations. Funds therein shall be disbursed pursuant to a Funds Transfer Certificate in accordance with the provisions of Section 5.28. Notwithstanding anything to the contrary set forth herein, the amounts on deposit in any such sub-account of the Second Lien Obligations Account (and all earnings thereon) shall secure only the Second Lien Obligations issued to fund the initial deposit to such sub-account, and such amounts shall be held by the Trustee hereunder solely for the benefit of the Holders of such Second Lien Obligations until such funds have been disbursed in accordance with this Section.

(d) Subordinate Obligations Account. The net proceeds of Subordinate Obligations shall be deposited by the Trustee into the applicable sub-account of the Subordinate Obligations Account as provided by the applicable Supplemental Indenture. The Subordinate Obligations Account and all sub-accounts therein shall be maintained in order to account for the receipt and disbursement of proceeds (and all earnings thereon) of the Subordinate Obligations, including but not limited to, the payment of, or reimbursement for a prior payment of, Costs of Issuance of Subordinate Obligations and other Project Costs permitted to be paid with the proceeds of such Subordinate Obligations. Funds therein shall be disbursed pursuant to a Funds Transfer Certificate in accordance with the provisions of Section 5.28. Notwithstanding anything to the contrary set forth herein, the amounts on deposit in any such sub-account of the Subordinate Obligations Account (and all earnings thereon) shall secure only the Subordinate Obligations issued to fund the initial deposit into such sub-account, and such amounts shall be held by the Trustee hereunder solely for the benefit of the Holders of such Subordinate Obligations until such funds have been disbursed in accordance with this Section.

(e) Insurance and Condemnation Proceeds Account. Proceeds of fire and other property and casualty insurance payable to or received by the Commission with respect to the Toll Roads System (whether by way of claims, return of premiums, ex gratia settlements or otherwise), and proceeds of any condemnation awards payable to or received by the Commission with respect to the Toll Roads System shall be transferred to the Trustee and deposited by the Trustee into the Insurance and Condemnation Proceeds Account; provided, that proceeds of any business interruption, delay in startup or loss of advance profits insurance paid to or for the benefit of the

Commission shall be deposited to the Toll Revenue Fund. If received prior to the applicable Substantial Completion Date, amounts on deposit in such Account shall be used to pay Project Costs, and, if required, a mandatory prepayment of the TIFIA Loan (and shall be transferred for such purpose). If received after the applicable Substantial Completion Date, amounts on deposit in the Insurance and Condemnation Proceeds Account may be used by the Commission to pay the costs of restoration, repair or rehabilitation of the Toll Roads System or any segment, phase or portion thereof to which such insurance or condemnation proceeds relate; provided, however, that any portion of such amounts that the Commission elects not to use for such restoration, repair or rehabilitation of the Toll Roads System or that are in excess of the amount needed for such restoration, repair or rehabilitation of the Toll Roads System, as evidenced by a Certificate of the Commission delivered to the Trustee, shall be transferred to the Redemption Fund and applied to the prepayment of principal of Outstanding Highest Priority Obligations, including the Senior Lien Obligations in the form of the TIFIA Loan if it is then Outstanding. The Commission shall comply with Section 5.28, including the delivery of a Funds Transfer Certificate (to the extent required by such Section 5.28 in requesting a disbursement of funds from time to time from the Insurance and Condemnation Proceeds Account.

### **Section 5.05 Revenue Stabilization Fund.**

Monies in the Revenue Stabilization Fund shall be available solely for the transfer to the Senior Lien Obligations Fund, the Second Lien Obligations Fund, and the Subordinate Obligations Fund, at such times as the Commission determines in its sole discretion, as may be set forth in a Written Request of the Commission, provided, however, if in any month there are insufficient Toll Revenues on deposit in the Toll Revenue Fund to make any required payments to the Senior Lien Obligations Fund, the Trustee shall be required to transfer monies from the Revenue Stabilization Fund to the Senior Lien Obligations Fund and the Senior Lien Obligations Reserve Fund for application in accordance with the provisions of Clause Fourth, Clause Fifth, Clause Eighth and Clause Ninth of Section 5.03(b).

### **Section 5.06 HRTF Transfers.**

(a) As and to the extent the Commission has authorized HRTF Transfers pursuant to the applicable provisions of the HRTF Indenture, the Commission will make available such HRTF Transfer for deposit to the Revenue Stabilization Fund, the Major Maintenance and Renewal Fund, and any other Fund or Account under this Indenture, all as may be provided in any Supplemental Indenture.

Unless provided otherwise in any Supplemental Indenture or as may be approved from time to time by resolution of the Commission, the amount of HRTF Transfers for deposit to the Revenue Stabilization Fund shall not exceed \$10,000,000 in any Fiscal Year, subject to any reimbursement of such amounts to the Commission pursuant to Section 5.15(c).

Unless provided otherwise in any Supplemental Indenture or as may be approved from time to time by resolution of the Commission, the aggregate amount of all HRTF Transfers made while any Obligations are Outstanding for deposit to the Major Maintenance and Renewal Fund shall not exceed the Major M & R HRTF Cumulative Transfer Cap, subject to any

reimbursement of such amounts to the Commission pursuant to Section 5.15(c). Commencing with the Fiscal Year ending June 30, 2027, the Commission shall calculate, on [an annual] [a biennial basis], the Major M & R HRTF Cumulative Transfer Cap as of the end of such Fiscal Year. The Commission shall provide such calculation to the Trustee within one hundred eighty days of the end of the applicable Fiscal.

(b) HRTF Transfers may only be used to pay HRTF Eligible Costs.

#### **Section 5.07 Operation and Maintenance Fund.**

The Commission shall establish and maintain the Operation and Maintenance Fund in accordance herewith the amount necessary to increase the balance of the Operation and Maintenance Fund to an amount equal to the Operation and Maintenance Expenses then due and payable, as reflected in the Annual Operating Budget for such Fiscal Year (including any revisions thereto) (the “**Operation and Maintenance Fund Required Amount**”). The Commission shall apply the funds in the Operation and Maintenance Fund and the amounts transferred to the Operation and Maintenance Fund under Article V of this Indenture for the payment of Operation and Maintenance Expenses in accordance with the terms of this Indenture.

#### **Section 5.08 Operation and Maintenance Reserve Fund.**

(a) In the event that the Commission delivers to the Trustee a Written Request of the Commission certifying that (i) at any time, monies on deposit in the Operation and Maintenance Fund are insufficient to pay Operation and Maintenance Expenses then due and payable, or (ii) on any Monthly Funding Date, monies on deposit in the Toll Revenue Fund are insufficient to make the deposits required by clause First of Section 5.03, the Trustee shall transfer such funds from the Operations and Maintenance Reserve Fund to the Operation and Maintenance Fund in an amount sufficient to cure such deficiency.

(b) If on an interest payment date or a principal payment date, the amount then on deposit in the Senior Lien Obligations Fund, the Second Lien Obligations Fund or the Subordinate Obligations Fund is insufficient to pay the principal of, and/or interest on, the related Senior Lien Obligations, Second Lien Obligations and/or Subordinate Obligations secured thereby then due, the Trustee shall make the following transfers from amounts on deposit in the Operation and Maintenance Reserve Fund in the following order of priority: first, to the Senior Lien Obligations Fund, the amount necessary to pay principal and interest due and payable on such interest payment date or principal payment date on the Senior Lien Obligations; second, to the Second Lien Obligations Fund, the amount necessary to pay principal and interest due and payable on such interest payment date or principal payment date on the Second Lien Obligations, and third, to the Subordinate Obligations Fund, the amount necessary to pay principal and interest due and payable on such interest payment date or principal payment date on the Subordinate Obligations.

#### **Section 5.09 Senior Lien Obligations Reserve Fund.**

(a) Except as may otherwise be specified in a Supplemental Indenture, on the date of issuance of any Series of Senior Lien Obligations that has a Senior Lien Obligations Reserve Requirement, the Senior Lien Obligations Reserve Requirement for those Senior Lien

Obligations shall be deposited in the Senior Lien Obligations Reserve Fund in an Account solely for the benefit of those Senior Lien Obligations. Alternatively, the Supplemental Indenture for any Series of Senior Lien Obligations may establish a pooled Senior Lien Obligations Reserve Requirement for that Series of Senior Lien Obligations and any one or more subsequently issued Series of Senior Lien Obligations with the same pooled Senior Lien Obligations Reserve Requirement, in which case the Senior Lien Obligations Reserve Requirement for the initial issue of such Senior Lien Obligations shall be deposited in the Senior Lien Obligations Reserve Fund in an Account solely for the benefit of those Senior Lien Obligations and any additional Senior Lien Obligations with the same pooled Senior Lien Obligations Reserve Requirement, and on the date of issuance of any such additional Senior Lien Obligations, there shall be deposited in the Account the amount necessary to increase the balance in the Account to an amount equal to the Senior Lien Obligations Reserve Requirement for all Senior Lien Obligations secured by that Account.

(b) Monies on deposit in each Account within the Senior Lien Obligations Reserve Fund shall be applied by the Trustee as follows:

(1) If on any (x) Interest Payment Date for Senior Lien Obligations secured by an Account within the Senior Lien Obligations Reserve Fund, (y) principal payment date for such Senior Lien Obligations or (z) redemption date on which such Senior Lien Obligations are subject to mandatory sinking fund redemption, the amount on deposit in the applicable Account of the Senior Lien Obligations Fund, determined after taking into account all amounts transferred to such Account of the Senior Lien Obligations Fund in accordance with clauses Fourth and Fifth of Section 5.03(b), is not sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Senior Lien Obligations, then moneys shall be transferred to the Senior Lien Obligations Interest Account and/or the Senior Lien Obligations Principal Account, as applicable, from the applicable Account of the Senior Lien Obligations Reserve Fund which, together with moneys then on deposit in the applicable Account of the Senior Lien Obligations Fund, will be sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Senior Lien Obligations on such date. Moneys shall be transferred first to the Senior Lien Obligations Interest Account until such Account, together with any available funds then on deposit in the Senior Lien Obligations Interest Account, is sufficiently funded with respect to such Senior Lien Obligations and thereafter, to the Senior Lien Obligations Principal Account until such Account, together with any available funds then on deposit in the Senior Lien Obligations Principal Account, is sufficiently funded with respect to such Senior Lien Obligations.

(2) Upon the maturity of Senior Lien Obligations secured by funds on deposit in an Account of the Senior Lien Obligations Reserve Fund or upon the earlier redemption of all or any portion of such Senior Lien Obligations, the Commission may direct the Trustee to transfer amounts on deposit in the applicable Account within the Senior Lien Obligations Reserve Fund to the Senior Lien Obligations Principal Account for application to the final payment of principal of all or a portion of the Senior Lien Obligations secured thereby or to an escrow account established for defeasance of such Senior Lien Obligations pursuant to Article X hereof, provided that, if less than all of the Senior Lien Obligations mature or are redeemed, the amount remaining on deposit in such

Account of the Senior Lien Obligations Reserve Fund following any such transfer shall not be less than the Senior Lien Obligations Reserve Requirement applicable to the Senior Lien Obligations secured thereby that remain Outstanding.

(3) Except as provided in paragraph (2) above, any amounts on deposit in an Account of the Senior Lien Obligations Reserve Fund in excess of the applicable Senior Lien Obligations Reserve Requirement shall be applied in accordance with Section 5.03(c) of this Indenture.

(c) The lien on the Senior Lien Obligations Reserve Fund (and all earnings thereon) shall apply only to the Senior Lien Obligations and the related interest of the Holder of such Senior Lien Obligations with respect to amounts on deposit in such Fund from time to time, and such amounts shall be solely for the benefit of such Holder of Senior Lien Obligations until such funds have been disbursed in accordance with this Section. If necessary, the Commission shall instruct the Trustee to create Accounts within the Senior Lien Obligations Reserve Fund to facilitate compliance with the provisions of this paragraph.

(d) The Senior Lien Obligations Reserve Requirement for any Series of Senior Lien Obligations may be permitted or required by the Supplemental Indenture establishing the Senior Lien Obligations Reserve Requirement to be funded in whole or in part with a Reserve Facility. The terms and conditions for any Reserve Facility shall be set forth in the Reserve Facility or the Supplemental Indenture establishing the Senior Lien Obligations Reserve Requirement to be met in whole or in part by the Reserve Facility, provided that those terms and conditions shall conform to and be consistent with the provisions set forth in this Section 5.09 and, for so long as the TIFIA Loan Agreement remains in effect, the requirements for Credit Support Instruments under the TIFIA Loan Agreement. The Trustee shall withdraw cash (and liquidate investments to produce cash) and draw on Reserve Facilities in or with respect to any Account in the Senior Lien Obligations Reserve Fund to fund payments of principal of and interest on Senior Lien Obligations supported by such Account in the Senior Lien Obligations Reserve Fund in the manner and in the order specified herein and in the applicable Supplemental Indenture or Supplemental Indentures. This Indenture shall not be discharged until all Reserve Facility Costs owing to a Reserve Facility Provider have been paid in full from amounts available to the Commission that do not constitute Revenues.

(e) Upon the occurrence of a Bankruptcy Related Event of which the Trustee shall be notified in writing, any Account within the Second Lien Obligations Reserve Fund that secures payment of the principal and interest on a Second Lien Obligation in the form of or securing payment of a TIFIA Loan, will become an Account within the Senior Lien Obligations Reserve Fund, will be funded on a parity with any other Accounts within the Senior Lien Obligations Reserve Fund and will be available only to pay principal and interest on the Parity Obligation in the form of or securing payment of such TIFIA Loan. The Parity Obligation in the form of or securing payment of a TIFIA Loan will not be secured by any other Account within the Senior Lien Obligations Reserve Fund.

## **Section 5.10 Second Lien Obligations Reserve Fund**

(a) Except as may otherwise be specified in a Supplemental Indenture, on the date of issuance of any Series of Second Lien Obligations that has a Second Lien Obligations Reserve Requirement, the Second Lien Obligations Reserve Requirement for those Second Lien Obligations shall be deposited in the Second Lien Obligations Reserve Fund in an Account solely for the benefit of those Second Lien Obligations. Alternatively, the Supplemental Indenture for any Series of Second Lien Obligations may establish a pooled Second Lien Obligations Reserve Requirement for those Second Lien Obligations and any one or more subsequently issued Second Lien Obligations with the same pooled Second Lien Obligations Reserve Requirement, in which case the Second Lien Obligations Reserve Requirement for the initial issue of such Second Lien Obligations shall be deposited in the Second Lien Obligations Reserve Fund in an Account solely for the benefit of those Second Lien Obligations and any additional Second Lien Obligations with the same pooled Second Lien Obligations Reserve Requirement, and on the date of issuance of any such additional Second Lien Obligations, there shall be deposited in the Account the amount necessary to increase the balance in the Account to an amount equal to the Second Lien Obligations Reserve Requirement for all Second Lien Obligations secured by that Account.

(b) Monies on deposit in each Account within the Second Lien Obligations Reserve Fund shall be applied by the Trustee as follows:

(1) If on any (x) Interest Payment Date for Second Lien Obligations secured by an Account within the Second Lien Obligations Reserve Fund, (y) principal payment date for such Second Lien Obligations or (z) redemption date on which such Second Lien Obligations are subject to mandatory sinking fund redemption, the amount on deposit in the applicable Account of the Second Lien Obligations Fund, determined after taking into account all amounts transferred to such Account of the Second Lien Obligations Fund in accordance with clauses Eighth and Ninth of Section 5.03(b), is not sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Second Lien Obligations, then moneys shall be transferred to the Second Lien Obligations Interest Account and/or the Second Lien Obligations Principal Account, as applicable, from the applicable Account of the Second Lien Obligations Reserve Fund which, together with moneys then on deposit in the applicable Account of the Second Lien Obligations Fund, will be sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Second Lien Obligations on such date. Moneys shall be transferred first to the Second Lien Obligations Interest Account until such Account, together with any available funds then on deposit in the Second Lien Obligations Interest Account, is sufficiently funded with respect to such Second Lien Obligations and thereafter, to the Second Lien Obligations Principal Account until such Account, together with any available funds then on deposit in the Second Lien Obligations Principal Account, is sufficiently funded with respect to such Second Lien Obligations.

(2) Upon the maturity of Second Lien Obligations secured by funds on deposit in an Account of the Second Lien Obligations Reserve Fund or upon the earlier redemption of all or any portion of such Second Lien Obligations, the Commission may direct the Trustee to transfer amounts on deposit in the applicable Account within the Second Lien Obligations Reserve Fund to the Second Lien Obligations Principal Account

for application to the final payment of principal of all or a portion of the Second Lien Obligations secured thereby or to an escrow account established for defeasance of such Second Lien Obligations pursuant to Article X hereof, provided that, if less than all of the Second Lien Obligations mature or are redeemed, the amount remaining on deposit in such Account of the Second Lien Obligations Reserve Fund following any such transfer shall not be less than the Second Lien Obligations Reserve Requirement applicable to the Second Lien Obligations secured thereby that remain Outstanding.

(3) Except as provided in paragraph (2) above, any amounts on deposit in an Account of the Second Lien Obligations Reserve Fund in excess of the applicable Second Lien Obligations Reserve Requirement shall be applied in accordance with Sections 5.03(c) of this Indenture.

(c) The lien on the Second Lien Obligations Reserve Fund (and all earnings thereon) shall apply only to the Second Lien Obligations and the related interest of the Holder of such Second Lien Obligations with respect to amounts on deposit in such Fund from time to time, and such amounts shall be solely for the benefit of such Holder of Second Lien Obligations until such funds have been disbursed in accordance with this Section. If necessary, the Commission shall instruct the Trustee to create Accounts within the Second Lien Obligations Reserve Fund to facilitate compliance with the provisions of this paragraph.

(d) The Second Lien Obligations Reserve Requirement for any Series of Second Lien Obligations may be permitted or required by the Supplemental Indenture establishing the Second Lien Obligations Reserve Requirement to be funded in whole or in part with a Reserve Facility. The terms and conditions for any Reserve Facility shall be set forth in the Reserve Facility or the Supplemental Indenture establishing the Second Lien Obligations Reserve Requirement to be met in whole or in part by the Reserve Facility, provided that those terms and conditions shall conform to and be consistent with the provisions set forth in this Section 5.10 and, for so long as the TIFIA Loan Agreement remains in effect, the requirements for Credit Support Instruments under the TIFIA Loan Agreement. The Trustee shall withdraw cash (and liquidate investments to produce cash) and draw on Reserve Facilities in or with respect to any Account in the Second Lien Obligations Reserve Fund to fund payments of principal of and interest on Second Lien Obligations supported by such Account in the Second Lien Obligations Reserve Fund in the manner and in the order specified herein and in the applicable Supplemental Indenture or Supplemental Indentures. This Indenture shall not be discharged until all Reserve Facility Costs owing to a Reserve Facility Provider have been paid in full from amounts available to the Commission that do not constitute Revenues.

(e) Upon the occurrence of a Bankruptcy Related Event of which the Trustee shall be notified in writing, any Account within the Second Lien Obligations Reserve Fund that secures payment of the principal and interest on a Second Lien Obligation in the form of or securing payment of a TIFIA Loan, will become an Account within the Senior Lien Obligations Reserve Fund, will be funded on a parity with any other Accounts within the Senior Lien Obligations Reserve Fund and will be available only to pay principal and interest on the Parity Obligation in the form of or securing payment of such TIFIA Loan. The Parity Obligation in the

form of or securing payment of a TIFIA Loan will not be secured by any other Account within the Senior Lien Obligations Reserve Fund.

### **Section 5.11 Subordinate Obligations Reserve Fund.**

(a) The Subordinate Obligations Reserve Requirement for those Subordinate Obligations secured by the Subordinate Obligations Reserve Fund or an Account therein shall be deposited in the Subordinate Obligations Reserve Fund in an Account solely for the benefit of those Subordinate Obligations on the dates and in the amounts set forth in the Supplemental Indenture authorizing the issuance of such Subordinate Obligations; provided, however, alternatively, the Supplemental Indenture for any Series of Subordinate Obligations may establish a pooled Subordinate Obligations Reserve Requirement for those Subordinate Obligations and any one or more subsequently issued Subordinate Obligations with the same pooled Subordinate Obligations Reserve Requirement, in which case the Subordinate Obligations Reserve Requirement for the initial issue of such Subordinate Obligations shall be deposited in the Subordinate Obligations Reserve Fund in an Account solely for the benefit of those Subordinate Obligations and any additional Subordinate Obligations with the same pooled Subordinate Obligations Reserve Requirement, and on the date of issuance of any such additional Subordinate Obligations, there shall be deposited in the Account the amount necessary to increase the balance in the Account to an amount equal to the Subordinate Obligations Reserve Requirement for all Subordinate Obligations secured by that Account.

(b) Monies on deposit in each Account within the Subordinate Obligations Reserve Fund shall be applied by the Trustee as follows:

(1) If on any (x) Interest Payment Date for Subordinate Obligations secured by an Account within the Subordinate Obligations Reserve Fund, (y) principal payment date for such Subordinate Obligations or (z) redemption date on which such Subordinate Obligations are subject to mandatory sinking fund redemption, the amount on deposit in the applicable Account of the Subordinate Obligations Fund, determined after taking into account all amounts transferred to such Account of the Subordinate Obligations Fund in accordance with clauses Twelfth and Thirteenth of Section 5.03(b), is not sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Subordinate Obligations, then moneys shall be transferred to the Subordinate Obligations Interest Account and/or the Subordinate Obligations Principal Account, as applicable, from the applicable Account of the Subordinate Obligations Reserve Fund which, together with moneys then on deposit in the applicable Account of the Subordinate Obligations Fund, will be sufficient to pay interest and/or principal and/or the redemption price (excluding any redemption premium) due on such Subordinate Obligations on such date. Moneys shall be transferred first to the Subordinate Obligations Interest Account until such Account, together with any available funds then on deposit in the Subordinate Obligations Interest Account, is sufficiently funded with respect to such Subordinate Obligations and thereafter, to the Subordinate Obligations Principal Account until such Account, together with any available funds then on deposit in the Subordinate Obligations Principal Account, is sufficiently funded with respect to such Subordinate Obligations.

(2) Upon the maturity of Subordinate Obligations secured by funds on deposit in an Account of the Subordinate Obligations Reserve Fund or upon the earlier redemption of all or any portion of such Subordinate Obligations, the Commission may direct the Trustee to transfer amounts on deposit in the applicable Account within the Subordinate Obligations Reserve Fund to the Subordinate Obligations Principal Account for application to the final payment of principal of all or a portion of the Subordinate Obligations secured thereby or to an escrow account established for defeasance of such Subordinate Obligations pursuant to Article X hereof, provided that, if less than all of the Subordinate Obligations mature or are redeemed, the amount remaining on deposit in such Account of the Subordinate Obligations Reserve Fund following any such transfer shall not be less than the Subordinate Obligations Reserve Requirement applicable to the Subordinate Obligations secured thereby that remain Outstanding.

(3) Except as provided in paragraph (2) above, any amounts on deposit in an Account of the Subordinate Obligations Reserve Fund in excess of the applicable Subordinate Obligations Reserve Requirement shall be applied in accordance with Section 5.03(c) of this Indenture.

(c) The lien on the Subordinate Obligations Reserve Fund (and all earnings thereon) shall apply only to the Subordinate Obligations and the related interest of the Holder of such Subordinate Obligations with respect to amounts on deposit in such Fund from time to time, and such amounts shall be solely for the benefit of such Holder of Subordinate Obligations until such funds have been disbursed in accordance with this Section. If necessary, the Commission shall instruct the Trustee to create Accounts within the Subordinate Obligations Reserve Fund to facilitate compliance with the provisions of this paragraph.

(d) The Subordinate Obligations Reserve Requirement for any Series of Subordinate Obligations may be permitted or required by the Supplemental Indenture establishing the Subordinate Obligations Reserve Requirement to be funded in whole or in part with a Reserve Facility. The terms and conditions for any Reserve Facility shall be set forth in the Reserve Facility or the Supplemental Indenture establishing the Subordinate Obligations Reserve Requirement to be met in whole or in part by the Reserve Facility, provided that those terms and conditions shall conform to and be consistent with the provisions set forth in this and, for so long as the TIFIA Loan Agreement remains in effect, the requirements for Credit Support Instruments under the TIFIA Loan Agreement. The Trustee shall withdraw cash (and liquidate investments to produce cash) and draw on Reserve Facilities in or with respect to any Account in the Subordinate Obligations Reserve Fund to fund payments of principal of and interest on Subordinate Obligations supported by such Account in the Subordinate Obligations Reserve Fund in the manner and in the order specified herein and in the applicable Supplemental Indenture or Supplemental Indentures. This Indenture shall not be discharged until all Reserve Facility Costs owing to a Reserve Facility Provider have been paid in full from amounts available to the Commission that do not constitute Revenues.

#### **Section 5.12 Major Maintenance and Renewal Fund.**

(a) The Trustee shall, in accordance with clause Fifteenth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available [and as applicable, any HRTF Transfers,] to be deposited into the Major Maintenance and Renewal Fund from time to time to increase the balance therein to an amount equal to the Major Maintenance and Renewal Fund Required Amount. Any amounts on deposit in the Major Maintenance and Renewal Fund certified by the Commission as no longer being needed for Major Maintenance and Renewal Fund Permitted Expenditures shall be applied in accordance with the requirements of Section 5.03(d) of this Indenture.

(b) On any date on which Major Maintenance and Renewal Fund Permitted Expenditures are due and payable or reasonably expected to become due and payable, monies on deposit in the Major Maintenance and Renewal Fund shall be applied by the Trustee pursuant to a Written Request of the Commission to pay or reimburse the Commission for such Major Maintenance and Renewal Fund Permitted Expenditures.

(c) The Major Maintenance and Renewal Fund shall constitute a “reserve fund” within the meaning of Section 6.03(a)(ii) of the MTA.

### **Section 5.13 Additional Toll Roads System Cost Payment Fund.**

(a) The Trustee shall, in accordance with clause Sixteenth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available and to the extent the “Additional Toll Roads System Cost Payment Fund Funding Conditions” (as defined below) are met, to be deposited into the Additional Toll Roads System Cost Payment Fund from time to time up to \_\_\_\_\_ [Drafting Note – to be elaborated as to describing the amount and extent of this funding requirement.] Any amounts on deposit in the Additional Toll Roads System Cost Payment Fund shall be applied by the Trustee pursuant to a Written Request of the Commission to pay or reimburse the Commission for the costs of any Toll Roads System Network Project.

(b) The “Additional Toll Roads System Cost Payment Fund Funding Conditions” are each of the following: (i) the balance in the General Fund as of the end of the immediately preceding Fiscal Year shall be greater than \$20,000,000, (ii) such additional Toll Roads System cost is included in the Commission’s most recently adopted fiscally constrained six year improvement plan, and (iii) the Commission shall be compliant with all covenants included in this Master Indenture and all payments, deposits and transfers required by Section 5.03(b) First through Sixteenth shall be current. No such deposit may be made in the Additional Toll Roads System Cost Payment Fund until the Commission shall have commenced principal payments on the TIFIA Loan.

### **Section 5.14 VDOT Repayment Fund.**

(a) The Trustee shall, in accordance with clause Eighteenth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available and to the extent the “VDOT Repayment Fund Funding Conditions” (as defined below) are met, to be deposited into the VDOT Repayment Fund from time to time up to \_\_\_\_\_ [Drafting Note – to be elaborated as to describing the amount and extent of this funding requirement.] Any amounts on deposit in the VDOT Repayment Fund shall be applied by the Trustee pursuant to a Written Request of the

Commission to pay or reimburse VDOT for costs expended by it in respect of the Toll System Network Project.

(b) The “VDOT Repayment Fund Funding Conditions” are all of the following: (i) the balance in the General Fund as of the end of the immediately preceding Fiscal Year shall be greater than \$20,000,000, and (ii) the Commission shall be compliant with all covenants included in this Master Indenture and all payments, deposits and transfers required by Section 5.03(b) First through Seventeenth shall be current; provided that the Commission shall have commenced principal payments on the TIFIA Loan.

### **Section 5.15 HRTF Repayment Fund**

(a) The Trustee shall, in accordance with clause Nineteenth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available and to the extent the “HRTF Repayment Fund Funding Conditions” (as defined below) are met, to be deposited into the HRTF Repayment Fund from time to time up to the amount of any unreimbursed HRTF Transfer.

(b) The “HRTF Repayment Fund Funding Conditions” are each of the following: (i) the balance in the General Fund as of the end of the immediately preceding Fiscal Year shall be greater than \$20,000,000, and (ii) the Commission shall be compliant with all covenants included in this Master Indenture and all payments, deposits and transfers required by Section 5.03(b) First through [Eighteenth] shall be current; provided that the Commission shall have commenced principal payments on the TIFIA Loan.

(c) On the Monthly Funding Date following any Calculation Date as of which each of the HRTF Repayment Fund Conditions has been satisfied, moneys on deposit in the HRTF Repayment Fund as of such date, if any, shall be transferred to the Commission and applied to the any unreimbursed HRTF Transfer as of such Monthly Funding Date.

### **Section 5.16 General Reserve Fund.**

(a) Moneys on deposit in the General Reserve Fund can be used to cure any deficiency in amounts required to be on deposit in the Operation and Maintenance Reserve Fund, the Senior Lien Obligations Fund, the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Fund, the Second Lien Reserve Obligations Fund, the Subordinate Obligations Fund, the Subordinate Obligations Reserve Fund, the Major Maintenance and Renewal Fund, or the Rebate Fund, in that order.

(b) Subject to the foregoing, moneys on deposit in the General Reserve Fund can be used, as specified in a Written Request of the Commission, for any lawful purpose approved by resolution of HRTAC that is reasonably related to or that benefits users of the Toll Roads System; provided that (i) the balance in the General Fund as of the end of the immediately preceding Fiscal Year shall be greater than \$20,000,000, (ii) if any outstanding Obligation is in the form of or securing payment of a TIFIA Loan, the Commission has commenced principal payments of such TIFIA Loan, (iii) no payment default or default in the payment of any Outstanding Obligations shall have occurred and be continuing, and all amounts due on all Outstanding Obligations up to and including the next preceding Calculation Date shall have been paid (including any amounts

remaining unpaid from any prior period), (iv) no Event of Default (or event that with notice, the passage of time or both, would result in an Event of Default) shall have occurred and be continuing, and (v) each Reserve Fund is fully funded, the amount on deposit in the Major Maintenance and Renewal Fund is equal to the then applicable Major Maintenance and Renewal Fund Required Amount, the amount on deposit in the Operation and Maintenance Fund is equal to the then applicable Operation and Maintenance Fund Required Amount, and the amount on deposit in the Operation and Maintenance Reserve Fund is equal to the then applicable Operation and Maintenance Reserve Fund Requirement.

(c) On each July 1, following satisfaction of the requirements of subsections (a) and (b) of this Section, for so long as the TIFIA Loan remains Outstanding, funds on deposit in the General Reserve Fund and funds credited to such Fund will not be subject to the lien and pledge of this Indenture, and the Commission will have the exclusive right to withdraw or otherwise dispose of or transfer funds on deposit in the General Reserve Fund to any account (or to such Person) for any lawful purpose as may be approved by resolution of the Commission.

**Section 5.17 Rebate Fund.** There shall be deposited in the Rebate Fund amounts transferred in accordance with clause Second of Section 5.03(b). All money at any time deposited in the Rebate Fund shall be held by the Trustee to satisfy the rebate requirement (as set forth in any Tax Certificate) for payment to the United States of America, [and shall be considered an Operations and Maintenance Expense for purposes of the flow of funds and the MTA.] The Trustee shall have no responsibility with respect to the Rebate Fund or the Rebate Requirement except to follow the written instructions of the Commission.

**Section 5.18 Senior Lien Obligations Interest Account.**

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clause Fourth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Third of Section 5.03(b), and before making any transfers to the Senior Lien Obligations Fund from the Revenue Stabilization Fund, the General Reserve Fund, or the Senior Lien Obligations Reserve Fund in accordance with clause Fourth of Section 5.03(b), Section 5.16(a), and Section 5.09(b), in such order of priority, to be deposited into the Senior Lien Obligations Interest Account.

(b) On the Business Day prior to each date when the interest portion of debt service on any Senior Lien Obligations shall be due and payable, monies on deposit in the Senior Lien Obligations Interest Account shall be applied pro rata to the payment of the interest due on such Senior Lien Obligations in accordance with this Indenture.

### **Section 5.19 Senior Lien Obligations Principal Account.**

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clause Fifth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Fourth of Section 5.03(b), and before making any transfers to the Senior Lien Obligations Fund from the Revenue Stabilization Fund, the General Reserve Fund or the Senior Lien Obligations Reserve Fund in accordance with clause Fifth of Section 5.03(b), Section 5.16(a), and Section 5.09(b), to be deposited into the Senior Lien Obligations Principal Account.

(b) On the Business Day prior to each date when the principal portion of debt service (including any mandatory sinking fund redemption payments) on any Senior Lien Obligations shall be due and payable, monies on deposit in the Senior Lien Obligations Principal Account shall be applied pro rata to the payment of the principal portion of such Senior Lien Obligations in accordance with this Indenture.

### **Section 5.20 Second Lien Obligations Interest Account.**

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clause Eighth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Seventh of Section 5.03(b), and before making any transfers to the Second Lien Obligations Fund from the Revenue Stabilization Fund, the General Reserve Fund, or the Second Lien Obligations Reserve Fund in accordance with clause Eighth of Section 5.03(b), Section 5.16(a), and Section 5.10(b), to be deposited into the Second Lien Obligations Interest Account.

(b) On the Business Day prior to each date when the interest portion of debt service on any Second Lien Obligations shall be due and payable, monies on deposit in the Second Lien Obligations Interest Account shall be transferred pro rata to the trustee for the interest due on such Second Lien Obligations in accordance with this Indenture.

### **Section 5.21 Second Lien Obligations Principal Account.**

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clause Ninth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Eighth of Section 5.03(b), and before making any transfers to the Second Lien Obligations Fund from the Revenue Stabilization Fund, the General Reserve Fund, or the Second Lien Obligations Reserve Fund in accordance with clause Ninth of Section 5.03(b), Section 5.16(a), and Section 5.10(b), to be deposited into the Second Lien Obligations Principal Account.

(b) On the Business Day prior to the date when the principal portion of debt service (including any mandatory sinking fund redemption payments) on any Second Lien Obligations shall be due and payable, monies on deposit in the Second Lien Obligations Principal Account shall be transferred pro rata to the trustee for the principal portion of such Second Lien Obligations in accordance with this Indenture.

### **Section 5.22 Subordinate Obligations Interest Account.**

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clause Twelfth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Eleventh of Section 5.03(b), and before making any transfers to the Subordinate Obligations Fund from the General Reserve Fund or the Subordinate Obligations Reserve Fund in accordance with Section 5.16(a) and Section 5.11(b), in such order of priority, to be deposited into the Subordinate Obligations Interest Account.

(b) On the Business Day prior to the date when the interest portion of debt service on any Subordinate Obligations shall be due and payable, monies on deposit in the Subordinate Obligations Interest Account shall be transferred to the trustee for or Holder of such Subordinate Obligations in accordance this Indenture.

### **Section 5.23 Subordinate Obligations Principal Account.**

(a) On each Monthly Funding Date, the Trustee shall, in accordance with clause Thirteenth of Section 5.03(b), cause amounts in the Toll Revenue Fund, to the extent available after application of funds for the purposes specified in clauses First through Twelfth of Section 5.03(b), and before making any transfers to the Subordinate Obligations Fund from the General Reserve Fund or the Subordinate Obligations Reserve Fund in accordance with Section 5.16(a) and Section 5.11(b), in such order of priority, to be deposited into the Subordinate Obligations Principal Account.

(b) On the Business Day prior to the date when the interest portion of debt service on any Subordinate Obligations shall be due and payable, monies on deposit in the Subordinate Obligations Principal Account shall be transferred to the trustee for or Holder of such Subordinate Obligations in accordance this Indenture.

**Section 5.24 Establishment and Application of the Redemption Fund.** The Trustee shall establish, maintain and hold in trust a special Fund designated as the “Redemption Fund.” All moneys deposited by the Commission with the Trustee for the purpose of redeeming Obligations of any Series (other than pursuant to a mandatory sinking fund redemption) shall, unless otherwise provided in the Supplemental Indenture establishing the terms and conditions for such Series Obligations, be deposited in the Redemption Fund. All amounts deposited in the Redemption Fund shall be used and withdrawn by the Trustee solely for the purpose of redeeming Obligations of such Series and maturity as shall be specified by the Commission in a Written Request of the Commission delivered to the Trustee, in the manner, at the times and upon the terms and conditions specified in the Supplemental Indenture pursuant to which such Series of Obligations was issued. Such Written Request of the Commission may specify that amounts on deposit in the Redemption Fund that remain unclaimed for a specified period of time shall be paid to the Commission, and the Trustee shall pay such unclaimed amounts to the Commission in accordance with the Written Request of the Commission.

**Section 5.25 Records.** The Trustee shall cause to be kept and maintained records pertaining to each Fund and Account held by it and all disbursements therefrom and shall deliver monthly to the Commission and, for so long as the TIFIA Loan remains Outstanding, to the TIFIA

Lender statements of activity with respect to such Funds and Accounts, provided that the Trustee shall not be obligated to report as to any Fund or Account that (a) has a balance of zero, and (b) has not had any activity since the last reporting date.

In addition, the Commission shall cause to be kept and maintained records pertaining to each Fund and Account held by it and all disbursements therefrom and shall deliver monthly to the Trustee and, for so long as any Obligations in the form of or securing payment of the TIFIA Loan remain Outstanding, to the TIFIA Lender statements of activity with respect to such Funds and Accounts, provided that the Commission shall not be obligated to report as to any Fund or Account that (a) has a balance of zero, and (b) has not had any activity since the last reporting date.

**Section 5.26 Investment by Trustee.** Unless otherwise provided in a Supplemental Indenture and while Obligations in the form of or securing a TIFIA Loan are Outstanding, subject to the conditions in the TIFIA Loan Agreement, moneys held by the Trustee in the Funds and Accounts created hereunder shall be invested and reinvested in Permitted Investments in accordance with the written instructions of an Authorized Representative.

Unless otherwise specified in the Supplemental Indenture with respect to a Fund or Account created pursuant to such Supplemental Indenture, all Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the Fund or Account that was used to purchase the Permitted Investment. Unless otherwise provided by a Written Request of the Commission or in a Supplemental Indenture with respect to a Fund or Account created pursuant thereto, all interest, profits and other income received from the investment of moneys in any Fund or Account held by the Trustee, other than the Rebate Fund and the Accounts in the Project Fund, shall be transferred to the Toll Revenue Fund when received. All interest, profits and other income received from the investment of moneys in the Rebate Fund shall be deposited in the Rebate Fund. All interest, profits and other income received from the investment of monies in the Operation and Maintenance Fund shall be deposited in the Operation and Maintenance Fund. Unless otherwise provided in a Supplemental Indenture establishing an Account within the Project Fund, all interest, profits and other income received from the investment of moneys in an Account within the Project Fund shall be deposited in such Account. Notwithstanding anything to the contrary contained in this paragraph, an amount of interest received with respect to any Permitted Investment equal to the amount of accrued interest, if any, paid as part of the purchase price of such Permitted Investment shall be credited to the Fund or Account from which such accrued interest was paid.

The Trustee is authorized and directed to cause to be sold or redeemed and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any Fund or Account is or will be insufficient to make any required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investments or for any loss resulting from such sale or redemption. Absent a Written Request of the Commission instructing the Trustee how to invest the cash balance in a Fund or Account held by the Trustee hereunder, the Trustee shall hold such cash balances uninvested pending its receipt of such a Written Request of the Commission.

All Permitted Investments credited to the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund or the Subordinate Obligations Reserve Fund shall be

valued by the Trustee as of each Calculation Date. All Permitted Investments credited to the Senior Lien Obligations Reserve Fund, the Second Lien Obligations Reserve Fund or the Subordinate Obligations Reserve Fund shall be valued at their fair market value determined to the extent practical by reference to the closing bid price thereof published in *The Wall Street Journal* or any other financial publication or generally recognized pricing information service selected by the Trustee in its discretion. The Trustee may use and rely conclusively and without liability upon any generally recognized pricing information service (including brokers and dealers in securities) available to it.

The Trustee or its affiliates may act as sponsor, advisor, principal or agent in the acquisition or disposition of any investment with the prior written approval of an Authorized Representative. The Trustee may commingle any of the moneys held by it pursuant to this Indenture (except for amounts on deposit in the Rebate Fund and any Fund or Account established to hold the proceeds of a drawing on any Credit Support Instrument) for investment purposes only; provided, however, that the Trustee shall account separately for the moneys belonging to each Fund or Account established pursuant to this Indenture and held by it. The Commission shall not commingle the moneys held by it in the Operation and Maintenance Fund with any other funds held by the Commission. The Trustee may rely on the investment directions of the Commission as to both the suitability and legality of the directed investments.

**Section 5.27 Subsidy Payments.** The Commission irrevocably directs that all Subsidy Payments with respect to Senior Lien Bonds be made directly to the Trustee for deposit in the Senior Lien Obligations Interest Account pursuant to this Indenture. The Commission irrevocably directs that all Subsidy Payments with respect to Second Lien Obligations be made directly to the Trustee for deposit in the Second Lien Obligations Interest Account pursuant to this Indenture. The Commission irrevocably directs that all Subsidy Payments with respect to Subordinate Obligations be made directly to the Trustee for deposit in the Subordinate Obligations Fund pursuant to this Indenture. Any such Subsidy Payments received by the Commission shall be promptly remitted to the Trustee. The Trustee shall deposit all such Subsidy Payments to the applicable Account upon receipt thereof.

**Section 5.28 Withdrawal and Application of Funds; Priority of Transfers from Funds and Accounts.**

(a) Except as provided in Sections [5.05, 5.07, 5.08, 5.09, 5.10, 5.11, 5.12, 5.13, 5.14, 5.15, 5.16, 5.18 and 5.19 *[Drafting Note: to be conformed to final funds flow]*], each withdrawal or transfer of funds from the Funds and Accounts by the Trustee on behalf of the Commission in accordance herewith shall be made pursuant to an executed Funds Transfer Certificate, which certificate shall be provided and prepared by the Commission in accordance with the terms hereof and shall contain a certification by the Commission that such withdrawal or transfer complies with the requirements of this Indenture.

(b) The Funds Transfer Certificate relating to each applicable Fund or Account shall be delivered to the Trustee (with a copy to the trustee for or Holder of any Second Lien Obligations or Subordinate Obligations) no later than two (2) Business Days prior to each date on which funds are proposed to be withdrawn from the applicable Fund or Account or transferred

from a Fund or Account to another Fund or Account in accordance with this Indenture. The Trustee shall comply with any such Funds Transfer Certificate; provided, that if the trustee for or Holder of Second Lien Obligations or Subordinate Obligations provides written notice to the Trustee, the Commission and the other Secured Creditors that any payment, withdrawal or transfer of funds is not in compliance with this Indenture or the other Financing Documents and specifies such non-compliance in such notice, the Commission shall not be entitled to cause such proposed withdrawal until such time as it has submitted a revised Funds Transfer Certificate which complies with the terms hereof or thereof.

(c) The Commission shall have the right to withdraw or cause to be transferred funds from the Operation and Maintenance Fund and the Major Maintenance and Renewal Fund solely for the purpose of payment of Operation and Maintenance Expenses or Major Maintenance and Renewal Fund Permitted Expenditures, respectively, at any time without any approval or consent of the Trustee or any other person, but subject to any transfers required to be made on any such date from the Major Maintenance and Renewal Fund required hereunder that may be of a higher priority, as described in Section 5.03(b).

(d) Each Funds Transfer Certificate requesting a disbursement from an Account within the Project Fund shall contain the following certifications by the Commission or, as to paragraph (5), the Commission and the Consulting Engineer:

(1) the names of the persons, firms or corporations to whom each such payment is due, including the Commission in the case of reimbursements or the Trustee in the case of payments of capitalized interest;

(2) the respective amounts to be paid or reimbursed to such entities;

(3) the purpose or Project Cost by general classification for which each such Obligation to be paid or reimbursed was incurred;

(4) that obligations in the stated amounts have been incurred by the Commission and presently are due and payable (except with respect to requisitions for capitalized interest, in which case amounts requisitioned, together with expected earnings from investment thereof, do not exceed amounts properly capitalizable as interest related to projects prior to their completion), or properly are reimbursable to the Commission, and that each item thereof is a Project Cost, is a proper charge against the applicable Account in the Project Fund, and has not been paid or reimbursed previously;

(5) after giving effect to the requisition, sufficient funds are and will be available to the Commission to achieve Substantial Completion of the applicable Project; provided that this certification need not be provided with respect to requisitions made after the applicable Substantial Completion Date;

(6) that there has not been filed with or served on the Commission any notice of lien, right of lien, or attachment upon or claim affecting the right of any person, firm or corporation named in such requisition to receive payment of any amounts which

has not been released or will not be released simultaneously with the payment of such Obligation; and

(7) that, as of the date of such Funds Transfer Certificate, no event or condition exists that constitutes, or that with the notice or lapse of time or both, would constitute, an Event of Default under this Indenture.

**Section 5.29 Effect of Bankruptcy Related Event on TIFIA Loan.** Notwithstanding any other provision to the contrary herein, upon the occurrence of any Bankruptcy Related Event, Second Lien Obligations in the form of or securing payment of the TIFIA Loan shall, automatically and without action on the part of the TIFIA Lender or any other person, immediately become Parity Obligations, and be of equal rank and on a parity with other Senior Lien Obligations, and the TIFIA Lender shall become and be entitled to all rights of an owner of Senior Lien Obligations hereunder (including, without limitation, the right of payment pro rata with other Senior Lien Obligations hereunder).

Upon the occurrence of a Bankruptcy Related Event of which the Trustee shall be notified in writing, any Account within the Second Lien Obligations Reserve Fund that secures payment of the principal and interest on a Second Lien Obligation in the form of or securing payment of a TIFIA Loan, will become an Account within the Senior Lien Obligations Reserve Fund, will be funded on a parity with any other Accounts within the Senior Lien Obligations Reserve Fund and will be available only to pay principal and interest on the Parity Obligation in the form of or securing payment of such TIFIA Loan. The Parity Obligation in the form of or securing payment of a TIFIA Loan will not be secured by any other Account within the Senior Lien Obligations Reserve Fund.

The provisions contained in this Section 5.29 and in Sections 1.01, 2.10, 2.11, 5.09(e) and 5.10(e) of this Indenture with respect to the TIFIA Lender's right to have the Second Lien Obligations in the form of or securing payment of the TIFIA Loan become and be secured as Parity Obligations upon the occurrence of a Bankruptcy Related Event shall be of no force or effect following the sale of the TIFIA Loan to a non-governmental commercial entity, but only with respect to that portion of the TIFIA Loan so sold. However, should an assignment or sale be made to a federal government agency or instrumentality, the federal government shall retain the right to have the Second Lien Obligations in the form of or securing payment of the TIFIA Loan become and be secured as Parity Obligations upon the occurrence of any Bankruptcy Related Event.

## ARTICLE VI COVENANTS OF THE COMMISSION

**Section 6.01 Punctual Payment and Performance.** The Commission will pay when due and payable the principal of and the interest on (and redemption premiums, if any, to become due on) its Obligations hereunder in strict conformity with the terms of the HRTAC Act, this Indenture and such Obligations, and will faithfully observe and perform all of the agreements and covenants contained in this Indenture and such Obligations.

**Section 6.02 Against Encumbrances.** The Commission will not create or cause or permit to be created any pledge, lien, charge or encumbrance having priority over the lien of the Senior Lien Obligations upon any part of the Trust Estate, provided that Operation and Maintenance Expenses are payable from Revenue prior to debt service in the order of priority established pursuant to Section 5.03(b) and Section 7.02. The Commission will not create or cause or permit to be created any pledge, lien, charge or encumbrance having parity with the lien of the Senior Lien Obligations upon any part of the Trust Estate except the lien of Senior Lien Obligations and Parity Obligations. The Commission will not create or cause or permit to be created any pledge, lien, charge or encumbrance having priority over the lien of the Second Lien Obligations upon any part of the Trust Estate except Senior Lien Obligations and Parity Obligations. The Commission will not create or cause or permit to be created any pledge, lien, charge or encumbrance having priority over the lien of the Subordinate Obligations upon any part of the Trust Estate, except Senior Lien Obligations, Parity Obligations and Second Lien Obligations. The Commission will not create or permit to be created or issue any Obligations secured by the Trust Estate except in accordance with the terms of this Indenture.

**Section 6.03 Toll and Revenue Covenants.**

(a) The Commission covenants that it shall at all times, beginning in the month following the Substantial Completion Date for any portion, phase or segment of the Toll Roads System, establish, impose, maintain and collect tolls in connection with the Toll Roads System as shall be sufficient, collectively, to produce Net Revenue in each Calculation Period commencing after the Substantial Completion Date equal to or in excess of the ratios set forth in each of (1) and (2) below:

(1) one hundred twenty-five percent (125%) of the Annual Debt Service in such Calculation Period on all Outstanding Senior Lien Obligations, with debt service on Senior Lien Obligations in the form of a TIFIA Loan calculated on the basis of TIFIA Debt if the TIFIA Loan is outstanding; and

(2) one hundred percent (100%) of the Annual Debt Service in such Calculation Period on all Outstanding Senior Lien Obligations, Second Lien Obligations and Subordinate Obligations, with debt service on Senior Lien Obligations in the form of a TIFIA Loan calculated on the basis of TIFIA Debt Service if the TIFIA Loan is outstanding.

(b) Beginning with the first Calculation Date [in the first full Fiscal Year] following the Substantial Completion Date for the Express Lanes Initial Project, the Commission covenants: (i) to compute Net Revenue for the Calculation Period ending on such Calculation Date and each Calculation Period thereafter and the ratios described in Section 6.03(a)(1) and (2) (each, a “**Coverage Ratio**”) not later than 15 days after such Calculation Date and each Calculation Date thereafter (such date of computation being hereinafter referred to as a “**Coverage Calculation Date**”); (ii) to furnish promptly to the Trustee and, while the TIFIA Loan is outstanding, the TIFIA Lender a Certificate of the Commission setting forth the results of such computations; and (iii) if any Coverage Ratio is less than the applicable requirement of Section 6.03(a), to take such action as promptly as practicable after the Coverage Calculation Date (including, without limitation,

increasing Toll Revenues through toll increases) as the Commission projects is necessary to cause each projected Coverage Ratio for each Calculation Period thereafter to equal or exceed the requirement of Section 6.03(a) for each such Calculation Period.

Within 15 days after the end of each Calculation Period ending after the Substantial Completion Date for the Express Lanes Initial Project, the Commission will file with the Trustee and, while the TIFIA Loan is outstanding, the TIFIA Lender a report setting forth the Net Revenue for such Calculation Period. The failure of toll rates to yield an amount sufficient to achieve each Coverage Ratio shall not be deemed to constitute an Event of Default so long as the Commission complies with the requirements set forth below in this Section 6.03(b). If any such report indicates that the Net Revenue for such Calculation Period was less than the amount required pursuant to Section 6.03(a), then as soon as practicable after delivering such report to the Trustee and the TIFIA Lender the Commission may, and within 30 days of a written request from the TIFIA Lender, shall, employ a Traffic Consultant to review and analyze the operations of the Toll Roads System. As soon as practicable (but not later than 180 days after engagement of the Traffic Consultant or, so long as the TIFIA Loan is outstanding, such other time period requirement specified in the TIFIA Loan Agreement), the Traffic Consultant shall submit a written report which shall include the HRTAC actions that the Traffic Consultant may recommend should be taken by the Commission with respect to (i) revising the toll rates, (ii) altering its methods of operation, or (iii) taking other action projected, to the extent necessary, to produce the amount so required to comply in each year with each Coverage Ratio (or, if less, the maximum amount deemed feasible by the Traffic Consultant and that the Traffic Consultant estimates will not adversely affect the amount of Net Revenue). Promptly upon its receipt of such written report, after giving due consideration thereto and, so long as the TIFIA Loan is outstanding, within the time period specified in the TIFIA Loan Agreement, the Commission will revise the toll rates, as permitted by law, alter its methods of operation, or take such other action as it deems appropriate. Such revisions, alterations, or actions need not comply with the recommendations of the Traffic Consultant so long as Net Revenue projected by the Traffic Consultant, or by the Commission if it chooses to act without a Traffic Consultant, to be produced by the revisions, alterations or actions then taken by the Commission are at least equal to the amount required hereinabove. The Trustee shall have no responsibility to review any written report received pursuant to this Section 6.03(b).

(c) The Commission further covenants that such toll rates for traffic using the Toll Roads System will be established and maintained in a reasonable way to cover all traffic (other than vehicles which are otherwise exempt from payment of tolls under State or federal law; and any vehicles during a public emergency declared by the Commonwealth in the Hampton Roads region) consistent with the requirements hereof and with the requirements of the MTA, but with such classifications as the Commission may deem appropriate; provided, that for so long as the TIFIA Loan Agreement remains in effect, the Commission will comply with any additional requirements with respect to toll policy set forth in the TIFIA Loan Agreement.

(d) Notwithstanding any provision to the contrary, nothing in this Section 6.03 shall be deemed to require the Commission to collect tolls and other fees with respect to which the Commission has determined, based upon a report from a Traffic Consultant, that the costs of collection would exceed the amount of tolls and other fees expected to be collected.

(e) If the TIFIA Loan is outstanding, and the Commission fails for [\_\_\_\_\_] (\_\_\_\_\_) consecutive additional Calculation Periods after the first Calculation Date on which the any of the required Coverage Ratios is not met, the Commission shall on the next Monthly Funding Date after such fourth Calculation Date be required to apply amounts in the Revenue Stabilization Fund to prepay on a pro rata basis, based on their respective principal amounts, the principal amounts of outstanding Senior Lien Obligations, including the TIFIA Loan, in amounts equal to the lesser of (i) the amount necessary to regain compliance with the required Coverage Ratios, and (ii) the amount on deposit in the Revenue Stabilization Fund. Prepayments shall continue following each Calculation Date thereafter pursuant to this subsection (e) until compliance with the required Coverage Ratios is regained. Any failure to meet the Coverage Ratios will not by itself constitute an Event of Default.

**Section 6.04 Annual Budget.** The Commission covenants that, for each Fiscal Year, it will take such actions as may be required of it to prepare and will adopt an annual budget with respect to the Toll Roads System in accordance with applicable law, including the HRTAC Act, and the Toll Agreements. The Commission further covenants that it will provide to the Trustee (A) no later than thirty (30) days prior to the commencement of each Fiscal Year, an operating plan and a preliminary budget, and (B) not later than the first day of each Fiscal Year, a copy of the Commission's final budget (such copy of the final budget being referred to herein as the "Annual Operating Budget"). The Trustee shall have no responsibility to review such preliminary budget or Annual Operating Budget and shall only retain such documents as a repository for the Holders of the Obligations.

**Section 6.05 Operation and Maintenance of the Toll Roads System.** The Commission represents and warrants that it has taken, and, so long as any Obligations are Outstanding, covenants and agrees that it will take, all lawful steps within its control as may be necessary to ensure that it will continue to have lawful right and lawful power to operate and maintain the Toll Roads System as a revenue-producing facility and that it will impose and collect tolls on the Toll Roads System consistent with its obligations under the HRTAC Act, the Master Tolling Agreement and the Toll Agreements. The Commission covenants and agrees to at all times operate the Toll Roads System in accordance with the requirements of the HRTAC Act, the Master Tolling Agreement and the Toll Agreements. The Commission further covenants and agrees that it will pay all Operation and Maintenance Expenses and keep or cause to be kept the Toll Roads System in good repair in accordance with customary business practices and the Tolling Operations and Maintenance Standards (as defined in the MTA).

**Section 6.06 Retention of Assets.** Subject to the provisions of the HRTAC Act, the Master Tolling Agreement and the Toll Agreements, the Commission covenants not to sell, lease or otherwise dispose of assets necessary to operate the Toll Roads System in the manner and at the levels of activity required to enable it to perform its covenants contained herein, including, without limitation, the covenants contained in Section 6.03 and Section 6.05.

**Section 6.07 Insurance.** The Commission covenants to carry at all times insurance or cause insurance to be carried (including by the general contractor or contractors for any Toll System Network Project, its subcontractors and the Toll Operator) with responsible insurance and/or reinsurance companies authorized and qualified to do business in (or with companies duly

authorized and qualified to do business in) the Commonwealth and to assume the risks thereof consistent with insurance requirements of all agreements entered into by the Commission in connection with the design, construction, operation and maintenance of each Project until the Substantial Completion Date therefor, and after the Substantial Completion of the Toll System Network Project, of the Toll Roads System.

Nothing contained herein shall be deemed or construed to prevent the Commission from maintaining policies of insurance with respect to the Toll Roads System in which parties other than the Commission are named as dual obligee beneficiaries, provided that such other parties shall be limited to VDOT, the Trustee, the TIFIA Lender, and persons supplying toll collection and revenue management system services, equipment or facilities. Upon request of the Trustee, the Commission shall provide the Trustee with an officer's certificate stating that it is in compliance with this Section 6.07.

**Section 6.08 Payment of Claims.** The Commission will pay and discharge any and all lawful claims that, if unpaid, might become a charge or lien upon the Trust Estate or any part thereof, prior to or on a parity with the charge and lien upon the Revenue securing the Obligations Outstanding hereunder.

**Section 6.09 Master Tolling Agreement and Toll Agreements.** The Commission hereby covenants and agrees that it has all lawful right and power to enter into the Master Tolling Agreement and Toll Agreements and that it shall perform all of its material obligations and exercise all of the powers granted to it thereunder (including but not limited to the Commission's powers to enforce performance by the counterparty to each such Toll Agreement of such counterparty's obligations thereunder) as the Commission may, in its reasonable judgment, determine are necessary to complete or cause the Substantial Completion and final completion of the portions, phases or segments of the Toll System Network Project in accordance with the Construction Plan for such portion, phase or segment, to allow the Toll System Network Project to be opened to vehicular traffic, and to commence and continue collection of tolls established pursuant to Section 6.03 of this Indenture.

**Section 6.10 Reserved.**

**Section 6.11 Construction and Maintenance From Other Sources Permitted.** Notwithstanding any provision to the contrary in this Indenture, the Commission may, in accordance with the HRTAC Act and other applicable laws, construct, reconstruct, rehabilitate, improve, acquire, lease, operate, or maintain, or any combination of these, both tolled and non-tolled facilities, structures, onramps, connector roads, bridges, tunnels and roadways that are on, necessary for, or related to the construction or operation of the Toll Roads System using any funds legally available therefor, including, without limitation and as applicable, HRTF Funds and federal, State and local grants, loans and matching funds. Notwithstanding any other provision of this Indenture, the United States of America, the Commonwealth or any of their respective agencies, departments or political subdivisions may construct, reconstruct, rehabilitate, improve, acquire, lease, operate, maintain, or any combination of these, both tolled and non-tolled facilities,

structures, onramps, connector roads, bridges, tunnels and roadways related to or competing with the Toll Roads System or to pay for all or any part of the cost thereof. The Commission has no power or authority to grant, permit, prohibit, prevent or interfere with any such actions.

### **Section 6.12 Tax Covenants.**

(a) The Commission shall not use or permit the use of any proceeds of the Obligations or any funds of the Commission, directly or indirectly, to acquire any securities or obligations that would cause the interest on Obligations intended by the Commission to be exempt from federal income taxation to become subject to federal income taxation, and shall not take or permit to be taken any other action or actions that would cause any such Obligations to be an “arbitrage bond” within the meaning of Section 148 of the Code or “federally guaranteed” within the meaning of Section 149(b) of the Code and any such applicable regulations promulgated from time to time thereunder. The Commission shall observe and not violate the requirements of Section 148 of the Code and any such applicable regulations. The Commission shall comply with all requirements of Sections 148 and 149(b) of the Code to the extent applicable to Obligations. In the event that at any time the Commission is of the opinion that for purposes of this Section 6.12(a) it is necessary to restrict or to limit the yield on the investment of any moneys held by the Trustee under this Indenture, the Commission shall so instruct the Trustee under this Indenture in writing, and the Trustee shall take such action as may be reasonably necessary in accordance with such instructions.

(b) The Commission covenants to comply with the provisions and procedures of each Tax Certificate.

(c) The Commission shall not, and shall not cause the Trustee to, use or permit the use of any proceeds of the Obligations or any funds of the Commission (so long as such proceeds or other funds are under its control), directly or indirectly, in any manner, and shall not take or omit to take any action that would cause any of the Obligations to be treated as an obligation not described in Section 103(a) of the Code if such Obligations were, when originally issued, intended by the Commission to be obligations described in Section 103(a) of the Code.

(d) Notwithstanding any provisions of this Section 6.12 or any Tax Certificate, if the Commission shall provide to the Trustee an Opinion of Bond Counsel to the effect that any specified action required under this Section 6.12 is no longer required or that some further or different action is required to maintain the exclusion from gross income for federal income tax purposes of interest on any Obligations, the Trustee and the Commission may conclusively rely on such opinion in complying with the requirements of this Section, and, notwithstanding any other provision of this Indenture or any Tax Certificate, the covenants hereunder shall be deemed to be modified to that extent.

(e) The Trustee shall follow the directions of the Commission given pursuant to the Tax Certificate, and shall have no liability or responsibility to enforce compliance by the Commission with the terms of the Tax Certificate.

### **Section 6.13 Accounting Records; Financial Statements and Other Reports.**

(a) The Commission shall keep appropriate accounting records in accordance with generally accepted accounting principles. Such accounting records shall at all times during business hours be subject to the inspection of the Trustee or of any Holder (or its representative authorized in writing).

(b) The Commission shall prepare and file with the Trustee annually within 180 days after the close of each Fiscal Year financial statements of the Commission for such Fiscal Year, together with an audit report thereon prepared by an Independent Certified Public Accountant.

**Section 6.14 Protection of Trust Estate and Rights of Holders.** The Commission shall preserve and protect the Trust Estate and the security of the Obligations issued hereunder and the rights of the Holders of such Obligations and will warrant and defend their rights against all claims and demands of all persons. From and after the sale and delivery of any Senior Lien Obligations, Second Lien Obligations or Subordinate Obligations by the Commission, such Obligations shall be incontestable by the Commission.

**Section 6.15 Payment of Governmental Charges and Compliance with Governmental Regulations.** The Commission shall pay and discharge all taxes or payments in lieu of taxes, assessments and other governmental charges or liens that may be levied, assessed or charged upon the Revenue, or any part thereof, promptly as and when the same shall become due and payable, except that the Commission shall not be required to pay any such governmental charges so long as the application or validity thereof shall be contested in good faith and the Commission shall have set aside reserves to cover such payments.

**Section 6.16 Maintenance of Powers.** The Commission covenants that it will at all times use its best efforts to maintain the powers, rights, functions, duties and obligations now delegated to it pursuant to the HRTAC Act and all other laws and the Master Tolling Agreement and will not at any time voluntarily do, suffer or permit any act or thing within its control the effect of which would be to hinder, delay or imperil either the payment of the indebtedness evidenced by any of the Obligations hereunder or Credit Support Instruments relating thereto or the performance or observance of any of the covenants herein contained.

**Section 6.17 Covenants Binding on Commission and Successors.** All covenants, stipulations, obligations and agreements of the Commission contained in this Indenture shall be deemed to be covenants, stipulations, obligations and agreements of the Commission to the full extent authorized or permitted by law. If the powers or duties of the Commission shall hereafter be transferred by amendment of the HRTAC Act or a new act or any provision of the Constitution or any other law of the Commonwealth or in any other manner there shall be a successor to the Commission, and if such transfer shall relate to any matter or thing permitted or required to be done under this Indenture by the Commission then the entity that shall succeed to such powers or duties of the Commission shall act and be obligated in the place and stead of the Commission as in this Indenture provided, and all such covenants, stipulations, obligations and agreements shall be binding upon the successor or successors thereof from time to time and upon any officer, board, body or authority to whom or to which any power or duty affecting such covenants, stipulations, obligations and agreement shall be transferred by or in accordance with law.

**Section 6.18 Continuing Disclosure.** Upon the issuance of any Series of Obligations, or upon conversion of any Series of Obligations to an interest rate period, requiring an undertaking regarding continuing disclosure under Rule 15c2-12, the Commission hereby covenants and agrees that it will execute and deliver a Continuing Disclosure Agreement with respect to such Series of Obligations and comply with and carry out all of the provisions of such Continuing Disclosure Agreement applicable to it. Notwithstanding any other provision of this Indenture, failure of the Commission to comply with the provisions of any Continuing Disclosure Agreement shall not constitute an Event of Default under this Indenture; provided, however, that the Trustee, at the request of any Participating Underwriter or the Owner of an Outstanding Obligation, shall (but only to the extent that the Trustee is indemnified to its satisfaction from any liability or expense, including fees and expenses of its attorneys) or any Owner or Beneficial Owner of an Obligation may, take such actions as may be necessary and appropriate, including seeking mandate or specific performance by court order to cause the Commission to comply with its obligations under this Section.

**Section 6.19 Further Assurances.** The Commission will adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the performance hereof and for the better assuring and confirming unto the Holders of the rights and benefits provided herein.

## **ARTICLE VII** **DEFAULT PROVISIONS AND REMEDIES**

**Section 7.01 Events of Default.** Any one of the following, and any other event specified in a Supplemental Indenture as an Event of Default, shall constitute an Event of Default hereunder:

- (a) default in the payment of any interest on any Highest Priority Obligation when and as the same shall have become due and payable;
- (b) default in the payment of the principal of or premium, if any, on any Highest Priority Obligation when and as the same shall become due and payable, whether at the stated maturity or redemption date thereof or otherwise;
- (c) default by the Commission in the observance or performance of any other covenant, agreement or obligation of the Commission contained in this Indenture and the continuance thereof for a period of thirty (30) days after the earlier to occur of (i) receipt by the Commission from the Trustee of written notice thereof, or (ii) the Commission's actual knowledge of such default; provided, however, that if such default is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 7.01(c), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (A) within such thirty (30) day cure period the Commission shall commence actions reasonably designed to cure such default and shall diligently pursue such actions until such default is cured, and (B) such failure is

cured within one hundred eighty (180) days of the date specified in either (i) or (ii) above, as applicable;

(d) if the Commission files a petition in voluntary bankruptcy for the composition of its affairs or for its corporate reorganization under any state or federal bankruptcy or insolvency law, or makes an assignment for the benefit of creditors, or admits in writing to its insolvency or inability to pay debts as they mature, or consents in writing to the appointment of a trustee or receiver for itself;

(e) if a court of competent jurisdiction shall enter an order, judgment or decree declaring the Commission insolvent, or adjudging it bankrupt, or appointing a trustee or receiver of the Commission, or approving a petition filed against the Commission seeking reorganization of the Commission under any applicable law or statute of the United States of America or any state thereof, and such order, judgment or decree shall not be vacated or set aside or stayed within sixty (60) days from the date of the entry thereof;

(f) if, under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the Commission or of the Revenue, and such custody or control shall not be terminated within sixty (60) days from the date of assumption of such custody or control; or

(g) while the Obligation in the form of the TIFIA Loan is Outstanding, the TIFIA Lender notifies the Trustee of a Deemed Event of Default that remains uncured in accordance with the terms of the TIFIA Loan Agreement.

The Commission shall notify the Trustee of the occurrence of an Event of Default or a Bankruptcy Related Event immediately after the Commission learns of the occurrence; provided, that notwithstanding any failure by the Commission to deliver such notice, an Event of Default shall occur hereunder immediately upon the occurrence of such Event of Default. If the Trustee has actual knowledge, or is notified by the Commission or a Bondholder, of the occurrence of an Event of Default or a Bankruptcy Related Event hereunder, the Trustee shall provide prompt written notice of the occurrence of such Event of Default or a Bankruptcy Related Event to the Commission and all Bondholders.

**Section 7.02 Application of Revenue and Other Funds After Default.** If an Event of Default shall occur and be continuing, the Trust Estate shall be under the control of and applied by the Trustee as follows and in the following order:

(a) first, to the payment of all fees, costs and other expenses (including the reasonable fees, costs and expenses of counsel and actual fees, costs and expenses due and payable by the Commission pursuant to any indemnity required by Section 8.01(c)) owed to the Trustee, and then to the pro rata payment of all costs and other expenses (including the reasonable fees, costs and expenses of counsel) owed to the trustee or Holder of any Obligations, in each case, in connection with the performance of their obligations under the Financing Documents, including to the TIFIA Lender under the TIFIA Loan Agreement, to which they are a party and the consummation of the transactions contemplated thereby (in each case to the extent not previously satisfied);

- (b) second, to the payment of Operation and Maintenance Expenses;
- (c) third, to the pro rata payment of all accrued and unpaid interest (but not default interest, if any) on all Senior Lien Obligations then Outstanding, in each case in the order of maturity of the payments thereof;
- (d) fourth, to the pro rata payment of all unpaid principal amounts of any Senior Lien Obligations then due;
- (e) fifth, to the pro rata payment of all accrued and unpaid default interest then due, if any, with respect to any Senior Lien Obligations, and scheduled payments due under any related Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to scheduled Hedging Obligations under Swaps;
- (f) sixth, to the pro rata payment of all accrued and unpaid redemption or prepayment premium then due, if any, with respect to any Senior Lien Obligations;
- (g) seventh, to the pro rata payment of all other amounts, if any, due and payable under any Financing Document with respect to any Senior Lien Obligations;
- (h) eighth, to the pro rata payment of all accrued and unpaid interest (but not default interest, if any) on all Second Lien Obligations;
- (i) ninth, if any unpaid principal of any Second Lien Obligations has become due, to the pro rata payment of such unpaid principal amounts;
- (j) tenth, to the pro rata payment of all accrued and unpaid default interest then due, if any, with respect to any Second Lien Obligations, and scheduled payments due under any related Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to scheduled Hedging Obligations under Swaps;
- (k) eleventh, to the pro rata payment of all accrued and unpaid redemption or prepayment premium then due, if any, with respect to any Second Lien Obligations;
- (l) twelfth, to the pro rata payment of all other amounts, if any, due and payable under any Financing Document with respect to any Second Lien Obligations;
- (m) thirteenth, to the pro rata payment of all accrued and unpaid interest (but not default interest, if any) on all Subordinate Obligations;
- (n) fourteenth, if any unpaid principal of any Subordinate Obligations has become due, to the pro rata payment of such unpaid principal amounts;
- (o) fifteenth, to the pro rata payment of all accrued and unpaid default interest then due, if any, with respect to any Subordinate Obligations, and scheduled payments due under any related Hedging Obligations, if any, net of any scheduled amounts payable to the Commission with respect to scheduled Hedging Obligations under Swaps;

(p) sixteenth, to the pro rata payment of all accrued and unpaid redemption or prepayment premium then due, if any, with respect to any Subordinate Obligations;

(q) seventeenth, to the pro rata payment of all other amounts, if any, due and payable under any Financing Document with respect to any Subordinate Obligations; and

(r) eighteenth, to the payment of any Hedging Termination Obligations with respect to Swaps; and

(s) nineteenth, upon the payment in full of all Secured Creditors in accordance with clauses (a) through (r) hereof, to pay to the Commission, or as may be directed by the Commission, or as a court of competent jurisdiction may direct, any Revenue or other funds then remaining in the Trust Estate.

**Section 7.03 No Acceleration.** There shall be no right of acceleration with respect to the Obligations.

**Section 7.04 Suits at Law or in Equity and Mandamus.** In case one or more Events of Default shall occur, then and in every such case the Trustee may, and shall at the request of the Holders of not less than a majority of the Bond Obligation of the Highest Priority Obligations then Outstanding (or such greater percentage of the Holders of Highest Priority Obligations as may be specified in the Supplemental Indenture) upon receiving indemnity reasonably satisfactory to the Trustee, potentially including indemnity provided by such Holders (subject to Section 8.01(c)), proceed to protect and enforce Bondholder rights by such appropriate judicial proceeding as shall be deemed most effectual to protect and enforce any such right, either by suit in equity or by action at law, whether for the specific performance of any covenant or agreement contained in this Indenture, or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Holders of Obligations by this Indenture or such Obligations or by law. The provisions of this Indenture shall constitute a contract with each and every Bondholder and the responsibilities of the Commission shall be enforceable by the Trustee on behalf of any Bondholder by mandamus or other appropriate suit, action or proceeding in any court of competent jurisdiction. Nothing herein shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Bondholder any plan of reorganization, arrangement, adjustment, or composition affecting the Obligations or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding without the approval of the Holders so affected.

**Section 7.05 Waivers.** No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default hereunder shall extend to or shall affect any subsequent Event of Default or shall impair any rights or remedies consequent thereon.

**Section 7.06 Rights of Subordinate Lenders.** Nothing in this Article VII or elsewhere in this Indenture shall be construed to limit or preclude the exercise of any rights or remedies reserved by the trustee for the Second Lien Obligations or by the trustee for or Holder of any

Subordinate Obligations; provided, that such rights and remedies may not interfere with, be adverse to or frustrate the rights and remedies of the Holders of the Senior Lien Obligations.

## ARTICLE VIII THE TRUSTEE

**Section 8.01 Trustee.** (a) [ ] will serve as the Trustee under this Indenture. The Trustee shall be required to perform such duties and only such duties as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default (that has not been cured), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as reasonable persons would exercise or use under the circumstances in the conduct of their own affairs. The Trustee accepts the duties imposed upon it hereunder and agrees, particularly: (i) to hold all sums held by it for the payment of the principal and Purchase Price of, premium, if any, or interest on the Obligations in trust for the benefit of the Holders of the Obligations as provided herein until such sums shall be paid to such Holders of such Obligations or otherwise disposed of as herein provided; (ii) to authenticate and cancel Obligations as provided herein; (iii) to perform its obligations under this Indenture; and (iv) to keep such books and records relating to its duties as Trustee as shall be consistent with reasonable industry practice and to make such books and records available for inspection by the Commission at all reasonable times upon reasonable notice.

The Commission shall cause the necessary arrangements to be made and to be thereafter continued whereby: (i) funds derived from the sources specified in this Indenture will be made available at the Principal Office of the Trustee for the timely payment of principal and Purchase Price of, premium, if any, and interest on the Obligations; (ii) Obligations shall be made available for authentication, exchange and registration of transfer by the Trustee at the Principal Office of the Trustee; and (iii) the Trustee shall be furnished such records and other information, at such times, as shall be required to enable the Trustee to perform the duties and obligations imposed upon it hereunder.

(b) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action or its own negligent failure to act, except that, at all times regardless of whether or not any Event of Default shall exist: (i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; (ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate, notice, order, requisition, request, consent or opinion furnished to the Trustee conforming to the requirements of this Indenture; but in the case of any such certificate, notice, order, requisition, request, consent or opinion which by any provision hereof is specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not it, on its face, conforms to the requirements of this Indenture; (iii) the Trustee shall not be liable for any error of judgment made in good faith unless it shall be proved

that the Trustee was negligent in ascertaining the pertinent facts; and (iv) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority, or such larger or smaller percentage as may be required hereunder, in Bond Obligations of the Highest Priority Obligations at the time Outstanding relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred upon the Trustee under this Indenture. The permissive right of the Trustee to do things enumerated in this Indenture as a right shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful misconduct.

(c) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers. The Trustee shall not be required to give any bond or surety in respect of the execution of the such trusts and powers or otherwise in respect of the premises. Before taking any action under this Indenture relating to an Event of Default or taking any other action (other than making payments of principal and interest in accordance with the provisions of this Indenture) hereunder, the Trustee may require that indemnity reasonably satisfactory to it be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability.

(d) No delivery of Obligations to the Trustee or purchase of Obligations by the Trustee shall constitute a redemption of Obligations or any extinguishment of the debt represented thereby, unless such Obligations are surrendered by the Commission to the Trustee for cancellation pursuant to this Indenture.

(e) The Trustee shall not be accountable for the use or application by the Commission of the proceeds of the Obligations or for the use or application of any money paid over to the Commission by the Trustee in accordance with the provisions of this Indenture. The Trustee shall have no responsibility or liability with respect to any information, statements or recitals in any offering memorandum or other disclosure material prepared or distributed with respect to the issuance of the Obligations other than information provided by the Trustee for use therein, if any.

(f) Whenever in the administration of this Indenture the Trustee shall deem it necessary or desirable that a matter be provided or established prior to taking or suffering any action to be taken hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of negligence or willful misconduct on the part of the Trustee, be deemed to be conclusively proved and established by a Certificate of the Commission and delivered to the Trustee and such certificate, in the absence of negligence or willful misconduct on the part of the Trustee, shall be full authority to the Trustee for any action taken, suffered or omitted by it under the provisions of this Indenture upon the faith thereof; provided that, notwithstanding the foregoing, until the TIFIA Loan is prepaid in full, no interpretation of the TIFIA Loan Agreement shall be deemed conclusively provided without the consent of the TIFIA Lender.

(g) The Trustee may elect to accept and act upon instructions or directions pursuant to this Indenture sent by facsimile or Electronic means, provided that the Trustee shall have received an incumbency certificate listing persons designated to give such instructions or directions and containing specimen signatures of such designated persons, which such incumbency certificate shall be amended and replaced whenever a person is to be added or deleted from the listing. If the Commission elects to give the Trustee facsimile or Electronic instructions and the Trustee in its discretion elects to act upon such instructions, the Trustee's understanding of such instructions shall be deemed controlling in the absence of its negligence or willful misconduct. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions notwithstanding such instructions conflict or are inconsistent with a subsequent written instruction. In the absence of negligence or willful misconduct by the Trustee, the Commission agrees to assume all risks arising out of the use of such facsimile or Electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

**Section 8.02 Compensation.** The Commission shall: (i) pay the Trustee reasonable compensation (which, to the extent permitted by applicable law, shall not be limited by any law limiting the compensation of the trustee of an express trust); and (ii) pay or reimburse the Trustee upon request for all reasonable fees, expenses, disbursements and advances incurred or made in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and of all agents and other persons not regularly in its employ), except to the extent that any such expense, disbursement or advance is due to its own negligence or willful misconduct. The obligations of the Commission under this Section 8.02 shall survive the satisfaction and discharge of this Indenture and the earlier removal or resignation of the Trustee. When the Trustee incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**Section 8.03 Qualifications of Trustee; Resignation; Removal.**

(a) There shall at all times be a trustee hereunder that is a commercial bank, trust company or national association organized and doing business under the laws of the United States or of a state thereof, authorized under such laws to exercise corporate trust powers, having (or if such bank, trust company or national association is a member of a bank holding company system, its holding company has) a combined capital and surplus of at least five hundred million dollars (\$500,000,000), and subject to supervision or examination by federal or state authority. If such banks, trust companies, or banking associations publish reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority above referred to, then, for the purposes of this Section 8.03, the combined capital and surplus of such banks, trust companies or banking associations shall be deemed to be their combined capital and surplus as set forth in their most recent reports of conditions so published.

(b) The Trustee may at any time resign by giving at least thirty (30) days' written notice to the Commission. Upon receiving such notice of resignation, the Commission,

shall promptly appoint a successor trustee by an instrument in writing. If no successor trustee shall have been so appointed and have accepted appointment within thirty (30) days after the giving of such notice of resignation, the resigning trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide Holder of a Highest Priority Obligation for at least six months may, on behalf of itself and any others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(c) In case at any time either of the following shall occur: (i) the Trustee shall cease to be eligible in accordance with the provisions of this Section 8.03 and shall fail to resign after written request therefor by the Commission or by any Holder who has been a bona fide Holder of a Highest Priority Obligation for at least six months; or (ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation, then, in any such case, the Commission may remove the Trustee and appoint a successor trustee by an instrument in writing executed by an Authorized Representative (provided that during the continuance of any Event of Default, the Commission shall have no right to remove the Trustee without the prior written consent of Holders of a majority of the outstanding principal amount of the Highest Priority Obligations), or Holders of a majority of the outstanding principal amount of the Highest Priority Obligations may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee. If no successor trustee shall have been so appointed by the Commission and have accepted appointment within thirty (30) days after such removal, the Trustee may petition any court of competent jurisdiction for the appointment of a successor trustee, or Holders of a majority of the outstanding principal amount of the Highest Priority Obligations may petition any such court for the appointment of a successor trustee.

(d) The Commission or Holders of a majority in Bond Obligation of the Highest Priority Obligation at the time Outstanding may at any time remove the Trustee and appoint a successor trustee by an instrument or concurrent instruments in writing signed by an Authorized Representative of the Commission or by such Holders, as the case may be.

(e) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 8.03 shall become effective upon written acceptance of appointment by the successor trustee acceptable to the Commission. Any successor trustee shall execute, acknowledge and deliver to the Commission and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts, duties and obligations of its predecessor in the trusts hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the Written Request of the Commission or the request of the successor trustee, the predecessor trustee ceasing to act shall execute and deliver an instrument transferring to such successor trustee, upon the trusts herein expressed, all the rights, powers and trusts of the trustee

so ceasing to act. Upon request of any such successor trustee, the Commission shall execute any and all instruments in writing necessary or desirable for more fully and certainly vesting in and confirming to such successor trustee all such rights, powers and duties. No successor trustee shall accept appointment as provided in this Section 8.03 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of this Section 8.03. Upon acceptance of appointment by a successor trustee as provided in this Section 8.03, the Commission or such successor trustee shall give Holders notice of the succession of such trustee to the trusts hereunder.

(f) Any company into which the Trustee may be merged or converted or with which it may be consolidated or any company resulting from any merger, conversion or consolidation to which it shall be a party or any company to which the Trustee may sell or transfer all or substantially all of its corporate trust business, provided such company shall be eligible under this Section 8.03 and acceptable to the Commission, shall be the successor to such Trustee without the execution or filing of any paper or any further act, anything herein to the contrary notwithstanding.

(g) In the event of the resignation or removal of the Trustee, the Trustee shall deliver any money and any Obligations and its related books and records held by it in such capacity to its successor.

(h) The Trustee may execute any of the trusts or powers hereof and perform any of its duties and responsibilities hereunder by or through attorneys, agents or receivers, including issuing and paying agents as provided in Section 8.05, and the Trustee shall not be answerable for the conduct of the same if appointed with due care hereunder, provided that the Trustee shall remain responsible for its duties hereunder. The Trustee may consult with counsel and the advice or any opinion of counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in the absence of negligence and willful misconduct and in accordance with such advice or opinion of counsel.

**Section 8.04 Instrument of Bondholders**. Any instrument required by this Indenture to be executed by Bondholders may be in any number of writings of similar tenor and may be executed by Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and of the ownership of Obligations given in any of the following forms shall be sufficient for any of the purposes of this Indenture: (i) a certificate of any officer in any jurisdiction who by law has power to take acknowledgements within such jurisdiction that the person signing such writing acknowledged before him the execution thereof; or (ii) a certificate executed by any trust company or bank stating that at the date thereof the party named therein did exhibit to an officer of such trust company or bank, as the property of such party, the Obligations therein mentioned.

The Trustee may rely on such an instrument of Bondholders unless and until the Trustee receives notice in the form specified in (i) or (ii) above that the original such instrument is no longer reliable. In the event that the Trustee shall receive conflicting directions from two or more groups of Bondholders, the directions given by the group of Bondholders that holds greater than 50% of the outstanding principal amount of the Highest Priority Obligations shall be controlling and the Trustee shall follow such directions to the extent required herein. The Trustee shall have

no liability provided it is following the instructions of such Bondholders permitted to direct the Trustee pursuant to this Indenture.

**Section 8.05 Issuing and Paying Agents.** The Commission may appoint and at all times have one or more issuing and paying agents in such place or places as the Commission may designate, for the payment of a Series of Obligations. Such issuing and paying agent shall meet the qualifications for the Trustee and the procedures and conditions for removal and resignation set forth in Section 8.03 hereof. It shall be the duty of the Trustee to make such arrangements with any such issuing and paying agent as may be necessary to assure, to the extent of the moneys held by the Trustee for such payment, the prompt payment of Obligations presented at either place of payment.

## **ARTICLE IX AMENDMENTS**

**Section 9.01 Amendments to Indenture Not Requiring Consent of Bondholders.**

Except to the extent expressly set forth by a Supplemental Indenture, the Commission and the Trustee, without the consent of any Bondholders, may execute Supplemental Indentures amending this Indenture for one or more of the following purposes:

(a) to grant to or confer upon the Trustee for the benefit of the Holders of any Series of Obligations or of all Obligations any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Trustee; provided that such additional rights, remedies, powers or authority may not impair or adversely affect in any material respect the rights, remedies, powers or authority of the Holders of any other Series of Obligations without the express written consent of Holders of a majority of the outstanding principal amount of such other Series of Obligations;

(b) to grant or pledge to the Trustee for the benefit of the Holders of any Series of Obligations or of all Obligations any Credit Support Instrument or similar additional security;

(c) to amend this Indenture in such manner as may be necessary or convenient in connection with the book-entry system for payments, transfers and other matters relating to the Obligations;

(d) to cure any ambiguity, supply any omission, or to correct or supplement any provision of this Indenture that, in the Opinion of Bond Counsel, is defective or inconsistent with any other provision of this Indenture;

(e) to insert such provisions clarifying matters or questions arising under this Indenture as are necessary or desirable and are not contrary to or inconsistent with this Indenture as theretofore in effect;

(f) to make any change therein necessary, in the Opinion of Bond Counsel, to maintain the exclusion from gross income for federal income tax purposes of the interest on any

Outstanding Obligations intended by the Commission to bear federally tax-exempt interest; provided that such change may not impair or adversely affect in any material respect the rights, remedies, powers or authority of the Holders of any Series of Obligations without the express written consent of Holders of a majority of the outstanding principal amount of such Series of Obligations;

(g) to modify, amend or supplement this Indenture or any Supplemental Indenture in such manner as to permit, if presented, the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or under any state blue sky law; provided that such change may not impair or adversely affect in any material respect the rights, remedies, powers or authority of the Holders of any Series of Obligations without the express written consent of Holders of a majority of the outstanding principal amount of such Series of Obligations;

(h) to make modifications or adjustments necessary in order to accommodate a Credit Support Instrument or a Reserve Facility; provided that, for so long as the TIFIA Loan is outstanding such modifications or adjustments are subject to the requirements of the TIFIA Loan Agreement;

(i) to modify, alter, amend or supplement this Indenture if (1) all of the Obligations to be affected thereby are variable interest rate obligations, (2) the modification, alteration, amendment or supplement shall not become effective until written notice thereof shall have been given to Bondholders of the affected Series by the Trustee, and (3) thirty (30) days shall have passed during which time such Bondholders shall have had the opportunity to tender their variable interest rate bonds for purchase;

(j) to modify, alter, amend or supplement this Indenture if (1) all of the Obligations to be affected thereby are Obligations in the form of or securing payment of the TIFIA Loan, and (2) the written consent of the TIFIA Lender has been obtained to such modification, alteration, amendment or supplement;

(k) to make any change therein that does not adversely affect in any material respect the rights of any of the Holders of the Obligations (and the absence of a material adverse effect is required to, be evidenced by a Certificate of the Commission or an Opinion of Bond Counsel delivered pursuant to Section 9.04); and

(l) to issue additional Obligations hereunder in accordance with the terms hereof, including to specify and determine the lien status of a Series of Obligations or, if applicable, the springing lien status of a Series of Obligations and also any other matters and things relative to such Obligations that are not contrary to or inconsistent with this Indenture as theretofore in effect, or to amend, modify or rescind any such authorization, specification or determination at any time prior to the original issuance of such Obligations;

provided that, in addition to the limitation set forth in Section 9.04, no such amendment may permit, (i) an extension of the maturity of the principal of, or the mandatory redemption date of, or interest on, any Obligation, or (ii) a reduction in the principal amount of, or the redemption premium or the rate of interest on, any Obligation, or (iii) a preference or priority of any Senior

Lien Obligations over any other Senior Lien Obligations, or (iv) a preference or priority of any Second Lien Obligation or Second Lien Obligations over any other Second Lien Obligation or Second Lien Obligations or Senior Lien Obligation, or (v) a preference or priority of any Subordinate Obligation or Subordinate Obligations over any other Subordinate Obligation or Subordinate Obligations, Second Lien Obligation or Senior Lien Obligation or (vi) a reduction in the Bond Obligation of the Obligations required for any consent to any amendment pursuant to Section 9.02.

**Section 9.02 Amendments to Indenture Requiring Consent of Bondholders and**

**TIFIA Lender.** Exclusive of amendments authorized by Section 9.01 and subject to the terms and provisions contained in this Section 9.02 and in any Supplemental Indenture, and further subject at all times prior to repayment of the TIFIA Loan in full pursuant to its terms to receipt of written consent from the TIFIA Lender, the Holders of at least a majority in aggregate Bond Obligation of the Obligations Outstanding at the time such consent is given, and in case less than all of the several Series of Obligations then Outstanding are affected by the modification or amendment, of the Holders of at least a majority in aggregate Bond Obligation of the Obligations of each Series so affected and Outstanding at the time such consent is given (provided, however, that if such modification or amendment will, by its terms, not take effect so long as any Obligations of any particular Series and maturity remain Outstanding, the consent of the Holders of such Obligations shall not be required and such Obligations shall not be deemed to be Outstanding for the purpose of any calculation of Outstanding Obligations under this Section 9.02) shall have the right, from time to time, anything contained in this Indenture to the contrary notwithstanding, to consent to such other amendments hereto for the purpose of modifying, altering, amending, or supplementing any of the terms or provisions contained in this Indenture or in any Supplemental Indenture; provided, however, that nothing in this Section 9.02 shall permit, or be construed as permitting (i) an extension of the maturity of the principal of, or the mandatory redemption date of, or interest on, any Obligation, or (ii) a reduction in the principal amount of, or the redemption premium or the rate of interest on, any Obligation, or (iii) a preference or priority of any Senior Lien Obligations over any other Senior Lien Obligations, or (iv) a preference or priority of any Second Lien Obligation or Second Lien Obligations over any other Second Lien Obligation or Second Lien Obligations or Senior Lien Obligations, or (v) a preference or priority of any Subordinate Obligation over any other Subordinate Obligation, or (vi) a reduction in the Bond Obligation of the Obligations required for any consent to any amendment.

**Section 9.03 Notice to and Consent of Bondholders.** If consent of the Bondholders is required under the terms of this Indenture for the amendment of this Indenture or for any other similar purpose, the Commission shall cause notice of the proposed amendment to be given by first-class mail to the Holders of the Outstanding Obligations then shown on the registration books for the Obligations. Such notice shall briefly set forth the nature of the proposed amendment or other action and shall state that copies of any such amendment are on file at the office of the Commission and the Principal Office of the Trustee for inspection by all Bondholders. If, within sixty (60) days or such longer period as shall be prescribed by the Commission following the mailing of such notice, the Holders of the requisite principal amount of the Obligations Outstanding by instruments filed with the Commission shall have expressly consented in writing to the amendment or other proposed action, then the Commission may adopt or execute, as

appropriate, such amendment or take such proposed action and the consent of the Bondholders shall thereby be conclusively presumed. Such instruments filed with the Commission may include documents, including Certificates of the Commission, stating that Holders of Obligations have consented to an amendment by purchasing such Obligations if the official statement or other disclosure document related to such purchase disclosed that the purchase of the Obligations was deemed to mean that the Holders consented to the amendment.

**Section 9.04 Execution and Effect of Supplemental Indentures.** Prior to executing any Supplemental Indenture hereunder, the Trustee shall receive, and is entitled to rely upon, an Opinion of Bond Counsel to the effect that such Supplemental Indenture is authorized or permitted hereunder. The Trustee is not obligated to execute any Supplemental Indenture adversely affecting its rights, duties, protections or immunities hereunder. [The Trustee shall not execute any Supplemental Indenture materially affecting the priority of payment of any Second Lien Obligation or the rights and obligations of the Holders of any Second Lien Obligation, as evidenced by the Opinion of Bond Counsel delivered pursuant to this Section 9.04, without the prior written consent of the trustee for or required Holders of such Second Lien Obligation. The Trustee shall not execute any Supplemental Indenture materially affecting the priority of payment of any Subordinate Obligation or the rights or obligations of the holder of any Subordinate Obligation, as evidenced by the Opinion of Bond Counsel delivered pursuant to this Section 9.04, without the prior written consent of the trustee for or required Holders of such Subordinate Obligation.] Upon the execution and delivery of any Supplemental Indenture pursuant to this Article IX, this Indenture shall be deemed to be modified and amended in accordance therewith, and the respective rights, duties and obligations under this Indenture of the Commission, the Trustee and all Owners of Outstanding Obligations shall thereafter be determined, exercised and enforced subject in all respects to such modification and amendment, and all the terms and conditions of any such Supplemental Indenture shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

**Section 9.05 Obligations Owned by the Commission.**

(a) For purposes of this Article IX, Obligations owned or held by or for the account of the Commission shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Obligations provided for in this Article IX, and the Commission shall not be entitled with respect to such Obligations to give any consent or take any other action provided for in this Article IX; except that in determining whether the Trustee shall be protected in relying upon any such approval or consent of a Holder, only Obligations which the Trustee actually knows to be owned by the Commission shall be disregarded unless all Obligations are owned or held by or for the account of the Commission, in which case such Obligations shall be considered Outstanding for the purpose of such determination. Upon request of the Trustee, at the time of any consent or other action is to be taken under this Article IX, the Commission shall furnish the Trustee a Certificate of the Commission, upon which the Trustee may rely, describing all Senior Lien Obligations so to be excluded. The purchase or other acquisition of Obligations by or on behalf of the Commission shall not cancel, extinguish, or otherwise affect the Obligations unless such Obligations are surrendered by the Commission to the Trustee for cancellation in accordance with Section 10.01(b).

## ARTICLE X DISCHARGE OF LIEN

**Section 10.01 Discharge of Lien and Security Interest.** (a) At the election of the Commission, upon payment in full of all the Obligations and of all other amounts payable under this Indenture, the pledge and lien on the Trust Estate arising under this Indenture shall cease, terminate, and be void; provided, however, such discharge of this Indenture shall not terminate the powers and rights granted to the Trustee with respect to the payment, transfer and exchange of the Obligations, and Section 8.02 shall survive hereunder. In such event, upon the written request of the Commission, the Trustee shall cooperate with an accounting for such period or periods as shall be requested by the Commission to be prepared and filed with the Commission and shall execute and deliver to the Commission all such instruments as may be necessary or desirable to evidence such discharge as prepared by or on behalf of the Commission, and the Trustee shall pay over, transfer, assign or deliver to the Commission all moneys or securities or other property held by it pursuant to this Indenture which are not required for the payment or redemption of Obligations not theretofore surrendered for such payment or redemption.

(b) The Commission may at any time surrender to the Trustee for cancellation any Obligations previously authenticated and delivered hereunder that the Commission at its option may have acquired in any manner whatsoever and such Obligations upon such surrender and cancellation shall be deemed to be paid and retired. Notwithstanding any provision in this Indenture to the contrary, if the principal of or interest on any Obligations shall be paid by a Credit Provider, those Obligations shall remain Outstanding for all purposes, not be defeased or otherwise satisfied and not be considered paid by the Commission within the meaning of this Section 10.01, and the pledge of the Trust Estate and all covenants, agreements and other obligations of the Commission as herein provided shall continue to exist and shall run to the benefit of such Credit Provider, and such Credit Provider shall be subrogated to the rights of the Holders.

**Section 10.02 Provision for Payment of Obligations.** Obligations (or any portion of the Obligations) shall be deemed to have been paid within the meaning of Section 10.01 if:

(a) there shall have been irrevocably deposited with the Trustee or other fiduciary in trust either (i) lawful money of the United States of America in an amount that shall be sufficient, or (ii) Defeasance Obligations, the principal and interest on which when due, together with the moneys, if any, deposited with the Trustee at the same time, shall be sufficient (as confirmed by a report of an Independent Certified Public Accountant or verification agent), to pay when due the principal amount of, redemption premium (if any) and all unpaid interest on such Obligations (or any portion thereof) to the maturity or the redemption date thereof, as the case may be; and

(b) any such Obligations are to be redeemed on any date prior to their maturity, (i) the Trustee shall have received (not less than 25 days prior to the proposed redemption date) in form satisfactory to it irrevocable written instructions from an Authorized Representative to redeem such Obligations on such redemption date, and (ii) notice of such redemption shall have been given or provision satisfactory to the Trustee shall have been irrevocably made for the giving of such notice.

Limitations elsewhere specified herein regarding the investment of money held by the Trustee shall not be construed to prevent the depositing and holding of the Defeasance Obligations described in Section 10.02(a)(ii) for the purpose of defeasing the lien of this Indenture as to Obligations that have not yet become due and payable. In addition, all money so deposited as provided in Section 10.02(a)(i) may also be invested and reinvested, at the written direction of an Authorized Representative, in Defeasance Obligations, maturing in the amounts and times as hereinbefore set forth, subject to the confirming report of an Independent Certified Public Accountant or verification agent as to the sufficiency thereof as provided in Section 10.02(a)(ii), and all income from all Defeasance Obligations in the hands of the Trustee or other fiduciary pursuant to this Section 10.02, that is not required for the payment of the principal of the Obligations and interest and redemption premium, if any, thereon with respect to which such money shall have been so deposited, shall be deposited in the Toll Revenue Fund as and when realized and applied as is other money deposited in the Toll Revenue Fund, or, in the event there are no longer any Obligations Outstanding under this Indenture, such income shall be automatically paid over to the Commission.

Notwithstanding any other provision of this Indenture, no Obligation that is subject to optional or mandatory tender in accordance with the provisions of the Supplemental Indenture pursuant to which such Obligation was issued, shall be deemed to be paid within the meaning of this Indenture, unless arrangements shall have been made to assure that such Obligation, if tendered for purchase prior to the date of its redemption or maturity in accordance with the provisions of the applicable Supplemental Indenture, could be paid and redeemed from such moneys or Defeasance Obligations as are provided pursuant to this Section 10.02.

**Section 10.03 Unclaimed Moneys.** Anything contained herein to the contrary notwithstanding, any moneys held by the Trustee in trust for the payment and discharge of any of the Obligations that remain unclaimed for two (2) years after the date when such Obligations shall have become due and payable (during which period the Trustee shall hold such moneys without liability for interest), either at their stated maturity dates, tender for purchase or by call for redemption, if such moneys were held by the Trustee at such date, or for two (2) years after the date of deposit of such moneys, if deposited with Trustee after the date when such Obligations or the Purchase Price thereof became due and payable, shall automatically be repaid by the Trustee to the Commission as its absolute property free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the Holders shall look only to the Commission for the payment of the principal or Purchase Price of, the redemption premiums, if any, and interest on such Obligations.

## ARTICLE XI MISCELLANEOUS

**Section 11.01 Liability of Commission Limited to Trust Estate.** Notwithstanding anything to the contrary contained in this Indenture, the Commission shall not be required to advance any money derived from any source of income other than from the Trust Estate as provided herein for the payment of the principal of or redemption premium, if any, or interest on the Obligations or for the payment or performance of any agreements or covenants contained

herein. The Commission may, but is not obligated to, advance funds for any such purpose so long as such funds are derived from a source legally available for such purpose and may be used by the Commission for such purpose without incurring an indebtedness prohibited hereby.

The Obligations are limited obligations of the Commission payable, as to principal thereof, and redemption premium, if any, upon the redemption of any thereof, and interest thereon, solely from the Trust Estate as provided herein and the Commission is not obligated to pay them except from the Trust Estate. The Obligations do not constitute a debt or liability of the Commonwealth or of any political subdivision of the Commonwealth other than the Commission, an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code, or a pledge of the full faith and credit of the Commonwealth or of any political subdivision of the Commonwealth.

**Section 11.02 Limitation of Rights; Third Party Beneficiary.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Indenture or the Obligations is intended or shall be construed to give to any Person other than the Bondholders and each Secured Creditor any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions herein contained; this Indenture and all of the covenants, conditions and provisions herein being intended to be and being for the sole and exclusive benefit of the Bondholders and each Secured Creditor. Any consent right set forth herein of the TIFIA Lender shall not be applicable if the Obligation evidenced by the TIFIA Loan has been repaid in full.

**Section 11.03 Rights of Credit Providers.** (a) A Supplemental Indenture authorizing a Series of Obligations may provide that any Credit Provider providing a Credit Support Instrument with respect to Obligations of such Series may exercise any right under this Indenture given to the Owners of the Obligations to which such Credit Support Instrument relates; provided that no Credit Support Instrument will be entered into without consent of the TIFIA Lender while the Obligations in the form of or securing the TIFIA Loan Agreement are outstanding.

(b) All provisions under this Indenture authorizing the exercise of rights by a Credit Provider with respect to consents, approvals, directions, waivers, appointments, requests or other actions, shall not be deemed to require or permit such consents, approvals, directions, waivers, appointments, requests or other actions (and shall be read as if the Credit Provider were not mentioned therein) during any period during which there is a default by such Credit Provider under the applicable Credit Support Instrument or after the applicable Credit Support Instrument shall at any time for any reason cease to be valid and binding on the Credit Provider, or shall be declared to be null and void by final judgment of a court of competent jurisdiction, or after the Credit Support Instrument has been rescinded, repudiated by the Credit Provider or terminated, or after a receiver, conservator or liquidator has been appointed for the Credit Provider or if the Credit Provider does not have an Acceptable Credit Rating. All provisions relating to the rights of a Credit Provider shall be of no further force and effect if all amounts owing to the Credit Provider under a Credit Support Instrument have been paid and the Credit Support Instrument provided by such Credit Provider is no longer in effect.

**Section 11.04 Severability.** If any provision of this Indenture is held to be in conflict with any applicable statute or rule of law or is otherwise held to be unenforceable for any reason whatsoever, such circumstances shall not have the effect of rendering the other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatsoever. If any one or more of the provisions contained in this Indenture or in the Obligations shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Indenture and such invalidity, illegality or unenforceability shall not affect any other provision of this Indenture, and this Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The Commission hereby declares that it would have executed this Indenture and each and every other section, paragraph, sentence, clause or phrase hereof, and authorized the issuance of the Obligations pursuant to this Indenture, irrespective of the fact that any one or more sections, paragraphs, sentences, clauses or phrases of this Indenture may be held illegal, invalid or unenforceable.

**Section 11.05 Notices.** Except as otherwise provided herein, it shall be sufficient service or giving of notice, request, complaint, demand or other paper if the same shall be duly mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Commission:

Hampton Roads Transportation Accountability Commission

723 Woodlake Drive, Chesapeake, Virginia 23220  
Attention: Executive Director

Telephone: (757) 420-8300  
Fax: (757) 523-4881

If to the Trustee:

[\_\_\_\_\_]

[\_\_\_\_\_]

[\_\_\_\_\_]

Attention: [\_\_\_\_\_]

Telephone: [\_\_\_\_\_]  
Fax: [\_\_\_\_\_]

The Commission and the Trustee by notice given hereunder may designate any different addresses to which subsequent notices, certificates or other communications shall be sent, or addresses or other instructions for the giving of Electronic notice, but no notice directed to any one such entity shall be thereby required to be sent to more than two addresses.

**Section 11.06 Payments Due on Non-Business Days.** Except as specifically provided otherwise in a Supplemental Indenture or in the TIFIA Loan Agreement, any payment or transfer

that would otherwise become due on a day that is not a Business Day need not be made on such day but shall be made on the next succeeding Business Day, with the same force and effect as if made on the date due, and no interest shall accrue on the amount of such payment or transfer for the period from and after the calendar date due.

**Section 11.07 Captions.** The captions or headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

**Section 11.08 Virginia Law.** This Indenture shall be construed and governed in accordance with the laws of the Commonwealth of Virginia.

**Section 11.09 Effective Date.** This Indenture shall become effective upon its execution and delivery.

**Section 11.10 Execution in Several Counterparts.** This Indenture may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the Commission and Trustee shall preserve undestroyed, shall together constitute but one and the same instrument.

**IN WITNESS WHEREOF**, the parties hereto have caused this Master Indenture to be executed by their duly authorized officers as of the day and year first written above.

**HAMPTON ROADS TRANSPORTATION  
ACCOUNTABILITY COMMISSION**

By: \_\_\_\_\_  
[Title]

\_\_\_\_\_  
as Trustee

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**  
**FORM OF FUNDS TRANSFER CERTIFICATE**

[To come]

**EXHIBIT B**

**DIAGRAM/SCHEMATIC AND DESCRIPTION OF  
HAMPTON ROADS EXPRESS LANES NETWORK**

[To come]



**HAMPTON ROADS TRANSPORTATION FUND and  
HAMPTON ROADS REGIONAL TRANSIT FUND  
FINANCIAL REPORT  
FY2014 – FY2021  
Period Ending September 30, 2020**

The HRTAC staff has prepared the attached September 2020 financial report based on data received to date from the Virginia Department of Transportation.

<b><u>Revenues</u></b>	<b><u>Inception to September 2020</u></b>	<b><u>FY2021 YTD</u></b>	<b><u>September 2020</u></b>
<b>Total Gross Revenues<sup>1</sup></b>	2,410,308,393	77,987,060	19,308,317
State Sales & Use Tax <sup>1</sup>	963,092,732	39,913,157	13,371,704
Local Fuels Tax <sup>1</sup>	313,501,681	14,377,726	4,969,314
Interest	4,055,341	108,829	67,980
Investment Income	71,761,062	1,404,845	293,903
Bond Proceeds	1,036,103,579	-	-
HRRTF	21,789,078	21,789,078	600,495
HRRTF Interest	4,920	4,920	4,920

<b><u>Expenditures</u></b>	<b><u>Inception to September 2020</u></b>	<b><u>FY2021 YTD</u></b>	<b><u>September 2020</u></b>
<b>Total Expenditures</b>	947,413,507	26,000,927	15,672,068
Projects	859,143,973	13,546,749	<b>11,457,285</b>
DMV & DOT Admin. Fees	909,463	-	-
Investment Fees	1,418,585	58,762	<b>19,009</b>
Bond Interest Expenses	76,083,097	11,642,831	<b>3,880,944</b>
Operating Expenses	9,858,389	752,586	<b>314,830</b>

**Cash Balance**

September 30, 2020 Ending Cash/Cash Equivalents	<b>\$ 1,462,894,885</b>
-------------------------------------------------	-------------------------

**Encumbered Balance**

Balance of Encumbered (through FY2027)	<b>\$ 3,772,461,457</b>
----------------------------------------	-------------------------

Allocation	4,631,605,431
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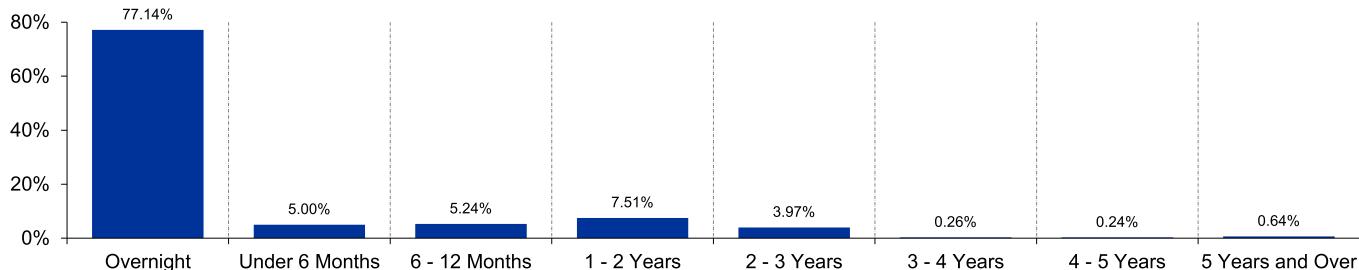
Less: Project Expenditures	859,143,973
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1 Beginning in June 2020, State Sales Tax and Local Fuels Tax are recorded either one month (sales tax) or two months (fuels tax) earlier than in previous periods, due to additional information received from the Commonwealth of Virginia on the timing of the source transactions for tax revenues.

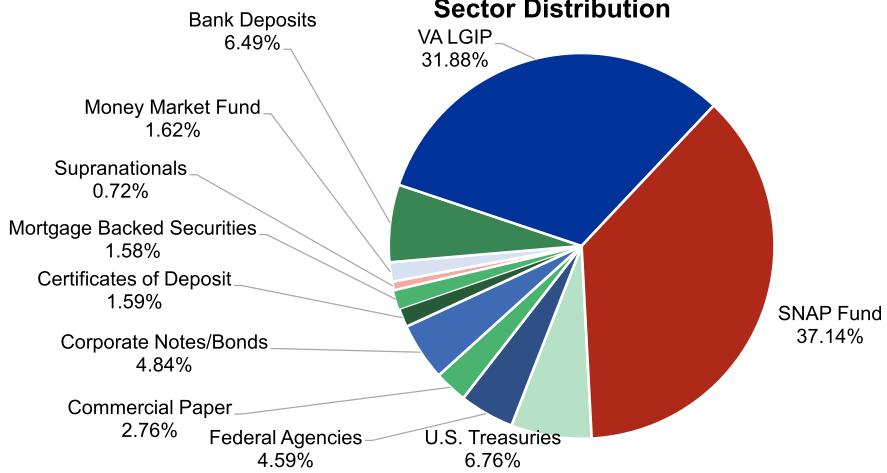
**Hampton Roads Transportation Accountability Commission**  
**Summary of Cash and Investments**  
**For September 2020**

Portfolio	Yield at Cost	Yield at Market	Balances at Cost	Balances at Market	% of Total
Union Checking	0.00%	0.00%	1,000,000	1,000,000	0.07%
Union Sweep	0.35%	0.35%	7,345,501	7,345,501	0.51%
Union Money Market	0.35%	0.35%	4,755	4,755	0.00%
Union General	0.35%	0.35%	85,132,422	85,132,422	5.91%
VA LGIP	0.22%	0.22%	459,007,373	459,007,373	31.88%
Enhanced Cash Portfolio	1.49%	0.30%	211,690,062	213,062,769	14.80%
Core Portfolio	1.73%	0.44%	136,716,213	139,410,344	9.68%
SNAP Fund	0.30%	0.30%	534,789,531	534,789,531	37.14%
<b>Total</b>			<b>\$ 1,435,685,857</b>	<b>\$ 1,439,752,695</b>	<b>100.00%</b>

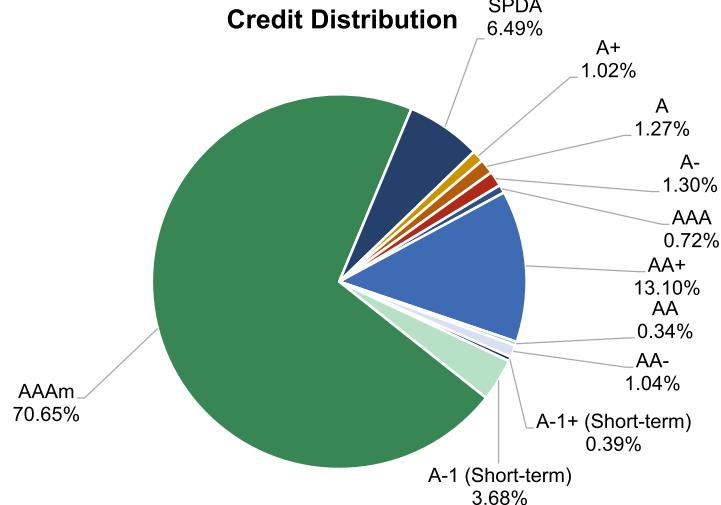
**Total Maturity Distribution**



**Sector Distribution**



**Credit Distribution**



All charts are based on market value as of 9/30/20

This material is for general informational purposes only and is not intended to provide specific advice or a specific recommendation.

**Hampton Roads Transportation Accountability Commission**  
**Interest and Investment Income**  
**Inception - September 2020**

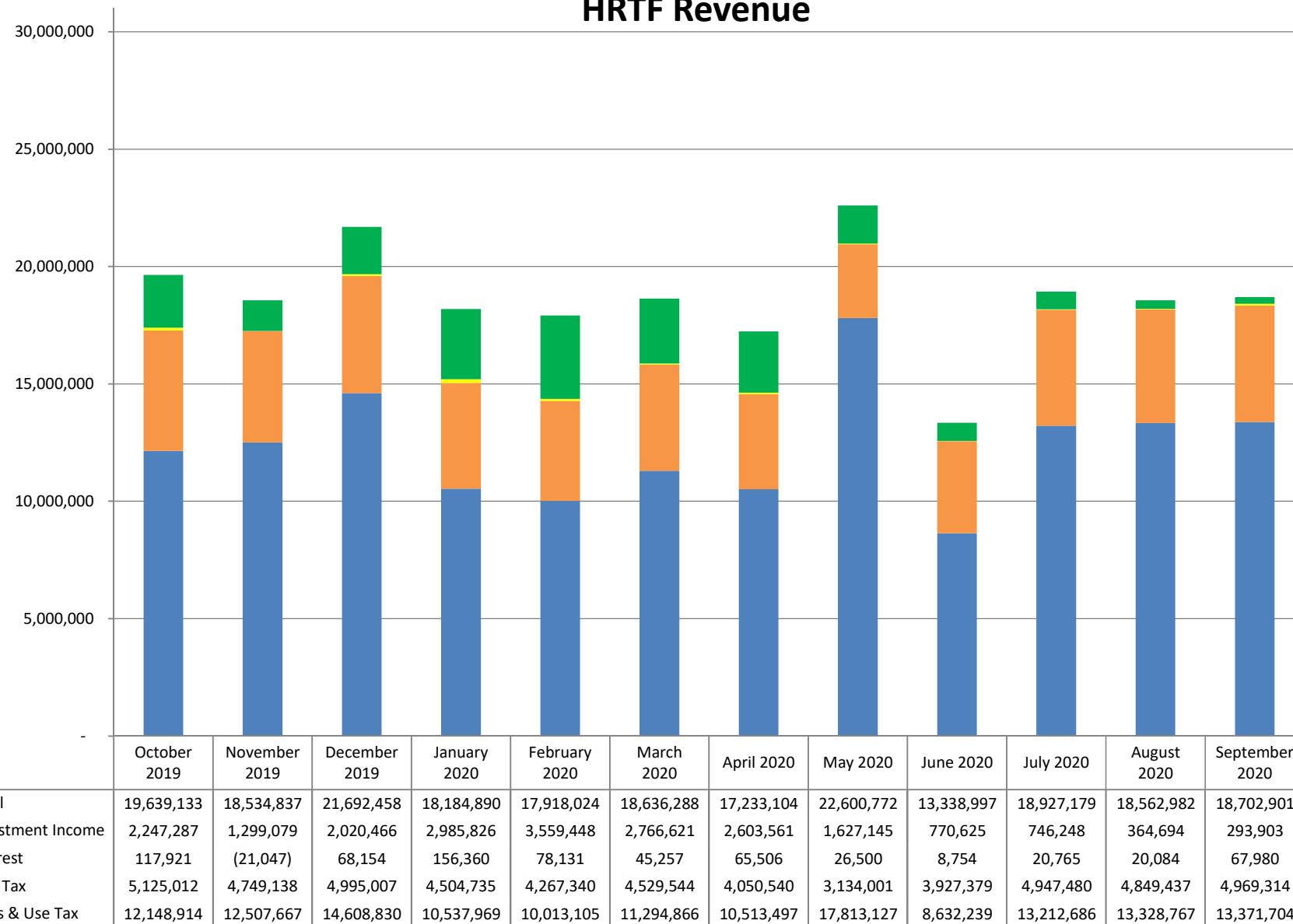
	<u>FY2014</u>	<u>FY2015</u>	<u>FY2016</u>	<u>FY2017</u>	<u>FY2018</u>	<u>FY2019</u>	<u>FY2020</u>	<u>FY2021</u>	<u>Total</u>
HRTF Interest Income	\$ 363,854	\$ 1,027,959	\$ 272,261	\$ 291,738	\$ 321,499	\$ 1,000,093	\$ 669,108	\$ 108,829	\$ 4,055,341
HRTF Investment Income	-	368,310	3,993,773	980,870	8,868,404	29,869,111	26,275,750	1,404,845	71,761,063
HRRTF Interest Income	-	-	-	-	-	-	-	4,920	\$ 4,920
<b>Total</b>	<b>\$ 363,854</b>	<b>\$ 1,396,269</b>	<b>\$ 4,266,033</b>	<b>\$ 1,272,608</b>	<b>\$ 9,189,903</b>	<b>\$ 30,869,204</b>	<b>\$ 26,944,858</b>	<b>\$ 1,518,594</b>	<b>\$ 75,821,324</b>

Notes:

"HRTF Interest Income" includes interest from Union Bank money market, sweep, and general accounts, as well as Regional Tax Interest/Interest Refund Adjustments.

"HRTF Investment Income" in FY2019 and FY2020 includes income from PFMAM (US Bank) core and enhanced cash, LGIP, and SNAP accounts. FY2014-2018 totals also include income from Sterling and Union Bank.

## HRTF Revenue



Notes: November 2018 Wholesale Fuels Tax revenue includes a \$9,865,900 Special Audit Assessment adjustment sourced from vendor audit settlement.

January 2019 Wholesale Fuels Tax revenue includes \$510,330 in adjustments from a Special Audit Assessment and a vendor audit settlement.

February 2019 Wholesale Fuels Tax revenue includes \$806,491 from a vendor audit assessment.

**Hampton Roads Transportation Fund (HRTF)**  
*Total of Sales & Use and Fuels Taxes*  
*Summary*

	Gross Revenue									Expenditures						Cumulative Balance 7/1/13 - 9/30/20
	Sales & Use Tax			Investment Income		Bond Proceeds		HRRTF		Projects		Dept of Tax Admin Fee	Investment Fees	Bond Expenses	Operating Expenses	
	Fuels Tax	Interest	Income	Bond Proceeds	HRRTF	Interest	Total	Projects	Admin Fee	Investment Fees	Bond Expenses	Operating Expenses	Total			
July 2013 - September 2019	\$ 815,109,358	\$ 259,452,754	\$ 3,400,977	\$ 50,476,161	\$ 583,270,073	\$ -	\$ -	\$ 1,711,709,323	\$ 566,546,098	\$ 826,678	\$ 1,184,809	\$ 43,696,569	\$ 5,823,740	\$ 618,077,894	\$ 1,093,631,429	
October 2019	12,148,914	5,125,012	117,921	2,247,287				19,639,133	14,129,508	-	19,696	2,154,506	349,475	16,653,185	1,096,617,377	
November 2019	12,507,667	4,749,138	(21,047)	1,299,079				18,534,837	21,970,226	-	19,099	2,154,506	76,246	24,220,076	1,090,932,139	
December 2019	14,608,830	4,995,007	68,154	2,020,466	452,833,507			474,525,965	12,188,878	-	19,789	2,960,177	1,059,078	16,227,922	1,549,230,182	
January 2020	10,537,969	4,504,735	156,360	2,985,826				18,184,890	19,348,861	-	19,751	3,880,944	171,694	23,421,249	1,543,993,823	
February 2020	10,013,105	4,267,340	78,131	3,559,448				17,918,024	32,785,799	-	18,480	3,880,944	171,762	36,856,984	1,525,054,863	
March 2020	11,294,866	4,529,544	45,257	2,766,621				18,636,288	44,512,900	-	19,830	3,880,944	239,547	48,653,221	1,495,037,929	
April 2020	10,513,497	4,050,540	65,506	2,603,561				17,233,104	12,842,838	-	19,243	3,880,944	149,574	16,892,600	1,495,378,433	
May 2020	17,813,127	3,134,001	26,500	1,627,145				22,600,772	16,011,917	-	19,872	3,880,944	162,423	20,075,156	1,497,904,049	
June 2020	8,632,239	3,927,379	8,754	770,625				13,338,997	105,260,202	82,785	19,255	(5,930,212)	902,264	100,334,294	1,410,908,752	
July 2020	13,212,686	4,947,480	20,765	746,248	20,534,447			39,461,626	-	-	19,848	3,880,944	167,463	4,068,255	1,446,302,123	
August 2020	13,328,767	4,849,437	20,084	364,694	654,135			19,217,118	2,089,463	-	19,905	3,880,944	270,292	6,260,604	1,459,258,636	
September 2020	13,371,704	4,969,314	67,980	293,903		600,495	4,920	19,308,317	11,457,285	-	19,009	3,880,944	314,830	15,672,068	1,462,894,885	
Total 12 Months	\$ 147,983,373	\$ 54,048,926	\$ 654,364	\$ 21,284,902	\$ 452,833,507	\$ 21,789,078	\$ 4,920	\$ 698,599,070	\$ 292,597,876	\$ 82,785	\$ 233,776	\$ 32,386,528	\$ 4,034,649	\$ 329,335,614		
Grand Totals	\$ 963,092,732	\$ 313,501,681	\$ 4,055,341	\$ 71,761,063	\$ 1,036,103,580	\$ 21,789,078	\$ 4,920	\$ 2,410,308,393	\$ 859,143,974	\$ 909,463	\$ 1,418,585	\$ 76,083,097	\$ 9,858,389	\$ 947,413,508		
Less Balance of Encumbered (through FY2027)															\$ (3,772,461,457)	
Total Net Available															\$ (2,309,566,572)	

## Notes

November 2018 Wholesale Fuels Tax revenue includes a \$9,865,900 Special Audit Assessment adjustment sourced from vendor audit settlement.

January 2019 Wholesale Fuels Tax revenue includes \$510,330 in adjustments from a Special Audit Assessment and a vendor audit settlement.

February 2019 Wholesale Fuels Tax revenue includes \$806,491 from a vendor audit assessment.

June 2019 Sales & Use Tax revenue includes \$7,424,592 of FY2019 AST Estimated Sales & Use Tax revenue

For audit purposes, the January through December 2019 investment income and bond expenses have been updated to reflect the gain on investments (on bond proceeds) held by the trustee and the full bond interest expense.

June 2019 Department of Taxation Administrative Fee is a \$199,993 fee charged by the Department of Motor Vehicles for fuels tax audit costs.

December 2019 Revenues include proceeds from the issuance of Intermediate Lien Bond Anticipation Notes, Series 2019A, dated December 17, 2019.

**Table 1 - Total HRTAC Revenues**  
**Hampton Roads Transportation Fund (HRTF) & Hampton Roads Regional Transit Fund (HRRTF)**  
*Total of Sales & Use, Fuels Taxes and Transit*  
*Fiscal Year 2021*

Locality	Total FY2014 - FY2020	Previous FY2021	September 2020	Total YTD FY2021	Total
<i>Chesapeake</i>	\$ 223,633,516	\$ 6,660,917	\$ 3,496,557	\$ 10,157,474	\$ 233,790,990
<i>Franklin</i>	13,388,549	403,395	234,249	637,644	14,026,193
<i>Hampton</i>	89,038,564	2,616,103	1,320,853	3,936,956	92,975,520
<i>Isle of Wight</i>	19,466,436	532,497	298,215	830,712	20,297,148
<i>James City</i>	54,046,414	1,341,173	678,058	2,019,231	56,065,645
<i>Newport News</i>	130,358,262	3,864,044	1,863,583	5,727,627	136,085,889
<i>Norfolk</i>	171,444,852	5,187,316	2,639,636	7,826,952	179,271,805
<i>Poquoson</i>	3,233,039	97,813	54,592	152,405	3,385,443
<i>Portsmouth</i>	43,286,558	1,283,142	695,742	1,978,884	45,265,441
<i>Southampton</i>	6,426,959	187,593	99,354	286,948	6,713,907
<i>Suffolk</i>	62,657,267	2,115,526	1,124,606	3,240,132	65,897,399
<i>Virginia Beach</i>	325,024,589	10,112,591	4,826,037	14,938,628	339,963,217
<i>Williamsburg</i>	25,350,751	531,696	255,506	787,203	26,137,953
<i>York</i>	54,559,268	1,404,563	754,030	2,158,593	56,717,861
<b>Total <sup>d</sup></b>	<b>1,221,915,024</b>	<b>36,338,370</b>	<b>18,341,018</b>	<b>54,679,388</b>	<b>1,276,594,413</b>
Interest <sup>a</sup>	3,946,512	40,849	67,980	108,829	4,055,341
Investment Income <sup>b</sup>	70,356,217	1,110,942	293,903	1,404,845	71,761,062
Bond Proceeds	1,036,103,580	-	-	-	1,036,103,579
HRRTF Income	-	21,188,582	600,495	21,789,078	21,789,078
HRRTF Interest	-	-	4,920	4,920	4,920
<b>Total Revenues</b>	<b>2,332,321,334</b>	<b>58,678,744</b>	<b>19,308,317</b>	<b>77,987,060</b>	<b>2,410,308,393</b>
Project Expenses	(845,597,225)	(2,089,463)	(11,457,285)	(13,546,749)	(859,143,973)
DMV & Dept. of Tax Admin Fees	(909,463)	-	-	-	(909,463)
Investment Fees (Sterling&PBMAM)	(1,359,823)	(39,753)	(19,009)	(58,762)	(1,418,585)
Bond Interest Expenses <sup>e</sup>	(64,440,266)	(7,761,888)	(3,880,944)	(11,642,831)	(76,083,097)
Operating Expense	(9,105,803)	(437,756)	(314,830)	(752,586)	(9,858,389)
Cash Balance	\$ 1,410,908,753	\$ 48,349,884	\$ 3,636,249	\$ 51,986,133	\$ 1,462,894,885
Less Balance of Encumbered	(3,782,103,576)				(3,772,461,457)
Net Available Cash	(2,371,194,823)				\$ (2,309,566,572)
Updated forecast <sup>c</sup>	\$ 1,215,454,951	\$ 32,538,187	\$ 17,586,512	\$ 50,124,699	\$ 1,265,579,650
Total Revenue - Forecast (under)/over	\$ 6,460,073	\$ 3,800,183	\$ 754,506	\$ 4,554,689	\$ 11,014,763

**Notes:**

<sup>a</sup> Includes interest from Union Bank money market, sweep, and general accounts, as well as Regional Tax Interest/Interest Refund Adjustments.

<sup>b</sup> FY2019 and FY2020 include income from PFMAM (US Bank), LGIP, and SNAP accounts. FY2014-2018 includes income from Sterling and Union Bank.

<sup>c</sup> Beginning in June 2020, State Sales Tax and Local Fuels Tax are recorded either one month (sales tax) or two months (fuels tax) earlier than in prior accounting periods, due to additional information received from the Commonwealth of Virginia on the timing of the source transactions for tax revenues. The change is retroactive and the prior year amounts have been restated.

## Table 1A - State Sales & Use Tax

### Hampton Roads Transportation Fund (HRTF)

#### *State Sales & Use Tax*

#### *Fiscal Year 2021*

Locality	Total FY2014 - FY2020	Previous FY2021	September 2020	Total YTD FY2021	Total
<i>Chesapeake</i>	\$ 167,101,988	\$ 4,848,626	2,572,347	\$ 7,420,973	\$ 174,522,961
<i>Franklin</i>	7,099,174	186,136	94,953	281,089	7,380,264
<i>Hampton</i>	65,011,642	1,796,499	919,003	2,715,502	67,727,144
<i>Isle of Wight</i>	10,958,098	322,727	179,956	502,683	11,460,780
<i>James City</i>	44,784,453	1,074,175	523,918	1,598,093	46,382,546
<i>Newport News</i>	101,448,008	2,923,989	1,412,330	4,336,319	105,784,327
<i>Norfolk</i>	134,953,873	3,848,472	1,899,896	5,748,368	140,702,240
<i>Poquoson</i>	2,275,728	70,177	40,727	110,904	2,386,632
<i>Portsmouth</i>	29,916,585	858,433	466,905	1,325,337	31,241,923
<i>Southampton</i>	2,735,028	67,591	39,148	106,739	2,841,767
<i>Suffolk</i>	40,302,525	1,258,766	701,753	1,960,519	42,263,044
<i>Virginia Beach</i>	255,804,258	7,875,169	3,756,445	11,631,614	267,435,872
<i>Williamsburg</i>	19,633,099	409,593	196,320	605,914	20,239,013
<i>York</i>	41,155,115	1,001,100	568,004	1,569,103	42,724,218
<b>Total<sup>1</sup></b>	<b>\$ 923,179,574</b>	<b>\$ 26,541,453</b>	<b>\$ 13,371,704</b>	<b>\$ 39,913,157</b>	<b>\$ 963,092,732</b>
Updated Forecast	914,271,042	22,840,085	11,467,817	34,307,902	948,578,944
Diff(under)/over	8,908,532	3,701,368	1,903,886.96	5,605,255	14,513,788

<sup>1</sup> Beginning in June 2020, State Sales Tax and Local Fuels Tax are recorded either one month (sales tax) or two months (fuels tax) earlier than in prior accounting periods, due to additional information received from the Commonwealth of Virginia on the timing of the source transactions for tax revenues. The change is retroactive and the prior year amounts have been restated.

## Table 1B - Local Fuels Tax

### Hampton Roads Transportation Fund (HRTF)

#### *Local Fuels Tax*

#### *Fiscal Year 2021*

Locality	Total FY2014 - FY2020	Previous FY2021	September 2020	Total YTD FY2021	Total
<i>Chesapeake</i>	56,531,528	\$ 1,812,291	\$ 924,210	\$ 2,736,501	\$ 59,268,029
<i>Franklin</i>	6,289,375	217,259	139,296	356,555	6,645,930
<i>Hampton</i>	24,026,922	819,604	401,850	1,221,454	25,248,376
<i>Isle of Wight</i>	8,508,339	209,770	118,259	328,029	8,836,368
<i>James City</i>	9,261,961	266,999	154,140	421,138	9,683,099
<i>Newport News</i>	28,910,253	940,055	451,253	1,391,308	30,301,561
<i>Norfolk</i>	36,490,980	1,338,844	739,740	2,078,585	38,569,565
<i>Poquoson</i>	957,311	27,635	13,865	41,501	998,811
<i>Portsmouth</i>	13,369,972	424,709	228,837	653,546	14,023,519
<i>Southampton</i>	3,691,931	120,002	60,207	180,209	3,872,140
<i>Suffolk</i>	22,354,741	856,760	422,853	1,279,613	23,634,355
<i>Virginia Beach</i>	69,220,331	2,237,422	1,069,592	3,307,014	72,527,345
<i>Williamsburg</i>	5,717,652	122,103	59,186	181,289	5,898,941
<i>York</i>	13,404,154	403,463	186,027	589,490	13,993,644
<b>Total<sup>1</sup></b>	<b>\$ 298,735,450</b>	<b>\$ 9,796,917</b>	<b>\$ 4,969,314</b>	<b>\$ 14,766,231</b>	<b>\$ 313,501,681</b>
Updated Forecast	301,183,909	9,698,102	6,118,695	15,816,797	317,000,706
Diff(under)/over	(2,448,459)	98,815	(1,149,381)	(1,050,566)	(3,499,025)

Note: November 2018 Wholesale Fuels Tax revenue included a \$9,865,900 Special Audit Assessment adjustment sourced from vendor audit settlement.

<sup>1</sup> Beginning in June 2020, State Sales Tax and Local Fuels Tax are recorded either one month (sales tax) or two months (fuels tax) earlier than in prior accounting periods, due to additional information received from the Commonwealth of Virginia on the timing of the source transactions for tax revenues. The change is retroactive and the prior year amounts have been restated.

## Table 1C - HRRTF Revenue

### Hampton Roads Regional Transit Fund (HRRTF)

*Fiscal Year 2021*

Locality	September		Total YTD		Total
	Previous	FY2021	2020	FY2021	
Chesapeake	\$ 322,742	\$ 121,711	\$ 444,453	\$ 444,453	
Hampton	63,434	43,876	107,310	107,310	
Newport News	125,328	76,480	201,808	201,808	
Norfolk	155,104	85,942	241,046	241,046	
Portsmouth	65,231	32,952	98,184	98,184	
Virginia Beach	456,742	239,534	696,276	696,276	
<b>Total</b>	<b>\$ 1,188,581</b>	<b>\$ 600,495</b>	<b>\$ 1,789,077</b>	<b>\$ 1,789,077</b>	
Annual Transit Revenue	20,000,000	-	20,000,000	20,000,000	
HRRTF Interest Income	-	4,920	4,920	4,920	\$ 4,920
<b>Total Revenues</b>	<b>\$ 21,188,581</b>	<b>\$ 605,415</b>	<b>\$ 21,793,997</b>	<b>\$ 21,793,997</b>	
Forecast	20,885,364	494,351	21,379,715	21,379,715	
Total Revenue - Forecast (under)/over	303,217	106,144	409,362	409,362	

**Table 2 - Allocations**

**Hampton Roads Transportation Fund (HRTF)**  
**Allocations**  
**Fiscal Year 2021**

Project	Total FY2014 - FY2020	Previous FY2021	September 2020	Total YTD FY2021	Total
<i>I-64 Peninsula Widening</i>					
<i>UPC 104905 - Segment 1 - Construction</i>	\$ 11,608,385	\$ -	\$ -	\$ -	\$ 11,608,385
<i>UPC 106665 - Segment 2 - PE/ROW/Construction</i>	175,832,897	-	-	-	175,832,897
<i>UPC 109790/106689 - Segment 3 - PE</i>	10,000,000	-	-	-	10,000,000
<i>UPC 109790/106689 - Segment 3 - Construction</i>	112,893,996	-	-	-	112,893,996
<i>I-64/264 Interchange Improvement</i>					
<i>UPC 57048/108042 - Phase I - PE/ROW</i>	15,071,063	-	-	-	15,071,063
<i>UPC 57048/108042 - Phase I - Construction</i>	137,023,653	-	-	-	137,023,653
<i>UPC 17630/108041 - Phase II - PE/ROW</i>	54,592,576	-	-	-	54,592,576
<i>UPC 17630/108041 - Phase II - Construction</i>	73,157,062	-	-	-	73,157,062
<i>UPC 106693 - Phase III - PE &amp; ROW</i>	10,000,000	-	-	-	10,000,000
<i>I-64 Southside Widening/High-Rise Bridge</i>					
<i>UPC 106692 - Phase I - PE</i>	12,200,000	-	-	-	12,200,000
<i>UPC 106692/108990 - Phase I - ROW/Construction</i>	419,756,220	-	-	-	419,756,220
<i>I-64 HRBT Expansion Project</i>					
<i>UPC 115008 - I-64 HRBT Expansion Project D-B Contract</i>	3,004,569,251	-	-	-	3,004,569,251
<i>UPC 115009 - I-64 HRBT Expansion Project Owners Oversight</i>	548,900,330	-	-	-	548,900,330
<i>HRCS Preferred Alternative Refinement - HRBT</i>					
<i>UPC 110577 - SEIS</i>	30,000,000	-	-	-	30,000,000
<i>460/58/13 Connector Study - UPC 106694 - PE</i>	1,095,368	-	-	-	1,095,368 *
<i>Bowers Hill Interchange Study - UPC 111427</i>	4,000,000	-	3,904,630	3,904,630	7,904,630
<i>HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)</i>	7,000,000	-	-	-	7,000,000
<b>Total</b>	<b>\$ 4,627,700,801</b>	<b>\$ -</b>	<b>\$ 3,904,630</b>	<b>\$ 3,904,630</b>	<b>\$ 4,631,605,431</b>

\* Remaining project funds were deallocated based on action Consent Item 5B of the 11/21/2019 HRTAC Regular Meeting. SPA Floatdown agreement with VDOT was executed 12/11/2019.

**Table 3 - Expenditures**

Hampton Roads Transportation Fund (HRTF)

*Expenditures  
Fiscal Year 2021*

Project	Total FY2014 - FY2020	Previous FY2021	September 2020	Total YTD FY2021	Total
<i>I-64 Peninsula Widening</i>					
<i>UPC 104905/111926 - Segment 1 - PE/Construction</i>	\$ 11,608,384	\$ -	\$ -	\$ -	\$ 11,608,384
<i>UPC 106665 - Segment 2 - PE/ROW/Construction</i>	154,979,139	2,246	3,938	6,184	154,985,323
<i>UPC 109790/106689 - Segment 3 - PE</i>	5,468,986	4,771	8,752	13,523	5,482,509
<i>UPC 109790/106689 - Segment 3 - Construction</i>	-	-	-	-	-
<i>I-64/264 Interchange Improvement</i>					
<i>UPC 57048/108042 - Phase I - PE/ROW</i>	15,071,063	-	-	-	15,071,063
<i>UPC 57048/108042 - Phase I - Construction</i>	119,720,152	23,212	5,976	29,188	119,749,340
<i>UPC 17630/108041 - Phase II - PE/ROW</i>	54,592,299	-	-	-	54,592,299
<i>UPC 17630/108041 - Phase II - Construction</i>	16,266,772	52,532	5,028,789	5,081,321	21,348,094
<i>UPC 106693 - Phase III - PE &amp; ROW</i>	2,201,527	31,788	13,976	45,765	2,247,291
<i>I-64 Southside Widening/High-Rise Bridge</i>					
<i>UPC 106692 - Phase I - PE</i>	12,189,098	-	-	-	12,189,098
<i>UPC 106692/108990 - Phase I - ROW/Construction</i>	116,813,882	1,784,284	6,235,779	8,020,063	124,833,945
<i>I-64 HRBT Expansion Project</i>					
<i>UPC 115008 - I-64 HRBT Expansion Project D-B Contract</i>	276,300,147	-	-	-	276,300,147
<i>UPC 115009 - I-64 HRBT Expansion Project Owners Oversight</i>	25,730,830	185,152	-	185,152	25,915,982
<i>HRCS Preferred Alternative Refinement - HRBT UPC 110577 - SEIS</i>	28,800,287	-	-	-	28,800,287
<i>460/58/13 Connector Study - UPC 106694 - PE</i>	1,095,368	-	-	-	1,095,368
<i>Bowers Hill Interchange Study - UPC 111427</i>	2,064,879	5,477	63,621	69,098	2,133,977
<i>HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)</i>	2,694,413	-	96,453	96,453	2,790,866
<b>Total</b>	<b>\$ 845,597,225</b>	<b>\$ 2,089,463</b>	<b>\$ 11,457,285</b>	<b>\$ 13,546,749</b>	<b>\$ 859,143,973</b>

**Table 3A - Bond-Reimbursed Expenditures**

Hampton Roads Transportation Fund (HRTF)

**Bond Reimbursements**  
**Fiscal Year 2021**

Project	Total FY2014 - FY2020	September 2020	Total YTD FY2021	Total
	Previous FY2021			
<i>I-64 Peninsula Widening</i>				
UPC 104905/111926 - Segment 1 - PE/Construction	\$ 10,063,882	\$ -	\$ -	\$ 10,063,882
UPC 106665 - Segment 2 - PE/ROW/Construction	154,979,139	2,246	3,938	6,184
UPC 109790/106689 - Segment 3 - PE	5,468,986	4,771	8,752	13,523
UPC 109790/106689 - Segment 3 - Construction	-	-	-	-
<i>I-64/264 Interchange Improvement</i>				
UPC 57048/108042 - Phase I - PE/ROW	15,071,063	-	-	-
UPC 57048/108042 - Phase I - Construction	119,720,152	23,212	5,976	29,188
UPC 17630/108041 - Phase II - PE/ROW	54,592,299	-	-	-
UPC 17630/108041 - Phase II - Construction	16,266,772	52,532	5,028,789	5,081,321
UPC 106693 - Phase III - PE & ROW	-	-	-	-
<i>I-64 Southside Widening/High-Rise Bridge</i>				
UPC 106692 - Phase I - PE	12,189,098	-	-	-
UPC 106692/108990 - Phase I - ROW/Construction	116,813,882	1,784,284	6,235,779	8,020,063
<i>I-64 HRBT Expansion Project</i>				
UPC 115008 - I-64 HRBT Expansion Project D-B Contract	-	-	-	-
UPC 115009 - I-64 HRBT Expansion Project Owners Oversight	-	-	-	-
<i>HRCS Preferred Alternative Refinement - HRBT</i>				
UPC 110577 - SEIS	-	-	-	-
460/58/13 Connector Study - UPC 106694 - PE	-	-	-	-
<i>Bowers Hill Interchange Study - UPC 111427</i>	-	-	-	-
<i>HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)</i>	-	-	-	-
<b>Total</b>	<b>\$ 505,165,273</b>	<b>\$ 1,867,045</b>	<b>\$ 11,283,235</b>	<b>\$ 13,150,280</b>
				<b>\$ 518,315,553</b>

**Table 3B - Non-Bond Reimbursed Expenditures**

Hampton Roads Transportation Fund (HRTF)

*Expenditures  
Fiscal Year 2021*

Project	Total FY2014 - FY2020	Previous FY2021	September 2020	Total YTD FY2021	Total
<i>I-64 Peninsula Widening</i>					
UPC 104905/111926 - Segment 1 - PE/Construction	\$ 1,544,502	\$ -	\$ -	\$ -	\$ 1,544,502
UPC 106665 - Segment 2 - PE/ROW/Construction	-	-	-	-	-
UPC 109790/106689 - Segment 3 - PE	-	-	-	-	-
UPC 109790/106689 - Segment 3 - Construction	-	-	-	-	-
<i>I-64/264 Interchange Improvement</i>					
UPC 57048/108042 - Phase I - PE/ROW	-	-	-	-	-
UPC 57048/108042 - Phase I - Construction	-	-	-	-	-
UPC 17630/108041 - Phase II - PE/ROW	-	-	-	-	-
UPC 17630/108041 - Phase II - Construction	-	-	-	-	-
UPC 106693 - Phase III - PE & ROW	2,201,527	31,788	13,976	45,765	2,247,291
<i>I-64 Southside Widening/High-Rise Bridge</i>					
UPC 106692 - Phase I - PE	-	-	-	-	-
UPC 106692/108990 - Phase I - ROW/Construction	-	-	-	-	-
<i>I-64 HRBT Expansion Project</i>					
UPC 115008 - I-64 HRBT Expansion Project D-B Contract	276,300,147	-	-	-	276,300,147
UPC 115009 - I-64 HRBT Expansion Project Owners Oversight	25,730,830	185,152	-	185,152	25,915,982
HRCS Preferred Alternative Refinement - HRBT	UPC	28,800,287	-	-	28,800,287
110577 - SEIS					
460/58/13 Connector Study - UPC 106694 - PE	1,095,368	-	-	-	1,095,368
Bowers Hill Interchange Study - UPC 111427	2,064,879	5,477	63,621	69,098	2,133,977
HR Regional Connector Study - HRTPO (Remaining Projects of Third Crossing)	2,694,413	-	96,453	96,453	2,790,866
<b>Total</b>	<b>\$ 340,431,951</b>	<b>\$ 222,418</b>	<b>\$ 174,050</b>	<b>\$ 396,469</b>	<b>\$ 340,828,420</b>

**I-64 Peninsula Widening- Segment II****UPC 106665 (HRTAC)****Project Scope:**

From 1.05 miles west of Hummelsine Parkway/Marquis Center Pkwy/Rte 199 (Exit 242) to where the Segment I project ends at 0.54 miles east of Yorktown Road/Rte 238 (Exit 247) (7.1 miles)

- Additional 12' wide travel lanes and 12' wide shoulders within the existing median space
- Repair and widening of 9 bridges and 6 major culverts
- Reconstruction of existing roadway

**Project Financial Summary:**

<u>Project Budget (\$175,832,897):</u>	<u>Funds Expended (as of 12/31/2020):</u>	<u>Projected Cost Over/(Under):</u>
○ PE \$ 6,000,000	\$ 2,869,659	\$ 0
○ RW \$ 1,511,548	\$ 524,227	\$ 0
○ CN \$ 168,321,349	<u>\$ 151,659,907</u>	\$ 0
	\$ 155,053,793	

**Project Schedule:**

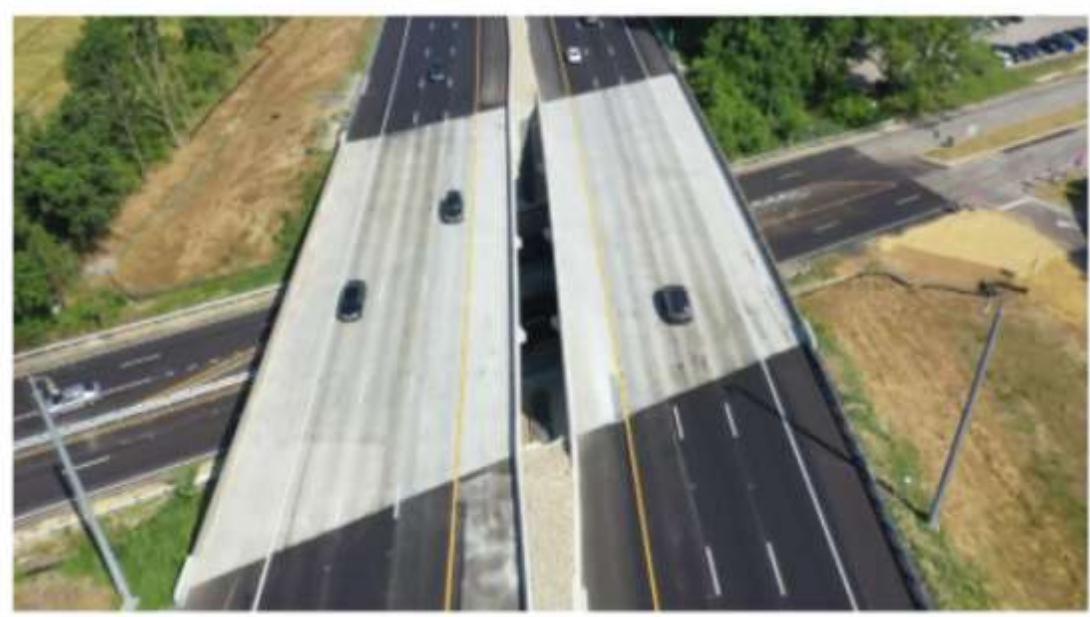
Notice To Proceed	February 2016
Project Completion	May 2019
Schedule Status	Completed

**Enabling Funding**

HRTAC	\$ 175,832,897
State/Federal	\$ _____.
	\$ 175,832,897

**Project Status:**

- In final contract close out

**Project Site (Looking West from the Yorktown Road overpass)**

**I-64 Peninsula Widening- Segment III**

**UPC 106689 (HRTAC)**  
**UPC 109790 (State / Federal)**

**Project Scope:**

From approximately 1.26 miles West of Rte 199/Lightfoot (Exit 234) to where the Segment II project ends at 1.05 miles west of Hummelsine Parkway/Marquis Center Pkwy /Rte 199 (Exit 242) (8.36 miles)

- Additional 12' wide travel lanes and 12' wide shoulders within the existing median space
- Replacement of the two Queen's Creek bridges, repair and widening of 4 bridges, 3 major culverts
- Reconstruction of existing mainline roadway

**Project Financial Summary:**

<u>Project Budget (\$244,045,973):</u>	<u>Funds Expended (as of 12/31/2020):</u>	<u>Projected Cost Over/(Under):</u>
○ PE \$ 10,000,000	\$ 5,567,176	\$ 0
○ RW \$ 12,000,000	\$ 626,265	\$ 0
○ CN \$ 222,045,973	<u>\$138,899,902</u>	<u>\$ 0</u>
	\$145,093,343	

**Project Schedule:**

Notice To Proceed	January 2018
Project Completion	December 2021*
Schedule Status	On-Schedule

Enabling Funding

HRTAC	\$ 122,893,996
State/Federal	<u>\$ 121,151,977</u>
	\$ 244,045,973

\*The Project Fixed Completion Date was extended from September to December 2021 to accommodate the additional required sound wall installation.

**Project Status:**

- Eastbound and Westbound traffic has been switched from the outside lanes to inside lanes
- Bridge widening construction underway at the Lakeshead Drive and Colonial Pkwy bridges
- Demolition of the existing eastbound Queens Creek Bridge is complete and new bridge construction is underway
- Noisewall construction is underway between the eastern project limits and the Queens Creek bridges



**Masonry construction complete at the Colonial Parkway Bridge**

**I-64/I-264- Phase I****UPC 108042 (HRTAC)**  
**UPC 57048 (State / Federal)****Project Scope:**

From the I-64 Twin Bridges to the I-264/Newtown Road Interchange

- Widening westbound I-64 by adding a second exit lane from Twin Bridges to the I-64/I-264 interchange
- Introducing a new two lane Collector-Distributor (C-D) roadway from I-64 to the Newtown Road interchange
- Constructing a new two-lane flyover ramp from westbound I-64 tying into the existing eastbound I-264 C-D road

**Project Financial Summary:**

<u>Project Budget (\$158,730,023):</u>	<u>Funds Expended (as of 12/31/2020):</u>	<u>Projected Cost Over/(Under):</u>
○ PE \$ 10,135,307	\$ 10,135,307	\$ 0
○ RW \$ 11,571,063	\$ 20,450,538	\$ 8,879,475
○ CN \$ 137,023,653	<u>\$ 120,607,055</u>	\$ 0
	\$ 151,192,900	

**Project Schedule:**

Notice To Proceed	October 2016
Project Completion	October 2019
Schedule Status	Completed

**Enabling Funding**

HRTAC	\$ 152,094,716
State/Federal	\$ 6,635,307
	\$ 158,730,023

**Project Status:**

- In final contract close out

**CD Road Bridge, 264 Flyover and Tidal Channel (low tide)**

### I-64/I-264- Phase II

**UPC 108041 (HRTAC)**  
**UPC 17630 (State / Federal)**

#### Project Scope:

From the I-264/Newtown Road Interchange to the I-264/Witchduck Road Interchange

- Extends the new C-D roadway from the Newtown Road interchange to the Witchduck Road interchange
- Reconfigure the Newtown Road and Witchduck Road interchange ramps south of I-264
- Constructing a new overpass that connects Greenwich Road south side of I-264 and Cleveland north of I-264

#### Project Financial Summary:

<u>Project Budget (\$194,503,887):</u>	<u>Funds Expended (as of 12/31/2020):</u>	<u>Projected Cost Over/(Under):</u>
○ PE \$ 14,082,810	\$ 14,082,810	\$ 0
○ RW \$ 54,392,666	\$ 54,464,162	\$ 71,496
○ CN \$ 126,028,411	<u>\$ 84,633,614</u>	\$ 0
	\$ 153,180,586	

#### Project Schedule:

Award	December 2017
Notice to Proceed	February 2018
Projected Completion	September 2021
Schedule Status	On-Schedule

#### Enabling Funding

HRTAC	\$ 127,749,638
State/Federal	<u>\$ 66,754,249</u>
	\$ 194,503,887

#### Project Status:

- Ground improvement piles for widening of bridge at Newtown Road (B601) complete, installing pile caps
- Ground improvements piles for widening of Bridge B602 east side 83%, west side 60%
- Greenwich Road Flyover five of seven deck sections complete
- West-bound Greenwich Road traffic shifted onto roundabout for median construction
- Utility and storm sewer work along Greenwich, Grayson, and Cleveland continues



**Newtown Bridge Pile Caps for Ground Improvements**

**Five of Seven Deck Sections Placed - Flyover Bridge (B603)**

**I-64 Southside Widening and High Rise Bridge - Phase I****UPC 106692 (HRTAC)**  
**UPC 108990 (State / Federal)****Project Scope:**

From approximately the I-64/264/664 Interchange at Bowers Hill and extending to the I-64/464 Interchange in Chesapeake

- Widening from 4 to 6 lanes
- Constructing a new High Rise Bridge parallel to and to the South of the existing High Rise Bridge

**Project Financial Summary:**

<u>Project Budget (\$524,613,765):</u>	<u>Funds Expended (as of 12/31/2020):</u>	<u>Projected Cost Over/(Under):</u>
○ PE \$ 12,200,000	\$ 12,189,098	\$ 0
○ RW \$ 18,726,000	\$ 10,594,502	\$ 0
○ CN \$ 493,687,765	<u>\$ 231,223,585</u>	<u>\$ 0</u>
	\$ 254,007,185	

**Project Schedule:**

Award	October 2017
Notice to Proceed	November 2017
Project Completion	December 2022 *
Schedule Status	On Schedule

**Enabling Funding**

HRTAC	\$ 431,956,220
State/Federal	<u>\$ 92,657,545</u>
	\$ 524,613,765

\* The Project Fixed Completion Date was extended to December 2022 to add roadway/drainage infrastructure for future Part-Time Shoulder Express Lanes.

**Project Status:**

- HRB substructure (piles, footings, columns, caps) continues. Superstructure (beam erection, deck forming) continues
- Great Bridge Blvd Bridge substructures, approach fills/MSE walls, and beams completed. One of 2 deck spans poured
- Construction of substructures on I-64 Bridge Widenings over Military Highway, Yadkin Road, and Shell Road continues
- Clearing and grubbing, earthwork, drainage/stormwater, roadway widening continues on all five roadway segments
- Construction of pavement on West 1 roadway segment and special wall on West 3 roadway segment continues



**(Panoramic View of High Rise Bridge Looking North)**

**I-64/I-264- Phase III****UPC 106693 (HRTAC)****Project Scope:**

Study/design to improve the remaining I-64/I-264 movements

- Includes I-64 Eastbound (EB) movements to I-264
- Includes I-264 movements to I-64

**Project Financial Summary:**

<u>Project Budget (\$10,000,000):</u>	<u>Funds Expended (as 12/31/2020):</u>	<u>Projected Cost Over/(Under):</u>
○ PE \$ 10,000,000	\$ 2,305,827	\$ 0
○ RW \$ 0	\$ 0	\$ 0
○ CN \$ 0	\$ 0	\$ 0
	\$ 2,305,827	

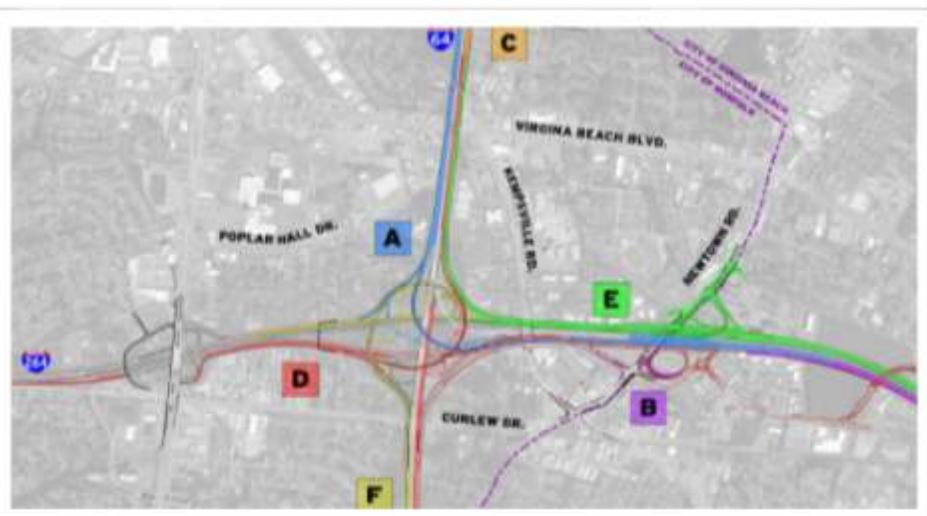
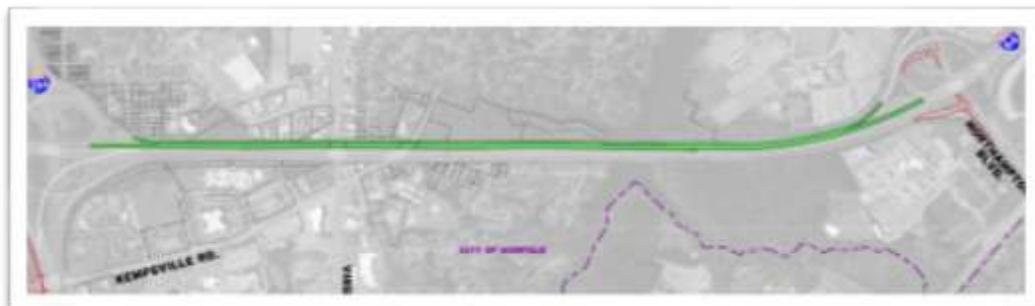
**Project Schedule:**

IMR Submittal to FHWA	December 2019
IMR Conditional Approval	Spring 2020
IMR approved by the FHWA	October 30, 2020
Advance to Design	Waiting Funding

<u>Enabling Funding</u>	
HRTAC	\$ 10,000,000
State/Federal	\$ _____.
	\$ 10,000,000

**Project Status:**

- In coordination with HRTPO, Subproject I submitted for Round 4 Smart Scale application. Subproject I widens eastbound I-64 to five lanes from the Northampton Boulevard interchange to I-264

**Subproject I**  
(originally part of  
Subproject A)

### Bowers Hill Interchange

**UPC 111427 (HRTAC)**

#### Study Scope:

Develop NEPA document and supporting studies for improvements to the I-64/I-264/I-664 Interchange and the Route 58/Route 460 Interchange (Bowers Hill) extending north to approximately the College Drive Interchange. Original scope modified to include extending study to College Drive interchange with 664 and add Managed Lane component through Bowers Hill interchange to College Drive Interchange to reflect HRTPO directed changes.

#### Study Financial Summary:

<u>Project Budget (\$4,000,000):</u>	<u>Funds Expended (as of 12/31/2020):</u>	<u>Projected Cost Over/(Under):</u>
o PE \$4,000,000	\$ 2,708,392	\$ 0
o RW \$ 0	\$ 0	\$ 0
o CN \$ 0	\$ 0	\$ 0
	\$ 2,708,392	

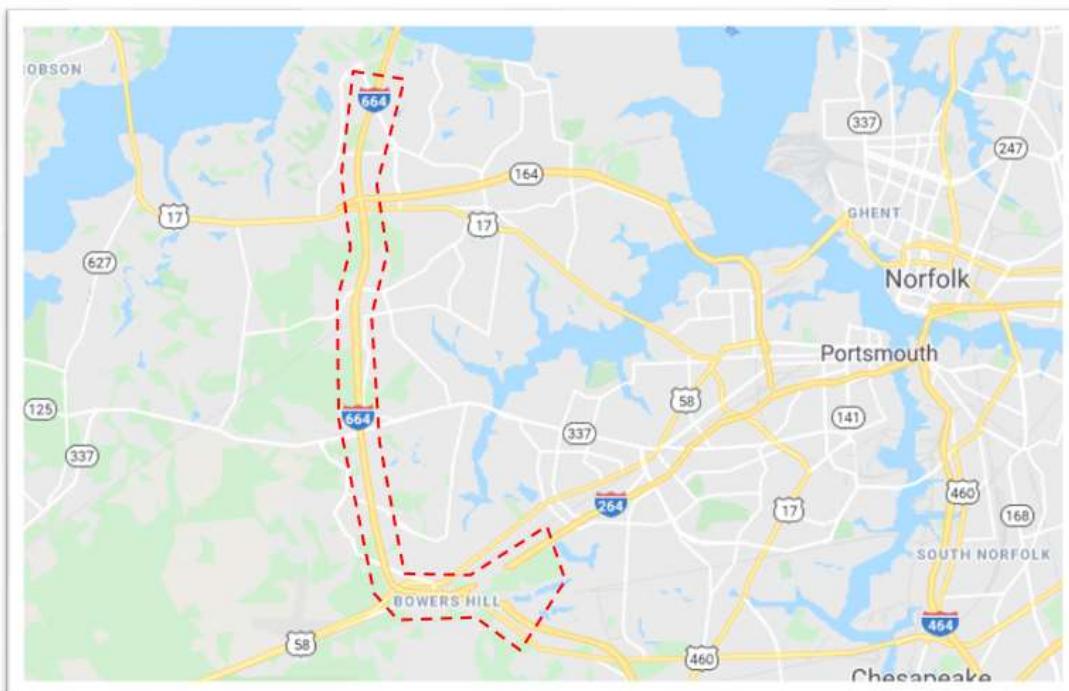
#### Study Schedule:

Begin NEPA Process	July 2020
Completion	December 2023
Schedule Status	On-Schedule

<u>Enabling Funding</u>		
HRTAC	\$ 4,000,000	
State/Federal	\$ _____	
	\$ 4,000,000	

#### Study Status:

- o Field work will be complete in January 2021
- o The study's newsletter went out on December 21, 2020
- o VDOT received concurrence on the study's Purpose and Need in December and introduced preliminary range of concepts to the agencies. VDOT will update the TTAC working group on the January 22, 2021 meeting
- o Potential alternatives scheduled to be presented to the agencies and the public in early spring 2021





Hampton Roads Bridge-Tunnel

VDOT



## December 2020 Project Report

### I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION

Proj. No. 0064-  
M06-032 Report #21



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Issue date: January 15, 2021

# 1. Executive Summary

## 1.1 Reporting Period

This report, prepared by the Virginia Department of Transportation (the Department), provides an overview of accomplishments and activities for the Hampton Roads Bridge-Tunnel Expansion project (the Project) from November 22, 2020 – December 12, 2020. The Design-Builder for the Project is Hampton Roads Connector Partners (HRCP), a consortium that includes Dragados, Vinci, Flatiron, and Dodin Campenon Bernard.

The current reporting period is aligned with HRCP's fiscal-month structure, on which the Project's design-build schedule updates and invoiced construction progress are based. Reporting periods typically close on the Saturday on or preceding the 24th of each month.

## 1.2 Project Accomplishments

During this reporting period, the following project accomplishments were recorded:

- HRCP began in-water dredging and test pile installation on December 2, 2020.
- HRCP completed a total of 43 out of 88 slurry-wall panels on the South Island as of December 12, 2020.
- Willoughby Bay Bridge permit from the US Coast Guard (USCG) received on December 22, 2020.
- HRCP received acceptance from the U.S. Navy on the first small design packages to allow median work in Norfolk and some clearing activities near Patrol Road Security Fence.
- HRCP completed installation of sediment ponds #1 and #3 on the South Island.
- HRCP completed assembly of the North Island trailer offices.
- Additional barge-mounted cranes mobilized for island expansion activities.
- North Island expansion activities continue, including dredging and placement of armor stone.

## 1.3 Priorities

The Department's priorities for the Project are to achieve the following objectives:

- To provide mobility enhancements and travel-time reliability along the Project corridor
- To minimize Project impacts on adjacent communities
- To improve transportation operations and safety throughout the Project corridor
- To develop public infrastructure in a financially responsible manner

## 1.4 Schedule

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Schedule updates for this reporting period include:

- HRCP remains on track to achieve Substantial Completion in advance of the contract milestone of September 1, 2025.
- HRCP remains on track to achieve Final Completion in advance of the contract milestone of November 1, 2025.
- Approximately 26% of the estimated scheduled time has progressed to date.

## 1.5 Budget and Cost

---

The budget and cost updates for this reporting period are as follows:

- Project budget overview (through December 2020 payment application):

Original total project budget:	\$3,861,997,227
Total charges for efforts to date:	\$696,696,597
Remaining project budget:	\$3,165,300,630

- Design-build contract overview (through December 2020 payment application):

Original total contract amount:	\$3,299,997,227
Total charges for efforts to date:	\$667,044,470
Total work orders:	\$10,337,216
Total exercised options:	\$73,454,414

- Design-build progress to date (through December 2020 payment application):

Overall:	19.65%
Mobilization:	100.0%
General Requirements (incl. Proj. Management):	17.2%
Design:	59.2%
Physical Progress:	5.93%

## 1.6 Environmental Management

---

During this reporting period, HRCP took the following steps in support of permit management for the project:

- HRCP and HRSD completed an inspection of the South Island water treatment plant on November 25, 2020.
- The Virginia Institute of Marine Science (VIMS) signed a contract to provide submerged aquatic vegetation (SAV) mitigation for the project in order to satisfy permit conditions.

- Wetland fencing/demarcation continues with the majority of wetlands between Bay Avenue and Patrol Road in Norfolk having been completed. Work will continue in Norfolk and then move to the Hampton segment.
- HRCP continues to prepare the air permit application and is currently evaluating the new generators that will be needed for tunnel emergency operations.
- HRCP is continuing Water Quality Monitoring during marine construction activities.

## 1.7 Construction

---

Progress updates for this reporting period include:

- Area 1 – Hampton
  - No construction activity during this period
- Area 2 – Marine Works
  - Set beams and decking for one span of temporary construction trestle (N1)
  - Completed initial drive for the test pile program
  - Completed dredging to level the area of the North Island expansion
  - Completed driving steel sleeves for proposed piles to support the North Island MOT trestle
- Area 3 – Islands and Tunnels
  - 43 out of 88 Tricell and Bore Proximity slurry wall panels completed to date on the South Island
  - Mobilization began for the installation of the conveyor and quay piles on the South Island
  - 2 of 3 storm water sedimentation ponds on the South Island complete
  - North Island work activities continue, including the relocation of permanent electrical ductbank and office trailer/complex assembly
  - Construction is ongoing for the temporary substation on the South Island to power the tunnel boring machine
- Area 4 – Norfolk
  - Ongoing erection of the warehouse building at the Willoughby Staging area
  - Began installation of erosion and sediment controls and construction laydown area at Bay Avenue

## 1.8 Operations

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The following operations activities took place during this reporting period:

- Fire/Life Safety Committee Meeting #5 held on December 2, 2020
- Preliminary design kick-off meeting held for island security
- Planned power outage completed to prepare existing manholes on the North Island for the upcoming medium voltage power switchover

## 1.9 Safety

---

Safety procedures and activities during this reporting period include:

- As a response to COVID-19 and to reduce exposure to illness, the VDOT Team and the HRCP Team have returned to divided work schedules of “A” and “B” Teams
- First responders finalized a response plan for the Cities of Hampton and Norfolk response during construction activities

## 1.10 Quality

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Quality updates for this reporting period include:

- Reviewed the Construction Quality Management Plan (CQMP) Appendix Update for the CGP Rev 4A; returned approved as noted
- Completed a review of version 7 of the Quality Management System Plan (QMSP) and conducted a hand back meeting to review comments

## 1.11 Civil Rights

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Civil Rights activities attended, including DBE and SWaM business for this reporting period are as follows:

- VDOT BOWD Center Leadership for DBEs
- AASHTO Committee on Civil Rights Panel
- Carolinas-Virginia Minority Supplier Development Council (CVMSCD) – Virtual Re-Emerge Conference
- Governor Northam’s Virtual Transportation Conference
- 2020 Women in Business Achievement Awards – Inside Business
- Virtual Year-End Job Fair – Virginia Career Works (Peninsula)
- HRCP Davis-Bacon Compliance Training
- HRCP EEO/Affirmative Action/Cultural Sensitivity Training

## 1.12 Public Outreach and Project Media

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Public outreach and project media updates for this reporting period are as follows:

- Presentation at 2020 Virtual Governor's Transportation Conference
- Presentation to Old Dominion University Civil and Environmental Engineering Senior Class
- Winter 2020 Edition of the HRBT Magazine, including link to concept video of the finished project.
- Virginia Business Magazine – Project Director, Jim Utterback, was featured in the December issue as one of the “100 People to Meet in 2021”

## 2. Project Schedule

### 2.1 Schedule Status

The following table depicts key milestone dates outlined in the contract requirements. This table will be updated to reflect these dates and used as a benchmark to track milestone achievements.

Key Dates	Contract Requirement	Schedule of Record Dates	December 2020 Update	Actual
<b>LNTP1</b>		April 12, 2019	April 12, 2019	April 12, 2019
<b>LNTP1 Completion Milestone</b>		September 25, 2019	September 24, 2019	September 24, 2019
<b>LNTP2</b>		September 29, 2019	September 25, 2019	September 25, 2019
<b>LNTP3</b>		October 9, 2019	September 25, 2019	September 25, 2019
<b>NTP</b>		September 9, 2020	September 11, 2020	September 11, 2020
<b>Substantial Completion</b>	September 1, 2025	August 27, 2025	August 23, 2025	
<b>Final Completion</b>	November 1, 2025	November 1, 2025	October 28, 2025	

### 2.2 Longest Path

The longest path for the Project schedule goes through the following activities:

- South Island Slurry Walls Construction
- Completion of South Portal Launching Pit
- Assembly of the Tunnel Boring Machine (TBM) in the launching pit
- TBM drive in High Occupancy Toll (HOT) Tunnel
- U-turn then drive in General Purpose (GP) Tunnel
- Finishing works and Mechanical, Electrical and Plumbing (MEP) works
- System operation integration of New and Existing Systems

## 2.3 Impact Analysis

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Several elements of work are near-critical and could affect schedule performance if they are not addressed diligently. VDOT and HRCP are closely monitoring these activities. The following work elements have been identified as near critical, meaning there is less than one month of float in the Baseline Schedule:

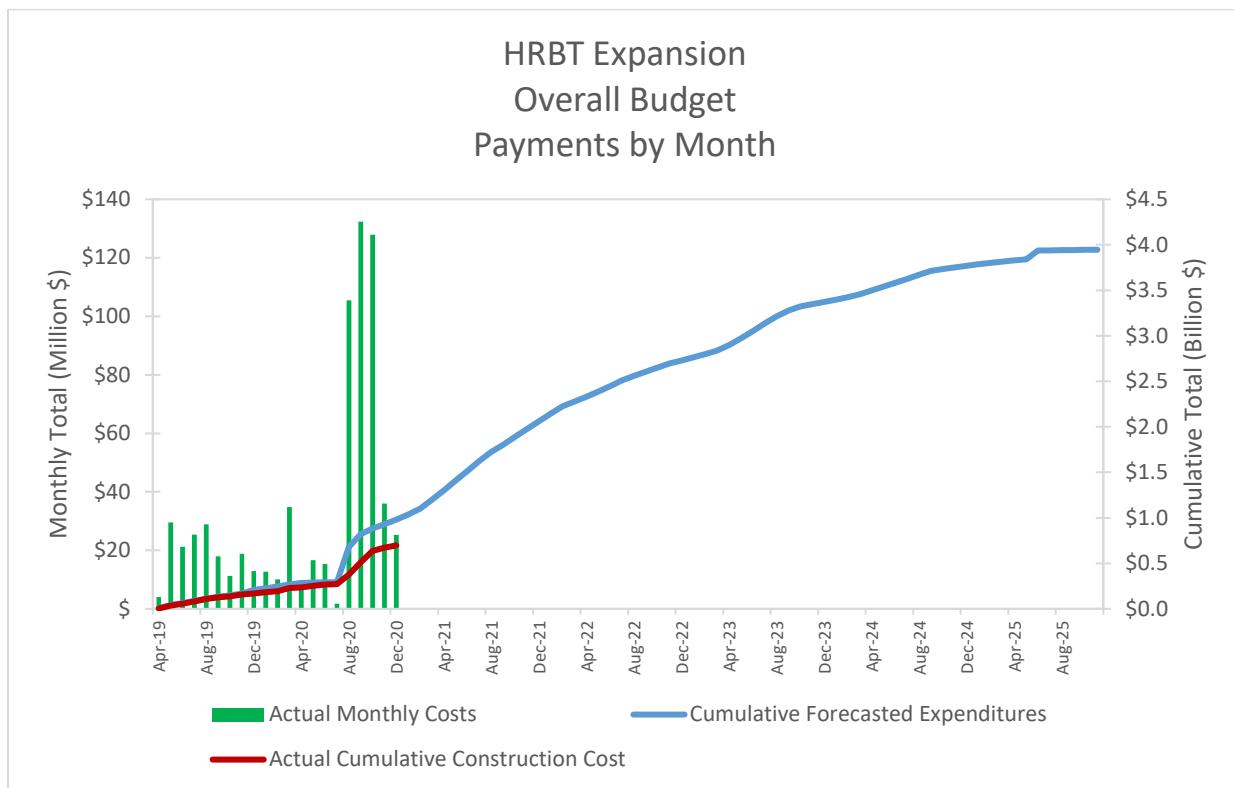
- South Portal Ground Improvement Procurement
- North Island Expansion
- Procure Tunnel Lining
- Bored Tunnel Design Stage 2
- Utility relocations
- South Trestle MOT Design Stage 2
- North Trestle Structural Material Procurement and Subcontract Execution

### 3. Budget and Cost

#### 3.1 Overall Budget

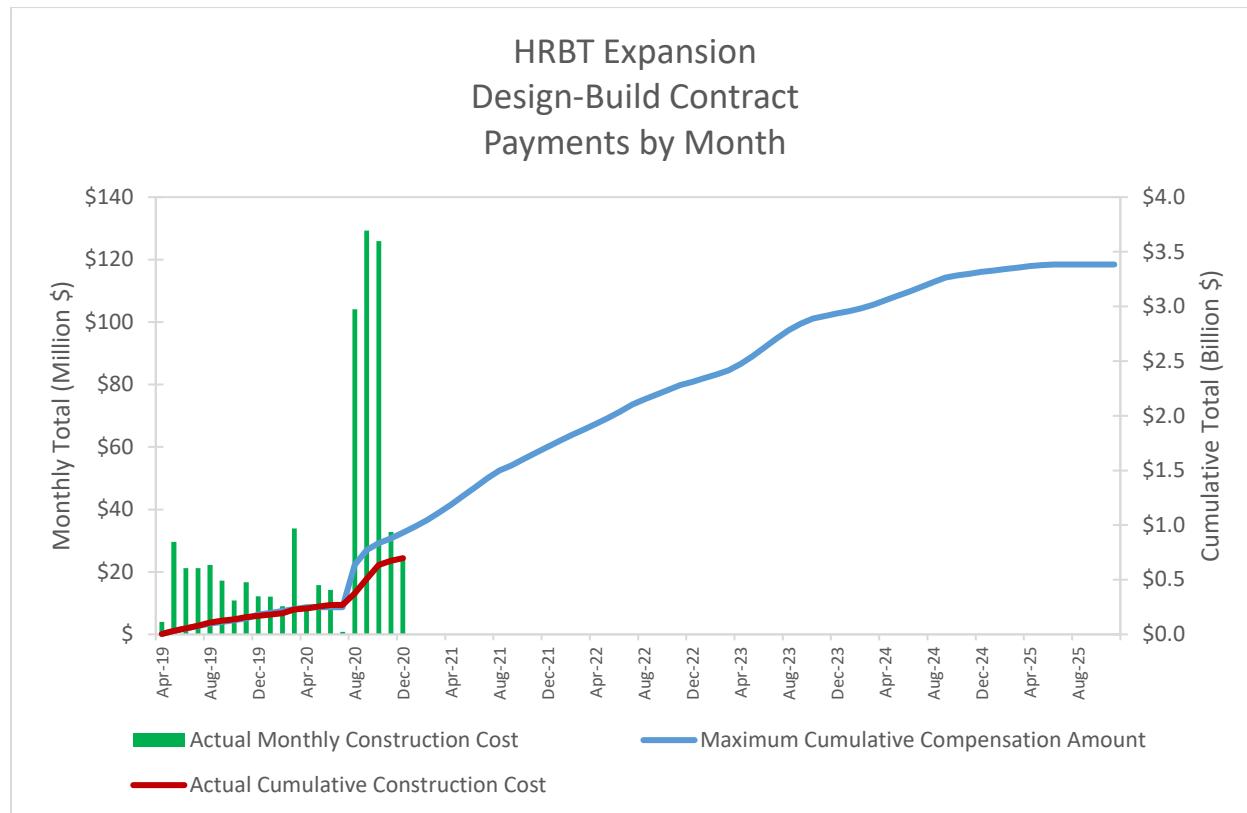
The overall budget outlined in this report is based on the terms and conditions of Article 3 (Project Funding) in the Project Agreement for Funding and Administration (PAFA). The cost curve is based on Exhibit 6 of the Comprehensive Agreement (monthly maximum cumulative compensation amount). Amounts this period reflects payments invoiced for Construction, Engineering Administration, Right of Way, and Contingency between November 22, 2020 – December 12, 2020.

	Amount this period:	Total to Date:	Original Total Budget:	Total Remaining Budget:	Percent Spent To-date:
<b><u>Comprehensive Agreement</u></b>					
<b>Construction</b>	\$24,977,264.90	\$667,044,469.87	\$3,299,997,227.00	\$2,632,952,757.13	20.21%
<b>Owner Costs</b>					
<b>Administration</b>	\$311,490.95	\$19,184,009.42	\$122,000,000.00	\$102,815,990.58	15.72%
<b>Right of Way</b>	\$255.00	\$6,468,118.13	\$15,000,000.00	\$8,531,881.87	43.12%
<b>No-Excuses Incentive</b>	\$0.00	\$0.00	\$90,000,000.00	\$90,000,000.00	0.00%
<b>Contingency</b>	\$0.00	\$4,000,000.00	\$335,000,000.00	\$331,000,000.00	1.19%
<b>Total</b>	<b>\$25,289,010.85</b>	<b>\$696,696,597.42</b>	<b>\$3,861,997,227.00</b>	<b>\$3,165,300,629.58</b>	<b>18.04%</b>



### 3.2 Design-Build Cost Status

The construction budget and planned cost have been established based on the maximum cumulative compensation amount. For this period, the invoiced expenditures (actual construction contract cost) cover the activities noted in this report, as well as a portion of the contractual project-mobilization payment.



### 3.3 Budget by Funding Source

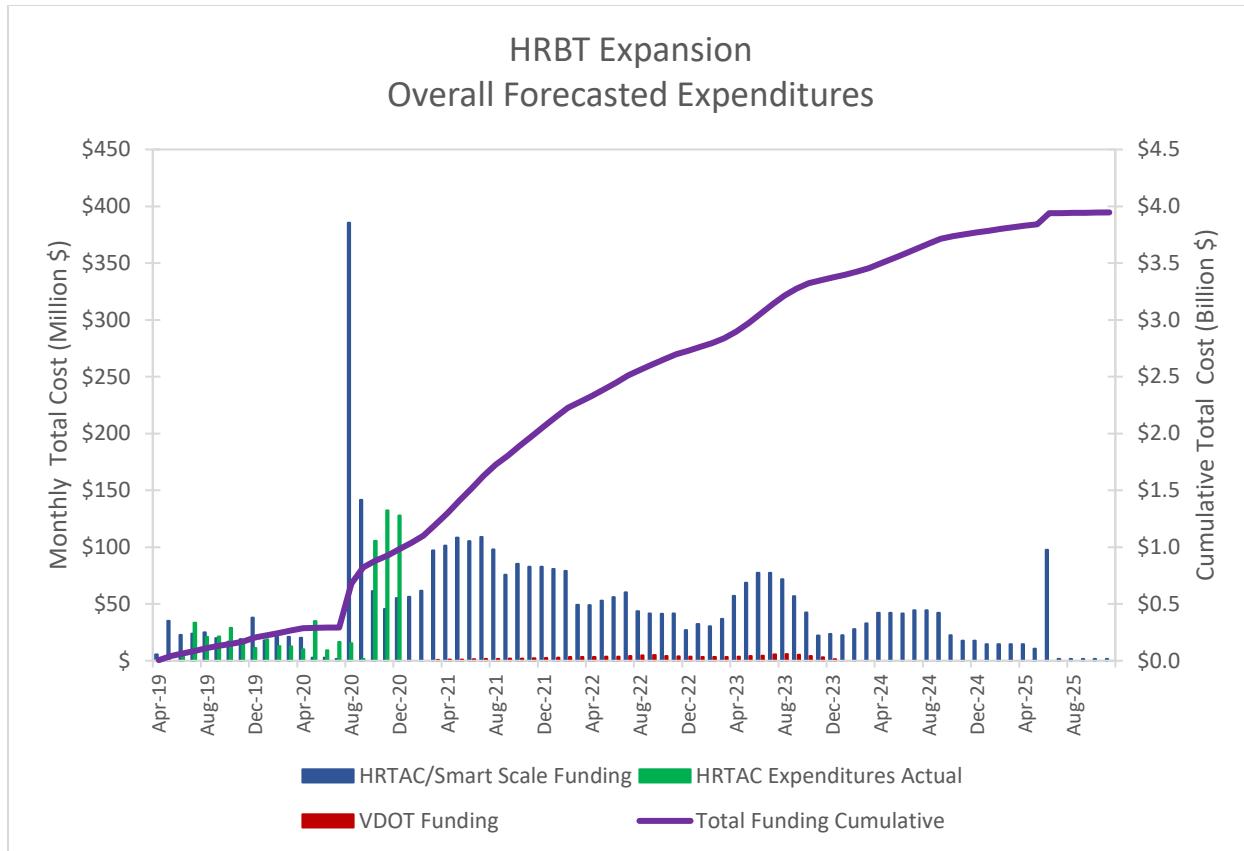
The budget for expenditures by funding source is based on the terms and conditions of Article 3 (Project Funding) and Exhibit 5 of the PAFA. This section outlines planned expenditures by both HRTAC and VDOT. The cost curve has been developed based on the monthly maximum cumulative compensation amount in the Comprehensive Agreement and will be updated as HRCP refines its design, construction means-and-methods, activity sequences, and project resourcing. Amounts this period reflect payments paid for Construction, Engineering, Administration, Right of Way, and Contingency between November 22, 2020 – December 12, 2020.

### 3.3.1 HRTAC and Smart Scale

	Amount this period:	Total to Date:	Original Total Budget Including Smart Scale:	Total Remaining Budget:	Percent Spent To-date:
<b><u>Comprehensive Agreement</u></b>					
<b>Construction Owner Costs</b>					
<b>Construction Owner Costs</b>	\$125,886,543.26	\$609,097,370.38	\$3,299,997,227.00	\$2,690,899,856.62	18.46%
<b>Administration</b>	\$0.00	\$16,295,974.14	\$122,000,000.00	\$105,704,025.86	13.36%
<b>Right of Way</b>	\$0.00	\$6,467,717.42	\$15,000,000.00	\$8,532,282.58	43.12%
<b>No-Excuses Incentive</b>	\$0.00	\$0.00	\$90,000,000.00	\$90,000,000.00	0.00%
<b>Contingency</b>	\$0.00	\$4,000,000.00	\$335,000,000.00	\$331,000,000.00	1.19%
<b>Total</b>	<b>\$125,886,543.26</b>	<b>\$635,861,061.94</b>	<b>\$3,861,997,227.00</b>	<b>\$3,226,136,165.06</b>	<b>16.46%</b>

### 3.3.2 VDOT

	Amount this period:	Total to Date:	Original Total Budget:	Total Remaining Budget:	Percent Spent To-date:
<b><u>Comprehensive Agreement</u></b>					
<b>Construction Owner Costs</b>					
<b>Construction Owner Costs</b>	\$0.00	\$0.00	\$95,427,976.00	\$95,427,976.00	0.00%
<b>Administration</b>	\$1,666.92	\$124,736.16	\$3,527,946.00	\$3,403,209.84	3.54%
<b>Right of Way</b>	\$0.00	\$0.00	\$0.00	\$0.00	0.00%
<b>No-Excuses Incentive</b>	\$0.00	\$0.00	\$0.00	\$0.00	0.00%
<b>Contingency</b>	\$0.00	\$0.00	\$9,571,724.00	\$9,571,724.00	0.00%
<b>Total</b>	<b>\$1,666.92</b>	<b>\$124,736.16</b>	<b>\$108,527,646.00</b>	<b>\$108,402,909.84</b>	<b>0.11%</b>



### 3.4 Contingency

- To date twenty-two (22) change orders have been issued:

	Description	Date Executed	Value	Time
CO-1	Department's Acquisition of Willoughby Staging Area	2/11/2020	\$ (3,000,000.00)	0 days
CO-2	Minor Revisions to Technical Requirements	3/18/2020	\$ -	0 days
CO-3	Tunnel Approach Structure Support of Excavation Requirements Refinement	4/28/2020	\$ -	0 days
CO-4	Dispute Resolution Board (DRB) Allowance	5/12/2020	\$ 200,000.00	0 days
CO-5	North Island Armor Stone Value Engineering Change Proposal (VECP)	4/28/2020	\$ (2,011,117.50)	0 days
CO-6	Exit Ramp at Bayville Avenue	5/29/2020	\$ 46,906.29	0 days
CO-7	Minor revisions to the Technical Requirements	7/16/2020	\$ -	0 days
CO-8	Zero Spread Drainage	9/16/2020	\$ 3,239,212.24	0 days

CO-9	Roadway and Bridge Scope Validation Issues	9/4/2020	\$ 15,516,248.00	0 days
CO-10	Slurry Walls as Permanent Structures	8/28/2020	\$ -	0 days
CO-12	Road and Bridge Lighting Requirements	8/27/2020	\$ 2,495,000.00	0 days
CO-13	Bridge Repair Work-Exercise Option	10/9/2020	\$ 73,454,313.00	0 days
CO-14	Trestle Barrier Form Liner elimination	7/29/2020	\$ (99,571.80)	0 days
CO-15	South Island Ground Improvement Value Engineering Change Proposal (VECP)	9/17/2020	\$ (5,338,000.00)	0 days
CO-17	Westbound ITT Reduced Instrumentation	10/30/2020	\$ (184,277.50)	0 days
CO-18	Willoughby Bay Bridge Barriers	9/10/2020	\$ -	0 days
CO-19	GeoPak Version Software Updates	8/3/2020	\$ -	0 days
CO-22	South Island Asbestos Conduits	9/16/2020	\$ 81,973.93	0 days
CO-23	Island & Tunnel Baseline Monitoring Req'ts	7/22/2020	\$ -	0 days
CO-24	Construction Water Supply	9/10/2020	\$ (609,157.27)	0 days
CO-25	Solids Handling Pumps Requirements	11/12/2020	\$ -	0 days
CO-26	Mass Notification Independent System Req'ts	11/12/2020	\$ -	0 days
CO-27	Fixed Fire Fighting System Requirements	11/16/2020	\$ -	0 days

- \$0 material price adjustments (asphalt, steel, & fuel) to date

## 4. Environmental Management

During this reporting period, HRCP has completed or is currently performing several compliance tasks included in agency permit conditions. Marine mammal observers (MMOs) have observed all in-water pile driving, and water quality monitoring has been conducted during all in-water construction activities. Also, wetland fencing/demarcation has been completed between Bay Avenue and Patrol Road in Norfolk. Once this work is completed in Norfolk, HRCP will move into Hampton to complete the wetland fencing/demarcation work. In-water work that is currently underway includes perimeter rock installation at the North Island and the test pile program along the north and south trestle.

NOAA is drafting the second 30-day public notice period for the Letter of Authorization (LOA) for future in-water work activities. NOAA also developed a proposed rule for the LOA that was provided to HRCP and VDOT for comment. HRCP anticipates issuance of the LOA in February 2021.

## 5. Construction

The figure below illustrates the project limits and the four construction areas throughout the project identified by HRCP. Construction Area 1 is Hampton Landside, Area 2 is Marine Work, Area 3 is Tunnels and Islands, and Area 4 is Norfolk Landside. The sections below outline construction activities taking place in each construction area during the reporting period.



## 5.1 Area 1: Hampton Landside

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No construction activity during the reporting period. The Commercial Ready-Mix Products (CRMP) batch plant continues to operate and provide concrete for project operations.

## 5.2 Area 2: Marine Work

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During the reporting period, the following work occurred in Area 2:

- Set beams and decking for one span of the N1 temporary construction trestle, which will parallel the North Trestle from the shoreline in Hampton to sufficient depth of water to allow barge-mounted equipment use.
- Completed the initial drive of 54" diameter cylinders piles for the test pile program. Dynamic testing was performed on the piles during driving. The focus of this operation now turns to static load testing of three of the piles to determine capacity.
- Completed dredging to level the area of the North Island expansion. HRCP will dredge within the area of the island expansion to remove stray armor stone from the alignment of the new tunnel bores.
- Completed driving steel sleeves at locations of proposed piles for the north island MOT trestle within the limits of the pending North Island expansion; began driving sleeves with a similar purpose for the adjacent north trestle bridge.
- Began expansion of the North Island. The initial work includes placing small diameter rock (up to 9") to form a dike along the perimeter. Larger rocks ranging from 100 pounds to 6 tons are then placed on the bayside face of the smaller stones to form layers of armor to protect the island from the marine environment.



Pile Beams and Decking on Temporary N1 Construction Trestle



Framing for Static Load Test of 54" Cylinder Pile



Sleeves for Trestle & MOT Bridges



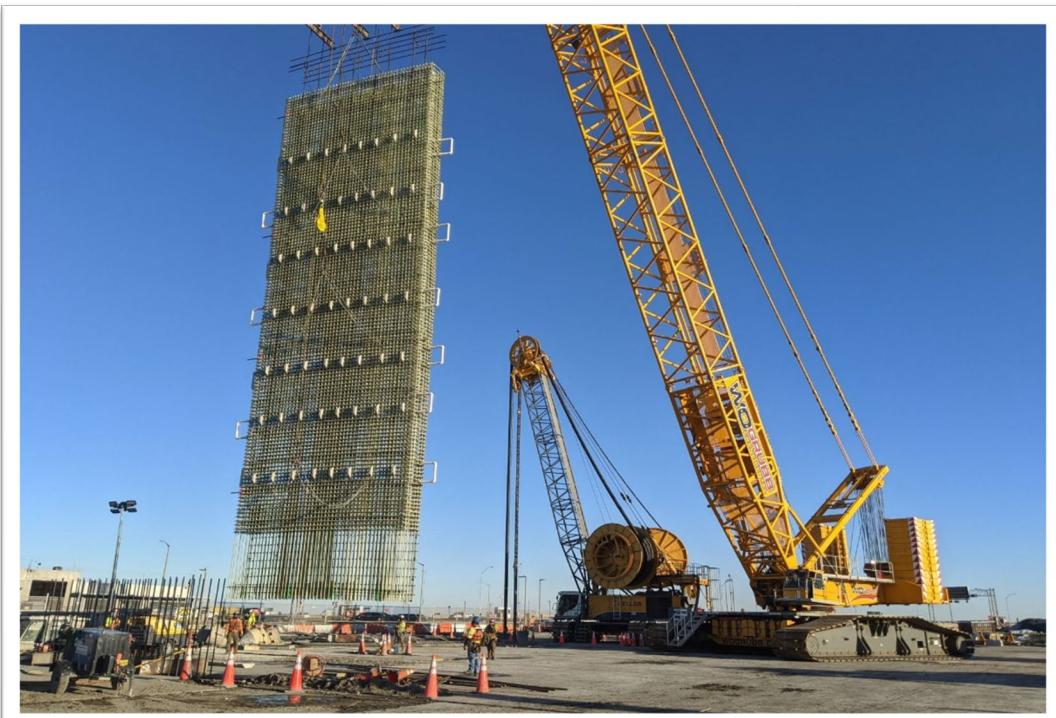
Placing Perimeter Stone for North Island Expansion

### 5.3 Area 3: Tunnels and Islands

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During the reporting period, the following work occurred in Area 3:

- Slurry wall construction continued for the tri-cell TBM launching pit as well as the bored tunnel cutoff walls on the South Island. Excavation for the walls was accomplished using two hydromill excavators and one clamshell bucket working 24 hours a day. The slurry wall panel reinforcing cages continue to be fabricated on-site and placed utilizing a crawler crane followed by concrete placement. The first rebar cage to utilize GFRP (glass fiber) reinforcing was installed during this reporting period. To date, 43 Tricell and Bore Proximity Starter slurry wall panels have been completed and 3 panel excavations are ongoing, totaling 25,500 CY of concrete placed for the South Island slurry walls.
- Mobilization has begun for the installation of the conveyor and quay piles on the South Island, including mobilization of a Manitowoc 999 and Berminghammer pile driving equipment. Ground preparation and pile driving template construction has begun for the quay piles.
- Construction of the last South Island storm water sedimentation pond continues, with the other two complete.
- Construction is ongoing for the temporary substation on the South Island to power the tunnel boring machine.
- Early works on the North Island have continued, including permanent electrical ductbank relocations and office trailer complex assembly/interior buildout.



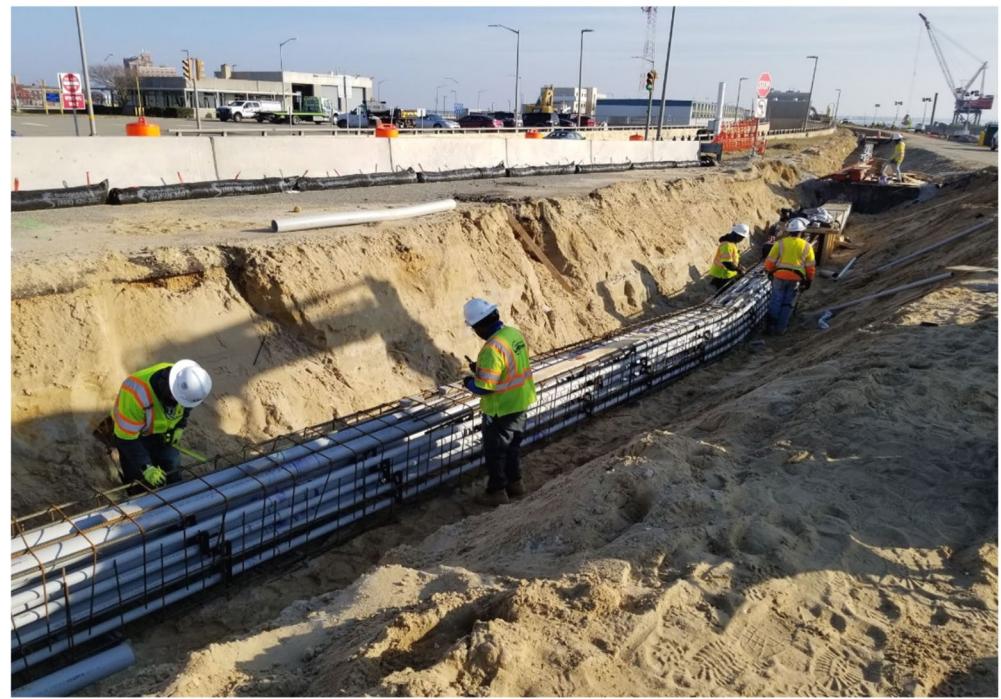
South Island Slurry Panel GFRP Reinforcing Cage Pick



South Island Hydroseeding Completed Sediment Pond



South Island Slurry Wall Concrete Placement



North Island Medium Voltage Duct Bank Install

## 5.4 Area 4: Norfolk Landside

During the reporting period, the following work occurred in Area 4:

- Continued erection of the warehouse building at the Willoughby Staging area
- Began installation of erosion and sediment controls and construction laydown area at Bay Avenue



Erosion and Sediment Controls at Bay Avenue

## 6. Operations

Operation activities include shoulder and lane closures, creation and maintenance of intelligent transportation system (ITS) architecture, other maintenance within the corridor, coordination with existing VDOT Operations, coordination with first responders, and communication with the Hampton Roads Harbor Tunnels (HRHT) facility. The following operation activities occurred during this reporting period:

- Shoulder and lane closures were conducted for maintenance and survey of equipment for tunnel baseline instrumentation and monitoring, installation of Willoughby Bay Bridge and Oastes Creek Bridge instrumentation and monitoring equipment, and installation of temporary power for the Tunnel Boring Machine under the westbound South Trestle.
- On December 2, 2020, Fire/Life Safety Committee Meeting #5 was held with stakeholders from first responders and emergency management to discuss tunnel drainage and fixed fire suppression.
- A kickoff meeting was held to discuss the preliminary design for island security, to include perimeter security, building access control, and integration into the statewide security management system.
- A planned power outage was completed to prepare existing manholes on the North Island for the upcoming medium voltage power switchover. Coordination continues VDOT Operations to accommodate the upcoming switchover.
- HRCP performed routine traffic and maintenance operations within the corridor.

## 7. Quality

Quality updates for this reporting period include:

- Reviewed the Construction Quality Management Plan (CQMP) Appendix Update for the CGP Rev 4A. The appendix update was approved as noted.
- Completed a review of update 7 of the Quality Management System Plan (QMSP) and conducted a hand back meeting to review comments.
- Other Quality activities included reviews of the Material Book documentation and QA/QC daily reports, non-conforming report (NCR) resolution coordination with HRCP, weekly quality status meetings, preparatory meetings, inspection documentation, and coordination on quality process development.
- HRCP has hired WRA to conduct an independent assessment of their quality program and to suggest means and methods to improve. Results of this assessment are in-progress.

## 8. Safety

Safety procedures and activities during this reporting period include:

- HRCP continues to enforce COVID-19 policies on the job site and at the project office. The VDOT Team and the HRCP Team have returned to divided work schedules of “A” and “B” Teams to limit potential exposure to illness.
- First responders finalized a response plan for the Cities of Hampton and Norfolk to support the project.
- HRCP continues to train staff and new hires as they come aboard.

## 9. Civil Rights

The Design-Builder has awarded a total of **180 subcontracts**, subconsultant agreements and purchase orders to DBE/SWaM certified firms for a total of **\$95.1 million** as of this reporting period. Contract awards include those issued to lower-tiered subcontractors. The project is targeting a total award of at least \$394.5 million of DBE/SWaM business opportunities.

On November 27-29, 2020, the Hampton Roads Black Chamber of Commerce hosted a Virtual Black Diamond Conference. During the event, a “Transportation and Opportunity Workshop” was held. The panel consisted of Keisha Branch of Hampton Roads Transit, Malcolm Kates of HRCP, and Queen Crittendon of VDOT. The session was facilitated by Dominique Milton, President of the Carolinas-Virginia Minority Supplier Development Council (CVMSDC). Discussion focused on workforce and business opportunities available on the HRBT Project and within the transportation industry.



Hampton Roads Black Chamber of Commerce's event promotion used on various social media platforms. Branch and Crittendon were identified in the promotional materials along with representatives of local agencies and organizations.

In other outreach and training events, the HRCP and VDOT Civil Rights staff participated in the following virtual events to engage and share information about business and workforce development opportunities available on the Project.

- November 24 – VDOT BOWD Center Leadership for DBEs
- December 1 – AASHTO Committee on Civil Rights Panel
- December 2-3 – Carolinas-Virginia Minority Supplier Development Council (CVMSCD) – Virtual Re-Emerge Conference
- December 4 – 2020 Women in Business Achievement Awards – Inside Business
- December 8 – Virtual Year-End Job Fair – Virginia Career Works (Peninsula)
- December 10 – HRCP Davis-Bacon Compliance Training
- December 11 – HRCP EEO/Affirmative Action/Cultural Sensitivity Training

VDOT and HRCP continued working in collaboration with the USDOT Small Business Transportation Resource Center in planning the 2021 Bonding Education Program (BEP). The BEP allows business and project specific information to be shared with participants related to improving a company's operation and making it bond-ready or to increase their bonding capacity. A preliminary virtual planning meeting was held on December 2, 2020. A Readiness Session for contractors performing on construction and transportation-related projects will be held on January 27, 2021 to share additional information about the BEP. The series of 90-minute training sessions will begin on February 16 through March 4, 2021. The Cities of Hampton and Norfolk will be participating in the Stakeholders Workgroup in support of the upcoming event.



## 10. Public Outreach and Project Media

The Communications team for the HRBT Expansion project remains committed to virtual outreach during the COVID-19 pandemic. The following public outreach activities took place during this reporting period:

December 3 – Presentation at 2020 Virtual Governor's Transportation Conference

December 4 – Presentation to Old Dominion University Civil and Environmental Engineering Students

December 7 – Winter 2020 Edition of the HRBT Magazine distributed featuring a message from the Project Director, a QR Code to view the concept video of the finished project, construction updates, project progress, and more.



Cover of the HRBT Magazine 2020 Winter Edition  
[www.hrbtexpansion.org/newsroom/newsletters-and-podcasts](http://www.hrbtexpansion.org/newsroom/newsletters-and-podcasts)

Virginia Business Magazine – Project Director, Jim Utterback, was featured in the December issue as one of the “100 People to Meet in 2021”



Jim Utterback

**James S. Utterback**

*Project Director of Hampton Roads Bridge Tunnel Expansion,  
Virginia Department of Transportation  
Norfolk*

The big dig finally commenced in late October. The Virginia Department of Transportation's largest-ever project — the \$3.8 billion Hampton Roads Bridge-Tunnel (HRBT) expansion — will increase tunnel and interstate capacity along 9.9 miles of Interstate 64 between Hampton and Norfolk in order to reduce congestion and improve access to the Port of Virginia. And James S. Utterback is overseeing it all. Although the project won't be finished until 2025, Utterback says that in late 2021 Virginians can expect to see the arrival from Germany of a 46-foot-diameter, custom-built underwater tunnel-boring machine, which is as tall as a four-story building and weighs as much as 10 fully loaded 747 airliners. It will dig through soil and construct tunnel segments, a major step in the construction process. It will begin boring in 2022.

Jim Utterback and HRBT Expansion Project listed in the December issue of Virginia Business Magazine

**CY 2021 Hampton Roads Regional Meetings**  
**(January 1, 2021 - December 31, 2021)**  
**HRPDC/HRTPO/HRTAC/HRMFFA**

Date	HRTPO 10:30 AM	HRPDC 12:30 PM	HRMFFA 10:30 AM	HRTAC 12:30 PM
JANUARY 21, 2021	✓	✓		
FEBRUARY 18, 2021	✓	✓		
MARCH 18, 2021			✓	✓
APRIL 15, 2021	✓	✓		
MAY 20, 2021	✓	✓		
JUNE 17, 2021			✓*	✓*
JULY 15, 2021	✓	✓		
AUGUST 19, 2021	<b>No Meetings Currently Scheduled</b>			
SEPTEMBER 16, 2021			✓	✓
OCTOBER 21, 2021	✓*	✓*		
NOVEMBER 18, 2021	✓	✓		
DECEMBER 16, 2021			✓	✓

*\*Annual Meeting*