



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

MEETING OF THE COMMONWEALTH TRANSPORTATION BOARD AGENDA

VDOT Central Office Auditorium

1221 East Broad Street

Richmond, Virginia 23219

July 21, 2021

9:00 a.m. or upon adjournment of the July 20, 2021 Workshop Meeting if the Workshop carries over to July 21, 2021.

*Meeting will be conducted using Electronic Communication means

Public Comments:

Approval of Minutes:

June 23, 2021

OFFICE OF LAND USE:

Presenting: Robert Hofrichter
Division Director

1. Action on Abandonment in the Primary System of State Highways: Previously Discontinued Portion of Old Route 29 Located in Pittsylvania County Located in the Lynchburg District.
2. Action on Additions in the Primary System of State Highways in Fauquier County Located in the Culpeper District.

* This meeting will be conducted using electronic communications in accord with Section 2.2-3708.2(D) of the Code of Virginia, with the primary location being at the address listed on the agenda. Public access will not be provided at remote locations; however, members of the public may attend the meeting at the location on the agenda or may witness the meeting live stream by clicking the "View video" button at the following

link: http://www.ctb.virginia.gov/public_meetings/live_stream/default.asp.

In the event there is an interruption in the broadcast of the meeting, please call (804) 729-6495.

Should you wish to offer comment regarding how meetings using electronic communications technology compare to traditional meetings when the CTB is physically present, you may complete the FOIA Council's Electronic Meetings Public Comment form appearing at the end of this agenda and submit it to the FOIA Council as described on the Form.

MAINTENANCE DIVISION:

Presenting: Robbie Prezioso
Division Administrator

3. Action on Commemorative naming of the bridge on U.S. Business Route 23, Park Ave NW/Kent Junction Road, over Dorchester Road, in West Norton, Wise County as the “Sgt. Alfred J. Amburgey Memorial Bridge” Located in the Bristol District
4. Action on Commemorative naming of the bridge on U.S. Business Route 23, Park Ave NE, over Guest River, in Esserville, Wise County as the “Corporal Carl Dingus Memorial Bridge” Located in the Bristol District.
5. Action on Commemorative naming of the intersection of Route 619, Horse Ridge Road and Route 631, Sumpter Road, Floyd County as the “James Michael Cox Vietnam Memorial Intersection” Located in the Salem District.

ENVIRONMENTAL DIVISION:

Presenting: Angel Deem
Division Administrator

6. Action on Approval of Next Phase of the Martinsville Southern Connector Project.

INFRASTRUCTURE INVESTMENT DIVISION:

Presenting: Kimberly Pryor
Division Director

7. Action on FY21-26 Six-Year Improvement Program Transfers for May 22, 2021 through June 21, 2021.
8. Action on Addition of Projects to the Six-Year Improvement Program for Fiscal Years 2022-2027.

TOLLING DIVISION:

Presenting: David Caudill
Division Administrator

9. Action on Approval of Proposed Amendments to Rules, Regulations and Rates Concerning Toll and Bridge Facilities.

LOCAL ASSISTANCE DIVISION:

Presenting: Russell Dudley
Division Administrator

10. Action on Economic Development Access to Patriot Centre at Beaver Creek, Lot 4 (deallocation) Project ECON-044-036, Henry County Located in the Salem District.
11. Action on Revenue Sharing Reallocation, City of Hampton – Wythe Creek Road Located in the Hampton Roads District.

GOVERNANCE AND LEGISLATIVE AFFAIRS DIVISION:

Presenting: Jo Anne Maxwell
Division Administrator

12. Action on Periodic Regulatory Review.

VIRGINIA DEPARTMENT OF RAIL AND PUBLIC TRANSPORTATION:

Presenting: Jennifer DeBruhl
Chief of Transit

13. Action on Transit Ridership Incentive Program Policy.

Presenting: Jeremy Latimer
Director, Rail Transportation Programs

14. Action on Rail Industrial Access, Norfolk Terminals, LP, Katoen Natie, Located in the Hampton Road District.

VIRGINIA DEPARTMENT OF TRANSPORTATION:

Presenting: Stephen Brich
Commissioner of Highways

15. Action on Approval and Authorization for the Commissioner of Highways to Execute a TIFIA Direct Agreement Between the Virginia Department of Transportation, the Hampton Roads Transportation Accountability Commission and the United States Department of Transportation and Related Amendments to the PAFA for the Hampton Roads Bridge Tunnel Expansion Project.
16. Action on Authorization for the Commissioner of Highways to Enter Into and Execute the Standard Project Agreement with the Hampton Roads Transportation Accountability Commission for the Segment 3 Capital Improvements Tolling Infrastructure Project for the HREL Network

SCHEDULING AND CONTRACT:

Presenting: Robbie Prezioso
Division Administrator
Maintenance Division

17. Bids.

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Meeting of the Commonwealth Transportation Board
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NEW BUSINESS:

ADJOURNMENT:

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COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 1

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

Title: Abandonment – Primary System of State Highways: Previously Discontinued Portion of Old Route 29 Located in Pittsylvania County

WHEREAS, upon reconstruction of Route 29 in Pittsylvania County in the 1970's, the State Highway Commission, predecessor to the Commonwealth Transportation Board, relocated a segment of an existing Primary system roadway to a new alignment, causing the previous segment to no longer provide a public convenience that warrants maintenance at public expense; and

WHEREAS, the State Highway Commission passed a resolution on May 9, 1974 discontinuing that previous segment of Route 29; and

WHEREAS, pursuant to §33.2-902, *Code of Virginia 1950*, as amended, the Commissioner of Highways was provided with a petition to abandon from the Primary System of State Highways a segment of Old Route 29, as seen in the map attached hereto as Exhibit B, in Pittsylvania County. This matter is being considered at the request of the county. The road segment proposed to be abandoned is 0.30 of a mile and is

- (a) no longer necessary as a public road, and
- (b) no longer provides a public convenience that warrants maintenance at public expense; and

Resolution of the Board

Abandonment - Primary System of State Highways: Previously Discontinued Portion of Old Route 29 Located in Pittsylvania County

July 21, 2021

Page 2 of 2

WHEREAS, the Pittsylvania County Board of Supervisors supports the abandonment of this segment of Old Route 29 from the Primary System of State Highways, as documented in the letter of support, attached hereto as Exhibit A, as seen in the map attached hereto as Exhibit B, which represents the previously discontinued segment; and

WHEREAS, notice was posted of the intent to abandon such segment, attached hereto as Exhibit C, and such posting was done in accordance with § 33.2-902, and no requests were received for public hearing on the matter; and

WHEREAS, a Primary roadway for which no public necessity exists may be abandoned by the Board, pursuant to § 33.2-902, *Code of Virginia* 1950, as amended

NOW THEREFORE, BE IT RESOLVED, that the roadway segment identified below, and as depicted in Exhibit B, is hereby ordered abandoned as part of Primary system of state highways, pursuant to § 33.2-902, *Code of Virginia*, 1950, as amended.

Primary System of State Highways Abandonment

Lynchburg District

Pittsylvania County

Project: 6029-071-111, C-501

- Old Route 29 – Segment A – B 0.30 Mi.

Total Mileage Abandoned from the Primary System: 0.30 Mi.

####

CTB Decision Brief

Abandonment – Primary System of State Highways: Previously Discontinued Portion of Old Route 29 Located in Pittsylvania County

Issue: The Pittsylvania County Board of Supervisors has requested that a 0.30 mile segment of a previously discontinued portion of Old Route 29 in Pittsylvania County be abandoned pursuant to § 33.2-902 of the *Code of Virginia*.

Facts: The State Highway Commission, predecessor to the Commonwealth Transportation Board, passed a resolution on May 9, 1974, discontinuing a portion of Old Route 29, upon the reconstruction of Route 29. The 0.30 mile segment currently being requested for abandonment is the roadway that was discontinued in 1974.

The Pittsylvania Board of Supervisors requested the abandonment of the 0.30 mile segment of Old Route 29 which is located adjacent to the intersection of Routes 638 and 988 (segment identified as “A – B” noted in “Blue” on Exhibit B, attached). The County wishes to abandon the portion of Old Route 29 outside of the right of way of existing highways to be conveyed to the county and used for a new county emergency services facility. A letter of support from the County, dated June 2, 2021, is attached as Exhibit A.

Upon review of the area, VDOT staff determined the 0.30 mile segment of Old Route 29 should be abandoned as a part of the Primary System of State Highways, pursuant to § 33.2-902 of the *Code of Virginia*, since no public necessity exists for the continuance of the segment as a public road.

Pursuant to and in accordance with § 33.2-902 of the *Code of Virginia*, the Virginia Department of Transportation published a “Notice of Intent to Abandon” in the *Star-Tribune* publication on June 2 and 9, 2021 (Exhibit C, attached). No request was received to hold the public hearing.

Recommendations: VDOT recommends the Board approve the abandonment of the 0.30 mile segment of Old Route 29 referenced above.

Action Required by CTB: The *Code of Virginia* requires a majority of the Board’s members to approve the proposed abandonment. A resolution describing the proposed segment to be abandoned is provided for the Board’s consideration.

Result if Approved: If approved, the segment of discontinued highway will no longer be available for use by the public.

Options: Approve, Deny or Defer

Public Comments/Reactions: A public hearing was not requested to be held.

Exhibit A
Pittsylvania County Letter of Support



COUNTY ATTORNEY
P.O. Box 426 • 1 Center Street
Chatham, Virginia 24531
Phone (434) 432-7720

June 2, 2021

VIA U.S. MAIL

Kenneth C. Martin
VDOT Halifax Residency Administrator
5211 Halifax Road
Halifax, Virginia 24558

Re: Proposed Virginia Code § 33.2-902 Abandonment of Portion of Old Route 29

Dear Mr. Martin:

In my capacity as County Attorney, and on behalf of the Pittsylvania County Board of Supervisors, the County supports, per legal authority in Virginia Code § 33.2-902, 1950, as amended, the primary abandonment of the 0.30 mile segment identified as "A" to "B" on the attached sketch. This action is associated with VDOT Project 6029-071-111, C-501. The State Highway Commission previously discontinued this segment of Old Route 29 on May 9, 1974.

If you have any questions related to this Project, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink that reads "J. Vaden Hunt".

J. Vaden Hunt, Esq.
Pittsylvania County Attorney

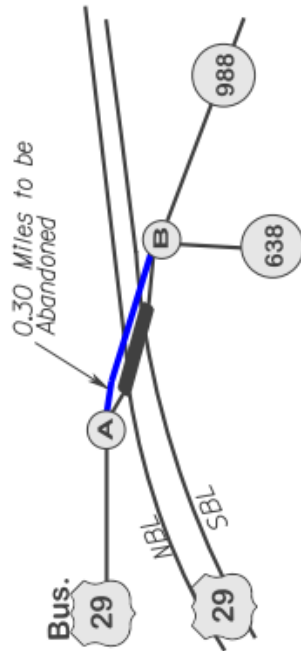
JVH/aw

Encls.

Cc: PCET (via email); (w/o encls.)
Hon. PCBOS (via email); (w/o encls.)
Nick Morris (Asst. Public Works Director/Special Projects Manager); (via email); (w/o encls.)
Christopher C. Slemph (Public Safety Director); (via email); (w/o encls.)

Exhibit B
Sketch of Proposed Segment to be Abandoned

SHEET 1 OF 1



Route	Action	Segment	Length
(Old) 29	Abandonment	A-B	0.30 Mi.



Virginia Department of Transportation
VDOT
 Office of Land Use
 June 01, 2021

Not To Scale

PITTSYLVANIA COUNTY


Lynchburg District

6029-071-111, C-501

Old Route 29 Abandonment 33.2-902 Code of Virginia

Exhibit C
“Notice of Intent to Abandon”

Published in the *Star-Tribune*
June 2 and 9, 2021



Route 29 (Old Location of Route 29)
Pittsylvania County
Willingness to Hold a Public Hearing
Notice of Intent to Abandon Public Road Segment

Pursuant to §33.2-902 of the Code of Virginia, the Virginia Department of Transportation (VDOT) will consider abandonment of a segment of the Old Location of Route 29 in Pittsylvania County. The total length of the segment to be abandoned is 0.3 miles. The Commonwealth Transportation Board discontinued this segment of roadway on May 9, 1974, made necessary by the construction of the new four lane Route 29 (VDOT Project #6029-071-111, C-501). The exact location of the segment is from the intersection of Route 638 (Harbor Drive) and Route 988 (Highway View Road) northeasterly for 0.3 miles to a point on Business Route 29 (Main Street), opposite station 12+07 of the new highway alignment.

VDOT is willing to hold a public hearing prior to considering the abandonment if one or more landowners whose property is impacted by the abandonment makes a request. A public hearing may be requested in writing to Mr. Joseph Craddock, PE, Assistant Resident Engineer, VDOT Halifax Residency, 5211 Halifax Road, Halifax, VA 24558 on or prior to July 2, 2021.

Additional information about the proposed abandonment is available at VDOT's Halifax Residency Office at the address above. Please call ahead at 434-433-3142 to make an appointment with appropriate personnel.

VDOT ensures nondiscrimination and equal employment in all programs and activities in accordance with Title VI and Title VII of the Civil Rights Act of 1964. If you need more information or special assistance for persons with disabilities or limited English proficiency, contact VDOT Civil Rights at 434-856-8168.



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Agenda item # 2

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

Additions – Primary System of State Highways in Fauquier County

WHEREAS, 0.61 mile of new roadways were constructed in Fauquier County under VDOT Project 0015-030-117, C-501; and

WHEREAS, § 33.2-314 of the *Code of Virginia* allows the Commonwealth Transportation Board to add new highways to the Primary System of State Highways; and

WHEREAS, the Fauquier County Board of Supervisors supports the addition of the new highways, identified as Routes FR-1076 and FR-1078, to the Primary System of State Highways and has provided a letter of support, attached hereto as Exhibit A, requesting the additions depicted on the sketch attached hereto as Exhibit B; and

NOW THEREFORE, BE IT RESOLVED, that the roadways identified below, are hereby ordered added to the Primary System of State Highways, pursuant to subsection A of § 33.2-314 of the *Code of Virginia*.

Primary System of State Highways

Additions

Culpeper District

Fauquier County

- Route FR-1076 0.33 Mi.
- Route FR-1078 0.28 Mi.

Total Mileage Added to the Primary System: 0.61 Mi.

#####

CTB Decision Brief

Additions – Primary System of State Highways in Fauquier County

Issue: VDOT Project 0015-030-117, C-501 resulted in the construction of Routes FR-1076 and FR-1078 in Fauquier County. The Virginia Department of Transportation, with support of the Fauquier County Board of Supervisors, seeks Commonwealth Transportation Board (Board) approval of addition of the new roadways to the Primary System of State Highways.

Facts: Routes FR-1076 and FR-1078 in Fauquier County, a total distance of 0.61 of a mile, were constructed as part of VDOT Project 0015-030-117, C-501.

The Fauquier County Board of Supervisors submitted a letter of support dated April 28, 2021 (Exhibit A, attached), indicating the Board of Supervisors' support of the addition of the 0.61 of a mile of newly constructed roadways Routes FR-1076 and FR-1078 to the Primary System of State Highways; said roadways are identified in "Red" on the Project sketch identified as Exhibit B, attached.

Upon review of the Project, VDOT staff determined that the 0.61 of a mile of newly constructed roadways comprised of Routes FR-1076 and FR-1078 should be added to the Primary System of State Highways, pursuant to § 33.2-314 of the *Code of Virginia*.

Recommendations: VDOT recommends the Commonwealth Transportation Board approve addition to the Primary System of State Highways, the 0.61 of a mile of roadway comprised of Routes FR-1076 and FR-1078 constructed as part of VDOT Project 0015-030-117, C-501 referenced above.

Action Required by CTB: The *Code of Virginia* requires a majority of the Board's members to approve the additions proposed in this brief. The resolution describing the proposed segments to be added is provided for the Board's consideration.

Result if Approved: If approved, VDOT will add the roadways referenced above to the Primary System of State Highways.

Options: Approve or Deny

Exhibit A
Fauquier County Board of Supervisors Letter of Support dated April 28, 2021



COUNTY OF FAUQUIER
OFFICE OF THE COUNTY ADMINISTRATOR

PAUL S. McCULLA
County Administrator

10 Hotel Street, Suite 204
Warrenton, Virginia 20186
PHONE 540-422-8001
FAX 540-422-8022
E-mail: paul.mcculla@faquiercounty.gov

ERIN M. KOZANECKI
Deputy County Administrator

April 28, 2021

Mr. D. Mark Nesbit, P.E.
Resident Engineer
Virginia Department of Transportation
Warrenton Residency
457 East Shirley Avenue
Warrenton, VA 20186

RE: Route 15/29 Opal Interchange, VDOT Project 0015-030-117, C-501

Dear Mr. Nesbit:

In my capacity as County Administrator and on behalf of the Fauquier County Board of Supervisors, the County supports the highway system changes associated with VDOT Project 0015-030-117, C-501 at the Route 15/29 Opal Interchange.

These highway system changes include (see attached VDOT Project sketch for additional details):

- §33.2-314.A – Addition of Primary roads
- §33.2-705 – Addition of a Secondary road
- §33.2-912 – Abandonment of a Secondary road related to this VDOT construction project

If you have any questions related to this Project, do not hesitate to contact me.

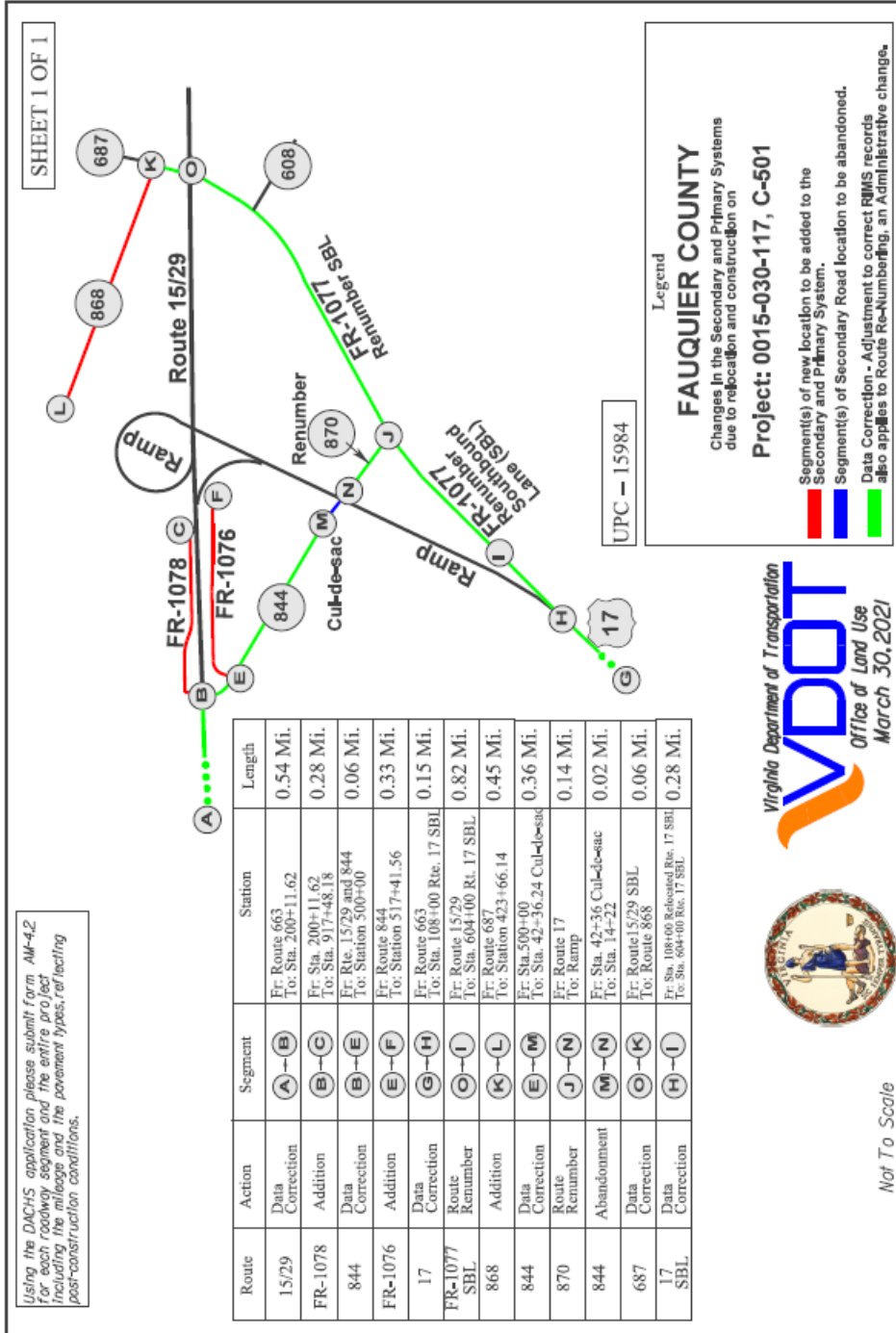
Sincerely,

Paul S. McCulla
County Administrator

PSM:rd
Enclosure
cc: Fauquier County Department of Community Development

Exhibit B

Sketch of Proposed Primary Additions Identified as Route FR-1076 (Segment E-F) & Route FR-1078 (Segment B-C)





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Agenda item # 3

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

Title: Bridge Naming: “Sgt. Alfred J. Amburgey Memorial Bridge”

WHEREAS, in accordance with § 33.2-213 of the *Code of Virginia*, the Wise County Board of Supervisors has requested, by resolution dated June 10, 2021, that the Commonwealth Transportation Board (CTB), to honor and memorialize the dedicated life, service and ultimate sacrifice to his country, his county, and his family of Sergeant First Class Alfred J. Amburgey, name the bridge on U.S. Business Route 23, Park Ave NW/Kent Junction Road, over Dorchester Road, in West Norton, Wise County as the “Sgt. Alfred J. Amburgey Memorial Bridge”; and

WHEREAS, Wise County, by resolution dated June 10, 2021 and by letter dated June 17, 2021, has agreed to pay the cost of producing, placing, and maintaining the signs calling attention to this naming; and

WHEREAS, § 33.2-213 provides that the Virginia Department of Transportation (VDOT) shall place and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other transportation facilities named by the CTB and requires that the costs of producing, placing, and maintaining such signs shall be paid by the localities in which they are located or by the private entity whose name is attached to the transportation facility so named.

NOW THEREFORE, BE IT RESOLVED, pursuant to § 33.2-213 of the *Code of Virginia*, the CTB hereby names the bridge on U.S. Business Route 23, Park Ave NW/Kent Junction Road, over Dorchester Road, in West Norton, Wise County as the “Sgt. Alfred J. Amburgey Memorial Bridge”; and

Resolution of the Board

Bridge Naming: "Sgt. Alfred J. Amburgey Memorial Bridge"

July 21, 2021

Page 2 of 2

BE IT FURTHER RESOLVED, that VDOT is directed to produce, place, and maintain the signs calling attention to this naming, and secure payment from Wise County for these costs as required by law.

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CTB Decision Brief

Bridge Naming: “Sgt. Alfred J. Amburgey Memorial Bridge”

Issue: Commemorative naming of the bridge on U.S. Business Route 23, Park Ave NW/Kent Junction Road, over Dorchester Road, in West Norton, Wise County as the “Sgt. Alfred J. Amburgey Memorial Bridge”.

Facts: Wise County enacted a resolution on June 10, 2021 to honor the life, dedication and ultimate sacrifice to his Country, county and family of Sergeant First Class Alfred J. Amburgey of Thacker’s Branch, Wise County, Virginia.

Mr. Amburgey served in the United States Army during the Korean War in 1952 and 1953 where he returned as a decorated Staff Sergeant, receiving the Combat Infantry Badge, Silver Star for Gallantry, National Defense Service, Korean War Service, Korean Defense Service, United Nations Korean Defense Service, United Nations Medal, Republic of Korea War Service, Korean Presidential Service, Army Overseas Medal and Army Service Medal.

After his Korean service, he re-enlisted and was promoted to Sgt. First Class and was stationed in Germany for six years before being sent to Vietnam in July 1966.

Sgt. First Class Alfred J. Amburgey was killed in action on August 25, 1966 while he and his team of 12 were on a reconnaissance patrol near the Demilitarized Zone and were ambushed. As a result of his bravery and service he was awarded the Combat Infantry Badge with Two Stars, The Vietnam Service Medal, The American Defense Service Medal, a Purple Heart with Two Stars, Vietnam War Medal, the United States Presidential Citation and the US Peace Medal.

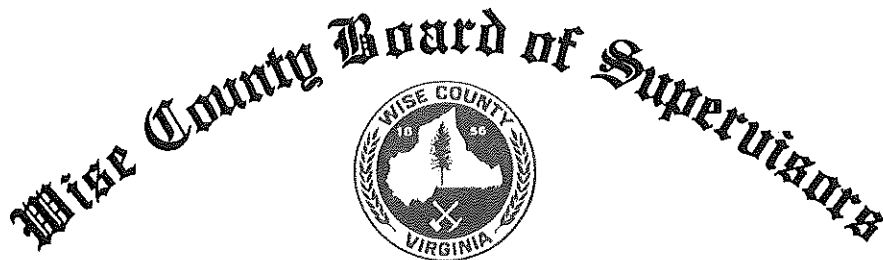
Recommendations: The Virginia Department of Transportation (VDOT) recommends this request be approved.

Action Required by CTB: The *Code of Virginia* requires a majority of the CTB members to approve a resolution naming a highway or bridge, as appropriate. A resolution will be provided for the Board’s consideration.

Result if Approved: The bridge on U.S. Business Route 23, Park Ave NW/Kent Junction Road, over Dorchester Road, in West Norton, Wise County will be named as the “Sgt. Alfred J. Amburgey Memorial Bridge”. In accordance with law and by resolution, Wise County agrees to pay the costs of producing, placing, and maintaining the signs calling attention to this naming.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: VDOT is not aware of any opposition to this proposal.



Office of County Administrator

TELEPHONE 276-328-2321
FAX 276-328-9780

COURTHOUSE

P.O. BOX 570
206 E. MAIN STREET

WISE, VIRGINIA 24293

**RESOLUTION
SGT. ALFRED J. AMBURGEY MEMORIAL BRIDGE**

WHEREAS, the Wise County Board of Supervisors is extremely proud of their citizens, both past and present; and

WHEREAS, one of the past citizens of Thacker's Branch, Wise County, Virginia, gave his all to his country, his county and his family; and

WHEREAS, Alfred J. Amburgey served in the United States Army during the Korea war in 1952 and 1953 where he returned as a decorated Staff Sergeant, receiving the Combat Infantry Badge, Silver Star for Gallantry, National Defense Service, Korean War Service, Korean Defense Service, United Nations Korean Defense Service, United Nations Medal, Republic of Korea War Service, Korean Presidential Service, Army Overseas Medal, and Army Service Medal; and

WHEREAS, after his Korea Service he re-enlisted and was promoted to Sgt. First Class and was stationed in Germany for six years before being sent to Vietnam on July 12, 1966 where he and his team of 12 were on a reconnaissance patrol near the DMZ, were ambushed and killed on August 25, 1966, for which he was awarded Combat Infantry Badge with Two Stars, The Vietnam Service Medal, The American Defense Service Medal, Purple Heart with two stars, Vietnam War Medal, the United States Presidential Citation, and the US Peace Medal.

NOW, THEREFORE, BE IT RESOLVED that the Wise County Board of Supervisors wishes to show its sincere appreciation and respect for the ultimate sacrifice of Sgt. Alfred J. Amburgey and respectfully requests the Commonwealth Transportation Board and the Virginia Department of Transportation to formally designate and formally name the bridge, located in West Norton on Business 23 Park Avenue NW/Kent Junction Road, (structure number 1016), as the "**Sgt. Alfred J. Amburgey Memorial Bridge**" to commemorate and honor Alfred J. Amburgey for his honor and his sacrifice, and allow a permanent sign to be erected to recognize this honor.


BE IT FURTHER RESOLVED that the County of Wise shall pay all associated expenses in fabricating and future maintenance of the signs.

ADOPTED this the 10th day of June 2021.

ATTEST:

WISE COUNTY BOARD OF SUPERVISORS


Michael W. Hatfield, Clerk


J.H. Rivers, Chairman

Wise County Board of Supervisors



Office of County Administrator

COURTHOUSE

WISE, VIRGINIA 24293

TELEPHONE 276-328-2321
FAX 276-328-9780

P.O. BOX 570
206 E. MAIN STREET

June 17, 2021

Virginia Department of Transportation
Wise Residency
Attn: Glenn M. Cantrell, Eng. Tech., Sr. – Permits
703 Hurricane Road, NE
Wise, Virginia 24293

RE: Bridge Naming Requests

Mr. Cantrell,

This is to confirm that the Wise County Board of Supervisors agrees to pay for the fabrication, installation, and future maintenance for the signage for the following bridge naming requests:

“Corporal Carl Dingus Memorial Bridge” – Resolution adopted April 8, 2021
“Sgt. Alfred J. Amburgey Memorial Bridge” – Resolution adopted June 10, 2021

If you should need anything further in this matter, please contact this office.

Sincerely,

Michael W. Hatfield,
County Administrator

Proposed Bridge Naming


Proposed Sgt. Alfred J. Amburgey Memorial Bridge

GPS: 36.554798, -82.392717

Route 23 - Kent Junction Road/Park Avenue NW
Wise County

Structure Number: 1016

Legend

-  Proposed Bridge to be named



Google Earth

© 2021 Google

800 ft





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Agenda item # 4

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

Title: Bridge Naming: “Corporal Carl Dingus Memorial Bridge”

WHEREAS, in accordance with § 33.2-213 of the *Code of Virginia*, the Wise County Board of Supervisors has requested, by resolution dated April 8, 2021, that the Commonwealth Transportation Board (CTB), to honor and memorialize the dedicated life, service and ultimate sacrifice to his country, his county, and his family of Corporal Carl Dingus, name the bridge on U.S. Business Route 23, Park Ave NE, over Guest River, in Esserville, Wise County as the “Corporal Carl Dingus Memorial Bridge”; and

WHEREAS, Wise County, by resolution dated April 8, 2021 and by letter dated June 17, 2021, has agreed to pay the cost of producing, placing, and maintaining the signs calling attention to this naming; and

WHEREAS, § 33.2-213 provides that the Virginia Department of Transportation (VDOT) shall place and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other transportation facilities named by the CTB and requires that the costs of producing, placing, and maintaining such signs shall be paid by the localities in which they are located or by the private entity whose name is attached to the transportation facility so named.

NOW THEREFORE, BE IT RESOLVED, pursuant to § 33.2-213 of the *Code of Virginia*, the CTB hereby names the bridge on U.S. Business Route 23, Park Ave NE, over Guest River, in Esserville, Wise County as the “Corporal Carl Dingus Memorial Bridge”; and

Resolution of the Board

Bridge Naming: "Corporal Carl Dingus Memorial Bridge"

July 21, 2021

Page 2 of 2

BE IT FURTHER RESOLVED, that VDOT is directed to produce, place, and maintain the signs calling attention to this naming, and secure payment from Wise County for these costs as required by law.

####

CTB Decision Brief

Bridge Naming: “Corporal Carl Dingus Memorial Bridge”

Issue: Commemorative naming of the bridge on U.S. Business Route 23, Park Ave NE, over Guest River, in Esserville, Wise County as the “Corporal Carl Dingus Memorial Bridge”.

Facts: Wise County enacted a resolution on April 8, 2021 to honor the life, dedication and ultimate sacrifice to his country, county, and family of Corporal Carl Dingus of Esserville, Wise County, Virginia.

Mr. Dingus was born in Esserville on March 3, 1944, less than a mile from the bridge in this commemorative naming. He would cross this bridge to and from school while he attended Esserville School from 1950-1952, Wise Elementary School from 1952-1957 and JJ Kelly High School from 1957-1962.

Corporal Carl Dingus was drafted into the United States Army in 1966 and was sent to Vietnam in November of 1967. He was killed in action while bravely serving his country on February 3, 1968.

Recommendations: The Virginia Department of Transportation (VDOT) recommends this request be approved.

Action Required by CTB: The *Code of Virginia* requires a majority of the CTB members to approve a resolution naming a highway or bridge, as appropriate. A resolution will be provided for the Board’s consideration.

Result if Approved: The bridge on U.S. Business Route 23, Park Ave NE, over Guest River, in Esserville, Wise County will be known as the “Corporal Carl Dingus Memorial Bridge”. In accordance with law and by resolution, Wise County agrees to pay the costs of producing, placing, and maintaining the signs calling attention to this naming.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: VDOT is not aware of any opposition to this proposal.

Wise County Board of Supervisors



Office of County Administrator

TELEPHONE 276-328-2321
FAX 276-328-9780

COURTHOUSE

P.O. BOX 570
208 E. MAIN STREET

WISE, VIRGINIA 24293

RESOLUTION

CORPORAL CARL DINGUS MEMORIAL BRIDGE

WHEREAS, the Wise County Board of Supervisors is extremely proud of their citizens, both past and present; and

WHEREAS, one of the past citizens of Esserville, Norton, Virginia, Corporal Carl Dingus, gave his all to his country, and his county and his family; and

WHEREAS, Carl Dingus was born in Esserville on March 3, 1944 less than a mile from the bridge and crossed the bridge to and from school while he attended Esserville School from 1950 to 1952, Wise Elementary School from 1952 to 1957 and JJ Kelly High School from 1957 to 1962; and

WHEREAS, Corporal Carl Dingus was drafted into the United States Army in 1966 and he was sent to Vietnam in November of 1967; and

WHEREAS, Corporal Carl Dingus was killed in action on February 3, 1968; and

WHEREAS, the Wise County Board of Supervisors wishes to show its appreciation and respect for the ultimate sacrifice of Corporal Carl Dingus.

NOW, THEREFORE, BE IT RESOLVED that the Wise County Board of Supervisors respectfully requests the Commonwealth Transportation Board and the Virginia Department of Transportation to formally designate and formally name the bridge at Esserville, VA as the "Corporal Carl Dingus Memorial Bridge" to commemorate and honor Corporal Carl Dingus and the Dingus family and allow a permanent sign to be erected to recognize this honor.

BE IT FURTHER RESOLVED that the County of Wise shall pay all associated expenses in fabricating and future maintenance of the sign.

ADOPTED this the 8th day of April 2021.

ATTEST:

WISE COUNTY BOARD OF SUPERVISORS


Michael W. Hatfield, Clerk


J. H. Rivers, Chairman

Wise County Board of Supervisors



Office of County Administrator

COURTHOUSE

WISE, VIRGINIA 24293

TELEPHONE 276-328-2321
FAX 276-328-9780

P.O. BOX 570
206 E. MAIN STREET

June 17, 2021

Virginia Department of Transportation
Wise Residency
Attn: Glenn M. Cantrell, Eng. Tech., Sr. – Permits
703 Hurricane Road, NE
Wise, Virginia 24293

RE: Bridge Naming Requests

Mr. Cantrell,

This is to confirm that the Wise County Board of Supervisors agrees to pay for the fabrication, installation, and future maintenance for the signage for the following bridge naming requests:

“Corporal Carl Dingus Memorial Bridge” – Resolution adopted April 8, 2021
“Sgt. Alfred J. Amburgey Memorial Bridge” – Resolution adopted June 10, 2021

If you should need anything further in this matter, please contact this office.

Sincerely,

Michael W. Hatfield,
County Administrator

Proposed Bridge Naming


Proposed Corporal Carl Dingus Memorial Bridge

GPS: 36.554798, -82.392717

Route 23 - Esserville Road/Park Avenue NE
Wise County

Structure Number: 1901

Legend

-  Proposed Bridge to be named



Google Earth

© 2021 Google



1000 ft



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

Agenda item # 5

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

Title: Bridge Naming: “James Michael Cox Vietnam Memorial Intersection”

WHEREAS, in accordance with § 33.2-213 of the *Code of Virginia*, the Floyd County Board of Supervisors has requested, by resolution dated May 11, 2021, that the Commonwealth Transportation Board (CTB), to honor and memorialize the life, service and ultimate sacrifice to his country of James Michael Cox, name the intersection of Route 619, Horse Ridge Road and Route 631, Sumpter Road, Floyd County as the “James Michael Cox Vietnam Memorial Intersection”; and

WHEREAS, Floyd County, by its May 11, 2021 resolution, has agreed to pay the cost of producing, placing, and maintaining the signs calling attention to this naming; and

WHEREAS, § 33.2-213 provides that the Virginia Department of Transportation (VDOT) shall place and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other transportation facilities named by the CTB and requires that the costs of producing, placing, and maintaining such signs shall be paid by the localities in which they are located or by the private entity whose name is attached to the transportation facility so named.

NOW THEREFORE, BE IT RESOLVED, pursuant to § 33.2-213 of the *Code of Virginia*, the CTB hereby names the intersection of Route 619, Horse Ridge Road and Route 631, Sumpter Road, Floyd County as the “James Michael Cox Vietnam Memorial Intersection”; and

Resolution of the Board

Bridge Naming: "James Michael Cox Vietnam Memorial Intersection"

July 21, 2021

Page 2 of 2

BE IT FURTHER RESOLVED, that VDOT is directed to produce, place, and maintain the signs calling attention to this naming, and secure payment from Floyd County for these costs as required by law.

####

CTB Decision Brief

Bridge Naming: “James Michael Cox Vietnam Memorial Intersection”

Issue: Commemorative naming of the intersection of Route 619, Horse Ridge Road and Route 631, Sumpter Road, Floyd County as the “James Michael Cox Vietnam Memorial Intersection”.

Facts: Floyd County enacted a resolution on May 11, 2021 to honor the life, service and ultimate sacrifice of James Michael Cox to his country and fellow soldiers. Mr. Cox grew up on Horse Ridge Road near the intersection of Sumpter Road and his family still resides there.

James Michael Cox served with distinction in the United States Army and paid the ultimate sacrifice while serving his country during the Vietnam War.

Recommendations: The Virginia Department of Transportation (VDOT) recommends this request be approved.

Action Required by CTB: The *Code of Virginia* requires a majority of the CTB members to approve a resolution naming a highway or bridge, as appropriate. A resolution will be provided for the Board’s consideration.

Result if Approved: The intersection of Route 619, Horse Ridge Road and Route 631, Sumpter Road, Floyd County will be known as the “James Michael Cox Vietnam Memorial Intersection”. In accordance with law and by resolution, Floyd County agrees to pay the costs of producing, placing, and maintaining the signs calling attention to this naming.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: VDOT is not aware of any opposition to this proposal.

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF FLOYD COUNTY, VIRGINIA, HELD ON TUESDAY, JUNE 8, 2021, AT 8:30 A.M. IN THE BOARD ROOM OF THE COUNTY ADMINISTRATION BUILDING, THEREOF:

PRESENT: Joe D. Turman, Chairman; Jerry W. Boothe, Vice Chairman; W. Justin Coleman, Linda D. Kuchenbuch, and Lauren D. Yoder, Board Members; Linda S. Millsaps, County Administrator; Cynthia B. Ryan, Assistant County Administrator.

The following action was taken:

On a motion of Supervisor Coleman, seconded by Supervisor Yoder, and unanimously carried, it was resolved to adopt the following resolution:

Highway Intersection Naming of Route 619 Horse Ridge Road and Route 631 Sumpter Road in Floyd County as the "James Michael Cox Vietnam Memorial Intersection"

WHEREAS, James Michael Cox grew up on Horse Ridge Road near the intersection of Sumpter Road in Floyd County Virginia;

WHEREAS, James Michael Cox's family still reside on Horse Ridge Road near the intersection of Sumpter Road;

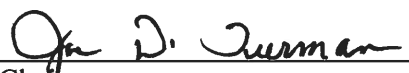
WHEREAS, James Michael Cox served with distinction in the US Army and paid the ultimate sacrifice in the Vietnam War;

WHEREAS, Section 33.2-213 of the Code of Virginia authorizes the Commonwealth Transportation Board (CTB) to give suitable names to state highways, bridges, interchanges, and other transportation facilities and change the names of any highways, bridges, interchanges, or other transportation facilities forming a part of the systems of state highways;

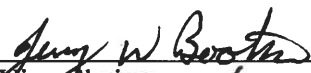
WHEREAS, Section 33.2-213 provides that the Virginia Department of Transportation shall place and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other transportation facilities named by the CTB and requires that the costs of producing, placing, and maintaining such signs shall be paid by the localities in which they are located.

NOW, THEREFORE, BE IT RESOLVED, that Floyd County, in accordance with Section 33.2-213 of the Code of Virginia, does hereby request that the CTB name the intersection of highways Horse Ridge Road and Sumpter Road on Routes 619 and 631, the James Michael Cox Vietnam Memorial Intersection on Route 619 from 0.05 mile north of Route 631 to 0.05 mile south of Route 631 and on Route 631 from 0.05 mile east of Route 631 to 0.05 mile west of Route 631 in Floyd County.

BE IT FURTHER RESOLVED, that Floyd County agrees to pay the costs of producing, placing, and maintaining the signs calling attention to this naming.



Chairman



Vice Chairman



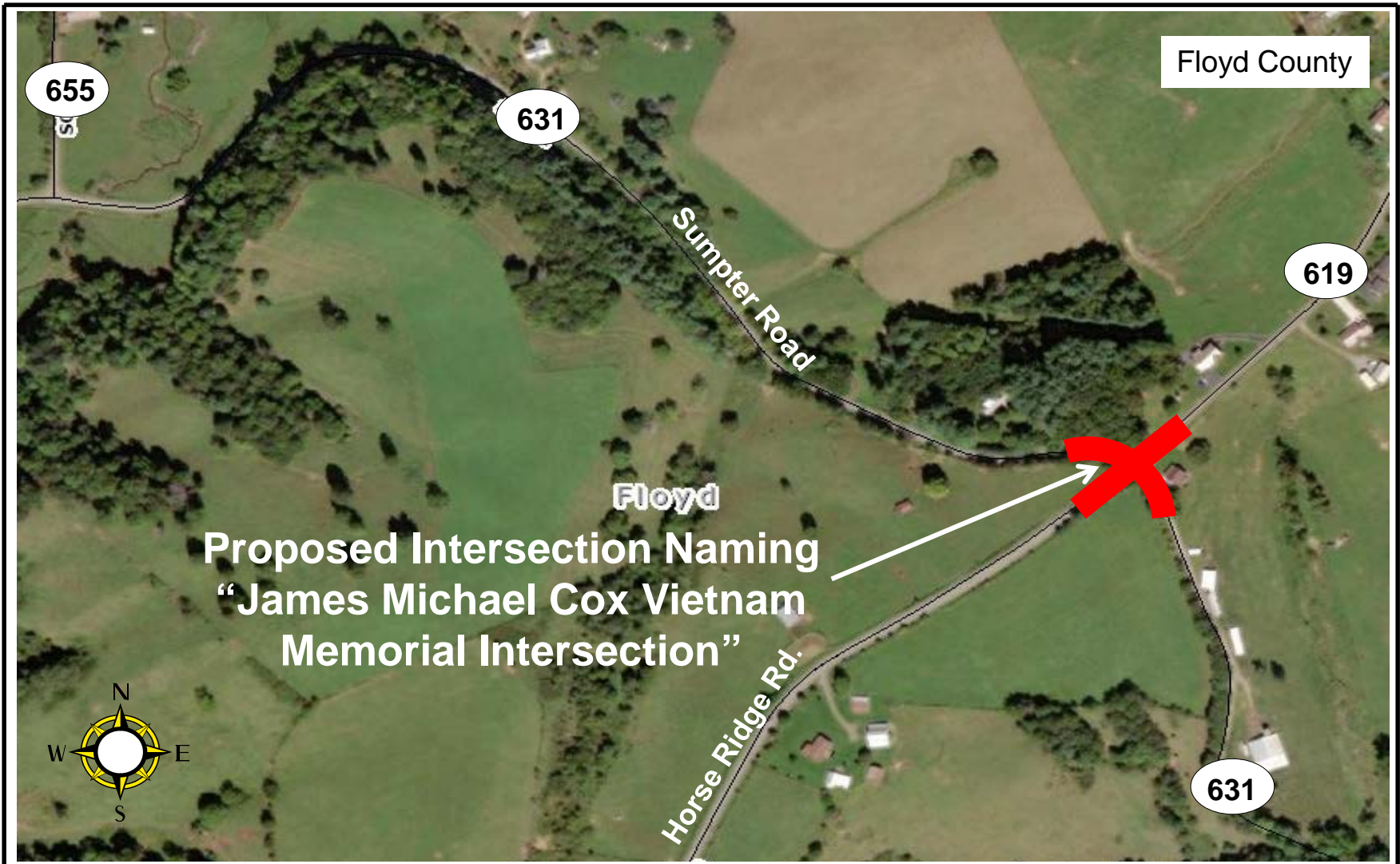
Supervisor



Supervisor



Supervisor



**Proposed Intersection Naming
"James Michael Cox Vietnam
Memorial Intersection"**



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

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Agenda Item # 6

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: Seconded By:

Action:

Title: Approval of Next Phase of the Martinsville Southern Connector Project

WHEREAS, on January 15, 2020, the Commonwealth Transportation Board (CTB) approved Alternative C of the Draft Environmental Impact Statement (EIS) as the preferred location alternative for the Martinsville Southern Connector Study (MSC), while directing VDOT to analyze whether adjustments could be made to measurably reduce impacts to properties as requested by Henry County and still result in a permissible project; and

WHEREAS, in the January 15, 2020, resolution to approve the preferred alternative, the CTB also resolved that any further commitment of funding for a project resulting from the MSC study (MSC Project), whether federal or state, must be approved by the CTB prior to entering into that commitment; and

WHEREAS, following CTB action, in accord with the direction of the CTB and in consultation with the local, federal, and state agencies involved in the National Environmental Policy Act process, VDOT adjusted the preferred alternative to result in fewer property impacts and successfully initiated the permitting process; and

WHEREAS, VDOT is in the process of developing the Final EIS, which will document impacts associated with the preferred alternative as adjusted; and

WHEREAS, in order to request a Record of Decision from the Federal Highway Administration, a subsequent phase of project development must be identified in the Statewide Transportation Improvement Plan (STIP); and

WHEREAS, a project must be included in the CTB's Six-Year Improvement Program in order to be reflected in the STIP; and

WHEREAS, VDOT has identified \$2,500,000 for the next phase of the MSC Project development; and

WHEREAS, a recent safety analysis of U.S. Route 220 between the state line and the U.S. Route 58 Bypass supports the location and scope of proposed targeted safety improvements as the next phase of the MSC Project.

NOW, THEREFORE, BE IT RESOLVED that the CTB hereby approves the subsequent phase of the MSC Project, UPC T25548 Route 220 South - Ridgeway Area - Safety Improvements, consisting of advancement of southbound safety improvements in targeted locations to mitigate geometric challenges on existing U.S. Route 220 from the state line to mile marker 3.0, including widened, paved shoulders; shoulder rumble strips; and guardrail installations and upgrades.

BE IT FURTHER RESOLVED that \$2,500,000 is hereby allocated to the subsequent phase of the MSC Project, UPC T25548 Rt. 220 South - Ridgeway Area - Safety Improvements, and the Fiscal Year 2022-2027 Six-Year Improvement Program is amended accordingly.

###

CTB Decision Brief
Approval of Next Phase of the Martinsville Southern Connector Project
State Project Number: 0220-044-052, P101; UPC: 110916/ UPC T25548

Issue: The Virginia Department of Transportation (VDOT) seeks from the Commonwealth Transportation Board (CTB) approval of the next phase of project development following the conclusion of the Martinsville Southern Connector Study.

Facts: The Martinsville Southern Connector Study (MSC) Route 220 Environmental Impact Statement (EIS) was initiated in February 2018 to evaluate potential transportation improvements along the U.S. Route 220 corridor between the U.S. Route 58/220 Bypass and the North Carolina state line.

In its location approval for the preferred alternative for the MSC EIS on January 15, 2020, the CTB directed VDOT to analyze whether adjustments could be made to measurably reduce impacts to properties and still result in a permissible project. CTB also resolved that any further commitment of funding for a project resulting from the MSC (Project) must be approved by the CTB prior to entering into that commitment.

The Draft EIS was developed and made available to the public in March 2020 and evaluated alternatives that accommodate local and regional traffic and address geometric deficiencies and inconsistencies. Following the CTB action on January 15, 2020, VDOT, in accord with the CTB's direction and in coordination with local, federal, and state agency partners, adjusted the preferred alternative to result in fewer property impacts and successfully initiated the permitting process. VDOT is currently in the process of developing the Final EIS, which will document the potential impacts associated with the adjusted preferred alternative.

In order to conclude the National Environmental Policy Act process and request a Record of Decision (ROD) from the Federal Highway Administration, a subsequent phase of project development must be identified in the Statewide Transportation Improvement Program (STIP) and included in the Six-year Improvement Program (SYIP). VDOT has identified \$2,500,000 to fund the next phase of Project development.

Based on a recent additional safety analysis of the U.S. Route 220 corridor between the state line and the U.S. Route 58 Bypass, VDOT developed a target location and scope of proposed improvements. These improvements are consistent with the MSC EIS and are warranted by the safety analysis.

Recommendation: VDOT recommends that the CTB approve the next phase of the Project, consisting of advancement of southbound safety improvements in targeted locations to mitigate geometric challenges on existing U.S. Route 220 from the state line to mile marker 3.0, to include:

- a. Widened, paved shoulders;
- b. Shoulder rumble strips; and
- c. Guardrail installations and upgrades.

. The recommendation considers the following factors:

Decision Brief of the Board

Approval of Next Phase of the Martinsville Southern Connector Project

July 21, 2021

Page Two

- The Federal Highway Administration (FHWA) has determined that there is no requirement to fully fund the preferred alternative for construction in order to request or obtain a ROD;
- There are significant horizontal and vertical challenges in the southbound lanes of U.S. Route 220 as evidenced by the numerous curve warning signs, chevrons, and truck rollover warning signs; and
- Over a five-year period, from August of 2015 to July of 2020, there were twice as many crashes in the southbound direction compared to the northbound direction. Seventy-one percent of the crashes in the southbound direction were “run-off-road” crashes.

Action required by the CTB: The CTB will be presented with a resolution for a formal vote that will provide for:

- Approval of the subsequent phase of the MSC Project to include the targeted safety improvements outlined above and presented to the CTB on June 22, 2021.
- Addition of this next phase, the MSC Project UPC T25548 Rt. 220 South - Ridgeway Area - Safety Improvements, to the SYIP of projects and programs for Fiscal Years 2022 through 2027.

Result, if Approved: VDOT will proceed with completing the Final EIS, obtaining a US Army Corps of Engineers permit, and seeking a ROD from FHWA. The proposed Project may advance once the ROD is issued.

Options: Approve, deny, or defer.

Public Comments/Reactions: CTB was briefed during its February 2019 and May 2019 workshops. CTB was briefed on public comments on the recommended preferred alternative on December 10, 2019. CTB was also briefed on the study’s status in June 2021. Those presentations are available here: http://www.virginiadot.org/projects/salem/martinsville_southern_connector_study_archives.asp

VDOT held Citizen Information Meetings on May 8, 2018 and January 23, 2019 and a Location Public Hearing on August 15, 2019 relating to the different alignment options under consideration and the recommendation for a preferred alternative to be documented in the Draft EIS. Maps, drawings, and other location studies data were presented for public review at these meetings and citizen comments were received and reviewed. VDOT conducted multiple online surveys supplementing these meetings, as well as an online survey that resulted in nearly 800 responses in Fall 2018 to inform the Purpose and Need of the study.

The public comment period on the Draft EIS was open from March 6, 2020 through September 11, 2020. A public hearing on the Draft EIS was held on September 1, 2020. Over the course of this comment period, including the public hearing, a total of 155 comments were received. Of the comments received, 31 were considered substantive, requiring a response. These responses are to be documented in the Final EIS.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

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Agenda item # 7

RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: Seconded By:

Action:

Title: FY2021-2026 Six-Year Improvement Program Transfers
For May 22, 2021 through June 21, 2021

WHEREAS, Section 33.2-214(B) of the Code of Virginia requires the Commonwealth Transportation Board (Board) to adopt by July 1st of each year a Six-Year Improvement Program (Program) of anticipated projects and programs. After due consideration, the Board adopted a Final Fiscal Years 2021-2022 Program on December 9, 2020; and

WHEREAS, the Board authorized the Commissioner, or his designee, to make transfers of allocations programmed to projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2021 through 2026 to release funds no longer needed for the delivery of the projects and to provide additional allocations to support the delivery of eligible projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2021 through 2026 consistent with Commonwealth Transportation Board priorities for programming funds, federal/state eligibility requirements, and according to the following thresholds based on the recipient project; and

Table with 2 columns: Total Cost Estimate and Threshold. Rows include categories like <\$5 million, \$5 million to \$10 million, and >\$10 million with corresponding allocation increase thresholds.

Resolution of the Board
FY2021-2026 Six-Year Improvement Program Transfers
May 22, 2021 through June 21, 2021
July 21, 2021
Page 2 of 2

WHEREAS, the Board directed that (a) the Commissioner shall notify the Board on a monthly basis should such transfers or allocations be made; and (b) the Commissioner shall bring requests for transfers of allocations exceeding the established thresholds to the Board on a monthly basis for its approval prior to taking any action to record or award such action; and

WHEREAS, the Board is being presented a list of the transfers exceeding the established thresholds attached to this resolution and agrees that the transfers are appropriate.

NOW THEREFORE, BE IT RESOLVED, by the Commonwealth Transportation Board, that the attached list of transfer requests exceeding the established thresholds is approved and the specified funds shall be transferred to the recipient project(s) as set forth in the attached list to meet the Board's statutory requirements and policy goals.

####

CTB Decision Brief

FY2021-2026 Six-Year Improvement Program Transfers For May 22, 2021 through June 21, 2021

Issue: Each year the Commonwealth Transportation Board (CTB) must adopt a Six-Year Improvement Program (Program) in accordance with statutes and federal regulations. Throughout the year, it may become necessary to transfer funds between projects to have allocations available to continue and/or initiate projects and programs adopted in the Program.

Facts: On December 9, 2020, the CTB granted authority to the Commissioner of Highways (Commissioner), or his designee, to make transfers of allocations programmed to projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2021 through 2026 to release funds no longer needed for the delivery of the projects and to provide additional allocations to support the delivery of eligible projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2021 through 2026 consistent with Commonwealth Transportation Board priorities for programming funds, federal/state eligibility requirements, and according to the following thresholds based on the recipient project:

Total Cost Estimate	Threshold
<\$5 million	up to a 20% increase in total allocations
\$5 million to \$10 million	up to a \$1 million increase in total allocations
>\$10 million	up to a 10% increase in total allocations up to a maximum of \$5 million increase in total allocations

In addition, the CTB resolved that the Commissioner should bring requests for transfers of allocations exceeding the established thresholds to the CTB on a monthly basis for its approval prior to taking any action to record or award such action.

The CTB will be presented with a resolution for formal vote to approve the transfer of funds exceeding the established thresholds. The list of transfers from May 22, 2021 through June 21, 2021 is attached.

Recommendations: VDOT recommends the approval of the transfers exceeding the established thresholds from donor projects to projects that meet the CTB's statutory requirements and policy goals.

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to adopt changes to the Program for Fiscal Years 2021– 2026 that include transfers of allocated funds exceeding the established thresholds from donor projects to projects that meet the CTB's statutory requirements and policy goals.

Result, if Approved: If approved, the funds will be transferred from the donor projects to projects that meet the CTB's statutory requirements and policy goals.

Options: Approve, Deny, or Defer.

Decision Brief

FY2021-2026 Six-Year Improvement Program Transfers for May 22, 2021 through June 21, 2021

July 21, 2021

Page 2 of 2

Public Comments/Reactions: None

Six-Year Improvement Program Allocation Transfer Threshold Report

Row	Donor District	Donor Description	Donor UPC	Recipient District	Recipient Description	Recipient UPC	Fund Source	Transfer Amount	Total Allocation	Total Estimate	Transfer Percent	Comments
A	Fredericksburg	Public Involvement Activities, BIKESHARE AND BICYCLE INFRASTRUCT. IMPROVEMENTS, Lafayette Blvd /Fredericksburg Train Station Access Study	102626, 109479, 115612	Fredericksburg	#SMART20 - ROUTE 1/ENON ROAD INTERSECTION AND ROADWAY IMP	105722	RSTP : Fredericksburg (CF2MA0), RSTP Match : Fredericksburg (CS2MA1)	\$85,976	\$11,922,101	\$10,600,000	0.7%	Transfer of surplus funds recommended by District and MPO from underway projects to fund a scheduled project.
B	Fredericksburg	FAMPO 2050 LRTP SUPPORT, REGIONALLY SIGNIFICANT PROJECTS STUDY	113538, 113914	Fredericksburg	#HB2.FY17 - SAFETY IMPRV RTE 1 TELEGRAPH/WOODSTOCK	109467	RSTP : Fredericksburg (CF2MA0), RSTP Match : Fredericksburg (CS2MA1)	\$525,000	\$10,334,405	\$9,807,405	5.1%	Transfer of surplus funds recommended by District and MPO from underway projects to fund a scheduled project.
C	Fredericksburg	FREDERICKSBURG DISTRICT CMAQ BALANCE ENTRY	70712	Fredericksburg	#HB2.FY17 VIRGINIA CENTRAL RAILWAY TRAIL BRIDGE	109574	CMAQ - Fredericksburg (CNF214)	\$34,922	\$328,652	\$328,652	10.6%	Transfer of surplus funds recommended by District and MPO from the Fredericksburg CMAQ Balance Entry line item to fund a completed project.
D	Statewide	STATEWIDE HIGHWAY SAFETY BALANCE ENTRY	70700	Fredericksburg	PEDESTRIAN CROSSINGS & SIGNAL SAFETY MODIFICATIONS	113542	Safety (statewide) (CF3100), Safety Soft Match (statewide) (CF3101)	\$3,170	\$154,187	\$151,017	2.1%	Transfer of surplus funds recommended by District and Traffic Engineering Division from the Statewide Balance Entry line item to fund a completed project.
E	Fredericksburg	FAMPO 2050 LRTP SUPPORT	113538	Fredericksburg	Corridor Study for Gateway Blvd	114814	RSTP : Fredericksburg (CF2MA0), RSTP Match : Fredericksburg (CS2MA1)	\$193	\$62,693	\$62,500	0.3%	Transfer of surplus funds recommended by District and MPO from an underway project to fund a completed project.
F	Hampton Roads	HAMPTON ROADS MPO CMAQ BALANCE ENTRY	70714	Hampton Roads	Main Street Pedestrian Improvements	102951	Hampton Roads CMAQ (CNF214), Local Project Contributions - Secondary (NPL623)	\$69,000	\$1,281,438	\$1,430,000	5.4%	Transfer of surplus funds recommended by District and MPO from the Hampton CMAQ Balance Entry line item to fund a scheduled project.
G	Hampton Roads	HAMPTON ROADS MPO CMAQ BALANCE ENTRY	70714	Hampton Roads	Pocahontas Trail Reconstruction	102980	CMAQ Federal - Access : Hampton Roads MPO (CNF214), CMAQ Federal - Secondary : Hampton Roads MPO (CNF214), CMAQ Federal - Urban : Hampton Roads MPO (CNF214), CMAQ Match - Access : Hampton Roads MPO (CNS214), CMAQ Match - Primary : Hampton Roads MPO (CNS214), CMAQ Match - Secondary : Hampton Roads MPO (CNS214), Hampton Roads (CNF214), Local Project Contributions - Primary (NPL423), Statewide (CNF214)	\$881,535	\$25,096,498	\$30,680,519	3.5%	Transfer of surplus funds recommended by District and MPO from the Hampton CMAQ Balance Entry line item to fund a scheduled project.
H	Hampton Roads	HAMPTON ROADS MPO CMAQ BALANCE ENTRY	70714	Hampton Roads	Bridge Road Traffic Signal Upgrades	102991	Local Project Contributions - Urban (NOP723), CMAQ Federal - Statewide (CNF214)	\$23,290	\$2,337,981	\$2,332,158	1.0%	Transfer of surplus funds recommended by District and MPO from the Hampton CMAQ Balance Entry line item to fund an underway project.
I	Hampton Roads	HAMPTON ROADS MPO CMAQ BALANCE ENTRY	70714	Hampton Roads	Chesapeake Signal Timing - Phase 2	107032	Local Project Contributions - Urban (NOP723), CMAQ Federal - Statewide (CNF214)	\$18,937	\$173,671	\$150,000	10.9%	Transfer of surplus funds recommended by District and MPO from the Hampton CMAQ Balance Entry line item to fund an underway project.

Six-Year Improvement Program Allocation Transfer Threshold Report

Row	Donor District	Donor Description	Donor UPC	Recipient District	Recipient Description	Recipient UPC	Fund Source	Transfer Amount	Total Allocation	Total Estimate	Transfer Percent	Comments
J	Hampton Roads	HAMPTON ROADS MPO CMAQ BALANCE ENTRY	70714	Hampton Roads	Amtrak Multimodal Station - Site Grading and Drainage	109075	Accounts Receivable - Urban (NR), CMAQ : Hampton Roads (CF5M30), CMAQ Federal - Access : Hampton Roads MPO (CNF214), CMAQ Match : Hampton Roads (CS5M31), CMAQ State Match - Hampton Roads (CNS214), Hampton Roads (CNF214), Statewide (CNF214)	\$422,580	\$9,019,384	\$9,180,378	4.7%	Transfer of surplus funds recommended by District and MPO from the Hampton CMAQ Balance Entry line item to fund an underway project.
K	Hampton Roads	HAMPTON ROADS MPO CMAQ BALANCE ENTRY	70714	Hampton Roads	Norfolk Bus Shelters and Pedestrian Improvements	109572	Local Project Contributions - Urban (NOP723), CMAQ Federal - Statewide (CNF214)	\$145,722	\$1,291,509	\$1,109,356	11.3%	Transfer of surplus funds recommended by District and MPO from the Hampton CMAQ Balance Entry line item to fund an underway project.
L	Hampton Roads	HAMPTON ROADS MPO CMAQ BALANCE ENTRY	70714	Hampton Roads	Dam Neck Road/Holland Road Intersection Improvements	110802	Local Project Contributions - Urban (NOP723), CMAQ Federal - Statewide (CNF214)	\$200,000	\$2,440,000	\$2,190,000	8.2%	Transfer of surplus funds recommended by District and MPO from the Hampton CMAQ Balance Entry line item to fund an underway project.
M	Hampton Roads	Portsmouth Boulevard Sidewalk Segment 2	110999	Hampton Roads	Portsmouth Boulevard Sidewalk Segment 1	110998	Safety (statewide) (CF3100), Safety Soft Match (statewide) (CF3101)	\$51,061	\$289,061	\$289,061	17.7%	Transfer of surplus funds recommended by District and Traffic Engineering Division from an underway project to fund an underway project.
N	Hampton Roads	Portsmouth Boulevard Sidewalk Segment 2	110999	Hampton Roads	Portsmouth Boulevard Sidewalk Segment 3	111000	Safety (statewide) (CF3100), Safety Soft Match (statewide) (CF3101)	\$52,719	\$768,464	\$768,464	6.9%	Transfer of surplus funds recommended by District and Traffic Engineering Division from an underway project to fund an underway project.
O	Hampton Roads	ADA Ramps Upgrade - Phase 4	113190	Hampton Roads	Little Creek Rd/Shore Drive Intersection Improvements	113201	Revenue Sharing Local Match (NPL201), Revenue Sharing State Match (CNS202)	\$36,346	\$1,299,146	\$1,886,036	2.8%	Transfer of surplus funds recommended by District and Local Assistance Division from a completed project to fund a scheduled project.
P	Hampton Roads	HAMPTON ROADS MPO CMAQ BALANCE ENTRY	70714	Hampton Roads	Install Emergency Vehicle Preemption Software & Hardware	113830	Local Project Contributions - Urban (NOP723), CMAQ Federal - Statewide (CNF214)	\$36,899	\$347,933	\$347,933	10.6%	Transfer of surplus funds recommended by District and MPO from the Hampton CMAQ Balance Entry line item to fund a scheduled project.
Q	Hampton Roads	East Pembroke Ave Reconstruction - Phase III, Freeman Dr. Reconstruction	102953, 104372	Hampton Roads	Grant Street New Roadway	117115	Revenue Sharing Local Match (NPL201), Revenue Sharing State Match (CNS202)	\$766,328	\$5,762,672	\$5,784,000	13.3%	Transfer of surplus funds recommended by District and Local Assistance Division from a completed projects to fund a scheduled project.
R	Northern Virginia	MOSEBY DRIVE CULVERT REPLACEMENT	113223	Northern Virginia	CONNER DRIVE - EXTENSION	101302	Revenue Sharing Local Match (NPL201), Local Project Contributions – Urban (NOP723), Revenue Sharing State Match (CNS202)	\$300,000	\$2,355,684	\$2,355,684	12.7%	Transfer of surplus funds recommended by District and Local Assistance Division from a completed project to fund a scheduled project.
S	Northern Virginia	NORTHERN VIRGINIA (NOVA) CMAQ BALANCE ENTRY	70716	Northern Virginia	NORTHERN VIRGINIA TERMS - FY'19 - FY '23	106474	CMAQ Match : Northern Virginia (CS5M11), Northern Virginia (CNF214)	\$924,304	\$19,561,316	\$19,561,316	4.7%	Transfer of surplus funds recommended by District and MPO from the Northern Virginia CMAQ Balance Entry line item to fund an underway project.
T	Northern Virginia	NORTHERN VIRGINIA (NOVA) CMAQ BALANCE ENTRY	70716	Northern Virginia	CAPITAL BIKESHARE	106958	Local Project Contributions - Access (NOP023), CMAQ Federal - Northern Virginia (CNF214)	\$68,606	\$835,758	\$749,255	8.2%	Transfer of surplus funds recommended by District and MPO from the Northern Virginia CMAQ Balance Entry line item to fund a scheduled project.

Six-Year Improvement Program Allocation Transfer Threshold Report

Row	Donor District	Donor Description	Donor UPC	Recipient District	Recipient Description	Recipient UPC	Fund Source	Transfer Amount	Total Allocation	Total Estimate	Transfer Percent	Comments
U	Richmond	RICHMOND DGP DEALLOCATION BALANCE ENTRY	T21766	Richmond	#SMART18 - Courthouse Rd Tr (Salem Ch Rd to Cts Complex Rd)	111715	DGP - State (GS0100)	\$41,380	\$1,241,380	\$1,241,380	3.3%	Transfer of surplus funds recommended by District from the Richmond DGP Deallocation Balance Entry line item to fund a scheduled project.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

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Richmond, Virginia 23219

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Agenda item # 8

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

Title: Addition of Projects to the Six-Year Improvement Program for Fiscal Years 2022-2027

WHEREAS, Section 33.2-214(B) of the *Code of Virginia* requires the Commonwealth Transportation Board (Board) to adopt by July 1st of each year a Six-Year Improvement Program (Program) of anticipated projects and programs and that the Program shall be based on the most recent official revenue forecasts and a debt management policy; and

WHEREAS, after due consideration the Board adopted a Final Fiscal Years 2022-2027 Program on June 23, 2021; and

WHEREAS, the Board is required by §§ 33.2-214(B) and 33.2-221(C) of the *Code of Virginia* to administer and allocate funds in the Commonwealth Transportation Fund and the Transportation Trust Fund, respectively; and

WHEREAS, § 33.2-214(B) of the *Code of Virginia* provides that the Board is to coordinate the planning for financing of transportation needs, including needs for highways, railways, seaports, airports, and public transportation and is to allocate funds for these needs pursuant to §§ 33.2-358 and Chapter 15 of Title 33.2 (33.2-1500 et seq.) of the *Code of Virginia*, by adopting a Program; and

WHEREAS, §§ 33.2-1526 and 33.2-1526.1 authorize allocations to local governing bodies, transportation district commissions, or public service corporations for, among other

things, capital project costs for public transportation and ridesharing equipment, facilities, and associated costs; and

WHEREAS, the projects shown in Appendix A were not included in the FY 2022-2027 Program adopted by the Board on June 23, 2021; and

WHEREAS, the Board recognizes that the projects are appropriate for the efficient movement of people and freight and, therefore, for the common good of the Commonwealth.

NOW THEREFORE, BE IT RESOLVED, by the Commonwealth Transportation Board, that the projects shown in Appendix A are added to the Six-Year Improvement Program of projects and programs for Fiscal Years 2022 through 2027 and are approved.

#####

CTB Decision Brief

Addition of Projects to the Six-Year Improvement Program for Fiscal Years 2022 - 2027

Issue: Each year the Commonwealth Transportation Board (CTB) must adopt a Six-Year Improvement Program (Program) and allocations in accordance with the statutory formula.

Facts: The CTB must adopt a Program of anticipated projects and programs by July 1st of each year in accordance with § 33.2-214(B) of the *Code of Virginia*. On June 23, 2021, after due consideration, the CTB adopted a Final FY 2022-2027 Program.

Recommendations: The Virginia Department of Transportation (VDOT) recommends the addition of the projects in Appendix A to the Program for FY 2022–2027.

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to add the projects listed in Appendix A to the Program for FY 2022–2027 to meet the CTB’s statutory requirements.

Result, if Approved: If the resolution is approved, the projects listed in Appendix A will be added to the Program for FY 2022-2027.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None

**Appendix A
Amendments to the FY2022-2027 SYIP**

UPC	District	Jurisdiction	Route	Project Description	Total Cost	Total Allocation	Balance	Major Fund Source	Fully Funded
T-25771	Bristol	Washington County	11/58	#Pipeline22 - Rte. 11/58	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25776	Bristol	Scott County	23	#Pipeline22 - Rte. 23	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25780	Bristol	Washington County	19/58 Alt	#Pipeline22 - Rte. 19/58 Alt.	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25787	Bristol	City of Bristol	11/421	#Pipeline22 - Rte. 11/421	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25799	Bristol	Lee County	58 Alt	#Pipeline22 - Rte. 58 Alt.	\$25,000	\$25,000	\$0	Prescoping	Yes
T-25578	Culpeper	Town of Warrenton	211	#Pipeline22 - Rte. 211	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25781	Culpeper	Albemarle County	250	#Pipeline22 - Rte. 250	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25783	Culpeper	Albemarle County	250	#Pipeline22 - Rte. 250	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25786	Culpeper	Fauquier County	17	#Pipeline22 - Rte. 17	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25789	Culpeper	Fauquier County	29	#Pipeline22 - Rte. 29	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25803	Fredericksburg	City of Fredericksburg/ Spotsylvania County	3	#Pipeline22 - Rte. 3	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25805	Fredericksburg	Gloucester County	17	#Pipeline22 - Rte. 17	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25807	Fredericksburg	Stafford County	1	#Pipeline22 - Rte. 1	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25808	Fredericksburg	City of Fredericksburg/ Spotsylvania County	1	#Pipeline22 - Rte. 1	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25814	Fredericksburg	City of Fredericksburg/ Stafford County	1/628	#Pipeline22 - Rte. 1/628	\$25,000	\$25,000	\$0	Prescoping	Yes
T-25817	Hampton Roads	City of Chesapeake	464	#Pipeline22 - Rte. 464	\$25,000	\$25,000	\$0	Prescoping	Yes
T-25823	Hampton Roads	City of Norfolk	168	#Pipeline22 - Rte. 168	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25825	Hampton Roads	City of Newport News	143	#Pipeline22 - Rte. 143	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25827	Hampton Roads	City of Norfolk	165	#Pipeline22 - Rte. 165	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25828	Hampton Roads	City of Williamsburg	199/5	#Pipeline22 - Rte. 199/5	\$25,000	\$25,000	\$0	Prescoping	Yes
T-25826	Lynchburg	City of Danville	3772/29 Bus	#Pipeline22 - Rte. 3772/29 Bus	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25829	Lynchburg	City of Lynchburg	460 Bus	#Pipeline22 - Rte. 460 Bus	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25830	Lynchburg	City of Lynchburg/Campbell County	682	#Pipeline22 - Rte. 682	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25831	Lynchburg	Nelson County	29	#Pipeline22 - Rte. 29	\$25,000	\$25,000	\$0	Prescoping	Yes
T-25832	Lynchburg	City of Lynchburg	221	#Pipeline22 - Rte. 221	\$25,000	\$25,000	\$0	Prescoping	Yes
T-25810	Northern Virginia	Fairfax County	236	#Pipeline22 - Rte. 236	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25811	Northern Virginia	Fairfax County	29	#Pipeline22 - Rte. 29	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25812	Northern Virginia	Prince William County	29	#Pipeline22 - Rte. 29	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25821	Northern Virginia	Prince William County	294	#Pipeline22 - Rte. 294	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25822	Northern Virginia	Loudoun County	7/15	#Pipeline22 - Rte. 7/15	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25779	Richmond	City of Richmond	60	#Pipeline22 - Rte. 60	\$25,000	\$25,000	\$0	Prescoping	Yes

**Appendix A
Amendments to the FY2022-2027 SYIP**

UPC	District	Jurisdiction	Route	Project Description	Total Cost	Total Allocation	Balance	Major Fund Source	Fully Funded
T-25785	Richmond	City of Richmond	1	#Pipeline22 - Rte. 1	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25791	Richmond	City of Richmond/Henrico County	360	#Pipeline22 - Rte. 360	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25795	Richmond	Henrico County	73	#Pipeline22 - Rte. 73	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25798	Richmond	Chesterfield County	147	#Pipeline22 - Rte. 147	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25548	Salem	Henry County	220	Rte. 220 South - Ridgeway Area Safety Improvements	\$2,500,000	\$2,500,000	\$0	CTB Formula High Priority	Yes
T-25802	Salem	City of Roanoke	11	#Pipeline22 - Rte. 11	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25813	Salem	City of Roanoke, Roanoke County	419	#Pipeline22 - Rte. 419	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25816	Salem	City of Salem	11/460	#Pipeline22 - Rte. 11/460	\$25,000	\$25,000	\$0	Prescoping	Yes
T-25819	Salem	Town of Christiansburg	460 Bus/114	#Pipeline22 - Rte. 460 Bus/114	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25824	Salem	Botetourt County	220/220 Alt	#Pipeline22 - Rte. 220/220 Alt	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25793	Staunton	City of Harrisonburg	11	#Pipeline22 - Rte. 11	\$25,000	\$25,000	\$0	Prescoping	Yes
T-25794	Staunton	Winchester City	11	#Pipeline22 - Rte. 11	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25796	Staunton	Frederick County	11	#Pipeline22 - Rte. 11	\$75,000	\$75,000	\$0	Prescoping	Yes
T-25800	Staunton	Frederick County	522	#Pipeline22 - Rte. 522	\$50,000	\$50,000	\$0	Prescoping	Yes
T-25801	Staunton	Frederick County	522	#Pipeline22 - Rte. 522	\$50,000	\$50,000	\$0	Prescoping	Yes
					\$4,975,000	\$4,975,000	\$0		



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 9

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

Title: Approval of Proposed Amendments to Rules, Regulations and Rates Concerning Toll and Bridge Facilities

WHEREAS, the Commonwealth Transportation Board completed a periodic review of the Rules, Regulations and Rates Concerning Toll and Bridge Facilities, 24VAC30-620, (Regulation) in June, 2020, and based on that review directed that the Regulation be amended; and,

WHEREAS, the Commonwealth Transportation Board approved proposed amendments to the Regulation at its February 2021 meeting; and,

WHEREAS, the proposed amendments were posted for public comment but received no comments.

NOW, THEREFORE, BE IT RESOLVED, that the Commonwealth Transportation Board approves the final amendments to the Regulation as presented in Attachment A, and further authorizes the Commissioner of Highways or his designee to take all acts necessary to file the final amendments in accord with submission requirements established by the *Code of Virginia*, Executive Order 14 (2018), and the Virginia Code Commission Regulations relating to regulatory actions.

#####

Chapter 620.

24VAC30-620-10. Applicability and effective dates.

This chapter applies to all VDOT-owned and -operated toll facilities, unless and until, by agreement or law, authority to operate and set tolls is provided to another public or private entity.

Statutory Authority

§ 33.2-210 of the Code of Virginia.

Historical Notes

Derived from VR385-01-68 § 1, eff. October 4, 1995; amended, Virginia Register Volume 11, Issue 26, eff. October, 18, 1995; Volume 21, Issue 15, eff. May 22, 2005.

24VAC30-620-20. General conditions and criteria concerning suspension of toll collection.

A. Tolls may be temporarily suspended on any toll facility subject to this chapter, under the following conditions:

1. The Commissioner of Highways or his designee has investigated or assessed an actual or potential threat to public safety on or in the vicinity of the toll facility; and
2. As a result of the investigation or assessment, the Commissioner of Highways or his designee believes that a temporary suspension of toll collection will alleviate the actual or potential threat or risk to the public's safety, or facilitate the flow of traffic on or within the vicinity of the toll facility.

B. Incidents which may justify the temporary suspension of toll collection operations include, but are not limited to, the following: natural disasters, such as hurricanes, tornadoes, fires, and floods; accidental releases of hazardous materials, such as chemical spills; major traffic accidents, such as multi-vehicle collisions; and any other incidents deemed to present a risk to public safety.

C. Any mandatory evacuation during a state of emergency as defined in § 44-146.16 shall require the temporary suspension of toll collection operations in affected evacuation zones on routes designated as mass evacuation routes. The Commissioner of Highways or his designee shall reinstate toll collection when the mandatory evacuation period ends.

D. The suspension of tolls and reinstatement of tolls shall be conducted in accordance with internal agency procedures established by the Commissioner of Highways. The Commissioner of Highways may delegate in writing the authority to suspend and reinstate toll collection operations, as a result of the conditions and criteria outlined in this section. This delegation of authority includes following the policies and procedures, established by the Commissioner of Highways and specific to each toll facility, governing the investigation and decision-making processes associated with the possible suspension and reinstatement of toll collections.

E. Judicial proceedings arising from any incident resulting in the suspension of toll collection will be conducted as provided for by § 33.2-613 of the Code of Virginia.

Statutory Authority

§ 33.2-210 of the Code of Virginia.

Historical Notes

Derived from VR385-01-68 § 2, eff. October 4, 1995; amended, Virginia Register Volume 11, Issue 26, eff. October, 18, 1995; Volume 28, Issue 4, eff. November 23, 2011; Volume 31, Issue 7, eff. December 31, 2014.

24VAC30-620-30. Rates.

A. The following are the toll rate schedules for the Powhite Parkway Extension Toll Road.

POWHITE PARKWAY EXTENSION TOLL ROAD MAXIMUM RATE STRUCTURE				
VEHICLE CLASS	MAIN LINE PLAZA	MAIN LINE PLAZA - EAST & WEST RAMP	RAMP - ROUTE 60	RAMP - COURTHOUSE ROAD
Two axle vehicles ¹	\$0.75	\$0.25	\$0.25	\$0.50
Three axle vehicles	\$1.00	\$0.35	\$0.35	\$0.60
Four axle vehicles	\$1.25	\$0.45	\$0.45	\$0.70
Five axle vehicles	\$1.50	\$0.55	\$0.55	\$0.80
Six axle vehicles	\$1.50	\$0.55	\$0.55	\$0.80

¹Includes passenger cars, motorcycles, motorcycles equipped with a sidecar, towing a trailer or equipped with a sidecar and towing a trailer, and 2-axle trucks (4 and 6 tires).

B. The following are the toll rate schedules for the George P. Coleman Bridge.

GEORGE P. COLEMAN BRIDGE TOLL RATE STRUCTURE	
VEHICLE CLASS ¹	ONE-WAY RATE
Motorcycles, pedestrians and bicyclists ²	\$0.85
Commuter ETC cars, vans, pick-ups	\$0.85
Commuter ETC two-axle commercial vans/trucks	\$0.85
Cars, vans, pick-ups	\$2.00
Two-axle, six-tire trucks and buses	\$2.00
Three-axle vehicles and buses	\$3.00
Four or more-axle vehicles	\$4.00

¹Commuter toll rates will be available only via the E-ZPass electronic toll collection (ETC) system to two-axle vehicles making three round-trip crossings within a 90-day period on the George P. Coleman Bridge.

²Includes motorcycles equipped with a sidecar, towing a trailer, or equipped with a sidecar and towing a trailer. Motorcyclists requesting this rate must use the manual toll collection lanes because the Automatic Vehicle Identification system cannot accommodate the \$0.85 rate.

C. For all designated High-Occupancy Toll facilities, the toll rates shall vary as necessary to manage the demand to use the facility in accordance with 23 U.S.C. 166.

Statutory Authority

§ 33.2-210 of the Code of Virginia.

Historical Notes

Derived from VR385-01-68 § 3, eff. October 4, 1995; amended, Virginia Register Volume 11, Issue 26, eff. October, 18, 1995; Volume 12, Issue 20, eff. July 24, 1996; Volume 13, Issue 18, eff. July 1, 1997; Volume 14, Issue 25, eff. September 30, 1998; Volume 21, Issue 15, eff. May 22, 2005; Volume 21, Issue 22, eff. August 20, 2005; Volume 28, Issue 4, eff. November 23, 2011.

Website addresses provided in the Virginia Administrative Code to documents incorporated by reference are for the reader's convenience only, may not necessarily be active or current, and should not be relied upon. To ensure the information incorporated by reference is accurate, the reader is encouraged to use the source document described in the regulation.

As a service to the public, the Virginia Administrative Code is provided online by the Virginia General Assembly. We are unable to answer legal questions or respond to requests for legal advice, including application of law to specific fact. To understand and protect your legal rights, you should consult an attorney.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 10

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

**Title: Economic Development Access to
Patriot Centre at Beaver Creek, Lot 4 (deallocation)
Project ECON-044-036, Henry County**

WHEREAS, § 33.2-1509 of the *Code of Virginia* provides a fund to “be expended by the Board for constructing, reconstructing, maintaining or improving access roads within localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed ...”; and

WHEREAS, on October 24, 2017, the Commonwealth Transportation Board (CTB) allocated \$650,000 from the Economic Development, Airport and Rail Access Fund to provide access to eligible property within the development of Patriot Centre at Beaver Creek in Henry County, Project ECON-044-036, subject to certain contingencies; and

WHEREAS, Henry County has requested, by correspondence sent from the Henry County Administrator to the Virginia Department of Transportation (VDOT) dated May 12, 2021, that the previously allocated funds be returned because the approved project intended for the prospective business establishment is no longer being pursued under the Economic Development Access Program and has requested cancellation of the project; and

Resolution of the Board

Economic Development Access Program – Patriot Center at Beaver Creek – Henry County

July 21, 2021

Page Two

WHEREAS, it is deemed that the administration of the Economic Development Access Program can best be served by the return of these separately approved allocations to the Economic Development, Airport and Rail Access Fund.

NOW, THEREFORE, BE IT RESOLVED, that the action of the CTB on October 24, 2017, allocating Economic Development, Airport and Rail Access funds for the access Project ECON-044-036, is hereby rescinded and the \$650,000 project allocation shall be returned to the Economic Development, Airport, and Rail Access Fund.

####

CTB Decision Brief

Economic Development Access – Henry County Patriot Centre at Beaver Creek, Lot 4 – De-allocation of Funds

Issue: Economic Development Access Program funds previously allocated by the Commonwealth Transportation Board (CTB) on October 24, 2017, to provide access to the planned development at Patriot Centre at Beaver Creek, Lot 4 in Henry County is no longer needed because Henry County's plans for the development did not proceed as anticipated. Henry County has requested by letter from the County Administrator to the Virginia Department of Transportation (VDOT) that the previously allocated funds be returned because the approved access road project is no longer being pursued under the Economic Development Access Program.

Facts: Section 33.2-1509 of the *Code of Virginia* provides for the CTB to expend funds set aside for constructing access roads to economic development sites on which certain establishments as prescribed or other establishments that meet the basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Business Assistance will be built under firm contract or are already constructed.

The Henry County Board of Supervisors requested funding from the Economic Development Access Program to assist in providing road access to Lot 4 within Patriot Centre at Beaver Creek. The access road project was neither constructed nor initiated, and no charges are warranted against the project's Economic Development Access Program allocation.

Recommendation: VDOT staff recommends that Project ECON-044-036 be cancelled and that the \$650,000 allocation for this project be returned to the Economic Development, Airport and Rail Access Fund in order that the funds may be made available for new projects.

Action Required by the CTB: The *Code of Virginia* and the CTB's Economic Development Access Policy specifies that the CTB shall approve the allocation of funds for the construction of access road projects. Having established the access road project to assist in the development of Lot 4 within Patriot Centre at Beaver Creek and allocated funding by resolution, it is now recommended that the CTB rescind its original action for this project. The October 24, 2017, CTB resolution is also attached for reference.

Result, if Approved: The \$650,000 total allocated to this project will be returned to the Economic Development, Airport and Rail Access Fund and made available for allocation to new projects.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None

County of Henry

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Board of Supervisors

JIM ADAMS
CHAIRMAN
Blackberry District

RYAN ZEHR
Fidgeway District

T.J. "TOMMY" SLAUGHTER
Reed Creek District

Telephone (276) 634-4601



TIM HALL
County Administrator

DALE WAGONER
Deputy County Administrator

Board of Supervisors

DEBRA PARSONS BUCHANAN
VICE-CHAIRMAN
Horsepasture District

JOSEPH A. BRYANT
Collinsville District

J. DAVID MARTIN
Iriswood District

Fax (276) 634-4781

May 12, 2021

Mr. Ken King
Salem District Engineer
731 Harrison Avenue
Salem, VA 24153

Request to Cancel EDA project

Dear Mr. King:

Please accept this letter as Henry County's request to cancel the EDA and Revenue Sharing funded project (UPC 112321), originally requested to provide adequate access to Lots 4A, 4B and 4C at the Patriot Centre at Beaver Creek business park. Regrettably, the anticipated development on those lots has not yet materialized.

Please contact me if you have any questions or need additional information.

Sincerely,

Tim Hall
Henry County Administrator

Cc: Lisa Hughes, VDOT
Tim Pace, Henry County Engineer



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

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Agenda item # 5

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 24, 2017

MOTION

Made By: Mr. Rosen, Seconded By: Mr. Stinson

Action: Motion Carried

Title: Economic Development Access to
Patriot Centre at Beaver Creek, Lot 4
Project ECON-044-036 Henry County

WHEREAS, § 33.2-1509 of the *Code of Virginia* provides a fund to "...be expended by the Board for constructing, reconstructing, maintaining or improving access roads within localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed ..." and, "in the event there is no such establishment or ... firm contract, a locality may guarantee to the Board by bond or other acceptable device that such will occur and, should no establishment or airport acceptable to the Board be constructed or under firm contract within the time limits of the bond, such bond shall be forfeited."; and

WHEREAS, the Henry County Board of Supervisors has, by appropriate resolution, requested Economic Development Access Program funds to serve eligible property within the development of Patriot Centre at Beaver Creek, off of Route 1188 and said access is estimated to cost approximately \$876,000; and

WHEREAS, it appears that this request falls within the intent of § 33.2-1509 of the *Code of Virginia* and complies with the provisions of the Commonwealth Transportation Board's (CTB) policy on Economic Development Access.

NOW, THEREFORE, BE IT RESOLVED, that \$650,000 (\$500,000 unmatched, \$150,000 matched) of the Economic Development, Airport and Rail Access Fund is allocated to provide adequate access to eligible property within Patriot Centre at Beaver Creek, located off of Route 1188, Project ECON-044-036, contingent upon:

1. All right of way, environmental assessments and remediation, and utility adjustments being provided at no cost to the Commonwealth; and
2. Execution of an appropriate contractual agreement between the County of Henry (LOCALITY) and the Virginia Department of Transportation (VDOT), to provide for the:
 - a. Design, administration, construction and maintenance of this project; and
 - b. Payment of all ineligible costs, and of any eligible costs in excess of this allocation, from sources other than those administered by VDOT; and
 - c. Provision by the LOCALITY of either i) documentation of a least \$3,250,000 of eligible capital outlay attributed to qualifying business on property served exclusively by this project, or ii) should documentation of capital outlay be insufficient, an appropriate bond or other acceptable surety device by the LOCALITY to VDOT, not to expire before November 24, 2022, without written permission of VDOT. Such surety device shall provide for reimbursement to VDOT of any expenses incurred by the Economic Development, Airport and Rail Access Fund for this project's construction not justified by the eligible capital outlay of establishments served by the project. If, by October 24, 2022, at least \$3,250,000 of eligible capital outlay on property served exclusively by this project has not been expended or committed by firm contract by a qualified establishment or establishments, then an amount equal to 20% of the eligible capital outlay of up to \$3,250,000 will be credited toward the project's Economic Development Access Program allocation utilized in the project's construction and the balance of the utilized allocation not justified by eligible capital outlay will be returned to VDOT and the Economic Development, Airport and Rail Access Fund. This surety may be released or reduced accordingly at an earlier date upon provision of documentation of eligible capital outlay by a qualified establishment, or establishments; and
3. Determination by VDOT of eligible capital outlay in accordance with current policy and procedures for administering the Economic Development Access Program.

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COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

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Agenda item # 11

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

Date: July 21, 2021

MOTION

Made By: Seconded By: Action:

**Title: Revenue Sharing Reallocation
City of Hampton – Wythe Creek Road**

WHEREAS, § 33.2-357 of the *Code of Virginia* (1950), as amended (“*Va. Code*”) prescribes that from funds made available by the General Assembly, the Commonwealth Transportation Board (CTB) may make an equivalent matching allocation to any locality for the improvement, construction, reconstruction or maintenance of the highway systems within such locality; and

WHEREAS, the governing body of the City of Hampton elected to participate in this program in fiscal year 2016 and, with the Virginia Department of Transportation (VDOT), identified specific eligible project work to be financed from the special fund account; and

WHEREAS, the governing body of the City of Hampton has, by appropriate resolution, requested the Wythe Creek Road Widening (UPC 97715) project to be established as a revenue sharing project; and

WHEREAS, the Wythe Creek Road Widening (UPC 97715) project meets the criteria for eligibility to receive such funds; and

WHEREAS, funds previously allocated to the City of Hampton for the Buckroe Ave. Sidewalk (UPC 102988) project remain unexpended after completion of the project, and may be reallocated by the CTB in accordance with the CTB’s Policy and Guidelines; and

WHEREAS, the governing body of the City of Hampton has, by appropriate resolution, requested that the funds set forth herein be transferred from the Buckroe Ave. Sidewalk (UPC 102988) project to the Wythe Creek Road Widening (UPC 97715) project for eligible work, as indicated herein; and

WHEREAS, this project work falls within the intent of § 33.2-357 of the *Va. Code*, and complies with the CTB’s Policy and Guidelines for the use of such funds.

NOW, THEREFORE, BE IT RESOLVED, that the Commonwealth Transportation Board hereby establishes the Wythe Creek Road Widening (UPC 97715) project as a revenue sharing project and approves the transfer of these funds as indicated herein.

**Reallocation of Funds Pursuant to
 § 33.2-357 of the *Code of Virginia***

Fiscal Year of Revenue Sharing Allocation	Locality Match	State Match	Original Project Number (UPC)	New Project Number (UPC)	Scope of Eligible Work for New Project
City of Hampton					
2016	\$52,004	\$52,004	102988	97715	Widen Road

####

CTB Decision Brief

Revenue Sharing Reallocation – City of Hampton Wythe Creek Road

Issue: The City of Hampton has requested that an existing Six-Year Improvement Program project be approved as a revenue sharing project and that revenue sharing funds be reallocated to that project.

Facts: Section 33.2-357 of the *Code of Virginia* authorizes the Commonwealth Transportation Board (CTB) to make matching allocations to any city, town or county for highway projects. The CTB approves each project and scope of work, and the program funds are distributed and administered in accordance with guidelines established by the CTB.

The revenue sharing program guidelines stipulate that surplus funds may be transferred from a completed revenue sharing project to an existing project in the Six-Year Improvement Program if approved by the CTB. In addition, such transfers require that the recipient project needs the funding in order to proceed to advertisement or award within the next twelve months. The current advertisement date for the recipient project is October 2021, thereby meeting the prescribed guidelines requirement. The transfer request must also include a resolution from the locality establishing the project as a revenue sharing project.

The City of Hampton requests that the Virginia Department of Transportation (VDOT) reallocate funds from an existing revenue sharing project allocated to the Buckroe Ave. Sidewalk (UPC 102988) project to a project in the Six-Year Improvement Plan, Wythe Creek Road Widening (UPC 97715), which currently is not being funded with revenue sharing funds. The Wythe Creek Road Widening (UPC 97715) project is currently underfunded but will be able to meet the advertisement date of October 2021 with these funds. The City of Hampton, by resolution, has established the Wythe Creek Road Widening (UPC 97715) project as a revenue sharing project and has requested, by resolution, to have revenue sharing funds transferred from the Buckroe Ave. Sidewalk (UPC 102988) project, which has been completed by the City and has a surplus of funding. This transfer will allow the Wythe Creek Road Widening (UPC 97715) project advertisement to occur. The transfer will not affect the overall allocation of the revenue sharing program. The VDOT Hampton Roads District Office has obtained concurrence for this transfer from Mr. John Malbon, Hampton Roads District CTB representative.

Recommendations: VDOT recommends that the Wythe Creek Road Widening (UPC 97715) project in the Six-Year Improvement Plan be established as a revenue sharing project and the proposed reallocation be approved.

Action Required by CTB: A resolution is presented for CTB approval to establish the Wythe Creek Road Widening (UPC 97715) project as a revenue sharing project and document CTB approval of the reallocation.

Result, if Approved: Revenue Sharing Program funding will be reallocated in accordance with the City Council's request to the CTB and the project can be advertised on schedule

Options: Approve, Deny, or Defer.

Public Comments/Reactions: N/A



City of Hampton

22 Lincoln Street
Hampton, VA 23669
www.hampton.gov

Official Record

Resolution: 21-0128

File Number: 21-0128

Resolution to Designate Wythe Creek Road Project as a Revenue Sharing Recipient Project and Transfer Virginia Department of Transportation Surplus Revenue Sharing Funds in the Amount of \$104,008 from the Buckroe Avenue Reconstruction Project to the Wythe Creek Road Project

WHEREAS, the Wythe Creek Road Project (UPC 97715), a Regional Surface Transportation Program ("RSTP") Project, managed by the Virginia Department of Transportation ("VDOT"), is currently in need of an additional \$104,008 in funds to pay for lighting on the Wythe Creek Bridge, which costs were stricken from the project because it could not be funded through RSTP funding guidelines;

WHEREAS, Hampton City Council previously approved funding to the Buckroe Avenue Reconstruction project (UPC 102988), a Revenue Sharing project, which is now complete and has surplus funds in the amount of \$104,008 (\$52,004 State/\$52,004 City);

WHEREAS, the City of Hampton ("City") Public Works Department recommends the Wythe Creek Road Project (UPC 97715) be designated as a Revenue Sharing recipient project by the Commonwealth Transportation Board ("CTB") so that the project may receive funds from the Buckroe Avenue Reconstruction project (UPC 102988);

WHEREAS, VDOT has agreed to transfer, upon CTB approval, the excess funds from the Buckroe Avenue Reconstruction project (UPC 102988) to the Wythe Creek Road Project (UPC 97715); and

WHEREAS, City Council wishes to transfer, upon CTB approval, the surplus Revenue Sharing funds totaling \$104,008 from the Buckroe Avenue Reconstruction project (UPC 102988) to the Wythe Creek Road Project (UPC 97715) in order to use the funds to pay for lighting for the Wythe Creek Road Project.


NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HAMPTON, VIRGINIA, that the Wythe Creek Road Project (UPC 97715), be considered and designated as a Revenue Sharing recipient project by the Commonwealth Transportation Board, and that \$104,008 (\$52,004 State/\$52,004 City) in surplus Revenue Sharing funds be reallocated, upon Commonwealth Transportation Board approval, from the Revenue Sharing Buckroe Avenue Reconstruction Project (UPC 102988) to the Wythe Creek Road Project (UPC 97715), in order to provide the additional needed funds for lighting to the Wythe Creek Road Project; and

BE IT FURTHER RESOLVED, that the City Manager, or her authorized designee, is hereby authorized to take any and all necessary actions to carry out the purposes of this Resolution, subject to approval by the City Attorney, including, but not limited to, executing any required applications and agreements between the City of Hampton and VDOT to transfer remaining Revenue Sharing funds from the Buckroe Avenue Reconstruction project to the Wythe Creek Road Project.


approved by the Hampton City Council on 4/14/2021.

Aye: 6 Councilmember Bowman, Councilmember Weston Brown,
Councilmember Brown, Vice Mayor Gray, Councilmember Hobbs and
Mayor Tuck

Out: 1 Councilmember Snead

Signed by: 
Donnie R. Tuck

Date APR 14 2021

Attested by: 
Katherine K. Glass

Date APR 14 2021



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

Agenda item # 12

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

Title: Periodic Regulatory Review

WHEREAS, the Virginia Administrative Process Act (the APA), particularly in §§ 2.2-4007.1 and 2.2-4017 of the *Code of Virginia*, requires that all state agencies that adopt regulations periodically review those regulations, including consideration of: 1) the extent to which regulations remain supported by statutory authority and do not duplicate, overlap, or conflict with state or federal law; 2) the nature of complaints or comments received from the public; 3) whether the regulations are necessary for the protection of public health, safety and welfare; 4) whether the regulations are clearly written and easily understandable; 5) whether the regulations' economic impacts on small businesses and families are minimized as much as possible; and 6) the length of time since the regulation has been evaluated; and

WHEREAS, Executive Order Number 14 (2018, amended) requires all regulations to be so reviewed every four years and specifies the procedures for conducting such review; and

WHEREAS, the Virginia Department of Transportation (VDOT) conducted a periodic review of the regulations listed in the table below, and pursuant to the requirements set forth in the APA and the process established in the Executive Order, notified the public of the regulations' ongoing periodic review on the Virginia Regulatory Town Hall website and solicited comment from the public for a minimum of 21 days, satisfying the minimum statutory requirement; and

WHEREAS, VDOT has completed all facets of the regulatory review of the regulations listed in the table below in accordance with the Executive Order 14 and the APA, including the

completion of a Periodic Review Report of Findings for each regulation (attached as Exhibits A through H); and

WHEREAS, no public comments were submitted regarding the regulations under periodic review and based upon the results of the review, VDOT recommends action for each regulation as determined in the relevant Periodic Review Report of Findings for each regulation and set forth in the table below:

Chapter	Title	Proposed Disposition
24 VAC 30-21	General Rules and Regulations of the Commonwealth Transportation Board	Retain as is.
24 VAC 30-50	Rules and Regulations for the Administration of Waysides and Rest Areas	Retain as is.
24 VAC 30-100	Rules and Regulations for the Administration of Parking Lots and Environs	Retain as is.
24 VAC 30-130	Rules Governing Prequalification and Classification	Repeal (but retain policy/procedures).
24 VAC 30-210	Policy on Placing Utilities Underground	Repeal.
24 VAC 30-271	Economic Development Access Fund Policy	Repeal (but retain policy/procedures).
24 VAC 30-420	Operation and Maintenance of Roads in Incorporated Towns Less Than 3500	Repeal (but retain policy).
24 VAC 30-430	Maintenance of Roads Crossing the Interstate System	Repeal (but retain policy/procedures).

; and,

WHEREAS, the Commonwealth Transportation Board originally adopted the regulations listed in the table above pursuant to its authority in § 33.2-210 of the *Code of Virginia* and other relevant sections of the *Code of Virginia*.

NOW THEREFORE, BE IT RESOLVED, that the Commonwealth Transportation Board approves and adopts the respective Periodic Review Report of Findings for each of the regulations listed in the table above, including the proposed disposition for each regulation.

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board directs the Commissioner of Highways or his designees to take all actions necessary to complete the periodic reviews for the regulations listed in the table above, and for those regulations for which repeal is approved, to complete the process necessary to repeal said regulations.

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board affirms that any current Policies of the Commonwealth Transportation Board relating to those regulations for which repeal is approved shall not be affected by this repeal action, however, the Commonwealth Transportation Board directs the Commissioner of Highways or his designees to begin a review of those Policies and to present any recommendations for further revisions or other action on those Policies to the Commonwealth Transportation Board no later than June 30, 2022.

#####

CTB Decision Brief **Periodic Regulatory Review**

Issue: The Administrative Process Act (APA) requires all state agencies that adopt regulations to periodically review those regulations. Executive Order 14 (2018) mandates that these reviews take place every four years to determine if the regulation should be continued with no changes or be amended or be repealed. In accordance with these requirements, the Virginia Department of Transportation (VDOT) has reviewed the regulations listed below and is providing recommendations as to the action to be taken by the Commonwealth Transportation Board (CTB) for each regulation.

Facts:

- The APA, particularly in §§ 2.2-4007.1 and 2.2-4017 of the *Code of Virginia*, requires that all state agencies that adopt regulations periodically review those regulations, including consideration of: 1) the extent to which regulations remain supported by statutory authority and do not duplicate, overlap, or conflict with state or federal law; 2) the nature of complaints or comments received from the public; 3) whether the regulations are necessary for the protection of public health, safety and welfare; 4) whether the regulations are clearly written and easily understandable; 5) whether the regulations' economic impacts on small businesses and families are minimized as much as possible; and 6) the length of time since the regulation has been evaluated.
- The Governor's Executive Order Number 14 (2018, amended) requires all regulations to be so reviewed every four years and specifies the procedures for conducting such review. Chapter 444 of the 2018 Acts of Assembly requires the Department of Planning and Budget (DPB) to track and report to the General Assembly annually which agencies are complying with the periodic review requirements.
- VDOT conducted a periodic review of the regulations listed in the table below, and pursuant to the requirements set forth in the APA and the process established in the Executive Order, notified the public of the regulations' ongoing periodic review on the Virginia Regulatory Town Hall website and solicited comment from the public for at least 21 days, satisfying the minimum statutory requirement. No public comments were submitted regarding the regulations under periodic review by the CTB. It is noted, however, that one request for a copy of the policy on placing utilities underground was received and a response provided. No subsequent comments or requests were submitted in response.
- VDOT has completed all facets of the regulatory review of the regulations listed in the table below, and has completed the Periodic Review Report of Findings for each regulation (Attached as Exhibits A-H), which is to be filed with the Virginia Registrar to complete the periodic review process.
- The regulations reviewed and which are to be considered by the CTB are listed in the table below, along with the proposed disposition of the regulation. The table is followed by a description of each regulation and the findings made by VDOT based upon the review.

Chapter	Title	Proposed Disposition
24 VAC 30-21	General Rules and Regulations of the Commonwealth Transportation Board	Retain as is.
24 VAC 30-50	Rules and Regulations for the Administration of Waysides and Rest Areas	Retain as is.
24 VAC 30-100	Rules and Regulations for the Administration of Parking Lots and Environs	Retain as is.
24 VAC 30-130	Rules Governing Prequalification and Classification	Repeal (but retain policy/procedures).
24 VAC 30-210	Policy on Placing Utilities Underground	Repeal.
24 VAC 30-271	Economic Development Access Fund Policy	Repeal (but retain policy/procedures).
24 VAC 30-420	Operation and Maintenance of Roads in Incorporated Towns Less Than 3500	Repeal (but retain policy).
24 VAC 30-430	Maintenance of Roads Crossing the Interstate System	Repeal (but retain policy/procedures).

- **24 VAC 30-21 General Rules and Regulations of the Commonwealth Transportation Board**

Under § 33.2-210 of the Code of Virginia, the CTB has authority the power and duty to make regulations that are not in conflict with the laws of the Commonwealth “for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations.” Through this regulation, the CTB regulates generally the activities that occur on highway rights-of-way under its

jurisdiction, dictating that uses other than travel are subject to the land use permit framework and that access/entrances are subject to the access management framework, and providing for regulation of other uses of the highway systems. VDOT recommends retaining the regulation as is.

- **24 VAC 30-50 Rules and Regulations for the Administration of Waysides and Rest Areas**

This regulation establishes rules and conditions governing the use of, and activities that may be conducted in, waysides and rest areas under the control of the CTB. Under § 33.2-210 of the Code of Virginia, the CTB has authority the power and duty to make regulations that are not in conflict with the laws of the Commonwealth “for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations.” In addition, under § 33.2-246 (subsection E) of the Code of Virginia, the CTB is authorized to "establish regulations for the use of recreational waysides, including regulations relating to (i) the time, place, and manner of parking of vehicles; (ii) activities that may be conducted within such waysides; (iii) solicitation and selling within the waysides; and (iv) such other matters as may be necessary or expedient in the interest of the motoring public."

Currently, the regulation addresses subjects such as operating hours, restrictions on parking, activities prohibited at all times, and those activities that may be performed by permit from the Commissioner. VDOT recommends retaining the regulation as is.

- **24 VAC 30-100 Rules and Regulations for the Administration of Parking Lots and Environs**

The statutory authority for this regulation is found in Code of Virginia §§ 33.2-118 (regulation of mobile food vending in parking lots in Planning District 8), and 33.2-210 (providing that the CTB has authority "to make rules and regulations, from time to time, not in conflict with the laws of this Commonwealth, for the protection or and covering traffic on and the use of systems of state highways”), and 23 U.S.C. § 111. This regulation establishes rules and conditions governing the use of, and activities that may be conducted in, parking lots and related environs under the control of the CTB.

Currently, the regulation addresses subjects such as restrictions on parking, activities prohibited at all times, and those activities that may be performed by permit from the Commissioner of Highways. VDOT recommends retaining the regulation as is.

- **24 VAC 30-130 Rules Governing Prequalification and Classification**

Section 2.2-4317 of the VPPA states that “Prospective contractors may be prequalified for

particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors.... Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body.” Section 33.2-209 of the Code of Virginia states that “The Board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$5 million.” That section further states that “The Board may award contracts for the construction of transportation projects on a design-build basis... pursuant to objective criteria previously adopted by the Board regarding the use of design-build... Such objective criteria shall include requirements for prequalification of contractors and competitive bidding processes.”

The CTB has adopted a written policy on what criteria it will consider and the process to be used for the prequalification of contractors, which can effectively be used as guidelines to govern the process used by VDOT and contractors for prequalification. Therefore, the regulation is not necessary, and VDOT is recommending the regulation be repealed. Going forward, if any revisions to the policy are recommended, the revisions and resulting policy will be presented to the CTB for approval, utilizing more streamlined methods available to the CTB for amending its policies and procedures.

- **24 VAC 30-210 Policy on Placing Utilities Underground**

The Commonwealth Transportation Board adopted this regulation, based on authority in § 33.2-348 of the Code of Virginia, which related to the CTB’s authority to fund construction and improvement projects for the Urban System of State Highways and specifically provided limited funding to urban localities relating to undergrounding utilities. The CTB also has general authority to adopt regulations “for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations” pursuant to § 33.2-210 of the Code of Virginia.

The regulation consists merely of a description of the Underground Utility Policy, describing it as a policy that establishes the conditions under which transportation funds shall be used to reimburse a portion of the additional cost involved to place overhead utility facilities underground in connection with new transportation improvement construction and states that the Policy applies to projects for the urban system of highways that are created and constructed in accordance with § 33.2-348 of the Code of Virginia. However, when § 33.2-348 was repealed, effective July 1, 2016, the specific statutorily authorized program for funding the relocation of aerial utilities underground was also repealed, effective July 1, 2016. Today, the VDOT Utility Manual addresses, among other things, undergrounding of aerial facilities and given the repeal of § 33.2-348, provides that additional costs attributable to undergrounding must be borne by the requesting localities. Therefore, VDOT is recommending that the regulation be repealed.

- **24 VAC 30-271 Economic Development Access Fund Policy**

Pursuant to § 33.2-1509 of the Code of Virginia, the Commonwealth Transportation Board is authorized to make decisions on expending funds “for constructing, reconstructing, maintaining, or improving access roads within localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed...” This regulation sets forth the policy by which the Commonwealth Transportation Board makes those funding decisions.

The General Assembly passed SB 1253 in its 2021 session, which amended § 33.2-1509 to require the CTB to establish guidelines for the Economic Development Access Fund, and requires that the guidelines consider the number of jobs that will be created by the economic development project, the proposed capital investment by the private sector at the economic development site, and any other relevant criteria related to the economic development project.

The functions performed by the regulation are those that are adequately performed by the existing Economic Development Access Fund guidelines that have been adopted by the Commonwealth Transportation Board as a guidance document. Therefore, VDOT is recommending that the regulation be repealed, but that the guidance document be retained and reviewed for modifications necessary to comply with the requirements of SB 1253.

- **24 VAC 30-420 Operation and Maintenance of Roads in Incorporated Towns Less Than 3500**

Section 33.2-339 of the Code of Virginia states that the “Commissioner of Highways may, subject to the approval of the [CTB], upon request of the governing bodies of towns with a population of less than 3,500, according to the last United States census, select certain streets and highways in such towns for maintenance, improvement, construction, and reconstruction from allocations available from secondary highway funds not to exceed two miles of streets or highways in such towns included in the secondary state highway system....”

Section 33.2-340 of the Code of Virginia states that “[i]f no request is made to the [CTB] by the governing body of any town as provided in § 33.2-339, the Commissioner of Highways, subject to the approval of the [CTB], may maintain, improve, construct, and reconstruct all streets in such town that” meet certain specified criteria and/or standards.

This regulation merely describes or references the CTB’s policy on approving requests for

maintenance of roads under §§ 33.2-339 and 33.2-340. The CTB's policy states that once a locality chooses the funding mechanism between §§ 33.2-339 and 33.2-340, that choice may only be changed with a showing of good cause. The purpose for which this regulation has been adopted may be accomplished through or by means of the CTB Policy. Therefore, VDOT is recommending this regulation be repealed, but that the underlying policy be retained.

- **24 VAC 30-430 Maintenance of Roads Crossing the Interstates**

The regulation specifies the expected responsibilities of various types of localities (cities and towns with populations over 3500 persons, counties, and counties that have withdrawn from the state highway system) and the responsibilities of the Virginia Department of Transportation in the maintenance of various types of highways that cross over or under Interstate Highways.

VDOT has determined that this regulation's purpose may be accomplished through a written CTB Policy and is not necessary as a regulation. Therefore, VDOT is recommending the regulation be repealed, but that the underlying policy be retained.

Recommendations: VDOT recommends that the General Rules and Regulations of the Commonwealth Transportation Board, the Rules and Regulations for the Administration of Waysides and Rest Areas and the Rules and Regulations for the Administration of Parking Lots and Environs be retained as is. VDOT recommends that the Rules Governing Prequalification and Classification, the Policy on Placing Utilities Underground, the Economic Development Access Fund Policy, the Operation and Maintenance of Roads in Incorporated Towns Less Than 3500, and the Maintenance of Roads Crossing the Interstates be repealed while any existing policy and procedures relating to such respective topics be retained as CTB policies or guidance documents, as appropriate.

Action Required by CTB: A resolution will be presented for CTB approval authorizing VDOT to complete the periodic review of these regulations by filing the respective Periodic Review Report of Findings for each regulation listed, and to authorize the Commissioner of Highways or his designee to take any actions necessary to repeal the regulations that are recommended to be so repealed.

Result, if Approved: The periodic reviews of the noted regulations will be completed, and the regulations will be retained as is or repealed as recommended.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: There were no comments or other input received from the public.



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-21
VAC Chapter title(s)	General Rules and Regulations of the Commonwealth Transportation Board
Date this document prepared	03/16/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CTB means the Commonwealth Transportation Board.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Commonwealth Transportation Board has general authority to adopt regulations “for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations” pursuant to § 33.2-210 of the Code of Virginia. Through this regulation, the CTB regulates generally the activities that occur on highway rights-of-way under its jurisdiction, dictating that uses other than travel are subject to the land use permit framework and that access/entrances are subject to the access management framework, and providing for regulation of other uses of the highway systems.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

No alternatives are viable that meet the essential purpose of the regulation, which is to preserve the integrity of the state system of highways, as well as to facilitate the safe and convenient transportation of goods and people.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comment was received during the public comment period.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Pursuant to its authority granted by § 33.2-210, it is reasonable and appropriate for the CTB to regulate the activities that occur on highway rights-of-way under its jurisdiction through the land use permit framework. It is also reasonable and appropriate for the CTB to establish rules concerning the use of highway rights-of-way. Both of these situations involve the safety of the traveling public, cargo carriers, anyone performing work on the highways or adjacent areas, as well as the integrity and soundness of the highway network itself.

This regulation works in complement to the detailed regulations concerning land use, access management, and administration of facilities such as parking lots, waysides, and rest areas that the CTB has also established. The regulation is therefore necessary for the protection of public health, safety, and welfare. Additionally, the regulation is clearly written and easily understandable.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The existing regulation serves a necessary purpose and is not overly burdensome on the public. The CTB recommends retaining the regulation as is.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The regulation continues to be necessary for the safety and protection of the travelling public and workers performing tasks on or near the highways. The CTB has received no complaints concerning this regulation. The regulation is not complex, and does not duplicate, or conflict with other state or federal laws. The regulation was last amended in 2009.



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-50
VAC Chapter title(s)	Rules and Regulations for the Administration of Waysides and Rest Areas
Date this document prepared	March 18, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CTB means the Commonwealth Transportation Board.
VDOT means the Virginia Department of Transportation.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating agency for this regulation is the Commonwealth Transportation Board (CTB). The statutory authority for this regulation is found in *Code of Virginia* §§ 33.2-210 and 33.2-246 (subsection E), and 23 U.S.C. § 111. This regulation establishes overall policies, procedures, and conditions under which waysides and rest areas under the control of the CTB may be used. Under § 33.2-210 of the *Code of Virginia*, the CTB has authority the power and duty to make regulations that are not in conflict with the laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations."

In addition, under § 33.2-246 (subsection E) of the *Code of Virginia*, the CTB is authorized to "establish regulations for the use of recreational waysides, including regulations relating to (i) the time, place, and manner of parking of vehicles; (ii) activities that may be conducted within such waysides; (iii) solicitation and selling within the waysides; and (iv) such other matters as may be necessary or expedient in the interest of the motoring public."

Currently, the regulation addresses subjects such as operating hours, restrictions on parking, activities prohibited at all times, and those activities that may be performed by permit from the Commissioner.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

State statutes explicitly authorize the CTB to make regulations at waysides, and include possible topics that may be addressed. Without some written directives concerning the operation of such facilities, users would not be aware of prohibited and permitted activities. Therefore, VDOT and the CTB believe that a regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The CTB believes that this regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. Safety of the users is preserved by prohibiting potentially dangerous conduct at waysides and rest areas, such as using threatening language or littering. The integrity of the facilities is protected by prohibiting conduct such as disturbing animals and birds, or posting signs and other advertisements, so that all users may have the benefits of the facilities.

The regulation clearly states prohibited conduct, as well as activities that may be performed with permission of the Commissioner.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The CTB recommends that the regulation should be retained without change.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

This regulation is necessary because state law has specifically authorized the CTB to make regulations at waysides, and describe topics that may be addressed. Furthermore, without written directives concerning their operation, users of these facilities would not be aware of prohibited and permitted activities. This regulation is not complex, nor does it overlap, duplicate, or conflict with federal or state law or regulation. The last time this regulation was subjected to periodic regulatory review was in 2013, at which time the CTB decided to retain the regulation without amendment. The CTBs decision regarding this regulation will minimize the economic impact on small businesses because this regulation has been in existence for decades without change. As a result of The CTB's recommendation to retain this regulation without change, there will be no new burdens placed on any small businesses.



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-100
VAC Chapter title(s)	Rules and Regulations for the Administration of Parking Lots and Environs
Date this document prepared	March 18, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CTB means the Commonwealth Transportation Board.
VDOT means the Virginia Department of Transportation.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The promulgating agency for this regulation is the Commonwealth Transportation Board (CTB). The statutory authority for this regulation is found in *Code of Virginia* §§ 33.2-118 (regulation of mobile food vending in parking lots), 33.2-210 (providing that the CTB has authority "to make rules and regulations, from time to time, not in conflict with the laws of this Commonwealth, for the protection or and covering traffic on and the use of systems of state highways"), and 23 U.S.C. § 111. This regulation establishes rules and conditions governing the use of, and activities that may be conducted in, parking lots and related environs under the control of the CTB.

Currently, the regulation addresses subjects such as restrictions on parking, activities prohibited at all times, and those activities that may be performed by permit from the Commissioner of Highways.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

State statutes explicitly authorize the CTB to make regulations concerning the use of the system of state highways. Without some written directives concerning their operation, users would not be aware of prohibited and permitted activities. Therefore, VDOT and the CTB believe that a regulation is the least burdensome alternative available for achieving the purpose of the regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018). The CTB believes that this regulation is necessary for the protection of public health, safety, and welfare, and is clearly written and easily understandable. Safety of the users is preserved by prohibiting potentially dangerous conduct, such as setting fires. The integrity of the facilities is protected by prohibiting conduct such as disturbing animals and birds, or posting signs and other advertisements, so that all users may have the benefits of the facilities. The regulation clearly states prohibited conduct, as well as activities that may be performed with permission of the Commissioner.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The CTB recommends the regulation be retained without making changes.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

There is a continued need for this regulation. Without some written directives concerning their operation, users would not be aware of prohibited and permitted activities in VDOT parking lots. This regulation is not complex, nor does it overlap, duplicate, or conflict with federal or state law or regulation. The last time this regulation was subjected to periodic regulatory review was in 2013, and the regulation was last amended in 2018, when the regulation was amended in response to legislation passed by the General Assembly to allow mobile food vending in certain areas of the parking lots. VDOT's decision to retain this regulation will minimize the economic impact on small businesses because the regulation will remain in place without change as a result of this periodic regulatory review.



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-130
VAC Chapter title(s)	Rules Governing Prequalification and Classification
Date this document prepared	03/18/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

VPPA means the Virginia Public Procurement Act.
CTB means the Commonwealth Transportation Board.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Commonwealth Transportation Board promulgated this regulation. Section 2.2-4302 of the Virginia Public Procurement Act states that the VPPA "may be implemented by ordinances, resolutions or

regulations consistent with this chapter and with the provisions of other applicable law promulgated by any public body empowered by law to undertake the activities described in this chapter.” Section 2.2-4317 of the VPPA states that “Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors.... Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body.” Section 33.2-209 of the *Code of Virginia* states that “The Board shall have the power and duty to let all contracts to be administered by the Department of Transportation or the Department of Rail and Public Transportation for the construction, maintenance, and improvement of the highways comprising systems of state highways and for all activities related to passenger and freight rail and public transportation in excess of \$5 million.” That section further states that “The Board may award contracts for the construction of transportation projects on a design-build basis... pursuant to objective criteria previously adopted by the Board regarding the use of design-build... Such objective criteria shall include requirements for prequalification of contractors and competitive bidding processes.”

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The CTB has adopted a written policy on what criteria it will consider for the prequalification of contractors, which can act as a guidance document which prospective contractors can follow. Therefore, the regulation is not necessary.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Although the regulation is clearly written and easily understandable, its purpose can be accomplished through other means, so it is therefore not necessary for the protection of public health, safety and welfare.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The CTB recommends repealing the regulation, and maintaining the underlying policy as a CTB Policy and/or guidance document.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Although the regulation is not complex and does not overlap or conflict with other law, it is not necessary to be maintained as a regulation. The regulation was last reviewed in 2010.



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-210
VAC Chapter title(s)	Policy on Placing Utilities Underground
Date this document prepared	3/11/2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

CTB means the Commonwealth Transportation Board.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Commonwealth Transportation Board adopted this regulation based on authority in § 33.2-348 of the Code of Virginia, which related to the CTB's authority to fund construction and improvement projects for the Urban System of State Highways. The CTB also has general authority to adopt regulations "for the

protection of and covering traffic on and for the use of systems of state highways and shall have the authority to add to, amend, or repeal such regulations” pursuant to § 33.2-210 of the Code of Virginia. However, § 33.2-348 was repealed, effective July 1, 2016.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The regulation consists merely of a description of the Underground Utility Policy, describing it as a policy that establishes the conditions under which transportation funds shall be used to reimburse a portion of the additional cost involved to place overhead utility facilities underground in connection with new transportation improvement construction and states that the Policy applies to projects for the urban system of highways that are created and constructed in accordance with § 33.2-348 of the Code of Virginia. However, when § 33.2-348 was repealed, effective July 1, 2016, the specific statutorily authorized program for funding the relocation of aerial utilities underground was also repealed, effective July 1, 2016. Today, the VDOT Utility Manual addresses, among other things, undergrounding of aerial facilities and given the repeal of § 33.2-348, provides that additional costs attributable to undergrounding must be borne by the requesting localities.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Although the regulation was clearly written and easily understandable, it is no longer necessary for the protection of public health safety and welfare. Future decisions on relocation of aerial utility facilities underground in connection with highway construction or maintenance projects should be made in accordance with the VDOT Utility Manual.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The Commonwealth Transportation Board recommends repeal of the regulation, because the statute that set forth the program which the regulation governed has been repealed.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

There is no continued need for the regulation.



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-271
VAC Chapter title(s)	Economic Development Access Fund Policy
Date this document prepared	September 20, 2020

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"CTB" means the Commonwealth Transportation Board.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The CTB is authorized generally to make regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the Code of Virginia, and more specifically, pursuant to § 33.2-1509 of the Code of Virginia, is authorized to make decisions on

expending funds for constructing, reconstructing, maintaining, or improving access roads within localities to economic development sites on which manufacturing, processing, research and development facilities, distribution centers, regional service centers, corporate headquarters, or other establishments that also meet basic employer criteria as determined by the Virginia Economic Development Partnership in consultation with the Virginia Department of Small Business and Supplier Diversity will be built under firm contract or are already constructed. This regulation sets forth the policy by which the CTB makes those funding decisions.

According to prior guidance from the Office of the Attorney General, this regulation is exempt from the provisions of the Administrative Process Act pursuant to § 2.2-4002(B)(3) and (4) and § 2.2-4006(A)(4)(a) of the Code of Virginia.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The CTB is authorized by § 33.2-1509 of the Code of Virginia to make decisions on expending funds for constructing, reconstructing, maintaining, or improving access roads within localities to economic development sites. Section 10 of the regulation states the general purpose of the regulation. Subsections A through M of Section 20 set forth the general criteria and conditions the CTB will consider in making such funding decisions for a particular project. The CTB expends funds by voting on a resolution, which specifies the criteria and conditions for the use of such funds on each project, and the terms of the resolution are used to enforce the funding conditions on the locality receiving the funds. The regulation merely provides guidance to the localities to use in preparing a request for funding. In fact, the CTB has adopted a guidance document which specifies, in more detail, all the criteria and conditions that the CTB will consider in making funding decisions for economic development access funds. Therefore, the regulation is not necessary.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comment was received during the public comment period.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Although the regulation is clearly written and easily understandable, it is not necessary for the protection of public health, safety and welfare, as it serves the same purpose as a guidance document, which the CTB has adopted and which provides guidance for any locality that wishes to request economic development access funds for a particular project.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The General Assembly passed SB 1253 in its 2021 session, which amended § 33.2-1509 to require the CTB to establish guidelines for the Economic Development Access Fund, and requires that the guidelines consider the number of jobs that will be created by the economic development project, the proposed capital investment by the private sector at the economic development site, and any other relevant criteria related to the economic development project.

The functions performed by the regulation are those that are adequately performed by the existing Economic Development Access Fund guidelines that have been adopted by the Commonwealth Transportation Board as a guidance document. Therefore, VDOT is recommending that the regulation be repealed, but that the guidance document be retained and reviewed for modifications necessary to comply with the requirements of SB 1253.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Although the regulation is not complex, and the CTB has received no complaints concerning the regulation, there is no continued need for the regulation because the CTB has adopted a guidance document to serve the same purpose in providing assistance to localities in requesting funding pursuant to § 33.2-1509 of the Code of Virginia. The most recent substantive amendment of the regulation was in 2012.



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC30-420
VAC Chapter title(s)	Operation and maintenance of roads in incorporated towns less than 3,500
Date this document prepared	March 25, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"CTB" means the Commonwealth Transportation Board.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Commonwealth Transportation Board (CTB) has “the power and duty to make regulations that are not in conflict with the laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of state highways” pursuant to *Code of Virginia* § 33.2-210.

Section 33.2-339 of the *Code of Virginia* states that the “Commissioner of Highways may, subject to the approval of the [CTB], upon request of the governing bodies of towns with a population of less than 3,500, according to the last United States census, select certain streets and highways in such towns for maintenance, improvement, construction, and reconstruction from allocations available from secondary highway funds not to exceed two miles of streets or highways in such towns included in the secondary state highway system.”

Section 33.2-340 of the *Code of Virginia* states that “[i]f no request is made to the [CTB] by the governing body of any town as provided in § 33.2-339, the Commissioner of Highways, subject to the approval of the [CTB], may maintain, improve, construct, and reconstruct all streets in such town that” meet certain specified criteria.

This regulation specifies the CTB’s policy on approving requests for maintenance of roads under §§ 33.2-339 and 33.2-340. The CTB’s policy states that once a locality chooses the funding mechanism between §§ 33.2-339 and 33.2-340, that choice may only be changed with a showing of good cause.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The purpose for which this regulation has been adopted may be accomplished through a similar guidance document or CTB Policy.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comment was received during the public comment period.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Although the regulation is clearly written and easily understandable, its purpose can be accomplished through other means, so it is therefore not necessary for the protection of public health, safety and welfare.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The CTB recommends repealing the regulation, and maintaining the underlying policy as a CTB Policy and/or guidance document.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Although the regulation is not complex and does not overlap or conflict with other law, it is not necessary to be maintained as a regulation. The regulation was last reviewed in 2010.



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Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-430
VAC Chapter title(s)	Maintenance of Roads Crossing the Interstates
Date this document prepared	March 31, 2021

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

Define all acronyms used in this Report, and any technical terms that are not also defined in the "Definitions" section of the regulation.

"CTB" means the Commonwealth Transportation Board.

Legal Basis

Identify (1) the promulgating agency, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating agency to regulate this specific subject or program, as well as a reference to the agency's overall regulatory authority.

The Commonwealth Transportation Board (CTB) has "the power and duty to make regulations that are not in conflict with the laws of the Commonwealth for the protection of and covering traffic on and for the use of systems of state highways" pursuant to *Code of Virginia* § 33.2-210.

This regulation specifies the responsibilities of various types of localities (cities and towns with populations over 3500 persons, counties, and counties that have withdrawn from the state highway system) and the responsibilities of the Virginia Department of Transportation in the maintenance of various types of highways that cross over or under Interstate Highways.

Alternatives to Regulation

Describe any viable alternatives for achieving the purpose of the regulation that were considered as part of the periodic review. Include an explanation of why such alternatives were rejected and why this regulation is the least burdensome alternative available for achieving its purpose.

The regulation describes the policy of the CTB in determining which maintenance activities on roads crossing over or under the Interstate Highways are eligible for funding by the CTB. Its purpose may be accomplished through a written CTB Policy and/or a guidance document, and is not necessary as a regulation.

Public Comment

Summarize all comments received during the public comment period following the publication of the Notice of Periodic Review, and provide the agency response. Be sure to include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. Indicate if an informal advisory group was formed for purposes of assisting in the periodic review.

No comment was received during the public comment period.

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in Executive Order 14 (as amended, July 16, 2018), including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

Although the regulation is clearly written and easily understandable, its purpose can be accomplished through other means, so it is therefore not necessary for the protection of public health, safety and welfare.

Decision

Explain the basis for the promulgating agency's decision (retain the regulation as is without making changes, amend the regulation, or repeal the regulation).

The CTB recommends repealing the regulation, and maintaining the underlying policy as a CTB Policy and/or guidance document.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency's consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

Although the regulation is not complex and does not overlap or conflict with other law, it is not necessary to be maintained as a regulation. The regulation was last reviewed in 2010.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

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Agenda item # 13

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: Seconded by:

Action:

Title: Policy for the Implementation of the Transit Ridership Incentive Program

WHEREAS, Section §33.2-1526.3 of the *Code of Virginia* was passed by the Virginia General Assembly in the 2020 legislative session to establish the Transit Ridership Incentive Program (TRIP) as part of the Omnibus Transportation Bill; and

WHEREAS, TRIP was created to promote improved regional transit service in urbanized areas of the Commonwealth (with an urban population in excess of 100,000) and to reduce barriers to transit use for low-income individuals; and

WHEREAS, shortly after the conclusion of the 2020 General Assembly, the coronavirus pandemic introduced a plethora of unprecedented operational challenges to Virginia transit providers, impacted patterns of commuting, and accentuated the need for equitable transit access; and

WHEREAS, the Department of Rail and Public Transportation has consulted with the Virginia Transit Association and other stakeholders to gather input to develop the TRIP policy;

NOW THEREFORE BE IT RESOLVED, the Commonwealth Transportation Board (Board) hereby adopts the following policy to govern the structure and prioritization of projects for TRIP Regional Connectivity funding pursuant to §33.2-1526.3 of the *Code of Virginia*.

1. For the purposes of review and prioritization, TRIP regional connectivity projects will be classified into the following four eligible project types:
 - The improvement and expansion of routes with regional significance
 - The implementation of integrated fare collection
 - The development and implementation of regional subsidy models
 - The creation of bus-only lanes on routes of regional significance

2. The following entities are eligible for TRIP regional connectivity funding:
 - Small and Large Urban transit agencies that serve regions with urbanized populations in excess of 100,000
 - Transportation District Commissions
 - Public Service Corporations
 - Local governments
 - Private nonprofit transit providers

3. The Commonwealth recognizes the need for both state and local funding commitments to establish transit services. Therefore, TRIP regional connectivity funding can be applied to a project for a maximum of five years with the state share decreasing over time. Projects may be eligible for funding beyond the initial five year commitment based on performance and availability of funding.

4. Candidate TRIP projects should be supported by planning, either at the regional or corridor level, that documents the regional travel demand and establishes an operational approach to serve regional travel needs, including congestion mitigation.

5. Projects to fund transit operations, bus only lanes, and integrated fare collection will be evaluated using a technical assessment that gauges a project’s ability to meet the legislatively defined goals of TRIP. The table below depicts the scoring criteria and their associated weights that will be used for prioritization. Projects to support regional subsidy models and integrated fare collections will be considered based on regional studies and recommendations from regional bodies.

Scoring Category	Measure	Measure Weight
Congestion Mitigation	<ul style="list-style-type: none"> ● Change in system-wide and peak period transit ridership attributed to the project 	60%
Regional Connectivity and Regional Collaboration	<ul style="list-style-type: none"> ● Increase in regional connectivity to community and employment centers attributed to the project 	30%

	<ul style="list-style-type: none"> • Project’s ability to heighten access to other modes of transportation • All involved localities’ involvement and commitment to the deployment of the project 	
Cost Per Passenger	<ul style="list-style-type: none"> • Cost of the project related to the predicted ridership increase attributed to the project 	10%
Total Score:		100%

6. Per subdivision C of §33.2-1526.3 of the *Code of Virginia*, the regional connectivity funds will be distributed based on a five-year rolling average, ensuring that each region receives their proportionate share over the five-year period.
7. Agencies awarded TRIP regional connectivity funding will report quarterly on project progress toward attaining established project goals and performance metrics.
8. A project that has been selected for TRIP funding must be rescored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project.
9. Selected regional routes projects may be eligible for continuation upon expiration of the initial pilot. Decisions to extend funding will be based on availability of funding and project performance.

NOW THEREFORE BE IT FURTHER RESOLVED, the Commonwealth Transportation Board hereby adopts the following policy to govern the structure, scoring, and prioritization of projects for Zero Fare and Low Income TRIP funding pursuant to §33.2-1526.3 of the *Code of Virginia*.

1. For the purposes of review and prioritization, TRIP zero fare and low income projects will be classified into the following three eligible types:
 - The provision of subsidized or fully free passes to low-income populations
 - The elimination of fares on high-capacity corridors, establishing ‘zero fare zones’ (net fares, less the cost of fare collection)
 - The deployment of an entirely zero fare system (net fare, less the cost of fare collection)
2. The entities eligible for TRIP Zero Fare and Low Income funding include:
 - Transportation District Commissions
 - Public Service Corporations
 - Local governments
 - Private nonprofit transit providers

Applications focused on the provision of zero-fare corridors or zero-fare systems should be submitted by the organization providing the service.

3. The Commonwealth recognizes the need for both state and local funding commitments to establish transit services. Therefore, TRIP zero fare and low income funding can be applied to a project for a maximum of three years. For multi-year projects, the state’s contribution would decrease and the local share would increase over the funding period. For agencies already committed to zero fare operations in FY22, allocations may be adjusted by the Board to reflect the early commitment to implementation.
4. Successfully enacting system-wide zero fare operations relies on a strong financial commitment from the service provider and its community. To ensure the success of these projects, all system-wide zero fare applicants must commit to an additional year of operation beyond the project agreement with DRPT where the funding recipient provides one hundred percent (100%) of project expenses.
5. Projects prioritized for funding should be supported by planning, either at the regional or corridor level that documents an evaluation of zero-fare policies and establishes an approach to meet community needs through the implementation of new fare policies.
6. The table below depicts the scoring criteria and their associated weights that will be used for reviewing TRIP zero fare and low income project types.

Scoring Criteria	Measure	Measure Weight
Impact on Ridership	<ul style="list-style-type: none"> • Predicted change in system wide transit ridership attributed to the project 	30%
Applicant Commitment	<ul style="list-style-type: none"> • The identification of community partnerships • support from involved localities • options for continued funding upon expiration of TRIP funds • duration of funding and willingness to participate in a step down funding structure 	30%
Implications for Equity and Accessibility	<ul style="list-style-type: none"> • Provision of planning documentation and/or existing research that identified areas of high need • metric of low income 	30%

	<ul style="list-style-type: none"> • description of how this project will benefit marginalized communities and areas of high need • capability to increase access to large employment and community centers 	
Project Schedule and Readiness	<ul style="list-style-type: none"> • Description of project’s ability to be quickly implemented with relatively low startup costs 	10%
Total Score:		100%

7. In order to appropriately measure the performance of selected projects and to ensure proper reporting, funding recipients will report quarterly on project progress to DRPT.
8. A project that has been selected for TRIP funding must be rescored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project.
9. Selected zero fare and low income projects may be eligible for continuation upon expiration of the initial pilot. Decisions to extend funding will be based on availability of funding and project performance

BE IT FURTHER RESOLVED, the methodology may continue to evolve and improve based upon advances in technology, data collection, and reporting tools, and to the extent that any such improvements modify or affect the policy set forth herein, they shall be brought to the Board for review and approval in addition to the five-year requirement to meet with the Board and revise the guidelines.

BE IT FURTHER RESOLVED, the Board hereby directs the Director of the Department of Rail and Public Transportation to take all actions necessary to implement and administer this policy, including, but not limited to preparation of program guidance and outreach consistent with this resolution.

NOW THEREFORE BE IT FURTHER RESOLVED, the Board hereby directs the Director of the Department of Rail and Public Transportation to analyze the outcomes of this process on an annual basis and to revisit the process at least every five years, in consultation with transit agencies, metropolitan planning organizations, and local governments prior to making recommendations to the Commonwealth Transportation Board.

###

CTB Decision Brief

Policy for the Implementation of the Transit Ridership Incentive Program

Issue: HB 1414 was passed during the 2020 General Assembly Session. This legislation provided dedicated funding to the creation of the Transit Ridership Incentive Program. This program has two distinct goals: 1) improving the regional connectivity of urban areas with population in excess of 100,000 and 2) increasing the ridership and accessibility of transit throughout the Commonwealth, specifically for low income populations. This policy provides the framework for the implementation of the program including eligibility requirements and evaluation criteria.

Facts: Section 33.2-1526.1 of the *Code of Virginia* (Code) established that six percent of the Commonwealth Mass Transit Fund must be allocated to the Transit Ridership Incentive Program. Section 33.2-1526.3 of the Code stipulates that the Department of Rail and Public Transportation shall develop guidelines for the program, pursuant to the regulations provided in the legislation and subject to the approval of the Commonwealth Transportation Board.

In March 2020, the COVID-19 pandemic introduced new challenges to transit operators throughout the Commonwealth. FY 21 TRIP funds were distributed to support more immediate operational needs, due to newfound costs and the loss of revenue. This deferment of the program start date permitted DRPT to conduct an expansive outreach process, despite COVID-19 challenges, to inform the development of policy materials. A webinar was held on November 18, 2020 and a Request for Ideas (RFI) was distributed to all of DRPT's funding recipients. This RFI gathered information on potential concepts for funding, gauged agency interest, and was accompanied by an interactive webinar to outline the program parameters and the purpose of the RFI. Two focus groups, one focusing on regional connectivity and the other focusing on zero fare and low income projects, were held after the collection of RFI responses. These discussions with stakeholders, coupled with the RFI responses, framed the development of this policy.

The CTB was briefed on this effort in May and the policy was made available for public comment for 30 days. DRPT received comments from six entities prior to the comment period closing on June 18th. The comments were reviewed and adjustments made in either the CTB policy or the Program Application Guidelines (which have also been available for public comment). Additionally, DRPT staff has followed up with commenters to specifically address the feedback received.

Recommendation: DRPT recommends that the CTB approve the Policy for the Implementation of the Transit Ridership Incentive Program (TRIP)

Action Required by CTB: Approve the Policy for the Implementation of the Transit Ridership Incentive Program (TRIP) which will allow DRPT to move forward to solicit applications for FY22 funding.

Options: Approve, Deny, or Defer



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

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Agenda item # 14

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By: Seconded By: Action:

Title: Rail Industrial Access – Norfolk Terminal, LP

WHEREAS, funding is provided by the General Assembly for Industrial, Airport, and Rail Access projects (RIA); and

WHEREAS, Section 33.2-1600 of the *Code of Virginia* declares it to be in the public interest that access railroad tracks and facilities be constructed to certain industrial commercial sites where rail freight service is or may be needed by new or substantially expanded industry; and

WHEREAS, Norfolk Terminals, LP has submitted an application for RIA grant funds in the amount of \$450,000 toward construction of 10,815 feet of track to serve a facility in the City of Norfolk; and

WHEREAS, the Department of Rail and Public Transportation (DRPT) has evaluated the project in accordance with the Board's RIA policy and, because the project scores 78 points, has recommended approval of the project; and

WHEREAS, the City of Norfolk, Virginia has, by resolution dated April 13, 2021, shown support for the application of up to \$450,000 in RIA funds for assistance in expanding track facilities to serve the Norfolk Terminal, LP facility located in the City of Norfolk; and

WHEREAS, Norfolk Southern Railway Company, by letter dated January 25, 2021, has indicated its support for the project and has agreed to serve the facility; and

WHEREAS, the funding request falls within the intent of Section 33.2-1600, and because the project is in accordance with the provisions of the Board’s policy on the use of Industrial Access Railroad Track funds, funding may be allocated to this project; and

WHEREAS, the Board believes that this project is for the common good of a region of the Commonwealth and serves a public purpose;

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves that \$450,000 of the RIA Fund be provided to construct approximately 10,815 linear feet of track subject to the following requirements:

1. All necessary right of way and utility adjustments must be provided at no cost to the Commonwealth.
2. All costs above the \$450,000 RIA grant must be borne by Norfolk Terminal, LP or sources other than those administered by DRPT.
3. Execution of an agreement acceptable to the Director of DRPT.
4. Execution of a contractual commitment by Norfolk Terminal, LP to maintain the track and make repayment of any costs related to the future relocation or removal of such track and facilities, in form acceptable to the Director of DRPT.

#####

CTB Decision Brief

Rail Industrial Access Applicant

Location: City of Norfolk, Virginia

Norfolk Terminal, LP

Summary: Norfolk Terminal, LP is a multi-customer terminal which during phase one of its expansion will primarily move polymers through storage, handling, packaging, and shipping in the City of Norfolk, Virginia. The company has submitted an application for Rail Industrial Access grant funds in the amount of \$450,000 to construct a new rail spur at their facility.

This project is part of Norfolk Terminal's initiative to receive, store, package, and ship product through the Virginia Port. The construction of the industrial sidetrack is critical to Norfolk Terminal's phase one expansion for capacity and will add an additional 31 employees.

DRPT has evaluated the project in accordance with the CTB's Rail Industrial Access policy. The project scores 78 points. Projects must reach a 50 point threshold to receive a recommendation by DRPT staff. For this project:

- The Applicant plans 3,000 rail carloads annually.
- The minimum threshold for carloads is 10 carloads annually.
- The Applicant commits to 31 new jobs.
- The Applicant's new 10,815 foot rail siding will remove approximately 10,200 trucks from Virginia highways per year.
- Total capital investment in the expanded facility is estimated at \$61M.
- Total railroad track construction cost is estimated at \$7M.
- Applicant is responsible for minimum 30% match toward rail costs.
- There will be a claw-back provision in the grant agreement for failure to meet performance requirements based on the CTB adopted program performance policies.

Source of State Funds: FY 2022 Industrial, Airport, and Rail Access Fund

Recommendation: In accordance with the CTB Rail Industrial Access policy, DRPT recommends the Board approve the project.

Action Required by CTB: CTB policy for Rail Industrial Access requires Board action on the resolution.

Options: Approve, Deny, or Defer



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

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Agenda item # 15

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By:

Seconded By:

Action:

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

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

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

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

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

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

WHEREAS, in reliance on the support for the HRBT Expansion Project provided by

Board Resolution

Approval and Authorization for the Commissioner of Highways to Execute a TIFIA Direct Agreement Between the Virginia Department of Transportation, the Hampton Roads Transportation Accountability Commission and the United States Department of Transportation and Related Amendments to the PAFA for the Hampton Roads Bridge Tunnel Expansion Project
July 21, 2021

Page Two

VDOT pursuant to the foregoing agreements, together with each electronic toll collection agreement and each violation processing services agreement entered into by HRTAC and VDOT pursuant to the MTA (collectively the VDOT Support Agreements), the United States Department of Transportation (USDOT) will grant to HRTAC two loans under the Transportation Infrastructure Finance and Innovation Act Program (TIFIA Loans) for the purpose of financing certain costs in connection with the construction and development of the HRBT Expansion Project and which will be repaid from toll revenues of the Hampton Roads Express Lane (HREL) Network and sales tax revenues dedicated to the Hampton Roads Transportation Fund, respectively; and

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

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

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

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

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

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

BE IT FURTHER RESOLVED, that the CTB hereby approves and authorizes the Commissioner of Highways to execute a separate, stand-alone HRBT PAFA Amendment, which incorporates modifications to the HRBT PAFA substantially similar to those set forth in Exhibit B, with such changes and modifications deemed necessary by the Commissioner.

#####

DIRECT AGREEMENT (VDOT)

This **DIRECT AGREEMENT** (this “**Agreement**”) dated as of [___], 2021 (the “**Effective Date**”), is made by and among the (i) VIRGINIA DEPARTMENT OF TRANSPORTATION, an agency of the Commonwealth of Virginia (“**VDOT**”); (ii) HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION, a body politic and a political subdivision created under the laws of the Commonwealth of Virginia (the “**Borrower**”); and (iii) UNITED STATES DEPARTMENT OF TRANSPORTATION, an agency of the United States, acting by and through the Executive Director of the Build America Bureau (“**USDOT**” or the “**TIFIA Lender**”).

RECITALS**WHEREAS:**

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

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

(3) VDOT, the Borrower, and the Commonwealth Transportation Board have entered into that certain Master Agreement for Development and Tolling of the Express Lanes Network, dated August 18, 2020, as it may be modified or amended from time to time in accordance with its terms (the “**MTA**”);

(4) VDOT has entered into that certain Standard Contract for VDOT I-64 Express Lanes Toll System and Services (the “**Segment 1 Toll System Contract**”), dated as of March 21, 2017, with TransCore, LP (the “**Segment 1 Toll System Contractor**”), as it may be modified or amended from time to time in accordance with its terms; and

(5) VDOT has entered into that certain Standard Contract Relating to the I-64 Express Lanes Expansion (the “**Segment 2 Toll System Contract**” and, together with the Segment 1 Toll System Contract, the “**Toll System Contracts**”), dated as of June 17, 2021, with Conduent State & Local Solutions, Inc. (the “**Segment 2 Toll System Contractor**” and, together with the Segment 1 Toll System Contractor, the “**Toll System Contractors**”), as it may be modified or amended from time to time in accordance with its terms.

The foregoing agreements in paragraphs (1) through (5) above, together with each Electronic Toll Collection Agreement and each Violation Processing Services Agreement, are herein collectively referred to as the “**VDOT Agreements.**”

WHEREAS, in reliance on the support for the Project provided by VDOT pursuant to the VDOT Agreements, the Borrower and the TIFIA Lender are entering into:

(1) that certain TIFIA Loan Agreement, dated as of the date hereof, pursuant to which the TIFIA Lender will (subject to the terms and conditions of the loan agreement) make a loan in a principal amount not to exceed \$[_____] (excluding interest that is capitalized), which loan shall be repaid from toll revenues collected by the Borrower (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**HRBT Toll TIFIA Loan Agreement**”), and

(2) that certain TIFIA Loan Agreement, dated as of the date hereof, pursuant to which the TIFIA Lender will (subject to the terms and conditions of the loan agreement) make a loan in a principal amount not to exceed \$[_____] (excluding interest that is capitalized), which loan shall be repaid from sales tax revenues dedicated to the Hampton Roads Transportation Fund (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**HRBT HRTF TIFIA Loan Agreement**” and, together with the Toll TIFIA Loan Agreement, the “**HRBT TIFIA Loan Agreements**”).

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

WHEREAS:

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

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

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

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

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

ARTICLE I

DEFINED TERMS; INTERPRETATION

Section 1.1 Capitalized Terms.

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

(b) All capitalized terms used in Article VI (VDOT Agreement Modifications and Clarifications) (other than Section 6.4 (Agreements Relating to Toll System Contract)) shall have the meanings given to them in the applicable VDOT Agreement.

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

“Electronic Toll Collection Agreement” means any Electronic Toll Collection Agreement entered into between the Borrower and VDOT, substantially in the form of Exhibit 14 to the MTA.

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

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

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

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

“Permitted Liens” means:

- (a) Liens imposed pursuant to the HRBT TIFIA Loan Agreements;
- (b) Liens imposed by law for taxes that are not yet due or are being contested;
- (c) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested;
- (d) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, and other social security laws or regulations;

(e) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(f) judgment Liens in respect of judgments that do not constitute an Event of Default under either HRBT TIFIA Loan Agreement;

(g) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that, in any case, do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of the Borrower;

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

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

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

“Violation Processing Services Agreement” means any Violation Processing Services Agreement entered into between the Borrower and VDOT, substantially in the form of Exhibit 15 to the MTA.

Section 1.3 Interpretation. Unless the context shall otherwise require, the words “hereto”, “herein”, “hereof”, and other words of similar import refer to this Agreement as a whole. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever VDOT’s knowledge is implicated in this Agreement or the phrase “to VDOT’s knowledge” or a similar phrase is used in this Agreement, VDOT’s knowledge or such phrase(s) shall be interpreted to mean to the best of VDOT’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits,

appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 9.1 and signed by a duly authorized representative of such party.

ARTICLE II

CONDITIONS PRECEDENT

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

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

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

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

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

(e) Organizational Documents. VDOT shall have provided to the TIFIA Lender evidence that VDOT is duly organized and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified

by VDOT's Authorized Representative: (i) a copy of all resolutions authorizing VDOT to execute and deliver, and to perform its respective obligations under, the VDOT Agreements, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by VDOT relating to the matters described therein, and (ii) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the VDOT Agreements.

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

(g) Accuracy of Representations and Warranties. The representations and warranties of VDOT set forth in this Agreement and in each other VDOT Agreement shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

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

ARTICLE III

VDOT ACKNOWLEDGMENTS AND UNDERTAKINGS; **NO LIABILITY FOR HRBT TIFIA LOANS**

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

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

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

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

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

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

Section 3.7 Assignment of Toll System Contracts to Borrower. The Parties acknowledge that, pursuant to the terms of each Toll System Contract, such Toll System Contract may, during the term thereof, be assigned to the Borrower. The Parties further acknowledge and agree that, as of the effective date of any such assignment of any Toll System Contract to the Borrower, such Toll System Contract will cease to be considered a VDOT Agreement for purposes of this Agreement and any and all obligations of VDOT hereunder with respect to such Toll System Contract and the applicable Toll System Contractor (other than (a) the acknowledgement and agreement of VDOT relating to certain liquidated damages set forth in Section 6.4 hereof and (b) any obligations of VDOT under any Toll System Contract which by the terms of such Toll System Contract or the instrument of assignment are intended to survive such assignment) will be of no further force and effect.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

(a) Organization; Power and Authority. VDOT is an agency of the State, duly organized and validly existing and in good standing under the laws of the State, has full legal right,

power and authority to enter into or become a signatory to this Agreement and the VDOT Agreements and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery, and performance of this Agreement and the VDOT Agreements.

(b) VDOT's Officers' Authorization. As of the Effective Date, the officers of VDOT executing (or that previously executed) this Agreement and the VDOT Agreements, and any certifications or instruments related thereto, are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of this Agreement and each of the VDOT Agreements in effect as of any date on which this representation and warranty is made, has been duly authorized, executed and delivered by VDOT and constitutes the legal, valid, and binding agreement of VDOT enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law); provided that all payments from VDOT under each of the VDOT Agreements are subject to appropriation by the Virginia General Assembly and allocation by the Commonwealth Transportation Board.

(d) Non-Contravention. The execution and delivery of this Agreement and the VDOT Agreements, the consummation of the transactions contemplated herein and therein and the fulfillment of or compliance with the terms and conditions hereof and thereof will not (i) conflict with VDOT's Organizational Documents or (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by VDOT of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which VDOT is a party and/or signatory or by which it or its properties or assets are otherwise subject or bound.

(e) Consents and Approvals. No consent or approval of any trustee, holder of any indebtedness of VDOT or any other Person, and no consent, permission, authorization, order or license of, or filing or registration with, any Governmental Authority is necessary in connection with (i) the execution and delivery by VDOT of this Agreement and the VDOT Agreements, except as have been obtained or made and as are in full force and effect, or (ii) (A) the consummation of any transaction contemplated by this Agreement or the VDOT Agreements or (B) the fulfillment of or compliance by VDOT with the terms and conditions of this Agreement and the VDOT Agreements, except as have been obtained or made and as are in full force and effect or as are ministerial in nature and can reasonably be expected to be obtained or made in the ordinary course on commercially reasonable terms and conditions when needed.

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of VDOT, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of VDOT, threatened against or affecting the Project or the ability of VDOT to execute, deliver and perform its obligations under

this Agreement or the VDOT Agreements. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of VDOT, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of VDOT, threatened against or affecting the Project, VDOT or the assets, properties or operations of VDOT, that in any case could reasonably be expected to result in a Material Adverse Effect. To VDOT's knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Principal Project Parties except for matters arising after the Effective Date that could not reasonably be expected to result in a Material Adverse Effect. VDOT is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) No Debarment. VDOT has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither VDOT nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended, or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 2.1(b). Further, VDOT has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. VDOT is not aware of any non-compliance by any Principal Project Party or any of VDOT's other contractors or subcontractors performing work related to the Project with the applicable requirements of 2 CFR Part 180.

(h) Accuracy of Representations and Warranties. The representations, warranties and certifications of VDOT set forth in this Agreement and in each VDOT Agreement are true, correct, and complete, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true, correct, and complete as of such earlier date).

(i) Compliance with Federal Requirements. With respect to the Project, VDOT has complied with all applicable requirements of NEPA, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.), and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.).

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

(k) Governmental Approvals. All Governmental Approvals required as of the Effective Date and any subsequent date on which this representation is made (or deemed made) for the undertaking and completion of the Project and for the operation and management thereof have been obtained or effected by VDOT and are in full force and effect, and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval.

(l) VDOT Agreements. Each VDOT Agreement in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each VDOT Agreement have been satisfied. VDOT or the Borrower has delivered to the TIFIA Lender (i) as of the Effective Date, a fully executed, complete, and correct copy of each such VDOT Agreement in effect as of the Effective Date and (ii) as of any other date on which this representation and warranty is made, a fully executed, complete, and correct copy of each such VDOT Agreement entered into after the Effective Date and prior to such other date, including, in each case in clauses (i) and (ii), (A) all exhibits, schedules and other attachments, (B) any amendments or modifications thereto and (C) any related credit support instruments or side letters. No event has occurred that gives VDOT or, to the knowledge of VDOT, any counterparty thereto the right to terminate any VDOT Agreement.

(m) Information. The information furnished by VDOT to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of VDOT.

(n) OFAC; Anti-Corruption Laws.

(i) Neither VDOT nor, to VDOT's knowledge, any other party to a VDOT Agreement is a Sanctioned Person.

(ii) Neither VDOT nor, to VDOT's knowledge, any other party to a VDOT Agreement is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism, civil or criminal.

(iii) There are no pending or, to the knowledge of VDOT, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, VDOT or, to VDOT's knowledge, any other party to a VDOT Agreement, in each case with respect to any possible or alleged violations of any Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of either HRBT TIFIA Loan or other transaction contemplated by this Agreement or any VDOT Agreement will violate any applicable Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws

(o) Compliance with Law. VDOT is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 4.1(p) below), including

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

(p) Environmental Matters. VDOT and, to the knowledge of VDOT, each Principal Project Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice “Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects,” 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> (“**Environmental Laws**”). All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. VDOT has not received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that VDOT or any other party to a VDOT Agreement is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to VDOT’s knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by VDOT or any other party to a VDOT Agreement with any such Environmental Law or Governmental Approval.

(q) Sufficient Rights and Utilities. VDOT possesses either valid legal and beneficial title to, leasehold title in, or other valid legal rights with respect to the real and personal property relating to the Project, in each case as is necessary and sufficient as of the date this representation is made for the construction, operation, maintenance and repair of the Project. The VDOT Agreements in effect and the Governmental Approvals that have been obtained and are in full force and effect create rights in VDOT sufficient to enable VDOT to own, construct, operate, maintain and repair the Project and to perform its obligations under each of the VDOT Agreements to which it is a party. All utility services, means of transportation, facilities and other materials necessary for the construction and operation of the Project (including, as necessary, gas, electrical, water and sewage services and facilities) are, or will be when needed, available to the Project and arrangements in respect thereof have been made on commercially reasonable terms.

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

(s) No Liens. Except for Permitted Liens, VDOT has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would

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

(t) Intellectual Property. VDOT owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case, necessary for the Project, the Express Lanes Network, and the operation of its business. To VDOT's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to VDOT's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project or the Express Lanes Network infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

(u) Investment Company Act. VDOT is not, and after applying the proceeds of the HRBT TIFIA Loans will not be, required to register as an "investment company" within the meaning of the Investment Company Act of 1940, as amended, and is not "controlled" by a company required to register as an "investment company" under the Investment Company Act of 1940, as amended.

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

(w) ERISA. Neither VDOT nor any ERISA Affiliate maintains or otherwise has any liability in respect of any plan or other arrangement that is subject to ERISA or Section 412 of the Code.

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

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

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

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

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

ARTICLE V

VDOT PROJECT-RELATED COVENANTS

Section 5.1 VDOT Affirmative Covenants related to HRBT TIFIA Loan Agreements. VDOT covenants and agrees as follows until the date the HRBT TIFIA Loans and the obligations of the Borrower under the HRBT TIFIA Loan Agreements (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Copies of Documents. VDOT shall provide written notice to the TIFIA Lender of VDOT's intent to enter into any Principal Project Contract or Additional Project Contract to be entered into by VDOT and, if such Additional Project Contract is subject to approval by the TIFIA Lender pursuant to Section 16(e) (*Principal Project Contracts; Additional Project Contracts*) of the HRBT Toll TIFIA Loan Agreement, shall provide drafts of any such Additional Project Contracts at least thirty (30) days prior to the proposed effective date thereof, together with any related contracts, side letters or other understandings. If the TIFIA Lender requests a copy of any Additional Project Contract that is not subject to approval by the TIFIA Lender, VDOT shall provide a copy of the final or near final draft of such Additional Project Contract, together with any related contracts, side letters or other understandings, prior to the execution thereof (provided such request is made prior to the execution of such contract). VDOT shall provide a complete and fully executed version of each Principal Project Contract entered into by VDOT (together with any credit support instruments provided in connection therewith) and, if requested by the TIFIA Lender, VDOT shall provide to the TIFIA Lender an executed version of any Additional Project Contract entered into by VDOT, together with any related contracts, side letters or other understandings, promptly following the full execution thereof.

(b) Prosecution of Work; Verification Requirements.

(i) VDOT shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with good engineering practices.

(ii) VDOT shall ensure that the Design-Builder and its subcontractors comply with all applicable laws and legal or contractual requirements with respect to any performance security instrument delivered by the Design-Builder to VDOT and shall ensure that any letter of credit provided pursuant to the Design-Builder meets the requirements therefor set forth therein.

(iii) VDOT shall comply with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.320, and with 2 CFR § 1200.332.

(c) Roadway Operation and Maintenance. VDOT shall perform all Roadway O&M Work (as defined in the MTA) for the Project and the Express Lanes Network (i) in a

reasonable and prudent manner, (ii) substantially in accordance with the Maintenance Protocol (as defined in the MTA) (except as necessary to prevent or mitigate immediate threats to human health and safety or to prevent or mitigate physical damage to material portions of the Project), and (iii) in accordance with the requirements of all applicable laws and each applicable VDOT Agreement. VDOT shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business.

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

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

(f) Insurance.

(i) VDOT shall maintain or cause to be maintained insurance for the construction and operation of the Project, with responsible insurers and, in any event, as required by the VDOT Agreements and any other Principal Project Contracts to which VDOT is a party.¹ VDOT shall cause each Principal Project Party under a Principal Project Contract to which VDOT is a party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Principal Project Contract.

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

(g) Notices.

(i) VDOT shall, within five (5) Business Days after VDOT learns of the occurrence, give the TIFIA Lender and the Borrower written notice of any of the following events or receipt of any of the following notices, as applicable, setting forth details of such event and including any relevant and significant documentation:

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

(A) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against VDOT before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by VDOT in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against VDOT with respect to the Project that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against VDOT with respect to the Project with individual award amounts in excess of \$5,000,000, either individually or in the aggregate;

(B) Delayed Governmental Approvals: any failure to receive or delay in receiving any Governmental Approval or making any required filing, notice, recordation or other demonstration to or with a Governmental Authority, in each case to the extent such failure or delay will or could reasonably be expected to result in a delay to any major milestone date (including the Projected Substantial Completion Date) set forth in the Construction Schedule, together with a written explanation of the reasons for such failure or delay and VDOT's plans to remedy or mitigate the effects of such failure or delay;

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

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

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

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

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

(H) Project Changes: any (1) change to the forecasted Total Project Costs in excess of five percent (5%) of total forecasted Total Project Costs, together (in the case of increased costs) with a written description of the committed funding sources available to VDOT or the Borrower to pay for such increased Total Project Costs; or (2) material change to the Construction Schedule, together with a proposed revised Construction Schedule;

(I) 2 CFR Notices: (1) that any of the information set forth in the certificate provided by VDOT pursuant to Section 2.1(b) was incorrect at the time the certificate was delivered or there has been a change in status of VDOT or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting either HRBT TIFIA Loan Agreement as described in 2 CFR § 200.113; and

(J) Other Adverse Events: the occurrence of any other event or condition, including any notice of breach from a contract counterparty, that could reasonably be expected to result in a Material Adverse Effect

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

(iii) Remedial Action. Within thirty (30) calendar days after VDOT learns of the occurrence of an event specified in [Section 8(a)(i)]² (other than in Section 5.1(g)(i)(E) (*Amendments*)), VDOT's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions VDOT proposes to take with respect thereto.

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

(i) Events of Loss; Loss Proceeds. If an Event of Loss shall occur with respect to the Project or any part thereof, VDOT shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event and (B) except as otherwise required by the Toll Indenture, pay or apply all Loss Proceeds stemming from such event to repair or replace the Project or the affected portion thereof

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

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

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

(k) Patriot Act. If the anti-money laundering compliance program provisions of the Patriot Act become applicable to VDOT, then VDOT will provide written notice to the TIFIA Lender of the same and will promptly establish an anti-money laundering compliance program that complies with all applicable requirements of the Patriot Act.

(l) Cargo Preference Act. Pursuant to 46 CFR Part 381, VDOT hereby agrees as follows, and shall insert the following clauses in contracts entered into by VDOT pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

(i) At least fifty percent (50%) of any equipment, materials or commodities procured, contracted for or otherwise obtained with HRBT TIFIA Loan proceeds, and which may be transported by ocean vessel, shall be transported on privately owned United States-flag commercial vessels, if available.

(ii) Within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) Business Days following the date of loading for shipments originating outside the United States, a legible copy of a rated, 'on-board' commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (i) above shall be furnished to both the TIFIA Lender and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

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

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

Section 5.2 VDOT Negative Covenants related to HRBT TIFIA Loan Agreements. VDOT covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the TIFIA Lender waives compliance in writing:

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

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

(c) Principal Project Contracts; Additional Project Contracts. VDOT shall not, without the prior written consent of the TIFIA Lender, enter into any Principal Project Contract that is not in effect as of the Effective Date. VDOT shall not, without the prior written consent of the TIFIA Lender, enter into any Additional Project Contract (or series of related contracts) allocable to the Project that commits the Borrower to spend, or is reasonably expected to involve expenditures by the Borrower of, amounts that either: (i) exceed \$2,500,000, inflated annually by CPI, in any Borrower Fiscal Year, or (ii), alone or when aggregated with the other Total Project Costs or Operation and Maintenance Expenses, as applicable, in the same line item of the applicable budget set forth in the Financial Plan most recently submitted to the TIFIA Lender, would cause aggregate Total Project Costs or Operation and Maintenance Expenses, as applicable, for such line item in any Borrower Fiscal Year to exceed the amounts for such line item for any Borrower Fiscal Year reflected in the budget in the Financial Plan mostly recently submitted to the TIFIA Lender.

(d) No Prohibited Sale, Lease or Assignment. VDOT shall not sell, lease, or assign its rights in and to the Project, a substantial portion of the assets included in the Project or

the Express Lanes Network, or its rights and obligations under any VDOT Agreement, in each case unless such sale, lease or assignment (or group of sales or disposals) (i) could not reasonably be expected to result in a Material Adverse Effect, (ii) could not reasonably be expected to result in a reduction to the [Toll Revenues] in any material respect, (iii) could not reasonably be expected to increase Tolling O&M Costs [(as defined in the MTA)] in any material respect, and (iv) is made by VDOT in the ordinary course of business.

(e) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the VDOT Agreements, VDOT shall not engage in any other transactions in connection with the Project with any other Governmental Authority (including any other Governmental Authority of or in the State), the terms and provisions of which are materially adverse to VDOT, the Borrower or the Project or that could reasonably be expected to result in a Material Adverse Effect.

(f) OFAC Compliance. VDOT:

(i) shall not violate (A) any applicable Anti-Money Laundering Laws, (B) any applicable Sanctions, (C) Anti-Corruption Laws or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(ii) shall not use the proceeds of either HRBT TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under the HRBT TIFIA Loan Agreements and the VDOT Agreements;

(iii) shall ensure that each of its directors, officers, employees, and agents, shall not, directly or indirectly, use the proceeds of either HRBT TIFIA Loan or lend to, make any payment to, contribute or otherwise make available any funds to any Affiliate, joint venture partner or other Person (A) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any applicable Anti-Corruption Laws, (B) in any manner that would result in the violation of any applicable Anti-Money Laundering Laws, (C) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (D) in any other manner that would result in the violation of any Sanctions by any Person (including the Executive Director, the TIFIA Lender or any Principal Project Party); and

(iv) shall not make a payment, directly or indirectly, to any Principal Project Party that, to VDOT's knowledge, has violated any of the laws referenced in clause (i) above or that is a Sanctioned Person.

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

(a) Reports and Records. VDOT shall maintain and retain all files relating to the Project and the Express Lanes Network until three (3) years after the later of the date on which (i) all rights and duties hereunder and under each HRBT TIFIA Loan Agreement (including

payments) have been fulfilled and any required audits have been performed and (ii) any litigation relating to the Project, the Express Lanes Network or the VDOT Agreements is finally resolved or, if the TIFIA Lender has reasonable cause to extend such date, a date to be mutually agreed upon by the TIFIA Lender and VDOT. VDOT shall provide to the TIFIA Lender in a timely manner all records and documentation relating to the Project, the Express Lanes Network or the VDOT Agreements that the TIFIA Lender may reasonably request from time to time.

(b) Required Audit. VDOT shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2019 and annually thereafter, except to the extent biennial audits are permitted for VDOT pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, VDOT shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project, the Express Lanes Network or the VDOT Agreements, to the Secretary, or the designee thereof, for any such project or programmatic audit.

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

ARTICLE VI

VDOT AGREEMENT MODIFICATIONS AND CLARIFICATIONS

Section 6.1 Amendments and Clarifications Relating to the PAFA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 6.3 Agreements and Undertakings Relating to the Master Tolling Agreement. VDOT acknowledges and agrees that the license to use the Tolling Infrastructure and System and access the roadway to perform Tolling O&M Duties granted by VDOT to the Commission pursuant to Section 3.08(b) of the Master Tolling Agreement is irrevocable during the term of the Master Tolling Agreement.

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

ARTICLE VII

TIFIA LENDER RIGHTS AND PROTECTIONS

Section 7.1 Project Monitoring. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. VDOT agrees to cooperate in good faith with the TIFIA Lender and the FHWA Division Office in the conduct of such monitoring by providing the TIFIA Lender and the FHWA Division Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and the FHWA Division Office, or its agents, including any independent engineer reports, documentation or information.

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

Section 7.3 Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 7.4 Delay or Omission Not Waiver. No waiver by the TIFIA Lender of any breach by VDOT of any of its obligations, agreements or covenants hereunder shall be deemed a waiver of any subsequent breach, or a waiver of any other obligation, agreement or covenant, and no delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of VDOT (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

Section 7.5 No Third Party Rights. The Parties hereby agree that this Agreement creates no third party rights against the United States Government or the TIFIA Lender solely by virtue of this Agreement.

ARTICLE VIII

DAMAGES

Section 8.1 Waiver of Consequential Damages. To the extent permitted by applicable law, neither VDOT nor the TIFIA Lender shall assert, and both VDOT and the TIFIA Lender hereby waives, any claim on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, the other transactions contemplated hereby, the HRBT TIFIA Loan Agreements, or the use of the proceeds of any draws thereunder.

ARTICLE IX

MISCELLANEOUS

Section 9.1 Notices. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

If to TIFIA Lender: Build America Bureau
United States Department of Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of
Credit Programs
Email: BureauOversight@dot.gov

with copies to: Federal Highway Administration
Virginia Division Office
400 North 8th St., Suite 750
Richmond, Virginia 23219-4825
Attn: Division Administrator
Telephone: 804-775-3320
Facsimile: 804-775-3356

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

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

If to Borrower: Hampton Roads Transportation
Accountability Commission
The Regional Building
723 Woodlake Drive
Chesapeake, Virginia 23320
Attention: Executive Director
Email: kpage@hrtac.org

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, by VDOT's Authorized Representative, with respect to notices to VDOT, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. Each such notice, request or communication shall be effective

(x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 9.1 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 9.1 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 9.2 No Personal Recourse. No official, employee or agent of the TIFIA Lender, the Borrower or VDOT or any person executing this Agreement shall be personally liable under this Agreement by reason of the issuance, delivery, execution or performance hereof.

Section 9.3 Authorized Representatives.

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

(b) TIFIA Lender's Authorized Representative. The TIFIA Lender shall at all times have appointed the TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

Section 9.4 Amendments and Waivers. No amendment, modification, termination or waiver of any provision of this Agreement shall in any event be effective without the written consent of the Parties.

Section 9.5 Governing Law. This Agreement shall be governed by the federal laws of the United States if and to the extent such federal laws are applicable and the internal laws of the State, if and to the extent such federal laws are not applicable.

Section 9.6 Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

Section 9.7 Successors and Assigns. This Agreement shall be binding upon the Parties hereto and their respective successors and assigns and shall inure to the benefit of the Parties hereto and the successors and assigns of the TIFIA Lender. None of VDOT or the Borrower may sell, assign, transfer or delegate any of its rights or obligations under this Direct Agreement without the prior written consent of the TIFIA Lender.

Section 9.8 Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the Parties in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Each Party agrees that the transaction consisting of this Agreement may be conducted by electronic means. Each Party agrees, and acknowledges that it is such Party's intent, that if such Party signs this Agreement using an electronic signature, it is signing, adopting, and accepting this Agreement and that signing this Agreement using an electronic signature is the legal equivalent of having placed its handwritten signature on this Agreement on paper. Each Party acknowledges that it is being provided with an electronic or paper copy of this Agreement in a usable format.

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

[Signature Pages Follow]

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

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____
Name:
Title:

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

By: _____

Name: Stephen C. Brich, P.E.

Title: Commissioner of Highways

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

By: _____

Name: Morteza Farajian

Title: Executive Director

EXHIBIT A

OPINIONS REQUIRED OF COUNSEL TO VDOT

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

EXHIBIT B

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

The undersigned, on behalf of the VIRGINIA DEPARTMENT OF TRANSPORTATION, hereby certifies that the VIRGINIA DEPARTMENT OF TRANSPORTATION has fully complied with its verification obligations under 2 CFR § 180.320 and hereby further confirms, in accordance with 2 CFR § 180.335, that the VIRGINIA DEPARTMENT OF TRANSPORTATION and its principals (as defined in 2 CFR § 180.995):

(a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);

(b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR §180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR §180.800(a); and

(d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

(e) Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain Direct Agreement, dated as of [____], 2021 between the TIFIA Lender, the Virginia Department of Transportation, and the Borrower, as the same may be amended from time to time.

Dated: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name:

Title:

EXHIBIT C

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

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

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of VDOT, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of the HRBT TIFIA Loans.

(b) If any funds other than proceeds of the HRBT TIFIA Loans have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the HRBT TIFIA Loans, VDOT shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(c) VDOT shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when the TIFIA Lender entered into this Agreement. Submission of this certification is a prerequisite to the effectiveness of this Agreement imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Dated: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title:

EXHIBIT D

FORM OF VDOT'S OFFICER'S CERTIFICATE

Reference is made to that certain Direct Agreement, dated as of [____], 2021 (the "Direct Agreement"), by and among the Virginia Department of Transportation ("VDOT"), Hampton Roads Transportation Accountability Commission (the "Borrower"), and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the Direct Agreement.

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

- (a) attached hereto as **Exhibit A** is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by VDOT to execute the Direct Agreement, and who have been appointed VDOT's Authorized Representative in accordance with Section 9.3(a) (*VDOT's Authorized Representative*) of the Direct Agreement;
- (b) VDOT hereby certifies that it is in compliance with the verification requirements set forth in 2 CFR §§ 180.300 and 180.320 and with its obligations under 2 CFR § 180.330;
- (c) VDOT hereby certifies that:
 - a. With respect to the Project, VDOT has complied with NEPA; and
 - b. VDOT has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
- (d) pursuant to Section 2.1(e) (*Conditions Precedent*) of the Direct Agreement, attached hereto as **Exhibit B** is evidence that VDOT is duly created and validly existing under the laws of the Commonwealth;
- (e) pursuant to Section 2.1(e) (*Conditions Precedent*) of the Direct Agreement, attached hereto as **Exhibit C** is a certified copy of the resolutions authorizing the execution of the Direct Agreement;
- (f) pursuant to Section 2.1(f) (*Conditions Precedent*) of the Direct Agreement attached hereto as **Exhibit D** are copies of certificates of insurance evidencing the property damage and liability insurance policies maintained by VDOT and by each of the Principal Project Parties as of the date of the Direct Agreement; and
- (g) pursuant to Section 2.1(g) (*Conditions Precedent*) of the Direct Agreement, VDOT hereby certifies that the representations and warranties of VDOT set forth in the Direct Agreement

and in each other VDOT Agreement are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date.

[Signature Page Follows]

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

VIRGINIA DEPARTMENT OF
TRANSPORTATION

By: _____

Name:

Title: Authorized Representative

EXHIBIT A TO EXHIBIT D

INCUMBENCY CERTIFICATE

The undersigned certifies that she is the [] of the Virginia Department of Transportation, an agency of the Commonwealth of Virginia (“VDOT”), and as such s/he is authorized to execute this certificate and further certifies that the following person has been elected or appointed, is qualified, and is now acting as an officer or authorized person of the Borrower in the capacity indicated below, and that the signature set forth opposite his name is a true and genuine signature. [Sh][H]e further certifies that any of the officer or authorized person listed below is authorized to sign the Direct Agreement as VDOT’s Authorized Representative (as defined in that certain Direct Agreement, dated as of the date hereof, among VDOT, the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

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

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of _____, 2021.

VIRGINIA DEPARTMENT OF
TRANSPORTATION

By: _____
Name:
Title:

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

PROPOSED AMENDMENTS TO

PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION

for the

I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION PROJECT

Dated April 2, 2019

between

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION,
as Commission

and

VIRGINIA DEPARTMENT OF TRANSPORTATION,
as Department

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PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION

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

RECITALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE 1.

DEFINITIONS, INTERPRETATION, AND PRECEDENCE; **REPRESENTATIONS AND WARRANTIES**

Section 1.01 Definitions

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

Section 1.02 Interpretation

(a) In this Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

Section 1.03 Order of Precedence

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

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

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

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

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

Section 1.04 Representations and Warranties of the Department

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

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

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

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

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

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

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

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

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

Section 1.05 Representations and Warranties of the Commission

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

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

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

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

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

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

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

ARTICLE 2.

PROCUREMENT OF THE PROJECT

Section 2.01 General Obligations of the Department (Procurement)

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

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

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

Section 2.02 Commission Involvement in Procurement Activities

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

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

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

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

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

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

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

Section 2.03 Cancellation of the Procurement

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

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

ARTICLE 3.

PROJECT FUNDING

Section 3.01 General Rights and Obligations of the Commission

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3.02 General Obligations of the Department (Funding)

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

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

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

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

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

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

Section 3.03 Maximum Commission Financial Commitment

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

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

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

(ii) Commission-Funded ROW Costs;

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

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

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

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

Section 3.04 Maximum Cumulative Compensation Amount Under Comprehensive Agreement

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

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

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

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

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

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

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

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

Section 3.06 Development and Procurement Costs

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

Section 3.07 Administration Costs

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

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

Section 3.08 Availability of Contingency Reserves; Tracking

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

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

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

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

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

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

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

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

Section 3.09 Additional Costs; Claims

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

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

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

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

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

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

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

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

Section 3.10 SMART SCALE and other Award Funding

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

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

Section 3.11 Funding the South Island Trestle Bridge Replacement Work

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

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

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

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

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

Section 3.12 Early Work Funding

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

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

Section 3.13 Proportionality

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

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

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

Section 3.14 Department’s Covenants for Bond-Related Projects

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

ARTICLE 4.

DELIVERY OF THE PROJECT

Section 4.01 General Obligations of the Department (Delivery)

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

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

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

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

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

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

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

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

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

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

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

Section 4.02 Ownership and Use of the Project Following Final Completion

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

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

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

Section 4.03 Work Orders Increasing the Contract Price; Claims

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4.04 [Intentionally Omitted.]

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

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

Section 4.06 Changes to Comprehensive Agreement that Reduce Contract Price

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

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

Section 4.07 No Excuses Incentive Payment

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

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

Section 4.08 Delay Liquidated Damages and Other Damages and Recoveries

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4.10 Books and Records

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

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

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

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

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

Section 4.11 Commission Interest in Project Assets

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

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

Section 4.12 Early Termination of Comprehensive Agreement

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

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

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

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

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

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

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

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

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

ARTICLE 5.

ADMINISTRATION OF THE AGREEMENT

Section 5.01 Program Coordinators

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

Section 5.02 Payment Requisitions

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

(a) Design-Build Requisitions

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

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

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

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

(b) Administration Cost Requisitions

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

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

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

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

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

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

Section 5.03 Periodic Compliance Reviews

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

ARTICLE 6.

DISPUTE RESOLUTION

Section 6.01 Disputes under the Agreement

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

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

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

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

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

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

Section 6.02 Disputes under the Comprehensive Agreement

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

ARTICLE 7.

MISCELLANEOUS

Section 7.01 Term; Termination

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

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

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

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

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

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

Section 7.02 Appropriations Requirements

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

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

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

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

Section 7.03 Commitments Relating to Master Tolling Agreement

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

Section 7.04 Federal Credit Assistance for Project

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

Section 7.05 Assignment

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

Section 7.06 Notices

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

If to the Commission:

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

With copies to (which shall not constitute notice):

The office of record of the Commission's general counsel

If to the Department:

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

With copies to (which shall not constitute notice):

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

Section 7.07 Modification or Amendment

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

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

Section 7.08 Engagement of Counsel

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

Section 7.09 No Personal Liability or Creation of Third Party Rights

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

Section 7.10 No Agency

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

Section 7.11 Governing Law

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

Section 7.12 Sovereign Immunity

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

Section 7.13 Counterparts

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

[SIGNATURE PAGE(S) TO FOLLOW]

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

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

By: _____

Name: _____

Title: _____

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

By: _____

Stephen C. Brich, P.E.

Commissioner of Highways

EXHIBIT 1

DEFINITIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Chair” means the chair of the Commission.

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

“Commission” means the Hampton Roads Transportation Accountability Commission.

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

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

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

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

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

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

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

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

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

“Commonwealth” means the Commonwealth of Virginia.

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

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

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

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

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

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

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

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

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

“Department” means the Virginia Department of Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 2

PROJECT SCOPE

1. Base Scope

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

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

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

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

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

2. Scope Options

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

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

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

EXHIBIT 3
PROJECT BUDGET

[To be attached]

EXHIBIT 4
OFFICIAL AUTHORIZING DOCUMENTS

[To be attached]

EXHIBIT 5
ESTIMATED COSTS AND PAYOUT SCHEDULE

EXHIBIT 6

REPORTS TO BE PROVIDED BY THE DEPARTMENT

1. Monthly Project Expenditure Report

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

2. Monthly Project Report

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

EXHIBIT 7

EXAMPLES OF ADMINISTRATION COSTS

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

EXHIBIT 8
FORM OF COMPREHENSIVE AGREEMENT

[To be attached]

EXHIBIT 9

UNIT PRICE WORK AND COMMODITY ADJUSTMENT ITEMS

Section 1. Unit Price Work

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

Section 2. Commodity Adjustment Items

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

EXHIBIT 10

FORM OF PAYMENT REQUISITION – DESIGN-BUILD

I-64 Hampton Roads Bridge Tunnel Expansion Project

Commission Project Number: _____

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission

723 Woodlake Drive

Chesapeake, VA 23320

Attention _____, Program Coordinator:

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

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Recommended For Payment

By: _____

Name: _____

Title: HRTAC Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____

Request Date: _____

HRTAC Project Number: _____

Project Title: _____

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

LISTING OF ATTACHED INVOICES

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

Requisition Amount		\$ -
---------------------------	--	------

Instructions

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

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

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

EXHIBIT 11

FORM OF PAYMENT CERTIFICATION – DESIGN-BUILD

I-64 Hampton Roads Bridge Tunnel Expansion Project

Commission Project Number: _____

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission

723 Woodlake Drive

Chesapeake, VA 23320

Attention _____, Program Coordinator:

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

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

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

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

EXHIBIT 12

FORM OF PAYMENT REQUISITION – ADMINISTRATION COSTS

I-64 Hampton Roads Bridge Tunnel Expansion Project

Commission Project Number: _____

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission

723 Woodlake Drive

Chesapeake, VA 23320

Attention _____, Program Coordinator:

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

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

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Recommended For Payment

By: _____

Name: _____

Title: HRTAC Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____

Request Date: _____

HRTAC Project Number: _____

Project Title: _____

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

LISTING OF ATTACHED INVOICES

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

Requisition Amount		\$ -
---------------------------	--	------

Instructions

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

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

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

EXHIBIT 13

LIMITATION ON ACTIONS UNDER COMPREHENSIVE AGREEMENT

Section 1. Actions Requiring Prior Written Consent of Commission

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

Section 2. Actions Requiring Consultation with the Commission

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

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

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

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

EXHIBIT 14

TAX COVENANTS FOR BOND-FUNDED PROJECTS

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

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

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

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

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

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

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

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

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

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

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

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



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

Agenda item # 16

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 21, 2021

MOTION

Made By:

Seconded By:

Action:

Title: Authorization for the Commissioner of Highways to Enter Into and Execute the Standard Project Agreement with the Hampton Roads Transportation Accountability Commission for the Segment 3 Capital Improvements Tolling Infrastructure Project for the HREL Network

WHEREAS, the Virginia Department of Transportation (VDOT) has made briefings to the Commonwealth Transportation Board (CTB), Hampton Roads Transportation Accountability Commission (HRTAC), and Hampton Roads Transportation Planning Organization (HRTPO), demonstrating the operational benefits of the Hampton Roads Express Lane (HREL) Network providing for continuous HOT lanes travel on Interstate 64 in Hampton Roads between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstates 64, 264, and 664 in the Bowers Hill section of Chesapeake; and

WHEREAS, on May 21, 2020, the HRTPO identified and adopted the Regional Express Lanes Network, consistent with the HREL Network concept, “as a component of the Regional Priority Projects... 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”, recommending the HRTAC pursue funding, development, and implementation for the network; and

WHEREAS, on May 28, 2020, HRTAC voted to endorse inclusion of the HREL Network in the FY21-FY26 Plan of Finance – Six Year Operating and Capital Program and at their June 18, 2020 meeting approved the HRTAC Debt Management Plan to fund the HREL Network; and

Resolution of the Board

Authorization for the Commissioner of Highways to Enter Into and Execute the Standard Project Agreement with the Hampton Roads Transportation Accountability Commission for the Segment 3 Capital Improvements Tolling Infrastructure Project for the HREL Network

July 21, 2021

Page Two

WHEREAS, the CTB and HRTAC developed and adopted the HREL Network concept of operation and VDOT, the CTB and HRTAC have entered into the Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network (MTA), dated August 18, 2020, to address both development and tolling of the HREL Network; and

WHEREAS, pursuant to Article 3 of the MTA, “[a]t such time as the Parties are prepared to commence the design and construction of any element of the HREL Project, the Department and the Commission shall enter into a Standard Project Agreement for Funding and Administration, substantially in the form attached hereto as Exhibit 9, for such element (or sub-element), whereupon the Department shall procure all goods and services necessary to design and construct the applicable element of the HREL Project in accordance with (i) any and all applicable federal, state, and local laws and regulations, and (ii) all terms and conditions of the applicable Standard Project Agreement for Funding and Administration (each an “HREL SPA”), including all terms and conditions applicable to the Definitive Project Budget set forth therein”; and

WHEREAS, at the July 2021 CTB Workshop, the CTB was briefed on the following element of the HREL Project, the Segment 3 Capital Improvements – Tolling Infrastructure Project (UPC 118376); and

WHEREAS, VDOT and HRTAC have developed a SPA, consistent with the HREL SPA as set forth in the MTA, for the Segment 3 Capital Improvements – Tolling Infrastructure Project (UPC 118376), attached hereto as Exhibit A.

NOW THEREFORE BE IT RESOLVED, that the CTB hereby approves and authorizes the Commissioner of Highways to enter into and execute a SPA for the HREL Segment 3 Capital Improvements Tolling Infrastructure Project, substantially in the form set out in Exhibit A, with such modifications and changes as deemed necessary by the Commissioner.

#####

**Standard Project Agreement for Funding and Administration
between
Hampton Roads Transportation Accountability Commission
and
Virginia Department of Transportation
(Hampton Roads Express Lanes Network Project Elements)**

HRTAC Project Title: Segment 3 (Capital Improvements – Tolling Infrastructure) Project

HRTAC Project Number: UPC 118376

This Standard Project Agreement for Funding and Administration (the “Agreement”) is made and executed in duplicate on this [●] day of [●], 2021, as between the Hampton Roads Transportation Accountability Commission (“HRTAC”) and the Virginia Department of Transportation (“VDOT”).

WITNESSETH

WHEREAS, Chapter 766 of the 2013 Acts of Assembly established the Hampton Roads Transportation Fund (the “HRTF”), and provides that moneys deposited in the HRTF are to be used solely for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, Chapter 678 of the 2014 Acts of Assembly (now codified in Section 33.2-2600 *et seq.* of the Code of Virginia, as amended) (the “HRTAC Act”) created HRTAC as a political subdivision of the Commonwealth of Virginia, and moved the responsibility to determine the projects that will be funded by the HRTF from the Hampton Roads Transportation Planning Organization to HRTAC;

WHEREAS, under Sections 33.2-2606 and 33.2-2607 of the Code of Virginia, HRTAC is also authorized to issue bonds and other evidences of debt, and to impose and collect certain tolls;

WHEREAS, under Chapter 703 of the 2020 Acts of Assembly (H1438)(the “HREL Tolling Legislation”), HRTAC is also authorized to impose and collect tolls in designated high-occupancy toll lanes on certain portions of Interstate 64;

WHEREAS, HRTAC is required to use all moneys that it receives, whether from the HRTF, bond proceeds, collections from any tolls imposed by HRTAC or otherwise (collectively, “HRTAC-Controlled Moneys”), for the benefit of those counties and cities that are embraced by HRTAC and in accordance with applicable law;

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

WHEREAS, in light of (i) VDOT's responsibilities with respect to VDOT Highways and HRTAC's responsibilities with respect to the application of the HRTAC-Controlled Moneys, and (ii) the determinations of VDOT and HRTAC to coordinate their efforts with respect to, among other things, the development, tolling, financing, procurement and delivery of the Hampton Roads Express Lanes Network Project (the "HREL Project"), VDOT and HRTAC entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network dated August 18, 2020 (such agreement as thereafter amended and modified from time to time, the "Master Agreement");

WHEREAS, the Master Agreement contemplates that HRTAC may from time to time enter into Standard Project Agreements for Funding and Administration pursuant to which VDOT will procure all goods and services necessary to design and construct elements of the HREL Project;

WHEREAS, pursuant to the Master Agreement, the parties are prepared to have VDOT proceed with the services described on Appendix A in respect of the project set forth and described on Appendix A to this Agreement (the "Project");

WHEREAS, HRTAC has determined that the Project would benefit the cities and counties that are embraced by HRTAC, it otherwise satisfies the requirements of the HRTAC Act, and it is consistent with the HREL Tolling Legislation;

WHEREAS, VDOT agrees to administer and/or develop the Project in accordance with the budget (the "Project Budget") and cashflow and construction schedule (the "Project Schedule") set forth and described on Appendix B to this Agreement (this Agreement and its appendices may be amended from time to time by mutual agreement of the parties to address mutually agreed changes relating to, among other things, Project scope, design, funding and regulatory approvals);

WHEREAS, HRTAC desires to provide funding for the administration and/or development of the Project out of HRTAC-Controlled Moneys, subject to the terms, conditions and limitations set forth herein;

WHEREAS, the Commonwealth Transportation Board ("CTB") has the authority, pursuant to Section 33.2-214 of the Code of Virginia, to cause VDOT to enter into this Agreement and has authorized the Commissioner of Highways to enter into agreements with HRTAC for project administration and development purposes, and Section 33.2-2608 of the Code of Virginia authorizes HRTAC to enter into this Agreement;

WHEREAS, the CTB, by resolution passed on January 14, 2015, resolved that any agreement between VDOT and HRTAC for project services shall provide that overruns or other additional project costs shall be prorated between HRTAC and VDOT so that each party bears a proportionate share of the additional costs based on each party's percentage responsibility of the project budget;

WHEREAS, in order to permit HRTAC to meet its obligations under this Agreement and Appendix B, contemporaneously with the execution and delivery of this Agreement, VDOT and HRTAC have agreed to amend the Project Agreement for

Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project dated April 2, 2019 (the “PAFA”), to ensure that all amounts paid by HRTAC under this Agreement will be treated as covered under the project budget set forth on Exhibit 3 to the PAFA through, specifically, the Commission-Supported Contingency Reserve (as defined in the PAFA); and

WHEREAS, HRTAC's governing body and the CTB have each authorized that their respective designee(s) execute this Agreement on their respective behalf(s) as evidenced by copies of each such entity's clerk's minutes or such other official authorizing documents which are appended hereto as Appendix E.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, the parties hereto agree as follows:

A. VDOT's Obligations

VDOT shall:

1. Complete or perform or cause to be completed or performed all work relating to the Project, as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with (i) any and all applicable federal, state, and local laws and regulations, and (ii) all terms and conditions of the Master Agreement and this Agreement, including, without limitation, the Project Budget and Project Schedule reflected in Appendix B, which Project Budget and Project Schedule (A) VDOT represents have been prepared in good faith, in accordance with the practices and procedures that VDOT uses for projects where the state or VDOT bears the cost of the project (including, without limitation, the practices used to price and budget services that may be internally sourced, such as Construction Engineering Inspection/CEI), and (B) the parties acknowledge may be amended pursuant to Section A.8 below or as follows:
 - (a) In the event that VDOT determines, after receipt of proposals or bids for any work related to the Project, that the cost of the contract for said work will result in a significant reduction in costs associated with a portion of the Project Budget reflected in Appendix B that is allocated to work covered by the contract, then VDOT shall notify HRTAC's Executive Director of the significant reduction in costs. For purposes of this Section A.1(a), HRTAC and VDOT agree that a “significant reduction in costs” shall mean a reduction in costs that has the effect of reducing, in Appendix B, (x) the costs for the particular portion of the Project Budget allocated to work covered by the contract by more than 20 percent or (y) the entire Project Budget either by more than 10 percent or \$10,000,000, whichever applies. In the event there is a significant reduction in costs, VDOT

and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the effect of the reduction (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state or federal contributions, then the commitment of each funding source would be reduced by its proportionate share of the reduction in costs, which proportionate share will be based on the funding source's proportionate responsibility for the total budgeted costs before the reduction was realized) (for the avoidance of doubt, the amount by which a commitment is reduced shall be considered deobligated from the Project).

- (b) In the event that any federal or state funding not previously available for the Project becomes available for any portion of the Project Budget reflected in Appendix B, then VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the benefit of the additional funding (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state contributions, but federal funding subsequently becomes available, then the respective commitments of HRTAC and the state would be reduced by each party's proportionate share of the additional funds, which proportionate share will be based on the party's proportionate responsibility for the total budgeted cost before the additional funding became available).
- (c) In the event that application is made for federal or state funding or loans not previously available for the Project, then VDOT will, to the extent within its reasonable control, provide reasonable support to such application and, if any such funding or loans are awarded or otherwise become available, take action to satisfy conditions and comply with requirements of such funding or loans, in each case as may be reasonably requested by HRTAC.

2. Without limiting the foregoing, VDOT shall:

- (a) Select contractors, contract with contractors, and administer and enforce contracts all in a manner that is consistent in all material respects with the policies, procedures and practices that VDOT uses where the state or VDOT bears the cost of a project; for example, VDOT shall use its customary policies, procedures and practices relating to requesting bids/proposals, negotiating/finalizing terms and conditions of contracts (using, where applicable, standard terms/forms), and monitoring and enforcing performance of contracts;

- (b) Not enter into any contract to perform the work related to the Project if (i) the cost of that contract would exceed the portion of the Project Budget reflected in Appendix B that is allocated to the work covered by that contract, (ii) the cost of that contract, when aggregated with the cost of all other contracts relating to the Project that have been, or are expected to be, entered into would exceed the Project Budget reflected in Appendix B, or (iii) the schedule in the contract for performing and paying for the work related to the Project would be materially different (whether accelerated or delayed) from the Project Schedule set forth in Appendix B; in addition, if the bids or proposals received for any portion of the Project are not qualitatively consistent with VDOT's standards for that work or quantitatively within VDOT's projections for that work, each as determined by VDOT in its good faith judgment, VDOT shall (i) undertake a new procurement, or (ii) recommend alternative measures to HRTAC, and seek HRTAC's advice and consent regarding pursuit of those alternative measures. If HRTAC grants its written consent to a modification to the Project Budget and/or Project Schedule in order to permit VDOT to enter into a contract to perform the work, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to reflect the modified Project Budget and Project Schedule.
 - (c) Involve HRTAC in any procurement consistent with the terms of the Master Agreement.
- 3. Perform or have performed in accordance with VDOT's standards for highways, bridges and tunnels (or that otherwise are applicable to the work under the Project) all design and engineering, all environmental work, and all right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions, as is required by this Agreement or that may be necessary for completion of the Project pursuant to the terms of this Agreement. If VDOT determines that a delay will more likely than not prevent the completion of a material phase of the Project (e.g., PE or ROW acquisition), or the entire Project, in accordance with the Project Schedule, VDOT shall notify HRTAC in writing and provide HRTAC with such information as HRTAC may reasonably request, including information pertaining to potential corrective measures and remedies against the contractor (if VDOT and HRTAC mutually develop a model notice for such purposes, VDOT's notice will follow the format of the model).
- 4. Not use any funds provided by HRTAC, including the funds specified on Appendix B, to pay any Project cost if, as applicable, the HRTAC Act or HREL Tolling Legislation does not permit such Project cost to be paid with HRTAC funds.

5. Recognize that, if the Project contains "multiple funding phases" (as such "multiple funding phases" are set out for the Project on Appendix A), for which HRTAC will provide funding for such multiple funding phases (as scheduled on Appendix B), HRTAC may not have sufficient cash flows to permit accelerated funding to VDOT and to advance the funding schedule for the Project. In any circumstance where VDOT seeks to advance the funding schedule for the Project, VDOT shall submit a written request to HRTAC's Executive Director explaining VDOT's reasons why HRTAC should authorize acceleration to the next funding phase. (As used in this Agreement, "Executive Director" shall mean HRTAC's Chairman if at any applicable time, HRTAC has not engaged a dedicated, full-time Executive Director.) HRTAC's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and HRTAC's current and projected cash flow position and make a recommendation to HRTAC whether to authorize VDOT's requested accelerated funding. The foregoing shall not prohibit VDOT from providing its own funds to advance a future funding phase of the Project and from requesting reimbursement from HRTAC for having advance funded a future phase of the Project; however, VDOT further recognizes that HRTAC's reimbursement to VDOT for having advance funded a phase of the Project will be dependent upon HRTAC's cash flow position at the time such a request for reimbursement is submitted and may be dependent upon the extent to which the reimbursement of any such advanced funding is otherwise consistent with the terms of this Agreement, including Appendix B.
6.
 - (a) Permit (and assist) HRTAC's Executive Director to periodically update HRTAC's cash flow estimates for the Project with the objective toward keeping those estimates accurate throughout the performance of the Project. VDOT shall provide all available information reasonably required by HRTAC so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the performance of the Project as described in Appendix B.
 - (b) Provide HRTAC's Executive Director with the monthly reports described on Appendix D.
7. Provide to HRTAC's Executive Director requests for payment consistent with Appendix C (and the most recently approved HRTAC cash flow estimates) that include (a) HRTAC's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by HRTAC, and (b) certifications that all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by HRTAC, VDOT can expect to receive payment within

twenty (20) days upon receipt by HRTAC. Approved payments may be made by means of electronic transfer of funds from HRTAC to or for the account of VDOT.

8. (a) Promptly notify HRTAC's Executive Director if VDOT determines that any additional, unbudgeted costs may be incurred to perform and complete the Project ("Additional Costs"), which notice shall include a description of the Additional Costs, an explanation of how they arose and the assumptions in the initial budget regarding those costs, and a detailed estimate of the Additional Costs. VDOT shall make recommendations regarding any curative actions that may be available relating to such Additional Costs, including any potential modification or reduction that may be made to the Project scope or design, or any other action, in order to stay within the initial budget for the Project. If the Additional Costs can be absorbed in the Project Budget by modifying or reducing the scope or design of the Project (or avoided by cancelling the Project or any portion thereof), HRTAC may, in its sole discretion, elect to (i) authorize VDOT to proceed with such modifications or reductions, (ii) authorize the Additional Costs (or if a combination of (i) and (ii) is feasible, HRTAC may elect such combination), or (iii) elect to cancel the Project or a portion thereof; provided, however, in any case, the respective obligations of VDOT and HRTAC, as modified by the elected alternative, shall be set forth in an amendment to this Agreement (VDOT and HRTAC shall work in good faith to finalize and execute such amendment). If the Additional Costs cannot be absorbed in the initial budget by modifying or reducing the scope or design of the Project (and HRTAC elects option (ii) above), then, subject to Section F below, such Additional Costs shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget. In the event that HRTAC elects to cancel the Project (or any portion thereof) pursuant to this Section A.8(a)(iii), (A) all compensation due and owing to any and all contractors for work on the Project that has been completed at the time of cancellation, shall be paid in accord with Appendix B, and (B) subject to Section F, all reasonable costs associated with the cancellation due and owing to said contractors pursuant to the terms of the contracts with the contractors, which terms shall be consistent with VDOT's standard contract terms relating to contract cancellation and termination, (the "Breakage Compensation"), shall be paid with HRTAC-Controlled Moneys, unless VDOT and HRTAC mutually determine that cancellation of the Project is necessary or warranted, in which case, the Breakage Compensation shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on

the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget.

- (b) VDOT shall not include in any contract with a contractor working on the Project any term, condition or remedy in respect of Additional Costs that is more favorable to the contractor than the terms, conditions or remedies VDOT includes in standard contracts where the state or VDOT bears the cost of the project.
 - (c) The Additional Costs may include costs incurred by VDOT as a result of contractor claims relating to the Project made pursuant to the VDOT Roads and Bridge Specifications and §§ 33.2-1101 through 33.2-1105 of the Code, as amended. VDOT shall promptly notify HRTAC if any such claims are made or VDOT receives a notice of intent to file a claim or other written communication from a contractor relating to a claim or contractual dispute that could result in increased contract costs, and whether in each such case the claimed amount is expected to become, or result in, Additional Costs (and the estimate thereof) or is expected to have a material adverse effect on the contingency reserves established as part of the Project Budget (and the estimated effect thereon). VDOT shall be responsible to handle all such claims and notices of intent, but VDOT may not settle any claim or notice of intent to file a claim and thereafter submit it as an Additional Cost pursuant to Section A.8(a) unless the settlement has been approved by HRTAC. Funding for the settlement will be prorated based on the respective proportionate share of the HRTAC-Controlled Moneys and state and federal funds in the Project Budget. Should the claim not be settled, any final judgment from a court of competent jurisdiction shall be paid in accordance with the proration rule set forth in the preceding sentence.
 - (d) Notwithstanding anything to the contrary set forth herein, if any additional cost (including, without limitation, any additional cost relating to a contractor claim described in Section A.8(c) above) arises out of or results from VDOT's negligence, breach of contract, willful misconduct or violation of law ("VDOT Fault"), HRTAC shall not be responsible for such additional costs. Any notice provided by VDOT to HRTAC pursuant to Section A.8(c) above shall be accompanied by a certification from VDOT that it has determined in good faith that any Additional Costs do not arise out of or result from VDOT Fault.
9. Release or return any unexpended funds to HRTAC no later than 90 days after final payment has been made in respect of the Project.

10. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations.
11. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations.
12. Reimburse HRTAC (or such other entity as may have provided funds) for all funds provided by HRTAC (or on behalf of HRTAC) and, to the extent applicable and permitted by law, with interest earned at the rate earned by HRTAC, (a) that VDOT misapplied, used or requisitioned in contravention of the HRTAC Act or any other applicable law, or any term or condition of this Agreement or (b) the expenditure of which arose out of VDOT Fault.
13. Be solely responsible for the administration and/or development of the Project and all engagements, commitments and agreements with contractors (and, without limiting the foregoing, shall ensure that such engagements, commitments and agreements contain all terms that, pursuant to the Master Agreement or this Agreement, are required to be included therein). VDOT shall ensure that VDOT's contractors maintain surety bonds and insurance in amounts and with coverages that VDOT requires under its Road and Bridge Specifications for all work to be performed for the Project, and name HRTAC and its members, officers, employees and, if applicable, any HRTAC lender and any bond trustee, as additional insureds on any such insurance policy, and present HRTAC with satisfactory evidence thereof before any work on the Project commences.
14. If in connection with the work VDOT engages outside legal counsel approved by the Attorney General (as opposed to utilizing the services of the Office of the Attorney General), VDOT will give HRTAC notice of the engagement so as to ensure that no conflict of interest may arise from any such representation (VDOT also shall ensure that such engagements are consistent with the practices and terms that VDOT uses where it is solely responsible for project costs).
15. Subject to and consistent with the requirements of Section E of this Agreement, upon final payment to all contractors for the Project, if the Project is or is part of a VDOT Highway, VDOT will use the Project (a) for its intended purposes for the duration of the Project's useful life, and (b) in accordance with, and subject to, the terms of the Master Agreement (including, without limitation, the license granted to HRTAC pursuant to Section 3.08(b) thereof). If the Project is or is part of a VDOT Highway, VDOT shall be responsible to operate and/or maintain the Project (which

duty and obligation excludes the Tolling O&M Duties, as defined in the Master Agreement, except as otherwise provided in the Master Agreement or in any other contract between VDOT and HRTAC under which VDOT is responsible to perform such duties as a contractor to HRTAC) after its completion (including responsibility to correct any defects or to cause any defects to be corrected)(and, without limiting the foregoing, shall perform its operations and maintenance obligations in accordance with the terms of the Master Agreement), and, except as and to the extent provided under the Master Agreement (with respect to Tolling O&M Duties), under no circumstances will HRTAC have any responsibility or obligation to operate and/or maintain the Project (or correct defects with respect to the Project).

16. Comply with all applicable federal, state and local laws and regulations, including without limitation requirements of the Virginia Public Procurement Act.
17. Recognize that VDOT or its contractors are solely responsible for obtaining, and shall obtain, all permits, permissions and approvals necessary to construct and/or operate the Project, including, but not limited to, obtaining all required VDOT and local land use permits, zoning approvals, environmental permits, and regulatory approvals.
18. Recognize that if the Project is being funded, in whole or in part, with federal and/or state funds (in addition to HRTAC-Controlled Moneys), that VDOT shall (a) take any and all necessary actions to satisfy any conditions to such additional federal and/or state funding (provided that such actions are within the control of VDOT) and to enforce any commitments made in connection therewith, (b) comply with all applicable federal and Commonwealth funding requirements within the control or purview of VDOT, and (c) include in its contracts with contractors provisions that permit such contracts to be terminated, without penalty, if the funding is rescinded or otherwise becomes unavailable (for clarification, a provision shall not be deemed to include a penalty solely as a result of terms that require payment of compensation due and owing at the time of cancellation and reasonable costs associated with cancellation provided that such costs are consistent with costs paid pursuant to VDOT's standard contract terms relating to contract cancellation and termination). VDOT acknowledges and agrees that if funding from such an additional federal or state source is rescinded or otherwise becomes unavailable HRTAC (i) shall not be responsible for any amount in excess of its commitment set forth on Appendix B, and (ii) may (A) replace said reduced funding with HRTAC Controlled-Moneys or (B) may request VDOT to immediately suspend or discontinue all work relating to the Project, provided if HRTAC requests suspension HRTAC shall be responsible for the costs reasonably incurred in connection with such suspension. Should HRTAC not replace the reduced funding or request

VDOT to suspend or discontinue work, VDOT may reduce the Project scope or take any other actions needed to reduce the Project costs to the Project Budget.

19. Provide a certification to HRTAC no later than 90 days after final payment for the Project that VDOT adhered to all applicable laws and regulations and all requirements of this Agreement.
20. Notify HRTAC if VDOT determines that a delay will more likely than not prevent the timely completion of a material phase of the Project, including information regarding potential corrective measures and remedies against the contractor.
21. With respect to modifications to any agreement with a contractor, concede to HRTAC any resulting savings, if HRTAC-Controlled Moneys are funding 100% of the applicable work, or if the cost savings relate to work funded with HRTAC-Controlled Moneys and state and/or federal funds, concede such savings to such parties *pro rata*, based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget for such work.
22. Include in any agreement with a contractor an assessment of liquidated damages in accordance with the Master Agreement if either substantial completion or final acceptance is not achieved by the applicable deadline. Unless otherwise agreed by the parties acting reasonably, any liquidated damages (as well as other damages paid by a contractor, insurance proceeds, or recoveries from third parties) received by VDOT in respect of the Project shall be administered in accordance with the terms of the Master Agreement.
23. Terminate any agreement with a contractor upon the written request of HRTAC if (a) VDOT has failed to exercise the right to terminate such agreement for cause, but only (i) if such failure is reasonably expected to have a material adverse effect on HRTAC and (ii) following consultation between HRTAC and VDOT regarding the reasons, if any, for VDOT's failure to exercise such right; or (b) HRTAC determines in good faith that HRTAC has suffered a material adverse change in its ability to satisfy its obligations under this Agreement and it is in HRTAC's best interests for VDOT to terminate the contractor's agreement for convenience.

B. HRTAC's Obligations

HRTAC shall:

1. Subject to the limitations as to amounts set forth in Appendix B (and subject to Section F of this Agreement), provide to VDOT the funding authorized by HRTAC for the Project, on a reimbursement basis as set

forth in this Agreement and as specified in Appendix B to this Agreement or the most updated amendment thereto, as approved by HRTAC.

2. Assign a person to serve as a Program Coordinator for the Project, who will be responsible for review of the Project on behalf of HRTAC for purposes of ensuring it is being completed in compliance with this Agreement and all HRTAC requirements. (In the absence of an assigned person, HRTAC's Executive Director shall serve as the Program Coordinator.) HRTAC's Program Coordinator will be responsible for overseeing, managing, reviewing, and processing, in consultation with HRTAC's Executive Director and its Chief Financial Officer ("CFO"), all payment requisitions submitted by VDOT for the Project. HRTAC's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the scope of the Project as set forth on Appendix A or to the Project Budget and Project Schedule as set forth on Appendix B.
3. Route to HRTAC's assigned Program Coordinator all VDOT payment requisitions and the summaries of actual costs submitted to HRTAC for the Project. After submission to HRTAC, HRTAC's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. HRTAC's Program Coordinator will then make a recommendation to the HRTAC's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from VDOT. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is, in HRTAC's reasonable judgment, deemed insufficient, within twenty (20) days from receipt, HRTAC's Program Coordinator will notify VDOT in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed in order to authorize the payment request. Payment will be withheld until all deficiencies identified by HRTAC have been corrected to HRTAC's reasonable satisfaction. Under no circumstances will HRTAC authorize payment for any work performed by or on behalf of VDOT that is not in conformity with the requirements of the HRTAC Act or this Agreement.
4. Route all of VDOT's accelerated or supplemental requests for funding from HRTAC under Sections A.5 and A.8, respectively, of this Agreement to HRTAC's Executive Director. HRTAC's Executive Director will initially review those requests and all supporting documentation with HRTAC's CFO. After such initial review, HRTAC's Executive Director will make a recommendation to HRTAC's Finance Committee for its independent consideration and review. HRTAC's Finance Committee will thereafter make a recommendation on any such request to HRTAC for final determination by HRTAC.

5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the HRTAC Act and other applicable law. Such compliance reviews may entail (i) review of VDOT's financial records for the Project, (ii) on-Project site inspections and (iii) review of a contractor's books and records in relation to the Project to the extent VDOT has access thereto.
6. Acknowledge that if, as a result of HRTAC's review of any payment requisition or of any HRTAC compliance review, HRTAC staff determines that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, HRTAC staff will promptly advise HRTAC's Executive Director and will advise VDOT's designated representative in writing. VDOT will thereafter have thirty (30) days to respond in writing to HRTAC's initial findings. HRTAC's staff will review VDOT's response and make a recommendation to HRTAC's Finance Committee. HRTAC's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to HRTAC. If HRTAC makes a final determination that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, the parties should engage in dispute resolution as provided in Section D of this Agreement. Pending final resolution of the matter, HRTAC will withhold further funding on the Project. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.
7. Upon making final payment to VDOT for the Project, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans, if any, developed pursuant to or in association with the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.
8. Be the sole determinant of the amount and source of HRTAC funds to be provided and allocated to the Project and the amounts of any HRTAC funds to be provided in excess of the amounts specified in Appendix B.
9. Have no obligation to pay or reimburse VDOT for any cost (including, without limitation, compensation paid or payable to any contractor) arising out of VDOT Fault.

C. Term

1. This Agreement shall (i) be effective upon adoption and execution by both parties and (ii) unless terminated earlier in accordance with its terms, expire ninety (90) days after the date on which VDOT makes final payment

to Project contractor(s) and all contractor claims have been resolved or are barred.

2. VDOT may terminate this Agreement, for cause, in the event of a material breach by HRTAC of this Agreement. If so terminated, HRTAC shall pay for all Project costs incurred in accordance with the terms of this Agreement through the date of termination and all reasonable costs incurred by VDOT to terminate all Project-related contracts. The Virginia General Assembly's failure to appropriate funds to HRTAC as described in Section F of this Agreement and/or repeal or amendment of the legislation establishing the HRTF or HRTAC's powers shall not be considered material breaches of this Agreement by HRTAC if such failure to appropriate or such repeal or amendment eliminates funds in the HRTF to be used for the Project or renders HRTAC without legal authority to provide funding for the Project. Before initiating any proceedings to terminate under this Section, VDOT shall give HRTAC sixty (60) days written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing HRTAC an opportunity to investigate and cure any such alleged breach.
3. HRTAC may terminate this Agreement, for cause, resulting from VDOT's material breach of this Agreement. If so terminated, VDOT shall refund to HRTAC all funds HRTAC provided to VDOT for the Project and, to the extent permitted by law, with interest earned at the rate earned by HRTAC. Before initiating any proceedings to terminate under this Section, HRTAC shall give VDOT sixty (60) days' written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing VDOT an opportunity to investigate and cure any such alleged breach. Prior to termination, if VDOT has substantially completed the Project or a portion that is severable (meaning it is subject to independent use), VDOT may request that HRTAC excuse VDOT from refunding funds paid in respect of the substantially completed Project or portion, and HRTAC may, in its sole discretion, excuse VDOT from refunding all or a portion of the funds HRTAC provided to VDOT for the substantially completed Project or portion thereof. No such request to be excused from refunding will be allowed (a) where VDOT has either misused or misapplied HRTAC funds in contravention of this Agreement or applicable law, or (b) without the prior written consent of any lender to HRTAC, if the terms of HRTAC's loan agreement with such lender require such consent.
4. Upon (a) expiration or earlier termination of this Agreement and (b) payment of all eligible expenses as set forth in Section C.3 above, VDOT will release or return to HRTAC all unexpended HRTAC funds and, to the extent permitted by law, with interest earned at the rate earned by HRTAC, no later than sixty (60) days after the date of such expiration or earlier termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer promptly in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. HRTAC's Executive Director and the Commissioner shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to HRTAC and to the Commissioner for formal confirmation and approval. If no satisfactory resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law or in equity, including all judicial remedies. The foregoing dispute resolution method shall not bar either party's right to seek equitable relief on an emergency basis. Neither party will seek or accept an award of attorneys' fees or costs incurred in connection with resolution of a dispute.

E. HRTAC's Interest in Project Assets

VDOT agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by HRTAC under this Agreement ("Assets") for the designated transportation purposes of the Project, in accordance with applicable law throughout the useful life of each such Asset, and in accordance with, and subject to, the terms of the Master Agreement (including, without limitation, the license granted to HRTAC pursuant to Section 3.08(b) thereof). If VDOT intends to sell, convey, or dispose any Asset funded with HRTAC funds or intends to use any Asset for a purpose inconsistent with this Agreement or the Master Agreement, VDOT shall notify HRTAC's Executive Director in writing of any such intent before further action is taken by VDOT in furtherance thereof. Upon receiving notification from VDOT, HRTAC's Executive Director shall notify HRTAC of VDOT's intended action(s). The parties shall, thereafter, meet and confer to discuss what measures need to be taken regarding VDOT's proposed sale, conveyance, disposition, or use of any such Asset(s) so as to ensure compliance with all applicable requirements and terms of the HRTAC Act and the Master Agreement (without limiting the foregoing, VDOT acknowledges that (i) under the HRTAC Act and applicable law, HRTAC is vested with the right to impose and collect tolls on facilities constructed by the Commission and holds a license to, among other things, use the tolling infrastructure and system), and (ii) under the HREL Tolling Legislation, HRTAC is vested with the right to impose and collect tolls on the portion of the HREL Project facility that has been designated by the CTB for use as high-occupancy toll lanes). All recommendations and/or proposed remedial actions developed by the parties' designated representatives during the meet and confer process shall be formally presented to HRTAC and the Commissioner for their respective approval.

F. Appropriations Requirements

1. Nothing herein shall require or obligate HRTAC to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by its governing body for the Project.
2. The parties acknowledge that all funding provided by HRTAC pursuant to the HRTAC Act is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the HRTF pursuant to applicable provisions of the Code of Virginia and any other moneys that the General Assembly appropriates for deposit into the HRTF are subject to appropriation by the General Assembly and (ii) HRTAC's obligations under this Agreement are subject to such moneys being appropriated to the HRTF by the General Assembly.
3. The parties agree that VDOT's obligations under this Agreement are subject to funds being appropriated by the General Assembly and allocated by the Commonwealth Transportation Board and otherwise legally available to VDOT for HRTAC projects.
4. Should VDOT be required to provide additional funds in order to proceed or complete the funding necessary for the Project, VDOT shall certify to HRTAC that such additional funds have been allocated and authorized by the CTB and/or appropriated by the Virginia General Assembly as may be applicable or have been obtained through another independent, lawful source.

G. Representations and Warranties

1. VDOT hereby represents and warrants to HRTAC as of the date of this Agreement as follows:
 - (a) VDOT is an agency of the Commonwealth of Virginia, and it has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;
 - (b) VDOT has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement, and each person executing this Agreement on behalf of VDOT has been duly authorized to execute and deliver it on behalf of VDOT;
 - (c) the execution and delivery by VDOT of this Agreement, and the performance of its obligations hereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any law, where

such violation will have a material adverse effect on the ability of VDOT to perform its obligations under this Agreement;

- (d) this Agreement has been duly authorized, executed, and delivered by VDOT and constitutes a valid and legally binding obligation of VDOT, enforceable against it in accordance with the terms hereof, subject to (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) sovereign immunity under the law of the Commonwealth of Virginia; *provided, however,* that, for the avoidance of doubt, sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth of Virginia; and
- (e) there is no action, suit, proceeding, investigation, or litigation pending and served on VDOT which challenges VDOT's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the VDOT official executing this Agreement, and VDOT has disclosed to HRTAC any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which VDOT is aware.

2. HRTAC hereby represents and warrants to VDOT as of the date of this Agreement as follows:

- (a) HRTAC is a body politic and a political subdivision of the Commonwealth of Virginia, and it has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;
- (b) HRTAC has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement, and each person executing this Agreement on behalf of HRTAC has been duly authorized to execute and deliver it on behalf of HRTAC;
- (c) the execution and delivery by HRTAC of this Agreement, and the performance of its obligations hereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any law, where such violation will have a material adverse effect on the ability of HRTAC to perform its obligations under this Agreement;

- (d) this Agreement has been duly authorized, executed, and delivered by HRTAC and constitutes a valid and legally binding obligation of HRTAC, enforceable against it in accordance with the terms hereof, subject to (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) sovereign immunity under the law of the Commonwealth of Virginia; *provided, however*, that, for the avoidance of doubt, sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth of Virginia; and
- (e) there is no action, suit, proceeding, investigation, or litigation pending and served on HRTAC which challenges HRTAC's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the HRTAC official executing this Agreement, and HRTAC has disclosed to VDOT any pending and unserved or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which HRTAC is aware.

H. Tax Covenants for Bond-Funded Projects

VDOT shall comply in all material respects with the Tax Covenants for Bond-Funded Projects set forth in Appendix F (*Tax Covenants for Bond-Funded Projects*).

I. Notices

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

- 1) to: HRTAC, to the attention of its Executive Director and Chairman;
723 Woodlake Drive
Chesapeake, VA 23320
- 2) to: VDOT, to the attention of:
Commissioner, Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219

J. Assignment

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

K. Modification or Amendment

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

(b) If HRTAC is able to obtain a source of funding for the Project that would reduce or replace the amount of HRTAC-Controlled Moneys expended on the Project, VDOT and HRTAC will work in good faith to amend this Agreement so it takes into account that other funding.

(c) VDOT and HRTAC will work in good faith to adopt such amendments to this Agreement as VDOT and HRTAC may mutually agree are necessary and desirable in connection with any bond financing.

L. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, member, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

M. No Agency

VDOT represents that it is not acting as a partner or agent of HRTAC; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

N. Sovereign Immunity

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

O. Incorporation of Recitals and Appendices

The recitals and Appendices to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that the recitals are true and correct.

P. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

Q. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

Q. Survival

The following provisions shall survive the expiration or earlier termination of this Agreement: Sections A.4, A.9, A.12, A.15, A.17, A.19, A.22, B.5 and B.7, and Sections C through Q.

[Signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Hampton Roads Transportation Accountability Commission

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

HAMPTON ROADS EXPRESS LANES NETWORK PROJECT ELEMENTS

SEGMENT 3 (CAPITAL IMPROVEMENTS – TOLLING INFRASTRUCTURE)
PROJECT

Scope: The Segment 3 (Capital Improvements – Tolling Infrastructure) to be performed under this Agreement includes providing the tolling infrastructure construction for Segment 3 of the Hampton Roads Express Lane Network. The Segment 3 project, which is approximately 10 miles in length, is located along I-64 in the Cities of Hampton and of Norfolk from approximately 900 feet west of Mallory Street to approximately 800 feet east of Patrol Road. No additional right of way is anticipated. This project will have minimal utility relocations. The proposed design includes tolling traffic management structures, equipment, generators and cabinets, power and communications services, advisory and confirmation dynamic message sign (DMS) structures and sign panels with overhead support structures.

The tasks to be completed include but are not limited to the following:

Survey, subsurface utility designation, scoping plan development, risk analysis & matrix, tolling infrastructure and equipment, generators and cabinets, power and communications services, advisory and confirmation DMS structures and sign panels with overhead support structures, scoping level cost estimate & schedule refinements, public information meetings, City of Norfolk bi-weekly meetings, HRBT/HREL coordination meetings, civic league information meetings, other information meetings as requested, NEPA Categorical Exclusion investigation and documentation, preliminary and final design and plan development, final quantity and cost estimate, LRTP inclusion coordination, TIP/STIP inclusion coordination, construction advertisement and construction.

APPENDIX B

HAMPTON ROADS EXPRESS LANES NETWORK ELEMENTS

SEGMENT 3 (CAPITAL IMPROVEMENTS – TOLLING INFRASTRUCTURE) PROJECT

PROJECT BUDGET AND PROJECT SCHEDULE

Project Budget: SEGMENT 3 (CAPITAL IMPROVEMENTS – TOLLING INFRASTRUCTURE) PROJECT:

Preliminary Engineering	\$1,361,556
Right of Way (RW)	\$0
Construction (CN)	\$17,427,918
<hr/> Total Cost	<hr/> \$18,789,474

The estimated cost of Segment 3 Capital Improvements – Tolling Infrastructure, as shown in Appendix B, utilizes the anticipated synergies by aligning with a corridor-wide tolling solutions of other segments of the Hampton Roads Express Lanes Network (Segments 1, 4A, 4B, and 4C). The estimated cost shown above does not include Tolling System Integration cost for Segment 3, which will be reflected in a separate Standard Project Agreement for the Tolling System Integration of the entire HREL Network.

The work associated with this Standard Project Agreement for the Segment 3 (Capital Improvements – Tolling Infrastructure) project will complete the installation of Tolling Infrastructure to support tolling operations on Interstate 64 from Mallory Street in Hampton to the Interstate 564 Interchange in Norfolk.

These tasks include but are not limited to the following:

Survey, subsurface utility designation, scoping plan development, risk analysis & matrix, tolling infrastructure and equipment, generators and cabinets, power and communications services, advisory and confirmation DMS structures and sign panels with overhead support structures, scoping level cost estimate & schedule refinements, public information meetings, City of Norfolk bi-weekly meetings, HRBT/HREL coordination meetings, civic league information meetings, other information meetings as requested, NEPA Categorical Exclusion investigation and documentation, preliminary and final design and plan development, final quantity and cost estimate, LRTP inclusion coordination, TIP/STIP inclusion coordination, construction advertisement and construction.

Project Schedule: SEGMENT 3 (CAPITAL IMPROVEMENTS – TOLLING INFRASTRUCTURE) PROJECT (all dates are estimates):

- **Preliminary Engineering (PE):**
 - PE Start: May 2021
 - PE End: October 2022
- **Construction (CN):**
 - CN Start: October 2022
 - CN End: March 2025*
- **Tolling System Integration (TSI):**
 - TSI Start: September 2024*
 - TSI End: March 2025

**Tolling System Integration cost is not included in this agreement. Although Segment 3 construction is anticipated to be completed by September 2024, an additional 6 months have been added to account for construction related close out and payment of invoices (i.e. March 2025). The Tolling System Integration is anticipated to commence in September 2024, based on early construction completion date assumptions of the HRBT project, and expected to be completed by Toll Day 1. It should be noted that additional testing of the tolling system may go beyond Toll Day 1 as Segment 3 begins to operate.*

APPENDIX C

FORM OF PAYMENT REQUISITION

HRTAC Project Title and Number: Hampton Roads Express Lanes Network Elements, Segment 3
(Capital Improvements – Tolling Infrastructure) Project - UPC 118376

Project Scope/Services Description: The work associated with this Standard Project Agreement for the Segment 3 (Capital Improvements – Tolling Infrastructure) project will complete the installation of Tolling Infrastructure to support tolling operations on Interstate 64 from Settlers Landing Road in Hampton to the Interstate 564 Interchange in Norfolk.

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, VA 23320

Attention _____, Program Coordinator:

This requisition is submitted in connection with the Standard Project Agreement for Funding and Administration for the project services noted above and dated _____, 20__ (the "Agreement") between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT"). VDOT hereby requests \$_____ of HRTAC funds, to pay the costs of the project services described and set forth in Appendices A and B of the Agreement ("Project Services") and in accordance with the Agreement. Also included are copies of each invoice relating to the items for which this requisition is requested.

The undersigned certifies (i) the amounts included within this requisition will be applied solely and exclusively for the payment or the reimbursement of VDOT's costs of the Project Services, (ii) VDOT is responsible for payment to vendors/contractors, (iii) VDOT is not in breach or default with respect to any of its obligations under the Agreement, including without limitation (but only if applicable) the tax covenants set forth in another Appendix to the Agreement, (iv) the representations and warranties made by VDOT in the Agreement are true and correct as of the date of this Requisition and (v) to the knowledge of VDOT, no condition exists under the Agreement that would allow HRTAC to withhold the requested advance.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name: _____
Title: _____

Recommended For Payment

By: _____
Name: _____
Title: HRTAC Program Coordinator

DETAILED PAYGO REQUEST

Draw Request Number: _____
HRTAC Project Number: UPC 118376

Request Date: _____
Project Title: HRELN Segment 3

Cost Category	HRTAC Approved Project Costs	Total PayGo Requests Previously Received	PayGo Requisition Amount this Period	Remaining PAYGO Project Budget (Calculation)
Project Starting Balance	\$1,361,556			\$ -
Design Work/ Engineering	\$1,361,556	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Work	-	-	-	\$ -
Construction	\$17,427,918	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$18,789,474	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Item Number	Invoice Number	Cost Category	Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-
Requisition Amount				\$ -

Instructions

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

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

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

APPENDIX D

REPORTS TO BE PROVIDED BY VDOT

1) Monthly Project Expenditure Report which lists, by category of expense (*e.g.*, engineering, ROW, utility relocations, construction), (a) information regarding expenditures to date against the budget, both monthly and for the life of the project, and a statement of the percent completed; and (b) such other information as VDOT customarily provides with monthly expenditure reports.

2) Monthly Project Report which provides (a) an overview of progress on major project tasks; (b) information regarding the budget (such as, the baseline planned forecast, any approved changes thereto, the monthly expenditures, the cumulative expenditures, and the cumulative forecasted expenditures); (c) future key tasks; and (d) significant issues.

APPENDIX E

OFFICIAL AUTHORIZING DOCUMENTS

APPENDIX F

TAX COVENANTS FOR BOND-FUNDED PROJECTS

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

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

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

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

4. The Department acknowledges that it may have to provide detailed information about the investment of the amount of any requisition unless (i) payments are remitted directly by the Commission to the contractors/vendors, or (ii) the Department remits payment to the contractors/vendors within five banking days after the date on which the Commission advances the amount of the requisition. The Commission may request the detailed information in order to compute the rebate liability

to the U.S. Treasury on the Commission's bonds or other debt financing pursuant to Section 148 of the Code. In addition, the Department shall provide the Commission with any further information reasonably requested by the Commission from time to time concerning the matters described in this Appendix F.

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

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

"Code" means the Internal Revenue Code of 1986, as amended.

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

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

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

AWARD

INTERSTATE

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Cost.	EE Range
	156629-CF	<p>Richmond South Bundled Interstate Maintenance Services (BIMS):</p> <p>Interstate I-95 in the counties of Greenville, Sussex, and Emporia from the N.C. State Line (MM) 00 to the Sussex/Prince George County Line at (MM) 34.11</p> <p>Interstate I-95 in the counties of Prince George, Petersburg, and Colonial Heights from the Sussex/Prince George County Line (MM) 34.11 to just north of the Appomattox River Bridge at (MM) 53.01</p> <p>Interstate I-85 in the counties of Mecklenburg, Brunswick, Dinwiddie, and Petersburg from the N.C. State Line (MM) 00 to the I-95 Intersection at (MM) 69.1</p> <p>Interstate I-295 in the counties of Prince George, Hopewell, and Chesterfield from the I-95 S City of Petersburg line to (MM) 00 to State Route (SR) # 10/ I295 at (MM) 16.24</p>	<p>DBI Services LLC</p> <p>Hazelton, PA</p>	#1	\$40,148,483.50	\$40,519,839.75	WITHIN
	MAINTENANCE FUNDS	<p>Greenville, Sussex, Prince George, Dinwiddie, Brunswick, Mecklenburg, Chesterfield Counties, and the Cities of Hopewell, Colonial Heights and Petersburg</p> <p>RICHMOND DISTRICT</p> <p>The BIMS will be performed within the right-of-way limits on I-95, I-85, I-295 in the Richmond and Hampton Roads Districts to include all on and off ramps. The BIMS consists of 138.35 center lane miles and 621.12 lane miles including all ramps up to the intersection of non-BIMS route(s) pavement edge.</p>					

1 Recommended for AWARD \$40,148,483.50

July 2021 CTB Meeting

156629-CF

Greenville, Sussex, Prince George, Dinwiddie, Brunswick, Mecklenburg, Chesterfield Counties, and the Cities of Hopewell, Colonial Heights and Petersburg

The purpose of the Richmond South BIMS (Bundled Interstate Maintenance Services) project is to provide all maintenance activities within the right-of-way limits of I-95, I-85, I-295 within the Richmond and Hampton Roads Districts, twenty-four (24) hours a day seven (7) days a week. The BIMS consists of 138.35 center lane miles and 621.12 lane miles including all ramps up to the intersection of non-BIMS route(s) pavement edge. Contractor performance will be assessed by contractual performance measures and timeliness requirements. Maintenance activities to be performed under this contract will be divided into two categories, Performance based and Requirements based.

Performance based services include all activities associated with highway, drainage, structures, roadside, vegetation, traffic services, specialty items, emergency response, incident management, and severe weather activities. These services include providing all personnel, engineering, equipment, and services necessary to adhere to all contract requirements and comply with all regulatory authorizations, conditions, and requirements. These activities will be performed on assets at a frequency that ensures uniform consistent and timely compliance at all times with the performance measures and requirements. The Contractor shall perform maintenance (including preventive maintenance), repair, and replacement of all contract assets due to deterioration, incident, or damage.

Requirements based services include Mowing with Litter pickup, Additional Litter Pickup, Long Arm Mowing, Herbicide Spraying, Mechanical Tree Removal, Roadway Sweeping, Incidental Asphalt/ Concrete Patching, Bridge Deck Patching, Bridge Expansion Joint Reconstruction, and Snow and Ice Operations.

Contract period: Five (5) Years from Contract Start Date with two (2) successive two (2) year renewal options

Contract to commence November 1, 2021.

10. If there were any presentations (PowerPoint, etc.), were you able to hear and see them?

Poorly
1 2 3 4 5
Clearly

COMMENT _____

11. Were the members as attentive and did they participate as much as you would have expected?

Less
1 2 3 4 5
More

COMMENT _____

12. Were there differences you noticed in how the members interacted?

With the other members present:

Very Different
1 2 3 4 5
No Difference

With members participating from other locations:

Very Different
1 2 3 4 5
No Difference

With the public:

Very Different
1 2 3 4 5
No Difference

COMMENT _____

13. Did you feel the technology was a help or a hindrance?

Hindered
1 2 3 4 5
Helped

COMMENT _____

14. How would you rate the overall quality of this meeting?

Poor
1 2 3 4 5
Excellent

COMMENT _____

THANK YOU. Please send your completed form by mail, facsimile or electronic mail to the FOIA Council using the following contact information:

Virginia Freedom of Information Advisory Council
General Assembly Building, Second Floor
201 North 9th Street, Richmond, Virginia 23219
foiacouncil@dls.virginia.gov/Fax: 804-371-8705/Tele: 866-448-4100