COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

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Agenda item # 10

RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD

September 17, 2025

MOTION

Made By: Mr. Stant**, Seconded By:** Dr. Smoot
Action: Motion Carried, Unanimously

Title: Approval and Authorization for the Commissioner of Highways to Execute a TIFIA Direct Agreement Between the Virginia Department of Transportation, the Hampton Roads Transportation Accountability Commission, and the United States Department of Transportation for the Hampton Roads Express Lanes Network

WHEREAS, the Virginia Department of Transportation ("VDOT") and the Hampton Roads Transportation Accountability Commission ("HRTAC") have entered into a series of Standard Project Agreements for segments of the I-64 Hampton Roads Express Lanes Network, (as amended, amended and restated, supplemented, or otherwise modified from to time); 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, (the "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; 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.; and

WHEREAS, in reliance on the support for the Hampton Roads Express Lanes Network Project (the "Project") provided by 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 and construction contracts entered into by VDOT pursuant to the HRELN SPAs to support construction of the Project (collectively the "VDOT

Support Agreements"), the United States Department of Transportation ("USDOT") will grant to HRTAC a loan under the Transportation Infrastructure Finance and Innovation Act Program (the "TIFIA Loan") for the purpose of financing certain costs in connection with the construction and development of the Project and which will be repaid by HRTAC from toll revenues generated by the Project; and

WHEREAS, as a condition of granting HRTAC the TIFIA Loan, USDOT requires VDOT and HRTAC to agree to and execute a Direct Agreement (the "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 the Project but is not liable for repayment of the TIFIA Loan; and

WHEREAS, at the September 2025 CTB Workshop, the CTB was briefed on the Direct Agreement.

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

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EXHIBIT A

DIRECT AGREEMENT (VDOT)

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

RECITALS

WHEREAS:

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE I

DEFINED TERMS; INTERPRETATION

Section 1.1 Capitalized Terms.

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

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

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

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

"Express Lanes Network" has the meaning set forth in the MTA.

"TIFIA Loan" means the loan provided under the TIFIA Loan Agreement.

"Permitted Liens" means:

(a) Liens imposed pursuant to the Indenture;

(b) Liens imposed by law for taxes that are not yet due or are being contested;

(c) carriers', warehousemen's, mechanics', materialmen's, repairmen's and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested;

(d) pledges and deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, and other social security laws or regulations;

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

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

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

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

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

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

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

Section 1.3 Interpretation. Unless the context shall otherwise require, the words "hereto", "herein", "hereof", and other words of similar import refer to this Agreement as a whole. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." Whenever VDOT's knowledge is implicated in this Agreement or the phrase "to VDOT's knowledge" or a similar phrase is used in this Agreement, VDOT's knowledge or such phrase(s) shall be interpreted to mean to the best of VDOT's knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person's successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time-to-time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically

provided, be delivered in writing in accordance with Section 9.1 and signed by a duly authorized representative of such party.

ARTICLE II

CONDITIONS PRECEDENT

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

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

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

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

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

(e) Organizational Documents. VDOT shall have provided to the TIFIA Lender evidence that VDOT is duly created and validly existing under the laws of its jurisdiction of formation, with full power, authority and legal right to own its properties and carry on its business and governmental functions as now conducted, including the following documents, each certified by VDOT's Authorized Representative: (i) a copy of all resolutions authorizing VDOT to execute and deliver, and to perform its respective obligations under, the VDOT Agreements in effect as of the Effective Date, and such resolutions have not been subsequently modified, rescinded or amended, are in full force and effect in the form adopted, and are the only resolutions adopted by VDOT relating to the matters described therein, and (ii) a copy of such further instruments and documents as are necessary, appropriate or advisable to effectuate the foregoing resolutions and to consummate and implement the transactions contemplated by such resolutions and the VDOT Agreements in effect as of the Effective Date.

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

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

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

ARTICLE III

VDOT ACKNOWLEDGMENTS AND UNDERTAKINGS; NO LIABILITY FOR TIFIA LOAN

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

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

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

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

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

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

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

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

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

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

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

(c) Due Execution; Enforceability. Each of this Agreement and each of the VDOT Agreements in effect as of any date on which this representation and warranty is made, has been duly authorized, executed and delivered by VDOT and constitutes the legal, valid, and binding agreement of VDOT enforceable in accordance with its terms, except as such

enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law); provided that all payments from VDOT under each such VDOT Agreement (other than any liquidated damages or other damages and recoveries payable by a third party contractor thereunder) are subject to appropriation by the Virginia General Assembly and allocation by the Commonwealth Transportation Board.

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

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

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

(g) No Debarment. VDOT has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither VDOT nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended, or voluntarily excluded from participation in Government contracts, procurement or non-procurement matters or delinquent on a Government debt as more fully set forth in the certificate delivered pursuant to Section 2.1(b). VDOT has complied with the disclosure requirements set forth in 2 CFR § 180.355. Further, VDOT has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332. VDOT is not aware of any non-compliance by any Principal Project Party or any of VDOT's other contractors or subcontractors performing work related to the Project with the applicable requirements of 2 CFR Part 180.

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

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

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

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

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

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

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

(n) OFAC; Anti-Corruption Laws.

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

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

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

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

(o) Compliance with Law. VDOT is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 4.1(p) below), including those set forth on Exhibit E to the TIFIA Loan Agreement, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by VDOT or, to the knowledge of VDOT and solely in respect of the Project or any VDOT Agreement, any other party to such VDOT Agreement, other than, in each case, notices of violations that are immaterial.

(p) Environmental Matters. VDOT and, to the knowledge of VDOT, each Principal Project Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid

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

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

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

(s) No Liens. Except for Permitted Liens, VDOT has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Project, the Express Lanes Network, the properties or assets in relation to the Project or the Express Lanes Network. Except for Permitted Liens described in clause (a) of the definition thereof, there are no Liens on the toll revenues to be produced from the operation of the Project or the Express Lanes Network.

(t) Intellectual Property. VDOT owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other

rights of whatsoever nature, in each case, necessary for the Project, the Express Lanes Network, and the operation of its business. To VDOT's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to VDOT's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project or the Express Lanes Network infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

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

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

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

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

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

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

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

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

ARTICLE V

VDOT PROJECT-RELATED COVENANTS

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

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

(b) Prosecution of Work; Verification Requirements.

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

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

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

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

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

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

(f) Insurance.

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

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

(g) Notices.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 5.2 VDOT Negative Covenants related to TIFIA Loan Agreement. VDOT covenants and agrees as follows until the date the TIFIA Bond and the obligations of the

Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash, unless the TIFIA Lender waives compliance in writing:

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

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

(c) Principal Project Contracts; Additional Project Contracts. VDOT shall not, without the prior written consent of the TIFIA Lender, enter into any Principal Project Contract that is not in effect as of the Effective Date [(other than an Electronic Toll Collection Agreement that is in the form of Exhibit 14 to the MTA or a Violation Processing Services Agreement that is in the form of Exhibit 15 to the MTA)][1]. 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

[1] **Note to Borrower**: have agreements attached as Exhibit 14 and 15 to MTA been executed?

Borrower Fiscal Year reflected in the budget in the Financial Plan mostly recently submitted to the TIFIA Lender.

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

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

(f) OFAC Compliance. VDOT:

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

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

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

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

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

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

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

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

ARTICLE VI

VDOT AGREEMENT MODIFICATIONS AND CLARIFICATIONS

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

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

ARTICLE VII

TIFIA LENDER RIGHTS AND PROTECTIONS

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

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

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

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

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

ARTICLE VIII

DAMAGES

Section 8.1 Waiver of Consequential Damages. To the extent permitted by applicable law, neither VDOT nor the TIFIA Lender shall assert, and both VDOT and the TIFIA Lender hereby waives, any claim on any theory of liability for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as

a result of, this Agreement, the other transactions contemplated hereby, the TIFIA Loan Agreement, or the use of the proceeds of any draws thereunder.

ARTICLE IX

MISCELLANEOUS

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

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

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

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

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

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

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, by VDOT's Authorized Representative, with respect to notices to VDOT, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 9.1 (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 9.1 (or in accordance with the latest unrevoked written direction from the receiving party); provided, that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

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

Section 9.3 Authorized Representatives.

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

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

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

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

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

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

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

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

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

[Signature Pages Follow]

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

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION

By: _____
Name:
Title:

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

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

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

By: _____
Name: Morteza Farajian
Title: Executive Director

EXHIBIT A

OPINIONS REQUIRED OF COUNSEL TO VDOT

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

EXHIBIT B

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

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

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

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

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

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

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

Dated: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title:

EXHIBIT C

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

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

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

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

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

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

Dated: _____

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title:

EXHIBIT D

FORM OF VDOT'S OFFICER'S CERTIFICATE

Reference is made to that certain Direct Agreement, dated as of [_____], 2025 (the "Direct Agreement"), by and among the Virginia Department of Transportation ("VDOT"), Hampton Roads Transportation Accountability Commission (the "Borrower"), and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the Direct Agreement.

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

1. attached hereto as **Exhibit A** is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by VDOT to execute the Direct Agreement, and who have been appointed VDOT's Authorized Representative in accordance with Section 9.3(a) (*VDOT's Authorized Representative*) of the Direct Agreement;

2. VDOT hereby certifies that it has complied with (A) the disclosure requirements set forth in 2 CFR § 180.355, (B) the verification requirements set forth in 2 CFR §§ 180.300 and 180.320, and (C) its obligations under 2 CFR § 180.330 with respect to the Project Construction Contracts;

3. VDOT hereby certifies that:

    a. all Governmental Approvals necessary to commence construction of the Project have been obtained and all such Governmental Approvals are in full force and effect, and there is no basis for, nor proceeding that is pending or threatened that could reasonably be expected to result in, the revocation of any such Governmental Approval;

    b. with respect to the Project, VDOT has complied with NEPA;

    c. VDOT has complied with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);

    d. VDOT and each applicable Principal Project Party, as and if applicable, have obtained insurance with respect to the Project, which meets the requirements of

Section 15(e) (Compliance with Principal Project Contracts) of the TIFIA Loan Agreement; and

e. each performance security instrument delivered to or by VDOT pursuant to any Principal Project Contract as of the Effective Date is (A) in compliance with the requirements for such performance security pursuant to the applicable Principal Project Contract, and (B) in full force and effect.

4. Pursuant to Section 2.1(e) (*Conditions Precedent*) of the Direct Agreement, attached hereto as **Exhibit B** is evidence that VDOT is duly created and validly existing under the laws of the Commonwealth;

5. Pursuant to Section 2.1(e) (*Conditions Precedent*) of the Direct Agreement, attached hereto as **Exhibit C** is a certified copy of the resolutions authorizing the execution of the Direct Agreement;

6. Pursuant to Section 2.1(f) (*Conditions Precedent*) of the Direct Agreement attached hereto as **Exhibit D** are copies of certificates of insurance evidencing the property damage and liability insurance policies maintained by VDOT and by each of the Principal Project Parties as of the date of the Direct Agreement; and

7. Pursuant to Section 2.1(g) (*Conditions Precedent*) of the Direct Agreement, VDOT hereby certifies that the representations and warranties of VDOT set forth in the Direct Agreement and in each other VDOT Agreement in effect as of the Effective Date are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date.

[Signature Page Follows]

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

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title: Authorized Representative

EXHIBIT A TO EXHIBIT D

INCUMBENCY CERTIFICATE

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

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

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

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____
Name:
Title: