
VDOT
Virginia Department of Transportation

DIRECT AGREEMENT TO SUPPORT TIFIA FINANCING FOR CERTAIN ASPECTS OF THE HAMPTON ROADS EXPRESS LANES NETWORK

Laura Farmer, Chief Financial Officer

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Direct Agreement: Why Needed

- HRTAC is pursuing a TIFIA loan to support the Hampton Roads Express Lanes Network (HRELN)
  - The HRELN segments financed by the 2025 Toll Loan – Segment 1A, Segment 1B, Segment 4A/4B, the I-64/I-464 Exit 291 Interchange Improvements, and Tolling Integration, are collectively defined as the "Project"
- Direct Agreement is a tri-party agreement among VDOT, HRTAC and USDOT (acting through Build America Bureau)
  - VDOT provides certain customary representations and warranties to USDOT relating to the HRELN
- Per Section 3.06 of the Master Agreement for Development and Tolling of the Express Lanes (MTA), VDOT committed to negotiate and enter into the Direct Agreement to support HRTAC's pursuit of TIFIA financing

Direct Agreement: Key Terms

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

Direct Agreement: Key Terms (cont.)

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

Direct Agreement: Key Terms (cont.)

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

Direct Agreement: Key Terms (cont.)

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

Direct Agreement: Key Terms (cont.)

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

Next Steps

VDOT will seek CTB delegation of authority to the Commissioner to enter into the TIFIA Direct Agreement for the Project in the September 2025 Action Meeting