



Chair, LINDA T. JOHNSON • Vice-Chair, DONNIE R. TUCK

Executive Director, KEVIN B. PAGE

AGENDA

Hampton Roads Transportation Accountability Commission

Special Meeting*

Meeting by Conference Call**

August 18, 2020

10:00 a.m.

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

****The Chair has called a Special Meeting of the Commission to be held on the date and at the time specified above to consider the matters stated in the below Agenda.***

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

- 1. Call to Order, Declaration re: Purpose of Meeting, and Roll Call**
- 2. Approval of Agenda**
- 3. Public Comment Period (3 Minute Limit)*****
- 4. Chair's Comments**
- 5. Action Items**

- *Recommended Action: Discussion/Approval*

- A. Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network (a/k/a Master Tolling Agreement or the "MTA"), among the Hampton Roads Transportation Accountability Commission ("HRTAC" or the "Commission"), the Virginia Department of Transportation ("VDOT" or the "Department"), and the Commonwealth Transportation Board (the "CTB") - Resolution Authorizing Finalization, Execution and Delivery - Recommended Action: Approval**

6. Information Items

- A. Next HRTAC Regular Meeting – September 17, 2020, 12:30 p.m., (Meeting by Conference Call unless the Governor lifts the State of Emergency)**

7. Adjournment

***Anyone wishing to make a public comment should contact Executive Director Page at kpage@hrtac.org 24 hours in advance of the meeting to register. Please do so by 10:00 a.m. on Monday, August 17, 2020.

To: Chair Johnson and the other members of HRTAC

From: Kevin B. Page, Executive Director

Date: August 18, 2020

Re: Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network (a/k/a Master Tolling Agreement or the “MTA”), among the Hampton Roads Transportation Accountability Commission (“HRTAC” or the “Commission”), the Virginia Department of Transportation (“VDOT” or the “Department”), and the Commonwealth Transportation Board (the “CTB”) – Reaffirmation of Approval – Resolution Authorizing Finalization, Execution and Delivery

Recommendation:

The MTA Advisory Committee Chair Johnson, Commission staff and its attorneys will provide a briefing on the terms of the Master Tolling Agreement (MTA) with recommendation for Commission approval of Resolution 2020-03.

Background:

At the Commission’s June 18th meeting, Commission staff and its advisors previewed the material open terms in the MTA, including the purview of the Toll Policy Committee and how to ensure that the committee would not impede the Commission’s ability to adopt or modify tolling policies.

For several weeks thereafter, the negotiating teams for the Commonwealth and the Commission worked to develop an alternative approach and, on July 10th, reached a compromise – the Commission could select and modify the tolling policies, provided that such policies would be subject to a review process whereby the Commissioner of Highways (the “Commissioner”) is allowed an opportunity to review the policies and determine whether they would have a material adverse effect on safety or operations, each tested using specific, objective criteria (the “MAE Determination”). Under this approach, the Toll Policy Committee would be a non-binding, advisory committee.

The teams then turned their efforts toward obtaining final approval of the negotiated MTA and, accordingly, the MTA was placed on the agenda for the July meetings of both the CTB and the Commission. The MTA was considered and approved by the Commission at its July 16th meeting, but, in the course of the CTB’s July 14th meeting, the MTA was pulled from the CTB agenda.

When the Commission met, Commission staff understood from comments of the CTB Chair made at the CTB meeting that the MTA had been pulled from the CTB agenda in order to afford the CTB members additional time to review the proposed resolution (and the MTA), and that the CTB Chair would call a special meeting within days to approve it. However, the



VDOT team subsequently informed the Commission's negotiating team that certain members of the CTB were seeking modifications to ensure that the CTB had a role with respect to reviewing the Commissioner's action with respect to the MAE Determination and then directing him/her.

On July 20th, the Office of the Attorney General conveyed draft language reflecting proposed modifications. In the interests of moving forward, the Commission's negotiating team engaged in additional negotiations, but remained steadfast in its position that the modifications (to incorporate the CTB into the process) should not compromise HRTAC's fundamental principles. Ultimately, the teams reached consensus on the language set forth in Sections 5.02 and 5.03 of the attached draft of the MTA. Attached hereto as Annex I is a summary that compares the principal terms relating to the MAE Determination process that were included in the July 16th draft (which the Commission approved) with those set forth in the draft that is now being presented for ratification. It is presently anticipated that when the Commission meets on August 18th, the MTA Advisory Committee will have reviewed and endorsed the attached draft of the MTA and the CTB will have adopted resolutions approving the MTA.

The Commission's July 16th resolutions granted the Chair and Executive Director plenary authority to finalize the MTA. However, in light of the Commission's specific involvement in previously vetting these terms, we felt it was appropriate to brief the Commission further and ask the Commission to adopt Resolution 2020-03 attached hereto to reaffirm the Commission's approval of the MTA.

Fiscal Impact:

The Hampton Roads Express Lane Network has a conceptual estimate cost of \$939,672,593 to construct over time.

Suggested Motion:

Motion is to approve Resolution 2020-03; Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network (a/k/a Master Tolling Agreement); Approval of and Authorization to Execute and Deliver Master Agreement for Development and Tolling of the Hampton Roads Express Lanes Network.

**Reaffirmation of Approval of MTA
Summary of Certain Material Changes (Sections 5.02 and 5.03)**

Subject	MTA Version Approved by HRTAC at 7/16/20 Meeting	MTA Version for Reaffirmed Approval by HRTAC at 8/18/20 Meeting
1. Party with Power to Set Initial Tolling Policies or Make Modifications	HRTAC	Same
2. Circumstances in which Commonwealth may Block Implementation	Commissioner of VDOT may not object (issue an “Exception Notice”) unless he/she reasonably demonstrates that the proposed policies (or modifications) would have a Toll Policy Material Adverse Effect (defined based on specific, objective safety and operational/throughput criteria) (a “ <u>Toll Policy MAE</u> ”)	Same
3. Setting/Modifying Tolling Policies ¹	<ul style="list-style-type: none"> • Policies are presented by HRTAC to Commissioner • Commissioner has specific time period to review proposed policies and either: <ul style="list-style-type: none"> -- object based on the likelihood of a Toll Policy MAE and issue an “Exception Notice” or -- not object and issue a “No Exception Notice” • If Commissioner fails to act within the specific time period, a No Exception Notice is deemed issued and the policies may be implemented • If Commissioner objects and issues an Exception Notice, the Commissioner’s determination may be challenged in court (court would evaluate the Commissioner’s determination using a reasonableness standard of review) 	<ul style="list-style-type: none"> • Same • Same (overall time has been extended by about 45 days) • Same • Same

¹ **Note:** Modifications to tolling policies that are required to prevent or cure a breach of the Financing Covenants are handled differently; they may be implemented unilaterally without a No Exception Notice. That rule hasn’t changed since 7/16/20.

Subject	MTA Version Approved by HRTAC at 7/16/20 Meeting	MTA Version for Reaffirmed Approval by HRTAC at 8/18/20 Meeting
	<ul style="list-style-type: none"> No specific role of CTB, except that modifications would be presented to a Toll Policy Committee for a non-binding recommendation (50% of the members of that committee would be appointed by Secretary of Transportation) 	<ul style="list-style-type: none"> No Toll Policy Committee Commissioner first presents analysis and findings to CTB <ul style="list-style-type: none"> If the Commissioner's analysis and findings conclude no Toll Policy MAE, the CTB shall direct the Commissioner to issue a No Exception Notice (however, time-permitting, the CTB may also request additional analysis) If the Commissioner's analysis and findings conclude a Toll Policy MAE, the CTB may either (i) direct Commissioner to issue an Exception Notice, or (ii) direct Commissioner to issue a No Exception Notice if only a marginal safety or throughput issue under the applicable test (however, time-permitting, the CTB may also request additional analysis) If the CTB directs the Commissioner to perform additional analysis, then, after being briefed on it, the process re-starts and either: (i) one of the above two bullets will apply, (ii) the CTB can direct the Commissioner to perform even more analysis, or (iii) the CTB could opt not to vote, with the effect that the Commissioner shall be deemed to have issued a No Exception Notice Although the CTB is now involved in the process, (a) there is still a specific time period and a No Exception Notice is deemed issued if there is no CTB action within that period, and (b) if an Exception Notice is challenged in court, the CTB direction to the Commissioner is not to be considered

Subject	MTA Version Approved by HRTAC at 7/16/20 Meeting	MTA Version for Reaffirmed Approval by HRTAC at 8/18/20 Meeting
		in connection with determining the reasonableness of the Commissioner's issuance of an Exception Notice



HRTAC RESOLUTION 2020-03

APPROVAL OF AND AUTHORIZATION TO EXECUTE AND DELIVER MASTER AGREEMENT FOR DEVELOPMENT AND TOLLING OF HAMPTON ROADS EXPRESS LANES NETWORK

WHEREAS, the Hampton Roads Bridge-Tunnel Expansion Project (the “HRBT Expansion Project”), and the Interstate 64 Southside Widening and High Rise Bridge Phase 1 Project (the “High Rise Bridge Expansion Project”), are high priority regional projects being funded predominantly by the Hampton Roads Transportation Accountability Commission (the “Commission”), through project agreements between the Commission and the Virginia Department of Transportation (the “Department”);

WHEREAS, the Commission’s existing funding plan for regional projects anticipates that a portion of its funding will be sourced through toll-backed financing derived from high-occupancy toll (“HOT”) lanes at the Hampton Roads Bridge Tunnel and the High Rise Bridge facilities;

WHEREAS, the facilities are integrated into and connected by Interstate 64;

WHEREAS, the Commonwealth Transportation Board (the “Board”) and the Department have taken certain actions to convert the reversible high-occupancy vehicle lanes between (i) the interchange of Interstate 64 and Interstate 564 and (ii) the interchange of Interstate 64 and Interstate 264 into HOT lanes;

WHEREAS, each of the Board and the Hampton Roads Transportation Planning Organization (“HRTPO”) has determined that it is in the best interests of the users of Interstate 64 in Hampton Roads to integrate the HOT lanes described above into a network of contiguous HOT lanes, in each direction, between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake (such network, the “Initial Interstate 64 Express Lanes Network”), which network would be parallel and adjacent to the general purpose lanes on Interstate 64 so the users of Interstate 64 in that corridor between Jefferson Avenue and Bowers Hill will continue to have a free means of travel in each direction as an alternative to the HOT lanes;

WHEREAS, the Commission has been vested with specific tolling authority in respect of the Initial Interstate 64 Express Lanes Network pursuant to Chapter 703 of the 2020 Acts of Assembly (H1438) (the “2020 Tolling Legislation”);

WHEREAS, the Commission, the Board and the Department have negotiated a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network and certain exhibits thereto (including certain ancillary agreements), pursuant to which the parties address the



coordination of their efforts and actions with respect to, and establish protocols and procedures to govern, among other things, (i) the procurement, financing, and delivery of the additional facilities that will support the Initial Interstate 64 Express Lanes Network, including the design, construction, installation, testing and implementation of the tolling infrastructure and system for the Initial Interstate 64 Express Lanes Network, (ii) the tolling policies applicable to the Initial Interstate 64 Express Lanes Network, (iii) the imposition, collection, and enforcement of tolls on the Initial Interstate 64 Express Lanes Network, (iv) the operation and maintenance of the tolling infrastructure and system, the HOT lanes and the applicable Interstate 64 facilities, and (v) the uses of toll revenues and the proceeds of toll-backed debt;

WHEREAS, on July 16, 2020, the Commission adopted HRTAC Resolution 2020-02 entitled “Resolution Authorizing Finalization, Execution and Delivery of Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network” (the “July 2020 Resolution”);

WHEREAS, after the adoption of the July 2020 Resolution, the parties determined it was appropriate to make certain modifications (the “Recent Modifications”) to the terms of the form of Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network that had been presented to the Commission in connection with the July 16, 2020 meeting;

WHEREAS, in connection with the Commission’s August 18, 2020 Special Meeting, the members of the Commission have been presented with (i) a substantially final version of Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network, which includes the Recent Modifications (the “Master Agreement”), and (ii) substantially all of the exhibits to the Master Agreement;

WHEREAS, in the interests of clarity, the Commission has determined that it is in the best interests of the Commission to reaffirm that the Commission authorizes and approves the finalization of the Master Agreement and its exhibits and the execution and delivery of the Master Agreement;

WHEREAS, the Commission, the Board and the Department desire for the Master Agreement to constitute the “agreement” among them required by the 2020 Tolling Legislation;

WHEREAS, the Commission is meeting to discuss and transact the business of the Commission, and the Commission deems it necessary to meet by electronic communications without physical assembly of members of the Commission in accordance with the 2020 Appropriation Act of the Commonwealth of Virginia (the “Commonwealth”), because the Governor of the Commonwealth has issued Executive Order Fifty-One (2020) declaring a state of emergency, which declaration continues in force and effect, and the nature of such emergency makes it impracticable or unsafe for the Directors of the Commission to assemble in a single location.



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

1. The Master Agreement and its exhibits are hereby approved, and the Chair or the Vice Chair of the Commission, either of whom may act (the “HRTAC Representative”), is authorized to execute and deliver the Master Agreement, with such changes, additions or modifications to the Master Agreement and its exhibits that the HRTAC Representative, upon the advice of the Commission’s Executive Director and its professional advisors, considers necessary, desirable or appropriate; the execution and delivery of such document by the HRTAC Representative to be conclusive evidence of such officer’s approval and determination thereof.
2. Each of the HRTAC Representatives and the Commission’s Executive Director, any of whom may act, is authorized and directed, to do and perform, for and on behalf of the Commission, such further things and acts, as he or she deem necessary, desirable or appropriate, to assist the Commission in the performance of its obligations under the Master Agreement.
3. The Commission confirms the findings and determinations contained in the recitals to this Resolution setting forth the reason for the need to meet by electronic means without requiring members of the Commission to physically assemble at one location during the current declared state of emergency by the Governor of the Commonwealth arising from COVID-19.
4. This Resolution shall take effect immediately.

APPROVED and ADOPTED by the Hampton Roads Transportation Accountability Commission at its meeting on the 18th day of August, 2020.

Linda T. Johnson
Chair
Hampton Roads Transportation
Accountability Commission

Donnie R. Tuck
Vice-Chair
Hampton Roads Transportation
Accountability Commission

**MASTER AGREEMENT FOR DEVELOPMENT AND TOLLING OF
HAMPTON ROADS EXPRESS LANES NETWORK**

Dated August [●], 2020

among

HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION,
as Commission

COMMONWEALTH TRANSPORTATION BOARD,
as Board

and

VIRGINIA DEPARTMENT OF TRANSPORTATION,
as Department

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Exhibit 4	Definitions
Exhibit 5	Implementation Map
Exhibit 6	Conceptual Scope and Estimate for HREL Project
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Exhibit 8	Conceptual Funding Plan
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Exhibit 10	Additional High Rise Bridge Work
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Exhibit 12	Tolling Operations and Maintenance Standards
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**MASTER AGREEMENT FOR DEVELOPMENT AND TOLLING OF
HAMPTON ROADS EXPRESS LANES NETWORK**

This MASTER AGREEMENT FOR DEVELOPMENT AND TOLLING OF HAMPTON ROADS EXPRESS LANES NETWORK (this “Agreement”) is made and entered into as of August [●], 2020 (the “Effective Date”), by and among the HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (the “Commission”), a body politic and a political subdivision of the Commonwealth of Virginia; the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “Department”), an agency of the Commonwealth of Virginia; and the COMMONWEALTH TRANSPORTATION BOARD, a board of the Commonwealth of Virginia (the “Board”) (each a “Party” and, together, the “Parties”).

RECITALS

WHEREAS, the Hampton Roads Bridge-Tunnel Expansion Project (the “HRBT Expansion Project”) is one of the most critical projects in the Commonwealth and is being funded predominantly by the Commission through a Project Agreement for Funding and Administration dated April 2, 2019 (the “HRBT PAFA”) between the Commission and the Department;

WHEREAS, the funding plan incorporated into the HRBT PAFA anticipates at least \$345,000,000 of the funds for the HRBT Expansion Project being sourced through toll-backed financing derived from HOT lanes (defined below) at such facility;

WHEREAS, the Interstate 64 Southside Widening and High Rise Bridge Phase 1 Project (the “High Rise Bridge Expansion Project”) is also a high priority project which is being funded predominantly by the Commission pursuant to certain Standard Project Agreements with the Department, which are more specifically described on Exhibit 1 (the “HRB Funding Agreements”);

WHEREAS, the Commission’s existing funding plan for regional projects also anticipates toll revenue from the HOT lanes developed through the High Rise Bridge Expansion Project;

WHEREAS, the facilities being developed as part of the HRBT Expansion Project and the High Rise Bridge Expansion Project are integrated into and connected by Interstate 64;

WHEREAS, a portion of Interstate 64 between such facilities, specifically between (i) the interchange of Interstate 64 and Interstate 564 and (ii) the interchange of Interstate 64 and Interstate 264, is presently tolled as HOT lanes (the “Reversible HOT Lanes Segment”), the result of work undertaken by the Department (and funded out of the Commonwealth’s Toll Facilities Revolving Account (defined below)), to convert the reversible high-occupancy vehicle (“HOV”) lanes that existed on such portion of Interstate 64 into HOT lanes;

WHEREAS, by resolution adopted January 15, 2020, the Board authorized advancing an additional \$28,000,000 from the Commonwealth’s Toll Facilities Revolving Account to support the construction and tolling integration on Interstate 64 from Interstate 264 to the interchange of Interstate 664 and Interstate 264 (referred to as “Segment 2”);

WHEREAS, the Board and the HRTPO (defined below) have determined, pursuant to the resolutions attached hereto as Exhibits 2 and 3, respectively, that it is in the best interests of the users of Interstate 64 in Hampton Roads to integrate the HOT lanes described above, whether now existing or contemplated, into a network of contiguous HOT lanes, in each direction, between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake, which ultimately would enable continuous HOT lane travel throughout such corridor (the foregoing, with the lane configurations described in Exhibit 5, the “Initial Interstate 64 Express Lanes Network” or “Initial Network”);

WHEREAS, the actions of the Board and HRTPO with respect to such HOT lanes are predicated upon the continued existence of general purpose lanes that are parallel and adjacent to the HOT lanes so the users of Interstate 64 between Jefferson Avenue and Bowers Hill will continue to have a free means of travel in each direction throughout that corridor as an alternative to the HOT lanes;

WHEREAS, neither the (i) Department’s advancement of the Applicable Revolving Account Costs nor (ii) the Commission’s existing funding plan for the HRBT Expansion Project and the High Rise Bridge Expansion Project account for certain costs to construct and implement the Initial Interstate 64 Express Lane Network, which costs are more specifically described and defined below as the “HREL Project Costs”;

WHEREAS, the HREL Project Costs are currently estimated to be approximately \$940,000,000, as demonstrated in Exhibit 6;

WHEREAS, the Department’s P3 Office has engaged CDM Smith to produce an investment grade traffic and revenue (T&R) study relating to the Initial Interstate 64 Express Lanes Network (the “T&R Study”);

WHEREAS, the T&R Study, as supplemented from time to time, will provide traffic and revenue information that will be essential for developing and implementing a financing plan for the construction and implementation of the entire Initial Interstate 64 Express Lanes Network;

WHEREAS, the Board has been vested with tolling authority pursuant to § 33.2-309 of the Code of Virginia, and the Commission has been vested with tolling authority in respect of the Initial Interstate 64 Express Lanes Network pursuant to Chapter 703 of the 2020 Acts of Assembly (H1438), now codified at § 33.2-2612 of the Code of Virginia (the “2020 Tolling Legislation”);

WHEREAS, the Parties desire to enter into this Agreement and the ancillary agreements attached hereto to coordinate their efforts and actions with respect to, and to establish protocols and procedures to govern, among other things, (i) the procurement, financing, and delivery of the additional facilities to support the Initial Interstate 64 Express Lanes Network, including the design, construction, installation, testing and implementation of the Tolling Infrastructure and System for the Initial Interstate 64 Express Lanes Network, (ii) the tolling policies applicable to the Initial Interstate 64 Express Lanes Network, (iii) the imposition, collection, and enforcement of tolls on the Initial Interstate 64 Express Lanes Network, (iv) the operation and maintenance of

the Tolling Infrastructure and System, the HOT lanes and the applicable Interstate 64 facilities, and (v) the uses of Toll Revenues (defined below) and the proceeds of Toll-Backed Debt (defined below);

WHEREAS, without limiting the foregoing, the Parties (a) acknowledge that the Initial Interstate 64 Express Lanes Network constitutes the “facility” described in the 2020 Tolling Legislation, and (b) further desire for this Agreement and the ancillary agreements attached hereto to constitute the agreement required by the 2020 Tolling Legislation.

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 4.

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 into 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) the word “or” is used in the inclusive sense of “and/or”;

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

(xi) 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 4; and

(iii) the provisions of the Exhibits to this Agreement, as amended, other than Exhibit 4.

(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.

(c) To the extent this Agreement conflicts with the provisions of the HRBT PAFA, this Agreement will control.

Section 1.04 Representations and Warranties of the Board and the Department

Each of the Board and the Department hereby represents and warrants to the Commission as follows:

(a) The Board is a board of the Commonwealth, duly created under the Code of Virginia, 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) 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;

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

(d) the execution and delivery by the Board and the Department of this Agreement, and the performance of their 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 either is a party or by which it is bound or (ii) to its knowledge any Legal Requirement, where such violation would have a material adverse effect on the ability of the Board or the Department to perform its obligations under this Agreement;

(e) this Agreement has been duly authorized, executed, and delivered by each of the Board and the Department and constitutes a valid and legally binding obligation of the Board and the Department, enforceable against each of them in accordance with the terms hereof, subject only 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;

(f) there is no action, suit, proceeding, investigation, or litigation pending and served on the Board or the Department which challenges the Board's or the Department's authority to execute, deliver or perform, or the validity or enforceability of, this Agreement, or which challenges the authority of the Board or the Department official executing this Agreement, and each of the Board 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 Board or the Department is aware; and

(g) each of the Board and 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 is otherwise in material compliance with all Legal Requirements applicable to it or its activities in connection with this Agreement.

Section 1.05 Representations and Warranties of the Commission

The Commission hereby represents and warrants to the Board and the Department 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 each such document on behalf of the Commission;

(c) the execution and delivery by the Commission of this 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 would 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 (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;

(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

INITIAL INTERSTATE 64 EXPRESS LANES NETWORK; ADDITIONAL TOLLED LANE(S)

Section 2.01 Initial Interstate 64 Express Lanes Network

(a) The facility initially covered by this Agreement shall be the Initial Interstate 64 Express Lanes Network, including the HRBT Segment, the Reversible HOT Lanes Segment, and the High Rise Bridge Segment, which is the “facility” defined and described in the 2020 Tolling Legislation.

(b) The Parties acknowledge and agree that the users of the HRBT Segment, the Reversible HOT Lanes Segment, and the High Rise Bridge Segment will benefit from the construction of an integrated network of contiguous HOT lanes which enable continuous HOT lane travel throughout the corridor covered by the Initial Interstate 64 Express Lanes Network.

Section 2.02 Sequencing of Development and Implementation

(a) Notwithstanding the goal to implement a contiguous and continuous network of HOT lanes throughout the Initial Interstate 64 Express Lanes Network, the Parties acknowledge and agree that they will work collaboratively to mutually determine the most prudent manner to develop and open the Initial Interstate 64 Express Lanes Network and that it may be developed and opened to travel in phases, in non-contiguous segments, based upon, among other things, project readiness, project costs, projected operating expenses and toll revenues, and the terms and availability of funding.

(b) Subject to Section 2.02(a) (Sequencing of Development and Implementation) and Section 2.02(c) (Sequencing of Development and Implementation), the Parties presently anticipate sequencing the segments as follows (which segments are more specifically outlined on the Implementation Map attached as Exhibit 5):

(i) the Reversible HOT Lanes Segment along Segment 1 (as shown in Exhibit 5);

(ii) Segment 2, which includes the High Rise Bridge Segment;

(iii) the HRBT Segment; and

(iv) other segments of the Initial Interstate 64 Express Lanes Network, with priority for any such segments that are designed to optimize the operational integrity of previously completed segments, including a part time shoulder lane adjacent to the Reversible HOT Lanes Segment along Segment 1 (as further described in Exhibit 5).

(c) The Parties acknowledge and agree that (i) the sequencing described above is a vision plan, except in the case of the HRBT Segment for which the financing under the HRBT PAFA relies on the implementation of tolling for the HRBT Segment, (ii) the completion of the HRBT Expansion Project, and the implementation of tolling for the HRBT Segment, shall at all

times be primary considerations when balancing interests, and (iii) the Commission will assume the Tolling O&M Duties with respect to the Initial Interstate 64 Express Lanes Network no later than the first day that the HRBT Segment is ready to accept traffic and commence tolling operations (the “HRBT Segment Toll Day One”).

Section 2.03 Additional Tolled Lane(s)

(a) If either the Board or Commission desires to toll any lane, other than those lanes that are already part of the Initial Interstate 64 Express Lanes Network, on the Interstate system or other roadways within Hampton Roads that (i) is part of a segment that has been expanded, constructed, or improved with Commission-Controlled Money or (ii) would be within the Hampton Roads Beltway, then the Board and Commission shall consult with each other in good faith and evaluate whether the tolling of such lanes should also be addressed under this Agreement (each such additional tolled lane, an “Additional Tolled Lane” and, collectively, the “Additional Tolled Lanes”).

(b) If the Parties determine that any Additional Tolled Lanes should be addressed under this Agreement, the Parties will enter into a written amendment to this Agreement which addresses the Additional Tolled Lanes in a manner that is substantially consistent with the Initial Interstate 64 Express Lanes Network.

(c) When considering whether any Additional Tolled Lane(s) should be addressed under this Agreement, the Parties shall, among other things, (i) take into account all applicable studies and plans, including those by HRTPO, to determine the configurations of the system that optimize congestion relief and traffic throughput in the segments under consideration, and (ii) evaluate whether the failure to include or inclusion of such Additional Tolled Lane(s) would reasonably be expected to violate any of the Financing Covenants or otherwise have a material adverse effect on any debt obligation of the Commission.

ARTICLE 3

PROCUREMENT AND COMPLETION OF THE HREL PROJECT

Section 3.01 General Obligations of the Department

(a) Attached as Exhibit 6 is a conceptual-level summary of the scope of work and cost estimates needed to design, construct, and implement the Initial Interstate 64 Express Lanes Network (the “HREL Project”). The HREL Project includes the goods, services, and real property rights that are required to implement the Initial Interstate 64 Express Lanes Network, but excludes the goods, services and real property rights:

(i) that are included in or will become part of the High Rise Bridge Expansion Project, the HRBT Expansion Project, or any other construction project that is already programmed under an existing funding agreement between the Department and the Commission;

(ii) that have been or will be provided by the Department with respect to the Initial Interstate 64 Express Lanes Network or any element or sub-element thereof using Toll

Facilities Revolving Account funds made available by the Department, which are to be repaid by the Commission in accordance with this Agreement; and

(iii) that will be included as part of the Additional High Rise Bridge Work, except in the event and to the extent that such work is treated as a HREL Project Cost under Section 3.03 (*Additional High Rise Bridge Work*).

(b) Attached as Exhibit 8 is a conceptual-level summary of the Commission's funding plan for the projects currently contemplated by the Commission, including the HREL Project (the "Conceptual Funding Plan"). The Parties acknowledge that Exhibits 6 and 8 have been prepared merely as working drafts based upon limited, preliminary information and that a definitive project budget for the HREL Project (the "Definitive Project Budget") and a definitive funding plan (the "Definitive Funding Plan") must be prepared, finalized, and approved by the Department and the Commission, respectively, in a manner consistent with past practice and after all material information, including the T&R Study and the Tolling O&M Cost Study, is developed and evaluated (without limiting the foregoing, the T&R Study and the Tolling O&M Cost Study shall be completed and delivered in accordance with Section 3.04 (*T&R Study, Operational Analysis and Tolling O&M Cost Study*) below). The Department and the Commission will work collaboratively and in good faith to prepare the Definitive Project Budget and the Definitive Funding Plan as soon as reasonably practicable. The Parties will endeavor to structure the Definitive Project Budget and the Definitive Funding Plan in a manner that supports the phased implementation contemplated by Section 2.02 (*Sequencing of Development and Implementation*).

(c) At 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. For the avoidance of doubt, the Department and the Commission intend to use a process that is substantially similar to the process used with the initial six projects funded by the Commission; specifically, for the applicable element (or sub-element) of the HREL Project, the following sequence of actions: (A) the Department and the Commission would prepare and, subject to Board and Commission approval, enter into an HREL SPA for the preliminary work (*e.g.*, preliminary engineering, cost estimation and environmental work), (B) if necessary, the Department would acquire the applicable right-of-way (which, for the avoidance of doubt, will be funded in accordance with the terms of the applicable HREL SPA), (C) the Department and the Commission would confer regarding the appropriate procurement method for project delivery, (D) the Department would initiate the procurement, prepare terms of the proposed project delivery agreement, and conduct the procurement to identify the selected contractor, (E) the Commission would take appropriate action to update the Definitive Funding Plan, (F) the Department and the Commission would prepare, and subject to Board and Commission approval, enter into the HREL SPA for project delivery, and (G) the Department would enter into the project delivery agreement.

(d) (i) The Department shall procure goods and services for the HREL Project 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 and operating risk. For example, the Department shall use its customary policies, procedures and practices relating to soliciting bids/proposals and negotiating/finalizing terms and conditions of contracts (using, where applicable, standard terms/forms).

(ii) Without limiting the foregoing or the terms of any applicable HREL SPA, each contract will establish liquidated damages for late completion (in an appropriate amount per day), with any liquidated damages assessed against a contractor for late completion being for the benefit of the Commission.

(e) Unless the Parties (including the Commission) otherwise expressly agree in writing, no Party shall enter into or otherwise award any Concession Agreement, whether initiated or to be implemented in accordance with the PPTA or otherwise, relating to the HREL Project or the Express Lanes Network or any facet thereof, whether relating to construction, financing, operation, maintenance, or otherwise. Each Party shall be entitled to withhold its approval of any Concession Agreement in its sole discretion; without limiting the foregoing, the Commission shall be entitled to withhold its approval if such agreement or arrangement could be reasonably expected to cause any of the Commission's bonds under the Definitive Funding Plan to be treated as taxable bonds or private activity bonds.

Section 3.02 Commission Involvement in Procurement Activities

The Department shall involve the Commission (through its Executive Director) in procurement activities relating to the HREL Project, provided, however, that the Commission shall undertake involvement in procurement activities within the reasonable times communicated by the Department so that the Commission does not delay any procurement activities. Upon the request of the Executive Director, the Department will include additional Commission representatives, such as officers, employees and/or consultants, in such procurement activities. If required by the Department, the Executive Director and each applicable Commission representative, before being granted access to confidential procurement information, shall enter into a non-disclosure agreement with the Department covering confidential information relating to the ongoing procurement or shall otherwise acknowledge and accept the duties and obligations applicable to Commission representatives under the Commission's non-disclosure agreement. The Department will involve the Executive Director and the applicable Commission representatives by:

(a) providing periodic updates regarding the status of the procurement process at reasonable intervals;

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

(c) providing the Executive Director and the applicable Commission representatives, in a manner consistent with past practice with the HRBT Expansion Project, an opportunity to participate in the development of, and provide feedback on, the terms of any applicable request for proposals or invitation to bid and any addenda or supplements thereto;

(d) in the case of a request for proposals, providing the Executive Director (including applicable Commission representatives) an opportunity to participate in meetings with prospective or shortlisted offerors, review proposals, provide input to the Department's evaluation team, and observe the scoring of proposals (on a non-voting basis); and

(e) providing the Executive Director (including applicable Commission representatives) with the opportunity to review and comment on drafts of, and receive a copy of the final, complete form of, any agreement relating to the goods and services procured (including all exhibits, appendices and attachments thereto).

Section 3.03 Additional High Rise Bridge Work

(a) The Department and the Commission acknowledge that the implementation of the HOT lanes in the High Rise Bridge Segment will require certain additional work, described on Exhibit 10 attached hereto (the "Additional High Rise Bridge Work"). The Department and Commission agree that any released or unused contingency reserve funds under the HRB Funding Agreements will be applied to fund the Additional High Rise Bridge Work, provided that the Department enters into a project agreement under which the Additional High Rise Bridge Work will be undertaken (the "Additional HRB Funding Agreement").

(b) If any such released or unused contingency reserve funds are insufficient to complete the Additional High Rise Bridge Work, then the unfunded portion of the Additional High Rise Bridge Work will be funded, *first*, to the extent the Department and the Commission identify (i) an unused and available contingency reserve under any other Initial Funding Agreement and (ii) any unused and available (to be confirmed and authorized by Board approval) SMARTSCALE award relating to the High Rise Bridge Expansion Project, from such reserve and award (if both exist the amounts drawn from each will be proportionate with the relative percentages of HRTF-Backed Funding and SMARTSCALE funds that supported the High Rise Bridge Expansion Project before adding the Additional High Rise Bridge Work), and, *second*, if necessary, as an HREL Project Cost.

(c) If any such released or unused contingency reserve funds exceed the funds needed to complete the Additional High Rise Bridge Work, then, to the fullest extent permitted by law, such excess funds shall be released and deobligated under the terms of the Additional HRB Funding Agreement and available to support the HREL Project Costs identified in the Commission's Definitive Funding Plan.

(d) For the avoidance of doubt, the application of any released or unused contingency reserve funds under the HRB Funding Agreements, to fund the Additional High Rise Bridge Work, will occur independently and separate from the applications of the Toll-Backed Debt proceeds and the Toll Revenues described in Section 6.02 (*Proceeds Waterfall*) and Section 6.03 (*Revenues Waterfall*), respectively.

Section 3.04 T&R Study, Operational Analysis and Tolling O&M Cost Study

(a) The Department has engaged CDM Smith to conduct, and CDM Smith has produced, preliminary traffic and revenue studies with respect to the Initial Interstate 64 Express Lanes Network. The Department shall provide the Commission with copies of such studies and related work papers. The Department shall use commercially reasonable efforts to cause CDM Smith to, as soon as practicable, prepare and finalize the T&R Study and deliver it to the Parties. The costs of the T&R Study shall be reimbursed to or borne as follows:

(i) With respect to costs of the T&R Study previously funded through advances from the Toll Facilities Revolving Account, those costs will be Applicable Revolving Account Costs and reimbursed in the manner provided below with respect to the reimbursement of Applicable Revolving Account Costs; and

(ii) With respect to the costs of the T&R Study incurred as part of the ongoing investment-grade traffic and revenue study, the Commission will bear those costs and make direct payments to CDM Smith.

(b) The Department has engaged Kimley-Horn to prepare and deliver an operational analysis with respect to the Initial Interstate 64 Express Lanes Network. The Department shall use commercially reasonable efforts to cause Kimley-Horn to, as soon as practicable, prepare and finalize the operational analysis (as so finalized, the “Operational Analysis”) and deliver it to the Parties.

(c) The Department has engaged HNTB to prepare and deliver estimates of the Tolling O&M Costs (the “Tolling O&M Cost Study”). The Department shall use commercially reasonable efforts to cause HNTB to, as soon as practicable, prepare and finalize the Tolling O&M Cost Study and deliver it to the Parties.

(d) The Department will (i) afford the Commission the opportunity to participate with the Department in all material discussions with the contractors preparing the T&R Study, the Operational Analysis and the Tolling O&M Cost Study (each a “Toll Study” and, collectively, the “Toll Studies”), (ii) design the specifications, parameters and assumptions of the Toll Studies so that they align with the requirements of the Commission’s financing activities (including, without limitation, any requirements of the Build America Bureau in connection with the Commission’s TIFIA financing), (iii) not make any material modifications to the specifications, parameters, and assumptions relating to any Toll Study without the Commission’s consent, such consent not to be unreasonably withheld or delayed, and (iv) incorporate any modifications to any Toll Study that the Commission may reasonably request, including any modifications that are necessary to support the Commission’s financing activities. However, the Department may engage the entity undertaking a Toll Study to run scenarios or perform other analysis in addition to that which the Commission directs, provided that (A) prior to such additional engagement, the Department consults with the Commission with respect to the desired analysis, (B) the terms of the engagement provide the Commission equal rights in the work product, (C) the Department pays for the incremental costs of such additional engagement, and (D) the engaged entity is directed to ensure that its completion of the additional engagement does not adversely affect its timely completion of the Toll Studies for the HREL Project.

(e) The Department shall cooperate with and support the performance of the work contemplated by this Section 3.04 (*T&R Study, Operational Analysis and Tolling O&M Cost Study*). By way of example and not limitation, the Department shall cooperate with the performance of traffic counts and shall supply information in its possession. [The Parties acknowledge and agree that, in order to expedite the Commission's TIFIA financing relating to the HRBT Segment, each Toll Study may be completed in multiple parts or phases to ensure that the Toll Study in respect of the HRBT Segment is completed before [September 30, 2020].]

(f) The Department shall further take such action as may be reasonably necessary to cause the Commission to receive all rights with respect to each Toll Study that are necessary to enable the Commission to use and disclose such work product in connection with its financing activities (without limiting the foregoing, such rights shall be coextensive with the rights held by the Department therein).

Section 3.05 Funding of HREL Project

(a) The Conceptual Funding Plan contemplates, among other things, that the Commission will receive all Toll Revenues from the Initial Interstate 64 Express Lanes Network, that such Toll Revenues will be used as security for the Toll-Backed Debt, and that at least \$345,000,000 of the proceeds from such Toll-Backed Debt will be used to provide, and otherwise satisfy the Commission's obligations in respect of, the Commission-Funded Budget (as defined in the HRBT PAFA).

(b) The Conceptual Funding Plan further contemplates, among other things, that the Commission will use (i) Hampton Roads Transportation Fund revenues ("HRTF Revenues") and the proceeds of HRTF-backed debt and Toll-Backed Debt to fund, where lawful based on source, HREL Project Costs (which are inclusive of the Eligible Project Costs relating to procuring and implementing the Tolling Infrastructure and System), (ii) HRTF Revenues to fund certain reserves relating to capital maintenance and/or Toll-Backed Debt Service, (iii) funding from the Department and Toll Revenues to fund reserves relating to Tolling O&M Costs, and (iv) Toll Revenues to fund other items in the Revenues Waterfall.

(c) The Definitive Funding Plan will be prepared and finalized by the Commission and may be amended from time to time by the Commission in its discretion, provided that, before amending the facets of the Definitive Funding Plan that relate to the HREL Project, the Commission will provide the Department not less than thirty (30) days' prior written notice of the proposed amendment and the opportunity to provide comments (if the Department advises the Commission that a proposed amendment is expected to adversely affect the design or construction schedule of any element of the HREL Project being performed contemporaneously with such amendment, the Commission will work in good faith with the Department to make reasonable adjustments to the proposed amendment).

(d) In furtherance of the implementation of the Definitive Funding Plan, and subject to the other terms and conditions of this Agreement, including Article 5 (*Tolling Policy and Procedure*), the Commission (i) shall be the issuer of all debt supported by the Toll Revenues, (ii) shall impose tolls in the Initial Interstate 64 Express Lanes Network, as further described in Section 5.01 (*HOT Designation and Tolling Authority*) below, and (iii) may take all actions it

deems necessary or appropriate to pledge the Toll Revenues generated therefrom to support the Toll-Backed Debt.

Section 3.06 Cooperation Re: Funding Plan; TIFIA and Other Financing

(a) The Board and the Department shall reasonably support the Commission in its efforts to implement the Definitive Funding Plan, to obtain the Toll-Backed Debt, and to comply with applicable Financing Covenants; provided, however, that in connection therewith neither the Board nor the Department shall be required to agree to any provision that would cause the Commonwealth, the Board, or the Department to be liable for the Toll-Backed Debt or for any debt, covenant, or obligation of the Commission.

(b) Without limiting the foregoing, the Department will, when reasonably required (i) (A) negotiate and enter into a Direct Agreement with the United States Department of Transportation (and/or its agents or assigns) relating to the TIFIA loans (that the Commission will pursue in connection with the implementation of the Definitive Funding Plan), (B) supply all engineering and inspection reports that are held by (or under the control of) the Department, and deliver, in a form reasonably acceptable to the Department, certificates and opinions that may be required to consummate the closing of the applicable financings or to otherwise comply with the applicable Financing Covenants, and (C) provide assurances relating to the Department's responsibility for operations and maintenance that are consistent with the terms of this Agreement (which, for the avoidance of doubt, excludes any Tolling O&M Duties for which the Commission is responsible under the terms of this Agreement), and (ii) take such other actions as the Commission may reasonably request.

(c) In the event that application is made for federal or state funding or loans not previously available for the HREL Project, then the Department will, to the extent within its reasonable control, provide 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 the Commission.

Section 3.07 FHWA Approvals

The Department and Commission will (a) collaborate to obtain any approvals and/or agreements that are required from the Federal Highway Administration with respect to the Initial Interstate 64 Express Lanes Network, and (b) each take such action, consistent with its roles and duties described in this Agreement, as may be necessary to comply with or facilitate compliance with such approvals and/or agreements and related federal Legal Requirements.

Section 3.08 Ownership of Express Lanes Network and Tolling Infrastructure and System

(a) The Department shall retain ownership of the Express Lanes Network and the Tolling Infrastructure and System even though the Commission will impose and collect tolls on the Express Lanes Network and possess the other rights set forth herein. For the avoidance of doubt, as the owner and operator of the roadway, the Department shall remain solely responsible for all environmental conditions relating to such real property and, without limiting the foregoing, as between the Department and the Commission, the Commission shall not under any

circumstances constitute an owner or operator for purposes of any environmental Legal Requirement.

(b) The Department hereby grants to the Commission such rights with respect to the Express Lanes Network as may be necessary or expedient for the Commission to exercise its rights and perform its duties and obligations under this Agreement (by way of example and not limitation, such rights include (i) a license to use the Tolling Infrastructure and System, and (ii) a right to access the roadway after coordination with the Department in accordance with the Department's standard protocols, in each case to perform, directly or through one or more contractors, Tolling O&M Duties).

ARTICLE 4

TOLLING OPERATION AND MAINTENANCE

Section 4.01 Performance of Tolling O&M Duties

(a) The Tolling O&M Duties shall be performed initially by the Department and shall be transitioned to the Commission on the Transition Date, after which date the Commission shall be responsible for the Tolling O&M Duties. The "Transition Date" shall be the earlier of (i) the HRBT Segment Toll Day One, or (ii) if the Commission in its sole discretion elects to effect an earlier transition, a date selected by the Commission for such transition that is after Segment 2 Toll Day One but prior to the HRBT Segment Toll Day One.

(b) The Department or the Commission, as applicable, shall perform or cause to be performed the Tolling O&M Duties in accordance with the tolling operations and maintenance standards set forth of Exhibit 12; provided, however, that in each case the Department E-ZPass Back Office Operations shall be performed by the Department.

(c) With respect to the Tolling O&M Duties that the Department is responsible to perform before the Transition Date, the Department may contract for the provision of such services in a manner consistent with its past practice, provided that the Department will consult with the Commission, provide the Commission the opportunity to review and comment on solicitation documents and contracts prior to execution, and use commercially reasonable efforts to ensure such contracts contain: (i) provisions that allow the Department to unilaterally assign the contract to the Commission, and (ii) commercially reasonable termination provisions including, without limitation, the Department's right to terminate for convenience without undue termination compensation payable to the contractor.

(d) With respect to the Tolling O&M Duties, which the Commission is responsible to perform upon and after the Transition Date, the Commission may freely contract for the performance of such Tolling O&M Duties, which contracting may be effected with a third party or by entering into a mutually-agreeable contract with the Department under which the Department performs or causes the performance of the Tolling O&M Duties. The Commission shall provide to the Department a written statement on or before July 1, 2023 noting whether the Commission desires to enter into a contract with the Department under which the Department performs or causes the performance of the Tolling O&M Duties for the initial period of time

immediately following the Transition Date. If the Commission fails to deliver a timely statement affirmatively requesting that the Department enter into such a contract with the Commission, then, unless the Commission and Department otherwise agree, the Commission shall enter into such a contract with a third party for the performance of the Tolling O&M Duties. If the Commission contracts with the Department to provide the Tolling O&M Duties, the Department may subcontract for the provision of such services, provided that such subcontracting shall be (i) to a contractor that is fully qualified to provide such services, (ii) procured in a manner that permits the Department to assign the subcontract to the Commission (in the event the Department and the Commission agree to effect such assignment and assumption), and (iii) otherwise in accordance with the terms of the applicable contract between the Commission and the Department.

(e) The performance of the Tolling O&M Duties will be secured by reasonable cash reserves, to the extent required by the applicable Financing Covenants.

(f) Before the Transition Date, the Department shall make available to the Commission without cost or charge all personal property assets constituting, used or held for use (including, without limitation, spare parts and supplies) in the operation and/or maintenance of, the Tolling Infrastructure and System. (For the avoidance of doubt, the limitation regarding costs and charges does not limit the Commission's obligation to reimburse the Department for Tolling O&M Costs to the extent otherwise payable pursuant to this Agreement.)

Section 4.02 Department Responsibility for All Roadway Operations and Maintenance

(a) [As between the Commission and the Department,] the Department shall be responsible to perform, at its sole cost and expense, all routine, emergency, and major highway, bridge, or tunnel operations and maintenance on Interstates in Hampton Roads (including, among other aspects of such facilities, both general purpose lanes and HOT lanes), including, without limitation, all required rehabilitation, reconstruction and replacement work (all such work, collectively, the "Roadway O&M Work"). The standards that the Department follows with respect to performance of the Roadway O&M Work with respect to the HOT lanes in the Initial Network shall be consistent with the standards that the Department follows for Interstates and toll roads throughout the Commonwealth. For the avoidance of doubt, such operations and maintenance shall also include the same snow, ice and debris removal and surface treatment services that the Department performs or causes to be performed with respect to the general purpose lanes.

(b) The Department shall undertake, perform and complete all Roadway O&M Work in accordance with the protocol attached as Exhibit 13 (the "Maintenance Protocol").

(c) In the event the Department determines that any Roadway O&M Work is necessary or advisable and that such work could reasonably be expected to adversely impact the use of the HOT lanes or the ability to impose and collect tolls thereon, the Department shall provide the Commission with a reasonably detailed plan for completing such Roadway O&M Work, including a planned timeline.

Section 4.03 Handling of Toll Revenues and Tolling O&M Costs Before Transition Date; Establishment of Reserves

(a) While the Department is responsible to perform the Tolling O&M Duties under Section 4.01(a) (*Performance of Tolling O&M Duties*), (i) the Department shall be entitled to apply the Toll Revenues that it collects during such period against the Department's actual costs of performing the Tolling O&M Duties, (ii) if the Toll Revenues are not sufficient to cover such costs, the Department shall cause the excess costs to be advanced from the Toll Facilities Revolving Account (such additional funding, the "Incremental TFRA Funding"), and (iii) if such Toll Revenues exceed such costs, the excess Toll Revenues shall be used, *first*, to repay any Incremental TFRA Funding, and, *second*, as follows: (A) during the period before the Initial Tolling Policies Effective Date, in a manner consistent with the Department's past practices and applicable law (including to cover the existing pledge of about \$3,500,000 regarding transit funding in Hampton Roads), and (B) from and after the Initial Tolling Policies Effective Date, in accordance with the Revenues Waterfall. If the Department's actual costs of performing the Tolling O&M Duties are incurred in respect of a good or service that has a shared utilization between the performance of the Tolling O&M Duties and the performance of other Department duties (*e.g.*, a Department employee who is responsible to use a portion of his or her time to perform a function within the Tolling O&M Duties and the remainder of his or her time to other Department duties), the Department shall use a commercially reasonable cost allocation methodology that is consistent with the methodology contemplated by the Tolling O&M Cost Study or that has otherwise been approved by the Commission, such approval not to be unreasonably conditioned, withheld, or delayed.

(b) At the Transition Date or at such time thereafter that the funding of operations and maintenance reserves for Tolling O&M Costs are first required by lenders, if and to the extent such reserves have not been funded, the Department will cause such reserves to be funded from the Toll Facilities Revolving Account. Such amounts will be reimbursable to the Department as an Applicable Revolving Account Cost.

ARTICLE 5

TOLLING POLICY AND PROCEDURE

Section 5.01 HOT Designation and Tolling Authority

The lanes comprising the Initial Interstate 64 Express Lanes Network have been, and throughout the term of this Agreement will be, designated as HOT lanes by the Board pursuant to § 33.2-502 of the Code of Virginia. Except as otherwise provided in Section 5.10 (*Transitional Approach with Reversible HOT Lanes*), the Initial Interstate 64 Express Lanes Network will be tolled under the authority of the Commission to impose and collect tolls for the use of the Initial Interstate 64 Express Lanes Network pursuant to the 2020 Tolling Legislation. The Parties hereby agree that, notwithstanding the fact that the Board is also vested with tolling authority, the Parties have determined to have the Commission exercise tolling authority over the Initial Interstate 64 Express Lanes Network on an exclusive basis, except as otherwise provided in Section 5.10 (*Transitional Approach with Reversible HOT Lanes*). Accordingly, except as otherwise expressly provided in Section 5.10 (*Transitional Approach with Reversible HOT*

Lanes), during the term of this Agreement the Board will not impose or collect tolls on the Initial Interstate 64 Express Lanes Network.

Section 5.02 Setting of Initial Tolling Policies

(a) (i) Except as otherwise provided in Section 5.10 (*Transitional Approach with Reversible HOT Lanes*), and subject to the requirements of this Section 5.02 (*Setting of Initial Tolling Policies*), the Commission will have the right and responsibility to set and implement the initial tolling policies for the Initial Interstate 64 Express Lanes Network (the “Initial Tolling Policies”).

(ii) The Commission, with the Department’s support, will develop the Initial Tolling Policies in parts or phases as CDM Smith completes each part or phase of the T&R Study. The Commission will adopt the Initial Tolling Policies that correspond to an applicable part or phase of the T&R Study before CDM Smith completes, but as part of a coordinated effort to finalize, that part or phase of the T&R Study. In that connection, the Commission and the Department will work collaboratively to develop Initial Tolling Policies that would not be reasonably likely to have a Tolling Policy Material Adverse Effect.

(iii) At such time as the Commission is prepared to submit proposed Initial Tolling Policies to the Commissioner for purposes of his or her review, subsequent presentation to the Board, and issuance of either a “No Exception Notice” or an “Exception Notice” pursuant to this Section 5.02 (*Setting of Initial Tolling Policies*)(each, an “Initial Policies Review Submission”), the Commission shall provide the Commissioner such proposed Initial Tolling Policies and the data produced from a substantially final draft of the applicable part or phase of the T&R Study, along with such T&R Study itself, together with written notice from the Commission confirming that such information constitutes the substantially final draft and requesting that the Commissioner commence his or her review. The Commission shall provide such information reasonably in advance of any Initial Tolling Policies Lock Date. Such information also shall include any proposed updates to any Initial Tolling Policies that have already been adopted pursuant to Section 5.02(a)(iv) or Section 5.02(a)(vi) (*Setting of Initial Tolling Policies*). Upon receipt of such information with respect to an Initial Policies Review Submission, the Commissioner shall (A) review such information and data, together with the Department’s current operational analysis in respect of the subject segment of the Initial Interstate 64 Express Lanes Network (which may be modified in the manner described below), for purposes of assessing whether the proposed policies, without modification, are reasonably likely to result in a Tolling Policy Material Adverse Effect, and (B) present the Commissioner’s analysis and findings to the Board, which review and presentation shall be completed within forty-five (45) days of the Commissioner’s receipt of such information from the Commission (the “Initial Tolling Policies Review Period”). As part of such presentation, the Commissioner shall specify whether he or she intends to issue an Exception Notice (which issuance shall be subject to Section 5.02(a)(v) (*Setting of Initial Tolling Policies*) below) or a No Exception Notice. After receiving such presentation the Board shall take one of the following actions:

- (1) if the Commissioner’s analysis and findings do not conclude that the proposed Initial Tolling Policies would be reasonably likely to result in a Tolling Policy Material

Adverse Effect, the Board shall direct the Commissioner to issue a No Exception Notice;

- (2) if the Commissioner's analysis and findings conclude that the proposed Initial Tolling Policies, without modification, would be reasonably likely to result in a Tolling Policy Material Adverse Effect, the Board may either (A) direct the Commissioner to issue an Exception Notice, or (B) direct the Commissioner to issue a No Exception Notice if the Board concludes that the proposed Initial Tolling Policies would trigger the definition of Tolling Policy Material Adverse Effect by only a marginal degree and elects, in its discretion, to waive strict enforcement;
- (3) direct the Commissioner to perform additional analysis with regard to the proposed Initial Tolling Policies and present to the Board at a subsequent meeting or meetings, an update with respect to the additional analysis, after which the Board shall take one of the actions described in clauses (1), (2), (3), or (4) of this Section 5.02(a)(iii) (*Setting of Initial Tolling Policies*); or
- (4) if the Board has previously directed the Commissioner to perform additional analysis pursuant to Section 5.02(a)(iii)(3) (*Setting of Initial Tolling Policies*), then at a subsequent meeting during which the Commissioner briefs the Board with regard to such proposed Initial Tolling Policies, the Board may opt not to vote on the issue in lieu of taking one of the actions described in Section 5.02(a)(iii)(1), (2), or (3) (*Setting of Initial Tolling Policies*), with the effect of such action being that upon the conclusion of such subsequent meeting, the Commissioner shall be deemed to have issued a No Exception Notice.

For the avoidance of doubt, (A) the action(s) described in Section 5.02(a)(iii)(3) (*Setting of Initial Tolling Policies*) shall not, except for the opportunity for the Commissioner to effect one 35-day extension pursuant to Section 5.02(a)(iv)(B) (*Setting of Initial Tolling Policies*), extend the Initial Tolling Policies Review Period, and (B) if for any reason, including, without limitation, failure to have a quorum or a deadlock in voting, the Board does not take one of the actions described in Section 5.02(a)(iii)(1), (2) or (4) (*Setting of Initial Tolling Policies*) within the Initial Tolling Policies Review Period, the Commissioner shall be deemed to have issued a No Exception Notice.

(iv) The Commissioner may extend the Initial Tolling Policies Review Period with respect to an Initial Policies Review Submission (A) for a reasonable amount of time, not to exceed thirty (30) days, if the data provided by the Commission reasonably requires modifications to the Department's current operational analysis for the Commissioner to analyze and present such data to the Board, and (B) one time for thirty-five (35) days if the Board requests additional analysis pursuant to Section 5.02(a)(iii)(3) (*Setting of Initial Tolling Policies*). The Commission may not implement the proposed Initial Tolling Policies that are the subject of an Initial Policies Review Submission or incur Toll-Backed Debt based on the ensuing implementation of such proposed Initial Tolling Policies while such policies are under review during the applicable Initial Tolling Policies Review Period. If the Commissioner does not issue either a No Exception Notice or an Exception Notice within the applicable Initial Tolling Policies Review Period (as extended, if applicable, by the Commissioner under the above

provisions of this paragraph), a No Exception Notice will be deemed to have been issued by the Commissioner. If the Commissioner issues or is deemed to have issued a No Exception Notice, the proposed Initial Tolling Policies (and, if applicable, the updates that were proposed in relation thereto), will have been duly adopted and become effective consistent with their terms pursuant to Section 5.02(a)(vii) (*Setting of Initial Tolling Policies*).

(v) The Commissioner may not issue an Exception Notice with respect to the proposed Initial Tolling Policies that are the subject of an Initial Policies Review Submission unless the Commissioner reasonably demonstrates that such proposed Initial Tolling Policies, without modification, are reasonably likely to result in a Tolling Policy Material Adverse Effect. Any Exception Notice issued by the Commissioner must be delivered by the Commissioner to the Commission within the applicable Initial Tolling Policies Review Period and be accompanied by both (1) written findings of the Commissioner and any supporting documentation demonstrating that the proposed policies, without modification, would be reasonably likely to result in a Tolling Policy Material Adverse Effect, and (2) if feasible, recommended reasonable revisions, the adoption of which would result in the deemed issuance of a No Exception Notice. If the Commissioner issues such an Exception Notice the Commission shall not implement the applicable proposed Initial Tolling Policies and may either (A) modify the policies in accordance with the Commissioner's recommended reasonable revisions, if such revisions have been provided by the Commissioner or (B) dispute the Commissioner's finding using the dispute resolution procedures or through a court proceeding (which may be instituted at any time and without initiating or exhausting the dispute resolution procedures). Such dispute shall be resolved in accordance with the dictates (including the standard of review) set forth in Section 5.03(c)(vii) (*Modifications to Tolling Policies*).

(vi) As the Commission adopts each part or phase of the Initial Tolling Policies, but prior to the Initial Tolling Policies Effective Date, it may update all previously adopted parts and phases, all of which, collectively, shall continue to constitute the Initial Tolling Policies.

(vii) The Initial Tolling Policies will be effective and implemented on the first day that the first new segment (*i.e.*, a segment other than the Reversible HOT Lanes Segment) is opened (the "Initial Tolling Policies Effective Date").

(viii) The Commission, with the Department's support, will take such action as may reasonably be required to obtain any applicable federal approvals or consents for the Initial Tolling Policies, and the Commission and the Department shall each take such action, consistent with their respective roles and duties described in this Agreement, as may be necessary to comply with or facilitate compliance with such approvals and/or consents.

(ix) If, at the time the Commission endeavors to initially incur Toll-Backed Debt, the prospective lenders (including bondholders) require tolling policies that conflict with the Initial Tolling Policies reviewed by the Board, or such lenders require Financing Covenants that would reasonably be expected to be breached by the implementation of the Initial Tolling Policies reviewed by the Board, then, in each case, Commission may adopt such modifications to the Initial Tolling Policies as the Commission may determine to be necessary or appropriate, subject to the written consent of the Department, such consent not to be unreasonably withheld,

delayed, or conditioned. However, the Department shall not provide written consent for policies for which the Board previously directed an Exception Notice until such policies have been presented to the Board by the Commissioner, using a process that is the same as the process set forth in Section 5.02(a)(iii) (*Setting of Initial Tolling Policies*), and a No Exception Notice has been issued or deemed issued with respect to such policies.

(b) The Initial Tolling Policies shall:

(i) establish the hours of operation of the tolling on the Initial Interstate 64 Express Lanes Network;

(ii) establish toll points;

(iii) establish whether (or not) the Initial Interstate 64 Express Lanes Network will employ trip-building as a feature of tolling;

(iv) comply with governing federal and Commonwealth laws and regulations, including 23 U.S.C. 166 (or any succeeding section);

(v) not be reasonably likely to have a Tolling Policy Material Adverse Effect, which condition shall be satisfied through the process described in Section 5.02(a) (*Setting of Initial Tolling Policies*);

(vi) define and allow only “Permitted Vehicles” to use the HOT lanes, which shall not include Trucks;

(vii) require each Permitted Vehicle using a tolled lane to pay the applicable toll rate unless an exemption applies (unless otherwise provided in the Tolling Policies, the high-occupancy vehicle exemption will be HOT-2);

(viii) to the extent permitted by law, exempt from tolls contractors that, at the direction of the Department or the Commission, are providing direct services to the Express Lanes Network (*e.g.*, snow removal contractors, maintenance contractors, and other similar contractors); and,

(ix) prohibit the use of toll booths and require that tolling be effected through electronic means only.

Section 5.03 Modifications to Tolling Policies

(a) After the earlier of the date of the Commission’s incurrence of Toll-Backed Debt and the Initial Tolling Policies Effective Date, the Commission may implement modified Tolling Policies at any time (and from time to time), provided that:

(i) the modified Tolling Policies do not contravene the Financing Covenants;

(ii) except to the extent a Tolling Policies modification is required to prevent or cure a breach under the Financing Covenants (a “Required Tolling Policy Modification”), a

No Exception Notice has been issued or deemed issued with respect to such modified Tolling Policies in accordance with Section 5.03(c) (*Modifications to Tolling Policies*) below.

(b) Notwithstanding anything to the contrary set forth in this Agreement, the Commission may implement a Required Tolling Policy Modification unilaterally, provided however, that prior to the implementation of a Required Tolling Policy Modification the Commission will use commercially reasonable efforts to provide to the Commissioner the details of the proposed modification, including, if feasible based on time constraints, an analysis of any impacts to the safety or operations of the Express Lanes Network and adjacent general purpose lanes, to afford the Commissioner the opportunity to (i) review and provide non-binding comments to the Commission with respect to the Required Tolling Policy Modification before the Required Tolling Policy Modification must be implemented (for the avoidance of doubt, the Commission may implement a Required Tolling Policy Modification without obtaining and/or addressing such comments), and (ii) for informational purposes, report to the Board with respect to the Required Tolling Policy Modification and with respect to any comments provided to the Commission.

(c) (i) With respect to any proposed modifications to the Tolling Policies, the Parties will collaborate as early as practicable and assist one another to assess the impacts of any proposed policies. Before implementing any modified Tolling Policies (other than a Required Tolling Policy Modification), the Commission will deliver to the Commissioner the proposed modifications and safety and operational analyses with respect to the proposed modifications, performed in accordance with industry standards for micro-simulation analysis and investment grade traffic and revenue studies, and a written request that the Commissioner review the proposed modifications for purposes of issuing either a No Exception Notice or an Exception Notice pursuant to this Section 5.03 (*Modifications to Tolling Policies*) (each, a “Modified Policies Review Submission”).

(ii) Upon receipt of such information with respect to a Modified Policies Review Submission, the Commissioner shall (A) review such data for purposes of assessing whether the proposed modifications to the Tolling Policies, without modification, are reasonably likely to result in a Tolling Policy Material Adverse Effect, and (B) present the Commissioner’s analysis and findings to the Board, which review and presentation shall be completed within ninety (90) days of receipt of such information (“Tolling Policies Modification Review Period”). As part of such presentation, the Commissioner shall specify whether he or she intends to issue an Exception Notice (which shall be subject to Section 5.03(c)(iv) (*Modifications to Tolling Policies*) below) or a No Exception Notice. After receiving such presentation the Board shall take one of the following actions:

- (1) if the Commissioner’s analysis and findings do not conclude that the proposed modifications to the Tolling Policies would be reasonably likely to result in a Tolling Policy Material Adverse Effect, the Board shall direct the Commissioner to issue a No Exception Notice;
- (2) if the Commissioner’s analysis and findings conclude that the proposed modifications to the Tolling Policies, without modification, would be reasonably likely to result in a Tolling Policy Material Adverse Effect, the Board may either (A) direct the

Commissioner to issue an Exception Notice, or (B) direct the Commissioner to issue a No Exception Notice if the Board concludes that the proposed modifications to the Tolling Policies would trigger the definition of Tolling Policy Material Adverse Effect by only a marginal degree and elects, in its discretion, to waive strict enforcement;

- (3) direct the Commissioner to perform additional analysis with regard to the proposed modifications to the Tolling Policies and present to the Board at a subsequent meeting or meetings, an update with respect to the additional analysis, after which the Board shall take one of the actions described in clauses (1), (2), (3), or (4) of this Section 5.03(c)(ii) (*Modifications to Tolling Policies*); or
- (4) if the Board has previously directed the Commissioner to perform additional analysis pursuant to Section 5.03(c)(ii)(3) (*Modifications to Tolling Policies*), then at a subsequent meeting during which the Commissioner briefs the Board with regard to such proposed modifications to the Tolling Policies, the Board may opt not to vote on the issue in lieu of taking one of the actions described in Section 5.03(c)(ii)(1), (2), or (3) (*Modifications to Tolling Policies*), with the effect of such action being that upon the conclusion of such subsequent meeting, the Commissioner shall be deemed to have issued a No Exception Notice.

For the avoidance of doubt, (A) the action(s) described in Section 5.03(c)(ii)(3) (*Modifications to Tolling Policies*) shall not, except for the opportunity for the Commissioner to effect one 45-day extension pursuant to Section 5.03(c)(iii) (*Modifications to Tolling Policies*), extend the Tolling Policies Modification Review Period, and (B) if for any reason, including, without limitation, failure to have a quorum or a deadlock in voting, the Board does not take one of the actions described in Section 5.03(c)(ii)(1), (2), or (4) (*Modifications to Tolling Policies*) within the Tolling Policies Modification Review Period, the Commissioner shall be deemed to have issued a No Exception Notice.

(iii) The Commissioner may extend the Tolling Policies Modification Review Period with respect to a Modified Policies Review Submission one time for an additional forty-five (45) days, if the Board requests additional analysis pursuant to Section 5.03(c)(ii)(3) (*Modifications to Tolling Policies*). The Commission shall not implement the proposed modifications that are the subject of a Modified Policies Review Submission or incur Toll-Backed Debt based on the ensuing implementation of such proposed modifications to the Tolling Policies while such modifications are under review during the applicable Tolling Policies Modification Review Period. If the Commissioner does not issue either a No Exception Notice or an Exception Notice within the applicable Tolling Policies Modification Review Period (as extended, if applicable, by the Commissioner under the above provisions of this paragraph), a No Exception Notice will be deemed to have been issued by the Commissioner. If the Commissioner issues or is deemed to have issued a No Exception Notice, the proposed modifications to the Tolling Policies will have been duly adopted and may be implemented consistent with their terms.

(iv) The Commissioner may not issue an Exception Notice with respect to the proposed modifications that are the subject of a Modified Policies Review Submission unless the

Commissioner reasonably demonstrates that such proposed modifications to the Tolling Policies, without modification, are reasonably likely to result in a Tolling Policy Material Adverse Effect.

(v) Any Exception Notice issued by the Commissioner must be delivered by the Commissioner to the Commission within the applicable Tolling Policies Modification Review Period and be accompanied by both (A) written findings of the Commissioner and any supporting documentation demonstrating that the proposed policies, without modification, would be reasonably likely to result in a Tolling Policy Material Adverse Effect, and (B) if feasible, recommended reasonable revisions, the adoption of which would result in the deemed issuance of a No Exception Notice.

(vi) Upon receipt of an Exception Notice, the Commission shall not implement the applicable proposed Toll Policy modifications and may either (A) modify the policies in accordance with the Commissioner's recommended reasonable revisions, if such revisions have been provided by the Commissioner or (B) dispute the Commissioner's finding using the dispute resolution procedures or through a court proceeding (which may be instituted at any time and without initiating or exhausting the dispute resolution procedures).

(vii) In the event the matter is submitted to a court for resolution, the court will apply a reasonableness (not an arbitrary and capricious) standard of review, and the Board's direction to the Commissioner pursuant to the procedures in Section 5.02 (*Setting of Initial Tolling Policies*) or Section 5.03 (*Modifications to Tolling Policies*), as applicable, shall not be considered in connection with determining the reasonableness of the Commissioner's issuance of an Exception Notice. If the court issues an order overturning or invalidating the Commissioner's issuance of an Exception Notice, a No Exception Notice will be deemed to have been issued.

(d) Within thirty (30) days of any modification to the Tolling Policies, the Commission shall provide to the Department a written explanation of the modification and the steps taken to implement such modification.

(e) For a period of ninety (90) days after the implementation of any Tolling Policies, either the Department or the Commission may request that such Parties meet and confer, after which request such Parties shall meet and confer, to consider potential refinements to the recently-implemented Tolling Policies; provided, however, that the Commission shall not have any duty or obligation to adopt and implement any potential refinement.

Section 5.04 Rate Methodology

(a) The Tolling Policies will specify the toll rates that may be applied from time to time, and the rate that is charged at any given time for any given segment shall be established using a dynamic-pricing algorithm which selects the applicable rate based on congestion level; provided, however, that, in no event shall the rate charged at any time be less than any rate required by the Financing Covenants.

(b) The baseline dynamic-pricing algorithm for the Initial Tolling Policies will be selected by the Commission in good faith taking into account the recommendations of the Department (relating to, among other things, safety) and the traffic consultant (relating to, among other things, compliance with the Financing Covenants).

(c) In exercising its right to impose and collect tolls, the Commission may impose, charge, collect, use, and enforce incidental fees and charges (by way of example and not limitation, reasonable administrative fees for account maintenance, account statements, and customer service, and fees, penalties, and interest for toll violations) of a type charged by toll road operators in the Commonwealth.

Section 5.05 E-ZPASS Compliance; Electronic Toll Collection Services

(a) The Party responsible to perform the Tolling O&M Duties (the Department or the Commission, as applicable) will use technologies and equipment approved for revenue operations by the E-ZPass Interagency Group (or any successor network thereof) or other interoperable tolling program supported by the Department to charge, debit, and collect tolls for actual vehicular use of the Express Lanes Network.

(b) No less than 120 days prior to the Transition Date, and effective as of the Transition Date, the Commission and the Department shall enter into an Electronic Toll Collection Services Agreement in substantially the form attached hereto as Exhibit 14. The Department will perform the Department E-ZPass Back Office Operations and will be reimbursed its costs (without any administrative fee or surcharge) in accordance with such agreement, whether the Department or the Commission performs the Tolling O&M Duties.

Section 5.06 Continuing Operations as HOT Lanes

Unless otherwise agreed by the Parties, once the Express Lanes Network becomes operational and the Commission begins operating it as HOT lanes under this Agreement, the Commission will continue to operate the Express Lanes Network as HOT lanes for the term of this Agreement.

Section 5.07 Tolling Enforcement

(a) The Party performing the Tolling O&M Duties, the Department or the Commission, as applicable, will be responsible for HOT lanes enforcement and will perform such enforcement in accordance with § 33.2-503 of the Code of Virginia, or other applicable law (without limiting the foregoing, the Commission shall be considered a HOT lanes operator pursuant to § 33.2-500 of the Code of Virginia).

(b) If the Commission elects to contract with the Department for violation processing services, it will enter into a Violation Processing Services Agreement with the Department in substantially the form attached hereto as Exhibit 15, and the Department will be reimbursed its costs (without any administrative fee or surcharge) in accordance with such agreement (such costs to be included as Tolling O&M Costs).

(c) In addition, the Commission shall bear ultimate responsibility for any costs associated with engaging police forces to provide HOT lanes enforcement on the Express Lanes Network (such costs to be included as Tolling O&M Costs). While the Department is performing the Tolling O&M Duties, the Department will contract with law enforcement for such enforcement. When Tolling O&M Duties are transitioned to the Commission, the

Department, will, upon the request of the Commission, facilitate efforts to establish a similar agreement between the Commission and the applicable law enforcement entities.

Section 5.08 Suspension of Tolling

(a) The Department shall, in its sole discretion, have the right to order immediate suspension of tolling in the event any portion of the Express Lanes Network is required for use as an emergency mass evacuation route. The Department shall lift any such emergency toll suspension as soon as the need for emergency mass evacuation ceases.

(b) If any portion of the Express Lanes Network is (i) designated for immediate use as any alternate route for diversion of traffic from another highway or from the general purpose lanes of Interstate 64 or (ii) temporarily closed to traffic in all lanes in one or both directions, in each case due to a significant traffic incident or emergency, then the Department shall have the right to order the immediate suspension of tolling in the direction(s) of any diversion. The Department shall lift any such order as soon as the need for such order ceases.

(c) The Department shall have the right to order the temporary closure of, and/or suspension of tolling on, any portion of the Express Lanes Network when reasonably required in connection with the performance of its maintenance activities, provided that such order and maintenance is in accordance with the Maintenance Protocol.

(d) None of the Commonwealth of Virginia, the Board, or Department shall have any liability to the Commission for the loss of any Toll Revenues or any increase in costs and expenses attributable to any suspension or closure described under subsections (a) through (c) above, provided that (i) such suspension or closure is effected in good faith in accordance with the terms of this Section 5.08 (*Suspension of Tolling*) and (ii) in the case of maintenance under subsection (c), the maintenance does not constitute a Compensable Maintenance Event.

(e) If the Department receives an order, request, notice, or demand from federal authorities, or from state or local police forces, the Department will have the right to close all or a portion of the HOT lanes to the public for such period of time as may be necessary for (i) secret service, national security, and homeland security purposes and (ii) state or local police purposes relating to governmental security or public safety. The Department will have no liability to the Commission for the loss of Toll Revenues or the increase in costs and expenses attributable to any such event. The Department will lift any such closure as soon as the need for such order ceases.

(f) Each Party will provide reasonable assistance to each other Party in seeking any available reimbursement from federal sources for lost Toll Revenues and expenses incurred as a result of a suspension pursuant to Section 5.08(a) or (b) (*Suspension of Tolling*) or a closure of the HOT lanes pursuant to Section 5.08(e) (*Suspension of Tolling*) and for pursuing insurance coverage related thereto. If either the Commission or the Department receives reimbursement from federal sources for lost Toll Revenues as a result of actions taken in the preceding sentence, the proceeds of such reimbursement will be deposited into, and applied in accordance with, the Revenues Waterfall.

Section 5.09 Preservation of General Purpose Lanes

(a) The Parties agree at all times to comply with Virginia law, including the restrictions on tolling general purpose lanes in § 33.2-119 of the Code of Virginia.

(b) Without limiting the foregoing, unless the Parties otherwise expressly agree, the users of Interstate 64 between Jefferson Avenue and Bowers Hill (which, for the avoidance of doubt, runs through the Hampton Roads Bridge-Tunnel and across the High Rise Bridge) will at all times continue to have a free means of travel in each direction throughout that corridor as an alternative to the HOT lanes. However, nothing in this provision shall be construed to negate the Department's right to close general purpose lanes when necessary to accommodate the performance of maintenance activities, including when such closure constitutes a Compensation Event.

Section 5.10 Transitional Approach with Reversible HOT Lanes

(a) Until the Transition Date, the Reversible HOT Lanes will be tolled under the authority of the Board.

(b) Until the Initial Tolling Policies Effective Date, the Board will set the tolling policies applicable to the Reversible HOT Lanes, which policies shall be substantially consistent with the policies in place as of the Effective Date.

Section 5.11 Opportunity to Receive Beneficial Terms

The Electronic Toll Collection Agreement and the Violations Processing Services Agreement are programmatic agreements offered to counterparties by the Department as standard terms, not subject to substantive negotiations. However, if at any time or from time to time after the date hereof (including after the Department and the Commission enter into the Electronic Toll Collection Agreement), the Department enters into an Electronic Toll Collection Agreement under terms that are more favorable to the counterparty (as compared to the Commission) than the contract terms set forth in either Exhibit 14 or the Electronic Toll Collection Agreement then in place between the Department and the Commission, the Department will notify the Commission of, and offer to the Commission, such more favorable terms, whereupon the Commission may elect to either incorporate the more favorable provisions into its Electronic Toll Collection Agreement with the Department, or remain with its then-current provisions. If a new toll facility becomes operational within the Commonwealth and the Department and the operator of such facility enter into an Electronic Toll Collection Agreement, the Commission may request, and the Department will provide, written verification that the terms of the applicable Electronic Toll Collection Agreement are no more favorable to the counterparty (as compared to the Commission) than the contract terms set forth in Exhibit 14 or the Commission's then-current Electronic Toll Collection Agreement (or if the Department is unable to provide such verification, it will provide the Commission notice and an offer in accordance with the terms set forth above). However, if any more favorable provisions are offered to third parties in exchange for other related provisions that benefit the Department (and the Department identifies those other related provisions to the Commission), the Commission shall incorporate the related provisions if it elects to incorporate the corresponding more

favorable provisions. Except for *de minimis* variances in the applicable fees, all of the foregoing principles and processes shall apply with regard to the Violation Processing Services Agreement to the extent the Commission and the Department become parties to such agreement, whether in the form of Exhibit 15 or as such agreement may be modified from time to time.

ARTICLE 6

TOLL REVENUES AND TOLL-BACKED DEBT PROCEEDS

Section 6.01 Legal Limitations on Uses of Toll Revenues; Procurement of Toll-Backed Debt

(a) This Agreement is governed by applicable state and federal laws restricting the use of toll revenues, including (without limitation) Va. Code § 33.2-309, 23 U.S.C. §§ 129 and 166, and the terms of the memorandum of understanding between the Department and the Federal Highway Administration (“FHWA”) related to the tolling of the Express Lanes Network. The Department shall provide to FHWA any certifications required of a State agency under 23 U.S.C. § 166.

(b) The Commonwealth of Virginia, the Board, and the Department shall have no liability for any Toll-Backed Debt or any other sum secured by or accruing under any financing agreement entered into by the Commission as a result of this Agreement. No document evidencing Toll-Backed Debt shall contain any provisions whereby a trustee or other person would be entitled to seek payment of such Toll-Backed Debt from the Commonwealth of Virginia, the Board, or the Department or any damages or other amounts from the Commonwealth of Virginia, the Board, or the Department relating to any breach by the Commission.

(c) Each bond, promissory note, or other document evidencing Toll-Backed Debt must include a conspicuous recital on its face stating: (i) payment of the principal and interest does not constitute a claim against the Department’s interest in the Express Lanes Network, or any part thereof; (ii) payment of the principal and interest is not an obligation of the Commonwealth of Virginia, the Board, the Department, or any other agency, instrumentality, or political subdivision of the Commonwealth of Virginia (including not being an obligation of the Commission’s member jurisdictions), moral or otherwise; and (iii) neither the full faith and credit nor the taxing power of the Commonwealth of Virginia, the Board, the Department, or any other agency, instrumentality, or political subdivision of the Commonwealth of Virginia (including that the Commission’s member jurisdictions full faith and credit and taxing powers are not so pledged) is pledged to the payment of the principal and interest on the Toll-Backed Debt. Nothing herein shall preclude the Commission from making any clarifications to the foregoing recital that may be reasonably necessary to address any liability of the Commission itself.

(d) Each bond, promissory note, or other document evidencing Toll-Backed Debt must also include an affirmative statement to the effect that such obligation is secured solely by and payable solely from the Toll Revenues, and, as applicable, amounts held in the funds and accounts established under the financing documents, and the trustee and bondholders have no

rights by lien or otherwise against the Department's title to or real property interest in the Express Lanes Network or any other facilities owned by the Department.

Section 6.02 Proceeds Waterfall

(a) The Commission shall have the exclusive right, title, entitlement, and interest in and to all net proceeds of any Toll-Backed Debt, provided, however, that such net proceeds shall be used solely as follows (the "Proceeds Waterfall"):

- (i) first, to procure and implement the Tolling Infrastructure and System;
- (ii) second, to fund the Covered Costs of the HRBT Expansion Project pursuant to the then-current funding plan that the Commission has adopted (and, if applicable, amended/updated) with respect to its programmed projects, with the amount of such funding being \$345,000,000 or such greater amount of Toll-Backed Debt that may, subject to the Balancing Principle, be allocated by the Commission to such Covered Costs;
- (iii) third, for HREL Project Costs not already funded pursuant to paragraph first;
- (iv) fourth, to (A) reimburse and supplant Commission-Controlled Moneys that have been used, or may be committed or scheduled for use, to fund the eligible cost of the design and construction of the Express Lanes Network (including, without limitation, the cost of the design and construction of HRBT Expansion Project, the High Rise Bridge Expansion Project, and the other components of the Express Lanes Network), which supplanting may be effected by any means permitted by applicable law and applicable Financing Covenants, or (B) fund other mutually agreed projects (including, without limitation, the Bowers Hill Project and any other extensions of the Express Lanes Network) as permitted by applicable law; and
- (v) fifth, subject to applicable law and applicable Financing Covenants, for such other purposes as the Parties mutually approve.

Section 6.03 Revenues Waterfall

(a) The Commission shall have the exclusive right, title, entitlement, and interest in and to all Toll Revenues upon and after the Initial Tolling Policies Effective Date, provided, however, that such Toll Revenues shall be used solely as follows (the "Revenues Waterfall"):

- (i) first, to pay the Tolling O&M Costs and to fund and maintain any reasonable operations and maintenance reserves required by lenders, to the extent such amounts are not satisfied pursuant to Section 6.02(a) (Proceeds Waterfall);
- (ii) second, to pay any Toll-Backed Debt Service and to fund and maintain reserves (including, without limitation, any debt service reserve fund deposits) related to Toll-Backed Debt required by lenders, in each case as permitted by applicable law;
- (iii) third, to a HREL Project Cost payment fund;

(iv) fourth, to reimburse the Department for the Applicable Revolving Account Costs;

(v) fifth, to (A) supplant Commission-Controlled Moneys that have been used, or may be committed or scheduled for use, to fund the eligible cost of the design and construction of the Express Lanes Network (including, without limitation, the cost of the design and construction of HRBT Expansion Project, the High Rise Bridge Expansion Project, and the other components of the Express Lanes Network), which supplanting may be effected by any means permitted by applicable law and applicable Financing Covenants, or (B) fund other mutually agreed projects (including, without limitation, the Bowers Hill Project and any other extensions of the Express Lanes Network) as permitted by applicable law; and

(vi) sixth, subject to applicable Financing Covenants, remaining funds held under the indenture (or other appropriate instrument) may be used for other transportation-related costs permitted by applicable law, such as transit, that contribute to congestion relief and that the Parties determine by mutual agreement to be suitable for funding.

(b) The Proceeds Waterfall and/or Revenues Waterfall may be modified by an amendment authorized, approved, executed and delivered by the Department and the Commission. The Department agrees to consider in good faith modifications that may be reasonably requested in connection with finalizing the terms of the Toll-Backed Debt.

(c) If upon termination of this Agreement and the full repayment and satisfaction of the Toll-Backed Debt there are remaining revenues available for distribution, such remaining revenues shall be distributed to the Commission for use in accordance with applicable law.

Section 6.04 Balancing Principle; Substitution of Source

The Parties will cooperate with the intent to maximize the proceeds of the TIFIA loans that the Commission will pursue in connection with the implementation of the Definitive Funding Plan. As part of such cooperation, at the Commission's request, the HRBT PAFA project budget (*i.e.*, Exhibit 3 to the HRBT PAFA) will be modified to allocate more than \$345,000,000 of Toll-Backed Debt proceeds to the Commission's obligations in respect of the Commission-Funded Budget (as defined in the HRBT PAFA). In such event, the Toll-Backed Debt in excess of \$345,000,000 will displace a portion of the \$3,208,469,581 of funding sourced from, or supported by, the Hampton Roads Transportation Fund ("HRTF-Backed Funding") identified in the HRBT PAFA project budget. Accordingly, the Commission, as a balancing principle (the "Balancing Principle"), will allocate to the uses contemplated by the Proceeds Waterfall clauses (to the extent legally permitted) *third*, *fourth* and *fifth* (and in that same order of priority) an amount of HRTF-Backed Funding equal to the difference between (i) the amount of Toll-Backed Debt actually allocated to the Commission's obligations in respect of the Commission-Funded Budget (as defined in the HRBT PAFA) and (ii) \$345,000,000.

Section 6.05 Reports and Accounting; Financial Models

(a) Prior to the Transition Date, the Department shall generate and deliver to the Commission monthly reports with respect to the operational portions of the Initial Interstate 64 Express Lanes Network, which monthly reports will include all monthly reports generated or

received by the Department in the normal course of operations. The Department shall maintain in reasonable detail and in accordance with its customary accounting practices, consistently applied, books, records and accounts with respect to its performance of the Tolling O&M Duties, and the Department shall provide the Commission with such additional information in the Department's possession as the Commission may reasonably request from time to time.

(b) No more than once per year the Commission, or an accounting firm engaged by the Commission, may inspect the Department's records for the sole purpose of assessing the Department's compliance with the financial terms of this Agreement relating to performance of the Tolling O&M Duties. Such inspection shall be performed during normal business hours and in accordance with the Department's customary procedures for such activity. The cost of such inspection shall be borne as a Tolling O&M Cost.

(c) (i) The Commission has delivered to the Department the initial and most recent drafts of the financial model that the Commission has provided to the United States Department of Transportation in connection with the closing of the first TIFIA loan that the Commission will pursue in connection with the implementation of the Definitive Funding Plan. At any time before the closing of such TIFIA loan or any subsequent TIFIA loan related to the Express Lanes Network, the Commission will deliver to the Department the most recent version of the financial model that the Commission has delivered to the United States Department of Transportation at approximately the same time that the Commission provides such model to the United States Department of Transportation.

(ii) Before the closing of each TIFIA loan, the Commission will deliver to the Department the financial model used as the Base Case Financial Model for purposes of closing.

(iii) Thereafter, the Commission will deliver to the Department, at approximately the same time that it is provided to the United States Department of Transportation, any annual updates to the Base Case Financial Model(s).

Section 6.06 Compensation Events

(a) Compensation Event Notice.

(i) If the Commission is affected by a Compensation Event, it will give written notice to the Department within 30 days following the date on which the Commission first became aware (or should have become aware, using all reasonable due diligence) that an event has occurred and that it is or will become a Compensation Event (a "Compensation Event Notice"). The Compensation Event Notice will set forth (A) the Compensation Event and its date of occurrence in reasonable detail, (B) the amount claimed as Commission Damages and (C) details of the calculation thereof including a written analysis and calculation of the estimated Net Cost Impact, if any, and estimated Net Revenue Impact, if known at that time; provided, however, that, if the amount of Commission Damages and details of the calculation thereof are not available within the 30-day notice period required in this Agreement, the Commission may submit an estimate of the amount, or if known, the actual amount claimed as Commission Damages and details of the calculation thereof no later than 60 days from submission of the

Compensation Event Notice; provided, however, that the Commission may update the amount of claimed Commission Damages and details thereof every 30 days.

(ii) After the Commission submits a Compensation Event Notice, the Department may, but is not required to, obtain, at its sole cost, (A) a comprehensive report as to the Commission's estimate of the Net Cost Impact attributable to the Compensation Event and (B) from a traffic and revenue consultant a traffic and revenue study, prepared in a commercially reasonable manner, analyzing and calculating the estimated Net Revenue Impact attributable to the Compensation Event. Within 90 days after receiving a Compensation Event Notice and the supporting documentation required by Section 6.06(a)(i) (*Compensation Events*), the Department will provide to the Commission a copy of such reports as it has elected to obtain. If the Department disagrees with the entitlement to or amount of Commission Damages claimed by the Commission, the Commission and Department will commence good faith negotiations to resolve the dispute within 100 days after the delivery of the Compensation Event Notice. If the dispute cannot be resolved within such 100 days, either the Commission or the Department may submit the dispute for resolution pursuant to Article 7 (*Dispute Resolution*).

(b) Commission Damages Determination.

(i) "Commission Damages" with respect to any Compensation Event will equal the sum of (A) any adverse Net Cost Impact for each year that there is an impact attributable to such Compensation Event plus (B) any adverse Net Revenue Impact for each year that there is an impact attributable to such Compensation Event; provided, however, that the amount payable in respect of such adverse Net Revenue Impact shall not exceed the sum of the amounts that are needed and are reasonably expected to be needed to (1) cure any breach under any Financing Covenant, provided that such Financing Covenant is a Coverage Financing Covenant or a covenant of the type customarily included in recent (*i.e.*, within last five (5) years) and comparable TIFIA toll revenue financings (*e.g.*, revenue risk public-private partnership financings), (2) reimburse amounts that in connection with the Compensation Event were drawn from reserves or deposits established under the Revenues Waterfall to comply with Financing Covenants (including, without limitation, reserves for Tolling O&M Costs and Toll-Backed Debt Service), and (3) maintain compliance with the Coverage Financing Covenants throughout the operating period (or periods) that is (or are) adversely affected by Compensation Event.

(ii) To avoid duplication of recovery, the Commission Damages (A) will be net of (1) all applicable net insurance proceeds payable to the Commission with respect to the Compensation Event, except as any payment of such insurance proceeds is affected by the bankruptcy or insolvency of the provider of such insurance, which net insurance proceeds will be determined after deducting any retention or deductible absorbed or borne by the Commission, and (2) all applicable net amounts actually recovered by the Commission from any third party with respect to claims asserted by the Commission against such third party based on their fault with respect to the corresponding Compensation Event, and (B) will include (x) all costs of asserting claims for such insurance proceeds, and any increased insurance premium resulting from any such claims, provided that any increased insurance premium resulting from any such claim is certified in writing by the insurance provider of the Commission prior to payment by the Department, and (y) all costs of asserting any such third party claims.

(iii) The Commission will conduct all discussions and negotiations with the Department to determine any Commission Damages and will share with the Department all data, documents and information pertaining thereto. As part of such negotiations, the Parties will continue to refine and exchange plans, drawings, configurations and other information related to the Compensation Event, traffic and revenue data, information, analyses and studies and financial modeling and quantifications of projected Net Cost Impacts and Net Revenue Impacts, if any.

(iv) If the Commission and the Department are unable to agree upon the amount of the Commission Damages within 100 days after the delivery of the Compensation Event Notice, then either the Commission or the Department, by written notice to the other, may terminate the negotiations and request the dispute be resolved in accordance with Article 7 (Dispute Resolution), provided that the Department will proceed to make payment to the Commission of the undisputed portion of the Commission Damages in accordance with Section 6.06(c) (Compensation Events) without regard to the dispute resolution procedures.

(v) The Commission will not be entitled to Commission Damages that are *de minimis*.

(c) Compensation Event Payment. Following a determination of the Commission Damages pursuant to Section 6.06(b) (Compensation Events), the Department will compensate the Commission for such Commission Damages in such manner as agreed upon by such Parties in writing or as may be determined through the dispute resolution procedures set forth in Article 7 (Dispute Resolution); provided, that:

(i) in the case of any lump sum payment of the Commission Damages or any other payment schedule that differs from the projected timing of the Commission Damages, the net present value of the Commission Damages will be determined using the then appropriate risk adjusted discount rate(s), as agreed between the Department and the Commission;

(ii) in the case of any payment method chosen other than an up-front lump sum payment or a payment that is based on the projected timing and amounts of the Commission Damages, the payment method will yield an amount that will be equal to the present value of a lump sum payment, using appropriate risk adjusted discount rate(s) as agreed by the Commission and the Department;

(iii) the amount and timing of payment of Commission Damages related to a Compensation Event shall in any event take into account the ability of the Commission to have funds available in such time and in such amounts as are required to make current payments to third parties.

Section 6.07 Limitation on Additional Toll-Backed Debt

The Parties acknowledge that the Commission's Definitive Funding Plan will rely upon Toll-Backed Debt proceeds to fund the costs described in the *first*, *second* and *third* tiers of the Proceeds Waterfall, which Toll-Backed Debt proceeds will be sourced from at least two TIFIA loans (one relating to the HRBT Expansion Project and another relating to the HREL Project) (the Toll-Backed Debt that, in the aggregate, is required to fund all such costs is the "Scheduled

Toll-Backed Debt”). After the Scheduled Toll-Backed Debt is incurred, the Commission will not incur additional Toll-Backed Debt unless (i) before or in connection with the closing of transaction by which such additional Toll-Backed Debt is incurred the Department has received or will receive repayment in full of the Applicable Revolving Account Costs, (ii) the additional Toll-Backed Debt relates to a refinancing of the Scheduled Toll-Backed Debt that reduces the Commission’s debt service obligations in respect of the Scheduled Toll-Backed Debt and would not reasonably be expected to delay the timing for repayment of the Applicable Revolving Account Costs, or (iii) the Department otherwise consents in writing to the Commission incurring the additional Toll-Backed Debt. The Department will not unreasonably withhold or delay its consent if the Commission is able to reasonably demonstrate that the obligations in respect of the repayment of the additional Toll-Backed Debt would not reasonably be expected to adversely affect the timing for repayment of the Applicable Revolving Account Costs.

Section 6.08 Contractor Acts

If the Commission is adversely affected by and/or suffers damages arising out of the negligence, illegal act, or willful misconduct of any Department contractor (“Contractor Act”), then, in addition to any other remedies available to the Commission against such contractor, at the Commission’s request, the Department will assert on behalf of the Commission (to the extent the Contractor Act constitutes a breach of its contract with the Department or a tort claim that the Department, based on its rights or legal status, may more effectively assert), or otherwise support the Commission in asserting, claims against the contractor in respect of such Contractor Act and, to the extent that the Department obtains a recovery against the contractor in respect of such Contractor Act and the recovered damages or portions thereof are reasonably allocable to the Commission’s claims or damages suffered by Commission (the “Commission Share”), the Department will assign or otherwise transfer to Commission the Commission Share of the recovered damages.

ARTICLE 7

DISPUTE RESOLUTION

Section 7.01 Disputes under the Agreement

(a) The Parties agree to use reasonable efforts to promptly resolve any dispute under this Agreement pursuant to this Section 7.01 (*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 any Party, the Chair of the Commission, the Secretary of Transportation, and the Commissioner (or in any case, their designee(s)) 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) among such principals, the Parties will exchange relevant information that will assist the Parties in resolving the dispute or disagreement. If the Chair of the Commission, the Secretary of Transportation, and the Commissioner (or their designee(s)) determine that the dispute cannot be resolved to the mutual satisfaction of the 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 a Party may file a legal action pursuant to Section 7.01(c) (*Disputes under the Agreement*) below.

(c) All litigation between or among 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 Section 7.01(b) (*Disputes under the Agreement*) shall be a condition precedent to instituting a legal action in court except with respect to legal action (i) disputing an Exception Notice, or (ii) seeking injunctive or equitable relief on an emergency basis.

(d) Pending final resolution of any dispute the Parties will continue to fulfill their respective obligations under this Agreement.

(e) No 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 7.01 (*Disputes under the Agreement*).

(f) EACH PARTY HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHTS THAT IT 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 CLAIMS, ACTIONS AND SUITS BETWEEN OR AMONG THE PARTIES ARISING OUT OF OR RELATED TO THE AGREEMENT AND DOES NOT APPLY TO THIRD-PARTY CLAIMS, ACTIONS 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 7.01(f) (*Disputes under the Agreement*).

ARTICLE 8

TERM

Section 8.01 Term of Agreement

(a) This Agreement shall be effective as of the Effective Date and, unless otherwise extended in the manner provided below, expire on the earlier of the following (the "Scheduled Expiration Date"):

(i) the later of (x) the fifty (50) year anniversary of the Effective Date, and (y) the forty (40) year anniversary of the date on which the final portion of the Scheduled Toll-Backed Debt was incurred; and

(ii) June 30, 2080.

(For the avoidance of doubt, if the Scheduled Toll-Backed Debt is refinanced, the maturity date of the refinanced debt shall not result in a further extension of the term of this Agreement.)

(b) At least two (2) years before the Scheduled Expiration Date, the Parties shall meet and confer to evaluate the congestion mitigation strategy and transportation needs of the region served by the Commission, and to work collaboratively to determine whether tolls will continue to be imposed on the Express Lanes Network.

(c) The following provisions shall survive any expiration or mutually agreed termination of this Agreement: (i) Section 1.01 (Definitions), Section 1.02 (Interpretation), Section 1.03 (Order of Precedence), Section 3.08(a) (Ownership of Express Lanes Network and Tolling Infrastructure and System), Section 6.03(c) (Revenues Waterfall), Section 7.01 (Disputes under the Agreement), Section 8.01(c) (Term of Agreement), Section 10.05 (Notices), Section 10.10 (Governing Law), Section 10.11 (Sovereign Immunity), Section 10.12 (Severability); and (ii) in each case with respect to events occurring before the expiration or termination of this Agreement: Section 5.08(f) (Suspension of Tolling), Section 6.06 (Compensation Events), and Section 6.08 (Contractor Acts).

ARTICLE 9

NONCOMPLIANCE AND REMEDIES

Section 9.01 Breach

(a) If a Party is in breach of any material representation, warranty, covenant, obligation, agreement, term or condition of this Agreement, any non-breaching Party may provide written notice of breach to the breaching Party, specifying in reasonable detail the nature of the breach. If the Department or the Board alleges that the Commission has breached the provisions hereof relating to modifications to the Tolling Policies, the notice shall specifically state that allegation.

(b) Within thirty (30) days of receipt of written notice of breach, the alleged breaching Party will notify the non-breaching Parties whether it disputes the claim of breach or will commence and diligently pursue a cure for such breach.

(c) Any dispute with respect to the existence of a breach shall be resolved in accordance with Article 7 (Dispute Resolution).

(d) The breaching Party shall cure its breach as promptly as practicable. Except in the case of an Intentional Policy Modification Breach, the breaching Party shall be afforded a reasonable cure period. The cure period shall be forty-five (45) days following the date of receipt of written notice of breach or such longer period as may be reasonably necessary to cure

the breach up to a maximum cure period of one hundred eighty (180) days; provided, with respect to the extension, (i) the breaching Party is proceeding with all due diligence to cure or cause to be cured such breach, (ii) the breach is capable of being cured within a reasonable period of time, and (iii) the breach is in fact cured within such period of time.

(e) In the case of an Intentional Policy Modification Breach, whether before or after the Transition Date, there will be no cure period and the step in remedies described in Section 9.02(b) (*Available Remedies*) will be available to the Department immediately upon written notice to the Commission (the Department will use commercially reasonable efforts to provide at least twenty-four (24) hours' notice to the Commission that the Department is exercising such remedy).

Section 9.02 Available Remedies

(a) The Parties acknowledge and agree that termination of this Agreement is not a remedy for breach, but, except as otherwise provided below, each Party may otherwise seek any and all other remedies available under applicable law, including monetary damages and/or specific performance. (For the avoidance of doubt, the ancillary agreements attached to this Agreement or contemplated hereby may include rights of termination and nothing herein shall be deemed or construed to be a limitation of a Party's right to terminate an ancillary agreement in accordance with its terms.)

(b) In addition, after the Transition Date (and including before the Transition Date in the case of an Intentional Policy Modification Breach), if the Commission is the breaching Party and fails to cure the breach within the applicable cure period, then the Department shall have the right (but not obligation) to step in and cure such breach and recover its actual costs to cure the breach (without any administrative fee) as a Tolling O&M Cost, which right, if exercised, shall constitute an exclusive remedy with respect to such breach. The Department shall discontinue its actions with respect to the cure when the cure has been effected or such earlier time that the Commission provides the Department with adequate assurance, to the Department's reasonable satisfaction, that the Commission may effect the cure in a timely manner without the Department's assistance.

ARTICLE 10

MISCELLANEOUS

Section 10.01 Operations and Maintenance

(a) The Department shall be responsible for, and shall perform at its own cost and expense and without the use of any Toll Revenues or the proceeds of any Toll-Backed Debt (or any other financial contribution from the Commission), the Roadway O&M Work. In addition, if the Commission elects to contract with the Department for the Tolling O&M Duties, the Commission will reimburse the Department for the Tolling O&M Costs with funds sourced at the levels described in Section 6.02 (*Proceeds Waterfall*) and/or Section 6.03 (*Revenues Waterfall*).

Section 10.02 Signage; Naming Rights

(a) The Department, consistent with its customary practices, will install signs informing the public of, among other things, the direction and distance to the HOT lanes in order to give sufficient notice of, and safe access to, the HOT lanes. In connection therewith, the Department, in consultation with the Commission, will develop a signage plan. Such signage plan shall include all notices and information required under applicable Legal Requirements and, consistent with its customary practices, extend to arterial roadways.

(b) The Department also will install within the HOT lanes (i) consistent with applicable Legal Requirements and its customary practices, traffic management and safety signs, and (ii) such additional signs relating to the use or operation of the HOT lanes as the Commission may reasonably request (the cost of such signs requested by the Commission shall be covered as a Tolling O&M Cost).

(c) Upon the Commission's request, which may be made from time to time, the Department and the Commission will evaluate the sufficiency of the signage and the Department will make such modifications as may be reasonably necessary.

(d) Subject to any contrary action by the General Assembly, the public name for the HOT lanes shall be the "Hampton Roads Express Lanes" and no Party shall declare or designate any other name for the HOT lanes, such as an "in memoriam" name, without the consent of all of the Parties.

Section 10.03 Insurance

The Department and the Commission shall work cooperatively to establish a commercially reasonable insurance program for the Commission with respect to its activities and its interest contemplated by and described in this Agreement, the cost of which shall be a Tolling O&M Cost. Without limiting the foregoing, the Parties specifically acknowledge and agree the Commission will obtain and maintain insurance in coverage amounts and types, as determined by the Commission, against interruption or loss of projected Toll Revenues ("Toll Revenue Interruption Insurance"); provided, however, that if any such insurance is not, or ceases to be, available on a commercially reasonable basis, such as, by way of example and not limitation, because of the nature of the Commission's interest and the insurability thereof, then the Department shall use commercially reasonable efforts to obtain insurance coverage types and amounts identified by the Commission, provided, further, that, the Department's costs to obtain and maintain such insurance shall be reimbursed as a Tolling O&M Cost, except to the extent the Department already has a policy in place insuring an interest independent of the Toll Revenues under which coverage benefitting the Commission may be added by rider or similar addendum or modification to existing coverage, in which case the Department will be responsible for the costs that are fairly attributable to the coverage that it maintains for its own benefit, and the Commission will be responsible for the incremental cost for the Department to obtain and maintain the additional coverage that is for the Commission's benefit. In the event that the Department obtains insurance coverage for the Commission's benefit and material premiums are due in advance in respect thereof, the Department may elect to request the Commission to pre-pay any insurance premium attributable to the Commission, and if so requested, the Department

will not have any duty to pay such insurance premium unless first pre-paid by the Commission. In the event that the Department obtains insurance coverage for the Commission's benefit, the applicable policies will include such endorsements as the Commission may reasonably request (including named insured status where possible), to ensure that the Commission receives the exclusive benefit of the insurance proceeds payable under each Toll Revenue Interruption Insurance policy and that the Commission's rights with respect to claims thereunder are maximized and are not adversely affected by acts or omissions by the Department or third parties, whether under principles of subrogation or otherwise. Notwithstanding anything to the contrary set forth herein, if the Department is liable to the Commission with respect to any insured claim, the provisions hereof stating that the insurance costs will be treated as Tolling O&M Costs shall not limit the Commission's recourse against the Department with respect to such claim.

Section 10.04 Assignment

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

Section 10.05 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 Chair of the Commission

With copies to (which shall not constitute notice):

The office of record of the Commission's general counsel

If to the Department or the Board:

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 10.06 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 the Parties or, in the case of an amendment pursuant to Section 6.03(b) (*Revenues Waterfall*), by the Department and the Commission.

Section 10.07 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 (the Department also shall ensure that such engagements are consistent with the practices and terms that the Department uses where it is solely responsible for project costs).

Section 10.08 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 any 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 any Party.

Section 10.09 No Agency

(a) The Department and Board represent that they are 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 10.10 Governing Law

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

Section 10.11 Sovereign Immunity

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

Section 10.12 Severability

If any provision in this Agreement is rendered void or invalid, the Parties agree to negotiate in good faith appropriate amendments to, or replacement of such provisions, to restore and carry out the original purposes to the extent practicable. If any provision is rendered void or invalid, all remaining provisions shall survive.

Section 10.13 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.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this Master Tolling Agreement as of the date first written above.

[SIGNATURE PAGES TO FOLLOW]

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

[●]

Hampton Roads Transportation Accountability Commission Chair

Date: _____

*[Signature Page to Master Agreement for Development and Tolling
of Hampton Roads Express Lanes Network]*

COMMONWEALTH TRANSPORTATION BOARD

The Honorable Shannon Valentine
Secretary of Transportation

Date: _____

*[Signature Page to Master Agreement for Development and Tolling
of Hampton Roads Express Lanes Network]*

VIRGINIA DEPARTMENT OF TRANSPORTATION

Stephen C. Brich, P.E.
Commissioner of Highways

Date: _____

*[Signature Page to Master Agreement for Development and Tolling
of Hampton Roads Express Lanes Network]*

EXHIBIT 1

List of Standard Project Agreements Re: HRB

1. Interim Project Agreement between the Department and the Commission dated April 16, 2015 (UPC 106692).
2. Standard Project Agreement between the Department and the Commission dated November 9, 2015 (sic) (UPC 106692).
3. First Amendment to Standard Project Agreement for Funding and Administration between VDOT and HRTAC dated October 20, 2017 I-64 Southside Widening and High Rise Bridge – Phase I (UPC 106692/108990) (Clarified that the date of the Standard Project Agreement was an error and amended and replaced the date with November 2, 2016)
4. Amendment to Interim Project Agreement and Standard Project Agreement between VDOT and HRTAC dated June 6, 2018 Relating to I-64 (Southside) Widening and High Rise Bridge Phase I (Tax Covenants for Bond Funded Projects) (UPC 106692)
5. Amendment to Interim Project Agreement and Standard Project Agreement between VDOT and HRTAC dated August 30, 2018 Relating to I-64 (Southside) Widening and High Rise Bridge Phase I (Float Down) (UPC 106692)

EXHIBIT 2

CTB Resolutions Re: Express Lanes Network

EXHIBIT 3

HRTPO Resolutions Re: Express Lanes Network

EXHIBIT 4

Definitions

The following terms used in this Agreement shall have the following meanings:

“2020 Tolling Legislation” has the meaning given in the Recitals.

“Additional High Rise Bridge Work” has the meaning given in Section 3.03(a) (*Additional High Rise Bridge Work*).

“Additional HRB Funding Agreement” has the meaning given in Section 3.03(a) (*Additional High Rise Bridge Work*).

“Additional Tolled Lane(s)” is defined in Section 2.03 (*Additional Tolled Lane(s)*).

“Agreement” means this Master Agreement for Development and Tolling of the Hampton Roads Express Lanes Network, dated as of August [●], 2020, and all exhibits and schedules hereto, as supplemented or further amended from time to time.

“Applicable Facility” means the HOT lanes in the Express Lanes Network and the general purposes lanes that operate alongside such HOT lanes.

“Applicable Revolving Account Costs” means the non-recurring costs that the Department has advanced (or will advance) out of the Toll Facilities Revolving Account with respect to the following: (i) Segment 1 (about \$19,000,000) and Segment 2 (about \$38,000,000) HOV to HOT conversions and tolling implementation costs related to the implementation of the Initial Interstate 64 Express Lanes Network, (ii) the T&R Study (about \$1,500,000), (iii) the existing pledge regarding transit funding in Hampton Roads (about \$3,500,000), and (iv) any amounts advanced by the Department pursuant to Section 4.03 (*Handling of Toll Revenues and Tolling O&M Costs Before Transition Date; Establishment of Reserves*) (about \$6,000,000). For the avoidance of doubt, the Applicable Revolving Account Costs will be measured based on funds actually advanced by the Department for such purposes and are not capped at the estimates noted above.

“Balancing Principle” is defined in Section 6.04 (*Balancing Principle; Substitution of Source*).

“Barrier Section” means a single-direction section of the Applicable Facility where the HOT lanes and general purpose lanes are barrier-separated, excluding in each case any portion thereof that by operation of the Non-Barrier Section definition is considered a Non-Barrier Section.

“Board” means the Commonwealth Transportation Board.

“Bowers Hill Project” means improvements to the I-64/I-264/I-664 and Route 58/460 Interchange and related improvements to I-64/I-264/I-664 to College Drive.

“Chair of the Commission” means the Chair of the Commission.

“Commission” means the Hampton Roads Transportation Accountability Commission.

“Commission-Controlled Moneys” means those funds received by the Commission from whatever source.

“Commission Damages” has the meaning given under Section 6.06(b)(i) (*Compensation Events*).

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

“Commonwealth” means the Commonwealth of Virginia.

“Commonwealth Transportation Board”, “CTB” or “Board” means a policy board of the Commonwealth with certain powers that complement, or otherwise interoperate with, the powers conferred upon the Department.

“Compensable Maintenance Event” means any maintenance activities, under the control of the Department (*i.e.*, performed by the Department or one of its contractors or otherwise performed at the Department’s direction), to the general purpose lanes or HOT lanes, as applicable (including, without limitation, on ramps and other points of entry), whether relating to routine or major maintenance (including, without limitation, major maintenance, replacement, rehabilitation, and/or reconstruction), that results in the closure (including, without limitation, individual lane closures) in a single direction of the general purpose lanes and/or HOT lanes (including, without limitation, on ramps and other points of entry) within any System Segment for, in the aggregate:

- (1) more than sixty (60) consecutive days, or
- (2) more than one thousand eighty (1,080) hours during any one hundred eighty (180) day period, without counting the hours of closure between 10 p.m. and 4 a.m. toward such one thousand eighty (1,080) hours,

in all cases, excluding any such maintenance resulting from an Exempt Event. For the avoidance of doubt, (A) for any Compensable Maintenance Event, the applicable Commission Damages, if any, shall be measured beginning from the 61st day or 1,081st hour, as applicable, and (B) when assessing whether the maintenance in a subject System Segment has exceeded the applicable days or hours threshold, the aggregation principle will include only days or hours of maintenance within that System Segment and will not include days or hours relating to maintenance in any other System Segment.

“Compensation Event Notice” has the meaning given in Section 6.06(a) (*Compensation Events*).

“Compensation Events” means any of the following events, circumstances or conditions:

- (1) the Department's lack of good and sufficient title or right to enter or occupy any parcel that the Department owns as of the Effective Date;
- (2) The Department or the Board issues or obtains an order or directive suspending tolls on, or diverting traffic from general purpose lanes onto, the HOT lanes, excluding a temporary order made in accordance with Section 5.08(a) (*Suspension of Tolling*), Section 5.08(b) (*Suspension of Tolling*), Section 5.08(e) (*Suspension of Tolling*), or, except in the case of a Compensable Maintenance Event, Section 5.08(c) (*Suspension of Tolling*); or
- (3) any loss or impairment of (a) use of the facility (*e.g.*, vehicles are unable to access and use the facility and/or pay tolls relating to the use), or (b) the Commission's ability to impose or collect tolls relating to such use, in each case, that arises out of or results from any:
 - (i) act or omission by Department in breach of the provisions of this Agreement,
 - (ii) negligence, illegal act, or willful misconduct by Department (including without limitation, any such negligence, illegal act, or willful misconduct in planning, preparing for, procuring, managing, or performing maintenance relating to, an Exempt Event), and/or
 - (iii) maintenance activities performed by the Department or its contractors that either (A) breach the Maintenance Protocol, or (B) relate to a Compensable Maintenance Event;

provided, that no Compensation Event may arise by reason of:

- (A) the negligence, illegal acts, or willful misconduct of the Commission; or
- (B) any act or omission by the Commission in breach of the provisions of this Agreement.

“Conceptual Funding Plan” is defined in Section 3.01(b) (*General Obligations of the Department*).

“Concession Agreement” means a contractual relationship with a private entity that establishes a concession or similar arrangement with respect to a transportation facility involving a transfer or assignment of risks or responsibilities to, or an assumption of risks or responsibilities by, the private entity with regard to the development or operation of such facility. For the avoidance of doubt, “Concession Agreement” does not include a services-for-fee operations and maintenance contract or subcontract under which the contractor or subcontractor does not bear the financial risk that Toll Revenues will be less than forecasted (even if a component of contractor or subcontractor compensation under such services-for-fee operations and maintenance contract or subcontract is based on the volume of transactions occurring within the Express Lanes Network).

“Coverage Financing Covenants” means those typical and customary Financing Covenants that pertain to (A) debt service coverage requirements (without giving effect to any “soft default” or retention of consultant provisions), or (B) deposits (which, for the avoidance of doubt, include all payments and funding) required under clauses (i) and (ii) in the Revenues Waterfall.

“Covered Costs” means those costs for which the Commission is responsible under the HRBT PAFA.

“Crash Rate” means a crash rate calculated using the industry standard methodology set forth in the *AASHTO Highway Safety Manual* or, if such manual is no longer in publication or the Commission and Department otherwise agree, a then-current industry standard methodology established by a similar, nationally-recognized, standard setting body or organization.

“Definitive Funding Plan” is defined in Section 3.01(b) (*General Obligations of the Department*).

“Definitive Project Budget” is defined in Section 3.01(b) (*General Obligations of the Department*).

“Department” means the Virginia Department of Transportation.

“Department E-ZPass Back Office Operations” means, for any E-ZPass transaction (whether initiated by transponder or by license plate image), the electronic process of drawing funds from the toll-paying user account maintained by the Department or other state transportation agency. For the avoidance of doubt, Department E-ZPass Back Office Operations does not include customer transactions that are not connected to an E-ZPass account.

“Effective Date” has the meaning given in the Preamble.

“Exception Notice” is a notice of that type issued by the Commissioner under Section 5.02 (*Setting of Initial Tolling Policies*) or Section 5.03 (*Modifications to Tolling Policies*), which has the effect described in Section 5.02(a)(v) (*Setting of Initial Tolling Policies*) or Section 5.03(c)(vi) (*Modifications to Tolling Policies*), as applicable.

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

“Exempt Event” means the occurrence of an event, act, omission, condition, or circumstance that arises by reason of:

- (1) the negligence or misconduct of a third party not under the control of the Department; or
- (2) any act of God (including, without limitation, an earthquake, hurricane, tsunami, tornado, flood, or other weather condition).

“Express Lanes Network” means (i) the Initial Interstate 64 Express Lanes Network plus (ii) any Additional Tolled Lane(s), if any, added by mutual agreement of the Parties under Section 2.03 (*Additional Tolled Lane(s)*).

“Financing Covenants” means the governing covenants of the financing agreements related to Toll-Backed Debt.

“Governmental Authority” means any court, Federal, state, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority.

“Hampton Roads” means the area within the geographical boundaries of the counties and cities embraced by the Commission.

“Hampton Roads Beltway” means the loop created by Interstate 64 and Interstate 664 which, for the avoidance of doubt, includes the portion of Interstate 64 containing the Initial Interstate 64 Express Lanes Network.

“High Rise Bridge Expansion Project” has the meaning given in the Recitals.

“High Rise Bridge Segment” means any HOT lanes on Interstate 64 between the interchange of Interstate 64 with Interstate 464 located in the City of Chesapeake and the interchange of Interstate 64 with Interstate 664 located in the City of Chesapeake.

“HNTB” means HNTB Corporation.

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

“HOV” means high-occupancy vehicle.

“HRB Funding Agreements” has the meaning given in the Recitals.

“HRTF-Backed Funding” is defined in Section 6.04 (*Balancing Principle; Substitution of Source*).

“HRBT Expansion Project” has the meaning given in the Recitals.

“HRBT PAFA” has the meaning given in the Recitals.

“HRBT Segment” means any HOT lanes on Interstate 64 between Exit 267 located in the City of Hampton and Exit 276 located in the City of Norfolk.

“HRBT Segment Toll Day One” is defined in Section 2.02(c) (*Sequencing of Development and Implementation*).

“HREL Project Costs” means the actual costs to deliver the HREL Project, which are estimated at a conceptual level within Exhibit 6 to be about \$940,000,000 (but are not capped at such amount).

“HREL Project” is defined in Section 3.01(a) (*General Obligations of the Department*).

“HREL SPA” is defined in Section 3.01(c) (*General Obligations of the Department*).

“HRTF Revenues” is defined in Section 3.05(b) (*Funding of HREL Project*).

“HRTPO” means the Hampton Roads Transportation Planning Organization.

“Incremental TFRA Funding” is defined in Section 4.03(a) (*Handling of Toll Revenues and Tolling O&M Costs Before Transition Date; Establishment of Reserves*).

“Initial Funding Agreement” means any Standard Project Agreement entered into between the Department and the Commission before such Parties entered into the HRBT PAFA.

“Initial Interstate 64 Express Lanes Network” or **“Initial Network”** has the meaning given in the Recitals.

“Initial Tolling Policies” is defined in Section 5.02(a) (*Setting of Initial Tolling Policies*).

“Initial Tolling Policies Effective Date” is defined in Section 5.02(a) (*Setting of Initial Tolling Policies*).

“Initial Tolling Policies Lock Date” means each of the following:

- (i) any date that the Commission plans to incur Toll-Backed Debt, whether based on the ensuing implementation of the complete Initial Tolling Policies or based on the ensuing implementation of any part or phase of the Initial Tolling Policies; and
- (ii) the Initial Tolling Policies Effective Date.

“Initial Tolling Policies Review Period” is defined in Section 5.02(a)(iii) (*Setting of Initial Tolling Policies*).

“Intentional Policy Modification Breach” means the Commission intentionally breaches [Section 5.03 (*Modifications to Tolling Policies*)] in connection with the implementation of a modified Tolling Policy.

“Legal Requirements” means all laws, treaties, ordinances, judgments, federal requirements, decrees, injunctions, writs and orders of any Governmental Authority, and all rules, regulations, orders, formal interpretations and permits of any Governmental Authority having jurisdiction over the Express Lanes Network, including without limitation, jurisdiction over the

environmental condition of the Express Lanes Network, and the health and safety of the travelers of the Express Lanes Network.

“Maintenance Protocol” is defined in Section 4.02(b) (*Department Responsibility for All Roadway Operations and Maintenance*).

“Net Cost Impact”, which shall not be less than zero (\$0), means any net increase in the Commission’s costs directly attributable to a Compensation Event, determined based upon what the Commission’s costs would have been absent the occurrence of the Compensation Event, which “net increase” is determined taking into account, without duplication, any savings attributable to or arising from the relevant Compensation Event.

“Net Revenue Impact,” which shall not be less than zero (\$0), means: (a) any net decrease in Toll Revenues attributable to a Compensation Event, determined based upon what the Toll Revenues would have reasonably been expected to be absent the occurrence of the Compensation Event; and (b) *less* any savings in operating and maintenance costs resulting directly from the Compensation Event (excluding any savings in costs subtracted from Net Cost Impact for the same Compensation Event), and (c) less any Toll Revenues that were actually lost as a direct result of the Commission’s failure to use commercially reasonable efforts to mitigate the loss of Toll Revenues.

“No Exception Notice” is a notice of that type issued or deemed issued to have been issued by the Commissioner under Section 5.02 (*Setting of Initial Tolling Policies*) or Section 5.03 (*Modifications to Tolling Policies*), which has the effect described in Section 5.02(a)(iv) (*Setting of Initial Tolling Policies*) or Section 5.03(c)(iii) (*Modifications to Tolling Policies*), as applicable.

“Non-Barrier Section” means a single-direction section of the Applicable Facility where the HOT lanes and general purpose lanes are not barrier-separated, including in each case a five hundred-foot influence area both before the non-barrier-separated section begins and after the non-barrier-separated section ends, provided that any HOT lane entrance or exit ramps within 0.25 miles of one another will be considered within the same, continuous Non-Barrier Section.

“Open Road Tolling” means an electronic toll collection system without toll plazas, where drivers will be charged the toll without having to stop, slow down, or stay in a given lane.

“Operational Analysis” is defined in Section 3.04(b) (*T&R Study, Operational Analysis and Tolling O&M Cost Study*).

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

“Peak Periods” means both (i) a daily three hour window of time (*i.e.*, consecutive hours) during which the Applicable Facility experiences peak a.m. traffic volume and (ii) a daily three hour window of time during which the Applicable Facility experiences peak p.m. traffic volume, in each case, as determined by reviewing the actual vehicular traffic volume data collected on

weekdays (excluding state holidays) on Interstate 64 that is within, or nearest to, the subject System Segment.]

“Permitted Vehicles” will be defined under the Tolling Policies in accordance with applicable laws.

“Person” means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

“Proceeds Waterfall” is defined in Section 6.02 (*Proceeds Waterfall*).

“PPPA” means the Virginia Public Procurement Act, Va. Code § 2.2-4300 *et seq.*

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

“Required Tolling Policy Modification” is defined in Section 5.03(a) (*Modifications to Tolling Policies*).

“Revenues Waterfall” is defined in Section 6.03 (*Revenues Waterfall*).

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

“Reversible HOT Lanes Segment” has the meaning given in the Recitals.

“Roadway O&M Work” is defined in Section 4.02(a) (*Department Responsibility for All Roadway Operations and Maintenance*).

“Scheduled Expiration Date” is defined in Section 8.01(a) (*Term of Agreement*).

“Scheduled Toll-Backed Debt” is defined in Section 6.07 (*Limitation on Additional Toll-Backed Debt*).

“Segment 2” has the meaning given in the Recitals.

“Segment 2 Toll Day One” means the first date there are continuous and contiguous operational HOT lanes open to the public on Interstate 64 between (i) Interstate 564 and (ii) the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake.

“System Segment” means each of the following:

- (i) in the eastbound direction:

- a. Interstate 64 from the western terminus of the Express Lanes Network (anticipated to be in the vicinity of Jefferson Avenue in Newport News) to immediately before the interchange of Interstate 664 in Hampton,
 - b. Interstate 64 from Interstate 664 in Hampton (and including such interchange) to immediately before the interchange of 564 in Norfolk,
 - c. Interstate 64 from the interchange of 564 in Norfolk (and including such interchange) to immediately before the interchange of 264 in Norfolk,
 - d. Interstate 64 from the interchange of 264 in Norfolk (and including such interchange) to immediately before the interchange of 464 in Chesapeake, and
 - e. Interstate 64 from the interchange of Interstate 464 in Chesapeake (and including such interchange) to and including the eastern terminus of the Initial Interstate 64 Express Lanes Network (anticipated to be near Bowers Hill interchange in Chesapeake); and
- (ii) in the westbound direction:
- a. Interstate 64 from the eastern terminus of the Initial Interstate 64 Express Lanes Network (anticipated to be near Bowers Hill interchange in Chesapeake) to immediately before the interchange of Interstate 464 in Chesapeake;
 - b. Interstate 64 from the interchange of Interstate 464 in Chesapeake (and including such interchange) to immediately before the interchange of Interstate 264 in Norfolk;
 - c. Interstate 64 from the interchange of Interstate 264 in Norfolk (and including such interchange) to immediately before the interchange of Interstate 564 in Norfolk;
 - d. Interstate 64 from the interchange of Interstate 564 in Norfolk (and including such interchange) to immediately before the interchange of Interstate 664 in Hampton; and
 - e. Interstate 64 from the interchange of Interstate 664 in Hampton to the western terminus of the Initial 64 Express Lanes Network (anticipated to be in the vicinity of Jefferson Avenue in Newport News).

“**TIFIA**” means the Transportation Infrastructure Finance and Innovation Act program administered by the United States Department of Transportation.

“**Toll-Backed Debt**” means (i) any bonds, promissory notes, loan, financing or credit agreements, including, without limitation, TIFIA loans, under which the Commission is obligated to repay money borrowed and secured by the Toll Revenues, and (ii) all installment sales, conditional sales, and capital lease obligations incurred or assumed by the Commission and secured by the Toll Revenues.

“Toll-Backed Debt Service” means for a fiscal year or other measurement period the aggregate of the payments to be made in respect of the principal of and interest on any Toll-Backed Debt and the associated financing or trustee's fees or charges and required deposits to any reserve funds.

“Toll Facilities Revolving Account” means the subaccount established pursuant § 33.2-1529 of the Code of Virginia.

“Tolling Infrastructure and System” means, collectively, the (i) electronic toll gantries, shelters, high-tech sensors, signage, and other tolling infrastructure, and (ii) the comprehensive electronic tolling solution, in each case with respect to the Express Lanes Network.

“Tolling O&M Cost Study” is defined in Section 3.04(c) (*T&R Study, Operational Analysis and Tolling O&M Cost Study*).

[**“Tolling O&M Costs”** means, subject to Section 4.02(a) (*Department Responsibility for All Roadway Operations and Maintenance*), the costs incurred by the entity performing the Tolling O&M Duties with respect to performing such duties *plus*, without duplication, (i) any compensation due to the Department under an Electronic Toll Collection Agreement(s) with respect to the Express Lanes Network, and (ii) any amounts due under Sections 5.07(b) and (c) (*Tolling Enforcement*), 6.05(b) (*Reports and Accounting; Financial Models*), 9.02(b) (*Available Remedies*), 10.02(b) (*Signage; Naming Rights*), and/or 10.03 (*Insurance*) (again, without duplication). For the avoidance of doubt, Tolling O&M Costs shall not include highway, bridge, or tunnel operations and maintenance costs, and if Tolling O&M Duties are performed by the Department, the Tolling O&M Costs shall not include an administrative charge applied by the Department.]

“Tolling O&M Duties” means those duties relating to the operation and maintenance of the Tolling Infrastructure and System set forth in Exhibit 16 (*Tolling O&M Duties*); it does not include the Department E-ZPass Back Office Operations.

“Tolling Policies” means, at any point in time, the tolling policies applicable to the Express Lanes Network, including the Initial Tolling Policies during the time they are applicable to the Express Lanes Network.

“Tolling Policies Modification Review Period” is defined in Section 5.03(c)(ii) (*Modifications to Tolling Policies*).

“Tolling Policy Material Adverse Effect” means, with respect to a proposed element of the Initial Tolling Policies or a proposed modification to the Tolling Policies, an effect caused by the proposed element or proposed modification that is material and adverse to the safety or operations of the Applicable Facility, determined as follows using then-current industry standard predictive tools as described below:

- (i) in the case of safety, the implementation of the element or modification would cause the Crash Rate in either a Barrier Section (where the Crash Rate for the HOT lanes would be calculated separately from the general purpose lanes, resulting in two independent Crash Rates) or in a Non-Barrier Section (where the Crash Rate for the HOT lanes and general purpose lanes would be calculated collectively, resulting in a single Crash Rate) to increase by more than five percent (5%) as compared to the average Crash Rate in the applicable Barrier Section or Non-Barrier Section during the then immediately-preceding five (5) year period; or
- (ii) in the case of operations, the implementation of the element or modification would cause a change in operational conditions whereby (A) the person throughput in two or more System Segments for one or more Peak Periods will decrease by more than five percent (5%), or (B) the person throughput in any single System Segment for one or more Peak Periods will decrease by more than ten percent (10%), in each case (whether (A) or (B)) as compared to a baseline operational condition established by an operational analysis, performed in accordance with industry standards for micro-simulation analysis and investment grade traffic and revenue studies, completed sufficiently before the planned effective date of the proposed element or modification to reflect the operating conditions of the Applicable Facility before the element or modification would be implemented; *provided that*, person throughput will be measured by analyzing the applicable general purpose lanes and HOT lanes in combination.

“**Toll Revenue Interruption Insurance**” is defined in Section 10.03 (*Insurance*).

“**Toll Revenues**” means:

- (a) all amounts received by or on behalf of the Commission (or by the Board with respect to the Reversible HOT Lanes) for use of the Express Lanes Network, including without limitation fees, tolls, rates, incidental charges, and other charges (including administrative charges such as late fees, insufficient funds fees, etc.), and
- (b) amounts received by or on behalf of the Commission (or by the Board with respect to the Reversible HOT Lanes) pursuant to any collection or enforcement action, judgment or settlement with respect to any of the foregoing revenues, including fines and penalties and interest thereon collected as a result of failure to pay any such amounts;
- (c) amounts received by or on behalf of the Commission (or by the Board with respect to the Reversible HOT Lanes) as contractual liquidated, other contract damages, insurance proceeds, third party recoveries, condemnation awards or any other amounts in lieu of or with respect to the Express Lanes Network or any of the foregoing revenues; and
- (d) all other amounts received by or on behalf of the Commission (or by the Board with respect to the Reversible HOT Lanes) that are derived from or with respect to the operation of the Express Lanes Network or any part thereof.

“Toll Studies” is defined in Section 3.04(d) (*T&R Study, Operational Analysis and Tolling O&M Cost Study*).

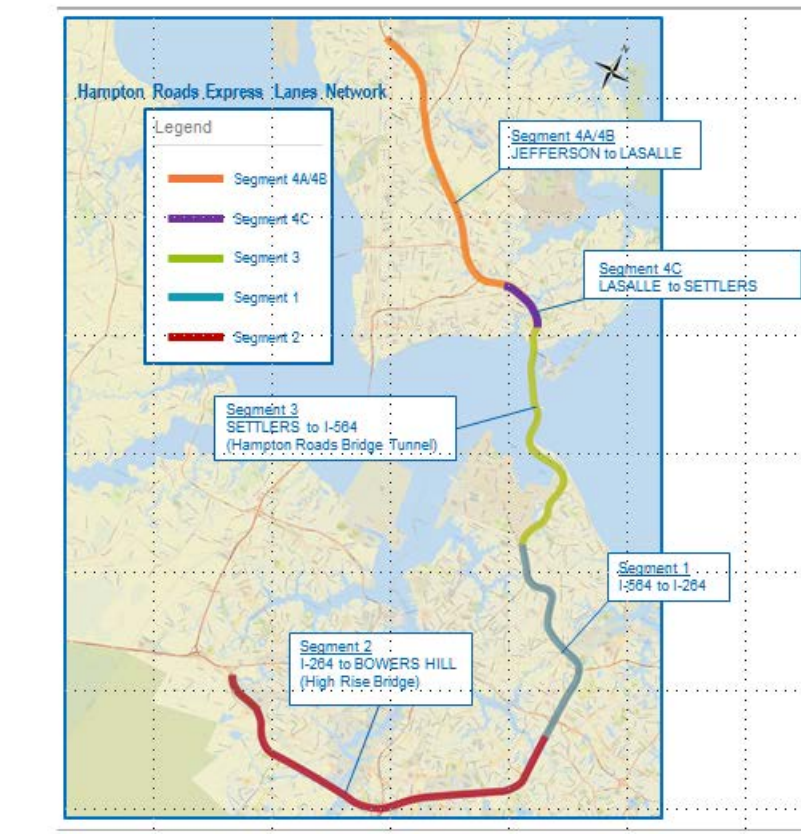
“T&R Study” has the meaning given in the Recitals.

“Transition Date” is defined in Section 4.01(a) (*Performance of Tolling O&M Duties*).

“Truck” means [Class 5 vehicles as defined by FHWA (two-axle, six-wheel vehicle with a gross vehicle weight rating of 16,001 pounds or greater), and all other vehicles of higher classifications according to FHWA designations].]

EXHIBIT 5

Implementation Map



Narrative Description of HREL Project Final Configuration

EASTBOUND – Traveling in the eastbound direction along I-64, between Jefferson Avenue and I-664, the proposed typical section consists of 1 managed HOT lane and 3 general purpose lanes. Between I-664 and LaSalle Avenue, the section changes to 1 managed HOT lane and 2 general purpose lanes. Between LaSalle Avenue and I-564 (through the HRBT), there will be 2 managed HOT lanes (1 managed HOT and 1 managed HOT part-time shoulder lane) and 2 general purpose lanes. During the AM peak period, the section between I-564 and I-264 will consist of 1 managed HOT part-time shoulder lane and 3 general purpose lanes. During the PM peak period, the section between I-564 and I-264 will consist of 2 managed HOT lanes (in the reversible section) and 3 general purpose lanes. Between I-264 and I-464, there will be 1 managed HOT lane and 3 general purpose lanes. Between I-464 and the Bowers Hill interchange (across the HRB), the proposed typical section consists of 1 managed HOT lane, 1 managed HOT part time shoulder lane, and 2 general purpose lanes.

WESTBOUND – Traveling in the westbound direction along I-64, between Bowers Hill interchange and I-464 (across the HRB), the proposed typical section consists of 1 managed HOT lane, 1 managed HOT part-time shoulder lane, and 2 general purpose lanes. Between I-464 and I-264, the section changes to 1 managed HOT lane and 3 general purpose lanes. During the AM peak period, the section between I-264 and I-564 will consist of 2 managed HOT lanes (in the reversible section) and 3 general purpose lanes. During the PM peak period, the section between I-264 and I-564 will consist of 1 managed HOT median part-time shoulder lane and 3 general purpose lanes. Between I-564 and LaSalle Avenue (through the HRBT), there will be 2 managed HOT lanes (1 managed HOT lane and 1 managed HOT part-time shoulder lane) and 2 general purpose lanes. Between LaSalle Avenue and I-664, the section changes to 1 managed HOT lane and 2 general purpose lanes. Between I-664 and Jefferson Avenue, the proposed typical section consists of 1 managed HOT lane and 3 general purpose lanes.

EXHIBIT 6

Conceptual Scope and Estimate for HREL Project

I-64 HREL NETWORK SEGMENT NO.	CONCEPTUAL SCOPE	CONCEPTUAL ESTIMATE
1 (I-564 to I-264)	<ol style="list-style-type: none">1. conversion of the inside shoulder lanes (eastbound and westbound) along Interstate 64 to a part-time HOT lane2. widening in spot locations to maintain minimum shoulder width in both directions3. replacement of four bridges as follows:<ol style="list-style-type: none">a) Tidewater Drive bridges (eastbound and westbound)b) Chesapeake Boulevard bridges (eastbound and westbound)4. additional right-of-way acquisition (approximately 30 parcels) and utility relocations5. installation of tolling gantries, signage, and other physical assets to support the tolling solution.6. any additional related work necessary to accomplish the above-defined scope	\$193,147,774
3 (Settlers Landing Road to I-564)	<ol style="list-style-type: none">1. installation of tolling gantries, signage, and other physical assets to support the tolling solution2. any additional related work necessary to accomplish the above-defined scope	\$24,630,792

I-64 HREL NETWORK SEGMENT NO.	CONCEPTUAL SCOPE	CONCEPTUAL ESTIMATE
4A & 4B (Jefferson Ave. to LaSalle Ave.)	<ol style="list-style-type: none"> 1. conversion of existing HOV lanes into HOT lanes (one eastbound and one westbound) 2. conversion of existing general purpose lanes into HOT lanes (one eastbound and one westbound) 3. pavement widening for buffer between HOT and general purpose lanes and to maintain minimum shoulder widths 4. replacement of bridge carrying Interstate 64 over LaSalle Ave. (eastbound only) 5. installation of tolling gantries, signage, and other physical assets to support the tolling solution 6. Interstate ramp realignment, as needed 7. right-of-way acquisition and utility relocations 8. any additional related work necessary to accomplish the above-defined scope 	\$156,199,948

I-64 HREL NETWORK SEGMENT NO.	CONCEPTUAL SCOPE	CONCEPTUAL ESTIMATE
4C (LaSalle Ave. to Settlers Landing Road)	<ol style="list-style-type: none"> 1. widening of eastbound and westbound lanes from about MM265.5 to about MM267.8; rehabilitation of existing lanes and an additional 12' wide travel lane in each direction 2. conversion of one general purpose lane to a HOT lane in each direction (for 2 general purpose + 2 HOT final configuration) 3. bridge replacement and rehabilitation¹ as follows: <ol style="list-style-type: none"> a) eastbound Hampton River bridges (replacement) b) westbound Hampton River bridge (widen and rehabilitate) c) eastbound and westbound portions of the bridge over King Street (widen and rehabilitate) d) westbound portion of bridge over Settlers Landing Road (widen and rehabilitate) 4. installation of tolling gantries, signage, and other physical assets to support the tolling solution 5. realignment of Interstate ramps, as needed 6. right-of-way acquisition (estimated 92 parcels impacted) and utility relocations 7. installation of sound barriers 8. any additional related work necessary to accomplish the above-defined scope 	\$526,537,729

¹ Each bridge will be investigated during scoping and preliminary design to determine the appropriate recommendations for this project. This analysis will include the bridge over Rip Rap Road, which is currently anticipated to remain in place without widening, rehabilitation, or replacement.

I-64 HREL NETWORK SEGMENT NO.	CONCEPTUAL SCOPE	CONCEPTUAL ESTIMATE
Overall Segments 1, 3, and 4	1. network toll system integration by toll solution provider	\$39,156,350
GRAND TOTAL HREL PROJECT CONCEPTUAL ESTIMATE		\$939,672,593²

POTENTIAL ADDITIONAL HREL PROJECT SCOPE		
2C (Battlefield Boulevard to Bowers Hill Interchange) pursuant to Sec. 3.03(b) (<i>High Rise Bridge Additional Work</i>) of the <i>Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network</i>	1. modifications to roadway, pavement, and drainage infrastructure along the Interstate 64 median to accommodate the conversion of the shoulders into part-time HOT lanes 2. any additional related work necessary to accomplish the above-defined scope	\$34,200,000 ³

² Grand total does not include estimated (i) \$25,000,000 for civil costs associated with Segments 2A and 2B, and (ii) \$13,000,000 for tolling integration costs associated with Segment 2. In each case, these will be funded as Applicable Revolving Account Costs, advanced by the Department and repaid in accordance with Section 6.03(a) (*Revenues Waterfall*) of the *Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network*.

³ Not included to the extent this portion is funded by residual contingency reserve funds from earlier projects under Section 3.03(a) (*Additional High Rise Bridge Work*) of the *Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network*.

EXHIBIT 7

[intentionally omitted]

EXHIBIT 8

Conceptual Funding Plan

EXHIBIT 9

Model Standard Project Agreement for Funding and Administration

EXHIBIT 9

**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: _____

HRTAC Project Number: _____

This Standard Project Agreement for Funding and Administration (the "Agreement") is made and executed in duplicate on this ____ day of ____, 20__, 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 _____, 2020 (the "Master Agreement");

WHEREAS, the Master Agreement contemplates that HRTAC may from time to time enter into 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; 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:

1. VDOT's Obligations

VDOT shall:

- a. 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 1.h below or as follows:
 - i. 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 1.a.i, 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).

- ii. 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).
 - iii. 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.
- b. Without limiting the foregoing, VDOT shall:
- i. 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;
 - ii. 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.

- iii. Involve HRTAC in any procurement consistent with the terms of the Master Agreement.
- c. Perform or have performed in accordance with VDOT's standards for highways, bridges and tunnels 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).
- d. 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.
- e. 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.

- f.
 - i. 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.
 - ii. Provide HRTAC’s Executive Director with the monthly reports described on Appendix D.
- g. 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.
- h.
 - i. 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 6 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 1.h.i(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 6, 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.

- ii. 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.

- iii. 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 1.h.i 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.
- iv. 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 1.h.iii 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.
- i. Release or return any unexpended funds to HRTAC no later than 90 days after final payment has been made in respect of the Project.
- j. 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.
- k. 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.

- l. 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.
- m. 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 bond trustee, as additional insureds on any such insurance policy, and present HRTAC with satisfactory evidence thereof before any work on the Project commences.
- n. 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).
- o. 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. 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).

- p. Comply with all applicable federal, state and local laws and regulations, including without limitation requirements of the Virginia Public Procurement Act.
- q. 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.
- r. 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.
- s. 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.
- t. 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.

- u. With respect to modifications to any agreement with a contractor, concede to HRTAC any resulting savings, if HRTAC is 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.
- v. Include in any agreement with a contractor an assessment of liquidated damages if either substantial completion or final acceptance is not achieved by the applicable deadline. Unless otherwise agreed by the parties acting reasonably, the benefit of any liquidated damages (as well as other damages paid by a contractor, insurance proceeds, or recoveries from third parties) received by VDOT in relation to (a) Project costs that HRTAC funded or (b) adverse effects to toll revenues, shall be for the benefit of HRTAC.
- w. 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 either 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.

2. HRTAC's Obligations

HRTAC shall:

- a. Subject to the limitations as to amounts set forth in Appendix B (and subject to Section 6 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.
- b. 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.

- c. 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.
- d. Route all of VDOT's accelerated or supplemental requests for funding from HRTAC under Sections 1.e and 1.h, 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.
- e. 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.
- f. 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 1.l 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 1.I of this Agreement to reimburse funds to HRTAC, the parties should engage in dispute resolution as provided in Section 4 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.

- g. 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.
- h. 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.
- i. 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.

3. Term

- a. 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.
- b. 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 6 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.

- c. 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. HRTAC will provide VDOT with sixty (60) days written notice that HRTAC is exercising its rights to terminate this Agreement and the reasons for termination. 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 where VDOT has either misused or misapplied HRTAC funds in contravention of this Agreement or applicable law.
- d. Upon (a) expiration or earlier termination of this Agreement and (b) payment of all eligible expenses as set forth in Section 3.c 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.

4. 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.

5. 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. 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 (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 (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.

6. Appropriations Requirements

- a. 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.
- b. 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.
- c. 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.

- d. 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.

7. Representations and Warranties

- a. VDOT hereby represents and warrants to HRTAC as of the date of this Agreement as follows:
 - i. 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;
 - ii. 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;
 - iii. 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;
 - iv. 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
 - v. 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.

- b. HRTAC hereby represents and warrants to VDOT as of the date of this Agreement as follows:
 - i. 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;
 - ii. 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;
 - iii. 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;
 - iv. 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
 - v. 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.

8. 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*).

9. 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

10. Assignment

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

11. 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.

12. 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.

13. 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.

14. Sovereign Immunity

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

15. 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.

16. 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.

17. 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 1.d, 1.i, 1.l, 1.o, 1.q, 1.s, 1.v, 2.e and 2.g, and Sections 3 through 17.

[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
PROJECT

APPENDIX B

PROJECT BUDGET AND PROJECT SCHEDULE

APPENDIX C

FORM OF PAYMENT REQUISITION

HRTAC Project Title and Number: _____

Project Scope/Services Description: [From Appendix B] _____

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: _____ Request Date: _____
HRTAC Project Number: _____ Project Title: _____

Cost Category	HRTAC Approved Project Costs	Total PayGo Requests Previously Received	PayGo Requisition Amount this Period	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

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.

EXHIBIT 10

Additional High Rise Bridge Work

Purpose: The purpose of the Additional High Rise Bridge Work is to modify the roadway and drainage infrastructure of the High Rise Bridge Expansion Project to accommodate the future conversion of the HOT lane shoulders to Part-Time Shoulder (PTS) HOT lanes.

Scope: The project scope includes:

- (i) shifting roadway crown locations between Route 17 and Great Bridge Boulevard two feet towards the outside (as a result of hard shoulder running being eliminated from the scope of the High Rise Bridge Expansion Project),
- (ii) changing inside shoulder cross slopes to Interstate travel lane standards to accommodate future lane reconfiguration from twelve-foot HOT lane and fourteen-foot shoulder to two eleven-foot HOT lanes and four-foot shoulder,
- (iii) adding drainage structures in median to prevent design event spread from encroaching into PTS HOT lanes,
- (iv) extending acceleration lanes to VDOT standard lengths on (a) Route 17 northbound to Interstate 64 westbound ramp and (b) Interstate 464 southbound to Interstate 64 eastbound ramp, and
- (v) adding conduits for future ITS system.

Project Limits: The project limits are along Interstate 64 between 0.295 miles east of Interstate 264 at Bowers Hill and 1.018 miles east of Interstate 464 (*i.e.*, 9.03 miles in total, and the same project limits as the High Rise Bridge Expansion Project).

EXHIBIT 11

[Intentionally Omitted]

EXHIBIT 12

Tolling Operations and Maintenance Standards

Capitalized terms used but not defined herein shall have the meanings given them in the Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network among the Hampton Roads Transportation Accountability Commission, the Commonwealth Transportation Board, and the Virginia Department of Transportation (together with the agreements contemplated thereby, the “Agreement”).

As used herein “Tolling Operator” means: (i) the Department when it is responsible under the Agreement to perform the Tolling O&M Duties (whether (a) before the Transition Date or (b) thereafter, only if after the Transition Date the Commission engages the Department to provide the applicable service), or (ii) the Commission when it is responsible to perform the Tolling O&M Duties, unless the Commission has otherwise engaged the Department to provide the applicable service.

A. ETC Performance Requirements

- I. Roadside equipment shall have an In Service Availability (**ISA**) of at least 99.9%. This shall exclude scheduled downtime and loss of power or any other condition beyond the Tolling Operator’s control despite its exercise of reasonable diligence consistent with industry standards in effect at the time.
- II. The electronic toll collection (**ETC**) system that is used to capture and record transactions shall have an ISA of at least 99.9%, excluding scheduled downtime and loss of power.
- III. At least 99.8% of transponder records shall be correct; *i.e.*, the data supplied are complete and relate correctly to the transponder detected for properly fitted and operating transponders, and excluding non-normal operation due to signal attenuation from a metallic windscreen or other similar condition beyond the control of the Tolling Operator.
- IV. At least 99.5% of payment claim records shall be correct; *i.e.*, the data supplied are complete and relate correctly to the payment due for the trip, the displayed prices, and the transponder to which it relates, excluding the effects of other conditions beyond the control of the Tolling Operator despite its exercise of reasonable diligence consistent with industry standards in effect at the time.
- V. Transponder based transactions shall be transmitted to the Department according to the current interface specification, or as otherwise agreed between the Department and the Tolling Operator, within three (3) business days unless written agreement has been obtained from the Department (which agreement will not be unreasonably withheld).

- VI. Records of transactions for which the transponder was not valid or where a transponder was not read shall be submitted for attempted posting via video toll (“VToll”), also known as image-based toll, and shall be made according to the published VToll interface and business rules in effect at the time.
- VII. Any transactions that include the read of a valid transponder at the time of the transaction that are not submitted within sixty (60) days may not be collected by the Tolling Operator.
- VIII. As described in Section B below, tag status files will be supplied by the Department (in accordance with the Electronic Toll Collections Agreement). Such tag status files will be loaded and distributed through the system and used to identify the status of each transponder transaction. This should be completed such that transactions with an entry date and time within one (1) hour of receipt of the tag files from Department are processed according to the status in that file 99% of the time (assuming a confirmed accurate tag status file from the Department), excluding the effects of other conditions beyond the reasonable control of the Tolling Operator.
- IX. The tag number captured from a tag shall be recorded without error at least 99.999999% of the time (no more than one error in 10 million). This is subject to the transponder supplier performance requirements.
- X. In the event that the Department receives two or more representations from customers in a calendar month claiming to have been charged an Express Lanes Network toll from the same toll point while using the general purpose lanes, the Tolling Operator shall present to the Department a management plan to investigate system performance. The Department and Tolling Operator agree that the customer confidence in the tolling system is essential and that misreads from the general purpose lanes must be addressed as a matter of urgency.
- XI. Accuracy for correctly assigning the transponder to the correct vehicle (and therefore license plate) shall be at least 99.5% for properly fitted and operating transponders, and excluding non-normal operation due to signal attenuation from a metallic wind screen or other similar condition beyond the control of the Tolling Operator despite its exercise of reasonable diligence consistent with industry standards in effect at the time.

B. Transactions

- I. The Department (in accordance with the Electronic Toll Collection Agreement) will supply tag status information, which should be loaded and distributed through the system and used for each transaction to ensure that images are recorded for the correct vehicles.

The Department reserves the right to reject duplicate transactions based upon accepted E-ZPass business rules.

- II. The Tolling Operator shall use commercially reasonable efforts to ensure that requests for payment are made only from accounts on the list of current active tags transmitted by the Department.
- III. Upon notification that the Tolling Operator has requested payment from an account that the Department has previously informed the Tolling Operator is invalid or no longer in good standing, the Tolling Operator must reconcile or audit the data transmission within three (3) business days to identify all other instances in which, notwithstanding receipt of such information from the Department, the Tolling Operator submitted a request for payment from that account.
- IV. The Tolling Operator shall use commercially reasonable efforts to ensure that no duplicate transactions or incorrect toll amounts are transmitted to the customer service center.
- V. Statements, invoices, and notices for transactions not paid by transponder shall accurately display the registered vehicle owner (or other party legally responsible for the tolls) name and address as received from the appropriate legal party (*e.g.* DMV), the date, time, and location of individual trips with associated tolls and fees, totals for the customer 99.99% of the time. Such notices or invoices shall be issued within sixty (60) days of transaction unless held-up by customer look-up delays by third parties not under the control of the Tolling Operator, provided that the Tolling Operator requested lookup data within ten (10) days of entry or correction of license plate data. Transactions not issued within sixty (60) days by the Tolling Operator due to system or operational issues within the control of the Tolling Operator may not be collected by the Tolling Operator. For the avoidance of doubt, where a recipient of a toll violation notice or invoice has referred such notice or invoice to a different individual by means of a signed affidavit, the 60-day period contemplated above shall begin anew with respect to such newly identified individual.
- VI. Complete trip records – The Tolling Operator shall ensure all contiguous tolling detection points in a single travel direction are incorporated into a single trip record accurately no less than 99.5% of the time.
- VII. Upon notification from the transaction processing system of a duplicate transaction or an incorrect toll amount on a per transmission basis, the Tolling Operator must reconcile or audit the applicable data transmission within three (3) business days to identify any and all other duplicate transactions or incorrect toll charges that may have occurred and shall transmit correction files or requests for toll corrections to the customer service center for action.

- VIII. Within five (5) business days of identification of a duplicate transaction, the Tolling Operator shall transmit the information in accordance with the Electronic Toll Collections Agreement.
- IX. Following receipt of two or more verified complaints within thirty (30) days of transponder reads from vehicles traveling in the general purpose lanes emanating from a single toll point the Tolling Operator shall investigate the complaints. In the event that a cross-read occurred or reasonable doubt exists as to whether a cross-read occurred, the Tolling Operator shall, within fifteen (15) days of receipt of such second complaint, prepare correspondence that can be sent to all customers who have made such a complaint regarding the erroneous general purpose lane reads. The Tolling Operator shall outline for the Department the issue with reads from tags in the general purpose lanes within fifteen (15) days of the receipt of such second complaint.
- X. Within seven (7) days of receiving notice that an incorrect toll amount has been charged (and provided that customer information has been provided) and that the incorrect charge has been validated, the Tolling Operator shall provide the customer service center with correspondence to be sent to the customer informing the customer that his or her account will be credited.
- XI. Within five (5) days of discovery or notice from the Department that an incorrect toll has been charged, the Tolling Operator shall submit a plan to the Department for approval to rectify the billing problem.
- XII. For any instance in which tolls may have been assessed during a period in which there was a communications failure with toll signage such that there may not have been a displayed toll rate that corresponds to the rate assigned to the trip record, the Tolling Operator will develop a commercially reasonable policy and communications plan to address/mitigate customer inquiries or complaints.
- XIII. During instances where the posting of trip records is interrupted, resulting in a material backlog of records, the Tolling Operator, at the Department's sole discretion, may be required to limit the posting rate of records and require First In, First Out (FIFO) sorting in order not to overwhelm customer account balances.
- XIV. Any trip requiring a rating adjustment after being sent to the CSC for account posting shall be adjusted using the automated corrections interface identified by the CSC and such adjustment shall be initiated within 48 hours of notification or discovery. Discretionary adjustments to trip pricing shall be initiated within seven (7) days.
- XV. The Tolling Operator shall provide monthly reports to the customer service center (CSC) regarding toll transactions and revenue to include: ETC transaction and revenue with

HOV and non-revenue transaction breakout (transponder and license plate), violation transactions, and associated toll revenues.

- XVI. The Tolling Operator shall ensure that, at all times, dynamic message signs along the Express Lanes Network display accurate information about toll rates and other travel information. Upon notification of the display of an incorrect toll amount, the Tolling Operator shall, as soon as commercially practicable, but in any event within one (1) business day, reconcile or audit the transmission data to identify any and all other customer accounts that may have been impacted by the incorrect signage (to be determined on a per transmission basis).
- XVII. The Tolling Operator shall comply with standards applicable to the retention of and use of customer records pursuant to Law, including § 33.2-504 of the Code of Virginia.

C. Customer Service Requirements

- I. The Tolling Operator shall develop a customer outreach and education program relating to facility operations for the Department's review and approval three (3) months prior to the commencement of tolling operations.
- II. Where contact details of customers have been provided, the Tolling Operator shall respond to customer inquiries and complaints about the HOT Lanes within three (3) business days.
- III. The Tolling Operator shall answer customer phone calls within 45 seconds 90% of the time a customer elects to speak with a live customer service representative. Reports indicating call response performance shall be made available to the Department on a monthly basis.
- IV. The Tolling Operator shall implement a Customer Relations Management tool that minimally tracks customer interaction and resolutions by description, date, and time.
- V. The Tolling Operator shall perform annually a 3rd party customer service assessment review and certification. Results of the review shall be provided in a report to the Department along with any necessary plans to address identified deficiencies.
- VI. The Tolling Operator shall be required to provide customer service call recordings for a period up to ninety (90) days (or such other time period as provided by applicable rules and regulations) upon Department request when approved by the affected customer.
- VII. The Tolling Operator shall develop an application for all mobile phone operating systems that provides customer access to real time toll pricing and a mechanism for customers to

pay a toll before it moves to invoicing or violation processes (a.k.a., “Missed-a-Toll”) feature.

D. Violation Processes

- I. For a trip record associated with a transponder owned by the Commonwealth that is not accepted by the CSC due to insufficient account balances, the Tolling Operator shall attempt to re-process the trip record in accordance with Virginia statute or the current Electronic Toll Collection Agreement. Failure to process the trip record through the re-try process will result in one final attempt to process the trip record using the vehicle’s license plate prior to proceeding to a violation remedy process.
- II. The Tolling Operator shall offer a Missed-a-Toll feature to allow customers to address outstanding toll obligations prior to proceeding to a violation remedy process.
- III. The Tolling Operator, if reasonably requested by the Department, shall provide audited support for the computation of administrative fees in addition to the actual toll amount.
- IV. Any mailed notice that is returned to the Tolling Operator as a result of an incorrect address shall require a re-start of the respective process once the proper mailing address has been confirmed.
- V. The Tolling Operator shall maintain a record of all mailed notices initiated by the back office solution and delivered to the United States Postal Service.
- VI. Any caching of address information related to a vehicle’s license plate shall be refreshed every sixty (60) days.
- VII. The Tolling Operator shall ensure that any incorrect information returned from a lookup database, including license plates that are systematically misidentified, can be flagged for manual handling to prevent continued incorrect notices being sent to customers.
- VIII. The Tolling Operator shall implement address correction software and skip tracing technologies to facilitate the accurate transmission of invoices.

E. HOV and Lane Encroachment Enforcement

- I. Vehicle passage under a toll gantry point shall determine whether the transponder is in HOV or Toll mode. The time of crossing as well as switch position will be written back to the transponder. HOV enforcement shall use visual alert beacons mounted over each lane, which shall provide the state of the transponder – *i.e.*, activated for HOV or not activated for non-HOV. Tolling Operator shall enforce HOV rules.

- II. Electronic Toll and Traffic Management (**ETTM**) system shall be capable of using electronic means to monitor vehicle occupancy. Processes need to account for automated deficiencies and supplement with manual certification to ensure accuracy of at least 99% for any potential subsequent invoice or toll that is applied to a falsely claimed HOV declared trip. Before any invoice or toll adjustment is pursued in respect of such a trip, at least one notice shall be provided to the E-ZPass account holder, through the Department, in advance to allow the customer to dispute the finding.
- III. Physical separation between GP and HOT lanes is not present on all portions of the HREL. In these portions where physical barriers do not exist, the Tolling Operator shall use commercially reasonable enforcement measures that are designed to deter vehicle access to HOT lanes except at the designated access points, with a goal of identifying and enforcing the rules on at least 65% of violators who commit the offense more than once.

F. Roadside ETC Support and Maintenance

The Tolling Operator shall support and maintain all roadside ETC equipment and infrastructure installed related to the HOT Lanes operations.

G. Information Technology Support and Maintenance

The Department and the Tolling Operator each shall carry out information technology service management in accordance with generally accepted VDOT Hampton Roads District practice.

H. Anti-Virus Scanning and Protection and Hacking Protection

- I. The Tolling Operator shall maintain customary (and updated) anti-virus, hacking, and protection procedures to protect the ETTM system from viruses and other destructive devices, and to manage the impact of virus attacks including transmission to the Eastern Region Operations (ERO) ATMS or other Department or third- party systems.
- II. The Tolling Operator shall immediately notify the Department of any viral outbreak or similar destructive outbreak upon identification.

I. Interfaces

The Department and the Tolling Operator each shall continuously monitor the manner in which its respective computer systems interface with the other's systems to ensure the operational integrity of the integrated ETC system. The monitoring should include availability, throughput, performance, buffer usage, queue lengths, hardware status, system alarms and warnings, and any other diagnostic data provided by the Department or the Tolling Operator's implementation of the interfaces. Reports on monitoring statistics shall be available to the other party upon request within five (5) business days. Any delays in processing and transmitting transactions in excess of two (2) business days shall be communicated to the other party along with an action plan for addressing the delays.

J. System Back-up and Recovery

- I. The Tolling Operator shall implement industry standard data security measures for the ETMM system, including the following:
 - a. Backup of all software and configuration following each release of, or change to, the system, including any disaster recovery site;
 - b. Daily back-up of all new and changed data held on the tolling system;
 - c. Provision of the means for the daily back-up to be maintained at a secure off-site location within twenty four (24) hours (or other agreed timeframe); and
 - d. Storage of one (1) month of the data back-ups in a secure off-site location.
- II. Backups shall not affect the ETC system's ability to capture, store or process detection data.

K. System Failure

- I. The Tolling Operator shall notify the Department without delay upon becoming aware of any event or the likely event of any system failure that results in a critical element of the ETMM system not functioning, or that results in or is likely to result in a material adverse impact on the public (which shall include, without limitation, a material threat to public safety), the Department, or a third party.
- II. The Department will notify the Tolling Operator without delay upon becoming aware of any event or the likely event of any system failure that results in a critical element of the ERO Traffic Operations Center (TOC) ATMS or the Department's customer service center not functioning, or that results in or is likely to result in a catastrophic impact on the public, the Tolling Operator, or a third party.
- III. Where the relevant system failure was caused by the Tolling Operator or its agents and it affects or may affect a third party, the Department, or its agents, the Tolling Operator shall cooperate fully with the Department and provide the Department with all available assistance that is reasonably necessary to resolve the relevant system failure expeditiously with the third party, the Department, or its agents, as appropriate.
- IV. Where the relevant system failure was caused by the Department or its agents, the Department shall cooperate fully with the Tolling Operator and provide the Tolling Operator with all available assistance that is reasonably necessary to resolve the relevant system failure expeditiously with the third party or Tolling Operator, as appropriate.

EXHIBIT 13

Maintenance Protocol

I. Reporting, Implementation, and Communication

- a. Annually, during September (not later than the 20th day of such month), the Department shall prepare and deliver to the Commission a ten-year Life Cycle Maintenance Plan with respect to the following (limited in each case to Roadway O&M Work and excluding Tolling O&M Duties): (i) the Initial Interstate 64 Express Lanes Network (including, without limitation, the structures and assets that support or are incorporated into the network); (ii) all general purpose lanes that run in conjunction with the Initial Interstate 64 Express Lanes Network (including, without limitation, the structures and assets that support or are incorporated into the lanes); and (iii) maintenance activities under the control of the Department (*i.e.*, performed by the Department or one of its contractors or otherwise performed at the Department's direction) on other roadways that could reasonably be expected to impact the use of the Initial Interstate 64 Express Lanes Network ((i) through (iii), collectively, the "Covered I-64 Network"). Such Life Cycle Maintenance Plan will describe all planned maintenance activities for the upcoming twelve (12) months (the "Annual Maintenance Plan"), and all planned major maintenance activities for the following ten (10) years.
- b. On or prior to each Friday, the Department shall deliver to the Executive Director a detailed list of all planned lane closures affecting the Covered I-64 Network for the upcoming week.
- c. The Department will coordinate all maintenance activities restricting use of or access to the Covered I-64 Network in accordance with the Department's Best Practices and IIM-OD-16-03 (*Communication Regarding VDOT Lane Closure Coordination and Implementation*) in practice as of the Effective Date, or such updated version thereof as the Department may periodically adopt from time to time, provided that any such update also has statewide applicability, addresses changes in travel and traffic patterns, and is consistent with the Department's customary practices.
- d. In the event an Emergency requires the Department to undertake maintenance activities immediately, the Department shall undertake such maintenance activities without delay and will provide notice to the Executive Director as soon as practicable, but in any event within 24 hours of the onset of the emergency maintenance activities.

II. Maintenance Standards

- a. The Department will perform all maintenance activities in accordance with the Department's Best Practices.
- b. The Department will undertake all maintenance activities in a manner designed to minimize disruptions to the Covered I-64 Network, and minimize disruptions to the overall system of highways within Hampton Roads.
- c. The Department will complete maintenance activities during periods of low traffic and nighttime hours, to the extent feasible.
- d. With respect to the foregoing, limitations of operations for maintenance activities shall be in accordance with the April 2019 version of the *Allowable Lane Closure Hours for the State Highway System in Hampton Roads District* or such updated version thereof as the Department may periodically adopt from time to time, provided that such update also addresses changes in travel and traffic patterns, and is consistent with the Department's customary practices.

III. Definitions

As used herein:

Capitalized but otherwise undefined terms have the meanings set forth in the *Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network* among the Commission (HRTAC), the Department (VDOT), and the Commonwealth Transportation Board.

“Best Practices” means the procedures, methods, and guidelines that, as of the applicable time (taking into account the Department's research and experience), the Department has adopted as its preferred procedures, methods, and guidelines with respect to maintenance and operations, which, without limiting the foregoing, will be consistent with industry leading practices.

“Emergency” means any unplanned event or condition along the Covered I-64 Network that: (i) presents an immediate or imminent threat to the long term integrity of any part of the Covered I-64 Network, to property adjacent to Covered I-64 Network, to the environment, or to the safety of road users or the traveling public; (ii) has jeopardized the safety of road users or the traveling public; or (c) is a declared state of emergency pursuant to Commonwealth or federal Law.

EXHIBIT 14

Form of Electronic Toll Collection Agreement

EXHIBIT 15

Form of Violation Processing Services Agreement

This VIOLATIONS PROCESSING SERVICES AGREEMENT (this “Agreement”) is made and entered into this [●] day of [●] 20[●], by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION (“VDOT”) and the HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (the “Participant”).

RECITALS

WHEREAS, Participant is the operator of the Facility (defined below); and

WHEREAS, in connection with the Participant’s operation of the Facility, the Participant desires to contract with VDOT to obtain certain violation processing services.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, VDOT and the Participant hereby agree as follows:

ARTICLE 1 – DEFINITIONS

Section 1.1 The terms set forth below will have the meanings set forth adjacent to them.

Facility means, within the Commonwealth of Virginia, the network of contiguous high-occupancy toll lanes or other dynamically-price travel lanes, in each direction, between (i) the interchange of Interstate 64 and Jefferson Avenue in Newport News and (ii) the interchange of Interstate 64, Interstate 264 and Interstate 664 in the Bowers Hill section of Chesapeake.

Facility System means a violation enforcement system at the Facility.

Master Agreement means the Master Agreement for Development and Tolling dated [●] between VDOT and Participant relating to the tolling of the Facility.

Participant means the Hampton Roads Transportation Accountability Commission.

VDOT means the Virginia Department of Transportation.

Violations Processing Center means a facility established to provide the Violations Processing Services, including all necessary or convenient data and communication lines, office supplies, equipment, and personnel.

Violations Processing Effective Date means the date on which VDOT commences providing the Violations Processing Services to Participant which shall be the Transition Date(as defined in the Master Agreement), unless the parties otherwise agree in writing.

Violations Processing Services means the services identified in Exhibit A.

VPS Provider means a third-party provider of Violations Processing Services to VDOT.

ARTICLE 2 – VIOLATIONS PROCESSING SERVICES

Section 2.1 Provision of Violations Processing Services. VDOT agrees to provide the Violations Processing Services to the Participant for the Facility, beginning as of the Violations Processing Effective Date, subject to the terms of this Agreement, including, but not limited to the Business Rules and Procedures set forth in Exhibit B and the Fee Schedule and Payment Provisions set forth in Exhibit C. VDOT may contract with one or more private companies for the provision of such Violations Processing Services.

Section 2.2 Violations Processing Centers. Subject to the limitations of and in accordance with the Business Rules and Procedures, VDOT shall establish, maintain, administer and operate (or cause the establishment, maintenance, administration and operation of) one or more Violations Processing Centers. VDOT will provide reasonable advance notice to the Participant, but not less than thirty (30) days' notice of any planned changes to the Violations Processing Center location, its operations and/or service requirements that affect the Participant and will, with good faith cooperation, seek the Participant's comments on any such changes and incorporate mutually agreeable proposals.

Section 2.3 Toll Violations Records. VDOT shall maintain or cause to be maintained a record of all toll violations processed under this Agreement, including fees, charges and penalties for such toll violations, notices, collections, enforcement requests sent to a third party (such as a collection agency or law enforcement agency), administrative dispositions of such toll violations, correspondence relating to toll violation enforcement, and the outcome or resolution of such toll violations, all in accordance with the Business Rules and Procedures. VDOT shall handle, store and dispose of, or cause to be handled, stored, and disposed of, violation images and data in compliance with applicable laws, including Virginia Code §§ 46.2-819.1 *et seq.*, and the records retention and destruction provisions of the Business Rules and Procedures. To the extent permitted by applicable law, all such records shall be available for audit and inspection by the Participant during normal business hours and upon reasonable notice.

Section 2.4 Performance of Violations Processing Services. VDOT shall perform itself or shall cause the VPS Provider to perform the Violations Processing Services in accordance with this Agreement. If Participant gives VDOT a written notice stating that the VPS Provider is not performing its duties and obligations, and specifying the reasons, VDOT shall promptly give the VPS Provider notice to such effect and require VPS Provider to perform in accordance with the VSP Provider's agreement with VDOT. VDOT shall apprise the Participant of all decisions relating to any such situation and seek and take into consideration the Participant's advice and input relating to any such matters. Participant acknowledges and agrees that the VPS Provider has the discretion to pursue or not to pursue violations by initiation of legal proceedings, as provided by the Business Rules and Procedures. VDOT shall promptly notify Participant of such events or conditions that are anticipated to materially affect the provision of Violations Processing Services under this Agreement, including with respect to amendments or changes to or matters under the E-ZPass Operations Interagency Agreement and

the E-ZPass Reciprocity Agreement (a “Material Change Notice”). VDOT shall use commercially reasonable efforts to give Participant each applicable Material Change Notice not less than 120 days’ before the date upon which the event or condition is anticipated to occur. Upon receipt of any Material Change Notice, Participant may terminate this Agreement by giving written notice to VDOT, which termination will be effective upon the date specified by Participant, which shall not be less than 30 days or greater than 120 days after receipt of the Material Change Notice.

Section 2.5 Additional Plazas and Lanes. The parties acknowledge that this Agreement provides only for Violations Processing Services in respect of the Facility. Violations Processing Services for additional facilities may be added pursuant to mutual written agreement.

Section 2.6 VDOT Standard of Care. VDOT will exercise due care and diligence in providing Violations Processing Services, planning and implementing modifications, upgrades and associated testing of its Violations Processing system at levels which are reasonable given the schedule, scope and budget for such system. However, VDOT expressly disclaims any and all liability for, and provides no guarantee against, system failures, interruptions or other malfunctions; while industry standard precautions will be taken by VDOT to help mitigate the risk of occurrence of such adverse impacts, VDOT shall not be financially responsible for the occurrence of any adverse impact to the Participant or other third parties.

Section 2.7 Relationship to ETC Agreement. Violations Processing Services hereunder shall not constitute “ETC Services” under and as defined in the Electronic Toll Collection Agreement between the Participant and VDOT.

ARTICLE 3 – PARTICIPANT

Section 3.1 Participant Policies and Operating Procedures. Participant shall consult with VDOT regarding Participant’s policies and operating procedures that relate to and have an effect on the Violations Processing Services. To the extent that any of the Participant’s policies and operating procedures would have a material adverse effect on the operations of the Violations Processing Center, VDOT and the Participant shall engage in good faith discussions regarding the implementation of such policies and procedures in order to mitigate such effects. If Participant’s policies and operating procedures or any revisions thereto (a) deviate materially from those used by other participants contracting with VDOT for Violations Processing Services (the “Prevailing Policies and Procedures”), and (b) result in a material increase in VDOT’s direct costs of providing the Violations Processing Services, VDOT shall immediately provide the Participant with notice of, and reasonable detail regarding, such cost increases. Unless Participant otherwise conforms its practices to the Prevailing Policies and Procedures, Participant shall reimburse VDOT for VDOT’s associated direct costs within 30 days after VDOT provides the Participant written notice thereof. Such written notice shall include adequate and detailed documentation of the costs.

ARTICLE 4 – FACILITY SYSTEM

Section 4.1 Facility System.

(a) In order for VDOT to provide Violations Processing Services, the Participant shall provide, install, maintain and operate at its Facility a Facility System, which shall be compatible with VDOT's system, and shall be capable of capturing a video image of a license plate, and other pertinent information of a vehicle that does not pay the proper toll amount, and shall provide violation processing capabilities consistent with the further requirements of this Agreement. The Participant shall provide and install all equipment, components, hardware, software, cabling, and any other materials and services required for this function. VDOT and/or the VPS Provider shall provide data formats, documentation, interface requirements and any other necessary design information, including updates and modifications, to the Participant in a timely manner and at no additional cost to the Participant other than as noted in the Fee Schedule and Payment Provisions set forth in Exhibit C.

(b) Participant shall be responsible for ensuring that the Facility System provides transaction data related to the Facility in the format required by VDOT from its program participants generally, which information shall be provided to Participant upon request. Participant's Facility System shall be capable of capturing a violation transaction, consisting of transaction data and license plate images for each vehicle that does not pay the proper toll either manually or electronically. The captured image shall be associated with the correct transaction and sent to the Violations Processing Center for processing. No image captured by the Facility System shall include the face of any person in the vehicle after the image has been prepared for processing in accordance with applicable law. The license plate number and state shall be readable to a clerk during review on a violation processing workstation monitor.

(c) Should the Participant's Facility System send erroneous data that increases VDOT's cost of providing the Violations Processing Services, VDOT shall immediately provide the Participant with notice of such cost increases. The Participant shall reimburse VDOT for VDOT's associated direct costs within 30 days after VDOT shall have given the Participant written notice. Such written notice shall include adequate and detailed documentation of such costs.

Section 4.2 Testing Procedures and Results.

(a) Participant may make, and will be responsible for, any and all system maintenance, changes, modifications or upgrades to its Facility System, but such changes, modifications or upgrades shall be compatible with VDOT's operations and otherwise satisfy the requirements of this Agreement. Either party shall notify the other in writing at least 90 days in advance of any changes or modification to such party's violations processing system equipment that may affect the other's system, equipment, provision of services or operations in any material respect. VDOT's changes and modifications will be applied to its participants generally, and if any change or modification would materially increase Participant's costs or expenses relating to obtaining Violation Processing Services, then, in accordance with the principles in Section 2.4, VDOT shall provide Participant a Material Change Notice whereupon Participant shall have the right to terminate this Agreement.

(b) VDOT or its representatives will participate in acceptance testing and must approve testing of upgrades or other modifications to the Participant's Facility System, prior to processing of live violations through the Violations Processing Center. VDOT shall give the Participant reasonable advance notice of VDOT's testing of upgrades or other modifications to VDOT's violations processing system, including a successor to the then-current VPS Provider or Violations Processing Center, and shall allow the Participant or its representatives an opportunity to participate in such testing.

Section 4.3 Modifications. In the event that either party proposes upgrades or modifications, such party will provide proposed test schedules and scripts for such upgrades or other modifications to the other party and the VPS Provider at least 90 days in advance of testing. In the case of upgrades or modifications to the Participant's Facility System, VDOT may reasonably require additional tests to be undertaken at the Participant's expense in order to confirm the accuracy and reliability in all aspects of the processing of violations. Copies of test results shall promptly be made available to the other party and the VPS Provider.

Section 4.4 System Performance. Both the Participant and VDOT shall report to the other within two (2) business days any system failure or degradation that may affect Violations Processing Services. In the event that the Participant is unable to send transactions for periods in excess of two (2) business days, the Participant must notify the manager of the Violations Processing Center prior to sending any backlogged violations transactions. If the Violations Processing Center is unable to process violation transactions for the Participant for any period in excess of 24 hours, VDOT shall notify the Participant within two (2) business days of such occurrence.

Section 4.5 Disputed Transactions. Disputed transactions shall be resolved as set forth in the Business Rules and Procedures.

ARTICLE 5 – MAINTENANCE

Section 5.1 Participant Responsibility. The Participant shall be responsible for the maintenance, repair, and operation of all necessary lane and computer equipment for its Facility System through and including its host computer to ensure that it performs hereunder and in accordance with the Business Rules and Procedures. In no event shall VDOT have any liability to the Participant for any losses suffered due to equipment failure or error in the Participant's Facility System from the lane level through the Participant's host computer. If VDOT gives the Participant a written notice stating that the Facility System is not operating in accordance with this Agreement or the Business Rules and Procedures, and specifying the reasons, the Participant shall promptly initiate appropriate corrective action. The Participant shall include VDOT in all material decisions relating to any such corrective action. The Participant shall notify VDOT of all changes in the Facility Systems that can reasonably be anticipated to affect VDOT or its provision of Violations Processing Services under this Agreement.

Section 5.2 VDOT Responsibility. VDOT shall be responsible for the maintenance, repair and operation of its Violations Processing system commencing from (but excluding) the Participant's host router and extending through and including telephone lines, routers, black boxes within the Violations Processing Center.

ARTICLE 6 – PAYMENT TERMS

Section 6.1 Payment Terms. The Participant agrees to compensate VDOT for Violations Processing Services, by paying to VDOT the fees and charges set forth in Exhibit C (as amended from time to time) that are applicable to the services requested by the Participant in accordance with Section 2.1. The parties acknowledge that Exhibit C contains a non-refundable initial set-up payment, in addition to ongoing transaction fees and charges. VDOT reserves the right to amend Exhibit C to revise, from time to time, the charges and fees for providing Violations Processing Services under this Agreement, which revisions shall take effect on such date as established by VDOT, but in no event before the expiration of 90 days from the delivery of notice of the revised charges and fees to the Participant, during which time Participant shall have the right to terminate this Agreement for convenience. VDOT shall invoice the Participant on a monthly basis for the Violations Processing Services in accordance with Exhibit C. The Participant agrees to remit payment to VDOT within 30 days of delivery of each such invoice.

ARTICLE 7 – TERM

Section 7.1 Term. The term of this Agreement shall commence upon the date of this Agreement, and shall terminate on that date which is the earlier to occur of:

- (a) June 30, 20[●], subject to automatic renewal for successive one year extensions, unless and until terminated by written notice delivered by either party to the other party at least 120 days prior to the end of the then current term; or
- (b) the effective date on which this Agreement is terminated by either party in accordance with its terms, as specified by delivery of written notice to the other party.

ARTICLE 8 – OPERATIONS

Section 8.1 Termination of VPS Operations. VDOT shall notify Participant of VDOT's intention to terminate its existing agreements with VPS Providers, its operations of its Violations Processing Center, and/or the provision of Violations Processing Services at least 120 days prior to undertaking same, absent exigent circumstances, in which latter case, VDOT shall provide Participant such notice as promptly as is practicable under the circumstances.

Section 8.2 Business Rules and Procedures. VDOT shall establish, maintain and amend, from time to time, the Business Rules and Procedures for Violations Processing Services. The current Business Rules and Procedures are annexed to this Agreement as Exhibit B. Any anticipated amendments shall be presented by VDOT and discussed at liaison meetings. VDOT will, in good faith cooperation, try to accommodate changes proposed by the Participant. However, VDOT has sole authority to amend the Business Rules and Procedures, which

amendments shall take effect on the date established by VDOT, but no sooner than the expiration of 90 days after delivery of written notice of the amendments to the Participant.

Section 8.3 Liaison and Meetings. Participant and VDOT each agree to meet with each other and VPS Providers to coordinate the administration and performance of this Agreement with each other and to conduct periodic meetings and liaison sessions to ensure the efficient provision of Violations Processing Services and the resolution of disputes that may arise under this Agreement.

ARTICLE 9 – DISPUTE RESOLUTION

Section 9.1 Dispute Resolution Generally. VDOT and the Participant will resolve any disputes which arise between them under this Agreement pursuant to the dispute resolution provisions of the Master Agreement.

ARTICLE 10 - DEFAULT

Section 10.1 Events of Default; Cure; Termination.

(a) A failure by either VDOT or Participant to fulfill their respective material responsibilities and obligations set forth herein will give rise to an event of default, respectively. Following the provision of notice of default by the non-defaulting party to the defaulting party, and the failure to cure the event of default within the period agreed upon pursuant to Section 12.1(b), the Agreement may be terminated in accordance with Section 10.1(c).

(b) If an event of default occurs pursuant to Section 10.1(a), the defaulting party shall have 60 days to cure such default; provided, however, that the 60-day cure period may be extended by mutual agreement.

(c) Following expiration of the cure period, unless such cure period is extended by mutual agreement, the non-defaulting party will have the right to terminate this Agreement by notice thereof to the defaulting party.

(d) VDOT shall incur no liability to the Participant for any actual or purported failure to properly maintain, repair or operate its violations processing system and the Violations Processing Center or its inability to continue to provide Violations Processing Services hereunder. Notwithstanding anything to the contrary set forth herein, if a default arises by reason of the failure of a VPS Provider to perform its contractual obligations to VDOT and VDOT is able to recover damages from that VPS Provider with respect to such failure, VDOT shall remit to the Participant such portion of the recovered damages as VDOT determines in its reasonable judgment to be fairly apportionable to the Participant, and VDOT shall provide the Participant information reflecting the rationale for its determination.

(e) Except as otherwise expressly provided by this Agreement, neither party shall have any liability to the other party for consequential damages.

ARTICLE 11 - MISCELLANEOUS

Section 11.1 Waivers, Modifications and Amendments. No waiver, modification, or amendment of any term, condition or provision of this Agreement will be valid or of any force or effect unless made in writing and signed by both VDOT and the Participant. The effect of any such change will be limited to the extent specified and agreed to by VDOT and the Participant, as evidenced by signatures of duly appointed officers of each of the parties.

Section 11.2 Captions. Captions, headings, cover pages and tables of contents contained in this agreement are inserted for convenience of reference only and in no way define, limit or prescribe the scope, intent or meaning of any provisions of this Agreement. All appendices, exhibits, or schedules attached hereto are hereby incorporated herein and made a part of this Agreement.

Section 11.3 Notices. All notices will be in writing and will be delivered personally, by telecopy, or by registered or certified mail, return receipt requested, addressed as follows:

Participant Mailing Address

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

VDOT Mailing Address

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

Section 11.4 Entire Agreement. This Agreement constitutes the entire agreement between VDOT and the Participant concerning the subject matter hereof and supersedes all prior negotiations, representations, and agreements about them, either oral or written; *provided, however* that the provisions of the Master Agreement, shall prevail in the event such provisions conflict with the terms of this Agreement.

Section 11.5 Force Majeure/Emergency. In case by reason of force majeure, either party will be rendered unable wholly or in part to carry out its obligations under this Agreement, then, provided such party will give notice and full particulars of such force majeure in writing to the other within a reasonable time after occurrence of the event or cause relied on, the obligations of such party so far as they are affected by such force majeure, will be suspended during the continuance of the inability then claimed, which will include a reasonable time for the removal of the effect thereof, and such party will endeavor to remove or overcome such inability with all reasonable dispatch. Any time period specified herein for the performance by such party of an obligation will be appropriately adjusted and extended without the necessity for any amendment to this Agreement if a force majeure event occurs.

Section 11.6 Assignment. Neither party may assign its rights and obligations under this Agreement except with the prior written consent of the other party.

Section 11.7 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia. 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.

Section 11.8 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 Follows]

IN WITNESS THEREOF, this Agreement has been entered into as of the first date set forth above, by the duly authorized officers of the parties hereto.

**VIRGINIA DEPARTMENT OF
TRANSPORTATION**

By: _____

Name: _____

Title: _____

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

By: _____

Name: _____

Title: _____

Violations Processing Services

Violations Processing Services shall include each of the following services if the box adjacent to any such service has been checked:

- ☐ Providing a manual image review of images and data transmitted from the Participant for the Toll Facility.
- ☐ Rejecting violation transactions that fail to meet appropriate criteria including image quality, valid transaction data, and front license plate image for tractor/trailer combinations.
- ☐ Identifying and communicating systematic issues with violation quality to the Participant.
- ☐ Processing requests from the Participant for specific violations dismissals due to equipment or other issues.
- ☐ Posting the transaction to the appropriate account for images associated with valid EZ-Pass accounts by transponder, license plate or vehicle owner name and address.
- ☐ Obtaining from the appropriate Department of Motor Vehicles or third party data provider the name and address of the owner associated with the recorded license plate number of each violating vehicle.
- ☐ Issuing by mail to such individual or entity one or more toll violation notices according to Business Rules.
- ☐ Quality control on the accuracy and appearance of notices.
- ☒ Escalating unpaid violations and amounts due according to Business Rules and issuing follow up notices.
- ☐ Imposing and collecting fees and tolls for toll violations, and waiving or crediting such fees and tolls.
- ☐ Providing customer service to support violation resolution via the web, in person service centers and telephone.
- ☐ Processing disputes for leased and rental vehicles and assigning violations to the driver of the vehicle.
- ☐ Providing monthly financial and processing reports of all amounts received, in respect to Participant's Toll Facility for the Participant to audit violation activity
- ☐ For unpaid violations meeting necessary criteria, as defined by the Participant, issuing summons by mail and by delivery to the appropriate sheriff and attending court hearings with the necessary evidentiary information.
- ☐ Recording and communication to the Participant the disposition of any court hearings.
- ☐ Working with the Participant on an ad-hoc basis to provide information to identify and allow the Participant to pursue egregious violators.

This scope of services may be modified in writing periodically to reflect funding constraints, modified business processes and new activities that are identified as beneficial to the violation processing program.

Business Rules and Procedures

[see attached]

Fee Schedule and Payment Provisions*[as of June 2020]***A. Fee Schedule.**

This preliminary fee schedule is subject to change as provided in Part B of this Exhibit C. Once the actual rates are established they will be reviewed and reset annually based on actual experience and operating costs, as provided in Part B of this Exhibit C. Fees will be assessed according to the following activities undertaken by service center:

- V1 – a transaction fee for each violation received by the central system;
- V2 – a transaction fee for each V-Toll processed by the central system;
- V3 – a system amortization fee allocated based on DMV look-up volume performed by VDOT;
- V4 – a processing fee assessed for each DMV look-up performed by VDOT;
- V5 – a transaction fee for each violation payment processed;
- V6 – a transaction fee for each violation administrative fee payment processed;
- V8 – a fee as a percentage of the value of violation payments processed (This percentage will be based on the average credit card and other financial transaction processing fees per violation dollar processed).
- V9 – actual costs incurred in pursuit of violations subsequent to mailing a final notice including costs to issues summons and attend court hearings or pursue unpaid violations via collections. The ceiling on these costs will be agreed in advance with the Participant.

Fee	Unit	Value
V1	Per Violations Image Loaded	\$0.10
V2	Per V-Toll	\$0.0649
V3	Per DMV Look-up by VDOT	\$0.78
V4	Per DMV Look-up by VDOT	\$1.20
V5	Per Notice	\$2.01
V6	Per Payment	\$7.56
V8	Percentage Fee	2.10%
V9	Actual costs incurred on behalf of Participant	Tracked monthly

Fees are progressive. By way of example, a violation that is cleared at the V-Toll stage would have \$____ netted against the toll; a violation that proceeds through collection at the Violations Processing Center after a single notice would be assessed \$____. Operators will also be invoiced monthly fee of ____% of payments processed.

In addition, the Participant shall pay VDOT an initial set-up fee that will be negotiated between the parties prior to the provision of any services pursuant to the Agreement.

B. Payment Provisions.

The foregoing costs and fees are preliminary and subject to change as provided below in connection with VDOT's annual review of the costs of providing Violations Processing Services.

Costs and fees under the Violations Processing Agreement shall cover the Participant's share of the actual costs of providing Violations Processing Services. VDOT shall review and, if appropriate, establish revised costs and fees on an annual basis and use its best efforts to provide notice thereof by April 1st in any year (for purposes of meeting the Participant's budget preparation cycle), and in any case provide not less than 60 days' notice of any proposed amendment and modification thereof and the effective or implementation date of any such revised costs and fees.

The Participant shall pay all such costs and fees, as provided in the Violations Processing Agreement.

EXHIBIT 16

Tolling O&M Duties

The Tolling O&M Duties are all the activities required to properly manage, operate, and maintain (including periodic replacement of components, as needed) the Tolling Infrastructure and System with respect to the Express Lanes Network. For the avoidance of doubt, when the Department is responsible under the Master Agreement for Development and Tolling (and/or the agreements contemplated thereby) to perform the Tolling O&M Duties (whether (a) before the Transition Date or (b) thereafter, assuming that after the Transition Date the Commission engages the Department to provide such services), the Department shall be responsible to perform both the Tolling O&M Duties and all other services that the Department would be required to perform if the Commission was performing the Tolling O&M Duties, such as, by way of example and not limitation, the Department E-ZPass Back Office Operations). The “Tolling O&M Duties” include, without limitation, the following:

1. the following services that “Participants” are required to perform under Electronic Toll Collection Agreements with the Department:
 - i. accept E-ZPass as a method of toll payment, generate and process E-ZPass transactions, and maintain the necessary interfaces to the Department’s E-ZPass program (which are requirements for all toll facilities within the Commonwealth);
 - ii. pay fees to the Department on both a toll transactional and revenue basis to cover the costs associated with Department E-ZPass Back Office Operations;
2. services necessary or required to operate and properly maintain the Tolling Infrastructure and System (inclusive of the electronic toll and traffic management (ETTM) systems) to manage, monitor, and enforce toll and traffic operations using:
 - a. surveillance cameras, vehicle detectors, and required signage deployed along the Express Lanes Network,
 - b. flexible delineators and pavement markings (including any reflectors) separating the HOT lanes from general purpose lanes,
 - c. Automated Traffic Management Systems gate equipment used to operate reversible HOT lanes (full-time) and HOT Shoulder lanes (part-time),
 - d. RFID antennas, cameras, sensors, vehicle occupancy detection, and other equipment mounted on gantries or other structures throughout the Express Lane Network,
 - e. support poles, signage structures gantries, roadside shelters, and cabinets associated with the ETTM systems,
 - f. power distribution (plus backup UPS and generators) and data communications infrastructure and equipment, along with the associated facility back office host systems needed to monitor traffic operations,

- capture and process toll and image-based transactions (without limiting the foregoing, all applicable data will be stored and backed up in a commercially reasonable manner), and
- g. technology to calculate, update, and display toll rates in accordance with the parameters of the dynamic pricing algorithm to ensure that minimum operating performance speeds (established under the applicable tolling policies in accordance with applicable law) are maintained;
3. services necessary or required to ensure that the ETTM systems accurately and consistently:
- a. capture signals from E-ZPass transponders mounted on vehicles or capture a clear image of the rear license plate of vehicles without a E-ZPass transponder signal, as well as an overview image of the rear of the same vehicle sufficient to identify the make and model of the vehicle,
 - b. detect the (i) transponder setting regarding the number of occupants in the vehicle and (ii) the actual number of occupants in the vehicle (in the case of both (i) and (ii), to determine compliance with HOV policy and enforce HOV policy),
 - c. package the captured data in a proper transaction format (E-ZPass or license plate image),
 - d. calculate, update, and display toll rates in accordance with the parameters of the dynamic pricing algorithm,
 - e. combine transactions into trips,
 - f. assign the proper toll rates to the trips, based on the price the motorists would have likely seen displayed just prior to entering the Express Lane Network,
 - g. transmit the transactions to the Department's statewide E-ZPass processing center for debiting either local E-ZPass accounts or accounts maintained by other E-ZPass agencies with time constraints noted in the Code of Virginia or other applicable state laws, agreements, or guidelines,
 - h. provide or arrange for violation processing services,
 - i. maintain detailed logs and summary data,

- j. meet key performance indicators articulated in any applicable third-party contract with an operator ultimately performing some or all of the Tolling O&M Duties, such as accuracy and availability, and
 - k. generate all reports necessary to maintain effective and accurate operations;
- 4. arrangement, in a commercially reasonable manner, for support staff, facilities, consultants, and vendors needed to monitor and maintain the ETTM systems and traffic operations within the Express Lane Network (and arrange for related work facilities), including:
 - i. toll and traffic operations center staff and field personnel;
 - ii. back office and call center staff to address motorist's questions and invoice processing; and
 - iii. consulting engineering, public agency staffing, toll system integrator and other field vendor personnel required to plan, monitor and maintain (over the life of the system) all the equipment (inclusive of hardware, software, and processes) required for the express lane traffic and toll operations and data host center, plus the tolling, power, variable message signage, UPS/generators, communications, computing equipment, statutory signage, spare equipment/parts and flexible delineators along the corridor (as well as maintenance of traffic vendors needed for shoulder or lane closures when servicing field equipment), safety service patrols, incident response teams, enforcement officers, and support for reversible lane operations.
- 5. the cyclical replacement over the life-cycle of the Tolling Infrastructure and System (inclusive of the ETTM systems) and associated components including flexible delineators, pavement markings, dynamic message signs, backup power, communications, access control gates, cameras, and sensors;
- 6. the cyclical replacement over the life-cycle of any other equipment and components required to carry out the Tolling O&M Duties (*e.g.*, the periodic replacement of safety service patrol and incident response vehicles, and other equipment and components, as needed); and
- 7. any other activities needed to properly manage, operate, and maintain (including periodic replacement, as needed) the Tolling Infrastructure and System that reasonably relate to the activities described above.