



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

AGENDA

MEETING OF THE COMMONWEALTH TRANSPORTATION BOARD

DoubleTree by Hilton
1900 Pavilion Drive
Virginia Beach, VA 23451
October 25, 2022

2:30 p.m. or upon adjournment of the October 25, 2022 Workshop Meeting

Public Comments:

Approval of Minutes September 21, 2022

MAINTENANCE DIVISION:

Presenting: Robbie Prezioso
Division Administrator

1. Action on Commemorative naming of the bridge on Route 685, Chalk Level Road, over U.S. Route 29, Pittsylvania County, within the Lynchburg District, as the "Deputy Sheriff J. Holland Thomas, Sr. Memorial Bridge".
2. Action on Commemorative naming of the bridge on State Route 6, Irish Road, over Norfolk-Southern railroad, Nelson County, within the Lynchburg District, as the "Goffrey E. Miles Memorial Bridge".
3. Action on Commemorative naming of the bridge on State Route 65, Sinking Creek Highway, over the Clinch River, Scott County, within the Bristol District, as the "Jack D. Collins Memorial Bridge".

VIRGINIA DEPARTMENT OF TRANSPORTATION:

Presenting: Laura Farmer
Chief Financial Officer

4. Action on Authorizing the Issuance of Commonwealth of Virginia I-81 Corridor Program Revenue Bonds, Series 2022 to be issued to the U.S. Department of Transportation to Evidence a Subordinate Lien Regular Loan in the Initial Principal Amount up to \$83,000,000 and Senior Lien Rural Loan in the Initial Principal Amount up to \$15,000,000, to be issued as Additional Bonds Under the Existing I-81 Corridor Program Master Indenture and Pursuant to Certain Other Documents and Undertakings in Connection with Such Issuance
5. Action on Authorizing the Defeasance of All or a Portion of the Outstanding Route 28 Transportation Contract Revenue Refunding Bonds and Setting forth the Details and Provisions for the Redemption Thereof.
6. Action on the Revised Fiscal Year 2023 Annual Budgets for the Commonwealth Transportation Fund and for the Virginia Department of Transportation.

INFRASTRUCTURE INVESTMENT DIVISION:

Presenting: Kimberly Pryor
Division Administrator

7. Action on FY23-28 Six-Year Improvement Program Transfers For June 18, 2022 through August 19, 2022.
8. Action on SMART SCALE Project Cancellation, West Main Street Phase 2 - 6th Street NW to 8th Street NW UPC 113177, Located in the City of Charlottesville within the Culpeper District.
9. Action on SMART SCALE Project Cancellation, Preston Avenue/Grady Avenue Intersection Improvements UPC 118873, Located in the City of Charlottesville within the Culpeper District.
10. Action on SMART SCALE Project Cancellation, West Main Street Phase 3 – 8th Street NW to Roosevelt Brown Avenue UPC 118874 , Located in the City of Charlottesville within the Culpeper District.
11. Action on SMART SCALE Project Budget Increase for Hydraulic Road and Route 29 Improvements UPC 118880, Located in the City of Charlottesville within the Culpeper District.
12. Action on SMART SCALE Project Budget Increase for Fontaine Avenue Streetscape Improvements UPC 109484, Located in the City of Charlottesville within the Culpeper District.

13. Action on SMART SCALE Project Budget Increase for I-95 Exit 126 Route 1 Southbound onto Southpoint Parkway UPC 110914, Located in Spotsylvania County within the Fredericksburg District.
14. Action on Revisions for FY2023-2024 Budgetary Assumptions.

ENVIRONMENTAL DIVISION

Presenting: Chris Swanson
Division Administrator

15. Action Location Approval for the Bowers Hill Interchange Improvements Study within the Hampton Roads District.

GOVERNANCE AND LEGISLATIVE AFFAIRS DIVISION:

Presenting: Jo Anne Maxwell
Division Administrator

16. Action on Periodic Regulatory Review.
17. Action on Delegation of Authority for the Commissioner of Highways to Enter into Interagency Agreement between the Virginia Department of Transportation (VDOT) and the Virginia Port Authority (VPA) relating Funding and Administration of the Rockland Road Improvement Project (UPC#112945).

LOCATION AND DESIGN DIVISION:

Presenting: Emmett Heltzel
Division Administrator

18. Action on Location Approval for the Fall Line Trail – Northern Section from the Chickahominy River Crossing to Route 657 (Ashcake Road) in the Counties of Henrico and Hanover and the Town of Ashland, Virginia Located within the Richmond District.

VIRGINIA DEPARTMENT OF TRANSPORTATION:

Presenting: Chris Hall
Hampton Roads
District Administrator

19. Authorization for the Commissioner of Highways to Enter into a Standard Project Agreement between the Virginia Department of Transportation and the Hampton Roads Transportation Accountability Commission (HRTAC) for the I-464/I-64 Interchange Access Report and future Standard Project Agreements with HRTAC related to the Interchange.

VIRGINIA DEPARTMENT OF TRANSPORTATION AND PUBLIC TRANSPORTATION:

Presenting: Grant Sparks
Acting Chief of Public Transportation

20. Action on Policy for the Implementation of State Transit Capital Prioritization (2022 Update).
21. Action on Guidelines for Urban Transit Agency Strategic Plans.

Presenting: Jennifer DeBruhl
Director

22. Action on Rail Industrial Access – New Millennium Building Systems, Located within the Salem District.
23. Action on Washington Metropolitan Area Transit Authority (WMATA) Annual Reporting – Fiscal Year 2022.

SCHEDULING AND CONTRACT:

Presenting: Bart Thrasher
Chief Engineer

24. Bids.

ADJOURNMENT:

###



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 1

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ Seconded By:

Action:

Title: Bridge Naming: “Deputy Sheriff J. Holland Thomas, Sr. Memorial Bridge”

WHEREAS, in accordance with § 33.2-213 of the *Code of Virginia*, the Pittsylvania County Board of Supervisors has requested, by resolution dated August 16, 2022, that the Commonwealth Transportation Board (CTB), to honor the life, sacrifices and outstanding commitment to his community of Deputy Sheriff J. Holland Thomas, Sr., name the bridge on Route 685, Chalk Level Road, over U.S. Route 29, Pittsylvania County, as the “Deputy Sheriff J. Holland Thomas, Sr. Memorial Bridge”; and

WHEREAS, Pittsylvania County, by letter dated August 23, 2022, has agreed to be responsible for payment of all sign costs billed by the Virginia Department of Transportation calling attention to this naming, which will include the costs to produce, place, and maintain the signs; and

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

NOW THEREFORE BE IT RESOLVED, pursuant to § 33.2-213 of the *Code of Virginia*, the CTB hereby names the bridge on Route 685, Chalk Level Road, over U.S. Route 29, Pittsylvania County, as the “Deputy Sheriff J. Holland Thomas, Sr. Memorial Bridge”.

Resolution of the Board

Bridge Naming: "Deputy Sheriff J. Holland Thomas, Sr. Memorial Bridge"

October 25, 2022

Page 2 of 2

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

####

CTB Decision Brief

Bridge Naming: “Deputy Sheriff J. Holland Thomas, Sr. Memorial Bridge”

Issue: Commemorative naming of the bridge on Route 685, Chalk Level Road, over U.S. Route 29, Pittsylvania County, as the “Deputy Sheriff J. Holland Thomas, Sr. Memorial Bridge”.

Facts: The Pittsylvania County Board of Supervisors enacted a resolution on August 16, 2022 to honor Deputy Sheriff J. Holland Thomas Sr.’s life, sacrifices and service to his community.

According to that resolution, Deputy Thomas was a Pittsylvania County Deputy who was killed in the line of duty while serving County citizens. On October 8, 1952, while attempting to arrest a man wanted for killing his employer, Deputy Thomas received gunfire from a shotgun to his chest and abdomen.

Surgeons at Danville Memorial Hospital were able to remove most of the pellets but some remained in his abdomen when he was released 2 weeks later. Deputy Thomas never fully recovered and was forced to retire from the Sheriff’s office.

In March 1956, one of the pellets remaining in his abdomen caused an infection and internal bleeding. As a result, Deputy Thomas succumbed to his injuries and passed away after 33 years of service in law enforcement. He was survived by his wife, two sons, two daughters, seven grandchildren and three sisters.

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

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

Result if Approved: The bridge on Route 685, Chalk Level Road, over U.S. Route 29, Pittsylvania County, will be known as the “Deputy Sheriff J. Holland Thomas, Sr. Memorial Bridge”. In accordance with law, and by letter dated August 23, 2022, Pittsylvania County agrees to pay the costs of producing, placing, and maintaining the signs calling attention to this naming.

Options: Approve, Deny, or Defer.

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

**PITTSYLVANIA COUNTY BOARD OF SUPERVISORS
AMENDED RESOLUTION # 2022-07-03**

**SUPPORT FOR NAMING THE ROUTE 685 (CHALK LEVEL ROAD) BRIDGE OVER
US HIGHWAY 29 IN PITTSYLVANIA COUNTY, VIRGINIA, BANISTER DISTRICT,
THE “DEPUTY SHERIFF J. HOLLAND THOMAS, SR., MEMORIAL BRIDGE”**

VIRGINIA: At the Pittsylvania County Board of Supervisors’ (“Board”) Business Meeting on August 16, 2022, the following Amended Resolution was presented and adopted:

WHEREAS, the Board is committed to recognizing and celebrating the County’s historical heritage and contributions made thereto by its citizens; and

WHEREAS, Deputy Sheriff J. Holland Thomas, Sr., (“Thomas”), was a Pittsylvania County Deputy who was killed in the line of duty while serving County citizens; and

WHEREAS, on October 8, 1952, while attempting to arrest a man wanted for killing his employer, who supposedly owed him \$18, Thomas received gunfire from a 12-gauge shotgun blast to his chest and abdomen area; and

WHEREAS, Thomas was taken to Danville Memorial Hospital where he underwent several surgeries to have the pellets removed; and

WHEREAS, doctors were able to remove most of the pellets, but were unable to remove some from the abdomen, and Thomas was released from the hospital two (2) weeks later and returned home; and

WHEREAS, Deputy Thomas never fully recovered and was forced to retire from the Sheriff’s Office; and

WHEREAS, in March 1956, one (1) of the pellets caused an infection and internal bleeding that led to his death; and

WHEREAS, Thomas had been in law enforcement for thirty-three (33) years and was survived by his wife, two (2) sons, two (2) daughters, seven (7) grandchildren, and three (3) sisters; and

WHEREAS, Law Enforcement Officers save countless lives by protecting County and Virginia citizens through rigorous law enforcement and patrolling of State and County roadways; and every day, they brave ever present danger to assist a stranded motorist, to investigate gun, drug, and human trafficking, to stop public corruption, to bring closure to devastated families, and to stop dangerous driving and dangerous individuals; and

WHEREAS, Thomas is an example of the dedication of County Sheriff’s Office, and it’s fitting that the Board remember his ultimate sacrifice; and

WHEREAS, § 33.2-213, Code of Virginia, 1950, as amended, authorizes the Commonwealth Transportation Board (“CTB”) to give suitable names to state highways, bridges, interchanges, and other transportation facilities, and change the names of any highways and bridges, interchanges, or other transportation facilities forming a part of the systems of state highways; and

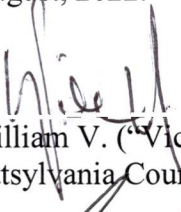
WHEREAS, the same Virginia Code Section further provides that the Virginia Department of Transportation (“VDOT”) shall place and maintain appropriate signs indicating the names of highways, bridges, interchanges, and other transportation facilities named by the CTB.

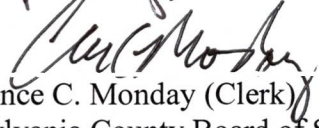
NOW, THEREFORE, BE IT HEREBY RESOLVED that the Board fully and enthusiastically supports the naming of the Rt. 685 (Chalk Level Road) bridge over US Highway 29 in Pittsylvania County, Virginia, Banister District, the location of said bridge depicted in more detail on the map attached hereto and made a part fully hereof, as the “Deputy Sheriff J. Holland Thomas, Sr., Memorial Bridge”; and

BE IT FINALLY RESOLVED that a copy of this Resolution be forwarded to the Thomas family, appropriate local VDOT officials, and the CTB for consideration.

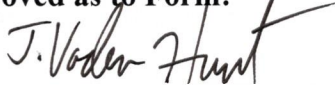
Given under my hand this 16th day of August, 2022.




William V. (“Vic”) Ingram (Chairman)
Pittsylvania County Board of Supervisors


Clarence C. Monday (Clerk)
Pittsylvania County Board of Supervisors

Approved as to Form:


J. Vaden Hunt, Esq.
Pittsylvania County Attorney



August 23, 2022

Jay Craddock
VDOT Assistant Resident Engineer

RE: Resolution # 2022-07-03; Deputy Sheriff J. Holland Thomas, Sr., Memorial Bridge


Dear Jay,

The Pittsylvania County Board of Supervisors approved Resolution # 2022-07-03 in support of naming the Rt. 685 (Chalk Level Road) bridge over US Highway 29 in Pittsylvania County, Virginia, Banister District, the "Deputy Sheriff J. Holland Thomas, Sr., Memorial Bridge".

In error, the Resolution states that VDOT shall place and maintain the appropriate signs for this bridge. Since this bridge is for a County Deputy, those costs are the responsibility of the locality. The County does accept and agrees to pay for the costs of producing, placing, and maintaining the signs calling attention to this naming.

Please feel free to reach out with any additional questions or concerns.

Regards,


Clarence C. Monday
Interim County Administrator
Pittsylvania County

Pittsylvania County



685

**Proposed Bridge Naming
"Deputy Sheriff J. Holland
Thomas, Sr. Memorial
Bridge"**



Chalk Level Road



703



CTB MEETING: October 26, 2022

Pittsylvania County
Proposed Bridge Naming:
**"Deputy Sheriff J. Holland Thomas, Sr.
Memorial Bridge"**



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 2

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ Seconded By:

Action:

Title: Bridge Naming: "Goffrey E. Miles Memorial Bridge"

WHEREAS, in accordance with § 33.2-213 of the *Code of Virginia*, the Nelson County Board of Supervisors has requested, by resolution dated August 9, 2022, that the Commonwealth Transportation Board (CTB), to honor the life, sacrifices and outstanding commitment to his community of Goffrey E. Miles, name the bridge on State Route 6, Irish Road, over Norfolk-Southern railroad, Nelson County, as the "Goffrey E. Miles Memorial Bridge"; and

WHEREAS, Nelson County, by resolution dated August 9, 2022 has agreed to pay the costs of producing, placing and maintaining the signs calling attention to this naming; and

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

NOW THEREFORE BE IT RESOLVED, pursuant to § 33.2-213 of the *Code of Virginia*, the CTB hereby names the bridge on State Route 6, Irish Road, over Norfolk-Southern railroad, Nelson County, as the "Goffrey E. Miles Memorial Bridge".

Resolution of the Board
Bridge Naming: "Goffrey E. Miles Memorial Bridge"
October 25, 2022
Page 2 of 2

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

####

CTB Decision Brief

Bridge Naming: “Goffrey E. Miles Memorial Bridge”

Issue: Commemorative naming of the bridge on State Route 6, Irish Road, over Norfolk-Southern railroad, Nelson County, as the “Goffrey E. Miles Memorial Bridge”.

Facts: The Nelson County Board of Supervisors enacted a resolution on August 9, 2022 to honor the life, sacrifices and service to his community of Goffrey E. Miles.

According to that resolution, Mr. Miles was a native son of Nelson County who began working at age 13 at Lambert’s Store in Faber, walking the railroad tracks to work each day. He gave tirelessly of himself as a lifetime volunteer, serving more than 45 years with the Faber Volunteer Fire Department as well as more than 30 years of service with the Nelson County Rescue Squad.

He served as an Officer of Elections for decades and was on the Board of Zoning Appeals for Nelson County for nearly 30 years. Mr. Miles was a committed, devoted and selfless public servant throughout his lifetime until his passing on February 16, 2021.

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

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

Result if Approved: The bridge on State Route 6, Irish Road, over Norfolk-Southern railroad, Nelson County, will be known as the “Goffrey E. Miles Memorial Bridge”. In accordance with law, and by resolution, Nelson County agrees to pay the costs of producing, placing, and maintaining the signs calling attention to this naming.

Options: Approve, Deny, or Defer.

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



BOARD OF
SUPERVISORS

THOMAS D. HARVEY
North District

ERNIE Q. REED
Central District

JESSE N. RUTHERFORD
East District

ROBERT G. BARTON, JR.
South District

J. DAVID PARR
West District

CANDICE W. MCGARRY
County Administrator

AMANDA B. SPIVEY
Administrative Assistant/
Deputy Clerk

LINDA K. STATON
Director of Finance and
Human Resources



Mr. Robert Brown, Residency Administrator
Virginia Department of Transportation - Appomattox Residency
P.O. Box 249
331 Ferguson Street
Appomattox, Virginia 24522

Dear Mr. Brown:

Please find Resolution R2022-48, as unanimously approved on August 9, 2022 by the Nelson County Board of Supervisors, to request the approval of the Commonwealth Transportation Board for the naming of the bridge structure over the Norfolk-Southern Railroad on Route 6 in Faber as the Goffrey E. Miles Memorial Bridge in honor of the late Goffrey E. Miles.

As the resolution states, Mr. Miles is a distinguished and honored son of Nelson County who was a lifelong public servant for Nelson County. The requested recognition of Mr. Miles is a much deserved honor for an individual who devoted himself to public service as a citizen volunteer in many capacities.

The Board of Supervisors on behalf of the citizens of Nelson County is committed to the requirements necessary to provide a lasting tribute to Mr. Miles through the naming of the herein referenced bridge structure in Nelson County, as is also denoted in the enclosed resolution. Please do not hesitate to contact this office should additional information be necessary to provide for the approval of the request hereby submitted by Nelson County.

Thank you, the Department, and the members of the Commonwealth Transportation Board for the consideration afforded the County's request, the approval of which is very important to this locality.

Respectfully,

Candice W. McGarry
County Administrator

Cc: Board of Supervisors

Enclosure



BOARD OF
SUPERVISORS

THOMAS D. HARVEY
North District

ERNIE Q. REED
Central District

JESSE N. RUTHERFORD
East District

ROBERT G. BARTON, JR.
South District

J. DAVID PARR
West District

CANDICE W. MCGARRY
County Administrator

AMANDA B. SPIVEY
Administrative Assistant/
Deputy Clerk

LINDA K. STATON
Director of Finance and
Human Resources

**RESOLUTION R2022-48
NELSON COUNTY BOARD OF SUPERVISORS
REQUEST FOR COMMEMORATIVE NAMING OF BRIDGE**

A resolution requesting the Commonwealth Transportation Board (to) name the bridge structure over the Norfolk-Southern railroad on Route 6 in the Faber area of Nelson County as the “Goffrey E. Miles Memorial Bridge” in honor and recognition of an esteemed and universally respected and dedicated public servant of Nelson County.

WHEREAS, the late Goffrey Edward Miles, a native son of Nelson County, was a committed, devoted and selfless public servant throughout his lifetime until his passing on February 16, 2021; and,

WHEREAS, Mr. Miles began working at the young age of 13 at Lambert’s Store in Faber, walking the railroad tracks to work each day; and,

WHEREAS, Mr. Miles gave tirelessly of himself as a lifetime volunteer, serving more than 45 years with the Faber Volunteer Fire Department, as well as more than 30 years of service with the Nelson County Rescue Squad; and,

WHEREAS, Mr. Miles served as an Officer of Elections for decades, committed to promoting democracy and ensuring fair and impartial elections; and,

WHEREAS, Mr. Miles served on the Board of Zoning Appeals for Nelson County for nearly 30 years; and,

WHEREAS, the Nelson County Board of Supervisors seeks to honor its native son, Goffrey Edward Miles with an enduring symbol to recognize and commemorate Mr. Miles, for his distinguished and outstanding service to Nelson County.

**NOW THEREFORE BE IT RESOLVED BY THE BOARD OF SUPERVISORS OF
NELSON COUNTY, VIRGINIA;**

That said Board of Supervisors hereby respectfully requests, pursuant to §33.2-213 of the Code of Virginia, that the Commonwealth Transportation Board name the bridge structure over the Norfolk Southern Railroad on Route 6 in the Faber area of Nelson County as the “Goffrey E. Miles Memorial Bridge”.

BE IT FURTHER RESOLVED:

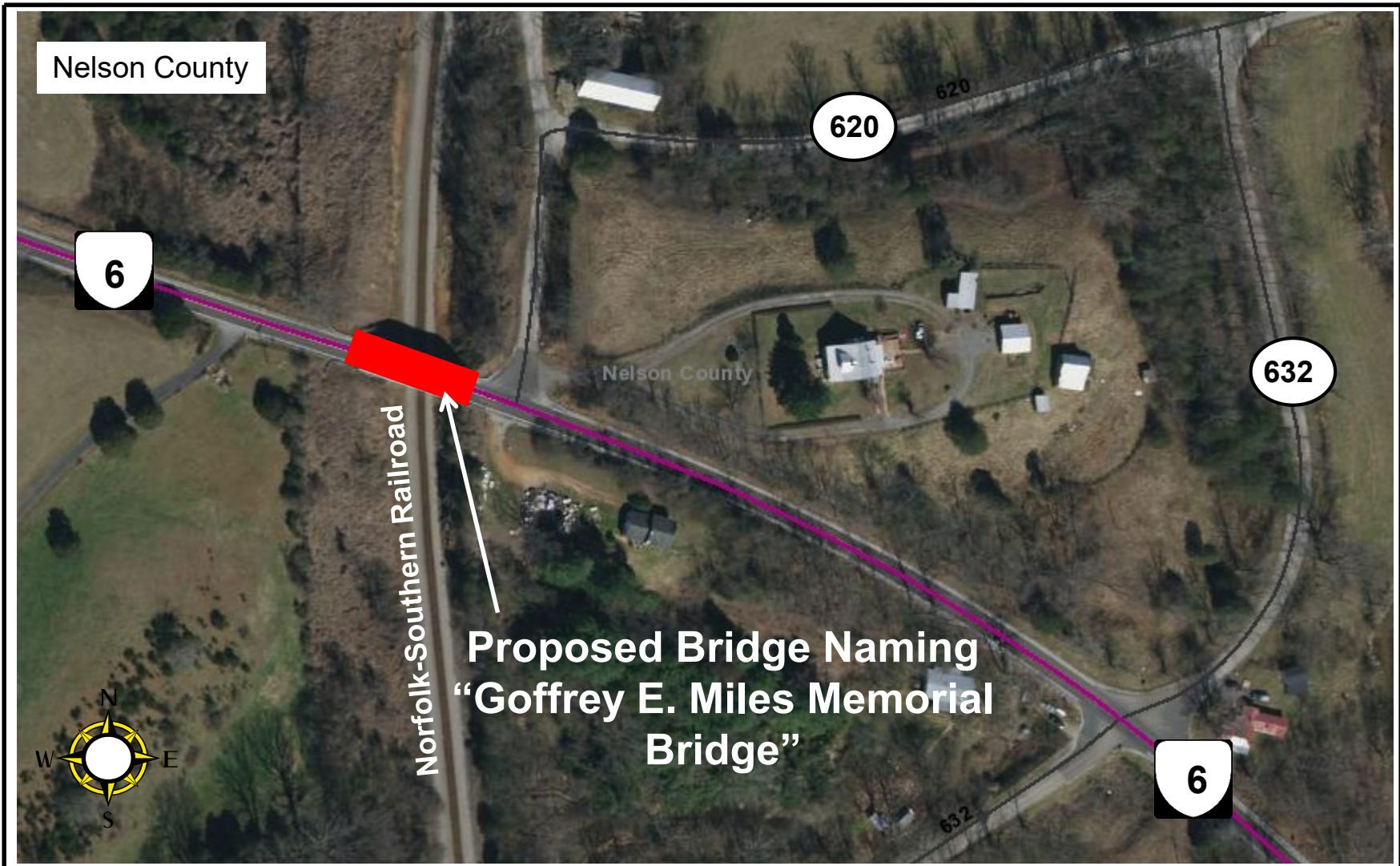
That said Board of Supervisors of Nelson County is committed to provide for the expense necessary to produce, place and to maintain the sign(s) the Board is requesting to honor Mr. Goffrey E. Miles and to take any other action required to support this petition to the Commonwealth.

Adopted: August 9, 2022

Attest: Candice N. McLaughlin, Clerk
Nelson County Board of Supervisors



Imagery ©2022 Commonwealth of Virginia, Maxar Technologies, Map data ©2022 100 ft 



Nelson County

6

620

632

Nelson County

Norfolk-Southern Railroad

Proposed Bridge Naming
"Goffrey E. Miles Memorial
Bridge"

6



Virginia Department of Transportation
Maintenance Division
CTB MEETING: October 26, 2022

Nelson County

Proposed Bridge Naming:

"Goffrey E. Miles Memorial Bridge"



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 3

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ Seconded By:

Action:

Title: Bridge Naming: “Jack D. Collins Memorial Bridge”

WHEREAS, in accordance with § 33.2-213 of the *Code of Virginia*, the Scott County Board of Supervisors has requested, by resolution dated September 7, 2022, that the Commonwealth Transportation Board (CTB), to honor the life, sacrifices and outstanding commitment to his country and community of Jack D. Collins, name the bridge on State Route 65, Sinking Creek Highway, over the Clinch River, Scott County, as the “Jack D. Collins Memorial Bridge”; and

WHEREAS, Scott County, by resolution dated September 7, 2022, has agreed to be responsible for payment of all sign costs billed by the Virginia Department of Transportation calling attention to this naming, which will include the costs to produce, place, and maintain the signs; and

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

NOW THEREFORE BE IT RESOLVED, pursuant to § 33.2-213 of the *Code of Virginia*, the CTB hereby names the bridge on State Route 65, Sinking Creek Highway, over the Clinch River, Scott County, as the “Jack D. Collins Memorial Bridge”.

Resolution of the Board
Bridge Naming: "Jack D. Collins Memorial Bridge"
October 25, 2022
Page 2 of 2

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

#####

CTB Decision Brief

Bridge Naming: “Jack D. Collins Memorial Bridge”

Issue: Commemorative naming of the bridge on State Route 65, Sinking Creek Highway, over the Clinch River, Scott County, as the “Jack D. Collins Memorial Bridge”.

Facts: The Scott County Board of Supervisors enacted a resolution on September 7, 2022 to honor Jack D. Collins’ life, sacrifices and service to his country and community.

According to that resolution, Mr. Collins lived most of his life in Scott County. Just after his 18th birthday, during his senior year in high school, was drafted into the United States Army. Because of his mathematical skills he was attached to the newly formed 87th Chemical Mortar Battalion. This battalion fought their way through the major battles of Europe from D-Day to Cherbourg, to the Hurtgen Forest, to the Battle of the Bulge.

During his service in the Army, Mr. Collins was awarded the following decorations and citations: American Theatre Ribbon, European-African-Middle Eastern Ribbon with one Silver Star, Good Conduct Medal, Distinguished Unit Badge, Bronze Arrowhead and the WWII Victory Medal.

After WWII he married Barbara Gillenwater and they lived in Dungannon for the majority of their lives. He worked at Moss 1 Preparation Plant for Clinchfield Coal Company for over 35 years.

Mr. Collins served as a Dungannon Town Council member and also Mayor for over 25 years. During that time he was greatly influential in helping the town and residents complete various projects that enhanced the lives of everyone living in Dungannon and the surrounding area. Mr. Collins passed way in 2009.

The county resolution used two different spellings of the name for the bridge, but based on clarification from the county administrator in an email sent on September 13, 2022, VDOT recommends the name used in the proposed CTB resolution, the “Jack D. Collins Memorial Bridge”.

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

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

Result if Approved: The bridge on State Route 65, Sinking Creek Highway, over the Clinch River, Scott County, will be known as the “Jack D. Collins Memorial Bridge”. In accordance with law, and by resolution dated September 7, 2022, Scott County agrees to pay the costs of producing, placing, and maintaining the signs calling attention to this naming.

Options: Approve, Deny, or Defer.

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

BOARD OF SUPERVISORS

DARREL W. JETER
MARSHALL D. TIPTON
JEREMY P. HERRON
MICHAEL K. BRICKEY
DANNY P. MANN
SELMA G. HOOD
STEFANIE C. ADDINGTON

We're a Natural



SCOTT COUNTY
BOARD OF SUPERVISORS

COUNTY ADMINISTRATOR
Freda R. Starnes

190 Beech Street, Suite 201
GATE CITY, VIRGINIA 24251
PHONE (276) 386-6521
FAX (276) 386-9198

EMAIL: fstarnes@scottcountyva.com
www.scottcountyva.com

SCOTT

VIRGINIA

At a meeting of the Scott County Board of Supervisors begun and held in the Supervisors' meeting room located at the Community Services Building in Gate City, Virginia on Wednesday the 7th day of September, 2022 at 8:30 a.m.

PRESENT: Darrel W. Jeter
Marshall D. Tipton
Jeremy P. Herron
Danny P. Mann – Chairman
Michael K. Brickey
Selma G. Hood – arrived at 8:35 a.m.
Stefanie C. Addington – Vice-Chairman

ABSENT: None.

On a motion by Marshall D. Tipton, duly seconded by Jeremy P. Herron, this Board hereby adopts the following and authorizes up to \$300 from Board Contingency for the sign.

RESOLUTION 2022 - 20

BRIDGE NAMING ON ROUTE 65, SINKING CREEK HIGHWAY, IN SCOTT COUNTY AS
THE
"JACK D. COLLINS MEMORIAL BRIDGE"

WHEREAS, Jack D. Collins (1925 - 2009) lived most of his life in Scott County, a twin son of Robert and Olga Porter Collins, and

WHEREAS, Mr. Collins, just after his 18th birthday, during his senior year of high school was drafted into the U.S. Army and transported to Camp Lee, Virginia where he received his basic training, and

WHEREAS, because of Mr. Collins' mathematical skills, he was attached to the newly formed 87th Chemical Mortar Battalion. This battalion fought their way through the major battles of Europe from D-Day to Cherbourg, to the Hurtgen Forest, to the Battle of the Bulge, and

WHEREAS, Mr. Collins was awarded the following decorations and citations: American Theatre Ribbon, European-African-Middle Eastern Ribbon with one Silver Star, Good Conduct Medal, Distinguished Unit Badge, Bronze Arrowhead, and WWII Victory Medal, and

WHEREAS, after WWII, he married Barbara Gillenwater and they lived in Dungannon for the majority of their lives. Mr. Collins worked at Moss 1 Preparation Plant for Clinchfield Coal Company for over 35 years, and

WHEREAS, Mr. Collins served as a Dungannon Town Council member and also Mayor for over 25 years. During that time he was greatly influential in helping the town and residents complete various projects that enhanced the lives of everyone living in Dungannon and the surrounding area, and

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

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

NOW, THEREFORE, BE IT RESOLVED, that Scott County, in accordance with the requirements of Section 33.2-213 of the *Code of Virginia*, does hereby request that the CTB name structure number 1038, located on Route 65, Sinking Creek Highway, in Scott County as the Jack D. (Don) Collins Memorial Bridge.

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

Voting aye: Darrel W. Jeter, Marshall D. Tipton, Jeremy P. Herron, Danny P. Mann, Michael K. Brickey, Selma G. Hood, and Stefanie C. Addington.

Voting nay: None.


CLERK

C: Virginia Department of Transportation

Proposed Bridge Naming

Proposed: Jack D (Don) Collins Memorial Bridge

GPS: 36.495294, -82.274287

Route 65 - Sinking Creek Highway

Structure Number: 1038

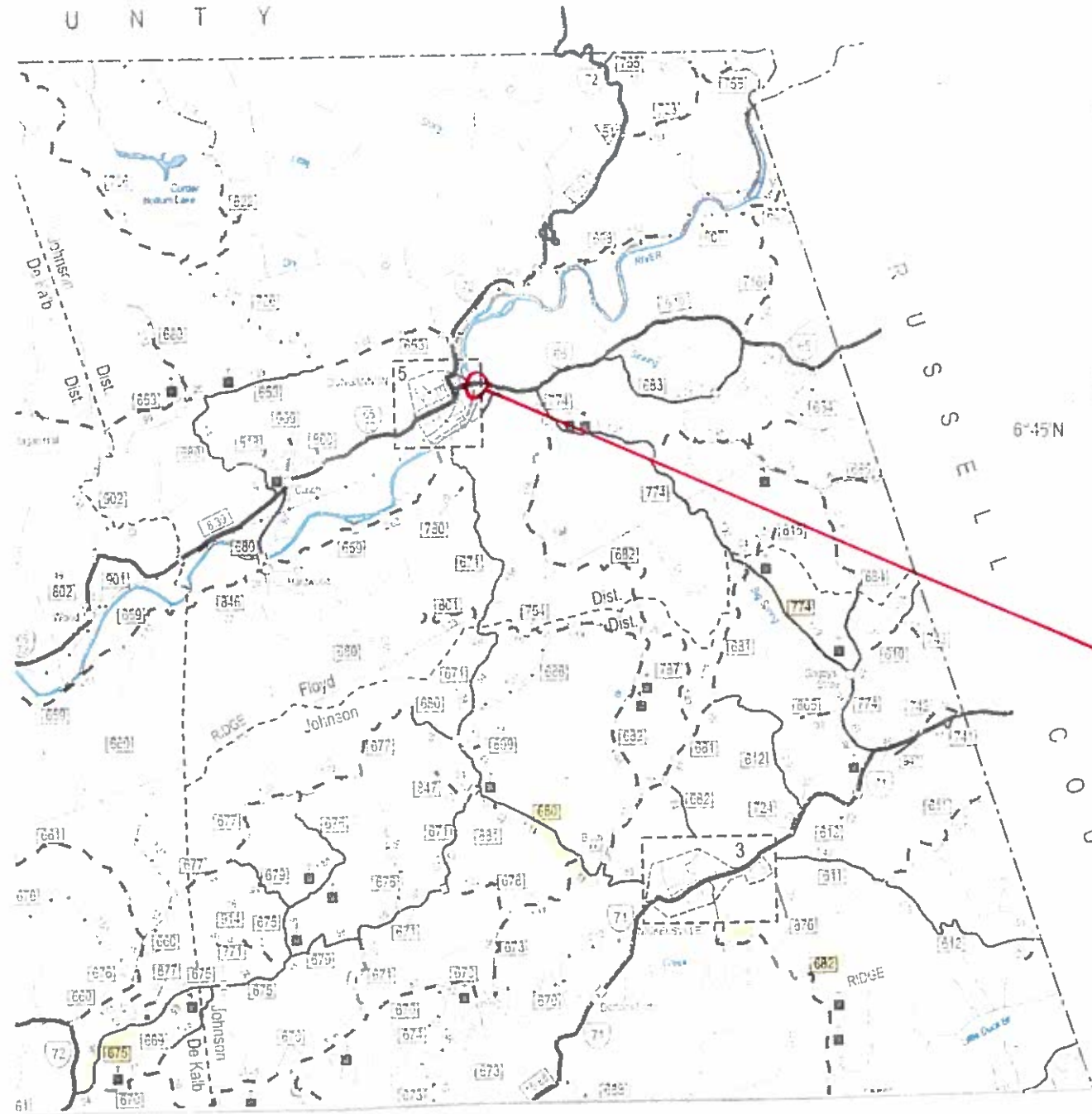
Over: Clinch River

Legend

 Proposed Bridge to be named



U N T Y



6°45'N



DUNGANNON AREA

five times map scale
see notation on map cover for distance annotation

STRUCTURE No.
1038

36°45'N

Proposed:
JACK D (DOW) COLLINS
MEMORIAL BRIDGE



Dunn, Jason <brack.dunn@vdot.virginia.gov>

Fwd: Bridge Dedications

1 message

Cantrell, Glenn <glenn.cantrell@vdot.virginia.gov>
To: Jason Dunn <brack.dunn@vdot.virginia.gov>

Mon, Sep 19, 2022 at 1:25 PM

Attached is the email you requested.

Thanks,
Glenn

----- Forwarded message -----

From: **Freda Starnes** <fstarnes@scottcountyva.com>
Date: Tue, Sep 13, 2022 at 1:50 PM
Subject: RE: Bridge Dedications
To: Cantrell, Glenn <glenn.cantrell@vdot.virginia.gov>

Thanks, Glenn. Could you double check the information that you sent for the Jack Collins bridge? The family has requested that (Don) be left off. It should read Jack D. Collins Memorial Bridge.

Freda

From: Cantrell, Glenn <glenn.cantrell@vdot.virginia.gov>
Sent: Tuesday, September 13, 2022 1:47 PM
To: Freda Starnes <fstarnes@scottcountyva.com>
Cc: Tina Seay <tseay@scottcountyva.com>
Subject: Re: Bridge Dedications

Freda,

Just wanted to let you know that the signs for the Kenny Fannon bridge were installed today. So you should be good to go for Saturday. Also I sent in the naming request for th Jack D. (Don) Collins Memorial Bridge. Hopefully will hear something on that one next month.

Thanks,
Glenn

On Mon, Sep 12, 2022 at 9:53 AM Freda Starnes <fstarnes@scottcountyva.com> wrote:

Thanks, Glenn. Attached is the "official" resolution.

Freda

From: Cantrell, Glenn <glenn.cantrell@vdot.virginia.gov>
Sent: Monday, September 12, 2022 9:42 AM
To: Freda Starnes <fstarnes@scottcountyva.com>
Subject: Re: Bridge Dedications

Good Morning Freda,

The gentleman that handles the bridge namings is out of the office this week. The CTB meeting is on the 20th of September, so we can't get the dedication on the agenda for this month. I need the typical County Resolution showing the votes, meeting times, etc... I will be putting the package together for the CTB and when I receive the full resolution, I will submit it. Also, I will let you know when the signs are up for the Kenny Fannaon Bridge. Our bridge crew is going to install them this week.

Thanks,

Glenn

On Mon, Sep 12, 2022 at 9:08 AM Freda Starnes <fstarnes@scottcountyva.com> wrote:

Glenn,

Just wanted to follow-up that the Kenny Fannon bridge dedication is this Saturday, September 17.

Also, I am attaching the resolution that was approved last week for the bridge on Sinking Creek Highway that I mentioned to you last month. If you could send that to the CTB for approval, I would appreciate it.

Freda

Freda R. Starnes, MBA

County Administrator, Scott County

190 Beech Street, Suite 201

Gate City, VA 24251

P: 276-386-6521

F: 276-386-9198

--

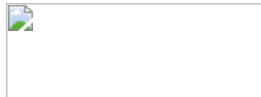
Glenn M. Cantrell
Engineering Technician Sr. - Permits
VDOT - Wise Residency
703 Hurricane Road N.E.
Wise, VA 24293
Office: 276.321.6456
Cell: 276.973.7503
glenn.cantrell@VDOT.Virginia.gov

--

Glenn M. Cantrell
Engineering Technician Sr. - Permits
VDOT - Wise Residency
703 Hurricane Road N.E.
Wise, VA 24293
Office: 276.321.6456
Cell: 276.973.7503
glenn.cantrell@VDOT.Virginia.gov

--

Glenn M. Cantrell
Engineering Technician Sr. - Permits
VDOT - Wise Residency
703 Hurricane Road N.E.
Wise, VA 24293
Office: 276.321.6456
Cell: 276.973.7503
glenn.cantrell@VDOT.Virginia.gov





Scott County

72

65

Sinking Creek Highway

Dungannon Town

Clinch River

Proposed Bridge Naming
"Jack D. Collins Memorial Bridge"

859



CTB MEETING: October 26, 2022

Scott County

Proposed Bridge Naming:

"Jack D. Collins Memorial Bridge"



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 4

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ Seconded By:

Action:

Title:

**AUTHORIZING THE ISSUANCE OF
COMMONWEALTH OF VIRGINIA
I-81 CORRIDOR PROGRAM REVENUE BONDS, SERIES 2022 TO BE ISSUED TO THE UNITED
STATES DEPARTMENT OF TRANSPORTATION TO EVIDENCE A SUBORDINATE LIEN REGULAR
LOAN IN THE INITIAL PRINCIPAL AMOUNT UP TO \$83,000,000 AND SENIOR LIEN RURAL LOAN
IN THE INITIAL PRINCIPAL AMOUNT UP TO \$15,000,000, TO BE ISSUED AS ADDITIONAL BONDS
UNDER THE EXISTING I-81 CORRIDOR PROGRAM MASTER INDENTURE AND PURSUANT TO
CERTAIN LOAN AGREEMENTS AND AUTHORIZING CERTAIN OTHER DOCUMENTS AND
UNDERTAKINGS IN CONNECTION WITH SUCH ISSUANCE**

WHEREAS, pursuant to the Transportation Development and Revenue Bond Act (the “State Transportation Revenue Bond Act”), Sections 33.2-1700 et seq. of the Code of Virginia of 1950, as amended (the “Virginia Code”), the Commonwealth Transportation Board (the “Board”) has the power to issue its revenue bonds to finance the costs of transportation projects authorized by the General Assembly of Virginia (the “General Assembly”), including any financing costs or other financing expenses related to such bonds;

WHEREAS, pursuant to the Commonwealth Transportation Interstate 81 Corridor Bond Act of 2020, enactment item 15 of Chapter 1230 of the Acts of the General Assembly of the Commonwealth of Virginia, 2020 Reconvened Session (the “ I-81 Bond Act”), the Board is authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Transportation Revenue Bond Act, revenue obligations of the Commonwealth of Virginia (the “Commonwealth”) to be designated “Commonwealth of Virginia Interstate 81 Corridor

Resolution of the Board

Authorizing the Issuance of Commonwealth of Virginia I-81 Corridor Program Revenue Bonds, Series 2022 to be issued to the U.S. Department of Transportation to Evidence a Subordinate Lien Regular Loan in the Initial Principal Amount up to \$83,000,000 and Senior Lien Rural Loan in the Initial Principal Amount up to \$15,000,000, to be issued as Additional Bonds Under the Existing I-81 Corridor Program Master Indenture and Pursuant to Certain Other Documents and Undertakings in Connection with Such Issuance

October 25, 2022

Page 2 of 8

Program Revenue Bonds, Series” (the “Bonds”) at one or more times in an aggregate principal amount not to exceed \$1 billion, after all costs, excluding refunding bonds and excluding pre-project completion interest convertible to principal associated with certain federal programs of the U.S. Department of Transportation;

WHEREAS, the Board is required pursuant to the I-81 Bond Act to use proceeds of any Bonds, including any premium received on the sale thereof, for the exclusive purpose of paying costs incurred or to be incurred in relation to the Interstate 81 Corridor Improvement Plan (the “I-81 Plan”) and the Interstate 81 Corridor Improvement Program (the “I-81 Program”), as such terms are defined in Section 33.2-3600 of the Virginia Code, which costs include financing and issuance expenses;

WHEREAS, Section 33.2-3601 of the Virginia Code creates the Interstate 81 Corridor Improvement Fund (the “I-81 Fund”) in the state treasury as a special non-reverting fund which shall be established on the books of the Comptroller of the Commonwealth and provides that all revenues dedicated to the I-81 Fund pursuant to Sections 33.2-372 and 58.1-2299.20 of the Virginia Code, any other funds that may be appropriated by the General Assembly, and any funds that may otherwise be received for credit to the I-81 Fund from any other sources shall be paid into the state treasury and credited to the I-81 Fund;

WHEREAS, Section 11 of the I-81 Bond Act requires the Board to establish a fund either in the state treasury with the cooperation of the State Treasurer or with a trustee in accordance with the provisions of Section 33.2-1716 of the State Transportation Revenue Bond Act to secure and be used for the payment of the Bonds to the credit of which there shall be deposited such amounts, subject to appropriation by the General Assembly, necessary to pay principal, purchase price, redemption premium, if any, and interest on the Bonds, as and when such costs become due and payable; provided that such costs shall be paid from the revenues deposited into the I-81 Fund pursuant to Section 58.1-2299.20 of the Virginia Code from the receipt of regional fuels tax levied pursuant to Section 58.1-2295 of the Virginia Code;

WHEREAS, Section 12 of the I-81 Bond Act permits the Board, in connection with the issuance or planned issuance of any Bonds, to pay any necessary and appropriate support costs, including debt service or deposits to reserve funds from the revenues deposited into the I-81 Fund pursuant to Section 58.1-2299.20 of the Virginia Code from the receipt of regional fuels tax levied pursuant to Section 58.1-2295 of the Virginia Code;

WHEREAS, Section 10 of the I-81 Bond Act permits the Board to receive other funds that may be made available to pay project costs and, subject to appropriation by the General Assembly, to make such funds available for the payment of the principal, purchase price, redemption premium, if any, and interest on Bonds authorized under the I-81 Bond Act;

Resolution of the Board

Authorizing the Issuance of Commonwealth of Virginia I-81 Corridor Program Revenue Bonds, Series 2022 to be issued to the U.S. Department of Transportation to Evidence a Subordinate Lien Regular Loan in the Initial Principal Amount up to \$83,000,000 and Senior Lien Rural Loan in the Initial Principal Amount up to \$15,000,000, to be issued as Additional Bonds Under the Existing I-81 Corridor Program Master Indenture and Pursuant to Certain Other Documents and Undertakings in Connection with Such Issuance

October 25, 2022

Page 3 of 8

WHEREAS, in furtherance of the purposes of the I-81 Bond Act, the Board, with the assistance of the Virginia Department of Transportation (the “Department”), caused to be prepared a Master Indenture dated as of August 21, 2021 (“Master Indenture”) between the Board and U.S. Bank National Association, as trustee, predecessor to U.S. Bank Trust Company, National Association (the “Trustee”) to provide for the issuance from time to time of Bonds under series supplemental indentures to the Master Indenture to finance or refinance the costs of I-81 Program projects and to provide for the security for and sources of payment of the debt service on such Bonds from Revenues (as defined in the Master Indenture) and other funds and accounts established for such purpose;

WHEREAS, in furtherance of the purposes of the I-81 Bond Act, the Board, with the assistance of the Department, caused to be prepared a Payment Agreement dated as of August 1, 2021 between the Board, the Secretary of Finance of the Commonwealth and the Treasury Board of the Commonwealth (the “Payment Agreement”), to establish a process for seeking appropriations from the General Assembly and the payment of appropriated funds to provide for payment of funding requirements under the Master Indenture, including payment of the debt service on the Bonds and other obligations issued from time to time under the Master Indenture;

WHEREAS, pursuant to the Master Indenture of Trust and a First Supplemental Indenture of Trust dated as of August 1, 2021 (the “First Supplemental Indenture”), the Board previously issued its \$80,990,000 Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bonds (Senior Lien) Series 2021 (the “Series 2021 Senior Lien Bonds”), the initial series of bonds issued under the Master Indenture;

WHEREAS, the Board and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), propose to enter into a TIFIA Loan Agreement (2022 Regular Project) (the “TIFIA Regular Subordinate Lien Project Loan Agreement”), and a TIFIA Loan Agreement (2022 Rural Project) (the “TIFIA Rural Senior Lien Project Loan Agreement”), pursuant to which the TIFIA Lender has agreed to extend loans to the Board, the proceeds of which shall be used to fund a portion of eligible I-81 Program project costs as permitted by the TIFIA Lender’s Regular Loan Program and the TIFIA Lender’s Rural Loan Program, respectively;

WHEREAS, as evidence of the loans extended by the TIFIA Lender and to provide for the repayment thereof, the Board has determined to issue and deliver a Series of Bonds under the Master Indenture to be issued as (a) a Subordinate Obligation respecting TIFIA Regular Subordinate Lien Project Loan Agreement and designated the Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond, Series 2022 (TIFIA Subordinate Lien) (the “TIFIA Subordinate Lien Bond”) and (b) a Senior Bond respecting TIFIA Rural Senior Lien Project Loan

Resolution of the Board

Authorizing the Issuance of Commonwealth of Virginia I-81 Corridor Program Revenue Bonds, Series 2022 to be issued to the U.S. Department of Transportation to Evidence a Subordinate Lien Regular Loan in the Initial Principal Amount up to \$83,000,000 and Senior Lien Rural Loan in the Initial Principal Amount up to \$15,000,000, to be issued as Additional Bonds Under the Existing I-81 Corridor Program Master Indenture and Pursuant to Certain Other Documents and Undertakings in Connection with Such Issuance

October 25, 2022

Page 4 of 8

Agreement and designated the Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond, Series 2022 (TIFIA Senior Lien) (the “TIFIA Senior Lien Bond”);

WHEREAS, the TIFIA Subordinate Lien Bond shall be in the initial aggregate principal amount (excluding convertible pre-project completion interest) of up to \$83,000,000 to finance a portion of certain eligible I-81 Program project costs under the TIFIA Regular Loan Program and the TIFIA Senior Lien Bond shall be in the initial aggregate principal amount (excluding convertible pre-project completion interest) of up to \$15,000,000 to finance a portion of certain eligible I-81 Program project costs under the TIFIA Rural Loan Program;

WHEREAS, the Master Indenture permits the issuance of additional Series of Bonds from time to time pursuant to series supplemental indentures and further provides for their issuance, among others, as Senior Bonds secured by Revenues on parity with outstanding Senior Bonds and also provides for the issuance of Subordinate Obligations secured by Revenues on a subordinate basis together with other funds and accounts in accordance with the Master Indenture and related series supplemental indentures;

WHEREAS, the Master Indenture permits certain amendments without bondholder consent to correct inconsistent provisions and in any manner not prejudicial to holders of outstanding bonds, and certain amendments of such nature were requested by the TIFIA Lender;

WHEREAS, the Master Indenture requires, as a condition to the issuance and authentication of any Series of Bonds, the delivery by the Board of a series supplemental indenture to the Trustee, and the Board desires to enter into a Second Supplemental Indenture and Amendment to Master Indenture and a Third Supplement Indenture as series supplemental indentures under the Master Indenture in connection with the TIFIA Regular Subordinate Lien Project Loan Agreement and the TIFIA Rural Senior Lien Project Loan Agreement, respectively, to effect the borrowing with the TIFIA Lender;

WHEREAS, in addition to the existing Master Indenture and the Payment Agreement, the following documents, which shall be filed with the records of the Board, providing for the issuance of the TIFIA Subordinate Lien Bond and TIFIA Senior Lien Bond have been prepared by Bond Counsel and the staff of the Department at the direction of the Board and have been presented at this meeting in their substantially final forms:

(1) a Second Supplemental Indenture and Amendment to Master Indenture between the Board and the Trustee, providing for the terms and structure of the TIFIA Subordinate Lien Bond (the “Second Supplemental Indenture”);

Resolution of the Board

Authorizing the Issuance of Commonwealth of Virginia I-81 Corridor Program Revenue Bonds, Series 2022 to be issued to the U.S. Department of Transportation to Evidence a Subordinate Lien Regular Loan in the Initial Principal Amount up to \$83,000,000 and Senior Lien Rural Loan in the Initial Principal Amount up to \$15,000,000, to be issued as Additional Bonds Under the Existing I-81 Corridor Program Master Indenture and Pursuant to Certain Other Documents and Undertakings in Connection with Such Issuance

October 25, 2022

Page 5 of 8

(2) the TIFIA Regular Project Subordinate Lien Loan Agreement between the Board and the TIFIA Lender, providing for the terms of the TIFIA Regular Project Loan as evidenced by the TIFIA Subordinate Lien Bond;

(3) a Third Supplemental Indenture between the Board and the Trustee, providing for the terms and structure of the TIFIA Senior Lien Bond (the “Third Supplemental Indenture”); and.

(4) the TIFIA Rural Senior Lien Project Loan Agreement between the Board and the TIFIA Lender, providing for the terms of the TIFIA Rural Project Loan as evidenced by the TIFIA Senior Lien Bond.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMONWEALTH TRANSPORTATION BOARD:

1. Authorization of TIFIA Loan Agreements. The Board hereby determines that it is in the best interests of the Commonwealth and the Board for the Board to enter into the TIFIA Regular Subordinate Lien Project Loan Agreement and the TIFIA Rural Senior Lien Project Loan Agreement (collectively, the TIFIA Loan Agreements”) to provide funding for a portion of the costs of the eligible I-81 Program projects. The Board approves the TIFIA Loan Agreements in the substantially final forms presented at this meeting. The Board authorizes and directs the Chairperson of the Board (the “Chairperson”) to prepare, execute, and deliver the final forms of the TIFIA Loan Agreements with such completions, omissions, insertions, and changes as are necessary or desirable to consummate the lending transactions contemplated by such agreements. Such documents shall bear dates as the Chairperson may approve. Execution and delivery of the TIFIA Loan Agreements or any of them shall constitute conclusive evidence of the approval of the document so executed and delivered by the Chairperson on behalf of the Board.

2. Authorization of Terms of TIFIA Bonds. The Board hereby determines that it is in the best interests of the Commonwealth and the Board for the Board (i) to enter into the Second Supplemental Indenture and the Third Supplemental Indenture (together, the “Supplemental Indentures”) to provide for the issuance of the TIFIA Subordinate Lien Bond and the TIFIA Senior Lien Bond (together, the TIFIA Bonds), respectively, and , (ii) to issue the TIFIA Bonds to the TIFIA Lender for the purposes authorized under and in accordance with the provisions of the I-81 Bond Act, the Master Indenture, the TIFIA Loan Agreements and the Supplemental Indentures. The initial principal amount of the TIFIA Subordinate Lien Bond shall not exceed \$83,000,000 (excluding convertible pre-project completion interest), and the initial principal amount of TIFIA Senior Lien Bond shall not exceed \$15,000,000 (excluding convertible pre-project completion interest). Pre-project completion interest convertible to principal as permitted by the I-81 Bond Act for federal financing programs of the U.S. Department of Transportation shall be limited to

Resolution of the Board

Authorizing the Issuance of Commonwealth of Virginia I-81 Corridor Program Revenue Bonds, Series 2022 to be issued to the U.S. Department of Transportation to Evidence a Subordinate Lien Regular Loan in the Initial Principal Amount up to \$83,000,000 and Senior Lien Rural Loan in the Initial Principal Amount up to \$15,000,000, to be issued as Additional Bonds Under the Existing I-81 Corridor Program Master Indenture and Pursuant to Certain Other Documents and Undertakings in Connection with Such Issuance

October 25, 2022

Page 6 of 8

\$13,000,000 in converted principal for the TIFIA Subordinate Lien Bond and related TIFIA Regular Subordinate Lien Project Loan Agreement and \$600,000 in converted principal for the TIFIA Senior Lien Bond and related TIFIA Rural Senior Lien Project Loan Agreement. In accordance with the I-81 Bond Act, the final maturity date of the TIFIA Subordinate Lien Bond shall not exceed 39 years from the first scheduled payment of principal, which first principal payment shall not be more than 5 years from the initial advancement of funds under the related TIFIA Regular Subordinate Lien Project Loan Agreement and the final maturity date of the TIFIA Senior Lien Bond shall not exceed 39 years from the first scheduled payment of principal, which first principal payment shall not be more than 5 years from the initial advancement of funds under the related TIFIA Rural Senior Lien Project Loan Agreement. The true interest cost of the TIFIA Subordinate Lien Bond and TIFIA Senior Lien Bond shall not exceed the maximum true interest cost approved by the Treasury Board for such TIFIA Bonds, which is empowered pursuant to Section 2.2-2416(7) of the Virginia Code to approve the terms and structure of all proposed bond issues by state agencies, boards or authorities where debt service payments are expected by such agency, board or authority to be made, in whole or in part, directly or indirectly, from appropriations of the General Assembly. In accordance with the I-81 Bond Act, the Board expects the debt service payments to be made from appropriations by the General Assembly from the I-81 Fund.

3. Limited Obligations. The TIFIA Bonds shall be limited obligations of the Board and the Commonwealth, payable from and secured by the Revenues pledged under and in accordance with the terms of the Master Indenture, TIFIA Loan Agreements and Supplemental Indentures and amounts in certain funds established in relation thereto. Nothing in this Resolution, the TIFIA Bonds, Master Indenture, TIFIA Loan Agreements or Supplemental Indentures shall be deemed to create or constitute a debt or a pledge of the faith and credit of the Commonwealth or any political subdivision thereof.

4. Determination of Details of the TIFIA Bonds and TIFIA Loan Agreements. The Board authorizes the Chairperson of the Board (the "Chairperson"), subject to the criteria set forth in paragraph 2 of this Resolution, to determine the details of the TIFIA Bonds and TIFIA Loan Agreements, including, without limitation, the principal amounts to be borrowed, the payment and maturity schedules, interest rates, redemption and prepayment provisions, and any series or other designation for the TIFIA Bonds.

5. Supplemental Indentures. The Board approves the Supplemental Indentures in the substantially final forms presented at this meeting. The Board authorizes and directs the Chairperson to prepare, execute, and deliver the final forms of the Supplemental Indentures with such completions, omissions, insertions, and changes, including the dates thereof, as are necessary or desirable to effect the issuance of the TIFIA Bonds to the TIFA Lender, as the Chairperson may

Resolution of the Board

Authorizing the Issuance of Commonwealth of Virginia I-81 Corridor Program Revenue Bonds, Series 2022 to be issued to the U.S. Department of Transportation to Evidence a Subordinate Lien Regular Loan in the Initial Principal Amount up to \$83,000,000 and Senior Lien Rural Loan in the Initial Principal Amount up to \$15,000,000, to be issued as Additional Bonds Under the Existing I-81 Corridor Program Master Indenture and Pursuant to Certain Other Documents and Undertakings in Connection with Such Issuance

October 25, 2022

Page 7 of 8

approve. Execution and delivery of the Supplemental Indentures or any of them shall constitute conclusive evidence of the approval of the document so executed and delivered by the Chairperson on behalf of the Board.

6. Execution and Delivery of the TIFIA Bonds. The Board authorizes and directs the Chairperson and the Secretary of the Board (the "Secretary") to have the TIFIA Bonds prepared and to execute the TIFIA Bonds in accordance with the Master Indenture and Supplemental Indentures, to deliver the TIFIA Bonds to the Trustee for authentication, and to cause the TIFIA Bonds so executed and authenticated to be delivered to or for the account of the TIFIA Lender, all in accordance with the Master Indenture, TIFIA Loan Agreements and Supplemental Indentures. Execution and delivery by the Chairperson and the Secretary of the TIFIA Bonds or any of them shall constitute conclusive evidence of the approval of the TIFA Bond so executed and delivered by the Chairperson and the Secretary on behalf of the Board.

7. Authorization of Further Action. The Board authorizes Department staff (i) to request the Treasury Board to approve the terms and structure of the TIFIA Bonds in accordance with Section 2.2-2416(7) of the Virginia Code and the I-81 Bond Act, (ii) to request the Governor of the Commonwealth to approve the issuance of the TIFIA Bonds in accordance with the I-81 Bond Act, and (iii) if determined by Department staff to be cost beneficial, to procure and negotiate a contract with a credit facility provider to issue a credit facility with respect to some or all of the TIFIA Bonds or reserves therefor and to execute such contract, together with any other documents related to such credit facility. The Board further authorizes (i) the Chairperson to execute and deliver all documents and certificates and to take all such further action as such officer may consider necessary or desirable in connection with the issuance of the TIFIA Bonds and (ii) the Department and Staff to take such further action, including the execution and delivery of such documents and instruments as may be necessary or appropriate, to undertake, carryout and perform the Board's obligations under the TIFIA Loan Agreements, including without limitation, submitting requisitions for the disbursement of funds and providing all reports, notices, certifications and other filings as determined to be necessary or appropriate under the TIFIA Loan Agreements. All actions of the Department and staff in connection with the application on behalf of the Board to the TIFIA Lender related to the TIFA Loans is hereby ratified and affirmed.

8. Designation of Authorized Representatives. The Chairperson and the Chief Financial Officer of the Department are designated authorized representatives of the Board for purposes of the TIFIA Loan Agreements. Either of the Chairperson or Chief Financial Officer of the Department are authorized to designate any other officer or staff of the Department to act as an authorized representative of the Board for such purpose.

Resolution of the Board

Authorizing the Issuance of Commonwealth of Virginia I-81 Corridor Program Revenue Bonds, Series 2022 to be issued to the U.S. Department of Transportation to Evidence a Subordinate Lien Regular Loan in the Initial Principal Amount up to \$83,000,000 and Senior Lien Rural Loan in the Initial Principal Amount up to \$15,000,000, to be issued as Additional Bonds Under the Existing I-81 Corridor Program Master Indenture and Pursuant to Certain Other Documents and Undertakings in Connection with Such Issuance

October 25, 2022

Page 8 of 8

9. Authorizations and Directions to Certain Officers. Any authorization or direction to the Chairperson or to the Secretary under this Resolution shall also be deemed to be an authorization or a direction to the Vice-Chairperson or to an Assistant Secretary, respectively, the Commissioner of Highways, and any officer or employee of the Board or the Department designated for such purpose by the Chairperson or the Secretary.

10. Effective Date. This Resolution shall be effective immediately and shall remain in force for a period of one year after adoption.

###

**SECOND SUPPLEMENTAL INDENTURE OF TRUST AND AMENDMENT TO
MASTER INDENTURE**

between

COMMONWEALTH TRANSPORTATION BOARD

and

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee**

Dated as of [_____] 1, 2022

relating to

\$_____

**Commonwealth of Virginia
Interstate 81 Corridor Program
Revenue Bond, Series 2022 (TIFIA 2022 Regular Project Subordinate Lien)**

Table of Contents

Page

ARTICLE I SECOND SUPPLEMENTAL INDENTURE

Section 1.1	Second Supplemental Indenture	2
Section 1.2	Definitions.....	2
Section 1.3	Representations of Board.....	5

ARTICLE II AMENDMENTS TO THE MASTER INDENTURE

Section 2.1	Amendments to Master Indenture.....	5
-------------	-------------------------------------	---

ARTICLE III AUTHORIZATION AND DETAILS OF TIFIA SERIES 2022 SUBORDINATE BOND

Section 3.1	Authorization of TIFIA Series 2022 Subordinate Bond.....	7
Section 3.2	Terms and Details of TIFIA Series 2022 Subordinate Bond.....	8
Section 3.3	Medium and Place of Payment	9
Section 3.4	Form of TIFIA Series 2022 Subordinate Bond; Approval of 2022 TIFIA Regular Project Loan Agreement	9
Section 3.5	Authentication and Delivery of TIFIA Series 2022 Subordinate Bond.....	9

ARTICLE IV REDEMPTION OF TIFIA SERIES 2022 SUBORDINATE BOND

Section 4.1	Optional Redemption.....	10
Section 4.2	Mandatory Redemption	10
Section 4.3	Special Mandatory Redemption Upon Optional Redemption of Other Debt.....	10
Section 4.4	Partial Redemption of the TIFIA Series 2022 Subordinate Bond	11

ARTICLE V ESTABLISHMENT OF FUNDS AND ACCOUNTS; APPLICATION OF PROCEEDS

Section 5.1	Establishment of Funds and Accounts for the TIFIA Series 2022 Subordinate Bond.....	11
Section 5.2	Use of Disbursements from TIFIA Loan	12

ARTICLE VI FLOW OF FUNDS; APPLICATION OF CERTAIN FUNDS

Section 6.1	TIFIA Series 2022 Subordinate Bond Debt Service Fund.....	12
Section 6.2	TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund.....	12
Section 6.3	TIFIA Series 2022 Regular Project Fund	13

Table of Contents
(continued)

Page

**ARTICLE VII
SECURITY FOR THE TIFIA SERIES 2022 SUBORDINATE BOND**

Section 7.1	Security for the TIFIA Series 2022 Subordinate Bonds	14
Section 7.2	Covenant to Requisition Under TIFIA Regular Project Loan Agreement.....	14

**ARTICLE VIII
SPECIAL COVENANTS WITH RESPECT TO TIFIA SERIES 2022 SUBORDINATE BOND**

Section 8.1	Issuance of Additional Bonds	15
Section 8.2	Additional Terms Relating to a Bond Credit Facility	15
Section 8.3	Permitted Investments.....	15
Section 8.4	Events of Default and Remedies.....	15

**ARTICLE IX
MISCELLANEOUS**

Section 9.1	Tax Status.....	16
Section 9.2	Successors and Assigns.....	16
Section 9.3	Severability	16
Section 9.4	Governing Law	16
Section 9.5	Counterparts	16
Section 9.6	Binding Effect.....	16
Section 9.7	Parties Interested.....	16

EXHIBIT A	2022 TIFIA REGULAR PROJECT LOAN AGREEMENT	
EXHIBIT B	FORM OF TIFIA SERIES 2022 SUBORDINATE BOND	
EXHIBIT C	FORM OF REQUISITION	

SECOND SUPPLEMENTAL INDENTURE OF TRUST AND AMENDMENT TO MASTER INDENTURE

This **SECOND SUPPLEMENTAL INDENTURE OF TRUST AND AMENDMENT TO MASTER INDENTURE** (this “Second Supplemental Indenture”) is made as of [_____] 1, 2022, between the **COMMONWEALTH TRANSPORTATION BOARD**, a board created and existing under the laws of the Commonwealth of Virginia (the “Board”), and **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a non-depository national banking association, and its successors, successor to U.S. BANK NATIONAL ASSOCIATION, as trustee (the “Trustee”).

RECITALS:

WHEREAS, pursuant to the Transportation Development and Revenue Bond Act (the “State Transportation Revenue Bond Act”), Sections 33.2-1700 et seq. of the Code of Virginia of 1950, as amended (the “Virginia Code”), the Board has the power to issue revenue bonds to finance the costs of transportation projects authorized by the General Assembly of Virginia (the “General Assembly”), including any financing costs or other financing expenses related to such bonds;

WHEREAS, pursuant to the Commonwealth Transportation Interstate 81 Corridor Bond Act of 2020, enactment clause 15 of Chapter 1230 of the Acts of the General Assembly of the Commonwealth of Virginia, 2020 Reconvened Session (the “I-81 Bond Act”), the Board is authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Transportation Revenue Bond Act, revenue obligations of the Commonwealth of Virginia (the “Commonwealth”) to be designated “Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bonds, Series” (the “Bonds”) at one or more times in an aggregate principal amount not to exceed \$1 billion, after all costs, excluding refunding bonds and excluding pre-project completion interest convertible to principal associated with certain federal programs of the U.S. Department of Transportation

WHEREAS, the Board has executed and delivered to the Trustee a Master Indenture of Trust dated as of August 1, 2021 (the “Master Indenture”), under which, among other things, the Board has provided for (i) the issuance from time to time of Bonds to finance or refinance the Costs of any Project and for such other purposes as may be authorized under and pursuant to the I-81 Bond Act and (ii) the security for and sources of payment of the debt service on such Bonds;

WHEREAS, pursuant to the Master Indenture of Trust and a First Supplemental Indenture of Trust dated as of August 1, 2021 (the “First Supplemental Indenture”), the Board previously issued its \$80,990,000 Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bonds (Senior Lien) Series 2021 (the “Series 2021 Senior Lien Bonds”), the initial series of bonds issued under the Master Indenture;

WHEREAS, pursuant to the Master Indenture of Trust and a Third Supplemental Indenture of Trust dated as of _____ 1, 2022 (the “Third Supplemental Indenture”), the Board issued to the TIFIA Lender (herein defined) its \$_____ Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond (Senior Lien) Series 2022 (the TIFIA Series 2022 Senior

Lien Bond”) on parity with the Series 2021 Senior Lien Bonds to evidence a lien loan to the Board pursuant to a TIFIA Loan Agreement (2022 Rural Project), dated as of _____, 2022 (the “2022 TIFIA Rural Project Loan Agreement”);

WHEREAS, the Board and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), propose to enter into a TIFIA Regular Project Loan Agreement, dated as of _____, 2022 (the “2022 TIFIA Regular Project Loan Agreement”), pursuant to which the TIFIA Lender has agreed to extend a loan to Board, the proceeds of which shall be used solely in respect of Eligible Project Costs (as defined in the 2022 Project Loan Agreement) paid or incurred by or on behalf of the Borrower (as defined in the 2022 TIFIA Regular Project Loan Agreement) from time to time in connection with the 2022 TIFIA Financed Projects (as defined below);

WHEREAS, as evidence of the loan extended by the TIFIA Lender under the 2022 TIFIA Regular Project Loan Agreement, and to provide for the repayment thereof, the Board has determined to issue and deliver a Series of Bonds under the Master Indenture, to be issued as a Subordinate Obligation thereunder and designated the Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond, Series 2022 (TIFIA 2022 Regular Project Subordinate Lien) (the “TIFIA Series 2022 Subordinate Bond”) to the TIFIA Lender in the initial aggregate principal amount (excluding any capitalized interest) of up to [\$82,580,876] to finance certain Eligible Project Costs;

WHEREAS, the Master Indenture provides that the Board may issue Subordinate Obligations from time to time as authorized by a Series Supplement, which Subordinate Obligations are to be secured by the Revenues and certain funds and accounts in accordance with the Master Indenture, and the Master Indenture further provides that, as a condition to the issuance and authentication of any Series of Bonds, the Board shall deliver to the Trustee a Series Supplement;

WHEREAS, the Board and the Trustee desire to enter into this Second Supplemental Indenture as a Series Supplement under the Master Indenture to set forth the terms of the Board’s obligations to the TIFIA Lender relating to the 2022 TIFIA Regular Project Loan Agreement, which is being entered into as indebtedness under, pursuant to and in accordance with the I-81 Bond Act;

WHEREAS, all things necessary to make the TIFIA Series 2022 Subordinate Bond a valid and binding limited obligation of the Board, when authenticated and issued as provided in this Second Supplemental Indenture, and to constitute this Second Supplemental Indenture a valid and binding Series Supplement securing the payment of the principal of and premium, if any, and interest on the TIFIA Series 2022 Subordinate Bond, have been done and performed.

NOW, THEREFORE, the Board hereby covenants and agrees with the Trustee and with the Owners, from time to time, of the TIFIA Series 2022 Subordinate Bond, as follows:

**ARTICLE I
SECOND SUPPLEMENTAL INDENTURE**

Section 1.1 Second Supplemental Indenture. This Second Supplemental Indenture is authorized and executed by the Board and delivered to the Trustee pursuant to and in accordance with Articles V and XV of the Master Indenture. All terms, covenants, conditions and agreements of the Master Indenture apply with full force and effect to the TIFIA Series 2022 Subordinate Bond, except as otherwise expressly stated in this Second Supplemental Indenture.

Section 1.2 Definitions. All capitalized words and terms used in this Second Supplemental Indenture, including in the Recitals, shall have the meanings set forth in Article I of the Master Indenture unless the context clearly requires a different or separate meaning. In addition, the following words and terms have the following meanings in this Second Supplemental Indenture unless the context clearly requires otherwise:

“2022 TIFIA Debt Service” means, with respect to any Interest Payment Date or Principal Payment Date occurring on or after the 2022 TIFIA Debt Service Payment Commencement Date, the principal and/or interest required to be paid on the 2022 TIFIA Loan on such Interest Payment Date or Principal Payment Date as shown on Exhibit G of the 2022 TIFIA Regular Project Loan Agreement in accordance with the provisions of Section 9 of the 2022 TIFIA Regular Project Loan Agreement.

“2022 TIFIA Debt Service Payment Commencement Date” means the earlier of (a) [May 15, 2026] and (b) the first Payment Date immediately succeeding the 2022 TIFIA Substantial Completion Date.

“2022 TIFIA Debt Service Reserve Required Balance” means 1.4 times the maximum Principal and Interest Requirements on the TIFIA Series 2022 Subordinate Bond in the then current or any future Fiscal Year. The 2022 TIFIA Debt Service Reserve Required Balance shall constitute the “Subordinate Debt Service Reserve Fund Requirement,” as defined in the Master Indenture, with respect to the TIFIA Series 2022 Subordinate Bond and any other bonds or other obligations issued to the TIFIA Lender under the Master Indenture and secured by a pledge of Revenues thereunder.

“2022 TIFIA Financed Project” means the Project as defined in the 2022 TIFIA Regular Project Loan Agreement.

“2022 TIFIA Interest Rate” means _____% per annum as set forth in Section 6 of the 2022 TIFIA Regular Project Loan Agreement.

“2022 TIFIA Loan” shall have the meaning set forth in the 2022 TIFIA Regular Project Loan Agreement as the “TIFIA Loan.”

“2022 TIFIA Regular Project Loan Agreement” means the 2022 TIFIA Regular Project Loan Agreement (2022 Regular Project), dated as of _____, 2022, between the TIFIA Lender and the Board, relating to the 2022 TIFIA Financed Projects, as amended in

accordance with its terms. The 2022 TIFIA Regular Project Loan Agreement is attached hereto as Exhibit A.

“2022 TIFIA Maximum Annual Debt Service” means the highest aggregate amount of 2022 TIFIA Debt Service for the present or any succeeding Fiscal Year.

“2022 TIFIA Substantial Completion Date” means Substantial Completion Date as defined in the 2022 TIFIA Regular Project Loan Agreement.

“Bond Resolution” means the resolution adopted by the Board on October __, 2022 entitled [“Resolution Of The Commonwealth Transportation Board Authorizing The Issuance Of Commonwealth Of Virginia I-81 Corridor Program Revenue Bonds, Series 2022 To Be Issued To The United States Department Of Transportation To Evidence A Subordinate Lien Regular Loan In The Initial Principal Amount Up To \$83,000,000 And Senior Lien Rural Loan In The Initial Principal Amount Up To \$15,000,000, To Be Issued As Additional Bonds Under The Existing I-81 Corridor Program Master Indenture And Pursuant To Certain Loan Agreements And Authorizing Certain Other Documents And Undertakings In Connection With Such Issuance.]

“Dated Date” means the date of the issuance, authentication and delivery of the TIFIA Series 2022 Subordinate Bond and may also be referred to as the “Closing Date.”

“Default Rate” means an interest rate equal to the sum (a) the 2022 TIFIA Interest Rate plus (b) two percent (2%) as set forth in the 2022 TIFIA Regular Project Loan Agreement.

“Excess Interest” means such interest due on a Bond Credit Facility or DSRF Credit Facility that exceeds the interest that is otherwise due and payable to the Bond Credit Provider or DSRF Credit Provider on the unpaid principal of and interest on the corresponding Bonds or portion thereof pursuant to the Indenture. Excess Interest shall include any related additional interest or fees.

“Final Maturity Date” means the earlier of (i) the [Payment Date] occurring on or immediately prior to the 35th anniversary of the Substantial Completion Date and (b) [May 15, 2060,] as set forth in the 2022 TIFIA Regular Project Loan Agreement.

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

“Interest Payment Date” means each [May 15] and [November 15], or if such day is not a Business Day, then the Business Day succeeding such [May 15] or [November 15] as set forth in the 2022 TIFIA Regular Project Loan Agreement.

“Master Indenture” means the Master Indenture of Trust dated as of August 1, 2021, between the Board and the Trustee, as the same may be modified, altered, amended and supplemented from time to time in accordance with its terms.

“Payment Date” means an Interest Payment Date or a Principal Payment Date as set forth in the 2022 TIFIA Regular Project Loan Agreement.

“**Permitted Investments**” has the meaning set forth in the 2022 TIFIA Regular Project Loan Agreement.

“**Principal Payment Date**” means each [May 15] as set forth in the 2022 TIFIA Regular Project Loan Agreement.

“**Second Supplemental Indenture**” means this Second Supplemental Indenture of Trust and Amendment to Master Indenture dated as of [_____] 1, 2022, between the Board and the Trustee, being a Series Supplement with respect to the TIFIA Series 2022 Subordinate Bond pursuant to the provisions of the Master Indenture.

“**Series 2021 Senior Lien Bonds**” means the Board’s \$80,990,000 Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bonds (Senior Lien) Series 2021, the initial obligations issued under the Master Indenture.

“**TIFIA Bond**” and “**TIFIA Loan**” each has the meaning set forth in the 2022 TIFIA Regular Project Loan Agreement.

“**TIFIA Lender**” means the U.S. Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, and its successors and assigns.

“**TIFIA Series 2022 Regular Project Fund**” means the Project Fund related to the TIFIA Series 2022 Subordinate Bond established pursuant to Section 7.1 of the Master Indenture and Section 5.1 of this Second Supplemental Indenture.

“**TIFIA Series 2022 Subordinate Bond**” means the Board’s Commonwealth of Virginia I-81 Corridor Program Revenue Bond, Series 2022 (TIFIA 2022 Regular Project Subordinate Lien), authorized to be issued as a Subordinate Obligation under the Master Indenture and this Second Supplemental Indenture.

“**TIFIA Series 2022 Subordinate Bond Debt Service Fund**” means the Bond Debt Service Fund related to the TIFIA Series 2022 Subordinate Bond established pursuant to Section 7.1 of the Master Indenture and Section 5.1 of this Second Supplemental Indenture.

“**TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund**” means the Bond Debt Service Reserve Fund related to the TIFIA Series 2022 Subordinate Bond established pursuant to Section 7.1 of the Master Indenture and Section 5.1 of this Second Supplemental Indenture.

“**VDOT**” means the Virginia Department of Transportation.

Section 1.3 Representations of Board. The Board represents that (i) it is duly authorized under the Constitution and laws of the Commonwealth, including, particularly and without limitation the I-81 Bond Act, to issue the TIFIA Series 2022 Subordinate Bond, to execute this Second Supplemental Indenture, and to pledge and grant the security provided herein subject to the Master Indenture, (ii) all action on its part necessary for the execution and delivery of this Second Supplemental Indenture has been taken, and (iii) the TIFIA Series 2022

Subordinate Bond in the hands of the Owner thereof IS and will be a valid and enforceable limited obligation of the Board.

ARTICLE II AMENDMENTS TO THE MASTER INDENTURE

Section 2.1 Amendments to Master Indenture. Section 8.1 of the Master Indenture is hereby amended and restated in its entirety without Owner consent as permitted by Section 15.1(a) thereof to correct inconsistent paragraph lettering and by Section 15.1(m)(ii) thereof permitting amendments not prejudicial to Owners of then Outstanding Bonds, as follows:

Section 8.1 Deposits into Debt Service Funds and Debt Service Reserve Funds. (a) Not later than July 25 of each Fiscal Year, or the following Business Day if such date is not a Business Day, or promptly upon the receipt of any Revenues for such Fiscal Year if later, and continuing on the 25th day of every month thereafter, or the following Business Day if such date is not a Business Day, the Board shall cause all Revenues received to be transferred to the Trustee for deposit into the Debt Service Fund and the Debt Service Reserve Fund in accordance with Section 6.7. Such monthly transfers shall continue until such time as the Trustee has accumulated deposits in the Debt Service Fund and the Debt Service Reserve Fund so that the balances therein are at least equal to the amount necessary to pay all related Principal and Interest Requirements, including any past due amounts, and satisfy all related Reserve Requirements for such Fiscal Year. After such Principal and Interest Requirements, including any past due amounts, and Reserve Requirements have been satisfied from Revenues deposited with the Trustee for the Fiscal Year, no further transfer of Revenues shall be required for such Fiscal Year. The Revenues transferred shall be deposited in the amounts and in the order of priority set forth below.

FIRST: To each Senior Debt Service Fund, ratably, an amount so that the balance therein equals the Principal and Interest Requirements on the Related Series of Senior Bonds due in such Fiscal Year, including any past due amounts; provided that the Board shall receive a credit against such transfer for the amount, if any, held in a Senior Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

SECOND: To each Senior Debt Service Reserve Fund, ratably, the amount, if any, required so that the balance in each such Fund shall be equal to the respective Senior Debt Service Reserve Requirement;

THIRD: To each Intermediate Lien Debt Service Fund, ratably, the amount required, if any, so that the balance therein equals the Principal and Interest Requirements on the Related Intermediate Lien Obligations due in such Fiscal Year, including any past due amounts; provided that the Board shall receive a credit against such transfer for the amount, if any, held in an Intermediate Lien Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon;

FOURTH: To each Intermediate Lien Debt Service Reserve Fund, ratably, the amount, if any, so that the balance in such Fund shall be equal to the respective Intermediate Lien Debt Service Reserve Requirement;

FIFTH: To each Subordinate Debt Service Fund, ratably, the amount required, if any, so that the balance therein equals the Principal and Interest Requirements on the Related Subordinate Obligations due in such Fiscal Year, including any past due amounts; provided that the Board shall receive a credit against such transfer for the amount, if any, held in a Subordinate Debt Service Fund as capitalized interest or otherwise, together with the investment earnings thereon; and

SIXTH: To each Subordinate Debt Service Reserve Fund, ratably, the amount, if any, so that the balance in such Fund shall be equal to the respective Subordinate Debt Service Reserve Requirement.

(b) Notwithstanding the foregoing transfer of Revenues into the Funds specified in paragraph (a), with respect to the Series 2021 Senior Lien Bonds only, in the event the amount on deposit in the Related Senior Debt Service Fund is insufficient to pay the Principal and Interest Requirements on the Series 2021 Senior Lien Bonds on any Payment Date, the Trustee shall transfer to such Senior Debt Service Fund an amount sufficient to cure any such insufficiency (i) first from amounts on deposit in the Subordinate Debt Service Funds, (ii) second from amounts on deposit in the Intermediate Lien Debt Service Funds and (iii) finally from amounts on deposit in the Related Debt Service Reserve Fund as set forth in Section 8.3(a). This Section 8.1(b) shall apply to the Series 2021 Senior Lien Bonds only, and to no other Bonds issued under the Master Indenture. As this amendment to Section 8.1(b) of the Master Indenture has no adverse effect on the Owners of the Series 2021 Senior Lien Bonds, the only Bonds heretofore outstanding under the Master Indenture, the Board finds as required by Section 15.1(m)(ii) of the Master Indenture that this amendment does not prejudice in any material respect the rights of such Owners.

(c) In the case of Bonds of a Series secured by a Bond Credit Facility, amounts may be transferred to the Related Debt Service Fund, the Related Reimbursement Account thereof, or elsewhere as provided in the Related Series Supplement to reimburse the Bond Credit Provider for amounts drawn under the Bond Credit Facility to pay the principal of and premium, if any, and interest on such Bonds.

(d) If on the 10th Business Day preceding a Payment Date, the Trustee does not have on deposit sufficient Revenues to make the required payment, the Trustee shall promptly notify the Board of such fact and of the amount of the deficiency, and the Board shall act in accordance with the Payment Agreement to cure any such deficiency to provide for complete and timely payment of any such payment obligation to the extent of any General Assembly appropriation for such purpose. Unless otherwise specified in a Supplemental Indenture, if the Trustee does not have sufficient Revenues on deposit in any of the Senior Debt Service Fund, the Intermediate Lien Debt Service Fund or the Subordinate Debt Service Fund to pay the Related Principal and Interest Requirements in any Fiscal Year, Revenues shall first be applied to Interest Requirements due and payable from any such Fund in such Fiscal Year.

(e) After all Principal and Interest Requirements, including any past due amounts, and Reserve Requirements have been satisfied for a Fiscal Year through the deposit of sufficient Revenues with the Trustee, if surplus funds over and above such requirements are on deposit in the Debt Service Fund or in the Debt Service Reserve Fund, the Trustee shall promptly notify the Board of the amount of such surplus, and, in accordance with instructions provided by the Board, return such surplus amount or a portion thereof to the Board or retain such amount or a portion thereof to be applied towards Principal and Interest Requirements and/or Reserve Requirements for the next Fiscal Year.

ARTICLE III

AUTHORIZATION AND DETAILS OF TIFIA SERIES 2022 SUBORDINATE BOND

Section 3.1 Authorization of TIFIA Series 2022 Subordinate Bond.

(a) There is authorized to be issued pursuant to the Master Indenture a Series of Subordinate Obligations to be called the “Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond, Series 2022[A] (TIFIA 2022 Regular Project Subordinate Lien) in the initial aggregate principal amount of up to \$[82,580,876], which amount is subject to increase or decrease pursuant to the provisions of the 2022 TIFIA Regular Project Loan Agreement and as described in Section 3.2(c) of this Second Supplemental Indenture.

(b) The proceeds of the TIFIA Series 2022 Subordinate Bond shall be used solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Board in connection with the 2022 TIFIA Financed Projects.

Section 3.2 Terms and Details of TIFIA Series 2022 Subordinate Bond.

(a) The TIFIA Series 2022 Subordinate Bond shall be issued to the TIFIA Lender in certificated form as one typewritten bond registered in the name of the TIFIA Lender as the Owner thereof. The TIFIA Series 2022 Subordinate Bond shall not be issued as a book-entry-only obligation. Initially, there shall be delivered hereunder one fully registered TIFIA Series 2022 Subordinate Bond up to the full authorized initial aggregate principal amount set forth above, numbered R-1, without interest coupons. Any TIFIA Series 2022 Subordinate Bond issued in replacement thereof upon transfer or exchange shall be numbered consecutively from R-2 upward, payable to the Owner thereof. The TIFIA Series 2022 Subordinate Bond shall be payable, executed, authenticated, registrable, exchangeable and secured all as set forth in the Master Indenture, this Second Supplemental Indenture, and the 2022 TIFIA Regular Project Loan Agreement. In the event the TIFIA Lender sells or otherwise transfers all or a portion of the TIFIA Series 2022 Subordinate Bond to another Owner, the Board shall provide, in writing, subsequent transfer and registration details to the Trustee.

(b) The TIFIA Series 2022 Subordinate Bond shall be dated the Dated Date. The 2022 TIFIA Loan as evidenced by the TIFIA Series 2022 Subordinate Bond shall bear interest at the TIFIA Interest Rate or at the 2022 TIFIA Default Rate as further provided in the 2022 TIFIA Regular Project Loan Agreement. Interest on the TIFIA Series 2022 Subordinate Bond shall be calculated on the basis of a year of 365 or 366 days, as appropriate, for the actual number of days elapsed in accordance with the 2022 TIFIA Regular Project Loan Agreement.

(c) The principal amount of the TIFIA Series 2022 Subordinate Bond will be increased from time to time (i) on each occasion on which the TIFIA Lender shall disburse loan proceeds under and pursuant to the 2022 TIFIA Regular Project Loan Agreement, by the amount of such disbursement of loan proceeds, and (ii) in accordance with Section 9(b) of the 2022 TIFIA Regular Project Loan Agreement, prior to the Debt Service Payment Commencement Date on each occasion on which any amount representing interest that is not currently paid by the Board on the applicable Interest Payment Date, by the amount of such unpaid interest, which shall be capitalized. Not later than the tenth calendar day before the first Business Day of the month following (x) each disbursement of loan proceeds under the 2022 TIFIA Regular Project Loan Agreement and (y) each Interest Payment Date on which interest is capitalized as provided in the preceding sentence, the Board shall provide a revised schedule to the Trustee and the TIFIA Lender setting forth each increase in the principal amount of the TIFIA Series 2022 Subordinate Bond and the revisions to the monthly deposits to the Funds and Accounts required by this Second Supplemental Indenture. The Board shall, within a reasonable period of time after each disbursement or each Interest Payment Date on which interest is capitalized, notify the Trustee in writing of the date and amount of each such disbursement or capitalized interest amount and increase to the outstanding principal amount of the TIFIA Series 2022 Subordinate Bond in accordance with Section (9)(b) of the 2022 TIFIA Regular Project Loan Agreement. Principal on the TIFIA 2022 Subordinate Bond shall be payable on each Principal Payment Date in accordance with the 2022 TIFIA Regular Project Loan Agreement.

(d) The 2022 TIFIA Loan as evidenced by the TIFIA Series 2022 Subordinate Bond shall mature no later than the Final Maturity Date.

(e) The principal of and premium, if any, and interest on the TIFIA Series 2022 Subordinate Bond shall be payable in lawful money of the United States of America.

Section 3.3 Medium and Place of Payment. Payment of the principal of and/or interest on the TIFIA Series 2022 Subordinate Bond shall be paid by the Trustee by wire transfer to the TIFIA Lender (or a successor) in immediately available funds in accordance with the payment instructions provided by the TIFIA Lender on the date of execution and delivery of the TIFIA Series 2022 Subordinate Bond. Upon receipt by the Board of any revision to the payment instructions provided by the TIFIA Lender that is not also simultaneously sent directly to the Trustee and any Paying Agent, the Board shall promptly forward such revised payment instructions to the Trustee and any such Paying Agent. The Trustee shall comply with such revised payment instructions if received no later than five (5) Business Days prior to the next payment date.

Section 3.4 Form of TIFIA Series 2022 Subordinate Bond; Approval of 2022 TIFIA Regular Project Loan Agreement.

(a) The TIFIA Series 2022 Subordinate Bond and the certificate of authentication shall be substantially in the form attached as Exhibit B to this Second Supplemental Indenture, which form is hereby approved and adopted as the form of the TIFIA Series 2022 Subordinate Bond and the certificate of authentication, with such appropriate variations, omissions and insertions as permitted or required by the Master Indenture, this

Second Supplemental Indenture, or the 2022 TIFIA Regular Project Loan Agreement. There may be endorsed on the TIFIA Series 2022 Subordinate Bond such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law.

(b) The terms and provisions of the 2022 TIFIA Regular Project Loan Agreement are hereby approved by the Board substantially in form and substance as set forth in Exhibit A to this Second Supplemental Indenture.

Section 3.5 Authentication and Delivery of TIFIA Series 2022 Subordinate Bond.

(a) The TIFIA Series 2022 Subordinate Bond shall bear a certificate of authentication, substantially as set forth in the form of the TIFIA Series 2022 Subordinate Bond attached as Exhibit B, duly executed by the Trustee. The Trustee shall authenticate the TIFIA Series 2022 Subordinate Bond with the signature of one of its authorized officers or employees. Only such authenticated TIFIA Series 2022 Subordinate Bond shall be entitled to any right or benefit under the Master Indenture or this Second Supplemental Indenture, and the certificate of authentication on the TIFIA Series 2022 Subordinate Bond shall be conclusive evidence that the TIFIA Series 2022 Subordinate Bond has been duly issued under and is secured by the provisions of the Master Indenture and this Second Supplemental Indenture.

(b) The Trustee shall authenticate and deliver the TIFIA Series 2022 Subordinate Bond to the TIFIA Lender when there have been filed with or delivered to it all items required by Section 5.3 of the Master Indenture and upon execution and delivery of the 2022 TIFIA Regular Project Loan Agreement.

ARTICLE IV REDEMPTION OF TIFIA SERIES 2022 SUBORDINATE BOND

Section 4.1 Optional Redemption. The TIFIA Series 2022 Subordinate Bond is subject to redemption prior to maturity at the option of the Board from any available moneys, in whole or in part at any time (in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at 100% of the principal amount of the TIFIA Series 2022 Subordinate Bond to be redeemed plus interest accrued to the date of redemption. The Board shall transfer the amounts necessary to fund the redemption from any available sources to the Trustee for deposit into the TIFIA Series 2022 Redemption Account at least ten (10) days prior, but not more than thirty (30) days prior, to the redemption date. Any optional redemption of the TIFIA Series 2022 Subordinate Bond may be conditioned upon the receipt and deposit of sufficient funds for such purpose.

Section 4.2 Mandatory Redemption. The TIFIA Series 2022 Subordinate Bond is subject to mandatory sinking fund redemption prior to maturity by the Board in accordance with Section 9(c) of the 2022 TIFIA Regular Project Loan Agreement.

For purposes of clarification, it is the intention of the Board and the TIFIA Lender that such mandatory sinking fund redemption shall at all times match the principal amortization schedule set forth in Exhibit G to the 2022 TIFIA Regular Project Loan Agreement (as it may be

modified from time to time in accordance with the 2022 TIFIA Regular Project Loan Agreement and Section 4.4 below), and any redemption or other action that results in a revision to the principal amortization schedule set forth in Exhibit G to the 2022 TIFIA Regular Project Loan Agreement will automatically result in a revision to the mandatory sinking fund redemption, and vice versa.

Section 4.3 Special Mandatory Redemption Upon Optional Redemption of Other Debt

(a) In accordance with Section 10(a) of the 2022 TIFIA Regular Project Loan Agreement, the TIFIA Series 2022 Subordinate Bond is subject to redemption prior to maturity, in part and without penalty or premium, on any date and concurrently with the optional redemption of Bonds other than the TIFIA Series 2022 Subordinate Bond in an amount equal to the same percentage of the Outstanding TIFIA Series 2022 Subordinate Bond that the principal amount of any Senior Bonds, Intermediate Lien Obligations or Subordinate Obligations being redeemed or prepaid bears to the principal amount of Senior Bonds, Intermediate Lien Obligations or Subordinate Obligations outstanding prior to the redemption or prepayment, in an amount equal to one hundred percent (100%) of the principal amount of the TIFIA Series 2022 Subordinate Bond to be redeemed, plus interest accrued to the date of redemption; provided, however, that the provisions of this Section 4.3(a) shall not apply to the payment of Senior Bonds, Intermediate Lien Obligations or Subordinate Obligations that are paid or to be paid with the proceeds of Bonds issued on the same lien level to refund the proposed refunded obligations.

(b) Any redemption pursuant to this Section 4.3 shall not reduce any debt service payment otherwise due on the date of redemption.

(c) Notice of redemption under this Section 4.3 shall be as provided in Section 4.3 of the Master Indenture, subject to the provisions of Section 10 of the 2022 TIFIA Regular Project Loan Agreement.

Section 4.4 Partial Redemption of the TIFIA Series 2022 Subordinate Bond. Any partial redemption of the TIFIA Series 2022 Subordinate Bond under Section 4.3 shall be applied on pro rata across remaining principal maturities and sinking fund installments. Upon any redemption of the TIFIA Series 2022 Subordinate Bond in part only, Exhibit G to the 2022 TIFIA Regular Project Loan Agreement may be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the 2022 TIFIA Regular Project Loan Agreement; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Board's obligations hereunder, under the TIFIA Series 2022 Subordinate Bond, or under any other TIFIA Loan Document (as defined in the 2022 TIFIA Regular Project Loan Agreement).

Following any such partial redemption, the Board, with the concurrence of the TIFIA Lender, may effect corresponding changes to the amount of the 2022 TIFIA Debt Service Reserve Required Balance.

ARTICLE V
ESTABLISHMENT OF FUNDS AND ACCOUNTS; APPLICATION OF PROCEEDS

Section 5.1 Establishment of Funds and Accounts for the TIFIA Series 2022 Subordinate Bond.

(a) In accordance with Section 7.1 of the Master Indenture, the following Funds and Accounts are hereby established for the TIFIA Series 2022 Subordinate Bond:

- (i) the TIFIA Series 2022 Regular Project Fund;
- (ii) the TIFIA Series 2022 Subordinate Bond Debt Service Fund, and within such Fund the TIFIA Series 2022 Interest Account, the TIFIA Series 2022 Principal Account and the TIFIA Series 2022 Redemption Account; and
- (iii) the TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund.

(b) The Funds and Accounts established pursuant to this Section 5.1(a) shall be held by the Trustee.

(c) [As provided in Section 2.1(a)(2) of the Master Indenture and subject to Section 8.1(b) thereof, the money and investments and earnings thereon held in the TIFIA Series 2022 Regular Project Fund, the TIFIA Series 2022 Subordinate Bond Debt Service Fund, and the TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund are pledged exclusively to secure the TIFIA Series 2022 Subordinate Bond].

Section 5.2 Use of Disbursements from TIFIA Loan. The disbursements received from the TIFIA Lender under the provisions of Section 4 of the 2022 TIFIA Regular Project Loan Agreement as proceeds of the TIFIA Series 2022 Subordinate Bond shall, if not applied immediately to reimburse the Board for Eligible Project Costs, or provide for the funding of a deposit to the TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund, be deposited when received by the Board into the TIFIA Series 2022 Regular Project Fund and applied to the payment or reimbursement of Eligible Project Costs as provided in Section 6.4 herein.

ARTICLE VI
FLOW OF FUNDS; APPLICATION OF CERTAIN FUNDS

Section 6.1 TIFIA Series 2022 Subordinate Bond Debt Service Fund.

(a) The Board shall make deposits for the payment of principal and interest on the TIFIA Series 2022 Subordinate Bond to the TIFIA Series 2022 Subordinate Bond Debt Service Fund beginning on the Debt Service Payment Commencement Date in accordance with Section 8.1(a) of the Master Indenture, and in particular the “FIFTH” clause thereof.

(b) Moneys in the TIFIA Series 2022 Redemption Account shall be applied by the Trustee to the purchase or redemption of the TIFIA Series 2022 Subordinate Bond as provided herein.

Section 6.2 TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund.

(a) On or prior to the later of the Substantial Completion Date (as defined in the 2022 TIFIA Regular Project Loan Agreement) or the date of the final disbursement of proceeds of the TIFIA Series 2022 Subordinate Bond under the provisions of the 2022 TIFIA Regular Project Loan Agreement, the Board shall cause the deposit of pledged Revenues available under the “SIXTH” clause of Section 8.1(a) and Section 8.3 of the Master Indenture into the TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund at such times and in amounts that are sufficient to cause the balance therein to equal the 2022 TIFIA Debt Service Reserve Required Balance as of such date. Thereafter, the Board shall cause the deposit of pledged Revenues pursuant to the “SIXTH” clause of such Section 8.1(a) into the TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund in an amount sufficient to maintain the balance therein to equal the 2022 TIFIA Debt Service Reserve Required Balance. In accordance with Section 8.3 of the Master Indenture, and notwithstanding Section 8.1(b) hereof, the TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund shall be held solely for the benefit of the Owner of the TIFIA Series 2022 Subordinate Bond, and shall be used, withdrawn, and replenished as provided herein and in Section 8.3 of the Master Indenture. If, on any date of valuation of Permitted Investments credited to the TIFIA Series 2022 Subordinate Bond Debt Service Reserve Fund pursuant to Section 8.3 of the Master Indenture, the amount on deposit in the TIFIA Series 2022 Bond Subordinate Debt Service Reserve Fund exceeds the 2022 TIFIA Debt Service Reserve Required Balance as of such date, the Trustee shall transfer such excess amount as provided in Section 8.3 of the Master Indenture.

(b) Notwithstanding any provision in the Master Indenture to the contrary, without the written consent of the TIFIA Lender, the Board may not cause to be deposited to the credit of the TIFIA Series 2022 Debt Service Reserve Fund any form of DSRF Credit Facility or Bond Credit Facility in lieu of cash or Permitted Investments. Additionally, in connection with any such DSRF Credit Facility or Bond Credit Facility obtained with the approval of the TIFIA Lender, for as long as any TIFIA Loan is outstanding, any payment to a provider of any such facility for any Excess Interest owed due to a drawing thereon or any additional interest, fees, fines or other penalties owed as a result of a default thereon shall not be made until all required payments have been made under the SIXTH clause of Section 8.1(a) of the Master Indenture.

Section 6.3 TIFIA Series 2022 Regular Project Fund.

(a) The Trustee will disburse the amounts in the TIFIA Series 2022 Regular Project Fund to the payment or reimbursement of Eligible Project Costs, as directed by the Board.

Disbursements from the TIFIA Series 2022 Regular Project Fund shall be made by the Trustee to the Board or as directed by the Board upon receipt by the Trustee of an Officer’s Certificate or of a requisition (upon which the Trustee shall be entitled to rely) signed by a Board

Representative and containing all information called for by, and otherwise being in the form of, Exhibit C.

(b) If the Trustee receives an Officer's Certificate stating that certain amounts in the TIFIA Series 2022 Regular Project Fund will not be necessary to pay the costs of the 2022 TIFIA Financed Projects, the Trustee shall then apply any remaining balance as directed by the Board Representative with the consent of the TIFIA Lender to the TIFIA Series 2022 Subordinate Bond Debt Service Fund as a credit to the 2022 TIFIA Debt Service Reserve Required Balance or to the prepayment of the TIFIA Series 2022 Subordinate Bond.

ARTICLE VII SECURITY FOR THE TIFIA SERIES 2022 SUBORDINATE BOND

Section 7.1 Security for the TIFIA Series 2022 Subordinate Bonds. The TIFIA Series 2022 Subordinate Bond shall be issued pursuant to the Master Indenture, this Second Supplemental Indenture, and the 2022 TIFIA Regular Project Loan Agreement, and shall be (a) equally and ratably secured with respect to the pledged Revenues with any other Series of Subordinate Obligations (or any related Credit Facility, if any) of the Board issued pursuant to Articles II and IX of the Master Indenture, without preference, priority or distinction of any Subordinate Obligations over any other Subordinate Obligations, and (b) secured with respect to certain Funds and Accounts in accordance with the provisions of this Second Supplemental Indenture. Notwithstanding anything in the Master Indenture to the contrary, amounts in the TIFIA Series 2022 Project Fund, the TIFIA Series 2022 Interest Account, the TIFIA Series 2022 Principal Account, the TIFIA Series 2022 Redemption Account, and the TIFIA Series 2022 Debt Service Reserve Fund are pledged exclusively to secure the obligations of the Board to the Owners of the TIFIA Series 2022 Subordinate Bond.

The Board has filed a copy of this Second Supplemental Indenture in the records of the Board.

Section 7.2 Covenant to Requisition Under TIFIA Regular Project Loan Agreement. The Board agrees to take all actions necessary to ensure that it can requisition sufficient monies under the 2022 TIFIA Regular Project Loan Agreement to pay Eligible Project Costs allocated to the 2022 TIFIA Loan.

ARTICLE VIII SPECIAL COVENANTS WITH RESPECT TO TIFIA SERIES 2022 SUBORDINATE BOND

Section 8.1 Issuance of Additional Bonds. For so long as any TIFIA Bond or Loan is Outstanding, the Board agrees, with respect to and in addition to the provisions of the Master Indenture relating to the issuance of a Series of Bonds, including additional Subordinate Obligations, to satisfy the requirements of Section 16(a) of the 2022 TIFIA Regular Project Loan Agreement.

Section 8.2 Additional Terms Relating to a Bond Credit Facility. For so long as any TIFIA Bond or Loan is Outstanding, in addition to the provisions of the Master Indenture

relating to a “Bond Credit Facility,” the Board hereby agrees that it will comply with the provisions relating to a “Liquidity Facility” (as defined in the 2022 TIFIA Regular Project Loan Agreement).

Section 8.3 Permitted Investments. For so long as any TIFIA Bond or Loan is Outstanding, and notwithstanding the provisions of the Master Indenture, amounts on deposit in any Fund or Account established under Section 5.1 of this Second Supplemental Indenture, must be invested in Permitted Investments (as such term is defined in the 2022 TIFIA Regular Project Loan Agreement) [and amounts on deposit in the TIFIA Series 2022 Interest Account, the TIFIA Series 2022 Principal Account and the TIFIA Series 2022 Redemption Account may only be invested in Permitted Investments that have a maturity that does not extend, respectively, beyond the next applicable Interest Payment Date, Principal Payment Date or redemption date.]

Section 8.4 Events of Default and Remedies.[In addition to the Events of Default under Section 13.1 of the Master Indenture and as provided in Section 13.1(d) thereof, the occurrence and continuation of an Event of Default under Section 19 of the TIFIA Regular Project Loan Agreement shall constitute Events of Default under this Second Supplemental Indenture with respect to the TIFIA Series 2022 Subordinate Bond, subject to paragraphs (b) and (c) of this section.]

(b) The provisions of this Section 8.4 are subject to the terms and conditions of the Master Indenture, including but not limited to, Article XIII thereof. Failure to pay the principal or any Amortization Requirement of or interest on the TIFIA Series 2022 Subordinate Bond will not constitute an Event of Default with respect to any Senior Bond or Intermediate Lien Obligation. An Event of Default with respect to the TIFIA Series 2022 Subordinate Bond shall not cause an Event of Default with respect to any other Series of Bonds unless such event or condition independently constitutes an Event of Default with such other Series of Bonds.

(c) In accordance with the Master Indenture there shall be no rights of acceleration of the TIFIA Series 2022 Subordinate Bond.

(d) In connection with the occurrence and continuance of an Event of Default respecting any Bond Outstanding under the Master Indenture, consistent with Section 13.1(d) of the Master Indenture, the TIFIA Lender shall have the right to intervene and participate in discussions and negotiations with the Board and the holder or holders of such obligations in structuring and implementing any and all remedies. This Section 8.4(d) shall not impair the rights of the Majority Owners to direct and control remedies in accordance with Section 13.3 of the Master Indenture or otherwise impact the priority for directing and controlling remedies as set forth therein.

ARTICLE IX MISCELLANEOUS

Section 9.1 Tax Status. The Board intends that the TIFIA Series 2022 Subordinate Bond shall not be an obligation described in Section 103 of the Internal Revenue Code of 1986, as amended, the interest on which is excludable from the gross income of the holders thereof.

The Board agrees not to file a Form 8038-G or comparable information return relating to tax-exempt obligations with the Internal Revenue Service in connection with the TIFIA Series 2022 Subordinate Bond.

Section 9.2 Successors and Assigns. This Second Supplemental Indenture is binding upon, inures to the benefit of and is enforceable by its parties and their respective successors and assigns.

Section 9.3 Severability. If any provision of this Second Supplemental Indenture is held invalid by any court of competent jurisdiction, such holding will not invalidate any other provision.

Section 9.4 Governing Law. This Second Supplemental Indenture will be governed by and construed under the applicable laws of the Commonwealth.

Section 9.5 Counterparts. This Second Supplemental Indenture may be executed in several counterparts, each of which will be an original, and the counterparts will together constitute one and the same instrument.

Section 9.6 Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the Trustee and the Board and their respective successors and assigns, subject to the limitations contained herein.

Section 9.7 Parties Interested. Except as and to the extent provided in Article II hereof, nothing in this Second Supplemental Indenture expressed or implied is intended or will be construed to confer upon any Person, other than the Board, the Trustee and the Owner(s) of the TIFIA Series 2022 Subordinate Bond, any right, remedy or claim under or by reason of this Second Supplemental Indenture. This Second Supplemental Indenture is intended for the sole and exclusive benefit of the Board, the Trustee and the Owner(s) of the TIFIA Series 2022 Subordinate Bond.

[Signature Page Follows]

IN WITNESS WHEREOF, the Board and the Trustee have caused this Second Supplemental Indenture to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

**COMMONWEALTH TRANSPORTATION
BOARD**

By: _____

Chairperson

**U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION, as Trustee**

By: _____

Vice President

[Signature Page of Second Supplemental Indenture]

EXHIBIT A
TIFIA REGULAR PROJECT LOAN AGREEMENT

EXHIBIT B

FORM OF TIFIA SERIES 2022 SUBORDINATE BOND

**COMMONWEALTH OF VIRGINIA
INTERSTATE 81 CORRIDOR PROGRAM
REVENUE BOND, SERIES 2022
(TIFIA 2022 REGULAR PROJECT SUBORDINATE LIEN)**

(TIFIA 2022 Regular Loan Project)

Maximum Principal Amount: \$ _____ .00 (excluding capitalized interest)

Effective Date: _____, 2022

Due: ____ 1, 20__

COMMONWEALTH TRANSPORTATION BOARD, created under the laws of the Commonwealth of Virginia (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Regular Project Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Regular Project Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Regular Project Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Regular Project Loan Agreement in accordance with **Exhibit G** to the TIFIA Regular Project Loan Agreement, as revised from time to time in accordance with the TIFIA Regular Project Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Regular Project Loan Agreement from time to time in accordance with the terms of the TIFIA Regular Project Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Regular Project Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(d) (*Manner of Payment*) and Section 36 (*Notices; Payment Instructions*) of the TIFIA Regular Project Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond (as defined in the TIFIA Regular Project Loan Agreement) shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Final Maturity Date is amended

in connection with an update to the Financial Plan approved by the TIFIA Lender pursuant to Section 21(a) (*Financial Plan*) of the TIFIA Regular Project Loan Agreement, the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Regular Project Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the “**TIFIA Regular Project Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the TIFIA Regular Project Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Regular Project Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Regular Project Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Regular Project Loan Agreement.

This TIFIA Bond is being issued by the Borrower pursuant to the Commonwealth Transportation 81 Interstate I-81 Bond Act of 2020, enactment clause 15 of Chapter 1230 of the Acts of the General Assembly of the Commonwealth of Virginia, 2020 Reconvened Session (the “I-81 Bond Act”), a resolution adopted by the Board on _____, 2022 and under and pursuant to a Master Indenture of Trust dated as of August 1, 2021 (the *Master Indenture*), between the Borrower and U.S. Bank Trust Company, National Association, successor to U.S. Bank, National Association, or its successor, as trustee (the *Trustee*), as supplemented and amended, with respect to this TIFIA Bond by the Second Supplemental Indenture of Trust and Amendment to Master Indenture dated as of [_____,] 2022 (the *Second Supplemental Indenture*). The Borrower previously issued its \$80,990,000 Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond (Senior Lien), Series 2021 pursuant to the Master Indenture as supplemented by a First Supplemental Indenture of Trust dated as of August 1, 2021 (the *First Supplemental Indenture* and, together with the Second Supplemental Indenture and the Master Indenture, the *Indenture*), between the Borrower and the Trustee, a certified copy of which Indenture is on file at the office of the Borrower.

This TIFIA Bond is issued as and constitutes a Subordinate Obligation within the meaning of such term in the Indenture.

This TIFIA Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision thereof. Nothing in this TIFIA Bond or in the Indenture of TIFIA Regular Project Loan Agreement shall be deemed to create or constitute a pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof. *The Borrower’s authority to receive Revenues pledged under the Master Indenture for payment of this TIFIA Bond is subject to the appropriation of funds for such purpose by the General Assembly of the Commonwealth. The General Assembly of the Commonwealth has no legal obligation to appropriate funds for such purpose.*

The Indenture provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional series of Bonds for the purpose of financing projects, and of refunding outstanding obligations of the Borrower. Such additional series of Bonds may be issued as Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations (as defined in the Indenture). This TIFIA Bond, together with all other obligations heretofore or hereafter issued under the provisions of the Indenture, are herein collectively referred to as the "I-81 Bonds". Reference is hereby made to the Indenture for the provisions, among others, with respect to the terms and conditions on which the I-81 Bonds of each series are or may be issued, the custody and application of the proceeds of I-81 Bonds issued under the Indenture, the collection and disposition of revenues, the funds charged with and pledged to the payment of the interest on and the principal and premium, if any, of the I-81 Bonds, the nature and extent of the security, the rights, duties and obligations of the Borrower, the Trustee and any paying agent for the I-81 Bonds and the rights of the owners of the I-81 Bonds. Certain of such funds, accounts and subaccounts secure only the Senior Obligations, certain of such funds, accounts and subaccounts secure only the Intermediate Lien Obligations, and certain of such funds, accounts and subaccounts secure only the Subordinate Obligations, all as more fully described in the Indenture.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Regular Project Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Regular Project Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Regular Project Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The owner of this TIFIA Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute any suit or other proceeding with respect to the Indenture, except as provided in the Indenture.

All acts, conditions and things required by the Constitution and laws of the Commonwealth of Virginia to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the Commonwealth shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until the Trustee has executed the Certificate of Authentication appearing on this TIFIA Bond and inserted the date of authentication.

IN WITNESS WHEREOF, THE COMMONWEALTH TRANSPORTATION BOARD has caused this TIFIA Bond to be signed by the manual or facsimile signature of its Chairperson, to be attested by the manual or facsimile signature of its Assistant Secretary and this Bond to be dated the Effective Date set forth above.

COMMONWEALTH TRANSPORTATION BOARD

By: _____

Chairperson

ATTEST:

By: _____

Assistant Secretary

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Indenture.

Authentication Date: _____

WILMINGTON TRUST, NATIONAL
ASSOCIATION

By: _____

Joy Holloway
Vice President

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT C

FORM OF REQUISITION

U.S. Bank Trust Company, National Association, as Trustee

Requisition No. _____

Dated: _____

Attn: _____

Re: Direction to Make Disbursements from the TIFIA Series 2022 Project Fund for the Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond, Series 2022 (TIFIA 2022 Regular Project Subordinate Lien)

Pursuant to Section 6.4 of the Second Supplemental Indenture of Trust and Amendment to Master Indenture dated as of [_____] 1, 2022 (the "Second Supplemental Indenture"), between the Commonwealth Transportation Board ("Board"), and U.S. Bank Trust Company, National Association, as successor trustee (the "Trustee"), the Trustee is directed to disburse from the TIFIA Series 2022 Project Fund the amount indicated below.

Each capitalized terms not otherwise defined herein has the same meaning as used in the Second Supplemental Indenture.

The undersigned certifies as follows:

1. The name(s) and address(es) of the person(s), firm(s) or corporation(s) to whom the disbursement(s) are due and the amounts to be disbursed are as follows:

<u>Name and Address</u>	<u>Amount</u>
-------------------------	---------------

[Use an additional page if necessary.]

2. The total amount to be disbursed is \$_____.

3. The project for which the obligation(s) to be paid was/were incurred: _____.

4. The undersigned is a "Board Representative" within the meaning of the Second Supplemental Indenture and the Master Indenture defined therein.

COMMONWEALTH TRANSPORTATION BOARD

By: _____
Board Representative

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

for up to \$82,554,209

with

COMMONWEALTH TRANSPORTATION BOARD

for the

[NEW LANES MILE MARKER 137-144ON INTERSTATE 81] PROJECT

(2022 REGULAR PROJECT)

(TIFIA – [____])

Dated as of [____], 2022

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definitions.....	2
Section 2. Interpretation.....	23
Section 3. TIFIA Loan Amount.....	23
Section 4. Disbursement Conditions.....	23
Section 5. Term.....	24
Section 6. Interest Rate	24
Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and the Loan Amortization Schedule.....	25
Section 8. Security and Priority; Flow of Funds.....	25
Section 9. Payment of Principal and Interest.....	26
Section 10. Prepayment	27
Section 11. Compliance with Laws.	28
Section 12. Conditions Precedent	28
Section 13. Representations and Warranties of Borrower.....	34
Section 14. Representations and Warranties of TIFIA Lender.....	40
Section 15. Affirmative Covenants.....	40
Section 16. Negative Covenants	49
Section 17. Indemnification.....	52
Section 18. Sale of TIFIA Loan.....	53
Section 19. Events of Default and Remedies.....	54
Section 20. Accounting and Audit Procedures; Inspections; Reports and Records	57
Section 21. Financial Plan, Statements, and Annual Certificates	58
Section 22. Project Oversight and Monitoring	62
Section 23. No Personal Recourse.....	64
Section 24. No Third Party Rights.....	64
Section 25. Borrower’s Authorized Representative.....	64
Section 26. TIFIA Lender’s Authorized Representative	64
Section 27. Servicer	64
Section 28. Fees and Expenses	65
Section 29. Amendments and Waivers	66
Section 30. Governing Law	66
Section 31. Severability and Conflicts.....	66

Section 32.	Successors and Assigns.....	66
Section 33.	Remedies Not Exclusive.....	66
Section 34.	Delay or Omission Not Waiver.....	66
Section 35.	Counterparts; Electronic Signatures	66
Section 36.	Notices; Payment Instructions	67
Section 37.	Effectiveness	68
Section 38.	Termination.....	68
Section 39.	Integration	68

SCHEDULE I– Project Budget
SCHEDULE II – Construction Schedule
SCHEDULE III– Existing Indebtedness
SCHEDULE IV– Articles VII and VIII of the Indenture
EXHIBIT A– Form of TIFIA Bond
EXHIBIT B– Anticipated TIFIA Loan Disbursement Schedule
EXHIBIT C – Non-Debarment Certification
EXHIBIT D – Requisition Procedures
EXHIBIT E – Compliance With Laws
EXHIBIT F – [FHWA Oversight Agreement]¹
EXHIBIT G – TIFIA Debt Service
EXHIBIT H-1 – Opinions Required from Counsel to Each Borrower Related Party
EXHIBIT H-2 – Opinions Required from Bond Counsel
[**EXHIBIT H-3** – Opinions Required from Counsel to VDOT]
EXHIBIT J – Form of Certificate of Trustee
EXHIBIT K – Form of Borrower’s Effective Date Officer’s Certificate
EXHIBIT J – Form of Notice of Substantial Completion
EXHIBIT M – TIFIA Loan Reamortization Methodology
EXHIBIT N – Certification Regarding Lobbying
[**EXHIBIT O** – Form of Semi-Annual Coverage Certificate]
EXHIBIT P– Reporting Subawards and Executive Compensation

¹ **Note to Borrower:** Please advise if there is a FHWA Oversight Agreement or something similar for this Project.

TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between the **COMMONWEALTH TRANSPORTATION BOARD**, a board created under the laws of the Commonwealth of Virginia (the “**State**”), with an address of 1401 E. Broad St., Richmond, Virginia 23219 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**TIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 (“**TIFIA**”), as codified at 23 U.S.C. §§ 601-609 (as amended from time to time, the “**Act**”); and

WHEREAS, Section 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans; and

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$82,554,209 (excluding interest that is capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated [_____] (the “**Application**”); and

WHEREAS, on [_____] the Secretary (as defined herein) approved TIFIA credit assistance for the Project in the form of the TIFIA Loan; and

WHEREAS, pursuant to the Indenture (as defined herein) and each Supplemental Indenture (as defined herein), the Borrower has pledged and granted to the Trustee (as defined herein) the Trust Estate (as defined herein), which secures the repayment of Bonds issued by the Borrower, including the TIFIA Bond (as defined herein), based on their respective lien priority; and

WHEREAS, the TIFIA Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the TIFIA Bond in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the dedication and availability of the Pledged Revenues and the Base Case Projections (as defined herein) delivered by the Borrower.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending

to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

Section 1. Definitions. Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (*Definitions*) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“Acceptable Credit Rating” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers, or issues a Qualified Hedge, Liquidity Facility, guarantee or other similar instrument, ‘A+’, ‘A1’ or the equivalent rating from each Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable

“Accreted Value” means, with respect to any Capital Appreciation Bonds, as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Capital Appreciation Bonds.

“Act” means the Act as defined in the recitals hereto.

“Additional Obligations” means any borrowings or indebtedness issued or incurred under the Indenture after the Effective Date that satisfy Section 5.3 (*Conditions of Issuing a Series of Bonds*) of the Indenture and the following requirements, as applicable:

(a) if the proceeds thereof will be used to refinance any Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations and are issued on the same lien level as the proposed refunded obligations, (i) such Additional Obligations must receive an Investment Grade Rating at the time of issuance (except where the proceeds of such Additional Obligations are used solely to refund any Existing Indebtedness on the same maturity schedule), (ii) such Additional Obligations shall only refinance Obligations of the same payment and lien priority as the Obligation being refinanced, (iii) the net proceeds thereof (after deducting any amounts required to be deposited to satisfy the respective Debt Service Reserve Requirement or required to pay costs of issuance) must not exceed interest owed to the call date plus the principal amount of the respective obligations outstanding and being refinanced, (iv) the respective lien level Debt Service, after the incurrence of such Additional Obligations, in each year of the remaining term of the TIFIA Loan, must be projected to be less than the respective lien level Debt Service projected for each such year in the Base Case Projections, and (v) the stated maturity of such Additional Obligations shall not exceed the stated maturity for the obligations being refinanced with the proceeds of the Additional Obligations; and

(b) if the proceeds thereof will be used for any reason not described in clause (a) above, such Additional Obligations must receive an Investment Grade Rating, and the Borrower shall provide the TIFIA Lender with respect to all Additional Obligations a certificate of the Borrower's Authorized Representative, in a form reasonably acceptable to the TIFIA Lender (including the calculations supporting such certificate), certifying that: (i) the activity or project to which such Additional Obligation proceeds will be applied could not reasonably be expected to result in a Material Adverse Effect; and (ii) the Borrower has satisfied the requirements for issuing the Additional Obligations in accordance with the applicable provisions of the Indenture existing as of the Effective Date and the relevant Supplemental Indenture, including, specifically, that during any twelve consecutive months of the eighteen months preceding the issuance of the Additional Obligations, (A) the Regional Fuel Tax Revenues were not less than (1) 2.00 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations then outstanding plus, if such Additional Obligations are Senior Obligations, such Additional Obligations, (2) 1.50 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations and Intermediate Lien Obligations then outstanding plus, if such Additional Obligations are Intermediate Lien Obligations, such Additional Obligations, and (3) 1.35 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations, Intermediate Lien Obligations and Subordinate Obligations then outstanding plus, if such Additional Obligations are Subordinate Obligations, such Additional Obligations; and (B) the Total Debt Service Coverage Ratio, including debt service for the Additional Obligations to be issued, for each Calculation Period is projected to be not less than [] to 1 while any Subordinate Obligations issued to the TIFIA Lender remain outstanding;

provided that (x) for each of clauses (a) and (b) above, no Event of Default under any Indenture Document or this Agreement has occurred and is continuing, and (y) for clause (b) above, the Rating Agency that provided the most recent public ratings of the Senior Obligations, any Subordinate Obligations, and the TIFIA Loan in accordance with Section 15(i) (*Annual Rating*) shall have provided a confirmation or affirmation (or the equivalent) that the incurrence of such Additional Obligations (A) shall not result in a downgrade of the then-existing credit rating of any of the Senior Obligations, the Subordinate Obligations or the TIFIA Loan and (B) in no event shall the credit rating on the TIFIA Loan be less than the lowest rating in the "A" category or the equivalent thereof.

"Agreement" has the meaning provided in the preamble hereto.

"Anticipated TIFIA Loan Disbursement Schedule" means the schedule set forth in **Exhibit B**, reflecting the anticipated disbursement of proceeds of the TIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (*Disbursement Conditions*).

"Anti-Corruption Laws" means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption.

“Anti-Money Laundering Laws” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“Application” has the meaning provided in the recitals hereto.

“Appreciated Value” means, with respect to any Deferred Interest Bond as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Deferred Interest Bond.

“Authorizing Legislation” means the I-81 Program Bond Act, [Section 33.2-1700 et seq. of the Virginia Code (State Transportation Revenue Bond Act)], Section 58.1-2295 of the Virginia Code (levying the regional fuels tax), Section 58.1-2299.20 of the Virginia Code (regarding the allocation of regional fuels tax to fund payments on the I-81 Program Bonds), and Section 33.2-372(E) of the Virginia Code (regarding the allocation of Interstate Operations and Enhancement Program funds to the I-81 Fund).

“Bank Lending Margin” means in respect of any Variable Interest Rate Obligations, the “Applicable Margin” or comparable interest rate margin as defined in the financing documents related to such Variable Interest Rate Obligations.

“Bank Secrecy Act” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1959 and 31 U.S.C. §§ 312, 5311-5313, and 5316-5322), as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“Bankruptcy Related Event” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Debt Service in accordance with the provisions of Section 9 (*Payment of Principal and Interest*), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an

order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law;

(c) solely with respect to the Borrower, (i) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Bonds, or (ii) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of pursuant to a sale or disposition of such Trust Estate in lieu of foreclosure; or

(d) solely with respect to the Borrower, the Trustee shall transfer, pursuant to directions issued by the Bondholders, funds on deposit in any of the Project Funds upon the occurrence and during the continuation of an Event of Default under the Indenture Documents for application to the prepayment or repayment of any principal amount of the Bonds other than in accordance with the provisions of the Indenture.

“Base Case Financial Model” means a financial model prepared by the Borrower that includes (a) for each six (6) month period corresponding to a Payment Period through the Final Maturity Date, a forecast of Pledged Revenues, expenditures, and funding obligations reflected in Article VIII of the Indenture, (b) for each six (6) month period corresponding to a Payment Period through the Final Maturity Date, a forecast of all Senior Debt Service, Intermediate Lien Debt Service and Subordinate Debt Service, and (c) the Project Budget, which model, in each case in clauses (a), (b), and (c) above, shall be based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender as of the Effective Date, and which model shall be provided to the TIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format requested by the TIFIA Lender.

“Base Case Projections” means the initial forecast for the Borrower prepared as of the Effective Date using the Base Case Financial Model.

“Bond” means any bond (including the TIFIA Bond) evidencing the Senior Obligations, Intermediate Lien Obligations, Subordinate Obligations, or any other evidences of indebtedness for borrowed money issued by the Borrower from time to time pursuant to Article V of the Indenture and the terms of any applicable Supplemental Indenture.

“Bondholder” means, when used with respect to the TIFIA Bond, the TIFIA Lender and, when used with respect to any other Bond, the registered owner of such Bond.

“Borrower” has the meaning provided in the preamble hereto.

“Borrower Fiscal Year” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty

(30) days' prior written notice to the TIFIA Lender, as provided in Section 16(e) (*Organizational Documents; Fiscal Year*).

“Borrower Related Party” means, individually or collectively, the Borrower and VDOT.

“Borrower’s Authorized Representative” means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

“Business Day” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York.

“Calculation Date” means each May 15 and November 15 (as applicable) occurring after the Effective Date.

“Calculation Period” means a twelve (12)-month period ending on a Calculation Date.

“Capital Appreciation Bonds” means any Permitted Debt hereafter incurred as to which interest is payable only at the maturity or prior redemption of such Permitted Debt.

“Capital Expenditures” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.

“Capitalized Interest Period” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period.

“Congress” has the meaning provided in the recitals hereto.

“Construction-Related Contract Party” means any Person (other than the Borrower) party to a Construction-Related Contract.

“Construction-Related Contracts” means VDOT construction contract ID No. C00116203DB108.

“Construction Period” means the period from the Effective Date through the Substantial Completion Date.

“Construction Schedule” means, collectively, (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached hereto as **schedule II**, and (b) any updates thereto included in the Financial Plan most recently submitted to the TIFIA Lender pursuant to Section 21 (*Financial Plan, Statements, and Annual Certificates*).

“Consulting Engineer” means an engineering firm selected by the Borrower at the request of the TIFIA Lender, subject to Section 22(d) (*Project Oversight and Monitoring*).

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “**Controlling**” and “**Controlled by**” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2022 as the base period.

“**Debt Service Fund**” means, as the context requires, a Senior Debt Service Fund, Intermediate Lien Debt Service Fund, and/or Subordinate Debt Service Fund established with respect to a series of Bonds pursuant to a related Supplemental Indenture.

“**Debt Service Payment Commencement Date**” means the earlier of (a) [May 15, 2026], and (b) the [first (1st)] Payment Date immediately succeeding the Substantial Completion Date.

“**Debt Service Reserve Fund**” means, as the context requires, a Senior Debt Service Reserve Fund, Intermediate Lien Debt Service Reserve Fund, and/or Subordinate Debt Service Reserve Fund established with respect to a Series of Bonds pursuant to a Related Series Supplement.

“**Debt Service Reserve Requirement**” means any Intermediate Lien Debt Service Reserve Requirement, Senior Debt Service Reserve Requirement, Subordinate Debt Service Reserve Requirement or the TIFIA Debt Service Reserve Requirement, as the context requires.

“**Default**” means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“**Default Rate**” means an interest rate equal to the sum of (a) the TIFIA Interest Rate plus (b) two percent (2.00%).

“**Deferred Interest Bond**” means any Permitted Debt (a) as to which interest accruing thereon prior to the applicable Interest Commencement Date of such Permitted Debt is (i) compounded on each Valuation Date for such Deferred Interest Bond and (ii) payable only at the maturity or prior redemption of such Permitted Debt and (b) as to which interest accruing after the applicable Interest Commencement Date is payable on the first interest payment date immediately succeeding the Interest Commencement Date and thereafter on the dates specified in or determined pursuant to the Supplemental Indenture authorizing the Permitted Debt. For the purposes of receiving payment of the redemption price if a Deferred Interest Bond is redeemed prior to maturity, the principal amount of a Deferred Interest Bond shall be deemed to be its Appreciated Value.

“**Development Default**” means VDOT fails (a) to diligently prosecute the work related to the Project or (b) to complete the Project by July 20, 2027.

“**Effective Date**” means the date of this Agreement.

“**Electronic Signature**” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to the Uniform Electronic Transactions Act, Va. Code 59.1-479 et seq., as amended from time to time.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including prior Project expenditures for the three (3)-year period preceding the date of the Application, all of which shall arise from the following:

(a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or

(c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction.

“**Environmental Laws**” has the meaning provided in Section 13(r) (*Environmental Matters*).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. § 1001 *et seq.*), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

“**Event of Default**” has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

“**Event of Loss**” means any event or series of events that causes any portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Existing Indebtedness**” means indebtedness of the Borrower that has been issued or incurred prior to the Effective Date under the Indenture or under any other arrangement where Pledged Revenues have been pledged as security or any other revenues from the I-81 Fund are the expected source of repayment by pledge or otherwise, as listed and described in **Schedule III**.

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

“FFY” means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“FHWA” means the Federal Highway Administration, an agency of the USDOT.

“FHWA Division Office” means the Virginia Division Office of the FHWA.

“Final Maturity Date” means the earlier of (a) the Payment Date occurring on or immediately prior to the 35th anniversary of the Substantial Completion Date and (b) [May 15, 2060].

“Financial Plan” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 21(a) (*Financial Plan, Statements, and Annual Certificates*) and (b) any updates thereto required pursuant to such Section 21(a).

“Financial Statements” has the meaning provided in Section 13(w) (*Financial Statements*).

“Fundamental Contracts” means the Payment Agreement or any other revenue-related contracts or revenue governing contracts with respect to the Project or the I-81 Fund other than Construction-Related Contracts.

“Fundamental Contract Party” means any Person (other than the Borrower) party to a Fundamental Contract.

“GAAP” means generally accepted accounting principles as defined by the Governmental Accounting Standards Board, or such other nationally recognized professional body, in effect from time to time in the United States of America.

“General Assembly” means the legislature of the State.

“Government Obligations” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (A), (B) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

“Governmental Approvals” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“Governmental Authority” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“Hedging Agreement” means (a) any ISDA Master Agreement(s) and the related credit support annex, schedules and confirmations, to be entered into by the Borrower and a Hedging Bank, (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, and (c) any other documentation directly relating to the foregoing.

“Hedging Banks” means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and its permitted successors (to the extent such successors are also Qualified Hedge Providers).

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

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

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases and not for any speculative purpose.

“I-81 Corridor Improvement Plan” means the I-81 Corridor Improvement Plan, dated December 2018, adopted by the Borrower on December 5, 2018, and subject to amendment by the Borrower from time to time.

“I-81 Corridor Improvement Program” means the “Interstate 81 Corridor Improvement Program” approved by the State’s General Assembly and reflected in Chapter 846 of the 2019 Virginia Acts of Assembly.

“I-81 Fund” means the “Interstate 81 Corridor Improvement Fund” established by Section 33.2-3601 of the Virginia Code.

“I-81 Program Act” means Chapter 846 the 2019 Acts of Assembly, as amended.

“I-81 Program Bond Act” means the Commonwealth Transportation Interstate 81 Corridor Bond Act of 2020, being enactment clause 15 of Chapter 1230 of the Acts of the Assembly of the Commonwealth of Virginia, 2020 Reconvened Session.

“I-81 Program Bonds” means bonds issued by the Borrower pursuant to the Indenture.

“I-81 Program Revenues” means, for any period, all Regional Fuel Tax Revenues and all Interstate Operations Enhancement Program revenues dedicated to the I-81 Fund pursuant to Sections 58.1-2299.20 and 33.2-372(E), respectively, of the Virginia Code that are, in each case, received by the Borrower during such period, and (b) any and all other revenues appropriated by the Virginia Assembly to support payments on the I-81 Program Bonds.

“Indemnatee” has the meaning provided in Section 17 (*Indemnification*).

“Indenture” means that certain Master Indenture of Trust between the Borrower and the Trustee, dated as of August 1, 2021, as supplemented or amended from time to time in accordance with its terms, which, among other matters, authorizes the Trustee to receive Pledged Revenues at any time and to hold and apply them subject to the terms of the Indenture and the Supplemental Indentures.

“Indenture Documents” means the Indenture, each Supplemental Indenture, each Hedging Agreement, each Liquidity Facility, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“Initial Obligations” means the Borrower’s Series 2021 I-81 Senior Lien Bonds issued in connection with the Project prior to the Effective Date and the TIFIA Rural Senior Lien Loan Bond to be issued on or about the Effective Date.

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

“Interest Commencement Date” means, with respect to any particular Deferred Interest Bond, the date determined by the Supplemental Indenture for such Deferred Interest Bond after which interest accruing on such Deferred Interest Bond shall be payable on the first interest

payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Indenture.

“Interest Payment Date” means each of [May 15] and [November 15].

“Intermediate Lien Debt Service” means, with respect to the Intermediate Lien Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Intermediate Lien Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Intermediate Lien Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Intermediate Lien Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

In calculating Intermediate Lien Debt Service for any future period (except as otherwise specifically provided herein):

(d) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon);

(e) any Put Bonds outstanding during such period that by their terms are not required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

(f) any Put Bonds outstanding during such period that by their terms are required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in the applicable Supplemental Indenture, or (iii) if the Liquidity Facility securing such Put Bonds expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Liquidity Facility;

(g) the principal amount of any Put Bonds tendered for payment by the Borrower that are required to be paid by the Borrower which have not yet been purchased in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender; and

(h) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Interest Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period.

“Intermediate Lien Debt Service Fund” means any debt service fund created for the benefit of one or more series of Intermediate Lien Obligations pursuant to the Indenture and any Supplemental Indenture.

“Intermediate Lien Debt Service Reserve Fund” means any debt service reserve fund created for the benefit of one or more series of Intermediate Lien Obligations pursuant to the Indenture and any Supplemental Indenture.

“Intermediate Lien Debt Service Reserve Requirement” means 1.0 times the maximum Principal and Interest Requirements (as defined in the Indenture) on the outstanding Intermediate Lien Obligations in the then current or any future Fiscal Year.

“Intermediate Lien Obligations” means any Bonds issued under the Indenture and designated as being subordinate as to payment and security to the Senior Obligations but senior as to payment and security to the Subordinate Obligations.

“Investment Grade Rating” means a public rating no lower than ‘BBB-,’ ‘Baa3’ or the equivalent of a public rating from a Rating Agency.

“ISDA Master Agreement” means a master agreement, entered into by the Borrower and a Hedging Bank, in the form published by the International Swaps and Derivatives Association, Inc.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“Liquidity Facility” means any letter of credit, standby bond purchase agreement, line of credit, surety instrument or similar instrument, any bond insurance policy, or any agreement relating to the reimbursement of any payment thereunder (or any combination of the foregoing), that is obtained by the Borrower and is issued by a Qualified Issuer.

“Loan Amortization Schedule” means the Loan Amortization Schedule reflected in the applicable column of **Exhibit G**, as amended from time to time in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“Material Adverse Effect” means a material adverse effect on (a) the Project (until the Substantial Completion Date) or the Pledged Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of any Borrower Related Party, (c) the legality, validity or enforceability of any material provision of any Indenture Document, TIFIA Loan Document or Fundamental Contract, (d) the ability of either Borrower Related Party or any Fundamental Contract Party to enter into, perform or comply with any of its material obligations under any Indenture Document, TIFIA Loan Document, Fundamental Contract to which it is a party, (e) the validity, enforceability or priority of the Liens provided pursuant to the Authorizing Legislation or under the Indenture Documents on the Trust Estate in favor of the Secured Parties or (f) the TIFIA Lender’s rights or remedies available under any TIFIA Loan Document.

“NEPA” means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. § 4321 *et seq.*), and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“NEPA Determination” means that certain Categorical Exclusion for the Project approved by the FHWA on September 10, 2020 in accordance with NEPA.

“Obligations” means, as of any date, the TIFIA Loan and any issued and outstanding Senior Obligations, Intermediate Lien Obligations and Subordinate Obligations.

“OFAC” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“Organizational Documents” means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“Outstanding TIFIA Loan Balance” means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the TIFIA Loan, as determined in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“Patriot Act” means the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“Payment Agreement” means that certain Payment Agreement, dated as of August 1, 2021, by and among the Borrower, the Treasury Board of the Commonwealth of Virginia, and the Secretary of Finance of the Commonwealth of Virginia.

“Payment Date” means each Interest Payment Date and Principal Payment Date.

“Payment Default” has the meaning provided in Section 19(a)(i) (*Payment Default*).

“Payment Period” means any period of six (6) months from (and including) an Interest Payment Date to (but excluding) the immediately succeeding Interest Payment Date, commencing with the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“Permitted Debt” means:

- (a) Existing Indebtedness;
- (b) the TIFIA Loan;
- (c) Initial Obligations;
- (d) Additional Obligations permitted under Section 16(a) (*Indebtedness*) and under the Indenture;
- (e) Subordinate Obligations permitted under Section 16(a) (*Indebtedness*) and under the Indenture;
- (f) indebtedness incurred in respect of Qualified Hedges; and
- (g) Liquidity Facilities in an aggregate face amount that does not exceed \$[_____] at any time; provided, that the undrawn face amount of Liquidity Facilities maintained in respect of Put Bonds shall be disregarded for purposes of determining the aggregate face amount of outstanding Liquidity Facilities.

“Permitted Hedging Termination” means the early termination, in whole or in part, of any Qualified Hedge (a) at the request of the Borrower as a result of a determination by the Borrower that such (or any part of such) Qualified Hedge is no longer necessary or required under the terms of this Agreement, (b) pursuant to the terms of any Hedging Agreement evidencing such Qualified Hedge that provides for the notional amount of such Qualified Hedge to amortize or otherwise be reduced from time to time or (c) as may be required pursuant to Section 15(m)(vi) (*Hedging*).

“Permitted Investments” means (with respect to the investment of the proceeds of the TIFIA Loan or any construction or reserve account established and maintained pursuant to the Indenture) the following obligations subject to additional restrictions included in the Investment of Public Funds Act (Chapter 45, Title 2.2, Virginia Code) and the Security for Public Deposits Act (Chapter 44, Title 2.2, Virginia Code):

- (a) Government Obligations;
- (b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;

(c) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;

(d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Rating Agency; and

(e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency.

“**Person**” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“**Pledged Revenues**” means all Revenues and all other property of any kind mortgaged, pledged or hypothecated under the Indenture to provide for the payment of or to secure the Bonds by the Borrower or by anyone on its behalf and with its written consent at any time as and for additional security under the Indenture and a Supplemental Indenture in favor of the Trustee.

“**Principal Payment Date**” means each [May 15].

“**Project**” means the “New Lanes Mile Marker 137-144 on Interstate 81” project, which has been undertaken by the Borrower pursuant to the I-81 Corridor Improvement Plan and the I-81 Corridor Improvement Program.

“**Project Budget**” means, collectively, the budget for the Project in the aggregate amount of \$232,716,987 attached to this Agreement as **Schedule I** showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time subject to the reporting requirements in Section 22(b) (*Quarterly Construction Progress Report*).

“**Project Fund**” means any project fund created pursuant to the Indenture and any Supplemental Indenture to receive to proceeds of a series of Bonds and any other funds as provided in the applicable Supplemental Indenture.

“**Projected Substantial Completion Date**” means January 14, 2026, unless otherwise agreed by the TIFIA Lender in writing.

“**Put Bonds**” means any bond that by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof either (a) by the Borrower and by the Person and/or from the source specified in a Supplemental Indenture or (b) without recourse to the Borrower, by the Person and/or from the source specified in a Supplemental Indenture.

“Qualified Hedge” means, to the extent from time to time permitted by law, with respect to Permitted Debt any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 15(m) (*Hedging*).

“Qualified Hedge Provider” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“Qualified Issuer” means (a) with respect to any Liquidity Facility issued by a bank or trust company, any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating and (b) with respect to any Liquidity Facility issued by an insurance company or other financial institution, any insurance company or other financial institution that is authorized and qualified to do business by the state insurance commissioner of its jurisdiction of organization and of the State and that has an Acceptable Credit Rating.

“Rating Agency” means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. § 78c(a)(62)).

“Rating Category” means one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“Regional Fuel Tax Revenues” means revenues deposited into the I-81 Fund pursuant to Section 58.1-2299.20 of the Virginia Code from the receipt of regional fuels tax payments levied pursuant to Section 58.1-2295 of the Virginia Code.

“Related Documents” means the Indenture Documents, the TIFIA Loan Documents, the Hedging Agreements and the Fundamental Contracts.

“Requisition” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

“Revenues” means, as provided in the Indenture, all monies appropriated by the General Assembly from time to time for the payment of the Bonds, including costs related to or for the support of the Bonds, from (i) Regional Fuel Tax Revenues deposited into the I-81 Fund and (ii) any other legally available funds.

“Revised Financial Model” means an updated version of the Base Case Financial Model, in form and substance satisfactory to the TIFIA Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

“Sanctioned Country” means, at any time, a country or territory that is itself the subject or target of any Sanctions.

“**Sanctioned Person**” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“**Sanctions**” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

“**Secretary**” means the United States Secretary of Transportation.

“**Secured Obligations**” means the Senior Obligations, the Intermediate Lien Obligations, the Subordinate Obligations (including the obligations of the Borrower under this Agreement and the TIFIA Bond), the Hedging Obligations, and the Hedging Termination Obligations.

“**Secured Parties**” means the Trustee, the TIFIA Lender, any other Bondholders, and the Hedging Banks.

“**Semi-Annual Coverage Certificate**” has the meaning provided in Section 21(c) (*Semi-Annual Coverage Certificates*).

“**Senior Bonds**” means any bonds or other obligations issued under the Indenture with seniority of payment and security over the Intermediate Lien Obligations and the Subordinate Obligations.

“**Senior Debt Service**” means, with respect to the Senior Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Senior Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Senior Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Senior Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

In calculating Senior Debt Service for any future period (except as otherwise specifically provided herein):

(a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon);

(b) any Put Bonds outstanding during such period which by their terms are not required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

(c) any Put Bonds outstanding during such period which by their terms are required to be paid by the Borrower upon tender by the holder thereof shall be assumed to

mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in the applicable Supplemental Indenture, or (iii) if the Liquidity Facility securing such Put Bonds expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Liquidity Facility;

(d) the principal amount of any Put Bonds tendered for payment by the Borrower which are required to be paid by the Borrower which have not yet been purchased in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender; and

(e) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Interest Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period.

“Senior Debt Service Fund” means any debt service fund created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Debt Service Reserve Fund” means any debt service reserve fund created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Debt Service Reserve Requirement” means any debt service reserve requirement created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Obligations” means any Senior Bonds heretofore or hereinafter issued under the Indenture and any Supplemental Indenture that are designated as being senior as to payment and security to the Intermediate Lien Obligations and the Subordinate Obligations.

“Series 2021 I-81 Senior Lien Bonds” means the Borrower’s \$80,990,000 Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bonds (Senior Lien) Series 2021 issued under the Master Indenture as the first series of obligations thereunder.

“Servicer” means such entity or entities as the TIFIA Lender shall designate from time to time to perform, or assist the TIFIA Lender in performing, certain duties hereunder.

“State” has the meaning provided in the preamble hereto.

“Subordinate Debt Service” means, with respect to the Subordinate Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Subordinate Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Subordinate Obligations due in such period, payment shall be assumed to be made in accordance with any amortization schedule established for such Subordinate Obligations.

“Subordinate Debt Service Fund” means any debt service fund, including the TIFIA Debt Service Fund, created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“**Subordinate Debt Service Reserve Fund**” means any debt service reserve fund, including the TIFIA Debt Service Reserve Fund, created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“**Subordinate Debt Service Reserve Requirement**” means any debt service reserve requirement, including the TIFIA Debt Service Reserve Requirement, created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“**Subordinate Obligations**” means any Bonds, including the TIFIA Bond, issued under the Indenture and designated as being subordinate as to payment and security to the Senior Obligations and the Intermediate Lien Obligations.

“**Subsequent Qualified Hedge**” has the meaning provided in Section 15(m)(iii) (*Hedging*).

“**Substantial Completion**” means [].

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Supplemental Indenture**” means a Supplemental Indenture to the Indenture relating to a specific issuance of Bonds by the Borrower, including the TIFIA Supplemental Indenture.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**TIFIA**” has the meaning provided in the recitals hereto.

“**TIFIA Bond**” means the Bond delivered by the Borrower in substantially the form of **Exhibit A**.

“**TIFIA Debt Service**” means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the TIFIA Interest Rate (or, as applicable, the Default Rate), in each case (a) as set forth on **Exhibit G**, and (b) due and payable on such Payment Date in accordance with the provisions of Section 9(c) (*Payment of TIFIA Debt Service*).

“**TIFIA Debt Service Fund**” means the Subordinate Debt Service Fund defined in the Indenture.

“**TIFIA Debt Service Reserve Fund**” means the Subordinate Debt Service Reserve Fund defined in the Indenture.

“**TIFIA Debt Service Reserve Requirement**” means 1.4 times the maximum Principal and Interest Requirements (as defined in the Indenture) on the 2022 TIFIA Loan in the then current or any future Fiscal Year.

“**TIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**TIFIA Lender**” has the meaning provided in the preamble hereto.

“**TIFIA Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 26 (*TIFIA Lender’s Authorized Representative*).

“**TIFIA Loan**” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth herein and as evidenced by the Borrower’s issuance of the TIFIA Bond, pursuant to the Act, in a principal amount not to exceed \$82,544,209 (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

“**TIFIA Loan Documents**” means this Agreement, the TIFIA Bond, the TIFIA Supplemental Indenture, and the other Indenture Documents.

“**TIFIA Rural Senior Lien Loan Bond**” means [].

“**TIFIA Supplemental Indenture**” means that certain Second Supplemental Series Indenture of Trust, dated as of [], 2022, between the Borrower and the Trustee in connection with the issuance of the TIFIA Bond.

“**Total Debt Service Coverage Ratio**” means, for any Calculation Period, the ratio of projected Pledged Revenues for such Calculation Period to the sum of (a) Senior Debt Service for such Calculation Period, (b) Intermediate Lien Debt Service for such Calculation Period, and (c) Subordinate Debt Service for such Calculation Period.

“**Total Project Costs**” means (a) the costs paid or incurred or to be paid or incurred by a Borrower Related Party in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance, and costs of issuance; (b) amounts, if any, required by the Indenture Documents or the TIFIA Loan Documents to be paid into any fund or account upon the incurrence of the TIFIA Loan or any Senior Obligations; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect of any indebtedness of the Borrower, including any Liquidity Facility maintained by the Borrower, in each case in connection with the Project (other than the TIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“**Trust Estate**” means the Pledged Revenues and Debt Service Reserve Fund plus, with respect to each series (and to such series only) of Bonds, the money and investments held in the applicable (a) Project Fund (if any) and (b) Debt Service Fund.

“**Trustee**” means U.S. Bank Trust Company, National Association, successor to U.S. Bank National Association.

“Uncontrollable Force” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“Uniform Commercial Code” or **“UCC”** means the Uniform Commercial Code, as in effect from time to time in the State.

“USDOT” means the United States Department of Transportation.

“Valuation Date” means (a) with respect to any Capital Appreciation Bonds, the date or dates set forth in the Supplemental Indenture authorizing such Capital Appreciation Bonds on which specific Accreted Values are assigned to the Capital Appreciation Bonds and (b) with respect to any Deferred Interest Bonds, the date or dates on or prior to the Interest Commencement Date set forth in the Supplemental Indenture authorizing such Deferred Interest Bonds on which specific Appreciated Values are assigned to the Deferred Interest Bonds.

“Variable Interest Rate” means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the Supplemental Indenture pursuant to which such Permitted Debt is incurred. Such Supplemental Indenture shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect, or (b) the time or times upon which any change in such variable interest rate shall become effective.

“Variable Interest Rate Bonds” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided, however, that Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Bonds if the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect; provided, further, that Permitted Debt bearing a fixed rate of interest shall be deemed Variable Interest Rate Bonds to the extent that the Borrower has entered into a Qualified Hedge pursuant to which the Borrower is obligated to pay a floating rate of interest and receives a fixed rate of interest and shall be deemed to bear interest at the lesser of the rate determined pursuant to clause (d) of the definition of the term Senior Debt Service or Intermediate Lien Debt Service (as applicable) or the maximum interest rate, if any, payable pursuant to such Qualified Hedge.

“Variable Interest Rate Obligations” means any Senior Obligations or Intermediate Lien Obligations under the Indenture that accrue interest at a Variable Interest Rate.

“VDOT” means the Virginia Department of Transportation.

“Virginia Code” means the Code of Virginia of 1950, as amended, and any successor provisions of law.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof,” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require, references to any Person shall be deemed to include such Person’s successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (Notices; Payment Instructions) and signed by a duly authorized representative of such party.TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$82,554,209 (excluding capitalized interest). TIFIA Loan proceeds shall be disbursed from time to time in accordance with Section 4 (Disbursement Conditions) and Section 12(b) (Conditions Precedent to All Disbursements).Disbursement Conditions. TIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower’s risk and expense, will not constitute Eligible Project Costs, and no TIFIA Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. To utilize the TIFIA Loan proceeds to make progress payments for the Project construction work performed under the Construction-Related Contracts, the Borrower shall demonstrate to the satisfaction of the TIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a “**Requisition**”) in the form set forth in **Appendix One To Exhibit D to Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to the TIFIA Lender, all in accordance with the

procedures of **Exhibit D** and subject to the requirements of this Section 4 and the conditions set forth in Section 12(b) (*Conditions Precedent to All Disbursements*); provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender and the Servicer (if any) and the FHWA Division Office on or before the first (1st) Business Day of each month for which a disbursement is requested. Subject to Section 4(d), if the TIFIA Lender does not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business Day if such fifteenth (15th) day is not a Business Day. Express denial of a Requisition by the TIFIA Lender shall be provided substantially in the form attached as **Appendix Two to Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 12 (*Conditions Precedent*) or **Exhibit D** (*Requisition Procedures*)), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 5. Term. The term of the TIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash. Interest Rate. The interest rate with respect to the Outstanding TIFIA Loan Balance (the "**TIFIA Interest Rate**") shall be [] percent ([] %) per annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the TIFIA Lender and (b) the date the Outstanding TIFIA Loan Balance and any interest

accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in immediately available funds. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and the Loan Amortization Schedule. The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the TIFIA Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** from time to time, in accordance with the principles set forth in Section 10(c) (*General Prepayment Instructions*) and **Exhibit M**, to reflect (i) any change to the Outstanding TIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the TIFIA Lender may determine is necessary for administering the TIFIA Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The TIFIA Lender shall provide the Borrower with a copy of **Exhibit G**, as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

Section 8. Security and Priority; Flow of Funds. As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the TIFIA Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture Documents. The TIFIA Bond shall be: (i) issued as a Subordinate Obligation, secured by the Liens on the Trust Estate, (ii) subordinate to the Lien on the Trust Estate pledged to secure the Senior Obligations and the Intermediate Lien Obligations, and (iii) *pari passu* to the Lien on the Trust Estate pledged to secure the Subordinate Obligations.

(b) Except to the extent otherwise provided in clause (a) of this Section 8 (*Security and Priority; Flow of Funds*), the Trust Estate will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge of the Borrower created under the Indenture Documents, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 (*Security and Priority; Flow of Funds*) and the Indenture Documents and shall not apply any portion of the Pledged Revenues in contravention of this Agreement or the Indenture Documents.

(d) The Indenture provides that all Pledged Revenues shall, subject to Section 8.1 thereof, have been deposited in the I-81 Fund and shall be applied in the order of priority described in Section 8.1(a) of the Indenture, a copy of which Section 8.1, as of the Effective Date, is attached as **Schedule IV** (all capitalized terms used in **Schedule IV** and not otherwise defined in this Agreement shall have the meanings ascribed in the Indenture)

Section 9. Payment of Principal and Interest, Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the Indenture Documents on (i) each Interest Payment Date, beginning on the Debt Service Payment Commencement Date, with respect to interest on the TIFIA Loan, (ii) each Principal Payment Date, beginning on the Debt Service Payment Commencement Date, with respect to the principal of the TIFIA Loan, and (iii) each other date on which payment is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of mandatory prepayment, optional prepayment, acceleration of the maturity of the TIFIA Loan (to the extent permitted under the Indenture) or otherwise); provided, that, if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Bond shall be treated as a payment of the TIFIA Loan, and any prepayment of principal of the TIFIA Loan shall be treated as redemption of the TIFIA Bond.

(b) Capitalized Interest Period. No payment of the principal of or interest on the TIFIA Loan is required to be made during the Capitalized Interest Period. On each Interest Payment Date occurring during the Capitalized Interest Period, interest accrued on the TIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding TIFIA Loan Balance. Any interest accruing on the TIFIA Loan during the period from (and including) the last Interest Payment Date occurring during the Capitalized Interest Period and ending on the last day of the Capitalized Interest Period shall also be capitalized and added to the Outstanding TIFIA Loan Balance on the earlier to occur of the Substantial Completion Date or the last day of the Capitalized Interest Period. Within thirty (30) days after the end of the Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(c) Payment of TIFIA Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay or cause the Trustee to pay TIFIA Debt Service in the amounts set forth in respect of such Payment Date on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(d) (*Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement and the TIFIA Bond shall be made by wire transfer on or before each Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender pursuant to Section 36 (*Notices; Payment Instructions*), as modified in writing from time to time by the TIFIA Lender.

The Borrower may make any such payment or portion thereof (or direct the Trustee to make such payment) with funds then on deposit in the TIFIA Debt Service Fund.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding TIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 19 (*Events of Default and Remedies*)), but only to the extent such acceleration is permitted under the Indenture.

(f) TIFIA Bond. As evidence of the Borrower's obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Bond substantially in the form of **Exhibit A**, having a maximum principal amount (excluding capitalized interest) of \$82,554,209 and bearing interest at the rate set forth in Section 6 (*Interest Rate*).

Section 10. Prepayment.Mandatory Prepayments. The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium, upon any voluntary prepayment of any Bonds other than the TIFIA Bond (other than any voluntary prepayment of any Bonds made with the proceeds of Additional Obligations issued in accordance with the requirements of subsection (a) in the definition thereof for the purpose of refinancing such Bonds) pro rata with such voluntary prepayment. The Borrower shall provide written notice to the TIFIA Lender at least two (2) Business Days prior to the date on which it makes any mandatory prepayment; provided that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred. Each prepayment pursuant to this Section 10(a) (*Mandatory Prepayments*) shall be effected pursuant to Section [6.4(b)] of the TIFIA Supplemental Indenture (as applicable) and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(b) Optional Prepayments. The Borrower may prepay the TIFIA Loan by causing the Trustee to redeem the TIFIA Bond in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in a minimum principal amount of \$1,000,000), at any time or from time to time, without penalty or premium. Each prepayment of the TIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender, which notice shall also specify the amount of unpaid interest accrued to the date of such prepayment on the amount of principal to be prepaid that the Borrower shall pay concurrently with such prepayment. In the case of any optional prepayment, such written notice shall be delivered to the TIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the TIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the TIFIA Lender. Anything in this Section 10(b) (*Optional Prepayments*) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) General Prepayment Instructions. Upon the TIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the TIFIA Lender shall surrender the TIFIA Bond to the Borrower or its representative at the principal office of the TIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the TIFIA Loan, such partial prepayments shall be applied pro rata across all maturities to reduce all future payments due on the TIFIA Loan. The TIFIA Lender may make a notation on **Exhibit G** indicating the amount of principal of and interest on such TIFIA Bond then being prepaid. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. After any prepayment, the remaining principal amount of such TIFIA Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate).

Section 11. Compliance with Laws. Each Borrower Related Party shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including federal and state laws, rules, regulations and executive orders. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law.

Section 12. Conditions Precedent.

(a) Conditions Precedent to Effectiveness. Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have duly executed and delivered to the TIFIA Lender this Agreement and the TIFIA Bond, each in form and substance satisfactory to the TIFIA Lender.

(ii) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each Indenture Document not separately delivered to the TIFIA Lender under clause (a) above, together with any amendment, waiver or modification thereto that, in each case, has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that, for purposes of this clause (ii), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

(iii) Counsel to each Borrower Related Party shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-1**), and bond counsel to the Borrower

shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-2**).

(iv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to the Borrower and its principals (as defined in 2 CFR § 180.995).

(v) The Borrower shall have provided to the TIFIA Lender satisfactory evidence that the Project has been included in (A) the I-81 Corridor Improvement Program, (B) the State transportation plan, and (C) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project.

(vi) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the Effective Date, of the assignment by at least two (2) Rating Agencies of an Investment Grade Rating to each of the Senior Obligations and the TIFIA Loan, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(vii) The Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit K** (A) as to the satisfaction of certain conditions precedent set forth in this Section 12(a) (*Conditions Precedent to Effectiveness*) as required by the TIFIA Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(viii) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that as of the Effective Date the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(ix) The Borrower shall have complied with the disclosure requirements set forth in 2 CFR § 180.355 and the verification requirements set forth in 2 CFR §§ 180.300 and 180.320, and complied with its obligations under 2 CFR § 180.330 in connection with the Construction-Related Contracts, and shall have provided evidence thereof satisfactory to the TIFIA Lender.

(x) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Fundamental Contract and each Construction-Related Contract, together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior

to the Effective Date and each such agreement shall be in full force and effect, without default, and in form and substance satisfactory to the TIFIA Lender.

(xi) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that each of the Borrower and VDOT has obtained all Governmental Approvals necessary to commence construction of the Project and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(xii) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate the Senior Debt Service Coverage Ratio and a Total Debt Service Coverage Ratio (for each Calculation Period through the Final Maturity Date), in each case reflected in the Application approved by the Secretary (or such other ratios as agreed to by the TIFIA Lender in its sole discretion), (C) demonstrate that Pledged Revenues in each Calculation Period through the Final Maturity Date are projected to be sufficient to satisfy the Borrower's funding obligations pursuant to Article VIII of the Indenture, and (D) otherwise be in form and substance acceptable to the TIFIA Lender.

(xiii) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant to the I-81 Program Bond Act to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents or required by applicable law, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xiv) The Borrower shall have paid in full all invoices delivered by the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof.

(xv) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender of the Borrower Related Parties' compliance with NEPA, and (B) complied, and caused VDOT to comply, with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have

provided evidence satisfactory to the TIFIA Lender of the Borrower Related Parties' compliance upon request by the TIFIA Lender.

(xvi) The TIFIA Lender shall have delivered its initial TIFIA Lender's Authorized Representative certificate.

(xvii) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System or Unique Entity Identifier number, as appropriate, and (C) registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management (www.SAM.gov).

(xviii) The Borrower shall have (1) provided a certificate, in form and substance satisfactory to the TIFIA Lender and signed by the Borrower's Authorized Representative, certifying that the insurance required pursuant to Section 15(f) (Insurance) is in full force and effect and that such insurance complies with the requirements thereof and (2) certificates of insurance evidencing that the Construction-Related Contract Parties have in effect as of the Effective Date insurance with respect to the Project that meet the requirements of Section 15(f) (Insurance) that are allocated to such Construction-Related Contract Parties under the applicable Construction-Related Contracts.

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

(xx) The Borrower shall have provided the TIFIA Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the TIFIA Lender and in sufficient time prior to the Effective Date to permit the TIFIA Lender and the FHWA Division Office to review such costs.

(xxi) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (Representations and Warranties of Borrower)) and in each other Related Document shall be true and correct, as of the Effective Date, except to

the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxii) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the Effective Date, (A) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (B) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

(xxiii) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Trustee in the form attached hereto as **Exhibit J**.

(xxiv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit N** in accordance with 49 CFR §20.100(b).

(xxv) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments and evidence of the closing of the Existing Indebtedness).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the TIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the TIFIA Lender:

(i) With respect to any disbursement occurring sixty (60) days or more after the Effective Date, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 21(a) (*Financial Plan, Statements, and Annual Certificates*).

(ii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have delivered to the TIFIA Lender certified, complete and fully executed copies of any Related Documents entered into after the Effective Date.

(iii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified copies of all Fundamental Contracts and all Construction-Related Contracts, including, in each case, any amendment, modification or supplement thereto and related performance security instrument entered into after the Effective Date.

(iv) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.

(v) The Borrower shall have provided to the TIFIA Lender any letters of self-insurance maintained by the Borrower and a certificate, executed by the Borrower's Authorized Representative, certifying that Borrower's self-insurance program is actuarially sound.

(vi) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder and no event of default (howsoever described or designated) under any other Related Document shall have occurred and be continuing, and (B) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of the Borrower under any other Related Document, in each case, shall have occurred and be continuing.

(vii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(viii) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the TIFIA Lender.

(ix) The Borrower shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the TIFIA Lender.

(x) The Borrower shall have paid in full all invoices received from the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) as of the date of disbursement of the TIFIA Loan, for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xi) To the extent not previously delivered to the TIFIA Lender, the Borrower shall provide all certified, completed and fully executed copies of each performance security instrument delivered to or by either Borrower Related Party pursuant to any Construction-Related Contract as of the date of disbursement of the TIFIA Loan, each of which performance security instruments shall be (A) in compliance with the requirements for such performance security pursuant to the applicable Construction-Related Contract, and (B) in full force and effect.

(xii) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the date of disbursement of the TIFIA Loan, as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

(xiii) The Borrower shall have delivered such other agreements, documents, certificates, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender.

Section 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (Officer's Authorization) and Section 13(k) (Credit Ratings), as of each date on which any disbursement of the TIFIA Loan is requested or made: Organization; Power and Authority. The Borrower is a board created and existing under the laws of the Commonwealth of Virginia, has full legal right, power and authority to enter into the Related Documents then in existence to which it is a party, to execute and deliver the TIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related Documents will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, other than the Liens granted pursuant to the Indenture Documents.

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

(f) Litigation. As of the Effective Date, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Fundamental Contract Parties except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Pledged Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or, as applicable, the most recent Revised Financial Model). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. In accordance with Section 2.2-4902.1 of the Code of Virginia of 1950, the Indenture Documents and the I-81 Program Bond Act, establish, in favor of the Trustee for the benefit of the TIFIA Lender, valid, binding and enforceable Liens on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Trust Estate except for the Liens associated with Senior Obligations and Intermediate Lien Obligations, and not *pari passu* with any obligations other than the Subordinate Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents or applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 15(a) (*Securing Liens*) or in the Indenture Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Trust Estate in favor

of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (Conditions Precedent to Effectiveness). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332, with respect to VDOT in connection with the Construction-Related Contracts. The Borrower is not aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 CFR Part 180.

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

(j) Transportation Improvement Program. The Project has been included in (i) the I-81 Corridor Improvement Program, (ii) the State transportation plan, and (iii) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135 and 23 U.S.C. § 602(a)(3), as applicable. The financial plan for each such program or plan reflects the costs of, and the sources of funding for, the Project.

(k) Credit Ratings. Each of the Senior Obligations and the TIFIA Loan has received an Investment Grade Rating from at least two (2) Rating Agencies, and written evidence of such ratings has been provided to the TIFIA Lender prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of the Borrower under any Related Document has occurred and is continuing.

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

(n) Fundamental Contracts; Construction-Related Contracts. Each Fundamental Contract and Construction-Related Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Fundamental Contract and each Construction-Related Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Fundamental Contract and Construction-Related Contract, including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related Liquidity Facilities or side letters. No event has occurred that gives the Borrower or, to either Borrower Related Party's knowledge, VDOT, any Fundamental Contract Party or any Construction-Related Contract Party the right to terminate such Fundamental Contract or Construction-Related Contract, as applicable. No Borrower Related Party is in breach of, or in default under, any Fundamental Contract or Construction-Related Contract, and, to the knowledge of the Borrower, no Fundamental Contract Party or Construction-Related Contract Party is in breach of, or in default under, such Fundamental Contract or any material term of such Construction-Related Contract, as applicable.

(o) Information. The information furnished by the Borrower to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower, VDOT nor, to the knowledge of the Borrower, any Fundamental Contract Party or Construction-Related Contract Party is a Sanctioned Person.

(ii) None of the Borrower, VDOT nor, to the knowledge of the Borrower, any Fundamental Contract Party or Construction-Related Contract Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal.

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal investigations conducted by, the Borrower or any Fundamental Contract Party or Construction-Related Contract Party, with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(iv) No use of proceeds of the TIFIA Loan or other transaction contemplated by this Agreement or any other Related Document will violate any applicable

Sanctions, Anti-Money Laundering Laws, or Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

(q) Compliance with Law. Each Borrower Related Party is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(r) (Environmental Matters)), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower's knowledge, each Fundamental Contract Party or Construction-Related Contract Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by either Borrower Related Party or, to the Borrower's knowledge, any Fundamental Contract Party or (solely in respect of the Project) or any Construction-Related Contract Party, other than, in each case, notices of violations that are immaterial.

(r) Environmental Matters.

(i) Each Borrower Related Party and, to the Borrower's knowledge, VDOT, each Fundamental Contract Party and each Construction-Related Contract Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**").

(ii) All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Neither Borrower Related Party has received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that a Borrower Related Party or Construction-Related Contract Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full compliance in the future by a Borrower Related Party or a Construction-Related Contract Party with any such Environmental Law or Governmental Approval.

(iii) The Borrower has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to either Borrower Related Party regarding the Borrower's, VDOT's or the Project's compliance with (A) Environmental Laws, and

(B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(s) Insurance. The Borrower is in compliance with all insurance obligations as required under each Related Document as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower's self-insurance program is actuarially sound.

(t) No Liens. Except for the Liens in favor of the Senior Obligations, Intermediate Lien Obligations and Subordinate Obligations, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate, the Project, the Pledged Revenues, or the properties or assets in relation to the Project.

(u) Intellectual Property. To the Borrower's knowledge, VDOT owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

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

(w) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the TIFIA Lender pursuant to Section 21(c) (*Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the State and the I-81 Fund as of the respective dates of the balance sheets included therein and the results of operations of the State and the I-81 Fund for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(x) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

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

(z) Sufficient Funds. The aggregate of (i) all funds that are undrawn but fully and completely committed under the Indenture Documents, the Fundamental Contracts and this Agreement, (ii) all delay payments and insurance proceeds in respect of any casualty loss (other than any proceeds of business interruption insurance, delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) received by the Borrower or to which the Borrower is entitled in accordance with the applicable insurance policies, Fundamental Contracts and Construction-Related Contracts, and (iii) all funds available under any other unused funding that is committed and available, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule (and in any event on or prior to the Projected Substantial Completion Date).

(aa) Sovereign Immunity. Neither Borrower Related Party has immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein that could be asserted in any breach of contract action to enforce the obligations of a Borrower Related Party under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder.

(bb) Patriot Act. Neither the Borrower nor VDOT is required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

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

Section 14. Representations and Warranties of TIFIA Lender. The TIFIA Lender hereby makes the following representations and warranties as of the Effective Date: Power and Authority. The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the TIFIA Lender executing each of the Related Documents to which the TIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

Section 15. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing: Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such

further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Trust Estate (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken whenever required. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Trustee for the benefit of the TIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to the Liens securing the Senior Obligations, Intermediate Lien Obligations and Subordinate Obligations.

(b) Copies of Documents.

(i) The Borrower shall furnish to the TIFIA Lender a copy of any draft documents and final offering documents (including any Indenture Documents) and cash flow projections prepared in connection with the incurrence of any Permitted Debt or any indebtedness subject to approval by the TIFIA Lender pursuant to Section 16(a) (Indebtedness), in each case at least twenty (20) days prior to the incurrence of any such Permitted Debt or such other indebtedness requiring TIFIA Lender approval, as well as copies of any continuing disclosure documents, prepared by or on behalf of the Borrower in connection with the incurrence of such Permitted Debt or such other indebtedness requiring TIFIA Lender approval, in each case promptly following the preparation or filing thereof. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (A) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with respect to the Project or any indebtedness of the Borrower that is or will be secured by or paid from the Trust Estate or any portion thereof, including the Pledged Revenues, (B) all notices and other written communications received by the Borrower from the Trustee or any Bondholder, (C) all reports, notices and other written materials required to be sent to the Trustee or any Bondholder under the Indenture Documents, and (D) all notices delivered by or to the Borrower relating to any of the Fundamental Contracts; unless, in each case, the TIFIA Lender notifies the Borrower in writing that any such reports, notices and/or other written materials no longer need to be provided.

(iii) Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (A) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document (other than

proposed amendments, modifications, replacements or supplements that are ministerial in nature and do not change any substantive provision of such Related Document) at least thirty (30) days prior to the effective date thereof, and (B) complete, correct and fully executed copies of any amendment, modification or supplement to, or replacement of, any Related Document within five (5) Business Days after execution thereof.

(iv) If the Borrower enters into a Fundamental Contract or a Construction-Related Contract after the Effective Date, the Borrower shall provide to the TIFIA Lender any executed copy of such Fundamental Contract or Construction-Related Contract, together with any related performance security instruments, contracts, side letters or other understandings, promptly following the full execution thereof.

(c) Use of Proceeds. The Borrower shall use the proceeds of the TIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents. In no event shall the Borrower use the proceeds of the TIFIA Loan for any purpose prohibited under 45 U.S.C. § 822(b)(2).

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower Related Parties shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of their industry.

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

(e) Operations and Maintenance. The Borrower Related Parties shall (i) operate and maintain the Project (A) in a reasonable and prudent manner and (B) substantially in accordance with its regulations, standards and guidelines and those of the FHWA, and (ii) maintain the Project in good repair, working order and condition, and in accordance with the requirements of all applicable laws and each applicable Related Document.

(f) Insurance.

(i) The Borrower shall at all times maintain insurance or provide self-insurance in amounts and with coverages as are customarily maintained in the United States of America by entities similar to the Borrower, or as is required under any Fundamental Contract, Construction-Related Contract or applicable law. During the construction of the Project, the Borrower shall maintain or cause to be maintained appropriate casualty and liability insurance covering the Borrower and the Project, including a builders all-risk policy and pollution and other environmental liability and remediation related coverage. The Borrower shall cause each Construction-Related Contract Party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Construction-Related Contract.

(ii) The Borrower shall cause all liability insurance policies that it maintains, other than workers' compensation insurance, to reflect the TIFIA Lender as an additional insured.

(iii) If an Event of Loss shall occur with respect to the Project or any part thereof, the Borrower shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event and (B) pay or apply all loss proceeds stemming from such event to rebuild, repair or replace the Project in accordance with all applicable laws and within a reasonable time period; provided, however, that loss proceeds must in any event be applied in accordance with all applicable federal disposition rules, including those set forth in 2 CFR Part 200.

(g) Notices.

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

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit L**;

(B) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(C) Fundamental Contract / Construction-Related Contract Defaults: any default or event of default on the part of the Borrower or any other party under any Fundamental Contract or any Construction-Related Contract.

(D) Litigation: (1) the filing of any litigation, suit or action, or the commencement of any proceeding, against the Borrower before any arbitrator, Governmental Authority, alternative dispute resolution body, or other neutral third-party, or the receipt by the Borrower in writing of any threat of litigation, suit, action, or proceeding, or of any written claim against the Borrower or VDOT that, in each case, could reasonably be expected to have a Material Adverse Effect, and any material changes in the status of such litigation, suit, action or claim, and (2) any judgments against the Borrower or VDOT with award amounts either individually or in the aggregate in excess of \$1,000,000 (inflated annually by the CPI) that are payable from the Trust Estate, the I-81 Fund or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage);

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

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

(G) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(H) Project Changes: any (1) change to the Total Project Costs forecasts in excess of ten percent (10%) of total forecasted Total Project Costs, together (in the case of increased costs) with a written description of the committed funding sources available to the Borrower to pay for such increased Total Project Costs, (2) proposed change to the Projected Substantial Completion Date, together with an explanation of the reasons for such proposed adjustment, and (3) material change to the Construction Schedule, together with a proposed revised Construction Schedule;

(I) Ratings Changes: any change in the rating assigned to the Senior Obligations, the TIFIA Loan or any Subordinate Obligations by any Rating Agency that has provided a rating on such indebtedness, the Borrower, or the Pledged Revenues;

(J) 2 CFR Notices: (1) any of the information set forth in the certificate provided pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the TIFIA Loan as described in 2 CFR § 200.113, and the Borrower shall require VDOT, the Construction-Related Contract Parties and each of their subcontractors for the Project to provide it notice of any such violation, which notice shall be promptly provided by the Borrower to the TIFIA Lender;

(K) Appropriations: if the appropriation of the Revenues to the I-81 Fund (1) is not included in each biennial budget or any supplemental budget that is presented to the General Assembly, and/or (2) if the General Assembly fails timely to appropriate Revenues for the immediately following State fiscal biennium;

(L) Material Events: the filing of (together with a copy of) any notice to the Municipal Securities Rulemaking Board of any of the events described in clause (b)(5)(i)(C) of Rule 15c2-12 of the U.S. Securities and Exchange Commission (or any similar rule) with respect to obligations issued under the Indenture or and any other obligations that are secured by, or on which payments are expected to be made from, the I-81 Fund; and

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

(ii) The Borrower shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described in Section 15(g)(i) (Notices).

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(g)(i) (Notices) (other than in Section 15(g)(i)(A) (Substantial Completion) or Section 15(g)(i)(I) (Ratings Changes) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto.

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a board created and existing under the laws of the State. [The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business, including implementation of the Project.

(j) Annual Rating. The Borrower shall, commencing in 2023, no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the TIFIA Bond and any other Bonds outstanding by a Rating Agency, together with the rating report or letter delivered by such Rating Agency in connection with each such rating, if any, in each case prepared no earlier than June 1 of such year.

(k) Project Funds; Permitted Investments.

(i) The Borrower shall fund the TIFIA Debt Service Reserve Fund in an amount equal to the TIFIA Debt Service Reserve Requirement by no later than the date that is the later of (A) the Substantial Completion Date and (B) the date the final disbursement of the TIFIA Loan. Thereafter, the Borrower shall maintain the TIFIA Debt Service Reserve Fund in an amount equal to the TIFIA Debt Service Reserve Requirement. To the extent that a Debt Service Reserve Fund is established at any lien level with respect to any other Series (as defined in the Indenture) of Bonds, the Borrower shall maintain such Debt Service Reserve Fund in an amount equal to the greater of the relevant Debt Service Reserve Requirement in accordance with the provisions of this Agreement and that required in the applicable Indenture Documents. Amounts in any Debt Service Reserve Fund shall be made available to ensure the timely payment of the principal, interest, and premium, if any, on the Bonds to which it relates.

(ii) Amounts on deposit in the Project Funds shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Debt Service Fund or the TIFIA Debt Service Reserve Fund, not later than the next Payment Date, and (B) with respect to any other Project Funds, on or

prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from the applicable Project Fund. The Borrower shall, promptly but in any event within five (5) days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(iii) The Borrower may replace all or a portion of the required balance of any Reserve Account, in accordance with the terms of the applicable Indenture Documents, with a letter of credit or surety instrument issued by a Qualified Issuer and that constitutes Permitted Debt. If at any time an issuer of such letter of credit or surety instrument securing a Reserve Account ceases to be a Qualified Issuer, the Borrower shall cause such letter of credit or surety instrument to be replaced by a new letter of credit or surety instrument issued by a Qualified Issuer within thirty (30) calendar days of the date on which the current issuer ceased to be a Qualified Issuer, or the Trustee shall be permitted to immediately draw the full amount of such letter of credit or surety instrument and deposit the proceeds of such drawing into the applicable Reserve Account. Any new letter of credit or surety instrument shall have the same terms and conditions (including expiration date and face amount) as the letter of credit or surety instrument being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any letter of credit or surety instrument securing a Reserve Account is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such letter of credit or surety instrument with a new letter of credit or surety instrument issued by a Qualified Issuer at least ten (10) Business Days prior to the stated expiry date of the existing letter of credit or surety instrument and such new letter of credit or surety instrument shall be in an amount equal to at least the amount of expiring letter of credit or surety instrument. If the Borrower fails to provide such new letter of credit or surety instrument by the date required above, the Trustee shall (and the TIFIA Lender shall have the right to direct the Trustee to) immediately draw the full undrawn amount of the existing letter of credit or surety instrument and deposit the proceeds of such drawing into the applicable Reserve Account.

(l) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon the Trust Estate or any portion thereof, including the Pledged Revenues, or the Borrower's other income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims that, if unpaid might give rise to a Lien upon the Project or any part thereof or on the Trust Estate or any portion thereof, including the Pledged Revenues; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(m) Hedging.

(i) As a condition to the issuance of any Senior Obligations or Intermediate Lien Obligations that bear interest at a Variable Interest Rate, the Borrower

shall enter into a Qualified Hedge with respect to such Senior Obligations or Intermediate Lien Obligations and shall maintain such Qualified Hedge in place until the earlier to occur of (i) the maturity date of any such Senior Obligations or Intermediate Lien Obligations and (ii) the Final Maturity Date. Each Qualified Hedge must have an aggregate stated notional amount of not less than (A) during the Construction Period, at least ninety percent (90%) and not more than one hundred ten percent (110%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding during such time period and (B) at all other times, at least ninety-eight percent (98%) and not more than one hundred two percent (102%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding until the maturity of such Variable Interest Rate Obligations. Any such Qualified Hedge shall have a payment profile that is reasonably consistent with the expected draw and repayment schedule of the applicable Variable Interest Rate Obligations subject to such Qualified Hedge. Such Qualified Hedge shall have a stated maturity or termination date not earlier than the earlier to occur of (x) the Final Maturity Date and (y) the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge.

(ii) Each Qualified Hedge shall provide for a fixed interest rate resulting in fixed payment amounts payable by the Borrower to the Qualified Hedge Provider. The Borrower's obligations to pay Hedging Obligations and Hedging Termination Obligations shall be from the sources and in the priority specified in the Indenture Documents. The Borrower shall ensure that, as of the day following the termination date of any Qualified Hedge that for any reason terminates before the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge, (A) a Subsequent Qualified Hedge (as defined below) is in full force and effect or (B) the Variable Interest Rate Obligations have been converted to a fixed rate, in each case in accordance with this Agreement and the Indenture Documents.

(iii) Any Hedging Transaction entered into subsequent to the initial Qualified Hedge (a "**Subsequent Qualified Hedge**") shall (A) be a Qualified Hedge, (B) commence no later than the termination date of the Qualified Hedge that is terminating and (C) terminate no earlier than the earlier to occur of (1) the Final Maturity Date and (2) the final maturity date of the Variable Interest Rate Obligations subject to such Subsequent Qualified Hedge. At the time the Subsequent Qualified Hedge is priced, the Borrower shall provide to the TIFIA Lender a certificate from a qualified third party acceptable to the TIFIA Lender to the effect that either the underlying fixed rate or the price of acquiring such Subsequent Qualified Hedge is a fair price based on the interest rate market at the time such Qualified Hedge is priced.

(iv) The Trustee shall be granted a security interest in each Qualified Hedge and payments due under each Qualified Hedge in order to secure the Borrower's obligations under the TIFIA Loan Documents. The Hedging Agreements shall provide that all payments due thereunder to the Borrower shall be made directly to the Trustee for deposit and disbursement in accordance with the Indenture Documents.

(v) The Borrower shall neither terminate (other than Permitted Hedging Terminations), transfer, nor consent to any transfer (other than to a Qualified Hedge

Provider) of any existing Qualified Hedge without the TIFIA Lender's prior written consent as long as the Borrower is required to maintain a Qualified Hedge pursuant to this Agreement.

(vi) If at any time a Hedging Bank no longer satisfies the requirements for a Qualified Hedge Provider, the Borrower shall, within thirty (30) days (or such lesser number of days required by the applicable Hedging Agreement, including any credit support annex thereto) of the date on which such Hedging Bank failed to qualify as a Qualified Hedge Provider, either (A) cash collateralize the mark-to-market value of the Hedging Termination Obligations (in accordance with the credit support annex or similar requirements of the applicable Hedging Agreement) or provide a guarantee for such amount from an entity with an Acceptable Credit Rating, or (B) cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider, whether by means of a transfer of the disqualified Hedging Bank's Hedging Agreement to a Qualified Hedge Provider or by means of a termination of such disqualified Hedging Bank's Hedging Agreement and replacement thereof by a Hedging Agreement with a Qualified Hedge Provider on terms and conditions that satisfy the requirements of this Section 15(m) (Hedging); provided that if the disqualified Hedging Bank's highest credit rating from any Rating Agency is less than 'A-', 'A3' or the equivalent, clause (A) shall not apply and the Borrower shall be required to cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider pursuant to clause (B).

(n) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the TIFIA Lender evidence of such active registration status with no active exclusions listed in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

(o) Immunity. The Borrower agrees that it will not assert any immunity (and hereby confirms that it has no such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the contractual obligations of the Borrower under this Agreement or any other TIFIA Loan Document; provided, however, that this representation shall not constitute a waiver of immunity under any circumstance specifically prohibited under the laws of the State.

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

(q) Cargo Preference Act. Pursuant to 46 CFR Part 381, the Borrower hereby agrees as follows, and shall insert the following clauses in contracts entered into by the Borrower

pursuant to which equipment, materials or commodities may be transported by ocean vessel in carrying out the Project:

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

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

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

(s) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit P** hereto.

(t) Buy America.

(i) The Borrower agrees that steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. § 313, as implemented by the FHWA. The Borrower acknowledges that this Agreement is neither a waiver of 23 U.S.C. § 313(a) nor a finding under 23 U.S.C. § 313(b).

(ii) The Borrower agrees that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, and FHWA. The Borrower acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Section 16. Negative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing: Indebtedness.

(i) Except for Additional Obligations that satisfy each of the applicable requirements, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness under the Indenture; provided that the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Trust

Estate, including Additional Obligations, following the occurrence, and during the continuation, of an Event of Default.

(ii) The Borrower shall not issue Subordinate Obligations that bear interest at a Variable Interest Rate.

(iii) To the extent any obligations consist of Put Bonds, the Borrower must maintain a Liquidity Facility that will pay any amounts payable by the Borrower in respect of such Put Bonds.

(iv) Prior to the incurrence of Additional Obligations, the Borrower shall provide to the TIFIA Lender (1) a certificate signed by the Borrower's Authorized Representative, demonstrating to the TIFIA Lender's satisfaction that such proposed indebtedness is authorized pursuant to this Section 16(a) (Indebtedness) and satisfies the applicable requirements under the definitions of "Permitted Debt" and "Additional Obligations," as applicable, and (2) a copy of all certificates and reports provided to the Trustee in connection with such Additional Obligations in accordance with the requirements of the Indenture.

(b) No Lien Extinguishment; Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, (i) extinguish, impair, or transfer the Liens on the Trust Estate granted pursuant to the Indenture, (ii) terminate, assign, amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, or (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan.

(c) No Prohibited Liens. Except for the Liens granted pursuant to the Indenture Documents, the Borrower shall not create, incur, assume or permit to exist any Lien on the Trust Estate, the Pledged Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Fundamental Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Fundamental Contract, except pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease, or assign its rights and obligations under any Related Document, unless such sale, lease or assignment (A) could not reasonably be expected to result in a Material Adverse Effect, and (B) is made by the Borrower in the ordinary course of business.

(e) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Indenture or in the Trust Estate) without the prior written consent of the TIFIA Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the TIFIA Lender.

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

(g) No Payment with Federal Funds. The Borrower shall not pay any portion of TIFIA Debt Service nor any other amount to the TIFIA Lender or to the Federal Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrower may prepay the TIFIA Loan in whole or in part with the proceeds of a validly issued federal credit instrument pursuant to, and in accordance with, Section 10 (Prepayment).

(h) Acquisitions; Change in Legal Structure; Sale of Assets; Transactions with Third Parties. The Borrower shall not, and shall not agree to:

(i) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person (excluding purchases or other acquisitions of inventory or materials or spare parts or Capital Expenditures, each in the ordinary course of business) to the extent such acquisition or purchase could reasonably be expected to have a Material Adverse Effect;

(ii) reorganize, consolidate with, or merge into another Person unless (A) such Person is a successor public entity or agency created by State law that succeeds to the assets of the Borrower and assumes the obligations of the Borrower hereunder and under the Related Documents to which the Borrower is a party, including payment of the TIFIA Bond, and such merger, consolidation, or reorganization does not adversely affect or impair to any extent or in any manner (1) the Pledged Revenues or other elements of the Trust Estate, or (2) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement and the other TIFIA Loan Documents; and (B) the Borrower provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender;

(iii) sell, lease, or assign its rights in and to the Project or in and to a material portion of the assets constituting the Project, to the extent such sale, lease or assignment could reasonably be expected to have a Material Adverse Effect; or

(iv) otherwise engage in a transaction with any other Person (including any other Governmental Authority of or in the State) to the extent such transaction could reasonably be expected to have a Material Adverse Effect.

(i) No Defeasance of TIFIA Bond. The Borrower shall not defease the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture without the prior written consent of the TIFIA Lender.

(j) OFAC Compliance.

(i) The Borrower shall not:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement, the other Related Documents and the Construction-Related Contracts; or

(C) make a payment, directly or indirectly, to any Fundamental Contract Party or Construction-Related Contract Party that (1) to the Borrower's knowledge, has violated any of the laws referenced in this Section 16(j)(i) (OFAC Compliance) or (2) is a Sanctioned Person.

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

(k) Hedging. Other than interest rate hedging transactions expressly permitted hereunder, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the TIFIA Lender.

Section 17. Indemnification. To the extent permitted by law, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent, advisor, or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any

Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 (Indemnification) is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17 (Indemnification). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 (Indemnification) shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 (Indemnification) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17 (Indemnification)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder. Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section 18 (Sale of TIFIA Loan). Any such sale or reoffering shall be on such terms as the TIFIA Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower in accordance with Section 29 (Amendments and Waivers). The TIFIA Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower

of the TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 (Sale of TIFIA Loan) shall not (x) obligate the TIFIA Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan. Events of Default and Remedies. An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any amount of principal or interest on the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9 (Payment of Principal and Interest), and any mandatory prepayment required pursuant to the provisions of Section 10(a) (Mandatory Prepayments)), when due and payable (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder), the TIFIA Bond or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof, (B) the Borrower's knowledge of such failure, or (C) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii) (Covenant Default), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either clause (A) or (B) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 19(a)(iv) (Misrepresentation Default) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (No Debarment), Section 13(j) (Transportation Improvement Program), Section 13(p) (OFAC; Anti-Corruption Laws), Section 13(aa) (Patriot Act), or Section 13(cc) (Compliance with Federal Requirements);

(C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Senior Obligations, Intermediate Lien Obligations or Subordinate Obligations. Any acceleration shall occur of the maturity of any Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations, or any such Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations shall not be paid in full upon the final maturity thereof.

(vi) Events of Default under Indenture Documents. Any default under (and as defined in) any Indenture Document shall occur and shall not have been cured by the Borrower or waived in writing in accordance with the requirements of the applicable Indenture Document within the applicable cure period (if any) provided under such Indenture Document.

(vii) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of \$[1,000,000] (inflated annually by the annual change in CPI) that are payable from the Trust Estate or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(viii) Failure to Maintain Existence; Organizational Documents. The Borrower shall fail to maintain its existence as a board created and existing under the laws of the State, or the I-81 Program Act shall be repealed or amended or modified in such a manner as could reasonably be expected to result in a Material Adverse Effect, unless at or prior to the time the Borrower ceases to exist in such form or the repeal or amendment of

the I-81 Program described above becomes effective, a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law and has succeeded to the assets of the Borrower and has assumed all of the obligations of the Borrower under the TIFIA Loan Documents and the Indenture Documents, including the payment of all Secured Obligations.

(ix) Project Abandonment. Either Borrower Related Party shall abandon the Project.

(x) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower or (B) a Bankruptcy Related Event shall occur with respect to a Borrower Related Party (other than the Borrower) or any Fundamental Contract Party.

(xi) Invalidity of TIFIA Loan Documents. (A) Any TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or either Borrower Related Party contests in any manner the validity or enforceability of any TIFIA Loan Document to which it is a party or denies it has any further liability under any TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Trust Estate, including the Pledged Revenues, other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby.

(xii) Authorizing Legislation. The Authorizing Legislation shall be repealed or shall be amended or modified in such a manner that could reasonably be expected to result in a Material Adverse Effect.

(b) Upon the occurrence of an Event of Default described in Section 19(a)(iii) (Development Default), the TIFIA Lender may (i) suspend the disbursement of TIFIA Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and/or (iii) demand that the Borrower immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower, in which event the Borrower shall immediately repay any such unexpended TIFIA Loan proceeds to the TIFIA Lender.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and, to the extent permitted under the Indenture Documents, the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities, and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest, or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (ii) to the extent permitted under the Indenture Documents, declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, all without presentment, demand, notice, protest, or other requirements of any kind, all of which are hereby expressly waived.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder, under the TIFIA Bond or under the other TIFIA Loan Documents with respect to the TIFIA Loan, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the Trust Estate the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor and a creditor under the Uniform Commercial Code (to the extent applicable), and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder, under the TIFIA Bond, or under the other TIFIA Loan Documents with respect to the TIFIA Loan, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Federal Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section 19 (Events of Default and Remedies) shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all of which shall survive any such action.

Section 20. Accounting and Audit Procedures; Inspections; Reports and Records. Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Pledged Revenues, so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the TIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower related to the Project, to examine its books of account and records related to the Project or the I-81 Fund, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and accounts related thereto with, and to

be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower related to the Project or the I-81 Fund, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 20(a) (Inspections) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 20(a) (Inspections) at any time when an Event of Default shall have occurred and be continuing.

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

(d) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2022 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 21. Financial Plan, Financial Statements, and Annual Certificates.Financial Plan.

(i) The Borrower shall provide a Financial Plan to the TIFIA Lender and the FHWA Division Office within sixty (60) days after the Effective Date and annually thereafter until the TIFIA Loan has been repaid in full, in each case not later than ninety (90) days after the beginning of each Borrower Fiscal Year. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(ii) Each Financial Plan shall be prepared in accordance with GAAP and shall meet FHWA's Major Project Financial Plan requirements, as amended from time to time.

(iii) Together with each Financial Plan, the Borrower shall deliver: (A) a certificate signed by the Borrower's Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower's knowledge and belief and (B) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, based upon assumptions and projections with respect to the Pledged Revenues, expenses and other financial aspects of the Project and the Trust Estate that shall reflect the prior experience and current status of the Project and the Pledged Revenues, and the expectations of the Borrower with respect to the Project and the Pledged Revenues, as of the most recent practicable date prior to the delivery of such Revised Financial Model, together with a change log describing such changes.

(iv) Each Financial Plan shall:

(A) provide an updated cash flow statement showing, for the Borrower Fiscal Year most recently ended, (1) actual annual cash inflows (Pledged Revenues and other income), (2) actual annual outflows (including Senior Debt Service, Intermediate Lien Debt Service, TIFIA Debt Service, other Subordinate Debt Service, replenishment of reserves, and other uses), (3) Total Debt Service Coverage Ratios (measured as of the last day of the applicable Borrower Fiscal Year) and (4) coverages of the payments and deposits required pursuant to clauses FIRST through SIXTH of Section 8.1(a) of the Indenture;

(B) provide an updated cash flow statement showing projected annual amounts for each of the items described in clause (A) above, in each case through the Final Maturity Date;

(C) provide a schedule of then currently projected I-81 Program Revenues and any planned increases thereto;

(D) to the extent that any Hedging Transactions are then in effect, report on the notional amounts and mark to market values (provided by the Qualified Hedge Provider) under such Hedging Transactions, in each case as of the last day of the most recently ended Borrower Fiscal Year; and

(E) provide a written narrative that: (1) explains any variances greater than 10% in comparison to the Base Case Financial Model and the most recent Financial Plan with respect to (i) Pledged Revenues and the amounts deposited into each of the accounts and subaccounts established under the Indenture Documents and (ii) cost items that are senior to TIFIA Debt Service; (2) to the extent that any Hedging Transactions are then in effect, reports on changes, if any, to the creditworthiness of the counterparties to such Hedging Transactions; (3) includes a description of any material matters that may affect the future performance by the Borrower of its obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Pledged Revenues, Construction-Related Contracts, and

third-party transactions; and (4) discusses contingency measures that will or may be taken to address any of the matters reported pursuant to this sub-clause (E).

(v) In addition to the above, prior to the Substantial Completion Date, each Financial Plan shall:

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan;

(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including an updated Projected Substantial Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule and in the most recent Financial Plan, and discuss the reasons for any changes to the expected completion of these Project milestones;

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the preceding Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of each individual change valued at \$[5,000,000] or more, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower's obligations under this Agreement.

(b) Semi-Annual Coverage Certificates. Within fifteen (15) days after each Calculation Date, the Borrower shall deliver to the TIFIA Lender, a certificate in the form of **Exhibit O** and signed by the Borrower's Authorized Representative (each, a "**Semi-Annual Coverage Certificate**") that (i) certifies that annual projected Pledged Revenues shall be sufficient to meet the Loan Amortization Schedule and to meet the Borrower's debt service payments due with respect to any other Obligations that are currently outstanding, in each case as of each applicable Interest Payment Date through the fifth (5th) anniversary of the most recent Interest Payment Date, (ii) sets forth the historical TIFIA Debt Service Coverage Ratio and Total Debt Service Coverage Ratio for each of the two (2) consecutive Calculation Periods ended as of the immediately preceding Calculation Date and as of the immediately preceding Calculation

Date, respectively, and (iii) sets forth the projected TIFIA Debt Service Coverage Ratio and Total Debt Service Coverage Ratio as of each Calculation Date through the fifth (5th) anniversary of the immediately preceding Calculation Date.

(c) Financial Statements and Information. The Borrower shall furnish to the TIFIA Lender:

(i) (A) as soon as available, but no later than sixty (60) days after the end of each quarterly period of each Borrower Fiscal Year, a copy of the State's unaudited *Monthly Analysis of Cash and Investments*² for each of the three months in that quarter;

(B) as soon as available, but no later than one hundred eighty (180) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the State as of the end of such fiscal year and the related audited statements of operations and of cash flow of the State for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the State and that is reasonably acceptable to the TIFIA Lender;

(C) as soon as available, but no later than sixty (60) days after the end of each quarterly period of each Borrower Fiscal Year, the financial information on the I-81 Fund required by Section 4 of the Borrower's Continuing Disclosure Agreement, certified by a Borrower's Authorized Representative fairly stating in all material respects the financial condition of the I-81 Fund as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

(D) as soon as available, but no later than ten months after the end of each Borrower Fiscal Year, a copy of the "Continuing Disclosure Annual Report Interstate 81 Improvement Fund" required by Section 4 of the Borrower's Continuing Disclosure Agreement, including an audit of the I-81 Fund in accordance with GAAP.

(ii) All such financial reports shall be complete and correct in all material respects and prepared in reasonable detail and, in the case of audited financial statements, in accordance with GAAP, applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(d) Officer's Certificate. The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Borrower pursuant to Section 21(c) (*Financial Statements and Information*), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower's

² **Note to Borrower:** Please confirm that this is the monthly State financial report that was suggested (located at https://www.doa.virginia.gov/reports/MCI_Report/MCI_June_2022.pdf) – or advise otherwise.

Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the Borrower has taken or intends to take in respect thereof.

Section 22. Project Oversight and Monitoring, Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. The Borrower agrees to cooperate in good faith with the TIFIA Lender and the FHWA Division Office in the conduct of such monitoring by promptly requesting that VDOT provide the TIFIA Lender and the FHWA Division Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and the FHWA Division Office, or its agents, including any Consulting Engineer reports, documentation or information.

(b) Quarterly Construction Progress Report. On or before the last Business Day of each quarter during the Construction Period, the Borrower shall deliver to the TIFIA Lender a report (which may consist in whole or in part of reports received by Borrower from one or more of its contractors) that:

(i) specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar quarter and the amount of Total Project Costs estimated to be required to complete the Project;

(ii) provides a revised Project Budget updated through the end of the preceding calendar quarter;

(iii) demonstrates that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project, taking into account any changes to the amount of Total Project Costs that are reflected in such quarterly construction progress report (or prior quarterly construction progress reports);

(iv) to the extent there has been any change (increase or decrease) to the Total Project Costs needed to achieve Substantial Completion since the most recent quarterly construction progress report, provides a narrative description of such changes (specifying the amounts of such changes) and, in the case of any increase to the Total Project Costs, a narrative description of (A) which line items of the Project Budget have been affected by such cost increases (and the extent of any overruns with respect to such line items), (B) any material change orders granted or pending under the Construction-Related Contracts with respect to such cost increases, and (C) how the Borrower will pay for such increased Total Project Costs;

(v) provides (A) an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule; and (B) to the extent there have been any events or occurrences (e.g., delayed equipment deliveries, permit delays, material change orders, etc.), that have had, or are anticipated to have, an adverse impact on the Construction Schedule and the meeting of critical dates thereunder, a detailed narrative description of steps being taken (or proposed to be taken) to address such adverse impacts on the Construction Schedule;

(vi) specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date specified in the Financial Plan most recently submitted to the TIFIA Lender; and

(vii) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request.

(c) Requested Information. The Borrower shall, at any time while the TIFIA Loan remains outstanding, promptly deliver to the TIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project or the Pledged Revenues as the TIFIA Lender may from time to time reasonably request, including copies of agreements, documentation and other information related thereto requested by the TIFIA Lender. The Borrower shall respond, and use commercially reasonable efforts to cause the Fundamental Contract Parties and Construction-Related Contract Parties to respond, to the TIFIA Lender's inquiries regarding the construction of the Project. The TIFIA Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the TIFIA Lender and at the Borrower's cost (as provided in Section 28 (Fees and Expenses)), to carry out the provisions of this Section 22(c).

(d) Consulting Engineer.

(i) If requested in writing by the TIFIA Lender (in circumstances where the Borrower does not already have a designated Consulting Engineer), the Borrower shall hire and retain a Consulting Engineer for so long as required by the TIFIA Lender.

(ii) Any Consulting Engineer retained by the Borrower shall advise the TIFIA Lender (with a duty of care to the TIFIA Lender) with regard to all technical matters related to the performance by the Borrower of its obligations under this Agreement and the Related Documents.

(iii) The Borrower may designate or replace the Consulting Engineer; provided that the TIFIA Lender shall have the right to object to any such Consulting Engineer (and the Borrower shall not retain any proposed Consulting Engineer if the TIFIA Lender has objected in writing to such proposed Consulting Engineer). The Borrower shall provide the TIFIA Lender with thirty (30) Business Days' advance written notice of any proposed initial or replacement Consulting Engineer, together with supporting information concerning the qualifications of the proposed Consulting Engineer. The Borrower may designate the proposed Consulting Engineer unless the TIFIA Lender objects in writing

within fifteen (15) Business Days following receipt of the Borrower's notice above. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed Consulting Engineer. The Borrower shall pay for all services performed by the Consulting Engineer.

(e) Reports by Trustee. The Borrower shall, at any time while the TIFIA Loan remains outstanding, promptly deliver to the TIFIA Lender each monthly report provided by the Trustee to the Borrower pursuant to Section 6.5 of the Indenture.

Section 23. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Federal Government, or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the TIFIA Lender, the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 17 (Indemnification), from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.TIFIA Lender's Authorized Representative. The TIFIA Lender shall at all times have appointed the TIFIA Lender's Authorized Representative by designating such Person or Persons from time to time to act on the TIFIA Lender's behalf pursuant to a written certificate furnished to the Borrower and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the TIFIA Lender.

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016 (the "**Delegation**") the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 27. Servicer. The TIFIA Lender may from time to time designate an entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Bond. The TIFIA Lender shall

give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder. Fees and Expenses. Commencing in FFY [2022] and continuing thereafter each year throughout the term of this Agreement, the Borrower shall pay to the TIFIA Lender a loan servicing fee on or before the fifteenth (15th) of November. The TIFIA Lender shall establish the amount of this annual fee, and the TIFIA Lender or the Servicer, if any, shall notify the Borrower of the amount at least thirty (30) days before payment is due.

(b) In establishing the amount of the servicing fee, the TIFIA Lender will adjust the previous year's base amount in proportion to the percentage change in CPI. For the FFY 2023 calculation, the TIFIA Lender will use the FFY 2023 base amount of \$[___], which applies to other TIFIA borrowers, as the previous year's base amount. The TIFIA Lender will calculate the percentage change in the CPI, before seasonal adjustment, from August of the previous year to August of the current year and will then adjust the previous year's base amount in proportion to the CPI percentage change. To calculate the amount of the fee, the TIFIA Lender shall round the current year's base amount using increments of \$500. Results with the ending integers between 250-499 or between 750-999 shall be rounded upward, and results with the ending integers between 001-249 or between 501-749 shall be rounded downward. The CPI adjustments in the following years shall begin with the base amount, not the rounded fee.

(c) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the TIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration, and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, or the Trust Estate, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder;

(iii) any ongoing oversight and monitoring of the TIFIA Loan, the Borrower or the Project by the TIFIA Lender as provided for herein; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents, including during the pendency of one or more Events of Default.

The obligations of the Borrower under this Section 28 (Fees and Expenses) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State if and to the extent such federal laws are not applicable.Severability and Conflicts. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. In the event of a conflict between the Indenture and this Agreement, the provisions of this Agreement shall be given precedence; provided that, in the event of a conflict between the provisions of this Agreement and those of the Indenture, and performance in accordance with the provisions of this Agreement is contrary to or inconsistent with the rights of the Bondholders under the Indenture, then the provisions of the Indenture shall be given precedence, and performance in accordance with the provisions thereof shall not violate this Agreement. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the TIFIA Lender.Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument

delivered in connection herewith in accordance with Section 36 (Notices; Payment Instructions) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

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

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

If to Borrower: Commonwealth Transportation Board
c/o Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attention: Chief Financial Officer

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(d) (Manner of Payment) and the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time to time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (Notices; Payment Instructions) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (Notices; Payment Instructions) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 37. Effectiveness. This Agreement shall be effective on the Effective Date.**Termination.** This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding TIFIA Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 17 (Indemnification), the reporting and record keeping requirements of Section 20(a) (Inspections) and Section 20(c) (Reports and Records), and the payment requirements of Section 28 (Fees and Expenses) shall survive the termination of this Agreement as provided in such sections.**Integration.** This Agreement, along with the TIFIA Bond, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

COMMONWEALTH TRANSPORTATION BOARD

By: _____
Name: _____
Title: _____

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

By: _____
Name: Dr. Morteza Farajian
Title: Executive Director

**SCHEDULE I:
PROJECT BUDGET**

Sources of Project Funds	Amount
Total	

Cost Element	Total Cost
Total	

**SCHEDULE III:
EXISTING INDEBTEDNESS**

SCHEDULE IV:
ARTICLES VII AND VIII OF THE INDENTURE

EXHIBIT A
FORM OF TIFIA SERIES 2022 BOND
COMMONWEALTH TRANSPORTATION BOARD
I-81 CORRIDOR IMPROVEMENT FUND
[•] PROJECT
(TIFIA – [•])
SUBORDINATE LIEN REVENUE BOND
TIFIA SERIES 2022

Maximum Principal Amount: \$82,554,209
(excluding capitalized interest)

Effective Date: [•], 2022

Due: Earlier of the 35th anniversary of Substantial Completion Date and [•]

COMMONWEALTH TRANSPORTATION BOARD, a board created and existing under the laws of the Commonwealth of Virginia (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Exhibit G** to the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Loan Agreement from time to time in accordance with the terms of the TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(d) (*Manner of Payment*) and Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become

due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If an amendment to the Final Maturity Date is approved by the TIFIA Lender pursuant to the TIFIA Loan Agreement, the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the “**TIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement or, as applicable, the Indenture.

This TIFIA Bond is being issued by the Borrower pursuant to Chapter 26, Title 33.2, Code of Virginia of 1950, as amended, a resolution adopted by the Borrower on May 19, 2021, and under and pursuant to a Master Indenture of Trust, between the Borrower and U.S. Bank National Association, or its successor, as trustee (the “**Trustee**”), dated as of August 1, 2021 (the “**Indenture**”), as supplemented and amended by the First Supplemental Series Indenture of Trust dated as of August 1, 2021 (the “**First Series Supplement**”), and the Second Supplemental Series Indenture of Trust dated as of [] (the “**Second Series Supplement**” and, together with the First Series Supplement and the Master Indenture, the “**Indenture Documents**”), each between the Borrower and the Trustee, a certified copy of which each Indenture Document is on file at the office of the Borrower.

This TIFIA Bond is issued as and constitutes a Subordinate Obligation within the meaning of such term in the Indenture.

This TIFIA Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision or instrumentality thereof (including any Member Locality) other than the Borrower. This TIFIA Bond shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code. *The Borrower’s authority to receive any or all of the taxes or other revenues pledged to the Trustee for payment of [I-81] Bonds (as defined below) pursuant to the Indenture is subject to appropriation by the General Assembly of the Commonwealth, and neither the General Assembly nor the Borrower can or will pledge, covenant or agree to impose or maintain at any particular rate or level any of such taxes or other revenues.*

The Indenture provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional series of Bonds for the purpose of financing projects, and of refunding outstanding obligations of the Borrower. Such additional series of Bonds may be issued as Senior Bonds, Intermediate Lien Obligations, or Subordinate

Obligations (as defined in the Indenture). This TIFIA Bond, together with all other obligations heretofore or hereafter issued under the provisions of the Indenture, are herein collectively referred to as the "I-81 Program Bonds." Reference is hereby made to the Indenture for the provisions, among others, with respect to the terms and conditions on which the [I-81] Bonds of each series are or may be issued, the custody and application of the proceeds of [I-81] Bonds issued under the Indenture, the collection and disposition of revenues, the funds charged with and pledged to the payment of the interest on and the principal and premium, if any, of the [I-81] Bonds, the nature and extent of the security, the rights, duties and obligations of the Borrower, the Trustee and any paying agent for the [I-81] Bonds and the rights of the owners of the [I-81] Bonds. Certain of such funds, accounts and subaccounts secure only the Senior Obligations, certain of such funds, accounts and subaccounts secure only the Intermediate Lien Obligations, and certain of such funds, accounts and subaccounts secure only the Subordinate Obligations, all as more fully described in the Indenture Documents.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The owner of this TIFIA Bond shall have no right to enforce the provisions of the Indenture Documents or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture Documents, or to institute any suit or other proceeding with respect to the Indenture Documents, except as provided in the Indenture Documents.

All acts, conditions and things required by the Constitution and laws of the Commonwealth of Virginia to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the Commonwealth shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture Documents until the Trustee has executed the Certificate of Authentication appearing on this TIFIA Bond and inserted the date of authentication.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the Commonwealth Transportation Board has caused this TIFIA Bond to be signed by the manual or facsimile signature of its Chair, to be attested by the manual or facsimile signature of its Executive Director and this Bond to be dated the Effective Date set forth above.

**COMMONWEALTH TRANSPORTATION
BOARD**

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Indenture.

Authentication Date: _____

U.S. BANK NATIONAL
ASSOCIATION

By: _____
Name:
Title:

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

Borrower
Fiscal
Year

EXHIBIT C

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

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

- (a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);
- (b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR § 180.800(a); and
- (d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain TIFIA Loan Agreement, dated as of [] between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

COMMONWEALTH TRANSPORTATION
BOARD

By: _____
Name:
Title:

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Section 2 through Section 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as **Appendix One To Exhibit D** to this **Exhibit D**. Supporting documentation should be submitted with the requisition.

All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if such day is not a Business Day, the next succeeding Business Day.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the TIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of or report prepared by an independent engineer relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender).

The TIFIA Lender shall promptly send to the Borrower, in accordance with Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as **Appendix Two** to this **Exhibit D**. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be resubmitted

in proper form in order to be considered for approval. If a Requisition exceeds the balance of the TIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the TIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the TIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The TIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

(a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing; or

(b) the Borrower:

- (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or
- (ii) fails to cause VDOT to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the highest standards of VDOT's industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by VDOT with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement; or
- (iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or
- (iv) fails to satisfy any condition set forth in Section 4 (*Disbursement Conditions*) or Section 12(b) (*Conditions Precedent to All Disbursements*) of the TIFIA Loan Agreement; or
- (v) fails to deliver documentation satisfactory to the TIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Federal Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the TIFIA Lender (a) shall be entitled to withhold approval of any pending or

subsequent requests for the disbursement of TIFIA Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower (even if such disbursement has been approved by the TIFIA Lender), in each case if the TIFIA Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

Build America Bureau

United States Department of Transportation
c/o Director, Office of Credit Programs

Room W12-464
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

Federal Highway Administration
Virginia Division Office
400 North 8th St., Suite 750
Richmond, Virginia 23219-4825
Attn: Division Administrator

Re: [] PROJECT (TIFIA - [])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [] (the “**TIFIA Loan Agreement**”), by and between the COMMONWEALTH TRANSPORTATION BOARD (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), we hereby request disbursement in the amount of \$[] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [_____].
2. The requested date of disbursement is [_____] 15, 20[] (the “**Disbursement Date**”)[, which is the first Business Day following [_____] 15, 20[_____]].
3. The requested amount is \$[_____].
4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan commitment.

6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
7. The Borrower or VDOT has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
8. As demonstrated in the Revised Financial Model most recently delivered to the TIFIA Lender and in the Project Budget, the funds that have been fully and completely committed and allocated to the Borrower by the providers thereof to pay Total Project Costs are sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule and by no later than the Projected Substantial Completion Date.
9. Each of the insurance policies obtained by VDOT in satisfaction of the condition in Section 12(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
10. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the TIFIA Lender and the FHWA Division Office and in accordance with the highest standards of VDOT's industry.
11. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
12. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
13. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [*insert date*] and is continuing.
14. A copy of the quarterly construction progress report pursuant to Section 23(b) (*Quarterly Construction Progress Report*) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.
15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with

the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Federal Government deems appropriate.

16. A copy of this requisition has been delivered to each of the above named addressees.
17. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Trustee.]

Date: _____

COMMONWEALTH TRANSPORTATION
BOARD

By: _____

Name:

Title: _____

APPENDIX TWO TO EXHIBIT D

**DISAPPROVAL OF THE TIFIA LENDER
(TO BE DELIVERED TO THE BORROWER)**

Requisition Number [] is [approved in part in the amount of \$[]] [not approved]³ by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [], 20[], by and between the Commonwealth Transportation Board (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the TIFIA Lender’s sole discretion, and in no event shall the TIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

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

By: _____
TIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

³Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

[INSERT REASONS FOR ANY PARTIAL OR FULL DENIAL OF APPROVAL.]

EXHIBIT E

COMPLIANCE WITH LAWS

The Borrower shall, shall cause VDOT to, and shall cause VDOT to cause the Construction-Related Contract Parties and their contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (ii) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 CFR Part 35; 29 CFR Part 1630);
- (iii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 CFR Part 21);
- (iv) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (v) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);
- (vi) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 CFR Part 20);
- (vii) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (viii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), including the environmental mitigation requirements and commitments made by VDOT that result in the FHWA's approval of the NEPA Determination;
- (ix) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (x) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (xi) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xii) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 CFR Part 1926 and 23 CFR § 635.108, as applicable);
- (xiii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 CFR Part 5), and, as applicable, 23 U.S.C. § 113 and implementing regulations (23 CFR §§ 635.117(f) and 635.118), and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;

- (xiv) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 CFR § 635.410);
- (xv) The Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52);
- (xvi) The requirements of 23 U.S.C. § 101 *et seq.* and 23 CFR;
- (xvii) The Cargo Preference Act of 1954, as amended (46 U.S.C. §55305), and implementing regulations (46 CFR Part 381);
- (xviii) The applicable requirements of 49 CFR Part 26 relating to the Disadvantaged Business Enterprise program; and
- (xix) The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and implementing regulations (2 CFR § 200.216).

EXHIBIT F
[FHWA OVERSIGHT AGREEMENT]

EXHIBIT H-1

OPINIONS REQUIRED OF COUNSEL TO EACH BORROWER RELATED PARTY

An opinion of the counsel of each Borrower Related Party, dated as of the Effective Date, to the effect that: (a) such Borrower Related Party is duly created and validly existing under the laws of the jurisdiction of formation; (b) such Borrower Related Party has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by such Borrower Related Party of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action; (d) such Borrower Related Party has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of such Borrower Related Party for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by such Borrower Related Party; (f) the execution and delivery by such Borrower Related Party of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of such Borrower Related Party, (ii) violate any statute, rule, regulation or other law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which such Borrower Related Party is a party, or to counsel's knowledge, after due inquiry, any court order, consent decree, statute, rule, regulation or any other law to which such Borrower Related Party is subject; (g) such Borrower Related Party is not an investment company required to register under the Investment Company Act of 1940, as amended; and (h) to our knowledge after reasonable, there are no actions, suits, proceedings or investigations against such Borrower Related Party by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.

EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that: (a) each of the TIFIA Bond, the Indenture, and the TIFIA Supplemental Indenture has been duly authorized, executed, and delivered by the Borrower in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (b) each of the TIFIA Bond, the Indenture, and the TIFIA Supplemental Indenture is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions; (c) the TIFIA Bond is a Subordinate Obligation, secured by the Liens on the Trust Estate, and shall be subordinate to the Lien on the Trust Estate pledged to secure the Senior Obligations and any Intermediate Lien Obligations, and shall be *pari passu* to the Lien on the Trust Estate pledged to secure the Subordinate Obligations and is a Bond entitled to the benefits of a Bond under the Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person; (d) the Indenture and the TIFIA Supplemental Indenture create the valid and binding assignment and pledge of the Trust Estate to secure the payment of the principal of, interest on, and other amounts payable in respect of, the TIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act; (e) all actions by the Borrower that are required for the use of Pledged Revenues as required under the Indenture, the TIFIA Supplemental Indenture and under the TIFIA Loan Agreement have been duly and lawfully made; (f) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Pledged Revenues as required by the terms of the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Loan Agreement; (g) the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; and (h) the Borrower is not entitled to claim governmental immunity in any breach of contract action under the TIFIA Loan Agreement or the TIFIA Bond or by the Trustee under the Indenture Documents.

EXHIBIT I

RESERVED

EXHIBIT J

FORM OF CERTIFICATE OF TRUSTEE

COMMONWEALTH TRANSPORTATION BOARD

TIFIA BOND,
[I-81] PROJECT
(TIFIA – [•])

The undersigned, U.S. Bank National Association (the “**Trustee**”), by its duly appointed, qualified and acting Vice President, certifies with respect to the above referenced bond (the “**TIFIA Bond**”) dated as of [___], 2022, as follows (capitalized terms used in this Certificate that are not otherwise defined shall have the meanings given to such terms in the Indenture (as defined below)):

18. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of the United States of America.
19. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained and are in full force and effect.
20. The Indenture and the TIFIA Supplemental Indenture (each as defined herein) pertaining to the issuance of the TIFIA Bond to which the Trustee is a party was executed and the TIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the TIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the TIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
21. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture (“**Trusts**”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
22. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today,

and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

23. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section 5.3 and Section 15.3 of that certain Master Indenture of Trust (the “**Indenture**”), dated as of August 1, 2021, and the Supplemental Indenture pertaining to the TIFIA Bond (the “**TIFIA Supplemental Indenture**”), dated as of [], 2022, each between the Commonwealth Transportation Board (the “**Borrower**”) and the Trustee.
24. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of [], 2022 (the “**TIFIA Loan Agreement**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Bondholder**”).
25. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee and of Bond Registrar and Paying Agent for and in respect of the TIFIA Bond as set forth in the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Loan Agreement, including from time to time redeeming all or a portion of the TIFIA Bond as provided in Article IV of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Article XIV of the Indenture.
26. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture (including, but not limited to, the [TIFIA Series 2022] Project Fund; the [TIFIA Series 2022 Bond Debt Service Fund], and within such Fund the [TIFIA Series 2021 Interest Account,] the [TIFIA Series 2021 Principal Account], [the TIFIA Series 2021 Redemption Account] and the [TIFIA Revenue Sharing Account,] and the [TIFIA Series 2021 Bond Debt Service Reserve Fund]) have been established as provided in the Indenture and the TIFIA Supplemental Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: [_____], 2022

U.S. BANK NATIONAL ASSOCIATION

By: _____

Its:

ANNEX ONE TO EXHIBIT J
OFFICERS OF TRUSTEE

ANNEX TWO TO EXHIBIT J
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT K

FORM OF BORROWER'S OFFICER'S CERTIFICATE⁴

Reference is made to that certain TIFIA Loan Agreement, dated as of [], 2022 (the "TIFIA Loan Agreement"), by and among the Commonwealth Transportation Board (the "Borrower") and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

Pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the undersigned, Executive Director, as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (b) pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit A** is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 26 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (c) pursuant to Section 12(a)(ii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit B** are certified, complete, and fully executed copies of each Indenture Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived;
- (d) pursuant to Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that it is in compliance with the disclosure requirements set forth in 2 CFR § 180.355 and the verification requirements set forth in 2 CFR §§ 180.300 and 180.320 and with its obligations under 2 CFR § 180.330;
- (e) pursuant to Section 12(a)(xv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that:
 - a. With respect to the Project, each of the Borrower and VDOT has complied with NEPA and the Borrower has delivered to the TIFIA Lender a copy of the NEPA Determination; and
 - b. The Borrower has complied, and has caused VDOT to comply, with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition

⁴ NTD: Certificate to be conformed with CPs to Effectiveness included in Section 12(a).

Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);

- (f) pursuant to Section 12(a)(v) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit C** is evidence that the Project has been included in (A) the State transportation plan and (B) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project;
- (g) pursuant to Section 12(a)(viii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has demonstrated that as of the Effective Date the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion;
- (h) pursuant to Section 12(a)(x) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has delivered to the TIFIA Lender certified, complete, and fully executed copies of each Fundamental Contract and each Construction-Related Contract , together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender;
- (i) pursuant to Section 12(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, each of the Borrower and VDOT has obtained all Governmental Approvals necessary to commence construction of the Project and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);
- (j) pursuant to Section 12(a)(xii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has delivered a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model (A) demonstrates that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrates (x) a Senior Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [] and (y) a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [], and (C) is otherwise in form and substance acceptable to the TIFIA Lender;
- (k) pursuant to Section 12(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit D** is evidence that the Borrower (A) is authorized, pursuant to the I-81 Program Bond Act, to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) has recorded or filed, or caused to be recorded or filed, for record in such manner

and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents and required by applicable law, and (C) has paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing;

- (l) pursuant to Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is [], (ii) the Borrower's Data Universal Numbering System number is [], and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as **Exhibit E** is evidence of (iii);
- (m) pursuant to Section 12(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit F** is evidence that each of the Borrower and VDOT is duly created and validly existing under the laws of the Commonwealth and a certified copy of each of the Borrower's and VDOT's Organizational Documents;
- (n) pursuant to Section 12(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit G** is a certified copy of the resolutions authorizing the execution of this Agreement, the TIFIA Supplemental Indenture, and the TIFIA Bond and the issuance of the TIFIA Bond;
- (o) pursuant to Section 12(a)(xxi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (p) pursuant to Section 12(a)(xxii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that, as of the Effective Date, (i) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (33%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

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

COMMONWEALTH TRANSPORTATION
BOARD

By: _____
Name:
Title: Authorized Representative

EXHIBIT A TO EXHIBIT K
INCUMBENCY CERTIFICATE

The undersigned certifies that he is the [] of the Commonwealth Transportation Board, a board created and existing under the laws of the Commonwealth of Virginia (the “Borrower”), and as such he is authorized to execute this certificate and further certifies that the following person has been elected or appointed, is qualified, and is now acting as an officer or authorized person of the Borrower in the capacity indicated below, and that the signature set forth opposite his name is a true and genuine signature. He further certifies that any of the officer or authorized person listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the TIFIA Loan Documents and/or the Indenture Documents as the Borrower’s Authorized Representative (each as defined in that certain TIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

Name	Title	Signature
[]	[]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of _____, 2022.

COMMONWEALTH TRANSPORTATION
BOARD

By: _____
Name:
Title:
r

EXHIBIT L

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

Build America Bureau
United States Department of Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of Credit Programs

Project: [] Project (TIFIA – [•])

Dear Director:

This Notice is provided pursuant to Section 15(g)(i)(A) (*Substantial Completion*) of that certain TIFIA Loan Agreement (the “**TIFIA Loan Agreement**”), dated as of [], 2022, by and between the Commonwealth Transportation Board (the “**Borrower**”) and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the TIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the TIFIA Lender that:

- (q) on [*insert date Substantial Completion requirements were satisfied*], the Project satisfied each of the requirements for Substantial Completion set forth in [];
- (r) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (s) Substantial Completion, as defined in the TIFIA Loan Agreement, has been achieved.

COMMONWEALTH TRANSPORTATION
BOARD

Name:

Title:

EXHIBIT N

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

Reference is made to that certain TIFIA Loan Agreement, dated as of [], 2022 (the “TIFIA Loan Agreement”), by and among the Commonwealth Transportation Board (the “Borrower”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement. The undersigned, on behalf of the Commonwealth Transportation Board, hereby certifies, to the best of his or her knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Borrower, to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of the TIFIA Loan.
- (b) If any funds other than proceeds of the TIFIA Loan have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the TIFIA Loan, the Borrower shall complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions.
- (c) The Borrower shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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

Dated: _____

**COMMONWEALTH TRANSPORTATION
BOARD**

By: _____
Name:
Title:

EXHIBIT O
FORM OF SEMI-ANNUAL COVERAGE CERTIFICATE

EXHIBIT P

2 CFR Part 170

I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

2. *Where and when to report.*

- i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.
- ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

- i. The total Federal funding authorized to date under this TIFIA Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;
- ii. In the preceding fiscal year, you received—
 - (A) eighty percent (80%) or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

- i. As part of your registration profile at <https://www.sam.gov>.
- ii. By the end of the month following the month of the Effective Date, and annually thereafter.

c. *Reporting of Total Compensation of Subrecipient Executives.*

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this TIFIA Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

- i. In the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) eighty percent (80%) or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
- ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

- i. To the recipient.
- ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and
2. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this **Exhibit P**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

- i. A Governmental organization, which is a State, local government, or Indian tribe;
- ii. A foreign public entity;
- iii. A domestic or foreign nonprofit organization; and,
- iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

- i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.
- ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR § 200.331).
- iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

- i. Receives a subaward from you (the recipient) under this TIFIA Loan; and
- ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)).

THIRD SUPPLEMENTAL INDENTURE OF TRUST

between

COMMONWEALTH TRANSPORTATION BOARD

and

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION,
as Trustee**

Dated as of [_____] 1, 2022

relating to

\$ _____

**Commonwealth of Virginia
Interstate 81 Corridor Program
Revenue Bond, Series 2022 (TIFIA 2022 Rural Project Senior Lien Lien)**

Table of Contents

Page

**ARTICLE I
THIRD SUPPLEMENTAL INDENTURE**

Section 1.1	Third Supplemental Indenture	2
Section 1.2	Definitions.....	2
Section 1.3	Representations of Board.....	5

**ARTICLE II
AUTHORIZATION AND DETAILS OF TIFIA SERIES 2022 SENIOR BOND**

Section 2.1	Authorization of TIFIA Series 2022 Senior Bond.....	5
Section 2.2	Terms and Details of TIFIA Series 2022 Senior Bond.....	5
Section 2.3	Medium and Place of Payment	7
Section 2.4	Form of TIFIA Series 2022 Senior Bond; Approval of 2022 TIFIA Rural Project Loan Agreement	7
Section 2.5	Authentication and Delivery of TIFIA Series 2022 Senior Bond.....	7

**ARTICLE III
REDEMPTION OF TIFIA SERIES 2022 SENIOR BOND**

Section 3.1	Optional Redemption.....	8
Section 3.2	Mandatory Redemption	8
Section 3.3	Special Mandatory Redemption Upon Optional Redemption of Other Debt.....	8
Section 3.4	Partial Redemption of the TIFIA Series 2022 Senior Bond	9

**ARTICLE IV
ESTABLISHMENT OF FUNDS AND ACCOUNTS; APPLICATION OF PROCEEDS**

Section 4.1	Establishment of Funds and Accounts for the TIFIA Series 2022 Senior Bond	9
Section 4.2	Use of Disbursements from TIFIA Loan	9

**ARTICLE V
FLOW OF FUNDS; APPLICATION OF CERTAIN FUNDS**

Section 5.1	TIFIA Series 2022 Senior Bond Debt Service Fund	10
Section 5.2	Section 5.2..... TIFIA Series 2022 Rural Project Fund	11

Table of Contents
(continued)

Page

ARTICLE VI
SECURITY FOR THE TIFIA SERIES 2022 SENIOR BOND

Section 6.1	Security for the TIFIA Series 2022 Senior Bonds	11
Section 6.2	Covenant to Requisition Under TIFIA Rural Project Loan Agreement	11

ARTICLE VII
SPECIAL COVENANTS WITH RESPECT TO TIFIA SERIES 2022 SENIOR BOND

Section 7.1	Issuance of Additional Bonds	12
Section 7.2	Additional Terms Relating to a Bond Credit Facility	12
Section 7.3	Permitted Investments.....	12
Section 7.4	Events of Default and Remedies.....	12

ARTICLE VIII
MISCELLANEOUS

Section 8.1	Tax Status.....	13
Section 8.2	Successors and Assigns.....	13
Section 8.3	Severability	13
Section 8.4	Governing Law	13
Section 8.5	Counterparts	13
Section 8.6	Binding Effect.....	13
Section 8.7	Parties Interested.....	13

EXHIBIT A	2022 TIFIA RURAL PROJECT LOAN AGREEMENT	
EXHIBIT B	FORM OF TIFIA SERIES 2022 SENIOR BOND	
EXHIBIT C	FORM OF REQUISITION	

THIRD SUPPLEMENTAL INDENTURE OF TRUST

This **THIRD SUPPLEMENTAL INDENTURE OF TRUST** (this “Third Supplemental Indenture”) is made as of [] 1, 2022, between the **COMMONWEALTH TRANSPORTATION BOARD**, a board created and existing under the laws of the Commonwealth of Virginia (the “Board”), and **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a non-depository national banking association, and its successors, successor to U.S. BANK NATIONAL ASSOCIATION, as trustee (the “Trustee”).

RECITALS:

WHEREAS, pursuant to the Transportation Development and Revenue Bond Act (the “State Transportation Revenue Bond Act”), Sections 33.2-1700 et seq. of the Code of Virginia of 1950, as amended (the “Virginia Code”), the Board has the power to issue revenue bonds to finance the costs of transportation projects authorized by the General Assembly of Virginia (the “General Assembly”), including any financing costs or other financing expenses related to such bonds;

WHEREAS, pursuant to the Commonwealth Transportation Interstate 81 Corridor Bond Act of 2020, enactment clause 15 of Chapter 1230 of the Acts of the General Assembly of the Commonwealth of Virginia, 2020 Reconvened Session (the “I-81 Bond Act”), the Board is authorized, by and with the consent of the Governor, to issue, pursuant to the provisions of the State Transportation Revenue Bond Act, revenue obligations of the Commonwealth of Virginia (the “Commonwealth”) to be designated “Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bonds, Series” (the “Bonds”) at one or more times in an aggregate principal amount not to exceed \$1 billion, after all costs, excluding refunding bonds and excluding pre-project completion interest convertible to principal associated with certain federal programs of the U.S. Department of Transportation

WHEREAS, the Board has executed and delivered to the Trustee a Master Indenture of Trust dated as of August 1, 2021 (the “Master Indenture”), under which, among other things, the Board has provided for (i) the issuance from time to time of Bonds to finance or refinance the Costs of any Project and for such other purposes as may be authorized under and pursuant to the I-81 Bond Act and (ii) the security for and sources of payment of the debt service on such Bonds;

WHEREAS, pursuant to the Master Indenture of Trust and a First Supplemental Indenture of Trust dated as of August 1, 2021 (the “First Supplemental Indenture”), the Board previously issued its \$80,990,000 Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bonds (Senior Lien) Series 2021 (the “Series 2021 Senior Lien Bonds”), the initial series of bonds issued under the Master Indenture;

WHEREAS, pursuant to the Master Indenture of Trust and a Second Supplemental Indenture of Trust dated as of _____ 1, 2022 (the “Second Supplemental Indenture”), the Board issued to the TIFIA Lender (herein defined) its \$ _____ Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond (Subordinate Lien) Series 2022 (the “TIFIA Series 2022 Subordinate Lien Bond”) to evidence a subordinate loan to the Board pursuant to a TIFIA Loan

Agreement (2022 Regular Project), dated as of _____, 2022 (the “2022 TIFIA Regular Project Loan Agreement”);

WHEREAS, the Board and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “TIFIA Lender”), propose to enter into a TIFIA Loan Agreement (2022 Rural Project), dated as of _____, 2022 (the “2022 TIFIA Rural Project Loan Agreement”), pursuant to which the TIFIA Lender has agreed to extend a loan to Board, the proceeds of which shall be used solely in respect of Eligible Project Costs (as defined in the 2022 TIFIA Rural Project Loan Agreement) paid or incurred by or on behalf of the Borrower (as defined in the 2022 TIFIA Rural Project Loan Agreement) from time to time in connection with the 2022 TIFIA Financed Projects (as defined below);

WHEREAS, as evidence of the loan extended by the TIFIA Lender under the 2022 TIFIA Rural Project Loan Agreement, and to provide for the repayment thereof, the Board has determined to issue and deliver a Series of Bonds under the Master Indenture, to be issued as a Senior Obligation on parity with the Series 2021 Senior Lien Bonds thereunder and designated the Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond, Series 2022 (TIFIA 2022 Rural Project Senior Lien) (the “TIFIA Series 2022 Senior Bond”) to the TIFIA Lender in the initial aggregate principal amount (excluding any capitalized interest) of up to [\$82,580,876] to finance certain Eligible Project Costs;

WHEREAS, the Master Indenture provides that the Board may issue Senior Obligations from time to time as authorized by a Series Supplement, which Senior Obligations are to be secured by the Revenues and certain funds and accounts in accordance with the Master Indenture, and the Master Indenture further provides that, as a condition to the issuance and authentication of any Series of Bonds, the Board shall deliver to the Trustee a Series Supplement;

WHEREAS, the Board and the Trustee desire to enter into this Third Supplemental Indenture as a Series Supplement under the Master Indenture to set forth the terms of the Board’s obligations to the TIFIA Lender relating to the 2022 TIFIA Rural Project Loan Agreement, which is being entered into as indebtedness under, pursuant to and in accordance with the I-81 Bond Act;

WHEREAS, all things necessary to make the TIFIA Series 2022 Senior Bond a valid and binding limited obligation of the Board, when authenticated and issued as provided in this Third Supplemental Indenture, and to constitute this Third Supplemental Indenture a valid and binding Series Supplement securing the payment of the principal of and premium, if any, and interest on the TIFIA Series 2022 Senior Bond, have been done and performed.

NOW, THEREFORE, the Board hereby covenants and agrees with the Trustee and with the Owners, from time to time, of the TIFIA Series 2022 Senior Bond, as follows:

**ARTICLE I
THIRD SUPPLEMENTAL INDENTURE**

Section 1.1 Third Supplemental Indenture. This Third Supplemental Indenture is authorized and executed by the Board and delivered to the Trustee pursuant to and in accordance with Articles V and XV of the Master Indenture. All terms, covenants, conditions and agreements of the Master Indenture apply with full force and effect to the TIFIA Series 2022 Senior Bond, except as otherwise expressly stated in this Third Supplemental Indenture.

Section 1.2 Definitions. All capitalized words and terms used in this Third Supplemental Indenture, including in the Recitals, shall have the meanings set forth in Article I of the Master Indenture unless the context clearly requires a different or separate meaning. In addition, the following words and terms have the following meanings in this Third Supplemental Indenture unless the context clearly requires otherwise:

“2022 TIFIA Debt Service” means, with respect to any Interest Payment Date or Principal Payment Date occurring on or after the 2022 TIFIA Debt Service Payment Commencement Date, the principal and/or interest required to be paid on the 2022 TIFIA Loan on such Interest Payment Date or Principal Payment Date as shown on Exhibit G of the 2022 TIFIA Rural Project Loan Agreement in accordance with the provisions of Section 9 of the 2022 TIFIA Rural Project Loan Agreement.

“2022 TIFIA Debt Service Payment Commencement Date” means the earlier of (a) [May 15, 2026] and (b) the first Payment Date immediately succeeding the 2022 TIFIA Substantial Completion Date.

“2022 TIFIA Financed Project” means the Project as defined in the 2022 TIFIA Rural Project Loan Agreement.

“2022 TIFIA Interest Rate” means _____% per annum as set forth in Section 6 of the 2022 TIFIA Rural Project Loan Agreement.

“2022 TIFIA Loan” shall have the meaning set forth in the 2022 TIFIA Rural Project Loan Agreement as the “TIFIA Loan.”

“2022 TIFIA Rural Project Loan Agreement” means the TIFIA Loan Agreement (2022 Rural Project), dated as of _____, 2022, between the TIFIA Lender and the Board, relating to the 2022 TIFIA Financed Projects, as amended in accordance with its terms. The 2022 TIFIA Rural Project Loan Agreement is attached hereto as Exhibit A.

“2022 TIFIA Maximum Annual Debt Service” means the highest aggregate amount of 2022 TIFIA Debt Service for the present or any succeeding Fiscal Year.

“2022 TIFIA Substantial Completion Date” means Substantial Completion Date as defined in the 2022 TIFIA Rural Project Loan Agreement.

“Bond Resolution” means the resolution adopted by the Board on October __, 2022 entitled [“Authorizing The Issuance Of Commonwealth Of Virginia I-81 Corridor Program

Revenue Bonds, Series 2022 To Be Issued To The United States Department Of Transportation To Evidence A Subordinate Lien Regular Loan In The Initial Principal Amount Up To \$83,000,000 And Senior Lien Rural Loan In The Initial Principal Amount Up To \$15,000,000, To Be Issued As Additional Bonds Under The Existing I-81 Corridor Program Master Indenture And Pursuant To Certain Loan Agreements And Authorizing Certain Other Documents And Undertakings In Connection With Such Issuance.]

“Dated Date” means the date of the issuance, authentication and delivery of the TIFIA Series 2022 Senior Bond and may also be referred to as the “Closing Date.”

“Default Rate” means an interest rate equal to the sum (a) the 2022 TIFIA Interest Rate plus (b) two percent (2%) as set forth in the 2022 TIFIA Rural Project Loan Agreement.

“Excess Interest” means such interest due on a Bond Credit Facility or DSRF Credit Facility that exceeds the interest that is otherwise due and payable to the Bond Credit Provider or DSRF Credit Provider on the unpaid principal of and interest on the corresponding Bonds or portion thereof pursuant to the Indenture. Excess Interest shall include any related additional interest or fees.

“Final Maturity Date” means the earlier of (i) the [Payment Date] occurring on or immediately prior to the 35th anniversary of the Substantial Completion Date and (b) [May 15, 2060,] as set forth in the 2022 TIFIA Rural Project Loan Agreement.

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

“Interest Payment Date” means each [May 15] and [November 15], or if such day is not a Business Day, then the Business Day succeeding such [May 15] or [November 15] as set forth in the 2022 TIFIA Rural Project Loan Agreement.

“Master Indenture” means the Master Indenture of Trust dated as of August 1, 2021, between the Board and the Trustee, as the same may be modified, altered, amended and supplemented from time to time in accordance with its terms.

“Payment Date” means an Interest Payment Date or a Principal Payment Date as set forth in the 2022 TIFIA Rural Project Loan Agreement.

“Permitted Investments” has the meaning set forth in the 2022 TIFIA Rural Project Loan Agreement.

“Principal Payment Date” means each [May 15] as set forth in the 2022 TIFIA Rural Project Loan Agreement.

“Third Supplemental Indenture” means this Third Supplemental Indenture of Trust dated as of [_____] 1, 2022, between the Board and the Trustee, being a Series Supplement with respect to the TIFIA Series 2022 Senior Bond pursuant to the provisions of the Master Indenture.

“**Series 2021 Senior Lien Bonds**” means the Board’s \$80,990,000 Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bonds (Senior Lien) Series 2021, the initial obligations issued under the Master Indenture.

“**TIFIA Bond**” and “**TIFIA Loan**” each has the meaning set forth in the 2022 TIFIA Rural Project Loan Agreement.

“**TIFIA Lender**” means the U.S. Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, and its successors and assigns.

“**TIFIA Series 2022 Senior Bond**” means the Board’s Commonwealth of Virginia I-81 Corridor Program Revenue Bond, Series 2022 (TIFIA 2022 Rural Project Senior Lien), authorized to be issued as a Senior Obligation under the Master Indenture and this Third Supplemental Indenture.

“**TIFIA Series 2022 Senior Bond Debt Service Fund**” means the Bond Debt Service Fund related to the TIFIA Series 2022 Senior Bond established pursuant to Section 7.1 of the Master Indenture and Section 5.1 of this Third Supplemental Indenture.

“**TIFIA Series 2022 Rural Project Fund**” means the Project Fund related to the TIFIA Series 2022 Senior Bond established pursuant to Section 7.1 of the Master Indenture and Section 5.1 of this Third Supplemental Indenture.

“**VDOT**” means the Virginia Department of Transportation.

Section 1.3 Representations of Board. The Board represents that (i) it is duly authorized under the Constitution and laws of the Commonwealth, including, particularly and without limitation the I-81 Bond Act, to issue the TIFIA Series 2022 Senior Bond, to execute this Third Supplemental Indenture, and to pledge and grant the security provided herein subject to the Master Indenture, (ii) all action on its part necessary for the execution and delivery of this Third Supplemental Indenture has been taken, and (iii) the TIFIA Series 2022 Senior Bond in the hands of the Owner thereof IS and will be a valid and enforceable limited obligation of the Board.

ARTICLE II AUTHORIZATION AND DETAILS OF TIFIA SERIES 2022 SENIOR BOND

Section 2.1 Authorization of TIFIA Series 2022 Senior Bond.

(a) There is authorized to be issued pursuant to the Master Indenture a Series of Senior Obligations to be called the “Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond, Series 2022[B] (TIFIA 2022 Rural Project Senior Lien) in the initial aggregate principal amount of up to \$[\$ _____], which amount is subject to increase or decrease pursuant to the provisions of the 2022 TIFIA Rural Project Loan Agreement and as described in Section 3.2(c) of this Third Supplemental Indenture.

(b) The proceeds of the TIFIA Series 2022 Senior Bond shall be used solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Board in connection with the 2022 TIFIA Financed Projects.

Section 2.2 Terms and Details of TIFIA Series 2022 Senior Bond.

(a) The TIFIA Series 2022 Senior Bond shall be issued to the TIFIA Lender in certificated form as one typewritten bond registered in the name of the TIFIA Lender as the Owner thereof. The TIFIA Series 2022 Senior Bond shall not be issued as a book-entry-only obligation. Initially, there shall be delivered hereunder one fully registered TIFIA Series 2022 Senior Bond up to the full authorized initial aggregate principal amount set forth above, numbered R-1, without interest coupons. Any TIFIA Series 2022 Senior Bond issued in replacement thereof upon transfer or exchange shall be numbered consecutively from R-2 upward, payable to the Owner thereof. The TIFIA Series 2022 Senior Bond shall be payable, executed, authenticated, registrable, exchangeable and secured all as set forth in the Master Indenture, this Third Supplemental Indenture, and the 2022 TIFIA Rural Project Loan Agreement. In the event the TIFIA Lender sells or otherwise transfers all or a portion of the TIFIA Series 2022 Senior Bond to another Owner, the Board shall provide, in writing, subsequent transfer and registration details to the Trustee.

(b) The TIFIA Series 2022 Senior Bond shall be dated the Dated Date. The 2022 TIFIA Loan as evidenced by the TIFIA Series 2022 Senior Bond shall bear interest at the TIFIA Interest Rate or at the 2022 TIFIA Default Rate as further provided in the 2022 TIFIA Rural Project Loan Agreement. Interest on the TIFIA Series 2022 Senior Bond shall be calculated on the basis of a year of 365 or 366 days, as appropriate, for the actual number of days elapsed in accordance with the 2022 TIFIA Rural Project Loan Agreement.

(c) The principal amount of the TIFIA Series 2022 Senior Bond will be increased from time to time (i) on each occasion on which the TIFIA Lender shall disburse loan proceeds under and pursuant to the 2022 TIFIA Rural Project Loan Agreement, by the amount of such disbursement of loan proceeds, and (ii) in accordance with Section 9(b) of the 2022 TIFIA Rural Project Loan Agreement, prior to the Debt Service Payment Commencement Date on each occasion on which any amount representing interest that is not currently paid by the Board on the applicable Interest Payment Date, by the amount of such unpaid interest, which shall be capitalized. Not later than the tenth calendar day before the first Business Day of the month following (x) each disbursement of loan proceeds under the 2022 TIFIA Rural Project Loan Agreement and (y) each Interest Payment Date on which interest is capitalized as provided in the preceding sentence, the Board shall provide a revised schedule to the Trustee and the TIFIA Lender setting forth each increase in the principal amount of the TIFIA Series 2022 Senior Bond and the revisions to the monthly deposits to the Funds and Accounts required by this Third Supplemental Indenture. The Board shall, within a reasonable period of time after each disbursement or each Interest Payment Date on which interest is capitalized, notify the Trustee in writing of the date and amount of each such disbursement or capitalized interest amount and increase to the outstanding principal amount of the TIFIA Series 2022 Senior Bond in accordance with Section (9)(b) of the 2022 TIFIA Rural Project Loan Agreement. Principal on the TIFIA 2022 Senior Bond shall be payable on each Principal Payment Date in accordance with the 2022 TIFIA Rural Project Loan Agreement.

(d) The 2022 TIFIA Loan as evidenced by the TIFIA Series 2022 Senior Bond shall mature no later than the Final Maturity Date.

(e) The principal of and premium, if any, and interest on the TIFIA Series 2022 Senior Bond shall be payable in lawful money of the United States of America.

Section 2.3 Medium and Place of Payment. Payment of the principal of and/or interest on the TIFIA Series 2022 Senior Bond shall be paid by the Trustee by wire transfer to the TIFIA Lender (or a successor) in immediately available funds in accordance with the payment instructions provided by the TIFIA Lender on the date of execution and delivery of the TIFIA Series 2022 Senior Bond. Upon receipt by the Board of any revision to the payment instructions provided by the TIFIA Lender that is not also simultaneously sent directly to the Trustee and any Paying Agent, the Board shall promptly forward such revised payment instructions to the Trustee and any such Paying Agent. The Trustee shall comply with such revised payment instructions if received no later than five (5) Business Days prior to the next payment date.

Section 2.4 Form of TIFIA Series 2022 Senior Bond; Approval of 2022 TIFIA Rural Project Loan Agreement.

(a) The TIFIA Series 2022 Senior Bond and the certificate of authentication shall be substantially in the form attached as Exhibit B to this Third Supplemental Indenture, which form is hereby approved and adopted as the form of the TIFIA Series 2022 Senior Bond and the certificate of authentication, with such appropriate variations, omissions and insertions as permitted or required by the Master Indenture, this Third Supplemental Indenture, or the 2022 TIFIA Rural Project Loan Agreement. There may be endorsed on the TIFIA Series 2022 Senior Bond such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law.

(b) The terms and provisions of the 2022 TIFIA Rural Project Loan Agreement are hereby approved by the Board substantially in form and substance as set forth in Exhibit A to this Third Supplemental Indenture.

Section 2.5 Authentication and Delivery of TIFIA Series 2022 Senior Bond.

(a) The TIFIA Series 2022 Senior Bond shall bear a certificate of authentication, substantially as set forth in the form of the TIFIA Series 2022 Senior Bond attached as Exhibit B, duly executed by the Trustee. The Trustee shall authenticate the TIFIA Series 2022 Senior Bond with the signature of one of its authorized officers or employees. Only such authenticated TIFIA Series 2022 Senior Bond shall be entitled to any right or benefit under the Master Indenture or this Third Supplemental Indenture, and the certificate of authentication on the TIFIA Series 2022 Senior Bond shall be conclusive evidence that the TIFIA Series 2022 Senior Bond has been duly issued under and is secured by the provisions of the Master Indenture and this Third Supplemental Indenture.

(b) The Trustee shall authenticate and deliver the TIFIA Series 2022 Senior Bond to the TIFIA Lender when there have been filed with or delivered to it all items required by Section 5.3 of the Master Indenture and upon execution and delivery of the 2022 TIFIA Rural Project Loan Agreement.

ARTICLE III REDEMPTION OF TIFIA SERIES 2022 SENIOR BOND

Section 3.1 Optional Redemption. The TIFIA Series 2022 Senior Bond is subject to redemption prior to maturity at the option of the Board from any available moneys, in whole or in part at any time (in principal amounts of \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at 100% of the principal amount of the TIFIA Series 2022 Senior Bond to be redeemed plus interest accrued to the date of redemption. The Board shall transfer the amounts necessary to fund the redemption from any available sources to the Trustee for deposit into the TIFIA Series 2022 Redemption Account at least ten (10) days prior, but not more than thirty (30) days prior, to the redemption date. Any optional redemption of the TIFIA Series 2022 Senior Bond may be conditioned upon the receipt and deposit of sufficient funds for such purpose.

Section 3.2 Mandatory Redemption. The TIFIA Series 2022 Senior Bond is subject to mandatory sinking fund redemption prior to maturity by The Board in accordance with Section 9(c) of the 2022 TIFIA Rural Project Loan Agreement.

For purposes of clarification, it is the intention of the Board and the TIFIA Lender that such mandatory sinking fund redemption shall at all times match the principal amortization schedule set forth in Exhibit G to the 2022 TIFIA Rural Project Loan Agreement (as it may be modified from time to time in accordance with the 2022 TIFIA Rural Project Loan Agreement and Section 4.4 below), and any redemption or other action that results in a revision to the principal amortization schedule set forth in Exhibit G to the 2022 TIFIA Rural Project Loan Agreement will automatically result in a revision to the mandatory sinking fund redemption, and vice versa.

Section 3.3 Special Mandatory Redemption Upon Optional Redemption of Other Debt

(a) In accordance with Section 10(a) of the 2022 TIFIA Rural Project Loan Agreement, the TIFIA Series 2022 Senior Bond is subject to redemption prior to maturity, in part and without penalty or premium, on any date and concurrently with the optional redemption of Bonds other than the TIFIA Series 2022 Senior Bond in an amount equal to the same percentage of the Outstanding TIFIA Series 2022 Senior Bond that the principal amount of any Senior Bonds, Intermediate Lien Obligations or Senior Obligations being redeemed or prepaid bears to the principal amount of Senior Bonds, Intermediate Lien Obligations or Senior Obligations outstanding prior to the redemption or prepayment, in an amount equal to one hundred percent (100%) of the principal amount of the TIFIA Series 2022 Senior Bond to be redeemed, plus interest accrued to the date of redemption; provided, however, that the provisions of this Section 4.3(a) shall not apply to the payment of Senior Bonds, Intermediate Lien Obligations or Senior Obligations that are paid or to be paid with the proceeds of Bonds issued on the same lien level to refund the proposed refunded obligations.

(b) Any redemption pursuant to this Section 4.3 shall not reduce any debt service payment otherwise due on the date of redemption.

(c) Notice of redemption under this Section 4.3 shall be as provided in Section 4.3 of the Master Indenture, subject to the provisions of Section 10 of the 2022 TIFIA Rural Project Loan Agreement.

Section 3.4 Partial Redemption of the TIFIA Series 2022 Senior Bond. Any partial redemption of the TIFIA Series 2022 Senior Bond under Section 4.3 shall be applied on pro rata across remaining principal maturities and sinking fund installments. Upon any redemption of the TIFIA Series 2022 Senior Bond in part only, Exhibit G to the 2022 TIFIA Rural Project Loan Agreement may be revised or completed by or on behalf of the TIFIA Lender in accordance with the terms of the 2022 TIFIA Rural Project Loan Agreement; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Board's obligations hereunder, under the TIFIA Series 2022 Senior Bond, or under any other TIFIA Loan Document (as defined in the 2022 TIFIA Rural Project Loan Agreement).

Following any such partial redemption, the Board, with the concurrence of the TIFIA Lender, may effect corresponding changes to the amount of the 2022 TIFIA Debt Service Reserve Required Balance.

ARTICLE IV

ESTABLISHMENT OF FUNDS AND ACCOUNTS; APPLICATION OF PROCEEDS

Section 4.1 Establishment of Funds and Accounts for the TIFIA Series 2022 Senior Bond.

(a) In accordance with Section 7.1 of the Master Indenture, the following Funds and Accounts are hereby established for the TIFIA Series 2022 Senior Bond:

- (i) the TIFIA Series 2022 Rural Project Fund; and
- (ii) the TIFIA Series 2022 Senior Bond Debt Service Fund, and within such Fund the TIFIA Series 2022 Interest Account, the TIFIA Series 2022 Principal Account and the TIFIA Series 2022 Redemption Account; and
- (iii) The Funds and Accounts established pursuant to this Section 4.1(a) shall be held by the Trustee.

(b) [As provided in Section 2.1(a)(2) of the Master Indenture and subject to Section 8.1(b) thereof, the money and investments and earnings thereon held in the TIFIA Series 2022 Rural Project Fund, the TIFIA Series 2022 Senior Bond Debt Service Fund, and the TIFIA Series 2022 Senior Bond Debt Service Reserve Fund are pledged exclusively to secure the TIFIA Series 2022 Senior Bond.]

Section 4.2 Use of Disbursements from TIFIA Loan. The disbursements received from the TIFIA Lender under the provisions of Section 4 of the 2022 TIFIA Rural Project Loan

Agreement as proceeds of the TIFIA Series 2022 Senior Bond shall, if not applied immediately to reimburse the Board for Eligible Project Costs, or provide for the funding of a deposit to the TIFIA Series 2022 Senior Bond Debt Service Reserve Fund, be deposited when received by the Board into the TIFIA Series 2022 Rural Project Fund and applied to the payment or reimbursement of Eligible Project Costs as provided in Section 6.4 herein.

ARTICLE V
FLOW OF FUNDS; APPLICATION OF CERTAIN FUNDS

Section 5.1 TIFIA Series 2022 Senior Bond Debt Service Fund.

(a) The Board shall make deposits for the payment of principal and interest on the TIFIA Series 2022 Senior Bond to the TIFIA Series 2022 Senior Bond Debt Service Fund beginning on the Debt Service Payment Commencement Date in accordance with Section 8.1(a) of the Master Indenture, and in particular the “FIFTH” clause thereof.

(b) Moneys in the TIFIA Series 2022 Redemption Account shall be applied by the Trustee to the purchase or redemption of the TIFIA Series 2022 Senior Bond as provided herein.

Section 5.2 TIFIA Series 2022 Rural Project Fund.

(a) The Trustee will disburse the amounts in the TIFIA Series 2022 Rural Project Fund to the payment or reimbursement of Eligible Project Costs, as directed by the Board.

Disbursements from the TIFIA Series 2022 Rural Project Fund shall be made by the Trustee to the Board or as directed by the Board upon receipt by the Trustee of an Officer’s Certificate or of a requisition (upon which the Trustee shall be entitled to rely) signed by a Board Representative and containing all information called for by, and otherwise being in the form of, Exhibit C.

(b) If the Trustee receives an Officer’s Certificate stating that certain amounts in the TIFIA Series 2022 Rural Project Fund will not be necessary to pay the costs of the 2022 TIFIA Financed Projects, the Trustee shall then apply any remaining balance as directed by the Board Representative with the consent of the TIFIA Lender to the TIFIA Series 2022 Senior Bond Debt Service Fund as a credit to the 2022 TIFIA Debt Service Reserve Required Balance or to the prepayment of the TIFIA Series 2022 Senior Bond.

ARTICLE VI
SECURITY FOR THE TIFIA SERIES 2022 SENIOR BOND

Section 6.1 Security for the TIFIA Series 2022 Senior Bonds. The TIFIA Series 2022 Senior Bond shall be issued pursuant to the Master Indenture, this Third Supplemental Indenture, and the 2022 TIFIA Rural Project Loan Agreement, and shall be (a) equally and ratably secured with respect to the pledged Revenues with any other Series of Senior Obligations (or any related Credit Facility, if any) of the Board issued pursuant to Articles II and IX of the Master Indenture, without preference, priority or distinction of any Senior Obligations over any other Senior Obligations, and (b) secured with respect to certain Funds and Accounts in

accordance with the provisions of this Third Supplemental Indenture. Notwithstanding anything in the Master Indenture to the contrary, amounts in the TIFIA Series 2022 Rural Project Fund, the TIFIA Series 2022 Interest Account, the TIFIA Series 2022 Principal Account, the TIFIA Series 2022 Redemption Account, and the TIFIA Series 2022 Debt Service Reserve Fund are pledged exclusively to secure the obligations of the Board to the Owners of the TIFIA Series 2022 Senior Bond.

The Board has filed a copy of this Third Supplemental Indenture in the records of the Board.

Section 6.2 Covenant to Requisition Under TIFIA Rural Project Loan Agreement. The Board agrees to take all actions necessary to ensure that it can requisition sufficient monies under the 2022 TIFIA Rural Project Loan Agreement to pay Eligible Project Costs allocated to the 2022 TIFIA Loan.

ARTICLE VII SPECIAL COVENANTS WITH RESPECT TO TIFIA SERIES 2022 SENIOR BOND

Section 7.1 Issuance of Additional Bonds. For so long as any TIFIA Bond or Loan is Outstanding, the Board agrees, with respect to and in addition to the provisions of the Master Indenture relating to the issuance of a Series of Bonds, including additional Senior Obligations, to satisfy the requirements of Section 16(a) of the 2022 TIFIA Rural Project Loan Agreement.

Section 7.2 Additional Terms Relating to a Bond Credit Facility. For so long as any TIFIA Bond or Loan is Outstanding, in addition to the provisions of the Master Indenture relating to a “Bond Credit Facility,” the Board hereby agrees that it will comply with the provisions relating to a “Liquidity Facility” (as defined in the 2022 TIFIA Rural Project Loan Agreement).

Section 7.3 Permitted Investments. For so long as any TIFIA Bond or Loan is Outstanding, and notwithstanding the provisions of the Master Indenture, amounts on deposit in any Fund or Account established under Section 5.1 of this Third Supplemental Indenture, must be invested in Permitted Investments (as such term is defined in the 2022 TIFIA Rural Project Loan Agreement) [and amounts on deposit in the TIFIA Series 2022 Interest Account, the TIFIA Series 2022 Principal Account and the TIFIA Series 2022 Redemption Account may only be invested in Permitted Investments that have a maturity that does not extend, respectively, beyond the next applicable Interest Payment Date, Principal Payment Date or redemption date.]

Section 7.4 Events of Default and Remedies.[In addition to the Events of Default under Section 13.1 of the Master Indenture and as provided in Section 13.1(d) thereof, the occurrence and continuation of an Event of Default under Section 19 of the TIFIA Rural Project Loan Agreement shall constitute Events of Default under this Third Supplemental Indenture with respect to the TIFIA Series 2022 Senior Bond, subject to paragraphs (b) and (c) of this section.]

(b) The provisions of this Section 7.4 are subject to the terms and conditions of the Master Indenture, including but not limited to, Article XIII thereof. Failure to pay the

principal or any Amortization Requirement of or interest on the TIFIA Series 2022 Senior Bond will not constitute an Event of Default with respect to any Senior Bond or Intermediate Lien Obligation. An Event of Default with respect to the TIFIA Series 2022 Senior Bond shall not cause an Event of Default with respect to any other Series of Bonds unless such event or condition independently constitutes an Event of Default with such other Series of Bonds.

(c) In accordance with the Master Indenture there shall be no rights of acceleration of the TIFIA Series 2022 Senior Bond.

(d) In connection with the occurrence and continuance of an Event of Default respecting any Bond Outstanding under the Master Indenture, consistent with Section 13.1(d) of the Master Indenture, the TIFIA Lender shall have the right to intervene and participate in discussions and negotiations with the Board and the holder or holders of such obligations in structuring and implementing any and all remedies. This Section 7.4(d) shall not impair the rights of the Majority Owners to direct and control remedies in accordance with Section 13.3 of the Master Indenture or otherwise impact the priority for directing and controlling remedies as set forth therein.

ARTICLE VIII MISCELLANEOUS

Section 8.1 Tax Status. The Board intends that the TIFIA Series 2022 Senior Bond shall not be an obligation described in Section 103 of the Internal Revenue Code of 1986, as amended, the interest on which is excludable from the gross income of the holders thereof. The Board agrees not to file a Form 8038-G or comparable information return relating to tax-exempt obligations with the Internal Revenue Service in connection with the TIFIA Series 2022 Senior Bond.

Section 8.2 Successors and Assigns. This Third Supplemental Indenture is binding upon, inures to the benefit of and is enforceable by its parties and their respective successors and assigns.

Section 8.3 Severability. If any provision of this Third Supplemental Indenture is held invalid by any court of competent jurisdiction, such holding will not invalidate any other provision.

Section 8.4 Governing Law. This Third Supplemental Indenture will be governed by and construed under the applicable laws of the Commonwealth.

Section 8.5 Counterparts. This Third Supplemental Indenture may be executed in several counterparts, each of which will be an original, and the counterparts will together constitute one and the same instrument.

Section 8.6 Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the Trustee and the Board and their respective successors and assigns, subject to the limitations contained herein.

Section 8.7 Parties Interested. Except as and to the extent provided in Article II hereof, nothing in this Third Supplemental Indenture expressed or implied is intended or will be construed to confer upon any Person, other than the Board, the Trustee and the Owner(s) of the TIFIA Series 2022 Senior Bond, any right, remedy or claim under or by reason of this Third Supplemental Indenture. This Third Supplemental Indenture is intended for the sole and exclusive benefit of the Board, the Trustee and the Owner(s) of the TIFIA Series 2022 Senior Bond.

[Signature Page Follows]

IN WITNESS WHEREOF, the Board and the Trustee have caused this Third Supplemental Indenture to be executed in their respective corporate names by their duly authorized officers, all as of the date first above written.

**COMMONWEALTH TRANSPORTATION
BOARD**

By: _____

Chairperson

**U.S. BANK TRUST COMPANY, NATIONAL
ASSOCIATION**, as Trustee

By: _____

Vice President

[Signature Page of Third Supplemental Indenture]

EXHIBIT A
TIFIA RURAL PROJECT LOAN AGREEMENT

EXHIBIT B

FORM OF TIFIA SERIES 2022 SENIOR BOND

**COMMONWEALTH OF VIRGINIA
INTERSTATE 81 CORRIDOR PROGRAM
REVENUE BOND, SERIES 2022
(TIFIA 2022 RURAL PROJECT SENIOR LIEN)**

(TIFIA 2022 Regular Loan Project)

Maximum Principal Amount: \$ _____ .00 (excluding capitalized interest)

Effective Date: _____, 2022

Due: ____ 1, 20__

COMMONWEALTH TRANSPORTATION BOARD, created under the laws of the Commonwealth of Virginia (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Rural Project Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Rural Project Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Rural Project Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Rural Project Loan Agreement in accordance with **Exhibit G** to the TIFIA Rural Project Loan Agreement, as revised from time to time in accordance with the TIFIA Rural Project Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Rural Project Loan Agreement from time to time in accordance with the terms of the TIFIA Rural Project Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Rural Project Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(d) (*Manner of Payment*) and Section 36 (*Notices; Payment Instructions*) of the TIFIA Rural Project Loan Agreement as the same become due. Principal of and interest on this TIFIA Bond (as defined in the TIFIA Rural Project Loan Agreement) shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If the Final Maturity Date is amended in

connection with an update to the Financial Plan approved by the TIFIA Lender pursuant to Section 21(a) (*Financial Plan*) of the TIFIA Rural Project Loan Agreement, the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Rural Project Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the “**TIFIA Rural Project Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the TIFIA Rural Project Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Rural Project Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Rural Project Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Rural Project Loan Agreement.

This TIFIA Bond is being issued by the Borrower pursuant to the Commonwealth Transportation 81 Interstate I-81 Bond Act of 2020, enactment clause 15 of Chapter 1230 of the Acts of the General Assembly of the Commonwealth of Virginia, 2020 Reconvened Session (the “I-81 Bond Act”), a resolution adopted by the Board on _____, 2022 and under and pursuant to a Master Indenture of Trust dated as of August 1, 2021 (the *Master Indenture*), between the Borrower and U.S. Bank Trust Company, National Association, successor to U.S. Bank, National Association, or its successor, as trustee (the *Trustee*), as supplemented and amended, with respect to this TIFIA Bond by the Third Supplemental Indenture of Trust dated as of [_____,] 2022 (the *Third Supplemental Indenture*). The Borrower previously issued its \$80,990,000 Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond (Senior Lien), Series 2021 pursuant to the Master Indenture as supplemented by a First Supplemental Indenture of Trust dated as of August 1, 2021 (the *First Supplemental Indenture* and, together with the Third Supplemental Indenture and the Master Indenture, the *Indenture*), between the Borrower and the Trustee, a certified copy of which Indenture is on file at the office of the Borrower.

This TIFIA Bond is issued as and constitutes a Senior Obligation within the meaning of such term in the Indenture.

This TIFIA Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision thereof. Nothing in this TIFIA Bond or in the Indenture of TIFIA Rural Project Loan Agreement shall be deemed to create or constitute a pledge of the faith and credit of the Commonwealth of Virginia or any political subdivision thereof. The Borrower’s authority to receive Revenues pledged under the Master Indenture for payment of this TIFIA Bond is subject to the appropriation of funds for such purpose by the General Assembly of the Commonwealth. The General Assembly of the Commonwealth has no legal obligation to appropriate funds for such purpose.

The Indenture provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional series of Bonds for the purpose of financing projects, and of refunding outstanding obligations of the Borrower. Such additional series of Bonds may be issued as Senior Obligations, Intermediate Lien Obligations, or Senior Obligations (as defined in the Indenture). This TIFIA Bond, together with all other obligations heretofore or hereafter issued under the provisions of the Indenture, are herein collectively referred to as the "I-81 Bonds". Reference is hereby made to the Indenture for the provisions, among others, with respect to the terms and conditions on which the I-81 Bonds of each series are or may be issued, the custody and application of the proceeds of I-81 Bonds issued under the Indenture, the collection and disposition of revenues, the funds charged with and pledged to the payment of the interest on and the principal and premium, if any, of the I-81 Bonds, the nature and extent of the security, the rights, duties and obligations of the Borrower, the Trustee and any paying agent for the I-81 Bonds and the rights of the owners of the I-81 Bonds. Certain of such funds, accounts and subaccounts secure only the Senior Obligations, certain of such funds, accounts and subaccounts secure only the Intermediate Lien Obligations, and certain of such funds, accounts and subaccounts secure only the Senior Obligations, all as more fully described in the Indenture.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Rural Project Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Rural Project Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Rural Project Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The owner of this TIFIA Bond shall have no right to enforce the provisions of the Indenture or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture, or to institute any suit or other proceeding with respect to the Indenture, except as provided in the Indenture.

All acts, conditions and things required by the Constitution and laws of the Commonwealth of Virginia to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the Commonwealth shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture until the Trustee has executed the Certificate of Authentication appearing on this TIFIA Bond and inserted the date of authentication.

IN WITNESS WHEREOF, THE COMMONWEALTH TRANSPORTATION BOARD has caused this TIFIA Bond to be signed by the manual or facsimile signature of its Chairperson, to be attested by the manual or facsimile signature of its Assistant Secretary and this Bond to be dated the Effective Date set forth above.

COMMONWEALTH TRANSPORTATION BOARD

By: _____

Chairperson

ATTEST:

By: _____

Assistant Secretary

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Indenture.

Authentication Date: _____

WILMINGTON TRUST, NATIONAL
ASSOCIATION

By: _____

Joy Holloway
Vice President

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT C

FORM OF REQUISITION

U.S. Bank Trust Company, National Association, as Trustee

Requisition No. _____

Dated: _____

Attn: _____

Re: Direction to Make Disbursements from the TIFIA Series 2022 Rural Project Fund for the Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bond, Series 2022 (TIFIA 2022 Rural Project Senior Lien)

Pursuant to Section 6.4 of the Third Supplemental Indenture of Trust dated as of [_____] 1, 2022 (the "Third Supplemental Indenture"), between the Commonwealth Transportation Board ("Board"), and U.S. Bank Trust Company, National Association, as successor trustee (the "Trustee"), the Trustee is directed to disburse from the TIFIA Series 2022 Rural Project Fund the amount indicated below.

Each capitalized terms not otherwise defined herein has the same meaning as used in the Third Supplemental Indenture.

The undersigned certifies as follows:

1. The name(s) and address(es) of the person(s), firm(s) or corporation(s) to whom the disbursement(s) are due and the amounts to be disbursed are as follows:

<u>Name and Address</u>	<u>Amount</u>
-------------------------	---------------

[Use an additional page if necessary.]

2. The total amount to be disbursed is \$_____.

3. The project for which the obligation(s) to be paid was/were incurred: _____.

4. The undersigned is a "Board Representative" within the meaning of the Third Supplemental Indenture and the Master Indenture defined therein.

COMMONWEALTH TRANSPORTATION BOARD

By: _____
Board Representative

**UNITED STATES
DEPARTMENT OF TRANSPORTATION**

TIFIA LOAN AGREEMENT

for up to \$[]

with

COMMONWEALTH TRANSPORTATION BOARD

for the

[] PROJECT

(2022 RURAL PROJECT)

(TIFIA – [])

Dated as of [], 2022

TABLE OF CONTENTS

	<u>Page</u>
Section 1. Definitions.....	2
Section 2. Interpretation.....	23
Section 3. TIFIA Loan Amount.....	24
Section 4. Disbursement Conditions.....	24
Section 5. Term.....	25
Section 6. Interest Rate	25
Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and the Loan Amortization Schedule.....	25
Section 8. Security and Priority; Flow of Funds.....	26
Section 9. Payment of Principal and Interest.....	27
Section 10. Prepayment	28
Section 11. Compliance with Laws.	29
Section 12. Conditions Precedent	29
Section 13. Representations and Warranties of Borrower.....	35
Section 14. Representations and Warranties of TIFIA Lender.....	41
Section 15. Affirmative Covenants.....	42
Section 16. Negative Covenants	50
Section 17. Indemnification.....	53
Section 18. Sale of TIFIA Loan.....	54
Section 19. Events of Default and Remedies.....	55
Section 20. Accounting and Audit Procedures; Inspections; Reports and Records	58
Section 21. Financial Plan, Statements, and Annual Certificates.....	59
Section 22. Project Oversight and Monitoring	63
Section 23. No Personal Recourse.....	65
Section 24. No Third Party Rights.....	65
Section 25. Borrower’s Authorized Representative.....	65
Section 26. TIFIA Lender’s Authorized Representative	65
Section 27. Servicer	66
Section 28. Fees and Expenses	66
Section 29. Amendments and Waivers	67
Section 30. Governing Law	67
Section 31. Severability and Conflicts.....	67

Section 32.	Successors and Assigns.....	67
Section 33.	Remedies Not Exclusive.....	67
Section 34.	Delay or Omission Not Waiver.....	67
Section 35.	Counterparts; Electronic Signatures	67
Section 36.	Notices; Payment Instructions	68
Section 37.	Effectiveness	69
Section 38.	Termination.....	69
Section 39.	Integration	69

SCHEDULE I– Project Budget
SCHEDULE II – Construction Schedule
SCHEDULE III– Existing Indebtedness
SCHEDULE IV– Articles VII and VIII
SCHEDULE 13(f) – Litigation
EXHIBIT A– Form of TIFIA Bond
EXHIBIT B– Anticipated TIFIA Loan Disbursement Schedule
EXHIBIT C – Non-Debarment Certification
EXHIBIT D – Requisition Procedures
EXHIBIT E – Compliance With Laws
EXHIBIT F – [FHWA Oversight Agreement]¹
EXHIBIT G – TIFIA Debt Service
EXHIBIT H-1 – Opinions Required from Counsel to Each Borrower Related Party
EXHIBIT H-2 – Opinions Required from Bond Counsel
[**EXHIBIT H-3** – Opinions Required from Counsel to VDOT]
EXHIBIT J – Form of Certificate of Trustee
EXHIBIT K – Form of Borrower’s Effective Date Officer’s Certificate
EXHIBIT J – Form of Notice of Substantial Completion
EXHIBIT M – TIFIA Loan Reamortization Methodology
EXHIBIT N – Certification Regarding Lobbying
[**EXHIBIT O** – Form of Semi-Annual Coverage Certificate]
EXHIBIT P– Reporting Subawards and Executive Compensation

¹ **Note to Borrower**: Please advise if there is a FHWA Oversight Agreement or something similar for this Project.

TIFIA LOAN AGREEMENT

THIS TIFIA LOAN AGREEMENT (this “**Agreement**”), dated as of the Effective Date, is by and between the **COMMONWEALTH TRANSPORTATION BOARD**, a board created under the laws of the Commonwealth of Virginia (the “**State**”), with an address of 1401 E. Broad St., Richmond, Virginia 23219 (the “**Borrower**”), and the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**Executive Director**”), with an address of 1200 New Jersey Avenue, S.E., Washington, D.C. 20590 (the “**TIFIA Lender**”).

RECITALS:

WHEREAS, the Congress of the United States of America (the “**Congress**”) has found that a well-developed system of transportation infrastructure is critical to the economic well-being, health and welfare of the people of the United States of America and, in furtherance thereof, has enacted the Transportation Infrastructure Finance and Innovation Act of 1998 (“**TIFIA**”), as codified at 23 U.S.C. §§ 601-609 (as amended from time to time, the “**Act**”); and

WHEREAS, Section 603 of the Act authorizes the TIFIA Lender to enter into agreements with one or more obligors to make secured loans; and

WHEREAS, the Borrower has requested that the TIFIA Lender make the TIFIA Loan (as defined herein) in a principal amount not to exceed \$[]² (excluding interest that is capitalized in accordance with the terms hereof) to be used to pay a portion of the Eligible Project Costs (as defined herein) related to the Project (as defined herein) pursuant to the application for TIFIA credit assistance dated [] (the “**Application**”); and

WHEREAS, on [], the Secretary (as defined herein) approved TIFIA credit assistance for the Project in the form of the TIFIA Loan; and

WHEREAS, pursuant to the Indenture (as defined herein) and each Supplemental Indenture (as defined herein), the Borrower has pledged and granted to the Trustee (as defined herein) the Trust Estate (as defined herein), which secures the repayment of Bonds issued by the Borrower, including the TIFIA Bond (as defined herein), based on their respective lien priority; and

WHEREAS, the TIFIA Lender is prepared to extend credit upon the terms and conditions hereof; and

WHEREAS, the Borrower agrees to repay any amount due pursuant to this Agreement and the TIFIA Bond in accordance with the terms and provisions hereof and thereof; and

WHEREAS, the TIFIA Lender has entered into this Agreement in reliance upon, among other things, the dedication and availability of the Pledged Revenues and the Base Case Projections (as defined herein) delivered by the Borrower.

² **Note to Borrower:** Please provide the rural loan amount.

NOW, THEREFORE, the premises being as stated above, and for good and valuable consideration, the receipt and sufficiency of which are acknowledged to be adequate, and intending to be legally bound hereby, it is hereby mutually agreed by and between the Borrower and the TIFIA Lender as follows:

Section 1. Definitions.

Unless the context otherwise requires, capitalized terms used in this Agreement shall have the meanings set forth below in this Section 1 (*Definitions*) or as otherwise defined in this Agreement. Any term used in this Agreement that is defined by reference to any other agreement shall continue to have the meaning specified in such agreement, whether or not such agreement remains in effect.

“Acceptable Credit Rating” means, with respect to any Person, the rating of its unsecured, senior long-term indebtedness (or, if such Person has no such rating, then its issuer rating or corporate credit rating) is no lower than (a) at the time such Person executes, delivers, or issues a Qualified Hedge, Liquidity Facility, guarantee or other similar instrument, ‘A+’, ‘A1’ or the equivalent rating from each Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable; and (b) at any time thereafter, ‘A’, ‘A2’ or the equivalent rating from each Rating Agency that provides a rating on such Person’s unsecured, senior long-term indebtedness or that provides an issuer rating or corporate credit rating for such Person, as applicable

“Accreted Value” means, with respect to any Capital Appreciation Bonds, as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Capital Appreciation Bonds.

“Act” means the Act as defined in the recitals hereto.

[**“Additional Obligations”** means any borrowings or indebtedness issued or incurred under the Indenture after the Effective Date that satisfy Section 5.3 (*Conditions of Issuing a Series of Bonds*) of the Indenture and the following requirements, as applicable:

- (a) if the proceeds thereof will be used to refinance any Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations and are issued on the same lien level as the proposed refunded obligations, (i) such Additional Obligations must receive an Investment Grade Rating at the time of issuance (except where the proceeds of such Additional Obligations are used solely to refund any Existing Indebtedness on its existing maturities), (ii) such Additional Obligations shall only refinance Obligations of the same payment and lien priority as the Obligation being refinanced, (iii) the net proceeds thereof (after deducting any amounts required to be deposited to satisfy the respective Debt Service Reserve Requirement or required to pay costs of issuance) must not exceed interest owed to the call date plus the principal amount of the respective obligations outstanding and being refinanced, (iv) the respective lien level Debt Service, after the incurrence of such Additional Obligations, in each year of the remaining term of the TIFIA Loan, must be projected to be less than the respective lien level Debt Service projected for each such year in the Base Case Projections, and (v) the stated maturity of such Additional Obligations

shall not exceed the stated maturity for the obligations being refinanced with the proceeds of the Additional Obligations; and

(b) if the proceeds thereof will be used for any reason not described in clause (a) above, such Additional Obligations, excluding Additional Obligations incurred solely for the purpose of refunding any Existing Indebtedness on its existing maturities, must receive an Investment Grade Rating, and the Borrower shall provide the TIFIA Lender with respect to all Additional Obligations a certificate of the Borrower's Authorized Representative, in a form reasonably acceptable to the TIFIA Lender (including the calculations supporting such certificate), certifying that: (i) the activity or project to which such Additional Obligation proceeds will be applied could not reasonably be expected to result in a Material Adverse Effect; and (ii) the Borrower has satisfied the requirements for issuing the Additional Obligations in accordance with the applicable provisions of the Indenture existing as of the Effective Date and the relevant Supplemental Indenture, including, specifically, that during any twelve consecutive months of the eighteen months preceding the issuance of the Additional Obligations, (A) the Regional Fuel Tax Revenues were not less than (1) 2.00 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations then outstanding plus, if such Additional Obligations are Senior Obligations, such Additional Obligations, (2) 1.50 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations and Intermediate Lien Obligations then outstanding plus, if such Additional Obligations are Intermediate Lien Obligations, such Additional Obligations, and (3) 1.35 times the maximum annual Principal and Interest Requirements (as defined in the Indenture) during the current or any future Fiscal Year (as defined in the Indenture) on the Senior Obligations, Intermediate Lien Obligations and Subordinate Obligations then outstanding plus, if such Additional Obligations are Subordinate Obligations, such Additional Obligations; and (B) the Total Debt Service Coverage Ratio, including debt service for the Additional Obligations to be issued, for each Calculation Period is projected to be not less than [] to 1 while any Subordinate Obligations issued to the TIFIA Lender remain outstanding;

provided that (x) for each of clauses (a) and (b) above, no Event of Default under any Indenture Document or this Agreement has occurred and is continuing, and (y) for clause (b) above, the Rating Agency that provided the most recent public ratings of the Senior Obligations, any Subordinate Obligations, and the TIFIA Loan in accordance with Section 15(j) (*Annual Rating*) shall have provided a confirmation or affirmation (or the equivalent) that the incurrence of such Additional Obligations shall not result in a downgrade of the credit rating (A) of the then-existing credit ratings of the Senior Obligations, the Subordinate Obligations, and the TIFIA Loan, respectively and (B) the credit ratings of the Senior Obligations, the Subordinate Obligations, and the TIFIA Loan, respectively, as of the Effective Date [or, if applicable, the closing date of the Initial Obligations (to the extent the Initial Obligations are issued on a day other than the Effective Date)]³.

³ **Note to Borrower**: Under consideration by the DOT team.

“**Agreement**” has the meaning provided in the preamble hereto.

“**Anticipated TIFIA Loan Disbursement Schedule**” means the schedule set forth in **Exhibit B**, reflecting the anticipated disbursement of proceeds of the TIFIA Loan, as such schedule may be amended from time to time pursuant to Section 4(c) (*Disbursement Conditions*).

“**Anti-Corruption Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to bribery or corruption.

“**Anti-Money Laundering Laws**” means all U.S. and other applicable laws, rules and regulations, as amended from time to time, concerning or related to anti-money laundering, including but not limited to those contained in the Bank Secrecy Act and the Patriot Act.

“**Application**” has the meaning provided in the recitals hereto.

“**Appreciated Value**” means, with respect to any Deferred Interest Bond as of any Valuation Date or for any period, the amount set forth for such date or period as determined in accordance with the Supplemental Indenture authorizing such Deferred Interest Bond.

“**Authorizing Legislation**” means the I-81 Program Bond Act, [Section 33.2-1700 et seq. of the Virginia Code (State Transportation Revenue Bond Act)], Section 58.1-2295 of the Virginia Code (levying the regional fuels tax), Section 58.1-2299.20 of the Virginia Code (regarding the allocation of regional fuels tax to fund payments on the I-81 Program Bonds), and Section 33.2-372(E) of the Virginia Code (regarding the allocation of Interstate Operations and Enhancement Program funds to the I-81 Fund).

“**Bank Lending Margin**” means in respect of any Variable Interest Rate Obligations, the “Applicable Margin” or comparable interest rate margin as defined in the financing documents related to such Variable Interest Rate Obligations.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970 (Titles I and II of Pub. L. No. 91-508, codified at 12 U.S.C. §§ 1829b and 1951-1959 and 31 U.S.C. §§ 312, 5311-5313, and 5316-5322), as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“**Bankruptcy Related Event**” means, with respect to any Person,

(a) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of such Person or any of its debts, or of a substantial part of the assets thereof, under any Insolvency Laws, or (ii) the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official for such Person or for a substantial part of the assets thereof and, in any case referred to in the foregoing subclauses (i) and (ii), such proceeding or petition shall continue undismissed for sixty (60) days or an order or decree approving or ordering any of the foregoing shall be entered;

(b) such Person shall (i) apply for or consent to the appointment of a receiver, trustee, liquidator, custodian, sequestrator, conservator or similar official therefor or for a

substantial part of the assets thereof, (ii) generally not be paying its debts as they become due unless such debts are the subject of a bona fide dispute, or become unable to pay its debts generally as they become due, (iii) solely with respect to the Borrower, fail to make two (2) consecutive payments of TIFIA Debt Service in accordance with the provisions of Section 9 (*Payment of Principal and Interest*), (iv) make a general assignment for the benefit of creditors, (v) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition with respect to it described in clause (a) of this definition, (vi) commence a voluntary proceeding under any Insolvency Law, or file a voluntary petition seeking liquidation, reorganization, an arrangement with creditors or an order for relief under any Insolvency Law, (vii) file an answer admitting the material allegations of a petition filed against it in any proceeding referred to in the foregoing subclauses (i) through (vi), inclusive, of this clause (b), or (viii) take any action for the purpose of effecting any of the foregoing, including seeking approval or legislative enactment by any Governmental Authority to authorize commencement of a voluntary proceeding under any Insolvency Law;

(c) solely with respect to the Borrower, (i) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of in a public or private sale or disposition pursuant to a foreclosure of the Liens thereon securing the Bonds, or (ii) the Trustee shall commence a process pursuant to which all or a substantial part of the Trust Estate may be sold or otherwise disposed of pursuant to a sale or disposition of such Trust Estate in lieu of foreclosure; or

(d) solely with respect to the Borrower, the Trustee shall transfer, pursuant to directions issued by the Bondholders, funds on deposit in any of the Project Funds upon the occurrence and during the continuation of an Event of Default under the Indenture Documents for application to the prepayment or repayment of any principal amount of the Bonds other than in accordance with the provisions of the Indenture.

“Base Case Financial Model” means a financial model prepared by the Borrower that includes (a) for each six (6) month period corresponding to a Payment Period through the Final Maturity Date, a forecast of Pledged Revenues, expenditures, and funding obligations reflected in Article VIII of the Indenture, (b) for each six (6) month period corresponding to a Payment Period through the Final Maturity Date, a forecast of all Senior Debt Service, Intermediate Lien Debt Service and Subordinate Debt Service, and (c) the Project Budget, which model, in each case in clauses (a), (b), and (c) above, shall be based upon assumptions and methodology provided by the Borrower and acceptable to the TIFIA Lender as of the Effective Date, and which model shall be provided to the TIFIA Lender as a fully functional Microsoft Excel-based financial model or such other format requested by the TIFIA Lender.

“Base Case Projections” means the initial forecast for the Borrower prepared as of the Effective Date using the Base Case Financial Model.

“Bond” means any bond (including the TIFIA Bond) evidencing the Senior Obligations, Intermediate Lien Obligations, Subordinate Obligations, or any other evidences of indebtedness for borrowed money issued by the Borrower from time to time pursuant to Article V of the Indenture and the terms of any applicable Supplemental Indenture.

“**Bondholder**” means, when used with respect to the TIFIA Bond, the TIFIA Lender and, when used with respect to any other Bond, the registered owner of such Bond.

“**Borrower**” has the meaning provided in the preamble hereto.

“**Borrower Fiscal Year**” means (a) as of the Effective Date, a fiscal year of the Borrower commencing on July 1 of any calendar year and ending on June 30 of the immediately succeeding calendar year or (b) such other fiscal year as the Borrower may hereafter adopt after giving thirty (30) days’ prior written notice to the TIFIA Lender, as provided in Section 16(e) (*Organizational Documents; Fiscal Year*).

“**Borrower Related Party**” means, individually or collectively, the Borrower and VDOT.

“**Borrower’s Authorized Representative**” means any Person who shall be designated as such pursuant to Section 25 (*Borrower’s Authorized Representative*).

“**Business Day**” means any day other than a Saturday, a Sunday or a day on which offices of the Federal Government or the State are authorized to be closed or on which commercial banks are authorized or required by law, regulation or executive order to be closed in New York, New York.

“**Calculation Date**” means each May 15 and November 15 (as applicable) occurring after the Effective Date.

“**Calculation Period**” means a twelve (12)-month period ending on a Calculation Date.

“**Capital Appreciation Bonds**” means any Permitted Debt hereafter incurred as to which interest is payable only at the maturity or prior redemption of such Permitted Debt.

“**Capital Expenditures**” means expenditures made or liabilities incurred for the acquisition of any assets, improvements or replacements thereof that have a useful life of more than one (1) year and that are capitalized in accordance with GAAP.

“**Capitalized Interest Period**” means the period from (and including) the Effective Date to (but excluding) the first day of the initial Payment Period.

“**Congress**” has the meaning provided in the recitals hereto.

“**Construction-Related Contract Party**” means any Person (other than the Borrower) party to a Construction-Related Contract.

“**Construction-Related Contracts**” means VDOT construction contracts ID Nos. []⁴.

“**Construction Period**” means the period from the Effective Date through the Substantial Completion Date.

⁴ **Note to Borrower**: Please insert all construction contracts for the rural project.

“**Construction Schedule**” means, collectively, (a) the initial schedule or schedules on which the construction timetables for the Project are set forth, attached hereto as **Schedule II**, and (b) any updates thereto included in the Financial Plan most recently submitted to the TIFIA Lender pursuant to Section 21 (*Financial Plan, Statements, and Annual Certificates*).

“**Consulting Engineer**” means an engineering firm selected by the Borrower at the request of the TIFIA Lender, subject to Section 22(d) (*Project Oversight and Monitoring*).

“**Control**” means, when used with respect to any particular Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or partnership or other ownership interests, by contract or otherwise, and the terms “**Controlling**” and “**Controlled by**” have meanings correlative to the foregoing.

“**CPI**” means the Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100 (not seasonally adjusted), or its successor, published by the Bureau of Labor Statistics, with, unless otherwise specified herein, January 2022 as the base period.

“**Debt Service Fund**” means, as the context requires, a Senior Debt Service Fund, Intermediate Lien Debt Service Fund, and/or Subordinate Debt Service Fund established with respect to a series of Bonds pursuant to a related Supplemental Indenture.

“**Debt Service Payment Commencement Date**” means the earlier of (a) [May 15, 2026]⁵, and (b) the [first (1st)] Payment Date immediately succeeding the Substantial Completion Date.

“**Debt Service Reserve Fund**” means, as the context requires, a Senior Debt Service Reserve Fund, Intermediate Lien Debt Service Reserve Fund, and/or Subordinate Debt Service Reserve Fund established with respect to a Series of Bonds pursuant to a Related Series Supplement.

“**Debt Service Reserve Requirement**” means any Intermediate Lien Debt Service Reserve Requirement, Senior Debt Service Reserve Requirement, Subordinate Debt Service Reserve Requirement or the TIFIA Debt Service Reserve Requirement, as the context requires.

“**Default**” means any event or condition that, with the giving of notice, the passage of time, or both, would constitute an Event of Default.

“**Default Rate**” means an interest rate equal to the sum of (a) the TIFIA Interest Rate plus (b) two percent (2.00%).

“**Deferred Interest Bond**” means any Permitted Debt (a) as to which interest accruing thereon prior to the applicable Interest Commencement Date of such Permitted Debt is (i) compounded on each Valuation Date for such Deferred Interest Bond and (ii) payable only at the maturity or prior redemption of such Permitted Debt and (b) as to which interest accruing after the applicable Interest Commencement Date is payable on the first interest payment date immediately

⁵ **Note to Borrower**: Kindly advise when repayment of the rural loan will begin.

succeeding the Interest Commencement Date and thereafter on the dates specified in or determined pursuant to the Supplemental Indenture authorizing the Permitted Debt. For the purposes of receiving payment of the redemption price if a Deferred Interest Bond is redeemed prior to maturity, the principal amount of a Deferred Interest Bond shall be deemed to be its Appreciated Value.

“**Development Default**” means VDOT fails (a) to diligently prosecute the work related to the Project or (b) to complete the Project by [___].⁶

“**Effective Date**” means the date of this Agreement.

“**Electronic Signature**” means any electronic symbol or process attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign such contract or record pursuant to the Uniform Electronic Transactions Act, Va. Code 59.1-479 et seq., as amended from time to time.

“**Eligible Project Costs**” means amounts in the Project Budget, substantially all of which are paid by or for the account of the Borrower in connection with the Project, including prior Project expenditures for the three (3)-year period preceding the date of the Application, all of which shall arise from the following:

(a) development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work and other preconstruction activities;

(b) construction, reconstruction, rehabilitation, replacement and acquisition of real property (including land related to the Project and improvements to land), environmental mitigation, construction contingencies and acquisition of equipment; or

(c) capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses and other carrying costs during construction.

“**Environmental Laws**” has the meaning provided in Section 13(r) (*Environmental Matters*).

“**ERISA**” means the Employee Retirement Income Security Act of 1974, Pub. L. 93-406 (29 U.S.C. § 1001 *et seq.*), as amended from time to time, and any successor statute of similar import, and the regulations thereunder.

“**ERISA Affiliate**” means any trade or business (whether or not incorporated) that, together with the Borrower, is treated as a single employer under Section 414(b) or (c) of the Tax Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Tax Code, is treated as a single employer under Section 414 of the Tax Code.

⁶ **Note to Borrower**: Please insert the final completion date included in the project contracts.

“**Event of Default**” has the meaning provided in Section 19(a) (*Events of Default and Remedies*).

“**Event of Loss**” means any event or series of events that causes any portion of the Project to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever, including through a failure of title, or any loss of such property, or a condemnation.

“**Executive Director**” has the meaning provided in the preamble hereto.

“**Existing Indebtedness**” means indebtedness of the Borrower that has been issued or incurred prior to the Effective Date under the Indenture or under any other arrangement where Pledged Revenues have been pledged as security or any other revenues from the I-81 Fund are the expected source of repayment by pledge or otherwise, as listed and described in **Schedule III**.

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

“**FFY**” means the fiscal year of the Federal Government, which is the twelve (12) month period that ends on September 30 of the specified calendar year and begins on October 1 of the preceding calendar year.

“**FHWA**” means the Federal Highway Administration, an agency of the USDOT.

“**FHWA Division Office**” means the Virginia Division Office of the FHWA.

“**Final Maturity Date**” means the earlier of (a) the Payment Date occurring on or immediately prior to the 35th anniversary of the Substantial Completion Date and (b) [May 15, 2060]⁷.

“**Financial Plan**” means (a) the financial plan to be delivered within sixty (60) days after the Effective Date in accordance with Section 21(a) (*Financial Plan, Statements, and Annual Certificates*) and (b) any updates thereto required pursuant to such Section 21(a).

“**Financial Statements**” has the meaning provided in Section 13(w) (*Financial Statements*).

“**Fundamental Contracts**” means the Payment Agreement or any other revenue-related contracts or revenue governing contracts with respect to the Project or the I-81 Fund other than Construction-Related Contracts.

“**Fundamental Contract Party**” means any Person (other than the Borrower) party to a Fundamental Contract.

⁷ **Note to Borrower**: Please confirm the final maturity date.

“**GAAP**” means generally accepted accounting principles as defined by the Governmental Accounting Standards Board, or such other nationally recognized professional body, in effect from time to time in the United States of America.

“**General Assembly**” means the legislature of the State.

“**Government Obligations**” means (a) direct obligations of, or obligations on which the timely payment of principal and interest are fully and unconditionally guaranteed by, the Federal Government, (b) bonds, debentures or notes issued by any of the following federal agencies: Banks for Cooperatives, Federal Intermediate Credit Banks, Federal Home Loan Banks, Export-Import Bank of the United States, Government National Mortgage Association or Federal Land Banks, (c) obligations issued or guaranteed by a Person Controlled or supervised by and acting as an instrumentality of the Federal Government pursuant to authority granted by the Congress, and (d) evidences of ownership of proportionate interests in future interest or principal payments on obligations specified in clauses (A), (B) and (c) of this definition held by a bank or trust company as custodian and which underlying obligations are not available to satisfy any claim of the custodian or any Person claiming through the custodian or to whom the custodian may be obligated, in each case.

“**Governmental Approvals**” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Authority.

“**Governmental Authority**” means any federal, state, provincial, county, city, town, village, municipal or other government or governmental department, commission, council, court, board, bureau, agency, authority or instrumentality (whether executive, legislative, judicial, administrative or regulatory), of or within the United States of America or its territories or possessions, including the State and its counties and municipalities, and their respective courts, agencies, instrumentalities and regulatory bodies, or any entity that acts “on behalf of” any of the foregoing, whether as an agency or authority of such body.

“**Hedging Agreement**” means (a) any ISDA Master Agreement(s) and the related credit support annex, schedules and confirmations, to be entered into by the Borrower and a Hedging Bank, (b) any other agreement entered into, or to be entered into, by the Borrower and a Hedging Bank for a Hedging Transaction, and (c) any other documentation directly relating to the foregoing.

“**Hedging Banks**” means any Qualified Hedge Provider that becomes a party to a Hedging Agreement and its permitted successors (to the extent such successors are also Qualified Hedge Providers).

“**Hedging Obligations**” means, collectively, the payment of (a) all scheduled amounts payable to the Hedging Banks by the Borrower under the Hedging Agreements (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower), net of all scheduled amounts payable to the Borrower by such Hedging Banks, and (b) all other indebtedness, fees, indemnities and other amounts payable by the Borrower to the

Hedging Banks under such Hedging Agreements, net of all other indebtedness, fees, indemnities and other amounts payable by the Hedging Banks to the Borrower under such Hedging Agreements; provided that Hedging Obligations shall not include Hedging Termination Obligations. For the avoidance of doubt, all calculations of such amounts payable under the Hedging Agreements shall be made in accordance with the terms of the applicable Hedging Agreements.

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

“Hedging Transaction” means any interest rate protection agreement, interest rate swap transaction, interest rate “cap” transaction, interest rate future, interest rate option or other similar interest rate hedging arrangement commonly used in loan transactions to hedge against interest rate increases and not for any speculative purpose.

“I-81 Corridor Improvement Plan” means the I-81 Corridor Improvement Plan, dated December 2018, adopted by the Borrower on December 5, 2018, and subject to amendment by the Borrower from time to time.

“I-81 Corridor Improvement Program” means the “Interstate 81 Corridor Improvement Program” approved by the State’s General Assembly and reflected in Chapter 846 of the 2019 Virginia Acts of Assembly.

“I-81 Fund” means the “Interstate 81 Corridor Improvement Fund” established by Section 33.2-3601 of the Virginia Code.

“I-81 Program Act” means Chapter 846 the 2019 Acts of Assembly, as amended.

“I-81 Program Bond Act” means the Commonwealth Transportation Interstate 81 Corridor Bond Act of 2020, being enactment clause 15 of Chapter 1230 of the Acts of the Assembly of the Commonwealth of Virginia, 2020 Reconvened Session.

“I-81 Program Bonds” means bonds issued by the Borrower pursuant to the Indenture.

“I-81 Program Revenues” means, for any period, all Regional Fuel Tax Revenues and all Interstate Operations Enhancement Program revenues dedicated to the I-81 Fund pursuant to Sections 58.1-2299.20 and 33.2-372(E), respectively, of the Virginia Code that are, in each case, received by the Borrower during such period, and (b) any and all other revenues appropriated by the Virginia Assembly to support payments on the I-81 Program Bonds.

“Indemnitee” has the meaning provided in Section 17 (Indemnification).

“Indenture” means that certain Master Indenture of Trust between the Borrower and the Trustee, dated as of August 1, 2021, as supplemented or amended from time to time in accordance

with its terms, which, among other matters, authorizes the Trustee to receive Pledged Revenues at any time and to hold and apply them subject to the terms of the Indenture and the Supplemental Indentures.

“Indenture Documents” means the Indenture, each Supplemental Indenture, each Hedging Agreement, each Liquidity Facility, and each other agreement, instrument and document executed and delivered pursuant to or in connection with any of the foregoing.

“Initial Obligations” means the Borrower’s Series 2021 I-81 Senior Lien Bonds issued in connection with the Project prior to the Effective Date and the TIFIA Regular Subordinate Lien Loan Bond to be issued on or about the Effective Date.

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

“Interest Commencement Date” means, with respect to any particular Deferred Interest Bond, the date determined by the Supplemental Indenture for such Deferred Interest Bond after which interest accruing on such Deferred Interest Bond shall be payable on the first interest payment date succeeding such Interest Commencement Date and periodically thereafter on the dates determined pursuant to such Supplemental Indenture.

“Interest Payment Date” means each of [May 15]⁸ and [November 15].

“Intermediate Lien Debt Service” means, with respect to the Intermediate Lien Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Intermediate Lien Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Intermediate Lien Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Intermediate Lien Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

In calculating Intermediate Lien Debt Service for any future period (except as otherwise specifically provided herein):

(a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon);

(b) any Put Bonds outstanding during such period that by their terms are not required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

⁸ **Note to Borrower**: Please confirm the interest payment dates.

(c) any Put Bonds outstanding during such period that by their terms are required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in the applicable Supplemental Indenture, or (iii) if the Liquidity Facility securing such Put Bonds expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Liquidity Facility;

(d) the principal amount of any Put Bonds tendered for payment by the Borrower that are required to be paid by the Borrower which have not yet been purchased in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender; and

(e) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Interest Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period.

“Intermediate Lien Debt Service Fund” means any debt service fund created for the benefit of one or more series of Intermediate Lien Obligations pursuant to the Indenture and any Supplemental Indenture.

“Intermediate Lien Debt Service Reserve Fund” means any debt service reserve fund created for the benefit of one or more series of Intermediate Lien Obligations pursuant to the Indenture and any Supplemental Indenture.

“Intermediate Lien Debt Service Reserve Requirement” means 1.0 times the maximum Principal and Interest Requirements (as defined in the Indenture) on the outstanding Intermediate Lien Obligations in the then current or any future Fiscal Year.

“Intermediate Lien Obligations” means any Bonds issued under the Indenture and designated as being subordinate as to payment and security to the Senior Obligations but senior as to payment and security to the Subordinate Obligations.

“Investment Grade Rating” means a public rating no lower than ‘BBB-,’ ‘Baa3’ or the equivalent of a public rating from a Rating Agency.

“ISDA Master Agreement” means a master agreement, entered into by the Borrower and a Hedging Bank, in the form published by the International Swaps and Derivatives Association, Inc.

“Lien” means any mortgage, pledge, hypothecation, assignment, mandatory deposit arrangement, encumbrance, attachment, lien (statutory or other), charge or other security interest, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, including any sale-leaseback arrangement, any conditional sale or other title retention agreement, any financing lease having substantially the same effect as any of the foregoing, and the filing of any financing statement or similar instrument under the UCC or any other applicable law.

“**Liquidity Facility**” means any letter of credit, standby bond purchase agreement, line of credit, surety instrument or similar instrument, any bond insurance policy, or any agreement relating to the reimbursement of any payment thereunder (or any combination of the foregoing), that is obtained by the Borrower and is issued by a Qualified Issuer.

“**Loan Amortization Schedule**” means the Loan Amortization Schedule reflected in the applicable column of **Exhibit G**, as amended from time to time in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“**Material Adverse Effect**” means a material adverse effect on (a) the Project (until the Substantial Completion Date) or the Pledged Revenues, (b) the business, operations, properties, condition (financial or otherwise) or prospects of any Borrower Related Party, (c) the legality, validity or enforceability of any material provision of any Indenture Document, TIFIA Loan Document or Fundamental Contract, (d) the ability of either Borrower Related Party or any Fundamental Contract Party to enter into, perform or comply with any of its material obligations under any Indenture Document, TIFIA Loan Document, Fundamental Contract to which it is a party, (e) the validity, enforceability or priority of the Liens provided pursuant to the Authorizing Legislation or under the Indenture Documents on the Trust Estate in favor of the Secured Parties or (f) the TIFIA Lender’s rights or remedies available under any TIFIA Loan Document.

“**NEPA**” means the National Environmental Policy Act of 1969, Pub. L. 91-190 (42 U.S.C. § 4321 *et seq.*), and any successor statute of similar import, and regulations thereunder, in each case as in effect from time to time.

“**NEPA Determination**” means that certain [Categorical Exclusion]⁹ for the Project approved by the FHWA on [September 10, 2020] in accordance with NEPA.

“**Obligations**” means, as of any date, the TIFIA Loan and any issued and outstanding Senior Obligations, Intermediate Lien Obligations and Subordinate Obligations.

“**OFAC**” means the Office of Foreign Assets Control of the United States Department of the Treasury.

“**Organizational Documents**” means: (a) with respect to any Person that is a Governmental Authority, (i) the constitutional and statutory provisions that are the basis for the existence and authority of such Governmental Authority, including any enabling statutes, ordinances or public charters and any other organic laws establishing such Governmental Authority and (ii) the bylaws, code of regulations, operating procedures or other organizational documents of or adopted by such Governmental Authority by which such Governmental Authority, its powers, operations or procedures or its securities, bonds, notes or other obligations are governed or from which such powers are derived; and (b) with respect to a Person that is not a Governmental Authority, (i) to the extent such Person is a corporation, the certificate or articles of incorporation and the by-laws of such Person, (ii) to the extent such Person is a limited liability company, the certificate of formation or articles of formation or organization and operating or limited liability company agreement of such Person and (iii) to the extent such Person is a partnership, joint

⁹ **Note to Borrower:** Kindly advise if a different NEPA determination was made regarding the rural project. If so, please insert the relevant information here.

venture, trust or other form of business, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation or organization or formation of such Person.

“Outstanding TIFIA Loan Balance” means the aggregate principal amount drawn by the Borrower and then outstanding (including capitalized interest) with respect to the TIFIA Loan, as determined in accordance with Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*).

“Patriot Act” means the USA PATRIOT Act, also known as the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, as amended from time to time, and any successor statute of similar import, and the regulations promulgated thereunder.

“Payment Agreement” means that certain Payment Agreement, dated as of August 1, 2021, by and among the Borrower, the Treasury Board of the Commonwealth of Virginia, and the Secretary of Finance of the Commonwealth of Virginia.

“Payment Date” means each Interest Payment Date and Principal Payment Date.

“Payment Default” has the meaning provided in Section 19(a)(i) (*Payment Default*).

“Payment Period” means any period of six (6) months from (and including) an Interest Payment Date to (but excluding) the immediately succeeding Interest Payment Date, commencing with the six (6) month period ending on the date immediately prior to the Debt Service Payment Commencement Date.

“Permitted Debt” means:

- (a) Existing Indebtedness;
- (b) the TIFIA Loan;
- (c) Initial Obligations;
- (d) Additional Obligations permitted under Section 16(a) (*Indebtedness*) and under the Indenture;
- (e) Subordinate Obligations permitted under Section 16(a) (*Indebtedness*) and under the Indenture;
- (f) indebtedness incurred in respect of Qualified Hedges; and
- (g) Liquidity Facilities in an aggregate face amount that does not exceed \$[] at any time; provided, that the undrawn face amount of Liquidity Facilities

maintained in respect of Put Bonds shall be disregarded for purposes of determining the aggregate face amount of outstanding Liquidity Facilities.

“Permitted Hedging Termination” means the early termination, in whole or in part, of any Qualified Hedge (a) at the request of the Borrower as a result of a determination by the Borrower that such (or any part of such) Qualified Hedge is no longer necessary or required under the terms of this Agreement, (b) pursuant to the terms of any Hedging Agreement evidencing such Qualified Hedge that provides for the notional amount of such Qualified Hedge to amortize or otherwise be reduced from time to time or (c) as may be required pursuant to Section 15(m)(vi) (Hedging).

“Permitted Investments” means (with respect to the investment of the proceeds of the TIFIA Loan or any construction or reserve account established and maintained pursuant to the Indenture) the following obligations subject to additional restrictions included in the Investment of Public Funds Act (Chapter 45, Title 2.2, Virginia Code) and the Security for Public Deposits Act (Chapter 44, Title 2.2, Virginia Code):

- (a) Government Obligations;
- (b) certificates of deposit where the certificates are collaterally secured by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest, but this collateral is not required to the extent the certificates of deposit are insured by the Federal Government;
- (c) repurchase agreements with counterparties that have an Acceptable Credit Rating, when collateralized by securities of the type described in clause (a) of this definition and held by a third party as escrow agent or custodian, of a market value not less than the amount of the repurchase agreement so collateralized, including interest;
- (d) investment agreements or guaranteed investment contracts rated, or with any financial institution whose senior long-term debt obligations are rated, or guaranteed by a financial institution whose senior long-term debt obligations are rated in one of the two (2) highest Rating Categories for comparable types of obligations by any Rating Agency; and
- (e) money market funds that invest solely in obligations of the United States of America, its agencies and instrumentalities, and having a rating by a Rating Agency equal to the then applicable rating of the United States of America by such Rating Agency.

“Person” means and includes an individual, a general or limited partnership, a joint venture, a corporation, a limited liability company, a trust, an unincorporated organization and any Governmental Authority.

“Pledged Revenues” means all Revenues and all other property of any kind mortgaged, pledged or hypothecated under the Indenture to provide for the payment of or to secure the Bonds by the Borrower or by anyone on its behalf and with its written consent at any time as and for additional security under the Indenture and a Supplemental Indenture in favor of the Trustee.

“**Principal Payment Date**” means each [May 15]¹⁰.

“**Project**” means the []¹¹, which has been undertaken by the Borrower pursuant to the I-81 Corridor Improvement Plan and the I-81 Corridor Improvement Program.

“**Project Budget**” means, collectively, the budget for the Project in the aggregate amount of \$[]¹² attached to this Agreement as **Schedule I** showing a summary of Total Project Costs with a breakdown of all Eligible Project Costs and the estimated sources and uses of funds for the Project, as amended from time to time subject to the reporting requirements in Section 22(b) (*Quarterly Construction Progress Report*).

“**Project Fund**” means any project fund created pursuant to the Indenture and any Supplemental Indenture to receive to proceeds of a series of Bonds and any other funds as provided in the applicable Supplemental Indenture.

“**Projected Substantial Completion Date**” means []¹³, unless otherwise agreed by the TIFIA Lender in writing.

“**Put Bonds**” means any bond that by its terms may be tendered by and at the option of the holder thereof for payment prior to the stated maturity or redemption date thereof either (a) by the Borrower and by the Person and/or from the source specified in a Supplemental Indenture or (b) without recourse to the Borrower, by the Person and/or from the source specified in a Supplemental Indenture.

“**Qualified Hedge**” means, to the extent from time to time permitted by law, with respect to Permitted Debt any Hedging Transaction entered into with a Qualified Hedge Provider and meeting the requirements of Section 15(m) (*Hedging*).

“**Qualified Hedge Provider**” means any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating.

“**Qualified Issuer**” means (a) with respect to any Liquidity Facility issued by a bank or trust company, any bank or trust company authorized to engage in the banking business that is organized under or licensed as a branch or agency under the laws of the United States of America or any state thereof that has an Acceptable Credit Rating and (b) with respect to any Liquidity Facility issued by an insurance company or other financial institution, any insurance company or other financial institution that is authorized and qualified to do business by the state insurance commissioner of its jurisdiction of organization and of the State and that has an Acceptable Credit Rating.

¹⁰ **Note to Borrower**: Please advise of the principal payment date(s).

¹¹ **Note to Borrower**: Please provide the proper project description.

¹² **Note to Borrower**: Kindly provide the project budget amount.

¹³ **Note to Borrower**: Please provide the projected substantial completion date.

“Rating Agency” means a rating agency registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization (as defined in 15 U.S.C. § 78c(a)(62)).

“Rating Category” means one of the generic rating categories of a Rating Agency without regard to any refinement or gradation of such rating by a numerical modifier or otherwise.

“Regional Fuel Tax Revenues” means revenues deposited into the I-81 Fund pursuant to Section 58.1-2299.20 of the Virginia Code from the receipt of regional fuels tax payments levied pursuant to Section 58.1-2295 of the Virginia Code.

“Related Documents” means the Indenture Documents, the TIFIA Loan Documents, the Hedging Agreements and the Fundamental Contracts.

“Requisition” has the meaning provided in Section 4(a) (*Disbursement Conditions*).

“Revenues” means, as provided in the Indenture, all monies appropriated by the General Assembly from time to time for the payment of the Bonds, including costs related to or for the support of the Bonds, from (i) Regional Fuel Tax Revenues deposited into the I-81 Fund and (ii) any other legally available funds.

“Revised Financial Model” means an updated version of the Base Case Financial Model, in form and substance satisfactory to the TIFIA Lender, taking into account changes in projected revenues, expenditures or other modeling assumptions since the delivery of the Base Case Financial Model (or, as applicable, the most recently submitted Revised Financial Model) and including a change log describing such changes.

“Sanctioned Country” means, at any time, a country or territory that is itself the subject or target of any Sanctions.

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC or the U.S. Department of State, (b) any Person operating, organized or resident in a Sanctioned Country, or (c) any Person owned or Controlled by any such Person or Persons.

“Sanctions” means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the Federal Government, including those administered by OFAC or the U.S. Department of State.

“Secretary” means the United States Secretary of Transportation.

“Secured Obligations” means the Senior Obligations, the Intermediate Lien Obligations, the Subordinate Obligations (including the obligations of the Borrower under this Agreement and the TIFIA Bond), the Hedging Obligations, and the Hedging Termination Obligations.

“Secured Parties” means the Trustee, the TIFIA Lender, any other Bondholders, and the Hedging Banks.

“**Semi-Annual Coverage Certificate**” has the meaning provided in Section 21(c) (*Semi-Annual Coverage Certificates*).

“**Senior Bonds**” means any bonds or other obligations issued under the Indenture with seniority of payment and security over the Intermediate Lien Obligations and the Subordinate Obligations.

“**Senior Debt Service**” means, with respect to the Senior Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Senior Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Senior Obligations due in such period (unless a different subsection of this definition applies for purposes of determining principal maturities or amortization), payment shall be assumed to be made in accordance with any amortization schedule established for such Senior Obligations, including any scheduled redemption of Permitted Debt on the basis of Accreted Value or Appreciated Value, as applicable, and for such purpose the redemption payment shall be deemed a principal payment.

In calculating Senior Debt Service for any future period (except as otherwise specifically provided herein):

(a) any Permitted Debt bearing interest at a Variable Interest Rate shall be deemed to bear interest at the Bank Lending Margin plus the fixed rate on the applicable Qualified Hedge (which shall reflect any premium or margin payable thereon);

(b) any Put Bonds outstanding during such period which by their terms are not required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the stated maturity date thereof;

(c) any Put Bonds outstanding during such period which by their terms are required to be paid by the Borrower upon tender by the holder thereof shall be assumed to mature on the earliest to occur of (i) the stated maturity date thereof, (ii) the date provided in the applicable Supplemental Indenture, or (iii) if the Liquidity Facility securing such Put Bonds expires within six (6) months or less of the date of calculation and has not been renewed or replaced, the expiration date of such Liquidity Facility;

(d) the principal amount of any Put Bonds tendered for payment by the Borrower which are required to be paid by the Borrower which have not yet been purchased in lieu of such payment by the Borrower shall be deemed to mature on the date required to be paid pursuant to such tender; and

(e) the principal and/or interest portion (whether by redemption or otherwise) of Capital Appreciation Bonds and Deferred Interest Bonds shall be the Accreted Value and Appreciated Value thereof, respectively, due and payable in respect of such period.

“**Senior Debt Service Fund**” means any debt service fund created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Debt Service Reserve Fund” means any debt service reserve fund created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Debt Service Reserve Requirement” means any debt service reserve requirement created for the benefit of one or more series of Senior Obligations pursuant to the Indenture and any Supplemental Indenture.

“Senior Obligations” means any Senior Bonds, including the TIFIA Bond, heretofore or hereinafter issued under the Indenture and any Supplemental Indenture that are designated as being senior as to payment and security to the Intermediate Lien Obligations and the Subordinate Obligations.

“Series 2021 I-81 Senior Lien Bonds” means the Borrower’s \$80,990,000 Commonwealth of Virginia Interstate 81 Corridor Program Revenue Bonds (Senior Lien) Series 2021 issued under the Master Indenture as the first series of obligations thereunder.

“Servicer” means such entity or entities as the TIFIA Lender shall designate from time to time to perform, or assist the TIFIA Lender in performing, certain duties hereunder.

“State” has the meaning provided in the preamble hereto.

“Subordinate Debt Service” means, with respect to the Subordinate Obligations, for any period, as of any date of calculation, an amount equal to the sum of all fees and interest and principal of Subordinate Obligations accruing and payable in respect of such period, as set forth in the most recent Revised Financial Model. In determining the principal amount of Subordinate Obligations due in such period, payment shall be assumed to be made in accordance with any amortization schedule established for such Subordinate Obligations.

“Subordinate Debt Service Fund” means any debt service fund, including the TIFIA Debt Service Fund, created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“Subordinate Debt Service Reserve Fund” means any debt service reserve fund created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“Subordinate Debt Service Reserve Requirement” means any debt service reserve requirement created for the benefit of one or more series of Subordinate Obligations pursuant to the Indenture and any Supplemental Indenture.

“Subordinate Obligations” means any Bonds issued under the Indenture and designated as being subordinate as to payment and security to the Senior Obligations and the Intermediate Lien Obligations.

“Subsequent Qualified Hedge” has the meaning provided in Section 15(m)(iii) (Hedging).

“**Substantial Completion**” means [].

“**Substantial Completion Date**” means the date on which Substantial Completion occurs.

“**Supplemental Indenture**” means a Supplemental Indenture to the Indenture relating to a specific issuance of Bonds by the Borrower, including the TIFIA Supplemental Indenture.

“**Tax Code**” means the Internal Revenue Code of 1986, as amended from time to time.

“**TIFIA**” has the meaning provided in the recitals hereto.

“**TIFIA Bond**” means the Bond delivered by the Borrower in substantially the form of **Exhibit A**.

“**TIFIA Debt Service**” means with respect to any Payment Date occurring on or after the Debt Service Payment Commencement Date, the principal portion of the Outstanding TIFIA Loan Balance and any interest payable thereon (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the TIFIA Interest Rate (or, as applicable, the Default Rate), in each case (a) as set forth on **Exhibit G**, and (b) due and payable on such Payment Date in accordance with the provisions of Section 9(c) (*Payment of TIFIA Debt Service*).

“**TIFIA Debt Service Fund**” means the Senior Debt Service Fund defined in the Indenture.

“**TIFIA Interest Rate**” has the meaning provided in Section 6 (*Interest Rate*).

“**TIFIA Lender**” has the meaning provided in the preamble hereto.

“**TIFIA Lender’s Authorized Representative**” means the Executive Director and any other Person who shall be designated as such pursuant to Section 26 (*TIFIA Lender’s Authorized Representative*).

“**TIFIA Loan**” means the secured loan made by the TIFIA Lender to the Borrower on the terms and conditions set forth herein and as evidenced by the Borrower’s issuance of the TIFIA Bond, pursuant to the Act, in a principal amount not to exceed \$[] (excluding capitalized interest), to be used in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower.

“**TIFIA Loan Documents**” means this Agreement, the TIFIA Bond, the TIFIA Supplemental Indenture, and the other Indenture Documents.

“**TIFIA Regular Subordinate Lien Loan Bond**” means [].

“**TIFIA Supplemental Indenture**” means that certain [Third]¹⁴ Supplemental Series Indenture of Trust, dated as of [___], 2022, between the Borrower and the Trustee in connection with the issuance of the TIFIA Bond.

“**Total Debt Service Coverage Ratio**” means, for any Calculation Period, the ratio of projected Pledged Revenues for such Calculation Period to the sum of (a) Senior Debt Service for such Calculation Period, (b) Intermediate Lien Debt Service for such Calculation Period, and (c) Subordinate Debt Service for such Calculation Period.

“**Total Project Costs**” means (a) the costs paid or incurred or to be paid or incurred by a Borrower Related Party in connection with or incidental to the acquisition, design, construction and equipping of the Project, including legal, administrative, engineering, planning, design, insurance, and costs of issuance; (b) amounts, if any, required by the Indenture Documents or the TIFIA Loan Documents to be paid into any fund or account upon the incurrence of the TIFIA Loan or any Senior Obligations; (c) payments when due (whether at the maturity of principal, the due date of interest, or upon optional or mandatory prepayment) during the Construction Period in respect of any indebtedness of the Borrower, including any Liquidity Facility maintained by the Borrower, in each case in connection with the Project (other than the TIFIA Loan); and (d) costs of equipment and supplies and initial working capital and reserves required by the Borrower for the commencement of operation of the Project, including general administrative expenses and overhead of the Borrower.

“**Trust Estate**” means the Pledged Revenues and Debt Service Reserve Fund plus, with respect to each series (and to such series only) of Bonds, the money and investments held in the applicable (a) Project Fund (if any) and (b) Debt Service Fund.

“**Trustee**” means U.S. Bank Trust Company, National Association, successor to U.S. Bank National Association.

“**Uncontrollable Force**” means any cause beyond the control of the Borrower, including: (a) a hurricane, tornado, flood or similar occurrence, landslide, earthquake, fire or other casualty, strike or labor disturbance, freight embargo, act of a public enemy, explosion, war, blockade, terrorist act, insurrection, riot, general arrest or restraint of government and people, civil disturbance or similar occurrence, sabotage, or act of God (provided that the Borrower shall not be required to settle any strike or labor disturbance in which it may be involved) or (b) the order or judgment of any federal, state or local court, administrative agency or governmental officer or body, if it is not also the result of willful or negligent action or a lack of reasonable diligence of the Borrower and the Borrower does not control the administrative agency or governmental officer or body; provided that the diligent contest in good faith of any such order or judgment shall not constitute or be construed as a willful or negligent action or a lack of reasonable diligence of the Borrower.

“**Uniform Commercial Code**” or “**UCC**” means the Uniform Commercial Code, as in effect from time to time in the State.

¹⁴ **Note to Borrower**: Kindly confirm.

“**USDOT**” means the United States Department of Transportation.

“**Valuation Date**” means (a) with respect to any Capital Appreciation Bonds, the date or dates set forth in the Supplemental Indenture authorizing such Capital Appreciation Bonds on which specific Accreted Values are assigned to the Capital Appreciation Bonds and (b) with respect to any Deferred Interest Bonds, the date or dates on or prior to the Interest Commencement Date set forth in the Supplemental Indenture authorizing such Deferred Interest Bonds on which specific Appreciated Values are assigned to the Deferred Interest Bonds.

“**Variable Interest Rate**” means a variable interest rate to be borne by any Permitted Debt. The method of computing such variable interest rate shall be specified in the Supplemental Indenture pursuant to which such Permitted Debt is incurred. Such Supplemental Indenture shall also specify either (a) the particular period or periods of time for which each value of such variable interest rate shall remain in effect, or (b) the time or times upon which any change in such variable interest rate shall become effective.

“**Variable Interest Rate Bonds**” means Permitted Debt which bears a Variable Interest Rate but does not include any Permitted Debt for which the interest rate has been fixed during the remainder of the term thereof to maturity; provided, however, that Permitted Debt bearing a Variable Interest Rate shall not be deemed Variable Interest Rate Bonds if the Borrower has entered into a Qualified Hedge with respect to such Permitted Debt during the period for which such Qualified Hedge is in effect; provided, further, that Permitted Debt bearing a fixed rate of interest shall be deemed Variable Interest Rate Bonds to the extent that the Borrower has entered into a Qualified Hedge pursuant to which the Borrower is obligated to pay a floating rate of interest and receives a fixed rate of interest and shall be deemed to bear interest at the lesser of the rate determined pursuant to clause (a) of the definition of the term Senior Debt Service or Intermediate Lien Debt Service (as applicable) or the maximum interest rate, if any, payable pursuant to such Qualified Hedge.

“**Variable Interest Rate Obligations**” means any Senior Obligations or Intermediate Lien Obligations under the Indenture that accrue interest at a Variable Interest Rate.

“**VDOT**” means the Virginia Department of Transportation.

“**Virginia Code**” means the Code of Virginia of 1950, as amended, and any successor provisions of law.

Section 2. Interpretation. Unless the context shall otherwise require, the words “hereto,” “herein,” “hereof,” and other words of similar import refer to this Agreement as a whole. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders and vice versa. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise require. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” Whenever the Borrower’s knowledge is implicated in this Agreement or the phrase “to the Borrower’s knowledge” or a similar phrase is used in this Agreement, the Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of the Borrower’s knowledge after reasonable and diligent inquiry and investigation. Unless the context shall otherwise require,

references to any Person shall be deemed to include such Person's successors and permitted assigns. Unless the context shall otherwise require, references to preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions are to the applicable preambles, recitals, sections, subsections, clauses, schedules, exhibits, appendices and provisions of this Agreement. The schedules and exhibits to this Agreement, and the appendices and schedules to such exhibits, are hereby incorporated by reference and made an integral part of this Agreement. The headings or titles of this Agreement and its sections, schedules or exhibits, as well as any table of contents, are for convenience of reference only and shall not define or limit its provisions. Unless the context shall otherwise require, all references to any resolution, contract, agreement, lease or other document shall be deemed to include any amendments or supplements to, or modifications or restatements or replacements of, such documents that are approved from time to time in accordance with the terms thereof and hereof. Every request, order, demand, application, appointment, notice, statement, certificate, consent or similar communication or action hereunder by any party shall, unless otherwise specifically provided, be delivered in writing in accordance with Section 36 (*Notices; Payment Instructions*) and signed by a duly authorized representative of such party.

Section 3. TIFIA Loan Amount. The principal amount of the TIFIA Loan shall not exceed \$[] (excluding capitalized interest). TIFIA Loan proceeds shall be disbursed from time to time in accordance with Section 4 (*Disbursement Conditions*) and Section 12(b) (*Conditions Precedent to All Disbursements*).

Section 4. Disbursement Conditions.

(a) TIFIA Loan proceeds shall be disbursed solely in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower in connection with the Project. The Borrower acknowledges and agrees that any costs incurred in connection with the Project prior to receipt of all necessary authorizations from the USDOT in respect of such costs (which may include approvals of prior-incurred costs) are incurred solely at the Borrower's risk and expense, will not constitute Eligible Project Costs, and no TIFIA Loan proceeds will be disbursed in respect thereof, unless and until such authorizations have been received. To utilize the TIFIA Loan proceeds to make progress payments for the Project construction work performed under the Construction-Related Contracts, the Borrower shall demonstrate to the satisfaction of the TIFIA Lender that such progress payments are commensurate with the value of the work that has been completed. Each disbursement of the TIFIA Loan shall be made pursuant to a requisition and certification (a "**Requisition**") in the form set forth in **Appendix One** To Exhibit D to **Exhibit D**, along with all documentation and other information required thereby, submitted by the Borrower to the TIFIA Lender, all in accordance with the procedures of **Exhibit D** and subject to the requirements of this Section 4 and the conditions set forth in Section 12(b) (*Conditions Precedent to All Disbursements*); provided, however, that no disbursements of TIFIA Loan proceeds shall be made on or after the date that is one (1) year after the Substantial Completion Date.

(b) The Borrower shall deliver copies of each Requisition to the TIFIA Lender and the Servicer (if any) and the FHWA Division Office on or before the first (1st) Business Day of each month for which a disbursement is requested. Subject to Section 4(d), if the TIFIA Lender does not expressly deny a Requisition, disbursements of funds shall be made on the fifteenth (15th) day of the month for which a disbursement has been requested, or on the next succeeding Business

Day if such fifteenth (15th) day is not a Business Day. Express denial of a Requisition by the TIFIA Lender shall be provided substantially in the form attached as **Appendix Two to Exhibit D** (*Requisition Procedures*). In no event shall disbursements be made more than once each month.

(c) The Borrower may amend the Anticipated TIFIA Loan Disbursement Schedule by submitting a revised version thereof to the TIFIA Lender no later than thirty (30) days prior to the proposed effective date of such amendment, together with a detailed explanation of the reasons for such revisions.

(d) Notwithstanding anything to the contrary set forth in this Agreement (including this Section 4, Section 12 (*Conditions Precedent*) or **Exhibit D** (*Requisition Procedures*)), in no event shall the TIFIA Lender have any obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower if the TIFIA Lender's ability to make such disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

Section 5. Term. The term of the TIFIA Loan shall extend from the Effective Date to the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

Section 6. Interest Rate. The interest rate with respect to the Outstanding TIFIA Loan Balance (the "**TIFIA Interest Rate**") shall be [] percent ([] %) per annum. Interest will be computed on the Outstanding TIFIA Loan Balance (as well as on any past due interest) from time-to-time on the basis of a 365-day or 366-day year, as appropriate, for the actual number of days elapsed; provided, however, in the event of a Payment Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) its due date to (but excluding) the date of actual payment. Upon the occurrence of any other Event of Default, the Borrower shall pay interest on the Outstanding TIFIA Loan Balance and on any interest accrued thereon but unpaid as of the applicable Payment Date (including interest accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, insolvency or similar proceeding with respect to the Borrower) at the Default Rate from (and including) the date such Event of Default first occurred to (but excluding) the earlier to occur of (a) the date such Event of Default has been waived by the TIFIA Lender and (b) the date the Outstanding TIFIA Loan Balance and any interest accrued thereon (at the Default Rate) but unpaid has been irrevocably paid in full in immediately available funds.

Section 7. Outstanding TIFIA Loan Balance; Revisions to Exhibit G and the Loan Amortization Schedule.

(a) The Outstanding TIFIA Loan Balance will be (i) increased on each occasion on which the TIFIA Lender disburses loan proceeds hereunder, by the amount of such disbursement of loan proceeds; (ii) increased on each occasion on which interest on the TIFIA

Loan is capitalized pursuant to the provisions of Section 9(b) (*Capitalized Interest Period*), by the amount of interest so capitalized; and (iii) decreased upon each payment or prepayment of the Outstanding TIFIA Loan Balance, by the amount of principal so paid. The TIFIA Lender may in its discretion at any time and from time to time, or when so requested by the Borrower, advise the Borrower by written notice of the amount of the Outstanding TIFIA Loan Balance as of the date of such notice, and its determination of such amount in any such notice shall be deemed conclusive absent manifest error.

(b) The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** from time to time, in accordance with the principles set forth in Section 10(c) (*General Prepayment Instructions*) and **Exhibit M**, to reflect (i) any change to the Outstanding TIFIA Loan Balance, (ii) any change to the date and amount of any principal or interest due and payable or to become due and payable by the Borrower under this Agreement, and (iii) such other information as the TIFIA Lender may determine is necessary for administering the TIFIA Loan and this Agreement. Any calculations described above shall be rounded up or down to the nearest whole cent. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. The TIFIA Lender shall provide the Borrower with a copy of **Exhibit G**, as revised, but no failure to provide or delay in providing the Borrower with such copy shall affect any of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents.

Section 8. Security and Priority; Flow of Funds.

(a) As security for the TIFIA Loan, the Borrower shall pledge, assign and grant, or shall cause to be pledged, assigned and granted, to the Trustee for the benefit of the TIFIA Lender, Liens on the Trust Estate in accordance with the provisions of the Indenture Documents. The TIFIA Bond shall be: (i) issued as a Senior Obligation, secured by the Liens on the Trust Estate, (ii) senior to the Lien on the Trust Estate pledged to secure the Intermediate Lien Obligations and the Subordinate Obligations, and (iii) *pari passu* to the Lien on the Trust Estate pledged to secure the Senior Obligations.

(b) Except to the extent otherwise provided in clause (a) of this Section 8 (*Security and Priority; Flow of Funds*), the Trust Estate will be free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto prior to, or of equal rank with, the pledge of the Borrower created under the Indenture Documents, and all organizational, regulatory or other necessary action on the part of the Borrower with respect to the foregoing has been duly and validly taken.

(c) The Borrower shall not use Pledged Revenues to make any payments or satisfy any obligations other than in accordance with the provisions of this Section 8 (*Security and Priority; Flow of Funds*) and the Indenture Documents and shall not apply any portion of the Pledged Revenues in contravention of this Agreement or the Indenture Documents.

(d) The Indenture provides that all Pledged Revenues shall, subject to Section 8.1 thereof, be deposited in the I-81 Fund and applied in the order of priority described in Section

8.1(a) of the Indenture, a copy of which Section 8.1, as of the Effective Date, is attached as **Schedule IV** (all capitalized terms used in **Schedule IV** and not otherwise defined in this Agreement shall have the meanings ascribed in the Indenture)

Section 9. Payment of Principal and Interest.

(a) Payment Dates. The Borrower agrees to pay the principal of and interest on the TIFIA Loan by making payments in accordance with the provisions of this Agreement and the Indenture Documents on (i) each Interest Payment Date, beginning on the Debt Service Payment Commencement Date, with respect to interest on the TIFIA Loan, (ii) each Principal Payment Date, beginning on the Debt Service Payment Commencement Date, with respect to the principal of the TIFIA Loan, and (iii) each other date on which payment is required to be made hereunder (including the Final Maturity Date and any date on which payment is due by reason of mandatory prepayment, optional prepayment, acceleration of the maturity of the TIFIA Loan (to the extent permitted under the Indenture) or otherwise); provided, that, if any such date is not a Business Day, payment shall be made on the next Business Day following such date. Any payment of the TIFIA Bond shall be treated as a payment of the TIFIA Loan, and any prepayment of principal of the TIFIA Loan shall be treated as redemption of the TIFIA Bond.

(b) Capitalized Interest Period. No payment of the principal of or interest on the TIFIA Loan is required to be made during the Capitalized Interest Period. On each Interest Payment Date occurring during the Capitalized Interest Period, interest accrued on the TIFIA Loan in the six (6) month period ending immediately prior to such date shall be capitalized and added to the Outstanding TIFIA Loan Balance. Any interest accruing on the TIFIA Loan during the period from (and including) the last Interest Payment Date occurring during the Capitalized Interest Period and ending on the last day of the Capitalized Interest Period shall also be capitalized and added to the Outstanding TIFIA Loan Balance on the earlier to occur of the Substantial Completion Date or the last day of the Capitalized Interest Period. Within thirty (30) days after the end of the Capitalized Interest Period, the TIFIA Lender shall give written notice to the Borrower stating the Outstanding TIFIA Loan Balance as of the close of business on the last day of the Capitalized Interest Period, which statement thereof shall be deemed conclusive absent manifest error; provided, however, that no failure to give or delay in giving such notice shall affect any of the obligations of the Borrower hereunder or under any of the other TIFIA Loan Documents.

(c) Payment of TIFIA Debt Service. On each Payment Date occurring on or after the Debt Service Payment Commencement Date, the Borrower shall pay or cause the Trustee to pay TIFIA Debt Service in the amounts set forth in respect of such Payment Date on **Exhibit G**, as the same may be revised as provided in Section 7 (*Outstanding TIFIA Loan Balance; Revisions to Exhibit G and Loan Amortization Schedule*), which payments shall be made in accordance with Section 9(d) (*Manner of Payment*).

(d) Manner of Payment. Payments under this Agreement and the TIFIA Bond shall be made by wire transfer on or before each Payment Date in immediately available funds in accordance with payment instructions provided by the TIFIA Lender pursuant to Section 36 (*Notices; Payment Instructions*), as modified in writing from time to time by the TIFIA Lender.

The Borrower may make any such payment or portion thereof (or direct the Trustee to make such payment) with funds then on deposit in the TIFIA Debt Service Fund.

(e) Final Maturity Date. Notwithstanding anything herein to the contrary, the Outstanding TIFIA Loan Balance and any accrued interest thereon shall be due and payable in full on the Final Maturity Date (or on any earlier date on which the maturity of the TIFIA Loan shall be accelerated pursuant to the provisions of Section 19 (*Events of Default and Remedies*)), but only to the extent such acceleration is permitted under the Indenture.

(f) TIFIA Bond. As evidence of the Borrower's obligation to repay the TIFIA Loan, the Borrower shall issue and deliver to the TIFIA Lender, on or prior to the Effective Date, the TIFIA Bond substantially in the form of **Exhibit A**, having a maximum principal amount (excluding capitalized interest) of \$[] and bearing interest at the rate set forth in Section 6 (*Interest Rate*).

Section 10. Prepayment.

(a) Mandatory Prepayments. The Borrower shall prepay the TIFIA Loan in whole or in part, without penalty or premium, upon any voluntary prepayment of any Bonds other than the TIFIA Bond (other than any voluntary prepayment of any Bonds made with the proceeds of Additional Obligations issued in accordance with the requirements of subsection (a) in the definition thereof for the purpose of refinancing such Bonds) pro rata with such voluntary prepayment. The Borrower shall provide written notice to the TIFIA Lender at least two (2) Business Days prior to the date on which it makes any mandatory prepayment; provided that the Borrower's failure to deliver such notice shall not diminish, impair or otherwise affect the Borrower's obligation to make any such mandatory prepayment as and when the circumstances requiring such mandatory prepayment have occurred. Each prepayment pursuant to this Section 10(a) (*Mandatory Prepayments*) shall be effected pursuant to Section [] of the TIFIA Supplemental Indenture (as applicable) and accompanied by a certificate signed by the Borrower's Authorized Representative identifying the provision of this Agreement pursuant to which such prepayment is being made and containing a calculation in reasonable detail of the amount of such prepayment.

(b) Optional Prepayments. The Borrower may prepay the TIFIA Loan by causing the Trustee to redeem the TIFIA Bond in whole or in part (and, if in part, the amounts thereof to be prepaid shall be determined by the Borrower; provided, however, that such prepayments shall be in a minimum principal amount of \$1,000,000), at any time or from time to time, without penalty or premium. Each prepayment of the TIFIA Loan shall be made on such date and in such principal amount as shall be specified by the Borrower in a written notice delivered to the TIFIA Lender, which notice shall also specify the amount of unpaid interest accrued to the date of such prepayment on the amount of principal to be prepaid that the Borrower shall pay concurrently with such prepayment. In the case of any optional prepayment, such written notice shall be delivered to the TIFIA Lender not less than ten (10) days or more than thirty (30) days prior to the date set for prepayment, unless otherwise agreed by the TIFIA Lender. At any time between delivery of such written notice and the applicable optional prepayment, the Borrower may, without penalty or premium, rescind its announced optional prepayment by further written notice to the TIFIA Lender. Anything in this Section 10(b) (*Optional*

Prepayments) to the contrary notwithstanding, the failure by the Borrower to make any optional prepayment shall not constitute a breach or default under this Agreement.

(c) **General Prepayment Instructions.** Upon the TIFIA Lender's receipt of confirmation that payment in full of the entire Outstanding TIFIA Loan Balance and any unpaid interest and fees with respect thereto has occurred as a result of a mandatory or optional prepayment, the TIFIA Lender shall surrender the TIFIA Bond to the Borrower or its representative at the principal office of the TIFIA Lender. If the Borrower prepays only part of the unpaid balance of principal of the TIFIA Loan, such partial prepayments shall be applied pro rata across all maturities to reduce all future payments due on the TIFIA Loan. The TIFIA Lender may make a notation on **Exhibit G** indicating the amount of principal of and interest on such TIFIA Bond then being prepaid. Absent manifest error, the TIFIA Lender's determination of such matters as set forth on **Exhibit G** shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower's obligations hereunder or under any other TIFIA Loan Document. After any prepayment, the remaining principal amount of such TIFIA Bond shall continue to bear interest until payment thereof at the rate provided for in Section 6 (Interest Rate).

Section 11. Compliance with Laws. Each Borrower Related Party shall, and shall require its contractors and subcontractors at all tiers for the Project to, comply in all material respects with all applicable laws, rules, regulations, executive and administrative decrees and orders, and orders and judgments of any court or arbitral panel, including federal and state laws, rules, regulations and executive orders. The list of federal laws attached as **Exhibit E** is illustrative of the type of requirements generally applicable to transportation projects and is not intended to be exhaustive. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law.

Section 12. Conditions Precedent.

(a) **Conditions Precedent to Effectiveness.** Notwithstanding anything in this Agreement to the contrary, this Agreement shall not become effective until each of the following conditions precedent shall have been satisfied or waived in writing by the TIFIA Lender:

(i) The Borrower shall have duly executed and delivered to the TIFIA Lender this Agreement and the TIFIA Bond, each in form and substance satisfactory to the TIFIA Lender.

(ii) The Borrower shall have delivered to the TIFIA Lender certified, complete, and fully executed copies of each Indenture Document not separately delivered to the TIFIA Lender under clause (a) above, together with any amendment, waiver or modification thereto that, in each case, has been entered into on or prior to the Effective Date, and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived (provided that, for purposes of this clause (ii), any such waiver shall be subject to the TIFIA Lender's consent in its sole discretion).

(iii) Counsel to each Borrower Related Party shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-1**), and bond counsel to the Borrower shall have rendered to the TIFIA Lender legal opinions satisfactory to the TIFIA Lender in its sole discretion (including those opinions set forth on **Exhibit H-2**).

(iv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the absence of debarment, suspension or voluntary exclusion from participation in Federal Government contracts, procurement and non-procurement matters substantially in the form attached hereto as **Exhibit C** with respect to the Borrower and its principals (as defined in 2 CFR § 180.995).

(v) The Borrower shall have provided to the TIFIA Lender satisfactory evidence that the Project has been included in (A) the I-81 Corridor Improvement Program, (B) the State transportation plan, and (C) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project.

(vi) The Borrower shall have provided evidence to the TIFIA Lender's satisfaction, no more than thirty (30), but no less than fourteen (14), days prior to the Effective Date, of the assignment by at least two (2) Rating Agencies of an Investment Grade Rating to each of the Senior Obligations and the TIFIA Loan, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(vii) The Borrower shall have delivered to the TIFIA Lender a certificate from the Borrower's Authorized Representative in the form attached hereto as **Exhibit K** (A) as to the satisfaction of certain conditions precedent set forth in this Section 12(a) (*Conditions Precedent to Effectiveness*) as required by the TIFIA Lender, (B) designating the Borrower's Authorized Representative, and (C) confirming such person's position and incumbency.

(viii) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that as of the Effective Date the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion.

(ix) The Borrower shall have complied with the disclosure requirements set forth in 2 CFR § 180.355 and the verification requirements set forth in 2 CFR §§ 180.300 and 180.320, and complied with its obligations under 2 CFR § 180.330 in connection with the Construction-Related Contracts, and shall have provided evidence thereof satisfactory to the TIFIA Lender.

(x) The Borrower shall have provided to the TIFIA Lender certified, complete, and fully executed copies of each Fundamental Contract and each Construction-Related Contract, together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect, without default, and in form and substance satisfactory to the TIFIA Lender.

(xi) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that each of the Borrower and VDOT has obtained all Governmental Approvals necessary to commence construction of the Project and that all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation).

(xii) The Borrower shall have delivered to the TIFIA Lender a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model shall (A) demonstrate that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrate the Senior Debt Service Coverage Ratio and a Total Debt Service Coverage Ratio (for each Calculation Period through the Final Maturity Date), in each case reflected in the Application approved by the Secretary (or such other ratios as agreed to by the TIFIA Lender in its sole discretion), (C) demonstrate that Pledged Revenues in each Calculation Period through the Final Maturity Date are projected to be sufficient to satisfy the Borrower's funding obligations pursuant to Article VIII of the Indenture, and (D) otherwise be in form and substance acceptable to the TIFIA Lender.

(xiii) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender that the Borrower is authorized, pursuant to the I-81 Program Bond Act to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) recorded or filed, or caused to be recorded or filed, for record in such manner and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents or required by applicable law, and (C) paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing.

(xiv) The Borrower shall have paid in full all invoices delivered by the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) to the Borrower as of the Effective Date for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof.

(xv) The Borrower shall have (A) provided evidence satisfactory to the TIFIA Lender of the Borrower Related Parties' compliance with NEPA, and (B) complied,

and caused VDOT to comply, with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and shall have provided evidence satisfactory to the TIFIA Lender of the Borrower Related Parties' compliance upon request by the TIFIA Lender.

(xvi) The TIFIA Lender shall have delivered its initial TIFIA Lender's Authorized Representative certificate.

(xvii) The Borrower shall have (A) obtained a Federal Employer Identification Number, (B) obtained a Data Universal Numbering System or Unique Entity Identifier number, as appropriate, and (C) registered with, and obtained confirmation as of the Effective Date of active registration status with no active exclusions listed in such registration from, the federal System for Award Management (www.SAM.gov).

(xviii) The Borrower shall have (1) provided a certificate, in form and substance satisfactory to the TIFIA Lender and signed by the Borrower's Authorized Representative, certifying that the insurance required pursuant to Section 15(f) (Insurance) is in full force and effect and that such insurance complies with the requirements thereof and (2) certificates of insurance evidencing that the Construction-Related Contract Parties have in effect as of the Effective Date insurance with respect to the Project that meet the requirements of Section 15(f) (Insurance) that are allocated to such Construction-Related Contract Parties under the applicable Construction-Related Contracts.

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

(xx) The Borrower shall have provided the TIFIA Lender records of the Eligible Project Costs incurred prior to the Effective Date, in form and substance satisfactory to the TIFIA Lender and in sufficient time prior to the Effective Date to permit the TIFIA Lender and the FHWA Division Office to review such costs.

(xxi) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true and correct, as of the Effective Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(xxii) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the Effective Date, (A) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed forty-nine percent (49%) of reasonably anticipated Eligible Project Costs and (B) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

(xxiii) The Borrower shall have delivered to the TIFIA Lender a duly executed certificate from the Trustee in the form attached hereto as **Exhibit J**.

(xxiv) The Borrower shall have provided a certificate from the Borrower's Authorized Representative as to the prohibition on the use of appropriated funds for lobbying substantially in the form attached hereto as **Exhibit N** in accordance with 49 CFR §20.100(b).

(xxv) The Borrower shall have delivered such other agreements, documents, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender, including evidence that all other Project funding requirements have been met (including evidence of other funding sources or funding commitments and evidence of the closing of the Existing Indebtedness).

(b) Conditions Precedent to All Disbursements. Notwithstanding anything in this Agreement to the contrary, the TIFIA Lender shall have no obligation to make any disbursement of loan proceeds to the Borrower (including the initial disbursement hereunder) until each of the following conditions precedent has been satisfied or waived in writing by the TIFIA Lender:

(i) With respect to any disbursement occurring sixty (60) days or more after the Effective Date, the Borrower shall have provided the Financial Plan, or the most recent update thereto, in each case in accordance with Section 21(a) (*Financial Plan, Statements, and Annual Certificates*).

(ii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have delivered to the TIFIA Lender certified, complete and fully executed copies of any Related Documents entered into after the Effective Date.

(iii) To the extent not previously delivered to the TIFIA Lender, the Borrower shall have provided certified copies of all Fundamental Contracts and all Construction-Related Contracts, including, in each case, any amendment, modification or

supplement thereto and related performance security instrument entered into after the Effective Date.

(iv) The Borrower shall have demonstrated to the TIFIA Lender's satisfaction that all Governmental Approvals necessary as of the time of the applicable disbursement for the development, construction, operation and maintenance of the Project have been issued and are in full force and effect.

(v) The Borrower shall have provided to the TIFIA Lender any letters of self-insurance maintained by the Borrower and a certificate, executed by the Borrower's Authorized Representative, certifying that Borrower's self-insurance program is actuarially sound.

(vi) At the time of, and immediately after giving effect to, any disbursement of TIFIA Loan proceeds then currently requested, (A) no Default or Event of Default hereunder and no event of default (howsoever described or designated) under any other Related Document shall have occurred and be continuing, and (B) no event or condition that, with the giving of notice, the passage of time, or both, would constitute an event of default (howsoever described or designated) of the Borrower under any other Related Document, in each case, shall have occurred and be continuing.

(vii) The representations and warranties of the Borrower set forth in this Agreement (including Section 13 (*Representations and Warranties of Borrower*)) and in each other Related Document shall be true, correct, and complete as of each date on which any disbursement of the TIFIA Loan is made, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).

(viii) No Material Adverse Effect, or any event or condition that could reasonably be expected to result in a Material Adverse Effect, shall have occurred and be continuing since the date the Borrower submitted the Application to the TIFIA Lender.

(ix) The Borrower shall have delivered to the TIFIA Lender a Requisition that complies with the provisions of Section 4 (*Disbursement Conditions*), and such Requisition has not been expressly denied by the TIFIA Lender.

(x) The Borrower shall have paid in full all invoices received from the TIFIA Lender (or by advisors to the TIFIA Lender that have direct billing arrangements with the Borrower) as of the date of disbursement of the TIFIA Loan, for the reasonable fees and expenses of the TIFIA Lender's counsel and advisors and any auditors or other consultants employed by the TIFIA Lender for the purposes hereof (such reasonableness to be determined in accordance with Part 31 of the Federal Acquisition Regulation).

(xi) To the extent not previously delivered to the TIFIA Lender, the Borrower shall provide all certified, completed and fully executed copies of each performance security instrument delivered to or by either Borrower Related Party pursuant to any Construction-Related Contract as of the date of disbursement of the TIFIA Loan, each of which performance security instruments shall be (A) in compliance with the

requirements for such performance security pursuant to the applicable Construction-Related Contract, and (B) in full force and effect.

(xii) The Borrower shall have provided the TIFIA Lender with evidence satisfactory to the TIFIA Lender that, as of the date of disbursement of the TIFIA Loan, as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

(xiii) The Borrower shall have delivered such other agreements, documents, certificates, instruments, opinions and other items required by the TIFIA Lender, all in form and substance satisfactory to the TIFIA Lender.

Section 13. Representations and Warranties of Borrower. The Borrower hereby represents and warrants that, as of the Effective Date and, as to each of the representations and warranties below other than those contained in Section 13(b) (Officer's Authorization) and Section 13(k) (Credit Ratings), as of each date on which any disbursement of the TIFIA Loan is requested or made:

(a) Organization; Power and Authority. The Borrower is a board created and existing under the laws of the Commonwealth of Virginia, has full legal right, power and authority to enter into the Related Documents then in existence to which it is a party, to execute and deliver the TIFIA Bond, and to carry out and consummate all transactions contemplated hereby and thereby and has duly authorized the execution, delivery and performance of the Related Documents.

(b) Officers' Authorization. As of the Effective Date, the officers of the Borrower executing (or that previously executed) the Related Documents, and any certifications or instruments related thereto, to which the Borrower is a party are (or were at the time of such execution) duly and properly in office and fully authorized to execute the same.

(c) Due Execution; Enforceability. Each of the Related Documents in effect as of any date on which this representation and warranty is made, and to which the Borrower is a party, has been duly authorized, executed and delivered by the Borrower and constitutes the legal, valid and binding agreement of the Borrower enforceable in accordance with its terms, except as such enforceability (i) may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally, and (ii) is subject to general principles of equity (regardless of whether enforceability is considered in equity or at law).

(d) Non-Contravention. The execution and delivery of the Related Documents to which the Borrower is a party, the consummation of the transactions contemplated in the Related Documents and the fulfillment of or compliance with the terms and conditions of the Related Documents will not (i) conflict with the Borrower's Organizational Documents, (ii) conflict in any material respect with, or constitute a violation, breach or default (whether immediately or after notice or the passage of time or both) by the Borrower of or under, any applicable law, administrative rule or regulation, any applicable court or administrative decree or

order, or any indenture, mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties or assets are otherwise subject or bound, or (iii) result in the creation or imposition of any Lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, other than the Liens granted pursuant to the Indenture Documents.

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

(f) Litigation. As of the Effective Date, [except as set forth in **Schedule 13(f)**]¹⁵ there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation, in any case before or by any court or other Governmental Authority pending or, to the knowledge of the Borrower, threatened against or affecting the Project or the ability of the Borrower to execute, deliver and perform its obligations under the Related Documents. As of the Effective Date and as of each other date on which the representations and warranties herein are made or confirmed, there is no action, suit, proceeding or, to the knowledge of the Borrower, any inquiry or investigation before or by any court or other Governmental Authority pending, or to the knowledge of the Borrower, threatened against or affecting the Project, the Borrower or the assets, properties or operations of the Borrower, that in any case could reasonably be expected to result in a Material Adverse Effect. To the Borrower's knowledge, there are no actions of the type described above pending, threatened against, or affecting any of the Fundamental Contract Parties except for matters arising after the Effective Date that could not reasonably be expected to (i) result in a Material Adverse Effect or (ii) adversely affect the Borrower's ability to receive Pledged Revenues in amounts sufficient to meet the financial projections contained in the Base Case Financial Model (or, as applicable, the most recent Revised Financial Model). The Borrower is not in default (and no event has occurred and is continuing that, with the giving of notice or the passage of time or both, could constitute a default) with respect to any Governmental Approval, which default could reasonably be expected to result in a Material Adverse Effect.

(g) Security Interests. In accordance with Section 2.2-4902.1 of the Code of Virginia of 1950, the Indenture Documents and the I-81 Program Bond Act, establish, in favor of the Trustee for the benefit of the TIFIA Lender, valid, binding and enforceable Liens on the Trust Estate that they purport to create, irrespective of whether any Person has notice of the pledge and without the need for any physical delivery, recordation, filing, or further act. Such Liens are in full force and effect and are not subordinate or junior to any other Liens in respect of the Trust Estate, and not *pari passu* with any obligations other than the Senior Obligations. The Borrower has duly and lawfully taken all actions required under this Agreement, the Indenture Documents

¹⁵ **Note to Borrower**: Please advise whether the AG's office confirmed there are no disclosures.

or applicable laws for the pledge of the Trust Estate pursuant to and in accordance with the Indenture Documents. The Borrower is not in breach of any covenants set forth in Section 15(a) (Securing Liens) or in the Indenture Documents with respect to the matters described in such section or documents. As of the Effective Date and as of each other date this representation and warranty is made, (i) all documents and instruments have been recorded or filed for record in such manner and in such places as are required and all other action as is necessary or desirable has been taken to establish a legal, valid, binding, and enforceable Lien on the Trust Estate in favor of the Trustee (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents, and (ii) all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing, have been paid. Neither the attachment, perfection, validity, enforceability or priority of the security interest in the Trust Estate granted pursuant to the Indenture Documents is governed by Article 9 of the UCC.

(h) No Debarment. The Borrower has fully complied with its verification obligations under 2 CFR § 180.320 and confirms that, to its knowledge, neither the Borrower nor any of its principals (as defined in 2 CFR § 180.995) is debarred, suspended or voluntarily excluded from participation in Federal Government contracts, procurement or non-procurement matters or delinquent on a Federal Government debt as more fully set forth in the certificate delivered pursuant to Section 12(a)(iv) (Conditions Precedent to Effectiveness). Further, the Borrower has fully complied with 2 CFR Part 180, including Subpart C, in particular §§ 180.300 and 180.330, and with 2 CFR § 1200.332, with respect to VDOT in connection with the Construction-Related Contracts. The Borrower is not aware of any non-compliance by any of its contractors or subcontractors with the applicable requirements of 2 CFR Part 180.

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

(j) Transportation Improvement Program. The Project has been included in (i) the I-81 Corridor Improvement Program, (ii) the State transportation plan, and (iii) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135 and 23 U.S.C. § 602(a)(3), as applicable. The financial plan for each such program or plan reflects the costs of, and the sources of funding for, the Project.

(k) Credit Ratings. Each of the Senior Obligations and the TIFIA Loan has received an Investment Grade Rating from at least two (2) Rating Agencies, and written evidence of such ratings has been provided to the TIFIA Lender prior to the Effective Date, and no such rating has been reduced, withdrawn or suspended as of the Effective Date.

(l) No Defaults. No Default or Event of Default, and no event of default (howsoever described or designated) of the Borrower under any Related Document has occurred and is continuing.

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

(n) Fundamental Contracts; Construction-Related Contracts. Each Fundamental Contract and Construction-Related Contract in effect as of any date on which this representation and warranty is made is in full force and effect and all conditions precedent to the obligations of the respective parties under each Fundamental Contract and each Construction-Related Contract have been satisfied. The Borrower has delivered to the TIFIA Lender a fully executed, complete, and correct copy of each such Fundamental Contract and Construction-Related Contract, including, in each case, all exhibits, schedules and other attachments) that is in effect, including any amendments or modifications thereto and any related Liquidity Facilities or side letters. No event has occurred that gives the Borrower or, to either Borrower Related Party's knowledge, VDOT, any Fundamental Contract Party or any Construction-Related Contract Party the right to terminate such Fundamental Contract or Construction-Related Contract, as applicable. No Borrower Related Party is in breach of, or in default under, any Fundamental Contract or Construction-Related Contract, and, to the knowledge of the Borrower, no Fundamental Contract Party or Construction-Related Contract Party is in breach of, or in default under, such Fundamental Contract or any material term of such Construction-Related Contract, as applicable.

(o) Information. The information furnished by the Borrower to the TIFIA Lender, when taken as a whole, does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements contained therein not misleading as of the date made or furnished; provided that no representation or warranty is made with regard to projections or other forward-looking statements provided by or on behalf of the Borrower (including the Base Case Financial Model, any Revised Financial Model, and the assumptions therein) except that the assumptions in the Base Case Financial Model and any Revised Financial Model were reasonable in all material respects when made.

(p) OFAC; Anti-Corruption Laws.

(i) None of the Borrower, VDOT nor, to the knowledge of the Borrower, any Fundamental Contract Party or Construction-Related Contract Party is a Sanctioned Person.

(ii) None of the Borrower, VDOT nor, to the knowledge of the Borrower, any Fundamental Contract Party or Construction-Related Contract Party is in violation of or, since the date that is five (5) years prior to the Effective Date, has violated: (A) any applicable Anti-Money Laundering Laws; (B) any applicable Sanctions; (C) any applicable Anti-Corruption Laws; or (D) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal.

(iii) There are no pending or, to the knowledge of the Borrower, threatened claims or investigations by any Governmental Authority against, or any internal

investigations conducted by, the Borrower or any Fundamental Contract Party or Construction-Related Contract Party, with respect to any possible or alleged violations of any applicable Sanctions, Anti-Money Laundering Laws, Anti-Corruption Laws, or any applicable anti-drug trafficking or anti-terrorism laws.

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

(q) Compliance with Law. Each Borrower Related Party is in compliance in all material respects with, and has conducted (or caused to be conducted) its business and government functions and the business and operations of the Project in compliance in all material respects with, all applicable laws (other than Environmental Laws, which are addressed in Section 13(r) (*Environmental Matters*)), including those set forth on **Exhibit E**, to the extent applicable. To the Borrower's knowledge, each Fundamental Contract Party or Construction-Related Contract Party is, and has caused its respective contractors and subcontractors to be, in compliance in all material respects with all applicable laws, including those set forth on **Exhibit E**, to the extent applicable. No notices of violation of any applicable law have been issued, entered or received by either Borrower Related Party or, to the Borrower's knowledge, any Fundamental Contract Party or (solely in respect of the Project) or any Construction-Related Contract Party, other than, in each case, notices of violations that are immaterial.

(r) Environmental Matters.

(i) Each Borrower Related Party and, to the Borrower's knowledge, VDOT, each Fundamental Contract Party and each Construction-Related Contract Party is in compliance with all laws applicable to the Project relating to (i) air emissions, (ii) discharges to surface water or ground water, (iii) noise emissions, (iv) solid or liquid waste disposal, (v) the use, generation, storage, transportation or disposal of toxic or hazardous substances or wastes, (vi) biological resources (such as threatened and endangered species), and (vii) other environmental, health or safety matters, including all laws applicable to the Project referenced in the notice "Federal Environmental Statutes, Regulations, and Executive Orders Applicable to the Development and Review of Transportation Infrastructure Projects," 79 Fed. Reg. 22756 (April 23, 2014) (or any successor Federal Register notice of similar import), which document is available at <http://www.transportation.gov/policy/transportation-policy/environment/laws> ("**Environmental Laws**").

(ii) All Governmental Approvals for the Project relating to Environmental Laws have been, or, when required, will be, obtained and are (or, as applicable, will be) in full force and effect. Neither Borrower Related Party has received any written communication or notice, whether from a Governmental Authority, employee, citizens group, or any other Person, that alleges that a Borrower Related Party or Construction-Related Contract Party is not in full compliance with all Environmental Laws and Governmental Approvals relating thereto in connection with the Project and, to the Borrower's knowledge, there are no circumstances that may prevent or interfere with full

compliance in the future by a Borrower Related Party or a Construction-Related Contract Party with any such Environmental Law or Governmental Approval.

(iii) The Borrower has provided to the TIFIA Lender all material assessments, reports, results of investigations or audits, and other material information in the possession of or reasonably available to either Borrower Related Party regarding the Borrower's, VDOT's or the Project's compliance with (A) Environmental Laws, and (B) Governmental Approvals relating to Environmental Laws that are required for the Project.

(s) Insurance. The Borrower is in compliance with all insurance obligations as required under each Related Document as of the date on which this representation and warranty is made. To the extent the Borrower self-insures, the Borrower's self-insurance program is actuarially sound.

(t) No Liens. Except for the Liens in favor of the Senior Obligations, Intermediate Lien Obligations and Subordinate Obligations, the Borrower has not created, and is not under any obligation to create, and has not entered into any transaction or agreement that would result in the imposition of, any Lien on the Trust Estate, the Project, the Pledged Revenues, or the properties or assets in relation to the Project.

(u) Intellectual Property. To the Borrower's knowledge, VDOT owns, or has adequate licenses or other valid rights to use, all patents, trademarks, service marks, trade names, copyrights, franchises, formulas, licenses and other rights with respect thereto and has obtained assignment of all licenses and other rights of whatsoever nature, in each case necessary for the Project and the operation of its business. To the Borrower's knowledge, there exists no conflict with the rights or title of any third party with respect to the intellectual property described in the preceding sentence. Excluding the use of commercially available "off-the-shelf" software, to the Borrower's knowledge, no product, process, method, substance, part or other material produced or employed or presently contemplated to be produced by or employed by the Project infringes or will infringe any patent, trademark, service mark, trade name, copyright, franchise, formula, license or other intellectual property right of any third party.

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

(w) Financial Statements. Each income statement, balance sheet, and statement of operations and cash flows (collectively, "**Financial Statements**") delivered to the TIFIA Lender pursuant to Section 21(c) (*Financial Statements*) has been prepared in accordance with GAAP and presents fairly, in all material respects, the financial condition of the Borrower and the I-81 Fund as of the respective dates of the balance sheets included therein and the results of operations of the Borrower and the I-81 Fund for the respective periods covered by the statements of income included therein. Except as reflected in such Financial Statements, there

are no liabilities or obligations of the Borrower of any nature whatsoever for the period to which such Financial Statements relate that are required to be disclosed in accordance with GAAP.

(x) Taxes. The Borrower is not required to file tax returns with any Governmental Authority.

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

(z) Sufficient Funds. The aggregate of (i) all funds that are undrawn but fully and completely committed under the Indenture Documents, the Fundamental Contracts and this Agreement, (ii) all delay payments and insurance proceeds in respect of any casualty loss (other than any proceeds of business interruption insurance, delay-in-start-up insurance and proceeds covering liability of the Borrower to third parties) received by the Borrower or to which the Borrower is entitled in accordance with the applicable insurance policies, Fundamental Contracts and Construction-Related Contracts, and (iii) all funds available under any other unused funding that is committed and available, will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule (and in any event on or prior to the Projected Substantial Completion Date).

(aa) Sovereign Immunity. Neither Borrower Related Party has immunity from the jurisdiction of any court of competent jurisdiction or from any legal process therein that could be asserted in any breach of contract action to enforce the obligations of a Borrower Related Party under any of the Related Documents to which it is a party or the transactions contemplated hereby or thereby, including the obligations of the Borrower hereunder and thereunder.

(bb) Patriot Act. Neither the Borrower nor VDOT is required to establish an anti-money laundering compliance program pursuant to the Patriot Act.

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

Section 14. Representations and Warranties of TIFIA Lender. The TIFIA Lender hereby makes the following representations and warranties as of the Effective Date:

(a) Power and Authority. The TIFIA Lender has all requisite power and authority to make the TIFIA Loan and to perform all transactions contemplated by the Related Documents to which it is a party.

(b) Due Execution; Enforceability. The Related Documents to which it is a party have been duly authorized, executed and delivered by the TIFIA Lender, and are legally valid and binding agreements of the TIFIA Lender, enforceable in accordance with their terms.

(c) Officers' Authorization. The officers of the TIFIA Lender executing each of the Related Documents to which the TIFIA Lender is a party are duly and properly in office and fully authorized to execute the same on behalf of the TIFIA Lender.

Section 15. Affirmative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Securing Liens. The Borrower shall at any and all times, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances as may be necessary or desirable in connection with assuring, conveying, granting, assigning, securing and confirming the Liens in and to the Trust Estate (whether now existing or hereafter arising) granted to the Trustee for the benefit of the TIFIA Lender pursuant to the Indenture Documents, or intended so to be granted pursuant to the Indenture Documents, or which the Borrower may become bound to grant, and the Borrower shall at all times maintain the Trust Estate free and clear of any pledge, Lien, charge or encumbrance thereon or with respect thereto that has priority over, or equal rank with, the Liens created by the Indenture Documents, other than as permitted by this Agreement, and all organizational, regulatory or other necessary action on the part of the Borrower to that end shall be duly and validly taken whenever required. The Borrower shall at all times, to the extent permitted by law, defend, preserve and protect the Liens on the Trust Estate granted pursuant to the Indenture Documents and all the rights of the Trustee for the benefit of the TIFIA Lender under the Indenture Documents against all claims and demands of all Persons whomsoever, subject to the Liens securing the Senior Obligations, Intermediate Lien Obligations and Subordinate Obligations.

(b) Copies of Documents.

(i) The Borrower shall furnish to the TIFIA Lender a copy of any draft documents and final offering documents (including any Indenture Documents) and cash flow projections prepared in connection with the incurrence of any Permitted Debt or any indebtedness subject to approval by the TIFIA Lender pursuant to Section 16(a) (Indebtedness), in each case at least twenty (20) days prior to the incurrence of any such Permitted Debt or such other indebtedness requiring TIFIA Lender approval, as well as copies of any continuing disclosure documents, prepared by or on behalf of the Borrower in connection with the incurrence of such Permitted Debt or such other indebtedness requiring TIFIA Lender approval, in each case promptly following the preparation or filing thereof. Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender copies of fully executed or final versions of such documentation within ten (10) days following execution or completion thereof.

(ii) The Borrower shall provide to the TIFIA Lender, promptly after the sending or receipt thereof, copies of (A) final ratings presentations sent to, and any notices, reports or other written materials (other than those that are ministerial in nature) received from, any Rating Agency that has provided, or is being requested to provide, a rating with

respect to the Project or any indebtedness of the Borrower that is or will be secured by or paid from the Trust Estate or any portion thereof, including the Pledged Revenues, (B) all notices and other written communications received by the Borrower from the Trustee or any Bondholder, (C) all reports, notices and other written materials required to be sent to the Trustee or any Bondholder under the Indenture Documents, and (D) all notices delivered by or to the Borrower relating to any of the Fundamental Contracts; unless, in each case, the TIFIA Lender notifies the Borrower in writing that any such reports, notices and/or other written materials no longer need to be provided.

(iii) Except as otherwise agreed by the TIFIA Lender in writing, the Borrower will provide to the TIFIA Lender (A) copies of any proposed amendments, modifications, replacements of, or supplements to any Related Document (other than proposed amendments, modifications, replacements or supplements that are ministerial in nature and do not change any substantive provision of such Related Document) at least thirty (30) days prior to the effective date thereof, and (B) complete, correct and fully executed copies of any amendment, modification or supplement to, or replacement of, any Related Document within five (5) Business Days after execution thereof.

(iv) If the Borrower enters into a Fundamental Contract or a Construction-Related Contract after the Effective Date, the Borrower shall provide to the TIFIA Lender any executed copy of such Fundamental Contract or Construction-Related Contract, together with any related performance security instruments, contracts, side letters or other understandings, promptly following the full execution thereof.

(c) Use of Proceeds. The Borrower shall use the proceeds of the TIFIA Loan for purposes permitted by applicable law and as otherwise permitted under this Agreement and the other Related Documents. In no event shall the Borrower use the proceeds of the TIFIA Loan for any purpose prohibited under 45 U.S.C. § 822(b)(2).

(d) Prosecution of Work; Verification Requirements.

(i) The Borrower Related Parties shall diligently prosecute the work relating to the Project and complete the Project in accordance with the Construction Schedule, and in accordance with the highest standards of their industry.

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

(e) Operations and Maintenance. The Borrower Related Parties shall (i) operate and maintain the Project (A) in a reasonable and prudent manner and (B) substantially in accordance with its regulations, standards and guidelines and those of the FHWA, and (ii) maintain the Project in good repair, working order and condition, and in accordance with the requirements of all applicable laws and each applicable Related Document.

(f) Insurance.

(i) The Borrower shall at all times maintain insurance or provide self-insurance in amounts and with coverages as are customarily maintained in the United States

of America by entities similar to the Borrower, or as is required under any Fundamental Contract, Construction-Related Contract or applicable law. During the construction of the Project, the Borrower shall maintain or cause to be maintained appropriate casualty and liability insurance covering the Borrower and the Project, including a builders all-risk policy and pollution and other environmental liability and remediation related coverage. The Borrower shall cause each Construction-Related Contract Party to obtain and maintain casualty and liability insurance in accordance with the requirements of the applicable Construction-Related Contract.

(ii) The Borrower shall cause all liability insurance policies that it maintains, other than workers' compensation insurance, to reflect the TIFIA Lender as an additional insured.

(iii) If an Event of Loss shall occur with respect to the Project or any part thereof, the Borrower shall (A) diligently pursue all of its rights to compensation against all relevant insurers, reinsurers and Governmental Authorities, as applicable, in respect of such event and (B) pay or apply all loss proceeds stemming from such event to rebuild, repair or replace the Project in accordance with all applicable laws and within a reasonable time period; provided, however, that loss proceeds must in any event be applied in accordance with all applicable federal disposition rules, including those set forth in 2 CFR Part 200.

(g) Notices.

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

(A) Substantial Completion: the occurrence of Substantial Completion, such notice to be provided in the form set forth in **Exhibit L**;

(B) Defaults; Events of Default: the occurrence of any Default or Event of Default;

(C) Fundamental Contract / Construction-Related Contract Defaults: any default or event of default on the part of the Borrower or any other party under any Fundamental Contract or any Construction-Related Contract.

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

that are payable from the Trust Estate, the I-81 Fund or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage);

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

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

(G) Uncontrollable Force: the occurrence of any Uncontrollable Force that could reasonably be expected to result in a Material Adverse Effect;

(H) Project Changes: any (1) change to the Total Project Costs forecasts in excess of ten percent (10%) of total forecasted Total Project Costs, together (in the case of increased costs) with a written description of the committed funding sources available to the Borrower to pay for such increased Total Project Costs, (2) proposed change to the Projected Substantial Completion Date, together with an explanation of the reasons for such proposed adjustment, and (3) material change to the Construction Schedule, together with a proposed revised Construction Schedule;

(I) Ratings Changes: any change in the rating assigned to the Senior Obligations, the TIFIA Loan or any Subordinate Obligations by any Rating Agency that has provided a rating on such indebtedness, the Borrower, or the Pledged Revenues;

(J) 2 CFR Notices: (1) any of the information set forth in the certificate provided pursuant to Section 12(a)(iv) (*Conditions Precedent to Effectiveness*) was incorrect at the time the certificate was delivered or there has been a change in status of the Borrower or any of its principals with respect to the criteria set forth in 2 CFR § 180.335; (2) any other notification required pursuant to 2 CFR § 180.350; and (3) any violation of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the TIFIA Loan as described in 2 CFR § 200.113, and the Borrower shall require VDOT, the Construction-Related Contract Parties and each of their subcontractors for the Project to provide it notice of any such violation, which notice shall be promptly provided by the Borrower to the TIFIA Lender;

(K) Appropriations: if the appropriation of the Revenues to the I-81 Fund (1) was not included in each biennial budget or any supplemental budget that is presented to the General Assembly, and/or (2) if the General Assembly failed to appropriate for the next State fiscal biennium;

(L) Material Events: the filing of (together with a copy of) any notice to the Municipal Securities Rulemaking Board of any of the events described in clause (b)(5)(i)(C) of Rule 15c2-12 of the U.S. Securities and Exchange Commission (or any similar rule) with respect to obligations issued under the Indenture or and any other obligations that are secured by, or on which payments are expected to be made from, the I-81 Fund; and

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

(ii) The Borrower shall provide the TIFIA Lender with any further information reasonably requested by the TIFIA Lender from time to time concerning the matters described in Section 15(g)(i) (Notices).

(h) Remedial Action. Within thirty (30) calendar days after the Borrower learns of the occurrence of an event specified in Section 15(g)(i) (Notices) (other than in Section 15(g)(i)(A) (Substantial Completion) or Section 15(g)(i)(I) (Ratings Changes) (in the case of a ratings upgrade)), the Borrower's Authorized Representative shall provide a statement to the TIFIA Lender setting forth the actions the Borrower proposes to take with respect thereto.

(i) Maintain Legal Structure. The Borrower shall maintain its existence as a board created and existing under the laws of the State. The Borrower shall at all times do or cause to be done all things necessary to obtain, preserve, renew, extend and keep in full force and effect the Governmental Approvals and any other rights, licenses, franchises, and authorizations material to the conduct of its business, including implementation of the Project.

(j) Annual Rating. The Borrower shall, commencing in 2023, no later than the last Business Day of June of each year during the term of the TIFIA Bond, at no cost to the TIFIA Lender, provide to the TIFIA Lender a public rating on the TIFIA Bond and any other Bonds outstanding by a Rating Agency, together with the rating report or letter delivered by such Rating Agency in connection with each such rating, if any, in each case prepared no earlier than June 1 of such year.

(k) Project Funds; Permitted Investments.

(i) Amounts on deposit in the Project Funds shall be held uninvested or invested in Permitted Investments. Permitted Investments must mature or be redeemable at the election of the holder as follows: (A) with respect to Permitted Investments maintained in the TIFIA Debt Service Fund, not later than the next Payment Date, and (B) with respect to any other Project Funds, on or prior to the date on which the funds invested in such Permitted Investments are reasonably expected to be needed for any payment from the applicable Project Fund. The Borrower shall, promptly but in any event within five (5)

days, liquidate any investment that was, but no longer is, a Permitted Investment and shall invest the proceeds of such investment solely into one or more Permitted Investments.

(ii) The Borrower may replace all or a portion of the required balance of any Reserve Account, in accordance with the terms of the applicable Indenture Documents, with a letter of credit or surety instrument issued by a Qualified Issuer and that constitutes Permitted Debt. If at any time an issuer of such letter of credit or surety instrument securing a Reserve Account ceases to be a Qualified Issuer, the Borrower shall cause such letter of credit or surety instrument to be replaced by a new letter of credit or surety instrument issued by a Qualified Issuer within thirty (30) calendar days of the date on which the current issuer ceased to be a Qualified Issuer, or the Trustee shall be permitted to immediately draw the full amount of such letter of credit or surety instrument and deposit the proceeds of such drawing into the applicable Reserve Account. Any new letter of credit or surety instrument shall have the same terms and conditions (including expiration date and face amount) as the letter of credit or surety instrument being replaced, or such other terms and conditions as may be satisfactory to the TIFIA Lender. If any letter of credit or surety instrument securing a Reserve Account is scheduled to expire prior to the Final Maturity Date, the Borrower shall replace such letter of credit or surety instrument with a new letter of credit or surety instrument issued by a Qualified Issuer at least ten (10) Business Days prior to the stated expiry date of the existing letter of credit or surety instrument and such new letter of credit or surety instrument shall be in an amount equal to at least the amount of expiring letter of credit or surety instrument. If the Borrower fails to provide such new letter of credit or surety instrument by the date required above, the Trustee shall (and the TIFIA Lender shall have the right to direct the Trustee to) immediately draw the full undrawn amount of the existing letter of credit or surety instrument and deposit the proceeds of such drawing into the applicable Reserve Account.

(l) Material Obligations; Liens. The Borrower shall pay its material obligations promptly and in accordance with their terms and pay and discharge promptly all taxes, assessments, and governmental charges or levies imposed upon it or upon the Trust Estate or any portion thereof, including the Pledged Revenues, or the Borrower's other income or profits or in respect of its property, before the same shall become delinquent or in default, as well as all lawful and material claims for labor, materials and supplies or other claims that, if unpaid might give rise to a Lien upon the Project or any part thereof or on the Trust Estate or any portion thereof, including the Pledged Revenues; provided, however, that such payment and discharge shall not be required with respect to any such tax, assessment, charge, levy, claim or Lien so long as the validity or amount thereof shall be contested by the Borrower in good faith by appropriate proceedings and so long as the Borrower shall have set aside adequate reserves with respect thereto in accordance with and to the extent required by GAAP, applied on a consistent basis.

(m) Hedging.

(i) As a condition to the issuance of any Senior Obligations or Intermediate Lien Obligations that bear interest at a Variable Interest Rate, the Borrower shall enter into a Qualified Hedge with respect to such Senior Obligations or Intermediate Lien Obligations and shall maintain such Qualified Hedge in place until the earlier to occur of (i) the maturity date of any such Senior Obligations or Intermediate Lien Obligations

and (ii) the Final Maturity Date. Each Qualified Hedge must have an aggregate stated notional amount of not less than (A) during the Construction Period, at least ninety percent (90%) and not more than one hundred ten percent (110%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding during such time period and (B) at all other times, at least ninety-eight percent (98%) and not more than one hundred two percent (102%) of the aggregate principal amount of the Variable Interest Rate Obligations projected to be outstanding until the maturity of such Variable Interest Rate Obligations. Any such Qualified Hedge shall have a payment profile that is reasonably consistent with the expected draw and repayment schedule of the applicable Variable Interest Rate Obligations subject to such Qualified Hedge. Such Qualified Hedge shall have a stated maturity or termination date not earlier than the earlier to occur of (x) the Final Maturity Date and (y) the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge.

(ii) Each Qualified Hedge shall provide for a fixed interest rate resulting in fixed payment amounts payable by the Borrower to the Qualified Hedge Provider. The Borrower's obligations to pay Hedging Obligations and Hedging Termination Obligations shall be from the sources and in the priority specified in the Indenture Documents. The Borrower shall ensure that, as of the day following the termination date of any Qualified Hedge that for any reason terminates before the final maturity date of the Variable Interest Rate Obligations subject to such Qualified Hedge, (A) a Subsequent Qualified Hedge (as defined below) is in full force and effect or (B) the Variable Interest Rate Obligations have been converted to a fixed rate, in each case in accordance with this Agreement and the Indenture Documents.

(iii) Any Hedging Transaction entered into subsequent to the initial Qualified Hedge (a "**Subsequent Qualified Hedge**") shall (A) be a Qualified Hedge, (B) commence no later than the termination date of the Qualified Hedge that is terminating and (C) terminate no earlier than the earlier to occur of (1) the Final Maturity Date and (2) the final maturity date of the Variable Interest Rate Obligations subject to such Subsequent Qualified Hedge. At the time the Subsequent Qualified Hedge is priced, the Borrower shall provide to the TIFIA Lender a certificate from a qualified third party acceptable to the TIFIA Lender to the effect that either the underlying fixed rate or the price of acquiring such Subsequent Qualified Hedge is a fair price based on the interest rate market at the time such Qualified Hedge is priced.

(iv) The Trustee shall be granted a security interest in each Qualified Hedge and payments due under each Qualified Hedge in order to secure the Borrower's obligations under the TIFIA Loan Documents. The Hedging Agreements shall provide that all payments due thereunder to the Borrower shall be made directly to the Trustee for deposit and disbursement in accordance with the Indenture Documents.

(v) The Borrower shall neither terminate (other than Permitted Hedging Terminations), transfer, nor consent to any transfer (other than to a Qualified Hedge Provider) of any existing Qualified Hedge without the TIFIA Lender's prior written consent as long as the Borrower is required to maintain a Qualified Hedge pursuant to this Agreement.

(vi) If at any time a Hedging Bank no longer satisfies the requirements for a Qualified Hedge Provider, the Borrower shall, within thirty (30) days (or such lesser number of days required by the applicable Hedging Agreement, including any credit support annex thereto) of the date on which such Hedging Bank failed to qualify as a Qualified Hedge Provider, either (A) cash collateralize the mark-to-market value of the Hedging Termination Obligations (in accordance with the credit support annex or similar requirements of the applicable Hedging Agreement) or provide a guarantee for such amount from an entity with an Acceptable Credit Rating, or (B) cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider, whether by means of a transfer of the disqualified Hedging Bank's Hedging Agreement to a Qualified Hedge Provider or by means of a termination of such disqualified Hedging Bank's Hedging Agreement and replacement thereof by a Hedging Agreement with a Qualified Hedge Provider on terms and conditions that satisfy the requirements of this Section 15(m) (Hedging); provided that if the disqualified Hedging Bank's highest credit rating from any Rating Agency is less than 'A-', 'A3' or the equivalent, clause (A) shall not apply and the Borrower shall be required to cause such disqualified Hedging Bank to be replaced by a Qualified Hedge Provider pursuant to clause (B).

(n) SAM Registration. The Borrower shall (i) maintain its active registration status with the federal System for Award Management (www.SAM.gov) (or any successor system or registry) and (ii) within sixty (60) days prior to each anniversary of the Effective Date, provide to the TIFIA Lender evidence of such active registration status with no active exclusions listed in such registration, in each case until the Final Maturity Date or to such earlier date as all amounts due or to become due to the TIFIA Lender hereunder have been irrevocably paid in full in cash.

(o) Immunity. The Borrower agrees that it will not assert any immunity (and hereby confirms that it has no such immunity) it may have as a governmental entity from lawsuits, other actions and claims, and any judgments with respect to the enforcement of any of the contractual obligations of the Borrower under this Agreement or any other TIFIA Loan Document.

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

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

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

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

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

(s) Reporting Subawards and Executive Compensation. To the extent applicable, the Borrower shall comply, and shall require each subrecipient to comply, with the reporting requirements set forth in **Exhibit P** hereto.

(t) Buy America.

(i) The Borrower agrees that steel, iron, and manufactured products used in the Project are subject to 23 U.S.C. § 313, as implemented by the FHWA. The Borrower acknowledges that this Agreement is neither a waiver of 23 U.S.C. § 313(a) nor a finding under 23 U.S.C. § 313(b).

(ii) The Borrower agrees that construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021), as implemented by the Office of Management and Budget, USDOT, and FHWA. The Borrower acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

Section 16. Negative Covenants. The Borrower covenants and agrees as follows until the date the TIFIA Bond and the obligations of the Borrower under this Agreement (other than contingent indemnity obligations) are irrevocably paid in full in cash and the TIFIA Lender no longer has any commitment to make disbursements to the Borrower, unless the TIFIA Lender waives compliance in writing:

(a) Indebtedness.

(i) Except for Additional Obligations that satisfy each of the applicable requirements, the Borrower shall not, without the prior written consent of the TIFIA Lender, issue or incur indebtedness under the Indenture; provided that the Borrower shall not incur any indebtedness of any kind payable from, secured or supported by the Trust Estate, including Additional Obligations, following the occurrence, and during the continuation, of an Event of Default.

(ii) The Borrower shall not issue Subordinate Obligations that bear interest at a Variable Interest Rate.

(iii) To the extent any obligations consist of Put Bonds, the Borrower must maintain a Liquidity Facility that will pay any amounts payable by the Borrower in respect of such Put Bonds.

(iv) Prior to the incurrence of Additional Obligations, the Borrower shall provide to the TIFIA Lender (1) a certificate signed by the Borrower's Authorized Representative, demonstrating to the TIFIA Lender's satisfaction that such proposed indebtedness is authorized pursuant to this Section 16(a) (Indebtedness) and satisfies the applicable requirements under the definitions of "Permitted Debt" and "Additional Obligations," as applicable, and (2) a copy of all certificates and reports provided to the Trustee in connection with such Additional Obligations in accordance with the requirements of the Indenture.

(b) No Lien Extinguishment; Adverse Amendments. The Borrower shall not, and shall not permit any Person to, without the prior written consent of the TIFIA Lender, (i) extinguish, impair, or transfer the Liens on the Trust Estate granted pursuant to the Indenture, (ii) terminate, assign, amend, modify, replace, or supplement any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan, or (iii) waive or permit a waiver of any provision of any Related Document in a manner that could adversely affect the TIFIA Lender (in the TIFIA Lender's determination) in connection with the TIFIA Loan.

(c) No Prohibited Liens. Except for the Liens granted pursuant to the Indenture Documents, the Borrower shall not create, incur, assume or permit to exist any Lien on the Trust Estate, the Pledged Revenues, or the Borrower's respective rights therein. The Borrower shall not collaterally assign any of its rights under or pursuant to any Fundamental Contract and shall not permit a Lien to encumber the Borrower's rights or privileges under any Fundamental Contract, except pursuant to the Indenture Documents in favor of the Trustee on behalf of the Secured Parties.

(d) No Prohibited Sale, Lease or Assignment. The Borrower shall not sell, lease, or assign its rights and obligations under any Related Document, unless such sale, lease or assignment (A) could not reasonably be expected to result in a Material Adverse Effect, and (B) is made by the Borrower in the ordinary course of business.

(e) Organizational Documents; Fiscal Year. The Borrower shall not at any time (i) amend or modify its Organizational Documents (other than any amendment or modification that is of a ministerial nature and that is not adverse to the interests of any Secured Party under the Indenture or in the Trust Estate) without the prior written consent of the TIFIA Lender, or (ii) adopt any fiscal year other than the Borrower Fiscal Year, except with thirty (30) days' prior written notice to the TIFIA Lender.

(f) Transactions with other Governmental Authorities. Except for the transactions expressly contemplated in the TIFIA Loan Documents, the Borrower shall not engage in any other transactions in connection with the Project with any other Governmental Authority (including any other Governmental Authority of or in the State), the terms and

provisions of which are materially adverse to the Borrower or the Project or that could reasonably be expected to result in a Material Adverse Effect.

(g) No Payment with Federal Funds. The Borrower shall not pay any portion of TIFIA Debt Service nor any other amount to the TIFIA Lender or to the Federal Government pursuant to the TIFIA Loan Documents with funds received directly or indirectly from the Federal Government; provided, however, that the Borrower may prepay the TIFIA Loan in whole or in part with the proceeds of a validly issued federal credit instrument pursuant to, and in accordance with, Section 10 (Prepayment).

(h) Acquisitions; Change in Legal Structure; Sale of Assets; Transactions with Third Parties. The Borrower shall not, and shall not agree to:

(i) acquire by purchase or otherwise the business, property or fixed assets of, or equity interests or other evidence of beneficial ownership interests in, any Person (excluding purchases or other acquisitions of inventory or materials or spare parts or Capital Expenditures, each in the ordinary course of business) to the extent such acquisition or purchase could reasonably be expected to have a Material Adverse Effect;

(ii) reorganize, consolidate with, or merge into another Person unless (A) such Person is a successor public entity or agency created by State law that succeeds to the assets of the Borrower and assumes the obligations of the Borrower hereunder and under the Related Documents to which the Borrower is a party, including payment of the TIFIA Bond, and such merger, consolidation, or reorganization does not adversely affect or impair to any extent or in any manner (1) the Pledged Revenues or other elements of the Trust Estate, or (2) the availability of the Pledged Revenues for the payment and security of the obligations of the Borrower under this Agreement and the other TIFIA Loan Documents; and (B) the Borrower provides to the TIFIA Lender, no later than sixty (60) days prior to the date of reorganization, consolidation or merger, prior written notice of such reorganization, consolidation or merger and the agreements and documents authorizing the reorganization, consolidation or merger, satisfactory in form and substance to the TIFIA Lender. The documents authorizing any reorganization, consolidation or merger shall contain a provision, satisfactory in form and substance to the TIFIA Lender, that, following such reorganization, consolidation or merger, the successor will assume, by operation of law or otherwise, the due and punctual performance and observance of all of the representations, warranties, covenants, agreements and conditions of this Agreement and the other Related Documents to which the Borrower is a party. In addition, the Borrower shall provide all information concerning such reorganization, consolidation or merger as shall have been reasonably requested by the TIFIA Lender;

(iii) sell, lease, or assign its rights in and to the Project or in and to a material portion of the assets constituting the Project, to the extent such sale, lease or assignment could reasonably be expected to have a Material Adverse Effect; or

(iv) otherwise engage in a transaction with any other Person (including any other Governmental Authority of or in the State) to the extent such transaction could reasonably be expected to have a Material Adverse Effect.

(i) No Defeasance of TIFIA Bond. The Borrower shall not defease the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture without the prior written consent of the TIFIA Lender.

(j) OFAC Compliance.

(i) The Borrower shall not:

(A) violate (1) any applicable Anti-Money Laundering Laws, (2) any applicable Sanctions, (3) any applicable Anti-Corruption Laws or (4) any applicable anti-drug trafficking or anti-terrorism laws, civil or criminal;

(B) use the proceeds of the TIFIA Loan for purposes other than those permitted by applicable law and as otherwise permitted under this Agreement, the other Related Documents and the Construction-Related Contracts; or

(C) make a payment, directly or indirectly, to any Fundamental Contract Party or Construction-Related Contract Party that (1) to the Borrower's knowledge, has violated any of the laws referenced in this Section 16(j)(i) (OFAC Compliance) or (2) is a Sanctioned Person.

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

(k) Hedging. Other than interest rate hedging transactions expressly permitted hereunder, the Borrower shall not enter into any swap or hedging transaction, including inflation indexed swap transactions, "cap" or "collar" transactions, futures, or any other hedging transaction without the prior written consent of the TIFIA Lender.

Section 17. Indemnification. To the extent permitted by law, the Borrower shall indemnify the TIFIA Lender and any official, employee, agent, advisor, or representative of the TIFIA Lender (each such Person being herein referred to as an "**Indemnitee**") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities, fines, penalties, costs and expenses (including the fees, charges and disbursements of any counsel for any Indemnitee and the costs of environmental remediation), whether known, unknown, contingent or otherwise, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (a) the execution, delivery and performance of this Agreement or any of the other Related Documents, (b) the TIFIA Loan or the use of the proceeds thereof, or (c) the violation of

any law, rule, regulation, order, decree, judgment or administrative decision relating to the environment, the preservation or reclamation of natural resources, the management, release or threatened release of any hazardous material or to health and safety matters; in each case arising out of or in direct relation to the Project; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, fines, penalties, costs or related expenses are determined by a court of competent jurisdiction by final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee. In case any action or proceeding is brought against an Indemnitee by reason of any claim with respect to which such Indemnitee is entitled to indemnification hereunder, the Borrower shall be entitled, at its expense, to participate in the defense thereof; provided that such Indemnitee has the right to retain its own counsel, at the Borrower's expense, and such participation by the Borrower in the defense thereof shall not release the Borrower of any liability that it may have to such Indemnitee. Any Indemnitee against whom any indemnity claim contemplated in this Section 17 (Indemnification) is made shall be entitled, after consultation with the Borrower and upon consultation with legal counsel wherein such Indemnitee is advised that such indemnity claim is meritorious, to compromise or settle any such indemnity claim. Any such compromise or settlement shall be binding upon the Borrower for purposes of this Section 17 (Indemnification). Nothing herein shall be construed as a waiver of any legal immunity that may be available to any Indemnitee. To the extent permitted by applicable law, neither the Borrower nor the TIFIA Lender shall assert, and each of the Borrower and the TIFIA Lender hereby waives, any claim against any Indemnitee or the Borrower, respectively, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any of the other Related Documents, the other transactions contemplated hereby and thereby, the TIFIA Loan or the use of the proceeds thereof, provided that nothing in this sentence shall limit the Borrower's indemnity obligations to the extent such damages are included in any third party claim in connection with which an Indemnitee is entitled to indemnification hereunder. All amounts due to any Indemnitee under this Section 17 (Indemnification) shall be payable promptly upon demand therefor. The obligations of the Borrower under this Section 17 (Indemnification) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other Related Documents, any amendments, waivers (other than amendments or waivers in writing with respect to this Section 17 (Indemnification)) or consents in respect hereof or thereof, any Event of Default, and any workout, restructuring or similar arrangement of the obligations of the Borrower hereunder or thereunder.

Section 18. Sale of TIFIA Loan. The TIFIA Lender shall not sell the TIFIA Loan at any time prior to the Substantial Completion Date. At any time after Substantial Completion, the TIFIA Lender may sell the TIFIA Loan to another entity or reoffer the TIFIA Loan into the capital markets only in accordance with the provisions of this Section 18 (Sale of TIFIA Loan). Any such sale or reoffering shall be on such terms as the TIFIA Lender shall deem acceptable in its sole discretion. However, in making such sale or reoffering the TIFIA Lender shall not change the terms and conditions of the TIFIA Loan without the prior written consent of the Borrower in accordance with Section 29 (Amendments and Waivers). The TIFIA Lender shall provide, at least thirty (30) days prior to any sale or reoffering of the TIFIA Loan, written notice to the Borrower of the TIFIA Lender's intention to consummate such a sale or reoffering; provided, however, that no such notice shall be required during the continuation of any Event of Default. The provision of any notice pursuant to this Section 18 (Sale of TIFIA Loan) shall not (x) obligate the TIFIA

Lender to sell nor (y) provide the Borrower with any rights or remedies in the event the TIFIA Lender, for any reason, does not sell the TIFIA Loan.

Section 19. Events of Default and Remedies.

(a) An “**Event of Default**” shall exist under this Agreement if any of the following occurs:

(i) Payment Default. The Borrower shall fail to pay any amount of principal of or interest on the TIFIA Loan (including TIFIA Debt Service required to have been paid pursuant to the provisions of Section 9 (*Payment of Principal and Interest*), and any mandatory prepayment required pursuant to the provisions of Section 10(a) (*Mandatory Prepayments*)), when due and payable (each such failure, a “**Payment Default**”).

(ii) Covenant Default. The Borrower shall fail to observe or perform any covenant, agreement or obligation of the Borrower under this Agreement (including any payment of fees or other amounts (other than principal and interest) payable hereunder), the TIFIA Bond or any other TIFIA Loan Document (other than in the case of any Payment Default or any Development Default), and such failure shall not be cured within thirty (30) days after the earlier to occur of (A) receipt by the Borrower from the TIFIA Lender of written notice thereof, (B) the Borrower’s knowledge of such failure, or (C) with respect to any non-payment of fees or amounts described above in this clause (ii), the date on which any such fees or amounts became due and payable; provided, however, that if such failure is capable of cure but cannot reasonably be cured within such thirty (30) day cure period, then no Event of Default shall be deemed to have occurred or be continuing under this Section 19(a)(ii) (*Covenant Default*), and such thirty (30) day cure period shall be extended by up to one hundred fifty (150) additional days, if and so long as (x) within such thirty (30) day cure period the Borrower shall commence actions reasonably designed to cure such failure and shall diligently pursue such actions until such failure is cured, and (y) such failure is cured within one hundred eighty (180) days of the date specified in either clause (A) or (B) above, as applicable; provided, further, that no extension of the thirty (30) day cure period shall be permitted for any failure to pay any fee or other amount (excluding principal and interest) payable hereunder.

(iii) Development Default. A Development Default shall occur.

(iv) Misrepresentation Default. Any of the representations, warranties or certifications of the Borrower made in or delivered pursuant to the TIFIA Loan Documents (or in any certificates delivered by the Borrower in connection with the TIFIA Loan Documents) shall prove to have been false or misleading in any material respect when made or deemed made (or any representation and warranty that is subject to a materiality qualifier shall prove to have been false or misleading in any respect); provided that no Event of Default shall be deemed to have occurred under this Section 19(a)(iv) (*Misrepresentation Default*) if and so long as:

(A) such misrepresentation is not intentional;

(B) such misrepresentation is not a misrepresentation in respect of Section 13(h) (No Debarment), Section 13(j) (Transportation Improvement Program), Section 13(p) (OFAC; Anti-Corruption Laws), Section 13(bb) (Patriot Act), or Section 13(cc) (Compliance with Federal Requirements);

(C) in the reasonable determination of the TIFIA Lender, such misrepresentation has not had, and would not reasonably be expected to result in, a Material Adverse Effect;

(D) in the reasonable determination of the TIFIA Lender, the underlying issue giving rise to the misrepresentation is capable of being cured;

(E) the underlying issue giving rise to the misrepresentation is cured by the Borrower within thirty (30) days from the date on which the Borrower first became aware (or reasonably should have become aware) of such misrepresentation; and

(F) the Borrower diligently pursues such cure during such thirty (30) day period.

(v) Acceleration of Senior Obligations, Intermediate Lien Obligations or Subordinate Obligations. Any acceleration shall occur of the maturity of any Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations, or any such Senior Obligations, Intermediate Lien Obligations, or Subordinate Obligations shall not be paid in full upon the final maturity thereof.

(vi) Events of Default under Indenture Documents. Any default under (and as defined in) any Indenture Document shall occur and shall not have been cured by the Borrower or waived in writing in accordance with the requirements of the applicable Indenture Document within the applicable cure period (if any) provided under such Indenture Document.

(vii) Judgments. One or more judgments (A) for the payment of money in an aggregate amount in excess of \$[1,000,000] (inflated annually by the annual change in CPI) that are payable from the Trust Estate or any portion thereof, including the Pledged Revenues, and are not otherwise fully covered by insurance (for which the insurer has acknowledged and not disputed coverage) or (B) that would reasonably be expected to result in a Material Adverse Effect shall, in either case, be rendered against the Borrower, and the same shall remain undischarged for a period of thirty (30) consecutive days during which time period execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower to enforce any such judgment.

(viii) Failure to Maintain Existence; Organizational Documents. The Borrower shall fail to maintain its existence as a board created and existing under the laws of the State, or the I-81 Program Act shall be repealed or amended or modified in such a manner as could reasonably be expected to result in a Material Adverse Effect, unless at or prior to the time the Borrower ceases to exist in such form or the repeal or amendment of

the I-81 Program described above becomes effective, a successor public agency or governing body has been created by the State pursuant to a valid and unchallenged State law and has succeeded to the assets of the Borrower and has assumed all of the obligations of the Borrower under the TIFIA Loan Documents and the Indenture Documents, including the payment of all Secured Obligations.

(ix) Project Abandonment. Either Borrower Related Party shall abandon the Project.

(x) Occurrence of a Bankruptcy Related Event. (A) A Bankruptcy Related Event shall occur with respect to the Borrower or (B) a Bankruptcy Related Event shall occur with respect to a Borrower Related Party (other than the Borrower) or any Fundamental Contract Party.

(xi) Invalidity of TIFIA Loan Documents. (A) Any TIFIA Loan Document ceases to be in full force and effect (other than as a result of the termination thereof in accordance with its terms) or becomes void, voidable, illegal or unenforceable, or either Borrower Related Party contests in any manner the validity or enforceability of any TIFIA Loan Document to which it is a party or denies it has any further liability under any TIFIA Loan Document to which it is a party, or purports to revoke, terminate or rescind any TIFIA Loan Document to which it is a party; or (B) any Indenture Document ceases (other than as expressly permitted thereunder) to be effective to grant a valid and binding security interest on any material portion of the Trust Estate, including the Pledged Revenues, other than as a result of actions or a failure to act by, and within the control of, the Trustee or any Secured Party, and with the priority purported to be created thereby.

(xii) Authorizing Legislation. The Authorizing Legislation shall be repealed or shall be amended or modified in such a manner that could reasonably be expected to result in a Material Adverse Effect.

(b) Upon the occurrence of an Event of Default described in Section 19(a)(iii) (Development Default), the TIFIA Lender may (i) suspend the disbursement of TIFIA Loan proceeds hereunder, (ii) terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and/or (iii) demand that the Borrower immediately repay any unexpended TIFIA Loan proceeds previously disbursed to the Borrower, in which event the Borrower shall immediately repay any such unexpended TIFIA Loan proceeds to the TIFIA Lender.

(c) Upon the occurrence of any Bankruptcy Related Event with respect to the Borrower, all obligations of the TIFIA Lender hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan shall automatically be deemed terminated, and, to the extent permitted under the Indenture Documents, the Outstanding TIFIA Loan Balance, together with all interest accrued thereon and all fees, costs, expenses, indemnities, and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, shall automatically become immediately due and payable, without presentment, demand, notice, declaration, protest, or other requirements of any kind, all of which are hereby expressly waived.

(d) Upon the occurrence of any other Event of Default, the TIFIA Lender, by written notice to the Borrower, may (i) suspend or terminate all of its obligations hereunder with respect to the disbursement of any undisbursed amounts of the TIFIA Loan, and (ii) to the extent permitted under the Indenture Documents, declare the unpaid principal amount of the TIFIA Bond to be, and the same shall thereupon forthwith become, immediately due and payable, together with the interest accrued thereon and all fees, costs, expenses, indemnities and other amounts payable under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents with respect to the TIFIA Loan, all without presentment, demand, notice, protest, or other requirements of any kind, all of which are hereby expressly waived.

(e) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender shall be entitled and empowered to institute any actions or proceedings at law or in equity for the collection of any sums due and unpaid hereunder, under the TIFIA Bond or under the other TIFIA Loan Documents with respect to the TIFIA Loan, and may prosecute any such judgment or final decree against the Borrower and collect in the manner provided by law out of the Trust Estate the moneys adjudged or decreed to be payable, and the TIFIA Lender shall have all of the rights and remedies of a creditor, including all rights and remedies of a secured creditor and a creditor under the Uniform Commercial Code (to the extent applicable), and may take such other actions at law or in equity as may appear necessary or desirable to collect all amounts due and unpaid hereunder, under the TIFIA Bond, or under the other TIFIA Loan Documents with respect to the TIFIA Loan, or to enforce performance and observance of any obligation, agreement, or covenant of the Borrower under this Agreement, the TIFIA Bond, or the other TIFIA Loan Documents.

(f) Whenever any Event of Default hereunder shall have occurred and be continuing, the TIFIA Lender may suspend or debar the Borrower from further participation in any Federal Government program administered by the TIFIA Lender and to notify other departments and agencies of such default.

(g) No action taken pursuant to this Section 19 (*Events of Default and Remedies*) shall relieve Borrower from its obligations pursuant to this Agreement, the TIFIA Bond or the other TIFIA Loan Documents, all of which shall survive any such action.

Section 20. Accounting and Audit Procedures; Inspections; Reports and Records.

(a) Accounting and Audit Procedures. The Borrower shall establish fiscal controls and accounting procedures sufficient to assure proper accounting for all Pledged Revenues, so that audits may be performed to ensure compliance with and enforcement of this Agreement. The Borrower shall use accounting, audit and fiscal procedures conforming to GAAP, including, with respect to the TIFIA Loan, accounting of principal and interest payments, disbursements, prepayments and calculation of interest and principal amounts outstanding.

(b) Inspections. So long as the TIFIA Loan or any portion thereof shall remain outstanding and until five (5) years after the TIFIA Loan shall have been paid in full, the TIFIA Lender shall have the right, upon reasonable prior notice, to visit and inspect any of the locations or properties of the Borrower, to examine its books of account and records, to make copies and extracts therefrom at the Borrower's expense, and to discuss the Borrower's affairs, finances and

accounts with, and to be advised as to the same by, its officers and employees and its independent public accountants (and by this provision the Borrower irrevocably authorizes its independent public accountants to discuss with the TIFIA Lender the affairs, finances and accounts of the Borrower, whether or not any representative of the Borrower is present, it being understood that nothing contained in this Section 20(b) (Inspections) is intended to confer any right to exclude any such representative from such discussions), all at such reasonable times and intervals as the TIFIA Lender may desire. The Borrower agrees to pay all out-of-pocket expenses incurred by the TIFIA Lender in connection with the TIFIA Lender's exercise of its rights under this Section 20(b) (Inspections) at any time when an Event of Default shall have occurred and be continuing.

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

(d) Required Audit. The Borrower shall have a single or program-specific audit conducted in accordance with 2 CFR Part 200 Subpart F and 31 U.S.C. § 7502 in 2022 and annually thereafter, except to the extent biennial audits are permitted for the Borrower pursuant to 2 CFR § 200.504 and 31 U.S.C. § 7502(b). Upon reasonable notice, the Borrower shall cooperate fully in the conduct of any periodic or compliance audits conducted by the TIFIA Lender, the USDOT, or designees thereof, pursuant to 49 CFR § 80.19, 31 U.S.C. § 7503(b), or 31 U.S.C. § 6503(h) and shall provide full access to any books, documents, papers or other records that are pertinent to the Project or the TIFIA Loan, to the Secretary, or the designee thereof, for any such project or programmatic audit.

Section 21. Financial Plan, Financial Statements, and Annual Certificates.

(a) Financial Plan.

(i) The Borrower shall provide a Financial Plan to the TIFIA Lender and the FHWA Division Office within sixty (60) days after the Effective Date and annually thereafter until the TIFIA Loan has been repaid in full, in each case not later than ninety (90) days after the beginning of each Borrower Fiscal Year. The Financial Plan submitted within sixty (60) days after the Effective Date should be consistent in all respects with the projections, assumptions and other information contained or reflected in the Base Case Financial Model.

(ii) Each Financial Plan shall be prepared in accordance with GAAP and shall meet FHWA's Major Project Financial Plan requirements, as amended from time to time.

(iii) Together with each Financial Plan, the Borrower shall deliver: (A) a certificate signed by the Borrower's Authorized Representative to the effect that the Financial Plan, including the assumptions and supporting documentation, is accurate and reasonable to the best of the Borrower's knowledge and belief and (B) an electronic copy of a Revised Financial Model for the period from the Effective Date through the Final Maturity Date, based upon assumptions and projections with respect to the Pledged Revenues, expenses and other financial aspects of the Project and the Trust Estate that shall reflect the prior experience and current status of the Project and the Pledged Revenues, and the expectations of the Borrower with respect to the Project and the Pledged Revenues, as of the most recent practicable date prior to the delivery of such Revised Financial Model, together with a change log describing such changes.

(iv) Each Financial Plan shall:

(A) provide an updated cash flow statement showing, for the Borrower Fiscal Year most recently ended, (1) actual annual cash inflows (Pledged Revenues and other income), (2) actual annual outflows (including TIFIA Debt Service, other Senior Debt Service, Intermediate Lien Debt Service, Subordinate Debt Service, replenishment of reserves, and other uses), (3) Total Debt Service Coverage Ratios (measured as of the last day of the applicable Borrower Fiscal Year) and (4) coverages of the payments and deposits required pursuant to clauses FIRST through SIXTH of Section 8.1(a) of the Indenture;

(B) provide an updated cash flow statement showing projected annual amounts for each of the items described in clause (A) above, in each case through the Final Maturity Date;

(C) provide a schedule of then currently projected I-81 Program Revenues and any planned increases thereto;

(D) to the extent that any Hedging Transactions are then in effect, report on the notional amounts and mark to market values (provided by the Qualified Hedge Provider) under such Hedging Transactions, in each case as of the last day of the most recently ended Borrower Fiscal Year; and

(E) provide a written narrative that: (1) explains any variances greater than 10% in comparison to the Base Case Financial Model and the most recent Financial Plan with respect to (i) Pledged Revenues and the amounts deposited into each of the accounts and subaccounts established under the Indenture Documents and (ii) cost items that are senior to TIFIA Debt Service; (2) to the extent that any Hedging Transactions are then in effect, reports on changes, if any, to the creditworthiness of the counterparties to such Hedging Transactions; (3) includes a description of any material matters that may affect the future performance by the Borrower of its obligations under this Agreement and the causes thereof, including a summary of reports prepared by or on behalf of the Borrower relating to the Pledged Revenues, Construction-Related Contracts, and

third-party transactions; and (4) discusses contingency measures that will or may be taken to address any of the matters reported pursuant to this sub-clause (E).

(v) In addition to the above, prior to the Substantial Completion Date, each Financial Plan shall:

(A) provide the current estimate of Total Project Costs and the remaining cost to complete the Project, identify any significant cost changes since the previous Financial Plan, discuss the reasons for and implications of the cost changes, and include a summary table showing the history of Total Project Costs by major activity or category in comparison to the Base Case Financial Model and the most recent Financial Plan;

(B) provide updates to the Construction Schedule, including major milestones for each phase of the Project (including an updated Projected Substantial Completion Date), and compare current milestone dates with the milestone dates in the Construction Schedule and in the most recent Financial Plan, and discuss the reasons for any changes to the expected completion of these Project milestones;

(C) provide current estimates of sources and uses of funds for the Project, identify any significant funding changes since the preceding Financial Plan, discuss the reasons for and implications of such funding changes, and include a summary table showing the history of Project funding in comparison to the Base Case Financial Model and the preceding Financial Plan;

(D) provide the total value of approved changes in Total Project Costs, and provide a listing of each individual change valued at \$[5,000,000] or more, setting forth the rationale or need for such changes and describing the impact of such changes on the Project; and

(E) contain a written narrative executive summary of the topics described in clauses (A) through (D) above since the Effective Date and since the date of the information included in the most recent Financial Plan, describing in reasonable detail all material matters that may affect the future performance of the Borrower's obligations under this Agreement.

(b) Semi-Annual Coverage Certificates. Within fifteen (15) days after each Calculation Date, the Borrower shall deliver to the TIFIA Lender, a certificate in the form of **Exhibit O** and signed by the Borrower's Authorized Representative (each, a "**Semi-Annual Coverage Certificate**") that (i) certifies that annual projected Pledged Revenues shall be sufficient to meet the Loan Amortization Schedule and to meet the Borrower's debt service payments due with respect to any other Obligations that are currently outstanding, in each case as of each applicable Interest Payment Date through the fifth (5th) anniversary of the most recent Interest Payment Date, (ii) sets forth the historical TIFIA Debt Service Coverage Ratio and Total Debt Service Coverage Ratio for each of the two (2) consecutive Calculation Periods ended as of the immediately preceding Calculation Date and as of the immediately preceding Calculation

Date, respectively, and (iii) sets forth the projected TIFIA Debt Service Coverage Ratio and Total Debt Service Coverage Ratio as of each Calculation Date through the fifth (5th) anniversary of the immediately preceding Calculation Date.

(c) Financial Statements and Information. The Borrower shall furnish to the TIFIA Lender:

(i) (A) as soon as available, but no later than sixty (60) days after the end of the first, second and third quarterly period of each Borrower Fiscal Year, an unaudited income statement and balance sheet of the Borrower and unaudited financial information on the I-81 Fund as of the end of such period and the related unaudited statements of operations and of cash flow of the Borrower and I-81 Fund for such period and for the portion of the fiscal year through the end of such period, setting forth in each case in comparative form the figures for the previous period, certified by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative fairly stating in all material respects the financial condition of the Borrower and the I-81 Fund as at the end of such period and the results of its operations and its cash flows for such period (subject to normal year-end audit adjustments); and

(B) as soon as available, but no later than one hundred twenty (120) days after the end of each Borrower Fiscal Year, a copy of the audited income statement and balance sheet of the Borrower as of the end of such fiscal year and the related audited statements of operations and of cash flow of the Borrower and the I-81 Fund for such fiscal year, setting forth in each case in comparative form the figures for the previous fiscal year, certified without a "going concern" or like qualification or exception, or qualification as to the scope of the audit, by an independent public accounting firm selected by the Borrower and which is reasonably acceptable to the TIFIA Lender.

(ii) All such financial statements shall be complete and correct in all material respects and shall be prepared in reasonable detail and in accordance with GAAP (or in the case of non-U.S. Persons, substantially equivalent principles) applied consistently throughout the periods reflected therein (except for changes approved or required by the independent public accountants certifying such statements and disclosed therein).

(d) Officer's Certificate. The Borrower shall furnish to the TIFIA Lender, together with each delivery of annual audited or interim unaudited financial statements of the Borrower pursuant to Section 21(c) (*Financial Statements and Information*), a certificate signed by the chief executive officer or chief financial officer of the Borrower or any Borrower's Authorized Representative, stating whether or not, to the Borrower's knowledge, during the quarterly or annual period (as the case may be) covered by such financial statements, there occurred any Default or Event of Default and, if any such Default or Event of Default shall have occurred during such period, the nature of such Default or Event of Default and the actions that the Borrower has taken or intends to take in respect thereof.

Section 22. Project Oversight and Monitoring.

(a) Project Development, Design and Construction. The TIFIA Lender shall have the right in its sole discretion to monitor (or direct its agents to monitor) the development, including environmental compliance, design, right-of-way acquisition, and construction of the Project. The FHWA Division Office has oversight responsibility for the Project, including ensuring compliance in all material respects with all applicable provisions of federal law. The Borrower agrees to cooperate in good faith with the TIFIA Lender and the FHWA Division Office in the conduct of such monitoring by promptly requesting that VDOT provide the TIFIA Lender and the FHWA Division Office with such reports, documentation or other information as shall be requested by the TIFIA Lender and the FHWA Division Office, or its agents, including any Consulting Engineer reports, documentation or information.

(b) Quarterly Construction Progress Report. On or before the last Business Day of each quarter during the Construction Period, the Borrower shall deliver to the TIFIA Lender a report (which may consist in whole or in part of reports received by Borrower from one or more of its contractors) that:

(i) specifies the amount of Total Project Costs expended since the Effective Date as well as during the preceding calendar quarter and the amount of Total Project Costs estimated to be required to complete the Project;

(ii) provides a revised Project Budget updated through the end of the preceding calendar quarter;

(iii) demonstrates that the Borrower has sufficient funds (including funds on hand and funds obtainable without undue delay or conditions that cannot reasonably be satisfied by the Borrower as and when such funds are needed) to complete the Project, taking into account any changes to the amount of Total Project Costs that are reflected in such quarterly construction progress report (or prior quarterly construction progress reports);

(iv) to the extent there has been any change (increase or decrease) to the Total Project Costs needed to achieve Substantial Completion since the most recent quarterly construction progress report, provides a narrative description of such changes (specifying the amounts of such changes) and, in the case of any increase to the Total Project Costs, a narrative description of (A) which line items of the Project Budget have been affected by such cost increases (and the extent of any overruns with respect to such line items), (B) any material change orders granted or pending under the Construction-Related Contracts with respect to such cost increases, and (C) how the Borrower will pay for such increased Total Project Costs;

(v) provides (A) an assessment of the overall construction progress of the Project since the date of the last report and since the Effective Date, together with an assessment of how such progress compares to the Construction Schedule; and (B) to the extent there have been any events or occurrences (e.g., delayed equipment deliveries, permit delays, material change orders, etc.), that have had, or are anticipated to have, an

adverse impact on the Construction Schedule and the meeting of critical dates thereunder, a detailed narrative description of steps being taken (or proposed to be taken) to address such adverse impacts on the Construction Schedule;

(vi) specifies the most recent projections for the Substantial Completion Date as compared to the Projected Substantial Completion Date specified in the Financial Plan most recently submitted to the TIFIA Lender; and

(vii) provides a discussion or analysis of such other matters related to the Project as the TIFIA Lender may reasonably request.

(c) Requested Information. The Borrower shall, at any time while the TIFIA Loan remains outstanding, promptly deliver to the TIFIA Lender such additional information regarding the business, financial, legal or organizational affairs of the Borrower or regarding the Project or the Pledged Revenues as the TIFIA Lender may from time to time reasonably request, including copies of agreements, documentation and other information related thereto requested by the TIFIA Lender. The Borrower shall respond, and use commercially reasonable efforts to cause the Fundamental Contract Parties and Construction-Related Contract Parties to respond, to the TIFIA Lender's inquiries regarding the construction of the Project. The TIFIA Lender has the right, in its sole discretion, to retain a financial oversight advisor, under a contract with the TIFIA Lender and at the Borrower's cost (as provided in Section 28 (Fees and Expenses)), to carry out the provisions of this Section 22(c).

(d) Consulting Engineer.

(i) If requested in writing by the TIFIA Lender (in circumstances where the Borrower does not already have a designated Consulting Engineer), the Borrower shall hire and retain a Consulting Engineer for so long as required by the TIFIA Lender.

(ii) Any Consulting Engineer retained by the Borrower shall advise the TIFIA Lender (with a duty of care to the TIFIA Lender) with regard to all technical matters related to the performance by the Borrower of its obligations under this Agreement and the Related Documents.

(iii) The Borrower may designate or replace the Consulting Engineer; provided that the TIFIA Lender shall have the right to object to any such Consulting Engineer (and the Borrower shall not retain any proposed Consulting Engineer if the TIFIA Lender has objected in writing to such proposed Consulting Engineer). The Borrower shall provide the TIFIA Lender with thirty (30) Business Days' advance written notice of any proposed initial or replacement Consulting Engineer, together with supporting information concerning the qualifications of the proposed Consulting Engineer. The Borrower may designate the proposed Consulting Engineer unless the TIFIA Lender objects in writing within fifteen (15) Business Days following receipt of the Borrower's notice above. Any such objection by the TIFIA Lender shall include a reasonable description of its reasons for objecting to the proposed Consulting Engineer. The Borrower shall pay for all services performed by the Consulting Engineer.

(e) Reports by Trustee. The Borrower shall, at any time while the TIFIA Loan remains outstanding, promptly deliver to the TIFIA Lender each monthly report provided by the Trustee to the Borrower pursuant to Section 6.5 of the Indenture.

Section 23. No Personal Recourse. No official, employee or agent of the TIFIA Lender or the Borrower or any Person executing this Agreement or any of the other TIFIA Loan Documents shall be personally liable on this Agreement or such other TIFIA Loan Documents by reason of the issuance, delivery or execution hereof or thereof.

Section 24. No Third Party Rights. The parties hereby agree that this Agreement creates no third party rights against the Borrower, the Federal Government, or the TIFIA Lender, solely by virtue of the TIFIA Loan, and the Borrower agrees to indemnify and hold the TIFIA Lender, the Servicer (if any), the Executive Director, and the Federal Government harmless, to the extent permitted by law and in accordance with Section 17 (Indemnification), from any lawsuit or claim arising in law or equity solely by reason of the TIFIA Loan, and that no third party creditor or creditors of the Borrower shall have any right against the TIFIA Lender with respect to the TIFIA Loan made pursuant to this Agreement.

Section 25. Borrower's Authorized Representative. The Borrower shall at all times have appointed a Borrower's Authorized Representative by designating such Person or Persons from time to time to act on the Borrower's behalf pursuant to a written certificate furnished to the TIFIA Lender and the Servicer, if any, containing the specimen signature or signatures of such Person or Persons and signed by the Borrower.

Section 26. TIFIA Lender's Authorized Representative.

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

(b) Pursuant to the delegation of authority, dated July 20, 2016, from the Secretary to the Under Secretary of Transportation for Policy, the further delegation of authority, dated July 20, 2016, from the Under Secretary of Transportation for Policy to the Executive Director of the Build America Bureau, the further delegation of authority, dated August 31, 2016 (the "**Delegation**") the Director of the Credit Office of the Build America Bureau has been delegated the authority to enter into contracts and sign all contractual and funding documents (with the exception of the term sheets and credit agreements) necessary to implement the Act, including entering into technical amendments to, and restatements of, term sheets and credit agreements that do not materially impair the credit quality of the revenues pledged to repay the TIFIA Lender. Pursuant to the Delegation, the Director of the Credit Office of the Build America Bureau may act and serve as the TIFIA Lender's Authorized Representative under this Agreement, in addition to the Executive Director of the Build America Bureau for the purposes set forth herein.

Section 27. Servicer. The TIFIA Lender may from time to time designate an entity or entities to perform, or assist the TIFIA Lender in performing, the duties of the Servicer or specified duties of the TIFIA Lender under this Agreement and the TIFIA Bond. The TIFIA Lender shall give the Borrower written notice of the appointment of any successor or additional Servicer and shall enumerate the duties or any change in duties to be performed by any Servicer. Any references in this Agreement to the TIFIA Lender shall be deemed to be a reference to the Servicer with respect to any duties which the TIFIA Lender shall have delegated to such Servicer. The TIFIA Lender may at any time assume the duties of any Servicer under this Agreement and the TIFIA Bond. The Borrower shall cooperate and respond to any reasonable request of the Servicer for information, documentation or other items reasonably necessary for the performance by the Servicer of its duties hereunder.

Section 28. Fees and Expenses.

(a) The Borrower agrees, whether or not the transactions hereby contemplated shall be consummated, to reimburse the TIFIA Lender on demand from time to time, within thirty (30) days after receipt of any invoice from the TIFIA Lender, for any and all fees, costs, charges, and expenses incurred by it (including the reasonable fees, costs, and expenses of its legal counsel, financial advisors, auditors, and any technical or other consultants and advisors, such reasonableness determined in accordance with Part 31 of the Federal Acquisition Regulation) in connection with the negotiation, preparation, execution, delivery, administration, and performance of this Agreement and the other TIFIA Loan Documents and the transactions hereby and thereby contemplated, including reasonable attorneys', and engineers' fees and professional costs, including all such fees, costs, and expenses incurred as a result of or in connection with:

(i) the enforcement of or attempt to enforce any provision of this Agreement or any of the other TIFIA Loan Documents;

(ii) any amendment, modification, or requested amendment or modification of, waiver, consent, or requested waiver or consent under or with respect to, or the protection or preservation of any right or claim under or with respect to, this Agreement, any other Related Document, or the Trust Estate, or advice in connection with the administration, preservation in full force and effect, and enforcement of this Agreement or any other Related Document or the rights of the TIFIA Lender thereunder;

(iii) any ongoing oversight and monitoring of the TIFIA Loan, the Borrower or the Project by the TIFIA Lender as provided for herein; and

(iv) any work-out, restructuring, or similar arrangement of the obligations of the Borrower under this Agreement or the other TIFIA Loan Documents, including during the pendency of one or more Events of Default.

(b) The obligations of the Borrower under this Section 28 (Fees and Expenses) shall survive the payment or prepayment in full or transfer of the TIFIA Bond, the enforcement of any provision of this Agreement or the other TIFIA Loan Documents, any such amendments, waivers or consents, any Event of Default, and any such workout, restructuring, or similar arrangement.

Section 29. Amendments and Waivers. No amendment, modification, termination, or waiver of any provision of this Agreement shall in any event be effective without the written consent of each of the parties hereto.

Section 30. Governing Law. This Agreement shall be governed by the federal laws of the United States of America if and to the extent such federal laws are applicable and the internal laws of the State if and to the extent such federal laws are not applicable.

Section 31. Severability and Conflicts. In case any provision in or obligation under this Agreement shall be invalid, illegal, or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby. In the event of a conflict between the Indenture and this Agreement, the provisions of this Agreement shall be given precedence; provided that, in the event of a conflict between the provisions of this Agreement and those of the Indenture, and performance in accordance with the provisions of this Agreement is contrary to or inconsistent with the rights of the Bondholders under the Indenture, then the provisions of the Indenture shall be given precedence, and performance in accordance with the provisions thereof shall not violate this Agreement.

Section 32. Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns and shall inure to the benefit of the parties hereto and their permitted successors and assigns. Neither the Borrower's rights or obligations hereunder nor any interest therein may be assigned, delegated, or transferred by the Borrower without the prior written consent of the TIFIA Lender.

Section 33. Remedies Not Exclusive. No remedy conferred herein or reserved to the TIFIA Lender is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 34. Delay or Omission Not Waiver. No delay or omission of the TIFIA Lender to exercise any right or remedy provided hereunder upon a default of the Borrower (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of any such default or acquiescence therein. Every right and remedy given by this Agreement or by law to the TIFIA Lender may be exercised from time to time, and as often as may be deemed expedient by the TIFIA Lender.

Section 35. Counterparts; Electronic Signatures. This Agreement and any amendments, waivers, consents or supplements hereto or in connection herewith may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute one and the same instrument; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are physically attached to the same document. Electronic delivery of an executed counterpart of a signature page of this Agreement or of any document or instrument delivered in connection herewith in accordance with Section 36 (*Notices; Payment Instructions*) shall be effective as delivery of an original executed counterpart of this Agreement or such other document or instrument, as applicable. Each party

acknowledges and agrees that it may execute this Agreement, and any amendment, modification, or waiver hereto, using Electronic Signatures. Such Electronic Signatures are intended to authenticate this writing and to have the same force and effect as handwritten signatures.

Section 36. Notices; Payment Instructions. Notices hereunder shall be (a) in writing, (b) effective as provided below and (c) given by (i) nationally recognized courier service, (ii) hand delivery, or (iii) email, in each case to:

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

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

If to Borrower: Commonwealth Transportation Board
c/o Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219
Attention: Chief Financial Officer

Unless otherwise instructed by the TIFIA Lender's Authorized Representative, all notices to the TIFIA Lender should be made by email to the email address noted above for the TIFIA Lender. Notices required to be provided herein shall be provided to such different addresses or to such further parties as may be designated from time to time by a Borrower's Authorized Representative, with respect to notices to the Borrower, or by the TIFIA Lender's Authorized Representative, with respect to notices to the TIFIA Lender or the Servicer. The Borrower shall make any payments hereunder or under the TIFIA Bond in accordance with Section 9(d) (*Manner of Payment*) and the payment instructions hereafter provided by the TIFIA Lender's Authorized Representative, as modified from time to time by the TIFIA Lender. Each such notice, request or communication shall be effective (x) if delivered by hand or by nationally recognized courier service, when delivered at the address specified in this Section 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party) and (y) if given by email, when such email is delivered to the address specified in this Section 36 (*Notices; Payment Instructions*) (or in accordance with the latest unrevoked written direction from the receiving party); provided that notices received on a day that is not a Business Day or after 5:00 p.m. Eastern Time on a Business Day will be deemed to be effective on the next Business Day.

Section 37. Effectiveness. This Agreement shall be effective on the Effective Date.

Section 38. Termination. This Agreement shall terminate upon the irrevocable payment in full in cash by the Borrower of the Outstanding TIFIA Loan Balance, together with all accrued interest and fees with respect thereto; provided, however, that the indemnification requirements of Section 17 (Indemnification), the reporting and record keeping requirements of Section 20(b) (Inspections) and Section 20(c) (Reports and Records), and the payment requirements of Section 28 (Fees and Expenses) shall survive the termination of this Agreement as provided in such sections.

Section 39. Integration. This Agreement, along with the TIFIA Bond, constitutes the entire contract between the parties relating to the subject matter hereof and supersedes any and all previous agreements and understandings, oral or written, relating to the subject matter hereof.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

COMMONWEALTH TRANSPORTATION BOARD

By: _____
Name: _____
Title: _____

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

By: _____
Name: Dr. Morteza Farajian
Title: Executive Director

SCHEDULE I
PROJECT BUDGET

Sources of Project Funds	Amount
Total	

Cost Element	Total Cost
Total	

SCHEDULE III
EXISTING INDEBTEDNESS

EXHIBIT A
FORM OF TIFIA SERIES 2022 BOND
COMMONWEALTH TRANSPORTATION BOARD
I-81 CORRIDOR IMPROVEMENT FUND

[•] PROJECT

(TIFIA – [•])

SENIOR LIEN REVENUE BOND
TIFIA SERIES 2022

Maximum Principal Amount: \$[]
(excluding capitalized interest)

Effective Date: [•], 2022

Due: Earlier of the 35th anniversary of Substantial Completion Date and [•]

COMMONWEALTH TRANSPORTATION BOARD, a board created and existing under the laws of the Commonwealth of Virginia (the “**Borrower**”), for value received, hereby promises to pay to the order of the **UNITED STATES DEPARTMENT OF TRANSPORTATION**, acting by and through the Executive Director of the Build America Bureau, or its assigns (the “**TIFIA Lender**”), the lesser of (x) the Maximum Principal Amount set forth above and (y) the aggregate unpaid principal amount of all disbursements (the “**Disbursements**”) made by the TIFIA Lender (such lesser amount, together with any interest that is capitalized and added to principal in accordance with the provisions of the TIFIA Loan Agreement (as defined below), being hereinafter referred to as the “**Outstanding Principal Sum**”), together with accrued and unpaid interest (including, if applicable, interest at the Default Rate, as defined in the TIFIA Loan Agreement) on the Outstanding Principal Sum and all fees, costs and other amounts payable in connection therewith, all as more fully described in the TIFIA Loan Agreement. The principal hereof shall be payable in the manner and at the place provided in the TIFIA Loan Agreement in accordance with **Exhibit G** to the TIFIA Loan Agreement, as revised from time to time in accordance with the TIFIA Loan Agreement, until paid in full. The TIFIA Lender is hereby authorized to modify the Loan Amortization Schedule included in **Exhibit G** to the TIFIA Loan Agreement from time to time in accordance with the terms of the TIFIA Loan Agreement to reflect the amount of each disbursement made thereunder and the date and amount of principal or interest paid by the Borrower thereunder. Absent manifest error, the TIFIA Lender’s determination of such matters as set forth on **Exhibit G** to the TIFIA Loan Agreement shall be conclusive evidence thereof; provided, however, that neither the failure to make any such recordation nor any error in such recordation shall affect in any manner the Borrower’s obligations hereunder or under any other TIFIA Loan Document.

Payments hereon are to be made in accordance with Section 9(d) (*Manner of Payment*) and Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement as the same become

due. Principal of and interest on this TIFIA Bond shall be paid in funds available on or before the due date and in any lawful coin or currency of the United States of America that at the date of payment is legal tender for the payment of public and private debts. If an amendment to the Final Maturity Date is approved by the TIFIA Lender pursuant to the TIFIA Loan Agreement, the due date of this TIFIA Bond shall be deemed to be amended to change the due date to such revised Final Maturity Date without any further action required on the part of the Borrower or the TIFIA Lender and such amendment shall in no way amend, modify or affect the other provisions of this TIFIA Bond without the prior written agreement of the TIFIA Lender.

This TIFIA Bond has been executed under and pursuant to that certain TIFIA Loan Agreement, dated as of the date hereof, between the TIFIA Lender and the Borrower (the “**TIFIA Loan Agreement**”) and is issued to evidence the obligation of the Borrower under the TIFIA Loan Agreement to repay the loan made by the TIFIA Lender and any other payments of any kind required to be paid by the Borrower under the TIFIA Loan Agreement or the other TIFIA Loan Documents referred to therein. Reference is made to the TIFIA Loan Agreement for all details relating to the Borrower’s obligations hereunder. All capitalized terms used in this TIFIA Bond and not defined herein shall have the meanings set forth in the TIFIA Loan Agreement or, as applicable, the Indenture.

This TIFIA Bond is being issued by the Borrower pursuant to Chapter 26, Title 33.2, Code of Virginia of 1950, as amended, a resolution adopted by the Borrower on May 19, 2021, and under and pursuant to a Master Indenture of Trust, between the Borrower and U.S. Bank National Association, or its successor, as trustee (the “**Trustee**”), dated as of August 1, 2021 (the “**Indenture**”), as supplemented and amended by the First Supplemental Series Indenture of Trust dated as of August 1, 2021 (the “**First Series Supplement**”), the Second Supplemental Series Indenture of Trust dated as of [] (the “**Second Series Supplement**”), and the Third Supplemental Series Indenture of Trust dated as of [] (the “**Third Series Supplement**” and, together with the First Series Supplement, the Second Series Supplement and the Indenture, the “**Indenture Documents**”), each between the Borrower and the Trustee, a certified copy of which each Indenture Document is on file at the office of the Borrower.

This TIFIA Bond is issued as and constitutes a Senior Bond within the meaning of such term in the Indenture.

This TIFIA Bond shall not be deemed to constitute a debt of the Commonwealth of Virginia or of any political subdivision or instrumentality thereof (including any Member Locality) other than the Borrower. This TIFIA Bond shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code. *The Borrower’s authority to receive any or all of the taxes or other revenues pledged to the Trustee for payment of [1-81] Bonds (as defined below) pursuant to the Indenture is subject to appropriation by the General Assembly of the Commonwealth, and neither the General Assembly nor the Borrower can or will pledge, covenant or agree to impose or maintain at any particular rate or level any of such taxes or other revenues.*

The Indenture provides for the issuance, from time to time, under the conditions, limitations and restrictions therein set forth, of additional series of Bonds for the purpose of financing projects, and of refunding outstanding obligations of the Borrower. Such additional

series of Bonds may be issued as Senior Bonds, Intermediate Lien Obligations, or Subordinate Obligations (as defined in the Indenture). This TIFIA Bond, together with all other obligations heretofore or hereafter issued under the provisions of the Indenture, are herein collectively referred to as the "I-81 Program Bonds." Reference is hereby made to the Indenture for the provisions, among others, with respect to the terms and conditions on which the [I-81] Bonds of each series are or may be issued, the custody and application of the proceeds of [I-81] Bonds issued under the Indenture, the collection and disposition of revenues, the funds charged with and pledged to the payment of the interest on and the principal and premium, if any, of the [I-81] Bonds, the nature and extent of the security, the rights, duties and obligations of the Borrower, the Trustee and any paying agent for the [I-81] Bonds and the rights of the owners of the [I-81] Bonds. Certain of such funds, accounts and subaccounts secure only the Senior Obligations, certain of such funds, accounts and subaccounts secure only the Intermediate Lien Obligations, and certain of such funds, accounts and subaccounts secure only the Subordinate Obligations, all as more fully described in the Indenture Documents.

This TIFIA Bond shall be subject to mandatory prepayment in accordance with the TIFIA Loan Agreement.

This TIFIA Bond may be prepaid at the option of the Borrower in whole or in part (and, if in part, the principal installments and amounts thereof to be prepaid are to be determined in accordance with the TIFIA Loan Agreement; provided, however, such prepayments shall be in principal amounts of at least \$1,000,000 or any integral multiple of \$1.00 in excess thereof), at any time or from time to time, without penalty or premium, by paying to the TIFIA Lender all or part of the principal amount of the TIFIA Bond in accordance with the TIFIA Loan Agreement.

Any delay on the part of the TIFIA Lender in exercising any right hereunder shall not operate as a waiver of any such right, and any waiver granted with respect to one default shall not operate as a waiver in the event of any subsequent default.

The owner of this TIFIA Bond shall have no right to enforce the provisions of the Indenture Documents or to institute action to enforce the covenants therein, or to take any action with respect to any event of default under the Indenture Documents, or to institute any suit or other proceeding with respect to the Indenture Documents, except as provided in the Indenture Documents.

All acts, conditions and things required by the Constitution and laws of the Commonwealth of Virginia to happen, exist, and be performed precedent to and in the issuance of this TIFIA Bond have happened, exist and have been performed as so required. This TIFIA Bond is issued with the intent that the federal laws of the United States of America shall govern its construction to the extent such federal laws are applicable and the internal laws of the Commonwealth shall govern its construction to the extent such federal laws are not applicable.

This TIFIA Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture Documents until the Trustee has executed the Certificate of Authentication appearing on this TIFIA Bond and inserted the date of authentication.

[The remainder of this page left intentionally blank.]

IN WITNESS WHEREOF, the Commonwealth Transportation Board has caused this TIFIA Bond to be signed by the manual or facsimile signature of its Chair, to be attested by the manual or facsimile signature of its Executive Director and this Bond to be dated the Effective Date set forth above.

**COMMONWEALTH TRANSPORTATION
BOARD**

By: _____
Name:
Title:

ATTEST:

By: _____
Name:
Title:

CERTIFICATE OF AUTHENTICATION

This TIFIA Bond is the TIFIA Bond described in the within-mentioned Indenture.

Authentication Date: _____

U.S. BANK NATIONAL
ASSOCIATION

By: _____
Name:
Title:

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED, the Undersigned hereby unconditionally sells, assigns and transfers unto

(Please Insert Social Security or other identifying number of Assignee(s)):

the within note and all rights thereunder.

Dated: _____

NOTICE: The signature to this assignment must correspond with the name as it appears upon the face of the within note in every particular, without alteration or enlargement or any change whatever.

EXHIBIT B

ANTICIPATED TIFIA LOAN DISBURSEMENT SCHEDULE

Borrower
Fiscal
Year

EXHIBIT C

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

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

- (a) Are not presently excluded (as defined in 2 CFR § 180.940) or disqualified (as defined in 2 CFR § 180.935);
- (b) Have not within a three (3) year period preceding the Effective Date been convicted of any of the offenses listed in 2 CFR § 180.800(a) or had a civil judgment rendered against them for one of those offenses within that time period;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the offenses listed in 2 CFR § 180.800(a); and
- (d) Have not within a three (3) year period preceding the Effective Date had one or more public transactions (federal, state or local) terminated for cause or default.

Capitalized terms used in the certificate and not defined shall have the respective meanings ascribed to such terms in that certain TIFIA Loan Agreement, dated as of [] between the TIFIA Lender and the Borrower, as the same may be amended from time to time.

Dated: _____

COMMONWEALTH TRANSPORTATION
BOARD

By: _____
Name:
Title:

EXHIBIT D

REQUISITION PROCEDURES

This **Exhibit D** sets out the procedures which the Borrower agrees to follow in submitting Requisitions for the disbursement of TIFIA Loan proceeds in respect of the Eligible Project Costs incurred in connection with the Project. Section 1 sets out the manner in which Requisitions are to be submitted and reviewed. Section 2 through Section 4 set out the circumstances in which the TIFIA Lender may reject or correct Requisitions submitted by the Borrower or withhold a disbursement. The Borrower expressly agrees to the terms hereof, and further agrees that (i) the rights of the TIFIA Lender contained herein are in addition to (and not in lieu of) any other rights or remedies available to the TIFIA Lender under the TIFIA Loan Agreement, and (ii) nothing contained herein shall be construed to limit the rights of the TIFIA Lender to take actions including administrative enforcement action and actions for breach of contract against the Borrower if it fails to carry out its obligations under the TIFIA Loan Agreement during the term thereof.

Section 1. General Requirements. All requests by the Borrower for the disbursement of TIFIA Loan proceeds shall be made by electronic mail or overnight delivery service by submission to the TIFIA Lender, in accordance with Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, of a Requisition, in form and substance satisfactory to the TIFIA Lender and completed and executed by the Borrower's Authorized Representative. The form of Requisition is attached as **Appendix One** to this **Exhibit D**. Supporting documentation should be submitted with the requisition.

All disbursement requests must be received by the TIFIA Lender at or before 5:00 P.M. (EST) on the first (1st) Business Day of a calendar month in order to obtain disbursement by the fifteenth (15th) day of such calendar month or, if such day is not a Business Day, the next succeeding Business Day.

Section 2. Rejection. A Requisition may be rejected in whole or in part by the TIFIA Lender if it is:

- (a) submitted without signature;
- (b) submitted under signature of a Person other than a Borrower's Authorized Representative;
- (c) submitted after prior disbursement of all proceeds of the TIFIA Loan; or
- (d) submitted without adequate documentation of Eligible Project Costs incurred or paid. Such documentation shall include invoices for costs incurred or paid and the most recent certificate of or report prepared by an independent engineer relating to the construction of the Project (to the extent not previously delivered to the TIFIA Lender).

The TIFIA Lender shall promptly send to the Borrower, in accordance with Section 36 (*Notices; Payment Instructions*) of the TIFIA Loan Agreement, a notice of any Requisition so rejected, and the reasons therefor, substantially in the form attached hereto as **Appendix Two** to this **Exhibit D**. Any Requisition rejected for the reasons specified in (a), (b) or (d) above must be resubmitted

in proper form in order to be considered for approval. If a Requisition exceeds the balance of the TIFIA Loan proceeds remaining to be disbursed, the request will be treated as if submitted in the amount of the balance so remaining, and the TIFIA Lender will so notify the Borrower.

Section 3. Correction. A Requisition containing an apparent mathematical error will be corrected by the TIFIA Lender, after telephonic or email notification to the Borrower, and will thereafter be treated as if submitted in the corrected amount.

Section 4. Withholding. The TIFIA Lender shall be entitled to withhold approval (in whole or in part) of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds if:

- (a) an Event of Default or event that, with the giving of notice or the passage of time or both, would constitute an Event of Default under the TIFIA Loan Agreement shall have occurred and be continuing; or
- (b) the Borrower:
 - (i) knowingly takes any action, or omits to take any action, amounting to fraud or violation of any applicable federal or local criminal law, in connection with the transactions contemplated hereby; or
 - (ii) fails to cause VDOT to construct the Project in a manner consistent with the Governmental Approvals with respect to the Project, or in accordance with the highest standards of VDOT's industry, where such failure prevents or materially impairs the Project from fulfilling its intended purpose, or prevents or materially impairs the ability of the TIFIA Lender to monitor compliance by VDOT with applicable federal or local law pertaining to the Project or with the terms and conditions of the TIFIA Loan Agreement; or
 - (iii) fails to observe or comply with any applicable federal or local law, or any term or condition of the TIFIA Loan Agreement; or
 - (iv) fails to satisfy any condition set forth in Section 4 (*Disbursement Conditions*) or Section 12(b) (*Conditions Precedent to All Disbursements*) of the TIFIA Loan Agreement; or
 - (v) fails to deliver documentation satisfactory to the TIFIA Lender evidencing Eligible Project Costs claimed for disbursement at the times and in the manner specified by the TIFIA Loan Agreement; provided, that in such case the TIFIA Lender may, in its sole discretion, partially approve a disbursement request in respect of any amounts for which adequate documentation evidencing Eligible Project Costs has been provided and may, in its sole discretion, disburse in respect of such properly documented amounts.

Section 5. Federal Government Shutdown. Notwithstanding anything to the contrary set forth in this **Exhibit D**, the TIFIA Lender (a) shall be entitled to withhold approval of any pending or subsequent requests for the disbursement of TIFIA Loan proceeds and (b) shall have no obligation to make any disbursement of proceeds of the TIFIA Loan to the Borrower (even if such disbursement has been approved by the TIFIA Lender), in each case if the TIFIA Lender's ability to make the relevant disbursement is impaired as a result of a partial or total shutdown of the operations of any federal department or agency (including the USDOT or any of its agencies), or any contractor of any such department or agency, due to a lapse in appropriations by Congress.

APPENDIX ONE TO EXHIBIT D

FORM OF REQUISITION

Build America Bureau

United States Department of Transportation
c/o Director, Office of Credit Programs

Room W12-464
1200 New Jersey Avenue, SE,
Washington, D.C. 20590

Federal Highway Administration
Virginia Division Office
400 North 8th St., Suite 750
Richmond, Virginia 23219-4825
Attn: Division Administrator

Re: [] PROJECT (TIFIA - [])

Ladies and Gentlemen:

Pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [] (the “**TIFIA Loan Agreement**”), by and between the COMMONWEALTH TRANSPORTATION BOARD (the “**Borrower**”) and the UNITED STATES DEPARTMENT OF TRANSPORTATION, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”), we hereby request disbursement in the amount of \$[] in respect of Eligible Project Costs paid or incurred by or on behalf of the Borrower. Capitalized terms used but not defined herein have the meaning set forth in the TIFIA Loan Agreement. In connection with this Requisition the undersigned does hereby represent and certify the following:

1. This Requisition is Requisition number [_____].
2. The requested date of disbursement is [_____] 15, 20[] (the “**Disbursement Date**”)[, which is the first Business Day following [_____] 15, 20[_____]].
3. The requested amount is \$[_____].
4. The amounts hereby requisitioned have been paid or incurred by or on behalf of the Borrower for Eligible Project Costs and have not been paid for or reimbursed by any previous disbursement from TIFIA Loan proceeds.
5. The amount of this Requisition, together with all prior Requisitions, does not exceed the amount of the TIFIA Loan commitment.

6. All documentation evidencing the Eligible Project Costs to be reimbursed by the above-requested disbursement has been delivered by the Borrower at the times and in the manner specified by the TIFIA Loan Agreement.
7. The Borrower or VDOT has all Governmental Approvals necessary as of the date hereof and as of the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), for the development, construction, operation and maintenance of the Project and each such Governmental Approval is in full force and effect (and is not subject to any notice of violation, breach or revocation).
8. As demonstrated in the Revised Financial Model most recently delivered to the TIFIA Lender and in the Project Budget, the funds that have been fully and completely committed and allocated to the Borrower by the providers thereof to pay Total Project Costs are sufficient to pay all Total Project Costs necessary to achieve Substantial Completion in accordance with the Construction Schedule and by no later than the Projected Substantial Completion Date.
9. Each of the insurance policies obtained by VDOT in satisfaction of the condition in Section 12(a)(xx) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement is in full force and effect, and no notice of termination thereof has been issued by the applicable insurance provider.
10. The Project has been, and is being, constructed in a manner consistent with all plans, specifications, engineering reports and facilities plans previously submitted to the TIFIA Lender and the FHWA Division Office and in accordance with the highest standards of VDOT's industry.
11. The representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document are true and correct as of the date hereof and as of the Disbursement Date, except to the extent such representations and warranties expressly relate to an earlier date (in which case, such representations and warranties shall be true and correct as of such earlier date).
12. As of the date hereof and on the Disbursement Date (immediately after giving effect to the above-requested disbursement of TIFIA Loan proceeds), (i) no Event of Default or event of default under any other Related Document and (ii) no event that, with the giving of notice or the passage of time or both, would constitute an Event of Default or event of default under any Related Document, in each case, has occurred and is continuing.
13. No Material Adverse Effect, or any event or condition that could reasonably be expected to have a Material Adverse Effect, has occurred since [*insert date*] and is continuing.
14. A copy of the quarterly construction progress report pursuant to Section 23(b) (*Quarterly Construction Progress Report*) of the TIFIA Loan Agreement for the month preceding the date of the applicable Requisition has been delivered to each of the above named addresses.
15. The undersigned acknowledges that if the Borrower makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with

the Project, the Federal Government reserves the right to impose on the Borrower the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l)(1), to the extent the Federal Government deems appropriate.

16. A copy of this requisition has been delivered to each of the above named addressees.
17. The undersigned is duly authorized to execute and deliver this requisition on behalf of the Borrower.

[Add wire instructions for Trustee.]

Date: _____

COMMONWEALTH TRANSPORTATION
BOARD

By: _____

Name:

Title: _____

APPENDIX TWO TO EXHIBIT D

**DISAPPROVAL OF THE TIFIA LENDER
(TO BE DELIVERED TO THE BORROWER)**

Requisition Number [] is [approved in part in the amount of \$[]] [not approved]¹⁶ by the TIFIA Lender (as defined herein) pursuant to Section 4 (*Disbursement Conditions*) of the TIFIA Loan Agreement, dated as of [], 20[], by and between the Commonwealth Transportation Board (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Any determination, action or failure to act by the TIFIA Lender with respect to the Requisition set forth above, including any withholding of a disbursement, shall be at the TIFIA Lender’s sole discretion, and in no event shall the TIFIA Lender be responsible for or liable to the Borrower for any and/or all consequence(s) which are the result thereof.

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

By: _____
TIFIA Lender’s Authorized Representative
Name:
Title:
Dated:

¹⁶Attached hereto as Exhibit A are reasons for any partial or full denial of approval.

EXHIBIT A TO APPENDIX TWO TO EXHIBIT D

[INSERT REASONS FOR ANY PARTIAL OR FULL DENIAL OF APPROVAL.]

EXHIBIT E

COMPLIANCE WITH LAWS

The Borrower shall, shall cause VDOT to, and shall cause VDOT to cause the Construction-Related Contract Parties and their contractors and subcontractors at all tiers for the Project to, comply in all material respects with any and all applicable federal and state laws. The following list of federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive.

- (i) The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. § 12101 *et seq.*; 28 CFR Part 35; 29 CFR Part 1630);
- (ii) Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d *et seq.*), and USDOT implementing regulations (49 CFR Part 21);
- (iii) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- (iv) Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 FR 12319), any Executive Order amending such order, and implementing regulations (29 CFR §§ 1625-27, 1630; 28 CFR Part 35; 41 CFR Part 60; and 49 CFR Part 27);
- (v) Restrictions governing the use of federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 CFR Part 20);
- (vi) The Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*);
- (vii) The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*), including the environmental mitigation requirements and commitments made by VDOT that result in the FHWA's approval of the NEPA Determination;
- (viii) The Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*);
- (ix) The Endangered Species Act, 16 U.S.C. § 1531, *et seq.*;
- (x) 23 U.S.C. § 138 and 49 U.S.C. § 303, as applicable;
- (xi) The health and safety requirements set forth in 40 U.S.C. §§ 3701-3702 and implementing regulations (29 CFR Part 1926 and 23 CFR § 635.108, as applicable);
- (xii) The prevailing wage requirements set forth in 40 U.S.C. § 3141 *et seq.*, and implementing regulations (29 CFR Part 5), and, as applicable, 23 U.S.C. § 113 and implementing regulations (23 CFR §§ 635.117(f) and 635.118), and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;

- (xiii) The Buy America requirements set forth in 23 U.S.C. § 313 and implementing regulations (23 CFR § 635.410);
- (xiv) The Build America, Buy America Act (Pub. L. No. 117-58, §§ 70901-52);
- (xv) The requirements of 23 U.S.C. § 101 *et seq.* and 23 CFR;
- (xvi) The Cargo Preference Act of 1954, as amended (46 U.S.C. §55305), and implementing regulations (46 CFR Part 381);
- (xvii) The applicable requirements of 49 CFR Part 26 relating to the Disadvantaged Business Enterprise program; and
- (xviii) The requirements of Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) and implementing regulations (2 CFR § 200.216).

EXHIBIT F
[FHWA OVERSIGHT AGREEMENT]

EXHIBIT G

TIFIA DEBT SERVICE

Interest Rate: []%

End of Period	Beginning Balance	Draws	Interest Due	Interest Paid	Interest Capitalized	Principal Paid	Total Debt Service	Ending Balance
Total								

EXHIBIT H-1

OPINIONS REQUIRED OF COUNSEL TO EACH BORROWER RELATED PARTY

An opinion of the counsel of each Borrower Related Party, dated as of the Effective Date, to the effect that: (a) such Borrower Related Party is duly created and validly existing under the laws of the jurisdiction of formation; (b) such Borrower Related Party has all requisite power and authority to conduct its business and to execute and deliver, and to perform its obligations under the Related Documents to which it is a party; (c) the execution and delivery by such Borrower Related Party of, and the performance of its respective obligations under, the Related Documents to which it is a party, have been duly authorized by all necessary organizational or regulatory action; (d) such Borrower Related Party has duly executed and delivered each Related Document to which it is a party and each such Related Document constitutes the legal, valid and binding obligation of such party; enforceable against such party in accordance with their respective terms; (e) no authorization, consent, or other approval of, or registration, declaration or other filing with any governmental authority of the United States of America or of the State is required on the part of such Borrower Related Party for the execution and delivery by such party of, and the performance of such party under, any Related Document to which it is a party other than authorizations, consents, approvals, registrations, declarations and filings that have already been timely obtained or made by such Borrower Related Party; (f) the execution and delivery by such Borrower Related Party of, and compliance with the provisions of, the Related Documents to which it is a party in each case do not (i) violate the Organizational Documents of such Borrower Related Party, (ii) violate any statute, rule, regulation or other law of the United States of America or of the State or (iii) conflict with or constitute a breach of or default under any material agreement or other instrument known to such counsel to which such Borrower Related Party is a party, or to counsel's knowledge, after due inquiry, any court order, consent decree, statute, rule, regulation or any other law to which such Borrower Related Party is subject; (g) such Borrower Related Party is not an investment company required to register under the Investment Company Act of 1940, as amended; and (h) to our knowledge after reasonable, there are no actions, suits, proceedings or investigations against such Borrower Related Party by or before any court, arbitrator or any other Governmental Authority in connection with the Related Documents or the Project that are pending.

EXHIBIT H-2

OPINIONS REQUIRED FROM BOND COUNSEL

An opinion of bond counsel, dated as of the Effective Date, to the effect that: (a) each of the TIFIA Bond, the Indenture, and the TIFIA Supplemental Indenture has been duly authorized, executed, and delivered by the Borrower in accordance with the Organizational Documents of the Borrower and in compliance with all applicable laws; (b) each of the TIFIA Bond, the Indenture, and the TIFIA Supplemental Indenture is in full force and effect and constitutes the legal, valid, and binding obligation of the Borrower, enforceable in accordance with its respective terms and conditions; (c) the TIFIA Bond is a Senior Bond, secured by the Liens on the Trust Estate, and shall be senior to the Lien on the Trust Estate pledged to secure the Intermediate Lien Obligations and any Subordinate Obligations, and shall be *pari passu* to the Lien on the Trust Estate pledged to secure the Senior Bonds and is a Bond entitled to the benefits of a Senior Bond under the Indenture, enforceable under the laws of the State without any further action by the Borrower or any other Person; (d) the Indenture and the TIFIA Supplemental Indenture create the valid and binding assignment and pledge of the Trust Estate to secure the payment of the principal of, interest on, and other amounts payable in respect of, the TIFIA Bond, irrespective of whether any party has notice of the pledge and without the need for any physical delivery, recordation, filing or further act; (e) all actions by the Borrower that are required for the use of Pledged Revenues as required under the Indenture, the TIFIA Supplemental Indenture and under the TIFIA Loan Agreement have been duly and lawfully made; (f) the Borrower has complied with the requirements of State law to lawfully pledge the Trust Estate and use the Pledged Revenues as required by the terms of the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Loan Agreement; (g) the Borrower is not eligible to be a debtor in either a voluntary or involuntary case under the United States Bankruptcy Code; and (h) the Borrower is not entitled to claim governmental immunity in any breach of contract action under the TIFIA Loan Agreement or the TIFIA Bond or by the Trustee under the Indenture Documents.

EXHIBIT I

RESERVED

EXHIBIT J

FORM OF CERTIFICATE OF TRUSTEE

COMMONWEALTH TRANSPORTATION BOARD

TIFIA BOND,
[I-81] PROJECT
(TIFIA – [•])

The undersigned, U.S. Bank National Association (the “**Trustee**”), by its duly appointed, qualified and acting Vice President, certifies with respect to the above referenced bond (the “**TIFIA Bond**”) dated as of [___], 2022, as follows (capitalized terms used in this Certificate that are not otherwise defined shall have the meanings given to such terms in the Indenture (as defined below)):

1. That the Trustee is a national association duly organized and validly existing under the laws of the United States of America and is duly licensed and in good standing under the laws of the United States of America.
2. All approvals, consents and orders of any governmental authority or agency having jurisdiction in the matter which would constitute a condition precedent to the performance by the Trustee of its duties and obligations under the documents pertaining to the issuance of the TIFIA Bond have been obtained and are in full force and effect.
3. The Indenture and the TIFIA Supplemental Indenture (each as defined herein) pertaining to the issuance of the TIFIA Bond to which the Trustee is a party was executed and the TIFIA Bond was authenticated on behalf of the Trustee by one or more of the persons whose names and offices appear on Annex One attached hereto and made part hereof, that each person was at the time of the execution of such documents and the authentication of the TIFIA Bond and now is duly appointed, qualified and acting incumbent of his or her respective office, that each such person was authorized to execute such documents and to authenticate the TIFIA Bond, and that the signature appearing after the name of each such person is a true and correct specimen of that person’s genuine signature.
4. That the undersigned is authorized to act as Trustee and accept the trusts conveyed to it under the Indenture (“**Trusts**”), has accepted the Trusts so conveyed and in so accepting the Trusts and so acting is in violation of no provision of its articles of association or bylaws, any law, regulation or court or administrative order or any agreement or other instrument to which it is a party or by which it may be bound.
5. That attached to this Certificate as Annex Two is a full, true and correct copy of excerpts from resolutions of the board of directors of the Trustee and other applicable documents that evidence the Trustee’s trust powers and the authority of the officers referred to above to act on behalf of the Trustee; and that these excerpts and other applicable documents were in effect on the date or dates such officers acted and remain in full force and effect today,

and such excerpts and documents have not been amended since the date of the last amendment thereto shown on any such copy, as applicable.

6. That receipt is acknowledged of all instruments, certifications and other documents or confirmations required to be received by the Trustee pursuant to Section 5.3 and Section 15.3 of that certain Master Indenture of Trust (the “**Indenture**”), dated as of August 1, 2021, and the Supplemental Indenture pertaining to the TIFIA Bond (the “**TIFIA Supplemental Indenture**”), dated as of [], 2022, each between the Commonwealth Transportation Board (the “**Borrower**”) and the Trustee.
7. That receipt is also acknowledged of that certain TIFIA Loan Agreement, dated as of [], 2022 (the “**TIFIA Loan Agreement**”), between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Bondholder**”).
8. That the Trustee also accepts its appointment and agrees to perform the duties and responsibilities of Trustee and of Bond Registrar and Paying Agent for and in respect of the TIFIA Bond as set forth in the Indenture, the TIFIA Supplemental Indenture, and the TIFIA Loan Agreement, including from time to time redeeming all or a portion of the TIFIA Bond as provided in Article IV of the Indenture. In accepting such duties and responsibilities, the Trustee shall be entitled to all of the privileges, immunities, rights and protections set forth in Article XIV of the Indenture.
9. That all funds and accounts for the payment of the TIFIA Bond pursuant to the Indenture and the TIFIA Supplemental Indenture (including, but not limited to, the [TIFIA Series 2022] Project Fund; the [TIFIA Series 2022 Bond Debt Service Fund], and within such Fund the [TIFIA Series 2021 Interest Account,] the [TIFIA Series 2021 Principal Account], [the TIFIA Series 2021 Redemption Account] and the [TIFIA Revenue Sharing Account] have been established as provided in the Indenture and the TIFIA Supplemental Indenture.

[SIGNATURE PAGE FOLLOWS]

Dated: [_____], 2022

U.S. BANK NATIONAL ASSOCIATION

By: _____

Its:

ANNEX ONE TO EXHIBIT J
OFFICERS OF TRUSTEE

ANNEX TWO TO EXHIBIT J
RESOLUTIONS OF BOARD OF DIRECTORS OF TRUSTEE

EXHIBIT K

FORM OF BORROWER'S OFFICER'S CERTIFICATE¹⁷

Reference is made to that certain TIFIA Loan Agreement, dated as of [], 2022 (the “**TIFIA Loan Agreement**”), by and among the Commonwealth Transportation Board (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement.

Pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the undersigned, Executive Director, as Borrower's Authorized Representative, does hereby certify on behalf of the Borrower and not in his/her personal capacity, as of the date hereof:

- (a) pursuant to Section 12(a)(vii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit A** is an incumbency certificate that lists all persons, together with their positions and specimen signatures, who are duly authorized by the Borrower to execute the Related Documents to which the Borrower is or will be a party, and who have been appointed a Borrower's Authorized Representative in accordance with Section 26 (*Borrower's Authorized Representative*) of the TIFIA Loan Agreement;
- (b) pursuant to Section 12(a)(ii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit B** are certified, complete, and fully executed copies of each Indenture Document, together with any amendments, waivers or modifications thereto, in each case that has been entered into on or prior to the Effective Date, and each such agreement is in full force and effect, and all conditions contained in such documents to the closing of the transactions contemplated thereby shall have been fulfilled or effectively waived;
- (c) pursuant to Section 12(a)(ix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that it is in compliance with the disclosure requirements set forth in 2 CFR § 180.355 and the verification requirements set forth in 2 CFR §§ 180.300 and 180.320 and with its obligations under 2 CFR § 180.330;
- (d) pursuant to Section 12(a)(xv) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that:
 - a. With respect to the Project, each of the Borrower and VDOT has complied with NEPA and the Borrower has delivered to the TIFIA Lender a copy of the NEPA Determination; and
 - b. The Borrower has complied, and has caused VDOT to comply, with all applicable requirements of the Uniform Relocation Assistance and Real Property Acquisition

¹⁷ **NTD**: Certificate to be conformed with CPs to Effectiveness included in Section 12(a).

Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);

- (e) pursuant to Section 12(a)(v) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit C** is evidence that the Project has been included in (A) the State transportation plan and (B) the State transportation improvement program approved by the USDOT or its designated agency, in each case to the extent required by 23 U.S.C. §§ 134 and 135, and 23 U.S.C. § 602(a)(3), as applicable; and the financial plan for each such program or plan shall reflect the costs of, and the sources of funding for, the Project;
- (f) pursuant to Section 12(a)(viii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has demonstrated that as of the Effective Date the aggregate of all committed sources of funds shown in the Base Case Financial Model and in the Project Budget to pay Total Project Costs have been fully and completely committed and allocated to the Borrower by the providers thereof and that such funds will be sufficient to pay all Total Project Costs necessary to achieve Substantial Completion;
- (g) pursuant to Section 12(a)(x) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has delivered to the TIFIA Lender certified, complete, and fully executed copies of each Fundamental Contract and each Construction-Related Contract , together with any amendments, waivers or modifications thereto and any related performance security instruments, in each case that has been entered into on or prior to the Effective Date and each such agreement shall be in full force and effect and in form and substance satisfactory to the TIFIA Lender;
- (h) pursuant to Section 12(a)(xi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, each of the Borrower and VDOT has obtained all Governmental Approvals necessary to commence construction of the Project and all such Governmental Approvals are final, non-appealable, and in full force and effect (and are not subject to any notice of violation, breach, or revocation);
- (i) pursuant to Section 12(a)(xii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower has delivered a certified Base Case Financial Model on or prior to the Effective Date, which Base Case Financial Model (A) demonstrates that projected Pledged Revenues are sufficient to meet the Loan Amortization Schedule, (B) demonstrates (x) a Senior Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [] and (y) a Total Debt Service Coverage Ratio for each Calculation Period through the Final Maturity Date that is not less than [], and (C) is otherwise in form and substance acceptable to the TIFIA Lender;
- (j) pursuant to Section 12(a)(xiii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit D** is evidence that the Borrower (A) is authorized, pursuant to the I-81 Program Bond Act, to pledge, assign, and grant the Liens on the Trust Estate purported to be pledged, assigned, and granted pursuant to the Indenture Documents, without the need for notice to any Person, physical delivery, recordation, filing or further act, (B) has recorded or filed, or caused to be recorded or filed, for record in such manner

and in such places as are required all documents and instruments, and taken or caused to be taken all other actions, as are necessary or desirable to establish and enforce the Trustee's Lien on the Trust Estate (for the benefit of the Secured Parties) to the extent contemplated by the Indenture Documents and required by applicable law, and (C) has paid, or caused to be paid, all taxes and filing fees that are due and payable in connection with the execution, delivery or recordation of any Indenture Documents or any instruments, certificates or financing statements in connection with the foregoing;

- (k) pursuant to Section 12(a)(xvii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, (i) the Borrower's Federal Employer Identification Number is [], (ii) the Borrower's Data Universal Numbering System number is [], and (iii) the Borrower has registered with, and obtained confirmation of active registration status from, the federal System for Award Management (www.SAM.gov), and attached hereto as **Exhibit E** is evidence of (iii);
- (l) pursuant to Section 12(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit F** is evidence that each of the Borrower and VDOT is duly created and validly existing under the laws of the Commonwealth and a certified copy of each of the Borrower's and VDOT's Organizational Documents;
- (m) pursuant to Section 12(a)(xix) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, attached hereto as **Exhibit G** is a certified copy of the resolutions authorizing the execution of this Agreement, the TIFIA Supplemental Indenture, and the TIFIA Bond and the issuance of the TIFIA Bond;
- (n) pursuant to Section 12(a)(xxi) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that the representations and warranties of the Borrower set forth in the TIFIA Loan Agreement and in each other Related Document to which the Borrower is a party are true and correct on and as of the date hereof, except to the extent that such representations and warranties expressly relate to an earlier date, in which case such representations and warranties were true and correct as of such earlier date; and
- (o) pursuant to Section 12(a)(xxii) (*Conditions Precedent to Effectiveness*) of the TIFIA Loan Agreement, the Borrower hereby certifies that, as of the Effective Date, (i) the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), together with the amount of any other credit assistance provided under the Act to the Borrower, does not exceed thirty-three percent (49%) of reasonably anticipated Eligible Project Costs and (ii) as required pursuant to § 603(b)(9) of the Act, the total federal assistance provided to the Project, including the maximum principal amount of the TIFIA Loan (excluding any interest that is capitalized in accordance with the terms hereof), does not exceed eighty percent (80%) of Total Project Costs.

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

COMMONWEALTH TRANSPORTATION
BOARD

By: _____
Name:
Title: Authorized Representative

EXHIBIT A TO EXHIBIT K
INCUMBENCY CERTIFICATE

The undersigned certifies that he is the [] of the Commonwealth Transportation Board, a board created and existing under the laws of the Commonwealth of Virginia (the “**Borrower**”), and as such he is authorized to execute this certificate and further certifies that the following person has been elected or appointed, is qualified, and is now acting as an officer or authorized person of the Borrower in the capacity indicated below, and that the signature set forth opposite his name is a true and genuine signature. He further certifies that any of the officer or authorized person listed below is authorized to sign agreements and give written instructions with regard to any matters pertaining to the TIFIA Loan Documents and/or the Indenture Documents as the Borrower’s Authorized Representative (each as defined in that certain TIFIA Loan Agreement, dated as of the date hereof, between the Borrower and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau):

Name	Title	Signature
[]	[]	_____

IN WITNESS WHEREOF, the undersigned has executed this certificate as of this _____ day of _____, 2022.

COMMONWEALTH TRANSPORTATION
BOARD

By: _____
Name:
Title:
r

EXHIBIT L

FORM OF CERTIFICATE OF SUBSTANTIAL COMPLETION

[Letterhead of Borrower]

[Date]

Build America Bureau
United States Department of Transportation
Room W12-464
1200 New Jersey Avenue, SE
Washington, D.C. 20590
Attention: Director, Office of Credit Programs

Project: [] Project (TIFIA – [•])

Dear Director:

This Notice is provided pursuant to Section 15(g)(i)(A) (*Substantial Completion*) of that certain TIFIA Loan Agreement (the “**TIFIA Loan Agreement**”), dated as of [], 2022, by and between the Commonwealth Transportation Board (the “**Borrower**”) and the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”).

Unless otherwise defined herein, all capitalized terms in this Notice have the meanings assigned to those terms in the TIFIA Loan Agreement.

I, the undersigned, in my capacity as the Borrower’s Authorized Representative and not in my individual capacity, do hereby certify to the TIFIA Lender that:

- (a) on [*insert date Substantial Completion requirements were satisfied*], the Project satisfied each of the requirements for Substantial Completion set forth in [];
- (b) Substantial Completion has been declared under each of the above-referenced agreements and copies of the notices of Substantial Completion under such agreements are attached to this certification; and
- (c) Substantial Completion, as defined in the TIFIA Loan Agreement, has been achieved.

COMMONWEALTH TRANSPORTATION
BOARD

Name:

Title:

EXHIBIT N

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

Reference is made to that certain TIFIA Loan Agreement, dated as of [], 2022 (the “**TIFIA Loan Agreement**”), by and among the Commonwealth Transportation Board (the “**Borrower**”) and the United States Department of Transportation, acting by and through the Executive Director of the Build America Bureau (the “**TIFIA Lender**”). Capitalized terms used in this certificate and not defined shall have the respective meanings ascribed to such terms in the TIFIA Loan Agreement. The undersigned, on behalf of the Commonwealth Transportation Board, hereby certifies, to the best of his or her knowledge and belief, that:

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

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

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

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

Dated: _____

**COMMONWEALTH TRANSPORTATION
BOARD**

By: _____

Name:

Title:

EXHIBIT P

2 CFR Part 170

I. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION

a. *Reporting of first-tier subawards.*

1. *Applicability.* Unless you are exempt as provided in paragraph (d) below, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph (e) below).

2. *Where and when to report.*

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph (a)(1) above to <http://www.fsrs.gov>.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. *What to report.* You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

b. *Reporting total compensation of recipient executives for non-Federal entities.*

1. *Applicability and what to report.* You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this TIFIA Loan equals or exceeds \$30,000 as defined in 2 CFR § 170.320;

ii. In the preceding fiscal year, you received—

(A) eighty percent (80%) or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards), and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. *Where and when to report.* You must report executive total compensation described in paragraph (b)(1) above:

i. As part of your registration profile at <https://www.sam.gov>.

ii. By the end of the month following the month of the Effective Date, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report.* Unless you are exempt as provided in paragraph (d) below, for each first-tier non-Federal entity subrecipient under this TIFIA Loan, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) eighty percent (80%) or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR § 170.320 (and subawards) and,

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

2. *Where and when to report.* You must report subrecipient executive total compensation described in paragraph (c)(1) above:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. *Exemptions.* If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

1. Subawards, and

2. The total compensation of the five most highly compensated executives of any subrecipient.

e. *Definitions.* For purposes of this **Exhibit O**:

1. *Federal Agency* means a Federal agency as defined at 5 U.S.C. § 551(1) and further clarified by 5 U.S.C. § 552(f).

2. *Non-Federal entity* means all of the following, as defined in 2 CFR Part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and,

iv. A domestic or foreign for-profit organization

3. *Executive* means officers, managing partners, or any other employees in management positions.

4. *Subaward*:

i. This term means a legal instrument to provide support for the performance of any portion of the Project and that you as the Borrower award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the Project (for further explanation, see 2 CFR § 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. *Subrecipient* means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this TIFIA Loan; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. *Total compensation* means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR § 229.402(c)(2)).



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 5

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ Seconded By:

Action:

**AUTHORIZING THE DEFEASANCE OF ALL OR A PORTION OF THE
OUTSTANDING ROUTE 28 TRANSPORTATION CONTRACT REVENUE
REFUNDING BONDS AND SETTING FORTH THE DETAILS AND PROVISIONS FOR
THE REDEMPTION THEREOF**

WHEREAS, pursuant to the Transportation Development and Revenue Bond Act, Sections 33.2-1700 et seq. of the Code of Virginia of 1950, as amended, the Commonwealth Transportation Board (the "Board") has previously issued its Commonwealth of Virginia Transportation Contract Revenue Refunding Bonds, Series 2012 (Route 28 Project) (the "2012 Bonds") under a Master Indenture of Trust dated as of October 1, 2002, as previously supplemented and amended (the "Master Indenture"), between the Board and U.S. Bank Trust Company, National Association, as successor trustee (the "Trustee") and a Second Supplemental Agreement of Trust dated as of May 1, 2012 (the "Second Supplement," and, together with the Master Indenture, the "Indenture") between the Board and the Trustee.

WHEREAS, the Board has determined that it is desirable to defease and/or redeem all or a portion of the 2012 Bonds.

NOW THEREFORE, BE IT RESOLVED BY THE COMMONWEALTH TRANSPORTATION BOARD:

Resolution of the Board

Authorizing the Defeasance of All or a Portion of the Outstanding Route 28 Transportation Contract Revenue Refunding Bonds and Setting forth the Details and Provisions for the Redemption Thereof

October 25, 2022

Page 2 of 2

1. Defeasance Authorized. The defeasance of all or a portion of the 2012 Bonds (collectively, the “Targeted Bonds”), is authorized and approved. The Targeted Bonds may be defeased all at one time or in portions from time to time. The Targeted Bonds shall be defeased to the applicable maturity date or any available call date specified by the Chairperson and are authorized to be called for redemption on any available call date specified by the Chairperson in accordance with the Indenture. The Chairperson is authorized to select the particular Targeted Bonds to be defeased and/or redeemed and the redemption dates for the selected Targeted Bonds.

2. Transfer of Funds. The Chairperson is authorized to apply, at one time or from time to time, amounts received from the State Route 28 Highway Transportation Improvement District Commission (the “Commission”) under the District Contract (as defined in the Indenture) representing Excess Revenues (as defined in the District Contract) to the Debt Service Fund pursuant to Section 506 of the Master Indenture sufficient to defease the Targeted Bonds to the redemption or maturity of the Targeted Bonds or to transfer any of such amounts to the Trustee or an escrow agent selected by the Chairperson to defease and/or redeem the Targeted Bonds in accordance with the terms of this Resolution and the Indenture. The Chairperson is authorized to engage escrow agents and verification agents as may be necessary or desirable, in the opinion of the Chairperson, to effect the defeasance and/or redemption of the Targeted Bonds in accordance with the terms of this Resolution.

3. Approval of Escrow Agreement. If the Chairperson deems it necessary or desirable to effect the defeasance and/or redemption of any selected Targeted Bonds, the Chairperson is authorized to execute and deliver on behalf of the Board an Escrow Agreement between the Board and such escrow agent to be selected by the Chairperson, and such Escrow Agreement may be approved by the Chairperson, whose approval will be evidenced conclusively by the execution and delivery of such document. The Board hereby authorizes each officer of the Board to execute and deliver on behalf of the Board such other instruments, documents or certificates, and to do and perform such other things and acts, as he or she deems necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Targeted Bonds or the Indenture, including without limitation to procure and/or negotiate investments and investment contracts related to the defeasance of the Targeted Bonds, and all of the foregoing, previously done or performed by any such officer of the Board, are in all respects approved, ratified and confirmed.

4. Effective Date. This Resolution will take effect immediately.

#####



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 6

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ Seconded By:

Action:

Title: Action on the Second Revised Fiscal Year 2023 Annual Budgets for the Commonwealth Transportation Fund and Virginia Department of Transportation

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

WHEREAS, the Board approved a Revised Commonwealth Transportation Fund Budget, Virginia Department of Transportation Budget, and DRPT Budget for Fiscal Year 2022 on January 12, 2022, which included certain legislatively proposed uses of \$115,796,000 in General Fund dollars dedicated to transportation (Fiscal Year 2022 General Fund Dollars); and

WHEREAS, the Board approved the Commonwealth Transportation Fund Budget, the Virginia Department of Transportation Budget, and the DRPT Budget for Fiscal Year 2023 on June 21, 2022 and approved Revised Budgets for the same on July 20, 2022; and

WHEREAS, the Governor and General Assembly included actions in Chapters 1 and 2 of the 2022 Special Session I that impacted transportation agencies; and

WHEREAS, on September 20, 2022, the Commonwealth Transportation Board was briefed on recommended updates to incorporate actions of the General Assembly and Governor to provide General Fund dollars and legislative direction for transportation initiatives.

Resolution of the Board

Action on the Second Revised Fiscal Year 2023 Annual Budgets for the Commonwealth
Transportation Fund and Virginia Department of Transportation

October 25, 2022

Page 2 of 2

NOW, THEREFORE, BE IT RESOLVED by the Commonwealth Transportation Board that the second revised budgets for the Commonwealth Transportation Fund and the Department of Transportation for Fiscal Year 2023, as attached hereto, are approved.

BE IT FURTHER RESOLVED by the Commonwealth Transportation Board that the Fiscal Year 2022 General Fund Dollars previously budgeted and allocated for prescribed uses are hereby restated in these second revised Fiscal Year 2023 budgets, for the uses depicted in Exhibit A, based on project readiness: \$30 million for Virginia Commercial Space Flight Authority for improvements to the Mid-Atlantic Regional Spaceport and \$85,796,000 to improve Interstate 64 between exit 205 and exit 234.

####

CTB Decision Brief

Action on the Second Revised Fiscal Year 2023 Annual Budgets for the Commonwealth Transportation Fund and for the Virginia Department of Transportation

Issue: The Commonwealth Transportation Board (the “Board”) is required by §§ 33.2-214 (B) and 33.2-221 (C) of the Code of Virginia (Code) to administer and allocate funds in the Transportation Trust Fund (TTF). The Board approved the Commonwealth Transportation Fund Budget (CTF), the Virginia Department of Transportation Budget (VDOT) and the Department of Rail and Public Transportation (DRPT) Budget for Fiscal Year 2023 on June 21, 2022 and Revised Budgets on July 20, 2022.

The Board has been briefed on recommendations to implement certain funding adjustments in FY 2023. Revised CTF and VDOT budgets are required to adopt these recommendations.

Facts:

The Board approved the CTF, VDOT and DRPT Budgets for Fiscal Year 2023 on June 21, 2022 and revised the budgets on July 20, 2022.

The Governor and General Assembly considered and adopted Chapters 1 and 2 during the 2022 Special Session I (Appropriations Acts). The Appropriations Acts amended Fiscal Year 2022 (Chapter 1) and adopted appropriation assumptions for the 2022-2024 Biennium, or Fiscal Years 2023 and 2024. These assumptions included General Fund dollars for transportation initiatives. Other budgetary actions that impacted VDOT included additional funding for Financial Assistance to Localities (\$15 million in FYs 2023 and 2024) and additional administrative budget funding needed for Employee Bonuses in FY 2023.

It is noted that in January 2022, the Board had adopted a Revised Fiscal Year 2022 Budget that included updated revenue assumptions and the proposed use of General Fund dollars dedicated to transportation. Certain uses of these funds, totaling \$115,796,000, were included in the Introduced Budget Bill for the 2022 Regular Session. When the budget responsibilities of the General Assembly were completed in June 2022, the recommendations in the enacted legislation included additional General Fund dollars dedicated to transportation but the uses of the funds were updated from the Introduced Budget Bill. This detail/these uses from the Introduced Budget Bill were included in the FY 2022 Board Approved Budgets and VDOT recommends reclassifying the allocation of these funds in the CTF and VDOT FY 2023 Budgets as outlined in the table below, based on the reason stated.

<i>(\$ in millions)</i>	FY 2022 Budget (January 2022)	Reclassification of FY 2022 based on Final Recommendations/ Readiness	TOTAL
Mid-Atlantic Regional Spaceport	\$30.0	\$ -	\$30.0
Regional Multi-Use Trails	25.8	(25.8)	-
Air Terminal Interchange	20.0	(20.0)	-
I-64 Gap	20.0	65.8	85.8
TPOF Restoration	10.0	(10.0)	-
Wildlife Habitat	10.0	(10.0)	-
TOTAL	\$115.8	-	\$115.8

The recommendations for the Second Revised 2023 CTF and VDOT Budgets also include updated revenue assumptions for the Commonwealth Transportation Fund based on year-end performance for Fiscal Year 2022 and updates for Fiscal Year 2023 forecasted revenue.

Recommendations: VDOT recommends the approval of the Second Revised Fiscal Year 2023 Annual Budgets for the Commonwealth Transportation Fund and the Department of Transportation.

Action Required by CTB: Adopt a Resolution setting forth the recommended actions/approvals.

Result if Approved: Revised budgets reflecting the recommended changes will be established with allocations to programs outlined in the attached budgets.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: N/A

**Action on the Second Revised Fiscal Year 2023 Annual Budgets for the Commonwealth
Transportation Fund and for the Virginia Department of Transportation**
EXHIBIT A

<i>(\$ in millions)</i>	FY 2022 Budget (January 2022)	Reclassification of FY 2022 based on Final Recommendations/ Readiness	TOTAL
Mid-Atlantic Regional Spaceport	\$30.0	\$ -	\$30.0
Regional Multi-Use Trails	25.8	(25.8)	-
Air Terminal Interchange	20.0	(20.0)	-
I-64 Gap	20.0	65.8	85.8
TPOF Restoration	10.0	(10.0)	-
Wildlife Habitat	10.0	(10.0)	-
TOTAL	\$115.8	-	\$115.8

Second Revised FY 2023

Commonwealth Transportation Fund Budget
October 2022



Virginia Department of Transportation

Budget and Funds Management Division

1221 E. Broad Street, 4th Floor


Richmond, VA 23219

Telephone: (804) 225-3552

Internet Address: <http://www.virginiadot.org/projects/reports-budget.asp>

Table of Contents

<u>Commonwealth Transportation Fund Revenues</u>	<u>4</u>
<u>Commonwealth Transportation Fund Recommended Distributions</u>	<u>8</u>
<u>Summary of Revenues</u>	<u>12</u>




During its 2020 session, the Virginia General Assembly enacted the Governor's Omnibus Transportation Bill, Chapter 1230 (House Bill 1414), which revised the composition of and increased available revenues for transportation funding in the Commonwealth. Under Chapter 1230, the Commonwealth Transportation Fund (CTF) serves as the fund to which all transportation revenues are deposited and then distributed to programs and funds. These transportation revenues include: (i) motor vehicles fuels taxes and road taxes for diesel fuel; (ii) vehicle registration fees; (iii) highway use fee; (iv) 0.5% statewide sales and use tax; (v) 0.3% statewide sale and use tax for transportation; (vi) 4.15% percent motor vehicles sales and use tax; (vii) motor vehicle rental tax (10 percent of gross proceeds from rentals for most passenger vehicles); (viii) \$0.03 of the \$0.25 per \$100 of assessed value of the statewide recordation tax; (ix) tax on liquid alternative fuel, set at the rate for gasoline; (x) International Registration Plan fees; and (xi) one-third of the revenue from insurance premium taxes.

Chapter 1230 also amends the allocation of funds. Before funds are distributed between the Transportation Trust Fund and the Highway Maintenance and Operating Fund ("HMO Fund"), (i) \$40 million annually will be deposited into the Route 58 Corridor Development Fund; (ii) \$40 million annually will be deposited into the Northern Virginia Transportation District Fund; and (iii) \$80 million annually (as adjusted annually based on changes in consumer price index for urban consumers) will be deposited into the Special Structure Fund. Enactment Clause 11 of Chapter 1230 provides the Commonwealth Transportation Board the ability to take actions deemed necessary in fiscal years 2021, 2022, and 2023 to ensure funds for modal programs and the highway maintenance and operating fund are at least equal to the amounts provided for in the six-year financial plan for the Commonwealth Transportation Fund as in effect on January 1, 2020.

Toll revenue and concession payments to the Commonwealth under the Public-Private Transportation Act of 1995 also would be deposited to the Commonwealth Transportation Fund and allocated to the Transportation Trust Fund (for defined purposes and not available for further distribution). Interest, dividends, and appreciation accrued to the Transportation Trust Fund or the HMO Fund also would be allocated to the Commonwealth Transportation Fund and distributed two-thirds to the Virginia Transportation Infrastructure Bank and one-third to the Transportation Partnership Opportunity Fund.

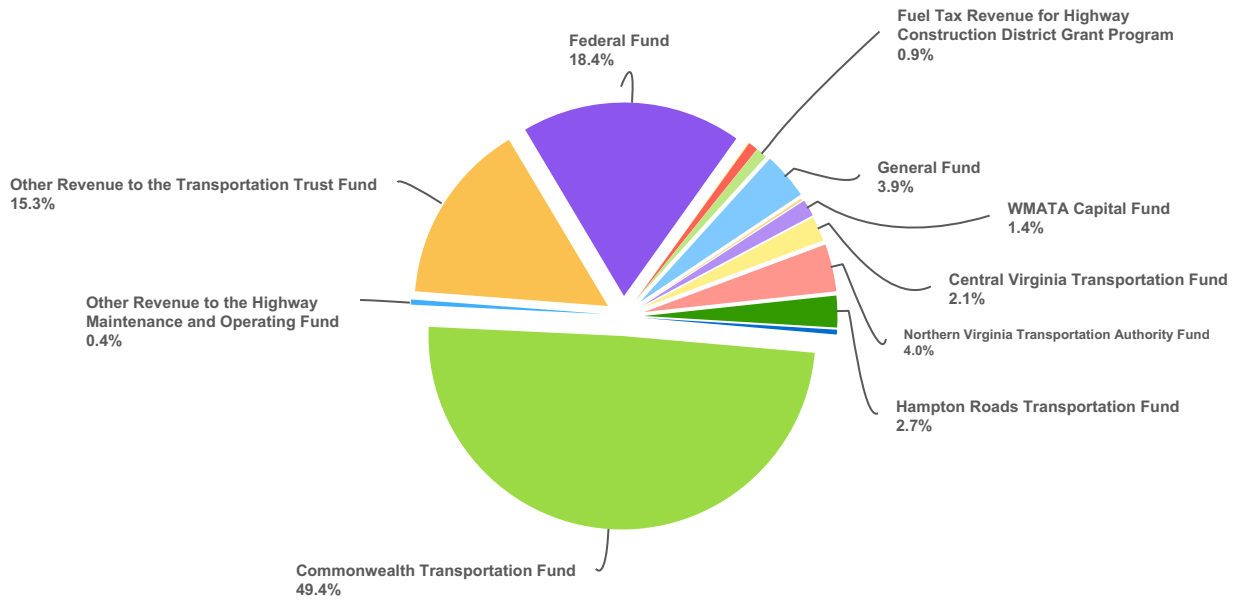
The remaining funds in the Commonwealth Transportation Fund are allocated 51% to the HMO Fund and 49% to the Transportation Trust Fund. Chapter 1230 directs the following distribution of funds from the Transportation Trust Fund: (i) 53% for construction programs; (ii) 23% to the Commonwealth Mass Transit Fund; (iii) 7.5% to the Commonwealth Rail Fund; (iv) 2.5% to the Commonwealth Port Fund; (v) 1.5% to the Commonwealth Aviation Fund; (vi) 1% to the Commonwealth Space Flight Fund; (vii) 10.5% to the Priority Transportation Fund; and (viii) 1% to the Department of Motor Vehicles. Enactment Clause 11 of Chapter 1230 also allows the Commonwealth Transportation Board to take actions deemed necessary in fiscal years 2021, 2022, and 2023 to ensure appropriate coverage ratios for any outstanding debt backed by the Transportation Trust Fund.

The Fiscal Year 2023 budget for the CTF identifies the estimated revenues and the distribution of the revenues to the related transportation agencies and programs. It is based on the state revenue forecast from February 2022, which reflects the elimination of i) the Retail Sales and Use Tax on food purchased for human consumption and essential personal hygiene items assumed to change July 1, 2022 and ii) the accelerated sales tax payments for FY 2023, and reflects implementation of federal funding provided under the Infrastructure Investment and Jobs Act (IIJA). The Second Revised FY 2023 CTF Budget totals \$9,527,302,484.



The CTF receives revenues from dedicated state and federal sources. The major state revenues are based on Virginia's official revenue forecast developed by the Department of Taxation. The federal revenues from the Federal Highway Administration and the Federal Transit Administration are estimated by the Virginia Department of Transportation (VDOT) and the Virginia Department of Rail and Public Transportation (DRPT). Revenues provided are also from funds collected for regional transportation improvements in Northern Virginia, Hampton Roads, and Central Virginia. These funds are dedicated to the efforts of the Northern Virginia Transportation Authority, Central Virginia Transportation Authority, and the Hampton Roads Transportation Accountability Commission.

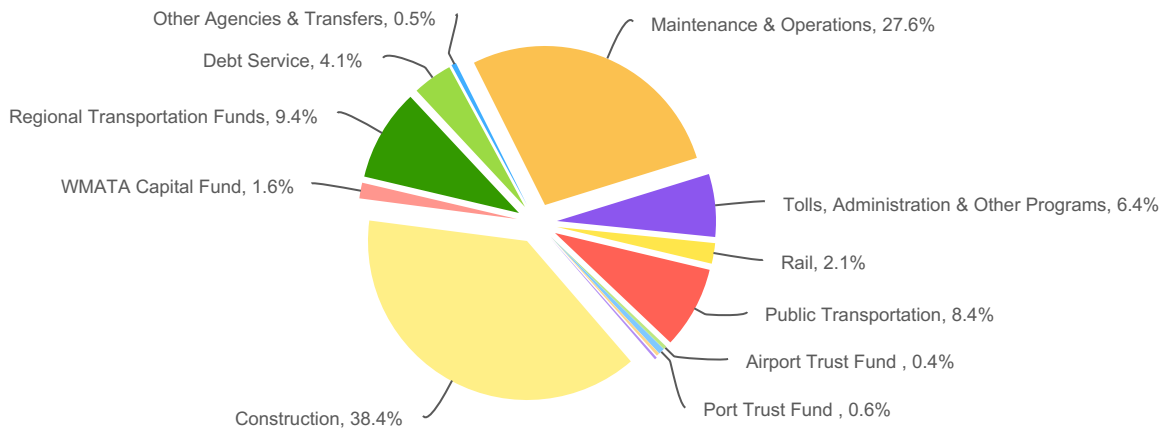
Commonwealth Transportation Fund Total Revenues for FY 2023



Commonwealth Transportation Fund	\$4,708,800,000
Other Revenue to the Highway Maintenance and Operating Fund	42,098,489
Other Revenue to the Transportation Trust Fund	1,454,310,854
Federal Fund	1,755,048,618
Interstate 81 Corridor Improvement Fund & Financing	78,800,000
Fuel Tax Revenue for Highway Construction District Grant Program	89,497,754
General Fund	373,204,000
Bonds	19,222,769
Total Operating Revenues	8,520,982,484
Pass Through Revenues	
WMATA Capital Fund	133,920,000
Central Virginia Transportation Fund	198,900,000
Northern Virginia Transportation Authority Fund	379,300,000
Hampton Roads Transportation Fund	254,300,000
Hampton Roads Regional Transit Fund	39,900,000
Subtotal	1,006,320,000
TOTAL	\$9,527,302,484

The revenues are dedicated to specific funds within the CTF. After certain distributions required by the Code of Virginia, the remaining funds in the CTF are allocated 51% to the Highway Maintenance and Operating Fund (HMOF) and 49% to the Transportation Trust Fund. Chapter 1230 directs the following distribution of funds from the Transportation Trust Fund: (i) 53% for construction programs; (ii) 23% to the Commonwealth Mass Transit Fund; (iii) 7.5% to the Commonwealth Rail Fund; (iv) 2.5% to the Commonwealth Port Fund; (v) 1.5% to the Commonwealth Aviation Fund; (vi) 1% to the Commonwealth Space Flight Fund; (vii) 10.5% to the Priority Transportation Fund; and (viii) 1% to the Department of Motor Vehicles.

The revenues for the HMOF support highway maintenance, operations and administration. The Priority Transportation Fund (PTF) revenues are dedicated to debt service on the Commonwealth of Virginia Transportation Capital Projects Revenue Bonds. The Commonwealth Transportation Board can also use the Fund to facilitate the financing of priority transportation projects throughout the Commonwealth. Federal revenues are used for their defined purposes to support construction, maintenance or transit.



Debt Service	\$386,831,539
Other Agencies & Transfers	49,162,918
Maintenance & Operations	2,628,649,254
Tolls, Administration & Other Programs	610,514,323
Public Transportation	797,121,656
Rail	199,696,173
Airport Trust Fund	35,309,545
Port Trust Fund	60,176,596
Department of Motor Vehicles	30,588,390
Space Flight Fund	23,575,710
Construction	3,659,356,380
Total Operating Programs	8,480,982,484
Pass Through Programs	
WMATA Capital Fund	153,920,000
Regional Transportation Funds	892,400,000
TOTAL RECOMMENDED DISTRIBUTIONS	\$9,527,302,484



STATE REVENUE SOURCES	Revised FY 2023	2nd Revised FY 2023	INCREASE (DECREASE)
Commonwealth Transportation Fund	\$ 4,674,400,000	\$ 4,708,800,000	\$ 34,400,000 ¹
Revenue Sharing	191,405,031	191,405,031	—
Highway Maintenance & Operating Fund (HMOF)	42,098,489	42,098,489	—
General Fund	—	373,204,000	373,204,000 ²
Transportation Trust Fund (TTF) and Other State Revenue			
Interest Earnings	18,490,000	18,490,000	—
Toll Facilities	37,840,000	37,840,000	—
Local Revenue Sources	383,592,011	383,592,011	—
Project Participation - Regional Entities	701,196,581	701,196,581	—
GARVEE Bonds/ Interest Earnings	19,222,769	19,222,769	—
Route 58 Bonds/ Interest Earnings	1,054,829	1,054,829	—
I-66 Outside the Beltway Concession Fee Payment/Interest	21,279,551	21,279,551	—
Interstate 81 Corridor Improvement Fund	78,800,000	78,800,000	—
Statewide Interstate Improvement Fund	—	—	—
Special Fund Account for the Highway Construction District Grant Program	89,497,754	89,497,754	—
Other Trust Fund Revenue	92,164,670	92,164,670	—
Total TTF and Other Revenue	1,443,138,165	1,443,138,165	—
Priority Transportation Fund (PTF)			
State Revenue	7,288,181	7,288,181	—
Total PTF	7,288,181	7,288,181	—
Pass Through Revenues			
Revenue Dedicated to WMATA Capital Fund	133,920,000	133,920,000	—
State Revenue for Regional Entities	872,400,000	872,400,000	—
Total Pass Through Revenues	1,006,320,000	1,006,320,000	—
TOTAL STATE REVENUES	7,364,649,866	7,772,253,866	407,604,000
Federal Funding Sources			
Federal Highway Administration (FHWA)	1,705,820,159	1,705,820,159	—
Federal Transit Administration (FTA)	49,228,459	49,228,459	—
Total Federal Funding	1,755,048,618	1,755,048,618	—
TOTAL COMMONWEALTH TRANSPORTATION FUNDS	\$ 9,119,698,484	\$ 9,527,302,484	\$ 407,604,000



DISTRIBUTION OF REVENUE SOURCES	Revised FY 2023	2nd Revised FY 2023	INCREASE (DECREASE)
Debt Service			
Northern Virginia Transportation District	\$ 11,870,438	\$ 11,870,438	\$ —
Route 28	8,644,519	8,644,519	—
Route 58	30,815,139	30,815,139	—
Interstate 81	5,220,979	5,220,979	—
GARVEE Bonds	136,978,264	136,978,264	—
CPR Bonds	193,302,200	193,302,200	—
Total Debt Service	386,831,539	386,831,539	—
Other Agencies & Transfers			
Trust Fund Management	3,092,567	3,092,567	—
Support to Other State Agencies (excludes DRPT)	43,349,176	43,349,176	—
Indirect Costs	2,721,175	2,721,175	—
Total State Agencies	49,162,918	49,162,918	—
Maintenance & Operations			
Highway System Maintenance	2,059,397,351	2,064,850,289	5,452,938 3
Financial Assist. to Localities for Ground Transportation - Cities	467,781,468	482,781,468	15,000,000 4
Financial Assist. to Localities for Ground Transportation - Counties	81,017,497	81,017,497	—
Total Maintenance & Operations	2,608,196,316	2,628,649,254	20,452,938
Tolls, Administration & Other Programs			
Ground Transportation System Planning and Research	106,660,594	106,954,634	294,040 3
Environmental Monitoring & Compliance	17,968,133	18,045,289	77,156 3
Administrative and Support Services	318,906,000	319,867,259	961,259 3
Program Management and Direction	49,904,320	51,057,141	1,152,821 3
Toll Facilities Operations	37,840,000	37,840,000	—
Toll Facility Revolving Account	36,750,000	36,750,000	—
Capital Outlay	40,000,000	40,000,000	—
Total Tolls, Administration & Other Programs	608,029,047	610,514,323	2,485,276

DISTRIBUTION OF REVENUE SOURCES	Revised FY 2023	2nd Revised FY 2023	INCREASE (DECREASE)
Transit and Rail Funds			
Share of TTF Distribution for Transit	\$ 504,504,614	\$ 508,381,494	\$ 3,876,880 ¹
Transit - Share of administrative costs	(662,119)	(662,119)	—
Other Revenue dedicated to Transit	16,153,359	21,153,359	5,000,000 ²
Share of TTF Distribution for Rail	164,512,374	165,776,574	1,264,200 ¹
Rail - Share of administrative costs	(170,401)	(170,401)	—
Federal Transit Authority (FTA)	49,228,459	49,228,459	—
CMAQ (without State Match)	28,101,637	28,101,634	(3)
STP Regional (without State Match)	12,945,933	12,945,933	—
Rail Fund (with prior year adjustments)	—	—	—
Interest Earnings	1,890,000	1,890,000	—
HB1414 Off the Top to Commonwealth Mass Transit Fund	50,300,000	50,300,000	—
Metro Matters	—	—	—
HB1414 Off the Top to Commonwealth Rail Fund	32,700,000	32,700,000	—
Mass Transit Fund-Support from Construction	10,436,903	10,261,896	(175,007) ⁵
Rail Fund - Support from Construction	87,500,000	87,500,000	—
Priority Transportation	7,300,000	7,300,000	—
Other	22,111,000	22,111,000	—
Subtotal Transit and Rail Funds	986,851,759	996,817,829	9,966,070
Pass Through Revenue for WMATA Capital			
Dedicated Revenue for WMATA Capital Fund	133,920,000	133,920,000	—
Transfer from NVTD Fund for WMATA Capital Fund	20,000,000	20,000,000	—
Subtotal WMATA Capital Fund	153,920,000	153,920,000	—
Airports - Share of TTF Distribution	32,902,475	33,155,315	252,840 ¹
Airports - Share of administrative costs	(45,770)	(45,770)	—
Airports - Interest Earnings	700,000	700,000	—
Directed CTF Allocation	1,500,000	1,500,000	—
Total Airport Trust Fund	35,056,705	35,309,545	252,840
Ports - Share of TTF Distribution	54,837,458	55,258,858	421,400 ¹
Ports - Share of administrative costs	(82,262)	(82,262)	—
Ports - Interest Earnings	1,000,000	1,000,000	—
Directed CTF allocation	4,000,000	4,000,000	—
Total Port Trust Fund	59,755,196	60,176,596	421,400
Department of Motor Vehicles - Share of TTF Distribution	21,934,983	22,103,543	168,560 ¹
DMV - Share of administrative costs	(15,153)	(15,153)	—
Directed CTF allocation	8,500,000	8,500,000	—
Total DMV	30,419,830	30,588,390	168,560
Virginia Commercial Space Flight Authority - Share of TTF Distribution	21,934,983	22,103,543	168,560 ¹
Space Flight Authority - Share of administrative costs	(27,833)	(27,833)	—
Directed CTF allocation	1,500,000	1,500,000	—
Total Space Flight Authority	23,407,150	23,575,710	168,560



DISTRIBUTION OF REVENUE SOURCES	Revised FY 2023	2nd Revised FY 2023	INCREASE (DECREASE)
Pass Through Revenue Allocations			
Central Virginia Transportation Authority Fund	\$ 198,900,000	\$ 198,900,000	—
Northern Virginia Transportation Authority Fund	417,743,624	417,801,502	57,878 1
Hampton Roads Transportation Fund	254,300,000	254,300,000	—
Hampton Roads Regional Transit Fund	39,900,000	39,900,000	—
Total Regional Transportation Programs	910,843,624	910,901,502	57,878
Construction			
Financial Assistance to Localities for Ground Transportation	18,303,310	18,303,310	—
State of Good Repair Program	331,213,278	332,341,175	1,127,897 1
High Priority Projects Program	246,678,340	247,367,360	689,020 1
Construction District Grant Programs	336,176,095	336,865,113	689,018 1
Specialized State and Federal Programs	1,845,367,547	2,210,516,438	365,148,891 2; 5
Virginia Highway Safety Improvement Program	134,783,478	135,127,988	344,510 1
Interstate Operations and Enhancement Program	274,702,353	275,333,494	631,141 1
Total Construction	3,187,224,401	3,555,854,878	368,630,477
Special Structures	80,000,000	85,000,000	5,000,000
DISTRIBUTION OF COMMONWEALTH TRANSPORTATION FUNDS			
	\$ 9,119,698,485	\$ 9,527,302,484	\$ 407,603,999
Agency Funding Summary:			
VDOT	\$ 7,955,524,748	\$ 8,351,976,310	\$ 396,451,562
Less Support to DRPT	(125,236,903)	(125,061,896)	175,007
VDOT (Net)	7,830,287,845	8,226,914,414	396,626,569
DRPT	1,140,771,759	1,150,737,829	9,966,070
Ports	59,755,196	60,176,596	421,400
Aviation	35,056,705	35,309,545	252,840
DMV	30,419,830	30,588,390	168,560
Space Flight Authority	23,407,150	23,575,710	168,560
Grand Total	\$ 9,119,698,485	\$ 9,527,302,484	\$ 407,603,999

CTF State Revenue Details

STATE REVENUE SOURCES	Revised FY 2023	2nd Revised FY 2023	INCREASE (DECREASE)
State Tax on Motor Fuels	\$1,360,700,000	\$1,360,700,000	\$—
Road Tax	69,200,000	69,200,000	—
Retail Sales & Use Tax	1,228,600,000	1,283,900,000	55,300,000
Motor Vehicle Sales and Use Tax	1,155,100,000	1,155,100,000	—
International Registration Plan	124,200,000	124,200,000	—
Motor Vehicle Licenses	236,600,000	236,600,000	—
Miscellaneous Revenues	17,200,000	17,200,000	—
Motor Vehicle Rental Tax	32,200,000	32,200,000	—
Aviation Fuels Tax	2,000,000	2,000,000	—
Highway Use Fee	59,700,000	59,700,000	—
Insurance Premium	196,000,000	202,500,000	6,500,000
Recordation Tax	81,000,000	81,000,000	—
Total	\$4,562,500,000	\$4,624,300,000	\$61,800,000

Endnotes

Endnote Number	Description
1	Adjustment represents additional revenue available to the Commonwealth Transportation Fund and its directed allocation to funds and program areas as prescribed in Code of Virginia §33.2-1524, §33.2-1524.1 and §33.2-358.
2	General Fund dollars made available in Chapters 1 and 2 (2022 Special Session I) in Fiscal Years 2022 and 2023 for Transportation Initiatives.
3	Program allocation to support VDOT Employee Bonuses prescribed in Chapter 2, Item 483.
4	Additional \$15 million in allocation provided for Financial Assistance for City Road Maintenance appropriated in Chapter 2, Item 456.
5	Correction of State Match for RSTP Federal Funding classification between VDOT and DRPT.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 7

RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ Seconded By: _____

Action: _____

**Title: FY2023-2028 Six-Year Improvement Program Transfers
For August 20, 2022 through September 23, 2022**

WHEREAS, Section 33.2-214(B) of the *Code of Virginia* requires the Commonwealth Transportation Board (Board) to adopt by July 1st of each year a Six-Year Improvement Program (Program) of anticipated projects and programs. After due consideration, the Board adopted a Final Fiscal Years 2023-2028 Program on June 21, 2022; and

WHEREAS, the Board authorized the Commissioner, or his designee, to make transfers of allocations programmed to projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 to release funds no longer needed for the delivery of the projects and to provide additional allocations to support the delivery of eligible projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 consistent with Commonwealth Transportation Board priorities for programming funds, federal/state eligibility requirements, and according to the following thresholds based on the recipient project; and

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

Resolution of the Board
FY2023-2028 Six-Year Improvement Program Transfers for August 20, 2022 through
September 23, 2022
October 25, 2022
Page 2 of 2

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

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

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

###

CTB Decision Brief

FY2023-2028 Six-Year Improvement Program Transfers For August 20, 2022 through September 23, 2022

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

Facts: On June 21, 2022, the CTB granted authority to the Commissioner of Highways (Commissioner), or his designee, to make transfers of allocations programmed to projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 to release funds no longer needed for the delivery of the projects and to provide additional allocations to support the delivery of eligible projects in the approved Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 consistent with Commonwealth Transportation Board priorities for programming funds, federal/state eligibility requirements, and according to the following thresholds based on the recipient project:

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

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

The CTB will be presented with a resolution for formal vote to approve the transfer of funds exceeding the established thresholds. The list of transfers from August 20, 2022 through September 23, 2022 is attached.

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

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to adopt changes to the Program for Fiscal Years 2023– 2028 that include transfers of allocated funds exceeding the established thresholds from donor projects to projects that meet the CTB's statutory requirements and policy goals.

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

Options: Approve, Deny, or Defer.

Decision Brief

FY2023-2028 Six-Year Improvement Program Transfers for August 20, 2022 through
September 23, 2022

October 26, 2022

Page 2 of 2

Public Comments/Reactions: None

**Six-Year Improvement Program Allocation Transfer Threshold Report
Transfers Requiring CTB Approval**

Row	Donor District	Donor Description	Donor UPC	Recipient District	Recipient Description	Recipient UPC	Fund Source	Transfer Amount	Total Allocation	Total Estimate	Transfer Percent	Comments
1	Hampton Roads	HAMPTON ROADS DISTRICT REGIONAL STP (RSTP) BALANCE ENTRY	70715	Fredericksburg	RT 17 WIDENING - SHORT LN TO MAIN ST (BUS) - STUDY ONLY	119182	RSTP : Hampton Roads (CF2M30), RSTP Match : Hampton Roads (CS2M31)	250,000	250,000	250,000	100.0%	Transfer of surplus fund recommended by District and MPO from the District RSTP Balance Entry line item to fund a scheduled project.
2	Northern Virginia	ELDEN STREET AND MONROE STREET INTERSECTION IMPROVEMENT, Realign and Signalize Elden Street @ Center Street	108690, 98177	Northern Virginia	#HB2.FY17 WIDEN EAST SPRING STREET	105521	Revenue Sharing Local Match (CNL201), Revenue Sharing State Match (CNS202)	2,318,556	22,595,976	22,595,976	11.4%	Transfer of surplus funds recommended by District and Local Assistance Division from completed and underway projects to fund a scheduled project.
3	Northern Virginia	I-66 OUTSIDE THE BELTWAY - CONCESSION FUND	113539	Northern Virginia	DEVLIN RD WIDENING 2 TO 4 LANES (DEVLIN TO UNIVERSITY BLVD)	118253	Concession Funds (CSC210)	9,223,288	34,223,288	34,223,288	36.9%	Transfer of surplus funds recommended by District and NVTA from the District Balance Entry line item to fund a scheduled project.
4	Bristol	APPALACHIAN REGIONAL COMMISSION LOCAL ACCESS FUNDING	60634	Salem	RESERVOIR RD/SR 689 RECONSTRUCTION & UPGRADE - HENRY CO	121894	Appalachian Local Access - Secondary (CNF282)	1,200,000	3,031,692	3,031,692	65.5%	Transfer of surplus funds recommended by District and Local Assistance Division from the Statewide APD Balance Entry line item to a scheduled project.
5	Statewide	STATEWIDE RAIL SAFETY BALANCE ENTRY	70704	Staunton	Rt.55 - Upgrade Flashing Lights and Add gates	110983	Rail Highway Crossings (CF4100), Rail Highway Crossings Soft Match (CF4101)	178,860	408,860	408,860	77.8%	Transfer of surplus funds recommended by District and Traffic Engineering Division from the Statewide Rail Safety Balance Entry line item to a scheduled project.
6	Statewide	STATEWIDE RAIL SAFETY BALANCE ENTRY	70704	Staunton	Rt.672-Upgrade Cabinet, Circuitry and Raise Cantilever	110985	Rail Highway Crossings (CF4100), Rail Highway Crossings Soft Match (CF4101)	250,542	350,542	350,542	>100%	Transfer of surplus funds recommended by District and Traffic Engineering Division from the Statewide Rail Safety Balance Entry line item to a scheduled project.
7	Statewide	STATEWIDE RAIL SAFETY BALANCE ENTRY	70704	Staunton	Rt.661-Install New Control House &Track Redundant Detector	110986	Rail Highway Crossings (CF4100), Rail Highway Crossings Soft Match (CF4101)	131,987	337,987	337,988	64.1%	Transfer of surplus funds recommended by District and Traffic Engineering Division from the Statewide Rail Safety Balance Entry line item to a scheduled project.

**Six-Year Improvement Program Allocation Transfer Threshold Report
Transfers Not Requiring CTB Approval**

Row	Donor District	Donor Description	Donor UPC	Recipient District	Recipient Description	Recipient UPC	Fund Source	Transfer Amount	Total Allocation	Total Estimate	Transfer Percent	Comments
A	Statewide	STATEWIDE TAP BALANCE ENTRY- UNALLOCATED	70466	Lynchburg	#TAP23 ARNETT BLVD - PEDESTRIAN IMPROVEMENTS	121047	Local Funds for Enhancement Projects (NPL206), TAP 5-200K (CF6600)	2,530	569,259	569,259	0.4%	Transfer of surplus funds recommended by District and Local Assistance Division from the Statewide TAP Balance Entry line item to fund a scheduled project.
B	Northern Virginia	I-66 OUTSIDE THE BELTWAY - CONCESSION FUND	113539	Northern Virginia	PRINCE WILLIAM PARKWAY INTERCHANGE @ REALIGNED BALLS FORD RD	112815	Concession Funds (CSC210)	2,929,911	107,929,911	107,929,911	2.8%	Transfer of surplus funds recommended by District and NVTA from the District Balance Entry line item to fund an underway project.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 8

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By:

Seconded By:

Action:

Title: SMART SCALE Project Cancellation
West Main Street Phase 2 - 6th Street NW to 8th Street NW UPC 113177

WHEREAS, the Commonwealth Transportation Board's (Board's) SMART SCALE Project Prioritization Process last approved December 8, 2021 states that a project that has been selected for funding through either the High Priority Projects Program or Highway Construction District Grant Program may be cancelled only by action of the Board; and

WHEREAS, Item 22 of the Board's SMART SCALE Prioritization Process adopted December 8, 2021 states that surplus Construction District Grant Funds no longer needed for delivery of a project will remain in the applicable Construction District Grant Program and may not be used in other districts, and further, provides that such surplus funds may either be reserved to address budget adjustments for current SMART SCALE projects or for allocation in the next solicitation cycle for SMART SCALE; and

WHEREAS, the West Main Street Phase 2 - 6th Street NW to 8th Street NW UPC 113177 project was submitted for consideration and selected for \$2,009,265 in funding through the Construction District Grant Program in the third round of the prioritization process pursuant to section 33.2-214.1; and

WHEREAS, in June 2022, the City of Charlottesville reassessed its local commitments related to transportation improvements and identified other priorities and requested cancellation of the Project; and

Resolution of the Board

SMART SCALE Project Cancellation West Main Street Phase 2 - 6th Street NW to 8th Street
NW UPC 113177

October 25, 2022

Page 2 of 2

WHEREAS, the City of Charlottesville has agreed to reimburse the Department of \$7,630 for expenditures incurred to date; and

WHEREAS, VDOT recommends Board action to cancel the Project and transfer all Construction District Grant funds to the Culpeper Construction District Grant balance entry (UPC -21761).

NOW THEREFORE BE IT RESOLVED, by the Commonwealth Transportation Board, that West Main Street Phase 2 - 6th Street NW to 8th Street NW UPC 113177 project is hereby cancelled.

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board that all Construction District Grant funds allocated to the Project be transferred to the Culpeper District Construction District Grant balance entry (UPC -21761).

####

CTB Decision Brief
SMART SCALE Project Cancellation
West Main Street Phase 2 - 6th Street NW to 8th Street NW (UPC 113177)

Issue: The West Main Street Phase 2 - 6th Street NW to 8th Street NW UPC 113177 (Project) was selected for funding in the third round of the Commonwealth Transportation Board's (Board's) SMART SCALE Prioritization Process. The Project was submitted by the City of Charlottesville and screened in for meeting a VTrans need. It was selected for funding and received \$2,009,265 in Construction District Grant funds. In June 2022 the City of Charlottesville reassessed its local commitments related to transportation improvements and identified other priorities and requested cancellation of the Project. CTB approval is needed for cancellation of this Project pursuant to the Policy for Implementation of the SMART SCALE Project Prioritization Process last approved by the Board December 8, 2021

Facts: The Project is locally administered and has incurred \$7,630 in expenditures to date. The City of Charlottesville has agreed to reimburse the Department for expenditures incurred.

Item 17 of the Board's Policy for Implementation of the SMART SCALE Project Prioritization Process last approved by the Board December 8, 2021 states that a project that has been selected for funding through either the High Priority Projects Program or Highway Construction District Grant Program may be cancelled only by action of the Board. In the event that a project is not advanced to the next phase of construction when requested by the Board, the locality or metropolitan planning organization may be required, pursuant to § 33.2-214 of the Code of Virginia, to reimburse the Department for all state and federal funds expended on the project.

Item 22 of the Board's SMART SCALE Prioritization Process adopted December 8, 2021 states that Surplus Construction District Grant Funds no longer needed for delivery of a project will remain in the applicable Construction District Grant Program and may not be used in other districts. In addition, this item provides that such surplus funds may either be reserved to address budget adjustments for current SMART SCALE projects or for allocation in the next solicitation cycle for SMART SCALE.

Recommendation: VDOT recommends that the Board cancel the West Main Street Phase 2 - 6th Street NW to 8th Street NW UPC 113177 and transfer all Construction District Grant funds to the Culpeper Construction District Grant Balance Entry (UPC -21761).

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to cancel the West Main Street Phase 2 - 6th Street NW to 8th Street NW UPC 113177 project and transfer all Construction District Grant funds to the Culpeper Construction District Grant balance entry (UPC -21761).

Result, if Approved: If approved, the project will be removed from the Six-Year Improvement Program and all Construction District Grant funds will be transferred to the Culpeper Construction District Grant balance entry (UPC -21761).

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 9

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By:

Seconded By:

Action:

**Title: SMART SCALE Project Cancellation
Preston Avenue/Grady Avenue Intersection Improvements UPC 118873**

WHEREAS, the Commonwealth Transportation Board's (Board's) SMART SCALE Project Prioritization Process last approved December 8, 2021 states that a project that has been selected for funding through either the High Priority Projects Program or Highway Construction District Grant Program may be cancelled only by action of the Board; and

WHEREAS, Item 22 of the Board's SMART SCALE Prioritization Process adopted December 8, 2021 states that surplus Construction District Grant Funds no longer needed for delivery of a project will remain in the applicable Construction District Grant Program and may not be used in other districts, and further, provides that such surplus funds may either be reserved to address budget adjustments for current SMART SCALE projects or for allocation in the next solicitation cycle for SMART SCALE; and

WHEREAS, the Preston Avenue/Grady Avenue Intersection Improvements UPC 118873 project was submitted for consideration and selected for \$7,743,498 in funding through the Construction District Grant Program in the fourth round of the prioritization process pursuant to section 33.2-214.1; and

WHEREAS, in June 2022, the City of Charlottesville requested cancellation of the project due to public comments prompting the need for additional study; and

Resolution of the Board
SMART SCALE Project Cancellation of Preston Avenue/Grady Avenue Intersection
Improvements UPC 118873
October 25, 2022
Page 2 of 2

WHEREAS, VDOT recommends Board action to cancel the Project and transfer all Construction District Grant funds to the Culpeper Construction District Grant balance entry (UPC -21761).

NOW THEREFORE BE IT RESOLVED, by the Commonwealth Transportation Board, that the Preston Avenue/Grady Avenue Intersection Improvements UPC 118873 project is hereby cancelled.

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board that all Construction District Grant funds allocated to the Project be transferred to the Culpeper District Construction District Grant balance entry (UPC -21761).

#####

CTB Decision Brief
SMART SCALE Project Cancellation
Preston Avenue/Grady Avenue Intersection Improvements UPC 118873

Issue: The Preston Avenue/Grady Avenue Intersection Improvements UPC 111017 (Project) was selected for funding in the fourth round of the Commonwealth Transportation Board's (Board) SMART SCALE Prioritization Process. The Project was submitted by the City of Charlottesville and screened in for meeting a VTrans need. It was selected for funding and received \$7,743,498 in Construction District Grant funds to fully fund the Project. Public response to the project prompted concerns and the City determined that additional study was needed to determine the best course of action. In June 2022, the City of Charlottesville requested cancellation of the Project. Board approval is needed for cancellation of this Project pursuant to the Policy for Implementation of the SMART SCALE Project Prioritization Process last approved by the Board December 8, 2021.

Facts: The Project is locally administered and has not yet started.

Item 17 of the Board's Policy for Implementation of the SMART SCALE Project Prioritization Process last approved by the Board December 8, 2021 states that a project that has been selected for funding through either the High Priority Projects Program or Highway Construction District Grant Program may be cancelled only by action of the Board. In the event that a project is not advanced to the next phase of construction when requested by the Board, the locality or metropolitan planning organization may be required, pursuant to § 33.2-214 of the Code of Virginia, to reimburse the Department for all state and federal funds expended on the project.

Item 22 of the Board's SMART SCALE Prioritization Process adopted December 8, 2021 states that Surplus Construction District Grant Funds no longer needed for delivery of a project will remain in the applicable Construction District Grant Program and may not be used in other districts. In addition, this item provides that such surplus funds may either be reserved to address budget adjustments for current SMART SCALE projects or for allocation in the next solicitation cycle for SMART SCALE.

Recommendation: VDOT recommends that the Board cancel the Preston Avenue/Grady Avenue Intersection Improvements UPC 118873 and transfer all Construction District Grant funds to the Culpeper Construction District Grant Balance Entry (UPC -21761).

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to cancel the Preston Avenue/Grady Avenue Intersection Improvements UPC 118873 project and transfer all Construction District Grant funds to the Culpeper Construction District Grant balance entry (UPC -21761).

Result, if Approved: If approved, the project will be removed from the Six-Year Improvement Program and all Construction District Grant funds will be transferred to the Culpeper Construction District Grant balance entry (UPC -21761).

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 10

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By:

Seconded By:

Action:

Title: SMART SCALE Project Cancellation
West Main Street Phase 3 – 8th Street NW to Roosevelt Brown Avenue (UPC 118874)

WHEREAS, the Commonwealth Transportation Board's (Board's) SMART SCALE Project Prioritization Process last approved December 8, 2021 states that a project that has been selected for funding through either the High Priority Projects Program or Highway Construction District Grant Program may be cancelled only by action of the Board; and

WHEREAS, Item 22 of the Board's SMART SCALE Prioritization Process adopted December 8, 2021 states that surplus Construction District Grant Funds no longer needed for delivery of a project will remain in the applicable Construction District Grant Program and may not be used in other districts, and further, provides that such surplus funds may either be reserved to address budget adjustments for current SMART SCALE projects or for allocation in the next solicitation cycle for SMART SCALE; and

WHEREAS, the West Main Street Phase 3 – 8th Street NW to Roosevelt Brown Avenue UPC 118874 project was submitted for consideration and selected for \$10,874,698 in funding through the Construction District Grant Program in the fourth round of the prioritization process pursuant to section 33.2-214.1; and

WHEREAS, in June 2022, the City of Charlottesville reassessed its local commitments related to transportation improvements and identified other priorities and requested cancellation of the Project; and

Resolution of the Board

SMART SCALE Project Cancellation West Main Street Phase 3 – 8th Street NW to Roosevelt
Brown Avenue UPC 118874

October 25, 2022

Page 2 of 2

WHEREAS, VDOT recommends Board action to cancel the Project and transfer all Construction District Grant funds to the Culpeper Construction District Grant balance entry (UPC -21761).

NOW THEREFORE BE IT RESOLVED, by the Commonwealth Transportation Board, that West Main Street Phase 3 – 8th Street NW to Roosevelt Brown Avenue UPC 118874 project is hereby cancelled.

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board that all Construction District Grant funds allocated to the Project be transferred to the Culpeper District Construction District Grant balance entry (UPC -21761).

####

CTB Decision Brief
SMART SCALE Project Cancellation
West Main Street Phase 3 – 8th Street NW to Roosevelt Brown Avenue (UPC 118874)

Issue: The West Main Street Phase 3 – 8th Street NW to Roosevelt Brown Avenue UPC 118874 (Project) was selected for funding in the fourth round of the Commonwealth Transportation Board's (Board's) SMART SCALE Prioritization Process. The Project was submitted by the City of Charlottesville and screened in for meeting a VTrans need. It was selected for funding and received \$10,874,698 in Construction District Grant funds to fully fund the Project. In June 2022 the City of Charlottesville reassessed its local commitments related to transportation improvements and identified other priorities and requested cancellation of the Project. Board approval is needed for cancellation of this Project pursuant to the Policy for Implementation of the SMART SCALE Project Prioritization Process last approved by the Board December 8, 2021

Facts: The Project is locally administered and has not yet started.

Item 17 of the Board's Policy for Implementation of the SMART SCALE Project Prioritization Process last approved by the Board December 8, 2021 states that a project that has been selected for funding through either the High Priority Projects Program or Highway Construction District Grant Program may be cancelled only by action of the Board. In the event that a project is not advanced to the next phase of construction when requested by the Board, the locality or metropolitan planning organization may be required, pursuant to § 33.2-214 of the Code of Virginia, to reimburse the Department for all state and federal funds expended on the project.

Item 22 of the Board's SMART SCALE Prioritization Process adopted December 8, 2021 states that Surplus Construction District Grant Funds no longer needed for delivery of a project will remain in the applicable Construction District Grant Program and may not be used in other districts. In addition, this item provides that such surplus funds may either be reserved to address budget adjustments for current SMART SCALE projects or for allocation in the next solicitation cycle for SMART SCALE.

Recommendation: VDOT recommends that the Board cancel the West Main Street Phase 3 – 8th Street NW to Roosevelt Brown Avenue UPC 118874 and transfer all Construction District Grant funds to the Culpeper Construction District Grant Balance Entry (UPC -21761).

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to cancel the West Main Street Phase 3 – 8th Street NW to Roosevelt Brown Avenue UPC 118874 project and transfer all Construction District Grant funds to the Culpeper Construction District Grant balance entry (UPC -21761).

Result, if Approved: If approved, the project will be removed from the Six-Year Improvement Program and all Construction District Grant funds will be transferred to the Culpeper Construction District Grant balance entry (UPC -21761).

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 11

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ **Seconded By:** _____

Action: _____

Title: SMART SCALE Project Budget Increase for Hydraulic Road and Route 29 Improvements (UPC 118880) in the City of Charlottesville

WHEREAS, section 33.2-214.1 of the Code of Virginia, provides that the Commonwealth Transportation Board (Board) shall develop a statewide prioritization process for certain projects funded by the Board, including those projects allocated funds pursuant to sections 33.2-358, 33.2-370 and 33.2-371 of the Code of Virginia, and

WHEREAS, on December 8, 2021, the Board adopted a revised SMART SCALE Prioritization Process to govern screening, scoring and selecting projects for funding pursuant to section 33.2-214.1; and

WHEREAS, Item 12 of the Board's SMART SCALE Prioritization Process provides that a project that has been selected for funding must be re-scored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project, such that the anticipated benefits relative to funding requested would have substantially changed; and

WHEREAS, Item 12.a. of the Board's SMART SCALE Prioritization Process further provides that if an estimate increases prior to project advertisement or contract award that exceeds the following thresholds, and the applicant is not covering the increased cost with other funds, Board action is required to approve the budget increase:

- i. Total Cost Estimate <\$5 million: 20% increase in funding requested

Resolution of the Board

SMART SCALE Project budget Increase for Hydraulic Road and Route 29 Improvements (UPC 118880) in the City of Charlottesville

October 25, 2022

Page 2 of 2

- ii. Total Cost Estimate \$5 million to \$10 million: \$1 million or greater increase in funding requested
- iii. Total Cost Estimate > \$10 million: 10% increase in funding requested; \$5 million maximum increase in funding requested; and

WHEREAS, section 33.2-214 requires projects funded wholly or partially with funds from the State of Good Repair Program pursuant to section 33.2-369, the High Priority Projects Program pursuant to section 33.2-370, or the Highway Construction District Grant Programs pursuant to section 33.2-371, or the Interstate Operations and Enhancement Program pursuant to section 33.2-372, or capital projects funded through the Virginia Highway Safety Improvement Program pursuant to section 33.2-373 in the Six-Year Improvement Program to be fully funded within the six-year horizon of the Six-Year Improvement Program; and

WHEREAS, Hydraulic Road and Route 29 Improvements (UPC 118880) Project (the Project) was submitted for consideration by the Charlottesville-Albemarle Metropolitan Planning Organization (MPO) and selected for \$5,730,488 in funding through the High Priority Projects Program in the fourth round of the prioritization process pursuant to section 33.2-214.1; and

WHEREAS, the Project has had a cost estimate increase due to higher than anticipated right of way costs, realignment of the intersection at Hydraulic and Route 29, and higher than anticipated unit costs due to inflation; and

WHEREAS, the Project is underway as a design build procurement and has a Request for Proposals (RFP) release anticipated for October and the estimated cost of the project exceeds the approved budget of \$24,030,488 by approximately \$4,223,776; and,

WHEREAS, VDOT recommends Board approval of a SMART SCALE budget increase of up to \$4,223,776 using surplus High Priority Projects Program funds (UPC -21770).

NOW THEREFORE BE IT RESOLVED, by the Commonwealth Transportation Board, that the SMART SCALE budget increase of \$4,223,776 for the Project, using surplus High Priority Projects Program funds (UPC -21770), is approved.

####

CTB Decision Brief
SMART SCALE Project Budget Increase for Hydraulic Road and Route 29 Improvements
(UPC 118880)

Issue: The Hydraulic Road and Route 29 Improvements UPC 118880 project (Project) was submitted by the Charlottesville-Albemarle Metropolitan Planning Organization (MPO) and selected for funding in the fourth round of the Commonwealth Transportation Board's (Board) SMART SCALE Prioritization Process and the current estimated cost for completion of the Project exceeds the approved budget by \$4,223,776. The Virginia Department of Transportation (VDOT) recommends Board approval of a SMART SCALE budget increase in the amount of up to \$4,223,776 using surplus High Priority Projects Program funds from UPC -21770. Board approval of the budget increase is required.

Facts: Item 12 of the Board's SMART SCALE Prioritization Process, adopted December 8, 2021, provides that a project that has been selected for funding must be re-scored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project, such that the anticipated benefits relative to funding requested would have substantially changed.

Item 12.a. of the Board's SMART SCALE Prioritization Process states that if an estimate increases prior to project advertisement or contract award that exceeds the following thresholds, and the applicant is not covering the increased cost with other funds, Board action is required to approve the budget increase:

- i. Total Cost Estimate <\$5 million: 20% increase in funding requested
- ii. Total Cost Estimate \$5 million to \$10 million: \$1 million or greater increase in funding requested
- iii. Total Cost Estimate > \$10 million: 10% increase in funding requested; \$5 million maximum increase in funding requested

Hydraulic Road and Route 29 Improvements UPC 118880 project (Project) was submitted for consideration and selected for \$5,730,488 in funding through the High Priority Projects Program by the Charlottesville-Albemarle Metropolitan Planning Organization (MPO) in Round 4 of SMART SCALE. The current estimated cost for completion of the Project exceeds the approved budget by \$4,223,776.

The Project is VDOT administered and is underway as a design build procurement with a request for proposals (RFP) anticipated for October.

Major factors driving the increase include higher than anticipated right of way costs, realignment of the intersection at Hydraulic and Route 29, and higher than anticipated unit costs due to inflation.

VDOT recommends Board approval of a SMART SCALE budget increase to address the shortfall of \$4,223,776 using surplus High Priority Projects Program funds (UPC -21770).

Recommendation: Approval of a SMART SCALE budget increase in the amount of up to \$4,223,776 using surplus High Priority Projects Program funds (UPC -21770).

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to approve the SMART SCALE budget increase.

Result, if Approved: If approved, funds will be transferred so that the project can advance.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 12

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ **Seconded By:** _____

Action: _____

Title: SMART SCALE Project Budget Increase for Fontaine Avenue Streetscape Improvements UPC 109484 in the City of Charlottesville

WHEREAS, section 33.2-214.1 of the Code of Virginia, provides that the Commonwealth Transportation Board (Board) shall develop a statewide prioritization process for certain projects funded by the Board, including those projects allocated funds pursuant to sections 33.2-358, 33.2-370 and 33.2-371 of the Code of Virginia, and

WHEREAS, on December 8, 2021, the Board adopted a revised SMART SCALE Prioritization Process to govern screening, scoring and selecting projects for funding pursuant to section 33.2-214.1; and

WHEREAS, Item 12 of the Board's SMART SCALE Prioritization Process provides that a project that has been selected for funding must be re-scored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project, such that the anticipated benefits relative to funding requested would have substantially changed; and

WHEREAS, Item 12.a. of the Board's SMART SCALE Prioritization Process further provides that if an estimate increases prior to project advertisement or contract award that exceeds the following thresholds, and the applicant is not covering the increased cost with other funds, Board action is required to approve the budget increase:

- i. Total Cost Estimate <\$5 million: 20% increase in funding requested

Resolution of the Board

SMART SCALE Project budget Increase for Fontaine Avenue Streetscape Improvements UPC 109484 in the City of Charlottesville

October 25, 2022

Page 2 of 2

- ii. Total Cost Estimate \$5 million to \$10 million: \$1 million or greater increase in funding requested
- iii. Total Cost Estimate > \$10 million: 10% increase in funding requested; \$5 million maximum increase in funding requested; and

WHEREAS, section 33.2-214 requires projects funded wholly or partially with funds from the State of Good Repair Program pursuant to section 33.2-369, the High Priority Projects Program pursuant to section 33.2-370, or the Highway Construction District Grant Programs pursuant to section 33.2-371, or the Interstate Operations and Enhancement Program pursuant to section 33.2-372, or capital projects funded through the Virginia Highway Safety Improvement Program pursuant to section 33.2-373 in the Six-Year Improvement Program to be fully funded within the six-year horizon of the Six-Year Improvement Program; and

WHEREAS, the Fontaine Avenue Streetscape Improvements UPC 109484 Project (the Project) was submitted for consideration by the City of Charlottesville and selected for \$11,700,000 in funding through the Construction District Grant Program in the first round of the prioritization process pursuant to section 33.2-214.1; and

WHEREAS, the Project has had a cost estimate increase due to design modifications to improve bicycle and pedestrian accommodations and reduce right of way impacts, updated unit prices, and inflation; and

WHEREAS, the Project has not yet started and the estimated cost of the project exceeds the approved budget of \$11,700,000 by \$6,226,896; and,

WHEREAS, the City of Charlottesville has committed \$750,523 towards the shortfall; and

WHEREAS, VDOT recommends Board approval of a SMART SCALE budget increase in the amount of up to \$5,476,373 using surplus Construction District Grant funds in the Culpeper District (UPC -21761).

NOW THEREFORE BE IT RESOLVED, by the Commonwealth Transportation Board, that the SMART SCALE budget increase of \$5,476,373 for the Project, using surplus Construction District Grant funds in the Culpeper District (UPC -21761), is approved.

####

CTB Decision Brief
SMART SCALE Project Budget Increase for Fontaine Avenue Streetscape Improvements
(UPC 109484)

Issue: The Fontaine Avenue Streetscape Improvements UPC 109484 project (Project) was submitted by the City of Charlottesville and selected for funding in the first round of the Commonwealth Transportation Board's (Board's) SMART SCALE Prioritization Process and the current estimated cost for completion of the Project exceeds the approved budget by \$6,226,896. The City of Charlottesville has committed \$750,523 towards the shortfall. The Virginia Department of Transportation (VDOT) recommends Board approval of a SMART SCALE budget increase in the amount of up to \$5,476,373 using surplus Construction District Grant Program funds in the Culpeper District from UPC -21761. Board approval of the budget increase is required.

Facts: Item 12 of the Board's SMART SCALE Prioritization Process, adopted December 8, 2021, provides that a project that has been selected for funding must be re-scored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project, such that the anticipated benefits relative to funding requested would have substantially changed.

Item 12.a. of the Board's SMART SCALE Prioritization Process states that if an estimate increases prior to project advertisement or contract award that exceeds the following thresholds, and the applicant is not covering the increased cost with other funds, Board action is required to approve the budget increase:

- i. Total Cost Estimate <\$5 million: 20% increase in funding requested
- ii. Total Cost Estimate \$5 million to \$10 million: \$1 million or greater increase in funding requested
- iii. Total Cost Estimate > \$10 million: 10% increase in funding requested; \$5 million maximum increase in funding requested

The Fontaine Avenue Streetscape Improvements UPC 109484 project (Project) was submitted by the City of Charlottesville for consideration and selected for \$11,700,000 in funding through the Construction District Grant Program in the first round of the prioritization process pursuant to section 33.2-214.1. The current estimated cost for completion of the Project exceeds the approved budget by \$6,226,896.

The Project is locally administered and ready to begin the right-of-way phase.

Major factors driving the increase include design modifications to improve bicycle and pedestrian accommodations and reduce right of way impacts, updated unit prices, and inflation. The City of Charlottesville has committed \$750,523 towards the shortfall.

VDOT recommends Board approval of a SMART SCALE budget increase to address the remaining shortfall of \$5,476,373 using surplus Construction District Grant funds in the Culpeper District (UPC -21761).

Recommendation: Approval of a SMART SCALE budget increase in the amount of up to \$5,476,373 using surplus Construction District Grant funds (UPC -21761) in the Culpeper District.

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to approve the SMART SCALE budget increase.

Result, if Approved: If approved, funds will be transferred so that the project can advance.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 13

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ **Seconded By:** _____

Action: _____

Title: SMART SCALE Project Budget Increase for I-95 Exit 126 Route 1 Southbound onto Southpoint Parkway (UPC 110914) in Spotsylvania County

WHEREAS, section 33.2-214.1 of the Code of Virginia, provides that the Commonwealth Transportation Board (Board) shall develop a statewide prioritization process for certain projects funded by the Board, including those projects allocated funds pursuant to sections 33.2-358, 33.2-370 and 33.2-371 of the Code of Virginia, and

WHEREAS, on December 8, 2021, the Board adopted a revised SMART SCALE Prioritization Process to govern screening, scoring and selecting projects for funding pursuant to section 33.2-214.1; and

WHEREAS, Item 12 of the Board's SMART SCALE Prioritization Process provides that a project that has been selected for funding must be re-scored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project, such that the anticipated benefits relative to funding requested would have substantially changed; and

WHEREAS, Item 12.a. of the Board's SMART SCALE Prioritization Process further provides that if an estimate increases prior to project advertisement or contract award that exceeds the following thresholds, and the applicant is not covering the increased cost with other funds, Board action is required to approve the budget increase:

Resolution of the Board

SMART SCALE Project Budget Increase for I-95 Exit 126 Route 1 Southbound onto Southpoint Parkway (UPC 110914) in Spotsylvania County

October 25, 2022

Page 2 of 2

- i. Total Cost Estimate <\$5 million: 20% increase in funding requested
- ii. Total Cost Estimate \$5 million to \$10 million: \$1 million or greater increase in funding requested
- iii. Total Cost Estimate > \$10 million: 10% increase in funding requested; \$5 million maximum increase in funding requested; and

WHEREAS, section 33.2-214 requires projects funded wholly or partially with funds from the State of Good Repair Program pursuant to section 33.2-369, the High Priority Projects Program pursuant to section 33.2-370, or the Highway Construction District Grant Programs pursuant to section 33.2-371, or the Interstate Operations and Enhancement Program pursuant to section 33.2-372, or capital projects funded through the Virginia Highway Safety Improvement Program pursuant to section 33.2-373 in the Six-Year Improvement Program to be fully funded within the six-year horizon of the Six-Year Improvement Program; and

WHEREAS, the I-95 Exit 126 Route 1 Southbound onto Southpoint Parkway (UPC 110914) (Project) was submitted for consideration and selected for \$12,745,000 in funding through the Fredericksburg Construction District Grant Program in the second round of the prioritization process pursuant to section 33.2-214.1; and

WHEREAS, the Project was ranked 6 out of 9 projects selected in Round 2 in the Fredericksburg District with a score of 7.20; and

WHEREAS, the Virginia Department of Transportation (VDOT) received bids for the Project on September 28, 2022 and determined that the price proposals were responsive and represented good competition; and

WHEREAS, based on the price proposals received, the current estimated cost for award of the Project exceeds the current budget by \$2,328,850; and

WHEREAS, VDOT recommends Board approval of a SMART SCALE budget increase of \$2,328,850 using surplus Fredericksburg Construction District Grant Program funds (UPC - 21762); and

WHEREAS, taking into consideration the proposed SMART SCALE budget increase, the Project was re-scored resulting in a revised score of 6.09 with no change in rank; and

WHEREAS, as of October 4, 2022 the Project has incurred expenditures totaling \$2,107,920.

NOW THEREFORE BE IT RESOLVED, by the Commonwealth Transportation Board, that the SMART SCALE budget increase of \$2,328,850 for the Project, using surplus Fredericksburg Construction District Grant Program funds (UPC -21762), is approved.

#####

CTB Decision Brief
SMART SCALE Project Budget Increase for I-95 Exit 126 Route 1 Southbound onto Southpoint Parkway (UPC 110914) in Spotsylvania County

Issue: The I-95 Exit 126 Route 1 Southbound onto Southpoint Parkway (UPC 110914) (Project) was selected for funding in the second round of the Commonwealth Transportation Board's (Board) SMART SCALE Prioritization Process and the current estimated cost for award of the Project exceeds the approved budget by \$2,328,850. The Virginia Department of Transportation (VDOT) recommends Board approval of a SMART SCALE budget increase in the amount of \$2,328,850 using surplus Fredericksburg Construction District Grant Program funds from UPC - 21762. Board approval of the budget increase is required.

Facts: Item 12 of the Board's SMART SCALE Prioritization Policy/Process, adopted December 8, 2021, provides that a project that has been selected for funding must be re-scored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project, such that the anticipated benefits relative to funding requested would have substantially changed.

Item 12.a. of the Board's SMART SCALE Prioritization Process states that if an estimate increases prior to project advertisement or contract award that exceeds the following thresholds, and the applicant is not covering the increased cost with other funds, Board action is required to approve the budget increase:

- i. Total Cost Estimate <\$5 million: 20% increase in funding requested
- ii. Total Cost Estimate \$5 million to \$10 million: \$1 million or greater increase in funding requested
- iii. Total Cost Estimate > \$10 million: 10% increase in funding requested; \$5 million maximum increase in funding requested

The I-95 Exit 126 Route 1 Southbound onto Southpoint Parkway (UPC 110914) (Project) was submitted for consideration and selected for \$12,745,000 in funding through the Fredericksburg Construction District Grant Program. The Project was ranked 6 out of 9 projects selected for funding in Round 2 in the Fredericksburg District with a score of 7.20.

VDOT received bids for the Project on September 28, 2022 and determined that the price proposals were responsive and represented good competition.

However, based on the price proposals, the cost to award the Project exceeds the current budget by \$2,328,850.

The Project was rescored based on the increased budget, resulting in a score of 6.09, with no change in rank.

As of October 4, 2022, the Project has incurred expenditures of \$2,107,920.

Based on the foregoing, VDOT recommends Board approval of a SMART SCALE budget increase for the Project in the amount of \$2,328,850 using surplus Fredericksburg Construction District Grant Program funds (UPC -21762) to fund the budget increase.

Recommendation: Approval of a SMART SCALE budget increase in the amount of \$2,328,850 using surplus Fredericksburg Construction District Grant Program funds (UPC -21762).

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to approve the SMART SCALE budget increase for the I-95 Exit 126 Route 1 Southbound onto Southpoint Parkway (UPC 110914) and to provide for the Board's intent and direction to fund the increase with surplus Fredericksburg Construction District Grant Program funds (UPC -21762).

Result, if Approved: If approved, funds will be transferred so that the project can be awarded.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 14

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ **Seconded By:** _____

Action: _____

Title: Revised Six-Year Improvement Program and Rail and Public Transportation Allocations For Fiscal Years 2023 – 2028

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

WHEREAS, the Appropriation Act authorizes the Secretary and all agencies within the Transportation Secretariat to take all actions necessary to ensure that federal transportation funds are allocated and utilized for the maximum benefit of the Commonwealth; and

WHEREAS, the Board is required by Section 33.2-214 (B) and 33.2-221 (C) of the *Code of Virginia* to administer and allocate funds in the Transportation Trust Fund based on the most recent official Commonwealth Transportation Fund revenue forecast; and

WHEREAS, the Board is required by Section 33.2-221 (C) of the *Code of Virginia* to ensure that total funds allocated to any highway construction project are equal to total project expenditures within 12 months following completion of the project; and

WHEREAS, the Board adopted the Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 on June 21, 2022; and

WHEREAS, the Governor and General Assembly included actions in Chapters 1 and 2 of the 2022 Special Session I that were not incorporated into the Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 adopted by the Board on June 21, 2022; and

WHEREAS, there are significant transportation needs across the Commonwealth that stand to benefit from the provisions set out in the Chapters 1 and 2 of the 2022 Special Session I; and

WHEREAS, the Revised Six-Year Improvement Program for Fiscal Years 2023 through 2028 accounts for and includes allocations to existing and new programs based on Chapters 1 and 2 of the 2022 Special Session I; and

WHEREAS, VDOT reviewed projects scheduled for advertisement in FY 2023 and recommends adjustments in project allocation to address impacts of updated unit costs and ongoing inflation; and

WHEREAS, Item 12 of the Board’s SMART SCALE Prioritization Process provides that a project that has been selected for funding must be re-scored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project, such that the anticipated benefits relative to funding requested would have substantially changed; and

WHEREAS, Item 12.a. of the Board’s SMART SCALE Prioritization Process further provides that if an estimate increases prior to project advertisement or contract award that exceeds the following thresholds, and the applicant is not covering the increased cost with other funds, Board action is required to approve the budget increase:

- i. Total Cost Estimate <\$5 million: 20% increase in funding requested
- ii. Total Cost Estimate \$5 million to \$10 million: \$1 million or greater increase in funding requested
- iii. Total Cost Estimate > \$10 million: 10% increase in funding requested; \$5 million maximum increase in funding requested; and

WHEREAS, VDOT recommends Board approval of a SMART SCALE budget increase for the Richmond-Henrico Turnpike – South Segment Project (UPC 111716) in Richmond District of \$2,767,120 using surplus Richmond Construction District Grant Program funds (UPC -21766) to address updated unit costs and ongoing inflation; and

WHEREAS, VDOT recommends Board approval of a SMART SCALE budget increase for the Rivermont and Bedford Avenue Intersection Improvement Project (UPC 115489) in Lynchburg District of \$182,000 using surplus Lynchburg Construction District Grant Program funds (UPC -21764) to address updated unit costs and ongoing inflation; and

WHEREAS, VDOT recommends Board approval of a SMART SCALE budget increase for the Arnett Boulevard – Sidewalks, Bike Lanes, Crosswalks Project (UPC 110764) of \$217,583 using surplus Lynchburg Construction District Grant Program funds (UPC -21764) to address updated unit costs and ongoing inflation; and

WHEREAS, VDOT recommends Board approval of a SMART SCALE budget increase for the Route 15 – Construct Roundabout at Route 360 Project (UPC 110767) of \$1,238,467 using surplus Lynchburg Construction District Grant Program funds (UPC -21764) to address updated unit costs and ongoing inflation; and

NOW, THEREFORE, BE IT RESOLVED, by the Commonwealth Transportation Board that the allocations of construction funds provided by Section 33.2-358, Maintenance and Operations funds, and Rail and Public Transportation funds in the Revised Six-Year Improvement Program for Fiscal Years 2023 through 2028 are approved.

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board that the revised Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 for Interstate, Primary and Urban Highway Systems, and Rail and Public Transportation is approved.

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board, that the SMART SCALE budget increase for the Richmond-Henrico Turnpike – South Segment Project (UPC 111716) in Richmond District of \$2,767,120 using surplus Richmond Construction District Grant Program funds (UPC -21766) to address updated unit costs and ongoing inflation, is approved; and

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board, that the SMART SCALE budget increase for the Rivermont and Bedford Avenue Intersection Improvement Project (UPC 115489) in Lynchburg District of \$182,000 using surplus Lynchburg Construction District Grant Program funds (UPC -21764) to address updated unit costs and ongoing inflation is approved; and

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board, that the SMART SCALE budget increase for the Arnett Boulevard – Sidewalks, Bike Lanes, Crosswalks Project (UPC 110764) of \$217,583 using surplus Lynchburg Construction District Grant Program funds (UPC -21764) to address updated unit costs and ongoing inflation, is approved; and

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board, that the SMART SCALE budget increase for the Route 15 – Construct Roundabout at Route 360 Project (UPC 110767) of \$1,238,467 using surplus Lynchburg Construction District Grant Program funds (UPC -21764) to address updated unit costs and ongoing inflation, is approved; and

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board that the Commissioner of Highways and the Director of the Department of Rail and Public Transportation are authorized to enter into agreements for respective programmed projects for Fiscal Year 2023 and prior within the Six-Year Improvement Program satisfactory to the Commissioner and the Director, to the extent otherwise consistent with authorities set forth in the Code of Virginia; and

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board that the transfers of previous allocations necessary to maximize the use of federal transportation funds as reflected in the Revised Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028, are approved.

BE IT FURTHER RESOLVED, by the Commonwealth Transportation Board that the Commissioner and Director, or their designees, are granted the authority to make transfers of allocations programmed to projects in the approved Revised Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 to release funds no longer needed for the delivery of the projects and to provide additional allocations to support the delivery of eligible projects in the Revised Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 consistent with Commonwealth Transportation Board priorities for programming funds, federal/state eligibility requirements, and according to the following thresholds based on the recipient project:

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

BE IT FURTHER RESOLVED, that the Commissioner and Director shall notify the Board on a monthly basis should such transfers or allocations be made.

BE IT FURTHER RESOLVED, that if such request for transfer of allocation exceeds the thresholds established herein, the Commissioner and Director shall bring such request to the Board on a monthly basis for their approval prior to taking any action to record or award such action.

###

CTB Decision Brief

Revised Six-Year Improvement Program and Rail and Public Transportation Allocations For Fiscal Years 2023 – 2028

Issue: Chapters 1 and 2 of the 2022 Special Session I included certain provisions not incorporated into the Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 adopted by the Board on June 21, 2022.

Facts: The Board adopted the Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 on June 21, 2022. There are significant transportation needs across the Commonwealth that stand to benefit from the provisions set out in Chapters 1 and 2 of the 2022 Special Session I. The Revised Six-Year Improvement Program for Fiscal Years 2023 through 2028 accounts for and includes allocations to existing and new programs based on Chapters 1 and 2 of the 2022 Special Session I.

In addition, VDOT reviewed projects scheduled for advertisement in FY 2023 and recommends adjustments in project allocations to address the impacts of updated unit costs and ongoing inflation. Four of these projects are SMART SCALE projects where the recommended adjustment in project allocations exceeds the thresholds set out in the Board’s SMART SCALE Prioritization Process.

Recommendations: VDOT and DRPT recommend the adoption of the Revised Program and that authority be granted to the Commissioner and Director, or their designees, to make transfers of allocations programmed to projects in the approved Program to release funds no longer needed for the delivery of the projects and to provide additional allocations to support the delivery of eligible projects in the approved Program consistent with Commonwealth Transportation Board priorities for programming funds, federal/state eligibility requirements, and according to the following thresholds based on the recipient project:

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

The CTB shall receive a report on a monthly basis regarding any such transfers. If a request for a transfer of allocation exceeds the thresholds above, the Commissioner and Director shall bring such request to the Board on a monthly basis for their approval prior to taking any action to record or award such action.

VDOT recommends Board approval of a SMART SCALE budget increase for the Richmond-Henrico Turnpike – South Segment Project (UPC 111716) in Richmond District of \$2,767,120 using surplus Richmond Construction District Grant Program funds (UPC -21766) to address updated unit costs and ongoing inflation.

Decision Brief

Revised Six-Year Improvement Program and Rail and Public Transportation Allocations For
Fiscal Years 2023 – 2028

October 25, 2022

Page 2 of 2

VDOT recommends Board approval of a SMART SCALE budget increase for the Rivermont and Bedford Avenue Intersection Improvement Project (UPC 115489) in Lynchburg District of \$182,000 using surplus Lynchburg Construction District Grant Program funds (UPC -21764) to address updated unit costs and ongoing inflation.

VDOT recommends Board approval of a SMART SCALE budget increase for the Arnett Boulevard – Sidewalks, Bike Lanes, Crosswalks Project (UPC 110764) of \$217,583 using surplus Lynchburg Construction District Grant Program funds (UPC -21764) to address updated unit costs and ongoing inflation.

VDOT recommends Board approval of a SMART SCALE budget increase for the Route 15 – Construct Roundabout at Route 360 Project (UPC 110767) of \$1,238,467 using surplus Lynchburg Construction District Grant Program funds (UPC -21764) to address updated unit costs and ongoing inflation.

Action Required by CTB: The CTB will be presented with a resolution for a formal vote to adopt the Revised Six-Year Improvement Program of Construction funds, Maintenance and Operations funds, and Rail and Public Transportation funds for Fiscal Years 2023 through 2028, including approval of the transfers of allocations completed as part of the revision. The resolution will include authorization for the Commissioner and Director or their designees to make transfers of allocations programmed to projects in the Revised Six-Year Improvement Program of projects and programs for Fiscal Years 2023 through 2028 necessary to release funds no longer needed for the delivery of the projects and to apply said funds to projects in the approved program needing funds, consistent with Commonwealth Transportation Board priorities for programming funds, federal/state eligibility requirements, and according to the thresholds identified above.

The resolution will also include approval of the following SMART SCALE budget increases to address updated unit costs and ongoing inflation:

- Richmond-Henrico Turnpike – South Segment Project (UPC 111716) in Richmond District of \$2,767,120 using surplus Richmond Construction District Grant Program funds (UPC -21766).
- Rivermont and Bedford Avenue Intersection Improvement Project (UPC 115489) in Lynchburg District of \$182,000 using surplus Lynchburg Construction District Grant Program funds (UPC -21764).
- Arnett Boulevard – Sidewalks, Bike Lanes, Crosswalks Project (UPC 110764) of \$217,583 using surplus Lynchburg Construction District Grant Program funds (UPC -21764).
- Route 15 – Construct Roundabout at Route 360 Project (UPC 110767) of \$1,238,467 using surplus Lynchburg Construction District Grant Program funds (UPC -21764).

Decision Brief

Revised Six-Year Improvement Program and Rail and Public Transportation Allocations For
Fiscal Years 2023 – 2028

October 25, 2022

Page 3 of 3

Options: Approve, Deny, or Defer.

Public Comments/Reactions: Given the need to have allocations available to continue and/or initiate projects and programs in the Program and Rail and Public Transportation allocations, the public expects the CTB to fulfill its statutory duty by approving the Revised Six-Year Improvement Program and Rail and Public Transportation allocations for Fiscal Years 2023 through 2028.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 15

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ Seconded By:

Action:

Title: Location Approval for the Bowers Hill Interchange Improvements Study

WHEREAS, on December 7, 2016 the Commonwealth Transportation Board (CTB) passed a resolution identifying the location for the Hampton Roads Crossing Study (HRBT Expansion Project) which included directing the Virginia Department of Transportation (VDOT) to begin a separate study of the Bowers Hill Interchange; and

WHEREAS, the Bowers Hill Interchange Study, which was identified as regional priority project and funded by the Hampton Roads Transportation Accountability Commission (HRTAC), was first documented in an Environmental Assessment (EA) that was made available to the public in April 2019; and

WHEREAS, the Hampton Roads Transportation Planning Organization (HRTPO) updated the scope of the project to include the portion of Interstate 664 (I-664) that extends from the Bowers Hill Interchange to the Monitor Merrimac Memorial Bridge Tunnel and additional environmental review was needed to document analysis of possible impacts that could result from potential improvements; and

WHEREAS, in an October 2019 resolution, HRTPO identified I-664 as a component of the Hampton Roads Express Lanes Network; and

WHEREAS, the expanded study area led VDOT and the Federal Highway Administration (FHWA) to agree that an Environmental Impact Statement (EIS) was the appropriate level of document to comply with the National Environmental Policy Act (NEPA); and

WHEREAS, a Draft EIS that will identify the preferred alternative for the Bowers Hill Interchange Improvements Study is being developed by VDOT and FHWA in close coordination with HRTPO, HRTAC, and federal, state, and local agencies; and

WHEREAS, VDOT has held three virtual public meetings, ten community meetings, and four public comment periods throughout the development of the EIS, as well as providing 26 monthly updates to the public; and

WHEREAS, in accordance with the statutes of the Commonwealth of Virginia and policies of the CTB, a Location Public Hearing was held in the City of Suffolk at VDOT's Hampton Roads District Office on April 27, 2022 for the purpose of soliciting public input on the recommended preferred alternative (Alternative C); and

WHEREAS, proper notice was given in advance, and all those present were given a full opportunity to express their opinions and recommendations on the alternatives under consideration, and their statements have been duly recorded and considered by the CTB; and

WHEREAS, the economic, social, and environmental effects of the evaluated alternatives have been examined and given proper consideration and this evidence, along with all other relevant information, has been carefully reviewed; and

WHEREAS, on May 19, 2022 the HRTPO voted unanimously to endorse Alternative C as the Preferred Alternative; and

WHEREAS, collaboration among VDOT, FHWA, the U.S. Army Corps of Engineers, and the U.S. Environmental Protection Agency resulted in Alternative C being recommended as the Preferred Alternative.

NOW, THEREFORE, BE IT RESOLVED that the location of this project be approved as presented under Alternative C at the Location Public Hearing.

BE IT FURTHER RESOLVED that, should FHWA and VDOT receive substantive comments on the Draft EIS that require the CTB to reconsider its action, the CTB would be briefed before VDOT requests FHWA conclude NEPA with a Record of Decision.

####

Commonwealth Transportation Board (CTB) Decision Brief

Location Approval for the Bowers Hill Interchange Improvements Study

Issue: The Virginia Department of Transportation (VDOT) seeks from the Commonwealth Transportation Board (CTB) approval of Alternative C as presented relating to the Bowers Hill Interchange Improvements Study as the location for this project pursuant to Virginia Code 33.2-208.

Facts: The Bowers Hill Interchange Improvements Study Environmental Impact Statement (EIS) was initiated in August 2020 to evaluate potential transportation improvements to the Bowers Hill Interchange in the City of Chesapeake and to I-664 from the Bowers Hill Interchange to near College Drive in the City of Suffolk. The Bowers Hill Interchange includes the junction of Interstate (I-) 664, I-264, I-64, U.S. Route 460, U.S. Route 58, U.S. Route 13, and Virginia (VA-) Route 191 (Jolliff Road).

The Draft EIS that is being developed evaluates alternatives that reduce congestion, improve travel reliability, and provide additional travel choice. The Draft EIS also evaluates the economic, social, and environmental effects of the alternatives.

VDOT held two Citizen Comment Opportunities from September 17, 2020 to October 16, 2020 and from February 12, 2021 to March 25, 2021 for the purpose of sharing information and soliciting public input on the development of key components of the study for incorporation in the Draft EIS. In accordance with the statutes of the Commonwealth of Virginia and policies of the CTB, a Location Public Hearing was held in the City of Suffolk at VDOT's Hampton Roads District Office on April 27, 2022 for the purpose of soliciting public input on the recommended preferred alternative (Alternative C). VDOT has received more than 1,500 public comments throughout the Study to inform the development of the Purpose and Need, Range of Alternatives, and Recommended Preferred Alternative.

The Draft EIS will be approved by Federal Highway Administration (FHWA) and VDOT and issued for public review in Winter 2022/2023. The public comment period will be open for 45 days. The public will be notified of an additional public hearing to be held during the comment period and review opportunities through press releases, media advertisements, social media, website announcements, and mailings. Per state code, all properties within the study area corridors will receive mailings announcing the document availability and Location Public Hearing 30-days prior to the meeting. Comments received on the Draft EIS will be responded to in the Final EIS.

Decision Brief

Location Approval for the Bowers Hill Interchange Improvements Study

Cities of Chesapeake, Portsmouth, and Suffolk

October 26, 2022

Page 2 of 4

Additional Background on the Study:

- On December 7, 2016, the CTB passed a resolution identifying the location for the Hampton Roads Crossing Study (HRBT Expansion Project), which directed VDOT to advance a separate study of the Bowers Hill Interchange.
- Prior to the initiation of the EIS and development of the Draft EIS, in the fall of 2018, VDOT, in coordination with the FHWA, initiated the environmental review process for the preparation of an Environmental Assessment (EA) to evaluate potential transportation improvements at the Bowers Hill Interchange. Following the issuance of the EA in April 2019, the Hampton Roads Transportation Planning Organization (HRTPO), in consultation with the Hampton Roads Transportation Accountability Commission (HRTAC), VDOT, and FHWA, expanded the Study parameters to include a larger Study Area into the City of Suffolk, including approximately seven additional miles north along I-664 to near College Drive (VA-135).
- In October 2019, HRTPO identified I-664 in the Bowers Hill Study Area as part of the Hampton Roads Express Lanes Network (HRELN).
- The Bowers Hill Study has also been identified as a high priority project by the HRTAC and a regional priority project by HRTPO.
- HRTAC's 2045 Long Range Plan of Finance identifies \$2.3 billion in costs for improvements to the Bowers Hill Interchange and widening I-664 to College Drive.

Recommendations: Based on the analysis through the development of technical reports, extensive coordination with federal, state, regional, and local agencies, and public input, VDOT recommends that Alternative C be approved as the location of this project. The recommendation considers the following factors:

- Alternative C was unanimously endorsed by HRTPO on May 19, 2022;
- Alternative C best meets the Purpose and Need of the Study and is consistent with local and regional plans, including development of the HRELN;
- Alternative C is the less impactful of the two Build Alternatives retained for further analysis in the Draft EIS; and
- All of the Bowers Hill Interchange Improvements Study's federal Cooperating Agencies (U.S. Army Corps of Engineers and U.S. Environmental Protection Agency) concurred to Alternative C being recommended as the preferred alternative to the CTB.

Action Required by CTB: The *Code of Virginia* requires the majority vote of the CTB to approve a Resolution accomplishing the following:

Decision Brief

Location Approval for the Bowers Hill Interchange Improvements Study

Cities of Chesapeake, Portsmouth, and Suffolk

October 26, 2022

Page 3 of 4

- Adopt a location decision based upon the alternatives advanced for further analysis in the Draft EIS.

Result, if Approved: VDOT will proceed with steps necessary for issuance of the Draft EIS, which will identify a Preferred Alternative consistent with the CTB's Location Approval.

Options: Approve, Deny, or Defer

Public Comments/ Reaction: CTB was briefed during its January 2021 and June 2021 workshops. CTB was briefed on public comments on the recommended preferred alternative on June 21, 2022 and again on the EIS on September 21, 2022. The public also had the opportunity to comment as part of the CTB Action Meeting on October 26, 2022.

- Four public comment periods:
 - September 17, 2020 to October 16, 2020: To inform development of the Purpose and Need. Public identified congestion issues throughout the Study Area.
 - February 12, 2021 to March 25, 2021: To inform development of the range of alternatives, including review of all preliminary concepts. Public indicated a preference for additional lanes to mitigate congestion in the Study Area, with a preference for general purpose lanes over managed lanes.
 - February 18, 2022 to March 21, 2022: In response to FHWA's publication of a Notice of Intent (NOI) to prepare an EIS for Bowers Hill Interchange Improvements Study. Limited comments received.
 - March 25, 2022 to May 7, 2022: To inform identification of a preferred alternative. Majority of public comments agreed that the recommended preferred alternative (Alternative C) addressed the Study's Purpose and Need.
- Three virtual public meetings during the public comment periods, except for the NOI comment period.
- One in-person public hearing:
 - April 27, 2022: To inform identification of a preferred alternative.
- Community office hours and meetings: May 16, 2021; January 18, 2022; February 10, 2022; February 12, 2022; April 19, 2022; and August 3, 9, and 18, 2022.

Decision Brief

Location Approval for the Bowers Hill Interchange Improvements Study

Cities of Chesapeake, Portsmouth, and Suffolk

October 26, 2022

Page 4 of 4

- 26 monthly newsletters beginning in August 2020 at the start of the EIS.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 16

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____ Seconded By:

Action:

Title: Periodic Regulatory Review

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

WHEREAS, Executive Order Number 19 (issued June 30, 2022 and replacing Executive Order Number 14 (2018)) requires all regulations to be so reviewed every four years and requires agencies to follow procedures for conducting such review as developed by the Office of Regulatory Management (ORM); and

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

WHEREAS, VDOT has completed all facets of the regulatory review of the regulations listed in the table below in accordance with the Executive Orders, the ORM procedures, and the

APA, including the completion of a Periodic Review Report of Findings for each regulation (attached as Exhibits A through F); and

WHEREAS, three total public comments were submitted, one for 24 VAC 30-91, 24 VAC 30-325, and 24 VAC 30-380 respectively, and no public comments were submitted for the other regulations under review, based upon the results of the review, and after giving the public comments due consideration, VDOT recommends action for each regulation as determined in the relevant Periodic Review Report of Findings for each regulation and set forth in the table below:

Chapter	Title	Proposed Disposition
24 VAC 30-11	Public Participation Guidelines	Retain as is.
24 VAC 30-41	Rules and Regulations Governing Relocation Assistance	Retain as is.
24 VAC 30-91	Subdivision Street Requirements	Retain as is.
24 VAC 30-92	Secondary Street Acceptance Requirements	Retain as is.
24 VAC 30-325	Urban Maintenance and Construction Policy	Amend.
24 VAC 30-380	Public Hearings for the Location and Design of Highway Projects	Retain as is.

; and,

WHEREAS, the Commonwealth Transportation Board originally adopted the regulations listed in the table above pursuant to its authority in § 33.2-210 of the *Code of Virginia* and other relevant sections of the *Code of Virginia* and is authorized to take action to amend, repeal or retain said regulations.

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

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board directs the Commissioner of Highways or his designees to take all actions necessary to complete the periodic reviews for the regulations listed in the table above, and for that regulation for which amendment is approved, to complete the process necessary to amend said regulation, submitting to the Board the proposed amendment(s) for approval prior to completing the process to amend the regulation.

#####

CTB Decision Brief
Periodic Regulatory Review

Issue: The Administrative Process Act (APA) requires all state agencies that adopt regulations to periodically review those regulations. Executive Order 14 (2018) and Executive Order 19 (issued June 30, 2022, replacing Executive Order 14) require periodic reviews to take place every four years to determine if the regulation should be continued with no changes or be amended or be repealed and require agencies to follow the procedures developed by the Office of Regulatory Management (ORM) for conducting such review. In accordance with these requirements, the Virginia Department of Transportation (VDOT) has reviewed the regulations listed below and is providing recommendations as to the action to be taken by the Commonwealth Transportation Board (CTB) for each regulation.

Facts:

- The APA, particularly in §§ 2.2-4007.1 and 2.2-4017 of the *Code of Virginia*, requires that all state agencies that adopt regulations periodically review those regulations, including consideration of: 1) the extent to which regulations remain supported by statutory authority and do not duplicate, overlap, or conflict with state or federal law; 2) the nature of complaints or comments received from the public; 3) whether the regulations are necessary for the protection of public health, safety and welfare; 4) whether the regulations are clearly written and easily understandable; 5) whether the regulations' economic impacts on small businesses and families are minimized as much as possible; and 6) the length of time since the regulation has been evaluated.
- The Governor's Executive Order Number 19 (issued June 30, 2022) replaced Executive Order Number 14 (2018, which governed the initial stages of this review) and created the Office of Regulatory Management (ORM) to, among other things, work with each regulatory agency to review all existing regulations, required once every four years, to reduce the overall regulatory burden on the public. The ORM procedures now outline the specific periodic review requirements. Chapter 444 of the 2018 Acts of Assembly requires the Department of Planning and Budget (DPB) to track and report to the General Assembly annually which agencies are complying with the periodic review requirements.
- VDOT conducted a periodic review of the regulations listed in the table below, and pursuant to the requirements set forth in the APA and the process established in the Executive Orders and the ORM procedures, notified the public of the regulations' ongoing periodic review on the Virginia Regulatory Town Hall website and solicited comment from the public for at least 21 days, satisfying the minimum statutory requirement. One public comment was submitted regarding 24 VAC 30-91, 24 VAC 30-325, and 24 VAC 30-380, respectively. No public comments were submitted regarding the other regulations under periodic review by the CTB.
- VDOT has completed all facets of the regulatory review of the regulations listed in the table below, taking into consideration the public comments submitted, and has completed

the Periodic Review Report of Findings for each regulation (Attached as Exhibits A-F), which must be filed with the Virginia Registrar to complete the periodic review process.

- The regulations reviewed and which are to be considered by the CTB are listed in the table below, along with the proposed disposition of the regulation. The table is followed by a description of each regulation and the findings made by VDOT based upon the review.

Chapter	Title	Proposed Disposition
24 VAC 30-11	Public Participation Guidelines	Retain as is.
24 VAC 30-41	Rules and Regulations Governing Relocation Assistance	Retain as is.
24 VAC 30-91	Subdivision Street Requirements	Retain as is.
24 VAC 30-92	Secondary Street Acceptance Requirements	Retain as is.
24 VAC 30-325	Urban Maintenance and Construction Policy	Amend.
24 VAC 30-380	Public Hearings for the Location and Design of Highway Projects	Retain as is.

- **24 VAC 30-11 Public Participation Guidelines**

Section 2.2-4007.02 of the *Code of Virginia* requires each agency that promulgates regulations to adopt public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations. The CTB is authorized to promulgate regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to §33.2-210. The CTB’s public participation guidelines mirror the Department of Planning and Budget’s model public participation guidelines as those existed at the time the Board’s guidelines were last amended in 2021. The guidelines, having the status of a regulation, are necessary to promote public involvement in the development, amendment or repeal of regulations. VDOT recommends retaining the regulation as is.

- **24 VAC 30-41 Rules and Regulations Governing Relocation Assistance**

This regulation was promulgated by the CTB as authorized by § 25.1-402 of the *Code of Virginia*, which provides assurances to the Federal Highway Administration that VDOT will comply with the Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601 et seq.), as amended, and as required in 49 CFR § 24.4 in order to receive federal financial assistance. The CTB is authorized to comply fully with the

provisions of federal aid acts pursuant to § 33.2-221 of the *Code of Virginia*. The regulation provides for relocation of displaced persons and personal property in a timely manner to meet the needs of those persons and to achieve project schedules. VDOT recommends retaining the regulation as is.

- **24 VAC 30-91 Subdivision Street Requirements**

Section 33.2-326 of the *Code of Virginia* vests in VDOT the control, supervision, management and jurisdiction over the secondary system of highways. Although § 33.2-705 grants authority to localities to establish highways, including subdivision streets on land being developed, if the locality or private developer wish to have VDOT assume maintenance of those streets, the design and construction of those streets must meet VDOT's standards.

The Subdivision Street Requirements (SSR) establish the conditions which must be met before certain subdivision streets constructed by entities other than VDOT will be accepted into the state secondary system.

It is noted that in 2007, the General Assembly (in Chapter 382 of the Acts of Assembly) authorized the CTB to adopt new regulations establishing Secondary Street Acceptance Requirements (SSAR), and specified several provisions that must be contained in those regulations. However, Chapter 382 also allowed for subdivision plats and construction plans submitted to VDOT prior to the effective date of the new regulations authorized by that Act to be built to the previously existing standards, which are found in this regulation. Accordingly, proposed developments that include roads to be accepted into the secondary system and that were initially received by VDOT prior to July 1, 2009 may be grandfathered under these requirements.

In order to comply with the intent of Chapter 382 to grandfather those developments that include roads to be accepted into the secondary system, received by VDOT prior to July 1, 2009, VDOT recommends retaining the regulation as is.

- **24 VAC 30-92 Secondary Street Acceptance Requirements**

Chapter 382 of the 2007 Acts of Assembly (SB 1181) added § 33.1-70.3 (now § 33.2-334) to the *Code of Virginia*. The legislation required the CTB to develop Secondary Street Acceptance Requirements (SSAR), promulgated by regulation, to determine the conditions and standards that must be met before streets constructed by developers, localities and entities other than VDOT will be accepted into the state secondary system for maintenance by VDOT. Section 33.2-326 of the *Code of Virginia* vests in VDOT the control, supervision, management and jurisdiction over the secondary system of highways. Further, VDOT is authorized by §33.2-334 to set standards for the acceptance of streets into the secondary system of highways. Although § 33.2-705 grants authority to localities to establish highways, including subdivision streets on land being developed, if the locality or private developer wish to have VDOT assume maintenance of those streets, the design and

construction of those streets must meet VDOT's standards.

This regulation offers guidance on the design and construction features of secondary street development and sets out design parameters deemed appropriate for most land development scenarios. All proposed developments which include roads to be accepted into the secondary system initially received by VDOT on/after July 1, 2009 must meet SSAR requirements. Legislation passed during the 2022 General Assembly session requires VDOT to convene a stakeholder advisory group to provide recommended amendments to the SSAR regarding flexibility to limit the number of connections to adjacent property or highway networks, as deemed appropriate. Any amendments to the SSAR as a result of this legislation will be addressed separately upon completion of the stakeholder advisory group's review. VDOT recommends retaining the regulation as is.

- **24 VAC 30-325 Urban Maintenance and Construction Policy**

Section 33.2-319 of the *Code of Virginia* authorizes payments for maintenance, construction, or reconstruction of highways to all cities and towns eligible for funds. Such payments shall only be made if those highways functionally classified as principal and minor arterial roads were constructed to certain standards and are maintained to a standard satisfactory to VDOT. The CTB is authorized to promulgate regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to §33.2-210.

This regulation provides certain details and conditions in order for urban streets to be eligible for maintenance payments as well as conditions for lane mile eligibility and calculations and further provides internal and external instructions in the administration of maintenance and construction payments for qualifying cities and towns. The regulation needs to be updated to reflect the elimination of formula funds, notably the urban construction allocation to localities referenced in the regulation. Chapter 684 of the 2015 Acts of Assembly amended § 33.2-358 of the *Code of Virginia* by changing the previous construction formula distribution – 40% to the primary system, 30% to the secondary system, and 30% to the urban system – to the current process which no longer utilizes an urban construction allocation. This change in the distribution formula applied to funds allocated for fiscal years beginning on and after July 1, 2020. Further, § 33.2-362 of the Code of Virginia, which outlined the allocation of construction funds for urban system highways, was repealed by Chapter 684 of the 2015 Acts of Assembly. VDOT proposes that the regulation therefore be amended to remove the obsolete provisions of the regulation referencing the urban construction allocation.

- **24 VAC 30-380 Public Hearings for the Location and Design of Highway Projects**

This regulation was promulgated by the CTB based on current Federal and State statutory and regulatory authorities as found in 23 USC § 128, 23 CFR § 771.111, and § 33.2-208 of the *Code of Virginia*. The CTB is authorized to promulgate regulations for the protection of

and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the *Code of Virginia*. This regulation is needed for purposes of complying with state and federal laws and regulations regarding public involvement in transportation projects that are developed using public funds and where there are impacts to the natural and human environment. Details of the public involvement process are typically coordinated and align with the level of involvement for state or federal environmental documents required by other sections of state and federal law and/or regulations. The procedures for the consideration and participation by public and private interests in determining the location and design of highway projects have had a history of producing successful outcomes in the public interest, and that is expected to continue under this regulation. VDOT recommends retaining the regulation as is.

Recommendations: VDOT recommends that the following regulations be retained as is: Public Participation Guidelines, Rules and Regulations Governing Relocation Assistance, Subdivision Street Requirements, Secondary Street Acceptance Requirements, and Public Hearings for the Location and Design of Highway Projects. VDOT further recommends that the Urban Maintenance and Construction Policy regulation be amended as specified above.

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

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

Options: Approve, Deny, or Defer.

Public Comments/Reactions: There were three public comments received in total, one for each of the following regulations: Subdivision Street Requirements, Urban Maintenance and Construction Policy, and Public Hearings for the Location and Design of Highway Projects. The public comment received for the Subdivision Street Requirements requested or sought changes relating to bicycle and pedestrian facilities, changes that were included in the 2011 Secondary Street Acceptance Requirements, which followed the Subdivision Street Requirements. The public comment received regarding Public Hearings for the Location and Design of Highway Projects was supportive of the regulation and its retention. The public comment received for the Urban Maintenance and Construction Policy recommended standardizing the required widths for determining street maintenance eligibility and calculating lane mileage eligibility to a narrow width that was included in a specific exception in the regulation; however, VDOT's provided response explained the special circumstance under which the narrower width applies and the reason why it should not be adopted more broadly as proposed. For the other regulations under review, there were no comments or other input received from the public.



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-11
VAC Chapter title(s)	Public Participation Guidelines
Date this document prepared	/ /2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

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

There are no acronyms used in this report or any technical terms that are used in this document to be defined.

Legal Basis

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

Section 2.2-4007.02 of the *Code of Virginia* requires each agency that promulgates regulations to adopt public participation guidelines for soliciting the input of interested parties in the formation and

development of its regulations. Furthermore, §§ 2.2-4007, 2.2-4007.01, 2.2-4007.03 (A) and (B), 4007.1(D)-(F), 2.2-4012(E), 2.2-4012.1, 2.2-4013(C) and (D), and 2.2-4017 of the *Code of Virginia* provide additional requirements for agency solicitation of public participation in the regulatory process.

The Commonwealth Transportation Board (CTB) is authorized to promulgate regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the *Code of Virginia*, and therefore is required to adopt public participation guidelines.

Alternatives to Regulation

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

The CTB’s public participation guidelines mirror the Department of Planning and Budget’s (DPB) model public participation guidelines. At the recommendation of the Office of Regulatory Management (ORM), due to the advanced stage of this periodic review at the time new procedures were issued, this form has been prepared with consideration of the regulation in its current form as the only alternative.

Public Comment

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

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The CTB’s public participation guidelines mirror DPB’s model public participation guidelines as those existed at the time the Board’s guidelines were last amended in 2021. The guidelines, having the status of a regulation, are necessary to promote public involvement in the development, amendment or repeal of regulations. Further, the regulation is clearly written and understandable.

Decision

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

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The CTB is proposing to retain this regulation without making any changes. The regulation continues to mirror the model public participation guidelines from the DPB.

Small Business Impact

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

There is a continued need for this regulation because it promotes public involvement in the development, amendment or repeal of CTB regulations. There is no overlap, duplication, or conflict with federal or state law or regulation. There have been no complaints received from the public to date. This is a best practice, and increased public participation is beneficial to the public, both to those who are interested in and choose to participate in a particular rulemaking as well as to those who decline to participate but may benefit from the participation of others. The last review of this regulation occurred in 2019 and the regulation was last amended in 2021 to align it with the most recent model public participation guidelines from the DPB. The CTB does not believe that this regulation has a significant economic impact on small businesses.



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-41
VAC Chapter title(s)	Rules and Regulations Governing Relocation Assistance
Date this document prepared	/ /2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

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

CFR – Code of Federal Regulations
 USC – United States Code
 VAC – Virginia Administrative Code

Legal Basis

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

This regulation was promulgated by the Commonwealth Transportation Board (CTB) as authorized by § 25.1-402 of the *Code of Virginia*, which provides assurances to the Federal Highway Administration that the Virginia Department of Transportation will comply with the Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970 (42 USC § 4601 *et seq.*), as amended, and as required in 49 CFR § 24.4 in order to receive federal financial assistance. The CTB is authorized to comply fully with the provisions of federal aid acts pursuant to § 33.2-221 of the *Code of Virginia*.

Alternatives to Regulation

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

This regulation is required to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC § 4601 *et seq.*) in order for the Virginia Department of Transportation to receive federal financial assistance. At the recommendation of the Office of Regulatory Management (ORM), due to the advanced stage of this periodic review at the time new procedures were issued, this form has been prepared with consideration of the regulation in its current form as the only alternative.

Public Comment

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

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

This regulation is necessary for the protection of public health, safety and welfare by providing relocation benefits and advisory assistance to persons displaced by a highway construction project and ensuring they are treated fairly and equitably. The regulation provides for relocation of displaced persons and personal property in a timely manner to meet the needs of those persons and to achieve project schedules. The regulation is clearly written and easily understandable.

Decision

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

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The CTB is proposing to retain this regulation without making any changes. The regulation continues to ensure fair and equitable treatment of persons displaced by highway construction projects.

Small Business Impact

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

There is a continued need for this regulation because it is required to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 USC § 4601 *et seq.*) in order for the Virginia Department of Transportation to receive federal financial assistance. It provides a system of benefits with the following objectives: "To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and to ensure that Agencies implement these regulations in a manner that is efficient and cost effective." (49 CFR § 24.1(b) & (c))

This regulation is not overly complex and is consistent with the federal law codified at 42 USC § 4601 *et seq.* and the related federal regulations in 49 CFR, part 24. The last review of this regulation occurred in 2019 and there have been no amendments or public comments since then. The regulation provides eligible relocation benefits and advisory assistance to small businesses when affected by a state project, thereby minimizing the economic impact of these projects on small businesses.



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-91
VAC Chapter title(s)	Subdivision Street Requirements
Date this document prepared	/ /2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

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

SSR – Subdivision Street Requirements

Legal Basis

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

The Subdivision Street Requirements (SSR) govern the acceptance of subdivision streets into the secondary system of state highways for maintenance by the Virginia Department of Transportation (VDOT). Section 33.2-326 of the *Code of Virginia* vests in VDOT the control, supervision, management

and jurisdiction over the secondary system of highways. Although § 33.2-705 grants authority to localities to establish highways, including subdivision streets on land being developed, if the locality or private developer wish to have VDOT assume maintenance of those streets, the design and construction of those streets must meet VDOT’s standards. The design-related provisions of the SSR are part of the department’s Road Design Manual (Appendix B of that Manual).

Alternatives to Regulation

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

In 2007, the General Assembly (in Chapter 382 of the Acts of Assembly) authorized the CTB to adopt new regulations establishing Secondary Street Acceptance Requirements, and specified several provisions that must be contained in those regulations. However, Chapter 382 also allowed for subdivision plats and construction plans submitted to VDOT prior to the effective date of the new regulations authorized by that Act to be built to the previously existing standards, which are found in this regulation, 24 VAC 30-91.

Streets which may be considered for acceptance in accordance with this regulation include: 1) streets where the street layout has been proffered pursuant to § 15.2-2297, 15.2-2298, or 15.2-2303 of the *Code of Virginia* if the requirements of 15.2-2307 are met prior to July 1, 2009; 2) streets that are part of a recorded plat or final site plan valid pursuant to § 15.2-2261 of the *Code of Virginia* and approved in accordance with §§ 15.2-2241 through 15.2-2245 and 15.2-2286 of the *Code of Virginia* prior to July 1, 2009; 3) streets that are part of a preliminary subdivision plat valid pursuant to § 15.2-2260 of the *Code of Virginia* approved in accordance with §§ 15.2-2241 through 15.2-2245 and 15.2-2286 of the *Code of Virginia* prior to July 1, 2009; 4) streets that are part of a street construction plan approved by VDOT prior to July 1, 2009; and 5) if requested by the local governing body, the SSR shall apply if the conceptual sketch was submitted to the agency prior to July 1, 2009.

Therefore, no alternatives to the SSR can be considered.

At the recommendation of the Office of Regulatory Management (ORM), due to the advanced stage of this periodic review at the time new procedures were issued, this form has been prepared with consideration of the regulation in its current form as the only alternative.

Public Comment

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

Commenter	Comment	Agency response
Nicole Keller	Hello Ms. Maxwell, I am writing to submit a public comment as part of the periodic review of the Subdivision Street Requirements [24 VAC 30-91], I believe that it is necessary for the protection of public health, safety,	The CTB agrees with the commenter regarding the importance of bicycle and pedestrian accommodations. More substantial accommodations were included in the 2011 Secondary Street Acceptance Requirements, which replaced the Subdivision Street Requirements.

	<p>and welfare and for the economic performance of newly built streets that a requirement for some form of active transportation accommodation is added to this Chapter. Newly constructed streets under state management should from this point forward be required to include either a sidewalk and/or bike lane. By requiring this, Virginia will continue to build a multi-modal transportation network that serves all people and encourages healthier and cleaner transportation. Thank you for registering my comment.</p>	
--	---	--

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The SSR establishes the conditions and standards that must be met before certain subdivision streets constructed by entities other than VDOT will be accepted into the state secondary system for maintenance by VDOT. Proposed developments that include roads to be accepted into the secondary system and that were initially received by VDOT prior to July 1, 2009 may be grandfathered under these requirements. The consistent construction, review, and acceptance of streets which meet specified requirements promotes the protection of public health, safety, and welfare. The standards ensure access by emergency response vehicles, reduce congestion, and ensure the safe, efficient movement of people and goods. The SSR is written in a manner which is clear and easily understandable.

Decision

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

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Commonwealth Transportation Board is proposing to retain this regulation without making any changes. The regulation promotes public health, safety, and welfare as well as accepting only qualified roads into the state’s highway systems.

Small Business Impact

As required by § 2.2-4007.1 E and F of the Code of Virginia, discuss the agency’s consideration of: (1) the continued need for the regulation; (2) the nature of complaints or comments received concerning the regulation; (3) the complexity of the regulation; (4) the extent to the which the regulation overlaps,

duplicates, or conflicts with federal or state law or regulation; and (5) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. Also, discuss why the agency's decision, consistent with applicable law, will minimize the economic impact of regulations on small businesses.

The SSR has a positive impact on state resources as well as small businesses. This regulation helps reduce long-term traffic congestion, support and promote more economic activity and better transportations systems. VDOT believes the regulation is not overly complex, and there is no overlap, duplication, or conflict with federal or state laws or regulations. The SSR was originally adopted in 1949. In 2005, VDOT worked with external stakeholders to complete a comprehensive revision of the SSR. There have been no complaints received from the public, and the one public comment received during the periodic review was supportive of changes which were included in the 2011 Secondary Street Acceptance Requirements, which followed the SSR. There have been no amendments to the regulation since it was last reviewed in 2019.



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-92
VAC Chapter title(s)	Secondary Street Acceptance Requirements
Date this document prepared	/ /2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

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

SSAR – Secondary Street Acceptance Requirements

Legal Basis

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

Chapter 382 of the 2007 Acts of Assembly (SB1181) added § 33.1-70.3 (now § 33.2-334) to the *Code of Virginia*. The legislation required the Commonwealth Transportation Board to develop Secondary

Street Acceptance Requirements, promulgated by regulation, to determine the conditions and standards that must be met before streets constructed by developers, localities and entities other than VDOT will be accepted into the state secondary system for maintenance by VDOT.

Section 33.2-326 of the *Code of Virginia* vests in VDOT the control, supervision, management and jurisdiction over the secondary system of highways. Further, VDOT is authorized by §33.2-334 to set standards for the acceptance of streets into the secondary system of highways. Although § 33.2-705 grants authority to localities to establish highways, including subdivision streets on land being developed, if the locality or private developer wish to have VDOT assume maintenance of those streets, the design and construction of those streets must meet VDOT’s standards. The design-related provisions of the SSAR are part of the department’s Road Design Manual (Appendix B of that Manual).

Alternatives to Regulation

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

At the recommendation of the Office of Regulatory Management (ORM), due to the advanced stage of this periodic review at the time new procedures were issued, this form has been prepared with consideration of the regulation in its current form as the only alternative. However, Chapter 425 of the 2022 Acts of Assembly required VDOT to convene a stakeholder advisory group composed of representatives from VDOT, local government, environmental advocacy organizations, and the residential and commercial land development and construction industry for the purpose of developing and providing recommended amendments to the SSAR. The CTB expects that alternatives to the existing SSAR may be considered as a result of those recommendations in 2023.

Public Comment

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

Commenter	Comment	Agency response

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The SSAR establishes the conditions and standards that must be met before secondary streets constructed by developers, localities and entities other than VDOT will be accepted into the state secondary system for maintenance by VDOT. All proposed developments which include roads to be accepted into VDOT’s Secondary System of Highways, which were initially received by the agency on/ after July 1, 2009, must meet the requirements of the SSAR. The consistent construction, review, and acceptance of streets which meet specified requirements promotes the protection of public health, safety,

and welfare. The standards ensure access by emergency response vehicles, reduce congestion, and ensure the safe, efficient movement of people and goods. The SSAR is written in a manner which is clear and easily understandable.

Decision

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

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The Commonwealth Transportation Board is proposing to retain this regulation without making any changes. The regulation promotes public health, safety, and welfare as well as accepting only qualified roads into the state's highway systems. Legislation passed during the 2022 General Assembly session requires VDOT to convene a stakeholder advisory group to provide recommended amendments to the SSAR regarding flexibility to limit the number of connections to adjacent property or highway networks, as deemed appropriate. Any amendments to the SSAR as a result of this legislation will be addressed separately upon completion of the stakeholder advisory group's review.

Small Business Impact

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

The SSAR has a positive impact on state resources as well as small businesses. This regulation is needed to reduce long-term traffic congestion, support and promote more economic activity and better transportations systems. VDOT believes the regulation is not overly complex, and there is no overlap, duplication, or conflict with federal or state laws or regulations. There have been no complaints received from the public nor have there been any amendments to the regulation since it was last reviewed in 2019.



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-325
VAC Chapter title(s)	Urban Maintenance and Construction Policy
Date this document prepared	/ /2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

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

There are no acronyms or any technical terms that are used in this document to be defined.

Legal Basis

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

This regulation was promulgated by the Commonwealth Transportation Board (CTB) and provides internal and external instructions in the administration of maintenance and construction payments for qualifying cities and towns, including clarifying satisfactory design standards and lane mileage eligibility.

The CTB is authorized to promulgate regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the *Code of Virginia*, and is specifically authorized to approve payments for maintenance, construction, or reconstruction of highways to all cities and towns eligible for funds under § 33.2-319 of the *Code of Virginia*. Such payments, however, shall only be made if those highways functionally classified as principal and minor arterial roads are maintained to a standard satisfactory to the Virginia Department of Transportation (VDOT).

Alternatives to Regulation

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

At the recommendation of the Office of Regulatory Management (ORM), due to the advanced stage of this periodic review at the time new procedures were issued, this form has been prepared with consideration of the regulation in its current form as the only alternative.

Public Comment

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

Commenter	Comment	Agency response
Anonymous	As the governor's office desires to remove unnecessary regulation, I propose that 24VAC30-325-10 A. 3 be modified to better match 24VAC30-325-10 B. 4 , where the former requires 16 feet of constructed way with 40 feet of ROW while the latter only deems 14 feet necessary when calculating lane mileage. Adjusting 24VAC30-325-10 A. 3 to 14 feet (and analyzing if 40 feet of ROW is necessary) would lower costs by requiring a smaller amount of constructed product and reduce the confusion of mentioning multiple widths.	<p>This regulation should be read in the context of § 33.2-319 of the <i>Code of Virginia</i>. Section 33.2-319 B specifies nine types/configurations of highways in cities and towns that can be eligible for urban maintenance payments. Section 33.2-319 B also states that the "Commissioner of Highways may waive the requirements as to hard-surface pavement or right-of-way width for highways where the width modification is at the request of the governing body of the locality and is to protect the quality of the affected locality's drinking water supply or, for highways constructed on or after July 1, 1994, to accommodate some other special circumstance where such action would not compromise the health, safety, or welfare of the public. The modification is subject to such conditions as the Commissioner of Highways may prescribe."</p> <p>24 VAC 30-325-10-B-4 is intended to address the type/configuration of highway in § 33.2-319 B (iv), which states: "...(iv) either (a) has been paved and has constituted part</p>

		<p>of the primary or secondary state highway system prior to annexation or incorporation...”.</p> <p>So, if an older highway in the state system of highways is annexed into a city/town that is eligible to receive urban maintenance payments, and that highway is a two lane highway with a paved width of 14 feet (which would typically occur in more rural counties), then the city/town that annexed the highway may still be eligible to receive urban maintenance payments for that highway, but VDOT will make such payments as though the highway were one lane, not two.</p> <p>But for that one exception, 24 VAC 30-325-10-A-3 provides that any local one way streets, loop roads, school bus entrances, service roads and frontage roads may be eligible for receiving urban maintenance payments, but only if they have a paved width of at least 16 feet and a right-of-way width of at least 40 feet. Note that none of the configurations in § 33.2-319 specify that combination of 16 ft./40 ft. So this would likely count as a waiver of the width requirements due to those types of highways being special circumstances.</p>
--	--	--

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The regulation is necessary for the protection of the public health, safety, and welfare as it specifies the appropriate design standards to which urban highways should be constructed and maintained in order for the cities and towns in which those urban highways are located to be eligible for certain state funds. The design standards ensure the safety of the public and facilitate the efficient movement of people and commercial goods on those highways. The regulation is clearly written and easily understandable.

Decision

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

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The CTB is proposing to amend this regulation. The allocation of funding for urban construction has changed since the regulation was last amended, and amendments are now needed to conform the regulation with current requirements.

Small Business Impact

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

There is a continued need for this regulation because it provides certain details and conditions in order for urban streets to be eligible for maintenance payments as well as conditions for lane mile eligibility and calculations and further provides internal and external instructions in the administration of maintenance and construction payments for qualifying cities and towns. There was one comment received during the public comment period for the periodic review, and the comment and response can be found in the "Public Comment" section above.

There have been no amendments to the regulation since it was last reviewed in 2019. The regulation is not overly complex. There is no overlap, duplication, or conflict with federal or state law or regulation. The regulation does not impact small businesses, other than by promoting the efficient movement of people and commercial goods on urban highways.

The regulation needs to be updated to reflect the elimination of formula funds, notably the urban construction allocation to localities referenced in the regulation. Chapter 684 of the 2015 Acts of Assembly amended § 33.2-358 of the Code of Virginia by changing the previous construction formula distribution – 40% to the primary system, 30% to the secondary system, and 30% to the urban system – to the current process which no longer utilizes an urban construction allocation. This change to the distribution formula applied to funds allocated for fiscal years beginning on and after July 1, 2020. Further, § 33.2-362 of the Code of Virginia, which outlined the allocation of construction funds for urban system highways, was repealed by Chapter 684 of the 2015 Acts of Assembly. The current programs for funding projects in the urban system of highways are outlined in Chapter 3.4 of the Urban Construction and Maintenance Manual. This Manual, adopted by VDOT, can be found by the public on Virginia's Regulatory Town Hall (www.townhall.virginia.gov) under VDOT's Guidance Documents and on the VDOT website (www.virginiadot.org) on the Local Assistance Division's Urban Highways page.



townhall.virginia.gov

Periodic Review and Small Business Impact Review Report of Findings

Agency name	Commonwealth Transportation Board
Virginia Administrative Code (VAC) Chapter citation(s)	24 VAC 30-380
VAC Chapter title(s)	Public Hearings for the Location and Design of Highway Projects
Date this document prepared	___ / ___ / 2022

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Acronyms and Definitions

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

CFR – Code of Federal Regulations
 USC – United States Code
 VAC – Virginia Administrative Code

Legal Basis

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

This regulation was promulgated by the Commonwealth Transportation Board (CTB) based on current Federal and State statutory and regulatory authorities as found in 23 USC § 128, 23 CFR § 771.111, and § 33.2-208 of the *Code of Virginia*.

The Commonwealth Transportation Board (CTB) is authorized to promulgate regulations for the protection of and covering traffic on and for the use of systems of state highways pursuant to § 33.2-210 of the *Code of Virginia*.

Alternatives to Regulation

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

At the recommendation of the Office of Regulatory Management (ORM), due to the advanced stage of this periodic review at the time new procedures were issued, this form has been prepared with consideration of the regulation in its current form as the only alternative.

Public Comment

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

Commenter	Comment	Agency response
Nicole Keller	Hello Ms. Maxwell, I am writing to submit my public comment as part of the periodic review of the Public Hearings for the Location and Design of Highway Projects chapter [24 VAC 30-380]. The public deserves to have a voice in response to major transportation projects. It is my opinion that this requirement is critical and should be retained. Thank you for recording my comment.	The CTB agrees with the commenter regarding the importance of this regulation and will retain the regulation as-is.

Effectiveness

Pursuant to § 2.2-4017 of the Code of Virginia, indicate whether the regulation meets the criteria set out in the ORM procedures, including why the regulation is (a) necessary for the protection of public health, safety, and welfare, and (b) is clearly written and easily understandable.

The origins of the regulation are nearly three decades old, and in the CTB’s judgment, the regulation continues to be necessary to meet current federal and state laws and regulations regarding the

requirements for public involvement in publicly funded transportation projects that will or are likely to affect the natural and human environments. Details of the public involvement process are typically coordinated and align with the level of involvement for state or federal environmental documents required by other sections of state and federal law and/or regulations. The regulation is clearly written and easily understandable.

Decision

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

If the result of the periodic review is to retain the regulation as is, complete the ORM Economic Impact form.

The CTB is proposing to retain this regulation without making any changes. The procedures for the consideration and participation by public and private interests in determining the location and design of highway projects have had a history of producing successful outcomes in the public interest, and that is expected to continue under this regulation.

Small Business Impact

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

This regulation is needed for purposes of complying with state and federal laws and regulations regarding public involvement in transportation projects that are developed using public funds and where there are impacts to the natural and human environment. The one public comment received during this periodic review was supportive of the regulation. The longevity of the regulation and the general awareness of its nature and purpose lead the CTB to determine that it is sufficiently narrow and not overly complex. The regulation is seamlessly interwoven with federal and state laws and regulations and is structured to support their policy goals and objectives. The CTB does not believe that this regulation has a significant economic impact on small businesses.

In 2008, the regulation received a review resulting in significant substantive changes, but the most recent periodic review was conducted in 2019 and there have been no amendments to the regulation since then. Technology that impacts the implementation and execution of activities required to comply with this regulation is constantly evolving and, in turn, may sometimes modify discrete public involvement procedures. These technology changes and improvements can make public involvement processes and activities easier to administer and more accommodating and meaningful to the public constituency that participates in them. However, in and of themselves, technology changes do not and should not serve as substitutes for the requirement to conduct said public involvement activities for publicly funded transportation projects as required by underlying federal and state laws and regulations.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 17

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: Seconded By: Action:

Title: Delegation of Authority for the Commissioner of Highways to Enter into Interagency Agreement between the Virginia Department of Transportation (VDOT) and the Virginia Port Authority (VPA) relating Funding and Administration of the Rockland Road Improvement Project (UPC#112945)

WHEREAS, VPA is a body corporate and political subdivision of the Commonwealth of Virginia vested with certain powers set forth in Title 62.1, Chapter 10 of the *Code of Virginia* (1950) as amended; and

WHEREAS, the Virginia Inland Port (VIP) is an intermodal container transfer facility in Front Royal, Virginia (Warren County) owned by VPA; and

WHEREAS, VPA sought, and was awarded, a FY 2018 BUILD Transportation Discretionary Grant from MARAD for a rail/highway grade separation and intersection realignment at Route 658 (Rockland Road) and the Norfolk Southern Railroad tracks serving the VIP (the "Project"); and

WHEREAS, VPA and VDOT have determined that VDOT is best suited to administer the Project; and

WHEREAS, VDOT and VPA have developed an interagency agreement that sets forth the responsibilities of the parties for funding and administration of the Project; and

Resolution of the Board

Delegation of Authority—Interagency Agreement for Rockland Road Improvement Project

October 25, 2022

Page 2 of 2

WHEREAS, § 33.2-214(C) of the *Code of Virginia* authorizes the Commonwealth Transportation Board to enter into agreements with local districts, commissions, agencies, and other entities created for transportation purposes.

NOW, THEREFORE, BE IT RESOLVED, that pursuant to § 33.2-214(C) of the Code of Virginia, the Commonwealth Transportation Board hereby authorizes the Commissioner of Highways to enter into an Interagency Agreement with the VPA (attached hereto as Exhibit A), relating to funding and administration of the Rockland Road Improvement Project, in substantially the same form as Exhibit A, with such changes and additions as the Commissioner deems necessary.

#####

Commonwealth Transportation Board (CTB)

Decision Brief

Delegation of Authority for the Commissioner of Highways to Enter into Interagency Agreement between the Virginia Department of Transportation (VDOT) and the Virginia Port Authority (VPA) relating to Funding and Administration of the Rockland Road Improvement Project (UPC#112945)

Issue: VDOT seeks from the Commonwealth Transportation Board (CTB) approval of and authority for the Commissioner to enter into an Interagency Agreement between VDOT and the VPA for funding and administration of a rail/highway grade separation and intersection realignment project at Route 658 (Rockland Road) and the Norfolk Southern Railroad tracks near VPA's Virginia Inland Port facility (the "Project") in Warren County. The VPA was awarded a BUILD Grant for the Project by the Maritime Administration and because VDOT is administering the Project, VPA and VDOT must enter into an agreement so that Grant funds may be used to reimburse VDOT for work on the Project.

Facts:

- The Virginia Inland Port (VIP) is an intermodal container transfer facility in Front Royal, Virginia (Warren County) owned by VPA.
- The Project will provide for a grade separated interchange near the VIP consisting of a bridge 220 feet long and 42 feet wide, with (2) 12-foot travel lanes and (2) 8-foot paved shoulders. This bridge would be tall enough for double-stacked freight containers to pass underneath and long enough to accommodate a future third track. Improvements are also planned for the roadway approaches on Route 658, Route 705 (Fishnet Boulevard), and nearby entrances.
- In the existing condition, vehicles must stop at the intersection multiple times per day for indefinite periods of time due to train activity. The Project's grade-separated crossing over the railroad tracks would eliminate the wait time for these vehicles
- VPA sought, and was awarded, a FY 2018 BUILD Transportation Discretionary Grant from MARAD for the Project and has requested that VDOT administer the Project. Accordingly, VDOT and the VPA have developed an agreement that sets forth the responsibilities of the parties relating to administration and funding for the Project, which

CTB Decision Brief

Delegation of Authority for the Commissioner of Highways to Enter into an Interagency Agreement between the Virginia Department of Transportation (VDOT) and the Virginia Port Authority (VPA) relating to Funding and Administration of the Rockland Road Improvement Project (UPC#112945)

October 26, 2022

Page 2 of 3

agreement is required in order for MARAD Grant funds to be used to reimburse VDOT for work performed on the Project.

- Section 33.2-214(C) of the Code of Virginia authorizes the Commonwealth Transportation Board to enter into agreements with local districts, commissions, agencies, and other entities, such as the VPA, created for transportation purposes.

Recommendations: VDOT recommends that the CTB delegate to the Commissioner the authority to execute the Agreement with VPA, attached hereto as Exhibit A, relating to the funding and administration of the Rockland Road Improvement Project, in substantially the same form as Exhibit A, with such changes and additions as the Commissioner deems necessary.

Action Required by CTB: Approve by majority vote the resolution providing the authorization recommended herein.

Result, if Approved: The Commissioner will be authorized to execute an Agreement between VDOT and VPA as described above, in substantially the same form as Exhibit A, with such changes and additions as the Commissioner deems necessary.

Options: Approve, Deny or Defer

INTERAGENCY AGREEMENT
BETWEEN THE VIRGINIA PORT AUTHORITY
AND THE VIRGINIA DEPARTMENT OF TRANSPORTATION
FOR U.S. DEPARTMENT OF TRANSPORTATION, MARITIME ADMINISTRATION
(MARAD) BUILD GRANT FUNDING
FOR THE ROCKLAND ROAD IMPROVEMENT PROJECT

This Interagency Agreement (Agreement) between the Virginia Port Authority (VPA) and the Virginia Department of Transportation (VDOT) to provide federal grant funding for the Rockland Road Grade Separation Project (UPC 112945) (Project), pursuant to MARAD FY 2018 BUILD Grant No. 693JF71910015, as well as other funding, and for Project administration, is entered into on the date of last execution set forth below (VPA and VDOT collectively are the “Parties”).

WHEREAS, VPA submitted an application for funding dated July 19, 2018, under the Better Utilizing Investments to Leverage Development (BUILD) Transportation Discretionary Grants program and entitled “Virginia Inland Port Terminal Optimization and Grade Separation Project” (“MARAD Grant Application”) under the provisions of the Consolidated Appropriations Act, 2018 (Pub. L. 115-141, March 23, 2018), regarding National Infrastructure Investments, as described in the Notice of Funding Opportunity for the Department of Transportation's National Infrastructure Investments Under the Consolidated Appropriations Act, 2018, 83 FR 18651 (April 27, 2018); and

WHEREAS, in response to VPA’s MARAD Grant Application, MARAD awarded a FY 2018 BUILD Transportation Discretionary Grant in the amount of \$15,500,197 (“MARAD Grant Funds” or “Funding”), which grant is memorialized in an agreement between the U.S. Department of Transportation (USDOT) and VPA, dated and effective September 25, 2020, and will be administered by MARAD (MARAD Grant Agreement); and

WHEREAS, while the MARAD Grant Application sought funding for two project components relating to the Virginia Inland Port (VIP), with Component 1 (“Outside the Gate”) being a rail/highway grade separation and intersection realignment project on Rockland Road and Component 2 (“Inside the Gate”) being railyard improvements on VIP property, because VPA is utilizing Rail Enhancement Funds provided by the Department of Rail and Public Transportation for Component 2, and in accordance with the MARAD Grant Agreement, the total \$15,500,197 in MARAD Grant Funding will be used to fund Component 1, the Project that is subject to this Agreement; and

WHEREAS, the Project, Component 1 of VPA’s Grant Application, is currently estimated to cost approximately \$28,032,681, which is an amount greater than the sum of the \$15,500,197 of MARAD Grant Funds and the \$10,510,000 of funding allocated by the Commonwealth Transportation Board (CTB) in the Fiscal Year 2022-2027 Six-Year Improvement Program (“CTB Funds”), leaving a potential balance needed to complete the Project, currently estimated to be \$2,022,484 (“Remaining Balance”) that has not been allocated by the CTB; and

WHEREAS, VDOT and VPA will cooperate to identify other eligible partners and funding sources to provide the Remaining Balance that is needed to complete Component 1; and

WHEREAS, VPA and VDOT have determined that VDOT is best suited to administer all work necessary to complete the Project.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

I. SCOPE OF WORK: The Project includes design and construction of a grade-separated crossing/bridge carrying state route 658 (Rockland Road) over the Norfolk Southern Railroad tracks, along with the realignment of Rockland Road's intersection with Fishnet Boulevard. This Project also includes the necessary right of way acquisition. Construction activities necessary to complete the grade separation and intersection realignment will include full site preparation and a temporary detour. The complete Project realignment will consist of new connection tie-ins, a bridge that will span the railroad, and relocation of all utilities. The Project will also include the following elements within the newly-acquired right-of-way: grading, drainage improvements, final paving, and project seeding.

A. VDOT will be responsible for:

- i. Performing or causing to be performed, all work necessary to construct the Project as set forth in the Scope of Work above;
- ii. Providing Project progress reports to VPA in support of any necessary reporting required by MARAD or any other Remaining Balance funding requirements;
- iii. Submitting invoices monthly to VPA for reimbursement of Eligible Project Costs, as defined in Section III herein for reimbursement of any MARAD Grant Funding or Remaining Balance funding;
- iv. Administering, in its discretion, the CTB Funds allocation to ensure it is credited to the Project after the MARAD Grant Funds are exhausted;
- v. Submitting final invoices for MARAD Grant Funds to VPA no less than 45 days prior to the Closeout Date of the Project provided in Section II;
- vi. Working with VPA to provide any documentation needed for close-out of the MARAD grant; and
- vii. Cooperating with VPA to secure the Remaining Balance funding.

B. VPA will be responsible for:

- i. Securing federal funds for this Project with MARAD and, in cooperation with VDOT, the Remaining Balance funding prior to Project advertisement;
- ii. Reviewing invoice reimbursement requests from VDOT for Eligible Project Costs;
- iii. Requesting reimbursement from MARAD for Eligible Project Costs incurred until such MARAD Funding is exhausted;
- iv. Reimbursing VDOT within 30 days of receipt of MARAD Grant Funds or, to the extent non-CTB Funds are applied to reimbursement, within 30 days of receipt of invoice;
- v. Monitoring all work associated with the Project and ensuring that all aspects of and work and activities relating to the Project, performed by VPA are in compliance with all MARAD Grant Fund requirements;
- vi. Consulting/coordinating with and obtaining responses and concurrence from MARAD for purposes of resolving questions or issues relating to Project compliance with all MARAD requirements, given VDOT's inexperience with regard to MARAD grant and project requirements;
- vii. Unless and until VPA receives a modification of the MARAD Grant Agreement in accordance with VDOT's alternative planned completion dates in II.D below, holding VDOT harmless from the impacts of any non-compliance with MARAD requirements;
- viii. Submitting required reporting to MARAD, including but not limited to reporting relating to Project progress as well as data required for measuring performance;

- ix. Obtaining MARAD's approval of this Agreement in final form prior to its execution by the Parties; and
- x. Closing out the MARAD grant.

II. MARAD GRANT PERIOD OF PERFORMANCE AND PROJECT MILESTONES:

- A. Eligible Project Costs incurred between the date of the MARAD Grant Agreement (September 25, 2020) and the Planned Period of Performance End Date (June 1, 2025) are eligible for reimbursement utilizing MARAD Grant Funds. Eligible Project Costs shall be reimbursed with other Remaining Balance funding if and once MARAD Grant Funding is exhausted or no longer available.
- B. The planned completion dates for MARAD-approved project milestones as provided in the MARAD Grant Agreement for this Project are as follows:
 - i. Planned Completion of Final Design: 05/19/2023
 - ii. Planned Right of Way Acquisition: 06/14/2023
 - iii. Planned PS&E Approval: 10/10/2023
 - iv. Planned Construction Contract Award: 12/30/2023 (*VDOT plans to award contract on 2/13/2024*)
 - v. Planned Construction Start Date: 12/30/2023 (*VDOT plans to start construction on 3/20/2024*)
 - vi. Planned Construction Substantial Completion Date: 04/01/2025 (*VDOT plans for the Project to reach substantial completion on 1/9/2026*)
 - vii. Planned Period of Performance End Date: 06/01/2025 (*For that portion of the Project to be reimbursed with MARAD Grant Funds*)
 - viii. Planned Project Closeout Date: 08/30/2025 (*For that portion of the Project to be reimbursed with MARAD Grant Funds*)
- C. VDOT acknowledges that the dates provided in Section II.B above are set forth in the MARAD Grant Agreement. The Parties acknowledge, however, that compliance with such dates is not achievable due to circumstances beyond the control of Parties and have set forth alternative planned completion dates below in Section II.D. VPA agrees that the changes to the planned completion dates in Section II.B are necessary and is seeking a modification to the MARAD Grant Agreement terms from MARAD in conformance with VDOT's alternative planned completion dates. Any changes to the planned completion dates will occur once VPA submits a modification request that is approved by MARAD.
- D. The alternative planned completion dates, based on the current VDOT schedule, are as follows:
 - i. (a) Furnish right-of-way and utilities plans, planned completion of final design for right-of-way acquisition: 10/3/2022
 - (b) Clear railroad agreements: 6/6/2023
 - ii. (a) Acquire right of way: 6/7/2023
 - (b) Utility relocations by others: 2/14/2024
 - iii. (a) Planned submission date: 6/13/2023
 - (b) Advertise Project: 8/8/2023
 - iv. Award Contract: 2/13/2024
 - v. (a) Administer contract start date: 3/20/2024
 - (b) Expected expenditures of MARAD Grant Funding: 1/30/2025
 - vi. Administer contract end date: 1/9/2026
 - vii. Expected last invoice for MARAD reimbursable work: 6/1/2025
 - viii. Central Office Closeout: 12/10/2026

III. ELIGIBLE PROJECT COSTS:

- A. Eligible Project Cost.** An Eligible Project Cost is a reasonable cost directly associated with, and necessary for, execution of the Scope of Work defined by this Agreement. Eligible Project Costs include, but are not limited to, reasonable costs incurred by VDOT for contractor or consultant expenses and VDOT internal costs. VPA will reimburse VDOT 100 percent of Eligible Project Costs that VDOT incurs in excess of the CTB's allocation of \$10,510,000.
- B. Source of Funding.** VPA will reimburse VDOT for the Eligible Project Costs to be funded with MARAD Grant Funds and any Remaining Balance funding. VPA agrees and verifies that any state match required for this Project has been satisfied and to the extent that the state match has not been satisfied by sums thus far made available by VPA pursuant to the MARAD Grant Agreement, VPA will provide the additional funds necessary to satisfy the state match. The Parties agree that, to the extent possible, the application of MARAD Grant Funds towards the reimbursement of Eligible Project Costs shall be prioritized in order to meet the MARAD Grant Agreement Planned Project Closeout Date.
- C. Invoicing.**
- i. No Project cost shall be eligible for reimbursement from MARAD Grant Funds that occurs prior to the date of the MARAD Grant Agreement (September 25, 2020).
 - ii. For reimbursement of Eligible Project Costs incurred by VDOT, VDOT will submit invoices to VPA on a monthly basis. Eligible Project Costs incurred after the MARAD Grant Agreement date of September 25, 2020, may be submitted after the Parties' execution of this Agreement.
 - iii. For all invoices, VDOT shall include documentation supporting the invoiced Eligible Project Costs and proof of payment by VDOT.
 - iv. VPA will approve or request additional information from VDOT regarding the supporting documentation for the invoice; the invoice will not be considered approved until VPA confirms the supporting documentation is adequate, which approval shall be promptly provided and not unreasonably withheld.
 - v. VPA will promptly invoice MARAD for federal reimbursement after final approval of the invoice and shall ensure that all reimbursement requests submitted to MARAD comply with all MARAD submission requirements and deadlines.
 - vi. VPA will reimburse VDOT within 30 days from receipt of MARAD Grant Funding. Upon receipt, VDOT will post the reimbursement as an expenditure credit for costs incurred.
 - vii. VDOT must submit all invoices for Eligible Project Costs to be reimbursed by MARAD Grant Funds by July 15, 2025. No reimbursements will be made to VDOT from MARAD Grant Funds after August 30, 2025.

IV. PROJECT BUDGET:

- A. Initial Estimated Cost.** The initial estimated cost for the Project is \$28,032,681.
- B. Monthly and Other Budget Updates.** Along with its monthly invoice for Eligible Project Costs, VDOT shall provide to VPA a quarterly progress report on the percentage of project completion and percentage of the budget expended to date.

V. MARAD REPORTING:

- A.** In order to enable VPA to comply with VPA's requirement to submit to MARAD Quarterly Project Progress Report and Recertification, VDOT shall submit to VPA no later than the

10th day after the end of each calendar quarter, and prior to Project Closeout, a report with the form and content consistent with Exhibit H of the MARAD Grant Agreement, Quarterly Project Progress Reports and Recertifications. Any changes to the activity completion dates of the Project should also be noted. VPA will submit to MARAD the Quarterly Project Progress Reports and Recertifications received from VDOT in accord with the MARAD Grant Agreement and no later than the 20th day of the month following each calendar quarter and at the Project closeout date.

- B. VPA will submit to MARAD the following Project Closeout Information as set forth in and in the manner required by the MARAD Grant Agreement no later than 90 days after the Planned Period of Performance End Date (06/01/2025): (i) the final Federal Financial Report (SF- 425), a certification or summary of Project expenses and any other information required by MARAD; and (ii) a report comparing the Project's final work, schedule, and budget to the statement of work, schedule and budget set forth in the MARAD Grant Agreement. VDOT will provide to VPA the information needed for VPA to comply with the Project Closeout information reporting requirement set forth in the MARAD Grant Agreement.

- VI. **THIRD PARTY PROCUREMENT:** VDOT must follow all third-party procurement requirements applicable to projects funded using MARAD Grant Funding and communicated to VDOT by VPA. VPA shall serve as liaison with MARAD and shall be responsible for communicating issues and/or questions relating to MARAD procurement and contracting requirements raised by VDOT and shall obtain information, satisfactory responses, and resolution from MARAD. VDOT shall not be responsible and VPA shall hold VDOT harmless for any Project delays, and/or any resulting MARAD Grant funding losses attributable to Project delays resulting from delayed or inaccurate information and/or delayed resolution of procurement and/or contracting issues from MARAD or VPA.
- VII. **AMENDMENT:** No amendment to this Agreement will be effective unless it is in writing and signed by both Parties.
- VIII. **MISCELLANEOUS:** The duties and obligations of VPA and VDOT pursuant to this Agreement are subject to appropriation by the General Assembly and allocation by the Commonwealth Transportation Board and the availability of funding for the Project.
- IX. **PARTIES SUBJECT TO MARAD GRANT AGREEMENT:** Other than the modified dates provided in Section II above, this Agreement shall be subject and subordinate to the MARAD Grant Agreement attached hereto and incorporated by reference herein, and to all of its terms, covenants, conditions, provisions and agreements, except as otherwise set forth in this Agreement. The Parties shall adhere to the requirements of the MARAD Grant Agreement in their performance of this Agreement.

[Signatures follow on next page]

The Parties have caused this agreement to be executed, each by its duly authorized officer as of the day, month and year set forth below.

VIRGINIA DEPARTMENT OF
TRANSPORTATION

VIRGINIA PORT AUTHORITY

Signature

Signature

Title

Title

Date

Date

DRAFT



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 18

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: Seconded By: Action:

**Title: Location Approval for the Fall Line Trail – Northern Section
from the Chickahominy River Crossing to Route 657 (Ashcake Road)
in the Counties of Henrico and Hanover and the Town of Ashland, Virginia**

WHEREAS, State Project 9999-166-294, P101, R201, C501 (UPC #121374); 9999-964-016, P101, R201, C501 (UPC# 119599) will complete the northernmost 4.8 miles of shared-use path on the Fall Line Trail – Northern Section from approximately 0.2 miles south of Winfrey Road in Henrico County to a 0.46-mile section of the existing Trolley Line Trail, extending along Walder Lane to Ashcake Road in the Town of Ashland (the “Project”); and

WHEREAS, the Fall Line Trail is a regional shared-use path that is planned to span seven localities and connect rural, suburban, and urban landscapes and a multitude of places of interests and uses along approximately 43 miles in the Richmond region from the City of Petersburg to the Town of Ashland; and

WHEREAS, the Virginia Department of Transportation (VDOT) is pursuing the development and implementation of the Project through a design-build contract; and

WHEREAS, the location of the Fall Line Trail was identified through VDOT’s *Ashland to Petersburg Trail Study* (the “Study”) that included the evaluation of six primary corridors and the identification of a recommended preferred corridor, the “Orange” corridor option. The primary

corridors evaluated by the Study were developed based on planned and existing bicycle facilities, designed bicycle routes, regional trail networks, existing utility easements, abandoned rail corridors, and destinations of interest; and

WHEREAS, the six primary corridors and the identification of a recommended preferred corridor, the “Orange” corridor option, were presented to the public at duplicate public information meetings conducted on September 30, 2019, and October 1, 2019, as shown on the attached “Ashland to Petersburg Trail Study Preliminary Corridor Options” exhibit; and

WHEREAS, the Study was completed in February 2020 with input and feedback from: (i) 13 individual or group meetings with members of the Stakeholder Technical Advisory Group composed of representatives from 15 localities, metropolitan planning organizations, planning district commissions, and special interest groups; (ii) 10 meetings with the Environmental Agency Working Group composed of representatives from the Federal Highway Administration, U.S. Army Corp of Engineers, and the Department of Environmental Quality; and (iii) two (2) public information meetings attended by over 340 community members; and

WHEREAS, the Study identified the recommended preferred corridor, the “Orange” corridor option, as the most practicable corridor that would provide connectivity to destinations of interest; align with state, regional, and local transportation plans; and be the least impactful option to environmental resources, with consideration given to cost and feasibility of implementation; and

WHEREAS, since the completion of the Study and the identification of the 43-mile recommended preferred corridor, which was officially named the Fall Line Trail in October 2020, a number of alignment refinements have been incorporated through continued coordination with locality stakeholders in order to be consistent with current local and regional priorities for active transportation, recreation, and economic development; and

WHEREAS, in accordance with the § 33.2-208 of the *Code of Virginia* and the policies and regulations of the Commonwealth Transportation Board (CTB), including 24 VAC 30-380-10, VDOT held duplicate In-Person Location Public Hearings (“Hearings”) on May 3, 2022 and May 5, 2022, for the purpose of soliciting input on the location the Project as shown on the attached “Fall Line Trail Northern Section Location” exhibit; and

WHEREAS, proper notice of the Hearings was given in advance, all those present were given a full opportunity to express their opinions and recommendations on the alternatives under consideration, and their statements have been duly recorded; and

WHEREAS, the economic, social, and environmental effects of the evaluated alignment alternatives have been examined and given proper consideration and this evidence, along with all other relevant evidence, has been carefully reviewed; and

WHEREAS, the Project will be coordinated with appropriate federal, state, and local agencies as part of the environmental review and approvals required throughout the project development process; and

WHEREAS, Henrico County, Hanover County and the Town of Ashland support the location of the Project. Henrico County’s Director of Public Works and County Engineer provided a letter of support dated August 30, 2022, the Town of Ashland’s Director of Planning and Community Development provided a letter of support dated August 22, 2022, and the Hanover County Administrator provided a letter of support on behalf of the Hanover County Board of Supervisors dated August 29, 2022. See attached; and

WHEREAS, review of all data resulted in VDOT’s recommendation that the Project be located as proposed and presented at the Hearings on May 2, 2022 and May 5, 2022, and as shown on the attached “Fall Line Trail Northern Section” exhibit.

NOW, THEREFORE, BE IT RESOLVED, that the CTB hereby approves the location of the Project, as proposed and presented at the Hearings on May 2, 2022 and May 5, 2022.

#####

Commonwealth Transportation Board (CTB) Decision Brief

Location Approval for the Fall Line Trail – Northern Section from the Chickahominy River Crossing to Route 657 (Ashcake Road) in the Counties of Henrico and Hanover and the Town of Ashland, Virginia

**State Project No.: 9999-166-294, P101, R201, C501; (UPC #121374);
9999-964-016, P101, R201, C501; (UPC# 119599)**

Issue: The Fall Line Trail – Northern Section will complete the northernmost 4.8 miles of a ten-foot (10’) wide shared-use path with two-foot (2’) graded shoulders on each side, from approximately 0.2 miles south of Winfrey Road in Henrico County to a 0.46-mile section of the existing Trolley Line Trail, extending along Walder Lane to Ashcake Road in the Town of Ashland (the “Project”).

The Project will connect the Longdale Section of the Fall Line Trail, which is currently under design and development by Henrico County, to the existing Trolley Line Trail in the Town of Ashland. The Project will follow the historic Richmond-Ashland Trolley Line corridor for approximately 4.3 miles, primarily along an existing property owned by Dominion Energy, and will incorporate a 0.46-mile section of existing ten-foot (10’) asphalt trail to its intersection with Ashcake Road in the Town of Ashland.

Facts:

- The *VTrans2040 – Multimodal Transportation Plan 2025 Needs Assessment*, prepared in 2017 by the Office of Intermodal Planning and Investment for the CTB, identified the need for redundancy and mode choice across districts and within VDOT’s Richmond District, along the I-64 and I-95 corridors, as well as US Route 1, US Route 60/360, and US Route 250.
- The Fall Line Trail is a regional shared-use path that is planned to span seven localities and connect rural, suburban, and urban landscapes and a multitude of places of interests and uses along approximately 43 miles in the Richmond region from the City of Petersburg to the Town of Ashland.
- The Virginia Department of Transportation (VDOT) is pursuing the development and implementation of the Project through a design-build contract.
- The construction and maintenance of the Project will be the responsibility VDOT.
- The location of the Fall Line Trail was identified through VDOT’s *Ashland to Petersburg Trail Study* (the “Study”).

- The purpose of the Study was to locate a shared-use path that would enhance the active transportation network in the Richmond region, including the counties of Chesterfield, Hanover, and Henrico; the cities of Colonial Heights, Petersburg, and Richmond; and the Town of Ashland.
- The Study included the evaluation of six primary corridors and the identification of a recommended preferred corridor, the “Orange” corridor option. The primary corridors evaluated were developed based on planned and existing bicycle facilities, designed bicycle routes, regional trail networks, existing utility easements, abandoned rail corridors, and destinations of interest.
- The six primary corridors and the identification of a recommended preferred corridor, the “Orange” corridor option, were presented to the public at duplicate public information meetings conducted on September 30, 2019 and October 1, 2019, as shown on the attached “Ashland to Petersburg Trail Study Preliminary Corridor Options” exhibit.
- The Study was completed in February 2020 with input and feedback from: (i) 13 individual or group meetings with members of the Stakeholder Technical Advisory Group composed of representatives from 15 localities, metropolitan planning organizations, planning district commissions, and special interest groups; (ii) 10 meetings with the Environmental Agency Working Group composed of representatives from the Federal Highway Administration, U.S. Army Corp of Engineers, and the Department of Environmental Quality; and (iii) two (2) public information meetings attended by over 340 community members.
- The Study identified the recommended preferred corridor, the “Orange” corridor option, as the most practicable corridor that would provide connectivity to destinations of interest and align with state, regional, and local transportation plans; and least impactful option to environmental resources, with consideration given to cost and feasibility of implementation.
- Since the completion of the Study and the identification of the 43-mile recommended preferred corridor, which was officially named the Fall Line Trail in October 2020, a number of alignment refinements have been incorporated though continued coordination with locality stakeholders in order to be consistent with current local and regional priorities for active transportation, recreation, and economic development.

- VDOT held duplicate Location Public Hearings (“Hearings”) on May 3, 2022 and May 5, 2022, for the purpose of soliciting input on the location of the Project as shown on the attached “Fall Line Trail Northern Section” exhibit.
- Once complete, the Fall Line Trail will include approximately 19 miles on new location and approximately 14 miles along VDOT-maintained roadways.

Recommendations: VDOT recommends approval of the location of the Project as proposed and presented at the Hearings on May 3, 2022 and May 5, 2022, and shown on the attached “Fall Line Trail Northern Section Location” exhibit.

Action Required by CTB: The *Code of Virginia* § 33.2-208, requires the majority vote of the CTB to locate and establish the routes to be followed by the facilities comprising systems of state transportation system between points designated in the establishment of such systems.

Result, if Approved: If approved by the CTB, the Project will move forward to the development and advertisement of a design-build contract.

Options: Approve, Deny or Defer

Public Comments/ Reaction:

A total of two-hundred eighty-five (285) members of the community attended the Hearings. The public was given the opportunity to provide comments at the Hearings or by completing an online survey, in addition to mailing or emailing comments. Of the 517 comments received, 439 (85%) supported the 43-mile Fall Line Trail alignment or for the Project, 72 comments (14%) suggested potential modifications to the recommended preferred alignment as presented, and 62 comments (12%) indicated opposition to the Project¹.

Henrico County, Hanover County and the Town of Ashland support the location of the Project. Henrico County’s Director of Public Works and County Engineer provided a letter of support dated August 30, 2022, the Town of Ashland’s Director of Planning and Community Development provided a letter of support dated August 22, 2022, and the Hanover County Administrator provided a letter of support on behalf of the Hanover County Board of Supervisors dated August 29, 2022. See attached.

¹ Note: Multiple themes may have been referenced by a single commenter (i.e. one commenter may have indicated support for the project and also suggested potential alignment changes).

CTB LOCATION PUBLIC HEARING SUMMARY

Fall Line Trail – Northern Section

Counties of Henrico and Hanover and the Town of Ashland

State Project: 9999-166-294, P101, R201, C501 (UPC #121374);
9999-964-016, P101, R201, C501 (UPC #119599)

Federal Project: N/A

Fr: 0.2 m south of Winfrey Road

To: Route 657 (Ashcake Road)

Project Length: 4.8 miles

PROJECT HISTORY – The Fall Line Trail was initially identified through the Virginia Department of Transportation’s (VDOT) *Ashland to Petersburg Trail Study* (the “Study”) that included the evaluation of six primary corridors and the identification of a recommended preferred corridor, the “Orange” corridor option. The Study was completed in February 2020. Since the completion of the Study and the identification of the 43-mile recommended preferred corridor, a number of alignment refinements have been incorporated through continued coordination with locality stakeholders in order to be consistent with current local and regional priorities for active transportation, recreation, and economic development.

The Fall Line Trail was presented at duplicate Location Public Hearings held on May 3, 2022 and May 5, 2022, for the purpose of soliciting public input on the proposed location of the Fall Line Trail.

VDOT is currently pursuing the development and implementation of the northernmost 4.8 miles of shared-use path on the Fall Line Trail – Northern Section from approximately 0.2 miles south of Winfrey Road in Henrico County to a 0.46-mile section of the existing Trolley Line Trail, extending along Walder Lane to Route 657 (Ashcake Road) in the Town of Ashland.

PROJECT PURPOSE – The purpose of the Fall Line Trail is to enhance the active transportation network in the Richmond region by improving bicycle and pedestrian safety, expanding non-motorized travel choices, and providing increased system linkage and connectivity to population centers, as well as key local and regional destinations, consistent with state, regional, and local transportation planning initiatives.

TYPICAL SECTION –

The Fall Line Trail – Northern Section will provide a new ten-foot (10’) shared use path to connect the Longdale Section of the Fall Line Trail, which is currently under design and development by Henrico County, to the existing Trolley Line Trail in the Town of Ashland. The Fall Line Trail – Northern Section will follow the historic Richmond-Ashland Trolley Line corridor for approximately 4.3 miles, primarily along an existing property owned by Dominion Energy and will incorporate a 0.46 mile section of existing ten-foot (10’) asphalt trail to its intersection with Ashcake Road.

PUBLIC HEARING –

Type: Location

Date: May 3, 2022 and May 5, 2022

Time: 5 – 7 p.m.

Locations: Lewis Ginter Botanical Garden Kelly Education Center, Massey Conference Center Auditorium (May 3, 2022) and Hilton Garden Inn Richmond South/Southpark Capital Ballroom (May 5, 2022).

ATTENDANCE – Two-hundred five (205) community members attended the Location Public Hearing on May 3, 2022 and eighty (80) attended on May 5, 2022, for a total of two-hundred eighty five (285) total participants in the duplicate Location Public Hearings.

COMMENTS RECEIVED – Five-hundred seventeen (517) total comments were submitted for the record, including four-hundred sixty-nine (469) comment sheets submitted at the Location Public Hearings or through an online survey form; an additional forty-eight (48) written comments were either emailed or mailed. Of the 517 comments received, 439 (85%) supported the 43-mile Fall Line Trail alignment for the Project. Seventy-two 72 comments (14%) suggested potential modifications to the recommended preferred alignment as presented and 62 comments (12%) indicated opposition to the project¹.

ENVIRONMENTAL DATA – As federal funding will not be used for the Fall Line Trail – Northern Section, an environmental review, consistent with the Federal Highway Administration’s implementing regulations under the National Environmental Policy Act of 1969 (23 CFR §771), is not required. The Fall Line Trail – Northern Section will be coordinated with appropriate federal, state, and local agencies as part of the other environmental review and approvals required throughout the project development process. All required environmental clearances and permits will be obtained prior to construction. Strict compliance with all environmental conditions and commitments resulting from regulatory approvals, in addition to adherence to VDOT’s specifications and standard best practices, will minimize impacts to the environment during construction.

ESTIMATED COST* –

	UPC# 119599	UPC# 121374	Total Estimated Cost
Preliminary Engineering:	\$716,461	\$1,273,080	\$1,989,541
Right of Way and Utilities:	\$1,118,624	\$2,652,250	\$3,770,874
Construction:	<u>\$3,154,823</u>	<u>\$8,544,473</u>	<u>\$11,699,296</u>
Total Estimated Cost:	\$4,989,908	\$12,469,803	\$17,459,711

**Note: Estimated cost represents pre-scoping estimate inflated to CY2023 and will be refined as the project design advances.*

¹ Note: Multiple themes may have been referenced by a single commenter (i.e. one commenter may have indicated support for the project also suggested potential alignment changes).

CTB Location Public Hearing Summary
Fall Line Trail – Northern Section
October 26, 2022
Page 3 of 3

ADVERTISEMENT – Advertisement for a Design-Build contract is planned for late 2022.

RIGHT OF WAY – No families, businesses, or non-profit organizations will be displaced as a result of the Fall Line Trail – Northern Section.

TRAFFIC DATA – N/A.

STAFF RECOMMENDS – Approval of the location of the Fall Line Trail – Northern Section as proposed and presented at the May 2, 2022 and May 5, 2022 Hearings as shown on the attached “Fall Line Trial Northern Section” exhibit.



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION

Stephen C. Brich, P.E.
Commissioner

1401 East Broad Street
Richmond, Virginia 23219

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

October 3, 2022

The Honorable W. Sheppard Miller, III
The Honorable Stephen C. Brich, P. E.
The Honorable Jennifer DeBruhl
The Honorable Darrell Byers
The Honorable Burwell W. Coleman
The Honorable Tom Fowlkes
The Honorable Mary Hughes Hynes
The Honorable Bert Dodson, Jr.
The Honorable Carlos M. Brown
The Honorable H. Randolph Laird
The Honorable Thomas Lawson
The Honorable Mark H. Merrill
The Honorable E. Scott Kasprovicz
The Honorable Laura Sellers
The Honorable Raymond D. Smoot, Jr.
The Honorable Frederick T. Stant, III
The Honorable Greg Yates

Subject: Location Approval for the Fall Line Trail – Northern Section in Henrico County, Hanover County and the Town of Ashland.

Dear Commonwealth Transportation Board Members:

The Department has initiated the above request for Location Approval for your consideration. The proposed Location Approval on State Projects 9999-166-294, P101, R201, C501 (UPC# 121374); 9999-964-016, P101, R201, C501 (UPC# 119599) has been recommended for approval by the Department's staff.

I have reviewed the staff's recommendations and determined that this request should be considered by the Board.

Sincerely,

Bart Thrasher
2022.09.28 16:59:23-04'00'
Barton A. Thrasher, P.E.
Chief Engineer

August 22, 2022

Scott Fisher
Virginia Department of Transportation
1401 E Broad St. Richmond, VA 23219

RE: Locality Support of Fall Line Alignment

Dear Mr. Fisher,

Please accept this letter as a show of support by the Town of Ashland for the proposed alignment of the Fall Line Trail, as shared by VDOT. We very much look forward to the completion of the 43-mile trail from The Center of the Universe to Petersburg.

Please let us know if we can be of further assistance.

Sincerely,



Nora D. Amos
Director
Planning and Community Development

BOARD OF SUPERVISORS

ANGELA KELLY-WIECEK, CHAIR
CHICKAHOMINY DISTRICT

SEAN M. DAVIS, VICE-CHAIR
HENRY DISTRICT

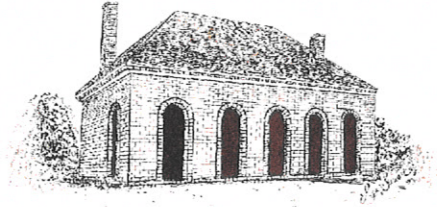
R. ALLEN DAVIDSON
BEAVERDAM DISTRICT

SUSAN P. DIBBLE
SOUTH ANNA DISTRICT

F. MICHAEL HERZBERG IV
COLD HARBOR DISTRICT

W. CANOVA PETERSON
MECHANICSVILLE DISTRICT

FAYE O. PRICHARD
ASHLAND DISTRICT



HANOVER COURTHOUSE

HANOVER COUNTY

ESTABLISHED IN 1720

JOHN A. BUDESKY
COUNTY ADMINISTRATOR

JAY A. BROWN
DEPUTY COUNTY ADMINISTRATOR

TODD E. KILDUFF
DEPUTY COUNTY ADMINISTRATOR

JAMES P. TAYLOR
DEPUTY COUNTY ADMINISTRATOR

WWW.HANOVERCOUNTY.GOV

P.O. BOX 470, HANOVER, VA 23069
7516 COUNTY COMPLEX ROAD, HANOVER, VA 23069

PHONE: 804-365-6005
FAX: 804-365-6234

August 29, 2022

Stephen C. Brich, PE
Commissioner
Virginia Dept. of Transportation
1401 E. Broad Street
Richmond, VA 23219

RE: Fall Line Trail

Dear Commissioner Brich,

At its meeting on August 24, 2022, the Hanover County Board of Supervisors passed a motion expressing its support for the Fall Line Trail's location and alignment through Hanover County. Please continue to work with my staff on the development of the trail segment through Hanover County and let me know if there is anything else you need in support of this effort.

Sincerely,

John A. Budesky
County Administrator

CC: Board of Supervisors
J. Michael Flagg, PE, Director of Public Works
Scott Fischer, PE, VDOT Richmond District Mega Projects Engineer

JAB:lsm



COMMONWEALTH OF VIRGINIA
COUNTY OF HENRICO

TERRELL C. HUGHES, P.E.
DIRECTOR OF PUBLIC WORKS
COUNTY ENGINEER
(804) 501-4393

August 30, 2022

Mr. Stephen C. Brich, PE
Commissioner
Virginia Department of Transportation
1401 E. Broad Street
Richmond, VA 23219

Re: Henrico County Support for Fall Line Trail Alignment

Dear Commissioner Brich:

This is to affirm our support for the proposed location and alignment of the Fall Line Trail for the approximately 7.5 miles through Henrico County.

The County's efforts to develop the best route for this regional trail in advance of VDOT's A to P Study helped inform the preferred alignment between Bryan Park in the City of Richmond and the Chickahominy crossing into to Hanover County. We have been engaged with VDOT, as well as the other regional stakeholders, in the planning, development, and funding for this exciting project.

Henrico County is committed to do our part to plan, construct, and help maintain our portion of what promises to be a world class trail facility located right here in Central Virginia. We value our partnership with VDOT in helping bring the Fall Line Trail to fruition as expeditiously as possible, so that the residents and visitors to our region can enjoy the benefits that this trail promises.

Please advise if you have any questions or need additional information.

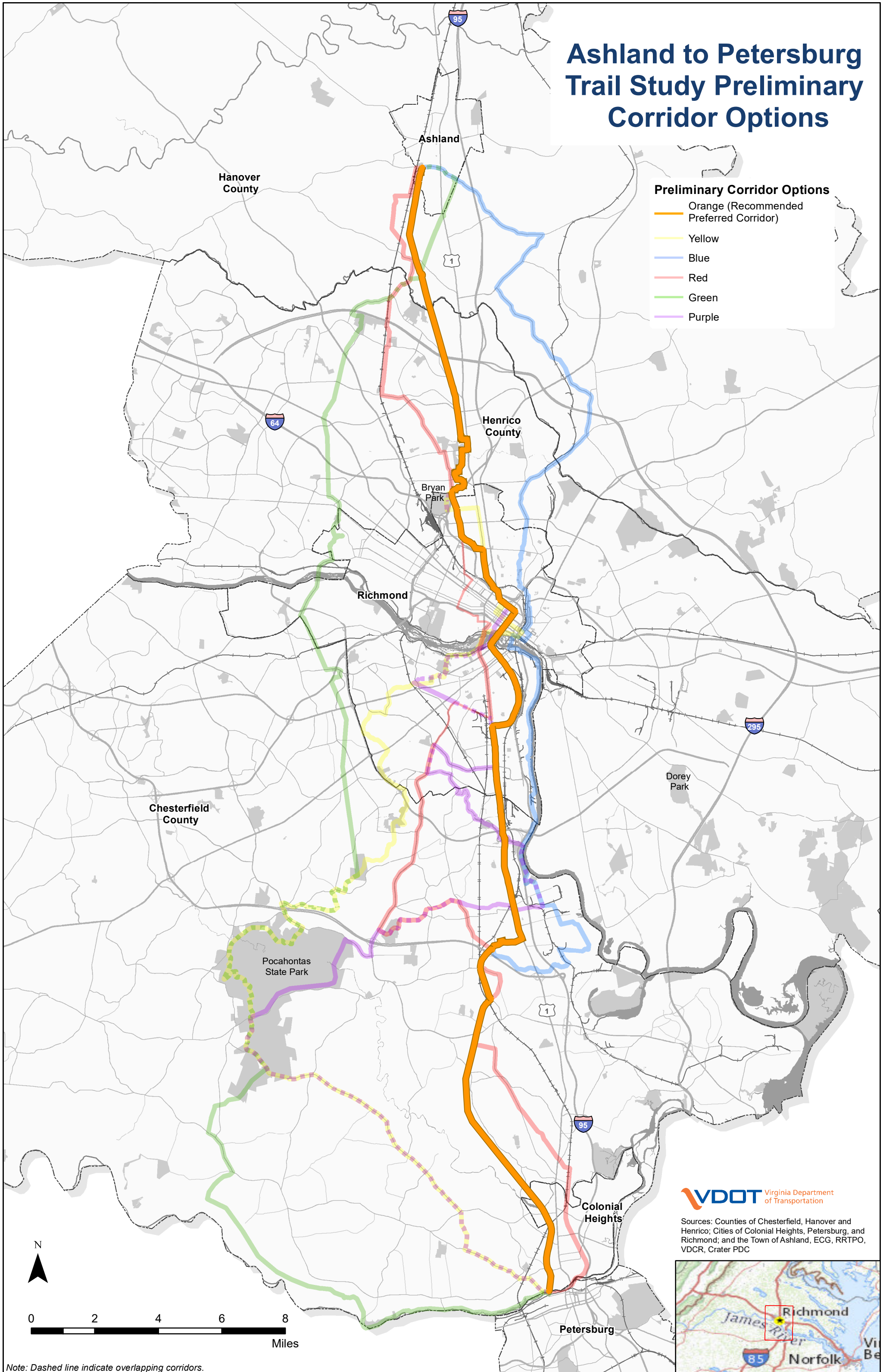
Sincerely,

Terrell C. Hughes, P.E.
Public Works Director

Ashland to Petersburg Trail Study Preliminary Corridor Options

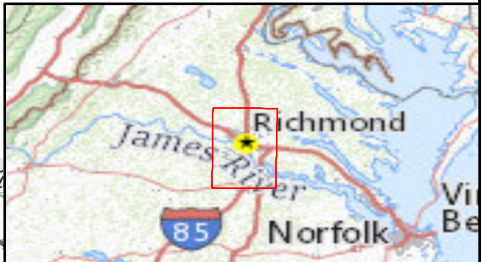
Preliminary Corridor Options

- Orange (Recommended Preferred Corridor)
- Yellow
- Blue
- Red
- Green
- Purple



VDOT Virginia Department of Transportation

Sources: Counties of Chesterfield, Hanover and Henrico; Cities of Colonial Heights, Petersburg, and Richmond; and the Town of Ashland, ECG, RRTPO, VDCR, Crater PDC



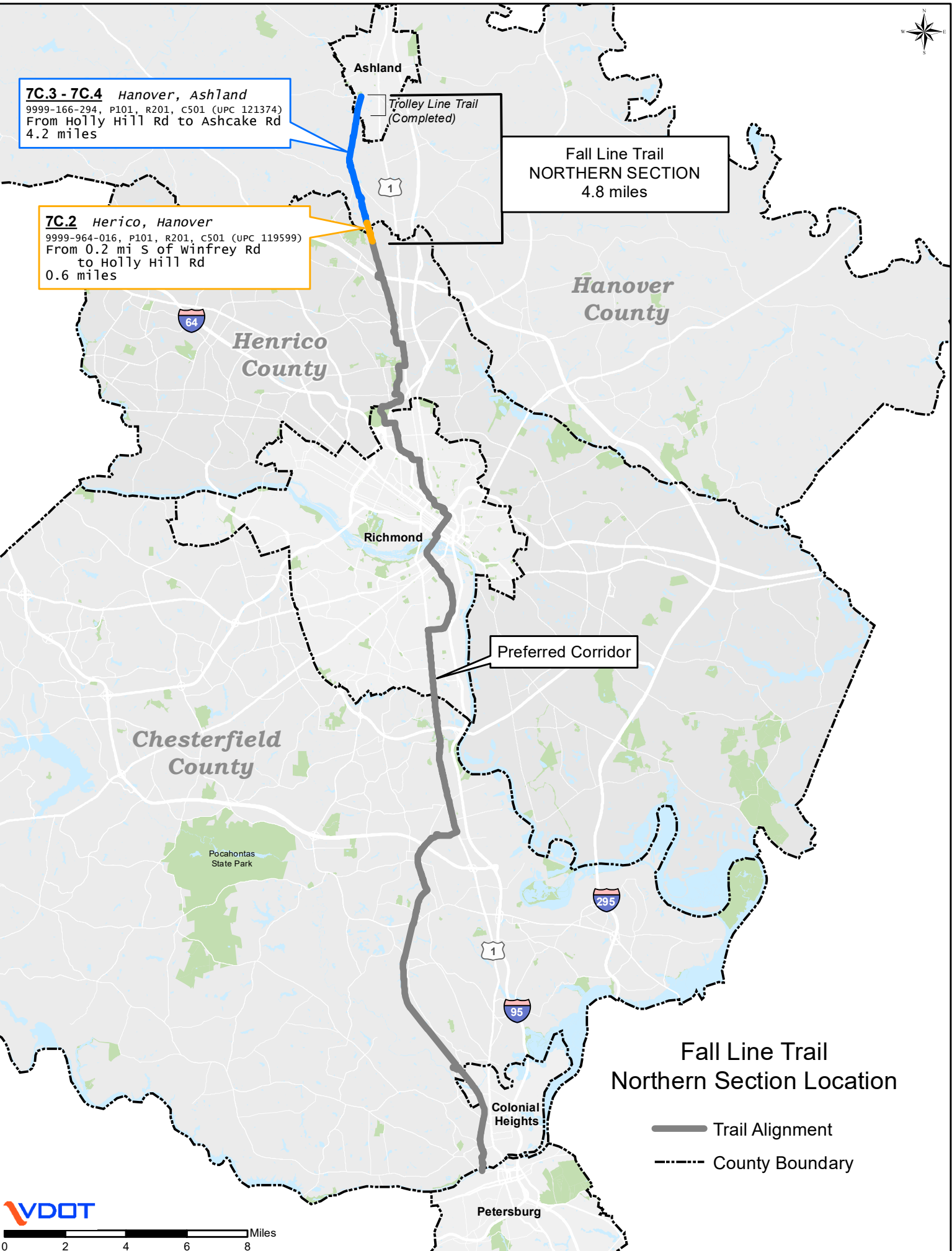
Note: Dashed line indicate overlapping corridors.



7C.3 - 7C.4 Hanover, Ashland
 9999-166-294, P101, R201, C501 (UPC 121374)
 From Holly Hill Rd to Ashcake Rd
 4.2 miles



7C.2 Herico, Hanover
 9999-964-016, P101, R201, C501 (UPC 119599)
 From 0.2 mi S of Winfrey Rd
 to Holly Hill Rd
 0.6 miles

Fall Line Trail
 NORTHERN SECTION
 4.8 miles



Preferred Corridor

**Fall Line Trail
 Northern Section Location**

-  Trail Alignment
-  County Boundary





COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 19

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By:

Seconded By:

Action:

Title: Authorization for the Commissioner of Highways to Enter into a Standard Project Agreement between the Virginia Department of Transportation and the Hampton Roads Transportation Accountability Commission (HRTAC) for the I-464/I-64 Interchange Access Report (IAR) and future Standard Project Agreements with HRTAC related to the Interchange

WHEREAS, the Virginia General Assembly, pursuant to Chapter 26 of Title 33.2 of the Code of Virginia, has established the Hampton Roads Transportation Accountability Commission (HRTAC), a political subdivision of the Commonwealth; and

WHEREAS, the Virginia General Assembly, pursuant to §33.2-2600 of the Code of Virginia, has also established the Hampton Roads Transportation Fund (HRTF) to fund new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23; and

WHEREAS, pursuant to §33.2-2608, the HRTAC may enter into contracts or agreements necessary or convenient for the performance of its duties and the exercise of its powers under Chapter 26; and

WHEREAS, §33.2-214 C of the Code of Virginia empowers the Commonwealth Transportation Board (CTB) to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes; and

WHEREAS, the CTB, on September 15, 2021, approved \$140,000,000 in Interstate Operations & Enhancement Program (IOEP) funds to install a flyover ramp from I-64 eastbound

Resolution of the Board

Authorization for the Commissioner of Highways to Enter into a Standard Project Agreement between the Virginia Department of Transportation and the Hampton Roads Transportation Accountability Commission (HRTAC) for the I-464/I-64 Interchange Access Report (IAR) and future Standard Project Agreements with HRTAC related to the Interchange

October 25, 2022

Page Two

to I-464 southbound and perform improvements to separate I-464 southbound traffic en route to Route 17 to Route 168 north of the interchange; and

WHEREAS, these improvements are in addition to the loop ramp replacements to this interchange that are included in the Region's 2045 Long Range Transportation Plan (LRTP) and HRTAC's 2045 Long Range Plan of Finance.

WHEREAS, prior to moving forward with the loop ramp replacements, VDOT is recommending that an Interstate Access Report (IAR) be funded by HRTAC to evaluate the full build of the I-464/I-64 Interchange and Route 168 ramp configuration; and

WHEREAS, HRTAC, on September 15, 2022, amended their FY2023-FY2028 Funding Plan to redirect \$2,500,000 to develop the I-464/I-64 Interchange Improvements – Full Interchange Access Report (IAR); and

WHEREAS, VDOT has requested that the CTB approve and authorize the Commissioner of Highways to, execute a Standard Project Agreement (SPA) with HRTAC relating to the development of the I-464/I-64 Interchange Full Interchange Access Report (IAR) and the HRTF funding therefore and further, to authorize the Commissioner to execute all future SPAs with HRTAC necessary for funding and administration of any and all improvements to the I-464/I-64 Interchange and any associated activities.

NOW, THEREFORE, BE IT RESOLVED, the Commonwealth Transportation Board hereby authorizes the Commissioner of Highways to enter into/execute the Standard Project Agreement with HRTAC, attached hereto as Exhibit A, regarding the funding of the I-464/I-64 Interchange Improvements – Full Interchange Access Report (IAR) development funding, with such changes and additions as the Commissioner deems necessary.

BE IT FURTHER RESOLVED, the Commonwealth Transportation Board hereby authorizes the Commissioner of Highways to enter into/execute all future SPAs with HRTAC necessary for funding and administration of any and all improvements to the I-464/I-64 Interchange and any associated activities.

#####

CTB Decision Brief

Authorization for the Commissioner of Highways to Enter into a Standard Project Agreement between the Virginia Department of Transportation and the Hampton Roads Transportation Accountability Commission (HRTAC) for the I-464/I-64 Interchange Access Report (IAR) and future Standard Project Agreements with HRTAC related to the Interchange

Issue: The Virginia Department of Transportation (VDOT) is requesting that the Commonwealth Transportation Board (CTB) authorize the Commissioner of Highways (Commissioner) to enter into the Standard Project Agreement (SPA) with the Hampton Roads Transportation Accountability Commission (HRTAC) for the development of an I-464/I-64 Interchange Access Report (IAR).

Facts:

- At its September 15, 2021 meeting, the CTB approved \$140,000,000 in Interstate Operations & Enhancement Program (IOEP) funds and added a project to the FY 2022 through 2027 Six Year Improvement Program, a project to install a flyover ramp from I-64 eastbound to I-464 southbound and perform improvements to separate I-464 southbound traffic en route to Route 17 to Route 168 north of the interchange
- These improvements are in addition to the loop ramp replacements to this interchange that are included in the Region's 2045 Long Range Transportation Plan (LRTP) and HRTAC's 2045 Long Range Plan of Finance.
- Prior to moving forward with the loop ramp replacements, VDOT is recommending that an Interstate Access Report (IAR) be funded by HRTAC to evaluate the full build of the I-464/I-64 Interchange and Route 168 ramp configuration
- HRTAC, on September 15, 2022, amended their FY2023-FY2028 Funding Plan to redirect \$2,500,000 (released from the I-264/I-64 Phase 3A project – UPC 106693) to develop the I464/I-64 Interchange Improvements – Full Interchange Access Report (IAR)

Recommendation: VDOT recommends that the CTB delegate to the Commissioner the authority (i) to enter into the SPA relating to the funding to develop a I-464/I-64 Interchange Improvements – Full Interchange Access Report (IAR), attached hereto as Exhibit A, with such changes and additions as the Commissioner of Highways deems necessary and (ii) to enter into all future SPAs with HRTAC necessary for funding and administration of any and all improvements to the I-464/I-64 Interchange and any associated activities.

Action Required by the CTB: Approve by majority vote the resolution providing the authorization recommended herein.

Result, if Approved: The Commissioner will be authorized to enter into the SPA between VDOT and HRTAC for use of the additional HRTAC Funds to pay the costs for the development of the I-464/I-64 Interchange Improvements – Full Interchange Access Report (IAR) and to enter into all future SPAs with HRTAC necessary for funding and administration of any and all improvements to the I-464/I-64 Interchange and any associated activities.

Options: Approve, Deny or Defer

Public Comments/Reactions: N/A

Exhibit A

**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: I-464/I-64 Interchange Improvements – Full Interchange Access Report (IAR) Development Project

HRTAC Project Number: UPC T27434

This Standard Project Agreement for Funding and Administration (the "Agreement") is made and effective as of the date of last execution below, between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT").

WITNESSETH

WHEREAS, Chapter 766 of the 2013 Acts of Assembly established the Hampton Roads Transportation Fund (the "HRTF"), and provides that moneys deposited in the HRTF are to be used solely for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, Chapter 678 of the 2014 Acts of Assembly (now codified in Section 33.2-2600 *et seq.* of the Code of Virginia, as amended) (the "HRTAC Act") created HRTAC as a political subdivision of the Commonwealth of Virginia, and moved the responsibility to determine the projects that will be funded by the HRTF from the Hampton Roads Transportation Planning Organization to HRTAC;

WHEREAS, under Sections 33.2-2606 and 33.2-2607 of the Code of Virginia, HRTAC is also authorized to issue bonds and other evidences of debt, and to impose and collect certain tolls;

WHEREAS, under Chapter 703 of the 2020 Acts of Assembly (H1438)(the "HREL Tolling Legislation"), HRTAC is also authorized to impose and collect tolls in designated high-occupancy toll lanes on certain portions of Interstate 64;

WHEREAS, HRTAC is required to use all moneys that it receives, whether from the HRTF, bond proceeds, collections from any tolls imposed by HRTAC or otherwise (collectively, "HRTAC-Controlled Moneys"), for the benefit of those counties and cities that are embraced by HRTAC and in accordance with applicable law;

WHEREAS, VDOT is the Virginia state agency responsible for building, maintaining and operating the interstate, primary, and secondary state highway systems ("VDOT Highways");

WHEREAS, in light of (i) VDOT's responsibilities with respect to VDOT Highways and HRTAC's responsibilities with respect to the application of the HRTAC-Controlled Moneys, and (ii) the determinations of VDOT and HRTAC to coordinate their efforts with respect to, among other things, the development, tolling, financing, procurement and delivery of the Hampton Roads Express Lanes Network Project (the "HREL Project"), VDOT and HRTAC entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network dated August 18, 2020 (such agreement as thereafter amended and modified from time to time, the "Master Agreement");

WHEREAS, the Master Agreement contemplates that HRTAC may from time to time enter into Standard Project Agreements for Funding and Administration pursuant to which VDOT will procure all goods and services necessary to design and construct elements of the HREL Project;

WHEREAS, pursuant to the Master Agreement, the parties are prepared to have VDOT proceed with the services described on Appendix A in respect of the project set forth and described on Appendix A to this Agreement (the "Project");

WHEREAS, HRTAC has determined that the Project would benefit the cities and counties that are embraced by HRTAC, it otherwise satisfies the requirements of the HRTAC Act, and it is consistent with the HREL Tolling Legislation;

WHEREAS, VDOT agrees to administer and/or develop the Project in accordance with the budget (the "Project Budget") and cashflow and construction schedule (the "Project Schedule") set forth and described on Appendix B to this Agreement (this Agreement and its appendices may be amended from time to time by mutual agreement of the parties to address mutually agreed changes relating to, among other things, Project scope, design, funding and regulatory approvals);

WHEREAS, HRTAC desires to provide funding for the administration and/or development of the Project out of HRTAC-Controlled Moneys, subject to the terms, conditions and limitations set forth herein;

WHEREAS, the Commonwealth Transportation Board ("CTB") has the authority, pursuant to Section 33.2-214 of the Code of Virginia, to cause VDOT to enter into this Agreement and has authorized the Commissioner of Highways to enter into agreements with HRTAC for project administration and development purposes, and Section 33.2-2608 of the Code of Virginia authorizes HRTAC to enter into this Agreement;

WHEREAS, the CTB, by resolution passed on January 14, 2015, resolved that any agreement between VDOT and HRTAC for project services shall provide that overruns or other additional project costs shall be prorated between HRTAC and VDOT so that each party bears a proportionate share of the additional costs based on each party's percentage responsibility of the project budget;

WHEREAS, HRTAC's governing body and the CTB have each authorized that their respective designee(s) execute this Agreement on their respective behalf(s) as evidenced by copies of each such entity's clerk's minutes or such other official authorizing documents which are appended hereto as Appendix E.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, the parties hereto agree as follows:

A. VDOT's Obligations

VDOT shall:

1. Complete or perform or cause to be completed or performed all work relating to the Project, as described in Appendix A, advancing such work diligently and ensuring that all work is completed in accordance with (i) any and all applicable federal, state, and local laws and regulations, and (ii) all terms and conditions of the Master Agreement and this Agreement, including, without limitation, the Project Budget and Project Schedule reflected in Appendix B, which Project Budget and Project Schedule (A) VDOT represents have been prepared in good faith, in accordance with the practices and procedures that VDOT uses for projects where the state or VDOT bears the cost of the project (including, without limitation, the practices used to price and budget services that may be internally sourced, such as Construction Engineering Inspection/CEI), and (B) the parties acknowledge may be amended pursuant to Section A.8 below or as follows:
 - (a) In the event that VDOT determines, after receipt of proposals or bids for any work related to the Project, that the cost of the contract for said work will result in a significant reduction in costs associated with a portion of the Project Budget reflected in Appendix B that is allocated to work covered by the contract, then VDOT shall notify HRTAC's Executive Director of the significant reduction in costs. For purposes of this Section A.1(a), HRTAC and VDOT agree that a "significant reduction in costs" shall mean a reduction in costs that has the effect of reducing, in Appendix B, (x) the costs for the particular portion of the Project Budget allocated to work covered by the contract by more than 20 percent or (y) the entire Project Budget either by more than 10 percent or \$10,000,000, whichever applies. In the event there is a significant reduction in costs, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the effect of the reduction on the commitments of the funding sources (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state or federal contributions, then the commitment of each funding source would be reduced by its

proportionate share of the reduction in costs, which proportionate share will be based on the funding source's proportionate responsibility for the total budgeted costs before the reduction was realized) (for the avoidance of doubt, the amount by which a commitment is reduced shall be considered deobligated from the Project).

- (b) In the event that any federal or state funding not previously available for the Project becomes available for any portion of the Project Budget reflected in Appendix B, then VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the benefit of the additional funding (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state contributions, but federal funding subsequently becomes available, then the respective commitments of HRTAC and the state would be reduced by each party's proportionate share of the additional funds, which proportionate share will be based on the party's proportionate responsibility for the total budgeted cost before the additional funding became available).
- (c) In the event that application is made for federal or state funding or loans not previously available for the Project, then VDOT will, to the extent within its reasonable control, provide reasonable support to such application and, if any such funding or loans are awarded or otherwise become available, take action to satisfy conditions and comply with requirements of such funding or loans, in each case as may be reasonably requested by HRTAC.

2. Without limiting the foregoing, VDOT shall:

- (a) Select contractors, contract with contractors, and administer and enforce contracts all in a manner that is consistent in all material respects with the policies, procedures and practices that VDOT uses where the state or VDOT bears the cost of a project; for example, VDOT shall use its customary policies, procedures and practices relating to requesting bids/proposals, negotiating/finalizing terms and conditions of contracts (using, where applicable, standard terms/forms), and monitoring and enforcing performance of contracts;
- (b) Not enter into any contract to perform the work related to the Project if (i) the cost of that contract would exceed the portion of the Project Budget reflected in Appendix B that is allocated to the work covered by that contract, (ii) the cost of that contract, when aggregated with the cost of all other contracts relating to the Project that have been, or are expected to be, entered into would exceed

the Project Budget reflected in Appendix B, or (iii) the schedule in the contract for performing and paying for the work related to the Project would be materially different (whether accelerated or delayed) from the Project Schedule set forth in Appendix B; in addition, if the bids or proposals received for any portion of the Project are not qualitatively consistent with VDOT's standards for that work or quantitatively within VDOT's projections for that work, each as determined by VDOT in its good faith judgment, VDOT shall (i) undertake a new procurement, or (ii) recommend alternative measures to HRTAC, and seek HRTAC's advice and consent regarding pursuit of those alternative measures. If HRTAC grants its written consent to a modification to the Project Budget and/or Project Schedule in order to permit VDOT to enter into a contract to perform the work, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to reflect the modified Project Budget and Project Schedule.

- (c) Involve HRTAC in any procurement consistent with the terms of the Master Agreement.
3. Perform or have performed in accordance with VDOT's standards for highways, bridges and tunnels (or that otherwise are applicable to the work under the Project) all design and engineering, all environmental work, and all right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions, as is required by this Agreement or that may be necessary for completion of the Project pursuant to the terms of this Agreement. If VDOT determines that a delay will more likely than not prevent the completion of a material phase of the Project (e.g., PE or ROW acquisition), or the entire Project, in accordance with the Project Schedule, VDOT shall notify HRTAC in writing and provide HRTAC with such information as HRTAC may reasonably request, including information pertaining to potential corrective measures and remedies against the contractor (if VDOT and HRTAC mutually develop a model notice for such purposes, VDOT's notice will follow the format of the model).
4. Not use any funds provided by HRTAC, including the funds specified on Appendix B, to pay any Project cost if, as applicable, the HRTAC Act or HREL Tolling Legislation does not permit such Project cost to be paid with HRTAC funds.
5. Recognize that, if the Project contains "multiple funding phases" (as such "multiple funding phases" are set out for the Project on Appendix A), for which HRTAC will provide funding for such multiple funding phases (as scheduled on Appendix B), HRTAC may not have sufficient cash flows to permit accelerated funding to VDOT and to advance the funding schedule for the Project. In any circumstance where VDOT seeks to advance the

funding schedule for the Project, VDOT shall submit a written request to HRTAC's Executive Director explaining VDOT's reasons why HRTAC should authorize acceleration to the next funding phase. (As used in this Agreement, "Executive Director" shall mean HRTAC's Chairman if at any applicable time, HRTAC has not engaged a dedicated, full-time Executive Director.) HRTAC's Executive Director will thereafter review the circumstances underlying the request in conjunction with Appendix B and HRTAC's current and projected cash flow position and make a recommendation to HRTAC whether to authorize VDOT's requested accelerated funding. The foregoing shall not prohibit VDOT from providing its own funds to advance a future funding phase of the Project and from requesting reimbursement from HRTAC for having advance funded a future phase of the Project; however, VDOT further recognizes that HRTAC's reimbursement to VDOT for having advance funded a phase of the Project will be dependent upon HRTAC's cash flow position at the time such a request for reimbursement is submitted and may be dependent upon the extent to which the reimbursement of any such advanced funding is otherwise consistent with the terms of this Agreement, including Appendix B.

6.
 - (a) Permit (and assist) HRTAC's Executive Director to periodically update HRTAC's cash flow estimates for the Project with the objective toward keeping those estimates accurate throughout the performance of the Project. VDOT shall provide all available information reasonably required by HRTAC so as to ensure and facilitate accurate cash flow estimates and accurate updates to those cash flow estimates throughout the performance of the Project as described in Appendix B.
 - (b) Provide HRTAC's Executive Director with the monthly reports described on Appendix D.
7. Provide to HRTAC's Executive Director requests for payment consistent with Appendix C (and the most recently approved HRTAC cash flow estimates) that include (a) HRTAC's standard payment requisition(s), containing detailed summaries of actual project costs incurred with supporting documentation as determined by HRTAC, and (b) certifications that all such costs were incurred in the performance of work for the Project as authorized by this Agreement. Each payment requisition shall be in substantially the same form as set forth in Appendix C of this Agreement. If approved by HRTAC, VDOT can expect to receive payment within twenty (20) days upon receipt by HRTAC. Approved payments may be made by means of electronic transfer of funds from HRTAC to or for the account of VDOT.
8.
 - (a) Promptly notify HRTAC's Executive Director if VDOT determines that any additional, unbudgeted costs may be incurred to perform

and complete the Project ("Additional Costs"), which notice shall include a description of the Additional Costs, an explanation of how they arose and the assumptions in the initial budget regarding those costs, and a detailed estimate of the Additional Costs. VDOT shall make recommendations regarding any curative actions that may be available relating to such Additional Costs, including any potential modification or reduction that may be made to the Project scope or design, or any other action, in order to stay within the initial budget for the Project. If the Additional Costs can be absorbed in the Project Budget by modifying or reducing the scope or design of the Project (or avoided by cancelling the Project or any portion thereof), HRTAC may, in its sole discretion, elect to (i) authorize VDOT to proceed with such modifications or reductions, (ii) authorize the Additional Costs (or if a combination of (i) and (ii) is feasible, HRTAC may elect such combination), or (iii) elect to cancel the Project or a portion thereof; provided, however, in any case, the respective obligations of VDOT and HRTAC, as modified by the elected alternative, shall be set forth in an amendment to this Agreement (VDOT and HRTAC shall work in good faith to finalize and execute such amendment). If the Additional Costs cannot be absorbed in the initial budget by modifying or reducing the scope or design of the Project (and HRTAC elects option (ii) above), then, subject to Section F below, such Additional Costs shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget. In the event that HRTAC elects to cancel the Project (or any portion thereof) pursuant to this Section A.8(a)(iii), (A) all compensation due and owing to any and all contractors for work on the Project that has been completed at the time of cancellation, shall be paid in accord with Appendix B, and (B) subject to Section F, all reasonable costs associated with the cancellation due and owing to said contractors pursuant to the terms of the contracts with the contractors, which terms shall be consistent with VDOT's standard contract terms relating to contract cancellation and termination, (the "Breakage Compensation"), shall be paid with HRTAC-Controlled Moneys, unless VDOT and HRTAC mutually determine that cancellation of the Project is necessary or warranted, in which case, the Breakage Compensation shall be paid from HRTAC-Controlled Moneys and state and federal funds prorated based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget.

- (b) VDOT shall not include in any contract with a contractor working on the Project any term, condition or remedy in respect of Additional Costs that is more favorable to the contractor than the terms,

conditions or remedies VDOT includes in standard contracts where the state or VDOT bears the cost of the project.

- (c) The Additional Costs may include costs incurred by VDOT as a result of contractor claims relating to the Project made pursuant to the VDOT Roads and Bridge Specifications and §§ 33.2-1101 through 33.2-1105 of the Code, as amended. VDOT shall promptly notify HRTAC if any such claims are made or VDOT receives a notice of intent to file a claim or other written communication from a contractor relating to a claim or contractual dispute that could result in increased contract costs, and whether in each such case the claimed amount is expected to become, or result in, Additional Costs (and the estimate thereof) or is expected to have a material adverse effect on the contingency reserves established as part of the Project Budget (and the estimated effect thereon). VDOT shall be responsible to handle all such claims and notices of intent, but VDOT may not settle any claim or notice of intent to file a claim and thereafter submit it as an Additional Cost pursuant to Section A.8(a) unless the settlement has been approved by HRTAC. Funding for the settlement will be prorated based on the respective proportionate share of the HRTAC-Controlled Moneys and state and federal funds in the Project Budget. Should the claim not be settled, any final judgment from a court of competent jurisdiction shall be paid in accordance with the proration rule set forth in the preceding sentence.
 - (d) Notwithstanding anything to the contrary set forth herein, if any additional cost (including, without limitation, any additional cost relating to a contractor claim described in Section A.8(c) above) arises out of or results from VDOT's negligence, breach of contract, willful misconduct or violation of law ("VDOT Fault"), HRTAC shall not be responsible for such additional costs. Any notice provided by VDOT to HRTAC pursuant to Section A.8(c) above shall be accompanied by a certification from VDOT that it has determined in good faith that any Additional Costs do not arise out of or result from VDOT Fault.
- 9. Release or return any unexpended funds to HRTAC no later than 90 days after final payment has been made in respect of the Project.
 - 10. Maintain complete and accurate financial records relative to the Project for all time periods as may be required by the Virginia Public Records Act and by all other applicable state or federal records retention laws or regulations.
 - 11. Maintain all original conceptual drawings and renderings, architectural and engineering plans, site plans, inspection records, testing records, and as

built drawings for the Project for the time periods required by the Virginia Public Records Act and any other applicable records retention laws or regulations.

12. Reimburse HRTAC (or such other entity as may have provided funds) for all funds provided by HRTAC (or on behalf of HRTAC) and, to the extent applicable and permitted by law, with interest earned at the rate earned by HRTAC, (a) that VDOT misapplied, used or requisitioned in contravention of the HRTAC Act or any other applicable law, or any term or condition of this Agreement or (b) the expenditure of which arose out of VDOT Fault.
13. Be solely responsible for the administration and/or development of the Project and all engagements, commitments and agreements with contractors (and, without limiting the foregoing, shall ensure that such engagements, commitments and agreements contain all terms that, pursuant to the Master Agreement or this Agreement, are required to be included therein). VDOT shall ensure that VDOT's contractors maintain surety bonds and insurance in amounts and with coverages that VDOT requires under its Road and Bridge Specifications for all work to be performed for the Project, and name HRTAC and its members, officers, employees and, if applicable, any HRTAC lender and any bond trustee, as additional insureds on any such insurance policy, and present HRTAC with satisfactory evidence thereof before any work on the Project commences.
14. If in connection with the work VDOT engages outside legal counsel approved by the Attorney General (as opposed to utilizing the services of the Office of the Attorney General), VDOT will give HRTAC notice of the engagement so as to ensure that no conflict of interest may arise from any such representation (VDOT also shall ensure that such engagements are consistent with the practices and terms that VDOT uses where it is solely responsible for project costs).
15. Subject to and consistent with the requirements of Section E of this Agreement, upon final payment to all contractors for the Project, if the Project is or is part of a VDOT Highway, VDOT will use the Project (a) for its intended purposes for the duration of the Project's useful life, and (b) in accordance with, and subject to, the terms of the Master Agreement (including, without limitation, the license granted to HRTAC pursuant to Section 3.08(b) thereof). If the Project is or is part of a VDOT Highway, VDOT shall be responsible to operate and/or maintain the Project (which duty and obligation excludes the Tolling O&M Duties, as defined in the Master Agreement, except as otherwise provided in the Master Agreement or in any other contract between VDOT and HRTAC under which VDOT is responsible to perform such duties as a contractor to HRTAC) after its completion (including responsibility to correct any defects or to cause any defects to be corrected)(and, without limiting the foregoing, shall perform its operations and maintenance obligations in accordance with the terms

of the Master Agreement), and, except as and to the extent provided under the Master Agreement (with respect to Tolling O&M Duties), under no circumstances will HRTAC have any responsibility or obligation to operate and/or maintain the Project (or correct defects with respect to the Project).

16. Comply with all applicable federal, state and local laws and regulations, including without limitation requirements of the Virginia Public Procurement Act.
17. Recognize that VDOT or its contractors are solely responsible for obtaining, and shall obtain, all permits, permissions and approvals necessary to construct and/or operate the Project, including, but not limited to, obtaining all required VDOT and local land use permits, zoning approvals, environmental permits, and regulatory approvals.
18. Recognize that if the Project is being funded, in whole or in part, with federal and/or state funds (in addition to HRTAC-Controlled Moneys), that VDOT shall (a) take any and all necessary actions to satisfy any conditions to such additional federal and/or state funding (provided that such actions are within the control of VDOT) and to enforce any commitments made in connection therewith, (b) comply with all applicable federal and Commonwealth funding requirements within the control or purview of VDOT, and (c) include in its contracts with contractors provisions that permit such contracts to be terminated, without penalty, if the funding is rescinded or otherwise becomes unavailable (for clarification, a provision shall not be deemed to include a penalty solely as a result of terms that require payment of compensation due and owing at the time of cancellation and reasonable costs associated with cancellation provided that such costs are consistent with costs paid pursuant to VDOT's standard contract terms relating to contract cancellation and termination). VDOT acknowledges and agrees that if funding from such an additional federal or state source is rescinded or otherwise becomes unavailable HRTAC (i) shall not be responsible for any amount in excess of its commitment set forth on Appendix B, and (ii) may (A) replace said reduced funding with HRTAC Controlled-Moneys or (B) may request VDOT to immediately suspend or discontinue all work relating to the Project, provided if HRTAC requests suspension HRTAC shall be responsible for the costs reasonably incurred in connection with such suspension. Should HRTAC not replace the reduced funding or request VDOT to suspend or discontinue work, VDOT may reduce the Project scope or take any other actions needed to reduce the Project costs to the Project Budget.
19. Provide a certification to HRTAC no later than 90 days after final payment for the Project that VDOT adhered to all applicable laws and regulations and all requirements of this Agreement.

20. Notify HRTAC if VDOT determines that a delay will more likely than not prevent the timely completion of a material phase of the Project, including information regarding potential corrective measures and remedies against the contractor.
21. With respect to modifications to any agreement with a contractor, concede to HRTAC any resulting savings, if HRTAC-Controlled Moneys are funding 100% of the applicable work, or if the cost savings relate to work funded with HRTAC-Controlled Moneys and state and/or federal funds, concede such savings to such parties *pro rata*, based on the respective proportionate share of HRTAC-Controlled Moneys and state and federal funds in the Project Budget for such work.
22. Include in any agreement with a contractor an assessment of liquidated damages in accordance with the Master Agreement if either substantial completion or final acceptance is not achieved by the applicable deadline. Unless otherwise agreed by the parties acting reasonably, any liquidated damages (as well as other damages paid by a contractor, insurance proceeds, or recoveries from third parties) received by VDOT in respect of the Project shall be administered in accordance with the terms of the Master Agreement.
23. Terminate any agreement with a contractor upon the written request of HRTAC if (a) VDOT has failed to exercise the right to terminate such agreement for cause, but only (i) if such failure is reasonably expected to have a material adverse effect on HRTAC and (ii) following consultation between HRTAC and VDOT regarding the reasons, if any, for VDOT's failure to exercise such right; or (b) HRTAC determines in good faith that HRTAC has suffered a material adverse change in its ability to satisfy its obligations under this Agreement and it is in HRTAC's best interests for VDOT to terminate the contractor's agreement for convenience.

B. HRTAC's Obligations

HRTAC shall:

1. Subject to the limitations as to amounts set forth in Appendix B (and subject to Section F of this Agreement), provide to VDOT the funding authorized by HRTAC for the Project, on a reimbursement basis as set forth in this Agreement and as specified in Appendix B to this Agreement or the most updated amendment thereto, as approved by HRTAC.
2. Assign a person to serve as a Program Coordinator for the Project, who will be responsible for review of the Project on behalf of HRTAC for purposes of ensuring it is being completed in compliance with this Agreement and all HRTAC requirements. (In the absence of an assigned person, HRTAC's Executive Director shall serve as the Program

Coordinator.) HRTAC's Program Coordinator will be responsible for overseeing, managing, reviewing, and processing, in consultation with HRTAC's Executive Director and its Chief Financial Officer ("CFO"), all payment requisitions submitted by VDOT for the Project. HRTAC's Program Coordinator will have no independent authority to direct changes or make additions, modifications, or revisions to the scope of the Project as set forth on Appendix A or to the Project Budget and Project Schedule as set forth on Appendix B.

3. Route to HRTAC's assigned Program Coordinator all VDOT payment requisitions and the summaries of actual costs submitted to HRTAC for the Project. After submission to HRTAC, HRTAC's Program Coordinator will conduct an initial review of all payment requisitions and supporting documentation for the Project in order to determine the submission's legal and documentary sufficiency. HRTAC's Program Coordinator will then make a recommendation to the HRTAC's CFO and Executive Director whether to authorize payment, refuse payment, or seek additional information from VDOT. If the payment requisition is sufficient as submitted, payment will be made within twenty (20) days from receipt. If the payment requisition is, in HRTAC's reasonable judgment, deemed insufficient, within twenty (20) days from receipt, HRTAC's Program Coordinator will notify VDOT in writing and set forth the reasons why the payment requisition was declined or why and what specific additional information is needed in order to authorize the payment request. Payment will be withheld until all deficiencies identified by HRTAC have been corrected to HRTAC's reasonable satisfaction. Under no circumstances will HRTAC authorize payment for any work performed by or on behalf of VDOT that is not in conformity with the requirements of the HRTAC Act or this Agreement.
4. Route all of VDOT's accelerated or supplemental requests for funding from HRTAC under Sections A.5 and A.8, respectively, of this Agreement to HRTAC's Executive Director. HRTAC's Executive Director will initially review those requests and all supporting documentation with HRTAC's CFO. After such initial review, HRTAC's Executive Director will make a recommendation to HRTAC's Finance Committee for its independent consideration and review. HRTAC's Finance Committee will thereafter make a recommendation on any such request to HRTAC for final determination by HRTAC.
5. Conduct periodic compliance reviews scheduled in advance for the Project so as to determine whether the work being performed remains within the scope of this Agreement, the HRTAC Act and other applicable law. Such compliance reviews may entail (i) review of VDOT's financial records for the Project, (ii) on-Project site inspections and (iii) review of a contractor's books and records in relation to the Project to the extent VDOT has access thereto.

6. Acknowledge that if, as a result of HRTAC's review of any payment requisition or of any HRTAC compliance review, HRTAC staff determines that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, HRTAC staff will promptly advise HRTAC's Executive Director and will advise VDOT's designated representative in writing. VDOT will thereafter have thirty (30) days to respond in writing to HRTAC's initial findings. HRTAC's staff will review VDOT's response and make a recommendation to HRTAC's Finance Committee. HRTAC's Finance Committee will thereafter conduct its own review of all submissions and make a recommendation to HRTAC. If HRTAC makes a final determination that VDOT is required under Section A.12 of this Agreement to reimburse funds to HRTAC, the parties should engage in dispute resolution as provided in Section D of this Agreement. Pending final resolution of the matter, HRTAC will withhold further funding on the Project. Nothing herein shall, however, be construed as denying, restricting or limiting the pursuit of either party's legal rights or available legal remedies.
7. Upon making final payment to VDOT for the Project, retain copies of all contracts, financial records, design, construction, and as-built project drawings and plans, if any, developed pursuant to or in association with the Project for the time periods required by the Virginia Public Records Act and as may be required by other applicable records retention laws and regulations.
8. Be the sole determinant of the amount and source of HRTAC funds to be provided and allocated to the Project and the amounts of any HRTAC funds to be provided in excess of the amounts specified in Appendix B.
9. Have no obligation to pay or reimburse VDOT for any cost (including, without limitation, compensation paid or payable to any contractor) arising out of VDOT Fault.

C. Term

1. This Agreement shall (i) be effective upon adoption and execution by both parties and (ii) unless terminated earlier in accordance with its terms, expire ninety (90) days after the date on which VDOT makes final payment to Project contractor(s) and all contractor claims have been resolved or are barred.
2. VDOT may terminate this Agreement, for cause, in the event of a material breach by HRTAC of this Agreement. If so terminated, HRTAC shall pay for all Project costs incurred in accordance with the terms of this Agreement through the date of termination and all reasonable costs incurred by VDOT to terminate all Project-related contracts. The Virginia General Assembly's failure to appropriate funds to HRTAC as described in

Section F of this Agreement and/or repeal or amendment of the legislation establishing the HRTF or HRTAC's powers shall not be considered material breaches of this Agreement by HRTAC if such failure to appropriate or such repeal or amendment eliminates funds in the HRTF to be used for the Project or renders HRTAC without legal authority to provide funding for the Project. Before initiating any proceedings to terminate under this Section, VDOT shall give HRTAC sixty (60) days written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing HRTAC an opportunity to investigate and cure any such alleged breach.

3. HRTAC may terminate this Agreement, for cause, resulting from VDOT's material breach of this Agreement. If so terminated, VDOT shall refund to HRTAC all funds HRTAC provided to VDOT for the Project and, to the extent permitted by law, with interest earned at the rate earned by HRTAC. Before initiating any proceedings to terminate under this Section, HRTAC shall give VDOT sixty (60) days' written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing VDOT an opportunity to investigate and cure any such alleged breach. Prior to termination, if VDOT has substantially completed the Project or a portion that is severable (meaning it is subject to independent use), VDOT may request that HRTAC excuse VDOT from refunding funds paid in respect of the substantially completed Project or portion, and HRTAC may, in its sole discretion, excuse VDOT from refunding all or a portion of the funds HRTAC provided to VDOT for the substantially completed Project or portion thereof. No such request to be excused from refunding will be allowed (a) where VDOT has either misused or misapplied HRTAC funds in contravention of this Agreement or applicable law, or (b) without the prior written consent of any lender to HRTAC, if the terms of HRTAC's loan agreement with such lender require such consent.
4. Upon (a) expiration or earlier termination of this Agreement and (b) payment of all eligible expenses as set forth in Section C.3 above, VDOT will release or return to HRTAC all unexpended HRTAC funds and, to the extent permitted by law, with interest earned at the rate earned by HRTAC, no later than sixty (60) days after the date of such expiration or earlier termination.

D. Dispute

In the event of a dispute under this Agreement, the parties agree to meet and confer promptly in order to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. HRTAC's Executive Director and the Commissioner shall be authorized to conduct negotiations on behalf of their respective entities. If a resolution of the dispute is reached via a meet and confer dispute resolution method, it shall be presented to HRTAC and to the Commissioner for formal confirmation and approval. If no satisfactory

resolution can be reached via the meet and confer method, either party is free to pursue whatever remedies it may have at law or in equity, including all judicial remedies. The foregoing dispute resolution method shall not bar either party's right to seek equitable relief on an emergency basis. Neither party will seek or accept an award of attorneys' fees or costs incurred in connection with resolution of a dispute.

E. HRTAC's Interest in Project Assets

VDOT agrees to use the real property and appurtenances and fixtures thereto, capital assets, equipment and all other transportation facilities that are part of the Project and funded by HRTAC under this Agreement ("Assets") for the designated transportation purposes of the Project, in accordance with applicable law throughout the useful life of each such Asset, and in accordance with, and subject to, the terms of the Master Agreement (including, without limitation, the license granted to HRTAC pursuant to Section 3.08(b) thereof). If VDOT intends to sell, convey, or dispose any Asset funded with HRTAC funds or intends to use any Asset for a purpose inconsistent with this Agreement or the Master Agreement, VDOT shall notify HRTAC's Executive Director in writing of any such intent before further action is taken by VDOT in furtherance thereof. Upon receiving notification from VDOT, HRTAC's Executive Director shall notify HRTAC of VDOT's intended action(s). The parties shall, thereafter, meet and confer to discuss what measures need to be taken regarding VDOT's proposed sale, conveyance, disposition, or use of any such Asset(s) so as to ensure compliance with all applicable requirements and terms of the HRTAC Act and the Master Agreement (without limiting the foregoing, VDOT acknowledges that (i) under the HRTAC Act and applicable law, HRTAC is vested with the right to impose and collect tolls on facilities constructed by the Commission and holds a license to, among other things, use the tolling infrastructure and system, and (ii) under the HREL Tolling Legislation, HRTAC is vested with the right to impose and collect tolls on the portion of the HREL Project facility that has been designated by the CTB for use as high-occupancy toll lanes). All recommendations and/or proposed remedial actions developed by the parties' designated representatives during the meet and confer process shall be formally presented to HRTAC and the Commissioner for their respective approval.

F. Appropriations Requirements

1. Nothing herein shall require or obligate HRTAC to commit or obligate funds to the Project beyond those funds that have been duly authorized and appropriated by its governing body for the Project.
2. The parties acknowledge that all funding provided by HRTAC pursuant to the HRTAC Act is subject to appropriation by the Virginia General Assembly. The parties further acknowledge that: (i) the moneys allocated to the HRTF pursuant to applicable provisions of the Code of Virginia and any other moneys that the General Assembly appropriates for deposit into

the HRTF are subject to appropriation by the General Assembly and (ii) HRTAC's obligations under this Agreement are subject to such moneys being appropriated to the HRTF by the General Assembly.

3. The parties agree that VDOT's obligations under this Agreement are subject to funds being appropriated by the General Assembly and allocated by the Commonwealth Transportation Board and otherwise legally available to VDOT for HRTAC projects.
4. Should VDOT be required to provide additional funds in order to proceed or complete the funding necessary for the Project, VDOT shall certify to HRTAC that such additional funds have been allocated and authorized by the CTB and/or appropriated by the Virginia General Assembly as may be applicable or have been obtained through another independent, lawful source.

G. Representations and Warranties

1. VDOT hereby represents and warrants to HRTAC as of the date of this Agreement as follows:
 - (a) VDOT is an agency of the Commonwealth of Virginia, and it has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;
 - (b) VDOT has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement, and each person executing this Agreement on behalf of VDOT has been duly authorized to execute and deliver it on behalf of VDOT;
 - (c) the execution and delivery by VDOT of this Agreement, and the performance of its obligations hereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any law, where such violation will have a material adverse effect on the ability of VDOT to perform its obligations under this Agreement;
 - (d) this Agreement has been duly authorized, executed, and delivered by VDOT and constitutes a valid and legally binding obligation of VDOT, enforceable against it in accordance with the terms hereof, subject to (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) sovereign immunity under the law of the Commonwealth of Virginia; *provided, however,* that, for the avoidance of doubt, sovereign

immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth of Virginia; and

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

2. HRTAC hereby represents and warrants to VDOT as of the date of this Agreement as follows:

- (a) HRTAC is a body politic and a political subdivision of the Commonwealth of Virginia, and it has full power, right, and authority to execute, deliver, and perform its obligations under, in accordance with, and subject to the terms and conditions of this Agreement;
- (b) HRTAC has taken or caused to be taken all requisite action to authorize the execution and delivery of, and the performance of its obligations under, this Agreement, and each person executing this Agreement on behalf of HRTAC has been duly authorized to execute and deliver it on behalf of HRTAC;
- (c) the execution and delivery by HRTAC of this Agreement, and the performance of its obligations hereunder, will not conflict with, and will not result, at the time of execution, in a default under or violation of, (i) any other agreements or instruments to which it is a party or by which it is bound or (ii) to its knowledge, any law, where such violation will have a material adverse effect on the ability of HRTAC to perform its obligations under this Agreement;
- (d) this Agreement has been duly authorized, executed, and delivered by HRTAC and constitutes a valid and legally binding obligation of HRTAC, enforceable against it in accordance with the terms hereof, subject to (i) bankruptcy, insolvency, reorganization, moratorium and other laws affecting the rights of creditors generally, (ii) principles of equity, whether considered at law or in equity, and (iii) sovereign immunity under the law of the Commonwealth of Virginia; *provided, however,* that, for the avoidance of doubt, sovereign immunity shall not bar an action to enforce a claim based on a breach of this Agreement presented in accordance with the law of the Commonwealth of Virginia; and

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

H. Tax Covenants for Bond-Funded Projects

VDOT shall comply in all material respects with the Tax Covenants for Bond-Funded Projects set forth in Appendix F (Tax Covenants for Bond-Funded Projects).

I. Notices

All notices under this Agreement to either party shall be in writing and forwarded to the other party by U.S. mail, care of the following authorized representatives:

1) to: HRTAC, to the attention of its Executive Director and Chairman;
723 Woodlake Drive
Chesapeake, VA 23320

2) to: VDOT, to the attention of:
Commissioner, Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219

J. Assignment

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

K. Modification or Amendment

(a) This Agreement may not be modified or amended, except pursuant a written agreement that is duly authorized, executed and delivered by both parties.

(b) If HRTAC is able to obtain a source of funding for the Project that would reduce or replace the amount of HRTAC-Controlled Moneys expended on the Project, VDOT and HRTAC will work in good faith to amend this Agreement so it takes into account that other funding.

(c) VDOT and HRTAC will work in good faith to adopt such amendments to this Agreement as VDOT and HRTAC may mutually agree are necessary and desirable in connection with any bond financing.

L. No Personal Liability or Creation of Third Party Rights

This Agreement shall not be construed as creating any personal liability on the part of any officer, member, employee, or agent of the parties; nor shall it be construed as giving any rights or benefits to anyone other than the parties hereto.

M. No Agency

VDOT represents that it is not acting as a partner or agent of HRTAC; and nothing in this Agreement shall be construed as making any party a partner or agent with any other party.

N. Sovereign Immunity

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

O. Incorporation of Recitals and Appendices

The recitals and Appendices to this Agreement are hereby incorporated into this Agreement and are expressly made a part hereof. The parties to this Agreement acknowledge and agree that the recitals are true and correct.

P. Mutual Preparation and Fair Meaning

The parties acknowledge that this Agreement has been prepared on behalf of all parties thereto and shall be construed in accordance with its fair meaning and not strictly construed for or against either party.

Q. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

R. Survival

The following provisions shall survive the expiration or earlier termination of this Agreement: Sections A.4, A.9, A.12, A.15, A.17, A.19, A.22, B.5 and B.7, and Sections C through R.

[Signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed by their duly authorized representatives, intending it to be effective on the date of last execution.

Hampton Roads Transportation Accountability Commission

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

HAMPTON ROADS EXPRESS LANES NETWORK PROJECT ELEMENTS

I-464/I-64 INTERCHANGE IMPROVEMENTS – FULL INTERCHANGE ACCESS REPORT (IAR) DEVELOPMENT PROJECT – UPC T27434

Scope: The work associated with this Standard Project Agreement for the I-464/I-64 Interchange Project is to perform an Interchange Access Report (IAR) for the full I-464/I-64 Interchange to include the Route 168 movements. The Commonwealth has recently allocated \$140M of Interstate Operations and Enhancement Program (IOEP) funds to install a flyover ramp from I-64 eastbound to I-464 southbound and to perform improvements to separate I-464 southbound traffic en route to Route 17 and Route 168 north of the interchange (IOEP Project). The IOEP Project is in addition to proposed loop ramp replacement improvements to this interchange that are included in the Hampton Roads Transportation Planning Organization (HRTPO) 2045 Long Range Transportation Plan (LRTP) and HRTAC's 2045 Long Range Plan of Finance. VDOT is currently completing an operational analysis relating to the installation of the flyover ramp funded under the IOEP. Prior to moving forward with the Region's loop ramp replacement improvement projects identified in the 2045 LRTP and Long Range Plan of Finance, VDOT will be performing an Interchange Access Report (IAR) funded under this agreement to evaluate the full build of the I-464/I-64 Interchange and Route 168 ramp configuration contemplated by HRTAC and the HRTPO.

The IAR will consider future planned transportation network changes and the impacts to the future surrounding transportation network, including but not limited to the Hampton Roads Express Lanes Network. The study is needed to identify the future needs and maximize efficiency and capacity of this key system-to-system interchange operation in the City of Chesapeake.

This study will build upon and reference several previous studies including:

- I-64 at I-464 Interchange Operational and Safety Analysis Report (Kimley-Horn 2022)
- Hampton Roads Express Lanes (Kimley-Horn)
- Interstate 64/High Rise Bridge Phase I Traffic Analysis (CH2M, 2016)
- I-64 High Rise Bridge Corridor Study Environmental Assessment (WRA, 2015)
- Interstate Operations and Enhancement Program (Kimley-Horn, 2021)

The objective is to develop, submit and achieve approval by the Federal Highway Administration (FHWA) of an IAR to support improvements that alleviate operational and safety issues at the I-64/I-464 interchange and along the Oak Grove Connector (Route 168 and Route 17). VDOT District and regional leadership recognize and seek to proactively address future long-term transportation needs at this crucial interchange and surrounding area.

The IAR will include a Framework Document based on VDOT's LD-459 Interchange Access Report Framework Document/guidance (VDOT, October 26, 2020) and will address the two technical FHWA Policy on Access to the Interstate System May 22, 2017 requirements identified in VDOT's IIM-LD-200.11 including:

1 An operational and safety analysis has concluded that the proposed change in access does not have a significant adverse impact on the safety and operation of the Interstate facility or on the local street network based on both the current and planned future traffic projections.

2 The proposed access connects to a public road only and will provide for all traffic movements. Less than "full interchanges" may be considered on a case-by-case basis for applications requiring special access, such as managed lanes (e.g., transit or high occupancy vehicle and high occupancy toll lanes) or park and ride lots.

As a separate effort that is not part of this scope, it is assumed that VDOT will complete the environmental review process and provide the environmental requirements, permits, and/or documents necessary for further project development at a later date.

The Scope of Work may include public outreach and coordination of one or more citizens' informational meetings to inform and direct the IAR as it is deemed necessary by the study work group.

The proposed access design documents will be prepared in accordance with current versions of the American Association of State Highway and Transportation Officials (AASHTO) Green Book; AASHTO Design Standards Interstate System and the VDOT Road Design Manual (RDM). Necessary deviations from the information contained in the references above shall be indicated in the report.

APPENDIX B

HAMPTON ROADS EXPRESS LANES NETWORK ELEMENTS

I-464/I-64 INTERCHANGE IMPROVEMENTS – FULL INTERCHANGE ACCESS REPORT (IAR) DEVELOPMENT PROJECT – UPC T27434

PROJECT BUDGET AND PROJECT SCHEDULE

***Project Budget: I-464/I-64 (FULL INTERCHANGE ACCESS REPORT – IAR)
PROJECT:***

HRTAC Costs (UPC T27434):

Preliminary Engineering (PE)	\$2,500,000
Right of Way (RW)	\$0
Construction (CN)	\$0
<hr/>	
Total HRTAC Cost	\$2,500,000

The Scope of Work for and activities associated with this Agreement for the I-464/I-64 Interchange Improvements-Full Interchange Access Development Project are set out in Appendix A.

The tasks contemplated under this Agreement include but are not limited to the following:

Development of the Interchange Access Report (IAR), begin NEPA Categorical Exclusion investigation and documentation, cost estimate & schedule refinements, support of design related activities for this project as defined in the Appendix A.

Project Schedule: I-464/I-64 Interchange Access Report (IAR) Project (all dates are estimates):

- **Preliminary Engineering (PE):**
 - PE Start: 11/30/2022
 - PE End: 8/25/2024
- **Right of Way (RW):**
 - RW Start: N/A
 - RW End: N/A
- **Construction (CN):**
 - CN Start: N/A
 - CN End: N/A

Project Cash Flow Schedule: See Annex I to this Appendix B (which is incorporated herein by this reference as if set out in full).

ANNEX I TO APPENDIX B -PROJECT BUDGET & CASH FLOW

PROJECT IDENTIFICATION AND PROPOSED FUNDING

HRTAC Project Title:	I-464/I-64 Interchange Improvements - Full Interchange Access Report (IAR) Development Project
Scope of Project Services:	Standard Project Services to Support the IAR (UPC T27434)
Recipient Entity:	Virginia Department of Transportation
VDOT Project Contact:	Todd Halacy (757) 956-3010
Baseline Schedule:	PE: Start November 2022, End August 2024
	RW: N/A
	CN: N/A

PROJECT COSTS & FUNDING SOURCE

Project Cost Category	Total Project Costs	HRTAC PayGo Funds	HRTAC Financed Funds	Description Other Sources of Funds	Amount Other Sources of Funds	Recipient Entity Funds
Design Work	\$ -	\$ -	\$ -		\$ -	\$ -
Engineering	\$ 2,500,000.00	\$ 2,500,000.00				
Environmental Work						
Right-of-Way Acquisition	\$ -	\$ -				
Construction	\$ -	\$ -				
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Other						
Total Estimated Cost	\$ 2,500,000.00	\$ 2,500,000.00	\$ -	\$ -	\$ -	\$ -

FISCAL YEAR ANNUAL PROJECT CASH FLOW

Project Phase	Total Fiscal Year 2023		Total Fiscal Year 2024		Total Fiscal Year 2025	
	PayGo	Financed	PayGo	Financed	PayGo	Financed
Design Work	\$ -					
Engineering	\$ 909,088.00		1,363,632.00		227,280.00	
Environmental Work						
Right-of-Way Acquisition	\$ -		\$ -		\$ -	
Construction	\$ -		\$ -		\$ -	
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Other						
Total Estimated Cost	\$ 909,088.00	\$ -	\$ 1,363,632.00	\$ -	\$ 227,280.00	\$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

FISCAL YEAR ESTIMATED PROJECT CASH FLOW

	FY 23 Mthly Cash Flow		FY 24 Mthly Cash Flow		FY 25 Qtrly Cash Flow	
	PayGo	Financed	PayGo	Financed	PayGo	Financed
July	\$ -		\$ 113,636.00		\$ 113,636.00	
August	\$ -		\$ 113,636.00		\$ 113,644.00	
September	\$ -		\$ 113,636.00		\$ -	
October	\$ -		\$ 113,636.00		\$ -	
November	\$ 113,636.00		\$ 113,636.00		\$ -	
December	\$ 113,636.00		\$ 113,636.00		\$ -	
January	\$ 113,636.00		\$ 113,636.00		\$ -	
February	\$ 113,636.00		\$ 113,636.00		\$ -	
March	\$ 113,636.00		\$ 113,636.00		\$ -	
April	\$ 113,636.00		\$ 113,636.00		\$ -	
May	\$ 113,636.00		\$ 113,636.00		\$ -	
June	\$ 113,636.00		\$ 113,636.00		\$ -	
Total per Fiscal Year	\$ 909,088.00	\$ -	\$ 1,363,632.00	\$ -	\$ 227,280.00	\$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

This attachment is certified and made an official attachment to the Standard Project Agreement document by the parties of this agreement.

Virginia Department of Transportation

Hampton Roads Transportation Accountability Commission

Signature
Commissioner
Title

Signature
HRTAC Chairman
Title

Date
Stephen C. Brich, P.E.
Print name of person signing
I-1878419.4

Date
Donnie R. Tuck
Print name of person signing

**APPENDIX C
FORM OF PAYMENT REQUISITION**

HRTAC Project Title and Number: I-464/I-64 Interchange Improvements – Full Interchange Access Report (IAR) Development Project – UPC T27434

Project Scope/Services Description: The work associated with this Standard Project Agreement for the I-464/I-64 Interchange is to perform the development of the Interchange Access Report (IAR) for the full I-464/I-64 Interchange.

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

**Exhibit A
DETAILED PAYGO REQUEST**

Draw Request Number: _____ Request Date: _____
 HRTAC Project Number: **UPC T27434** Project Title: **I-464/I-64 Full IAR Dev Project**

Cost Category	HRTAC Approved Project Costs	Total PayGo Requests Previously Received	PayGo Requisition Amount this Period	Remaining PAYGO Project Budget (Calculation)
Project Starting Balance	\$0			\$ -
Design Work/ Engineering	\$0	\$ -	\$ -	\$ -
Engineering	\$2,500,000	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Work	\$0	-	-	\$ -
Construction	\$0	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$2,500,000	\$ -	\$ -	\$ -

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.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 20

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: , **Seconded By:**

Action:

Title: Policy for the Implementation of State Transit Capital Prioritization (2022 Update)

WHEREAS, Section 33.2-214.4 of the Code of Virginia provides that the Commonwealth Transportation Board shall develop a prioritization process for capital projects funded pursuant to subdivision C of 33.2-1526.1 of the Code of Virginia; and

WHEREAS, the Department of Rail and Public Transportation has consulted with the Transit Service Delivery Advisory Committee in the development of this prioritization process; and

WHEREAS, the Department of Rail and Public Transportation has solicited input from localities, metropolitan planning organizations, transit authorities, and other stakeholders in the development of the prioritization process; and

WHEREAS, the Board's priority for transit capital investment is to allocate funds in order to attain and maintain a state of good repair for transit assets, while also supporting needs beyond state of good repair that would enhance transit utilization, efficiency, and reduce congestion; and

NOW THEREFORE BE IT RESOLVED, the Commonwealth Transportation Board hereby adopts the following policy and process to govern the structure, scoring, and prioritization of projects for capital funding pursuant to subdivision C of 33.2-1526.1 of the Code of Virginia:

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

1. For the purposes of review and prioritization, transit capital projects will be classified into three categories:
 - State of Good Repair – Capital projects or programs to replace or rehabilitate an existing asset, excluding major capital construction projects with a total cost over \$3 million;
 - Minor Enhancement – Capital projects or programs that add capacity or include the purchase of new assets meeting the following criteria: Total project cost of less than \$3 million, or for expansion vehicles, an increase of 5 vehicles or less or 5% or less of the fleet size, whichever is greater, or all projects for engineering and design;
 - Major Expansion – Capital projects or programs to add, expand, or improve transit services or facilities, with a total cost exceeding \$3 million, or for expansion vehicles, an increase of greater than 5 vehicles or 5% of fleet size, whichever is greater, or all projects that include the replacement of an entire existing facility;
 - In the rare instance that a project submitted for DRPT funding fits the definition of a Major Expansion project based solely on total project cost, but does not add, expand, or improve transit services or facilities, the DRPT Director shall determine the appropriate project category for project evaluation.
2. The Transit Capital Program will be structured to provide a minimum of 80% of the annual allocation to State of Good Repair and Minor Enhancement projects with a maximum of 20% available for Major Expansion projects. This structure reflects program trends and the availability of other funding sources to support major expansion projects. The Board retains the discretion to shift funding from Major Expansion to State of Good Repair, based on program needs. The Board also retains the discretion to direct any carryover balances appropriated prior to FY2020, based on program needs.
3. In order to provide predictability and to ensure projects are funded at a level sufficient to move forward, State of Good Repair and Minor Enhancement projects will be matched at a maximum state match rate of 68% of total project cost. Major expansion projects will be funded at a maximum state match rate of 50% of total project cost, providing applicants with funding that can be leveraged against other state and federal funding programs. Local matching funds, at a minimum of 4% of total project cost, are required for all transit capital projects except those that have been awarded federal discretionary grant funding. DRPT may allow for a lower local match for a capital project that has been awarded funding through a federal discretionary grant program.

4. DRPT may recommend to the Board an allocation of capital funding reserved to provide matching funds for projects awarded federal discretionary grants throughout the fiscal year. Projects will be evaluated using the MERIT prioritization methodology and allocations reported to the Board when the reserve funds are utilized.

5. State of Good Repair projects will be evaluated considering asset condition (up to 60 points), service impact (up to 40 points), and incentive scoring (up to 10 points). The asset condition score depends upon the asset’s age at the time of application. For vehicles, the asset condition score is the average of the age and mileage-based scoring tables. For non-vehicle assets, only the age score is used.

Age of Asset Relative to Service Life	Points	Mileage of Vehicle Relative to Service Life	Points
< 80% of ESL Age	0	< 80% of ESL Mileage	0
80-89.9% of ESL Age	25	80-89.9% of ESL Mileage	25
90-99.9% of ESL Age	30	90-99.9% of ESL Mileage	30
0-9.9% > ESL Age	35	0-9.9% > ESL Mileage	35
10-19.9% > ESL Age	40	10-19.9% > ESL Mileage	40
20-29.9% > ESL Age	45	20-29.9% > ESL Mileage	45
30-39.9% > ESL Age	50	30-39.9% > ESL Mileage	50
40-49.9% > ESL Age	55	40-49.9% > ESL Mileage	55
50% or more > ESL Age	60	50% or more > ESL Mileage	60

Service impact considers the asset impact on service (direct or indirect), and to what extent an asset affects the rider experience and system efficiency. Points for service impact will be awarded in four categories, with up to 10 points awarded per category:

- Service Frequency, Travel Time and/or Reliability – Speeds up transit routes or allows for increased frequency. Significant impact on reliability either through preventing breakdowns or removing vehicles from mixed traffic.
- Operating Efficiency – Provides for a significantly more cost-effective service.
- Service Accessibility and/or Customer Experience – Implements a significant improvement in a customer’s ability to access the system or a significant improvement in the ease of use of the system.
- Safety and Security – Provides a significant improvement in safety or security.

Service impact scoring is primarily qualitative based on project type and takes into consideration specific project features and characteristics. Projects will automatically receive the minimum score for the criteria based on the default values with high = 10, medium = 6, and low = 3.

Primary Project Types	Secondary Project Types	Operating Efficiency	Frequency, Travel Time and/or Reliability	Accessibility and/or Customer Experience	Safety and Security	Total Default Score
Admin/Maintenance Facilities	Supports Operations	High Impact	Medium Impact	Low Impact	Medium Impact	25
Admin/Maintenance Facilities	Non-Operational	Low Impact	Low Impact	Low Impact	Medium Impact	15
Customer Facilities	Transit Centers/Stations	Medium Impact	Medium Impact	High Impact	Medium Impact	28
Customer Facilities	Bus Stop/ Shelter Improvements	Low Impact	No Impact	High Impact	High Impact	23
Capital Finance Strategies	All	High Impact	High Impact	High Impact	Medium Impact	36
Maintenance Equipment & Parts	Vehicle and Vehicle Support Equipment	High Impact	High Impact	Medium Impact	Medium Impact	32
Maintenance Equipment & Parts	Property and Facilities	Medium Impact	Low Impact	Low Impact	High Impact	22
System Infrastructure	All	High Impact	Medium Impact	Medium Impact	Medium Impact	28
Technology/Equipment	Onboard Systems—ITS/Communications	Medium Impact	Medium Impact	High Impact	Medium Impact	28
Technology/Equipment	Operations Support	Medium Impact	Medium Impact	Medium Impact	Medium Impact	24
Technology/Equipment	Onboard Systems—Safety	No Impact	No Impact	Medium Impact	High Impact	16
Technology/Equipment	Administrative	Low Impact	Low Impact	Low Impact	Low Impact	12
Vehicles	Revenue Vehicles	High Impact	High Impact	High Impact	High Impact	40
Vehicles	Overhaul/Rebuild	High Impact	High Impact	Medium Impact	High Impact	36
Vehicles	Support Vehicles	Medium Impact	Medium Impact	Low Impact	Low Impact	18

Incentive scoring prioritizes specific statewide goals and program requirements, and allows for further differentiation in project scores. Incentive points are awarded within four criteria areas: Zero-Emissions Technology, Innovation, Safety and Comfort around Customer Facilities, and Agency Accountability. The maximum score in each criteria area will be 5 points not to exceed a maximum of 10 points total.

DRPT Incentive Points: SGR and MIN Projects		
Criteria	Points	<i>Incentives for projects that satisfy DRPT Goals (Not to exceed 10 points total per project)</i>
Zero - Emissions Technology	5 Points, if project includes one of the following:	<ul style="list-style-type: none"> · Procurement of Zero-Emissions Vehicles, or · Installation of Zero-Emissions Infrastructure
Innovation	5 Points, if project includes one of the following:	<ul style="list-style-type: none"> · Installation of Real-Time Departure/ Arrival Information, or · Automated Data Collection, Scheduling and Dispatch technology acquisition, or · Utilization of Transit Signal Priority, or · Installation of safety technology, or · Mobile Ticketing
Safety and Comfort Around Customer Facilities	5 Points, if project includes one of the following:	<ul style="list-style-type: none"> · Enhanced Lighting at Transit Stations or Stops, or · Enhancements for Pedestrians/ Accessibility connecting passengers to Transit, or · Projects that include benches or shelters
		· Compliance with State Asset Management Requirements (TransAM Updates on time)

Agency Accountability	5 point, if all requirements are met:	<ul style="list-style-type: none"> · Compliance with State Strategic Planning Requirements (TSP/TDP Up to Date) · Compliance with State Capital Planning Requirements (5-year Capital Budgets) · Compliance with State Performance Reporting (On-time reporting in OLGA)
------------------------------	---------------------------------------	---

6. Minor Enhancement projects will be evaluated considering the same service impact and incentive scoring methodology that is applied to State of Good Repair projects.
7. Major Expansion projects will be evaluated based upon the following factor areas identified in 33.2-214.4 of the Code of Virginia: congestion mitigation, economic development, accessibility, safety, environmental quality, and land use.
8. The factors specified in 33.2-214.4 of the Code of Virginia will be measured and weighted according to the following metrics:

Category	Measure	Measure Weight
Congestion Mitigation	Change in peak period transit system ridership attributed to the project	100%
Economic Development	Project consistency with regional and local economic development plans and policies, and support for local development activity	100%
Accessibility	Project improvement in accessibility to jobs	50%
	Disadvantaged population (low-income, minority, or limited English proficiency) within walking distance of project	50%
Safety	Project contribution to improving safety and security, reducing risk of fatalities or injuries	100%
Environmental Quality	Reduction in daily vehicle miles traveled resulting from project	100%
Land Use	Transit supportive land use served by the project	100%

9. Candidate Major Expansion projects will be scored based on the factors and weights identified above, the cost of the project, and based on the information included in the project application.
10. The final score for Major Expansion projects will be determined by calculating the anticipated benefits relative to the amount of funding requested pursuant to 33.2-1526.1 of the Code of Virginia.

11. A project that has been selected for transit capital funding (state of good repair, minor enhancement, or major expansion) must be rescored and the funding decision reevaluated if there are significant changes to either the scope or cost of the project.

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

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

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

###

CTB Decision Brief

Policy for the Implementation of State Transit Capital Prioritization

Issue:

The 2018 General Assembly passed HB 1539 that provided dedicated funding for WMATA Capital, restructured the Commonwealth Mass Transit Fund, and enacted a slate of reforms for the statewide transit program. The Policy for the Implementation of State Transit Capital Prioritization provides the policy framework for the implementation of a formal prioritization process used by DRPT to make capital funding recommendations to the CTB.

Facts:

Section 33.2-214.4 of the *Code of Virginia* provides that the Commonwealth Transportation Board shall develop a prioritization process for capital projects funded pursuant to subdivision C of 33.2-1526.1 of the *Code of Virginia*. This process was first implemented in FY2020 with the creation of MERIT (Making Efficient-Responsible Investments in Transit).

Section 33.2-214.4 of the *Code of Virginia* provides that the Commonwealth Transportation Board shall revisit this policy at least every three years, in consultation with the Transit Service Delivery Advisory Committee (TSDAC).

Beginning in March 2022, DRPT engaged TSDAC to prepare a set of recommended updates to the policy. In June 2022, TSDAC unanimously approved these recommendations.

The CTB was briefed on this effort in September 2022 and the attached policy has been open for public comment for a period of 45 days.

Recommendation: DRPT recommends that the CTB approves changes to the Policy for the Implementation of State Transit Capital Prioritization.

Action Required by CTB: Approve the updated Policy for the Implementation of State Transit Capital Prioritization.

Options: Approve, Deny, or Defer.



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 21

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: _____, Seconded By:

Action:

Title: Guidelines for Urban Transit Agency Strategic Plans

WHEREAS, § 33.2-286 of the Code of Virginia provides that the Department of Rail and Public Transportation shall develop guidelines, subject to the approval of this Board, for the development of strategic plans for transit agencies that serve an urbanized area with a population of 50,000 or more and have a bus fleet of at least 20 buses; and

WHEREAS, § 33.2-286 of the Code of Virginia provides that such plans are required to be updated at least every five years, as a condition of receiving funds from the Commonwealth Mass Transit Fund; and

WHEREAS, the Department of Rail and Public Transportation has developed updated program guidelines, in consultation with the Transit Service Delivery Advisory Committee and industry stakeholders, that fulfill the requirements of § 33.2-286 of the Code of Virginia; and

WHEREAS, the guidelines and implementation plan have been made available for public comment for a period of 45 days;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts the updated Guidelines for Urban Transit Agency Strategic Plans as attached hereto.

BE IT FURTHER RESOLVED, the methodology may continue to evolve and improve based upon advances in technology, data collection, and results of the pilot projects, and to the extent that any such improvements modify or affect the guidance set forth, they shall be brought to the Board for review and approval.

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

CTB Decision Brief

Guidelines for Urban Transit Agency Strategic Plans

Issue:

The 2018 General Assembly passed HB 1539 that provided dedicated funding for WMATA Capital, restructured the Commonwealth Mass Transit Fund, and enacted a slate of reforms for the statewide transit program. The Guidelines for Urban Transit Agency Strategic Plans provides the framework for the implementation of the strategic planning process.

Facts:

Section 33.2-286 of the *Code of Virginia* provides that the Department of Rail and Public Transportation shall develop guidelines, subject to the approval of the Commonwealth Transportation Board (CTB), for the development of strategic plans for transit agencies that serve an urbanized area with a population of 50,000 or more and have a bus fleet of at least 20 buses. The enactment clauses of Chapter 854 of the 2018 Virginia Acts of Assembly require the CTB to adopt such guidelines. In October 2018 the CTB adopted the Guidelines for Urban Transit Agency Strategic Plans.

Section 33.2-214 of the *Code of Virginia* provides that the guidelines shall be developed in consultation with the Transit Service Delivery Advisory Committee (TSDAC) and other stakeholders.

Beginning in March 2022, DRPT engaged TSDAC to prepare a set of recommended updates to the guidelines. In June 2022 TSDAC unanimously approved these recommendations.

The CTB was briefed on this effort in September 2022 and the attached guidelines have been open for public comment for a period of 45 days.

Recommendation: DRPT recommends that the CTB approves changes to the Guidelines for Urban Transit Agency Strategic Plans.

Action Required by CTB: Approve the updated Guidelines for Urban Transit Agency Strategic Plans.

Options: Approve, Deny, or Defer.

OCTOBER 2022

Transit Strategic Plan (TSP)

Guidelines

Table of Contents

- I. Transit Strategic Plans for Urban Areas 2
- II. Detailed Purposes of a Transit Strategic Plan..... 3
- III. TSP Parameters..... 4
 - Agency Size Requirements..... 4
 - Planning Horizon..... 5
 - Update Frequency..... 5
 - Plan Deliverables..... 6
 - Implementation Plan 7
- IV. Plan Requirements 8
 - Chapter 1: System Overview and Strategic Vision 8
 - Chapter 2: System Performance and Operations Analysis11
 - Chapter 3: Planned Improvements and Modifications.....14
 - Chapter 4: Implementation Plan.....16
 - Chapter 5: Financial Plan.....17
 - Appendix A: Agency Profile and System Overview18
 - Appendix B: Available resources for TSP development.....22

I. Transit Strategic Plans for Urban Areas

Urban areas throughout the Commonwealth of Virginia have been changing rapidly over the past 30 years, resulting in new settlement and commute patterns. The transit systems and networks that serve these areas, however, have not always kept up with these changes. Many transit routes and networks still follow decades-old travel patterns designed for a different era. In many areas, bus ridership has been declining as new modes of travel are introduced. This requires strategic focus to assess how transit service should be restructured in an era of new mobility.

To address this issue, the Virginia General Assembly passed legislation in 2018 that requires transit agencies operating in urbanized areas to develop a Transit Strategic Plan (TSP) to ensure that transit services are planned in a way that better meets the mobility needs of their communities. This gives those agencies an opportunity to evaluate and update their services and networks to respond to changes in demand.

The main goal of a TSP is to create a strategic blueprint outlining desired changes that will improve the provision of transit services throughout each agency's service area within existing funding structures. This is an opportunity for each agency to look at their system as a blank slate, re-examine the priorities of stakeholders and riders, and make difficult choices concerning where and how to provide services in an efficient and cost-effective manner. A TSP is not intended to supplant an implementation plan for a system redesign. Preliminary planning and initial vision for a system redesign process may be included in an agency's TSP, however, such process may not replace the completion of a TSP.

A TSP is intended to replace the previously required Transit Development Plan (TDP) for agencies that are required to complete one. With this in mind, the TSP must also provide a foundation for future funding requests, directly advising each agency's programming process in the years that follow its adoption. Smaller agencies that do not require a TSP must still develop a TDP under Virginia Department of Rail and Public Transportation guidelines.

This document details the frequency and format for developing a TSP, and provides guidance for each of the required elements of the plan. DRPT will continue offering financial and technical resources to assist in meeting the requirements herein.

II. Detailed Purposes of a Transit Strategic Plan

The purposes of a TSP are as follows:

1. To serve as a strategic planning, management, and policy document for transit operators in urbanized areas;
2. To identify areas for improved operational efficiency;
3. To assess the type of operating services for different service areas and needs;
4. To review and assess the performance of routes, route design standards, and schedule standards;
5. To examine transit needs in order to identify ways to improve access for underserved areas;
6. To inform DRPT of transit operators' capital, operating, state of good repair, and maintenance needs;
7. To provide the basis for inclusion of an operator's capital and operating programs in planning and programming documents such as: the Six Year Improvement Program (SYIP), Statewide Transportation Improvement Program (STIP), Transportation Improvement Program (TIP) and Constrained Long Range Plan (CLRP);
8. To provide a clear understanding of unmet or unfunded needs;
9. To develop and track the progress of short-, mid- and long-term goals for transit in the region;
10. To continually aim to improve efficiency and effectiveness of public transportation services.

III. TSP Parameters

Agency Size Requirements

TSPs are required for agencies that satisfy **both** of the following size requirements:

1. The agency must serve an urbanized area with 50,000 or more people; and
2. The agency must operate a fleet of 20 or more buses.

This includes the agencies throughout the Commonwealth of Virginia that are listed in Table 1.

Table 1. Agencies in Virginia that Require a Transit Strategic Plan as of 2022

Agencies in Virginia that Require a TSP	
DASH - Alexandria	Arlington Transit (ART)
Fairfax Connector	Loudoun Transit
Potomac and Rappahannock Transportation Commission (PRTC)	Blacksburg Transit (BT)
Charlottesville Area Transit (CAT)	Fredericksburg Transit
Greater Lynchburg Transit Company (GLTC)	Greater Richmond Transit Company (GRTC)
Greater Roanoke Transit Company (Valley Metro)	Harrisonburg Transit
Hampton Roads Transit (HRT)	Petersburg Area Transit (PAT)
Radford Transit	Williamsburg Area Transit Authority (WATA)

All other transit agencies are not required to complete a TSP, however, they must still develop a [TDP under Virginia Department of Rail and Public Transportation guidelines](#).

Large Urban Areas – Additional Regional Transit Planning Requirements

In planning districts with transit systems collectively serving population areas between 1.5 million and 2 million, transit systems shall develop a regional transit planning process coordinated by the federally designated Metropolitan Planning Organization (MPO). These regional transit planning requirements are separate from and in addition to individual agency Transit Strategic Plans, which should be developed in accordance with these guidelines.

This regional planning process coordinated by the MPO should include:

- The identification and prioritization of projects;
- The establishment of performance benchmarks that incorporate state and federal requirements;
- The development and implementation of a regional subsidy allocation model;
- The distribution of funds, solely designated for transit and rail and that are administered by a regional body for the operation and maintenance of transit and rail facilities;

All other transit systems that do not satisfy this population size requirement are encouraged to work with their MPOs when developing the TSP to ensure coordination with the metropolitan transportation planning process.

Planning Horizon

The planning horizon for a TSP is 10 years; this includes the fiscal year for which funds are being sought and the subsequent nine (9) years. The minimum 10-year planning horizon will provide a clearer understanding of any unmet or unfunded needs. Agencies must complete a new TSP at the end of the 10-year planning horizon.

A longer planning horizon allows for agencies to better prepare for SMART SCALE and other discretionary grant programs. A longer planning horizon also reflects significant capital replacement/rehabilitation needs, or the capital and operating budget implications of significant service expansion.

Update Frequency

Minor Update

A minor update to each TSP must occur once every 5 years. The minor update will include the full review of an agency's existing TSP and must include at a minimum any updates, or major changes to each of the chapters highlighted by this guideline document with a high level of detail. The minor update must also be adopted by the operator's governing body (i.e. Operations Board, City Council, or County Board) and endorsed by the designated MPO in the Region. A resolution of approval shall be provided to DRPT with the submittal of the TSP document. An agency may complete a new TSP during this cycle. Agencies will determine whether a complete TSP overhaul, or a minor update is necessary in consultation with their designated DRPT Program Manager.

Annual Updates

A TSP is a living document, and the planning process must provide flexibility to address major changes in areas such as: organizational/governance changes, fare changes, new services/facilities, available funding, economic conditions, demographic and employment patterns, and changes in federal and state laws and regulations. These annual updates serve as intermediate corrections in accounting for unexpected changes.

To reflect and address these changes, the plan is to be assessed annually and an updated Service, Asset and Financials worksheet must be completed in consultation with the agency's DRPT Program Manager and assigned DRPT Transit Planner.

DRPT will use existing quarterly meetings to help agencies complete the annual update. DRPT staff (Planners and Program Managers) will annually conduct a joint quarterly meeting by January 15th each year. The joint quarterly will focus on a range of topics and sections in the TSP. To facilitate the discussion, DRPT will provide transit agencies with a pre-meeting worksheet related to TSP needs. In some cases, DRPT may request transit agencies make changes to their TSP as an outcome of the joint quarterly meeting.

Table 2. Update Frequency and Requirements

Update Type	Time Frame/Format	Requirements
Minor	Every 5 years/ Updated Sections	<p>Complete update of all chapters and sections outlined in this guideline document:</p> <ul style="list-style-type: none"> • Chapter 1: Overview and Strategic Vision • Chapter 2: Performance and Operations Analysis • Chapter 3: Improvements and Modifications • Chapter 4: Implementation Plan • Chapter 5: Financial Plan
Annual	Annually/ Completed Service, Asset and Financials worksheet to DRPT and the Designated MPO	<p>Address changes in areas such as:</p> <ul style="list-style-type: none"> • Organizational/governance changes • Fare changes • New services/facilities • Unforeseen fluctuations with operation, maintenance, and capital expenses or revenues • Status updates on ongoing projects and grants (smart scale, etc.) • Fleet and facilities management (TAM & PTASP)

Plan Deliverables

Minor Update Deliverables

For each **minor update** (every 5 years), the following deliverables must be submitted to DRPT and the designated MPO in each region:

- An electronic, editable version of the TSP including all appendices and related documents;
- Proof of adoption of the TSP by the applicable board or commission, including the official date (month and year) of adoption on title page
- An updated, electronic version of the TSP available to the public on the agency’s website, or that of the agency’s governing body
- **Data Requirement 1:** Assets and their conditions must be listed and updated in the TransAM, online asset management portal (See Chapter 4 guidelines for more details).
- **Data Requirement 2:** GIS data created or obtained in a geodatabase and system-wide GTFS feed where applicable.

Additional sections may be required depending on individual agency needs. DRPT staff may identify these needs during an annual update.

Annual Update Deliverables

For each **annual update**, the following deliverables must be submitted to:

- A completed electronic Service, Assets, and Financials worksheet as provided by DRPT Complete one joint quarterly meeting per fiscal year with DRPT planning and programming staff. The meeting will include agencies filling out a pre-meeting worksheet signing off on a post-meeting report. The joint quarterly will cover, at a minimum, data requirements and discussion topics listed below:

- **Discussion Topic 1:** Any TAM related compliance needs.
- **Discussion Topic 2:** Any PTASP compliance needs. Tier 2 Group PTASP Plan participants (Small Urban agencies) will need to provide documentation of an annual PTASP review. This can be in the form of a checklist or a revised PTASP document. Note: If the PTASP is revised it requires sign off by the transit agency board or equivalent authority.
- **Discussion Topic 3:** A review of short and mid-term needs
- **Data Requirement 1:** All assets and their conditions must be listed and updated in the TransAM, online asset management portal.
- **Data Requirement 2:** Any updates to GIS and or GTFS data created or obtained
- **Data Requirement 3:** Any updates to fares, routes, and service levels
- **Data Requirement 4:** Any Unforeseen fluctuations with operation, maintenance, and capital expenses or revenues

Implementation Plan

Adopted TSPs must be submitted to DRPT to qualify for allocated funding no later than fiscal year 2024 (FY 2024). In accordance with the enactment clauses of Chapter 854 of the 2018 Virginia Acts of Assembly, no agency shall be penalized for not submitting a strategic plan, provided such agency is in compliance with this schedule.

IV. Plan Requirements

Each TSP must address all plan requirements and follow the chapter structure specified below. Transit agencies may go above and beyond the plan requirements to examine specific issues that are pertinent to their services or areas. However, for DRPT funded TSPs, DRPT must be informed of the budget impacts and any additional funding needs prior to examining any issues outside of the plan requirements.

In addition to the written documentation of the plan, “Data Requirements” are highlighted in text boxes in various sections and are listed again in the Plan Deliverables section.

The Commonwealth Transportation Board (CTB) may periodically modify the guidance document requirements below to reflect changes in legislative mandates, other legislative changes, new organizational needs, or federal or state trends. It is not anticipated that these changes will be significant in nature but the breadth and focus of analysis may be different between an agency’s successive TSPs.

Title page

The TSP title page must include the words “[Transit Strategic Plan](#)”, the fiscal years covered by the plan, the official name of the transit operator, and the date approved by the governing board.

Chapter 1: System Overview and Strategic Vision

This chapter should provide a high-level overview the subject transit agency and provide an overview of each agency’s strategic priorities.

1.1 System Overview

This section should include the following basic overview information:

1.1.1 Services Provided and Areas Served:

Describe all fixed route, demand response and connecting services for each transit mode provided (i.e., commuter rail, heavy rail, light rail, bus rapid transit, express bus, local bus, ferry service). Include a limited number of system and service area maps to illustrate this information.

1.1.2 Current/Recent Initiatives:

Describe any ongoing initiatives that your agency is currently undertaking that affect the provision of transit services in your area. This can include the introduction of new infrastructure or guideway (e.g. light rail or bus rapid transit systems), systematically reconfiguring the bus transit network, the introduction of new technology and/or propulsion systems (such as hybrid or electric vehicles), upgrading stops and station, etc.

Appendix A contains more detailed information on the agency profile.

1.2 Strategic Vision

This section will set the stage for the chapters that follow by determining the overall vision for transit services adopted by the agency, as well as its goals, objectives, and service standards. Since the Strategic Vision will impact other aspects of the TSP, it is recommended that the vision, and any goals, objectives, and strategies included in it, be developed in consultation with the transit agency’s governing body and/or approved by that body prior to completing other elements of the plan. If applicable, an agency should also consult any relevant rider and/or operator advisory bodies around its vision, goals, and objectives.

This should include discussion of tradeoffs in the provision of transit service, included topics such as:

- Frequency vs. Coverage — describe the agency’s priorities for striking a balance between services designed for high ridership and services designed for high geographic coverage;
- Walking vs. Waiting — how the agency balances service quantity (i.e. the number of routes accessible from any given location) and service frequency (i.e. minimizing wait times on a few select routes);
- Boardings vs. Distance Travelled — discuss whether the number of passenger boardings or the total number of passenger miles are better determinates of ridership success;
- Peak Hour vs. All-Day Service — discuss how the agency values service during different time periods, and whether frequent, peak-hour service or less frequent, all-day service is a priority;
- Serving Specific Population Groups — discuss whether certain population groups are targeted and how best to reach them.
- Per FTA and FHWA’s Planning Emphasis Areas released December 30, 2021, agencies should consider the following strategies in collaboration with VDOT, DRPT, regional MPOs, and local governments for improving service for disadvantaged populations:
 - Improve infrastructure for non-motorized travel, public transportation access, and increased public transportation service in underserved communities;
 - Plan for the safety of all road users, particularly those on arterials, through infrastructure improvements and advanced speed management;
 - Reduce single-occupancy vehicle travel and associated air pollution in communities near high-volume corridors;
 - Offer reduced public transportation fares as appropriate;
 - Target demand-response service towards communities with higher concentrations of older adults and those with poor access to essential services; and
 - Consider equitable and sustainable practices while developing transit-oriented development including affordable housing strategies and consideration of environmental justice populations.

Note: Depending on each agency’s on-going public engagement process and whether previous planning studies or visioning projects have been completed, it is likely that a public outreach phase will be necessary to gather input on the priorities of the community to address these issues and determine Goals, Objectives, and Service Standards.

Effective TSP Stakeholder Consultation may include a combination of the following:

- Advisory Committee(s) that may include both agency and public stakeholders, in addition to the agency’s governing body;
- Surveys of existing riders, potential riders, and drivers, mechanics and agency staff (online, in-person, or mail/insert);
- Stakeholder interviews/focus groups;
- Outreach events such as project information tables at popular gathering places such as the library, transit center, social service center, cultural center, or grocery store;
- Design charrettes with the advisory committee(s) and other stakeholders;

- Work sessions with the transit provider’s board or the body that will ultimately adopt the TSP;
- Project web site, if applicable;
- Open houses and/or virtual open houses may be useful in some cases. For example, they can be effective in smaller urban areas where the transit service area coincides with the city limits. An open house may also be a necessary or required step for the transit provider prior to an adoption hearing by the governing body.

1.2.1 Goals and Objectives

Taking into account the topic areas mentioned above, each agency should review and update their service goals and objectives, as well as the process for establishing and reviewing them. These should reference agency specific goals and objectives, as well as statewide funding and capital goals. Agencies should consider identifying goals such as fleet and facility electrification and emissions reductions, as well as innovation and technology-related goals for service improvement, and fleet and facility resilience.

Goals and objectives should be based **SMART** principles, that is — **Specific, Measurable, Agreed, Realistic, and Time-bound**. It is recommended that each goal and objective have an associated performance measure to track progress.

The following guidelines should also be taken into account:

- The goals and objectives should reflect the basis under which new service would be deployed and existing service evaluated and modified;
- The goals and objectives should be comprehensive and address all major areas of concern and activity for public transit operators;

1.2.2 Service Design Standards

This section should present service design standards for all modes and service types (i.e. rail, local bus, commuter bus, demand response, etc.) based on the newly defined strategic vision, goals, and objectives. The service design standards should address all facets of transit such as scheduling and route planning; service reliability; system efficiency; safety and security; customer service; multimodal connectivity; and regulatory compliance.

1.2.3. Performance Standards

Develop performance standards based on the adopted strategic vision, goals, and objectives for both fixed-route and demand response services. At a minimum, this must include the following elements, using narrative, tables, and other graphic formats as warranted:

- System-wide and route-level performance standards for each mode and/or type of service (e.g. local, express, or commuter service) for fixed route and demand response service.
 - Performance standards should include specific measures, determined by the agency, that quantify the following aspects of transit service, at a minimum: **ridership** (i.e. passengers per mile, passengers per hour, total passenger miles, etc.), **cost efficiency** (i.e. cost per mile, cost per hour, cost per trip, farebox recovery, etc.), **safety** (i.e. accidents, injuries, etc.), and **system accessibility** (i.e. how many people can access the system, how many jobs are accessible, etc.). Additional measures can be included that address other goals and objectives, such as: customer satisfaction, vehicle maintenance, accessibility for people with disabilities, travel information, or affordability.

Chapter 2: System Performance and Operations Analysis

This chapter is the centerpiece of the TSP and should be designed to provide an in-depth evaluation of the existing transit system and how it performs when compared to the Strategic Vision. This analysis should identify strengths and areas for improvements that will be addressed by specific improvements or modifications listed in the following chapter. This also presents the opportunity for agencies to rethink the design of their existing transit network in order to identify ways to improve operational efficiency.

Agencies will also present an evaluation of its 10-year asset management plan using its TransAM data. This section should include an analysis of the state of its fleet and major facilities, including vehicle useful life and the agency's plan to maintain and improve anticipated fleet replacement schedules relative to recent service improvements.

Transit needs that are identified through this analysis should be addressed by "opportunities for improvement" in each step listed below. Each of the "opportunities for improvement" should be focused on maximizing system performance, efficiency, or coverage within existing funding structures. Emphasis should be placed on technological and other innovative solutions, such as zero emissions fleet and facilities transition, as appropriate.

2.1 System and Service Data

Present an overall snapshot of the existing transit system and service standards, including results from intercept surveys, and documentation of local support for public transit. This must include the following items:

- Current fiscal year data on the system, including: service area population and density, service area square mileage, operating costs, number of vehicles in peak service, number of vehicles available for peak service, ridership, revenue hours, total hours, revenue miles, level of service (days of the week operated, trips per day and average headway) and directional route mileage;
- Description of existing route design standards;
- Description of existing schedule standards;
- Survey Results: Includes information on customer demographics, customer satisfaction (to be completed at least once within each 5 year TSP update cycle); and Title VI compliance related information, such as origin-destination data when applicable;
- Support for transit: If necessary, consult with key regional stakeholders (e.g. MPO/PDC staff, local elected officials and other stakeholders) and the public to determine the level of support for transit within the community and to identify transit needs.

2.2 Evaluation of Transit Market Demand and Underserved Areas

2.2.1 Transit Demand and Underserved Area Evaluation

This section should provide an overview of factors influencing demand for transit within and outside of the existing service areas. This should include the following elements:

- An analysis of existing land use, employment, population, and demographics (e.g. the location and prevalence of population groups including: minority groups, older adults,

low-income earners, those with limited English proficiency, and persons with disabilities), and discussion of how these groups affect transit demand and/or the propensity to utilize public transit services;

- Projected employment and population growth over the next 10 years, and a discussion of how this may change transit needs in and around the existing service area;
- An analysis of opportunities to expand service to underserved areas, including:
 - An analysis of areas within the existing service area; and
 - An analysis of areas outside of the existing service areas.

2.2.2 Transit Demand and Underserved Area Opportunities for Improvement

Based on the evaluation of transit demand and underserved areas provide “**Opportunities for Improvement**” which include the following:

- A description of areas with high transit demand and underserved areas that would benefit from additional service and a description of areas with low transit demand that may have too much service;
- A description of specific solutions to any gaps or service deficiencies for fixed-route and demand response services, which will be incorporated into Chapter 3.

2.3 Performance Evaluation

2.3.1 Performance Evaluation

Existing performance should be measured against the performance standards defined in Chapter 1. At a minimum, this must include the following elements, using narrative, tables, and other graphic formats as warranted:

- System-wide and route-level performance for each mode and/or type of service (e.g. local, express, or commuter service) for fixed route and demand response service.
 - The performance evaluation should include specific measures, determined by the agency, that quantify the following aspects of transit service, at a minimum: **ridership** (i.e. passengers per mile, passengers per hour, total passenger miles, etc.), **cost efficiency** (i.e. cost per mile, cost per hour, cost per trip, farebox recovery, etc.), **safety** (i.e. accidents, injuries, etc.), and **system accessibility** (i.e. how many people can access the system, how many jobs are accessible, etc.). Additional measures should be included that address other goals and objectives, such as: customer satisfaction, vehicle maintenance, accessibility for people with disabilities, travel information, or affordability.
 - In addition to agency specific performance measures, the TSP should include specific performance measures as identified by state policy. Where available, a three-year retrospective analysis of performance including trend analysis for the performance measures defined by statewide policy for state operating assistance.
- Fleet and facilities management standards, including anticipated fleet replacement schedule and State of Good Repair (SGR) needs.

2.3.2 Performance Based Opportunities for Improvement

Based on the performance evaluation, provide “**Opportunities for Improvement**” focused on maximizing ridership within existing funding structures which includes the following:

- A description of deviations from adopted service standards and describe proposed remedies, including service expansion and/or contraction;

- A description of specific solutions to any gaps or service deficiencies for fixed-route and demand response services, which will be incorporated into Chapter 3.

Note: When developing solutions, emphasis should be placed on technological and other innovative approaches, as appropriate.

2.4 Operating and Network Efficiency Evaluation

2.4.1 Efficiency Evaluation

Provide a comprehensive analysis of operating efficiency, including an assessment of the existing transit network. At a minimum, this must include a discussion of the following elements of the existing system, using narrative, tables, and other graphic formats as warranted:

- An analysis of the **frequency, span, and ridership during different time periods** for fixed route service;
- An analysis of **recorded speeds** of fixed route service;
- An analysis of the **reliability and on-time performance** of fixed route service;
- An analysis of **reliability, on-time performance, and ridership during different time periods** for demand response service;
- An analysis of the transit network design and network connectivity as it relates to these measures of operating efficiency and the Strategic Vision presented in Chapter 2.

2.4.2 Efficiency Based Opportunities for Improvement

Based on the operating and network efficiency evaluation, provide **“Opportunities for Improvement”** focused on maximizing efficiency within existing funding structures, which include the following:

- A description of deviations from adopted service standards and describe proposed remedies, including service expansion and/or contraction;
- A description of specific solutions to any gaps or service deficiencies for fixed-route and demand response services, which will be incorporated into “Chapter 3: Strategic Plan.”

Note: For agencies in need of a comprehensive review and update of their existing transit network, this section presents the opportunity to propose an overhaul or redesign of fixed-route services. In addition, when developing solutions, emphasis should be placed on technological and other innovative approaches to improve efficiency, as appropriate.

2.5 Analysis of Opportunities to Collaborate with Other Agencies and Stakeholders

2.5.1 Collaboration Analysis

This section must include a discussion of opportunities to further coordinate and collaborate with other transit providers operating services in the vicinity, and regional and State transportation planning partners including:

- A description of other service providers with nearby or overlapping service areas;
- The identification of additional coordination and collaboration activities that could improve efficiency in the provision of transit services (e.g. mergers, transfers, or deduplication of services; providing a regional fare media and/or payment system;

providing joint training to personal; developing joint procurement agreements; providing shared customer service and/or administrative functions; etc.).

An assessment of relevant transportation planning partners and strategies to collaborate in order to enhance and sustain reliable public transit service in the service area.

Agencies should use this opportunity to discuss strategies to collaborate with local governments, their designated MPOs, and VDOT/DRPT to meet goals that require multiple stakeholders, and leveraging different funding sources.

For example, a critical issue facing transit operators and riders is safety due to poor historical investment in multimodal infrastructure. Agencies should collaborate with their regional and State partners to plan for and fund Complete Streets infrastructure connecting riders to the public transit network. To be considered complete, these roads should include safe pedestrian facilities, safe transit stops, and safe crossing opportunities on an interval necessary for accessing destinations.

2.5.2 Collaboration Based Opportunities for Improvement

If specific opportunities are identified, provide “**Opportunities for Improvement**” which include the following:

- A description of each opportunity for collaboration, the parties that would need to be involved, and the processes that would need to take place to implement such changes, which will be incorporated into Chapter 3;
- Demonstration of buy-in from all of the transit agencies involved.

Chapter 3: Planned Improvements and Modifications

This chapter must contain a prioritized list of improvements and modifications to existing services that each agency plans to make over the following ten (10) years. The improvements outlined here should directly address the “opportunities for improvement” identified in the previous chapter, along with other known needs that address agency goals and regulatory requirements.

In addition, the TSP improvements outlined here **must be financially constrained**, meaning that funding for them must be reasonably expected to be available over the timeframe of the plan. If an agency decides to substantially reconfigure or redesign fixed route transit services as part of the TSP, efforts should be made to ensure that the planned modifications are as close to “cost-neutral” as possible when it comes to the operations costs borne by the agency. If an increase in available revenues is expected to become available within the planning horizon of the TSP, then these additional funds should be taken into account.

Agencies may choose to develop unconstrained scenarios based on funding that is not reasonably expected to be available at the time of adoption, but these must be clearly labelled as “unconstrained” and included separately from the financially constrained modifications in the plan.

3.1 Planned Service Improvements

Describe fixed route and demand response services the operator intends to provide over the next 10 years, and identify necessary improvements to service. In addition, this section can

contain information on how new mobility options, such as demand-response services and other options, such as bike-share, can be integrated with fixed route service.

- Transit service improvements should address transit needs identified by:
 - Adopted goals, objectives, and standards
 - “Opportunities for Improvement” identified in Chapter 2, and
 - State and Federal legal and regulatory requirements
- Each planned service improvement must include a separate description showing how it will support an identified need from one of sources listed above;
- An estimate of future ridership based on these improvements should be provided using either of the following approaches:
 - Building a ridership model for any proposed fixed route or demand response services for other similar type and size systems in Virginia; or
 - Applying one or more generally employed ridership proxies, such as the number of riders per bus-hour that is based on actual transit agency ridership characteristics.

3.2 Prioritization of Planned Service Improvements

Assign a desired time-frame for implementation of each project and estimate capital and operations costs. Focus should be placed on projects that can be funded under existing funding structures under all time frames. If a desired project will require additional funds, the source of additional funds (SMART SCALE, Discretionary Grant Programs, etc.) should be noted.

- Time-frames should be organized into the following categories
 - Short-term transit improvements (1 to 3 years)
 - Mid-term transit improvements (3 to 7 years)
 - Long-term transit improvements (7 to 10 years)
- Capital and operating cost estimates associated with any potential service expansions or modifications should be prepared using standard vehicle acquisition and operating cost information for systems of a similar type and size;
- Describe any planned facility improvements or capital projects to improve operations;

3.3 Discuss whether or not the planned or proposed capital and/or service project(s) are currently contained in the CLRP, STIP, and/or SYIP. If the project is not included in any of these documents, discuss when it will be submitted for inclusion in the CLRP, and/or when funding for the project will be sought so it may be submitted for inclusion in the STIP and SYIP. Service Development

Describe the levels of service planned using a table to show service hours and service miles.

- Separately identify fixed route service (by mode and type of service), demand responsive service (by type of service), and expansion services (by mode and type of service):
 - The table must clearly identify service expansion and/or reduction by the year of planned deployment and/or elimination;
 - There must be a rational relationship between the information portrayed and Chapter 2 of the TSP.
- Where reductions in service levels are required to achieve a balanced operating budget, describe the reductions and assess their impact on the affected service areas and

communities in order to prepare for any eventual Title VI issues that will arise at the time of implementation;

- Describe any planned service changes in response to the most recent federal Title VI report and/or FTA Triennial Review;
- Discuss any additional, current, or anticipated policy, planning, funding, or operating issues that may affect the operations of the existing or planned transit system;
- Provide current schedule for projects, showing completed and anticipated milestone dates.
- Discuss any policy changes, funding or capital projects needed for implementation.

Chapter 4: Implementation Plan

The Implementation Plan lists steps required by an agency to carry out the operations and services described in Chapter 3. The implementation plan also should reference the approved Transit Asset Management plan to guide the schedule for replacing and/or increasing rolling stock and facilities to maintain a State of Good Repair (SGR).

4.1 Asset Management

Transit agencies that receive federal funding from the Federal Transit Administration (FTA) must create and maintain a Transit Asset Management (TAM) plan for their rolling stock, non-revenue vehicles, and facilities, and other equipment. These plans are divided into two types: Tier I and Tier II. The tiers are determined upon the size of the agency's fleet and/or presence of rail service. DRPT developed and maintains the Tier II plan for Tier II-eligible agencies in Virginia. The remaining agencies are either Tier I agencies and responsible for their own TAM plans, Tier II agencies that did not opt in to the Tier II group plan, or agencies that do not receive federal funding. Such information should be used to identify capital needs associated with attaining and maintaining a state of good repair for all assets.

Describe the policies set forth in the applicable TAM plan for the agency, including the following:

- Policies for replacement, rehabilitation, retrofitting, expansion and reduction of the revenue and non-revenue fleet to carry out the implementation plan above.
- Policies for maintenance or replacement of the vehicle maintenance and operations facilities.
- Policies for passenger facilities, infrastructure, or amenities such as bus stops, shelters, or stations.
- Policies for updating technology and ITS such as CAD/AVL systems, APCs, scheduling software, fare processing equipment, and data processing hardware or software.
- Planning and prioritization for addressing any state of good repair (SGR) needs. This may include identifying replacement years based on condition indicators such as TERM rating and or Useful Life Benchmarks. SGR needs should be included as a prioritized list.

This can be a detailed summary of the TAM plan developed by DRPT or internally. If items are not included in the TAM plan, they should be added to meet these requirements.

4.2 Capital Implementation Plan

Provide a detailed implementation plan for meeting the capital needs of the agency. This plan should take into account the current asset plan detailed above and the planned service developments outlined in Chapter 3. Other than state of good repair or replacement bus

purchases, which should also be detailed within the implementation plan, each implementation step should be tied directly to a planned service improvement or development and identified fund source.

Capital implementation plans should consider electrification and zero-emissions transition plans to ensure fleet replacement schedules and infrastructure investments. These investments should help agencies work towards Federal climate change mitigation goals outlined in the FTA and FHWA Planning Emphasis Areas including:

- Helping achieve the national greenhouse gas reduction goals of 50-52 percent below 2005 levels by 2030, and net-zero emissions by 2050; and
- Increasing resilience to extreme weather events and other disasters resulting from the increasing effects of climate change.

Chapter 5: Financial Plan

In the financial plan, service costs are projected and financial resources are identified. Consequently, it is through the development of the TSP's financial plan that transit agencies determine which service improvements can be realistically achieved and when those service improvements should be implemented. In developing a financial plan, agencies throughout the commonwealth are encouraged to explore entrepreneurial strategies at attracting novel sources of funds, such as corporate or institutional support for specific routes and services.

The financial plan should include:

- “Baseline” level of service at the time of the TSP preparation. Committed service changes must also be defined, with their expenses and revenue separately identified in the operating and capital financial plan tables;
- Capital and operating budget forecasts; federal, state, regional, and local revenue projections; fare policies, labor or service agreements, competitive demands on funding, and regional priorities and policies;
 - Show projected cash flow needs, including any anticipated difficulties, and approved or anticipated decisions on bond financing.
 - Identify funds that have been programmed, allocated or received, and funds that have not been secured;
 - Include the source of funds and amount from each source for the last five years;
 - Use the recently approved Six Year Improvement Program (SYIP) to help with current and future estimates.
- The capital and the operations budget must be sustainable and generally balanced each year over the period of the TSP, using currently available or reasonably projected revenues;
- All capital and operations expenses and revenues stated in year of expenditure dollars, with the assumed escalation factor of at least three percent per year;
 - All sources of revenue shown in the operations and capital plans should be identified individually;
 - All assumptions that relate to expenditure and revenue estimates must also be documented;
- A narrative explaining any major changes in service hours and miles due to deployment of new service or major service reductions; changes in fare revenue due to changes in the level of service; changes in expenses due to changes in the level of service, and changes in expenses due to a labor or service contract changes;

- Where increases in revenues (e.g., fares, sales taxes, general fund revenues) are required in order to sustain service levels, the steps and timelines needed to achieve the revenue increases, and the policies and actions that will be taken if the proposed revenues do not materialize;
- Planned fare increases and decreases, and/or changes in fare policies, including the years these changes are planned to take effect. Also describe planned changes in inter-operator transfer agreements and/or regional policy on fare coordination;
- Significant service expansion or reduction, and the introduction of new service;
- Reserves available for operations and changes to reserves over the period of the TSP, including anticipated unallocated reserves;
- In addition to future year forecasts, the Appendix should include a three-year retrospective of operating and capital expenses and revenues (provide audited budgets if available).

Appendix A: Agency Profile and System Overview

This appendix will provide a detailed overview of the transit agency and system. This should include the following elements:

A.1 History

Provide a brief history of the transit system (e.g., year of formation, facilities and fleet development, changes in service focus areas, key milestones and events).

A.2 Governance

Provide an overview of the governance process, governing body, and decision makers involved in the transit system. This should include:

- Type of governance (e.g., city, joint powers authority, transit district);
- The composition and nature of representation of the governing body (including the number of members). Indicate if members are elected or appointed and if appointed, how; what agencies and/or groups do members represent (e.g., cities, county, general public);
- A list of current members and their terms; and
- A description of any advisory committees that provide direct input to the governing body.

A.3 Organizational Structure

Provide a brief description of the organizational structure and staffing including:

- An organizational chart that identifies departments and reporting relationships. The names of key management personnel should be provided in the organizational chart;
- Identification of all contracted transportation services (including the name of contractors and length of current contracts); and
- Identification of the labor unions representing agency employees (including the length of current contracts).

A.4 Services Provided and Areas Served

Describe all fixed route, demand response and connecting services for each transit mode provided (i.e., commuter rail, heavy rail, light rail, bus rapid transit, express bus, local bus, ferry service) including:

- The areas served and the peak vehicle requirement for each type of service provided (i.e. any express bus, radial, circulator services);
- Details of any services provided with funding and/or oversight partnerships with other agencies or organizations;
- An description of infrastructure used to access the transit system, including safe, accessible pathways to stops and stations as well as any other bicycle or pedestrian accommodations provided;
- How the service is deployed to meet the Americans with Disabilities Act (ADA) requirements;
- Any bus stop and shelter placement guidelines;
- A description of any existing travel training programs for students, seniors, or persons with disabilities; and
- Additional transportation services in the area that may impact transit and its connections.

Data Requirement 2: Provide GIS shapefiles of each transit route or service area and submit shapefiles to DRPT. In the GIS data, include origins and destinations, trip generators, and transit facilities and, if the agency has existing GTFS data, check the accuracy of the data and make corrections.

A.5 Fare Structures, payments, and purchasing

Describe the fare structure and payment methods for each mode of transit provided for both fixed route and demand responsive services. Describe how and where customers can purchase fare media. Include information on the following:

- Single fare (e.g., adults, seniors, student/youth);
- Discounted or multi-ride fares/passes (e.g., adults, seniors, student/youth);
- Changes in fares since the last TDP (include the date instituted) and the reason the fare structure was changed;
- Transfer agreements if applicable;
- Customer payment methods (Cash, magnetic strip paper fare cards, smartcards, credit cards, mobile apps, etc.); and
- Fare media purchase locations (website, mobile app, ticket vending machines, commuter store, etc.).

A.6 Transit Asset Management – Existing Fleet and Facilities

On July 26, 2016, FTA published a Final Rule for Transit Asset Management in Federal Register Volume 81, Number 143. The rule requires FTA grantees to develop asset management plans for their public transportation assets, including vehicles, facilities, equipment, and other infrastructure. Transit providers have the option to develop their own plans or, depending on their characteristics, use DRPT’s Transit Asset Management group plan.

In this subsection, provide status of provider’s Transit Asset Management plan or, if applicable, reference the use of the state Transit Asset Management Plan as the chosen alternative.

Provide a high level overview of existing fleet and facilities, including:

- Type number of vehicles used for revenue and non-revenue operations. This list should identify assets that are at or beyond a state of good repair based on standard measures including TERM ratings and Useful Life Benchmarks;

- The location of maintenance, storage, and parking facilities;
- The presence of guideways and their location;
- The location of fueling, or electric charging stations.

In this section, agencies should include electrification or zero-emissions transition plans if applicable. FTA requires a Zero Emissions Transition Plan in order to be eligible for FTA's Low and No Emissions Grant Program (49 U.S.C. § 5339(c)). Zero Emissions Transitions Plans must:

- Demonstrate a long-term fleet management plan with a strategy for how the applicant intends to use the current request for resources and future acquisitions.
- Address the availability of current and future resources to meet costs for the transition and implementation.
- Consider policy and legislation impacting relevant technologies.
- Include an evaluation of existing and future facilities and their relationship to the technology transition.
- Describe the partnership of the applicant with the utility or alternative fuel provider.
- Examine the impact of the transition on the applicant's current workforce by identifying skill gaps, training needs, and retraining needs of the existing workers of the applicant to operate and maintain zero-emission vehicles and related infrastructure and avoid displacement of the existing workforce.

The length and complexity of an agency's plan will vary depending on a number of factors, including the size of the agency's fleet, service provided, etc. DRPT may provide technical assistance through its General Planning Consultant bench, as outlined within this document in Appendix B — Available Data & Resources.

A.7 Transit Security Program

Describe all security plans and programs that are in place to protect riders, employees and general public, including:

- System security and emergency preparedness plan(s);
- Fare inspection;
- Security features on vehicles;
- Security features at transit stations and facilities;
- Security training programs and drills or exercises; and
- Public Awareness programs and campaigns.

A.8 Intelligent Transportation Systems (ITS) Programs

Describe any intelligent transportation systems (ITS) programs for the agency and any technology projects to improve efficiency and operations and provide information to customers. Include information on:

- Computer aided dispatch (CAD) or automatic vehicle locator (AVL) systems;
- Automatic passenger counters (APC);
- Traffic signal priority (TSP) system;
- On-board cameras;
- Trip planners;
- Scheduling and run cutting software;
- Maintenance, operations and yard management systems;

- Information displays;
- Real time arrival; and
- Information to mobile devices or applications.

A.9 Data Collection and Ridership/Revenue Reporting Method

Describe the agency policies for collecting, processing, verifying, storing and reporting ridership and revenue service data. Include information on:

- Electronic registering fireboxes (ERF);
- Cash fare boxes (rural systems only);
- Automatic passenger counters (APC) and status of any APC calibration/validation efforts made for NTD reporting;
- Manual count including free fares;
- Scheduling software;
- Accounting/payroll systems;
- Mobile data terminals (MDT) for demand response service;
- Automatic vehicle locator (AVL) system;
- Odometer readings or driver logs if used for mileage and hours;
- Operating expense and revenue data including fares and revenue from leases, advertising, contract service and other sources;
- Agency accountability policy;
- On-Line Grant Administration (OLGA) performance data submission;
- Executive director or board certification of adherence to standards and accuracy of data submitted to OLGA;
- National Transit Database (NTD) data submission practices (or explanation of why agency does not submit data to the NTD); and
- Financial audit review of verification method.

A.10 Coordination with Other Transportation Service Providers

Describe any coordination with transit service providers in adjacent jurisdictions, Transportation Network Companies (TNC), taxi companies, human service providers, bikeshare systems, carshare companies, etc. including designating pickup and drop off at stations or transit centers, schedule coordination, fare agreements, programs to subsidize fares, programs to utilize TNCs for senior or disabled service, or other initiatives.

A.11 Current Initiatives

Describe any ongoing initiatives that your agency is currently undertaking that affect the provision of transit services in your area. This can include the introduction of new infrastructure or guideway (e.g. light rail or bus rapid transit systems), systematically reconfiguring the bus transit network, the introduction of new technology and/or propulsion systems (such as hybrid or electric vehicles), upgrading stops and station, etc.

Appendix B: Available resources for TSP development

[B.1 DRPT Website](#)

[B.2 DRPT Open Data Portal](#)

[B.3 Online Grants Administration \(OLGA\)](#)

[B.4 DRPT Grants references and guidelines \(Blue Book and Purple Book\)](#)

[B.5 Transit Asset Management Plan \(TAM\)](#)

[B.6 Public Transportation Agency Safety Plan \(PTASP\)](#)

[B.7 Virginia Department of Transportation \(VDOT\) SMARTSCALE program](#)

[B.8 VDOT Pathways for Planning](#)

[B.9 FTA/FHWA Planning Emphasis Areas \(December 30, 2021\)](#)

DRPT



**VIRGINIA DEPARTMENT OF RAIL
AND PUBLIC TRANSPORTATION**

600 East Main Street, Suite 2102
Richmond, VA 23219
804-786-4440



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

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

Agenda item # 22

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: Seconded By: Action:

Title: Rail Industrial Access – New Millennium Building Systems

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

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

WHEREAS, New Millennium Building Systems has submitted an application for RIA grant funds in the amount of \$450,000 toward construction of 1,850 feet of track to serve a facility in the City of Salem, Virginia; and

WHEREAS, the Department of Rail and Public Transportation (DRPT) has evaluated the project in accordance with the Board's RIA policy and, because the project scores 58 points, has recommended approval of the project; and

WHEREAS, the City of Salem, Virginia has, by resolution dated July 25, 2022, shown support for the application of up to \$450,000 in RIA funds for assistance in expanding track facilities to serve the New Millennium Building Systems facility located in the City of Salem; and

WHEREAS, Norfolk Southern Railway Company, by letter dated July 20, 2022, has indicated its support for the project and has agreed to serve the facility; and

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

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

NOW THEREFORE, BE IT RESOLVED, that the Board hereby approves that \$450,000 of the RIA Fund be provided to construct approximately 1,850 linear feet of track subject to the following requirements:

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

####

CTB Decision Brief
Rail Industrial Access Applicant
Location: City of Salem, Virginia
New Millennium Building Systems

Summary: New Millennium Building Systems has submitted an application for Rail Industrial Access grant funds in the amount of \$450,000 to construct a new rail spur at its City of Salem facility. New Millennium fabricates steel building components for use in low-rise non-residential buildings to include joists, girders, trusses, and steel decking. Rail is used for incoming raw material from the Midwest and Southern U.S.

DRPT has evaluated the project in accordance with the CTB's Rail Industrial Access policy. The project scores 58 points. Projects must reach a 50 point threshold to receive a recommendation by DRPT staff. For this project:

- The Applicant plans 900 new rail cars annually.
- The minimum threshold for carloads is 301 carloads annually.
- The Applicant commits to 5 new jobs.
- The Applicant's new 1,850 foot rail spur will divert approximately 3,060 trucks from Virginia highways per year.
- The total capital investment in the facility is estimated at \$1.4M.
- The total railroad track construction cost is estimated at \$1.4M.
- Applicant is responsible for minimum 30% match toward rail costs.
- There will be a claw-back provision in the grant agreement for failure to meet performance requirements based on the CTB adopted program performance policies.

Source of State Funds: FY 2023 Industrial, Airport, and Rail Access Fund

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

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

Options: Approve, Deny, or Defer



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller, III
Chairperson

1401 East Broad Street
Richmond, Virginia 23219

(804) 482-5818
Fax: (804) 786-2940

Agenda item # 23

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 25, 2022

MOTION

Made By: Seconded By: Action:

Title: Washington Metropolitan Area Transit Authority (WMATA) Annual Reporting – Fiscal Year 2022

WHEREAS, Virginia Code Section 33.2-1526.1 allocates 46.5 percent of the Commonwealth Mass Transit Fund to the Northern Virginia Transportation Commission (“NVTC”) for distribution to the Washington Metropolitan Area Transit Authority (“WMATA”) for capital purposes and operating assistance (“Commonwealth Mass Transit Fund WMATA Allocation”), as determined by NVTC; and

WHEREAS, the Virginia Code Section 33.2-1526.1 requires the CTB to withhold funding available to WMATA under the following conditions:

1. Va. Code Sec. 33.2-1526.1(J) requires that in any year that the total Virginia operating assistance in the approved WMATA budget increases by more than three percent from the total operating assistance in the prior year's approved WMATA budget, the CTB shall withhold an amount equal to 35 percent of the funds available. The following items shall not be included in the calculation of any WMATA budget increase: (i) any service, equipment, or facility that is required by any applicable law, rule, or regulation; (ii) any capital project approved by the WMATA Board before or after July 1, 2018; and (iii) any payments or obligations of any kind arising from or related to legal disputes or proceedings between or among WMATA and any other person or entity.
2. Va. Code Sec. 33.2-1526.1(K) requires the CTB to withhold 20 percent of the funds available if (i) any alternate directors participate or take action at an official WMATA Board meeting or committee meeting as Board directors for a WMATA compact member when both directors appointed by that same WMATA Compact member are present at the WMATA Board meeting or committee meeting or (ii) the WMATA Board of

Directors has not adopted bylaws that would prohibit such participation by alternate directors.

3. The eighth enactment clause of Chapters 854 and 856 of the 2018 Acts of Assembly requires that, beginning July 1, 2019, the CTB shall withhold 20 percent of the funds available each year unless (i) WMATA has adopted a detailed capital improvement program covering the current fiscal year and, at a minimum, the next five fiscal years, and at least one public hearing on such capital improvement program has been held in a locality embraced by the NVTC; and (ii) WMATA has adopted or updated a strategic plan within the preceding 36 months, and at least one public hearing on such plan or updated plan has been held in a locality embraced by the NVTC. The first strategic plan adopted to comply with such requirements shall include a plan to align services with demand and to satisfy the other recommendations included in the report submitted pursuant to Item 436 R of Chapter 836 of the Acts of Assembly of 2017; and

WHEREAS, the CTB approved policy and guidelines to implement the enactment clauses by resolution of the Board on September 18, 2018, which were updated on January 19, 2021, which require that DRPT analyze information received from WMATA and make a recommendation on enforcement actions, if any, to be taken; and

WHEREAS, DRPT has completed a review of WMATA's compliance with such requirements, in consultation with the Office of the Attorney General, and has presented their findings and recommendations to the Board; and

NOW THEREFORE, BE IT RESOLVED that the Board hereby adopts the following findings relative to WMATA's compliance for Fiscal Year 2022:

Three Percent Cap on Growth in Total Virginia Operating Assistance (Va. Code Sec. 33.2-1526.1(J))

1. WMATA has met the requirements of the statute and Board policy for FY2022.
2. No enforcement action to be taken for FY2022.

Participation by Alternate Directors of the WMATA Board (Va. Code Sec. 33.2-1526.1(K))

1. WMATA has met the requirements of the statute and Board policy for FY2022.
2. No enforcement action to be taken for FY2022.

Adoption of a Detailed Capital Improvement Program (Enactment Clause 8(i) of Chapters 854 and 856 of the 2018 Virginia Acts of Assembly)

1. WMATA has met the minimum requirements for compliance with the statute and CTB policy.

2. No enforcement action to be taken for FY2022.

Adoption or Update of a Strategic Plan (Enactment Clause 8(ii) of Chapters 854 and 856 of the 2018 Virginia Acts of Assembly)

1. WMATA has met the minimum requirements for compliance with the statute and CTB policy.
2. No enforcement action to be taken for FY2022.
3. The next WMATA Strategic Plan update must be approved by the WMATA Board no later than June 30, 2023 and should address safety, operating costs, service optimization and recovery from the ridership impacts of COVID.

#####

CTB Decision Brief

Washington Metropolitan Area Transit Authority (WMATA) Annual Reporting – Fiscal Year 2022

Issue: In accordance with the CTB Policy and Guidelines for Implementation of Governance and Funding Reforms for the Washington Metropolitan Area Transit Authority (WMATA) that was approved by the CTB on September 18, 2018, and updated January 19, 2021, WMATA must provide notifications to DRPT by July 1 of each year regarding its compliance with four specific legislative and CTB policy requirements. DRPT is required to analyze the information received from WMATA and present to the CTB, in September of each year (beginning in 2019), a recommendation on enforcement actions, if any, that are required to be taken by the CTB policy. A resolution approving DRPT’s recommendations as presented is required.

Facts: WMATA provided the required notifications for FY 2022 actions to DRPT in two separate letters both dated June 30, 2022. DRPT staff reviewed and analyzed the information received from WMATA, and DRPT Director Jennifer DeBruhl presented DRPT’s findings and recommendations to the CTB at its workshop on September 20, 2022. The four specific legislative and CTB Policy requirements that WMATA must document compliance with include the annual adoption of a detailed Capital Improvement Program (CIP), the adoption or update of a Strategic Plan at least every 36 months, a three percent cap on growth in total Virginia operating assistance from the previous fiscal year, and restrictions on the participation by Alternate Directors to the WMATA Board. WMATA must also certify that it held public hearings on the CIP and Strategic Plan prior to adoption. DRPT found that WMATA met the standards for compliance with all four legislative and CTB Policy requirements in FY 2022.

Recommendation: Based on its analysis of the required information received from WMATA, DRPT recommends that the CTB take no enforcement actions against WMATA related to its FY 2022 compliance with the CTB Policy and legislative requirements. In addition, the next WMATA Strategic Plan update must be approved by the WMATA Board no later than June 30, 2023 and should address safety, operating costs, service optimization and recovery from the ridership impacts of COVID.

Action Required by CTB: Approval of the attached resolution certifying that the CTB will take no enforcement actions against WMATA related to its FY 2022 compliance with the CTB Policy and legislative requirements.

Options: Approve, Deny or Defer.

October 2022 CTB Meeting

F97

0001-088-709, B617, C501, D609, D610

0711-088-689, C501

Spotsylvania County

This project consists of the widening of the I-95 Exit 126 off-ramp onto Route 1 and includes additional turn lanes onto Route 711 (South point Parkway). This project will add an additional right turn lane off the I-95 Exit 126 ramp and continue to provide a full right turn lane on south bound Route 1 which will extend through to South Point Parkway. Pedestrian accommodations will be included within the project. This project will serve to improve safety, traffic flow, and reduce delays/backups on I-95 as well as along the Route 1 corridor.

Following are the proposed improvements included in the project:

- Widening the existing roadway along Ramp C to Southbound Route 1
- Widening the existing Southbound Route 1 pavement section
- Widening of both Northbound and Southbound pavement sections along Route 711
- Box culvert extension near the intersection of Route 711 and Route 1
- Widening of the bridge on Route 711 over Massaponax Creek
- Two retaining walls along Southbound Route 1
- A culvert extension near one of the retaining walls along Southbound Route 1
- Sidewalk along Southbound Route 1, from the Intersection of Route 1 and Route 711 to the existing Exxon Gas Station
- Sidewalk along Northbound and Southbound Route 711.

This project has been reviewed by the Environmental Division to determine applicable permits required. All right of way is clear and dry utilities have been relocated.

Fixed Completion Date: 931 calendar days from NTP and no later than **October 15, 2025**

AWARD

PRIMARY

Order No.	UPC No. Project No.	Location and Work Type	Vendor Name	No Of Bidders	Bid Amount	Estimated Construction Cost.	EE Range
F97	109516, 110914	FROM: 0.263 MI. W. OF INT. RTE. 1 & RTE. 711	BRANCH CIVIL, INC.	4	\$12,775,850.00	\$13,528,729.89	Within
	0001-088-709,C501,B617, D609-10	TO: 0.065 MI. N. OF INT. RTE. 1 & EXIT 126 OFF I-95, RAMP C	ROANOKE				
	NHPP-5111(402); HSIP-5111(401)	SPOTSYLVANIA	VA				
	Construction Funds	FREDERICKSBURG DISTRICT					
		SMART SCALE* - ROAD & BRIDGE WIDENING OVER MASSAPONAX CREEK					

1 Recommended for AWARD \$12,775,850.00

BIDS FOR SEPTEMBER CTB ACTION MEETING

 Ben Coaker, P.E.

October 26, 2022

Order No. F97 – Fredericksburg District – UPC 109516,110914

SCOPE:	SMART SCALE* - ROAD & BRIDGE WIDENING OVER MASSAPONAX CREEK
LOCATION:	SPOTSYLVANIA (ROUTE 711)
BIDS:	4
LOW BID:	\$12,775,850.00 (within range)
CONTRACTOR:	Branch Civil, Inc. (Roanoke, VA)