



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

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Agenda item # 8

**RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD**

April 19, 2017

MOTION

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

Action: Motion Carried, Unanimously

Title: Authorization for the Commissioner of Highways to Enter into a MOU with the Hampton Roads Transportation Accountability Commission (HRTAC) and the Hampton Roads Transportation Planning Organization Concerning the Study of Components not Included in the Selected Hampton Roads Crossing Study SEIS Alternative and to Execute a Standard Project Agreement with HRTAC Relating to the Bowers Hill Study

WHEREAS, on December 7, 2016, the Commonwealth Transportation Board (“CTB”) approved as the location for the Hampton Roads Crossing Study/Project, Alternative A, as set forth in the Draft SEIS approved by FHWA on July 25, 2016 (“Preferred HRCS SEIS Alternative”) and, among other things, directed the Virginia Department of Transportation (“VDOT”) to continue to work with the Hampton Roads Transportation Planning Organization (“HRTPO”), Hampton Roads Transportation Accountability Commission (“HRTAC”), U.S. Army Corps of Engineers (“USACE”), U.S. Navy, the Port of Virginia and other parties to advance separate studies to identify appropriate access options around Craney Island to include I-564/I-664 Connectors, I-664/MMMBT and VA 164/164 Connector (“Additional Corridors Studies”), which were HRCS SEIS components not included in the Preferred HRCS SEIS Alternative; and

Resolution of the Board

Authorization for the Commissioner of Highways to Enter into a MOU with the Hampton Roads Transportation Accountability Commission (HRTAC) and the Hampton Roads Transportation Planning Organization Concerning the Study of Components not Included in the Selected Hampton Roads Crossing Study SEIS Alternative and to Execute a Standard Project Agreement with HRTAC Relating to the Bowers Hill Study

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WHEREAS, on December 7, 2016, the CTB also directed VDOT to continue to work with the HRTPO, HRTAC, USACE and other parties to advance a separate study of the Bowers Hill Interchange at I-664 and I-264 in Chesapeake (“Bowers Hill Study”) which also was an HRCS SEIS component not included in the Preferred HRCS SEIS Alternative; and

WHEREAS, HRTAC, on March 16, 2017, amended the HRTAC 2016-2022 Funding Plan to provide \$7,000,000 for study of HRCS SEIS components not included in the Commonwealth Transportation Board’s Preferred HRCS SEIS Alternative; and

WHEREAS, VDOT, HRTAC and HRTPO have identified a need to develop a Memorandum of Understanding between the parties to identify a framework and specify the various responsibilities of each of the parties in order to advance the additional studies noted herein (“HRCS Additional Studies MOU”); and

WHEREAS, the HRCS Additional Studies MOU contemplates that VDOT will bear responsibility for managing the Bowers Hill Study, HRTAC will provide \$ 4 million in funding to VDOT from the Hampton Roads Transportation Fund (HRTF) for the study, and HRTAC will require execution of a Standard Project Agreement relating to said funding; and

WHEREAS, the Virginia General Assembly, pursuant to Chapter 26 of Title 33.2 of the Code of Virginia, 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, also established the 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 CTB to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes; and

WHEREAS, VDOT has requested that the CTB approve and authorize the Commissioner to enter into/execute the HRCS Additional Studies MOU and further, to authorize

Resolution of the Board

Authorization for the Commissioner of Highways to Enter into a MOU with the Hampton Roads Transportation Accountability Commission (HRTAC) and the Hampton Roads Transportation Planning Organization Concerning the Study of Components not Included in the Selected Hampton Roads Crossing Study SEIS Alternative and to Execute a Standard Project Agreement with HRTAC relating to the Bowers Hill Study

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the Commissioner to execute a Standard Project Agreement with HRTAC regarding the Bowers Hill Study and use of HRTF funds for the study, upon approval by HRTAC of the Standard Project Agreement.

NOW, THEREFORE BE IT RESOLVED, that the Commonwealth Transportation Board hereby approves and authorizes the Commissioner of Highways to execute the HRCS Additional Studies MOU between VDOT, HRTAC and the HRTPO concerning the Additional Corridors Studies and Bowers Hill Study, as set out in Attachment A, with such changes as the Commissioner deems necessary or appropriate.

BE IT FURTHER RESOLVED, that the Commonwealth Transportation Board hereby approves and authorizes the Commissioner of Highways to execute a Standard Project Agreement with HRTAC relating to the Bowers Hill Study and the HRTF funding therefor in substantially the same form as Attachment B with such changes as the Commissioner deems necessary, upon approval by HRTAC of said Agreement.

BE IT FURTHER RESOLVED, that the Commissioner is directed to report back to the CTB upon execution of the Standard Project Agreement relating to the Bowers Hill Study by HRTAC and the Commissioner.

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CTB Decision Brief

Authorization for the Commissioner of Highways to Enter into a Memorandum of Understanding with the Hampton Roads Transportation Accountability Commission (HRTAC) and the Hampton Roads Transportation Planning Organization Concerning the Study of Components not Included in the Selected Hampton Roads Crossing Study SEIS Alternative and to Execute a Standard Project Agreement with HRTAC Relating to the Bowers Hill Study

Issue: In order to advance separate studies, as directed by the Commonwealth Transportation Board (“CTB”), of certain components not included in the selected alternative/location approved by the CTB for the Hampton Roads Crossing Study Project, the Virginia Department of Transportation (“VDOT”) seeks to enter into a Memorandum of Understanding with the Hampton Roads Transportation Planning Organization (“HRTPO”) and the Hampton Roads Transportation Accountability Commission (“HRTAC”) that sets forth the general roles of each of the parties with regard to said studies (“HRCS Additional Studies MOU”). In addition, because VDOT will bear responsibility for managing one of the studies, the Bowers Hill Study, and HRTAC will provide funding for the Bowers Hill Study, a Standard Project Agreement between VDOT and HRTAC relating to the study and use of HRTAC funding therefor will need to be executed. Pursuant to §33.2-214 (C) of the Code of Virginia, the Commonwealth Transportation Board (“CTB”) is empowered to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes. Accordingly, VDOT seeks CTB approval of, and authorization for the Commissioner of Highways to enter into (i) the HRCS Additional Studies MOU with the HRTPO and HRTAC; and (ii) a Standard Project Agreement with HRTAC regarding the Bowers Hill Study.

Facts:

- On December 7, 2016, the CTB approved as the location for the Hampton Roads Crossing Study/Project, Alternative A, as set forth in the Draft SEIS approved by FHWA on July 25, 2016 (“Preferred HRCS SEIS Alternative”) and, among other things, directed VDOT to continue to work with the HRTPO, HRTAC, U.S. Army Corps of Engineers, U.S. Navy, the Port of Virginia and other parties to advance separate studies to identify appropriate access options around Craney Island to include I-564/I-664 Connectors, I-664/MMMBT and VA 164/164 Connector (“Additional Corridors Studies”).
- On December 7, 2016, the CTB also directed VDOT to continue to work with the HRTPO, HRTAC, USACE and other parties to advance a separate study of the Bowers Hill Interchange at I-664 and I-264 in Chesapeake (“Bowers Hill Study”) which was also an HRCS SEIS component not included in the Preferred HRCS SEIS Alternative.
- HRTAC, on March 16, 2017, amended the HRTAC 2016-2022 Funding Plan to provide \$7,000,000 for study of HRCS SEIS components not included in the Commonwealth Transportation Board’s Preferred HRCS SEIS Alternative.
- VDOT, HRTAC and HRTPO have identified a need to develop a Memorandum of Understanding between the parties to identify a framework and specify the various

responsibilities of each of the parties in order to advance the additional studies noted herein (“HRCS Additional Studies MOU”).

- The HRCS Additional Studies MOU contemplates that VDOT will bear responsibility for managing the Bowers Hill Study, HRTAC will provide \$ 4 million in funding to VDOT from the Hampton Roads Transportation Fund (HRTF) for the study, and HRTAC will require execution of a Standard Project Agreement relating to said funding. It is anticipated that HRTAC will approve the Standard Project Agreement at its upcoming meeting in June, 2017.
- The Virginia General Assembly, pursuant to Chapter 26 of Title 33.2 of the Code of Virginia, established the Hampton Roads Transportation Accountability Commission (HRTAC), a political subdivision of the Commonwealth and, pursuant to §33.2-2600 of the Code of Virginia, 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.
- 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.
- Section 33.2-214 (C) of the Code of Virginia empowers the CTB to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes.
- VDOT is requesting that the CTB (i) approve and authorize the Commissioner to enter into/execute the HRCS Additional Studies MOU and (ii) approve and authorize the Commissioner to execute a Standard Project Agreement with HRTAC regarding the Bowers Hill Study and use of HRTF funds for the study, upon approval by HRTAC of the Standard Project Agreement, and to report back to the CTB once the Standard Project Agreement has been executed.

Recommendations: That the CTB (i) authorize the Commissioner of Highways to execute the HRCS Additional Studies MOU between VDOT, HRTAC and the HRTPO, as set out in Attachment A, with such changes as the Commissioner deems necessary or appropriate; and (ii) approve and authorize the Commissioner to execute a Standard Project Agreement with HRTAC regarding the Bowers Hill Study and use of HRTF funds for the study, in substantially the same form as Attachment B with such changes as the Commissioner deems necessary, upon approval by HRTAC of the Agreement, and to report back to the CTB once the Standard Project Agreement has been executed.

Action Required by CTB: Va. Code § 33.2-214 (C) requires a majority vote of the CTB to (i) approve, and authorize the Commissioner of Highways to execute the HRCS Additional Studies MOU between VDOT, HRTAC and the HRTPO with such changes as the Commissioner deems necessary or appropriate and (ii) authorize the Commissioner to execute a Standard Project Agreement with HRTAC regarding the Bowers Hill Study and use of HRTF funds for the study,

in substantially the same form as Attachment B with such changes as the Commissioner deems necessary, upon approval by HRTAC of the Agreement, and require the Commissioner to report back to the CTB once the Standard Project Agreement has been executed.

Results, if Approved: The Commissioner of Highways will be (i) authorized to execute the HRCS Additional Studies MOU between VDOT, HRTAC and the HRTPO, as set out in Attachment A, with such changes as the Commissioner deems necessary or appropriate; and (ii) authorized to execute a Standard Project Agreement with HRTAC regarding the Bowers Hill Study and use of HRTF funds for the study in substantially the same form as Attachment B with such changes as the Commissioner deems necessary, and required to report back to the CTB once the Standard Project Agreement has been executed.

Options: Approve, Deny, or Defer.

Public Comments/Reaction: None

ATTACHMENT A

Study of Components not Included in the Selected Hampton Roads Crossing Study SEIS Alternative

Memorandum of Understanding
among
Hampton Roads Transportation Accountability Commission
and
Hampton Roads Transportation Planning Organization
and
Virginia Department of Transportation

This Memorandum of Understanding (MOU) for the study of components not included in the Selected Hampton Roads Crossing Study (HRCS) SEIS Alternative is made and executed in triplicate on this ____ day of _____ 2017, among the Hampton Roads Transportation Planning Organization (HRTPO), Hampton Roads Transportation Accountability Commission (HRTAC), and the Virginia Department of Transportation (VDOT).

RECITALS

WHEREAS, on July 25, 2016 the Federal Highway Administration and VDOT approved the Hampton Roads Crossing Study Draft Supplemental Environmental Impact Statement (HRCS SEIS)¹; and,

WHEREAS, on October 20, 2016, the Hampton Roads Transportation Planning Organization (HRTPO) unanimously approved the Hampton Roads Crossing Study Alternative A, “modified” to include the Bowers Hill Interchange, as the Region’s Preferred Alternative; and

WHEREAS, on October 20, 2016, HRTAC unanimously supported the HRTPO’s selection of Alternative A-modified (to include the Bowers Hill Interchange), and allocated up to \$7,000,000, to include the reallocation of the balance of the \$5,000,000 that was allocated by the Commission toward the cost of the Hampton Roads Crossing SEIS to be applied toward the cost of further study of the Hampton Roads Crossing Study SEIS components not included in the selected SEIS Alternative – specifically the I-564/I-664 Connectors (Patriot’s), I-664/MMMBT (Including Bowers Hill), and VA 164/164 Connector; and,

WHEREAS, the Commonwealth Transportation Board (CTB), in a resolution dated December 7, 2016, approved Alternative A as the location for this project and instructed VDOT to continue to work with HRTPO, HRTAC, USACE, Navy, the Port of Virginia, and other parties to advance separate studies to identify appropriate access options around Craney Island to include I-564/I-664 Connectors, I-664/MMMBT and VA 164/164 Connector. The resolution also directed VDOT to continue to work with HRTPO, HRTAC, USACE, and other parties to advance a separate study of the Bowers Hill Interchange at I-664 and I-264 in Chesapeake.

WHEREAS, on March 16, 2017, HRTAC amended its HRTAC 2016-2022 Funding Plan Approved March 17, 2016 to provide \$7,000,000 for Study of HRCS SEIS Components not included in the

¹ Study documentation available on web site:
http://www.hamptonroadscrossingstudy.org/learn_more/hracs_draft_seis.asp

Commonwealth Transportation Board’s Selected Preferred HRCS SEIS Alternative in accordance with its October 20, 2016 Action; and,

WHEREAS, the parties desire to complete additional studies (“Additional Feasibility Studies”) to evaluate the following corridors, which were considered but not advanced from the HRCS SEIS (collectively, the “Additional Corridors”). The funding and administration of the Additional Feasibility Studies will be covered under a separate standard project agreement between the HRTPO and HRTAC, not to exceed \$3,000,000 of the \$7,000,000 allocated:

- (i) VA-164 (Illustrated as Segment 14 on Exhibit A),
- (ii) I-564 Connector (Illustrated as Segment 10 on Exhibit A),
- (iii) VA 164 Connector (Illustrated as Segment 13 on Exhibit A),
- (iv) I-664 Connector (Illustrated as Segment 11 on Exhibit A),
- (v) I-664 (Illustrated as Segments 2-7 on Exhibit A); and,

WHEREAS, the parties also desire to advance study under the NEPA process for the Bowers Hill Interchange (the “Bowers Hill Study”) (Illustrated as Segment 1 on Exhibit A), which was also considered as a HRCS SEIS Segment but not advanced under the CTB-approved HRCS SEIS Alternative A. The Bowers Hill Study will be covered under a separate standard project agreement between VDOT and HRTAC. HRTAC is to provide all funding for the Bowers Hill Study, not to exceed \$4,000,000 of the \$7,000,000 allocated; and,

WHEREAS, the HRTPO Board has directed that the impacted jurisdictions will be engaged in the development of these study efforts: and,

WHEREAS, the parties have developed this MOU to establish a framework to advance these two study efforts.

NOW, THEREFORE, in connection with the foregoing, HRTPO, HRTAC, and VDOT commit to complete the appropriate studies, designs, funding analyses, and documentation necessary to determine feasibility, permitability, and transportation benefits necessary to advance the Additional Corridors, and the parties hereby agree to the following:

1. **AGREEMENT DOCUMENTS** – The Exhibit listed below is hereby incorporated into and made part of this MOU, and this MOU and the incorporated Exhibit shall be the “Agreement Documents.” In the event of conflict among the Agreement Documents, the provisions of this MOU shall supersede the Exhibit. The studies on the Additional Corridors shall provide an assessment of probability for projects being permitted and also a traffic benefit analysis.

EXHIBIT A	Alignment Segments figure from Appendix A of the HRCS Draft SEIS
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2. **TERM & TERMINATION** – The parties will initiate the Additional Feasibility Studies and Bowers Hill Study in whole or in part at a mutually-agreeable time that does not conflict with ongoing

federal actions associated with the HRCS SEIS. The terms of this MOU will survive until the efforts described herein are completed. The terms of this MOU will be referenced in the respective Standard Project Agreements as described; however, the terms of the Standard Project Agreement will prevail over any conflicts to this MOU.

3. HRTPO'S DUTIES – Manage Additional Feasibility Studies.

HRTPO shall for the Additional Feasibility Studies:

- a. complete or cause to be completed all work relating to the Additional Feasibility Studies of the Additional Corridors, and ensure that all relevant work is completed in accordance with all applicable federal, state, and local laws and regulations, including the engagement of appropriate regional, state and federal agencies; and,
- b. lead a working group comprised of HRTPO, VDOT, HRTAC and local impacted jurisdictions; and,
- c. lead the formation of a steering committee comprised of the local jurisdictions, the U.S. Army Corps of Engineers (USACE), the U.S. Navy (Navy), the Port of Virginia, and other parties which will develop the scope of work and also determine the consultant selection approach; and,
- d. use the information collected through the Additional Feasibility Studies of the Additional Corridors to develop a regional consensus.
- e. Develop with HRTAC a separate funding agreement

4. VDOT'S DUTIES – Manage the Bowers Hill Study and support the Additional Feasibility Studies

- VDOT shall for the Bowers Hill Study:

- a. manage study under the NEPA process for the Bowers Hill Interchange (the "Bowers Hill Study") (Illustrated as Segment 1 on Exhibit A), which was also considered as a HRCS SEIS Segment but not advanced under the CTB-approved HRCS SEIS Alternative A.
- b. develop with HRTAC an agreement for the Bowers Hill Study as a separate standard project agreement between VDOT and HRTAC.

- VDOT shall for the Additional Feasibility Studies:

- a. provide input and data for the Additional Feasibility Studies.

5. HRTAC'S DUTIES – HRTAC shall provide funding for the Bowers Hill Study and the Additional Feasibility Studies and more specifically shall:

- a. Provide all funding for the Bowers Hill Study, not to exceed \$4,000,000 of the \$7,000,000 allocated; and,
- b. provide all funding for the Additional Feasibility Studies, not to exceed \$3,000,000 of the \$7,000,000 allocated;
- c. enter into funding agreements with VDOT and the HRTPO regarding the funding described in 5(a) and 5(b), respectively; and,

- d. provide input and data in its possession related to the studies and designs.
6. **CONTROLLING LAW & VENUE** – The MOU is made and entered into, and shall be performed, in the Commonwealth of Virginia, and shall be governed by the applicable laws of the Commonwealth of Virginia without regard to conflicts of law principles. Notwithstanding any other provisions of the MOU, any dispute arising out of the Agreement, or its interpretations, or its performance shall be litigated only in Richmond General District Court or the Circuit Court of the City of Richmond.
 7. **MERGER** – The Agreement Documents represent the entire agreement among the parties with respect to the subject matter hereof and supersede all prior communications and negotiations. This MOU may be modified only in writing, signed by all parties.
 8. **SEVERABILITY** – If any provision of the Agreement Documents is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement Documents shall not be affected thereby and each other provision of the Agreement Documents shall be valid and enforceable to the fullest extent permitted by law.
 9. **SOVEREIGN IMMUNITY** – No party waives or abrogates its sovereign immunity, in part or in whole, in any manner, under any theory, hereunder.
 10. **ASSIGNMENT** – This MOU shall not be assigned by any party unless express written consent is provided by all other parties.
 11. **NOTICES** – All notices under this MOU shall be sent in writing to the following representatives:
 - a. **HRTAC**

Kevin B. Page, Executive Director
The Regional Building
723 Woodlake Drive
Chesapeake, VA 23220
 - b. **HRTPO**

Robert A. Crum, Jr., Executive Director
The Regional Building
723 Woodlake Drive
Chesapeake, VA 23220

c. **VDOT**

James S. Utterback, District Administrator
1700 N. Main Street
Suffolk, VA 23434

- 12. DISPUTES** – In the event of a dispute under this MOU, the parties agree to meet and confer promptly to ascertain if the dispute can be resolved informally without the need of a third party or judicial intervention. If no satisfactory resolution can be reached via the meet and confer method, any 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 a party's right to seek equitable relief on an emergency basis.
- 13. NO AGENCY OR THIRD PARTY RIGHTS** – VDOT represents that it is not acting as a partner or agent of HRTAC or HRTPO; and nothing in this MOU shall be construed as making any party a partner or agent with any other party. This MOU 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.

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IN WITNESS WHEREOF, each party hereto has caused this Memorandum of Understanding to be executed as of the day, month, and year first herein written by its duly authorized representative.

Hampton Roads Transportation Accountability Commission

By: _____

Name: _____

Title: _____

Date: _____

Hampton Roads Transportation Planning Organization

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

Exhibit A

Figure A-1: Alignment Segments



ATTACHMENT B

**Standard Project Agreement for Funding and Administration
between
Hampton Roads Transportation Accountability Commission
and
Virginia Department of Transportation**

HRTAC Project Number:

This Standard Project Agreement for Funding and Administration (the "Agreement") is made and executed in duplicate on this ____ day of _____, 2016, as between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT").

WITNESSETH

WHEREAS, Chapter 766 of the 2013 Acts of Assembly established the Hampton Roads Transportation Fund (the "HRTF"), and provides that moneys deposited in the HRTF are to be used solely for new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23;

WHEREAS, Chapter 678 of the 2014 Acts of Assembly (now codified in Section 33.2-2600 *et seq.* of the Code of Virginia, as amended) (the "HRTAC Act") created HRTAC as a political subdivision of the Commonwealth of Virginia, and moved the responsibility to determine the projects that will be funded by the HRTF from the Hampton Roads Transportation Planning Organization to HRTAC;

WHEREAS, under Sections 33.2-2606 and 33.2-2607 of the Code of Virginia, HRTAC is also authorized to issue bonds and other evidences of debt, and to impose and collect certain tolls;

WHEREAS, Section 33.2-2611 of the Code of Virginia requires HRTAC to use all moneys it receives (the "HRTAC-Controlled Moneys"), which include, without limitation, moneys from the HRTF as well as any bond proceeds and collections from any tolls imposed by HRTAC, solely for the benefit of those counties and cities that are embraced by HRTAC, and in a manner that is consistent with the purposes of the HRTAC Act;

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 VDOT's responsibilities with respect to VDOT Highways, and HRTAC's responsibilities with respect to the application of the HRTAC-Controlled Moneys, VDOT and HRTAC entered into a Memorandum of Agreement dated March 30, 2015 (the "MOA");

WHEREAS, the MOA contemplates that HRTAC may from time to time enter into Project Agreements for Funding and Administration of projects that HRTAC selects and HRTAC requests VDOT to administer and/or develop with HRTAC Controlled Moneys;

WHEREAS, HRTAC has determined that it desires to proceed with the project set forth and described on Appendix A to this Agreement (the “Project”), and that the Project would benefit the cities and counties that are embraced by HRTAC and it otherwise satisfies the requirements of the HRTAC Act;

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; and

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 initial project budget; and

WHEREAS, HRTAC's governing body and the CTB have each authorized that their respective designee(s) execute this Agreement on their respective behalf(s) as evidenced by copies of each such entity's clerk's minutes or such other official authorizing documents which are appended hereto as Appendix E.

NOW THEREFORE, in consideration of the foregoing premises and the mutual promises, covenants, and agreements contained herein, the parties hereto agree as follows:

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 this Agreement, including, without limitation, the Project Budget and Project Schedule reflected in Appendix B, which Project Budget and Project Schedule (A) VDOT represents have been prepared in good faith, in accordance with the practices and procedures that VDOT uses for projects where the state or VDOT bears the cost of the project (including, without limitation, the practices used to price and budget services that may be internally sourced, such as Construction Engineering Inspection/CEI), and (B) the parties acknowledge may be amended pursuant to Section A.8 below or as follows:

- (a) In the event that VDOT determines, after receipt of proposals or bids for any work related to the Project, that the cost of the contract for said work will result in a significant reduction in costs associated with a portion of the Project Budget reflected in Appendix B that is allocated to work covered by the contract, then VDOT shall notify HRTAC's Executive Director of the significant reduction in costs. For purposes of this Section A.1(a), HRTAC and VDOT agree that a "significant reduction in costs" shall mean a reduction in costs that has the effect of reducing, in Appendix B, (x) the costs for the particular portion of the Project Budget allocated to work covered by the contract by more than 20 percent or (y) the entire Project Budget either by more than 10 percent or \$10,000,000, whichever applies. In the event there is a significant reduction in costs, VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the effect of the reduction (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state or federal contributions, then the commitment of each funding source would be reduced by its proportionate share of the reduction in costs, which proportionate share will be based on the funding source's proportionate responsibility for the total budgeted costs before the reduction was realized) (for the avoidance of doubt, the amount by which a commitment is reduced shall be considered deobligated from the Project).
- (b) In the event that any federal or state funding not previously available for the Project becomes available for any portion of the Project Budget reflected in Appendix B, then VDOT and HRTAC will work reasonably and in good faith to amend Appendix B to fairly reflect the benefit of the additional funding (by way of example, if the Appendix B costs are to be paid initially from both HRTAC-Controlled Moneys and state contributions, but federal funding subsequently becomes available, then the respective commitments of HRTAC and the state would be reduced by each party's proportionate share of the additional funds, which proportionate share will be based on the party's proportionate responsibility for

the total budgeted cost before the additional funding became available).

2. Without limiting the foregoing,
 - (a) VDOT shall 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) VDOT shall 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.
3. Perform or have performed in accordance with VDOT's standards for highways, bridges and tunnels all design and engineering, all environmental work, and all right-of-way acquisition, construction, contract administration, testing services, inspection services, or capital asset acquisitions, as is required by this Agreement or that may be necessary for completion of the Project pursuant to the terms of this Agreement. If VDOT determines that a delay will more likely than not prevent the completion of a material phase of the Project (e.g., PE or ROW acquisition), or the entire Project, in accordance with the Project Schedule,

VDOT shall notify HRTAC in writing and provide HRTAC with such information as HRTAC may reasonably request, including information pertaining to potential corrective measures and remedies against the contractor (if VDOT and HRTAC mutually develop a model notice for such purposes, VDOT's notice will follow the format of the model).

4. Not use any funds provided by HRTAC, including the funds specified on Appendix B, to pay any Project cost if the HRTAC Act 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 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 or breach of contract, HRTAC shall not be responsible for such additional costs.

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, 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.
13. Acknowledge that VDOT is solely responsible for the administration and/or development of the Project and all engagements, commitments and agreements with contractors. VDOT shall ensure that VDOT's contractors maintain surety bonds and insurance in amounts and with coverages that VDOT requires under its Road and Bridge Specifications for all work to be performed for the Project, and name HRTAC and its members, officers, employees and, if applicable, any HRTAC bond trustee as additional insureds on any such insurance policy, and present HRTAC with satisfactory evidence thereof before any work on the Project commences.
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.
15. Subject to and consistent with the requirements of Section F 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 for its intended purposes for the duration of the Project's useful life. If the Project is or is part of a VDOT Highway, VDOT shall be responsible to operate and/or maintain the Project after its completion (including responsibility to correct any defects or to cause any defects to be corrected), and 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). The provisions in this Section

A.15 will survive the completion of the Project under this Agreement and/or the termination of this Agreement.

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.

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. 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 assess whether the work being performed likely remains within the scope of this Agreement, the HRTAC Act and other applicable law. Such compliance reviews may entail review of VDOT's financial records for the Project and on-Project site inspections.
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.

C. Term

1. This Agreement shall be effective upon adoption and execution by both parties.

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. HRTAC will provide VDOT with sixty (60) days written notice that HRTAC is exercising its rights to terminate this Agreement and the reasons for termination. Prior to termination, if VDOT has substantially completed the Project or a portion that is severable (meaning it is subject to independent use), VDOT may request that HRTAC excuse VDOT from refunding funds paid in respect of the substantially completed Project or portion, and HRTAC may, in its sole discretion, excuse VDOT from refunding all or a portion of the funds HRTAC provided to VDOT for the substantially completed Project or portion thereof. No such request to be excused from refunding will be allowed where VDOT has either misused or misapplied HRTAC funds in contravention of this Agreement or applicable law.
4. Upon termination and 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 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.

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 and in accordance with applicable law throughout the useful life of each such Asset. 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, 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 of the HRTAC Act (without limiting the foregoing, VDOT acknowledges that under the HRTAC Act and applicable law, HRTAC is vested with the right to impose and collect tolls on facilities constructed by the Commission). 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. 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

H. Assignment

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

I. 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) If HRTAC proposes to issue bonds, 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 the bond offering, including, without limitation, tax covenants of the type made by VDOT under its Project Agreements with the Northern Virginia Transportation Authority.

J. 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.

K. 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.

L. Sovereign Immunity

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

M. 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.

N. 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.

O. Governing Law

This Agreement is governed by the laws of the Commonwealth of Virginia.

[Signature page follows]

IN WITNESS WHEREOF, each party hereto has caused this Agreement to be executed as of the day, month, and year first herein written by their duly authorized representatives.

Hampton Roads Transportation Accountability Commission

By: _____

Name: _____

Title: _____

Date: _____

Virginia Department of Transportation

By: _____

Name: _____

Title: _____

Date: _____

APPENDIX A

PROJECT

NARRATIVE DESCRIPTION OF STANDARD PROJECT SERVICES

HRTAC Project Title:

Recipient Entity: Virginia Department of Transportation

VDOT Program Manager Contact Information:

HRTAC Executive Director:

Project Scope

Detailed Scope of Services

**APPENDIX B
PROJECT BUDGET, PROJECT SCHEDULE, AND CASHFLOW**

APPENDIX B-PROJECT BUDGET & CASH FLOW

PROJECT IDENTIFICATION AND PROPOSED FUNDING

HRTAC Project Title: _____
 Scope of Project Services: _____
 Recipient Entity: Virginia Department of Transportation
 VDOT Project Contact: _____
 Baseline Schedule: _____

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						
Environmental Work						
Right-of-Way Acquisition		\$ -				
Construction						
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Other						
Total Estimated Cost	\$ -	\$ -	\$ -	\$ -		\$ -

FISCAL YEAR ANNUAL PROJECT CASH FLOW

Project Phase	Total Fiscal Year 2020		Total Fiscal Year 2021		Total Fiscal Year 2022	
	PayGo	Financed	PayGo	Financed	PayGo	Financed
Design Work						
Engineering						
Environmental Work						
Right-of-Way Acquisition						
Construction						
Contract Administration						
Testing Services						
Inspection Services						
Capital Asset Acquisitions						
Other						
Total Estimated Cost		\$ -	\$ -	\$ -	\$ -	\$ -

Please Note: If additional years are needed, please submit a separate form with additional columns

FISCAL YEAR ESTIMATED PROJECT CASH FLOW

	FY 20 Mthly Cash Flow		FY 21 Mthly Cash Flow		FY 22 Qtrly Cash Flow	
	PayGo	Financed	PayGo	Financed	PayGo	Financed
July						
August						
September						
October						
November						
December						
January						
February						
March						
April						
May						
June						
Total per Fiscal Year	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -

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
Charles A. Kilpatrick, P.E.

Print name of person signing

Date
William D. Sessoms, Jr

Print name of person signing

APPENDIX C

FORM OF PAYMENT REQUISITION

HRTAC Project Title and Number: _____

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

Draw Request Number: _____

Date: _____, 20__

Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, VA 23320

Attention _____, Program Coordinator:

This requisition is submitted in connection with the Standard Project Agreement for Funding and Administration for the project services noted above and dated _____, 20__ (the "Agreement") between the Hampton Roads Transportation Accountability Commission ("HRTAC") and the Virginia Department of Transportation ("VDOT"). VDOT hereby requests \$_____ of HRTAC funds, to pay the costs of the project services described and set forth in Appendices A and B of the Agreement ("Project Services") and in accordance with the Agreement. Also included are copies of each invoice relating to the items for which this requisition is requested.

The undersigned certifies (i) the amounts included within this requisition will be applied solely and exclusively for the payment or the reimbursement of VDOT's costs of the Project Services, (ii) VDOT is responsible for payment to vendors/contractors, (iii) VDOT is not in breach or default with respect to any of its obligations under the Agreement, including without limitation (but only if applicable) the tax covenants set forth in another Appendix to the Agreement, (iv) the representations and warranties made by VDOT in the Agreement are true and correct as of the date of this Requisition and (v) to the knowledge of VDOT, no condition exists under the Agreement that would allow HRTAC to withhold the requested advance.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

Recommended For Payment

By: _____

Name: _____

Title: HRTAC Program Coordinator

DETAILED PAYGO REQUEST

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

Cost Category	HRTAC Approved Project Costs	Total PayGo Requests Previously Received	PayGo Requisition Amount this Period	Remaining PAYGO Project Budget (Calculation)
Project Starting Balance	\$ -			\$ -
Design Work	\$ -	\$ -	\$ -	\$ -
Engineering	-	-	-	\$ -
Environmental Work	-	-	-	\$ -
Right-of-Way Acquisition	-	-	-	\$ -
Construction	-	-	-	\$ -
Contract Administration	-	-	-	\$ -
Testing Services	-	-	-	\$ -
Inspection Services	-	-	-	\$ -
Capital Asset Acquisitions	-	-	-	\$ -
Other (please explain)	-	-	-	\$ -
TOTALS	\$ -	\$ -	\$ -	\$ -

LISTING OF ATTACHED INVOICES

Vendor/Contractor Name	Item Number	Invoice Number	Cost Category	Amount
	1			\$ -
	2			-
	3			-
	4			-
	5			-
	6			-
	7			-
	8			-
	9			-
	10			-
	11			-
	12			-
Requisition Amount				\$ -

Instructions

1. Column B-Please list approved PayGo Project Cost per category.
2. Column C-Please list Total PayGo Amounts per Category Previously Reimbursed by HRTAC
3. Column D- Please list invoice amounts summarized by Category from the Listing of Attached Invoices
4. Column E - Is a calculation of the Remaining PAYGO Budget per Category

Instructions-Listing of Attached Invoices: (please list each invoice separately)

1. Column A- Please list the name as it appears on the Invoice
2. Column B- Please manually number the invoices attached with the corresponding Item number in this schedule.
3. Column C- Please list the invoice number as it appears on the Invoice
4. Column D- Please list the appropriate Cost Category based on the Project Category breakout above
5. Column E- Please enter the dollar amount listed on the invoice.
6. The calculated Requisition Amount should equal the total in Column D in the Schedule above.

APPENDIX D

REPORTS TO BE PROVIDED BY VDOT

1) Monthly Project Expenditure Report which lists, by category of expense (*e.g.*, engineering, ROW, utility relocations, construction), (a) information regarding expenditures to date against the budget, both monthly and for the life of the project, and a statement of the percent completed; and (b) such other information as VDOT customarily provides with monthly expenditure reports

2) Monthly Project Report which provides (a) an overview of progress on major project tasks; (b) information regarding the budget (such as, the baseline planned forecast, any approved changes thereto, the monthly expenditures, the cumulative expenditures, and the cumulative forecasted expenditures); (c) future key tasks; and (d) significant issues.

APPENDIX E

OFFICIAL AUTHORIZING DOCUMENTS