



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

W. Sheppard Miller III
Chairperson

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Agenda item # 13

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

September 20, 2023

MOTION

Made By: Mr. Stant Seconded By: Mr. Coleman

Action: Motion Carried, Unanimously

Title: Authorization for the Commissioner of Highways to Execute an Amendment to the PAFA for the Hampton Roads Bridge-Tunnel Expansion Project Between the Virginia Department of Transportation and the Hampton Roads Transportation Accountability Commission

WHEREAS, the Virginia Department of Transportation (“VDOT”) and the Hampton Roads Transportation Accountability Commission (“HRTAC”) have entered into that certain Amended and Restated Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (the “**HRBT Expansion Project**”), dated as of December 16, 2021, and effective as of the dates set forth therein (the “**HRBT PAFA**”); and

WHEREAS, VDOT has entered into that certain Comprehensive Agreement Relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 3, 2019 (the “**Comprehensive Agreement**”), with Hampton Roads Connector Partners (the “**Design-Builder**”); and

WHEREAS, the Design-Builder has presented to VDOT schedule updates and requests for contract adjustment time and price adjustments asserting that the planned substantial completion of the HRBT Expansion Project has been impacted by delays and the unexpected escalation of costs of various commodities; and

WHEREAS, VDOT has engaged in negotiations with the Design-Builder regarding such impacts to the planned substantial completion of the HRBT Expansion Project; and

Resolution of the Board

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WHEREAS, to resolve the certain outstanding matters as between VDOT and the Design-Builder and to facilitate the success of the HRBT Expansion Project and the timely completion of the necessary design and construction work, VDOT intends to amend the Comprehensive Agreement (such amendment, the “**CA Amendment**”); and

WHEREAS, VDOT and HRTAC seek to modify the HRBT PAFA, substantially in the form as shown in the amendment to the HRBT PAFA attached as Exhibit A hereto, to support the successful completion of the HRBT Expansion Project, and as necessary to facilitate through a modification of the Comprehensive Agreement; and

WHEREAS, at the September 2023 Board Workshop, the Board was briefed on the status of the HRBT Expansion Project and the basis for a CA Amendment, as well as the proposed amendment to the HRBT PAFA.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby approves and authorizes the Commissioner of Highways to: (i) execute and deliver an amendment to the HRBT PAFA, which incorporates modifications to the HRBT PAFA substantially similar to those set forth in Exhibit A hereto, with such changes and modifications deemed necessary by the Commissioner of Highways; and (ii) execute and deliver such other documents as may be necessary to implement the matters addressed in such amendment to the HRBT PAFA.

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Board Decision Brief

Authorization for Commissioner to Execute an Amendment to the PAFA for the Hampton Roads Bridge-Tunnel Expansion Project Between the Virginia Department of Transportation and the Hampton Roads Transportation Accountability Commission

Issue: The Virginia Department of Transportation (“VDOT”) seeks authorization from the Commonwealth Transportation Board (the “**Board**”), pursuant to the Board’s authority under §33.2-214(C) of the Code of Virginia to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes, for the Commissioner of Highways (the “**Commissioner**”) to enter into an amendment to the HRBT PAFA (defined below) with the Hampton Roads Transportation Accountability Commission (“**HRTAC**”).

Facts: VDOT and HRTAC have entered into that certain Amended and Restated Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (the “**HRBT Expansion Project**”), dated as of December 16, 2021, and effective as of the dates set forth therein (the “**HRBT PAFA**”). VDOT has entered into that certain Comprehensive Agreement Relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project, dated as of April 3, 2019 (the “**Comprehensive Agreement**”), with Hampton Roads Connector Partners (the “**Design-Builder**”). Under the HRBT PAFA, VDOT is responsible for the development, design, construction, and administration of the HRBT Expansion Project and HRTAC, pursuant to its authority under §§ 33.2-2600 *et seq.* of Code of Virginia, provides the primary funding for the HRBT Expansion Project (up to a defined maximum financial commitment). In order to resolve certain outstanding matters as between VDOT and the Design-Builder with respect to the ongoing design and construction of the HRBT Expansion Project, and to otherwise facilitate the success and timely completion of the design and construction work, VDOT intends to amend the Comprehensive Agreement (such amendment, the “**CA Amendment**”). VDOT has determined that it is necessary to make certain modifications to the HRBT PAFA in order for VDOT to enter into, implement, and administer the CA Amendment.

In general, such modifications to the HRBT PAFA include:

- (1) confirming HRTAC’s consent to VDOT entering into a CA Amendment;
- (2) modifying existing terms in the HRBT PAFA addressing increases to the contract price for the HRBT Expansion Project (the “**Contract Price**”) to allow for the indexing of reimbursement for specified commodities specific to the HRBT Expansion Project to certain established price indexes or other benchmarks and establishing a \$373,119,941 million cap on the aggregate amount of such increases to the Contract Price;
- (3) setting forth a commitment from HRTAC to provide \$53,812,130 in supplemental contingency funds;
- (4) setting forth a commitment from VDOT to provide \$53,812,130 in matching supplemental contingency funds, which funds are expected to be obtained from the Interstate Operations and Enhancement Program funding;
- (5) modifying terms of the PAFA, which address how VDOT and HRTAC are to proceed in the event contingency funds fall below specified thresholds, to reflect

the commitments made by HRTAC and VDOT to identify funds and discuss other potential options;

- (6) modifying the milestone dates on which the Design-Builder may earn the No Excuses Incentive Payment, or a portion thereof, to align with the terms of the CA Amendment;
- (7) confirming HRTAC's consent to VDOT's modifications of the manner by which VDOT compensates the Design-Builder to include the establishment in the CA Amendment of a "Funding Advances" system; and
- (8) addressing other outstanding work order items and certain other potential adjustments as part of the CA Amendment and confirming HRTAC's consent to same.

Recommendations: VDOT recommends that the Board authorize the Commissioner to enter into the proposed amendment to the HRBT PAFA, substantially in the form attached hereto as Exhibit A, with such changes as the Commissioner deems necessary or appropriate.

Actions Required by the Board: The Board will be presented with a resolution for a formal vote to authorize the Commissioner to: (i) enter into/execute the amendment to the HRBT PAFA, substantially in the form attached hereto as Exhibit A, with such changes as the Commissioner deems necessary or appropriate; and (ii) enter into/execute such other documents as may be necessary to implement the matters addressed such amendment to the HRBT PAFA.

Result, if Approved: VDOT would enter into the amendment to the HRBT PAFA, and the HRBT Expansion Project would continue to be funded and administered in accordance with the HRBT PAFA, as so amended.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None.

EXHIBIT A

PROPOSED AMENDMENT TO HRBT PAFA

[See attached]

**FIRST AMENDMENT TO AMENDED AND RESTATED
PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION**

This FIRST AMENDMENT TO AMENDED AND RESTATED PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION FOR THE I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION PROJECT (this “**Amendment**”) is made, entered into, and effective as of [_____] [___], 2023, by and between the HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION (the “**Commission**”), a body politic and a political subdivision of the Commonwealth of Virginia, and the VIRGINIA DEPARTMENT OF TRANSPORTATION (the “**Department**”), an agency of the Commonwealth of Virginia (each a “**Party**” and, together, the “**Parties**”).

RECITALS

WHEREAS, the Commission and the Department have entered into that certain Amended and Restated Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (the “**Agreement**”), dated as of December 16, 2021, and effective as of the dates set forth in Section 1.02 (*Interpretation; Effective Dates*) thereof, as amended, for the Project, as identified and described in the Agreement;

WHEREAS, in order to achieve the design and construction of the Project, the Department has entered into that certain Comprehensive Agreement (the form of which is attached to the Agreement as Exhibit 8 (*Form of Comprehensive Agreement*)), dated April 3, 2019, with Hampton Roads Connector Partners (the “**Design-Builder**”);

WHEREAS, in order to resolve certain outstanding issues as between the Department and the Design-Builder with respect to the ongoing design and construction of the Project, and to otherwise facilitate timely completion of the design and construction of the Project, the Department intends to enter into that certain First Amendment to Comprehensive Agreement (the “**CA Amendment**”), the form of which is attached to this Amendment as Exhibit 8A (*Form of CA Amendment*), with the Design-Builder;

WHEREAS, the Commission and the Department each acknowledge and agree that the implementation of the CA Amendment is essential in order to achieve the design and construction of the Project;

WHEREAS, the Commission and the Department each further acknowledge and agree that certain modifications to the terms of the Agreement are necessary or otherwise desirable in order for the Department to implement and carry out the terms of the CA Amendment; and

WHEREAS, the Commission and the Department desire to amend the Agreement on the terms set forth herein to provide for the modifications necessary or otherwise desirable in order for the Department to implement and carry out the terms of the CA Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions; Interpretation.** Each capitalized term used and not otherwise defined herein shall have the respective meaning assigned to such term in the Agreement. For the avoidance of doubt, in the event of a conflict between the terms of this Amendment and the Agreement, the terms of this Amendment shall control.

2. **CA Amendment.** For purposes of Section 4.01(b) (*General Obligations of the Department (Delivery)*) of the Agreement, the Commission consents to the Department entering into the CA Amendment with the Design-Builder on or before [_____] [___], 2023. The final, complete form of the CA Amendment shall be in substantially the form attached hereto as Exhibit 8A (Form of CA Amendment), which the Department and the Commission expressly acknowledge and agree will, among other things, reset the Substantial Completion Deadline and the Final Completion Deadline, each referenced in Sections 4.01(d) (*General Obligations of the Department (Delivery)*) and 4.08 (*Delay Liquidated Damages and Other Damages and Recoveries*) of the Agreement. Before executing and delivering the CA Amendment, the Department shall provide the Commission with the final, complete form of the CA Amendment (including all exhibits, appendices, and attachments thereto) and shall identify all modifications to the form attached hereto as Exhibit 8A (Form of CA Amendment). The Department shall not incorporate any material modification into the final, complete form of the CA Amendment, or thereafter make any material amendment to the CA Amendment, except for any Work Order entered into in accordance with Section 4.03 (*Work Orders Increasing the Contract Price; Claims*) of the Agreement. Following execution of the CA Amendment by the Department and the Design-Builder, all references in the Agreement to “Comprehensive Agreement” shall be deemed to mean the Comprehensive Agreement, as amended by the CA Amendment.

3. **Project Budget.** The Project Budget appended to the Agreement as Exhibit 3 (*Project Budget*) is hereby amended, replaced, and otherwise superseded by the Project Budget attached hereto as Amended Exhibit 3 (Amended Project Budget).

4. **Estimated Costs and Payout Schedule.** The Estimated Costs and Payout Schedule appended to the Agreement as Exhibit 5 (*Estimated Costs and Payout Schedule*) is hereby amended, replaced, and otherwise superseded by the Estimated Costs and Payout Schedule attached hereto as Amended Exhibit 5 (Amended Estimated Costs and Payout Schedule).

5. **Contract Price Increases from Commodities Adjustments.** Exhibit 9 (*Unit Price Work and Commodity Adjustment Items*) to the Agreement, referenced primarily in Section 4.05 (*Contract Price Increases from Unit Price Work or Commodities Adjustments*) of the Agreement, is hereby amended, replaced, and otherwise superseded by Amended Exhibit 9 (Amended Unit Price Work and Commodity Adjustment Items) attached hereto; *provided, however*, that the Department shall administer any and all related adjustments in accordance with the Comprehensive Agreement, as amended by the CA Amendment, including, without limitation, (a) Sections 6 (*Adjustments to Asphalt, Fuel, and Steel*), 7 (*Adjustments to Certain Other*

Commodities), 9 (*Miscellaneous Terms Relating to Commodity Adjustments*), and 10.a (*Compensation Constraint Relating to Commodity Adjustments*) of the CA Amendment and (b) the \$373,119,941 aggregate cap set forth in the CA Amendment as the “NTE Amount” in respect of amounts paid as a result of the application of the Materials Adjustment Provisions (as defined in the CA Amendment). For the avoidance of doubt, the Department shall not increase the NTE Amount or make amendments to the CA Amendment or any of the exhibits thereto that set forth the Materials Adjustments Provisions unless, in each case, the Department obtains the Commission’s prior written consent, which may be granted, withheld, or conditioned by the Commission in its sole discretion.

6. **Amendments to Section 3.04 (Maximum Cumulative Compensation Amount under Comprehensive Agreement)**. Section 3.04 (*Maximum Cumulative Compensation Amount*) of the Agreement is hereby amended by inserting the following new subsection:

(e) The Parties acknowledge that under the CA Amendment (specifically, Exhibit 28 (*Funding Advances*) thereof), the manner by which the Department will compensate the Design-Builder is being modified to establish a system by which the Department may make “Funding Advances” (such term, and the terms “Funding Advances Account” and “Disbursement Account,” shall have the meanings given in the CA Amendment) to the Design-Builder. In consenting to the CA Amendment, the Commission consents to the establishment of such system in accordance with the terms of the CA Amendment. The Parties acknowledge and agree that while such system is in effect, in lieu of the Commission funding the Department in conformity with Subsections (a) [through (c)] of Section 3.04 (*Maximum Cumulative Compensation Amount Under Comprehensive Agreement*) and Section 5.02(a) (*Payment Requisitions*) of the Agreement, the Commission shall provide the Department the funds required to make such Funding Advances in accordance with the following: _____; *provided, however*, that _____ . If the Department suspends or terminates the Funding Advance system under the CA Amendment, then the terms of Subsections (a) [through (c)] of Section 3.04 (*Maximum Cumulative Compensation Amount Under Comprehensive Agreement*) shall apply. The Department shall take reasonable steps to ensure that the Design-Builder only uses the proceeds of any Funding Advance to pay for costs and expenses arising from or relating to undisputed elements of the Work and approved Work Orders, with priority given to the payment of Design Consultants and Subcontractors (such payments to be made by the Design-Builder in a timely manner and not later than when required under the Comprehensive Agreement). Funding Advances shall not (i) increase the Contract Price, (ii) modify the Target Earnings Schedule (as defined in the CA Amendment), or (iii) modify the Maximum Cumulative Compensation Amount. Funding Advances shall otherwise be subject to recovery or claw back from the Design-Builder pursuant to terms set forth in the Comprehensive Agreement. Any Funding Advance moneys (including any interest) recovered or clawed back from the Design-Builder or the Funding Advances Account or the Disbursement Account pursuant to the terms of the Comprehensive Agreement shall be paid to the Commission promptly and thereafter constitute Commission-Controlled Moneys available as part of the Maximum Commission Financial Commitment.

7. **Amendment to Section 3.09 (Additional Costs; Claims)**. The last sentence of Section 3.09(a) (*Additional Costs; Claims*) of the Agreement is hereby deleted in its entirety and replaced as follows:

If the Department notifies the Commission that Additional Costs may be incurred, then, subject to clause (d) below, the Parties will collaborate and consider the following solutions (in order of priority):

- (i) reducing the Project scope, re-engineering, and/or considering value engineering options;
- (ii) identifying other funding sources; and
- (iii) terminating the Comprehensive Agreement.

8. **Amendments to Section 3.11 (Funding the South Island Trestle Bridge Replacement Work)**. The heading of Section 3.11 (*Funding the South Island Trestle Bridge Replacement Work*) is hereby amended to read as follows: “**Section 3.11 Funding the South Island Trestle Bridge Replacement Work and Reversal Work**” and Section 3.11 is hereby further amended by inserting the following new subsection:

(e) The Department shall be solely responsible for paying the costs of the Reversal Work. The Department has identified a funding source for the Reversal Work, other than Commission-Controlled Moneys (or the Aggregate Supplemental Contingency), or toll-backed financing. The Department shall procure the goods and services in respect of the Reversal Work in conformity with the terms of the Master Tolling Agreement, including, without limitation, Sections 3.01 and 3.02 thereof, and, without limiting the foregoing, in connection with contracting for such goods and services, the Department shall confer with the Commission regarding the liquidated damages (for the benefit of the Commission) that will be assessed against the applicable contractor(s) for late completion under the applicable contract(s).

9. **Amendments to Section 4.03 (Work Orders Increasing the Contract Price; Claims)**. Clauses (iii), (iv), and (v) of Section 4.03(d) (*Work Orders Increasing the Contract Price*) of the Agreement are hereby deleted in their entirety and replaced as follows:

(iii) for the period between the Department’s issuance of NTP and the date on which the Design-Builder completes tunnel excavation work, the Minimum Commission-Supported Contingency Amount shall be equal to [fifteen percent (15%)] of the sum of (x) the amount of the Base Contingency Reserve *plus* (y) the amount of the Aggregate Supplemental Contingency;

(iv) for the period between the Design-Builder’s completion of the tunnel excavation work and the Final Completion Date, the Minimum Commission-Supported Contingency Amount shall be equal to [seven percent (7%)] of the sum of (x) the amount of the Base Contingency Reserve *plus* (y) the amount of the Aggregate Supplemental Contingency; and

(v) for the period between the Final Completion Date and the date on which all claims relating to the Project are resolved, the Minimum Commission-Supported Contingency Reserve shall be equal to \$0.

10. **Amendments to Section 4.04 (Intentionally Omitted)**. Section 4.04 (*Intentionally Omitted*) of the Agreement is hereby deleted in its entirety and replaced as follows:

Section 4.04 Supplemental Funding for Contingency Reserve; De-Scoped Work

The Parties acknowledge and agree as follows:

(a) As of [●], the amount of the Commission-Supported Contingency Reserve remaining is \$265,495,663 (the “**Base Contingency Reserve**”).

(b) In order to provide additional support for the Base Contingency Reserve, (i) the Commission hereby commits to provide an additional \$53,812,139 to the Commission-Supported Contingency Reserve (the “**Supplemental Commission Contingency**”) and (ii) the Department hereby commits to provide an additional \$53,812,139 to match the Supplemental Commission Contingency (the “**Supplemental Department Contingency**”) and, together with the Supplemental Commission Contingency, the “**Aggregate Supplemental Contingency**,” which, for the avoidance of doubt, equals \$107,624,278). The Aggregate Supplemental Contingency shall be used after the Base Contingency Reserve is reduced to \$0, and each time any funding for Project costs (or any Funding Advance) is required out of the Aggregate Supplemental Contingency, it shall be funded by the Commission and the Department in equal halves (i.e., 50%/50%).

(c) The rules set forth in Section 3.09 (*Additional Costs; Claims*) related to collaboration regarding solutions shall apply after (i) *first*, the funds committed pursuant to subsections (a) and (b) of this Section 4.04 (Supplemental Funding for Contingency Reserve; De-Scoped Work) have been exhausted (in that order), and (ii) *second*, the Commission has funded its entire Maximum Commission Financial Commitment (including the \$8,530,419 referenced in Section 3.08(f) (*Availability of Contingency Reserves; Tracking*)) with funds that may be legally available to it. In such event, consistent with (and without limiting) Section 3.09(a) (*Additional Costs; Claims*), as part of their collaboration to identify other funding sources that may be available to the Parties, the Parties will investigate, and coordinate efforts regarding, programs (federal, state, and other) that may be legally available.

(d) By _____, dated _____, the Comprehensive Agreement was amended to reduce the scope of the work (as more specifically stated therein, the “**De-Scoped Work**”), and to reduce the Contract Price (as defined in the Comprehensive Agreement) by the value of such De-Scoped Work; specifically, \$53,812,139 (the “**De-Scoped Value**”). The Department will engage a third-party contractor to complete the De-Scoped Work and the Commission has committed to provide \$53,812,139 in connection therewith. Accordingly, the amount of the Base Contingency Reserve stated in Section

4.04(a) (*Supplemental Funding for Commission-Supported Contingency Reserve*) of this Amendment is derived net of the De-Scoped Value. In lieu of reducing the amount of the Maximum Commission Financial Commitment in connection with such change and then increasing it to reflect the Commission’s supplemental commitment under Section 4.04(b) (*Supplemental Funding For Commission-Supported Contingency Reserve*) of this Amendment, the Maximum Commission Financial Commitment shall remain \$3,562,000,000. Attached hereto as Annex 1 (*Revised Project Description*) is a revised description of the Project and its geographic termini.

(e) For the avoidance of doubt, if the Base Contingency Reserve is exhausted, the Department’s special reimbursement right under Section 3.07(a) (*Administration Costs*) of the Agreement with respect to Administration Costs in excess of the Admin Cost Subcap shall cease to apply.

11. **Amendments to and re: Section 4.07 (*No Excuses Incentive Payment*)**. Subsection (a) of Section 4.07 (*No Excuses Incentive Payment*) is hereby deleted in its entirety and replaced as shown below. For the avoidance of doubt, the amount of the No Excuses Incentive Payment (as defined below), including the circumstances in which it is earned by the Design-Builder, shall be determined in strict conformity with the CA Amendment.

(a) The Department shall include in the Comprehensive Agreement a mechanism by which the Design-Builder may earn a no excuses incentive payment for the early achievement of Substantial Completion (the “No Excuses Incentive Payment”) in an amount not to exceed ninety million dollars (\$90,000,000). The amount of the No Excuses Incentive Payment shall decline progressively to zero dollars (\$0) over a six-month period during which the Design-Builder may achieve Substantial Completion, with no incentive payable if Substantial Completion is achieved on or after February 26, 2027, as such date may be adjusted pursuant to the terms of the CA Amendment. For the avoidance of doubt, the Department shall not make any modification to such mechanism without the Commission’s prior written consent, which may be granted, withheld, or conditioned by the Commission in its sole discretion.

12. **Amendments to Section 4.09 (*Optional Work: I-564 Direct Connections; Bridge Repair Option Work*)**. Section 4.09 (Optional Work: I-546 Direct Connections; Bridge Repair Option Work) is hereby deleted in its entirety and replaced as follows:

[Intentionally Omitted.]

13. **Amendments to Exhibit 1**. The following definitions are hereby deleted in their entirety and replaced as follows:

“**Comprehensive Agreement**” means that certain Comprehensive Agreement Relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project dated as of April 3, 2019, by and between the Department and the Design-Builder, as amended by that certain First Amendment to Comprehensive Agreement dated as of September [], 2023, and as further amended consistent with its terms and the terms of this Agreement.

14. **New Defined Terms Added to Exhibit 1.** The following definitions are hereby added to Exhibit 1:

“**Aggregate Supplemental Contingency**” is defined in Section 4.04(b) (Supplemental Funding for Contingency Reserve).

“**Base Contingency Reserve**” is defined in Section 4.04(a) (Supplemental Funding for Contingency Reserve).

“**De-Scoped Work**” is defined in Section 4.04(d) (Supplemental Funding for Contingency Reserve).

“**De-Scoped Value**” is defined in Section 4.04(d) (Supplemental Funding for Contingency Reserve).

“**Reversal Work**” means all modifications, improvements and replacements (including, without limitation, all goods and services required to engineer, design, construct and otherwise install and implement such modifications, improvements and replacements) to the ventilation and lighting systems and equipment in the existing eastbound tunnel that are required to reverse the direction of travel in the existing eastbound tunnel (the Design-Builder’s scope of work under the Comprehensive Agreement, as further described in Section 3.b (*No Excuses Incentive Payment*) of the CA Amendment, has been modified to exclude such modifications, improvements and replacements).

“**Supplemental Commission Contingency**” is defined in Section 4.04(b) (Supplemental Funding for Contingency Reserve).

“**Supplemental Department Contingency**” is defined in Section 4.04(b) (Supplemental Funding for Contingency Reserve).

15. **No Modification.** This Amendment is limited to the matters set forth herein and shall not constitute a modification or waiver of any other provision of the Agreement. Except as modified hereby, all other terms of the Agreement shall remain full force and effect. For the avoidance of doubt (and without limiting the foregoing), the Parties expressly agree that Section 7.09 (*No Personal Liability or Creation of Third Party Rights*) of the Agreement shall apply to this Amendment.

16. **Counterparts.** This Amendment may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have executed this First Amendment to Amended and Restated Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project as of the date first written above.

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

By: _____

Name: _____

Title: _____

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

By: _____

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

AMENDED EXHIBIT 3

Amended Project Budget

(see attached)

AMENDED EXHIBIT 5

Amended Estimated Costs and Payout Schedule

(see attached)

EXHIBIT 8A

CA Amendment

(see attached)

AMENDED EXHIBIT 9

Amended Unit Price and Commodity Adjustment Items

(see attached)

ANNEX 1

REVISED PROJECT DESCRIPTION

(see attached)