



# COMMONWEALTH of VIRGINIA

## *Commonwealth Transportation Board*

Shannon Valentine  
Chairperson

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*Agenda item # 8*

### RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

December 11, 2019

#### MOTION

**Made By: Mr. Malbon, Seconded By: Mr. Miller**  
**Action: Motion Carried, Unanimously**

**Title: Delegation of Authority for Commissioner of Highways to Enter into an Amendment and Termination of Standard Project Agreement between VDOT and Hampton Roads Transportation Accountability Commission (HRTAC) for the Route 460/58/13 Connector Study/Project (UPC 106694)**

**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 Hampton Roads Transportation Fund (HRTF) to fund new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23; and

**WHEREAS**, pursuant to §33.2-2608 the HRTAC may enter into contracts or agreements necessary or convenient for the performance of its duties and the exercise of its powers under Chapter 26; and

**WHEREAS**, §33.2-214 (C) of the Code of Virginia empowers the Commonwealth Transportation Board (Board) to enter into contracts with local districts, commissions, agencies, or other entities created for transportation purposes; and

**WHEREAS**, in accord with approval and delegation by the Board, dated July 28, 2016, the Commissioner of Highways executed a Standard Project Agreement, dated as of November 9, 2016, between VDOT and HRTAC for Funding and Administration of the Route 460/58/13 Connector Study (UPC 106694) (the “Project” or “Study”), whereby HRTAC provided \$5,000,000 in funding for the Study; and

**WHEREAS**, VDOT utilized a portion of the HRTAC Funding to perform a traffic analysis relating to the Route 460/58/13 Connector Study and concluded that the existing facilities accommodate travel demands through 2040 and no further study is required at this time; and

**WHEREAS**, VDOT has notified HRTAC that all invoices arising from work on the Project have been paid and that there remains \$3,904,632.42 in unexpended HRTAC-controlled funds that were obligated for the Study; and

**WHEREAS**, HRTAC and VDOT staff have developed an Amendment and Termination document, which makes technical amendments to the Standard Project Agreement, to allow and provide for termination of the Standard Project Agreement and release of the unexpended funding for the Study to HRTAC for other uses (“Amendment and Termination of Standard Project Agreement”); and

**WHEREAS**, the Amendment and Termination of Standard Project Agreement was approved by the HRTAC on November 21, 2019; and

**WHEREAS**, VDOT has requested that the Board authorize the Commissioner to execute the Amendment and Termination of Standard Project Agreement, attached hereto as Exhibit A, in order to terminate the Standard Project Agreement with HRTAC regarding preliminary engineering relating to the Route 460/58/13 Connector Study and to release the unexpended portion of the HRTAC-controlled funds, totaling \$3,904,632.42, for other uses.

**NOW, THEREFORE, BE IT RESOLVED**, the Commonwealth Transportation Board hereby approves and authorizes the Commissioner of Highways to execute the Amendment and Termination of Standard Project Agreement, in substantially the same form as Exhibit A with such changes and additions as the Commissioner deems necessary, in order to terminate the Standard Project Agreement with HRTAC regarding administration and funding for the Route 460/58/13 Connector Study and to release the unexpended portion of the HRTAC-controlled funds obligated thereto, totaling \$3,904,632.42, for other uses.

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## CTB Decision Brief

### Delegation of Authority for Commissioner of Highways to Enter into an Amendment and Termination of the Standard Project Agreement between VDOT and Hampton Roads Transportation Accountability Commission (HRTAC) for Route 460/58/13 Connector Study/Project

**Issue:** On November 9, 2016 and in accord with approval and delegation by the Commonwealth Transportation Board (CTB), dated July 28, 2016, the Commissioner of Highways executed a Standard Project Agreement between VDOT and HRTAC for Funding and Administration of the Route 460/58/13 Connector Study (UPC 106694) (the “Project” or “Study”), whereby HRTAC provided \$5,000,000 in funding for the Study. Subsequently and pursuant to the Standard Project Agreement, VDOT performed a traffic analysis of the Route 460/58/13 connector and concluded that the existing facilities accommodate travel demands through 2040 and no further study is required at this time. Accordingly, to release HRTAC funds remaining on the project, amendment and termination of the Standard Project Agreement between VDOT and HRTAC is necessary and VDOT seeks approval of and authorization by the CTB for the Commissioner of Highways to execute the amendment and termination document.

**Facts:** HRTAC and VDOT entered into a Standard Project Agreement, dated as of November 9, 2016, for Funding and Administration of the Route 460/58/13 Connector Study (UPC 106694). Since that time, VDOT has performed a traffic analysis of the Route 460/58/13 connector and concluded that the existing facilities accommodate travel demands through 2040 and that no further study is required at this time. Accordingly, VDOT recommended to the Hampton Roads Transportation Planning Organization (“HRTPO”) and HRTAC that the Project be terminated and that the unexpended HRTAC-Controlled Funds provided pursuant to and addressed by the Standard Project Agreement be released to HRTAC.

The HRTPO responded to VDOT’s recommendation by taking action on November 14, 2019 to approve termination of the Project. VDOT has notified HRTAC that all invoices arising from work on the Study have been paid and that the resulting unexpended portion of the HRTAC-controlled funds (none of which is in VDOT’s possession) totals \$3,904,632.42.

HRTAC staff concurs with the amount of the unexpended portion of the HRTAC-Controlled funds. Accordingly, HRTAC and VDOT staff have developed an Amendment and Termination document, attached hereto as Exhibit A, which makes technical amendments to the Standard Project Agreement to allow and provide for termination of the Standard Project Agreement, and release of the unexpended funding for the Route 460/58/13 Study to HRTAC for other uses (“Amendment and Termination of Standard Project Agreement”). The Amendment and Termination of Standard Project Agreement was approved by the HRTAC on November 21, 2019.

Section 33.2-214 C of the *Code of Virginia* empowers the CTB to enter into contracts (agreements) with local districts, commissions, agencies or other entities created for transportation purposes and VDOT seeks approval and delegation of the CTB for the Commissioner to execute the Amendment and Termination of Standard Project Agreement, relating to termination and release of funding for the Route 460/58/13 Connector Study, attached hereto as Exhibit A.

**Recommendation:** VDOT recommends that the CTB approve and authorize the Commissioner to execute the Amendment and Termination of Standard Project Agreement, relating to termination of and release of funding for the Route 460/58/13 Connector Study.

**Action Required by the CTB:** Approve by majority vote the resolution providing for termination of the standard project agreement and release of HRTAC funds for the Route 460/58/13 Connector Study, in the amount of \$3,904,632.42.

**Result, if Approved:** The Commissioner will have authority to execute the Amendment and Termination of Standard Project Agreement, relating to termination of and release of funding for the Route 460/58/13 Connector Study, and upon, execution, HRTAC funding in the amount of \$3,904,632.42 will be released for other uses.

**Options:** Approve, Deny or Defer

**Public Comments/Reactions:** N/A

EXHIBIT A

**AMENDMENT TO AND TERMINATION OF  
STANDARD PROJECT AGREEMENT  
FOR FUNDING AND ADMINISTRATION**

THIS AMENDMENT TO AND TERMINATION OF THE STANDARD PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION (this "Amendment and Termination"), dated as of November \_\_\_, 2019 (the "Effective Date"), is made by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION ("VDOT"), and the HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION ("HRTAC").

**RECITALS:**

A. The parties entered into a Standard Project Agreement for Funding and Administration of the Route 460/58/13 Connector Study (UPC 106694), dated as of November 9, 2016 (the "Project Agreement").

B. Pursuant to the Project Agreement, VDOT performed a traffic analysis of the Route 460/58/13 connector and concluded that the existing facilities accommodate travel demands through 2040 and no further study is required at this time.

C. VDOT has recommended to the Hampton Roads Transportation Planning Organization ("HRTPO") and HRTAC that the Project be terminated and that the unexpended HRTAC-Controlled Moneys committed pursuant to and addressed by the Project Agreement are no longer needed for purposes of this Project.

D. VDOT has notified HRTAC that all invoices arising from work on the Project have been paid and the resulting unexpended portion of the committed HRTAC-Controlled Moneys (none of which is in VDOT's possession) amounts to \$3,904,632.42 ("Remaining Agreement Funding").

E. In accordance with Section I(a) of the Project Agreement, the Parties now desire to amend and terminate the Project Agreement on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements set forth in this Amendment and Termination, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree:

1. AMENDMENT OF THE PROJECT AGREEMENT

(a) That pursuant to subsection I(a) of the Project Agreement, Section C (Term) of the Project Agreement is hereby amended by adding a subsection (5) which reads:

5. Notwithstanding the foregoing, the parties may, by mutual agreement, terminate this Agreement, without cause, and in such case, upon termination and payment of all eligible expenses any unexpended HRTAC funds

committed pursuant to this Agreement shall be released by VDOT no later than 60 days after the date of termination.

2. TERMINATION OF THE PROJECT AGREEMENT, AS AMENDED

(a) That no further study of the Route 460/58/13 connector is warranted at this time, the Project has been terminated, only eligible expenses and all invoices therefor arising from work on the Project have been paid, and none of the Remaining Agreement Funding is required for the Project.

(b) That VDOT hereby represents and warrants, as VDOT's certification required under Section A.19 of the Project Agreement, as amended, that it adhered to all applicable laws and regulations and all requirements of the Project Agreement.

(c) That termination of the Project Agreement by mutual agreement of the parties is warranted in this case.

(d) That the Project Agreement is hereby terminated, and the Remaining Agreement Funding in the amount of \$3,904,632.42 is released by VDOT and no longer encumbered by the Project or the Project Agreement.

(e) That VDOT shall provide to HRTAC copies of all reports, analyses, and summary documents prepared by or on behalf of VDOT in connection with the Project.

3. This Amendment and Termination may be executed in any number of counterparts, and by each party on a separate counterpart, each of which, when so executed and delivered, shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Amendment and Termination by their duly authorized representative as of the Effective Date.

**VIRGINIA DEPARTMENT OF  
TRANSPORTATION**

**HAMPTON ROADS  
TRANSPORTATION  
ACCOUNTABILITY COMMISSION**

By: \_\_\_\_\_  
Stephen C. Brich, P.E.  
Commissioner of Highways

By: \_\_\_\_\_  
Linda T. Johnson  
Chair

Date: \_\_\_\_\_

Date: \_\_\_\_\_