



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

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Agenda item # 12

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

March 17, 2021

MOTION

Made By: Mr. Malbon **Seconded By:** Mr. Miller

Action: Motion Carried, Unanimously

Title: Authorization for the Commissioner of Highways to Enter into an Amendment of the Standard Project Agreement between the Virginia Department of Transportation and the Hampton Roads Transportation Accountability Commission for the Expanded Bowers Hill Interchange Study (UPC 111427)

WHEREAS, the Virginia General Assembly, pursuant to Chapter 26 of Title 33.2 of the Code of Virginia, has established the Hampton Roads Transportation Accountability Commission (HRTAC), a political subdivision of the Commonwealth; and

WHEREAS, the Virginia General Assembly, pursuant to §33.2-2600 of the Code of Virginia, has also established the Hampton Roads Transportation Fund (HRTF) to fund new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23; and

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

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

Resolution of the Board

Authorization for the Commissioner of Highways to Enter into an Amendment of the Standard Project Agreement between the Virginia Department of Transportation and the Hampton Roads Transportation Accountability Commission for the Expanded Bowers Hill Interchange Study (UPC 111427)

March 17, 2021

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WHEREAS, at its April 19, 2017 meeting, the CTB approved and authorized the Commissioner of Highways to, among other things, execute the execute a Standard Project Agreement (SPA) with HRTAC relating to the Bowers Hill Study and the HRTF funding therefore; and

WHEREAS, in accord with said approval and delegation by the CTB, the Commissioner of Highways executed a Standard Project Agreement, dated as of August 28, 2017, between VDOT and HRTAC for Funding and Administration of the Bowers Hill Interchange Study (UPC 111427) (the “Project” or “Study”), whereby HRTAC provided \$4,000,000 in funding for the Project; and

WHEREAS, based on extensive study and coordination between the Hampton Roads Transportation Planning Organization (HRTPO) and its Bowers Hill Interchange Study Working Group, VDOT, and HRTAC, it was determined that the Bowers Hill Interchange Study scope of work needed to be modified to include the segment of I-664 between Bowers Hill Interchange and the College Drive Interchange due to the significant congestion along I-664 that extends to the Bowers Hill Interchange; and

WHEREAS, on May 21, 2020, the HRTPO approved the expansion of the Bowers Hill Interchange Study to incorporate an express lane component; and

WHEREAS, HRTAC, on December 10, 2020, amended the FY2021-FY2026 Funding Plan to redirect an additional \$3,904,630 (previously released from the Route 460/58/13 Connector Study) to extend the scope and budget of the Bowers Hill Interchange Study and authorized the Chair to finalize and execute the appropriate amendment to the funding agreement between VDOT and HRTAC; and

WHEREAS, provision of the additional funding by HRTAC for the expanded Bowers Hill Interchange Study/Project requires amendment of the SPA for the Bowers Hill Interchange Study and pursuant to §33.2-214 C, VDOT has requested that the CTB authorize the Commissioner to execute a proposed Amendment to the SPA with HRTAC for the expanded Bowers Hill Interchange Study; and

WHEREAS, the proposed Amendment to the SPA will address an issue previously noted by the CTB relating to language in the SPA regarding the opportunity for VDOT to cure alleged material breaches of the SPA.

NOW, THEREFORE, BE IT RESOLVED, the Commonwealth Transportation Board hereby authorizes the Commissioner of Highways to enter into/execute the Amendment to the Standard Project Agreement with HRTAC, attached hereto as Exhibit A, regarding the additional funding and expanded scope of the Bowers Hill Interchange Study funding, with such changes and additions as the Commissioner deems necessary.

####

CTB Decision Brief

Authorization for the Commissioner of Highways to Enter into an Amendment of the Standard Project Agreement between the Virginia Department of Transportation and the Hampton Roads Transportation Accountability Commission for the Expanded Bowers Hill Interchange Study (UPC 111427)

Issue: The Virginia Department of Transportation (VDOT) is requesting that the Commonwealth Transportation Board (CTB) authorize the Commissioner of Highways (Commissioner) to enter into the Amendment of the Standard Project Agreement (SPA) with the Hampton Roads Transportation Accountability Commission (HRTAC) for the expanded Bowers Hill Interchange Study.

Facts:

- At its April 19, 2017 meeting, the CTB approved and authorized the Commissioner of Highways to enter into a MOU with HRTAC and the Hampton Roads Transportation Planning Organization (HRTPO) 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.
- In accord with approval and delegation by the Board, the Commissioner of Highways executed a Standard Project Agreement, dated as of August 28, 2017, between VDOT and HRTAC for Funding and Administration of the Bowers Hill Interchange Study (UPC 111427) (the “Project” or “Study”), whereby HRTAC provided \$4,000,000 in funding for the Study; and
- VDOT has made briefings to the CTB, HRTAC, and Hampton Roads Transportation Planning Organization (HRTPO), demonstrating the operational benefits of the Hampton Roads Express Lane (HREL) network providing for continuous HOT lanes travel on Interstate 64 in Hampton Roads between the interchange of Interstate 64 and Jefferson Avenue in Newport News and the interchange of Interstates 64, 264, and 664 in the Bowers Hill section of Chesapeake.
- Based on extensive study and coordination between HRTPO and its Bowers Hill Interchange Study Working Group, VDOT, and HRTAC, it was determined that the Bowers Hill Interchange Study scope of work needed to be modified to include the segment of I-664 between Bowers Hill Interchange and the College Drive Interchange due to the significant congestion along I-664 that extends to the Bowers Hill Interchange.
- On May 21, 2020, HRTPO approved the expansion of the Bowers Hill Interchange Study to incorporate an express lane component.
- On December 11, 2019, the Commonwealth Transportation Board approved and authorized the Commissioner of Highways to execute the Amendment and Termination of Standard Project Agreement 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.

- On December 10, 2020, HRTAC, amended the FY2021-FY2026 Funding Plan to redirect an additional \$3,904,630 of funding that was released from the Route 460/58/13 Connector Study to extend the scope and budget of the Bowers Hill Interchange Study and authorized the Chair to finalize and execute the appropriate amendment to the funding agreement between VDOT and HRTAC.

The purpose of the Bowers Hill Interchange Improvements Study is to reduce congestion, improve travel reliability, and provide additional travel choice on I-664 from and including the Bowers Hill Interchange to College Drive. The expanded scope of the Bowers Hill Interchange Study includes the following:

- Study location/termini:
 - I-664 - Up to College Drive interchange
 - I-64 – The first interchange southeast of Bowers Hill (Military Hwy)
 - I-264 – The first interchange east of Bowers Hill (Greenwood Dr)
 - Route 13/58/460 – The Bisco St/Airport Entrance intersection
- Ability to carry Express Lanes through the interchange and along I-664
- Maintain local access/connections, where feasible
- Provide high speed access between all major movements, where feasible
- Evaluate reliability of freight movement
- Evaluate evacuation impacts
- Evaluate resiliency/sea level rise impacts
 - Bowers Hill Interchange may be prone to flooding during major storms
- Project Phasing
 - First Phase - Bowers Hill Interchange and I-664 improvements necessary for the improved Interchange to provide acceptable operating conditions
 - Second Phase - The remaining portion of I-664 up to College Drive
- Consideration of other studies, including the Regional Connectors Study (RCS) and 2045 Long Range Transportation Plan

This Amendment will allow for the additional \$3,904,630 to continue to develop the Environmental Impact Statement (EIS) along with the expanded scope parameters of the Bowers Hill Interchange Study. In addition, the Amendment will address an issue previously noted by the CTB and provide VDOT an opportunity to cure alleged material breaches of the SPA. The proposed Amendment to the SPA is attached hereto as Exhibit A.

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.

At their December 10, 2020 meeting, HRTAC approved the transfer of additional funds to this Project and authorized the Chair to finalize and execute the appropriate amendment to the funding agreement between the Virginia Department of Transportation and HRTAC.

Recommendation: VDOT recommends that the CTB delegate to the Commissioner the authority to enter into the Amendment to the SPA relating to the additional funding and expanded scope of the Bowers Hill Interchange Study, attached hereto as Exhibit A, with such changes and additions as the Commissioner of Highways deems necessary.

Action Required by the CTB: Approve by majority vote the resolution providing the authorization recommended herein.

Result, if Approved: The Commissioner will be authorized to enter into the Amendment to the SPA between VDOT and HRTAC for use of the additional HRTAC Funds to pay the costs for the expanded scope of the Bowers Hill Interchange Study.

Options: Approve, Deny or Defer

Public Comments/Reactions: N/A

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

HRTAC Project/Number: Bowers Hill Interchange Study (UPC 111427)

THIS AMENDMENT TO the STANDARD PROJECT AGREEMENT for the Bowers Hill Interchange Study (this "Amendment"), dated and effective as of the date of last execution below, is made by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION ("VDOT") and the HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION ("HRTAC").

WITNESSETH

- A. The parties entered into a Standard Project Agreement for the Bowers Hill Interchange Study (UPC 111427) (the "Project") dated August 28, 2017(the "Agreement").
- B. Capitalized terms not defined when used herein shall have the meanings given those terms under the Agreement.
- C. The Project contemplated by the Agreement is a study under the NEPA process of the Bowers Hill Interchange at I-664 and I-264 in Chesapeake, which is based on a scope and termini approved in 2016 by the Hampton Roads Transportation Planning Organization (HRTPO) and supported by HRTAC and the Commonwealth Transportation Board (CTB).
- D. At its May 21, 2020 meeting, the Hampton Roads Transportation Planning Organization (HRTPO) took action to expand the scope and termini of the study/Project to include a managed express lanes component through the Bowers Hill Interchange and along the segment of I-664 to College Drive, and HRTAC and the CTB have supported said expansion.
- E. VDOT has notified HRTAC that the additional work necessary to perform the study/Project with the expanded scope approved by HRTPO will require more funding than the amount initially scheduled under the Agreement, and has requested that HRTAC provide additional funding in an amount of \$3,904,630.
- F. In addition, it has been observed by the Commonwealth Transportation Board that the boilerplate language in the Standard Project Agreements between VDOT and HRTAC does not necessarily provide VDOT with an opportunity to cure material breaches of the Agreements and accordingly, VDOT has proposed language to provide VDOT with an opportunity to cure a material breach of this Agreement.

G. The parties now desire to amend the Agreement on the terms set forth below.

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements set forth in this Amendment, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to amend the Agreement as follows:

1. In order to provide VDOT with an opportunity to cure a material breach of the Agreement, Section C.3 of the Agreement is amended and restated in its entirety as set forth below:

HRTAC may terminate this Agreement, for cause, resulting from VDOT's material breach of this Agreement. If so terminated, VDOT shall refund to HRTAC all funds HRTAC provided to VDOT for the Project and, to the extent permitted by law, with interest earned at the rate earned by HRTAC. Before initiating any proceedings to terminate under this Section, HRTAC shall give VDOT sixty (60) days' written notice of any claimed material breach of this Agreement and the reasons for termination; thereby allowing VDOT an opportunity to investigate and cure any such alleged breach. Prior to termination, if VDOT has substantially completed the Project or a portion that is severable (meaning it is subject to independent use), VDOT may request that HRTAC excuse VDOT from refunding funds paid in respect of the substantially completed Project or portion, and HRTAC may, in its sole discretion, excuse VDOT from refunding all or a portion of the funds HRTAC provided to VDOT for the substantially completed Project or portion thereof. No such request to be excused from refunding will be allowed where VDOT has either misused or misapplied HRTAC funds in contravention of this Agreement or applicable law.

2. In order to memorialize and give effect to the increase in Project scope approved by HRTPO, Appendix A of the Agreement is hereby amended and restated in its entirety as set forth in the document attached hereto as Attachment I.

3. In order to give effect to the \$3,904,630 increase in HRTAC funding for the Project described herein, Appendix B of the Agreement is hereby amended and restated in its entirety as set forth in the document attached hereto as Attachment II, such that HRTAC's total commitment with respect to the Project (a portion of which has already been funded) is \$7,904,630.

4. Except as modified by the provisions of this Amendment, all other terms of the Agreement shall remain in full force and effect.

5. This Amendment 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 by their duly authorized representatives as set forth below.

**VIRGINIA DEPARTMENT OF
TRANSPORTATION**

**HAMPTON ROADS TRANSPORTATION
ACCOUNTABILITY COMMISSION**

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

By: _____
Donnie R. Tuck
Chair

Date: _____

Date: _____

ATTACHMENT I

APPENDIX A

NARRATIVE DESCRIPTION OF STANDARD PROJECT SERVICES

HRTAC Project Title: Bowers Hill Interchange Study (UPC 111427)

Recipient Entity: Virginia Department of Transportation

VDOT Program Manager Contact Information: Scott Smizik (804) 371-4082

HRTAC Executive Director: Kevin Page (757) 720-8300

Project Scope

The Standard Project Services are intended to provide for development of National Environmental Policy Act (NEPA) documentation for the overall project and are set forth in more detail below in the Detailed Scope of Services. The overall project entails identifying long-term improvements to the Bowers Hill Interchange, extending north to the College Drive Interchange on Interstate 664 (I-664)

The expanded scope of the Bowers Hill Interchange Study includes the following:

- Study location/termini:
 - I-664 - Up to College Drive interchange
 - I-64 – The first interchange southeast of Bowers Hill (Military Hwy)
 - I-264 – The first interchange east of Bowers Hill (Greenwood Dr)
 - Route 13/58/460 – The Bisco St/Airport Entrance intersection
- Ability to carry Express Lanes through the interchange and along I-664
- Maintain local access/connections, where feasible
- Provide high speed access between all major movements, where feasible
- Evaluate reliability of freight movement
- Evaluate evacuation impacts
- Evaluate resiliency/sea level rise impacts
 - Bowers Hill Interchange may be prone to flooding during major storms
- Project Phasing
 - First Phase - Bowers Hill Interchange and I-664 improvements necessary for the improved Interchange to provide acceptable operating conditions
 - Second Phase - The remaining portion of I-664 up to College Drive
- Consideration of other studies, including the Regional Connectors Study (RCS) and 2045 Long Range Transportation Plan

Detailed Scope of Services

The detailed scope of services addressed by this Amendment (and to which the funding provided thereunder relates) consists of developing a NEPA study, including supporting technical studies, permit documents, and Interchange Access Report (IAR), for the purpose of identifying a preferred alternative or improving the Bowers Hill Interchange and the portion of I-664 south of the College Drive Interchange.

Any additional costs for said studies will be subject to and addressed in accord with the terms of this Standard Project Agreement.

ATTACHMENT II

APPENDIX B

PROJECT BUDGET, PROJECT SCHEDULE, AND CASHFLOW

APPENDIX B-PROJECT BUDGET & CASH FLOW

PROJECT IDENTIFICATION AND PROPOSED FUNDING

HRTAC Project Title:	Bowers Hill Interchange Study (UPC 111427)
Scope of Project Services:	Standard Project Services To Support Preliminary Work For Bowers Hill Interchange
Recipient Entity:	Virginia Department of Transportation
VDOT Project Contact:	Todd Halacy, P.E. (757) 956-3010
Baseline Schedule: PE	Start September 2017, End June 2023

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	\$ 7,904,630.00	\$ 7,904,630.00				
Total Estimated Cost	\$ 7,904,630.00	\$ 7,904,630.00	\$ -	\$ -		\$ -

FISCAL YEAR ANNUAL PROJECT CASH FLOW

Project Phase	Total Fiscal Years 2018-FY2020		Total Fiscal Year 2021		Total Fiscal Year 2022		Total Fiscal Year 2023	
	PayGo	Financed	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	2,011,804.87		1,947,588.70		2,240,000.00		1,705,236.43	
Total Estimated Cost	\$ 2,011,804.87	\$ -	\$ 1,947,588.70	\$ -	\$ 2,240,000.00	\$ -	\$ 1,705,236.43	\$ -

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

FISCAL YEAR ESTIMATED PROJECT CASH FLOW

	Total Previous Years FY18-21		FY 21 Mthly Cash Flow		FY 22 Mthly Cash Flow		FY 23 Mthly Cash Flow	
	PayGo	Financed	PayGo	Financed	PayGo	Financed	PayGo	Financed
July			\$37,257		\$250,000		\$150,000	
August			\$21,294		\$250,000		\$150,000	
September			\$63,621		\$180,000		\$150,000	
October			\$19,152		\$180,000		\$150,000	
November			\$291,333		\$180,000		\$150,000	
December			\$22,395		\$180,000		\$150,000	
January			\$242,537		\$180,000		\$150,000	
February			\$250,000		\$180,000		\$150,000	
March			\$250,000		\$180,000		\$150,000	
April			\$250,000		\$180,000		\$150,000	
May			\$250,000		\$150,000		\$150,000	
June			\$250,000		\$150,000		\$55,236	
Total per Fiscal Year	\$ 2,011,804.87	\$ -	\$ 1,947,588.70	\$ -	\$ 2,240,000.00	\$ -	\$ 1,705,236.43	\$ -

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	Signature
Commissioner	HRTAC Chairman
Title	Title
Date	Date
Stephen C. Brich, P.E.	Donnie R. Tuck
Print name of person signing	Print name of person signing