

**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 1st day of May 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/hrcs_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: William Sessions

Name: William Sessions

Title: Chair, HRATAC

Date: March 16, 2017

Hampton Roads Transportation Planning Organization

By: Linda T. Johnson

Name: Linda T. Johnson

Title: Chair, HRTPO

Date: April 20, 2017

Virginia Department of Transportation

By: Charles A. Kilpatrick

Name: Charles A. Kilpatrick, P.E.

Title: Commissioner of Highway

Date: May 1, 2017

Exhibit A

Figure A-1: Alignment Segments





HRTAC RESOLUTION 2017-02

MEMORANDUM OF UNDERSTANDING - STUDY OF COMPONENTS NOT INCLUDED IN THE SELECTED HRCS SEIS ALTERNATIVE

WHEREAS, the funding of the Hampton Roads Crossing Study (the “Project”) is covered by the HRTAC 2016-2022 funding plan adopted by the Commission on March 17, 2016 (the “Funding Plan”); and

WHEREAS, on October 20, 2016, the Hampton Roads Transportation Planning Organization (HRTPO) unanimously approved the Hampton Roads Crossing Study Alternative A as the Preferred Alternative; and

WHEREAS, on October 20, 2016, HRTAC unanimously supported the HRTPO’s selection of Alternative A and allocated up to \$7,000,000, to include the reallocation of the balance of the \$5,000,000 that was initially 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 Project has evolved to include the further study of the HRCS SEIS components not included in the selected alternative; and

WHEREAS, on Thursday, March 16, 2017, the Commission amended the Funding Plan to allocate a total of \$7,000,000* towards the cost of a study of the HRCS SEIS components not included in the selected SEIS Alternative A; and

WHEREAS, sufficient funding is available for the study phase of this Project that has been separated into two discrete parts: one relating to Bowers Hill (\$4,000,000) following the NEPA process, and the other a planning evaluation of the feasibility of the remaining components not selected in the HRCS SEIS Alternative (\$3,000,000); and,

WHEREAS, the Commission desires to amend its Approved HRTAC 2016-2022 Funding Plan to include a contingency of up to \$4,000,000 to be available to complete the work under the Memorandum of Understanding; and,

WHEREAS, sufficient funding is available to establish a contingency of \$4,000,000 to be available if additional funding is required for the work; and,



WHEREAS, any future incremental allocations to advance the project will be allocated on a case by case basis; and

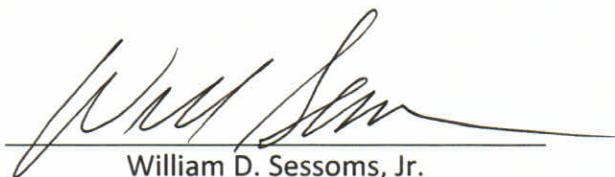
WHEREAS, the Virginia Department of Transportation ("VDOT"), Hampton Roads Transportation Planning Organization ("HRTPO"), and the Hampton Roads Transportation Accountability Commission have developed an MOU that establishes a framework to advance these two study efforts.

NOW, THEREFORE, BE IT RESOLVED, that the Commission approves the Memorandum of Understanding and authorizes the Chair to execute and deliver the document; and

BE IT FURTHER RESOLVED, the Commission's executive director will consult with VDOT and the HRTPO as they perform the work under the Memorandum of Understanding, and if he determines additional funding may be reasonably required, he will seek the Commission's authorization of that additional funding, it being the Commission's intent to support the completion of the work under the Memorandum of Understanding; and,

BE IT FURTHER RESOLVED, that the Commission authorizes a public hearing relating to an amendment to its Approved HRTAC 2016-2022 Funding Plan to include the \$4,000,000 contingency, which amendment will be considered at the Commission's June 15, 2017 meeting.

APPROVED and ADOPTED by the Hampton Roads Transportation Accountability Commission at its meeting on the 16th day of March, 2017.



William D. Sessoms, Jr.
Chair
Hampton Roads Transportation
Accountability Commission



Michael J. Hipple
Vice-Chair
Hampton Roads Transportation
Accountability Commission



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Aubrey L. Layne, Jr.
Chairman

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 225-2940

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

April 19, 2017

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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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