ITEM #7:  MEMORANDA OF AGREEMENT: FRANKLIN, SOUTHAMPTON, AND SURRY

Attached is a letter from Secretary Sean T. Connaughton, dated April 4, 2013, to the HRTPO Executive Director regarding the regional taxes found in HB2313 (Attachment 7-A). The Governor recommended, and the General Assembly approved, amendments to redefine their applicability. Specifically, rather than the regional taxes only applying in certain named localities, the amendments broaden the applicability to any Planning District that meets certain population, registered vehicle, and transit ridership criteria. Numerous technical changes were also made to ensure that associated language reflected these changes, such as requiring that revenues deposited into the Hampton Roads Transportation Fund be used on projects in all regions of Planning District 23.

The legislation will impose taxes on three localities that are members of the Hampton Roads Planning District Commission (HRPDC) but not the Hampton Roads Transportation Planning Organization (HRTPO). They include the City of Franklin and the Counties of Southampton and Surry.

The Secretary suggests two possible alternatives:

“Develop an agreement among the HRTPO member and non-member localities that guarantees representation and voting rights for the non-members on matters involving the planning, programming, and funding of projects supported by the HB 2313 revenue;”

or

“The HRTPO could amend the boundaries of the HRTPO to include Southampton, Franklin, and Surry.”

At the May 16, 2013 Retreat, the HRTPO staff recommended approving an interim agreement among the HRTPO members and the three non-member localities that guarantees representation and voting rights to the non-members on matters involving the planning, programming, and funding of projects supported by the state revenues in HB2313. During the May Retreat, the affected localities provided feedback to the HRTPO Board on how they would like to proceed:

- The City of Franklin and Southampton County have provided the HRTPO approval to enter into an MOA (Attachment 7-B).
- Surry County requested deferment of action on their MOA as they are awaiting feedback from the Secretary of Transportation.

The attached individual MOAs between each affected locality and the HRTPO (Attachments 7-C, 7-D, and 7-E) are under the Consent Agenda for approval; see Item #12-M.

Mr. Dwight Farmer, Executive Director, will brief the HRTPO Board on this item.

Attachment 7-A
Attachment 7-B
Attachment 7-C
Attachment 7-D
Attachment 7-E
April 4, 2013

Dwight L. Farmer
Executive Director
Hampton Roads Transportation Planning Organization
723 Woodlake Drive
Chesapeake, VA 23320

Dear Mr. Farmer:

As you are aware, this past General Assembly session, the legislature reached an historic, bi-partisan compromise to provide much needed revenues to address the Commonwealth’s transportation funding challenges. While much of the legislation (HB2313) focuses on addressing statewide transportation needs, certain provisions impact the Hampton Roads region and the Hampton Roads Transportation Planning Organization (HRTPO). I write to request the HRTPO have in place by July 1, 2013, a process to ensure that all the localities of the Hampton Roads Planning District have a vote on the planning, programming and funding of projects supported by HB2313 revenues.

The Conference Report for HB2313, as adopted by the General Assembly, imposed an additional 0.7 percent sales and use tax, as well as an additional 2.1% sales tax on motor fuel, in the Hampton Roads region. The Hampton Roads region was defined as those localities embraced by the HRTPO. Revenues generated by these taxes were to be deposited in the Hampton Roads Transportation Fund and used on road projects within the localities where the taxes were imposed.

Based on legal concerns regarding these regional taxes, the Governor recommended, and the General Assembly approved, amendments to redefine their applicability. Specifically, rather than the regional taxes only applying in certain named localities, the amendments broaden the applicability of the taxes to any Planning District that meets certain population, registered vehicle, and transit ridership criteria. Numerous technical changes were also made to ensure that associated language reflected these changes, such as requiring that revenues deposited into the Hampton Roads Transportation Fund be used on projects in all regions of Planning District 23.

While these amendments strengthened the constitutionality of the legislation, the enumerated criteria set forth in the legislation will impose the regional transportation taxes on three localities that are members of the Hampton Roads Planning District Commission but not
currently members of the HRTPO. Specifically, Planning District 23 includes the County of Southampton, the City of Franklin and the County of Surry, which are not members of the HRTPO.

Consequently, the HRTPO must develop and implement a method to ensure that Southampton, Franklin and Surry have a vote on the planning, programming and funding of projects supported by HB2313 revenues. We assume that as a practical matter, inclusion of these additional jurisdictions should not be difficult. The Hampton Roads Transportation Planning Organization and the Hampton Roads Planning District Commission have generally the same localities as members and work hand in hand to achieve the long-term planning goals for the region. In addition, both organizations share the same offices and staff, with you serving as the Executive Director for both entities.

Given this, we believe that the HRTPO could quickly develop an agreement among the HRTPO member and non-member localities that guarantees representation and voting rights for the non-members on matters involving the planning, programming and funding of projects supported by HB2313 revenues. As an alternative, the HRTPO could amend the boundaries of the HRTPO to include Southampton, Franklin and Surry. It is my understanding that such a change requires the approval of the Federal Highway Administration and the Federal Transit Administration. We are committed to working with you to effectuate such an amendment, if that is the desired course of action.

Since a workable solution needs to be in place on or about July 1, 2013, which is the date on which revenues will begin to accrue to the Hampton Roads Transportation Fund, we request that the HRTPO immediately begin the process of providing Franklin, Southampton and Surry representation and voting rights for the non-members on matters involving the planning, programming and funding of projects supported by HB2313 revenues. The transportation challenges facing the Hampton Roads region are among the most severe in the Commonwealth. The new regional revenues will go a long way to helping address these challenges and improving the region’s economic competitiveness and quality of life. However, in implementing the new revenue streams, it is imperative that we ensure that every locality wherein the revenues are generated has a seat at the table in deciding how the revenues are spent.

I look forward to working with the HRTPO and the local governments in Hampton Roads as we address this critical issue. Please do not hesitate to contact me at your convenience if you would like to further discuss this matter.

Sincerely,

Sean T. Connaughton
April 26, 2013

Mr. Dwight L. Farmer
Executive Director
Hampton Roads Planning District Commission
723 Woodlake Drive
Chesapeake, Va.  23320

Dear Dwight:

On Monday April 22, 2013, the Franklin City Council unanimously authorized execution of a Memorandum of Agreement (MOA) between the City and the Hampton Roads Transportation Planning Organization (HRTPO) which guarantees representation and voting rights to the city as a non-member locality "on matters involving the planning, programming and funding of projects supported by the HB 2313 revenue". The legislation imposes taxes on the City of Franklin as a member of the Hampton Roads Planning District 23 despite the fact that the City is not currently a member of the HRTPO. The MOA will on at least an interim basis ensure that the City businesses and residents are not taxed without the opportunity to be included in discussion on the use of the new revenue generated by the taxes and for the City to be a beneficiary of the projects funded by the revenues as required by the legislation.

Transportation Secretary Sean Connaughton was clear in his communication to you dated April 4, 2013 that "the HRTPO must develop and implement a method to ensure that Southampton (County), Franklin and Surry (County) have a vote on these matters. In his communication dated April 2, 2013, to Mike Johnson, Southampton County Administrator, he stated "This can be done administratively, and options include adding Southampton and the other jurisdictions to be full or partial members of the TPO. To ensure your projects are eligible for funding, we amended HB2313 to read: 'The Hampton Roads Transportation Planning Organization shall give priority to those projects that are expected to prove the greatest impact on reducing congestion and shall ensure that the moneys shall be used for such construction projects in all localities comprising Planning District 23.'" The interim MOA is expected to accomplish the required action until longer terms options are evaluated and pursued.

City of Franklin officials look forward to participating in upcoming discussions on this topic and encourage the HRTPO Board to likewise endorse execution of the MOA as soon as possible to allow the City of Franklin and other affected municipalities to get involved in the process before the HB 2313 taxes are imposed effective July 1, 2013, and decisions are made on the use of funds. In closing, thank you for your leadership on this important matter and for prompt action to bring this before the HRTPO for consideration.

Sincerely,
R. Randy Martin
Franklin City Manager
May 6, 2013

Mr. Dwight L. Farmer
Executive Director/Secretary
Hampton Roads TPO
723 Woodlake Drive
Chesapeake, VA 23320

RE: Interim MOA

Dear Mr. Farmer:

In regular session on April 22, 2013, the Southampton County Board of Supervisors authorized me to execute the interim Memorandum of Agreement with one editorial revision in the third paragraph. They have requested this paragraph to read as follows:

“WHEREAS, HB 2313 imposes certain new and increased taxes in those cities, counties and towns comprising Virginia Planning District 23 that will be deposited into the Fund, and requires that monies in the Fund be used for transportation projects in all regions localities of that Planning District 23; and”

I trust the HRTPO will favorably consider the proposed revision and further authorize you to execute the MOA on their behalf.

With kind regards, I remain

Sincerely,

Michael W. Johnson
County Administrator
Memorandum of Agreement
Between
The Hampton Roads Transportation Planning Organization
And
The City of Franklin

This Memorandum of Agreement is executed as of ____________, 2013, by and among the Hampton Roads Transportation Planning Organization (“HRTPO”) and the City of Franklin, Virginia (“Franklin”). Franklin is sometimes hereinafter referred to as “the Locality.”

WHEREAS, Chapter 766, 2013 Virginia Acts of Assembly, effective July 1, 2013, codifies the enactment of HB2313, establishing new revenues for transportation projects, a portion of which will be deposited to a newly established Hampton Roads Transportation Fund (the “Fund”) to be expended for projects in the Hampton Roads area; and

WHEREAS, HB2313 imposes certain new and increased taxes in those cities, counties and towns comprising Virginia Planning District 23 that will be deposited into the Fund, and requires that monies in the Fund be used for transportation projects in all regions of that Planning District 23; and

WHEREAS, the Locality is within Planning District 23 but not within the designated Hampton Roads Metropolitan Planning Area or members of the HRTPO, which is designated by HB2313 to identify those transportation projects for which monies in the Fund may be expended, and

WHEREAS, the Commonwealth of Virginia and the parties hereto desire to establish a mechanism by which the Locality will be entitled to vote on the planning, programming and funding of projects supported by HB2313 revenues.

NOW, THEREFORE, the parties hereby agree as follows:

1. Effective July 1, 2013, the Locality shall be entitled to one vote at meetings of the HRTPO on any matter involving the planning, programming and funding of projects supported by HB2313 revenues.

2. The Locality shall appoint one individual to represent it, and exercise the right of the Locality to vote, on the designated matters before the HRTPO. The representative shall be an elected official appointed by the governing body of the City. The Locality shall designate an alternate authorized to act in the absence of the appointed representative of the Locality, who shall also be an elected official.
3. The representatives of the Locality shall be invited to attend all meetings of the HRTPO, shall be given notice thereof, shall be allowed to participate in the discussions of the HRTPO, and shall be given all communications given by the HRTPO to the voting representatives of the HRTPO members.

4. This Agreement may be amended or revoked only by further written instrument executed by all parties hereto. This Agreement shall remain in effect until such time as it is revoked by the parties hereto.

In Witness Whereof, the parties have caused this Memorandum of Agreement to be executed by their duly authorized officers as of the date first set forth above.

Hampton Roads Transportation Planning Organization
By:__________________________
Chair

City of Franklin
By:__________________________
Title:
Memorandum of Agreement
Between
The Hampton Roads Transportation Planning Organization
And
The County of Southampton

This Memorandum of Agreement is executed as of _____________, 2013, by and among the Hampton Roads Transportation Planning Organization ("HRTPO") and the County of Southampton, Virginia ("Southampton"). Southampton is sometimes hereinafter referred to as “the Locality.”

WHEREAS, Chapter 766, 2013 Virginia Acts of Assembly, effective July 1, 2013, codifies the enactment of HB2313, establishing new revenues for transportation projects, a portion of which will be deposited to a newly established Hampton Roads Transportation Fund (the “Fund”) to be expended for projects in the Hampton Roads area; and

WHEREAS, HB2313 imposes certain new and increased taxes in those cities, counties and towns comprising Virginia Planning District 23 that will be deposited into the Fund, and requires that monies in the Fund be used for transportation projects in all regions of that Planning District 23; and

WHEREAS, the Locality is within Planning District 23 but not within the designated Hampton Roads Metropolitan Planning Area or members of the HRTPO, which is designated by HB2313 to identify those transportation projects for which monies in the Fund may be expended, and

WHEREAS, the Commonwealth of Virginia and the parties hereto desire to establish a mechanism by which the Locality will be entitled to vote on the planning, programming and funding of projects supported by HB2313 revenues.

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1. Effective July 1, 2013, the Locality shall be entitled to one vote at meetings of the HRTPO on any matter involving the planning, programming and funding of projects supported by HB2313 revenues.

2. The Locality shall appoint one individual to represent it, and exercise the right of the Locality to vote, on the designated matters before the HRTPO. The representative shall be an elected official appointed by the governing body of the County. The Locality shall designate an alternate authorized to act in the absence of the appointed representative of the Locality, who shall also be an elected official.
3. The representatives of the Locality shall be invited to attend all meetings of the HRTPO, shall be given notice thereof, shall be allowed to participate in the discussions of the HRTPO, and shall be given all communications given by the HRTPO to the voting representatives of the HRTPO members.

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**In Witness Whereof**, the parties have caused this Memorandum of Agreement to be executed by their duly authorized officers as of the date first set forth above.

Hampton Roads Transportation Planning Organization

By: ________________________________
Chair

County of Southampton

By: ________________________________
Title:
Memorandum of Agreement
Between
The Hampton Roads Transportation Planning Organization
And
The County of Surry

This Memorandum of Agreement is executed as of _____________, 2013, by and among the Hampton Roads Transportation Planning Organization ("HRTPO") and the County of Surry, Virginia ("Surry"). Surry is sometimes hereinafter referred to as "the Locality."

WHEREAS, Chapter 766, 2013 Virginia Acts of Assembly, effective July 1, 2013, codifies the enactment of HB2313, establishing new revenues for transportation projects, a portion of which will be deposited to a newly established Hampton Roads Transportation Fund (the "Fund") to be expended for projects in the Hampton Roads area; and

WHEREAS, HB2313 imposes certain new and increased taxes in those cities, counties and towns comprising Virginia Planning District 23 that will be deposited into the Fund, and requires that monies in the Fund be used for transportation projects in all regions of that Planning District 23; and

WHEREAS, the Locality is within Planning District 23 but not within the designated Hampton Roads Metropolitan Planning Area or members of the HRTPO, which is designated by HB2313 to identify those transportation projects for which monies in the Fund may be expended, and

WHEREAS, the Commonwealth of Virginia and the parties hereto desire to establish a mechanism by which the Locality will be entitled to vote on the planning, programming and funding of projects supported by HB2313 revenues.

NOW, THEREFORE, the parties hereby agree as follows:

1. Effective July 1, 2013, the Locality shall be entitled to one vote at meetings of the HRTPO on any matter involving the planning, programming and funding of projects supported by HB2313 revenues.

2. The Locality shall appoint one individual to represent it, and exercise the right of the Locality to vote, on the designated matters before the HRTPO. The representative shall be an elected official appointed by the governing body of the County. The Locality shall designate an alternate authorized to act in the absence of the appointed representative of the Locality, who shall also be an elected official.
3. The representatives of the Locality shall be invited to attend all meetings of the HRTPO, shall be given notice thereof, shall be allowed to participate in the discussions of the HRTPO, and shall be given all communications given by the HRTPO to the voting representatives of the HRTPO members.

4. This Agreement may be amended or revoked only by further written instrument executed by all parties hereto. This Agreement shall remain in effect until such time as it is revoked by the parties hereto.

**In Witness Whereof,** the parties have caused this Memorandum of Agreement to be executed by their duly authorized officers as of the date first set forth above.

Hampton Roads Transportation Planning Organization

By:__________________________
Chair

County of Surry

By:__________________________
Title: