COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Nicholas Donohue
Chairperson

1221 East Broad Street
Richmond, Virginia 23219

(804) 482-5818

Agenda item # 16

RESOLUTION
OF THE
COMMONWEALTH TRANSPORTATION BOARD

September 16, 2026

MOTION

Made By: Mr. Stant, Seconded By: Mr. Good
Action: Motion Carried, Unanimously

Title: Approval and Authorization for the Commissioner of Highways to Execute a Side Letter Amending the Amended and Restated Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project

WHEREAS, the Virginia Department of Transportation ("VDOT") and the Hampton Roads Transportation Accountability Commission ("HRTAC") are parties to that certain Amended and Restated Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (as amended, amended and restated, or supplemented from time to time, the "PAFA"); and

WHEREAS, VDOT has entered into the Comprehensive Agreement Relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project dated as of April 3, 2019 (as amended, amended and restated, or supplemented from time to time, the "Comprehensive Agreement") with Hampton Roads Connector Partners (the "Design-Builder"), pursuant to which the Design-Builder is designing and constructing the Hampton Roads Bridge-Tunnel Expansion Project (the "Project"); and

WHEREAS, HRTAC is providing the primary source of funding for the design and construction of the Project; and

WHEREAS, the PAFA governs the administration and funding of the Project as between VDOT and HRTAC; and

WHEREAS, pursuant to the terms of the Comprehensive Agreement, VDOT intends to enter into a work order (the "Work Order") with the Design-Builder to: (i) address certain entitlements to an increase in the contract price and a modification of the construction completion deadlines specified in the Comprehensive Agreement arising from certain changes in the work directed by VDOT and (ii) extend by sixty (60) calendar days the dates associated with the no excuses incentive payment that may be earned by HRCP for achieving substantial completion of the Project ahead of the construction completion deadlines specified in the Comprehensive Agreement; and

WHEREAS, in conjunction with the Work Order, VDOT and HRTAC have negotiated, and VDOT has requested that the Board authorize the Commissioner of Highways to enter into/execute, a side letter amending the PAFA (the "Side Letter"), attached hereto as Attachment A, to (i) clarify certain procedures under the PAFA for HRTAC's reimbursement to VDOT of all or any portion of the no excuses incentive payment earned by the Design-Builder and (ii) modify certain dates relating to the no excuses incentive payment set forth in the PAFA to align with the terms of the Work Order.

NOW, THEREFORE, BE IT RESOLVED, that the Board hereby authorizes the Commissioner of Highways to enter into/execute, the Side Letter amending the PAFA, in the form set out in Attachment A, with such changes and modifications deemed necessary by the Commissioner of Highways.

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CTB Decision Brief

AUTHORIZATION FOR THE COMMISSIONER OF HIGHWAYS TO EXECUTE A SIDE LETTER AMENDING THE AMENDED AND RESTATED PROJECT AGREEMENT FOR FUNDING AND ADMINISTRATION FOR THE I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION PROJECT

Issue: The Virginia Department of Transportation ("VDOT") and the Hampton Roads Transportation Accountability Commission ("HRTAC") are parties to that certain Amended and Restated Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (as amended, amended and restated, or supplemented from time to time, the "PAFA"), which governs the funding and administration of the I-64 Hampton Roads Bridge-Tunnel Expansion Project (the "Project"). VDOT has entered into the Comprehensive Agreement Relating to the Project dated as of April 3, 2019 (as amended, amended and restated, or supplemented from time to time, the "Comprehensive Agreement") with Hampton Roads Connector Partners (the "Design-Builder"), pursuant to which the Design-Builder is designing and constructing the Project. HRTAC makes funding available for the design and construction of the Project pursuant to the terms of the PAFA and VDOT administers the Comprehensive Agreement subject to the terms of the PAFA. VDOT and HRTAC desire to enter into a side letter (the "Side Letter") that would amend the PAFA to align with certain terms of a work order VDOT intends to enter into with the Design-Builder pursuant to the terms of the Comprehensive Agreement.

Facts: VDOT and the Design-Builder have finalized the terms of a work order (the "Work Order") pursuant to the Comprehensive Agreement to address the Design-Builder's entitlement to an increase in the contract price and modification of the contract completion deadlines specified in the Comprehensive Agreement arising from certain changes to the Design-Builder's work directed by VDOT. Specifically, the Design-Builder removed and replaced tunnel segments in response to direction given by VDOT. Under the terms of the Work Order, the contract price will be increased by $19,284,240 and construction completion deadlines specified in the Comprehensive Agreement will be extended by sixty (60) calendar days. The Work Order also will extend by sixty (60) calendar days the deadlines for the so-called No Excuses Incentive Payment, which is an early completion bonus payment the Design-Builder may earn if the Design-Builder achieves substantial completion ahead of deadlines specified in the Comprehensive Agreement.

Under the terms of the PAFA, VDOT may not modify the dates relating to the No Excuses Incentive Payment without with the consent of HRTAC. The Side Letter would memorialize HRTAC's consent to such modification, as contemplated by the Work Order. In addition, the Side Letter would clarify the mechanics for VDOT requesting reimbursement of the No Excuses Incentive Payment from HRTAC under the PAFA should the No Excuses Incentive Payment, or any portion thereof, be earned by the Design-Builder (including the timing for VDOT to make any such request for reimbursement and limitations on HRTAC's obligations to pay such reimbursement). Lastly, the Side Letter would amend the PAFA so that reference to a specific calendar date relating to the No Excuses Incentive Payment currently set forth in the PAFA would reflect the sixty (60) calendar day extension to be provided under the terms of the Work Order (to ensure consistency as between the PAFA and the Work Order).

Recommendations: It is recommended that the Board authorize the Commissioner of Highways to enter into/execute the Side Letter attached hereto as Attachment A, with such changes as the Commissioner of Highways deems necessary or appropriate.

Result, if Approved: VDOT would enter into the Side Letter and the No Excuses Incentive Payment mechanism in the Comprehensive Agreement would be administered pursuant to the terms of the Comprehensive Agreement and the PAFA, as modified by the Work Order and the Side Letter, respectively.

Options: Approve, Deny, or Defer.

Public Comments/Reactions:

ATTACHMENT A

COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
1401 East Broad Street
Richmond, Virginia 23219-2000

Stephen C. Brich, P.E.
Commissioner

[_____] [__], 2026

Mr. Douglas G. Pons
Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, Virginia 23320

Dear Mr. Pons,

Reference is made to: (i) that certain Amended and Restated Project Agreement for Funding and Administration for the I-64 Hampton Roads Bridge-Tunnel Expansion Project dated as of December 16, 2021, by and between the Virginia Department of Transportation (the "Department") and the Hampton Roads Transportation Accountability Commission ("HRTAC") (such agreement, as amended by that certain Amendment to Amended and Restated Project Agreement for Funding and Administration dated as of January 3, 2023 and that certain Second Amendment to Amended and Restated Project Agreement for Funding and Administration dated as of February 7, 2024, the "PAFA") and (ii) that certain Comprehensive Agreement Relating to the I-64 Hampton Roads Bridge-Tunnel Expansion Project dated as of April 3, 2019 (as amended, the "Comprehensive Agreement"), by and between the Department and Hampton Roads Connector Partners (the "Design-Builder"). Capitalized terms used in this Letter and not otherwise defined herein shall have the respective meanings ascribed to those terms within the PAFA or the Comprehensive Agreement, as applicable.

As previously discussed with the Executive Director, the Department seeks to issue Work Order No. [__] under the Comprehensive Agreement, a copy of which is attached hereto as Attachment 1 (the "Work Order") that would, among other things: (i) provide for an increase in the Contract Price and an extension of the Contract Times by sixty (60) days, which the Department has determined the Design-Builder is entitled to under the terms of the Comprehensive Agreement due to the impact on the Contract Price and Contract Times of certain work; and (ii) in connection therewith, reset (*i.e.*, extend) by sixty (60) calendar days the dates associated with the No Excuses Incentive Payment, all as more specifically stated in the Work Order.

The Department and HRTAC acknowledge that, pursuant to Section 4.07 of the PAFA, the Department may not make any modification to the No Excuses Incentive Payment mechanism set forth in the Comprehensive Agreement without the Commission's prior written consent, which may be granted, withheld, or conditioned by the Commission in its sole discretion.

HRTAC hereby consents to the Department's issuance of the Work Order, subject to the following clarifications and understandings:

1. In accordance with Section 4.07(b) of the PAFA, the Department shall not pay the No Excuses Incentive Payment unless all applicable conditions under the Comprehensive Agreement have been satisfied in full, including, without limitation, the Design-Builder's execution and delivery of a release of all claims in accordance with the terms thereof (the "Claims Release").

2. If all applicable conditions under the Comprehensive Agreement to the payment of the No Excuses Incentive Payment have been satisfied in full, the Department shall pay the applicable amount; however, notwithstanding anything to the contrary set forth in the PAFA, the Department shall not be entitled to reimbursement from the Commission of the No Excuses Incentive Payment paid by the Department, unless and until each of the following conditions has been satisfied:

   (A) the Final Completion Date has been achieved and the Department has provided to the Commission a certificate confirming same;

   (B) the Department has provided to the Commission a complete and correct copy of the fully executed Claims Release; and

   (C) the Department has provided to the Commission a certificate confirming that, except for the Commission's reimbursement obligation in respect of the No Excuses Incentive Payment (which is subject to the limitation set forth below), the Commission has paid and satisfied in full all of its payment/reimbursement obligations under the PAFA.

3. The Department shall not be entitled to reimbursement from the Commission in respect of the No Excuses Incentive Payment to the extent the Commission's Maximum Commission Financial Commitment has been reached (*i.e.*, the amount payable by the Commission to the Department in respect of the No Excuses Incentive Payment shall be the lesser of (A) the amount paid by the Department to the Design-Builder and (B) the amount, if any, which when combined with all other amounts paid by the Commission under the PAFA, will not cause the Commission's Maximum Commission Financial Commitment to be exceeded).

4. For clarity, the Commission shall have no obligation to reimburse the Department for all or any portion of the No Excuses Incentive Payment paid by the Department to the Design-Builder if the payment of such reimbursement by the Commission would result in the Commission expending funds in excess of the Maximum Commission Financial Commitment.

5. Section 4.07(a) of the PAFA is hereby deleted in its entirety and replaced as shown below.

(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 April 27, 2027. 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.

This letter is limited to the matters set forth herein and shall not constitute a modification or waiver of any other provision of the PAFA. Except as modified hereby, all other terms of the PAFA shall remain in full force and effect.

This letter 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.

Sincerely,

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

Acknowledged and Agreed:

Hampton Roads Transportation Accountability Commission

By: _____
Douglas G. Pons, HRTAC Chair

ATTACHMENT 1

WORK ORDER

[*See attached*]

Form C-10 (modified)
HRBT Expansion Project 10-25-2023

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

CHANGE ORDER

Contract ID No.: 115008 FHWA No.: NHPP-5A03(992) State Project No.: 0064-M06-032

Original Contract Value: $ 3,299,997,227.19 Total of Other Change Orders: _____ Change Order No.: 121

This Work Order is executed by the parties pursuant to Article 9 of Exhibit 1 to the Comprehensive Agreement (CA) between the Virginia Department of Transportation (VDOT) and Hampton Roads Connector Partners (HRCP) dated April 3, 2019. All capitalized terms used in this Work Order that are not otherwise defined herein shall have the meanings ascribed to them by the CA.

I. ENGINEER'S EXPLANATION, DESCRIPTION AND LOCATION OF PROPOSED CHANGE:

This Work Order is to adjust the Contract Price and Contract Times as per Article 9 of the General Conditions of the Contract to compensate HRCP for constructions cost and time impacts incurred by HRCP for the replacement of tunnel segments that developed cracks during tunnel boring operations meeting the following precautionary measure taken by the Department.

As a precautionary measure, the Department directed the removal and replacement of tunnel segments exhibiting cracks exceeding the 0.008-inch crack width criterion set forth in Technical Requirement Section 23.3.2.2. However, the contract documents do not clearly define tunnel segments with cracks exceeding the 0.008-inch criterion as "damaged tunnel segments," nor do they expressly require removal and replacement under such conditions.

This change will result in an increase to the Contract Price and Contract Times

II. CHANGE CATEGORY:

CHAR

III. ENTITLEMENT CONDITIONS:

☒ Changes in Character of Work ☐ Value Engineering Proposal ☐ Differing Site Condition

IV. CHANGE TO CONTRACT TIMES:

	Previous Date	Change	Revised Date
Substantial Completion Deadline	February 26, 2027	+ 60 days	April 27, 2027
Final Completion Deadline	August 27, 2027	+ 60 days	October 26, 2027
Long Stop Deadline	December 31, 2027	+ 0 days	Unchanged

V. CHANGE TO CONTRACT PRICE:

Item No.	Item Description	Qty.	Unit	Unit Price	Increase	Decrease
1	Tunnel Segment Replacement	1	LS	$19,284,240.00	$19,284,240.00	
Federal Funding: ☒ Participating ☐ Non - Participating Funding Source/Charge: Commission Funded: 100% Federal / State: 0%				Net Increase/Decrease:	$19,284,240.00	
				Net Total:		
				Revised Contract Price:		

VI. OTHER TERMS:

a. HRCP and VDOT agree the above changes to Contract Times and / or Contract Price constitute complete relief and full compensation for all efforts and costs (including, but not limited to, labor, equipment, material, engineering, incidentals, QA / QC, administrative costs, overhead, and profit) necessary to fully implement the changes as outlined in this Work Order.

b. HRCP and VDOT agree that this Work Order fully resolves and settles all claims or demands for damages or relief of any kind relating to or arising out of the change set forth in this Work Order, including but not limited to delay, disruption, schedule impact, and acceleration, if any, incidental to, the changes described herein.

c. CA Exhibit 6 (Maximum Cumulative Compensation Amount) is hereby modified for this change, effective as of the [XXX] entry.

d. HRCP hereby agrees to perform and/or non-perform, as indicated, the work described herein (i) at the price set forth and (ii) in accordance

Commented [RB1]: Month and year to be filled in prior to execution by VDOT.

Month and year will be the month preceding execution by VDOT.

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION

CHANGE ORDER

Contract ID No.: 115008 FHWA No.: NHPP-5A03(992) State Project No.: 0064-M06-032

Original Contract Value: $ 3,299,997,227.19 Total of Other Change Orders: _____ Change Order No.: 121

with the CA provisions and specifications and any other terms incorporated herein.

e. This change shall not transfer any risk, responsibility, or liability from HRCP to the Department.

f. All other provisions of the CA remain in full force and effect.

Approved by Hampton Roads Connector Partners (Design-Builder): _____

☐ Unilateral Work Order

Claudio Cimiotti, Design-Builder's Representative Date

Recommended for VDOT Approval:

_____

Bradley A. Weidenhammer, Deputy Project Director Date

HRTAC Approval (if required):

_____ *not required* _____

_____

VDOT Approval:

_____

Michael R. Davis, District Engineer Date

FHWA Approval:

_____

John E. Mazur, FHWA Major Projects Engineer Date

Form C-10 (modified)
HRBT Expansion Project 10-25-2023

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER FORM
SUPPLEMENTAL ATTACHMENT

Contract ID No.: 115008 FHWA No.: NHPP-5A03(992) State Project No.: 0064-M06-032
Supplemental Attachment Sheet #: 1 of 1 Change Order Number: 121

A. Explanation of change (noting any relevant correspondence):

This Work Order is to adjust the Contract Price and Contract Times as per Article 9 of the General Conditions of the Contract to compensate HRCP for constructions cost and time impacts incurred by HRCP for the replacement of tunnel segments that developed cracks during tunnel boring operations meeting the following precautionary measure taken by the Department.

As a precautionary measure, the Department directed the removal and replacement of tunnel segments exhibiting cracks exceeding the 0.008-inch crack width criterion set forth in Technical Requirement Section 23.3.2.2. However, the contract documents do not clearly define tunnel segments with cracks exceeding the 0.008-inch criterion as "damaged tunnel segments," nor do they expressly require removal and replacement under such conditions.

This change will result in an increase to the Contract Price and Contract Times

B. Contract document to be changed: Comprehensive Agreement

C. Article(s) or section(s) to be changed:

i. CA Article 5.2 Completion Dates
ii. CA Article 5.3 No Excuses Incentive Payment

Insert change/update to the CA here:

i. CA Article 5.2 Completion Dates

5.2.1 Substantial Completion Deadline. Design-Builder shall achieve Substantial Completion on or before April 27, 2027 February 26, 2027 (the "Substantial Completion Deadline"). The date the Project has achieved Substantial Completion is the "Substantial Completion Date."

5.2.2 Final Completion Deadline. Design-Builder shall achieve Final Completion on or before October 26, 2027 August 27, 2027 (the "Final Completion Deadline"). The date the Project has achieved Final Completion is the "Final Completion Date."

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
CHANGE ORDER FORM
SUPPLEMENTAL ATTACHMENT

Contract ID No.: 115008 FHWA No.: NHPP-5A03(992) State Project No.: 0064-M06-032
Supplemental Attachment Sheet #: 1 of 1 Change Order Number: 121

ii. CA Article 5.3 No Excuses Incentive Payment

5.3.2 Determination of Amount of No Excuses Incentive Payment. The Subject to Section 5.3.4, the amount of the No Excuses Incentive Payment shall be determined in accordance with the following provisions.

.1 If Design-Builder achieves Substantial Completion on or before November 24, 2026 ~~September 25, 2026~~, the amount of the No Excuses Incentive Payment will equal ninety million dollars ($90,000,000).

.2 If Design-Builder achieves Substantial Completion after November 24, 2026 ~~September 25, 2026~~, but on or before March 1, 2027~~December 31, 2026~~, the amount of the No Excuses Incentive Payment will equal (i) ninety million dollars ($90,000,000) less (ii) one hundred forty-two thousand dollars ($142,000) per day for each day that Design-Builder's achievement of Substantial Completion extends beyond November 24, 2026 ~~September 25, 2026~~ (e.g., if Design-Builder achieves Substantial Completion on March 1, 2027~~December 31, 2026~~, the No Excuses Incentive Payment will equal seventy-six million two hundred twenty-six thousand dollars ($76,226,000)).

.3 If Design-Builder achieves Substantial Completion on March 2, 2027 ~~January 1, 2027~~, the amount of the No Excuses Incentive Payment will equal fifty-one million dollars ($51,000,000).

.4 If Design-Builder achieves Substantial Completion after March 2, 2027 ~~January 1, 2027~~, but on or before April 26, 2027 ~~February 25, 2027~~, the amount of the No Excuses Incentive Payment will equal (i) fifty-one million dollars ($51,000,000) less (ii) nine hundred fourteen thousand two hundred eighty-five dollars ($914,285) per day for each day that Design-Builder's achievement of Substantial Completion extends beyond March 2, 2027 ~~January 1, 2027~~ (e.g., if Design-Builder achieves Substantial Completion on April 26, 2027 ~~February 25, 2027~~, the No Excuses Incentive Payment will equal seven hundred fourteen thousand three hundred twenty-five dollars ($714,325)).

.5 [Not used.]

.6 [Not used.]

.7 If Design-Builder achieves Substantial Completion on or after April 27, 2027 ~~February 26, 2027~~, the amount of the No Excuses Incentive Payment will equal zero dollars ($0).