

## **ITEM #9: MEMORANDUM OF AGREEMENT: VDOT AND HRTPO**

At its May Retreat, the HRTPO Board was briefed on the ongoing coordination between the Commonwealth and HRTPO on the revenue collection, distribution process, programming, and reporting of the HB2313 Hampton Roads Transportation Fund (HRTF), and its associated Memorandum of Agreement (MOA) between VDOT and the HRTPO Board currently under development by VDOT. Since May, the HRTPO and VDOT have mutually developed an MOA that outlines the roles, responsibilities, and products regarding the HRTF revenues (attached).

This item is under the Consent Agenda for approval; see Item #14-0.

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

Attachment 9

**MEMORANDUM OF AGREEMENT BETWEEN  
THE VIRGINIA DEPARTMENT OF TRANSPORTATION AND  
THE HAMPTON ROADS TRANSPORTATION PLANNING ORGANIZATION  
RELATING TO  
IMPLEMENTATION OF CHAPTER 766 OF THE 2013 ACTS OF ASSEMBLY AND  
ADMINISTRATION OF THE HAMPTON ROADS TRANSPORTATION FUND**

**WHEREAS**, the 2013 Virginia General Assembly adopted and enacted into law House Bill 2313, 2013 Va. Acts Chapter 766 (“Chapter 766”); and

**WHEREAS**, Chapter 766 provides for imposition of certain state taxes in localities comprising planning districts that meet certain criteria as specified in the Act, and further provides that the revenues derived from taxes imposed in the localities comprising any such planning district be deposited in a special fund and used solely for transportation purposes and projects in the planning district; and

**WHEREAS**, Planning District 23 meets the criteria specified in §§ 58.1-603.1, 58.1-604.01, 58.1-604.1, 58.1-614 and 58.1-2295 of the Code of Virginia of 1950 (as amended) and the taxes specified in those sections shall be imposed in the localities comprising Planning District 23; and

**WHEREAS**, Chapter 766, in §33.1-23.5:3, establishes the Hampton Roads Transportation Fund (“HRTF”) and specifies that all revenues dedicated to the HRTF pursuant to § 58.1-638 and Chapter 22.1 (§§58.1-2291 et seq.) shall be paid into the state treasury, credited to the fund and the amounts so dedicated deposited monthly by the Comptroller; and

**WHEREAS**, Chapter 766, in §33.1-23.5:3 provides, among other things, that the moneys deposited in the HRTF shall be used solely for new construction projects on new or existing roads, bridges and tunnels in the localities comprising Planning District 23, as approved by the Hampton Roads Transportation Planning Organization (“HRTPO”); and

**WHEREAS**, the HRTPO and the Virginia Department of Transportation (“VDOT”) have determined that it is necessary for the two entities to enhance coordination of transportation planning and programming functions in order to ensure the most effective and efficient use of revenues deposited into the HRTF and other state and federal transportation revenues.

**WHEREAS**, the Virginia Department of Taxation bears responsibility for collecting and depositing into the HRTF all revenues associated with the additional sales tax(es) imposed in Planning District 23 by Chapter 766 in sections 58.1-603.1, 58.1-604.01, 58.1-604.1, 58.1-614; and the Virginia Department of Motor Vehicles bears responsibility for collecting and depositing into the HRTF all revenues associated with the additional motor fuels taxes imposed in Planning District 23 by Chapter 766 in section 58.1-2295 and VDOT shall bear no responsibility for collecting or depositing the tax revenues into the HRTF.

**WHEREAS**, the Department of Treasury is responsible for the investment of state funds and the administration of banking and cash management services and accordingly, bears such responsibility as it relates to the HRTF.

**NOW THEREFORE**, in order to most effectively administer the expenditure of funds once deposited into the HRTF, the Parties have deemed it necessary and prudent to identify their respective roles and responsibilities with regard to said Fund by means of an Agreement and, accordingly, do hereby agree as follows:

1. **Maintenance of the Hampton Roads Transportation Fund:** For the HRTF, VDOT will serve as the fiscal agent, administering appropriation (budget authority) and expenditure processing for the HRTF.
2. **Use and Availability of Funds:** Use of funds in the HRTF shall be consistent with state and federal law. Further, monies in the Fund shall not be used to support or repay existing or new debt, whether such debt is in the form of bonds or any other form of debt, unless otherwise authorized by law. Further, use and availability of HRTF funds are subject to appropriation.
3. **VDOT's Role and Responsibilities:**
  - a. VDOT will provide the HRTPO with the Department of Taxation's estimates of HRTF revenues that will result from the state taxes imposed in Planning District 23 pursuant to Chapter 766, as they are made available for public distribution.
  - b. VDOT will provide the HRTPO with monthly financial reports relating to the HRTF in a form similar to the exemplar attached hereto as Exhibit A, and which will include the following information:
    - i. Income by revenue source as detailed by the collecting agency
    - ii. Interest earnings
    - iii. Expenditures reflecting both the program (HRTF) total as well as project totals.
    - iv. The current cash position/balance in the Fund as well as forecasted cash position/balance.
  - c. Anticipated revenues and cash flows will be revised from time to time, (hereinafter "Current Anticipated Cash Flow") as deemed necessary and appropriate by VDOT, in its sole discretion, to reflect and take into consideration actual revenues and revenue trends and expenditures.
  - d. For all projects funded in whole or part with HRTF funds the projects shall be administered using VDOT's existing project administration agreements and protocols. Standard templates/exemplars of VDOT project administration agreements are attached hereto as Exhibit B.

- e. VDOT will incorporate the HRTPO allocation of HRTF funds into the annual update of the Six-Year Improvement Program (SYIP). VDOT will provide to the HRTPO a schedule by January 31st of each year, establishing the deadlines by which allocation information shall be submitted for inclusion into the draft and final SYIPs each year.
- f. VDOT will submit to the CTB monthly amendments to and transfers within the SYIP of HRTF funds as requested by the HRTPO, making advance copies of said amendments and transfers available to the HRTPO at the time the information is made available to CTB members.
- g. VDOT will process TIP amendments for HRTF funds as required by federal law and regulations and amend the STIP.

**4. The HRTPO's Roles and Responsibilities:**

- a. The HRTPO will allocate the estimated revenues to projects in accord with the following requirements of §33.1-23.5:3:
  - i. Monies in the HRTF shall be used solely for new construction projects on new or existing roads, bridges, and tunnels in the localities comprising Planning District 23, as approved by the HRTPO;
  - ii. Priority shall be given to those projects that are expected to provide the greatest impact on reducing congestion; and
  - iii. HRTPO shall ensure that the monies in the HRTF are used for such construction projects in all localities comprising Planning District 23 and shall produce annual reports reflecting all projects during the reporting period that were funded in whole or in part with monies from the HRTF.
- b. The HRTPO will plan projects using a constrained planning process whereby projects to be funded by the HRTF must be supported by available allocations and cash and further, will monitor and oversee actual HRTF spending to ensure it is consistent with and in accord with Current Anticipated Cash Flow. The HRTPO acknowledges and agrees that spending in excess of or inconsistent with Current Anticipated Cash Flow could delay future projects.
- c. The HRTPO will incorporate the HRTF funds into the Constrained Long-Range Planning process and financial constraint process due to be conducted after execution of this Agreement.
- d. The HRTPO will maintain documentation relating to the use of revenues from the HRTF as required by Chapter 766 and in accord with sound accounting principles and practices.

- e. The HRTPO will establish a cooperative process consistent with state and federal requirements whereby all localities comprising Planning District 23 will have opportunity to participate in the process for selecting and prioritizing projects to be funded with monies from the HRTF, which process will include but not be limited to establishment of voting rights for, and written agreements or memoranda of agreement with, localities in Planning District 23 that are not members of the HRTPO, unless the boundaries of the Metropolitan Planning Area for the HRTPO are expanded to include those localities within Planning District 23 that are not currently members of the MPO and such localities are made members of the HRTPO.
- f. The HRTPO will enter into agreements with localities in Planning District 23 that are not members of the HRTPO, as appropriate, to ensure agreement as to the roles and responsibilities of the parties with regard to planning, project selection, programming, project administration, project spending and HRTF administration.
- g. The HRTPO will submit to VDOT the allocation information on HRTF funds for inclusion into the draft and final SYIPs during the annual update process by the deadlines established each year.
- h. The HRTPO will submit amendments to the SYIP and transfers of HRTF funds that are needed outside the annual SYIP update to VDOT for action by the CTB.
- i. The HRTPO will incorporate projects funded by the HRTF into the TIP as required by federal law and regulations. The HRTPO will submit these TIP changes to VDOT for inclusion into the STIP.
- j. The HRTPO will cooperate with VDOT and other state entities in the review and reporting requirement set forth in the 17th re-enactment clause of Chapter 766.

**5. TERMINATION OF AGREEMENT:**

This Agreement shall be terminated upon the occurrence of any of the following:

- a. Withdrawal by VDOT from the Metropolitan Transportation Planning and Programming Process in the Hampton Roads Area.
- b. Withdrawal of the Section 134 designation to the MPO by the Governor.
- c. Withdrawal of the HRTPO from the Metropolitan Transportation Planning and Programming Process.
- d. By written request of either Party.

In the event of termination under subsections a. or d., at least 30 days written notice shall be given prior to termination. In the event of termination under subsections b. or c., said termination shall be effective the date of notification.

**6. SETTLEMENT OF DISPUTES:**

Any factual disputes in connection with this Agreement not disposed of by mutual agreement between the DEPARTMENT and the HRTPO shall be transmitted in writing to the Commissioner of Highways and a 60 day period provided for his review and decision. The Commissioner will rule on the question and his decision shall be final.

Any legal disputes in connection with this Agreement not disposed of by mutual agreement between VDOT and the HRTPO shall be transmitted in writing to the Commissioner of Highways and a 60-day period provided for his review and decision. The Commissioner will rule on the question and his decision shall be final unless the legal dispute is adjudicated in court. Exhaustion of the administrative procedure outlined herein above is a prerequisite of and not a substitute for the right of judicial review of the legal dispute.

**7. LIABILITY FOR PLANNING PROCESS AND ADMINISTRATION OF FUNDS:**

Nothing in this Agreement shall be deemed to waive VDOT's defense of sovereign immunity applicable to any claims which might arise as a consequence of the planning process or this Agreement. Further, the HRTPO will comply with all requirements of Chapter 766 with respect to the HRTF.

**8. MODIFICATION OF AGREEMENT:**

This Agreement may be modified only by written agreement, duly executed by both Parties.

IN WITNESS WHEREOF, the Parties have caused this Memorandum of Agreement to be executed by their duly authorized representatives on the \_\_\_\_\_ day of July, 2013, which shall be the effective date of this Agreement.

Hampton Roads Transportation  
Planning Organization

Virginia Department of Transportation

By: \_\_\_\_\_  
Dwight L. Farmer  
Executive Director/Secretary

By: \_\_\_\_\_  
Gregory A. Whirley  
Commissioner