



# COMMONWEALTH of VIRGINIA

## *Commonwealth Transportation Board*

Aubrey L. Layne, Jr.  
Chairman

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*Agenda item #1*

### RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

February 16, 2017

#### MOTION

**Made By: Ms. Hynes, Seconded By: Mr. Rosen**  
**Action: Motion Carried, Unanimously**

**Title: Authorization for the Commissioner of Highways to Enter into a Memorandum of Understanding with the Federal Highway Administration Concerning Tolling of the I-95 HOV/HOT Lanes, as Extended**

**WHEREAS**, on July 31, 2012, pursuant to the Public Private Transportation Act of 1995 (Va. Code 33.2-1800 *et seq*), the Virginia Department of Transportation (the "Department") and 95 Express Lanes, LLC entered into a comprehensive agreement (the "Comprehensive Agreement"), relating to the I-95 HOV/HOT Lanes Project to develop, design, finance, construct, maintain, and operate 29 continuous miles of HOT lanes (or Express Lanes) on Interstates 95 and 395 (the "95 HOT or Express Lanes") in Virginia; and

**WHEREAS**, on June 27, 2012, the Department and United States Department of Transportation entered into an agreement ("Agreement") to permit tolls to be charged for the I-95 HOV/HOT Lanes Project; and

**WHEREAS**, the Department now desires to extend the 95 HOT/Express Lanes 2.2 miles to the south (the "I-95 Express Lanes Southern Terminus Extension") and eight miles to the north (the "I-395 Express Lanes Northern Extension") collectively, the I-95/395 HOV/HOT Lanes Project; and

**WHEREAS**, the Federal Highway Administration ("FHWA") requires the Department to enter into a tolling memorandum of understanding (Tolling MOU) collectively governing tolling for the existing I-95 HOT/Express Lanes and the I-95/395 HOV/HOT Lanes Project; and

**WHEREAS**, a Tolling MOU would require the Department to comply with mandatory federal requirements that apply to tolling of the I-95/395 HOT Lanes; and

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**WHEREAS**, this Tolling MOU will replace the Agreement signed on June 27, 2012; and

**WHEREAS**, the Commonwealth Transportation Board (“CTB”) is authorized under Va. Code §33.2-221(A) to enter into contracts and agreements with the United States government.

**NOW, THEREFORE, BE IT RESOLVED:** that the CTB hereby authorizes the Commissioner of Highways to execute a Tolling MOU between the Department and FHWA, governing the tolling of the 95/395 HOT Lanes, to include existing 95 HOT/Express Lanes as well the I-95 Express Lanes Southern Terminus Extension and I-395 Express Lanes Northern Extension, as set out in Attachment A, with such changes as the Commissioner deems necessary or appropriate.

####

## CTB Decision Brief

### Authorization for the Commissioner of Highways to Enter into a Memorandum of Understanding with the Federal Highway Administration Concerning Tolling of the I-95/395 HOV/HOT Lanes, as Extended

**Issue:** In order to adjust tolling for the I-95 HOV/HOT Lanes, as will be modified by extending the 95 HOT lanes to the south beyond the existing southern terminus and to the North, on I-395, beyond the existing northern terminus, a Memorandum of Understanding with the Federal Highway Administration (FHWA) concerning tolling for the project (Tolling MOU) must be executed. Pursuant to Va. Code §33.2-221 (A) the Commonwealth Transportation Board (CTB) has the power and duty to enter into contracts and agreements with the U.S. government. Accordingly, approval of, and authorization for the Commissioner of Highways to execute, the Tolling MOU with FHWA is sought.

#### Facts:

- On July 31, 2012, pursuant to the Public Private Transportation Act of 1995 (Va. Code 33.2-1800 *et seq.*) the Virginia Department of Transportation (the “Department”) and 95 Express Lanes, LLC entered into a comprehensive agreement (the “Comprehensive Agreement”), relating to the I-95 HOV/HOT Lanes Project to develop, design, finance, construct, maintain, and operate 29 continuous miles of HOT (or Express) lanes on Interstates 95 and 395 (the “95 HOT or Express Lanes”) in Virginia.
- On June 27, 2012, the Department and United States Department of Transportation entered into an agreement (“Agreement”) to permit tolls to be charged on I-95 HOV/HOT Lanes Project.
- The Department seeks to extend the 95 HOT/Express Lanes 2.2 miles to the south (the “I-95 Express Lanes Southern Terminus Extension”) and approximately eight miles to the north (the “I-395 Express Lanes Northern Extension”).
- The FHWA requires the Department to enter into a tolling memorandum of understanding governing tolling on the 95/395 HOT Lanes, including both existing I-95 HOT/Express lanes as well as the I-95 Express Lanes Southern Terminus Extension and I-395 Express Lanes Northern Extension. The Tolling MOU requires the Department to comply with mandatory federal requirements that apply to tolling of the 95/395 HOT/Express Lanes.
- The Tolling MOU (attachment A) will replace the Agreement signed on June 27, 2012.

**Recommendation:** That the CTB approve and authorize the Commissioner to execute a Tolling MOU with FHWA/USDOT relating to tolling on I-95/395, as set out in Attachment A, with such changes as the Commissioner deems appropriate/necessary.

**Action Required by CTB:** Virginia Code § 33.2-221 (A) requires a majority vote of the CTB to approve, and authorize the Commissioner to execute, a Tolling MOU with FHWA/USDOT relating to tolling on I-95/395 as set out in Attachment A, with such changes as the Commissioner deems appropriate/necessary. The CTB will be presented with a resolution for a formal vote.

**Result, if Approved:** The Commissioner of Highways will be authorized to execute the Tolling MOU with FHWA/USDOT relating to tolling on I-95/395, with such changes as the Commissioner deems appropriate/necessary.

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**Options:** Approve, Deny, or Defer.

**Public Comments/Reactions:** None

## Attachment A

# MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN THE FHWA VIRGINIA DIVISION OFFICE (Division) AND THE VIRGINIA DEPARTMENT OF TRANSPORTATION (VDOT)

WHEREAS, on June 27, 2012, the FHWA and VDOT entered into a tolling agreement pursuant to the provisions of Section 166 of title 23, United States Code, permitting VDOT to toll the high occupancy vehicle ("HOV") lanes facility on Interstate 95 from approximately two miles north of the Capital Beltway near Turkeycock Run, milepost 2.0, at the northern terminus, to Garrisonville Road (VA 610) near milepost 143.6 in Stafford County, at the southern terminus, including the Phase VIII HOV-only lanes and HOV connector ramps through the Springfield Interchange ("I-95 HOV/HOT Lanes Tolling Agreement"); and

WHEREAS, tolling agreements are no longer required under Section 129 of Title 23, United States Code, as amended by MAP-21 and the FAST Act; and

WHEREAS, VDOT desires to extend and expand the existing I-95 HOV/HOT Lanes network 2.2 miles south (to I-95 mile marker 142.5), and approximately eight miles north (to I-395 at the Washington D.C. line) (the entire span from mile marker 142.5 to the Washington D.C. line hereinafter referred to as the "Toll Project"):

- The I-395 Express Lanes Northern Extension ("NTE") will extend the I-95/395 HOT/Express Lanes approximately eight miles to the north from Turkeycock Run to the Washington D.C. line.
- The Southern Terminus Extension ("STE") will extend the existing HOV/HOT lanes approximately 2.2 miles from approximately mile marker 145 to approximately mile marker 142.5. The STE includes the creation of new northbound and southbound access points between the HOV/HOT Lanes and the general purpose lanes.
- After completion of the NTE and STE, the project limits of the I-95/395 HOT Lanes will be from the Washington D.C. line to approximately 0.9 miles south of the Garrisonville Road overpass, mile marker 142.5, including the Phase VIII HOV-only lanes and HOV connector ramps through the Springfield Interchange (hereinafter referred to as the "Toll Facility").
- The I-95 HOV/HOT Lanes Project, NTE and STE will collectively be referred to as I-95/395 HOV/HOT Lanes Project.

WHEREAS, VDOT desires to implement tolls using a congestion pricing toll strategy on the Toll Facility; and

WHEREAS, the FHWA and VDOT desire to enter into this MOU to reflect the mutual understanding that 23 U.S.C. 129(a) and 23 U.S.C. 166, HOV to HOT conversion applies to the Toll Project; and

WHEREAS, 23 U.S.C. 166(b)(4), as amended by the FAST Act, provides that a public authority may allow vehicles not otherwise exempt pursuant to 23 U.S.C. 166(b) to use a HOV facility by paying a toll.

NOW THEREFORE, the FHWA and VDOT hereby agree as follows:

1. The Toll Project meets the toll eligibility requirements of 23 U.S.C. 166.
2. VDOT shall comply with all requirements of 23 U.S.C. 129(a) and 23 U.S.C. 166, as amended by the FAST Act, with respect to the Toll Project and the operation of the Toll Facility. VDOT shall also ensure compliance with these requirements through appropriate contractual arrangements with a private operator of the Toll Facility.
3. The I-95 HOV/HOT Lanes Tolling Agreement is hereby terminated and replaced with this MOU.

IN WITNESS THEREOF, the parties hereto have caused this MOU to be duly executed, on the date of the last signature below.

STATE OF VIRGINIA  
VIRGINIA DEPARTMENT OF TRANSPORTATION

BY: \_\_\_\_\_,  
Charles A. Kilpatrick, PE  
Commissioner of Highways

DATE: \_\_\_\_\_

FEDERAL HIGHWAY ADMINISTRATION  
VIRGINIA DIVISION

BY: \_\_\_\_\_,

DATE: \_\_\_\_\_