



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Shannon Valentine
Chairperson

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Agenda Item # 6

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

January 16, 2019

MOTION

Made By: Ms. Hynes, Seconded By: Mr. Kasprovicz

Action: Motion Carried, Unanimously

Title: Designation of the I-95 Express Lanes

Fredericksburg Extension as HOT Lanes and Authorization for the Commissioner of Highways to Enter into an Updated Memorandum of Understanding with the Federal Highway Administration Concerning Tolling of the I-95 HOV/HOT Lanes, as Extended.

WHEREAS, pursuant to the Public-Private Transportation Act of 1995 (the "PPTA"), (Va. Code §§ 33.2-1800, *et seq.*), the Virginia Department of Transportation (the "Department") may allow private entities to develop and/or operate qualifying transportation facilities; and

WHEREAS, on July 31, 2012, pursuant to the PPTA, 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 High Occupancy Toll ("HOT") lanes on Interstates 95 and 395 between Turkeycock Run (milepost 2.0 on Interstate 395) and Garrisonville Road (VA Route 610) (the "Original 95 HOT Lanes"); and

WHEREAS, on May 2, 2016, the Department entered into the First Amendment to the Comprehensive Agreement to extend the HOT lanes on Interstate 95 south 2.2 miles (near milepost 142.5 on Interstate 95) (the "I-95 Express Lanes Southern Terminus Extension"); and

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Designation of the I-95 Express Lanes Fredericksburg Extension as HOT Lanes

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WHEREAS, on June 8, 2017, the Department entered into the Amended and Restated Comprehensive Agreement (the “First ARCA”) to extend the HOT lanes on Interstate 395 for approximately 8 miles north to the Washington D.C. line (the “I-395 Express Lanes Northern Extension”); and

WHEREAS, the Department anticipates amending and restating the First ARCA to extend the HOT lanes on Interstate 95 approximately ten additional miles farther south to Route 17 in Fredericksburg (the “I-95 Express Lanes Fredericksburg Extension”); and

WHEREAS, Va. Code § 33.2-502 provides that the Commonwealth Transportation Board (the “CTB”) may designate one or more lanes of any highway including lanes previously classified as High Occupancy Vehicle (“HOV”) lanes, in the Interstate System, primary state highway system, or National Highway System, or any portion thereof, as HOT lanes; and

WHEREAS, pursuant to Va. Code § 33.2-502, in making HOT lanes designations, the CTB is required to also specify the high-occupancy requirement and conditions for use of such HOT lanes or may authorize the Commissioner of Highways to make such determination consistent with the terms of a comprehensive agreement executed pursuant to Va. Code § 33.2-1808, however, the high-occupancy requirement for a HOT lanes facility constructed or operated as a result of the PPTA shall not be less than three; and

WHEREAS, by Resolution dated September 17, 2014, the CTB designated as HOT lanes the Original 95 HOT Lanes; and

WHEREAS, by Resolution dated February 16, 2017, the CTB designated as HOT lanes both the (i) I-95 Express Lanes Southern Terminus Extension, and (ii) I-395 Express Lanes Northern Extension; and

WHEREAS, the Department intends for the I-95 Express Lanes Fredericksburg Extension to be tolled using congestion pricing.

WHEREAS, pursuant to authority granted by the CTB on February 16, 2017, the Department entered into a memorandum of understanding with the Federal Highway Administration (“FHWA”) on April 10, 2017 (the “Existing Toll MOU”) permitting the Department to toll certain HOT lanes on Interstates 95 and 395 from I-395 just south of the Washington D.C. line, at the northern terminus, to approximately mile marker 142.5 on I-95, approximately 0.9 miles south of the Garrisonville Road overpass, at the southern terminus (the “Existing 95/395 Toll Facility”); and

WHEREAS, given the Department’s intention to extend and expand the Existing 95/395 Toll Facility ten miles farther south to Route 17 in Fredericksburg (the entire span from Route 17

to just south of the Washington D.C. line hereinafter referred to as the “Extended 95/395 Toll Facility”) the FHWA requires the Department to enter into a tolling memorandum of understanding governing tolling for the Extended 95/395 Toll Facility (the “Updated Toll MOU”), attached hereto as Attachment A, to replace the Existing Toll MOU; and

WHEREAS, the Updated Toll MOU will require the Department to comply with mandatory federal requirements related to tolling and applicable to the Extended 95/395 Toll Facility; and

WHEREAS, the 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 designates the I-95 Express Lanes Fredericksburg Extension as HOT lanes in accordance with Va. Code § 33.2-502, to be implemented upon issuance of a “Service Commencement Notice to Proceed” pursuant to the First ARCA, as amended and restated.

BE IT FURTHER RESOLVED that the CTB hereby specifies the high-occupancy requirement for the I-95 Express Lanes Fredericksburg Extension as HOV-3, in accordance with Va. Code § 33.2-502, to be implemented upon issuance of a “Service Commencement Notice to Proceed” pursuant to the First ARCA, as amended and restated.

BE IT FURTHER RESOLVED that the CTB hereby authorizes the Commissioner of Highways to establish the conditions for use of the I-95 Express Lanes Fredericksburg Extension in accordance with the terms and conditions of the First ARCA, as amended and restated.

BE IT FURTHER RESOLVED that the CTB hereby authorizes the Commissioner of Highways to execute the Updated Toll MOU between the Department and FHWA, governing the tolling of the Extended 95/395 Toll Facility, in the form set out as Attachment A, with such changes as the Commissioner deems necessary or appropriate.

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CTB Decision Brief

Designation of the I-95 Express Lanes Fredericksburg Extension as HOT Lanes and Authorization for the Commissioner of Highways to Enter into an Updated Memorandum of Understanding with the Federal Highway Administration Concerning Tolling of the I-95 HOV/HOT Lanes, as Extended.

Issue: The Virginia Department of Transportation (the “Department”) intends to amend and restate the Amended and Restated Comprehensive Agreement (“First ARCA”) relating to the Interstate 95 and 395 High Occupancy Toll (“HOT”) Lanes to extend the HOT lanes on Interstate 95 approximately ten miles farther south to Route 17 in Fredericksburg (the “I-95 Express Lanes Fredericksburg Extension”). Given the Department’s intention to extend and expand the HOT/Express lanes on I-95, the Federal Highway Administration (“FHWA”) requires the Department to enter into/execute an updated tolling memorandum of understanding governing tolling for the extended I- 95/395 toll facility (the “Updated Toll MOU”), to replace the existing Memorandum of Understanding relating to tolling on the existing I-95/395 toll facility.

Pursuant to Va. Code § 33.2-502, the Department is requesting the Commonwealth Transportation Board (the “CTB”) to designate the I-95 Express Lanes Fredericksburg Extension as HOT lanes with a high-occupancy requirement of three or more. Further, pursuant to Va. Code § 33.2-221 (A), the Department is requesting authorization for the Commissioner of Highways to enter into the Updated Toll MOU with FHWA.

Facts:

- On July 31, 2012, pursuant to the Public-Private Transportation Act of 1995 (“PPTA”), (Va. Code §§ 33.2-1800, *et seq.*), the Department and 95 Express Lanes, LLC entered into the Comprehensive Agreement to develop, design, finance, construct, maintain, and operate 29 continuous miles of HOT lanes on Interstates 95 and 395 (the “Original 95 HOT Lanes”).
- On May 2, 2016, the Department entered into an amendment (the “First Amendment”) to the Comprehensive Agreement to extend the I-95 HOT Lanes south 2.2 miles by constructing one reversible HOT lane and adding new HOT lane access points (the “I-95 Express Lanes Southern Terminus Extension”).
- On June 8, 2017, the Department entered into the First ARCA to extend HOT lanes on I-395 for approximately 8 miles north to the Washington DC line (“I-395 Express Lanes Northern Extension”).
- The Department now anticipates amending and restating the First ARCA to add the I-95 Express Lanes Fredericksburg Extension.
- The Department intends for the I-95 Express Lanes Fredericksburg Extension to be tolled using congestion pricing.

Designation of I-95 Express Lanes Fredericksburg Extension as HOT Lanes

- By resolution dated September 17, 2014, the CTB designated as HOT lanes the Original 95 HOT Lanes.
- By Resolution dated February 16, 2017, the CTB designated as HOT lanes both (i) the I-95 Express Lanes Southern Terminus Extension, and (ii) the then-anticipated I-395 Express Lanes Northern Extension.

- In order for the lanes to be operated as HOT Lanes, the CTB must designate those lanes that comprise the I-95 Express Lanes Fredericksburg Extension as HOT lanes.

Authorization for the Commissioner of Highways to Enter Into an Updated Toll MOU with FHWA Concerning Tolling of the I-95/395 HOT Lanes, as Extended

- On April 10, 2017, FHWA and the Department entered into a memorandum of understanding (the “Existing Toll MOU”) permitting the Department to toll certain HOT lanes on Interstates 95 and 395 from I-395 just south of the Washington D.C. line, at the northern terminus, to approximately mile marker 142.5 on I-95, approximately 0.9 miles south of the Garrisonville Road overpass, at the southern terminus (the “Existing 95/395 Toll Facility”).
- Given the Department’s intention to extend and expand the Existing 95/395 Toll Facility ten miles farther south to Route 17 in Fredericksburg (the entire span from Route 17 to just south of the Washington D.C. line hereinafter referred to as the “Extended 95/395 Toll Facility”) the FHWA requires the Department to enter into a tolling memorandum of understanding governing tolling for the Extended 95/395 Toll Facility (the “Updated Toll MOU”), attached hereto as Attachment A, to replace the Existing Toll MOU.
- The Updated Toll MOU will require the Department to comply with mandatory federal requirements related to tolling and applicable to the Extended 95/395 Toll Facility.
- The CTB is authorized under Va. Code § 33.2-221(A) to enter into contracts and agreements with the United States government.

Recommendation: that the CTB (1) designate the I-95 Express Lanes Fredericksburg Extension as HOT Lanes, in accordance with Va. Code §33.2-502, to be implemented upon issuance of a “Service Commencement Notice to Proceed” pursuant to the First ARCA, as amended and restated; (2) specify the high-occupancy requirement for the I-95 Express Lanes Fredericksburg Extension as HOV-3, in accordance with Va. Code §33.2-502, to be implemented upon issuance of a “Service Commencement Notice to Proceed” pursuant to the First ARCA, as amended and restated; (3) authorize the Commissioner of Highways to establish the conditions for use of the I-95 Express Lanes Fredericksburg Extension in accordance with the terms and conditions of the First ARCA, as amended and restated; and (4) authorize the Commissioner of Highways to execute the Updated Toll MOU with FHWA for the Extended 95/395 Toll Facility.

Action Required by CTB: Section 33.2-502 requires a majority vote of the CTB adoption or approving the recommended actions. The CTB will be presented with a resolution for a formal vote.

Result, if Approved: The I-95 Express Lanes Fredericksburg Extension will be designated as HOT lanes with a high occupancy requirement of three or more, in accordance with Va. Code § 33.2-502, to be implemented upon issuance of a “Service Commencement Notice to Proceed” pursuant to the First ARCA, as amended and restated; the Commissioner of Highways will be authorized to establish the conditions for use of the I-95 Express Lanes Fredericksburg Extension in accordance with the terms and conditions of the First ARCA, as amended and restated; and the Commissioner of Highways will be authorized to execute the Updated Toll MOU with FHWA.

CTB Decision Brief

Designation of the I-95 Express Lanes Fredericksburg Extension as HOT Lanes and Authorization for the Commissioner of Highways to Enter into an Updated Memorandum of Understanding with the Federal Highway Administration Concerning Tolling of the I-95 HOV/HOT Lanes, as Extended.

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Options: Approve, Deny, or Defer.

Public Comments/Reactions: None

CTB: Attachment A

**AMENDED AND RESTATED MEMORANDUM OF UNDERSTANDING (MOU)
BETWEEN THE
FHWA VIRGINIA DIVISION OFFICE (DIVISION) AND THE VIRGINIA
DEPARTMENT OF TRANSPORTATION (VDOT)**

WHEREAS, on April 10, 2017, the FHWA and VDOT entered into a memorandum of understanding (the “Existing Toll MOU”) permitting VDOT to toll the high occupancy vehicle (“HOV”) lanes facility on Interstates 95 and 395 from approximately I-395 just south of the Washington D.C. line, at the northern terminus, to approximately mile marker 142.5 on I-95 in Stafford County, at the southern terminus, including the Phase VIII HOV-only lanes and HOV connector ramps through the Springfield Interchange (the “Existing Facility”); and

WHEREAS, VDOT desires to extend and expand the Existing Facility 10 miles farther south to approximately I-95 mile marker 133 (the entire span from mile marker 133 to just south of the Washington D.C. line hereinafter referred to as the “Toll Facility”); and

WHEREAS, based on the Existing Toll MOU, VDOT has previously implemented or plans to implement tolls using a congestion pricing toll strategy on the Existing Facility and now also desires to implement tolls using a congestion pricing toll strategy on the portion of the Existing Facility to be extended and expanded farther south to approximately I-95 mile marker 133, such that tolling using a congestion pricing toll strategy will eventually be implemented on the entirety of the Toll Facility; and

WHEREAS, the FHWA and VDOT desire to enter into this Amended and Restated 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 entirety of the Toll Facility; 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 Facility 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 Facility. VDOT shall also ensure compliance with these requirements through appropriate contractual arrangements with a private operator of the Toll Facility.
3. The Existing Toll MOU is hereby amended and restated to apply to the entirety of the Toll Facility and replaced with this Amended and Restated MOU.

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

COMMONWEALTH OF VIRGINIA
VIRGINIA DEPARTMENT OF TRANSPORTATION

BY: _____
Stephen C. Brich, P.E.
Commissioner of Highways

DATE: _____

FEDERAL HIGHWAY ADMINISTRATION
VIRGINIA DIVISION

BY: _____

DATE: _____