



## COMMONWEALTH of VIRGINIA

### Commonwealth Transportation Board

W. Sheppard Miller, III  
Chairperson

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*Agenda item # 7*

#### RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 18, 2023

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

**Title: Authorization for the Commissioner of Highways to Enter into Memoranda of Understanding with the Federal Highway Administration (“FHWA”) Relating to the Expansion of Tolling of the Interstate 64 HOT (Express) Lanes Comprising the Hampton Roads Express Lanes Network (“HRELN”)**

**WHEREAS**, on October 19, 2016, pursuant to Va. Code §§ 33.2-502 and 33.2-309, and 23 USC § 166, the Commonwealth Transportation Board (“CTB”) authorized dynamic tolling on designated lanes (“Express Lanes”) of Interstate 64 between the I-564 Interchange in Norfolk and the I-264 Interchange in Virginia Beach, which comprises Segment 1 of the HRELN; and

**WHEREAS**, on April 19, 2017, pursuant to Va. Code § 33.2-221(A), the CTB approved and authorized the Virginia Department of Transportation (“VDOT”) to enter into a memorandum of understanding with FHWA relating to the tolling of Interstate 64 Express Lanes between the I-564 Interchange and the I-264 Interchange (“Tolling MOU Segment 1”); and

**WHEREAS**, on September 20, 2017, pursuant to Va. Code §§ 33.2-502 and 33.2-309, and 23 USC § 166, the CTB further designated Express Lanes on Interstate 64 between the I-664/I-264 Interchange at Bowers Hill and the I-264 Interchange; and

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**WHEREAS**, on January 10, 2018, pursuant to Va. Code §§ 33.2-502, 33.2-309, and 33.2-119, and 23 USC §§ 129 and 166, the CTB designated Express Lanes on Interstate 64 between the I-664 Interchange in Hampton and the I-564 Interchange; and

**WHEREAS**, on July 14, 2020, pursuant to Va. Code §§ 33.2-502 and 33.2-119, and 23 USC §§ 129 and 166, the CTB designated and authorized Express Lanes on Interstate 64 beginning in the vicinity of the I-664 Interchange in Hampton and extending to the vicinity of the intersection of Interstate 64 and Jefferson Avenue in Newport News; and

**WHEREAS**, on June 18, 2021, after completion of negotiations and other activities necessary for award, the Commissioner of Highways executed a contract, pursuant to the authorization and delegation issued by the CTB on May 19, 2021, with Conduent State and Local Solutions, Inc., for the Interstate 64 Hampton Roads Express Lanes Tolling System and Services Contract (the “Contract”); and

**WHEREAS**, on June 23, 2021, pursuant to Va. Code § 33.2-209, the CTB affirmed and ratified the Commissioner of Highways’ award and execution of the Contract for the HREL Tolling System and Services to Conduent State and Local Solutions, Inc., and reiterated its authorization for the Commissioner of Highways to exercise any and all options under the Contract; and

**WHEREAS**, both 23 USC § 166, which provides that a public authority may allow vehicles not meeting, and not otherwise exempt from, high-occupancy (“HOV”) requirements to use an HOV facility by paying a toll, and 23 USC § 129, which sets out the requirements for federal participation on tolled highway projects, apply to all segments of the HRELN; and

**WHEREAS**, FHWA recommends, as additional segments of the HRELN approach operational status, that VDOT enter into further memoranda of understanding relating to the tolling for those portions of the I-64 Express Lanes not covered by the initial Tolling MOU Segment 1, due to the potential consequences of noncompliance, including the discontinuation of toll collection; and

**WHEREAS**, section 33.2-221(A) of the *Code of Virginia* provides the CTB with the authority to enter into contracts and agreements with the United States government, including FHWA.

**NOW THEREFORE BE IT RESOLVED**, that the Commonwealth Transportation Board hereby approves, and authorizes the Commissioner of Highways to execute, a memorandum of understanding between VDOT and FHWA, substantively similar to Exhibit A and relating to the tolling of the I-64 Express Lanes from the I-264 Interchange in Virginia Beach to the I-264/I-664 Interchange at Bowers Hill, with such changes as the Commissioner deems necessary or appropriate.

Resolution of the Board

Authorization for the Commissioner of Highways to Enter into Memoranda of Understanding with the Federal Highway Administration (FHWA) Relating to the Expansion of Tolling of the Interstate 64 HOT (Express) Lanes Comprising the Hampton Roads Express Lanes Network (HRELN)

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**NOW, THEREFORE, BE IT FURTHER RESOLVED**, that the Commonwealth Transportation Board hereby authorizes the Commissioner of Highways to execute any further tolling-related memoranda of understanding with FHWA for the HRELN as future segments approach operational status.

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## **CTB Decision Brief**

### **Authorization for the Commissioner of Highways to Enter into Memoranda of Understanding with the Federal Highway Administration (“FHWA”) Relating to Tolling of the Interstate 64 HOT (“Express”) Lanes Comprising the Hampton Roads Express Lanes Network (“HRELN”)**

**Issue:** Prior to implementing dynamic tolling on the Express lanes along Interstate 64, from the I-264 Interchange in Virginia Beach to the I-264/I-664 Interchange at Bowers Hill in Chesapeake, which comprise Segment 2 of the HRELN, FHWA recommends that the Virginia Department of Transportation (“VDOT”) enter into a memorandum of understanding with FHWA concerning tolling on said lanes. Further, as additional segments of the HRELN approach operational status and prior to implementing dynamic tolling on those segments, similar memoranda of understanding with FHWA will be warranted (“Tolling MOUs”). Pursuant to § 33.2-221 (A) of the *Code of Virginia*, VDOT seeks approval of and authorization for the Commissioner of Highways or his designee to execute Tolling MOUs with the FHWA for Segment 2 and other segments of the HRELN as they approach operational status.

#### **Facts:**

- By resolution dated October 19, 2016, the Commonwealth Transportation Board (“CTB”) authorized dynamic tolling on designated lanes (“Express Lanes”) of Interstate 64 between the I-564 Interchange in Norfolk and the I-264 Interchange in Virginia Beach, which comprises Segment 1 of the HRELN.
- By resolution dated April 19, 2017, the CTB approved and authorized the Commissioner of Highways to enter into a Tolling MOU with FHWA relating to the tolling of Interstate 64 Express Lanes between I-564 Interchange and the I-264 Interchange (“Tolling MOU Segment 1”).
- By resolution dated September 20, 2017, the CTB also designated Express Lanes on Interstate 64 between the I-264/I-664 Interchange at Bowers Hill and the I-264 Interchange; by resolution dated January 10, 2018, the CTB further designated Express Lanes on Interstate 64 between the I-664 Interchange in Hampton and the I-564 Interchange; and by resolution dated July 14, 2020, the CTB designated and authorized Express Lanes on Interstate 64 beginning in the vicinity of the I-664 Interchange in Hampton and extending to the vicinity of the intersection of Interstate 64 and Jefferson Avenue in Newport News.
- On June 18, 2021, after completion of negotiations and other activities necessary for award, the Commissioner of Highways executed a contract, pursuant to the authorization and delegation issued by the CTB on May 19, 2021, with Conduent State and Local Solutions, Inc. for the Interstate 64 Hampton Roads Express Lanes Tolling System and Services Contract (the “Contract”).
- On June 23, 2021, pursuant to Va. Code § 33.2-209, the CTB affirmed and ratified the Commissioner of Highways’ award and execution of the Contract for the HREL Tolling System and Services to Conduent State and Local Solutions, Inc, and reiterated its

authorization for the Commissioner of Highways to exercise any and all options under the Contract.

- Both 23 USC §166, which provides that a public authority may allow vehicles not meeting, and not otherwise exempt from, high-occupancy (“HOV”) requirements to use an HOV facility by paying a toll, and 23 USC § 129, which sets out the requirements for federal participation on tolled highway projects, apply to all segments of the HRELN.
- FHWA recommends, as additional segments of the HRELN approach operational status, that VDOT enter into further memoranda of understanding relating to the tolling for those portions of the HRELN not covered by the initial Tolling MOU Segment 1, due to the potential consequences of noncompliance, including the discontinuation of toll collection.

**Recommendations:** VDOT recommends that the CTB approve, and authorize the Commissioner of Highways to execute, a Tolling MOU with FHWA relating to the tolling of the I-64 Express Lanes for Segment 2 of the HRELN, as set out in Attachment A, with such changes as the Commissioner deems necessary or appropriate. VDOT further recommends that the CTB provide authority for the Commissioner of Highways to execute additional Tolling MOUs as future segments of the HREL Network approach operational status.

**Action Required by CTB:** Section 33.2-221 (A) of the *Code of Virginia* requires a majority of the CTB’s members to authorize the Commissioner to enter into a Tolling MOU with FHWA, an entity of the US government.

**Results, if Approved:** The Commissioner of Highways will be authorized to execute the Tolling MOU with FHWA relating to the tolling of the I-64 Express Lanes comprising Segment 2 of the HRELN, as set out in Attachment A, with such changes as the Commissioner deems necessary or appropriate. The Commissioner of Highways will also be authorized to execute additional future Tolling MOUs with FHWA for the HRELN as additional segments approach operational status.

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

**Public Comments/Reaction:** N/A

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

**WHEREAS**, on August 8, 2017, the Division and VDOT entered into an MOU converting Interstate 64 High Occupancy Vehicle (HOV) reversible lanes, from the I-564 Interchange in Norfolk to the I-264 Interchange in Virginia Beach, to High Occupancy Toll (HOT) lanes; and

**WHEREAS**, VDOT desires to extend the HOT lanes network in Virginia by converting the existing Interstate 64 HOV lanes from I-264, in Virginia Beach, to I-464, in Chesapeake, to HOT lanes and constructing new HOT lanes from I-464 to I-664 in Chesapeake (the “Toll Project”); and

**WHEREAS**, VDOT desires to extend the implementation of tolling using dynamic tolling of vehicles on Interstate 64 from I-264 in Virginia Beach, Virginia, to I-664 in Chesapeake, Virginia (the “Toll Facility”), such that dynamic tolling of vehicles will be used for the entire facility between I-564 in Norfolk to I-664 in Chesapeake; and

**WHEREAS**, the Division and VDOT desire to enter into this MOU in order to reflect the mutual understanding that 23 USC § 129(a) and 23 USC § 166 apply to the Toll Project; and

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

**NOW THEREFORE**, the Division and the VDOT hereby agree as follows:

1. The Toll Project meets the relevant toll eligibility requirements of 23 USC § 129(a)(1) and 23 USC § 166.
2. VDOT shall comply with all requirements of 23 USC § 129(a) and 23 USC § 166, as amended, with respect to the Toll Project and the operation of the Toll Facility.

*(Signatures on following page)*

**IN WITNESS THEREOF**, the parties hereto have caused this MOU to be duly executed, on the date of final 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: \_\_\_\_\_  
Thomas Nelson, Jr., P.E.  
Division Administrator

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