



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda Item #5

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

May 19, 2021

MOTION

Made By: _____ Seconded By: _____

Action: _____

**Title: Designation of the I-495 Express Lanes
Northern Extension as HOT Lanes and Authorization for the Commissioner of
Highways to Enter into a Memorandum of Understanding with the Federal Highway
Administration Concerning Tolling**

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 April 28, 2005, pursuant to the PPTA, the Department, Fluor and Transurban (USA), Inc. entered into a comprehensive agreement to develop, design, finance, construct, maintain, and operate the Route 495 HOT Lanes in Virginia Project; and

WHEREAS, on December 19, 2007, the Department and Capital Beltway Express LLC entered into the Amended and Restated Comprehensive Agreement (as subsequently amended, the "ARCA") to develop, design, finance, construct, manage, operate, maintain and collect tolls on approximately 14-miles of high-occupancy toll lanes ("HOT lanes") along Interstate 495 between the vicinity of Backlick Road (Route 617) and Route 738 (the "Existing I-495 HOT Lanes"); and

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WHEREAS, the Department anticipates amending and restating the ARCA to extend the Existing I-495 HOT Lanes approximately two additional miles farther north to the vicinity of George Washington Memorial Parkway (the “I-495 Express Lanes Northern 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 designated 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 permitting free passage by vehicles that meet the high-occupancy requirement; 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 occupants per vehicle (“HOV-3”); and

WHEREAS, on October 18, 2007, the CTB designated as HOT lanes the Existing I-495 HOT Lanes with two dedicated travel lanes in each direction; and

WHEREAS, the Department intends for the I-495 Express Lanes Northern Extension to be tolled using congestion pricing; and

WHEREAS, pursuant to authority granted by the CTB, the Department entered into an Agreement with the Federal Highway Administration (“FHWA”) on December 12, 2007, (the “Existing Tolling Agreement”) permitting the Department to implement tolls on HOV facilities under a congestion pricing toll strategy on Interstate 495 between the vicinity of Hemming Avenue and terminating near the vicinity of the Georgetown Pike (Route 193); and

WHEREAS, given the Department’s intention to extend the Existing I-495 HOT Lanes two miles farther north to the vicinity of George Washington Memorial Parkway (the entire span from the vicinity of Hemming Avenue to the vicinity of George Washington Memorial Parkway hereinafter referred to as the “Extended I-495 HOT Lanes”), the FHWA requires the Department to enter into a memorandum of understanding governing tolling for the Extended I-495 HOT Lanes (the “Toll MOU”), attached hereto as Attachment A, to replace the Existing Tolling Agreement; and

WHEREAS, the Toll MOU will require the Department to comply with mandatory federal requirements related to tolling and applicable to the Extended I-495 HOT Lanes; and

WHEREAS, the CTB is authorized under Va. Code § 33.2-221(A) to enter into all contracts and agreements with the United States government.

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NOW, THEREFORE, BE IT RESOLVED that the CTB hereby designates the I-495 Express Lanes Northern 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 ARCA, as it may be amended.

BE IT FURTHER RESOLVED that the CTB hereby specifies the high-occupancy requirement for the I-495 Express Lanes Northern 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 ARCA, as it may be amended.

BE IT FURTHER RESOLVED that the CTB hereby authorizes the Commissioner of Highways to establish the conditions for use of the I-495 Express Lanes Northern Extension in accordance with the terms and conditions of the ARCA, as it may be amended.

BE IT FURTHER RESOLVED that the CTB hereby authorizes the Commissioner of Highways to execute the Toll MOU between the Department and FHWA, governing the tolling of the Extended I-495 HOT Lanes, 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-495 Express Lanes Northern Extension as HOT Lanes and Authorization for the Commissioner of Highways to Enter into a Memorandum of Understanding with the Federal Highway Administration Concerning Tolling

Issue: The Virginia Department of Transportation (the “Department”) intends to amend and restate the Amended and Restated Comprehensive Agreement (as subsequently amended, the “ARCA”) relating to the Route 495 High Occupancy Toll (“HOT”) Lanes to extend the existing HOT lanes on Interstate 495, with two dedicated travel lanes in each direction, approximately two miles farther north to the vicinity of George Washington Memorial Parkway (the “I-495 Express Lanes Northern Extension”). Given the Department’s intention to extend the HOT lanes on I-495, the Federal Highway Administration (“FHWA”) requires the Department to enter into a memorandum of understanding governing tolling for the extended I-495 HOT Lanes (the “Toll MOU”), to replace the tolling agreement for the existing I-495 HOT lanes (“Existing Tolling Agreement”).

Pursuant to Va. Code § 33.2-502, the Department is requesting that the Commonwealth Transportation Board (the “CTB”) designate the I-495 Express Lanes Northern Extension as HOT lanes permitting free passage by vehicles with three or more occupants (“HOV-3”). Further, pursuant to Va. Code § 33.2-221 (A), the Department is requesting authorization for the Commissioner of Highways to enter into the Toll MOU with FHWA.

Facts:

- On April 28, 2005, pursuant to the Public-Private Transportation Act of 1995 (the “PPTA”) (Va. Code § 33.2-1800, *et seq.*), the Department, Fluor and Transurban (USA), Inc., entered into a comprehensive agreement to develop, design, finance, construct, maintain, and operate the Route 495 HOT Lanes in Virginia Project.
- On December 19, 2007, the Department and Capital Beltway Express LLC (the “Concessionaire”) entered into the Amended and Restated Comprehensive Agreement (as subsequently amended, the “ARCA”) to develop, design, finance, construct, manage, operate, maintain and collect tolls on approximately 14-miles of high-occupancy toll lanes along Interstate 495 between the vicinity of Backlick Road (Route 617) and Route 738 (the “Existing I-495 HOT Lanes”).
- The Department now anticipates amending and restating the ARCA to add the I-495 Express Lanes Northern Extension.
- The Department expects for the I-495 Express Lanes Northern Extension to be tolled using congestion pricing.

Designation of I-495 Express Lanes Northern Extension as HOT Lanes

- On October 18, 2007, the CTB designated as HOT lanes the Existing I-495 HOT Lanes.
- In order for the lanes to be operated as HOT Lanes, the CTB must designate those lanes that comprise the I-495 Express Lanes Northern Extension as HOT lanes.
- Va. Code § 33.2-502 provides that the CTB may designate one or more lanes of any highway, including lanes previously designated as high-occupancy vehicle lanes, in the Interstate System, primary state highway system, or National Highway System, or any portion thereof, as HOT lanes.

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- 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 occupants per vehicle (“HOV-3”).

Authorization for the Commissioner of Highways to Enter Into a Toll MOU with FHWA Concerning Tolling of the I-495 HOT Lanes, as Extended

- On December 12, 2007, the Department entered into an Agreement with the Federal Highway Administration (“FHWA”) permitting the Department to implement tolls on HOV facilities under a congestion pricing toll strategy on Interstates 495 between the vicinity of Hemming Avenue and terminating near the vicinity of the Georgetown Pike (Route 193).
- Given the Department’s intention to extend the Existing I-495 HOT Lanes two miles farther north to the vicinity of George Washington Memorial Parkway (the entire span from the vicinity of Hemming Avenue to the vicinity of George Washington Memorial Parkway hereinafter referred to as the “Extended I-495 HOT Lanes”), the FHWA requires the Department to enter into a memorandum of understanding governing tolling for the Extended I-495 HOT Lanes (the “Toll MOU”), attached hereto as Attachment A, to replace the Existing Tolling Agreement.
- The CTB is authorized under Va. Code § 33.2-221(A) to enter into all contracts and agreements with the United States government.

Recommendation: It is recommended that the CTB (1) designate the I-495 Express Lanes Northern 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 ARCA, as it may be amended; (2) specify the high-occupancy requirement for the I-495 Express Lanes Northern 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 ARCA, as it may be amended; (3) authorize the Commissioner of Highways to establish the conditions for use of the I-495 Express Lanes Northern Extension in accordance with the terms and conditions of the ARCA, as it may be amended; and (4) authorize the Commissioner of Highways to execute the Toll MOU with FHWA for the Extended I-495 HOT Lanes.

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-495 Express Lanes Northern Extension will be designated as HOT lanes, with a high occupancy requirement of three or more persons per vehicle, in accordance with Va. Code § 33.2-502, to be implemented upon issuance of a “Service Commencement Notice to Proceed” pursuant to the ARCA, as it may be amended; the Commissioner of Highways will be authorized to establish the conditions for use of the I-495 Express Lanes Northern Extension in accordance with the terms and conditions of the ARCA, as it may be amended; and the Commissioner of Highways will be authorized to execute the Toll MOU with FHWA.

Options: Approve, Deny, or Defer.

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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 December 12, 2007, the Federal Highway Administration (FHWA) and Virginia Department of Transportation (VDOT) entered into an agreement (the "I-495 HOV/HOT Lanes Tolling Agreement") permitting VDOT to toll the high occupancy vehicle ("HOV") lanes facility on Interstate 495 between the vicinity of Hemming Avenue and terminating near the vicinity of the Georgetown Pike (Route 193) as High Occupancy Toll (HOT) lanes (the "Existing I-495 HOV/HOT Lanes Facility"); 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 the Existing I-495 HOV/HOT Lanes Facility approximately two miles farther north to the vicinity of George Washington Memorial Parkway ("Toll Project"), and after completion of the Toll Project, the entire span of the I-495 HOV/HOT Lanes Facility will extend from the vicinity of Hemming Avenue to the vicinity of George Washington Memorial Parkway (hereinafter referred to as the "Toll Facility"); and

WHEREAS, based on the Existing Toll Agreement, VDOT has previously implemented or plans to implement tolls using a congestion pricing toll strategy on the Existing I-495 HOV/HOT Lanes Facility and desires to implement tolls using a congestion pricing toll strategy on the portion of the Existing I-495 HOV/HOT Lanes Facility to be extended farther north to the vicinity of George Washington Memorial Parkway, such that tolling using a congestion pricing toll strategy will eventually be implemented on the entirety of the Toll Facility; and

WHEREAS, FHWA and VDOT desire to enter into this Memorandum of Understanding 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. Effective as of the date of last signature of this MOU, the I-495 HOV/HOT Lanes Tolling Agreement is hereby terminated and replaced with this MOU, which shall apply to the entirety of the Toll Facility.

IN WITNESS THEREOF, the parties hereto have caused this 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: _____
Thomas L. Nelson, Jr., P.E.
Division Administrator

DATE: _____