



# COMMONWEALTH of VIRGINIA

## *Commonwealth Transportation Board*

Shannon Valentine  
Chairperson

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### **DRAFT MINUTES MEETING OF THE COMMONWEALTH TRANSPORTATION BOARD ACTION MEETING**

August 14, 2020

9:00 a.m.

Governor Ralph Northam declared a state of emergency in Virginia on Thursday, March 12 in response to COVID-19. In light of this action, the Action Meeting of the August 14, 2020 Commonwealth Transportation Board (CTB) was conducted using electronic communications in accord with Item 4-0.01.g. of Chapter 1289 (2020 Acts of Assembly), as the COVID-19 emergency makes it impracticable or unsafe to assemble in a single location. The purpose of the meeting was to discuss or transact the business statutorily required or necessary to continue operation of the CTB and the discharge of its lawful purposes, duties, and responsibilities.

All board members participated remotely using a Webex platform. Members of the public were able to witness the meeting online via live-streaming at the following internet link: [http://www.ctb.virginia.gov/public\\_meetings/live\\_stream/default.asp](http://www.ctb.virginia.gov/public_meetings/live_stream/default.asp) and were provided the opportunity to provide public comment telephonically at the meeting using a dial in number provided in the online meeting public notice.

The online internet public notice for the meeting noted that this meeting would be conducted using an electronic process due to the COVID-19 state of emergency and as a precaution to reduce the risk and spread of the novel coronavirus. The online meeting public notice also furnished the Agenda and Board materials as well as information regarding the availability of online live-streaming of the meeting at the noted link.

Online viewers were furnished a telephone number to call to notify staff of any interruption of the live streaming of the meeting in accordance with Item 4-0.01.g. of Chapter 1289 and Section 2.2-3708.2 of the Code of Virginia; and no interruption of the live streaming was noted during the meeting.

The Chair, Shannon Valentine, presided and called the meeting to order at 9:01 a.m. on August 14, 2020.

Present: Messrs. Brown, Dodson, Johnsen, Kasprowicz, Malbon, Miller, Rucker, Stinson, Smoot, Whitworth, Williams, Yates and, Ms. DeTuncq, Ms. Hynes; Mr. Brich, ex officio, Commissioner of Highways and Ms. Mitchell, ex officio, Director of the Department of Rail and Public Transportation.

Absent: None

Prior to taking up any agenda items Mr. Whitworth made the following motion:  
*In light of the continuing state of emergency declared by Governor Northam, where it is impracticable or unsafe to assemble a quorum in a single location, I move that we adopt this agenda to take action to discuss or transact the business statutorily required or necessary to continue operation of the Commonwealth Transportation Board. This motion was seconded by Ms. DeTuncq, a roll call vote was taken with all present voting aye, the motion passed unanimously.*

VDOT Commissioner Stephen Brich and S. Michael Westermann of the Attorney General's Office provided an update to the Board entitled *Master Agreement for Development and Tolling of Hampton roads Express Lane Network – Update*. A copy of that presentation is attached hereto.

Following the presentation Mr. Whitworth made the below motion

*I move that the Board convene in a Closed Session pursuant to Section 2.2-3711 (A)(6) of the Code of Virginia, for the purpose of discussing an agreement involving the investment of public funds where bargaining is involved and where the financial interest of the Commonwealth would be adversely affected if the discussion were made public at this time, And, pursuant to Va. Code Sec. 2.2-3711(A)(8), for the purpose of consulting with legal counsel regarding provisions in the agreement requiring legal advice.*

*Additionally, I move that staff and attorneys attend the Closed Session because their presence is deemed necessary, and will aid the Board in its consideration of this matter.*

This motion was seconded by Mr. Rucker, a roll call vote was taken with all present voting aye, the motion passed unanimously.

The Board suspended the Open meeting at 9:40 a.m. on August 14, 2020 to move into Closed Session.

The Board came out of Closed Session at 11:02 a.m. on August 14, 2020 and reconvened the Open Session.

The Vice Chair read the below statement immediately upon resuming the Open Session.

*To the best of my knowledge, during the Closed Meeting, the only matters heard, discussed or considered were those matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and only such public business matters as were identified in the motion by which the Closed Meeting was convened."*

A roll call was taken with all members agreeing with the above referenced statement.

\* \* \*

**Public Comments:**

Mr. Rob Whitfield of the Northern Virginia Taxpayers Alliance, addressed the Board regarding the funding of transit in Northern Virginia specifically the Washington Metropolitan Area Transit Authority.

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**HAMPTON ROADS DISTRICT:**

**Agenda Item 1.** Action on Adoption of the Hampton Roads Express Lanes Network (HREL Network) Concept of Operation and Approval of the Master Tolling Agreement with the Hampton Roads Transportation Accountability Commission for Tolling on the HREL Network Located in the Hampton Roads District.

Made By: Mr. Miller, Seconded By: Mr. Williams  
Prior to the vote on the resolution a motion was made by Ms. Hynes to amend the resolution to include the language shown below:

**BE IT FURTHER RESOLVED** that the Commonwealth Transportation Board hereby directs the Commissioner of Highways to provide to the members of the Commonwealth Transportation Board all materials submitted by HRTAC as part of any Initial Policies Review Submission (as defined in the Agreement) as soon as practicable after the Commissioner of Highways receives such Initial Policies Review Submission from HRTAC, and in no case more than three days after such receipt.

**BE IT FURTHER RESOLVED** that the Commonwealth Transportation Board hereby directs the Commissioner of Highways to provide to the members of the Commonwealth Transportation Board all materials submitted by HRTAC as part of any Modified Policies Review Submission (as defined in the Agreement) as soon as practicable after the Commissioner of Highways receives such Modified Policies Review Submission from HRTAC, and in no case more than three days after such receipt.

**BE IT FURTHER RESOLVED** that if the Commonwealth Transportation Board, after having received the analysis and findings of the Commissioner of Highways with respect to any Initial Policies Review Submission, directs the Commissioner of Highways to perform additional analysis and re-present before the Commonwealth Transportation Board pursuant to its rights under sections 5.02(a)(iii)(3) of the Agreement, then to the extent the Commonwealth Transportation Board concludes such additional analysis will reasonably require modifications to the existing operational analysis, the Commonwealth Transportation Board may further direct the Commissioner of Highways to exercise his right to extend the Initial Tolling Policies Review Period (as defined in the Agreement) by up to sixty-five additional days in accordance with the Commissioner of Highway's rights under section 5.02(a)(iv)(A) and (B) of the Agreement.

**BE IT FURTHER RESOLVED** that if the Commonwealth Transportation Board, after having received the analysis and findings of the Commissioner of Highways with respect to any Modified Policies Review Submission, directs the Commissioner of Highways to perform additional analysis and re-present before the Commonwealth Transportation Board pursuant to its rights under sections 5.03(c)(ii)(3) of the Agreement, then the Commonwealth Transportation Board may further direct the Commissioner of Highways to exercise his right to extend the Tolling Policies Modification Review

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Period (as defined in the Agreement) by an additional forty-five days in accordance with the Commissioner of Highway's rights under section 5.03(c)(iii) of the Agreement.

Ms. Hynes motion was seconded by Mr. Kasprowicz.

A roll call vote was taken with Mr. Miller, Mr. Rucker and Mr. Williams voting against the amendment and all others voting in favor of the amendment.

Motion carried, amendment approved.

Mr. Kasprowicz made a motion to adopt the resolution as amended, this motion was seconded by Mr. Smoot.

A roll call vote was taken with all members present voting in favor of approval of the resolution as amended.

Motion carried, resolution as amended approved, unanimously.

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**NEW BUSINESS:**

None

**ADJOURNMENT:**

**Meeting adjourned at 11:25 a.m.**

Respectfully Submitted:

Carol Mathis,  
Assistant Secretary to the Board

###

# MASTER AGREEMENT FOR DEVELOPMENT AND TOLLING OF HAMPTON ROADS EXPRESS LANE NETWORK - UPDATE

Stephen C. Brich, P.E. – VDOT Commissioner

S. Michael Westermann – Senior Assistant Attorney General

August 14, 2020

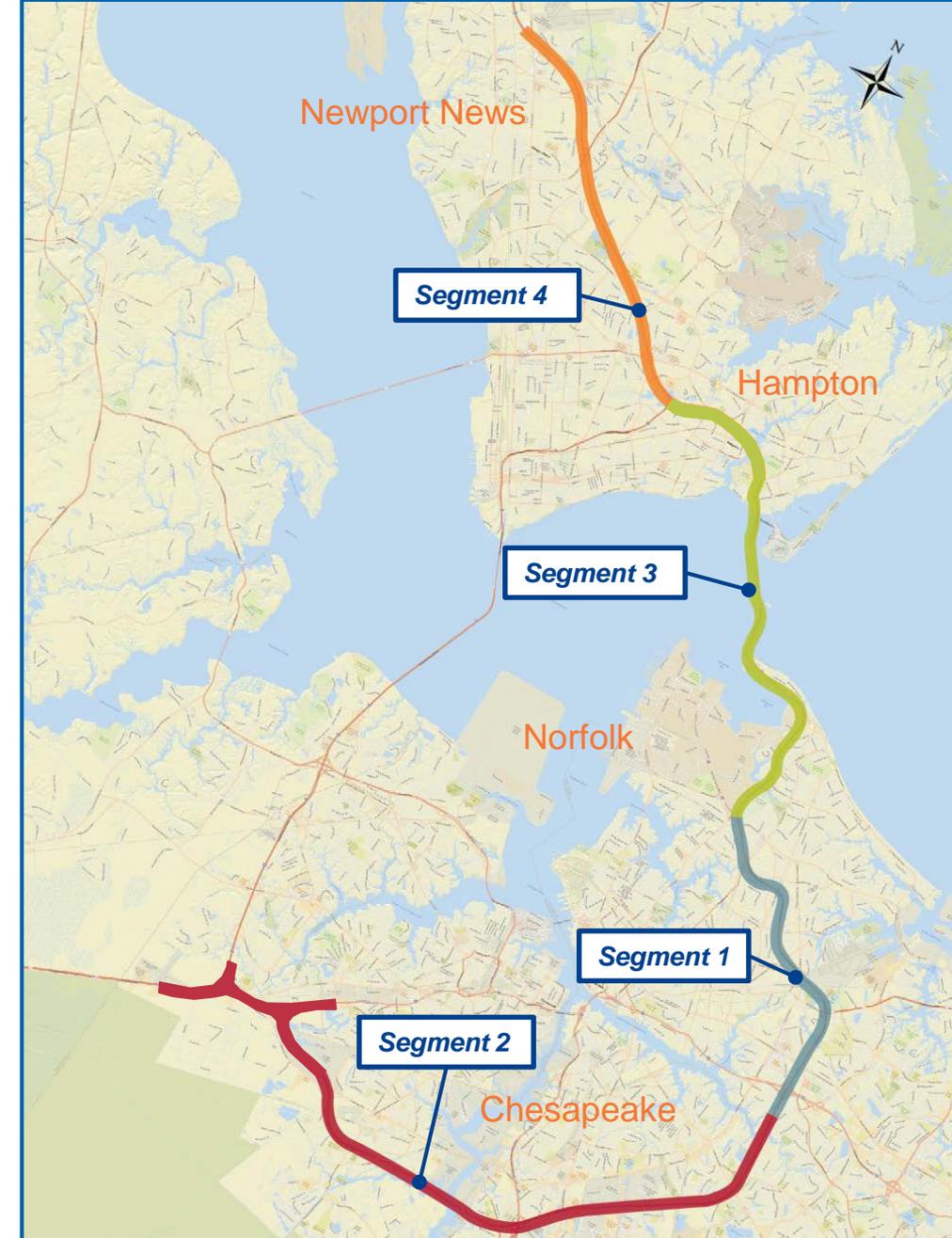
# HREL Development and Tolling Agreement Update

- **VDOT and HRTAC have continued to collaboratively develop Hampton Roads Express Lane (HREL) Network agreement**
  - Progress made on outstanding items since June 2020
    - Toll Policy Committee
  - Agreement on broad terms
  - Exhibits being finalized
- **Requires execution from CTB, VDOT and HRTAC**
- **Agreement provided in CTB package**

# HREL Development and Tolling Agreement Major Terms

## I-64 HREL Network

- **Defines the initial HREL**
  - I-64 and Jefferson Avenue to I-64/I-264/I-664 Bowers Hill
- **Sequencing and implementation**
  - Goal is to create a contiguous and continuous network
- **Sequencing based on project schedules and operations**
- **Allows for mutually agreed additions to initial HREL**



# HREL Development and Tolling Agreement Major Terms

## Procurement and Completion of HREL

- **VDOT responsible for design, right-of-way and construction**
- **HRTAC participates in procurement**
- **Continued collaboration on traffic and revenue studies**
  - Conducted in phases – HRBT TIFIA loan
  - Initial Tolling Policies
- **Funding of HREL**
  - HRTAC funding plan
  - VDOT assistance with TIFIA and other financing
- **VDOT continue to own the HREL**

# HREL Development and Tolling Agreement Major Terms

## Tolling Operations and Maintenance

- **Operations and maintenance performed initially by VDOT then transitioned to HRTAC**
  - Earliest transition – High Rise Bridge segment toll day one
  - Latest transition – HRBT toll day one
  - HRTAC may enter into mutually agreeable contract with VDOT to provide tolling O&M
- **VDOT responsible for roadway operations and maintenance**
  - Includes snow, ice and debris

# HREL Development and Tolling Agreement Major Terms

## Tolling Policy and Procedure

- Designation of the initial HREL as HOT Lanes
- Agree to have HRTAC exercise its tolling authority for HREL
- HRTAC has right and responsibility to set initial tolling policy
  - Hours of operation
  - Toll points
  - Comply with federal + state laws/regulations
  - Commissioner of Highways review for safety and operational performance
  - Prohibit use of toll booths (Electronic tolling only)
- Setting of Initial Tolling Policies – Tolling Policy Modifications
- Toll rate to be set dynamically based on congestion
- Toll enforcement will be the responsibility of the operator
- Criteria established for Commissioner to suspend tolling
- Express agreement to provide free means of travel along corridor

# HREL Development and Tolling Agreement Major Terms

- **Toll Revenues and Toll Backed Debt**
  - Establishes priority use of debt proceeds and toll revenues
  - HRTAC to regularly submit financial models
  - Parties agree to cooperate to maximize the proceeds from TIFIA
    - Minimum of \$345M debt proceeds applied to HRBT, as stipulated in PAFA
- **Naming rights**
  - Hampton Roads Express Lanes
- **Compensation event**
- **Dispute resolution process**
- **Term – July 2080 or earlier**
  - 50 year
  - 40 year following final issuance of toll-backed debt

# HREL Development and Tolling Agreement Major Terms

## Setting of Initial Tolling Policies and Tolling Policy Modifications

- **Sections 5.02 and 5.03**
- **Tolling policies subject to CTB review, including modifications**
- **HRTAC develops and proposes policies**
- **Commissioner presents analysis and findings to CTB**
  - Recommends to approve or reject based on whether policies likely to have “Material Adverse Effect”

# HREL Development and Tolling Agreement Major Terms

## Setting of Initial Tolling Policies and Tolling Policy Modifications

- **CTB actions:**
  - Approve policies if analysis demonstrates material adverse effect not likely
  - Reject policies if analysis demonstrates material adverse effect likely
  - Approve policies by waiving Marginal trigger of material adverse effect
  - Direct Commissioner to conduct additional analyses and present to CTB
  - Opt not to vote – results in deemed approval
- **Failure of CTB and Commissioner to take action during review period equates to deemed approval**
- **Rejected policies subject to dispute resolution  
CTB/VDOT/HRTAC**

# HREL Development and Tolling Agreement Major Terms

## Tolling Policy Review Time Periods

- **Initial Policies**
  - 45 day base review – Commissioner to review information supplied by HRTAC and present findings to CTB
  - 45 day review period can be extended for two reasons
    - 30 additional days if modifications to operational analysis needed
    - 35 additional days if CTB directs additional analysis
  - Maximum review period is 110 days = 45 + 30 + 35
- **Modifications to Tolling Policies**
  - 90 day base review – Commissioner to review and present findings to CTB
  - 45 day review period can be extended
  - Maximum review period is 135 days = 90 + 45

# HREL Development and Tolling Agreement Major Terms

## Next Steps

- **Agreement**
  - Finalize exhibits
- **Commonwealth Transportation Board**
  - Review Decision Brief
  - Action on proposed Resolution

