

AGENDA

Hampton Roads Transportation Accountability Commission

Master Tolling Agreement Advisory Committee Meeting

Meeting by Conference Call*

June 30, 2020

10:00 a.m.

Dial Toll Free Telephone Number to Attend: (855) 735-2639

**In light of the Governor's Declared State of Emergency due to COVID-19, it is impracticable and unsafe for the Commission to assemble in a single location, so the meeting will be held electronically, by telephone, pursuant to the 2020 Amendments to the 2019 Appropriation Act; the purpose of the meeting is to discuss or transact the business statutorily required or necessary to continue operations of the Commission and the discharge of its lawful purposes, duties, and responsibilities. The public is welcome to use the number above to attend the meeting electronically. The Commission will make available a recording or transcript of the meeting on its website in accordance with the timeframes established in Sections 2.2-3707 and 2.2-3707.1 of the Code of Virginia.*

1. Call to Order, Declaration re: Purpose of Meeting, and Roll Call

2. Approval of Agenda

3. Public Comment Period (3 Minute Limit)**

4. Consent Items

- *Recommended Action: Approval*

A. Minutes of the January 31, 2020 Meeting (Attachment 5A)

5. Action Items

- *Recommended Action: Discussion/Endorsement/Recommendation/Direction*

A. Review of Schedule and Update re: Negotiations and Open Issues Concerning the Proposed Master Tolling Agreement (the "MTA") - Closed Session as needed - Executive Director Page, Counselors Inglima, Wall, and Ballou, and PFM Financial Advisors

6. Adjournment

****Anyone wishing to make a public comment should contact Executive Director Page at kpage@hrtac.org 24 hours in advance of the meeting to register. Please do so by 10:00 a.m. on Monday, June 29, 2020.**

Agenda Item 4A
Consent Item

To: Chair Johnson and the Other Members of MTA Advisory Committee

From: Kevin B. Page, Executive Director

Date: June 30, 2020

Re: January 31, 2020 MTA Advisory Committee Meeting Minutes

Recommendation:

The MTA Advisory Committee is asked to approve the Commission's January 31, 2020 MTA Advisory Committee Meeting minutes.

Background:

The MTA Advisory Committee approves meeting minutes for the permanent record of the Commission.

Fiscal Impact:

There is no fiscal impact in relation to this Consent Item.

Suggested Motion:

Motion: The MTA Advisory Committee approves and adopts the minutes of the MTA Advisory Committee on January 31, 2020.

**Hampton Roads Transportation
Accountability Commission (HRTAC)
Master Tolling Agreement Advisory Committee
Summary Minutes of the January 31, 2020 Meeting**

The meeting of the Hampton Roads Transportation Accountability Commission (HRTAC) Master Tolling Agreement Advisory Committee was held in the HRTAC Conference Room, The Regional Building, 723 Woodlake Drive, Chesapeake, Virginia, with the following in attendance:

HRTAC Master Tolling Agreement Advisory Committee Members in Attendance:

Linda T. Johnson, Chair Donnie Tuck
Michael Hipple

HRTAC Executive Director

Kevin Page

HRTAC Master Tolling Agreement Advisory Committee Members Absent:

Kenneth Alexander Monty Mason

Other Participants:

Tom Inglima, Willcox Savage Chuck Wall, Seyfarth Shaw
David Miller, PFM (by telephone)

* Denotes Late Arrival or Early Departure

Others Recorded Attending:

Jennifer Hodnett (HRTAC)

Call to Order

Chair Linda T. Johnson called the HRTAC Master Tolling Agreement Advisory Committee to order at 12:15 p.m.

Approval of Agenda

Mr. Michael Hipple Moved to approve the agenda; Mr. Donnie Tuck seconded. The Motion Carried.

Public Comment Period (limit 5 minutes per individual)

No public comments were made.

Mr. Kevin Page, HRTAC Executive Director reviewed the progress made in negotiating the Master Tolling Agreement and stated his gratitude for the legislative actions taken to further the Master Tolling Agreement. Mr. Page informed the Committee members HRTAC had received the first draft of the agreement from the Commonwealth.

Consent Items

4A. Minutes of the December 5, 2019 Meeting

Mr. Hipple Moved to approve and adopt the minutes of the MTA Advisory Committee on December 5, 2019; Seconded by Mr. Donnie Tuck. The Motion Carried.

Action Items

6A. Review of Schedule, Term Sheet Decision Points and Assumptions relating to the Prospective Master Tolling Agreement (closed session as needed)

At 12:20 p.m., Mr. Michael Hipple Moved that a closed session be held for discussions regarding the proposed terms of the Master Tolling Agreement, including the issuer of the toll-backed debt, the covered facilities and the treatment/consideration of alternate routes, in accordance with Virginia Code Section 2.2-3711(A)(8) for the purpose of consulting with legal counsel regarding specific legal matters requiring the provision of legal advice by such counsel. Seconded by Mr. Donnie Tuck. The Motion Carried.

A Closed Session, limited to Committee Members, Staff and the Commission's advisors, was convened.

At 1:14 p.m. the closed session concluded. Counselor Inglima proceeded to read the following certification: The Master Tolling Agreement Advisory Committee of the Hampton Roads Transportation Accountability Commission hereby certifies that, to the best of each member's knowledge: (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act, and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened, were heard, discussed or considered in the closed meeting just concluded.

A roll call vote was taken for certification:

Mr. Michael Hipple: Yes

Mr. Donnie Tuck: Yes

Mrs. Linda T. Johnson: Yes

Adjournment

With no further business to come before the Hampton Roads Transportation Accountability Commission Master Tolling Agreement Advisory Committee, the meeting adjourned at 1:15 p.m.

Linda T. Johnson
Master Tolling Agreement Advisory Committee Chair

Agenda Item 5A
Action Item

**To: Chair Johnson and the other members of HRBT Master Tolling Agreement
Advisory Committee**

From: Kevin B. Page, Executive Director

Date: June 30, 2020

**Review of Schedule and Update re: Negotiations and Open Issues Concerning the
Proposed Master Tolling Agreement (the “MTA”) - Closed Session as needed**

Background:

Commission staff, counsels, and financial advisors, will provide a review of schedule and update re: negotiations and open issues concerning the proposed Master Tolling Agreement (the “MTA”). The Committee may use a closed session for certain of such subject matter. The presentation delivered at the Commission’s June 18, 2020 meeting, a copy of which is attached as Attachment 5A, may be referenced.

Fiscal Impact:

There is no immediate fiscal impact in relation to this Action Item.

Motion:

The MTA Advisory Committee will provide Commission staff, counsels, and financial advisors direction on next steps relating to the development of the prospective Master Tolling Agreement.



Summary of Current Draft Master Tolling Agreement

June 18, 2020

Today's Presentation

- Progress Since May 28 Special Meeting Briefing
- Overview of the Master Tolling Agreement
- Open issues to be resolved by July 16, 2020 HRTAC Meeting
- Next Steps

Progress Since the May 28 Special Meeting Briefing

- HRBT is nearing Notice to Proceed to construct the project
- HRTAC, VDOT, and Representatives from the Office of the Secretary of Transportation have continued to work to finalize the terms of the Master Tolling Agreement
 - The base agreement language is nearing final drafting
 - Open issues have been narrowed, with both teams working to close out items before the July meetings of CTB and HRTAC
 - CTB is also being briefed this week on the MTA by the Commissioner of VDOT

Introduction

- **Parties:** HRTAC; VDOT; Commonwealth Transportation Board
- Framework agreement re:
 - Design/development of the initial HREL
 - vicinity of Jefferson Ave in Newport News, through HRBT and High Rise Bridge, to Bowers Hill
 - Building/Construction
 - Financing
 - Operations
 - Maintenance
- Now named Master Agreement for Development and Tolling (of HREL)
- Users of the HREL section of I-64 will always have access to free general purpose lanes
- If either CTB or HRTAC desires to toll other lanes on Interstate system or roadways within Hampton Roads improved with HRTAC funding or within Hampton Roads beltway, CTB and HRTAC to consult and evaluate addressing such lanes under the Master Agreement
- Unless the parties otherwise agree, no party shall enter into/award any concession relating to the HREL Project or the Express Lanes Network or any facet thereof, whether relating to construction, financing, operation, maintenance, or otherwise.

Principal Terms re: Design, Development and Construction

- Developed in phases
 - Initial plan begins with segment from Reversible HOT through High Rise Bridge
 - Then, core portion of HRBT
 - Followed by remainder
- VDOT has developed conceptual work and cost estimates and HRTAC has developed conceptual funding plan
- Parties to work cooperatively to develop definitive plans with phased implementation
- When all parties are prepared to design and construct a project element, they will use process similar to one with initial six projects
 - VDOT will lead procurement of goods and services required to complete the project element
 - VDOT will involve HRTAC in procurement process
 - HRTAC will update its funding plan
 - VDOT and HRTAC will prepare a Standard Project Agreement (SPA)
 - CTB and HRTAC board members will be presented with SPA for approval

Principal Terms re: Design, Development and Construction (cont.)

- Development efforts include three studies:
 - traffic and revenue (T&R) study
 - operations and maintenance cost study
 - operational analysis
- VDOT will afford HRTAC ability to participate in studies – specifications, parameters and assumptions must align with the requirements of the HRTAC financing activities
- HRTAC will have rights in the studies, necessary for HRTAC's financing activities
- T&R study completed in phases as information is developed
- First phase relates to investment-grade T&R study for HRBT which will be used for HRTAC's 2021 TIFIA loan re: HRBT
 - Initial Tolling Policies: HRTAC will have to adopt Initial Tolling Policies in the next few months to permit this study to be finalized in timely manner

Principal Terms re: Funding Plan

- Sources under HRTAC's conceptual funding plan:
 - Hampton Roads Transportation Fund (HRTF) revenues and proceeds of HRTF-supported debt, including TIFIA
 - Toll Revenues and proceeds of toll-backed debt, including TIFIA
 - HRTF to fund reserves re: capital maintenance and re: toll-backed debt service
 - VDOT/TFRA funding re: tolling O&M cost reserves
- HRTAC will impose the tolls and be the issuer of toll-backed debt (using powers under 2020 special legislation – HB 1438)
- HRTAC will finalize definitive funding plan and update over time
- VDOT and CTB to support HRTAC's efforts (but not be liable for HRTAC debt), including supporting efforts to pursue federal and state funding that may become available

Principal Terms re: Tolling Policies

- Reversible HOT – CTB policies apply until the first new segment is opened
- HRTAC sets the Initial Tolling Policies which will take effect* when the expansion of the network starts; the policies will principally:
 - establish hours (24/7 likely)
 - establish toll points and whether trip-building applies (consolidating multiple traveled segments into one transaction)
 - allow for (and not adversely impact) safe operating conditions
 - define and allow “Permitted Vehicles” (excluding Trucks) to use HOT lanes
 - specify toll rates (established using dynamic-pricing algorithm which selects applicable rate based on congestion level); must not be less than rate required by HRTAC’s financing covenants
 - HRTAC will select baseline algorithm, taking into account recommendations from VDOT and traffic consultant
 - require each Permitted Vehicle to pay the applicable rate unless an exemption applies

*Once the network becomes operational and the Commission begins operating it, the network must be operated as HOT lanes for the term of the Agreement

Principal Terms re: Tolling Policies (cont.)

- Modifications to policies:
 - HRTAC will have unilateral right to modify to comply with financing covenants
 - Toll Policy Committee: Elective modifications subject to approval of Toll Policy Committee with 6 members
 - 3 appointed by Secretary of Transportation
 - 3 appointed by HRTAC
 - ***ongoing negotiation re: voting principles and avoiding deadlock***
- Toll Policy Committee may not itself introduce, repeal or revoke policies

Principal Terms re: Use of Toll Revenues & Toll-Backed Debt

- HRTAC has right to proceeds of toll-backed debt and toll revenues
- Debt proceeds are used to, *first*, procure and implement the tolling infrastructure and system, *second*, fund \$345 million of the HRBT Expansion Project or such greater amount as may be allocated under HRTAC's funding plan, and, *third* to fund other HREL Project Costs
 - To the extent HRTAC allocates more than \$345 million to the HRBT project, it will replace HRTF funding and that HRTF funding will be reallocated to other uses in the debt proceeds waterfall
- Toll revenues are used to, *first*, pay the costs of tolling O&M costs and required reserves, *second*, pay any debt service payments and/or reserves related to toll-backed debt, in each case as permitted by applicable law, *third*, fund an HREL Project Cost payment fund, and, *fourth*, fund a VDOT repayment fund to reimburse VDOT for costs advanced from Toll Facilities Revolving Account

Principal Terms re: Use of Toll Revenues & Toll-Backed Debt (cont.)

- In each case, excess debt proceeds or toll revenues would be used in the following order to:
 - reimburse and supplant HRTAC monies that have been used, committed or scheduled to fund HREL network costs
 - fund other mutually agreed projects (including, without limitation, Bowers Hill and any other extension segments of the Express Lanes Network) as permitted by applicable law; and
 - for such other transportation-related costs permitted by applicable law and that the parties mutually determine are suitable
- After scheduled Toll-backed debt incurred, HRTAC generally may not incur additional debt without VDOT's consent until TFRA advances have been repaid
- Upon termination of the Master Agreement (and repayment of Toll-Backed Debt), remaining revenues will be distributed to HRTAC for use in accordance with law

Principal Terms re: Tolling Operation and Maintenance

- Pre/Post “Transition Date” distinction re: responsible operator for Tolling O&M Duties
 - Pre-Transition – VDOT
 - Post-Transition – HRTAC
- Transition Date is not later than the date that the network is operational at HRBT (could be earlier at HRTAC’s option)
- Responsible operator must perform per designated standards
- When HRTAC is operator, HRTAC may elect to subcontract performance of obligations to:
 - VDOT or third party
- Operator is responsible for O&M re: tolling infrastructure and system
 - Pre-Transition Date, VDOT bears operating risk by advancing funds out of TFRA; during this period, VDOT may cause incremental advances to be repaid out of excess toll revenues

Principal Terms re: Roadway Operations and Maintenance

- VDOT is responsible (at all times) for all roadway operations and maintenance
- VDOT must perform in accordance with standards it follows for Interstates and toll roads throughout the Commonwealth
- VDOT's O&M obligations include same snow, ice and debris removal and surface treatment services that VDOT performs for general purpose lanes
- Suspension of Tolling: VDOT has right to suspend tolling if use of HOT lanes required for emergency mass evacuation or to divert traffic due to (i) a significant traffic incident or emergency or (ii) an order from federal authorities (re: secret service, national security or homeland security purpose), or from state or local police forces (re: governmental security or public safety)
- Temporary Closure: VDOT also may order a temporary closure when reasonably required in connection with maintenance activities, provided that VDOT complies with a prescribed maintenance protocol

Principal Terms re: Revenue Stream Protections

- Insurance: Protection re: third party action or act of God damaging roadway or system and, in turn, impairing revenue stream: HRTAC and VDOT will pursue insurance program which includes toll revenue interruption insurance (cost borne as Tolling O&M Cost, which is paid through toll revenues waterfall)
- Compensation Events: Protection re: VDOT activities, acts or omissions:
 - Events triggering VDOT obligation to compensate HRTAC – ***under negotiation***

Principal Terms re: Term of Agreement and Remedies for Breach

- Term: Expires upon later of (i) 50 year anniversary of execution or (ii) 40 year anniversary of the date the final portion of the scheduled Toll-backed debt is issued
- Agreement is not terminable for breach
 - Parties may pursue damages and specific performance, subject to applicable cure periods and dispute resolution procedures
 - If HRTAC breaches and VDOT steps in to cure, VDOT entitled to recover (as a Tolling O&M Cost) its actual costs to cure
- If HRTAC engages VDOT to perform services (*e.g.*, tolling O&M duties), such separate services agreement shall be terminable in accordance with its terms

Next Steps

- HRTAC and VDOT teams work to finalize the terms of the Master Agreement and its exhibits
- If final terms reached by July meetings, Master Agreement presented for CTB and HRTAC approval (execution to promptly follow)
- VDOT will continue to work to finalize the preliminary cost estimates for the HREL
- HRTAC, PFM, Office of P3, and CDM Smith will continue with the development of the investment grade traffic and revenue study of the HREL
 - In connection with this effort, HRTAC team will work with HRTAC board/members to adopt Initial Tolling Policies
- HRTAC will continue to develop the toll and HRTF-backed TIFIA loan(s) for HRBT
- HRTAC will engage bond underwriter services and continue to prepare for the Commission's authorized bond sale following approval of the MTA and issuance of the Notice to Proceed for HRBT

