

PUBLIC-PRIVATE PARTNERSHIPS: THE VIRGINIA HOT LANES PROJECT

by J. R. Steele

On September 10, 2007, the Virginia Department of Transportation (VDOT) announced an “in-principal” Public-Private Partnership with the joint-venture Fluor Corporation and Transurban (“Fluor-Transurban”) to construct the Commonwealth’s interstate 95 and 395 Capital Beltway High Occupancy Toll Lanes project (“HOT Lanes”). Under the Public-Private Partnership, VDOT will own and oversee the lanes, but Fluor-Transurban will construct and, upon completion, be responsible for maintaining and operating the HOT Lanes. This Public-Private Partnership is set to be finalized upon completion of environmental approvals and financial feasibility studies. This article is intended to acquaint Commonwealth businesses with Public-Private Partnerships and specifically highlight the Virginia HOT Lanes Public-Private Partnership.

What is a Public-Private Partnership?

The development of the Public-Private Partnership, or PPP, evolved from the fact that the United States is faced with an aging infrastructure, coupled with the reduction of local, state, and federal government budgets for repair and improvements to older infrastructure. The PPP was developed in order to address this problem and to bring private capital and knowhow to public projects.

PPP & HOT Lanes Websites:

- **The National Council for Public-Private Partnerships:**

www.ncppp.org

- **Public-Private Transportation Act (PPTA):** www.virginiadot.org/business/ppta-default.asp

- **HOT Lanes:**

www.virginiahotlanes.com

- **Federal Highway Administration – Public-Private Partnerships**

www.fhwa.dot.gov/PPP

In general, a PPP is a contractual agreement between a public agency (federal, state, or local) and a private sector entity. Through the PPP agreement, the assets, skills, and resources of both the public and private entity

are shared in order to deliver a service or facility for the general public’s use. With this sharing of resources also comes the sharing of the inherent risks and rewards in the delivery of the service or facility.

The use of a PPP is thought to promote timely, efficient, and less costly construction for both the public and private partners. PPPs allow projects to move more quickly because the project can avoid some of the governmental funding issues that can slow down a traditionally government funded construction project. In addition, a PPP encourages the participating private entity to invest in the state where the project is located. Another important advantage of using a PPP is that the public benefits from the use of new, cutting-edge technology that normally a governmental entity would deem too risky for public procurement. PPPs have been successful on a multitude of projects throughout the United States, including transportation, water/wastewater management, urban development, school/university, and utility projects.

In Virginia, the Public-Private Transportation Act of 1995 (“VA PPTA”), as amended by the 2005 General Assembly (VA. CODE ANN. § 56-556, et seq.), is the legislative framework enabling the Commonwealth of Virginia to enter into agreements with private entities to construct, improve, maintain and operate transportation facilities. The Commonwealth has utilized PPPs on several transportation infrastructure projects. For example, Route 895 Pocahontas Parkway—a 8.8-mile long freeway that crosses the James River—was funded 90% through private funds. In addition, in Powhatan and Goochland Counties, Western Route 288’s largest section was awarded under a PPTA and the Dulles Greenway, a 14-mile freeway, was built 100% by private funding.

The VA PPTA allows both solicited and unsolicited project proposals. The major steps undertaken to evaluate, select, and implement projects are similar for both solicited and unsolicited proposals. The process, however, is not subject to the Virginia Public Procurement Act (“VPPA”) (VA. CODE ANN. § 11-35, et seq.). Under the VA PPTA, the private and public entity are provided great flexibility in developing financing methods, including user fees, service payments, issuance of debt, equity or other securities or obligations. Sale and

leaseback transactions are also choices that are available if the parties desire.

Both solicited and unsolicited project proposals are evaluated under a competitive process. After evaluating any competing proposal, the Commonwealth can choose to enter negotiations with selected private entities. Negotiations may result in a private entity partner being chosen for the project. Final authorization to develop the project, however, is contingent upon successful negotiation and execution of a comprehensive agreement between the public and the chosen private entity. At a minimum, the comprehensive agreement will outline the parties' rights and obligations, set maximum return rates to the private entity, allocate risk and liabilities and—in accordance with VA.CODE ANN. §56-566—establish a timeline for termination of the private entity's authority and turn-over of the project to the Commonwealth.

One of the recent criticisms of the VA PPTA is its perceived lack of transparency. The hallmark of public contracting is transparency at all levels of the contract process. The VA PPTA has been criticized by some because the negotiation process between the Commonwealth and contractors on PPP projects is not fully transparent. This criticism is largely based on issues surround-

ing the current Metrorail extension to the Washington Dulles International Airport in Northern Virginia—where the terms of the construction contract (including documents dealing with cost estimates, scheduling, overruns, markups, overhead and profit) will be “sealed jointly” by the partnership and kept from the public until the end of the extension project. Supporters of this arrangement are quick to point-out that the VA PPTA was developed by the legislature of the Commonwealth to address private entities' concerns that companies participating in a PPP may be required to disclose proprietary information, such as fee structures and business strategies, thereby disclosing such information to their competitors. It is not clear whether this debate will be taken up by the Commonwealth's legislature, but these concerns are certain to influence the way public and private entities craft future PPP agreements in the Commonwealth.

What is a HOT Lane?

As background, VDOT maintains the third largest highway system in the United States, encompassing a total of 57,100 miles of roads with 1,120 miles of those being classified as interstate roads. Of the 1,120 miles of interstate roads, there is a growing concern from the government and the state's citizens that the amount of traffic volume is overwhelming the interstate system causing widespread delays. After years of debate and study, the Commonwealth has chosen High Occupancy Toll Lanes, or “HOT Lanes”, as one of the weapons to decrease the number of vehicles found on Virginia's most congested interstates.

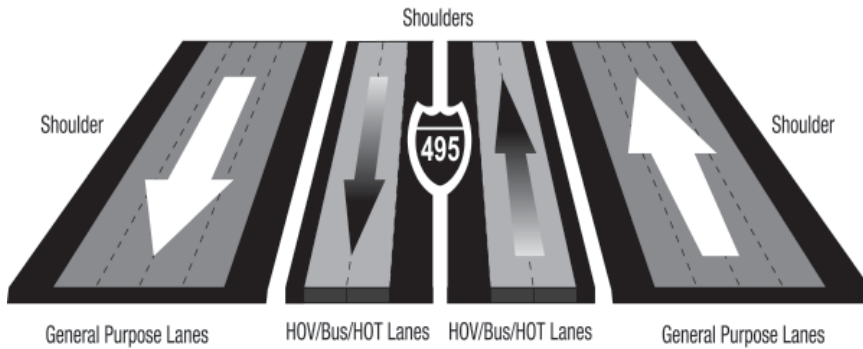
More specifically, HOT Lanes are to be constructed adjacent to existing or “regular” interstate 95 and 395 Capital Beltway traffic lanes. Similar to High Occupancy Vehicle (HOV) Lanes, HOT Lanes are exclusively reserved for motorcycles, carpooling, vanpooling, buses, and emergency vehicles. However, unlike HOV Lanes, those motorists who are not carpooling or riding a bus will be required to pay a toll when using the lanes. The HOT Lanes Project will:

- Add four new HOT Lanes on the Capital Beltway from the Spring-



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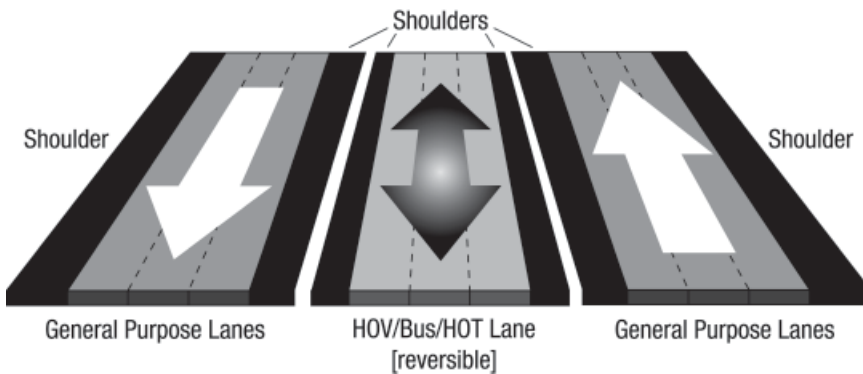
Graphic #1. Graphic courtesy of www.virginiahotlanes.com

field Interchange to just north of the Dulles Toll Road, and

- Convert the existing, reversible High Occupancy Vehicle (“HOV”) lanes on I-95/395 into HOT Lanes, expand it from two lanes to three lanes, and extend two of the lanes 28 miles south into Spotsylvania County.

As depicted in **Graphic #1**, once the HOT Lanes project is completed, there will be a total of twelve lanes total on portions of the Capital Belt-

toll amount will also increase—thus regulating the number of cars using the lanes. Therefore, the toll amount will change throughout the day according to real-time traffic conditions in order to manage the number of cars in the HOT lanes and keep them congestion free—even during rush hour. The HOT Lanes will utilize electronic toll collection technology. The project will be built in such a manner that further expansion of the system will be possible.



Graphic #2. Graphic courtesy of www.virginiahotlanes.com

way, with 4 general purpose lanes and 2 Hot Lanes north- and south-bound.

In addition, as depicted in **Graphic #2**, portions of I-95/395 north- and south-bound will have 9 total lanes with 6 general purpose lanes and 3 reversible HOT Lanes.

The toll amount for motorists utilizing these HOT Lanes will fluctuate. When the traffic is light in the HOT Lanes, toll prices will be low. When congestion increases, however, the

One of the major goals of the HOT Lanes is to reduce the overall number of vehicles on the road by encouraging people to utilize public transportation or carpooling options. The Capital Beltway portion of the project will bring HOV service to the beltway in Virginia for the first time. The hope is that HOV traffic, especially carpools and buses, will now be able to move freely in and out of Tysons Corner, one of the most congested areas in the Com-

monwealth. The project will also support regional transportation goals by dovetailing with Metrorail’s plans to extend Metro services to Washington Dulles International Airport. Construction on the HOT Lanes project is expected to begin some time in the first half of 2008 with the lanes slated to be opened some time in 2013. The estimated cost of the entire project is in the neighborhood of one billion dollars.

Conclusion:

Virginia is embracing the use of PPPs to address the growing transportation infrastructure and state budgetary problems the Commonwealth is facing. The success of the HOT Lanes project, and other Commonwealth PPPs, will largely determine whether or not the use of PPPs in Virginia becomes the public infrastructure and facility delivery method of choice. It is clear, at least for the foreseeable future, that Virginia businesses are likely to see increased use of these partnerships not only on transportation projects, but on various other public projects. ##



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Article originally published in the June 2008 issue of *The Virginia Engineer* and is available online at www.vaeng.com. Send questions or comments to news@vaeng.com.