Congestion Reduction Demonstration Agreement

by and between
U.S. Department of Transportation
and the
Atlanta -area Congestion Reduction Partners

Executive Summary

This Congestion Reduction Demonstration Agreement sets forth an agreement in principle between the U.S. Department of Transportation (the "Department") and the Department's Atlanta Region Congestion Reduction Partners, comprised of the Georgia Department of Transportation ("GDOT"), the Georgia Regional Transportation Authority ("GRTA"), and the State Road and Tollway Authority ("SRTA") (collectively the "Partner Agencies"). Under this agreement, the Partner Agencies agree that a long-term goal of the Atlanta Region is to implement an integrated system of congestion-priced lanes, enhanced transit service, and innovative technology. To implement such a network, the Partner Agencies agree to (i) institute Phase I of the network, consisting of dynamically-priced high occupancy toll ("HOT") lanes and supporting transit elements on I-85 from I-285 to Old Peachtree Road, by January 31, 2011 ("Phase I"); and (ii) complete the full 49 mile network by implementing additional HOV-to-HOT conversions along I-85, I-75 and I-20, subject to the availability of funding. In exchange for these commitments, the Department intends to allocate $110 million in Federal grant assistance to the Partner Agencies.

THIS MEMORANDUM OF UNDERSTANDING (this "MOU"), dated as of November 21, 2008, is made by and among the Secretary of Transportation (the "Secretary"), the Federal Highway Administration ("FHWA"), the Federal Transit Administration ("FTA"), the Research and Innovative Technology Administration ("RITA") (the Secretary, FHWA, FTA, and RITA, collectively, the "Department"), and the undersigned State governmental entities, as the case may be (collectively, the "Partner Agencies").

Agreement in Principle

1. Agreement in Principle. This MOU sets forth an agreement in principle among the undersigned concerning the terms and conditions of Federal assistance to be provided by the Department for the transportation projects described herein. This MOU represents solely the intent of the parties (including, without limitation, the intent of the Department to allocate funds as set forth in Section 4(a) below), and no party shall be legally bound hereby. Any agreement between the Department and the Partner Agencies concerning funding of the transportation projects described herein shall be set forth in a grant agreement (the "Grant Agreement") to be negotiated and executed by the parties to this MOU. Nothing herein constitutes the approval by the Department of a request for funding. The Department reserves the right, in its discretion, not to fund the transportation projects (or any part thereof) described in this MOU or otherwise set forth in the application filed by the Partner Agencies to the Congestion Reduction Demonstration Program (the "CRD Program").

2. Background. Transportation system congestion is one of the greatest threats to our Nation's economic prosperity and way of life. Whether it takes the form of trucks stalled in traffic, cargo stuck at overwhelmed seaports, or airplanes or airplanes stuck on the tarmac, congestion costs the Nation an estimated $200 billion a year. The problem of traffic congestion in our major metropolitan areas in particular is severe and worsening. In 2003, traffic jams in the Nation's largest 85 urban areas cost Americans 3.7 billion hours and 2.3 billion gallons of fuel. Congestion is also affecting the quality of life in America by robbing us of time that could be spent with families and friends and in participation in civic life.

The signatories to this MOU do not believe that gridlock is our inevitable fate. In November 2007, the Department solicited by notice published in the Federal Register (at 72 FR 63951 (2007)) (the "Federal Register Notice") certain metropolitan-area proposals to implement congestion pricing together with complementary transportation solutions, including transit service and innovative technology. In accordance with the process described in the Federal Register Notice, the Department has selected the Partner Agencies as recipients of Federal assistance in order to support the congestion reduction strategy for the Atlanta Region described in the Application.

3. Designation of Partner Agencies. In accordance with the Federal Register Notice and for purposes of this MOU, the Department designates each of the following entities a "Partner Agency" (which shall be a "qualified jurisdiction" for purposes of the procedures described in the Federal Register Notice):

(a) Georgia Department of Transportation, as lead agency;
(b) State Road and Tollway Authority; and
(c) Georgia Regional Transportation Authority.

4. Grant Agreements. The Department and the Partner Agencies agree to negotiate a grant agreement (or a series of grant agreements) that would reflect the following terms and conditions:

(a) Projects and Sources of Funding.

(i) The Department shall make available from funds available through the Intelligent Transportation Systems Operational Testing to Mitigate Congestion ("ITS-OTMC") Program $12.5 million to support the implementation of automated enforcement through a controlled access gantry system in the Phase I corridor and for evaluation of the impacts of Phase I on reducing congestion.

(ii) The Department shall make available from funds appropriated in Fiscal Year 2007 under the Department's 5309 Bus and Bus Facilities Program (the "Bus Program") an amount not less than $28.8 million in Federal funding to support any project in an approved Transportation Improvement Program ("TIP") and State Transportation Improvement Plan ("STIP") (including, without limitation, any project set forth on Appendix A) eligible to receive Federal assistance under the Bus Program (collectively, the "Transit Projects"); provided that (i) a Partner Agency duly applies for such funds and expends such funds on the Transit Projects and (ii) the Partner Agencies shall convert, and together shall reserve and make available an amount sufficient to pay for the conversion of, the HOV lanes to HOT lanes as described in Phase I.

(iii) The Department shall make available from funds appropriated in Fiscal Year 2007 under the Department's 5309 Bus and Bus Facilities Program (the "Bus Program") an amount not less than $29.2 million in Federal funding to support the Transit Projects in Phase I, consisting of the purchase of 36 commuter coaches and the construction or expansion of up to 3 park-and-ride lots.

(iv) The Department shall make available from "prior year" lapsed earmarks (funded from the Department's 5309 Bus and Bus Facilities or New Starts Programs but which the Department shall re-allocate as funds available for purposes under the Bus and Bus Facilities, the Fixed Guideway Modernization, or the New Starts Programs pursuant to 49 U.S.C. 5309(j)(1), as amended by Section 3011(a) of SAFETEA-LU (Pub. Law 109-59) and similar provisions in previous Department of Transportation Appropriations Acts) $39.5 million to support any project in an approved Transportation Improvement Program ("TIP") and State Transportation Improvement

Plan ("STIP") (including, without limitation, any project set forth on Appendix A) eligible to receive Federal assistance under the aforementioned section 5309 Programs (collectively, the "Transit Projects"); provided that (i) a Partner Agency duly applies for such funds and expends such funds on the Transit Projects and (ii) the Partner Agencies shall convert, and together shall reserve and make available an amount sufficient to pay for the conversion of, the HOV lanes to HOT lanes as described in Phase I.

(b) Completion of Projects. Unless otherwise agreed by the Department and the Partner Agencies, the Phase I HOT lanes shall be in operation by not later than January 31, 2011. Phase I transit elements shall be in operation no later than July 31, 2012. In the event that the action(s) funded in connection with the Congestion Reduction Demonstration Agreement experience delay due to circumstances beyond the control of the Partner Agencies, the Department may either negotiate an extended completion date or terminate the action(s).

(c) Other Terms and Conditions. Each of the Grant Agreements shall additionally provide that:

(i) No funds obligated by the Grant Agreements shall be drawn down by the Partner Agencies unless and until the Partner Agencies shall have obtained approval from the Georgia State Transportation Board to designate the minimum vehicle occupancy requirements for vehicles exempt from paying tolls to access the HOT lanes as 3 or more;

(ii) No funds obligated by the Grant Agreement shall be drawn down by the recipient unless the Partner Agencies have agreed to exempt privately operated over-the-road buses from tolls to the same extent it exempts (or proposes to exempt) public transportation from tolls in connection with the Phase I projects;

(iii) The Department reserves the right to de-obligate funds obligated under the Grant Agreement (or to require the return of such funds) in the event a recipient breaches or otherwise fails to perform under the Grant Agreement;

(iv) The recipient shall not assess congestion charges against any vehicles owned or operated by any foreign government or international organization or its representatives, officers, or employees if notified by the U.S. Department of State that, pursuant to U.S. international legal obligations, the vehicles are exempt from such charges;

(v) The recipient makes customary representations to the Department that the Phase I projects will comply with all applicable Federal, State and local laws before funds are drawn down;

(vi) The recipient agrees to provide to the Department (and its designees) access to the Phase I projects and all data collected by the recipient with respect to the Phase I projects for purposes of the Department's oversight of the Phase I projects; and

(vii) To the extent requested by the Department, the recipient agrees to designate an independent third party to perform all program evaluations required by law or as reasonably directed by the Department in order to assist in the evaluation of the Federal Projects.

(viii) In order to ensure that the Phase I HOT Lanes continue to be classified as fixed guideway mileage in the funding formulas under 49 U.S.C. 5307 and 49 U.S.C. 5309, the Phase I HOT Lanes will be operated in accordance with the FTA Final Policy Statement on High-

Occupancy Vehicle Lanes Converted to High-Occupancy/Toll Lanes (72 FR 1366), including continuous monitoring, achievement of the performance standards in 23 U.S.C. 166(d), and limitations on the permissible uses of toll revenue.

(d) Actions Prior to Execution of Grant Agreements. Prior to the execution of the Grant Agreements, the Partner Agencies shall provide to the Department, in addition to usual and customary deliverables, an opinion of counsel, satisfactory in form and substance to the Department, concerning the Phase I projects.

5. Non-Disclosure. Prior to the public announcement of the Congestion Reduction Demonstration Agreement by the U.S. Secretary of Transportation, the undersigned agree not to disclose the contents hereof to any third party, except by written agreement of the Department or as required by law.

6. Counterparts. This MOU may be executed in counterparts.

United States Department of Transportation

_____ **Date** _____

Authorized Person
U.S. Department of Transportation

_____ **Date** 11/24/08

Thomas Madison
Administrator
Federal Highway Administration

_____ **Date** November 24, 2008

Sherry Little
Acting Administrator
Federal Transit Administration

_____ **Date** Nov 24, 2008

Paul Brubaker
Administrator
Research and Innovative Technology Administration

[Additional signatures appear on the following page.]

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United States Department of Transportation

Rosalind A Knapp **Date** Jan. 24, 2008

Rosalind A. Knapp
Deputy General Counsel
U.S. Department of Transportation

_____ **Date** _____

Thomas Madison
Administrator
Federal Highway Administration

_____ **Date** _____

Sherry Little
Acting Administrator
Federal Transit Administration

_____ **Date** _____

Paul Brubaker
Administrator
Research and Innovative Technology Administration

[Additional signatures appear on the following page.]

Execution Copy

Partner Agencies

Georgia Department of Transportation

Signature Gena L. Evans **Date** 11-24-08

Gena L. Evans
Commissioner
Georgia Department of Transportation

Signature_____ **Date** _____

Bill Kuhlke, Jr.
State Transportation Board Chairman
Georgia Department of Transportation

State Road and Tollway Authority

Signature Gena L. Evans **Date** 11-24-08

Gena L. Evans
Executive Director
State Road and Tollway Authority

Signature Sonny Perdue **Date** Nov 24, 2008

Governor Sonny Perdue
Chairman
State Road and Tollway Authority

Georgia Regional Transportation Authority

Signature [illegible] **Date** 11.24.08

Richard Anderson
Executive Director
Georgia Regional Transportation Agency

Execution Copy

Partner Agencies

Georgia Department of Transportation

Signature Gena L. Evans **Date** 11-24-08

Gena L. Evans
Commissioner
Georgia Department of Transportation

Signature _____ **Date** 11/24/08

Bill Kuhlke, Jr.
State Transportation Board Chairman
Georgia Department of Transportation

State Road and Tollway Authority

Signature Gena L. Evans **Date** 11-24-08

Gena L. Evans
Executive Director
State Road and Tollway Authority

Signature _____ **Date** _____

Governor Sonny Perdue
Chairman
State Road and Tollway Authority

Georgia Regional Transportation Authority

Signature _____ **Date** 11.24.08

Richard Anderson
Executive Director
Georgia Regional Transportation Agency

Appendix A

PROJECT NUMBER	PROJECT NAME
0007924	Hiram Park & Ride Construction
0008482	Douglas Blvd Park & Ride Construction (+ Douglas 5307)
0007922	Tara Blvd Park & Ride Right of Way Acquisition
0007922	Tara Blvd Park & Ride Construction
0007955	Jodeco Park & Ride Right of Way Acquisition
0007955	Jodeco Park & Ride Construction
0007956	Coweta Park & Ride Right of Way Acquisition
0007956	Coweta Park & Ride Construction
0003541	Xpress Operating Facility
0007955	Jodeco Park & Ride Construction
0007918	Town Center Right of Way Acquisition
0007954	Salem Road Construction
0007918	Town Center Park & Ride Construction
0007954	Salem Road Right of Way Acquisition
0008693	28 Buses for 2010