



## COMMONWEALTH of VIRGINIA

### *Commonwealth Transportation Board*

Sean T. Connaughton  
Chairman

1401 East Broad Street - Policy Division - CTB Section - #1106  
Richmond, Virginia 23219

(804) 786-2701  
Fax: (804) 225-4700

*Agenda Item # New Business 1*

### RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

March 14, 2012

#### MOTION

**Made By: Mr. Layne Seconded By: Mr. Koelemay Action: Motion Carried, Unanimously**

**Title: Tolling of the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway  
Extension Project**

**WHEREAS**, the Public-Private Transportation Act of 1995 (Code of Virginia § 56-556, *et seq.*) (the "PPTA") grants the Virginia Department of Transportation (the "Department") as a responsible public entity the authority to enter into a comprehensive agreement to allow private entities to develop and/or operate qualifying transportation facilities; and

**WHEREAS**, the PPTA further states that (i) a private entity shall have the power to develop and/or operate the qualifying transportation facility and impose user fees...in connection with the use thereof; (ii) a comprehensive agreement shall provide for such user fees as may be established from time to time by agreement of the parties and (iii) user fees mean the rates, tolls, fees, or other charges imposed by the private entity for use of all or a portion of a qualifying transportation facility pursuant to a comprehensive agreement; and

**WHEREAS**, the Department and Elizabeth River Crossings Opco, LLC (the "Concessionaire") are parties to that certain Comprehensive Agreement Relating to the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project, dated as of December 5, 2011 (the "Comprehensive Agreement") attached with Exhibit A thereto [as Exhibit A](#) hereto; and

Resolution of the Board  
Tolling of the Downtown Tunnel/Midtown Tunnel  
Martin Luther King Freeway Extension Project  
March 14, 2012  
Page Two of Three

**WHEREAS**, the Comprehensive Agreement sets forth the agreement between the Department and Concessionaire to (i) to finance, develop, design, construct, manage, operate and maintain the Project Assets (as such term is defined in the Comprehensive Agreement) and (ii) to establish, impose, charge, collect, use and enforce payment of tolls and related charges for the use of the Project Assets (the "Project"), all as more specifically specified in the Comprehensive Agreement; and

**WHEREAS**, the Project will develop and expand the existing transportation network between Portsmouth, Virginia and Norfolk, Virginia to provide users of the Project Assets with increased transportation capacity between the two cities and congestion relief within the transportation network; and

**WHEREAS**, the Comprehensive Agreement sets forth a schedule identifying vehicle and user classifications, tolling periods, toll rates and toll rate escalation provisions; and

**WHEREAS**, pursuant to the Comprehensive Agreement, the Department has agreed to contribute a Public Funds Amount (as such term is defined in the Comprehensive Agreement) in an amount not to exceed \$412 million, of which the Department will fund up to \$350 million from the proceeds of issuing Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes ("GARVEE Notes"); and

**WHEREAS**, the State Revenue Bond Act (Code of Virginia § 33.1-267, *et seq.*) specifically authorizes the Commonwealth Transportation Board (the "Board") to fix and collect tolls and other charges for the use of projects identified by the Board to be financed in whole or in part through the issuance of GARVEE Notes; and

**WHEREAS**, the Code of Virginia § 33.1-12(15) generally vests the Board with the power to establish highway user fees for the systems of state highways; and

**WHEREAS**, on September 4, 2009, the Department entered into a Cooperative Agreement (the "Cooperative Agreement") with the Federal Highway Administration ("FHWA") pursuant to which FHWA authorized the Department to operate the Project (directly or through a third party public authority or private entity) as a toll facility as part of the Value Pilot Pricing Program; and

**WHEREAS**, the imposition of tolls for the use of the Project Assets is required to finance the Project.

**NOW THEREFORE, BE IT RESOLVED BY THE COMMONWEALTH TRANSPORTATION BOARD:**

Resolution of the Board  
Tolling of the Downtown Tunnel/Midtown Tunnel  
Martin Luther King Freeway Extension Project  
March 14, 2012  
Page Three of Three

1. The Board hereby affirms the Project and, while not otherwise required by the PPTA, ratifies the terms and conditions of the Comprehensive Agreement.

2. The Board, pursuant to the State Revenue Bond Act (Code of Virginia § 33.1-267, *et seq.*), the Code of Virginia § 33.1-12(15), and the Cooperative Agreement, specifically approves and ratifies the imposition and collection of tolls on the Project Assets as contemplated and set forth in Exhibit J to the Comprehensive Agreement and attached hereto as [Exhibit B](#), including without limitation the specified rates and escalation thereof during the term of the Comprehensive Agreement.

3. This resolution shall take effect immediately upon its adoption.

###