



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Sean T. Connaughton
Chairman

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RESOLUTION AND ORDER OF THE COMMONWEALTH TRANSPORTATION BOARD

October 17, 2013

MOTION

Made By: Mr. Layne

Seconded By: Mr. Miller

Action: Motion Carried, Unanimously

ORDERING THE CITY OF PORTSMOUTH TO RELOCATE CERTAIN UTILITIES IN CONNECTION WITH THE DOWNTOWN TUNNEL/MIDTOWN TUNNEL/MLK FREEWAY EXTENSION PROJECT

WHEREAS, on March 14, 2012, the Commonwealth Transportation Board (the "Board") approved and ratified the Comprehensive Agreement (the "Comprehensive Agreement") Relating to the Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project (the "Project") between the Virginia Department of Transportation ("VDOT") and Elizabeth River Crossings ("ERC"), dated December 5, 2011, in accordance with the Public-Private Transportation Act of 1995 (Code of Virginia § 56-556, *et seq.*) (the "PPTA"); and

WHEREAS, the City of Portsmouth (the "City") owns and operates certain public water and sanitary sewer utility facilities within the limits of the above described Project; and

WHEREAS, construction of the Project requires the City to take certain actions related to the relocation and removal of the City's public water and sanitary sewer utility facilities; and

WHEREAS, the City has not yet taken such certain actions to relocate and remove the City's utility water and sanitary sewer facilities, the relocation and removal of which is essential for the Project to be constructed, specifically as follows:

1. At the approach to the new tube of the Midtown Tunnel on the banks of the Elizabeth River in Portsmouth, 80 linear feet of 8" water main owned by the City must be

relocated. This water main is part of a loop that provides water service to the Virginia Port Authority and provides back-up water supply for fire suppression service in the Midtown Tunnel. To complete the relocation, the City must temporarily cut off the flow in this section of the main. On February 7, 2013, ERC requested the City to approve this relocation, but the City has neither approved the engineered relocation plan nor responded;

2. At Columbus Avenue, East of the NPBL Railroad on the VDOT-acquired right-of-way adjacent to the Portsmouth Redevelopment and Housing Authority Building, 1,265 linear feet of 20" water main owned by the City must be relocated. This water main provides water supply for fire and domestic service in Portsmouth. To complete the relocation, flow in this section of the main must be temporarily cut off. The final submittal for approval for this relocation was submitted to the City on March 26, 2013, but the City has neither approved the engineered relocation plan nor responded;
3. On Trexler Avenue between Arcadia Avenue and Downes Street, 285 linear feet of 6" water main owned by the City must be relocated. This main provides water supply for fire and domestic service. To complete the relocation, flow in this section of the main must be temporarily cut off. Approval for this relocation was requested from the City on May 22, 2013, but the City has neither approved the engineered relocation plan nor responded;
4. On Trexler Avenue between Arcadia Avenue and Downes Street, 305 linear feet of 8" sewer main owned by the City must be relocated. This sewer main provides service to domestic users. To complete the relocation, flow in this section of the main must be temporarily cut off. Approval for this relocation was requested from the City on May 22, 2013, but the City has neither approved the engineered relocation plan nor responded; and
5. On Columbus Avenue west of South Street, 880 linear feet of 8"/10" sewer main owned by the City must be relocated.. This sewer main provides service to domestic users. To complete the relocation, flow in this section of the main must be temporarily cut off. Approval for this relocation was requested from the City on May 22, 2013, but the City has neither approved the engineered relocation plan nor responded; and

WHEREAS, the relocation of these water and sanitary sewer mains and the temporary cut off of this flow in the mains should have minimum impact to the customers served by the mains; and

WHEREAS, ERC has installed the new segments of water or sanitary sewer mains referenced above, but the City must participate with the relocation by cutting off service in the existing lines; and

WHEREAS, the Board has identified the Project as one to be financed in part through the issuance of Commonwealth of Virginia Federal Grant Anticipation Revenue Notes

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(“GARVEE Notes”), by virtue of its resolutions adopted on October 19, 2011, and May 16, 2012, so that the Project is, therefore, a defined “project” under § 33.1-268(2)(w) of the State Revenue Bond Act (the “State Revenue Bond Act”), Article 5, Chapter 3, Title 33.1 of the Code of Virginia of 1950, as amended; and

WHEREAS, reasonable regulations concerning the installation, construction, maintenance, repair, renewal and relocation of public utility facilities have been enacted by the Board; and

WHEREAS, § 33.1-269(8) of the State Revenue Bond Act provides that “[w]henver the Board determines that it is necessary that any such public utility facilities should be relocated or removed, the Commonwealth or such municipality, county, political subdivision, public utility or public service corporation shall relocate or remove the same in accordance with the order of the Board”; and

WHEREAS, the Board therefore has the power to order the removal or relocation of the utility facilities defined herein.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Commonwealth Transportation Board, in accordance with § 33.1-12 and § 33.1-269(8) of the Code of Virginia, that the City of Portsmouth shall take the following actions with regard to its public water and sanitary sewer utility facilities:

1. Regarding the 8” water main relocation at the approach to the new tube of the Midtown Tunnel on the banks of the Elizabeth River in Portsmouth. The relocated water main has already been installed with final closure pieces pending. To complete this relocation, flow in this section of the existing main must be temporarily cut off and the main must be tied into the relocated main. Within 7 calendar days the City is ordered to provide comments or approval of the previously submitted relocation plans, provided that within 14 calendar days, the City is hereby ordered to cut off flow in the existing main and tie it into the relocated main.
2. Regarding the 20” water main relocation on Columbus Avenue, East of the NPBL Railroad on the VDOT-acquired right-of-way adjacent to the Portsmouth Redevelopment and Housing Authority Building. The relocated water main has already been installed with final closure pieces pending. To complete this relocation, flow in this section of the existing main must be temporarily cut off and the main must be tied into the relocated main. Within 7 calendar days the City is ordered to provide comments or approval of the previously submitted relocation plans, provided that within 14 calendar days, the City is hereby ordered to cut off flow in the existing 20” main and tie it into the relocated main.
3. Regarding the 6” water main relocation on Trexler Avenue between Arcadia Avenue and Downes Street. Within 7 calendar days the City is ordered to provide comments or

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approval of the relocation plans submitted by ERC on May 22, 2013, provided that within 14 calendar days thereafter, the City is hereby ordered to remove and relocate the existing 6" main according to the approved plan.

4. Regarding the 8" sewer main relocation on Trexler Avenue between Arcadia Avenue and Downes Street. Within 7 calendar days the City is ordered to provide comments or approval of the relocation plans submitted by ERC on May 22, 2013, provided that within 14 calendar days thereafter, the City is hereby ordered to remove and relocate the existing main according to the approved plan.
5. Regarding the 8"/10" sewer main relocation on Columbus Avenue west of South Street. Within 7 calendar days the City is ordered to provide comments or approval of the relocation plans submitted by ERC on May 22, 2013, provided that within 14 calendar days thereafter, the City is hereby ordered to remove and relocate the existing main according to the approved plan.

NOW, THEREFORE, BE IT FURTHER RESOLVED AND ORDERED by the Commonwealth Transportation Board that the removal and relocation as ordered would be more effectively performed if the City cooperated with the ERC and its contractors and the City agreed to allow ERC and its contractors to perform the work in accordance with the submittals provide to the City as referenced herein. To the extent that the City elects to cooperate with the ERC and its contractors and the City agrees to allow ERC and its contractors to perform the work in accordance with this resolution (and the time specified herein) and with the submittals already provided to the city as referenced herein, the same shall constitute compliance with the Order of the Board in this resolution.

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