



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Pierce R. Homer
Chairman

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Agenda item # 9

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 16, 2009

MOTION

Made By: Ms. Pandak, Seconded By: Mr. Koelemay, Motion Carried, Unanimously

AUTHORIZING THE ISSUANCE AND SALE OF TRANSPORTATION REVENUE BONDS, SERIES 2009A (NORTHERN VIRGINIA TRANSPORTATION DISTRICT PROGRAM)

WHEREAS, in Section 33.1-221.1:3 of the Code of Virginia of 1950, as amended (the "Virginia Code"), the General Assembly of Virginia (the "General Assembly") has declared it to be in the public interest that the economic development needs and economic growth potential of Northern Virginia be addressed by a special transportation program to provide for an adequate, modern, safe and efficient transportation network in Northern Virginia to be known as the Northern Virginia Transportation District Program (the "NVTD Program");

WHEREAS, the Commonwealth Transportation Board (the "Board") is authorized to issue revenue and refunding bonds pursuant to the State Revenue Bond Act, Section 33.1-267 *et seq.* of the Virginia Code, and Chapter 391 of the Acts of Assembly of 1993, as amended and reenacted by Chapters 470 and 597 of the Acts of Assembly of 1994, Chapters 740 and 761 of the Acts of Assembly of 1998, Chapter 538 of the Acts of Assembly of 1999 and Chapter 799 of the Acts of Assembly of 2002 (the "NVTD Bond Acts");

WHEREAS, the Board has previously issued Commonwealth of Virginia Transportation Revenue Bonds to finance costs with respect to the NVTD Program pursuant to a Master Agreement of Trust dated as of August 15, 1993 (the "NVTD Master Trust Agreement"), as supplemented and amended by a First Supplemental Agreement of Trust dated as of August 15, 1993, a Second Supplemental Agreement of Trust dated as of January 15, 1995, a Third Supplemental Agreement of Trust dated as of November 1, 1996, a Fourth Supplemental Agreement of Trust dated as of October 1, 1997, a Fifth Supplemental Agreement of Trust dated as of November 15, 1999, a Sixth Supplemental Agreement of Trust dated as of September 1, 2001, a Seventh Supplemental Agreement of Trust dated as of November 1, 2002, an Eighth Supplemental Agreement of Trust dated as of November 1, 2004, a Ninth Supplemental Agreement of Trust dated as of May 1, 2006, and a Tenth Supplemental Agreement of Trust dated as of February 1, 2007, each between the Board and U.S. Bank National Association (as successor in interest to First Union National Bank of Virginia), as trustee (the "Trustee");

WHEREAS, the Board has determined to finance additional costs related to the NVTD Program through the issuance of its Commonwealth of Virginia Transportation Revenue Bonds, Series 2009A (Northern Virginia Transportation District Program) (the "Bonds");

WHEREAS, in accordance with the provisions of Chapters 740 and 761 of the Acts of Assembly of 1998, as amended, (a) the governing bodies of at least five of the jurisdictions participating in the NVTD Program and

comprising a majority of the population of such participating jurisdictions have adopted resolutions endorsing the proposed sale or sales of bonds to finance the NVTD Program projects to be financed with the Bonds and (b) the Cities of Alexandria, Fairfax and Falls Church and Arlington County have entered into contracts with the Board providing for deposits to the Northern Virginia Transportation District Fund pursuant to Section 58.1-815.1 of the Virginia Code;

WHEREAS, as a result of current conditions in the capital markets, the Transportation Board's financial advisor, Public Resources Advisory Group (the "Financial Advisor"), has recommended that a determination be made closer to the time the Transportation Board enters the market with the Bonds whether to offer and sell such bonds pursuant to a competitive bidding process or a negotiated underwriting;

WHEREAS, the Bonds will be offered for sale pursuant to a Preliminary Official Statement, to be dated the date of its release (the "Preliminary Official Statement") and, depending on market and other economic and financial conditions, will be (a) awarded by the Transportation Board through a competitive electronic bidding process using a Notice of Sale, to be dated the date of the Preliminary Official Statement (the "Notice of Sale"), which states the structure and terms of the sale of the proposed Bonds, or (b) sold pursuant to a Bond Purchase Agreement, to be dated as of the date of sale of the Bonds (the "Bond Purchase Agreement"), between the Transportation Board and one or more underwriters to be selected as described below (collectively, the "Underwriters");

WHEREAS, there have been presented to this meeting drafts of the following documents which the Board proposes to approve and cause to be executed to carry out the issuance of the Bonds, copies of which shall be filed with the records of the Board:

(a) an Eleventh Supplemental Agreement of Trust, supplementing and amending the NVTD Master Trust Agreement (the "Eleventh Supplemental Trust Agreement," and collectively, with the NVTD Master Trust Agreement as previously supplemented and amended, the "NVTD Trust Agreement"), between the Board and the Trustee providing for the issuance and details of the Bonds;

(b) the Preliminary Official Statement, including as an appendix, if the Bonds are sold in a competitive bidding process, a form of Notice of Sale (the "Notice of Sale") relating to the terms of such competitive bidding process for the Bonds; and

(c) a Continuing Disclosure Agreement of the Board (the "Continuing Disclosure Agreement"); and

WHEREAS, prior to the issuance of the Bonds, the Chairman of the Board, or his designee, may determine on behalf of the Board as provided herein, to elect that all or a portion of the Bonds shall constitute "Build America Bonds" pursuant to the federal American Recovery and Reinvestment Act of 2009, the interest of which will be taxable to the holders thereof for federal income tax purposes, and either (a) such holders will receive a tax credit equal to 35% of the interest on the Bonds or (b) the federal government will make direct payments to, or as directed by, the Board in the amount of the such credit as and when such interest is payable;

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

1. Authorization of Issuance of Bonds; Competitive Bidding or Negotiated Sale. The Board determines that it is in the best interest of the Commonwealth of Virginia (the "Commonwealth") to issue and sell the Bonds to finance costs related to the NVTD Program and to pay costs of issuance of the Bonds. The Board authorizes the issuance and sale of the Bonds either by competitive bidding, including electronic bidding, as described on the Notice of Sale, or through a negotiated sale, including the execution and delivery of the Bond Purchase Agreement, pursuant to the following terms and conditions: (a) the aggregate principal amount of the Bonds shall not exceed \$75,000,000, (b) the final maturity of the Bonds shall not extend beyond May 15, 2034, and (c) the "true" interest cost of the Bonds shall not exceed 6.00% per annum, after taking into account (i) any original issue discount or premium, if any, and (ii) in the case of any Bonds issued as "Build America Bonds," any payments anticipated to be made by the federal government to, or as directed by, the Board. The Board further authorizes and directs the Chairman or his designee to confirm prior to the sale of the Bonds that the resolutions adopted by the governing bodies of at least five of the jurisdictions participating in the NVTD Program and comprising a majority of the population of such participating jurisdictions endorsing the proposed sale or sales of bonds to finance the NVTD Program projects to be financed with the Bonds remain in full force and effect, and the acceptance of bids for the Bonds pursuant to paragraph 5 below shall constitute conclusive evidence that the Chairman or his designee have confirmed the such resolutions remain in full force and effect.

2. Determination of Details of Bonds. The Board authorizes and directs the Chairman or his designee, subject to the limitations set forth in paragraph 1, (a) to determine the details of the Bonds including, without limitation, the aggregate principal amount, the maturity schedule, the interest rates and the redemption provisions of the Bonds, the sale date, the sale price and the prices at which the Bonds are to be reoffered by the initial purchasers thereof, (b) to determine whether to elect that all or a portion of the Bonds, including on a maturity-by-maturity basis, shall constitute "Build America Bonds" pursuant to the American Recovery and Reinvestment Act of 2009, (c) to approve the final form of all documents that are appropriate to carry out the contemplated financing, (d) upon the recommendation of the Financial Advisor, to determine the manner of sale of the Bonds either through a competitive bidding process or a negotiated sale, and (e) to take all such further action as may be necessary or desirable for the issuance and sale of the Bonds.

3. Preliminary Official Statement. The Preliminary Official Statement, in substantially the form presented at this meeting with such completions, omissions, additions and changes as shall be approved by the Chairman or his designee in connection with the offering and sale of the Bonds, including without limitation any changes necessary in connection with offering any Bonds as Build America Bonds, is approved and the distribution thereof is authorized. The Board authorizes the Chairman or his designee to deem the Preliminary Official Statement final as of its date for purposes of Securities and Exchange Commission Rule 15c2-12 (the "Rule"), and distribution of the Preliminary Official Statement shall constitute conclusive evidence that it has been deemed final as of its date, except for the omission of such pricing and other information permitted to be omitted by the Rule.

4. Notice of Sale. The form of the Notice of Sale is approved. If the Bonds are sold through a competitive bidding process, the Chairman or his designee is authorized and directed to cause the Notice of Sale to be published and distributed to potential bidders for the Bonds in substantially the form of the draft submitted to this meeting, with such completions, omissions, insertions and changes as may be approved by the Chairman, including without limitation any changes necessary in connection with offering any Bonds as Build America Bonds. The Chairman's approval shall be evidenced conclusively by the distribution of the Notice of Sale to potential bidders.

5. Acceptance of Bids or Bond Purchase Agreement. If upon the recommendation of the Financial Advisor, the Chairman or his designee determines the then-current market or other conditions warrant a sale of the Bonds through a competitive bidding process, the Chairman or his designee is authorized and directed to accept the bid for the purchase of the Bonds at the price and interest rates that result in the lowest true interest cost to the Commonwealth in accordance with the Notice of Sale (the "Winning Bid" and the proposer of such bid, the "Winning Bidder"), provided that such true interest cost shall not exceed the maximum set forth in paragraph 1. The Chairman or his designee also is authorized to postpone the sale date or amend the terms of the offering as may be provided in the Notice of Sale.

If, upon the recommendation of the Financial Advisor, the Chairman or his designee determines the then-current market or other conditions warrant a negotiated sale of the Bonds, the Chairman or his designee is hereby authorized, subject to the limitations set forth in paragraph 1, to consult with the State Treasurer to determine the Underwriters for the Bonds, including any syndicate members and members of the selling group for the Bonds, and negotiate the provisions of the Bond Purchase Agreement, including without limitation determining the prices at which the Bonds will be offered by the Underwriters to the public, and the Chairman or his designee is hereby authorized to execute and deliver such Bond Purchase Agreement

6. Limited Obligations. The Bonds shall be limited obligations of the Board, payable solely from Revenues, as defined in the NVTB Trust Agreement, and the funds created thereunder, and nothing in the Bonds or in the NVTB Trust Agreement shall be deemed to create or constitute a debt or a pledge of the faith and credit of the Commonwealth or any political subdivision thereof.

7. Official Statement. The Board authorizes and directs the staff of the Virginia Department of Transportation (the "Department") in collaboration with the Financial Advisor, to complete the Preliminary Official Statement, as appropriate to reflect the terms of the Winning Bid or the Bond Purchase Agreement, as applicable, as an official statement in final form (the "Official Statement"). The Chairman or Vice-Chairman of the Board, either of whom may act, is authorized and directed to execute the Official Statement, which execution shall constitute conclusive evidence of his approval of the Official Statement and that it has been deemed final within the meaning of the Rule. The Board authorizes and directs the Department staff to arrange for the delivery to the Winning Bidder or the Underwriters, as applicable, of a reasonable number of copies of the Official Statement, within seven business days after the date thereof, for distribution by the Winning Bidder or the Underwriters, as applicable, to each potential investor requesting a copy thereof and to each person to whom the Winning Bidder or the Underwriters, as applicable, initially sells Bonds. The Board authorizes and approves the distribution of the Official Statement by the Winning Bidder or the Underwriters, as applicable.

8. Eleventh Supplemental Trust Agreement. The Board authorizes and directs the Chairman or his designee to execute the Eleventh Supplemental Trust Agreement in substantially the form presented to this meeting, which is approved with such completions, omissions, insertions and changes as may be approved by the Chairman or his designee, and the execution by the Chairman or his designee to constitute conclusive evidence of the approval of any such completions, omissions, insertions and changes.

9. Continuing Disclosure. The Board covenants to undertake ongoing disclosure and to provide "annual financial information" and "material event notices" for the benefit of the holders of Bonds, to assist the Winning Bidder or the Underwriters, as applicable, in complying with the Rule, in accordance with the Continuing Disclosure Agreement. The Board authorizes and directs the Chairman or his designee to execute the Continuing Disclosure Agreement in substantially the form presented at this meeting, which is approved with such completions, omissions, insertions and changes as the Chairman or his designee may approve. The execution by the Chairman or

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his designee of the Continuing Disclosure Agreement shall constitute conclusive evidence of approval of any such completions, omissions, insertions and changes.

10. Execution and Delivery of Bonds. The Board authorizes and directs the Chairman, the Vice Chairman, the Commonwealth Transportation Commissioner and the Secretary of the Board to have the Bonds prepared and executed in accordance with the NVTB Trust Agreement, to deliver them to the Trustee for authentication, and to cause the Bonds so executed and authenticated to be delivered to or for the account of the Winning Bidder or the Underwriters, as applicable, upon payment of the purchase price in accordance with the Winning Bid or the Bond Purchase Agreement, as applicable. The approval of the Chairman, Vice Chairman or their designee shall be evidenced conclusively by the execution and delivery of the Bonds.

11. Authorization of Further Action. The Board authorizes the Department staff (a) to request the Treasury Board of the Commonwealth to approve the terms and structure of the Bonds in accordance with Section 2.2-2416(7) of the Virginia Code and (b) to request the Governor of the Commonwealth to approve issuance of the Bonds in accordance with the NTVB Bond Acts. The Board further authorizes and directs its officers and the Department staff to execute and deliver all documents, certificates and instruments and to take all such further action as they may consider necessary or desirable in connection with the issuance and sale of the Bonds, including (i) execution and delivery of a certificate setting forth the expected use and investment of the proceeds of the Bonds to show that such expected use and investment will not violate the provisions of Section 148 of the Internal Revenue Service Code of 1986, as amended and regulations thereunder, applicable to "arbitrage bonds" and (ii) providing for the rebate of any "arbitrage rebate amounts" earned on investment of proceeds of the Bonds to the United States.

12. Effective Date. This Resolution shall be effective immediately.

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