



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Pierce R. Homer
Chairman

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Agenda item # 9

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

October 18, 2007

MOTION

**Made By: Ms. Connally Seconded By: Mr. Bowie
Action: Motion Carried, Unanimously**

Title: Creation of the Capital Beltway Funding Corporation of Virginia

WHEREAS, pursuant to the Public-Private Transportation Act (the "PPTA") (Sections 56-556 through 56-575 of the Code of Virginia of 1950, as amended (the "Virginia Code")), the Virginia Department of Transportation (the "Department") is granted the authority to allow private entities to develop and/or operate qualifying transportation facilities if the Department determines there is a need for the facilities and private involvement would provide the facilities to the public in a timely and cost-effective fashion; and,

WHEREAS, as of April 28, 2005, the Department, Fluor Enterprises, Inc. ("Fluor") and Transurban (USA) Inc. ("Transurban") entered into a Comprehensive Agreement to Develop, Design, Finance, Construct, Maintain and Operate the Route 495 HOT Lanes in Virginia (the "Original Comprehensive Agreement"); and,

WHEREAS, the Department plans to consent to the assignment and novation by Fluor and Transurban to Capital Beltway Express LLC (the "Concessionaire") of Fluor's and Transurban's respective rights and obligations under the Original Comprehensive Agreement and to the release of guaranties relating thereto, and Fluor and Transurban plan to assign and novate their respective rights and obligations under the Original Comprehensive Agreement in favor of the Concessionaire, and the Concessionaire plans to assume such obligations; and,

WHEREAS, since the date of the Original Comprehensive Agreement certain changes have been made to the PPTA and to the Department's procedures for evaluating and implementing PPTA proposals (the "Guidelines"); and,

WHEREAS, the Department and Concessionaire wish for the transaction to be governed by the PPTA and such Guidelines, as so changed in 2005 and as they may be changed in the future; and,

WHEREAS, pursuant to Section 13.17 of the Original Comprehensive Agreement, the Department and the Concessionaire plan to amend and restate the Original Comprehensive Agreement (i) to develop, design, finance and construct the Route 495 HOT Lanes in Virginia Project, which will consist of (a) widening Interstate Route 495 (the “Capital Beltway”) in Virginia from 8 to 12 lanes over an approximately 14 mile section between the Springfield Interchange and terminating just south of the Georgetown Pike (Route 193) which will pass near, adjacent to, or through the cities of Alexandria, Fairfax and Falls Church and the county of Fairfax, Virginia; (b) constructing associated access/egress ramps; (c) converting four existing inner general purpose lanes to high occupancy toll lanes; (d) implementing an electronic tolling system; (e) constructing or reconstructing more than one dozen interchanges, overpasses and the HOT Lanes terminus; and (f) designing and constructing Phase VIII of the Springfield Interchange to provide HOV to HOV/HOT lane connection between I-95/I-395 and the Capital Beltway; and (ii) to manage, operate, maintain and collect tolls on the Route 495 high occupancy toll lanes as more fully described below (the “HOT Lanes”), pursuant to a long-term concession arrangement granted to the Concessionaire by the Department (the “Amended and Restated Comprehensive Agreement”); and,

WHEREAS, the Capital Beltway Funding Corporation of Virginia (the “Funding Corporation”) has been formed as a Virginia nonstock, nonprofit corporation for the purpose of issuing certain notes and bonds (the “Bonds”) and loaning the proceeds thereof to the Concessionaire to be used for (i) paying certain costs of the renovation, construction and expansion of the governmentally owned, operated and controlled portion of the Route 495 HOT Lanes in Virginia Project; (ii) paying a portion of the costs of any bond insurance or credit enhancement related to the Funding Corporation’s Bonds; (iii) funding a portion of the capitalized interest during construction of the Route 495 HOT Lanes in Virginia Project; (iv) making any required deposits to the debt service reserve fund; and (v) paying a portion of the cost of issuing the bonds or notes; and,

WHEREAS, a copy of the Articles of Incorporation of the Funding Corporation (the “Articles of Incorporation”) have been presented to this meeting; and,

WHEREAS, Section 33.1-56.2 of the Virginia Code provides that the Commonwealth Transportation Board may designate one or more lanes of any highway as high-occupancy toll lanes.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMONWEALTH TRANSPORTATION BOARD (THE “BOARD”) AS FOLLOWS:

1. (a) To the extent required by Section 103 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), and Revenue Ruling 63-20 and Revenue Procedure 82-26, the Board approves and authorizes: (i) the creation of the Funding Corporation as a Virginia nonstock, nonprofit corporation for the purposes contemplated in the Articles of Incorporation, and (ii) the issuance of Bonds pursuant to Sections 142(a)(15) and 142(m) of the Internal Revenue Code by the Funding Corporation in an amount not to exceed \$800,000,000 to finance the costs relating to

the portion of the Route 495 HOT Lanes Project owned, operated and controlled by the Commonwealth.

(b) The Board directs and authorizes the Department, acting in its capacity as an executive branch agency of the Commonwealth and acting pursuant to powers expressly conferred upon the Department as a "responsible public entity" under the PPTA, to grant approvals and authorizations in the Amended and Restated Comprehensive Agreement identical in all material respects with the Board's approvals and authorizations specified in paragraph 1(a) above.

2. Pursuant to Section 33.1-56.2 of the Virginia Code the following are hereby designated as the HOT Lanes: (a) four-lane inner directional roadways (two in each direction) including shoulders and ramps comprising a portion of the Capital Beltway to be identified separately from the adjacent general-purpose lanes of the Capital Beltway to be dedicated for use by qualifying HOT lanes traffic and operated by the Concessionaire pursuant to the Amended and Restated Comprehensive Agreement and (b) when constructed or designated as such, any Additional Traffic Lanes, as defined in the Amended and Restated Comprehensive Agreement, but only those dedicated for use by qualifying HOT Lanes traffic, including such lanes as may be added pursuant to Project Enhancements, as defined in the Amended and Restated Comprehensive Agreement.
3. The Commonwealth Transportation Commissioner is hereby authorized to specify the high occupancy requirements and conditions for use of the HOT Lanes consistent with applicable law and the terms to be included in the Amended and Restated Comprehensive Agreement but any such specification of a high occupancy requirement above the minimum of 3 as currently required pursuant to the Virginia Code must be approved by the Board.
4. The Bonds shall not be a debt of the Department, this Board, the Commonwealth of Virginia or any political subdivision thereof. The approval in this Resolution is not intended to be and shall not be construed to be, a determination by or on behalf of the Department, this Board or the Commonwealth of Virginia as to the soundness, legality, validity or the structure of or security for the Bonds.
5. This Resolution shall take effect immediately.

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