



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Sean T. Connaughton
Chairman

1401 East Broad Street
Richmond, Virginia 23219

(804) 786-2701
Fax: (804) 786-2940

Agenda Item # NB

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD October 20, 2010

MOTION

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

Title: Approval of Refunding Bonds for 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 December 19, 2007, the Department and Capital Beltway Express LLC ("CBE") entered into an Amended and Restated Comprehensive Agreement Relating to the Route 495 HOT Lanes in Virginia Project (the "Comprehensive Agreement"); and

WHEREAS, on October 18, 2007, 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 Commonwealth Transportation Board (the "Board") approved and authorized: (i) the creation of the Capital Beltway Funding Corporation of Virginia (the "Funding Corporation") as a Virginia nonstock, nonprofit corporation for the purposes contemplated in the Funding Corporation's 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 as provided below; and

WHEREAS, the Funding Corporation was formed as a Virginia non-stock, nonprofit corporation and has previously issued its \$589,000,000 Senior Lien Multi-Modal Toll Revenue Bonds (I-495 HOT Lanes Project), Series 2008A through D (Tax Exempt, AMT) (the "Outstanding Bonds"), for the purpose of loaning the proceeds thereof to CBE to be used for (i) paying certain costs of the renovation, construction and expansion of the governmentally owned, operated and controlled portion of the HOT Lanes Project (as defined

in the Comprehensive Agreement), (ii) paying a portion of the costs of any bond insurance or credit enhancement related to the Outstanding Bonds; (iii) funding a portion of the capitalized interest during construction of the Project; (iv) making any required deposits to the debt service reserve fund; and (v) paying a portion of the cost of issuing the Outstanding Bonds; and

WHEREAS, as part of the economic stimulus package to combat the global financial crisis, the United States Congress enacted the American Recovery and Reinvestment Act of 2009 (the "ARRA") that includes an exemption from the federal alternative minimum tax for interest on certain private activity bonds that are issued in 2009 and 2010; and

WHEREAS, CBE has proposed that the Funding Corporation issue private activity bonds in a one time issuance on or before December 31, 2010, in an aggregate principal amount not to exceed \$589,000,000 to refund the Outstanding Bonds (the "Refunding Bonds"), for the purpose of gaining the benefit pursuant to the ARRA that interest on the Refunding Bonds will not be subject to the federal alternative minimum tax; and

WHEREAS, Section 103 of the Internal Revenue Code, and Revenue Ruling 63-20 and Revenue Procedure 82-26 requires the Board to approve the purposes and activities of the Funding Corporation and the issuance of the Refunding Bonds as the sponsoring governmental unit of the Funding Corporation; and

WHEREAS, the issuance of the Refunding Bonds, the refunding of the Outstanding Bonds and entering into or amending related financing documents constitutes a Refinancing, as defined in the Comprehensive Agreement; and

WHEREAS, Section 6.06 of the Comprehensive Agreement provides for certain requirements in connection with a Refinancing, including, without limitation, providing the Department with details of the Refinancing, as defined therein, any changes to the Base Case Financial Model, as defined therein, and financing documents in connection with the Refinancing; and

WHEREAS, CBE and the Funding Corporation, as evidenced by correspondence attached hereto, have requested the Board to approve the purposes and activities of the Funding Corporation and the issuance of the Refunding Bonds, in accordance with Section 103 of the Internal Revenue Code, Revenue Ruling 63-20 and Revenue Procedure 82-26.

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

1. (a) To the extent required by Section 103 of the Internal Revenue Code, and Revenue Ruling 63-20 and Revenue Procedure 82-26, the Board approves the purposes and activities of the Funding Corporation and approves and authorizes the Funding Corporation to issue the Refunding Bonds, provided however, such approval is subject to written determination prior to the issuance of the Refunding Bonds by the Commonwealth Transportation Commissioner that the Department has received and reviewed all items, and all requirements have been satisfied (to the extent such requirements are not expressly waived in writing by the

Department), as provided for by the Comprehensive Agreement in connection with a Refinancing; and provided further that the Refunding Bonds are issued on or before December 31, 2010.

(b) The Board directs and authorizes the Department, acting in its capacity as an executive branch agency of the Commonwealth of Virginia, to take any further action needed to permit the Refunding Bonds to qualify as tax-exempt bonds under Section 103 of the Internal Revenue Code and Revenue Ruling 63-20 and Revenue Procedure 82-26

2. The Refunding 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. The approval of this Resolution is not intended to mandate the issuance of the Refunding Bonds if the Funding Corporation and CBE determine not to pursue the issuance of the Refunding Bonds.

3. This Resolution shall take effect immediately.

###