



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

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Agenda item # 10

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

July 19, 2017

MOTION

Made By: Ms. Valentine, Seconded By: Mr. Williams

Action: Motion Carried, Unanimously

Title: Federal Transportation Grant Anticipation Revenue Notes (GARVEE) Memorandum of Agreement (MOA) Update

WHEREAS, by resolution dated October 19, 2011, the Commonwealth Transportation Board (“Board”) approved and authorized issuance and sale of Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes, Series 2011 (“2011 GARVEES”), and

WHEREAS, the Board, in its resolution authorizing issuance and sale of the 2011 GARVEES, among other things, approved and authorized execution of certain “Basic Documents”, one of which included a memorandum of agreement between the Virginia Division of the Federal Highway Administration (“FHWA”), the Virginia Department of Transportation (“Department”), and the Board, required by the FHWA and related to the processes to execute and manage the Commonwealth of Virginia’s GARVEE program; and

WHEREAS, on December 28, 2011, FHWA, the Department, and the Board executed the memorandum of agreement, which includes a provision requiring review of the document every five years to determine needed changes or updates; and

WHEREAS, the five year review has been completed and resulted in a determination that an update to the memorandum of agreement is needed to more clearly define the parties’ roles and responsibilities, processes, and timeframes, based on knowledge and experience gained

over the last five years in implementing the GARVEE program, and to incorporate FHWA's 2014 GARVEE Guidance; and

WHEREAS, FHWA and the Department have prepared a revised memorandum of agreement addressing execution and management of the Commonwealth of Virginia's GARVEE program, which incorporates the needed updates and is attached hereto as Attachment A ("GARVEE MOA"); and

WHEREAS, the Board is authorized under Virginia Code §33.2-221(A) to enter into contracts or agreements with the United States government.

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

- 1. Approval of the GARVEE MOA and Authorization to Execute:** The Board approves the GARVEE MOA, in substantially the form as set forth in Attachment A. The Board authorizes and directs the Commissioner of Highways to execute the GARVEE MOA on behalf of the Department and the Chairman to prepare, execute, and deliver the final form of the GARVEE MOA on behalf of the Board. The Chairman's execution and delivery of the GARVEE MOA shall constitute conclusive evidence of the approval of the final forms of the MOA by the Chairman on behalf of the Board.
- 2. Effective Date.** This Resolution is effective upon adoption.

CTB Decision Brief
Federal Transportation Grant Anticipation Revenue Notes (GARVEE) Memorandum of Agreement (MOA) Update

Issue: The Federal Highway Administration (“FHWA”) requires a memorandum of agreement be entered into among the Virginia Division FHWA, the Virginia Department of Transportation, and the Commonwealth Transportation Board (“CTB”) regarding the processes to execute and manage the Commonwealth of Virginia’s Grant Anticipation Revenue Vehicle (GARVEE) program. Pursuant to Va. Code §33.2-221 (A) the CTB has the power and duty to comply fully with the provisions of the present or future federal aid acts and the authority to enter into contracts or agreements with the U.S. government.

Facts:

FHWA requires a memorandum of agreement regarding the processes to execute and manage the GARVEE program. GARVEE bond and debt service allocations are included in the Six-Year Improvement Program (SYIP).

By resolution dated October 19, 2011, the CTB approved and authorized issuance and sale of Commonwealth of Virginia Federal Transportation Grant Anticipation Revenue Notes, Series 2011 (“2011 GARVEES”).

The CTB, in its resolution authorizing issuance and sale of the 2011 GARVEES, among other things, approved and authorized execution of certain “Basic Documents”, one of which was a memorandum of agreement (“MOA”) between the Virginia Division FHWA, the Virginia Department of Transportation, and the CTB.

Virginia Division FHWA, the Virginia Department of Transportation, and the CTB executed the MOA on December 28, 2011, that included a provision to review the MOA every five years to determine needed changes or updates.

The five year review has been completed and resulted in a determination that an update to the MOA is needed to more clearly define the parties’ roles and responsibilities, processes and timeframes, based on knowledge and experience gained over the last five years in implementing the GARVEE program, and to incorporate FHWA’s 2014 GARVEE Guidance.

FHWA and the Department have prepared a revised memorandum of agreement addressing execution and management of the Commonwealth of Virginia’s GARVEE program, which incorporates the needed updates and is attached hereto as Attachment A (“GARVEE MOA”). The GARVEE MOA has been reviewed by both the Attorney General’s Office and Bond Counsel.

The CTB is authorized under Virginia Code §33.2-221(A) to enter into contracts or agreements with the United States government.

Recommendation: That the CTB approve and authorize the Secretary and Commissioner, on behalf of the CTB and Virginia Department of Transportation, respectively, to execute a GARVEE MOA with FHWA regarding the processes to execute and manage the Commonwealth of Virginia's Grant Anticipation Revenue Vehicle (GARVEE) program, as set out in Attachment A.

Action Required by CTB: Virginia Code § 33.2-221 (A) requires a majority vote of the CTB to approve the GARVEE MOA. The CTB will be presented with a resolution for a formal vote.

Result, if Approved: The CTB and Virginia Department of Transportation will execute the GARVEE MOA with FHWA.

Options: Approve, Deny, or Defer.

Public Comments/Reactions: None

Memorandum of Agreement: Stewardship and Oversight of the GARVEE Program in the Commonwealth of Virginia

This Memorandum of Agreement (MOA) is entered into among the Federal Highway Administration, Virginia Division (FHWA), The Virginia Department of Transportation (VDOT), and the Commonwealth Transportation Board (CTB). This MOA supersedes the prior MOA executed on December 28, 2011 among the Parties.

PURPOSE

This MOA establishes the processes to execute and manage the Commonwealth of Virginia's Grant Anticipation Revenue Vehicle (GARVEE) program; the details regarding project execution will be established in a separate standard operating procedure document, jointly used by FHWA and VDOT.

Specifically, this document will outline the following key processes:

- Programming and identification of GARVEE projects,
- Authorization and modification of debt service projects,
- Billing and payment of eligible debt service costs, and
- Closeout of debt service projects.

The FHWA Virginia Division will conduct periodic reviews of the State's GARVEE bond program to ensure that the program and projects are being administered in accordance with Federal requirements, that only costs allocable to the Federal-aid highway program are charged to Federal-aid funds, and to determine if certain processes can be improved in accordance with identified best practices.

DEFINITIONS

Bond Proceeds – The principal and any premium received from a bond holder as a result of a GARVEE sale that is held by the Trustee, including any investment earnings. Bond Proceeds are drawn down (requisitioned) from the Trustee to pay the project costs as they are incurred.

Commonwealth Transportation Board (CTB) – The Commonwealth of Virginia state board appointed by the Governor of Virginia that establishes the administrative policies for Virginia's transportation system and allocates highway funding to specific projects, locates routes, and provides funding for airports, seaports, and public transportation.

Debt Service Schedule – A schedule for each project that fully allocates the debt obligations (principal, interest, cost of issuance, and other eligible costs) by project and shows the final maturity date for the respective series of bonds. The schedule includes known debt service based on an actual issuance as well as estimated debt service costs of future issuances.

Exhibit A Project List – A comprehensive list of projects to be financed by the sale of debt. This list includes information such as the state identified project number (i.e., UPC), project description, let date, contracting method, and Bond Proceeds allocated to such project.

Eligible Debt Service Costs – Expenses and costs incurred by the State or a political subdivision of the State, such as interest payments under an eligible debt financing instrument, the retirement of principal of an eligible debt financing instrument, the cost of the issuance of an eligible debt financing instrument, the cost of insurance for an eligible debt financing instrument, and any other cost incidental to the sale of an eligible debt financing instrument (as determined by the United States Secretary of Transportation).

Grant Anticipation Revenue Vehicle (GARVEE) - A bond, note, certificate, mortgage, lease, bank loan (including a State infrastructure bank loan), private placement or other debt financing instrument issued by a State, a political subdivision of a State, or a public authority, the proceeds of which are used to fund a project eligible for assistance under Title 23, United States Code (U.S.C.).

Parties – The FHWA, VDOT, and CTB, collectively.

Premium –When bonds are sold with an original issuance premium, the amount of Bond Proceeds received is more than the amount of principal that will be repaid. That difference between the Bond Proceeds received and the amount of principal to be repaid and identified on the debt service schedule is called the premium. For this reason, the principal identified in the debt service schedule may be less than the SYIP allocations and the Exhibit A Project List Bond Proceeds identified.

Master Indenture – The Master Trust Indenture, dated as of February 1, 2012, between the Board and the Trustee, as the same may be modified, altered, amended and supplemented from time to time in accordance with its terms.

Six-Year Improvement Program (SYIP) – The document required by §33.2-214 of the Code of Virginia (as amended) that outlines planned funding for Virginia state transportation projects proposed for construction, development, or study for the next six years. The first year is the budget and the succeeding five fiscal years are estimated amounts. The SYIP is approved annually by the CTB and executed by VDOT and the Department of Rail and Public Transportation (DRPT).

State – The Commonwealth of Virginia.

State Transportation Improvement Program (STIP) – Federally required four-year transportation improvement program that identifies those capital and non-capital surface transportation projects (or phases of projects) within the boundaries of the State that will utilize federal funding or for which approval will be required from either the FHWA or the Federal Transit Administration (FTA).

Stewardship and Oversight (S&O) Agreement – The current agreement between FHWA and VDOT that sets forth the roles and responsibilities of FHWA and VDOT with respect to Title 23 project approvals and related responsibilities and the Federal-Aid Highway Program oversight activities.

Trust Account – Specified funds or accounts containing Bond Proceeds from which project costs are funded.

Trustee – A financial institution with trust powers, such as a commercial bank or trust company, that is given fiduciary powers by a bond issuer to enforce the terms of a bond indenture. An indenture is a contract between a bond issuer and a bond holder. A trustee sees that bond interest payments are made as scheduled and protects the interests of the bondholders if the issuer defaults.

BACKGROUND

23 U.S.C. §122 allows a recipient to receive reimbursement from FHWA for bond or other debt instrument financing costs. GARVEEs are used to accelerate the construction and/or acquisition of projects identified in the STIP and SYIP. VDOT is charged with administering the highway transportation policies set forth by Virginia’s CTB, to include the GARVEE Program. The CTB issues GARVEEs in accordance with the Commonwealth of Virginia Federal Transportation Grant Anticipation Notes Act of

2011, Article 4 of Chapter 15 of Title 33.2 of the Code of Virginia of 1950 as amended (the Virginia GARVEEs Act) and the Transportation Development and Revenue Bond Act, Chapter 17 of Title 33.2 of the Code of Virginia of 1950 as amended.

All projects financed with Bond Proceeds are administered in accordance with the same laws, regulations, and procedures that apply to federally-assisted projects authorized under Title 23, U.S.C., with the exception that reimbursement by FHWA is based on the project's debt service schedule, rather than on the basis of capital costs incurred. FHWA does not approve the sale of debt under the GARVEE program, and the sale is not an obligation of Federal-aid funds; therefore, the sale does not constitute a commitment by the United States to provide for payment of principal or interest, or create any right of a third party against the U.S. Government for payment. A project must be authorized by FHWA under 23 U.S.C §122 before any debt service costs are incurred, and the CTB and VDOT shall not use Bond Proceeds for any cost incurred prior to authorization under 23 U.S.C. §122.

FHWA will exercise oversight on all approved debt service projects, consistent with the current Federal-aid agreements and other FHWA/VDOT agreements that are in effect. The FHWA Virginia Division has the authority to approve and/or review any of the eligible costs incurred and billed by VDOT or the costs of debt service paid from the Trust Accounts. If questionable and/or ineligible costs are identified, FHWA will contact VDOT and take appropriate action.

Project costs identified as funded with the Bond Proceeds will be billed to and paid from one or more Trust Accounts held by the Trustee under the Master Indenture. VDOT will maintain documentation for projects costs in the normal manner as well as maintaining documentation for the basis of billing the Trust Accounts for the reimbursement of such costs.

PROGRAMMING AND IDENTIFICATION OF GARVEE PROJECTS

Annually, the CTB updates the SYIP to identify all transportation projects to be carried out within the next six fiscal years, including projects selected for bond financing. Prior to authorization under 23 U.S.C. §122, GARVEE debt service costs associated with a project funded by Bond Proceeds must be included in the federally-approved STIP in accordance with the STIP Procedures Memorandum of Agreement entered into among VDOT, DRPT, FHWA, and FTA.

Exhibit A Project List

Exhibit A Project List contains all projects VDOT intends to fund with Bond Proceeds. VDOT enters the project description and the Bond Proceeds to be applied to the project, and submits to FHWA for approval prior to requesting authorization of a project with debt service. FHWA will respond in writing to any proposed adjustments to Exhibit A Project List within fifteen (15) business days of VDOT submittal.

If multiple projects are funded with Bond Proceeds, each project must be allocated a prorated share of the debt-related costs identified accordingly in the debt service schedule. Bond and issuance expenses are eligible to be allocated to projects to the extent they are reasonable, necessary, and in accordance with 23 U.S.C. § 122.

If VDOT desires to change Exhibit A Project List, due to cost underruns on a completed project, a reallocation of debt service costs associated with a project not advancing (e.g., project can no longer proceed due to environmental regulations), or any other reason, VDOT shall submit an update to the Exhibit A Project List to FHWA for approval.

AUTHORIZING AND MODIFYING GARVEE PROJECTS

Request for Authorization

VDOT shall request the authorization to proceed as “pay as you go” (23 U.S.C. §121) and/or as debt service (23 U.S.C. §122) at the project phase’s initial authorization. In the event debt service is added to a “pay as you go” project, the debt service authorization date establishes the date at which eligible debt service related costs, as identified in the debt service schedule, may be incurred and reimbursed by FHWA. All project agreement actions will be processed within the timeframes established in the Stewardship and Oversight Agreement.

The debt service schedule for each project must be submitted to FHWA with, or in advance of, VDOT’s request for authorization of the Federal-aid agreement through FHWA’s Fiscal Management Information System (FMIS). Debt service costs for which Federal reimbursement will be requested must be demonstrated in the STIP prior to VDOT submitting a request for authorization, and the FMIS request must explicitly state the authorization is under 23 U.S.C. §122.

All GARVEE debt service costs will be authorized as Advance Construction (AC) under 23 U.S.C. §115,¹ except in the case where an obligation is necessary for current Federal fiscal year reimbursements based on the debt service schedule. The use of AC procedures preserves the eligibility for reimbursement of project costs without providing a commitment, guarantee, or obligation on the part of the United States, acting by and through the FHWA to provide for payment of project costs. The State also retains the right to use non-Federal funds in lieu of Federal-aid funds for debt service costs.

Modification of GARVEE Project Agreements

Conversion of AC to obligation for all known GARVEE debt service costs are processed as the first obligation of each fiscal year to cover the payments due that year, based on the debt service schedule. The type of funds used to convert AC must directly relate to the eligibility of projects paid for by the Bond Proceeds.

Modifications to GARVEE projects should align with the Master Indenture, debt service schedule, and STIP. Should the State need to make adjustments to the projects funded by Bond Proceeds, due to overruns or shortages based on actual expenditures, VDOT will submit a revised Exhibit A Project List request in writing to FHWA for approval as provided above. Cost under runs may be added to existing GARVEE projects listed in Exhibit A Project List or may be added to a new project identified in VDOT’s request submitted for FHWA approval as provided above.

If there are changes in the project’s debt service schedule, a new schedule must be submitted with, or in advance of, the project modification request, along with justification as to the reason for the change in debt service. Reimbursement for eligible debt service costs may not be made for debt service costs incurred prior to FHWA’s authorization to proceed under 23 U.S.C. §122.

¹ 23 U.S.C. §115 allows a State to proceed with a project authorization without the use of Federal funds and in accordance with all procedures and requirements applicable to the project; there is no commitment of Federal funding until an obligation (i.e., AC conversion) occurs.

Refunding Bonds

A refunding bond issue may be a federally eligible debt financing instrument if the issue is a refunding of an outstanding GARVEE bond issue approved under the provisions of 23 U.S.C. §122. The State will consult with FHWA prior to issuing any GARVEE refunding bond to obtain approval for Federal participation in the revised debt service costs. Additionally, the CTB shall comply with all state law requirements, which may include obtaining the approval of the Treasury Board of the Commonwealth of Virginia to the terms and structure of GARVEE refunding bonds.

Following issuance of a GARVEE refunded bond for any eligible purpose, VDOT will modify the relevant project agreement(s) and debt service schedules to reflect the revised project cost and Federal share.

DEBT SERVICE BILLING AND REIMBURSEMENT

Subject to Federal-aid funds and obligation authority availability, the State will obligate the amount necessary to pay that year's Federal share of debt service as the first obligation of the Federal fiscal year. The request for obligation must align with the project's total annual payment amount according to the debt service schedule. Reimbursement will be made in accordance with established FHWA policies and the Federal Cost Principles (2 CFR 200). The State may request Federal reimbursement in sufficient time to make debt service payments in accordance with the provisions of the Cash Management Improvement Act.

VDOT agrees to maintain a system that accurately allocates eligible debt service payments, issuance costs, and other bond-related costs back to the projects. VDOT also affirms that procedures and expenditure controls are in place to ensure that all construction and bond-related costs are eligible for Federal-aid funding. If any Bond Proceeds are used for ineligible activities, a proportional share of the debt service is also ineligible for Federal-aid.

Typically, debt service payments are due to the Trustee on March 15 and September 15 each year. VDOT will submit the draft payment request to FHWA for review no later than March 1 and September 1, respectively. FHWA will review the proposed payments against the debt service schedule and respond to VDOT within two business days. FHWA will indicate adjustments necessary or approve VDOT to proceed with submitting the reimbursement request via the FMIS Current Bill module. VDOT will submit the reimbursement request no earlier than seven (7) business days prior to the due date for payment to the Trustee.

The CTB will make GARVEE debt service payment to a bond trustee in accordance with the provisions of the Master Indenture and the applicable Supplemental Trust Indentures between the CTB and the bond trustee (collectively, the GARVEE Indenture), and VDOT will pro-rate the debt service payment to each GARVEE project according to the final schedule of eligible debt service cost to be made part of the federal authorization.

Upon receipt of the funds from FHWA, VDOT will wire transfer the reimbursement of eligible debt service costs to the Trustee on or before the debt service payment due date in accordance with the terms and conditions of the GARVEE indenture.

CLOSEOUT OF GARVEE PROJECTS

Any Federal-aid project that includes debt service costs must remain open until the GARVEE bonds have been fully retired (i.e., the last debt service payment reimbursement has been made) and any adjustments to the Federal share of project costs have been finalized (i.e., the principal amount associated with the debt service payments on each project may not exceed the total eligible direct project expenditures).

If a related project had been authorized at the initial phase of authorization and does not contain any debt service costs, the project may be closed when the project is complete (e.g., for a construction project, the final inspection reports are complete) and conventional project closeout documentation is submitted to FHWA in accordance with FHWA/VDOT Stewardship and Oversight Agreement(s).

VDOT will maintain documentation of individual project costs for not less than three (3) years after closeout of the bond project.

REFERENCES

VDOT and FHWA shall adhere to the following regulations in managing the GARVEE Program: [23 U.S.C. §122](#); 23 CFR 630 & 635; and [2 CFR 200](#).

In addition to Federal regulations, FHWA guidance is available and recommended for proper management of the GARVEE Program: [2014 FHWA GARVEE Guidance](#).

Commonwealth of Virginia Federal Transportation Grant Anticipation Notes Act of 2011, Article 4 of Chapter 15 of Title 33.2 of the Code of Virginia of 1950 as amended.

Transportation Development and Revenue Bond Act (State Revenue Bond Act), Chapter 17 of Title 33.2 of the Code of Virginia of 1950 as amended.

Treasury Board, Article 8 of Chapter 24 of Title 2.2 of the Code of Virginia of 1950 as amended.

AMENDMENT

This agreement shall not be altered, modified, or amended except by instrument in writing and executed by the Parties hereto. The Parties to this MOA shall review it five (5) years from the date originally signed, and at five (5) year intervals thereafter, to determine whether the MOA can be extended without change or whether modifications are appropriate. In addition, amendments may be required prior to the five (5) year milestone in order to reflect material changes in the terms of the bonds issued, new issuances, and refinancing.

EXECUTION OF AGREEMENT

This Memorandum of Agreement is effective as of: _____.

Division Administrator
Federal Highway Administration

Chairman
Commonwealth Transportation Board

Commissioner of Highways
Virginia Department of Transportation