

SUMMARY MINUTES
JOINT FINANCE AND DULLES CORRIDOR COMMITTEE
SPECIAL MEETING OF APRIL 16, 2014

Mr. Davis called the April 16 Special Joint Finance and Dulles Corridor Committee Meeting to order at 9:00 a.m. A quorum was present during the meeting: Mr. Griffin, Mr. Curto and Ms. Merrick, Co-Chairs; and Mr. Adams, Mr. Carter, Mr. Gates, Ms. McConnell, Mr. McDermott, Mr. Session and Mr. Conner, *ex officio*. Ms. Hall and Mr. Williams were also present.

Funding Agreement between the Authority and the Commonwealth of Virginia Providing for a Grant of \$300 Million for the Dulles Corridor Metrorail Project. Monica Hargrove, Deputy General Counsel, reported that the Virginia General Assembly had authorized a grant of \$300 million during its 2013 legislative session. She noted that the grant for the Dulles Corridor Metrorail Project was contingent upon an execution of a funding agreement governing the grant between the Authority and the Commonwealth. Ms. Hargrove reported that negotiations related to the funding agreement had occurred over the past several months and a consensus agreement had been reached, which the Committee and Board would consider that day. She noted that the \$300 million grant, along with the Transportation Infrastructure Finance and Innovation Act (TIFIA) loan for which the Authority had applied, are expected to allow the current Toll Road rates to remain the same through 2018. Ms. Hargrove recalled that the Board had approved the receipt of \$150 million funding agreement from the Commonwealth for the Metrorail Project in January 2013, and the Authority had received the funds in April 2013.

Mr. Davis noted that the \$300 million grant is good news for the Toll Road users since they will be able to save money on tolls.

Ms. Hargrove highlighted five provisions of the funding agreement. With respect to the timing and condition to the delivery of the funds, Virginia will provide the funding in three equal installments on or before June 30 in 2014, 2015 and 2016. As a condition to these installments, the General Assembly required a statement from the Airports Authority's Accountability Officer that it had addressed recommendations in the November 2012 report of the Office of Inspector General. A provision is included in the legislation which also authorizes the Governor to waive this requirement in the event that the Airports Authority had not fully addressed one or more recommendations. Ms. Hargrove noted that this

provision and the Governor's waiver authority were reflected in the agreement.

The second provision was relative to the use of the grant funds. Ms. Hargrove explained that the Airports Authority may use the funds solely to fund the design and construction of Phase 2 of the Metrorail Project and to reduce the portion of Phase 2 costs funded from the Dulles Toll Road.

The third provision is a requirement that the Airports Authority continue to take reasonable actions consistent with its rights and obligations under its agreements with the Commonwealth to operate and maintain the Dulles Toll Road to minimize toll rates on the Toll Road.

Ms. Hargrove reported that the funding agreement included labor agreements similar to those that were incorporated in the \$150 million Commonwealth grant agreement requiring that there not be in any Phase 2 construction solicitation or contract, a requirement of offerors or contractors to enter a project or workplace labor agreement, and that the Airports Authority would not offer incentives or preferences favoring offerors with such an agreement. She recalled that the Virginia legislature had passed such legislation in 2012, which is a requirement of all construction projects in the Commonwealth of Virginia.

Ms. Hargrove noted that the other labor provision in the funding agreement is relevant to the Virginia right-to-work law. Under the agreement, the Airports Authority would be required, consistent with the 2013 funding agreement, to comply and require Phase 2 construction contractors to comply with Virginia's right-to-work law.

Staff recommended that the Dulles Corridor and Finance Committee recommend that the Board approve the \$300 million funding agreement with the Commonwealth of Virginia and that it authorize the President and Chief Executive Officer to execute the agreement on behalf of the Airports Authority.

Mr. Davis inquired whether the toll rates would have increased if the Commonwealth had not provided the \$300 million grant. Andy Rountree, Vice President for Finance and Chief Financial Officer, reported that the \$300 million would benefit the Toll Road users by helping to reduce expected toll increases for future years. Mr. Potter noted that for each \$50 million increment of funds received, future tolls would be re-

duced by \$.10. Therefore, the \$300 million grant would decrease the Toll Road rates by \$.60 going forward.

For clarification purposes, Mr. Carter inquired whether the terms of the Authority's labor agreement would prohibit any contractor that had a labor agreement in place from participating in Phase 2. Phil Sunderland, Vice President and General Counsel, responded that providing the labor agreement was voluntary, a contractor would not be prohibited from Phase 2 participation.

Mr. McDermott referred to paragraph 3 of the Funding Agreement entitled "The Continuing Effort to Minimize DTR Toll Rates," and noted that the language stated that the Airports Authority would continue to minimize toll rates on the Toll Road and additional language that spoke about "the use of funds in a manner that will minimize toll rate increases." He noted that the Authority is minimizing the rate increases – not going back to lower rates between now and 2018. Mr. McDermott wanted to ensure clarity because the Board would later consider the authorization of a bond issuance, which specified that the toll rates would be a certain level through a certain period. For clarification purposes, Mr. McDermott stated that the Authority would not enter into an agreement that would actually lower Toll Road rates. Mr. Sunderland agreed with Mr. McDermott and reported that Toll Road rates would be minimized in the sense that increases each year would be as low as possible and the rate each year would be minimized by small increases.

Mr. Williams inquired why provisions 4 and 5 were both necessary. Ms. Hargrove responded that the Commonwealth had enacted two different statutes – one is the right-to-work law and the other relates to provisions with respect to the project labor agreements (PLA). She explained that both provisions basically incorporated existing Virginia statutes.

Mr. Williams referred to Article 2 of the \$300 million funding agreement, which is a requirement applicable to the use of the Commonwealth funding, and inquired whether that language was consistent with the language for the \$150 million funding agreement. Mr. Sunderland responded that some parts of Article 2 were not similar. Mr. Williams asked staff to provide clarity on the employers' responsibilities with respect to labor agreements. Mr. Sunderland responded that the \$300 million funding agreement stated that prime contractors shall not require subcontractors to have a PLA. To Mr. Williams' point, he believed that the agreement should also state that a prime contractor shall not be prohibited from a subcontractor having a PLA. Mr. Sunderland stated that that is how the

Virginia statute was written. He noted that the statute was not written in any way to say what the prime contractor shall not have. It simply stated that the prime contractor shall not require and shall not prohibit a level playing field. Mr. Sunderland noted that one remaining major contract must still be awarded for Phase 2. To ensure a level playing field, Mr. Sunderland indicated that text would be inserted to indicate that there is no requirement and no prohibition from subcontractors having a PLA.

The Committee thereupon unanimously approved the recommended funding agreement between the Authority and the Commonwealth. Mr. Davis stated that he would offer a resolution later that day for the Board's consideration.

The Meeting was thereupon adjourned at 9:20 a.m.