SPECIAL BOARD OF DIRECTORS MEETING

Minutes of November 16, 2011

The special meeting of the Board of Directors was held in Conference Rooms 1A/1B/1C at 1 Aviation Circle following an executive session on pending legislation and was called to order by the Chairman at 10:15 a.m. All thirteen Directors were present during the meeting:

Charles D. Snelling, Chairman
Thomas M. Davis III, Vice Chairman
Robert Clarke Brown
Richard S. Carter
William W. Cobey Jr.
Frank M. Conner III
H.R. Crawford
Michael A. Curto
Shirley Robinson Hall
Dennis L. Martire
Mame Reiley
Michael L. O'Reilly
Warner W. Session

The Secretary and Executive Management were present:

John E. Potter, President and Chief Executive Officer
Margaret E. McKeough, Executive Vice President and Chief Operating Officer

The Chairman announced that he had called a Special Meeting to address two matters, which had been combined in a single resolution: approval of the revised Memorandum of Agreement (MOA) on Phase 2 of the Dulles Metrorail Project among the Funding Partners, the Commonwealth of Virginia, the Washington Metropolitan Area Transit Authority and the U.S. Department of Transportation, and an agreement with the Commonwealth on a Project Labor Agreement. He announced that the consent of all Directors was required to proceed; none of the Directors objected.

I. MEMORANDUM OF AGREEMENT, PHASE 2 OF THE DULLES METRORAIL PROJECT

Ms. Reiley moved the adoption of the following resolution, a copy of which had been distributed to all Directors in advance of the Special Meeting:

WHEREAS, In late 2010, as preliminary engineering proceeded on Phase 2 of the Dulles Corridor Metrorail Project, it became apparent that the Phase 2 costs would escalate from 2005 estimates as much as Phase 1 costs had;

WHEREAS, Without substantial federal-aid funding, by direct grant or TIFIA credit assistance, the existing funding agreements would increase the shares of the Funding Partners and place an undue burden on the Dulles Toll Road users;

WHEREAS, With increasing public concern over the costs and toll rate implications, Secretary of Transportation Ray LaHood in June 2011 convened a series of meetings with the Funding Partners, Fairfax County, Loudoun County and the Airports Authority, as well as the Commonwealth of Virginia and the Washington Metropolitan Area Transit Authority to consider scope, other cost reduction measures, and financial support;

WHEREAS, The result of continuing negotiations among the Funding Partners and other parties has been a Memorandum of Agreement, detailing design and scope adjustments that Secretary LaHood has characterized as reducing the estimated cost from $3.8 billion to $2.8 billion;

WHEREAS, The Memorandum of Agreement includes a reference to a separate agreement between the Airports Authority (PLA) and the Commonwealth of Virginia to assure any Project Labor Agreement on the Phase 2 project be entirely consistent with Virginia and Federal law;

WHEREAS, The Memorandum of Agreement, as presented to the Board of Directors at this meeting, is ready for execution by all six participants, and the separate agreement with respect to the PLA is ready for execution by both signatories;

WHEREAS, It is understood among the parties that funding sources beyond the Funding Partners and existing grants and loans will be necessary to significantly reduce Toll Road rates in the future, and that the Memorandum of Agreement does not foreclose future applications for grants and financing support;

RESOLVED, That the Chairman and the President and Chief Executive Officer are authorized and directed to execute the Memorandum of Agreement, as presented at this meeting;

2. That the President and Chief Executive Officer is authorized and directed to execute the PLA agreement, as presented at this meeting; and

3. That the Memorandum of Agreement will not be effective until executed by all parties.

Mr. Davis asked if the motion was the same one that had been agreed to in the Dulles Corridor Committee Meeting held earlier that day; the Chairman said that it was. He said that the proposed resolution authorized the President and Chairman to sign the Memorandum of Agreement and provided that it would not be effective unless executed by all parties.

Mr. Brown asked if the PLA language was included in the Memorandum of Agreement. The Chairman said the PLA was addressed in a separate agreement, already fully agreed to between the Airports Authority and the Commonwealth; the MOA included a reference to it.

Mr. Davis asked Mr. Potter if the PLA language had been fully agreed to; Mr. Potter said that it had.

Mr. Brown said he was grateful that Secretary LaHood had convened the group and forced the parties to sit down and work out the issues. He had long been a supporter of the rail project, as had Ms. Reiley. He was fully supportive of the project. He was, however, disappointed with the outcome after four months of negotiation. He had hoped that the process would identify additional funding sources. He had thought the MOA negotiation would have provided a forum to do so, and was disappointed it had not. In four months, there had not been any progress in reducing tolls. In fact, there had been some backsliding from July. Mr. Brown said that the commitments of Fairfax and Loudoun had been unconditional in the original draft of the MOA in July; in the final now presented to the Board, they were merely conditional.

Mr. Brown then reviewed the cost figures. He said the current cost estimate was not $3.8 billion, but $3.5 billion as the President had just pointed out in his presentation to the Board. The additional components of the MOA's alleged $1 billion cost reduction were $300 million in savings on the Airport station and $320 million in cost shifting to the Counties. The scope of the project had not changed, and some of the County responsibilities were coming back to the project. The only real reduction in costs produced over the last six months by Secretary LaHood's process, other than the $300 million resulting from the change in the airport station, had been about $100 million in small items, such as station finishes, all of which reductions had been identified by the Airports Authority engineering team at Ms. Reiley's direction as Chairman of the Dulles Corridor Committee. Most of the savings had come from the Airports Authority, not anywhere else, and this point should be made clear. The Airports Authority had been criticized for having an estimate $1 billion over budget, yet no one but the Airports Authority engineering staff had any ideas for cost reductions. This should be made clear. Reductions had come from the Airports Authority; only cost shifts, and not cost reductions, had come from the MOA.

Ms. Reiley thanked Mr. Brown for making his points. She noted, however, that when Peter M. Rogoff, the Administrator of the Federal Transit Administration had spoken to the Board, Transportation Infrastructure Finance and Innovation Act (TIFIA) funds had not been available. $250 million in TIFIA had since become available; though it wasn't much, she was gratified to have it. More was needed, and funding was going in the right direction. She added that the Airports Authority had been fodder for the local politicians during the election period, and she had resented it, because the staff had worked very hard to reduce costs.

The Chairman asked for a recorded vote. After a show of hands, he announced that all had voted in favor of the resolution.

He said the negotiations had been important, in that the MOA would allow the project to go forward on the original schedule, as soon as the other jurisdictions had ratified it. It reflected a comprehensive reduction in construction costs, which was very important. It ensured lower tolls on the Dulles Toll Road, not low enough, but lower. It demonstrated that the jurisdictions could work together effectively, and create working relationships among all the sponsoring bodies. He said the Airports Authority could go forward, working cooperatively with all its partners, in a better climate to do what is right for Northern Virginia.

Mr. Brown asked that several pages of questions and answers put to staff about the MOA be attached to the minutes; the Chairman said they would be.

The Chairman then announced that the Board would go into executive session to discuss a personnel matter.

II. UNFINISHED BUSINESS

There was no unfinished business.

III. OTHER BUSINESS & ADJOURNMENT

At the conclusion of the executive session, there being no further business, the meeting was adjourned at 10:55 a.m.

Respectfully submitted:

Quince T. Brinkley, Jr.
Vice President and Secretary

Attachment – Questions & Answers

approved 12/7/11

Questions from Finance Committee Chair
Responses Provided November 15, 2011
And Further Annotated December 1, 2011

Background:

In anticipation of the Board's pending vote to authorize a Memorandum of Agreement (MOA) among the federal Department of Transportation, the Commonwealth of Virginia, Fairfax County, Loudoun County, and the Airports Authority as related to Phase 2 of the Metrorail Project, the following 9 questions were submitted to staff from the Finance Committee Chairman, Robert Clarke Brown, with a request for written responses by November 15, 2011. Written responses were provided November 15, 2011. During the Dulles Corridor Committee meeting on November 16, Mr. Brown asked additional questions and answers were provided verbally by staff. Mr. Brown requested that the original list of 9 questions be annotated to document the additional questions asked and responses provided. Such annotations are noted below and in some instances, additional information is offered to be more responsive than the original verbal response. Mr. Brown requested that this document and accompanying schedules be accepted into the Minutes of the Special Board Meeting of November 16, during which the Board unanimously voted to authorize the MOA.

1. Pls. explain the mechanics of para. 3.2c., perhaps with an example calculation.

Counties of Fairfax and Loudoun are using Additional Funding Sources (i.e., third party developers or other) to pay for the garages and station using best efforts. Item 3.2.c is clarifying that all parties to the funding agreement and the toll road get the benefit of this (i.e., whatever gets funded from outside sources is essentially out of the project cost from a participation standpoint). The attached schedules should illustrate this concept.

2. How will any Additional Funding Sources be integrated into the funding plan? If that is specified in the MOU, I missed it. In the most recent draft I participated in, last July, the MOU was explicit that additional money, or at least VDOT money, would be for the exclusive benefit of the toll payers (i.e., not for the counties). Is that still the case?

Section 3.2 (including Section 3.2c) addresses additional funding sources related to those project elements for which Loudoun and Fairfax counties are using best efforts to finance. Section 3.6 addresses the $150 million expected from the Commonwealth (which is used to benefit the toll payers and not the counties). The original funding agreement remains in tact with respect to any additional sources of funds unless specifically addressed in the MOA.

Annotation: Staff was asked to explain the potential impact of Virginia's contribution of $150 million on toll rates. The CFO explained that if the $150 million is used to pay Project costs, the annual impact might be a 1% reduction in projected toll rates. Subsequent analysis by Financial Advisors indicates this may be closer to a 3% reduction in projected toll rates. By using the Virginia contribution to pay interest on Dulles Toll Road revenue bonds, toll rates in the years 2013 and 2014 could potentially be reduced by 40% and 20%, respectively, and 3% annually thereafter.

3. What is the value of IAD land MWAA is required by para.3.3c to donate to Loudoun? Does the value of MWAA's donation of land to Loudoun count against MWAA's 4.1% share of project costs, as does MWAA's donation of land to WMATA for the rail yard? Will MWAA retain any interest in Loudoun's development of that land, or any right to a share of the revenue it generates?

We do not know the value of land that could be needed for a stand alone 606 garage; a 2005 or so appraisal put the value of the land needed for the rail yard at over $12M. The donation of the land for a stand alone garage does not count towards MWAA's 4.1% share of project costs; the value of the rail yard land is counted against the 4.1% contribution. To the extent the 606 garage is developed by Loudoun, MWAA will not have any right to share in the revenue the garage generates, but could retain interests in the donated land where the exercise of those interests would not conflict with the rights granted to Loudoun for the garage. Were airport land made available by MWAA for private development to facilitate construction of a 606 parking garage, fair market value would have to be paid for the land.

Annotation: Staff was asked to explain why the Authority should not receive credit for the land donation. The President and General Counsel both explained that this donation of land was a request by DOT, that was deemed legal and appropriate by the DOT, as a way to mitigate the project cost. If the 606 parking garage were privately developed, the Authority would need to be compensated for the fair market value of the land used for the development.

4. VA's contribution, as delineated in para. 3.6, is subject to appropriation and to executive (CTB) allocation. As you recall, I emailed MWAA's negotiating team (Jack/Phil/you) last week asking that that risk be addressed. None of the addressees of that email responded to me, so I don't know what the team's thinking is. It appears, however, that the final version of the MOU is actually worse than the draft I raised a question about. Please provide a statement of the negotiating team's assessment of that risk.

Your email was received. The negotiation team requested insertion of the language, "Such funding shall be requested in the 2012 session of the Virginia General Assembly"; the addition was made. As with any legislative action, there does remain a risk that the General Assembly will not appropriate these funds. However, the administration is expected to present and support the appropriation request, and has indicated the availability of other funds in the event the legislature fails to appropriate.

Annotation: Staff was asked to explain how much the project is at risk in the "subject to appropriation and CTB allocation" language. General Counsel responded that the Commonwealth made a commitment, which we accepted as such. The Commonwealth did not identify specifically additional funding sources that may be used in the event of failure to appropriate and allocate.

5. It's a little disappointing that after all this dickering Virginia still would not agree to an extension of the Permit & Operating Agreement. Please provide the negotiating team's assessment, based on your dealings with Virginia in this process, of the likelihood of VA consenting during the next year to a meaningful extension.

The term extension is addressed in 3.6b. To date, we have not been able to demonstrate that an extension will further mitigate tolls. If we can develop a realistic scenario, the Commonwealth is open to an extension.

6. Is the agreement between MWAA & VA dealing with the PLA in draft, or final, form? I'm sure there are Directors who would like to see this agreement before having to vote on the MOU.

We will have the PLA agreement later today or in the morning, and will ask the Board to authorize the President/CEO to sign it.

7. What is the meaning of the last sentence in para. 4.6, appearing to limit Fairfax contribution? And why is only Fairfax, and not Loudoun, getting the benefit of such a limit?

Fairfax requested this language to demonstrate to the owners of property in its Phase 2 tax district that none of its obligations under the MOA would or could cause its contribution to the total Project costs to exceed 16.1% since that (i.e., the Fairfax contribution of 16.1%) is a condition in the petition establishing the Phase 2 district. We believe the other parties are similarly positioned with respect to their percentages, albeit this is not specifically called out in the MOU.

Annotation: Staff was requested to further explain why this section was necessary for Fairfax. As explained by the General Counsel, the landowners' petition for the tax district provides that no "agreements constituting binding commitments of any Special Tax revenues" (i.e., revenues from the district's incremental tax rate) shall be entered by the Phase 2 District Commission unless "it is reasonably anticipated that the County's share of the aggregate costs of the entire Metrorail Dulles Extension Project [i.e., Phase 1 and 2] would remain consistent with the currently anticipated contributions from the various funding sources set forth in the Local Funding Agreement . . .." The Petition goes on to provide that if this or any of the other stated conditions are not satisfied, "the Phase II District [may] not enter into any such agreements unless and until it receives the written approval of the owners of at least fifty-one percent of either the land area or the assessed value of real property in the Phase II District zoned or used for commercial or industrial purposes." The petition further provides that "each of the forgoing conditions precedent shall be absolute and inviolate, and the non-occurrence of any one of them shall serve to prohibit the Phase II District Commission from entering into such . . . agreements" (i.e., agreements containing binding commitments of Phase 2 special revenues). These provisions of the Phase 2 Petition – and the limitations they impose on the commission that oversees the Phase 2 district - led the County to conclude that any agreement on its part that would have the effect of increasing its rail project contribution to more than 16.1% of the final total project cost would put in significant jeopardy its ability to obtain special revenues from the Phase 2 tax district.

8. The Board should also be told what the total phase 2 cost, or various costs under various scenarios, is under the proposed MOU. (Interesting that DOT was so insistent on specifying that "current cost" of the project is $3.8B, but a little less interested in having the new cost number spelled out.) I notice LaHood, in his press conf. Thurs. evening after the final meeting, was no longer citing a number, but just saying "under $3B". We'll need a little more precision than that.

The estimated capital cost for Phase 2 is $2.821 billion assuming the Counties secure $317 million of funding for the Route 28 station and the five parking garages.

If the Counties are not successful, the estimated cost for Phase 2 is $3.138 billion.

9. Did I correctly understand you to say on our call that the attached toll schedule is MWAA's position as to current forecast on toll rates? If so, please advise:

1. what project cost this forecast is based on?
2. what does it assume with respect to VDOT grant size?
3. what does it assume with respect to TIFIA (a) to MWAA, and (b) to counties?
4. what does it assume about who bears cost of counties' project elements (garages + Rt. 28)?

You are correct that on the call we discussed that the Table 6-3 (sometimes referred to as OS Alt, and referenced in the MOA in 3.8) is a "reasonable approximation" of tolls. During the course of discussions, FAs modeled multiple scenarios with project elements out, TIFIA following the project cost elements, etc., and most scenarios resulted in a few percentage points either side of this schedule. Virginia wanted a reference to a schedule in the MOA, and we insisted on calling it a "reasonable approximation" of the current projection of future rates, and on having the parties "acknowledge" that the projection will change over time as various factors affecting toll rates change.

Please refer to the attached schedules, which are intended to be responsive to your specific questions.

Annotation: The attached schedules as modeled by the Financial Advisors for the Authority, Mercator Advisors and Frasca and Associates, illustrate various scenarios with respect to TIFIA; Mr. Brown asked how much TIFIA the Authority applied for and the maximum amount of TIFIA expected under this MOA? The CFO responded that the Authority had originally submitted a Letter of Interest for credit assistance of over a billion dollars. He further explained that DOT is committing up to $30 million of TIFIA subsidy under the MOA, which depending upon the credit of the applicant, may translate into various nominal loan amounts. Excluding TIFIA loans that may be allocable to Fairfax and Loudoun, it is likely that the maximum TIFIA loan that could be provided to the Authority for the Project is in the $250 million range. The MOA does not prohibit application for future TIFIA loans.

Annotation: Staff and Financial Advisors were asked to estimate the potential reduction in toll rates attributable to the TIFIA assistance that may be provided to the Project. The Financial Advisors provided a "best case" scenario that assumes (i) the Counties provide sufficient credit support to secure TIFIA funding at a low subsidy rate for the entire cost of the Route 28 station and the five parking garages (ii) the remaining TIFIA subsidy amount is sufficient to support a $248 million TIFIA loan for Phase 2, and (iii) Virginia provides $150 million to pay interest on DTR revenue bonds. Under that scenario, the estimated Phase 2 capital cost is $2.821 billion and the potential reduction in projected toll rates is 40% in 2013, 20% in 2014, and 8% each year thereafter (using the Alternate Toll Rate Schedule developed by Wilbur Smith Associates in 2009 as the starting point.)

A potential "worst case" scenario assumes a $3.138 billion Phase 2 cost and higher subsidy rates for any TIFIA loans. Under the MOA, the Airports Authority could receive approximately $253 million of the available TIFIA funding, which is about $15 million more than the incremental cost allocated to the Dulles Toll Road if the Counties do not fund the Route 28 station and the parking garages (75% of $317 million is $237.75 million). The TIFIA loan, and a $150 million contribution from Virginia, would allow projected toll rates to be reduced by 40% in 2013, 20% in 2014, and 1% each year thereafter.

Annotation: TIFIA loans are limited to one-third of a project's total cost. Since DOT is allowing Fairfax and Loudoun to consume an apparently substantial amount of project cost to receive TIFIA, will there be substantial cost availability remaining in the project for a larger TIFIA loan in the future? The President and CEO explained that our working assumption is that the Project is Phase 1 plus Phase 2 combined, for a total project cost in the neighborhood of $6 billion. Accordingly, staff was of the opinion that sufficient costs still remain to support a sizeable TIFIA loan in the future.