

HRTAC RESOLUTION 2021-03

**RESOLUTION AUTHORIZING INDENTURE FOR
TOLL ROADS SYSTEM REVENUE BONDS**

WHEREAS, the Hampton Roads Transportation Accountability Commission (the “Commission”), has been empowered under the Code of Virginia of 1950, as amended (the “Virginia Code”), pursuant to Virginia Code § 33.2-2607 and as set forth in Chapter 26, Title 33.2 of the Virginia Code (the “HRTAC Act”), to impose and collect tolls in amounts established by the Commission for the use of any new or improved highway, bridge or tunnel, to increase capacity on such facility or to address congestion within Planning District 23 as long as such facilities are constructed by the Commission (i) with federal, state, or local funds, (ii) solely with revenues of the Commission, or (iii) with revenues under the control of the Commission;

WHEREAS, the Commission has been further empowered under Virginia Code § 33.2-2612 to impose and collect tolls on high-occupancy toll lanes on Interstate 64 in the “facility”, being the vicinity of the interchange of Interstate 64 and Jefferson Avenue in Newport News to the Bowers Hill interchange of Interstate 64, Interstate 264, and Interstate 664 in Chesapeake (the “Express Lanes Network,” as further described and defined in the Master Indenture, as later defined herein; all capitalized terms used but not otherwise defined herein shall have the same meanings as set forth in the Master Indenture), provided that such tolls shall be collected by an electronic toll system that, to the extent possible, shall not impede the traffic flow of the Express Lanes Network and may only be imposed on a portion of the Express Lanes Network that has been designated as high-occupancy toll lanes by the Commonwealth Transportation Board (the “CTB”) pursuant to Virginia Code § 33.2-502, with the amount of the tolls to be varied by congestion level;

WHEREAS, the CTB has designated certain segments of the Express Lanes Network as high-occupancy toll lanes pursuant to resolutions duly adopted on October 19, 2016, September 20, 2017, and on January 10, 2018;

WHEREAS, all tolls imposed by the Commission under Virginia Code § 33.2-2612 may be used for programs and projects that are reasonably related to or that benefit users of the Express Lanes Network and, without limiting the foregoing, may be used to pay the debt service on and related reserves and financing costs for, and pledged to support, bonds and other evidences of indebtedness the proceeds of which are or were used for construction or improvement of the Express Lanes Network (collectively, the “Projects”);

WHEREAS, the Hampton Roads Transportation Planning Organization (the “HRTPO”), in its Resolution No. 2020-04, identified and adopted the Express Lanes Network as a component of the Regional Priority Projects (added to its current version dated January 2020) identified by the HRTPO in its 2040 Long-Range Transportation Plan to collectively provide the greatest impact on reducing congestion for the greatest number of citizens residing in Hampton Roads and requested that the Commission pursue development of a funding, development, and implementation plan for the Express Lanes Network to be advanced by the Commission based on project readiness;

WHEREAS, prior to the imposition of tolls under Virginia Code § 33.2-2612, the Commission is required to enter into an agreement with the CTB and the Virginia Department of Transportation (“VDOT” or the “Department”), an agency of the Commonwealth of Virginia, that addresses certain matters described in such Code section (the “Required Tolling Agreement”);

WHEREAS, the Commission, the CTB and the Department have entered into a Master Agreement for Development and Tolling of Hampton Roads Express Lanes Network Tolling Agreement dated August 18, 2020 (the “Master Tolling Agreement” or “MTA”), which serves as the Required Tolling Agreement;

WHEREAS, under the Master Tolling Agreement, prior to imposing tolls (which shall become effective upon the substantial completion or transition date for the appropriate segment, phase or portion of the Hampton Roads Express Lanes Network), the Commission is required to set the initial tolling policies for the Express Lanes Network;

WHEREAS, in a resolution adopted the date hereof titled “Resolution Authorizing Initial Tolling Policies for the Hampton Roads Express Lanes Network,” the Commission has approved and set the tolling policies that, subject to the issuance or deemed issuance of a No Exception Notice (as defined in the MTA) by the Commissioner of Highways, will serve as the initial tolling policies for the Express Lanes Network;

WHEREAS, pursuant to the requirements set forth in the MTA and the HRTAC Act, the Commission has determined to provide for the imposition of tolls on the initial segments or phases of the Express Lane Network, *inter alia*, in amounts required to provide Toll Revenues to make payments of debt service on the Obligations (as defined in the Master Indenture, defined below) and to make other payments related thereto;

WHEREAS, Section 33.2-2606 of the HRTAC Act authorizes and empowers the Commission to issue bonds and other evidences of debt and provides that the provisions of Article 5 (Section 33.2-1920 *et seq.*) of Chapter 19 of Title 33.2 of the Virginia Code shall apply, *mutatis mutandis*, to the issuance of such bonds and other evidences of debt, including Obligations (collectively, the “Bonds”) for any of the Commission’s purposes;

WHEREAS, Section 33.2-1920 of the Virginia Code permits the Commission’s Bonds to be payable from and secured by a pledge of all or any part of the revenues, moneys or funds of the Commission as specified in a resolution adopted or indenture entered into by the Commission, but that such Bonds shall not constitute debt of the Commonwealth of Virginia (the “Commonwealth”), or any political subdivision thereof, including the localities comprising Planning District 23 established pursuant to Chapter 42, Title 15.2, of the Virginia Code (collectively, the “Member Localities”), other than the Commission, and that such Bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction, except as provided under Section 33.2-1920 of the Virginia Code;

WHEREAS, the Virginia Code authorizes the Commission to receive all of the amounts dedicated to the Hampton Roads Transportation Fund (the “HRTF”) from the additional sales and use tax revenues described in Section 58.1-638.H.2 of the Virginia Code and the additional

wholesale motor vehicle fuels sales tax revenues described in Section 58.1-2295.A.2 of the Virginia Code;

WHEREAS, as provided in the HRTAC Act, the Commission shall use the moneys deposited in the HRTF solely for the purposes of (i) funding new construction projects on new or existing highways, bridges, and tunnels in the Member Localities, giving priority to projects expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within the Member Localities, and (ii) paying the Commission's administrative and operating expenses as provided in its annual budget;

WHEREAS, the Commission has previously issued its HRTF revenue bonds pursuant to a Master Indenture, dated as of February 1, 2018, as supplemented by a First Supplemental Indenture, dated as of February 1, 2018, a Second Supplemental Indenture, dated as of December 1, 2019, a Third Supplemental Indenture, dated as of December 15, 2019, and a Fourth Supplemental Indenture, dated as of October 1, 2020 (together, and including such supplemental indentures as may be entered into from time to time, the "HRTF Indenture"), in order to provide for the funding and refunding of such construction projects, all as more fully described in such HRTF Indenture;

WHEREAS, Section 8.5 of the HRTF Indenture provides that amounts in the General Fund established under the HRTF Indenture may be applied to any lawful purpose approved by resolution of the Commission, including, without limitation, expenditures for capital improvements with respect to any transportation facility or project that the Commission may finance or refinance pursuant to the Virginia Code;

WHEREAS, the toll revenue Bonds are to be issued and secured under a separate indenture from the HRTF revenue bonds;

WHEREAS, the Commission has been advised that by the execution and delivery of a Master Indenture to be dated as of a date as determined by the Commission (the "Master Indenture"), with a bank or trust company (the "Trustee"), the Commission may provide for the financing and refinancing of the costs of Projects through the issuance from time to time of its Bonds payable from and secured by the Toll Revenues (as defined in the Master Indenture) and other revenues available under the HRTAC Act, including certain limited HRTF revenues as set forth in the Master Indenture and Supplemental Indenture;

WHEREAS, the Master Indenture provides that, as a condition to the issuance of any series of Bonds, the Commission shall deliver to the Trustee, among other documents, certificates and opinions, a related Supplemental Indenture ("Supplemental Indenture");

WHEREAS, the Master Indenture and form of Supplemental Indenture have been presented to this meeting for review and approval by the Commission; and

WHEREAS, in addition to the conditions described above, the issuance of any series of the Bonds shall be conditioned upon further approving resolutions of the Commission.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE HAMPTON ROADS TRANSPORTATION ACCOUNTABILITY COMMISSION:

1. Authorization and Findings Regarding Bonds. The Commission hereby authorizes the issuance of its Bonds as hereinafter provided, in one or more series from time to time in accordance with the terms of this Resolution, to be known as the “Toll Roads System Revenue Bonds,” with appropriate series designations. The Bonds shall be substantially in the form attached as an exhibit to the form of the Supplemental Indenture. The Commission shall use the proceeds of the issuance of the Bonds for Projects approved in accordance with the HRTAC Act. The Commission hereby finds and determines that (i) the purposes of the Commission and the HRTAC Act will be furthered by the issuance of Bonds as described in the above Recitals, (ii) the financing and refinancing of the costs of Projects with proceeds of the Bonds will benefit of the citizens of the Commonwealth and the Member Localities and promote their safety, health, welfare, convenience and prosperity and will constitute the performance of an essential governmental function in accordance with Section 33.2-1920 of the Virginia Code, (iii) the MTA satisfies the requirement of the Required Tolling Agreement, (iv) the imposition and collection of tolls on the Express Lanes Network and the use of such tolls for programs and projects as set forth herein and the Master Indenture are reasonably related to and/or benefit users of the Express Lanes Network, (v) the Express Lanes Network, comprised of the various segments thereof and including the Hampton Roads Bridge Tunnel Expansion Project, as defined in the Master Indenture, constitutes the “facility” described in Virginia Code § 33.2-2612, (vi) the Express Lanes Network, and the several segments thereof including the Hampton Roads Bridge Tunnel, are functionally related to one other and comprise an integrated network and a single project, and (vii) the imposition and application of the tolls, the application of HRTF revenues, and the use of proceeds of the Bonds as described above and in the MTA and the Master Indenture will otherwise be in accordance with the HRTAC Act and applicable law, including the Constitution of Virginia.

2. Details of Bonds. The final details of each series of the Bonds, including without limitation, their series designation, dated date, aggregate principal amount, interest rates, maturity dates, redemption provisions, sale prices, and the principal amount of each maturity, shall be established in accordance with the requirements of 33.2-1920 of the Virginia Code in further resolutions of the Commission.

3. Approval of Indenture. The Master Indenture and the form of Supplemental Indenture are approved. The Chair or Vice Chair of the Commission, either of whom may act (the “HRTAC Representative”), is authorized to execute and deliver on the Commission’s behalf the Master Indenture in substantially the form submitted to this meeting, with such changes, insertions or omissions as may be approved by such HRTAC Representative with advice of counsel. Such approval shall be evidenced conclusively by the execution and delivery of such documents on the Commission’s behalf. The issuance of any series of Bonds shall be conditioned upon further approving resolutions of the Commission whereby the Commission would approve the related Supplemental Indenture for such series of Bonds.

4. Pledge of Revenues. The Toll Revenues are hereby pledged to secure the payment of the principal of and premium, if any, and interest on the Bonds in such amounts and under such terms and conditions as provided in the Master Indenture. Neither the members, commissioners, officers, employees or agents of the Commission nor any person executing the Bonds on behalf of the Commission shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not constitute a debt of the Commonwealth or any political subdivision thereof (including any Member Locality) other than the Commission, and shall not constitute an

indebtedness within the meaning of any debt limitation or restriction except as provided under Section 33.2-1920 of the Virginia Code.

5. Sale of Bonds. The Bonds may be sold in such manner, either at public or private sale or on a competitive or negotiated basis, as may be determined by the Commission by subsequent resolution to be in the best interests of the Commission. The Commission authorizes the Executive Director to continue discussions with the United States Department of Transportation, an agency of the United States of America, acting by and through the Executive Director of the Build America Bureau (the "TIFIA Lender"), regarding the terms and conditions of a loan (the "TIFIA Loan") from the TIFIA Lender to the Commission, the proceeds of which shall be used to finance the Initial Express Lane Project. To evidence the TIFIA Loan and to provide for its repayment, the Commission would issue and deliver a Series of Obligations under the Master Indenture, with the specific terms of the TIFIA Loan and the related Supplemental Indenture subject to the further approval of the Commission. The Commission further authorizes the Executive Director, with the advice of its financial advisor, to appoint one or more underwriters from time to time from the Commission's current underwriting pool or as may be provided following a competitive solicitation therefor, including one or more senior and/or co-managers, to serve as the underwriters with respect to any series of the Bonds, and authorizes the sale of each series of the Bonds to any or all of such underwriters appointed by the Executive Director for any particular issuance of the Bonds by negotiated sale, subject to further Commission approval as provided in this Resolution.

6. Preparation, Execution, Authentication and Delivery of Bonds. After Bonds are sold or awarded, the HRTAC Representative is authorized and directed to take all proper steps to have the Bonds prepared and executed in accordance with the terms of the Master Indenture and the related Supplemental Indenture, to deliver the Bonds to the Trustee for authentication, and to cause the Bonds so executed and authenticated to be delivered to or for the account of the first purchasers thereof upon payment of the purchase price thereof as provided in Master Indenture or the related Supplemental Indenture. The Bonds shall be prepared, executed, authenticated and delivered as provided in the Master Indenture or the related Supplemental Indenture.

7. Approval of Use of Certain HRTF Funds. As provided in Section 8.5 of the HRTF Indenture, the Commission approves the use of funds from the General Fund established under the HRTF Indenture for the specific uses set forth in the Master Indenture and the form of the Supplemental Indenture and in accordance with the HRTAC Act, including the deposit from time to time in the Revenue Stabilization Fund, any debt service reserve fund, and the Major Maintenance and Renewal Fund.

8. Securities Disclosure Matters Relating to Bonds. The HRTAC Representative is authorized and directed to approve and deem final in connection with the sale of each series of Bonds such disclosure documents as may be required in accordance the Securities Exchange Act of 1934, as amended, including, without limitation, Rule 15c2-12, as amended, promulgated thereunder (the "Municipal Securities Rule"). The HRTAC Representative is further authorized and directed to execute and deliver on the Commission's behalf simultaneously with the issuance of each series of Bonds such continuing disclosure agreements as may be required in accordance with the Municipal Securities Rule.

9. Tax Matters Relating to Bonds. The HRTAC Representative is authorized and directed to execute and deliver on the Commission's behalf simultaneously with the issuance of each series of Bonds, the interest on which is intended to be exempt from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations (collectively, the "Tax Code"), a tax and non-arbitrage agreement ("Tax Agreement") and/or similar agreements or certificates. The Tax Agreement and/or similar agreements or certificates shall set forth the expected use of and investment of all or any portion of the proceeds of such Bonds and include such covenants as may be necessary to qualify the interest on all or any portion of such Bonds for exemption from gross income for federal income tax purposes under the Tax Code, to maintain such exemption, and to provide that the expected use and investment of the proceeds of such Bonds will comply with the non-arbitrage regulations of Section 148 of the Tax Code. The HRTAC Representative is further authorized to make on behalf of the Commission such elections under the Tax Code with respect to such Bonds as he or she may deem to be in the best interests of the Commission after consultation with Bond Counsel, as defined in the Master Indenture.

10. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of, or project referenced by, this Resolution is for any reason held or decided to be unconstitutional or invalid, such decision of unconstitutionality or invalidity shall not affect the validity of the remaining portions. The Commission hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause and phrase thereof and each project referenced therein even though any one or more sections, subsections, sentences, clauses, phrases or projects might be declared unconstitutional or invalid.

11. Additional Actions. The Commission authorizes the Executive Director to issue requests for proposals or other competitive procurement solicitations for a bond trustee, consulting engineer, and traffic and revenue consultant with respect to the performance of the respective specified responsibilities under the Master Indenture. Additionally, each officer and authorized representative of the Commission is authorized to execute and deliver on the Commission's behalf such other instruments, documents or certificates, and to do and perform such things and acts as he or she shall deem necessary or appropriate to carry out the transactions authorized by this Resolution or contemplated by the Master Indenture. Any of the foregoing previously done or performed by any officer or authorized representative of the Commission is in all respects approved, ratified and confirmed.

12. Effective Date. This Resolution shall take effect immediately.

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The undersigned hereby certify that this is a true and correct copy of a resolution duly adopted at a meeting of the Hampton Roads Transportation Accountability Commission held on January 21, 2021.

Donnie B. Duck

Chair, Hampton Roads Transportation
Accountability Commission

Richard H. Just

Vice Chair, Hampton Roads Transportation
Accountability Commission

