

HRTAC RESOLUTION 2021-04

**RESOLUTION AUTHORIZING CERTAIN LEGAL PROCEEDINGS
TO ESTABLISH THE VALIDITY OF 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 § 33.2-2612 and as set forth in Chapter 26, Title 33.2 (the “HRTAC Act”) of the Virginia Code, 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), 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, prior to the imposition of tolls pursuant to 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, 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, 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 (as defined in the Master Indenture defined below) (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, in a resolution adopted the date hereof titled “Resolution Authorizing Toll Roads System Revenue Bonds” (the “Bond Authorizing Resolution”), the Commission has approved a Master Indenture (the “Master Indenture”), between the Commission and a bank or trust company (the “Trustee”), together with a [form of Supplemental Series Indenture], to 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;

WHEREAS, in the Bond Authorizing Resolution the Commission has found and determined 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 under Virginia Code § 33.2-2612, (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 in the Bond Resolution 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 in the Bond Resolution and in the Master Indenture will otherwise be in accordance with the HRTAC Act and applicable law, including the Constitution of Virginia; and

WHEREAS, Section 33.2-1921 of the Virginia Code provides that the provisions of Article 6, Chapter 26, Title 15.2 of the Virginia Code pertaining to the judicial determination of validity of bonds (the “Validation Procedures”) shall apply to all suits, actions and proceedings of whatever nature involving the validity of bonds issued by the Commission under the HRTAC Act, and the Validation Procedures may, among other things, establish the validity of the Bonds, the legality of all proceedings taken in connection with the authorization or issuance of the Bonds, the validity of the means provided for the payment of the Bonds, the validity of the powers granted to the Commission under the HRTAC Act, and the validity of all pledges of revenues and of all the covenants and provisions that constitute a part of the contract between the Commission and the owners of the Bonds.

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

1. Authorization of Validation. In consultation with and with the approval of Willcox & Savage, P.C., as the Commission’s general counsel, Kaufman & Canoles, P.C., as the Commission’s Bond Counsel, is authorized on the Commission’s behalf to initiate a validation proceeding in a circuit court within Planning District 23, with respect to the Bonds under the Validation Procedures to establish the validity of the Bonds and any or all of the other matters permitted under the Validation Procedures. Bond Counsel is also authorized on the Commission’s behalf and in consultation with and with the approval of the Commission’s general counsel to continue all proceedings and undertake all acts (including, without limitation, the preparation and filing of required motions and documents and the giving of required notices) as it may deem necessary and proper in connection with the validation proceeding.

2. Authorization of Defense. In consultation with and with the approval of the Commission’s general counsel, Bond Counsel is also authorized to undertake the defense of the Commission in any legal challenge of the validity of the Bonds, the HRTAC Act, the organization or composition of the Commission, the powers granted to the Commission, the composition of the Toll Revenues or the other funds available under the Master Indenture, the selection or approval of the Projects, the consideration or approval of the Bond Authorization Resolution, the validity of the Master Indenture or any supplement thereto, or the pledge of the HRTAC Revenues thereunder, or any related matters or proceedings.

3. Severability. If any section, subsection, paragraph, sentence, clause, or phrase of 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 even though any one or more sections, subsections, sentences, clauses, or phrases might be declared unconstitutional or invalid.

4. 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.

Donna B. Luek

Chair, Hampton Roads Transportation
Accountability Commission

Richard M. Tavel

Vice Chair, Hampton Roads Transportation
Accountability Commission