

HRTAC RESOLUTION 2023-01

RESOLUTION AUTHORIZING THE DEFEASANCE OF THE HAMPTON ROADS TRANSPORTATION FUND SENIOR LIEN BOND ANTICIPATION NOTES, SERIES 2021A

WHEREAS, the Hampton Roads Transportation Accountability Commission (the “Commission”) is a political subdivision of the Commonwealth of Virginia (the “Commonwealth”) having the powers set forth in Chapter 26, Title 33.2, of the Code of Virginia of 1950, as amended (the “HRTAC Act”);

WHEREAS, to provide financing on an interim basis for the costs of the Hampton Roads Bridge Tunnel Expansion Project, which constitutes in accordance with the HRTAC Act a construction project for congestion relief on a new or existing highway, bridge, and/or tunnel in the localities comprising Planning District 23 (the “HRBT Expansion Project”), the Commission issued its \$817,990,000 Senior Lien Bond Anticipation Notes, Series 2021A (the “2021A BANs”), pursuant to the terms of the HRTAC Act, a Master Indenture of Trust (as amended and supplemented from time to time, the “Master Indenture”) between the Commission and Wilmington Trust, National Association, as trustee (the “Trustee”) and dated as of February 1, 2018, and a Sixth Supplemental Series Indenture of Trust (the “Sixth Supplemental Indenture”), between the Commission and the Trustee and dated as of September 15, 2021;

WHEREAS, to provide long-term financing for the HRBT Expansion Project, the Commission has also issued its \$817,990,000 Subordinate Lien Revenue Bond, TIFIA Series 2021 (TIFIA – 20211008A) (the “TIFIA Series 2021 Bond”), pursuant to the terms of the HRTAC Act, the Master Indenture, and a Fifth Supplemental Series Indenture of Trust (the “Fifth Supplemental Indenture”), between the Commission and the Trustee and dated as of September 1, 2021, and in connection therewith entered into a TIFIA Loan Agreement (HRTF Revenues), dated as of September 21, 2021 (the “2021 TIFIA Loan Agreement”), between the Commission and 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”);

WHEREAS, proceeds of the TIFIA Series 2021 Bond may be used to pay or redeem the 2021A BANs, and therefore provide long-term financing for eligible costs of the HRBT Expansion Project originally paid through the interim financing provided by the 2021A BANs;

WHEREAS, the 2021A BANs mature and are due for payment on July 1, 2026, and the Commission originally planned to draw on the TIFIA Series 2021 Bond to repay the 2021A BANs at or in close proximity to their maturity;

WHEREAS, it may prove fiscally advantageous for the Commission to utilize proceeds of the TIFIA Series 2021 Bond, together with certain unspent proceeds of the 2021A BANs in the capitalized interest account, to prepay and defease the 2021A BANs prior to their maturity;

WHEREAS, the Commission intends to cause the TIFIA Lender to disburse funds under the TIFIA Series 2021 Bond and the 2021 TIFIA Loan Agreement (the “TIFIA Proceeds”) to be used, together with unspent proceeds of the 2021A BANs in the capitalized interest account, to defease the 2021A BANs;

WHEREAS, there has been presented at this meeting a draft Escrow Agreement, between the Commission and Wilmington Trust, National Association, as escrow agent, to be dated the date of its execution and delivery (the “Escrow Agreement”); and

WHEREAS, the Commission desires to authorize and approve (i) the defeasance of all or a portion of the 2021A BANs from the TIFIA Proceeds and available unexpended amounts of the 2021A BANs in the capitalized interest account, (ii) the payment of any and all costs associated with such defeasance, (iii) the Escrow Agreement, and (iv) such other action as may be necessary or incidental in connection with the foregoing (collectively, the “Defeasance Transaction”);

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

1. The Commission authorizes and approves the Defeasance Transaction, including the use of amounts in the capitalized interest account for the 2021A BANs, in connection therewith. Proceeds of the 2021A BANs that remain following the Defeasance Transaction, along with any net financial benefit realized by the Commission as a result of the Defeasance Transaction, shall continue to be spent on eligible costs of the HRBT Expansion Project.

The Commission hereby authorizes and approves the execution and the delivery of the Escrow Agreement, in substantially the form presented at this meeting, with such changes, insertions and omissions as may be approved and made by the Chair or Vice Chair of the Commission, either of whom may act (the “HRTAC Representative”). The HRTAC Representative’s execution of the Escrow Agreement shall constitute conclusive evidence of the approval of such Escrow Agreement as executed, and any changes, insertions and omissions.

2. The HRTAC Representative and the Executive Director, each of whom may act (each, a “Designated Financial Officer”) on behalf of the Commission, and the Escrow Agent (as defined below) are hereby authorized and directed (i) to make the necessary arrangements for the purchase of government securities referenced in the Escrow Agreement and the delivery thereof to the Escrow Agent for deposit to the credit of the escrow fund under the Escrow Agreement, and (ii) to execute any subscription forms for the purchase and issuance of the “United States Treasury Securities - State and Local Government Series” for deposit to the credit of the Escrow Agreement.

3. In order for the Commission to satisfy in a timely manner all of its obligations under this Resolution, each Designated Financial Officer is hereby authorized and directed to take from time to time all actions that are reasonably necessary to provide for the defeasance of the 2021A BANs, including, without limitation, executing and delivering on behalf of the Commission all certificates, consents, receipts, requests, notices, escrow reinvestment agreements, float contracts, any supplements and/or amendments to the Fifth Supplemental Indenture and the Sixth Supplemental Indenture, and other documents as may be reasonably necessary to instruct the bond trustee for the 2021A BANs to make transfers to and from any necessary or appropriate

accounts in connection with the Defeasance Transaction and the application and use of proceeds of the 2021A BANs; to engage a certified public accountant to prepare a verification of the sufficiency of the deposit of cash and/or investments under the Escrow Agreement to accomplish the defeasance of the 2021A BANs; to direct bond counsel to prepare and deliver any necessary legal opinions in connection with the defeasance of the 2021A BANs; and to file any and all notices of such defeasance as specified or required in compliance with the Commission's continuing disclosure undertaking with respect to the 2021A BANs.

4. As trustee under the Master Indenture, Wilmington Trust, National Association, Richmond, Virginia, is the trustee for the 2021A BANs, and is hereby appointed as the escrow agent (the "Escrow Agent") with respect to the Defeasance Transaction. The Commission hereby delegates to the Executive Director the authority to select a bidding agent and a verification agent, and to the extent necessary or advisable an alternative escrow agent, with respect to the Defeasance Transaction.

5. Each Designated Financial Officer is hereby authorized and directed (without limitation except as may be expressly set forth herein) to take such action and to execute and deliver any such documents, letters of instruction, certificates, undertakings, agreements or other instruments as such officer, with the advice of counsel, may deem necessary or appropriate to effect the Defeasance Transaction and any other action contemplated by this Resolution.

6. In case any one or more of the provisions of this resolution or of any agreement, document or instrument executed and delivered in connection herewith shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this resolution or of any such agreement, document or instrument, but this resolution and any such agreement, document or instrument shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

7. This Resolution shall take effect immediately.

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 March 16, 2023.

Donna B. Sherrill

Chair, Hampton Roads Transportation
Accountability Commission

Richard West

Vice Chair, Hampton Roads Transportation
Accountability Commission