



RESOLUTION #2481

- SUBJECT:** Authorize the Issuance and Sale of Transportation District Special Bond Obligation Revenue Bonds (Transforming Rail in Virginia Program), Series 2022 (Green Bonds)
- WHEREAS:** The Northern Virginia Transportation District ("NVTD") and the Potomac and Rappahannock Transportation District ("PRTD" and, together with NVTD, the "Districts") are bodies corporate and politic created under the Transportation District Act of 1964, § 33.2-1900 et seq. of the Code of Virginia of 1950, as amended (the "Transportation District Act");
- WHEREAS:** Pursuant to the Transportation District Act, the Northern Virginia Transportation Commission ("NVTC") and the Potomac and Rappahannock Transportation Commission ("PRTC" and together with NVTC, the "Commissions") have been established to manage and control the functions, affairs and property of NVTD and PRTD, respectively, and to exercise all of the rights, powers and authority and perform all of the duties conferred or imposed upon NVTD and PRTD, respectively;
- WHEREAS:** Section 33.2-1915.A.4 of the Transportation District Act provides, among other things, that commissions such as NVTC and PRTC may enter into contracts and agreements with commissions of adjoining transportation districts to provide transit facilities, that such contracts or agreements may be utilized by a transportation district to finance the construction of transportation facilities, and that such contracts or agreements shall inure to the benefit of any creditor of the transportation district;
- WHEREAS:** NVTD and PRTD adjoin one another;
- WHEREAS:** The Commissions are jointly engaged in the operation and maintenance of a commuter rail service known as the Virginia Railway Express ("VRE") presently consisting of trains making round trips on each of two railroad lines originating near Fredericksburg and Manassas, Virginia, and terminating at Union Station in Washington, D.C.;
- WHEREAS:** The Commissions, the Counties of Fairfax, Prince William, Spotsylvania, and Stafford and the Cities of Manassas, Fredericksburg and Manassas Park (collectively, the "Participating Jurisdictions"), and the County of Arlington and the City of Alexandria (collectively, the "Contributing Jurisdictions") entered into a Master Agreement for Provision of Commuter Rail Services in Northern Virginia – Establishment of the Virginia Railway Express dated October 3, 1989, as amended (the "Master Agreement"), which establishes the contractual obligations between the Commissions, the Participating Jurisdictions and the Contributing Jurisdictions relating to the operation of VRE;

- WHEREAS:** Under Section I.D.(2).(b) of the Master Agreement, NVTC is designated to be the issuer of all bonds and notes to finance project costs related to VRE;
- WHEREAS:** In 2018, the General Assembly created in the state treasury a special nonreverting fund to be known as the Commuter Rail Operating and Capital Fund (the "CROC Fund") pursuant to Section 33.2-3500 et seq. of the Code of Virginia of 1950, as amended (the "Virginia Code"), to make funds available to the Commissions to support the cost of operating commuter rail service; acquiring, leasing, or improving railways or railroad equipment, rolling stock, rights-of-way, or facilities; or assisting other appropriate entities to acquire, lease, or improve railways or railroad equipment, rolling stock, rights-of-way, or facilities; for commuter rail transportation purposes whenever the Commissions have determined that such acquisition, lease, or improvement is for the common good of a region of the Commonwealth of Virginia (the "Commonwealth") or the Commonwealth as a whole;
- WHEREAS:** Section 33.2-3500 of the Virginia Code provides that the CROC Fund will consist of funds deposited therein pursuant to Section 58.1-2299.20 and such other funds as may be set forth by the General Assembly in a general appropriations act or allocated by the Commonwealth Transportation Board;
- WHEREAS:** Section 58.1-2299.20 of the Virginia Code provides for the disposition of the revenues from the tax imposed by Section 58.1-2295 upon every distributor who engages in selling fuels at wholesale to retail dealers for retail sale in the Districts and requires certain amounts of such tax revenue generated in each District to be deposited in the CROC Fund;
- WHEREAS:** Section 58.1-3500 of the Virginia Code directs the Comptroller of the Commonwealth to disburse funds from the CROC Fund monthly to the Districts in accordance with the formula set forth therein;
- WHEREAS:** Section 33.2-3502 of the Virginia Code authorizes the Commissions to issue bonds and other evidences of debt supported by any funds available in the CROC Fund pursuant to Article 5 of the Transportation District Act;
- WHEREAS:** On March 26, 2021, the Commissions entered into the Passenger Rail Improvements and Funding Agreement (the "Funding Agreement") with the Virginia Department of Rail and Public Transportation ("DRPT");
- WHEREAS:** DRPT subsequently assigned its rights and duties under the Funding Agreement to the Virginia Passenger Rail Authority ("VPRRA");

- WHEREAS:** The Funding Agreement includes provisions for the Commissions to fund a portion of the capital projects (as more particularly defined in the Funding Agreement, the "Supported Program Elements") being undertaken by VPRA as part of the Transforming Rail in Virginia program (the "TRV Program"), including VPRA's acquisition of real property for right-of-way within the VRE operating territory which will be subject to continuing use by the Commissions (the "ROW Project");
- WHEREAS:** The Funding Agreement requires, among other things, that (i) the Commissions, for the benefit of VRE and the TRV Program, issue debt secured by a pledge of the funds received from the CROC Fund (the "CROC-Backed Debt") by no later than November 15, 2022, and (ii) the Commissions pay to VPRA the net proceeds of the CROC-Backed Debt in support of the ROW Project;
- WHEREAS:** The Funding Agreement also requires that for a period commencing July 1, 2021, and ending 10 years later (as such period may be extended as provided in the Funding Agreement) (the "CROC Pay-Go Contribution Period"), the Commissions will pay to VPRA the balance of the funds disbursed to the Commissions from the CROC Fund net of the debt service on the CROC-Backed Debt and amounts required to replenish or fund Debt Service Reserves and other Reserve Accounts established with respect to the CROC-Backed Debt (as more particularly defined in the Funding Agreement, the "CROC Pay-Go Contributions"), unless the Commissions substitute other funds for the CROC Pay-Go Contributions as permitted under the Funding Agreement;
- WHEREAS:** In September 2021, the Commissions approved updated and amended Financial and Debt Management Principles for VRE to guide the issuance of debt backed by the CROC Fund;
- WHEREAS:** On November 19, 2021, December 2, 2021, and December 2, 2021, the VRE Operations Board, NVTC, and PRTC each, respectively, authorized VRE staff to advance a public bond issuance backed by the CROC Fund to support the financing of the ROW Project;
- WHEREAS:** Between February and April 2022, each Participating Jurisdiction and Contributing Jurisdiction consented as required by the Master Agreement to the issuance of CROC-Backed Debt by the Commissions to finance the ROW Project in accordance with the Funding Agreement;
- WHEREAS:** NVTC has determined to proceed with the issuance and sale of CROC-Backed Debt in the form of the 2022 Bonds (as defined herein) in a principal amount not to exceed \$140,000,000 under the terms and conditions set forth below;
- WHEREAS:** The Commissions propose to enter into the Agreement for the Assignment, Payment and Allocation of Disbursements from the Commuter Rail Operating and Capital Fund dated as of June 1, 2022 (the "Assignment and Payment Agreement"), to provide for the manner in which funds disbursed from the CROC Fund will be handled by the Commissions;

WHEREAS: The Assignment and Payment Agreement will provide that NVTC will receive all funds disbursed from the CROC Fund and that, commencing on the issue date of the 2022 Bonds and for so long as the Master Indenture (as defined herein) remains in effect, NVTC will immediately transfer all such funds to the Trustee (as defined herein) for deposit in the Revenue Fund established under the Master Indenture to provide the primary source for the payment of the 2022 Bonds and additional Bonds issued under the Master Indenture;

WHEREAS: VRE has developed a Green Bond Framework for the 2022 Bonds (the "Green Bond Framework") in accordance with the Green Bond Principles issued by the International Capital Markets Association (the "GBPs") and has procured Kestrel Verifiers to provide a second party opinion that the 2022 Bonds satisfy the GBPs;

WHEREAS: The foregoing arrangements will be reflected in the following documents, forms of which have been presented to this meeting and filed with NVTC's records:

- (i) The Master Indenture of Trust dated June 1, 2022 (the "Master Indenture"), between NVTC and U.S. Bank Trust Company, National Association, as trustee (the "Trustee");
- (ii) The First Supplemental Indenture dated as of June 1, 2022 (the "First Series Supplement" and together with the Master Indenture, the "Indenture"), between NVTC and the Trustee;
- (iii) The Preliminary Official Statement to be dated the date of its posting (the "Preliminary Official Statement"), pursuant to which the 2022 Bonds are to be offered for sale by the Underwriters;
- (iv) The Bond Purchase Agreement to be dated the date of its execution and delivery (the "Bond Purchase Agreement"), between NVTC and the group of underwriters senior managed by BofA Securities, Inc. (collectively, the "Underwriters");
- (v) The Continuing Disclosure Agreement, to be dated the date of its execution and delivery (the "Continuing Disclosure Agreement"), by PRTC and NVTC;
- (vi) The Assignment and Payment Agreement;
- (vii) The Green Bond Framework and the requirements of Kestrel Verifiers for disclosure about the "Green Bond" designation in the Preliminary Official Statement and the Official Statement (as defined herein) (the "Kestrel Closing Package"); and

(viii) The Agreement regarding Payment and Use of Proceeds of Transportation District Special Obligation Revenue Bonds (Transforming Rail in Virginia Program), Series 2022 (Green Bonds), and CROC PayGo Contributions dated the date of its full execution (the "Payment and Use Agreement"), by the Commissions and VPRA, providing the details of the disbursement of the net proceeds of the 2022 Bonds to VPRA for the ROW Project.

WHEREAS: The Master Indenture, First Series Supplement, Bond Purchase Agreement, Preliminary Official Statement, Continuing Disclosure Agreement, Assignment and Payment Agreement, Green Bond Framework, Kestrel Closing Package and Payment and Use Agreement are referred to collectively herein as the "Documents"; and

WHEREAS: Unless otherwise defined, each capitalized term used in this Resolution shall have the meaning given to it in the Indenture.

NOW THEREFORE BE IT RESOLVED that after careful consideration and to further the public purposes for which NVTC was created, the Northern Virginia Transportation Commission hereby authorizes the following:

- 1. Authorization and Details of 2022 Bonds.** The issuance, sale and delivery of revenue bonds of NVTC to be known as the Northern Virginia Transportation Commission, Transportation District Special Obligation Revenue Bonds (Transforming Rail in Virginia Program), Series 2022 (Green Bonds) (the "2022 Bonds"), is hereby authorized. NVTC shall apply the proceeds of the 2022 Bonds, along with other available funds, in accordance with the Indenture to pay the issuance and financing costs of the 2022 Bonds, to fund any reserves required under the Indenture, and to make contributions to VPRA to support the ROW Project. The Chair of NVTC (the "Chair") is authorized to determine and approve the final details of the 2022 Bonds, including without limitation, the final aggregate principal amount of the 2022 Bonds, the interest rates on the 2022 Bonds, the dates of the 2022 Bonds, the maturity date of the 2022 Bonds, the dates, amounts, and prices of any optional or mandatory redemptions, and the sale price of the 2022 Bonds to the Underwriters; provided, however, that (i) the aggregate principal amount of the 2022 Bonds may not exceed \$140,000,000, (ii) the true interest cost of the 2022 Bonds may not exceed 6.5%, and (iii) the final maturity date of the 2022 Bonds may not be later than December 31, 2053. The Chair's approval of such details will be conclusively evidenced by the execution and delivery of the Bond Purchase Agreement.
- 2. Findings and Determinations.** NVTC hereby finds and determines that the issuance of the 2022 Bonds and application of the proceeds thereof in accordance with this Resolution and the Indenture (i) is necessary for the orderly growth and development of the Districts and will promote the safety, comfort and convenience of their citizens and (ii) is for the common good of the Districts and the Commonwealth as a whole.

- 3. Approval of the Documents.** The forms of the Documents are approved. The Chair is authorized to execute and deliver on NVTC's behalf the Documents in substantially the forms submitted to this meeting, with such changes, insertions or omissions as may be approved by the Chair. Such approval shall be evidenced conclusively by the execution and delivery of such documents on NVTC's behalf.
- 4. Preparation, Execution and Delivery of 2022 Bonds.** The 2022 Bonds will be in substantially the same form attached as an Exhibit to the First Series Supplement, which form is hereby approved. The Chair is authorized to have the 2022 Bonds prepared, to have the 2022 Bonds executed pursuant to the terms of the Indenture, to deliver the 2022 Bonds to the Trustee for authentication, and to cause the 2022 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 the First Series Supplement.
- 5. Pledge.** The Revenues and other moneys described in the Indenture are hereby pledged to secure the payment of the principal of and premium, if any, and interest on the 2022 Bonds under such terms and conditions provided in the Indenture. Neither the individual Commissioners of NVTC nor any person executing the 2022 Bonds shall be liable personally on the 2022 Bonds by reason of the issuance thereof. The 2022 Bonds shall not be a debt of the Commonwealth or any political subdivision thereof (including VPRA, any Participating Jurisdiction or Contributing Jurisdiction or any other county or city presently comprised by the Districts or that may agree to join the Districts) other than NVTC. The 2022 Bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under the Transportation District Act. NVTC hereby represents and acknowledges that its authority to receive any or all of the Revenues may be eliminated, changed or limited at any time by action of the General Assembly and that neither the General Assembly nor NVTC can or will pledge, covenant or agree to impose or maintain at any particular rate or level any of the taxes that are expected to generate substantially all of the Revenues or to maintain the CROC Fund for the benefit of the holders of the 2022 Bonds, the Trustee or any other person or entity.
- 6. Revenue Stabilization Fund.** NVTC is authorized to transfer up to \$3,750,000 (the "Revenue Stabilization Deposit") to the Revenue Stabilization Fund as established under the Indenture. The Revenue Stabilization Deposit will consist of previously disbursed funds from the CROC Fund held by NVTC.
- 7. Sale of 2022 Bonds in Multiple Series.** If market or other conditions are such that the Chair determines that it not advisable to issue and sell the 2022 Bonds all at once in a single series, NVTC is authorized to issue and sell the 2022 Bonds in multiple series from time to time pursuant to Series Supplements, bond purchase agreements, disclosure documents and related documents in substantially the same forms as the Documents presented to this meeting; provided that, in aggregate, the principal amount and other terms of the 2022

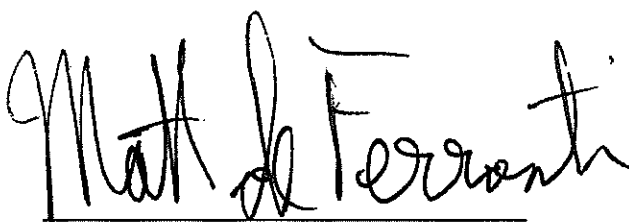
Bonds will be within the parameters set forth in section 1 of this Resolution. The Chair may change the series designation of any such series of 2022 Bonds to reflect the issuance of multiple series, including to reflect the year in which the 2022 Bonds are actually issued.

- 8. Authorization of Bond Anticipation Notes.** If market or other conditions are such that the Chair determines that it is not advisable to issue the 2022 Bonds on a long-term basis, the Chair, without further approval of NVTC as to documentation or otherwise, is hereby authorized to execute, deliver and issue short-term notes of NVTC (the "Notes") at public or private sale in anticipation of the issuance of any or all series of the 2022 Bonds; provided that the aggregate principal amount of the Notes shall not exceed \$125,000,000, the term to maturity of the Notes shall not exceed five years, and the Notes shall have a true interest cost not in excess of 5.75%. The Notes shall be subject to such other terms and conditions contained in this Resolution to the extent not inconsistent with this paragraph. The interest payments on the Notes shall be secured in the same manner as the 2022 Bonds authorized hereunder. NVTC shall retire the Notes either by issuing the 2022 Bonds authorized hereby or by making a payment or payments from any other lawfully available funds, provided that the maximum amount of the 2022 Bonds authorized hereby will be reduced by the amount of Notes retired by other lawfully available funds. If NVTC issues 2022 Bonds to retire the Notes, NVTC shall issue the 2022 Bonds in accordance with the terms of and subject to the parameters contained in this Resolution.
- 9. Preliminary Official Statement and Official Statement.** The Preliminary Official Statement is approved in substantially the form submitted to this meeting with such changes, insertions or omissions as may be approved by the Chair, whose approval will be evidenced conclusively by the execution and delivery of the final Official Statement. The use and distribution of the Preliminary Official Statement by the Underwriters are approved. The Chair is authorized and directed to cause the final Official Statement with respect to the 2022 Bonds to be prepared, to execute and deliver it and to authorize on behalf of NVTC its use and distribution by the Underwriters, which authorization will be evidenced conclusively by such execution and delivery.
- 10. Federal Tax Matters.** The Chair is authorized and directed to execute and deliver on NVTC's behalf simultaneously with the issuance of any portion of the 2022 Bonds a federal tax certificate and regulatory agreement and any similar or ancillary agreements or certificates (collectively, the "Tax Documents"). The Tax Documents shall set forth the expected use of and investment of the proceeds of such 2022 Bonds and related moneys and include such covenants as may be necessary to qualify the interest on such 2022 Bonds for exemption 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"), and to maintain such exemption. The Chair is further authorized to make on behalf of NVTC such elections under the Tax Code with respect to the

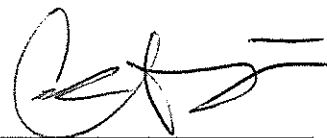
2022 Bonds as he may deem to be in the best interests of NVTC after consultation with NVTC's Bond Counsel and Financial Advisor.

- 11. Continuing Disclosure.** The Chair is authorized and directed to execute and deliver on NVTC's behalf simultaneously with the issuance of any or all series of the 2022 Bonds a Continuing Disclosure Agreement, setting forth the disclosure to be made by or on behalf of NVTC and containing such covenants as may be necessary in order to satisfy the provisions of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934. NVTC may, in its discretion, from time to time engage an entity to serve as Dissemination Agent (as defined in the Continuing Disclosure Agreement) to assist NVTC and PRTC in fulfilling their respective covenants and obligations under the Continuing Disclosure Agreement.
- 12. Severability.** If any section, subsection, paragraph, sentence, clause, or phrase of, or project approved 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. NVTC hereby declares that it would have adopted this Resolution and each section, subsection, sentence, clause and phrase thereof and each project listed therein even though any one or more sections, subsections, sentences, clauses, phrases or projects might be declared unconstitutional or invalid.
- 13. Additional Actions.** The Executive Director of NVTC and each member, officer and authorized representative of NVTC and VRE are authorized to execute and deliver on NVTC'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 Indenture or to cause the 2022 Bonds to be designated as "Green Bonds" under the GBPs. Any of the foregoing previously done or performed by any member, officer, or authorized representative of NVTC or VRE is in all respects approved, ratified and confirmed. In the Chair's absence, the Vice Chair is authorized to take any action specifically assigned to the Chair under this Resolution.
- 14. Effective Date.** This Resolution shall take effect immediately.

Approved this 2nd day of June 2022.



Matt de Ferranti
Secretary-Treasurer



Canek Aguirre
Chair