

# NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

## RESOLUTION 07-24-13-E

### AUTHORIZING CERTAIN LEGAL PROCEEDINGS IN CONNECTION WITH THE ISSUANCE OF THE AUTHORITY'S TRANSPORTATION FACILITIES REVENUE BONDS

**WHEREAS**, the Northern Virginia Transportation Authority ("NVTA") is a political subdivision of the Commonwealth of Virginia (the "Commonwealth") created by the Northern Virginia Transportation Authority Act (the "NVTA Act"), Chapter 48.2, Title 15.2, Code of Virginia of 1950, as amended (the "Virginia Code"); and

**WHEREAS**, as provided by Section 15.2-4831 of the NVTA Act, NVTA embraces the Counties of Arlington, Fairfax, Loudoun, and Prince William, and the Cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park (collectively, the "Member Localities"); and

**WHEREAS**, Section 15.2-4839 of the NVTA Act authorizes and empowers NVTA to issue bonds and other evidences of debt and provides that the provisions of Article 5 (Section 15.2-4519 et seq.) of Chapter 45 of Title 15.2 of the Virginia Code, shall apply, *mutatis mutandis*, to the issuance of such bonds or other debt; and

**WHEREAS**, Section 15.2-4519 of the Virginia Code provides that NVTA's bonds may be payable from and secured by a pledge of all or any part of the revenues, moneys or funds of NVTA as specified in a resolution adopted or indenture entered into by NVTA; and

**WHEREAS**, on April 3, 2013, the Virginia General Assembly adopted the Governor's substitute for House Bill 2313 ("HB 2313"), which provides, among other things, for transportation funding and related reform both on a statewide basis and on a regional basis for NVTA and the Member Localities; and

**WHEREAS**, under HB 2313, the Northern Virginia Transportation Authority Fund (the "Fund") will receive the revenues dedicated to it under §§58.1-638, 58.1-802.2 and 58.1-1742 of the Virginia Code and any other funds that may be appropriated to the Fund by the General Assembly (the "HB 2313 Transportation Revenues"); and

**WHEREAS**, NVTA has determined to proceed with the issuance of its bonds (as more particularly defined below, the "Bonds") under the terms and conditions set forth in that certain resolution adopted the date hereof entitled "**Resolution Authorizing the Issuance of Transportation Facilities Revenue Bonds**" (the "Bond Authorization Resolution"); and

**WHEREAS**, NVTA will apply the proceeds of the Bonds, along with other available funds, to pay the issuance and financing costs thereof, to fund any required reserves and to pay the costs of the construction and acquisition of the transportation facilities and projects described in the Bond Authorization Resolution; and

**WHEREAS**, debt service payments on the Bonds will be made from the portion of the HB 2313 Transportation Revenues pledged thereto as provided in the Bond Authorization Resolution and the Indenture (defined in the Bond Authorization Resolution) and the investment earnings on certain funds and accounts to be established under the Indenture; and

**WHEREAS**, the NVTA Act provides in Section 15.2-4520 that 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 NVTA under the NVTA 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 tax or other means provided for the payment of the bonds, and the validity of all pledges of revenues and of all the covenants and provisions that constitute a part of the contract between the issuer and the owners of the bonds; and

**After careful consideration and to further the public purposes for which NVTA was created, NOW, THEREFORE, BE IT RESOLVED BY NVTA THAT:**

- 1. Authorization of Validation.** In consultation with and with the approval of the Council of Counsels, McGuireWoods LLP, as Bond Counsel, is authorized to initiate a validation proceeding in the Circuit Court of Fairfax County 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 NVTA's behalf and under the supervision and direction of the Council of Counsels to continue all proceedings and undertake all acts (including without limitation the preparation and filing of required documents and the giving of required notices) as it may deem necessary and proper in connection with the validation proceeding.
- 2. Authorization of Defense.** Acting under the supervision and direction of the Council of Counsels, Bond Counsel is also authorized to undertake the defense of NVTA in any legal challenge of the validity of the Bonds, HB 2313 and the HB 2313 Transportation Revenues 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. NVTA 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.

