

## NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

MEMORANDUM

**FOR:** Chairman Martin E. Nohe and Members  
Northern Virginia Transportation Authority

**FROM:** Mayor Parrish, Chair, NVTa Finance Committee

**DATE:** October 6, 2017

**SUBJECT:** Bond Counsel Service Agreement Extension

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1. **Purpose:** To seek to Northern Virginia Transportation Authority (NVTa) approval of the proposed Bond Counsel Service Agreement Extension.
2. **Suggested Motion:** *I move Authority approval of the proposed Bond Counsel Service Agreement with McGuireWoods LLP.*
3. **Background:**
  - a. The Authority entered into an agreement for bond counsel services with McGuireWoods LLP in July 2013.
  - b. The term of the July 2013 agreement extended into 2017.
  - c. The NVTa Council of Counsel, Executive Director and Chief Financial Officer conferred and are recommending the existing agreement with McGuireWoods LLP be extended through 2019 with optional renewals for two additional years until 2021.
  - d. The attached 'Terms of Engagement of Bond Counsel' serves to update and extend the existing agreement.
  - e. The proposed fee structure is consistent with the Authority's adopted FY2018 Operating Budget.

**Attachment:** NVTa Terms of Engagement of Bond Counsel

**Coordination:**  
NVTa Finance Committee  
Council of Counsels



September 7, 2017

The Honorable Martin E. Nohe  
Chairman  
Northern Virginia Transportation Authority  
3040 Williams Drive, Suite 200  
Fairfax, Virginia 22031

**Northern Virginia Transportation Authority  
Terms of Engagement of Bond Counsel**

Dear Chairman Nohe:

This letter will set forth the terms to extend the term of our service as Bond Counsel to the Northern Virginia Transportation Authority ("NVTa"). The general subject matters covered by these terms are the authorization and issuance of future series of NVTa bonds ("Bonds"), any validation proceeding NVTa may determine to authorize as a condition to the issuance of a series of Bonds, and providing legal advice on application of federal and Virginia law (including the Internal Revenue Code) to the financing activities of NVTa.

1. Nature of Services. The services to be rendered by McGuireWoods LLP (the "Law Firm") as Bond Counsel will include:

- (a) Preparing appropriate resolutions by which NVTa will authorize the issuance of future series of Bonds and approve the associated financing documents;
- (b) Preparing appropriate resolutions by which the NVTa will select transportation projects for funding in accordance with the NVTa Act, or the use and reliance of other revenue sources which may become available to the NVTa in the future;
- (c) Drafting, circulating for comment among the appropriate parties and negotiating appropriate financing documents and tax and closing certificates;
- (d) Attendance as necessary at meetings of NVTa its various working groups and committees;
- (e) Preparing, in coordination with NVTa's Council of Counsel, the Motion for Judgment, Memorandum of Law and other appropriate pleadings and briefs in connection with any validation suit authorized by NVTa as a condition to the issuance of a series of Bonds, appearing in Circuit Court and handling any appeals and NVTa's defense against any related proceedings brought by others to challenge the validity of the Bonds, the regional tax revenues or related matters;

(f) Attendance at and supervision of the closing of each future series of Bonds, the execution and delivery of the financing documents and related tax and closing certificates;

(g) Delivering our approving legal opinion at closing to the effect that each future series of Bonds are valid and binding limited obligations of NVTa and, to the extent applicable, that the interest thereon will be excludable from gross income for federal income tax purposes;

(h) Assisting NVTa in seeking from other governmental authorities such approvals, rulings, permissions and exemptions deemed necessary or appropriate in connection with the authorization, issuance and delivery of any series of Bonds;

(i) Reviewing and providing legal advice on issues relating to the terms and structure of each series of Bonds;

(j) Reviewing those sections of the official statement, private placement memorandum or other form of offering or disclosure document to be disseminated in connection with the sale of each future series of Bonds involving a description of the Bonds, the security for the Bonds and the bond counsel opinion;

(k) Advising NVTa on the proper use of the proceeds of each series of Bonds and the projects financed or refinanced thereby to ensure NVTa and such Bonds to remain in compliance with Virginia law, including the NVTa Act, the private activity bond and arbitrage restrictions of the Internal Revenue Code and any applicable U.S. Security and Exchange Commission requirements and regulations;

(l) Representing, in coordination with NVTa's Council of Counsel, the NVTa in court and administrative proceedings relating to application of federal and state law, including federal and state tax and securities law, to the issuance and sale of any series of Bonds, the investment and application of the proceeds of the Bonds and the use of the projects financed or refinanced by the Bonds;

(m) Assisting NVTa and NVTa's Financial Advisor in preparing investor presentations and in presenting information to bond rating organizations and providers of credit enhancement relating to legal issues affecting the issuance of future series of Bonds;

(n) Preparing and/or reviewing Parity System generated official bid forms and the notice of sale pertaining to any competitive sale of a future series of Bonds;

(o) Drafting the continuing disclosure undertaking of NVTa in consultation with the NVTa's Financial Advisor, as needed, in connection with each future series of Bonds and providing advice to NVTa on the entire range of initial and continuing disclosure issues affecting the Bonds;

(p) Provide a dedicated representative for bond counsel services identified herein (initially, Arthur E. Anderson II);

(q) Prepare transcripts of the proceedings concerning each future series of Bonds and provide copies of all such transcripts to NVTa and to other parties involved with the series as directed by NVTa; and

(r) Generally provide other assistance, advice and consultation as may be appropriate and requested.

2. Term. The term of our engagement to provide the above-described services will end on January 31, 2019, with automatic renewal for two additional years.

3. Fees. The Law Firm's fees will be billed as follows:

(a) The Law Firm will bill on a monthly basis for its fees, at a discounted rate equal to our standard hourly fees less 7%, starting in September of 2017. Please note that our standard hourly fees are normally adjusted each January 1.

(b) The Law Firm will bill for its actually-incurred out-of-pocket costs on a monthly basis. These costs will include, but are not to be limited to, travel expenses, delivery and courier services, air courier services, and document reproduction.

(c) The Law Firm will create a separate file for any series of Bonds and accumulate the fees incurred in connection therewith, including the fees incurred in the related validation action. Unless otherwise mutually agreed between NVTa and the Law Firm, the billing for such fees will occur upon earlier of (i) the termination of the Bond issuance process, (ii) a suspension of the Bond issuance process for a period of not less than three months, or (iii) at the closing of the series of Bonds.

(d) At NVTa's request, the Law Firm will undertake to negotiate a fixed fee or other alternative fee arrangement with NVTa for any specific series of Bonds or discrete task the Law Firm is requested to handle or perform.

(e) The present standard billing rates of the lawyers who most likely will work on the matter are:

Arthur E. Anderson II	\$645.00
Thomas W. Bruno	\$505.00

4. Form of Bills. All bills will be in summary form showing in general terms the dates and time services rendered or expenses incurred, or both, and will be payable upon presentation.

5. Conflicts. McGuireWoods LLP is pleased to represent NVTa as bond counsel. We propose to do so under an arrangement that protects the confidentiality of information we

obtain from NVT A while recognizing that McGuireWoods represents other clients who may ask us to represent them in matters directly adverse to NVT A that may be related or unrelated to our work for NVT A.

Unless NVT A explicitly consents at the time, we will not during the term of our engagement initiate the representation of any other client in any matter adverse to NVT A if the matter is substantially related to any of our work for NVT A. For purposes of this letter, a matter will be deemed to be substantially related to any of our work for NVT A if the matter involves debt or bond financing. We are unaware, and we understand NVT A's Council of Counsels is unaware, of any such representation existing at this time. We understand that the purpose of this stipulation is to allow us to have unencumbered access to the finance staff and consultants of NVT A and its member localities to obtain the financial and technical information we will need throughout the term of our engagement.

For any matters that are not substantially related to the work we will perform for NVT A, we understand that you consent in advance to our representation of other clients in matters that are directly adverse (in transactions, litigation or otherwise) to any person or entity related to or affiliated with you (including any of NVT A's member localities). We agree to promptly advise NVT A that the firm is representing or is in the process of being retained to represent a client and/or multiple clients on matters that are not substantially related to the work we will perform for NVT A, but which nonetheless may be considered adverse (in transaction, litigation, or otherwise) to: a) NVT A; or b) any person or entity affiliated with NVT A, including its member localities, where the outcome of any such matter may result in the impairment of any of NVT A's statutory revenue streams. In all such instances, NVT A's consent to such representation shall be required. If the matter is adverse to NVT A, the NVT A's consent shall be required. We agree to screen from participation in any such matters all of our lawyers who: (i) are working on any NVT A matters at the time; or (ii) have acquired any material confidential information about NVT A. This means that we will not use any information NVT A gives us to NVT A's disadvantage, and that no lawyers working for NVT A will at the same time work for other clients in any matters adverse to NVT A.

6. McGuireWoods Consulting. NVT A has retained McGuireWoods Consulting ("MWC") to lobby on NVT A's behalf, as directed by NVT A's Chairman or Executive Director, on transportation funding matters and legislation affecting transportation funding and programs in the Commonwealth of Virginia as prescribed in NVT A's contract with MWC, and to monitor such matters and legislation to keep the Executive Director apprised of pertinent developments.

In order to prevent inadvertent waivers of the attorney-client privilege, for so long as MWC performs lobbying work for NVT A, the Law Firm and MWC will establish and maintain an ethics screen between the Law Firm team representing NVT A on bond and bond validation matters and the MWC team performing lobbying work for NVT A. The ethics screen will prevent each team from sharing confidential information pertaining to their respective work for NVT A matters and accessing hard copy and electronically stored records pertaining to the other team's NVT A matters, unless expressly directed to do so by NVT A's Executive Director. No Law Firm team member will work on MWC matters involving NVT A, and vice versa, unless

expressly directed to do so by the NVTa Executive Director. The Executive Director's express direction must be in writing, and may be provided via e-mail.

In addition, both the Law Firm and MWC will submit separate bills for their services and out-of-pocket expenses.

7. Termination without Cause. NVTa may at any time, and for any reason, terminate this arrangement by written notice to the Law Firm specifying the termination date, which shall be not less than thirty (30) days from the date such notice is mailed.

In the event of such termination, the Law Firm shall be paid such amount as shall compensate the Law Firm for the work satisfactorily completed, and accepted by NVTa, at the time of termination.

If NVTa terminates this engagement, the Law Firm shall cease performance of any further work hereunder, and turn over to NVTa any work completed or in process for which payment has been made.

We deeply appreciate the opportunity to handle NVTa's bond counsel work. We look forward to working with NVTa and being of service.

Very truly yours,

MCGUIREWOODS LLP

By:   
Arthur E. Anderson II

ACCEPTED:  
NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
Martin E. Nohe, Chairman

cc: Robert Dickerson, Esquire  
Stephen A. MacIsaac, Esquire  
Ellen F. Posner, Esquire