

NORTHERN VIRGINIA TRANSPORTATION AUTHORITY

RESOLUTION 07-24-13-B

AUTHORIZING THE ISSUANCE OF 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, Planning District 8 established pursuant to Chapter 42 of Title 15.2 of Virginia Code is composed of the Member Localities; and

WHEREAS, Section 15.2-4830 of the NVTA Act provides, among other things, that NVTA (i) shall prepare a regional transportation plan for Planning District 8, to include, but not necessarily be limited to, transportation improvements of regional significance, and those improvements necessary or incidental thereto, and will from time to time revise and amend the plan and (ii) has the power to construct or acquire, by purchase, lease, contract, or otherwise, the transportation facilities specified in the regional transportation plan when adopted; and

WHEREAS, NVTA prepared and on November 8, 2012, approved a regional transportation plan for Planning District 8 entitled "TransAction 2040 Regional Transportation Plan" ("TransAction 2040"); 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, NVTA has determined to proceed with the issuance of its bonds in a principal amount not to exceed \$105,000,000 (as more particularly defined below, the "Bonds") under the terms and conditions set forth below; 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

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 Sections 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, subsection B of Section 15.2-4838.1 of the NVTA Act provides that 30% of the revenues received by NVTA (the "NVTA Revenues"), including the HB 2313 Transportation Revenues, shall be distributed on a pro rata basis to the Member Localities to be applied as provided therein; and

WHEREAS, subsection C.1. of Section 15.2-4838.1 ("Subsection C.1.") provides that in Fiscal Year 2014 NVTA shall use the remaining 70% of the NVTA Revenues plus the amount of any NVTA Revenues to be redistributed pursuant to subsection B (the "Regional NVTA Funds," which term, as used below, shall include the proceeds of bonds payable from the Regional NVTA Funds) to fund (i) transportation projects selected by NVTA that are contained in TransAction 2040 or (ii) mass transit capital projects that increase capacity; and

WHEREAS, NVTA has received from the Project Implementation Working Group (the "PIWG") a selection process (the "FY 2014 Project Selection Process") that has been previously approved by NVTA pursuant to a resolution entitled "**Resolution Approving the Process Used to Select Projects to be Financing with Fiscal Year 2014 NVTA Funds, the Projects to be Financed by such Funds and the Carryover of Certain Projects for Future Consideration**" (the "FY 2014 Project Selection Process Resolution"); and

WHEREAS, as described in the FY 2014 Project Selection Process Resolution, the PIWG (i) developed the FY 2014 Project Selection Process and applied it to a list of projects submitted by the Member Localities and transportation agencies and (ii) considered the public comments received regarding such projects as well as the results of the FY 2014 Project Selection Process in developing the list of the projects ultimately approved for financing and attached as Attachment B.1. to the FY 2014 Project Selection Process Resolution (the "Recommended FY 2014 Program"); and

WHEREAS, pursuant to direction received at the June 20, 2013, NVTA meeting, the PIWG developed a selection process to evaluate projects for bond financing, which is attached as Attachment A.2. (the "Bond Selection Process"); and

WHEREAS, PIWG applied the Bond Selection Process to the Recommended FY 2014 Program and developed a list of projects that satisfy the Bond Selection Process (the "FY 2014 Bond Projects"); and

WHEREAS, the list of FY 2014 Bond Projects is attached as Attachment C, and PIWG has recommended that NVTA approve the Bond Selection Process and the issuance of the Bonds to pay the costs of the FY 2014 Bond Projects; and

WHEREAS, to the extent the related Bonds are validated, NVT A 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 FY 2014 Bond Projects; and

WHEREAS, debt service payments on the Bonds will be made from the portion of the Regional NVT A Funds pledged thereto as provided in this Resolution and the below-defined Indenture and the investment earnings on certain funds and accounts to be established under the Indenture; and

WHEREAS, the foregoing arrangements will be reflected in the following documents, forms of which have been presented to this meeting: (i) the Master Indenture of Trust (the "Master Indenture") between NVT A and a trustee to be named therein (the "Trustee"); and (ii) the First Supplemental Series Indenture between NVT A and the Trustee, to which the form of the Bonds is attached as an exhibit (the "First Supplemental Series Indenture" and, together with the Master Indenture, the "Indenture"); and

WHEREAS, on January 10, 2008, NVT A adopted Debt Policies relating to the issuance of NVT A debt (the "2008 Debt Policies"); and

WHEREAS, the 2008 Debt Policies related to NVT A debt secured by revenues derived from House Bill 3202, adopted April 4, 2007, and which are unrelated and inapplicable to the HB 2313 Transportation Revenues; and

WHEREAS, NVT A desires to suspend the 2008 Debt Policies because they are unrelated and inapplicable to the HB 2313 Transportation Revenues and the Bonds to be issued hereunder.

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

- 1. Approval of the Bond Selection Process.** NVT A hereby finds and determines that the Bond Selection Process provides a reasonable method by which to determine whether to provide bond financing for projects included in the Recommended FY 2014 Program. The Bond Selection Process is hereby approved.
- 2. Reaffirmation of Findings, Determinations and Approvals Regarding the FY 2014 Bond Projects.** NVT A hereby reaffirms its findings, determinations and approvals that are embodied in the FY 2014 Project Selection Process Resolution regarding the FY 2014 Bond Projects, which form a subset of the projects included in the Recommended FY 2014 Program.
- 3. Authorization and Findings Regarding Bonds.** There is hereby authorized the issuance of bonds of NVT A, in one or more series from time to time in accordance with the terms of this Resolution, to be known as the Northern Virginia Transportation Authority Transportation Facilities Revenue Bonds (the "Bonds") with appropriate series designations. The Bonds shall be in substantially the form attached as an exhibit to the First Supplemental Series Indenture. NVT A shall use the proceeds of the issuance of the Bonds as described in the Recitals above and in accordance with the NVT A Act and the Indenture to the extent the Bonds, the FY 2014 Bond Projects and the HB 2313

Transportation Revenues are validated in accordance with Section 15.2-4520 of the Virginia Code. NVTA hereby finds and determines that (i) the issuance of the Bonds will be in all respects for the benefit of the inhabitants of the Commonwealth and the Member Localities and will promote their safety, health, welfare, convenience and prosperity, (ii) the undertaking of the construction and acquisition of the FY 2014 Bond Projects will constitute the performance of an essential governmental function, (iii) the issuance of the Bonds will further the purposes of NVTA and the NVTA Act by, among other things, financing the construction and acquisition of the FY 2014 Bond Projects, (iv) the proceeds of the Bonds will be used by NVTA in accordance with subsections A. and C.1. of Section 15.2-4838.1 of the NVTA Act and (v) the issuance of the Bonds and the application of the net proceeds thereof to pay the costs of the construction and acquisition of the FY 2014 Bond Projects will be consistent with the requirement set forth in subsection C.3. of Section 15.2-4838.1 that all revenues deposited to the credit of NVTA be used for projects benefiting the Member Localities, with each Member Locality's total long-term benefits being approximately equal to the total of the fees and taxes expected to be received by NVTA that are generated by or attributable to the Member Locality divided by the total of such fees and taxes received by NVTA.

4. **Details of Bonds.** The final details of the Bonds, including without limitation, their series designation, dated date, aggregate principal amount, interest rates, maturity dates, redemption provisions, sale prices, and the principal amount of each maturity will be approved by subsequent resolution of NVTA; provided, however, that (i) the aggregate principal amount of the Bonds shall not exceed \$105,000,000; (ii) the Bonds shall have a true interest cost that does not exceed 6.0%; (iii) no Bonds shall mature after December 31 of the year that is 20 years after the dated date of the Bonds; and (iv) the optional redemption premium on the Bonds, if any, shall not exceed 2%.
5. **Approval of Indenture.** The forms of the Master Indenture and the First Supplemental Series Indenture are approved. The Chairman is authorized to execute and deliver on NVTA's behalf the Master Indenture and the First Supplemental Series Indenture in substantially the forms submitted to this meeting, with such changes, insertions or omissions as may be approved by the Chairman. Such approval shall be evidenced conclusively by the execution and delivery of such documents on NVTA's behalf.
6. **Preparation, Execution and Delivery of Bonds.** The Chairman is authorized to have the Bonds prepared in substantially the form submitted to this meeting, to have the Bonds executed pursuant to the terms of the Master Indenture and the First Supplemental Series Indenture, to deliver the Bonds to the Trustee for authentication, and to cause the 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 Supplemental Series Indenture.
7. **Pledge.** The Regional NVTA Funds are hereby pledged to secure the payment of the principal of and premium, if any, and interest on the Bonds in such amounts and under such terms and conditions as provided in the Indenture. Neither the members of NVTA nor any person executing the Bonds shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not be a debt of the Commonwealth or any political subdivision thereof (including any Member Locality) other than NVTA. The Bonds shall not constitute an indebtedness within the meaning of any debt limitation or restriction except as provided under the NVTA Act. NVTA hereby represents and

acknowledges that its authority to receive any or all of the HB 2313 Transportation Revenues may be eliminated, changed or limited at any time by action of the General Assembly and that neither the General Assembly nor NVTA can or will pledge, covenant or agree to impose or maintain at any particular rate or level any of the taxes and fees described in Sections 58.1-638, 58.1-802.2 and 58.1-1742 of the Virginia Code or the HB 2313 Transportation Revenues for the benefit of the holders of the Bonds, the Trustee or any other person or entity.

8. **Sale of Bonds.** The Bonds may be sold in such manner, either at public or private sale or on a competitive or negotiated basis, as may be determined by NVTA by subsequent resolution to be in the best interests of NVTA.
9. **Authorization of Bond Anticipation Notes.** If market or other conditions are such that the Chairman determines that it is not advisable to enter into a long-term financing for all or any portion of the projects specified in the recitals, the Chairman, without further approval of NVTA as to documentation or otherwise, is hereby authorized to execute, deliver and issue short-term notes of NVTA (the "Notes") as provided in Section 15.2-4519 of the Virginia Code at public or private sale in anticipation of the issuance of any or all series of the Bonds; provided that the aggregate principal amount of the Notes shall not exceed the principal amount authorized hereby, the term to maturity thereof shall not exceed five years, and the Notes shall have a true interest costs that does not exceed 5.0%. 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 Bonds authorized hereunder and the principal and premium, if any, of such Notes shall be secured by the Bonds authorized hereby. NVTA shall retire the Notes either by issuing the Bonds authorized hereby or by making a payment or payments from any other lawfully available funds, provided that the maximum amount of the Bonds authorized hereby will be reduced by the amount of Notes retired by other lawfully available funds. If NVTA issues Bonds to retire the Notes, NVTA shall issue the Bonds in accordance with the terms of and subject to the parameters contained in this Resolution.
10. **Federal Tax Matters.** The Chairman is authorized and directed to execute and deliver on NVTA's behalf simultaneously with the issuance of the Bonds a Tax Regulatory Agreement and/or similar agreements or certificates. The Tax Regulatory Agreement and/or similar agreements or certificates shall set forth the expected use of and investment of all or any portion of the proceeds of the Bonds and include such covenants as may be necessary to qualify the interest on all or any portion of the 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 Chairman is further authorized to make on behalf of NVTA such elections under the Tax Code with respect to the Bonds as he may deem to be in the best interests of NVTA after consultation with NVTA's Bond Counsel and Financial Advisor.
11. **Continuing Disclosure.** The Chairman is authorized and directed to execute and deliver on NVTA's behalf simultaneously with the issuance of any or all series of the Bonds a Continuing Disclosure Agreement, setting forth the disclosure to be made by or on behalf of NVTA 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.

- 12. Suspension of 2008 Debt Policies.** The 2008 Debt Policies are hereby suspended because they are unrelated and inapplicable to the HB 2313 Transportation Revenues and the Bonds authorized hereunder. The Chairman is authorized to direct the Financial Working Group to prepare revised debt policies that are based on the HB 2313 Transportation Revenues upon validation of such revenues and the Bonds.
- 13. 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. NVTA 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.
- 14. Additional Actions.** Each member, officer and authorized representative of NVTA is authorized to execute and deliver on NVTA'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. Any of the foregoing previously done or performed by any member, officer, or authorized representative of NVTA is in all respects approved, ratified and confirmed. In the Chairman's absence, the Vice Chairman is authorized to take any action specifically assigned to the Chairman under this Resolution.
- 15. Effective Date.** This Resolution shall take effect immediately.

Adopted by the Northern Virginia Transportation Authority on this 24th day of July 2013.

BY:



Chairman

ATTEST:



Clerk

Northern Virginia Transportation Authority FY 2014 Project Selection Process – STEP II

The Project Implementation Working Group (PIWG) was directed by the Northern Virginia Transportation Authority (“NVTA” or “the Authority”) at its June 20, 2013 meeting to prepare an FY 2014 Program to include preparation of documents for an initial bond issuance for consideration by the Authority at its July 24, 2013 meeting. Pursuant to that charge, the PIWG developed and approved by consensus a list of FY 2014 bond selection criteria. The criteria do not prescribe specific project funding decisions; instead it provides guidance to the Authority by relating investment decisions to statutory requirements and regional goals. The bond selection process is provided in detail below.

Bond Selection Criteria

The PIWG developed the following selection criteria which provide the basis for selecting projects for a FY 2014 Bond List. All projects must have been evaluated through the FY 2014 Project Selection Process in order to be considered in this process. No projects that did not pass the Tier I Screening of the FY 2014 Project Selection Process were considered.

As noted in the FY 2014 Project Selection Process (Attachment A.1.) the approach focuses on selecting projects that provide rapid, noticeable improvements to address some of the region’s transportation problems. There are a total of six (6) bond selection criteria.

- **Project with 20 year lifespan.**
- **High ranking project.** Priority is given to projects on the “List of Projects for FY 2014 Funding” as presented to the Authority on June 20, 2013. In order to be considered for bond funding, projects on the “List of Projects for Consideration for the Future Six-Year Program” as presented at the June 20, 2013 NVTA meeting must receive a high rating in the Tier II analysis.
- **Leverages external funding.** Short-term priorities of the jurisdictions that are partially funded in the Commonwealth’s Six Year Improvement Program or by individual jurisdictions or agencies.
- **Monetary size of project funding request.** Projects with relatively small funding requirements are not as suitable for bonding.

Projects that met these criteria were then screened to ensure that, as a package, the following criteria were satisfied:

- **Geographic balance.**
- **Mode balance.** Transit, Road, Multimodal. Projects are coded as “R” for Roadway, “T” for Transit and “M for Multimodal.

Once the second screen was complete, the total value of the project funding requests on the draft list was evaluated to ensure that it met the Financial Working Group guidance on the overall size of the bond package, which took \$50 million to be the lower bound and \$100 million to be the upper bound, the PIWG searched for one project whose funding request could be split between the FY 2014 Bond List and the FY 2014 PAYG list.

Projects not removed from the “List of Projects for FY 2014 Funding” as presented to the Authority on June 20, 2013 were included on the FY 2014 PAYG List.

