

8915. RESOLUTION 03-32 - AUTHORIZING THE PREPARATION AND EXECUTION OF A FORWARD INTEREST RATE SWAP AGREEMENT. The Executive Director presented the following Resolution.

WHEREAS, The Delaware River and Bay Authority (the “Authority”) was created as a body politic and an agency of government of the State of Delaware and the State of New Jersey, by virtue of Chapters 145 and 146, Volume 53, Laws of Delaware, approved by the Governor of the State of Delaware on July 21, 1961, and Chapter 66 of the Pamphlet Laws of 1961 of the State of New Jersey, approved by the Governor of the State of New Jersey on June 3, 1961 (said Chapters 145 and 146 and said Chapter 66 being hereinafter sometimes collectively called the “Original Enabling Legislation”), pursuant to which the State of Delaware and the State of New Jersey entered, subject to the consent of the Congress of the United States of America, into a compact (hereinafter sometimes called the “Original Compact”) creating the Authority; and

WHEREAS, the consent of the Congress of the United States of America was given to the States of Delaware and New Jersey to enter into the Original Compact by a Joint Resolution of the Congress, approved September 20, 1962 (Public Law 87-678, 87th Congress); and

WHEREAS, by virtue of Chapter 252, Volume 67, Laws of Delaware, approved by the Governor of the State of Delaware on June 28, 1990, and Chapter 192 of the Pamphlet Laws of 1989 of the State of New Jersey, approved by the Governor of the State of New Jersey on October 18, 1989 (said Chapter 252 and said Chapter 192, together with the Original Enabling Legislation being hereinafter sometimes collectively called the “Enabling Legislation”), the State of Delaware and the State of New Jersey entered, subject to the consent of the Congress of the United States of America, into certain amendments to the Original Compact (as so amended and as may be further amended from time to time hereinafter sometimes called the “Compact”); and

WHEREAS, the consent of the Congress of the United States of America was given to the State of Delaware and New Jersey to enter into the Compact by a Joint Resolution of the Congress, approved November 15, 1990 (Public Law 101-565, 101st Congress); and

WHEREAS, by virtue of the Compact and the Enabling Legislation, the Authority’s powers include authorization to plan, finance, develop, construct, purchase, lease, maintain, improve and operate crossings, including bridges, tunnels and ferries and all approaches thereto and connecting and service routes, between the State of Delaware and the State of New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said River; and

WHEREAS, the Authority owns, operates and maintains twin bridges spanning the Delaware River from a point between Pigeon Point near the City of Wilmington in the State of Delaware and New Castle in said State to a point near the Salem Canal in the State of New Jersey, together with their approaches, appurtenances and property (said twin spans being known as The Delaware Memorial Bridge and, together with such approaches, appurtenances and property, being hereinafter sometimes called the “Bridge”); and

WHEREAS, the Authority also owns, operates and maintains a public ferry system across Delaware Bay between Cape May in the State of New Jersey and the Town of Lewes in the State of Delaware, including vessels, marine facilities, approaches and connecting and service routes and appurtenances and equipment incidental thereto (said public ferry system, including approaches and connecting and service routes and appurtenances and equipment incidental thereto, being herein sometimes called the “Ferry”); and

WHEREAS, for the purpose of paying: (1) certain outstanding indebtedness; (2) the balance of the cost of certain improvements and modifications to the original span of the Bridge constructed in 1946; (3) costs associated with the construction of the second span of the Bridge; and (4) certain costs in connection with the construction and acquisition of the Ferry, the Authority issued its revenue bonds in the original aggregate principal amount of One Hundred Three Million Dollars (\$103,000,000), (the “Prior Bonds”) pursuant to a Trust Agreement, dated as of the 1st day of January, 1964, by and between the Authority and Delaware Trust Company, as trustee (the “Prior Trust Agreement”); and

WHEREAS, for the purpose of: (i) refunding all of the \$43,355,000 outstanding Prior Bonds and thereby defeasing the lien of the Prior Trust Agreement on the revenues of the Authority; and (ii) funding the cost of various Additional Facilities (as defined in the Agreement mentioned below) undertaken by the Authority, the Authority issued its \$123,755,000 aggregate principal amount of its Revenue Bonds, Series 1993 (the “1993 Bonds”) pursuant to a Trust Agreement, dated as of October 1, 1993, between the Authority and Wilmington Trust Company, as Trustee (the Trust Agreement as supplemented in connection with the 1993 Bonds and as further supplemented and amended in accordance with the terms thereof, the “Agreement”); and

WHEREAS, for the purpose of funding the costs of various Additional Facilities undertaken by the Authority, the Authority issued its \$67,065,000 aggregate principal amount of its Revenue Bonds, Series 1996 (the “1996 Bonds”), pursuant to the Agreement; and

WHEREAS, for the purpose of funding the costs of various Additional Facilities undertaken by the Authority, the Authority issued its \$98,755,000 aggregate principal amount of its Revenue Bonds, Series 2000A and its \$30,000,000 aggregate principal amount of its Revenue Bonds, Series 2000B (the “2000A and 2000B Bonds”), pursuant to the Agreement; and

WHEREAS, for the purpose of funding the costs of various additional facilities undertaken by the Authority, the Authority issued its \$76,300,000 aggregate principal amount of its Revenue Bonds, Series 2003 (the “2003 Bonds”) pursuant to the Agreement; and

WHEREAS, under the Agreement, the Authority may provide for the issuance from time to time of: (i) revenue bonds or Parity Indebtedness of the Authority, on a parity basis with respect to the 1993 Bonds, the 1996 Bonds, the 2000A Bonds, the 2000B Bonds and the 2003 Bonds, which remain outstanding, under the provisions of the Agreement, for the purpose of paying all or any part of the cost of constructing and acquiring any Additional Facilities; or (ii) Subordinate Obligations, on a subordinated basis with respect to the 1993 Bonds, the 1996 Bonds, the 2000A Bonds, the 2000B Bonds and the 2003 Bonds, which remain outstanding, for the purpose of paying

all or any part of the cost of the constructing and acquiring Additional Facilities or for any other lawful purpose of the Authority; and

WHEREAS, the Authority continually tracks the bond market to determine if market rates offer any potential savings; and

WHEREAS, the Authority has identified potential savings related to a refunding of its outstanding 1993 Bonds; and

WHEREAS, the minimum net present value savings of the refunding of the Series 1993 bonds will be 3%; and

WHEREAS, the Authority may desire to enter into a Forward Interest Rate Swap Agreement or other similar instrument (such Agreement or instrument shall be referred to as the "Swap Agreement") and/or issue refunding bonds in early 2004 to capture the benefits of low interest rates, but desire to minimize negative arbitrage associated with the proposed refunding; and

WHEREAS, the Authority's Budget and Finance Committee has reviewed and discussed the concept of a Rate Swap Agreement and recommends it to the Board of Commissioners; and

WHEREAS, the Swap Agreement will be competitively bid to qualified providers to ensure the greatest benefit to the Authority; and

WHEREAS, due to the fact that the savings are primarily derived by market conditions beyond the Authority's control, the Authority desires to authorize the Delegates (hereinafter defined) acting in unison, to engage certain professionals and execute a Rate Swap Agreement with a third party provider; and

NOW THEREFORE BE IT RESOLVED THAT the Chairperson, Vice Chairperson, Chair of the Budget and Finance Committee and Executive Director are each hereby appointed delegates (the "Delegates") with full power to carry out the duties set forth; and

BE IT FURTHER RESOLVED that the Delegates shall execute a Certificate evidencing the determinations made or other actions carried out by their unanimous agreement pursuant to the Authority and granted in this Resolution, and any such certificate shall be conclusive evidence of the actions or determinations as stated therein; and

BE IT FURTHER RESOLVED that the Delegates are each 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, certificates, undertakings, agreements, including the engagement of certain other professionals, or other instruments as they, with the advice of counsel, may deem necessary or appropriate to effectuate the transaction(s) contemplated by this Resolution.

Resolution 03-32 was moved by Commissioner Cooper, seconded by Commissioner McWilliams and was approved by a roll call vote of 11-0.