

9887. RESOLUTION 08-52 (Formerly 08-42) - RELATING TO THE ISSUANCE AND AWARD OF THE DELAWARE RIVER AND BAY AUTHORITY REVENUE BONDS, REFUNDING SERIES 2008

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 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 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 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 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; 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; and

WHEREAS, the Authority entered into a Trust Agreement (the "Trust Agreement") and Supplemental Trust Agreement Number 1, each dated as of October 1, 1993, with Wilmington Trust Company, as Trustee, and issued and secured thereunder its \$123,755,000 Revenue Bonds, Series 1993 (the "1993 Bonds"), to: (i) defease certain outstanding indebtedness with respect to the Authority's outstanding revenue bonds originally issued in the aggregate principal amount of \$103,000,000 (the "Prior Bonds") and the defeasance of the trust agreement, dated as of January 1, 1964, pursuant to which the Prior Bonds were issued and (ii) finance the costs of certain Additional Facilities; and

WHEREAS, the Authority entered into Supplemental Trust Agreement Number 2, dated as of August 1, 1996, with the Trustee and issued and secured thereunder its \$67,065,000 Revenue Bonds, Series 1996 (the "1996 Bonds"), for the purpose of financing the costs of certain Additional Facilities; and

WHEREAS, the Authority entered into Supplemental Trust Agreement Number 3, dated as of June 1, 2000, and Supplemental Trust Agreement Number 4, dated as of August 1, 2000 (the "4th Supplemental Agreement"), with the Trustee and issued and secured thereunder its \$98,755,000 Revenue Bonds, Series 2000A (the "2000A Bonds"), and \$30,000,000 Revenue Bonds, Series 2000B (the "2000B Bonds"), respectively, for the purpose of financing the costs of certain Additional Facilities; and

WHEREAS, the Authority entered into Supplemental Trust Agreement Number 5, dated as of January 1, 2003, with the Trustee and issued and secured thereunder its \$76,300,000 Revenue Bonds, Series 2003 (the "2003 Bonds"), for the purpose of financing the costs of certain Additional Facilities; and

WHEREAS, the Authority entered into Supplemental Trust Agreement Number 6, dated as of September 1, 2004, with the Trustee and issued and secured thereunder its \$53,670,000 Revenue Bonds, Refunding Series 2004 (the "2004 Bonds"), for the purpose of refunding a portion of the 1993 Bonds and 1996 Bonds; and

WHEREAS, the Authority entered into Supplemental Trust Agreement Number 7, dated as of March 1, 2005, with the Trustee and issued and secured thereunder its \$180,215,000 Revenue Bonds, Refunding Series 2005 (the "2005 Bonds"), for the purpose of refunding all or a portion of its 1993 Bonds, 1996 Bonds, 2000A Bonds and 2003 Bonds; and

WHEREAS, the Authority has determined, after consultation with its financial advisor, that market disruptions, related in part to the downgrade in the financial strength and financial enhancement ratings of Ambac Assurance Corporation, which issued a municipal bond insurance policy insuring the payment, when due, of the principal and interest on the 2000B Bonds, have substantially increased the debt service costs of the 2000B Bonds; and

WHEREAS, the Authority's staff, after consultation with its Financial Advisor, has negotiated the terms of a commitment letter (the "Commitment Letter") with T.D. Bank, N.A. (d/b/a "Commerce Bank"), and the terms thereof, to issue a direct pay letter of credit to support up to \$30,000,000 principal amount of bonds of the Authority to refund the 2000B Bonds and, in the alternative, should the issuance of the Bonds hereinafter mentioned fail to close on or before the redemption date, a temporary loan in the amount of \$30,000,000 to pay the principal of the 2000B Bonds on their redemption date; and

WHEREAS, the Authority has determined, after consultation with its financial advisor, that the Authority may reduce its debt service costs attributable to the 2000B Bonds through a current refunding of 2000B Bonds; and

WHEREAS, there have been presented at this meeting copies of forms of the following documents relating to the issuance of the Bonds hereinafter mentioned:

(a) Supplemental Trust Agreement Number 8 (the "8th Supplemental Agreement") between the Authority and the Trustee, the provisions of which relate to the issuance of and security for the Bonds;

(b) the Bond Purchase Agreement (the "Bond Purchase Agreement") between the Authority and Citigroup Global Markets Inc., as underwriter (the "Underwriter");

(c) the Remarketing Agreement (the "Remarketing Agreement") between the Authority and Citigroup Global Markets Inc. (in such capacity, the "Remarketing Agent");

(d) the Reimbursement Letter of Credit Agreement (the "Reimbursement Agreement") between the Authority and T.D. Bank, N.A., as the initial Credit Facility Provider, pursuant to which the initial Credit Facility Provider will deliver its irrevocable, direct-pay letter of credit (initially, the "Credit Facility") on the date of issuance of the Bonds; and

(e) the Official Statement (the "Official Statement") relating to the Bonds.

NOW, THEREFORE, THE COMMISSIONERS OF THE DELAWARE RIVER AND BAY AUTHORITY HEREBY RESOLVE, as follows:

Section 1. *Definitions.* Capitalized words and terms used in this Resolution and not defined herein shall have the same meanings in this Resolution as such words and terms are given in the Trust Agreement or the 8th Supplemental Agreement.

Section 2. *Authorization of the Bonds.* Pursuant to the authority granted to it by the Compact, the Authority hereby authorizes the issuance of The Delaware River and Bay Authority Revenue Bonds, Refunding Series 2008 (the “Bonds”) in an aggregate principal amount of \$30,000,000, consisting of Current Interest Bonds that shall be initially issued as Variable Rate Bonds, Optional Tender Bonds and Term Bonds, bearing interest at a Weekly Interest Rate (as defined in the 8th Supplemental Agreement) and shall be dated the date of their delivery and mature, subject to prior redemption as provided in Section 3 hereof, on January 1, 2030, all as determined by the unanimous agreement of the Chairperson, Vice Chairperson and Chairperson of the Board’s Budget and Finance Committee (collectively, the “Delegates”) prior to the execution of the Bond Purchase Agreement.

Section 3. *Redemption Provisions.* The Bonds shall be subject to optional and mandatory tender, purchase in lieu of redemption, mandatory sinking fund and optional redemption at such times, upon such terms and conditions, and at such prices, all as further described in the form of the form of the 8th Supplemental Agreement presented at this meeting.

Section 4. *Approval of Forms of Documents.* The forms, terms and provisions of the 8th Supplemental Agreement, the Bond Purchase Agreement, the Remarketing Agreement, and the Reimbursement Agreement are hereby approved in all respects, and the Authority Representatives (hereinafter defined) are each hereby authorized and directed to execute and deliver the 8th Supplemental Agreement, the Bond Purchase Agreement, the Remarketing Agreement, and the Reimbursement Agreement in substantially the forms presented to this meeting together with such changes, modifications and deletions as such Authority Representatives, with the advice of Authority counsel, may deem necessary and appropriate; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Authority.

Section 5. *Execution of the Bonds.* The Chairperson and the Secretary are hereby authorized and directed to execute by facsimile signature, and to deliver to the Bond Registrar, for authentication on behalf of the Authority, the Bonds in definitive form, which shall be in substantially the form contained in the 8th Supplemental Agreement together with such changes, modifications and deletions as they, with the advice of Authority counsel, may deem necessary and appropriate and consistent with the Trust Agreement and the 8th Supplemental Agreement; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Authority.

Section 6. *Authorization of Delegates to Award the Bonds.* The Authority hereby authorizes the Delegates by unanimous agreement to award the Bonds, bearing interest initially at a Weekly Interest Rate determined in accordance with the provisions of the 8th Supplemental Agreement, to the Underwriter in accordance with the terms of the Bond Purchase Agreement at a purchase price of par, and to pay the Underwriter compensation, not to exceed \$65,500 for its services in connection with the offering of the Bonds, all as determined by the unanimous agreement of the Delegates.

Section 7. *Authentication and Delivery of the Bonds.* Upon their execution in the form and manner set forth in the 8th Supplemental Agreement, the Bonds shall be deposited with the Bond Registrar for authentication, and the Bond Registrar is hereby authorized and directed to authenticate and, upon due and valid execution and acceptance of the Bond Purchase Agreement and the 8th Supplemental Agreement, by the proper parties thereto, the Trustee shall cause the Bond Registrar to deliver the Bonds for the account of the Underwriter at The Depository Trust Company, New York, New York against payment therefor in accordance with and subject to the provisions of Section 210 of the Trust Agreement.

Section 8. *Offering Document.* The form of Official Statement is hereby approved and an Authority Representative is hereby authorized to execute the Official Statement in substantially the form of presented at this meeting, together with such changes, modifications and deletions as such Authority Representative, with the advice of Authority counsel, may deem necessary or appropriate; and such execution shall be conclusive evidence of the approval thereof by the Authority; and the Authority hereby approves and authorizes the distribution and use of copies of the Official Statement, the Trust Agreement and the 8th Supplemental Agreement by the Underwriter in connection with the sale and marketing of the Bonds.

Section 9. *Certain Appointments.* Pursuant to the Trust Agreement and the 8th Supplemental Agreement, the Authority hereby makes the following appointments:

- (a) as Paying Agent and Bond Registrar for the Bonds, Wilmington Trust Company, which is also Trustee under the Trust Agreement and the 8th Supplemental Agreement and
- (b) as Tender Agent for the Bonds, Wilmington Trust Company; and
- (c) as Remarketing Agent for Bonds, Citigroup Global Markets Inc.

Section 10. *Application of Bond Proceeds; Redemption of 2000B Bonds.* The proceeds of the 2008 Bonds shall be applied in accordance with the terms of the 8th Supplemental Agreement. In addition, concurrently with the delivery of the 2008 Bonds, the Authority Representatives are authorized (a) to direct the Trustee to transfer amounts from the Debt Service Fund deposited to the credit of the Debt Service Fund for the payment of interest on the 2000B Bonds to pay accrued interest thereon to their redemption date and (b) to withdraw from the General Fund such amounts as are necessary to (i) deposit to the Debt Service Reserve Fund, such amount, if any, as determined by an Authority Representative to be necessary, but not more than required in order that such amount, when added to the amounts already on deposit in the Debt Service Reserve Fund, will make the total amount held for the credit of the Debt Service Reserve Fund equal to the Debt Service Reserve Fund Requirement and (ii) pay the costs of issuing the 2008 Bonds, including, but not limited to, the fees and expenses of the initial Credit Facility Provider, the Bond Registrar, the Rating Services rating the 2008 Bonds, the consultants, advisors and counsel to the Authority.

Section 11. *Authority Representatives.* The Chairperson, Vice Chairperson, Chairperson of the Board's Budget and Finance Committee and Executive Director are each hereby appointed "Authority Representatives" with full power to carry out the duties set forth herein and therein.

Section 12. *Authority of Authority Representatives.* The Authority Representatives 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 or other instruments as they, with the advice of Authority counsel, may deem necessary or appropriate to effectuate the transactions contemplated by this Resolution, the Trust Agreement, the 8th Supplemental Agreement, the Bond Purchase Agreement, the Remarketing Agreement, the Reimbursement Agreement, and the Official Statement. The Authority Representatives are each authorized and directed to take such action and to deliver such notices as are required to cause the 2000B Bonds to be called for redemption. In particular, the Authority Representatives are authorized to call to the 2000B Bonds for redemption in accordance with the provisions of Section 2.7(c) of the 4th Supplemental Agreement on the scheduled delivery date of the Bonds as may be fixed by the Delegates, and to direct the Trustee to give the required notice of redemption in accordance with the provisions of Section 2.9 of the 4th Supplemental Agreement.

Section 13. *Delegates' Certificate.* The Delegates shall execute a Certificate evidencing the determinations made or other actions carried out by their unanimous agreement pursuant to the authority granted in this Resolution, and any such Certificate shall be conclusive evidence of the actions or determinations as stated therein.

Section 14. *Ratification of Terms of Commitment Letter; Contingent Approval of Temporary Loan.* The terms of the Commitment Letter and the transactions contemplated thereby are hereby approved and ratified, and its solicitation, execution and delivery by an Authority Representative, by and on behalf of the Authority, is hereby ratified. If, for any reason, the Bonds are not issued on or before the redemption date for the 2000B Bonds, the Temporary Loan, with the substantially the terms and conditions set forth in the Commitment Letter, is hereby approved. An Authority Representative is hereby authorized to execute such documents as are necessary to document the Temporary Loan.

Section 15. *Effective Date.* This Resolution shall take effect immediately upon its passage, subject to cancellation by the Governor of the State of Delaware or the Governor of the State of New Jersey within ten (10) business days of the receipt by the respective offices of the Governors of the minutes of the meeting at which this Resolution was adopted.

A motion to approve Resolution 08-52 was made by Commissioner Patterson, seconded by Commissioner Simmerman, and unanimously approved by a roll call vote of 11-0.