

**10569. RESOLUTION 12-29 - RELATING TO THE ISSUANCE AND AWARD OF THE DELAWARE RIVER AND BAY AUTHORITY REVENUE BONDS, SERIES 2012A AND REVENUE BONDS, REFUNDING SERIES 2012B**

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 on 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 States of Delaware and New Jersey to enter into the Compact by a Joint Resolution of the Congress, approved on 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 the Trust Agreement (the “**Trust Agreement**”) and Supplemental Trust Agreement Number 1, each dated as of October 1, 1993, with Wilmington Trust Company, as Trustee (the” “**Original 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 Original 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, with the Original 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**”, and together with the 2000A Bonds, the “**2000 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 Original 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 Original 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 the 1996 Bonds; and

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

WHEREAS, the Authority entered into Supplemental Trust Agreement Number 8, dated as of December 1, 2008, with the Original Trustee and issued and secured thereunder its \$30,000,000 Revenue Bonds, Refunding Series 2008 (the “**2008 Bonds**”) for the purpose of refunding the remaining outstanding portion of the 2000B Bonds; and

WHEREAS, the Authority has determined (i) to provide for the costs of certain Additional Facilities constituting a portion of its Five-Year Capital Plan (for fiscal years ending December 31, 2012 through 2016, inclusive) and (ii) to fund to maturity or refund for significant debt service savings all or such portion of the outstanding 2003 Bonds and 2005 Bonds (the “**2003 Refunding Candidates**” and the “**2005 Refunding Candidates**,” respectively, and together, the “**Refunding Candidates**”) as the Delegates (hereinafter defined) shall determine and which shall meet the minimum present value debt service savings threshold set by this resolution (the Refunding Candidates so refunded are herein referred to individually as the “**2003 Refunded Bonds**” and the “**2005 Refunded Bonds**,” and collectively as the “**Refunded Bonds**”); and

WHEREAS, in connection with the proposed issuance of the Bonds (as defined herein), the Authority has decided to remove the Original Trustee and appoint The Bank of New York Mellon Trust Company, N.A., as successor Trustee (the “Trustee”); 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:

the Ninth Supplemental Trust Agreement (the “**Supplemental Agreement**”) between the Authority and the Trustee, the provisions of which relate to the issuance of and security for the Bonds;

the Bond Purchase Agreement (the “**Bond Purchase Agreement**”) between the Authority and Citigroup Global Markets Inc., as representative of the underwriters named therein (collectively, the “**Underwriters**”);

the Preliminary Official Statement (the “**Preliminary Official Statement**”), including the Continuing Disclosure Agreement of the Authority (the “**Continuing Disclosure Agreement**”) relating to the Bonds;

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

*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, as previously supplemented and amended, or the Supplemental Agreement, as applicable.

*Authorization of the Bonds; Determination of 2003 Refunded Bonds.* Pursuant to the authority granted to it by the Compact, the Authority hereby authorizes the issuance of its Revenue Bonds, Series 2012A to be issued in one or more series or sub-series in an aggregate principal amount not to exceed \$150,000,000 (the “**2012A Bonds**”) and its Revenue Bonds, Refunding Series 2012B to be issued in one or more series or sub-series in an aggregate principal amount not to exceed \$80,000,000 (the “**2012B Bonds**”, and together with the 2012A Bonds, the “**Bonds**”), consisting of Current Interest Bonds that are Serial Bonds or Term Bonds or a combination thereof, dated as of such date, maturing on such dates in such years not later than January 1, 2043 and in such principal amounts and bearing interest at such rates, all as

determined by agreement of the Executive Director and/or the Chief Financial Officer of the Authority (collectively, the “**Delegates**”) prior to the award of the Bonds; provided that the true interest cost rate on the Bonds shall not exceed 6.00% per annum. The Delegates are hereby authorized to determine which of the 2003 Refunding Candidates shall be 2003 Refunded Bonds subject to their receipt of the advice of the Authority’s Financial Advisor, Brown Advisory, LLC (the “**Financial Advisor**”), that the Authority will have surpassed the standard of an aggregate net present value debt service savings, as determined by the Financial Advisor, of not less than two and one-half percent (2.5%) of the aggregate principal amount of the 2003 Refunded Bonds. The terms of any such issuance of Bonds shall comply with the terms of this Resolution, except that the date of the Bonds, their series designation and the initial interest payment date of the Bonds may be changed to reflect the timing of the issuance, any such changes to be approved by the Delegates.

*Authorization of Subsequent Issue of Revenue Bonds; Determination of 2005 Refunded Bonds.* Any subsequent issue undertaken pursuant to the parameters of this Resolution is authorized, including, but not limited to, the subsequent issuance of revenue bonds for the purpose of: (i) financing the future costs of certain Additional Facilities representing the unfunded portion of Five-Year Capital Plan (for fiscal years ending December 31, 2015 through 2016, inclusive); (ii) refunding the 2005 Refunding Candidates; and (iii) paying the costs and/or funding reserves associated with issuing such revenue bonds. Any subsequent issuance of revenue bonds for purposes set forth in (i) above is limited to a maximum aggregate principal amount of \$50,000,000; provided, however, in no circumstance shall any Bonds, including any subsequent issue of revenue bonds, issued pursuant to this Resolution for purposes of financing Additional Facilities be issued in excess of the maximum aggregate principal amount of \$150,000,000 as set forth in Section 2 above.

The Delegates, with the consent of the Budget and Finance Committee of the Authority, are hereby authorized to determine which of the 2005 Refunding Candidates shall be 2005 Refunded Bonds subject to their receipt of the advice of the Authority’s Financial Advisor, that the Authority will have surpassed the standard of an aggregate net present value debt service savings, as determined by the Financial Advisor, of not less than two and one-half percent (2.5%) of the aggregate principal amount of the 2005 Refunded Bonds. In no circumstance shall any Bonds, including any subsequent issue of revenue bonds, issued pursuant to this Resolution for purposes of refunding the 2005 Refunding Candidates be issued in excess of the maximum aggregate principal amount of \$80,000,000 as set forth in Section 2 above.

The Delegates, with the consent of the Budget and Finance Committee of the Authority, are also authorized to approve in form and substance any agreement, document or certificate necessary to consummate any future issuance of revenue bonds; such documents to include, but are not limited to, a bond purchase agreement, supplemental trust agreement, escrow deposit agreement, preliminary official statement and continuing disclosure agreement. The terms of any such subsequent issuance of revenue bonds shall comply with the terms of this Resolution, except that the date of the such revenue bonds, their series designation, the initial interest payment date and redemption provisions of such revenue bonds may be changed to reflect the timing of the issuance, any such changes to be approved by the Delegates.

*Redemption Provisions.* The Bonds shall be subject to optional redemption at such times, upon such terms and conditions, and at such prices, all as determined by the unanimous agreement of the Delegates prior to the award of the Bonds; provided that the Bonds shall be subject to redemption prior to maturity at the option of the Authority on a date not later than January 1, 2023 and at a redemption price not to exceed 102%; provided further, however, that if the Authority's Financial Advisor shall advise the Delegates that the incremental savings to be realized from the Authority's extending the period during which the Bonds are not subject to redemption at the option of the Authority or making all or any of the Bonds not subject to redemption at the option of the Authority outweigh the value of the call options that could otherwise apply with respect to such Bonds and the Delegates shall agree, then such Bonds (the Bonds with respect to which such determination shall be made that such incremental savings outweigh the value of the call options that could otherwise apply) shall not be subject to redemption, at the option of the Authority, for such extended period or periods or prior to their stated maturity, as the case may be. The Term Bonds shall have such Amortization Requirements (and corresponding mandatory sinking fund redemption requirements) as determined by the unanimous agreement of the Delegates prior to the award of the Bonds.

*Approval of Forms of Documents.* The forms, terms and provisions of the Supplemental Agreement, the Bond Purchase Agreement and the Continuing Disclosure Agreement are hereby approved in all respects, and the Authority Representatives (hereinafter defined) are each hereby authorized and directed to execute and deliver the Supplemental Agreement, the Bond Purchase Agreement and the Continuing Disclosure 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 or appropriate; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Authority.

*Purchase of Defeasance Obligations.* Any Authority Representative is hereby authorized to subscribe, cancel such subscription and resubscribe, without limitation, for United States Treasury State and Local Government Series, Time Deposit Securities and Demand Deposit Securities, and alternatively, if so advised by the Authority's Financial Advisor, to purchase and sell open market Defeasance Obligations, all for the purpose of funding the escrows for the Refunded Bonds. If any Authority Representative shall determine that the same shall improve the efficiency of the escrow funds created under the Supplemental Agreement, he is further authorized to enter into agreements and give instructions for the purchase of Defeasance Obligations for periods when moneys credited to said escrow funds would otherwise be uninvested. Any Authority Representative is further authorized to determine the particular Defeasance Obligations to be purchased and the form thereof and the terms of any related agreement with respect thereto that, in his judgment, will improve the efficiency of the Defeasance Obligations in defeasing the Refunded Bonds.

*Execution of the Bonds.* The Chairman or Vice Chairman and the Assistant Secretary are hereby authorized and directed to execute by manual or 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 Supplemental Agreement together with such changes, modifications and deletions as they, with the advice of Authority counsel, may deem necessary or appropriate and consistent with the Trust Agreement and the Supplemental

Agreement; such execution and delivery shall be conclusive evidence of the approval and authorization thereof by the Authority.

*Authorization of Delegates to Award the Bonds.* The Authority hereby authorizes the Delegates by unanimous agreement to award the Bonds to the Underwriters in the aggregate principal amount determined pursuant to Section 2 of this Resolution and at the interest rates determined pursuant to said Section 2 at a purchase price not less than 97% of their principal amount, with an underwriting discount of not greater than 1% of the principal amount of the Bonds, all as determined by the unanimous agreement of the Delegates, plus accrued interest, if any.

*Authentication and Delivery of the Bonds.* Upon their execution in the form and manner set forth in the 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 Supplemental Agreement, by the proper parties thereto, the Trustee shall cause the Bond Registrar to deliver the Bonds for the account of the Underwriters at The Depository Trust Company, New York, New York against payment therefor in accordance with and subject to the provisions of Sections 209 and 210 of the Trust Agreement.

*Offering Documents.* The form of Preliminary Official Statement is hereby approved and an Authority Representative is hereby authorized to approve the terms of and publish a Preliminary Official Statement describing the Bonds in substantially the same form as the Preliminary Official Statement presented to this meeting and deem “final” such Preliminary Official Statement for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended; and an Authority Representative is hereby authorized to execute an official statement (the “**Official Statement**”) in substantially the form of the deemed “final” Preliminary Official Statement, 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 Preliminary Official Statement, the Official Statement, the Trust Agreement, the Supplemental Agreement and the Escrow Deposit Agreement by the Underwriters in connection with the sale and marketing of the Bonds.

*Certain Appointments.* Pursuant to the Trust Agreement and the Supplemental Agreement, the Authority hereby makes and/or confirms the following appointments:

- (a) as Trustee, Paying Agent and Bond Registrar for the Bonds, The Bank of New York Mellon Trust Company, N.A., as Trustee to the Trust Agreement and the Supplemental Agreement; and
- (b) as Securities Depository for the Bonds, The Depository Trust Company, New York, New York.

*Application of the Proceeds of the Bonds.* The proceeds of the Bonds shall be deposited by an Authority Representative in accordance with the provisions of Sections 209 and 210 of the Trust Agreement as follows:

to the Trustee for deposit to the credit of special escrow fund, appropriately designated and which shall be a subaccount of the Debt Service Fund held under the Trust Agreement exclusively for the Refunded Bonds, such amount of proceeds of the 2012B Bonds which, together with other moneys deposited in such fund as provided in the Trust Agreement and with the interest that shall accrue on the Defeasance Obligations acquired pursuant to the Supplemental Agreement, shall be sufficient to defease and pay or redeem on their respective maturity or redemption dates the Refunded Bonds;

to the Trustee for deposit to the Debt Service Reserve Fund, such portion of the proceeds of the Bonds as determined by such Authority Representative to be necessary, but not greater than that amount required, in order that such amount, when added to the amounts, if any, deposited to the credit of the Debt Service Reserve Fund by the Authority from other funds available to it, will make the total amount held for the credit of the Debt Service Reserve Fund equal to the Debt Service Reserve Fund Requirement on account of the Bonds; and

to the Trustee for deposit to a special subaccount in the Construction Fund designated "The Series 2012A Construction Account," the balance of the proceeds of such 2012A Bonds; and

to the Trustee for deposit to a special subaccount in the Revenue Fund designated "The Series 2012B Costs of Issuance Account", the balance of the proceeds of such 2012B Bonds. Any excess balance remaining three (3) months after the issuance of the 2012B Bonds in the Series 2012B Costs of Issuance Account shall be transferred to the Debt Service Fund for the 2012B Bonds and be applied to pay the Interest Requirement and/or Principal Requirement next due on the 2012B Bonds.

*Authority Representatives.* The Chairman, Vice Chairman, Chairman 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.

*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 Supplemental Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement and the Official Statement. 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 amendments to the Authority's existing forward delivery agreements that may be necessary or desirable to reflect the circumstance of the issuance of the Bonds and the refunding of the Refunded Bonds. The Authority Representatives are each further authorized and directed to obtain the services of a financial institution with experience in calculating arbitrage yields and cash flows in connection with the refunding of

municipal securities to serve as verification agent for the refunding transaction authorized by this Resolution.

*Bond Insurance.* If deemed financially advantageous to the Authority in connection with the issuance of the Bonds, the Delegates are hereby authorized to purchase a policy of insurance guaranteeing the payment of the principal of and interest on part or all of the Bonds, to pay the premium for such policy from the proceeds of the Bonds and to execute such documents as may be necessary to effect the issuance of such policy. If applicable, the Bonds issued under this Resolution may include a statement of the terms of such insurance policy and the Authentication Certificate of the Trustee appearing on each Bond may include a statement confirming that the original or a copy of the insurance policy is on file with the Trustee.

*Delegates' Certificate.* The Delegates shall execute a Certificate evidencing the determinations made or other actions carried out by 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.

*Effective Date.* This Resolution shall take effect immediately upon its passage.

A motion to approve Resolution 12-29 was made by Commissioner Smith, seconded by Commissioner Murphy, and approved by a roll call vote of 11-0.



## **Resolution 12-29 Executive Summary Sheet**

**Resolution:** Authorizing the Authority to refund existing debt and issue bonds in connection with the financing of the Capital Improvement Plan.

**Committee:** Budget & Finance Committee

**Committee Date:** September 18, 2012

**Board Date:** September 18, 2012

**Purpose of Resolution:** In 2012, the Authority intends to issue new debt in connection with the financing of a portion of its Five-Year Capital Plan, as well as refund for significant debt service savings all or a portion of the outstanding callable 2003 Bonds in accordance with the thresholds of this resolution. This resolution identifies and authorizes the parameters of the transaction, documents and delegates necessary for the issuance of such debt.

**Background for Resolution:**

The Authority utilizes a combination of cash and debt to fund its capital improvement program. The Authority, in consultation with its Financial Advisor, has determined that it is in the best interest of the Authority to issue debt for the purposes of financing certain Additional Facilities constituting a portion of its Five-Year Capital Plan and to refund all or portions of the existing 2003 Bonds for savings.