

Series Resolution

Resolution No. 23 - 04

RESOLUTION SUPPLEMENTING RESOLUTION 02-4, AS PREVIOUSLY AMENDED AND SUPPLEMENTED, AUTHORIZING THE ISSUANCE OF COMMONWEALTH PORT FUND REVENUE BONDS IN CALENDAR YEAR 2023, GRANTING AUTHORITY TO THE EXECUTIVE DIRECTOR OF THE VIRGINIA PORT AUTHORITY TO APPROVE THE ISSUANCE OF SUCH BONDS AND RELATED MATTERS

WHEREAS, the Virginia Port Authority (the “Authority”) acting by its Board of Commissioners (the “Board”) adopted Resolution No. 02-4 on May 28, 2002 (as previously amended and supplemented, the “Bond Resolution”), which in Section 2.09 permits the issuance of bonds of the Authority for the purpose of, among other things, providing funds for various improvements to Norfolk International Terminals owned and operated by the Authority (“NIT”), including (i) certain costs associated with the acquisition and installation of equipment expected to consist of low height ship to shore cranes, additional stacking cranes and replacement parts, together with improvements that will result in an enhanced container stack area, extension to the wharf area and associated upgrades to the stack yard facilities, docks, and other structures, and (ii) the payment of certain expenses incurred in connection with such financing and costs of issuance in connection with respect to the bonds (the “Series 2023 Project”).

WHEREAS, the Authority intends to issue Bonds under the Bond Resolution pursuant to the Series Resolution adopted on the date hereof, which are collectively referred to as the “Bonds.” The Bond Resolution is to be designated as the “Virginia Port Authority Commonwealth Port Fund Revenue Bonds, Series 2023A” (the “Series 2023A Bonds”), which Series 2023A Bonds may be issued in one or more series throughout calendar year 2023 and shall be appropriately designated to differentiate one series from another. The Series 2023A Bonds shall be issued as tax-exempt or taxable issue(s) subject to certain Financing Conditions, herein defined. The aggregate par principal amount of the Series 2023A Bond shall not exceed \$166,000,000 except as hereinafter described in Section 1(i) of this Series Resolution.

WHEREAS, in Item 464 of the 2022 Appropriations Act, Chapter 2, Special Session I, Virginia Acts of Assembly (H.B. 30), the General Assembly of the Commonwealth of Virginia has authorized the Authority to issue the Series 2023A Bonds (the “General Assembly Authorization”).

WHEREAS, the Board also hereby authorizes the Authority to obtain Treasury Board approval of the Series 2023A Bonds and the associated plan of finance.

WHEREAS, the Board has found and determined that the issuance and sale of the Series 2023A Bonds on the terms contemplated hereby are in conformity with the purposes of the Authority set forth in Title 62.1, Chapter 10 of the Code of Virginia

inclusive of Sections 62.1-128 to 62.1-147.2 thereof (the “Act”) and are in the public interest and otherwise beneficial to the Commonwealth of Virginia.

WHEREAS, Section 2.09 of the Bond Resolution contemplates that in a Series Resolution supplementing the Bond Resolution the Board will authorize the issuance of its bonds, fix the amount and the details thereof. The definition of “Series Resolution” in the Bond Resolution states that if the Board shall delegate to the Finance and Audit Committee of the Board or the Executive Director the power to determine specifically the matters generally authorized by a Series Resolution of the Board, the resolution of the Finance and Audit Committee, or one or more certificates of the Executive Director (the “Officer’s Certificate”), as the case may be, in furtherance of such Series Resolution and shall be deemed to be part of the Series Resolution.

WHEREAS, the Board has determined that it is necessary to delegate to the Executive Director the authority to approve the form and content of any preliminary official statement, final official statement, continuing disclosure agreement, bond purchase agreement and any other documents deemed necessary by the Authority’s bond counsel to consummate the issuance of the Series 2023A Bonds (collectively, the “Financing Documents”). As the actual terms of the Series 2023A Bonds and the identity of the Bonds to be issued cannot be determined until the time the Authority enters the market, the Board has determined that it is necessary to delegate to the Executive Director the power to approve the issuance of the Series 2023A Bonds, and the details thereof, subject to any conditions herein set forth, by the execution and delivery of one or more certificates of the Executive Director which shall be deemed to be part of this Series Resolution.

NOW THEREFORE, BE IT RESOLVED by the Board of Commissioners of the Virginia Port Authority, as follows:

Section 1. Authorization of Bonds. (a) The Authority is authorized to issue the Series 2023A Bonds on a tax-exempt or taxable basis, in one or more series, throughout calendar year 2023 pursuant to Section 2.09 of the Bond Resolution, as determined by the Executive Director, subject to the approval of the Treasury Board, for the purpose of providing funds, together with such other funds as may be available therefor from the Commonwealth of Virginia or otherwise, for financing all or a part of one or more series of the Series 2023A Bonds, including the payment of costs of issuance of the Series 2023A Bonds; and as necessary, funding reserves for the payment of principal of and interest on the Series 2023A Bonds, subject, however, to the following conditions (the “Financing Conditions”):

(i) The aggregate principal amount of the Series 2023A Bonds shall not exceed \$166,000,000, together with any “net original issue premium” allowable in accordance with Section 2.2-5002.1 of the Virginia Code, in accordance and consistent with the General Assembly Authorization;

(ii) If issued in more than one series, the Series 2023A Bonds shall be appropriately designated to differentiate one series from another;

(iii) The final maturity of any series of the Series 2023A Bonds shall be not later than December 31, 2048; and

(iv) The true interest cost on the Series 2023A Bonds shall not exceed 5.75% if such Series 2023A Bonds are issued on a tax-exempt fixed rate basis. If any portion of the Series 2023A Bonds are issued on a taxable fixed rate basis, the true interest cost on such portion of the Series 2023A Bonds shall not exceed 6.75%.

(b) The Series 2023A Bonds will be issued in fully registered form and may be sold in a public offering or a private placement. Any such issue of the Series 2023A Bonds offered in a public sale shall be issued in the name of Cede & Co., a nominee of the Depository Trust Company, New York, New York (“DTC”), and immobilized in the custody of DTC or otherwise as may be permitted by DTC’s rules. One Series 2023A Bond in each series will be issued for the original principal amount of each maturity. Unless any such issue of the Series 2023A Bonds is offered in a private placement, beneficial owners will not receive physical delivery of the Series 2023A Bonds. Unless any such issue of the Series 2023A Bonds is offered in a private placement, individual purchases of the Series 2023A Bonds may be made in book-entry form only in original principal amounts of \$5,000 and integral multiples of \$5,000.

Unless any such issue of the Series 2023A Bonds are offered in a private placement, payments of the principal of and premium, if any, and interest on the Series 2023A Bonds will be made to DTC or its nominee as registered owner of the Series 2023A Bonds on the applicable payment date.

So long as Cede & Co., or its successor, as nominee, is the registered owner of the Series 2023A Bonds, references in the Bond Resolution or this Series Resolution to the Holders of the Series 2023A Bonds shall mean Cede & Co. and shall not mean the beneficial owners of the Series 2023A Bonds.

Replacement Series 2023A Bonds (the “Replacement Bonds”) will be issued directly to beneficial owners of Series 2023A Bonds rather than to DTC, or its nominee, but only in the event that:

(1) DTC determines not to continue to act as securities depository for the Series 2023A Bonds;

(2) the Authority has advised DTC of its determination that DTC is incapable of discharging its duties;

(3) the Authority has determined that it is in the best interests of the beneficial owners of the Series 2023A Bonds not to continue the book-entry system of transfer; or

(4) the Series 2023A Bonds being replaced were originally issued in a private placement.

Upon occurrence of the events described in clause (1) or (2), the Authority will attempt to locate another qualified securities depository. If DTC makes the determination described in clause (1) and the Authority fails to locate another qualified securities depository to replace DTC, the Authority will execute, and the Bond Registrar will authenticate and deliver to the Participants (as defined in DTC's rules), the Replacement Bonds to which such Participants are entitled. In the event the Authority makes the determination described in clause (2) or (3) (the Bond Registrar has no obligation to make any investigation to determine the occurrence of any events that would permit the Authority to make any such determination), and if the determination under clause (2) has also been made, and the Authority has failed to locate another qualified securities depository and has made provisions to notify the beneficial owners of the Series 2023A Bonds by mailing an appropriate notice to DTC, the Authority will execute, and the Bond Registrar will authenticate and deliver to the Participants, the appropriate Replacement Bonds to which Participants are entitled. The Bond Registrar is entitled to rely on the records provided by DTC as to the Participants entitled to receive Replacement Bonds.

The Series 2023A Bonds will be issued substantially in the form set forth in Section 2.02 of the Bond Resolution, with appropriate variations, omissions and insertions as may be permitted or required by the Bond Resolution, this Series Resolution and any Officer's Certificate of the Executive Director deemed a part of this Series Resolution. There may be endorsed on the Series 2023A Bonds such legend or text as may be necessary or appropriate to conform to any applicable rules and regulations of any governmental authority or any usage or requirement of law.

(c) Subject to the Financing Conditions, the Series 2023A Bonds shall be issued in such principal amount; shall be dated a date that is on or before the date of their delivery; shall be Current Interest Bonds, Serial Bonds and/or Term Bonds or Variable Rate Bonds as defined in the Bond Resolution; shall mature, subject to mandatory sinking fund redemption with such Amortization Requirements and to the right of prior redemption in accordance with the Financing Conditions and Section 2 hereof; and shall bear interest payable on January 1 and July 1 in each year commencing on such date, at such rates per annum, as may be determined by a certificate of the Executive Director delivered at the Closing.

(d) If any issue of the Series 2023A Bonds are to be offered in a public offering, the Authority delegates to the Executive Director the authority to appoint the underwriting syndicate for such series of the Series 2023A Bonds to be offered at public sale, and to designate the senior manager and co-senior manager, if any, of such underwriting syndicate.

Section 2. Optional Redemption. The Series 2023A Bonds may be subject to the right of prior redemption at the option of the Authority upon such terms as the Executive Director shall determine with the advice of the Authority's financial advisor.

Section 3. Terms of Purchase; Approval of Bond Purchase Agreement. The Executive Director is hereby authorized, subject to the prior approval of the Treasury Board, if the Authority's Financial Advisor shall so recommend, to accept an offer of the underwriters in a public offering or an offer of an institutional buyer in a private placement, in the form of the Bond Purchase Agreement, to purchase all of any issue of the Series 2023A Bonds at the price stated therein. Multiple Bond Purchase Agreements may be executed by the Executive Director to consummate the sale of more than one issue of Series 2023A Bonds. The Executive Director's execution and delivery of the Bond Purchase Agreement(s) shall constitute conclusive evidence of his acceptance of the purchase price of an issue of Series 2023A Bonds and his approval of the form and content of any Bond Purchase Agreement.

Section 4. Approval of Official Statement. In any public offering of an issue of Series 2023A Bonds, the form and content of the Preliminary Official Statement shall be approved by the Executive Director. Subject to the approval of its form and content by the Executive Director, the use and distribution by the underwriters selected by the Executive Director of the Preliminary Official Statement in connection with the offering of the Series 2023A Bonds, prior to the availability of the Official Statement, are hereby authorized. The Executive Director is hereby authorized to deem the Preliminary Official Statement final for purposes of Rule 15c2-12 of the Securities and Exchange Commission, and the distribution of such Preliminary Official Statement shall be conclusive evidence that the Authority has deemed such Preliminary Official Statement final. The Chairman or Vice-Chairman of the Board and the Executive Director of the Authority are hereby authorized and directed to execute and deliver to the underwriters for their use and distribution in making a public offering of an issue of the Series 2023A Bonds (but only upon the terms and conditions set forth herein and in the Bond Purchase Agreement applicable thereto) a final Official Statement, together with any amendment or supplement to such final Official Statement as may be necessary to comply with the Bond Purchase Agreement, which in the case of such final Official Statement shall be substantially in the form of the Preliminary Official Statement approved by the Executive Director, with such changes, insertions and omissions as the Chairman or Vice-Chairman of the Board and the Executive Director of the Authority may approve, and which in the case of any such amendment or supplement shall be in such form as the Chairman or Vice-Chairman of the Board and the Executive Director of the Authority may approve. The execution and delivery by the Chairman or Vice-Chairman and the Executive Director of the final Official Statement or any such amendment or supplement thereto shall be conclusive evidence that the Authority has approved any such changes, insertions and omissions, amendment or supplement, as the case may be.

Section 5. Approval of Other Financing Documents. The Executive Director shall approve the form and content of the other Financing Documents and is hereby

authorized to execute and deliver the other Financing Documents, his execution of such Financing Documents to be conclusive evidence of such approval.

Section 6. Execution of the Bonds. The Series 2023A Bonds shall be executed with the original or facsimile signature of the Executive Director and the original signature of the Secretary of the Authority, and the seal of the Authority shall be impressed, or a facsimile of the seal of the Authority shall be imprinted, on the Series 2023A Bonds. The Series 2023A Bonds shall be authenticated by the Bond Registrar and shall be delivered by the Trustee to or for the account of the underwriters in the case of a public offering or to or for the account of the institutional buyer in the case of a private placement upon receipt of the purchase price set forth in the Bond Purchase Agreement accepted by the Executive Director.

Section 7. Application of Proceeds. The proceeds of the Series 2023A Bonds shall be transferred by the Trustee to the Authority upon the submission of a requisition of the Authority signed by an authorized representative and applied by the Authority, together with other available funds, for use by the Authority for the payment of Project costs and to pay costs of issuance of the Series 2023A Bonds.

Section 8. Tax Covenant. If a tax-exempt issuance of any series of the Series 2023A Bonds is pursued, the Authority covenants that it will comply with the provisions of the Internal Revenue Code of 1986, as amended, so that interest on the Series 2023A Bonds will remain exempt from existing federal income taxes to which they are subject on the date of the issuance of such Series 2023A Bonds.

Section 9. Treasury Board Approval. The Authority requests the Treasury Board of the Commonwealth to approve the terms and conditions and structure of each issue of the Series 2023A Bonds in accordance with the provisions of Section 2.2-2416.5 and 2.2-2416.7 of the Code of Virginia of 1950, as amended. After reasonable notice duly given to the Chairman and Vice-Chairman of the Board, and the Chairman of the Finance and Audit Committee, the Authority is authorized and directed to make application(s) for such approval(s) to the Treasury Board and to furnish such materials and do such things as may be required to obtain such approval(s).

Section 10. Reimbursement. On January 10, 2023, the Authority adopted Resolution 23-01 regarding its intent to reimburse itself for certain qualified expenditures with proceeds from the Series 2023A Bonds (the "Prior Reimbursement Bond Resolution"). Those statements and facts are hereby ratified and affirmed. As set forth in the Prior Reimbursement Bond Resolution, officers of the Authority have represented to the Board that it may be necessary to proceed with the establishment of certain contracts and other actions related to the acquisition, construction, rehabilitation and equipping of the Series 2023A Project. The Board hereby ratifies and affirms that the officers and staff of the Authority may proceed with such plans and enter into contracts, advance monies and take such other steps as it may deem necessary and appropriate therefor. The Authority hereby again declares its intention to be reimbursed from the proceeds of the Series 2023A Bonds for all qualified costs expended by it prior to the

issuance of the Series 2023A Bonds within sixty (60) days prior to the date the Prior Reimbursement Bond Resolution was adopted with respect to the planning and the acquisition, construction, rehabilitation and equipping of the Series 2023A Project (the "Expenditures"). The Authority reasonably expects to reimburse itself with up to \$24,395,998 in proceeds of the Series 2023A Bonds for Series 2023A Project costs. The declaration and expectations stated in this Section 10 are intended to be further evidence of official intent within the meaning of Treasury Regulation Section 1.150-2 promulgated under the Internal Revenue Code of 1986, as amended. Each Expenditure will be, unless otherwise approved by Bond Counsel, (a) of a type properly chargeable to a capital account under general federal income tax principles (determined in each case as of the date of such Expenditure), (b) a cost of issuance with respect to the Series 2023A Bonds or (c) a nonrecurring item that is not customarily payable from current revenues. The Authority intends to make a reimbursement allocation, which is a written allocation by the Authority that evidences the Authority's use of proceeds of the Series 2023A Bonds to reimburse the Expenditures no later than eighteen (18) months after the later of the date on which the Expenditures are paid or the Series 2023A Project is placed in service or abandoned, but in no event more than three (3) years after the date on which the Expenditure is paid. The Authority recognizes that exceptions are available for certain "preliminary expenditures," cost of issuance, certain de minimus amounts, expenditures by "small issuers" (based on the year of issuance and not the year of expenditure), and expenditures for construction projects of at least five (5) years.

Section 11. Ratification; Further Action. The actions previously taken by the officers and staff of the Authority are hereby ratified and confirmed. The officers and staff of the Authority are hereby authorized to take such actions, and deliver such additional documents and certificates, as they may in their discretion deem necessary or proper in connection with the issuance of the Series 2023A Bonds.

Section 12. Other Definitions. All terms not otherwise defined herein shall have the meanings given to them in the Bond Resolution.

Section 13. Series Resolution. This Resolution supplements the Bond Resolution and constitutes, together with the Officer's Certificates, a Series Resolution as defined therein.

Section 14. Effective Date; Termination of Effectiveness. This Series Resolution shall take effect immediately upon its adoption. If no Series 2023A Bonds are issued by the Authority in accordance with the terms hereof prior to midnight on March 31, 2024, this Resolution shall expire and terminate.

PASSED AND ADOPTED this 13th day of March, 2023.

Aubrey L. Layne, Board Chair

Attest:

Ryanne A. Shields, Secretary