


# M E M O

## *Alameda Corridor Transportation Authority*

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To: Governing Board  
Meeting Date: December 14, 2023  
From: Kevin L. Scott, Chief Executive Officer   
Subject: APPROVE Certain Documents for the Issuance of 2024 Revenue Refunding Bonds and a Tender of Certain Previously Issued bonds

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### **Recommendation:**

Adopt the Resolution of the Governing Board of the Alameda Corridor Transportation Authority.

This Resolution:

1. Approves and authorizes the issuance and sale of Alameda Corridor Transportation Authority Tax-Exempt Senior Lien Revenue Refunding Bonds, Series 2024A (the "Series 2024A Bonds"), Taxable Senior Lien Revenue Refunding Bonds, Series 2024B (the "Series 2024B Bonds"), Tax-Exempt Subordinate Lien Revenue Refunding Bonds, Series 2024C (the "Series 2024C Bonds,") and Taxable Subordinate Lien Revenue Refunding Bonds, Series 2024D (the "Series 2024D Bonds," and collectively, the "Series 2024 Bonds;"); and
2. Authorizes a cash tender offer or bond exchange to holders of certain of ACTA's taxable and tax-exempt senior lien and subordinate lien revenue bonds and revenue refunding bonds; and
3. Authorizes (i) the execution and delivery of the Fifteenth Supplemental Trust Indenture providing the terms of the Series 2024A Bonds; (ii) the execution and delivery of the Sixteenth Supplemental Trust Indenture providing the terms of the Series 2024B Bonds; (iii) the execution and delivery of the Seventeenth Supplemental Trust Indenture providing the terms of the Series 2024C Bonds; (iv) the execution and delivery of the Eighteenth Supplemental Trust Indenture providing the terms of the Series 2024D Bonds; (v) the preparation and distribution of a Preliminary Official Statement and a Final Official Statement relating to the sale of the Series 2024 Bonds; (vi) the execution and delivery of one or more Bond Purchase Agreements for the Series 2024 Bonds, one or more Continuing Disclosure Certificates related to the Series 2024 Bonds, and one or more contracts for credit enhancement relating to the Series 2024 Bonds; (vii) execution and delivery of the Dealer Manager Agreement and certain related documents; and (viii) the execution and delivery of related documents and notices; and
4. Authorizes the Chief Executive Officer or the Chief Financial Officer, or their respective designees, acting individually, to take such other actions as are necessary or desirable in connection with the tender and exchange offers and the issuance of the Series 2024 Bonds, including payment of Costs of Issuance.

**Discussion:**

ACTA collects Use Fees and Charges for waterborne containers that get transported to and from Southern California by rail, which is ACTA's revenue (Revenue). Revenue is used to pay debt service and operations and administration costs. If Revenue is less than debt service (shortfall), the Port of Los Angeles and Port of Long Beach (Ports) are responsible for paying Contingent Port Obligations of up to 40% of debt service and related financing fees.

A previous bond refinancing, the 2022 Transaction, achieved ACTA's short-term goals for 2022-2026. However, current revenue projections and debt service schedule necessitate additional solutions for anticipated shortfalls in Bond Years ("BY") 2026-2037.

The plan of finance developed in 2022 was a two phased approach, with the first transaction in 2022 and a second transaction planned for 2026 to address shortfalls projections. The 2022 transaction was successful in solving ACTA's near term shortfalls and resulted in shortfalls that decreased from \$1.35 billion to under \$800 million, saving ACTA \$568 million through BY 2037 and removing all shortfalls through FY 2026 (BY 2025). Given the current revenue projections, ACTA is not forecasted to have adequate annual revenues to fund debt service payments due in Bond Years 2026-2037, resulting in annual shortfalls that need to be addressed. The Contingent Port Obligations of 40% of ACTA debt service and financing fees are not sufficient to cover projected shortfall levels in BY 2026 through BY 2029.

Current market conditions suggest that a programmatic approach to reducing risk over the next two years is warranted. Staff proposes that ACTA refund portions of its debt in FY2024 and FY2025, should market conditions continue to be advantageous for it to cost effectively refinance. This multi-year approach will reduce the risk of interest rates increasing and of not being able to sell all the bonds needed in the anticipated large financing in 2026. As the majority of ACTA's debt is non-callable, an Invitation to Tender or Exchange to existing bondholders is the lowest cost method available to restructure outstanding debt service.

The proposed 2024 transaction will be part of a multi-year financing strategy, expected to be completed in 2026, to address the projected shortfalls through Bond Year 2037. With regard to 2024, ACTA staff proposes to issue the following:

- Series 2024A Bonds to fund the purchase of tendered Series 1999A Bonds;
- Series 2024B Bonds to fund the purchase of tendered Series 1999C Bonds and to prepay, redeem or defease to their redemption date or maturity any or all outstanding Series 1999C Bonds;
- Series 2024C Bonds to fund the purchase of tendered Series 2004A Bonds;
- Series 2024D Bonds to fund the purchase of tendered Series 2004B Bonds and to prepay, redeem or defease to their redemption date or maturity any or all maturities of the outstanding Series 2004B Bonds;

Costs of the transaction such as, but not limited to, insurance, transaction fees, information and tender agent fees, rating agency fees, bond, tax and disclosure counsel, financial advisory fees, offering document preparation and closing will be funded from proceeds of the transaction. As an example, an issuance the Series 2024 is expected

to result in transaction costs of approximately \$2.5 million excluding bond insurance and surety fees, tender/exchange fees and underwriting charges and expenses. See Transmittal 1, Exhibit A

Principal 2024 Bond Transaction Documents

There are a number of transaction documents related to the Series 2024 Bond financings which are available online at ACTA's website in substantially final form for consideration and approval by ACTA's Governing Board as follows:

- Governing Board Resolution for the Series 2024 Bonds (Transmittal 1): Approves and authorizes the issuance and sale of the Series 2024 Bonds in an aggregate principal amount not to exceed \$500 million; Approves and authorizes the tender and exchange offer with respect to ACTA's senior lien and subordinate lien taxable and tax-exempt bonds prepayment, redemption or defeasance to their redemption date or maturity any or all maturities with respect to ACTA's and subordinate lien taxable and tax-exempt bonds; Approves the forms of the primary financing documents and delegates to the CEO and CFO, or their designees, the ability to execute and deliver such documents with such changes as the CEO and CFO, or their designees, shall require or approve, and such other ancillary documents necessary or desirable in connection with the transaction; Authorizes municipal bond insurance and debt service reserve surety policies for the Series 2024 Bonds; Authorizes (a) paying the purchase price for tendered senior and subordinate lien bonds; Sets an outside limit for the true interest cost of the Series 2024 Bonds to 8.5% and a maximum underwriters' discount of 0.7% of the aggregate par amount of the Series 2024 Bonds. The maximum Dealer Manager fee will not exceed 0.4% of the aggregate par amount of the bonds that are offered for tender and accepted by the Authority, plus out-of-pocket expenses.
- 2024 Dealer Manager Agreement (Exhibit B-1): Provides for the terms, conditions and compensation for the Dealer Managers, JP Morgan and RBC, in the consummation of the tender of outstanding bonds.
- 15th Supplemental Trust Indenture (Exhibit C-1): Authorizes the issuance of ACTA's Series 2024A Bonds which will be senior lien bonds under ACTA's existing Master Trust Indenture; the Series 2024A Bonds are expected to pay the purchase price for tendered Series 1999A Bonds, if any. The 15th Supplement contemplates that, subject to market conditions, bond insurance and a debt service reserve surety may be provided by a bond insurer.
- 16th Supplemental Trust Indenture (Exhibit C-2): Authorizes the issuance of ACTA's Series 2024B Bonds which will be subordinate lien bonds under ACTA's existing Master Trust Indenture; the Series 2024B Bonds are expected to be used to pay the purchase price for tendered Series 1999C Bonds and to prepay, redeem or defease to their redemption date or maturity any or all outstanding Series 1999C Bonds, if any. The 16th Supplement also contemplates that, subject to market conditions, bond insurance and a debt service reserve surety may be provided by a bond insurer.

- 17th Supplemental Trust Indenture (Exhibit C-3): Authorizes the issuance of ACTA’s Series 2024C Bonds which will be first subordinate lien bonds under ACTA’s existing Master Trust Indenture; the Series 2024C Bonds are expected to be used to pay the purchase price for the tendered Series 2004A Bonds, if any. The 17th Supplement also contemplates that, subject to market conditions, bond insurance and a debt service reserve surety may be provided by a bond insurer.
- 18th Supplemental Trust Indenture (Exhibit C-4): Authorizes the issuance of ACTA’s Series 2024D Bonds which will be first subordinate lien bonds under ACTA’s existing Master Trust Indenture; the Series 2024D Bonds are expected to be used to pay the purchase price for the tendered Series 2004B Bonds and to prepay, redeem or defease to their redemption date or maturity any or all outstanding Series 2004B Bonds, if any. The 18th Supplement also contemplates that, subject to market conditions, bond insurance and a debt service reserve surety may be provided by a bond insurer.
- 2024 Bond Purchase Agreement - Senior Lien (Exhibit D-1): Provide for the sale and distribution of the Series 2024 Senior Lien Bonds by the underwriters designated therein; Designates J.P. Morgan Securities, LLC as lead underwriter.
- 2024 Bond Purchase Agreement – Subordinate Lien (Exhibit D-2): Provide for the sale and distribution of the Series 2024 Subordinate Lien Bonds by the underwriters designated therein; Designates J.P. Morgan Securities, LLC as lead underwriter.
- 2024 Preliminary Official Statement (Exhibits E): Discloses to investors the terms of the 2024 Bonds and other material information concerning ACTA’s Bonds and the Alameda Corridor Project, including the Ports’ and Railroads’ obligations under the Use and Operating Agreement and other relevant documents.
- Escrow Agreement (Exhibit F): Provides for the establishment and funding of escrow accounts for the purpose of defeasing the applicable Bonds, if needed. Requires the execution of escrow purchases by the selected escrow bidding agent and the delivery of verification reports by an independent certified public accountant verifying that the amounts deposited in the escrow accounts (and earnings thereon) will be sufficient to defease the applicable bonds upon redemption or maturity, as applicable.
- Continuing Disclosure Certificates (Exhibit G): Provides that ACTA, and each Port, will provide certain financial and operating information to bondholders annually in accordance with SEC Rule 15c2-12. Similar agreements will be entered into by BNSF and UP.

### Schedule

By the December 14, 2024 meeting of ACTA’s Governing Board, the Harbor Commissions of each Port will have considered approval of Port Resolution, Letter of Representation, and Continuing Disclosure Certificate in connection with the restructuring transaction. ACTA management and its consultants have met with rating agencies. Subject to approval of the Resolution, they will negotiate terms for bond insurance and a debt service reserve fund surety, if cost effective and take other actions set forth in the Resolution with respect to the offering and sale of the Series 2024 Bonds. The tender and exchange offer is scheduled to occur in early January through mid-January 2024. The Series 2024 Bond sale is currently scheduled for the week of January 17, with closing in mid-February 2024.

**Budget Impact:**

No budget appropriation is necessary at this time.

**Co-General Counsel Review:**

Subject to final completion of the documents as authorized in the Resolution, ACTA's Co-General Counsel has reviewed and approved as to form the proposed Resolution, the Dealer Manager Agreement, Bond Purchase Agreements, and Continuing Disclosure Certificates.

**Transmittals:**

## Transmittal 1: Board Resolution

- Exhibit A: Good Faith Estimate
- Exhibit B-1: Form of Dealer Manager Agreement
- Exhibit B-2: Invitation to Tender Bonds
- Exhibit C-1: Form of 15th Supplemental Trust Indenture
- Exhibit C-2: Form of 16th Supplemental Trust Indenture
- Exhibit C-3: Form of 17th Supplemental Trust Indenture
- Exhibit C-4: Form of 18th Supplemental Trust Indenture
- Exhibit D-1: Form of Bond Purchase Agreement (Senior Lien)
- Exhibit D-2: Form of Bond Purchase Agreement (Subordinate Lien)
- Exhibit E: Form of Preliminary Official Statement
- Exhibit F: Form of Escrow Agreement
- Exhibit G: Form of Continuing Disclosure Certificate