



Legislation Details (With Text)

File #: 23-0554 **Version:** 1 **Name:** Resolution approving loans for Phases II - IV of Flood Mitigation Project
Type: Resolution **Status:** Adopted
File created: 4/10/2023 **In control:** Finance
On agenda: 5/3/2023 **Final action:** 5/3/2023

Title: Dept/ Agency: Finance
Action: () Ratifying (X) Authorizing () Amending
Purpose: Approving Loan and Escrow Agreements for Joint Meeting Flood Mitigation Project Phases II through IV.
Amount to be Financed: \$7,755,000.00
Source of Appropriation: New Jersey Infrastructure Bank (NJIB)
Project Information:
(Description/ Project No./Amount Appropriated/Ordinance No.)
RESOLUTION OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, DETERMINING THE FORM AND OTHER DETAILS OF ITS PHASE II, PHASE III, AND PHASE IV NOTES, EACH ENTITLED "NOTE RELATING TO THE WATER BANK CONSTRUCTION FINANCING PROGRAM OF THE NEW JERSEY INFRASTRUCTURE BANK", TO BE ISSUED IN THE PRINCIPAL AMOUNT OF UP TO \$1,365,000.00, \$5,455,000.00 AND \$935,000.00, RESPECTIVELY, AND PROVIDING FOR THE ISSUANCE AND SALE OF SUCH NOTES TO THE NEW JERSEY INFRASTRUCTURE BANK, AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH NOTES BY THE CITY OF NEWARK IN FAVOR OF THE NEW JERSEY INFRASTRUCTURE BANK, ALL PURSUANT TO THE NEW JERSEY INFRASTRUCTURE BANK WATER BANK CONSTRUCTION FINANCING PROGRAM.
Additional Information:
Resolution must be adopted by no less than a majority of the full membership of the Municipal Council.

Sponsors: Council of the Whole

Indexes:

Code sections:

Date	Ver.	Action By	Action	Result
5/3/2023	1	Municipal Council	Adopt	Pass

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Additional Information:

Resolution must be adopted by no less than a majority of the full membership of the Municipal Council.

WHEREAS, the City of Newark (the “Local Unit”), in the County of Essex, State of New Jersey (the “State”), is a participant in the Joint Meeting of Essex and Union Counties, constituting a joint meeting of various municipalities located in the Counties of Essex and Union in the State (the “Joint Meeting”), which Joint Meeting is organized pursuant to N.J.S.A. 40:63-68 et seq., as a public body corporate and politic, duly created and validly existing pursuant to the laws of the State; and

WHEREAS, the Joint Meeting is not statutorily authorized to incur debt obligations for any purpose, including, without limitation, in order to finance any capital improvements thereof and, therefore, any capital improvements that are undertaken by the Joint Meeting must be financed by its member municipalities and other participating municipalities, including, without limitation, the Local Unit, through the incurrence of debt thereby or otherwise; and

WHEREAS, the Joint Meeting has determined that there exists a need to, as applicable, acquire, construct, renovate or install a project of the Joint Meeting consisting of (a) the unfunded portion of Phase II of the Flood Mitigation Facilities Project (Co-Generation Upgrade) consisting of: (i) upgrades to the existing Co-Generation Facility to power an Effluent Pumping Station, two storm water pumping stations, and the Sludge Dewatering Facility, (ii) the acquisition and installation of two engine generator sets and associated equipment including all required electrical and instrumentational connections to integrate the new engines into the existing systems, (iii) the acquisition and installation of digester gas and natural gas piping to the new engines, (iv) construction of a new substation at the Sludge Dewatering Facility, and (v) the installation of medium voltage connections to the Co-Generation grid (“Phase II(b)”); (b) Phase III of the Flood Mitigation Facilities Project (Main Treatment Plant Walls) consisting of, but not limited to, the construction of reinforced concrete flood protection walls around the Main Treatment Plant site including, but not limited to, the installation of four (4) flood protection swing gates, the demolition of the existing guard house and the construction of a new guard house, the construction of five (5) storm sewer isolation chambers with sluice gates and electric actuators, the realignment and repaving of various treatment plant roadways, the construction of a new emergency access roadway, the relocation and protection of existing utilities, and associated grading and site restoration (“Phase III”); and (c) Phase IV of the Flood Mitigation Facilities Project (Storm water Pumping Station) consisting of the rehabilitation of the existing Army Corps of Engineers (ACOE) Storm water Pumping Station including the removal of existing equipment, modifications to the existing pumping station structure, installation of three (3) new storm water pumps and discharge piping, replacement of two (2) existing sluice gates, installation of two (2) new sluice gates, modifications to the existing storm water piping influent to the pumping station, replacement of storm water inlet gratings, installation of a new seal water service to the pumping station, installation of new electrical power to the pumping station, and site restoration (“Phase IV” and together with Phase II(b) and Phase III, shall be collectively referred herein to as the “Joint Meeting Project”); and

WHEREAS, it is the desire of the Local Unit to obtain financing for its allocable share of Phases II, III and IV of the Joint Meeting Project (such allocable share being referred to herein as the

“Project”) through participation in the environmental infrastructure financing program (the “New Jersey Water Bank”) of the New Jersey Infrastructure Bank (the “I-Bank”); and

WHEREAS, the Local Unit has determined to temporarily finance, as applicable, the acquisition, construction, renovation or installation of the Project prior to long-term bond financing through the New Jersey Water Bank, and to undertake such temporary financing with the proceeds of short-term loans to be made by the I-Bank (the “Construction Loan(s)”) to the Local Unit, pursuant to the Water Bank Construction Financing Program of the I-Bank (the “Construction Financing Program”);

WHEREAS, the Local Unit adopted Bond Ordinance 6PSF-a on August 19, 2020, which appropriated and authorized amounts necessary to cover costs of the Project for Phases I and II; and

WHEREAS, on January 18, 2022, the Local Unit financed its allocable share of Phase II of the Project (“Phase II(a) of the Project”) in the amount of \$660,000.00 through the I-Bank (the “2022 Note”); and

WHEREAS, the Local Unit adopted bond ordinance 6PSF-c on September 8, 2022, which appropriated and authorized amounts necessary to cover costs of the Project for Phases III; and

WHEREAS, due to inflation and increases in the costs of materials, supplies and equipment, primarily caused by the COVID-19 pandemic, the estimated costs of the Joint Meeting Project, which were originally estimated in 2017, have increased considerably over the past six (6) years; and

WHEREAS, the Local Unit adopted Bond Ordinance 6PSF-h on March 15, 2023, which appropriated and authorized amounts necessary to cover the increased costs of Phases II and III and the costs of Phases IV, V and VI of the Project; and

WHEREAS, the Local Unit now desires to cancel the 2022 Note, which will be replaced with the Phase II Note (as hereinafter defined) to finance the costs of Phase II of the Project; and

WHEREAS, the Local Unit will also issue the Phase III Note (as hereinafter defined) to finance the costs of Phase III of the Project; and

WHEREAS, the Local Unit will also issue the Phase IV Note (as hereinafter defined) to finance the costs of Phase IV of the Project; and

WHEREAS, the United States Federal Emergency Management Agency (“FEMA”) has approved, or prior to the issuance of the respective Notes (as hereinafter defined) will approve, the scope of each phase of the Project and, consequently, has agreed to fund up to 90% of the costs of planning and constructing the Project; and

WHEREAS, after receipt of the FEMA reimbursements, the Local Unit will finance the remaining approximately 10% percent of the costs of each phase of the Project via (i) the issuance of long term bonds, (ii) the payment of cash, or (iii) a combination thereof; and

WHEREAS, in order to: (i) evidence and secure the repayment obligation of the Local Unit to the I-Bank with respect to the Construction Loans and (ii) satisfy the requirements of the Construction Financing Program, it is the desire of the Local Unit to issue and sell to the I-Bank its: (a) “Note

Relating to the Water Bank Construction Financing Program of the New Jersey Infrastructure Bank” in an aggregate principal amount of up to \$1,365,000.00 (the “Phase II Note”); (b) “Note Relating to the Water Bank Construction Financing Program of the New Jersey Infrastructure Bank” in an aggregate principal amount of up to \$5,455,000.00 (the “Phase III Note”); and (c) “Note Relating to the Water Bank Construction Financing Program of the New Jersey Infrastructure Bank” in an aggregate principal amount of up to \$935,000.00 (the “Phase IV Note” and together with the Phase II Note and the Phase III Note, the “Notes”), in substantially the forms attached hereto as Exhibit A, Exhibit B, and Exhibit C, respectively, to finance Phase II, Phase III, and Phase IV, respectively, of the Project; and

WHEREAS, it is the desire of the Local Unit to authorize, execute, attest and deliver the Notes to the I-Bank pursuant to the terms of the Local Bond Law of the State of New Jersey, constituting Chapter 2 of Title 40A of the Revised Statutes of the State of New Jersey (the “Local Bond Law”), and other applicable law; and

WHEREAS, Section 28 of the Local Bond Law allows for the sale of the Notes to the I-Bank, without any public offering, and N.J.S.A. 58:11B-9 allows for the sale of the Notes to the I-Bank without any public offering, all under the terms and conditions set forth therein; and

WHEREAS, in connection with its participation in the Joint Meeting and the issuance of its Notes for the purpose of financing the costs of Phases II, III, and IV of the Project, the Local Unit desires to enter into that certain Project Financing Agreement (the “Agreement”), by and between the Joint Meeting and the Local Unit, and acknowledged and agreed to by the I-Bank, in substantially the form attached hereto as Exhibit D; and

WHEREAS, a separate Agreement will be executed and delivered upon the closing of each of the Notes.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. In accordance with Section 28 of the Local Bond Law and N.J.S.A. 58:11B-9, the Local Unit hereby authorizes the issuance, sale and award of the Phase II Note in accordance with the provisions hereof. The \$660,000.00 portion of the obligation represented by the Phase II Note has been appropriated and authorized by Bond Ordinance 6PSF-a adopted on August 19, 2020 of the Local Unit, which bond ordinance is entitled “BOND ORDINANCE PROVIDING FOR THE LOCAL UNIT’S ALLOCABLE SHARE OF THE FLOOD MITIGATION FACILITIES PROJECT OF THE JOINT MEETING OF ESSEX AND UNION COUNTIES, BY AND IN THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (THE “LOCAL UNIT”); APPROPRIATING \$2,705,000.00 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$2,705,000.00 BONDS OR NOTES TO FINANCE THE COST THEREOF” and was finally adopted by the Local Unit at a meeting duly called and held on August 19, 2020, and the \$705,000.00 remaining portion of the obligation represented by the Phase II Note has been appropriated and authorized by Bond Ordinance 6PSF-h March 15, 2023 of the Local Unit, which bond ordinance is entitled “BOND ORDINANCE PROVIDING FOR PHASES II(b), III(b), IV, V and VI OF THE LOCAL UNIT’S ALLOCABLE SHARE OF THE FLOOD MITIGATION FACILITIES PROJECT OF THE JOINT MEETING OF ESSEX AND UNION COUNTIES, BY AND IN THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (THE “LOCAL UNIT”); APPROPRIATING \$5,690,000.00 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$5,690,000.00 BONDS OR

NOTES TO FINANCE THE COST THEREOF” and was finally adopted by the Local Unit at a meeting duly called and held on March 15, 2023 (the “2023 Bond Ordinance”), at which times a quorum was present and acted throughout, all pursuant to the terms of the Local Bond Law and other applicable law.

2. In accordance with Section 28 of the Local Bond Law and N.J.S.A. 58:11B-9, the Local Unit hereby authorizes the issuance, sale and award of the Phase III Note in accordance with the provisions hereof. The \$4,140,000.00 portion of the obligation represented by the Phase III Note has been appropriated and authorized by Bond Ordinance 6PSF-c September 8, 2022 of the Local Unit, which bond ordinance is entitled “BOND ORDINANCE PROVIDING FOR THE LOCAL UNIT’S ALLOCABLE SHARE OF PHASE III OF THE FLOOD MITIGATION PROJECT OF THE JOINT MEETING OF ESSEX AND UNION COUNTIES, BY AND IN THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (THE “LOCAL UNIT”); APPROPRIATING \$4,140,000.00 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$4,140,000.00 BONDS OR NOTES TO FINANCE THE COST THEREOF” and was finally adopted by the Local Unit at a meeting duly called and held on September 8, 2022, and the \$1,315,000.00 remaining portion of the obligation represented by the Phase III Note has been appropriated and authorized by the 2023 Bond Ordinance, at which times a quorum was present and acted throughout, all pursuant to the terms of the Local Bond Law and other applicable law.

3. In accordance with Section 28 of the Local Bond Law and N.J.S.A. 58:11B-9, the Local Unit hereby authorizes the issuance, sale and award of the Phase IV Note in accordance with the provisions hereof. The \$935,000.00 obligation represented by the Phase IV Note has been appropriated and authorized by the 2023 Bond Ordinance, at which times a quorum was present and acted throughout, all pursuant to the terms of the Local Bond Law and other applicable law.

4. The Chief Financial Officer of the Local Unit (the “Chief Financial Officer”) is hereby authorized to determine, in accordance with the Local Bond Law and pursuant to the terms and conditions hereof, (i) the final principal amount of the Notes (subject to the maximum limitation set forth in Section 4(a) hereof), and (ii) the dated date of the Notes.

5. Any determination made by the Chief Financial Officer pursuant to the terms hereof shall be conclusively evidenced by the execution and attestation of the Notes by the parties authorized pursuant to Section 4(h) hereof.

6. The Local Unit hereby determines that certain terms of the Notes shall be as follows:

- (a) the principal amount of the Phase II Note, the Phase III Note, and the Phase IV Note to be issued shall be an amount not to exceed \$1,365,000.00, \$5,455,000.00, and \$935,000.00, respectively;
- (b) the maturity of the respective Notes shall be as determined by the I-Bank;
- (c) the interest rate for each of the Notes shall be as determined by the I-Bank;
- (d) the purchase price for each of the Notes shall be par;
- (e) the Notes shall be subject to prepayment prior to their respective stated maturities in accordance with the terms and conditions set forth in the Notes;

- (f) the Notes shall be issued in a single denomination and shall be numbered “NJWB - CFP-2023-2-JM-FEMA”, “NJWB - CFP-2023-3-JM-FEMA”, and “NJWB - CFP-2023-4-JM-FEMA”, respectively;
- (g) the Notes shall be issued in fully registered form and shall be payable to the registered owner thereof as to both principal and interest in lawful money of the United States of America; and
- (h) the Notes shall be executed by the manual or facsimile signatures of the Mayor and the Chief Financial Officer (collectively, the “Authorized Officers”) under official seal or facsimile thereof affixed, imprinted or reproduced thereon and attested by the manual signature of the Local Unit Acting City Clerk.

7. The Notes, in substantially in the forms attached hereto as Exhibit A, Exhibit B, and Exhibit C, respectively, with such additions, deletions, and omissions as may be recommended by the Chief Financial Officer of the Local Unit, upon the advice of Bond Counsel, General Counsel, and/or the Municipal Advisor to the Local Unit, be and are hereby approved.

8. The law firm of DeCotiis, FitzPatrick, Cole and Giblin, LLP, is hereby authorized to arrange for the printing of the Notes, which law firm may authorize McCarter and English, LLP, Bond Counsel to the I-Bank for the Construction Financing Pandogram, to arrange for same.

9. The Agreement, in substantially the form attached hereto as Exhibit D, with such additions, deletions, and omissions as may be recommended by the Chief Financial Officer of the Local Unit, upon the advice of Bond Counsel, General Counsel, and/or the Municipal Advisor to the Local Unit, be and is hereby approved. The Mayor or Chief Financial Officer of the Local Unit are hereby authorized and directed on behalf of the Local Unit to enter into, execute and deliver, and consummate or perform any actions required under, the Agreement executed and delivered with each of the Notes.

10. The Authorized Officers of the Local Unit are hereby further severally authorized to: (i) execute and deliver, and the Local Unit Acting City Clerk is hereby further authorized to attest to such execution and to affix, imprint or reproduce the corporate seal of the Local Unit to, any document, instrument or closing certificate deemed necessary, desirable or convenient by the Authorized Officers of the Local Unit, in their respective sole discretion, after consultation with counsel and any advisors to the Local Unit, and after further consultation with the I-Bank and its representatives, agents, counsel and advisors, to be executed in connection with the issuance and sale of the Notes and the participation of the Local Unit in the Construction Financing Program, which determination shall be conclusively evidenced by the execution of each such certificate, instrument or other document by the party authorized hereunder to execute such certificate, instrument or other document; and (ii) perform such other actions as the Authorized Officers deem necessary, desirable or convenient in relation to the execution and delivery of the Notes and the Agreement and any other documents, agreements or instruments related to, and the participation of the Local Unit in, the Construction Financing Program.

11. Upon the adoption hereof, the Local Unit Acting City Clerk shall forward certified copies of this Resolution to William R. Mayer, Esq., DeCotiis, FitzPatrick, Cole and Giblin, LLP, Bond Counsel to the Local Unit, Everett M. Johnson, Esq., Wilentz, Goldman and Spitzer, P.A., Bond

Counsel to the Joint Meeting, David Zimmer, Executive Director of the I-Bank, and Richard T. Nolan, Esq., McCarter and English, LLP, Bond Counsel to the I-Bank.

STATEMENT

This Resolution determines the form and other details of Phase II, Phase III and Phase IV notes relating to the Water Bank Constructions Financing Program of the New Jersey Infrastructure Bank and provides for the issuance and sale of such notes to the New Jersey Infrastructure Bank and authorizes the execution and delivery of such notes.