



Legislation Text

File #: 23-1545, Version: 1

Dept/ Agency: Finance

Action: () Ratifying (X) Authorizing () Amending

Purpose: Approving Form of Sale of City-Secured Bonds

Amount to be Financed: \$2,735,000.00

Source of Appropriation: Notes

Purchaser: New Jersey Infrastructure Bank

Project Information:

(Description/ Project No./ Amount Appropriated/Ordinance No.)

RESOLUTION OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, NEW JERSEY, DETERMINING THE FORM AND OTHER DETAILS OF ITS PHASE V AND PHASE VI 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 \$1,965,000.00 AND \$770,000.00, 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:

Phase V and VI of Flood Mitigation Project.

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 projects consisting of (a) Phase V of the Flood Mitigation Facilities Project (Biosolids Site Wall) consisting of the construction of reinforced concrete flood walls on piles with steel sheeting subsurface cut-off walls around the four (4) sides of the Biosolids Facilities Site including installation of flood gates for vehicular access, modifications to the existing entrance roadways, construction of stormwater facilities to redirect on-site stormwater to the proposed Biosolids Stormwater Pumping Station, and coordination with and/or relocation of various utilities within the project area ("Phase V"); and (b) Phase VI of the Flood Mitigation Facilities Project (Biosolids Stormwater Pumping Station) consisting of a below ground reinforced concrete stormwater

pumping station for the Biosolids Facilities Site including modifications to the site stormwater collection system to redirect the flow of on-site stormwater into the pumping station, installation of submersible stormwater pumps and associated piping, valves, electrical and instrumentation equipment, and site restoration (“Phase VI” and together with Phase V, shall be collectively referred herein to as the “Joint Meeting Projects”); and

WHEREAS, it is the desire of the Local Unit to obtain financing for its allocable share of Phases V and VI of the Joint Meeting Projects (such allocable shares being referred to herein, collectively, as the “Project(s)”) 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 Projects 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”); and

WHEREAS, the Local Unit adopted bond ordinance number #6PSF-h on March 15, 2023 (the “2023 Bond Ordinance”), which appropriated and authorized amounts necessary to cover the costs of, among other projects, the Projects; and

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

WHEREAS, the Local Unit will also issue the Phase VI Note (as hereinafter defined) to finance the costs of Phase VI 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 Projects 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 \$1,965,000.00 (the “Phase V Note”), and (b) “Note Relating to the Water Bank Construction Financing Program of the New Jersey Infrastructure Bank” in an aggregate principal amount of up to \$770,000.00 (the “Phase VI Note” and together with the Phase V Note, the “Notes”), in substantially the forms attached hereto as Exhibit A and Exhibit B, respectively, to finance Phase V and Phase VI, 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 the Projects, 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 C, and

WHEREAS, a separate Agreement for Phase V and Phase VI, respectively, of the Project 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, IN THE COUNTY OF ESSEX, NEW JERSEY, THAT:

1. In accordance with Section 28 of the Local Bond Law and N.J.S.A. 58:11B-9, the Municipal Council (“Local Unit”) hereby authorizes the issuance, sale and award of the Phase V Note in accordance with the provisions hereof. The \$1,965,000.00 obligation represented by the Phase V Note has been appropriated and authorized by the 2023 Bond Ordinance, which was duly adopted by the Governing Body of the Local Unit at meetings and 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 VI Note in accordance with the provisions hereof. The \$770,000.00 obligation represented by the Phase VI Note has been appropriated and authorized by the 2023 Bond Ordinance, which was duly adopted by the governing body of the Local Unit at meetings and 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. 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 limitations set forth in Section 5(a) hereof), and (ii) the dated date of the Notes.

4. 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 5(h) hereof.

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

- (a) the principal amount of the Phase V Note and Phase VI Note to be issued shall be an amount not to exceed \$1,965,000.00, and \$770,000.00, 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-2024-1-JM-FEMA”, and “NJWB - CFP-2024-2-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”) of the Local Unit under official seal or facsimile thereof affixed, imprinted or reproduced thereon and attested by the manual signature of the Local Unit City Clerk.

6. The Notes, in substantially in the forms attached hereto as Exhibit A, and Exhibit B, 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.

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

8. The Agreement, in substantially the form attached hereto as Exhibit C, 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 and/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.

9. The Authorized Officers of the Local Unit are hereby further severally authorized to (i) execute and deliver, and the Local Unit 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.

10. This resolution shall take effect immediately.

11. Upon the adoption hereof, the Local Unit City Clerk shall forward certified copies of this resolution to William R. Mayer, Esq., DeCotiis, FitzPatrick, Cole & Giblin, LLP, bond counsel to the Local Unit, Everett M. Johnson, Esq., Wilentz, Goldman & Spitzer, P.A., Bond Counsel to the Joint Meeting, David Zimmer, Executive Director of the I-Bank, and Richard T. Nolan, Esq., McCarter & English, LLP, Bond Counsel to the I-Bank.

STATEMENT

Resolution determining the form and other details of its Phase V and Phase VI 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 \$1,965,000.00 and \$770,000.00, 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.