



Legislation Text

File #: 20-0975, Version: 1

Dept/ Agency: Finance

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

Type of Service: Preliminary/Official Statement and Disclosure Agreement for Issuance of Notes

Purpose: Approving Official Statement and Disclosure Agreement for sale of Bond Anticipation Notes and Special Emergency Notes.

Amount to be Financed: Not to exceed \$64,774,000.00

Project Information:

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

RESOLUTION OF THE CITY OF NEWARK AUTHORIZING THE CIRCULATION OF A PRELIMINARY OFFICIAL STATEMENT AND FINAL OFFICIAL STATEMENT IN CONNECTION WITH THE NEGOTIATED SALE AND ISSUANCE OF GENERAL OBLIGATION NOTES, SERIES 2020, OF THE CITY, APPROVING A CONTINUING DISCLOSURE CERTIFICATE AND NOTE PURCHASE CONTRACT WITH RESPECT TO SAID NOTES, AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH.

Additional Information:

\$42,399,000.00 Note Rollover

\$17,000,000.00 Special Emergency Notes

\$2,375,000.00 General Capital Improvements

WHEREAS, the City of Newark, in the County of Essex, New Jersey (the "City"), has heretofore issued on October 8, 2019 the principal amount of \$37,897,000.00 General Capital Improvement Bond Anticipation Notes, Series 2019, maturing October 7, 2020 and aggregate principal amount of \$11,523,000.00 Tax Appeal Refunding Notes, Series 2019, also maturing October 7, 2020 (collectively, the "Prior Notes"); and

WHEREAS, the City's Director of Finance/Chief Financial Officer is desirous of selling and issuing a \$42,399,000.00 General Obligation Notes, Series 2020, consisting of \$6,060,000.00 Tax Appeal Refunding Notes, Series 2020 and \$36,339,000.00 General Capital Improvement Bond Anticipation Notes, Series 2020 (collectively, the "Renewal Series 2020 Notes") to refund, together with budgetary appropriations of the City, the Prior Notes and are authorized to do so pursuant to the Local Bond Law, specifically N.J.S.A. 40A:2-28 (the "Local Bond Law"), the Ordinances (as defined below) and this resolution; and

WHEREAS, the City is also desirous of selling and issuing all or a portion of \$20,000,000.00 Special Emergency Notes, Series 2020 (the "SEN's") to fund contractually required severance liabilities and \$2,375,000.00 in new money general capital improvement bond anticipation notes (the "New Money Notes") to fund improvements to the Liner/Green Street buildings in concert with the sale and issuance of the Renewal Series 2020 Notes or separately, as the case may be; and

WHEREAS, in anticipation of the issuance and sale of the Renewal Series 2020 Notes and the SEN's and the New Money Notes in an aggregate principal amount not to exceed

\$64,774,000.00 therewith (collectively, the "Series 2020 Notes"), the City expects to receive an offer to purchase the Series 2020 Notes from one or more underwriters designated by the City (the "Underwriter") upon such negotiated terms and conditions as set forth in one or more note purchase contracts (the "Note Purchase Contract") by and between the City and the Underwriter, the form of which was presented at this meeting and is on file in the Office of the City Clerk of the City and incorporated herein by reference, and City wishes to approve the form and execution of the Note Purchase Contract; and

WHEREAS, in the event the SEN's and the New Money Notes are sold and issued separately from the Renewal Series 2020 Notes, the City shall negotiate the purchase of such notes with an Underwriter selected by the City in accordance with the terms and conditions of the form of the Note Purchase Contract attached hereto; and

WHEREAS, the City intends to issue the Series 2020 Notes on or about October 6, 2020; and

WHEREAS, if sold and issued separately, the SEN's and the New Money Notes will be issued on or about November 1, 2020; and

WHEREAS, in connection with the offering and sale of the Series 2020 Notes, the Underwriter intends to distribute one or more Preliminary Official Statements on behalf of the City and one or more final Official Statements setting forth certain information relating to the City and the sale of the Series 2020 Notes, and to enter into one or more Continuing Disclosure Certificates as required by Rule 15c2-12, as amended, promulgated by the Securities and Exchange Commission (the "Rule"); and

WHEREAS, the Series 2020 Renewal Notes, the SEN's and the New Money Notes are authorized to be issued pursuant to the following bond ordinances of the City: (i) in the case of the Tax Appeal Refunding Notes: Refunding Bond Ordinance 6PSF-c finally adopted by the Municipal Council of the City on November 8, 2018 (the "TARN Ordinance"); (ii) in the case of the Special Emergency Notes Ordinance 6PSF-e 0 finally adopted by the Municipal Council of the City on August 5, 2020 (the "SEN Ordinance"); (iii) in the case of the General Capital Improvement Notes, Ordinance 6PSF-a(S) finally adopted by the Municipal Council of the City on March 21, 2017, Ordinance 6PSF-b finally adopted by the Municipal Council of the City on April 19, 2017; and (iv) in the case of the New Money Notes, an Ordinance to be finally adopted by the Municipal Council of the City ((iii) and (iv) collectively, the "Notes Ordinances" and together with the TARN Ordinance and the SEN Ordinance, the "Ordinances"), approved and published as required by law, all other provisions for the issuance of the Series 2020 Notes (including, without limitation, maturity date and the interest rate or rates) shall be determined by the Director of Finance/Chief Financial Officer.

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

1. Authorization for Official Statement. The preparation by the City, and its financial advisors, NW Financial Group, LLC and Public Resources Advisory Group (collectively, the "Financial Advisor"), of one or more Preliminary Official Statements relating to the Series 2020 Notes or the Renewal Series 2020 Notes and the SEN's and the New Money Notes are hereby authorized. There is hereby delegated to the Director of Finance/Chief Financial Officer of the City the authorization to approve the form of one or more Preliminary Official Statements, with such insertions, deletions and

changes therein and any supplements thereto as bond counsel to the City (“Bond Counsel”) and the Financial Advisor to the City may advise and recommend and the Director of Finance/Chief Financial Officer may approve, such approval to be evidenced by such City officer’s execution of the final Official Statement as described herein. The Business Administrator or the Director of Finance/Chief Financial Officer are each hereby authorized and directed to deem one or more Preliminary Official Statements (the “POS”) “final” within the meaning of the Rule and to execute and deliver a certificate to that effect to the Underwriter. The Business Administrator and the Director of Finance/Chief Financial Officer are each hereby authorized and directed to approve the contents and terms of one or more final Official Statements reflecting the pricing, as applicable, of the Series 2020 Notes or the Renewal Series 2020 Notes and the SEN’s and the New Money Notes in respect of the aforementioned Series 2020 Notes or the Renewal Series 2020 Notes and the SEN’s and the New Money Notes in substantially the form of one or more POS. The Business Administrator or the Director of Finance/Chief Financial Officer are each hereby authorized to execute and deliver one or more final Official Statements on behalf of the City, in substantially such form of the POS, with such insertions, deletions and changes therein and any supplements thereto as Bond Counsel and Financial Advisor to the City may advise and the City officer executing the same may approve, such approval to be evidenced by such City officer’s execution thereof. The use and distribution of the POS by the Underwriter(s) in connection with the offering and sale of the Series 2020 Notes or the Renewal Series 2020 Notes and the SEN’s and the New Money Notes, as the case may be, are hereby authorized by the City.

2. Continuing Disclosure. The form of one or more Continuing Disclosure Certificates is hereby approved in substantially the form presented at this meeting and on file in the Office of the City Clerk of the City and incorporated herein by reference as **Exhibit A**, and the execution of one or more Continuing Disclosure Certificates by the Director of Finance/Chief Financial Officer of the City is hereby authorized. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of one or more Continuing Disclosure Certificates executed by the City and dated the date of issuance and delivery of Series 2020 Notes or the Series 2020 Renewal Notes and the SEN’s and the New Money Notes, as applicable, as originally executed and as it may be amended from time to time in accordance with the terms thereof. Notwithstanding any other provision of this Resolution, the failure of the City to comply with the provisions of one or more Continuing Disclosure Certificates shall not be considered a default on the Series 2020 Notes or the Series 2020 Renewal Notes and the SEN’s and the New Money Notes; however, any holder may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under one or more Continuing Disclosure Certificates.

3. Note Purchase Contract. The form of one or more Note Purchase Contracts with respect to the Series 2020 Notes or the Series 2020 Renewal Notes and the SEN’s and the New Money Notes, as applicable, in substantially the form presented at this meeting as **Exhibit B** and on file in the office of the Clerk of the City and incorporated herein by reference, with such changes as may be approved by the Business Administrator or the Director of Finance/Chief Financial Officer, upon the recommendations of Bond Counsel to the City and the City’s Financial Advisor, is hereby approved, and the execution of one or more Note Purchase Contracts by the Business Administrator and/or the Director of Finance/Chief Financial Officer of the City is hereby authorized, which execution shall be conclusive evidence of the approval thereof. Following execution, one or more fully executed Note Purchase Contracts shall be filed with the City Clerk and the Underwriter.

4. Appointment of Underwriter. It is hereby delegated to the Director of Finance/Chief

Financial Officer and the Business Administrator of the City the authority to solicit proposals from the investment banking community and to select an Underwriter who will purchase the Series 2020 Notes or, in the alternative, the Series 2020 Renewal Notes and the SEN's and the New Money Notes pursuant to the provisions of the Note Purchase Contract authorized herein provided that the compensation to each Underwriter, including fees and expenses and underwriter counsel fee as negotiated by the Business Administrator and the Director of Finance/Chief Financial Officer of the City shall not exceed \$2.50 per \$1,000.00 of Series 2020 Notes issued or the issuance of the Series 2020 Renewal Notes and the SEN's and the New Money Notes, including expenses.

5. Further Action with respect to SEN's Authorization. (a) In accordance with N.J.S.A. 40A:4-53(h), the City has heretofore finally adopted on August 5, 2020 Ordinance 6PSF-e(s) entitled "AN ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, AUTHORIZING A SPECIAL EMERGENCY APPROPRIATION PURSUANT TO THE PROVISIONS OF N.J.S.A. 40A-4-53(h) TO FUND CONTRACTUALLY REQUIRED SEVERANCE LIABILITIES" (the "Ordinance") to provide for the payment of contractually required severance liabilities resulting from the layoff or retirement of City employees; (b) In accordance with the provisions of N.J.S.A. 40A:4-53 (h) and -55 and the Ordinance, a special emergency appropriation was thereby made by the City to pay contractually required severance liabilities resulting from the layoff or retirement of City employees in the amount of \$20,000,000.00; (c) The City hereby determines to finance the special emergency appropriation referred to in Section 5(b) hereinabove by the issuance of SEN's of the City in an aggregate principal amount not to exceed \$20,000,000.00 with the final par amount of notes to be determined at the time of sale, which SEN's may be renewed from time to time, provided by law as follows: pursuant to the provisions of N.J.S.A. 40A:4-55(b) and (c) of the Local Budget Law, at least one fifth (1/5) of all such SEN's and renewals shall have matured and have been paid not later than the last day of the fifth year following the date on which the special emergency appropriations were first financed from surplus funds or borrowed money, whichever is earlier; and (d) All such SEN's issued hereunder shall mature at such times as may be determined by the Chief Financial Officer, subject to the limitations set forth in Section 5(c) hereof. The Chief Financial officer shall determine all matters in connection with SEN's issued pursuant to this Resolution, and the Chief Financial Officer's signature upon the SEN's shall be conclusive evidence as to all such determinations. The Chief Financial Officer is hereby authorized and directed to sell all or a portion of the SEN's from time to time, at no less than par plus accrued interest, if any, at public or private sale and to deliver them to the purchasers thereof upon receipt of payment of the purchase price plus accrued interest, if any, from their dates to the date of delivery thereof. The Chief Financial Officer is directed to report in writing to the governing body at the meeting next succeeding the date when any sale or delivery of the SEN's pursuant to this Resolution is made. Such report must include the amount, the description, the interest rate and the maturity schedule of the SEN's sold, the price obtained and the name of the purchaser, and such report shall be entered in full on the minutes of such meeting.

6. Sale and Issuance of all Series 2020 Notes. The sale and issuance of the Series 2020 Notes or any combination of the sale and issuance of the Series 2020 Renewal Notes and the SEN's and the New Money Notes, as the case may be, are hereby authorized and approved. The terms and provisions of the Series 2020 Notes (including, without limitation, registered or book-entry only form, the aggregate principal amount, the maturity date, interest rate and redemption provisions) shall be determined by the Director of Finance/Chief Financial Officer of the City as authorized by the Local Bond Law and the Ordinances heretofore adopted by the Municipal Council and this Resolution. The Mayor, the Business Administrator, the City Clerk and the Director of Finance/Chief

Financial Officer are each authorized and directed to take all actions which are necessary or convenient to effectuate the terms of this Resolution and the issuance, sale and delivery of one or more series of the Series 2020 Notes, including, but not limited to the execution of the Continuing Disclosure Certificate(s) and the Note Purchase Contract(s) and closing certificates, documents and opinions in connection therewith, in consultation with and upon the advice of Bond Counsel.

7. Tax Exemption. To the extent all or a portion of the Series 2020 Notes are issued as tax exempt obligations (which determination shall be made prior to sale), the City shall covenant in a Tax and Arbitrage Certificate that it will comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and that it will take no action or omit to take any action that would cause the interest on the Series 2020 Notes to lose its tax exemption under the Code. The Director of Finance/Chief Finance Officer of the City is hereby authorized and directed to execute and deliver the Tax and Arbitrage Certificate in connection with the issuance of the Series 2020 Notes.

8. Reimbursement. The City may finance the SEN's contractual liabilities and the Liner/Green Streets buildings improvement projects (collectively, the "Project") with all or a portion of tax-exempt notes, but may pay for certain costs of the Project ("Project Costs") prior to the issuance of the notes with funds of the City which are not proceeds of tax-exempt notes. The City desires to preserve its right to treat an allocation of proceeds of the notes to the reimbursement of Project Costs paid prior to the issuance of the notes as an expenditure for such Project Costs to be reimbursed for purposes of Sections 103 and 141-150 of the Internal Revenue Code (the "Code"). The City reasonably expects to reimburse its expenditure of Project Costs paid prior to the issuance of the notes with proceeds of its notes. This section is intended to be and hereby is a declaration of the City's official intent to reimburse the expenditure of Project Costs paid prior to the issuance of the notes with the proceeds of a borrowing to be incurred by the City, in accordance with Treasury Regulations Section 150-2. The maximum principal amount of the notes expected to be issued to finance the SEN's project is \$17,000,000.00 and \$2,375,000.00 for the Liner/Green Streets buildings improvements. The Project Costs to be reimbursed with the proceeds of the notes will be "capital expenditures" in accordance with the meaning of Section 150 of the Code. No reimbursement allocation will employ an "abusive arbitrage device" under Treasury Regulations Section 1.148-10 to avoid the arbitrage restrictions or to avoid the restrictions under Sections 142 through 147 of the Code. The proceeds of the notes used to reimburse the City for Project Costs, or funds corresponding to such amounts, will not be used in a manner that results in the creation of "replacement proceeds," including "sinking funds", "pledged funds," or funds subject to a "negative pledge" (as such terms are defined in Treasury Regulations Section 1.148-1) of the notes or another issue of debt obligations of the City, other than amounts deposited into a "bona fide debt service fund" (as defined in Treasury Regulations Section 1.148-1). All reimbursement allocations will occur not later than 18 months after the later of (i) the date the expenditure from a source other than the notes is paid, or (ii) the date the Project is "placed in service" (within the meaning of Treasury Regulations Section 1.150-2) or abandoned, but in no event more than 3 years after the expenditure is paid.

9. Pledge of City. The full faith and credit of the City are hereby pledged to the punctual payment of the principal of and the interest on the Series 2020 Notes authorized by this resolution. The Series 2020 Notes shall be direct, unlimited obligations of the City. The powers and obligations of the City to pay any Series 2020 Note issued pursuant to this Resolution shall be unlimited and the City shall have the power and be obligated to levy ad valorem taxes upon all taxable property within the City for the payment of such Series 2020 Notes and interest thereon, without limitation as to rate

or amount.

10. Execution of Series 2020 Notes. All Series 2020 Notes issued pursuant to this Resolution shall be executed by the Chief Financial Officer and the Mayor of the City under the seal of the City and attested by the City Clerk. Such officers are hereby authorized and directed to execute and deliver all documents necessary or convenient in connection with the issuance, sale and delivery of the Series 2020 Notes.

11. SEN's Filing. With respect to the SEN's, a copy of the SEN's Ordinance and this Resolution, as adopted, shall be filed with the Director of the Division of Local Government Services in the Department of Community Affairs, State of New Jersey.

12. Sale of Series 2020 Notes. The Chief Financial Officer is hereby authorized to combine the Series 2020 Renewal Notes, the SEN's and the New Money Notes for purposes of the sale and issuance of such Series 2020 Notes. In the event a combined sale and issuance is not feasible or permitted or the SEN's Ordinance and/or the New Money Ordinance are not valid and effective at the time of the adoption of this resolution, the Director of Finance/Chief Financial Officer is authorized to sell and issue any combination of the Series 2020 Notes in one or more series of Renewal Series 2020 Notes, SEN's and New Money Notes with one or more Continuing Disclosure Certificates, Note Purchase Contracts and Preliminary Official Statements.

13. Effectiveness. This Resolution shall take effect immediately upon adoption.

STATEMENT

Resolution authorizing the distribution of a Preliminary Official Statement and Final Official Statement, authorizing forms of Note Purchase Contract and Continuing Disclosure Certificate and related matters in connection with the issuance and sale of Series 2020 Renewal Notes, SEN's and New Money Notes.