



Legislation Text

File #: 19-0847, 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 school promissory notes

Amount to be Financed: \$30,582,031.00

Project Information:

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

RESOLUTION OF THE CITY OF NEWARK AUTHORIZING THE DISTRIBUTION OF A PRELIMINARY OFFICIAL STATEMENT AND FINAL OFFICIAL STATEMENT IN CONNECTION WITH THE RENEWAL AND COMPETITIVE SALE OF SCHOOL PROMISSORY NOTES, SERIES 2019 OF THE CITY, APPROVING A CONTINUING DISCLOSURE CERTIFICATE AND NOTICE OF SALE WITH RESPECT TO SAID NOTES, AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH.

Additional Information:

WHEREAS, the City of Newark, in the County of Essex, New Jersey (the "City"), has heretofore issued on (i) August 3, 2017 the principal amount of \$30,582,031.00 School Promissory Notes, Series 2017A maturing August 2, 2018 (the "Original Notes") and on (ii) August 1, 2018 the \$30,582,031.00 principal amount of School Promissory Notes, Series 2018A maturing July 31, 2019 (the "Prior Notes"); and

WHEREAS, the City's Director of Finance/Chief Financial Officer is desirous of selling and issuing School Promissory Notes, Series 2019, in the aggregate principal amount not to exceed \$30,582,031.00 to refinance the outstanding 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") and the Ordinance, as defined below (the "2019 Notes"); and

WHEREAS, the City expects to sell the 2019 Notes on a competitive basis pursuant to a Notice of Sale, the form of which is presented at this meeting and is on file in the Office of the City Clerk and incorporated herein by reference, and City wishes to approve the form of the same; and

WHEREAS, the City intends to issue the 2019 Notes on or about July 30, 2019; and

WHEREAS, in connection with the offering and sale of the 2019 Notes, the City intends to distribute a Preliminary Official Statement and a final Official Statement setting forth certain information relating to the City and the sale of the 2019 Notes, and to deliver a Continuing Disclosure Certificate as required by Rule 15c2-12, as amended, promulgated by the Securities and Exchange Commission (the "Rule"); and

WHEREAS, pursuant to Ordinance 6PSF-a entitled, “**BOND ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, ON BEHALF OF THE STATE-OPERATED SCHOOL DISTRICT OF THE CITY OF NEWARK, PROVIDING FOR VARIOUS SCHOOL CAPITAL PROJECTS AND APPROPRIATING \$30,582,031.00 THEREFOR, AND PROVIDING FOR THE ISSUANCE OF \$30,582,031.00 OF SCHOOL QUALIFIED BONDS OR NOTES OF THE CITY OF NEWARK TO FINANCE THE COSTS THEREOF**” heretofore finally adopted by the Municipal Council on May 17, 2017, approved and published as required by law (the “Ordinance”), all other provisions of the sale and issuance of the 2019 Notes (including, without limitation, the aggregate principal amount, maturity date or dates 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, NEW JERSEY, THAT:

1. Confirmation of Intention to Issue School Promissory Notes. Pursuant to the provisions of the Ordinance, the Director of Finance/Chief Financial Officer is hereby authorized and directed to sell, issue, execute and deliver the Notes in accordance with this Resolution. The Notes will be dated and shall mature within one (1) year as shall be determined by the Director of Finance/Chief Financial Officer. The Notes may be renewed from time to time in accordance with the provisions of the Local Bond Law (N.J.S.A. 40A:2-8.1). The Notes shall not be subject to redemption prior to maturity.

2. Notice of Sale. It is hereby delegated to and the Director of Finance/Chief Financial Officer is hereby authorized and directed to sell and award the purchase of the Notes to the successful bidder pursuant to the terms and conditions of the Notice of Sale. The Notice of Sale in substantially the form attached hereto as **Exhibit A** is hereby approved, and the execution of the Notice of Sale by the Director of Finance/Chief Financial Officer of the City is hereby authorized with such changes as may be approved by the Director of Finance/Chief Financial Officer, upon the advice of the City’s Bond Counsel (“Bond Counsel”) and the City’s municipal advisor (the “Financial Advisor”). The Director of Finance/Chief Financial Officer is authorized and directed to distribute the Notice of Sale in connection with the offering and sale of the Notes.

3. Authorization for Official Statement. The preparation by the City and its Financial Advisor, NW Financial, of a Preliminary Official Statement (the “POS”) relating to the sale of the 2019 Notes is hereby authorized and the POS, in substantially the form presented at this meeting and attached hereto as **Exhibit B** and on file in the Office of the City Clerk and incorporated herein by reference is hereby approved, with such insertions, deletions and changes therein and any supplements thereto as Bond Counsel and Financial Advisor to the City may advise and the Director of Finance/Chief Financial Officer executing the same may approve, such approval to be evidenced by such City officer’s execution thereof. The Business Administrator or the Director of Finance/Chief Financial Officer is hereby authorized and directed to deem the Preliminary Official Statement “final” within the meaning of the Rule and to execute and deliver a certificate to that effect. The Business Administrator and the Director of Finance/Chief Financial Officer are each hereby authorized to approve the contents and terms of the final Official Statement (the “OS”) in respect of the aforementioned 2019 Notes in substantially the form of the Preliminary Official Statement. The Business Administrator or the Director of Finance/Chief Financial Officer are each hereby authorized and directed to execute and deliver such OS 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 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 City in connection with the offering and sale of the 2019 Notes are hereby authorized by the City.

4. Continuing Disclosure. The form of the Continuing Disclosure Certificate is hereby approved in substantially the form presented at this meeting and on file in the Office of the City Clerk and incorporated herein by reference as **Exhibit C**, and the execution of the Continuing Disclosure Certificate 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 the Continuing Disclosure Certificate executed by the City and dated the date of issuance and delivery of the 2019 Notes, 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 the Continuing Disclosure Certificate shall not be considered a default on the 2019 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 the Continuing Disclosure Certificate.

5. Form of Note. The form of the Note certificate substantially in the form attached hereto as **Exhibit D** is hereby approved. The Note certificate shall be executed in the name of the City by the Mayor and Chief Financial Officer and whose signatures will be attested to by the City Clerk and the seal of the City affixed thereto in accordance with the provisions of the Local Bond Law.

6. Tax Covenant. The City hereby covenants with the holders from time to time of the Notes that it will make no investment or other use of the proceeds of the Notes or take any further action (or refrain from taking such action) which would cause the Notes to be "arbitrage bonds" or "private activity bonds" within the meaning of the Internal Revenue Code of 1986, as amended, or under any similar statutory provision or any rule or regulation promulgated thereunder (the "Code"), or would cause interest on the Notes not to be excludable from gross income for federal income tax purposes, and that it will comply with the requirements of the Code and said regulations throughout the term of the Notes.

7. Pledge of City. The full faith and credit of the City is hereby pledged for the payment of the principal of and interest on the Notes. The Notes shall be direct obligations of the City, and, unless paid from other sources, the City shall be obligated to levy ad valorem taxes upon all the taxable real property within the City for the payment of the principal of and interest on the Notes without limitation as to rate or amount.

8. Further Action. The terms and provisions of the 2019 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 Ordinance heretofore adopted by the Municipal Council in consultation with Bond Counsel and the Financial Advisor. The Mayor, the Business Administrator and the Director of Finance/Chief Financial Officer are authorized and directed to take all actions which are necessary or convenient to effectuate the terms of this Resolution and the sale, issuance and delivery of the 2019 Notes, including, but not limited to the execution of the Continuing Disclosure Certificate and closing certificates, documents and opinions in connection therewith. The Director of Finance/Chief Financial Officer shall report, in writing, the results of the sale of the Notes to the Municipal Council at its first meeting after the sale.

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

STATEMENT

Resolution authorizing the distribution of a Preliminary Official Statement (“POS”) and Final Official Statement, authorizing forms of POS, Notice of Sale, the Note and Continuing Disclosure Certificate and related matters in connection with the sale and issuance of the 2019 Notes to refinance the Prior Notes. (\$30,582,031.00).