



Legislation Text

File #: 22-1026, Version: 1

Dept/ Agency: Finance

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

Purpose: Approving Form of Sale of City-Secured Bonds

Amount to be Financed: \$4,140,000.00

Source of Appropriation: Notes/Bonds

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, DETERMINING THE FORM AND OTHER DETAILS OF ITS “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 \$4,140,000.00, AND PROVIDING FOR THE ISSUANCE AND SALE OF SUCH NOTE TO THE NEW JERSEY INFRASTRUCTURE BANK, AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH NOTE 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:

To cover the City of Newark’s portion of the Joint Meeting Flood Mitigation Phase III 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 a project of the Joint Meeting consisting of Phase III of the Flood Mitigation Facilities Project 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 of the Flood Mitigation

Facilities Project shall also include costs for engineering services related to surveying, I-Bank Project Report and Permitting, New Jersey Department of Environmental Protection and Army Corps of Engineers permitting, and performance of test pits for determination of utility locations (collectively, the “Joint Meeting Project”); and

WHEREAS, it is the desire of the Local Unit to obtain financing for its allocable share 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 a short-term loan to be made by the I-Bank (the “Construction Loan”) to the Local Unit, pursuant to the Water Bank Construction Financing Program of the I-Bank (the “Construction Financing Program”); and

WHEREAS, the United States Federal Emergency Management Agency (“FEMA”) has approved, or prior to the issuance of the Note (as hereinafter defined) will approve, the scope 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 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 Loan; 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 “Note Relating to the Water Bank Construction Financing Program of the New Jersey Infrastructure Bank” in an aggregate principal amount of up to \$4,140,000.00 (the “Note”); and

WHEREAS, it is the desire of the Local Unit to authorize, execute, attest and deliver the Note 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 Note to the I-Bank, without any public offering, and N.J.S.A. 58:11B-9 allows for the sale of the Note 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 Note for the purpose of financing the costs 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 B.

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 City of Newark (the "Local Unit") hereby authorizes the issuance, sale and award of the Note in accordance with the provisions hereof. The obligation represented by the Note has been appropriated and authorized by Bond Ordinance of the Local Unit, which bond ordinance is entitled "BOND ORDINANCE PROVIDING FOR THE LOCAL UNIT'S ALLOCABLE SHARE 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 adopted by the Local Unit, pursuant to the terms of the Local Bond Law and other applicable law.

2. 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 Note (subject to the maximum limitation set forth in Section 4(a) hereof); and (ii) the dated date of the Note.

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

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

- (a) the principal amount of the Note to be issued shall be an amount not to exceed \$4,140,000.00;
- (b) the maturity of the Note shall be as determined by the I-Bank;
- (c) the interest rate of the Note shall be as determined by the I-Bank;
- (d) the purchase price for the Note shall be par;
- (e) the Note shall be subject to prepayment prior to its stated maturity in accordance with the terms and conditions of the Note;
- (f) the Note shall be issued in a single denomination and shall be numbered "NJWB - CFP -2022-2-JM-FEMA";
- (g) the Note 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 Note shall be executed by the manual or facsimile signatures of the Mayor and the Chief Financial Officer of the Local Unit (collectively, the "Authorized Officers") under official seal or facsimile thereof affixed, imprinted, engraved or reproduced thereon and attested by the manual signature of the Local Unit City Clerk.

5. The Note, in substantially in the form attached hereto as Exhibit A, 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.

6. The law firm of Wilentz, Goldman and Spitzer, P.A. is hereby authorized to arrange for the printing of the Note, which law firm may authorize McCarter and English, LLP, Bond Counsel to

the I-Bank for the Construction Financing Program, to arrange for same.

7. The Agreement, in substantially the form attached hereto as Exhibit B, 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 is 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.

8. 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 Note 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 Note and the Agreement and the participation of the Local Unit in the Construction Financing Program.

9. The effective date of this Resolution is subject to and contingent upon the validity of the Bond Ordinance after final adoption, publication and expiration of the twenty (20) day period without the filing of litigation contesting its validity.

10. Upon the adoption hereof, the Local Unit City Clerk shall forward certified copies of this Resolution to: Cheryl J. Oberdorf, 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 its "Note relating to the Water Bank Constructions Financing Program of the New Jersey Infrastructure Bank", to be issued in the principal amount of up to \$4,140,000.00, and providing for the issuance and sale of such note to the New Jersey Infrastructure Bank, and authorizing the execution and delivery of such Note by the City of Newark in favor of the New Jersey Infrastructure bank, all pursuant to the New Jersey Infrastructure Bank Construction Financing Program.