



## Legislation Text

File #: 19-1505, Version: 1

**Dept/ Agency:** Finance

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

**Purpose:** Approving Form of Sale of City-Secured Bonds

**Amount to be Financed:** \$120,000,000.00

**Source of Appropriation:** Notes/Bonds

**Purchaser:** Essex County Improvement Authority (ECIA)

**Project Information:**

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

**RESOLUTION OF THE CITY OF NEWARK AUTHORIZING THE PRIVATE SALE OF NOT TO EXCEED \$120,000,000.00 REFUNDING BONDS AND/OR REFUNDING NOTES OF THE CITY TO THE ESSEX COUNTY IMPROVEMENT AUTHORITY, PROVIDING FOR OTHER DETAILS OF THE SALE AND AUTHORIZING OTHER ACTIONS IN CONNECTION THEREWITH.**

**Additional Information:**

**WHEREAS**, on August 27, 2019, pursuant to N.J.S.A. 40A: 4-20, the City of Newark, in the County of Essex, State of New Jersey (the "City") adopted a temporary emergency appropriation resolution in the amount of \$120,000,000.00 (the "Temporary Emergency Appropriation"), 7R1-c(S), to pay the costs of replacing 18,000 lead service lines within the City and ancillary costs and costs of issuance relating thereto (the "Project"); and

**WHEREAS**, on August 27, 2019, the City introduced on first reading a refunding bond ordinance entitled, "**REFUNDING BOND ORDINANCE PROVIDING FOR THE FUNDING OF A TEMPORARY EMERGENCY APPROPRIATION OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY, RELATING TO THE PAYMENT OF THE COSTS OF LEAD SERVICE LINES REPLACEMENT, APPROPRIATING \$120,000,000.00 THEREFOR AND AUTHORIZING THE ISSUANCE \$120,000,000.00 REFUNDING BONDS AND/OR NOTES OF THE CITY FOR FINANCING THE COSTS THEREOF**" (the "Refunding Bond Ordinance"), 6PSF-h, for the purposes of paying, funding or refunding the Temporary Emergency Appropriation pursuant to N.J.S.A. 40A:2-51; and

**WHEREAS**, on August 27, 2019, the City adopted Resolution 7R4-(S) authorizing the submission of an application to the Local Finance Board, in the Division of Local Government Services, Department of Community Affairs, State of New Jersey (the "Local Finance Board") on a joint basis with the Essex County Improvement Authority (the "Authority") for the financing of the Project; and

**WHEREAS**, the City anticipates that the City will issue and sell to the Authority, and the Authority will purchase, all or a portion of not to exceed \$120,000,000.00 principal amount of refunding bonds ("Refunding Bonds") and/or refunding notes ("Refunding Notes" and together with the Refunding Bonds, the "City Obligations") and the Authority will issue a corresponding principal

amount of its Governmental Loan Revenue Bonds, Series 2019 (Essex County Guaranteed) (City of Newark Project) (the "Authority Bonds") and/or Governmental Loan Project Notes, Series 2019 (Essex County Guaranteed) (City of Newark Project) (the "Authority Notes" and together with the Authority Bonds, the "Authority Obligations"); and

**WHEREAS**, on September 11, 2019, the Local Finance Board issued positive findings on the issuance of the Authority Obligations and approved the issuance of the City Obligations; and

**WHEREAS**, on September 18, 2019, the Municipal Council of the City finally adopted the Refunding Bond Ordinance which has been duly approved and published as required by law; and

**WHEREAS**, the City intends to sell and issue the City Obligations to the Authority on or about November 1, 2019; and

**WHEREAS**, in anticipation of the issuance and sale of the City Obligations to the Authority, the City expects to receive an offer to purchase the City Obligations from the Authority upon such negotiated terms and conditions as set forth in a bond purchase agreement and/or note purchase agreement (collectively, the "Purchase Agreements") by and between the City and the Authority, the forms of which were presented at this meeting and are attached hereto and on file in the Office of the City Clerk of the City and incorporated herein by reference, and the City wishes to approve the form and authorize the execution and delivery of the Purchase Agreements; and

**WHEREAS**, in connection with the offering and sale of the City Obligations, the underwriter intends to distribute a Preliminary Official Statement on behalf of the Authority and a final Official Statement setting forth certain information relating to the Authority and the City and the sale of the Authority Obligations and the transaction relating to the City Obligations, and the City shall to enter into a Continuing Disclosure Agreement(s) with the Authority and the trustee (the "Trustee") for the Authority's Obligations as required by Rule 15c2-12, as amended, promulgated by the Securities and Exchange Commission (the "Rule"); and

**WHEREAS**, in connection with the above, the City desires to authorize the sale and issuance of the City Obligations to the Authority in accordance with the terms, conditions and parameters set forth below.

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

1. There shall be issued any combination of Refunding Bonds and/or Refunding Notes of the City in the aggregate principal amount not to exceed \$120,000,000.00 (collectively, the "City Obligations") pursuant to the Refunding Bond Ordinance (as long as the principal amount of Refunding Bonds and Refunding Notes outstanding at any one time shall not exceed \$120,000,000.00). The period of usefulness stated in said Refunding Bond Ordinance is 30 years.

2. A Preliminary Official Statement relating to the Authority Obligations and City Obligations is hereby authorized and the Business Administrator or Director of Finance/Chief Financial Officer of the City are each hereby authorized and directed to approve the Preliminary Official Statement ("POS") as it pertains to information relating to the City or the City Obligations, with such changes therein and any supplements thereto as Bond Counsel and the Financial Advisor to the

City may advise and the Business Administrator or Director of Finance/Chief Financial Officer may approve. The Business Administrator or the Director of Finance/Chief Financial Officer are each hereby authorized and directed to deem the POS “final” within the meaning of the Rule and to execute and deliver a certificate to the Authority to that effect. The Business Administrator or the Director of Finance/Chief Financial Officer are each hereby authorized and directed to approve the contents and terms of the final Official Statement reflecting pricing details in respect of the aforementioned Authority Obligations and City Obligations in substantially the form of the Preliminary Official Statement. The use and distribution of the POS by the Underwriter on behalf of the Authority in connection with the offering and sale of the Authority Obligations is hereby authorized by the City.

3. The execution and delivery of one or more Continuing Disclosure Agreement(s) by the Director of Finance/Chief Financial Officer of the City is hereby authorized in connection with the issuance of the Authority Obligations and City Obligations. The Director of Finance/Chief Financial Officer of the City is hereby authorized and directed to approve the forms of such agreement(s) and the execution thereof by the Director of Finance/Chief Financial Officer shall be conclusive evidence of such approval. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement(s) executed between the City, the Authority and the Trustee and dated the date of issuance and delivery of City Obligations. Notwithstanding any other provision of this Resolution, the failure of the City to comply with the provisions of the Continuing Disclosure Agreement(s) shall not be considered a default on the City Obligations; however, the Authority or the Trustee 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 Agreement(s).

4. The City Obligations are hereby sold and awarded to the Authority at a purchase price determined by the Business Administrator or Director of Finance/Chief Financial Officer of the City (each an “Authorized Officer” and collectively, the “Authorized Officers”), upon the recommendations of Bond Counsel to the City and the City’s Financial Advisor, pursuant to the Purchase Agreements. The forms of the Purchase Agreements attached hereto as **Exhibit A** and **Exhibit B** in substantially final form are hereby approved and the Business Administrator and/or the Director of Finance/Chief Financial Officer of the City are each hereby authorized and directed to execute and deliver the applicable Purchase Agreement to the Authority with such changes and revisions as may be recommended by the City’s Bond Counsel and Financial Advisor, which execution shall be conclusive evidence of the approval thereof. Following execution, the fully executed Purchase Agreements shall be filed with the City Clerk and the Authority.

5. The Refunding Bonds referred to in Section 1 hereof shall be in the aggregate principal amount not to exceed \$120,000,000.00. The Refunding Bonds issued by the City shall be designated “Refunding Bonds, Series 2019” and shall be numbered with the prefix “RB-2019” from one (1) consecutively upward and shall be in fully registered form. The Refunding Bonds (i) shall be dated the date of delivery, (ii) shall mature commencing in the years 2020 through 2049, or such other dates and corresponding shorter or longer periods of time as may be approved by the Director of Finance/Chief Financial Officer so long as the term of the Refunding Bonds from the date of original issuance shall not exceed 30 years, (iii) shall bear interest at the interest rates per annum as determined by the Director of Finance/Chief Financial Officer, (iv) shall be sold at such price or prices as determined by the Director of Finance/Chief Financial Officer, and (v) may be subject to redemption prior to their stated maturities as approved by the Director of Finance/Chief Financial Officer, as shall be set forth in the Purchase Agreement for the purchase of the Refunding Bonds

acceptance and approval of which is authorized pursuant to Section 4 hereof.

6. The principal amount of Refunding Notes referred to in Section 1 hereof together with the Refunding Bonds shall not exceed \$120,000,000.00. The Refunding Notes issued by the City shall be designated "Refunding Notes, Series 2019" and shall be numbered "RN-2019-1" and shall be in fully registered form. The Refunding Notes (i) shall be dated the date of delivery, (ii) shall mature in 2020, or such shorter or longer period of time as may be approved by the Director of Finance/Chief Financial Officer so long as the maturity date of the Refunding Notes and any renewals thereof, including the issuance of any Refunding Bonds to refinance the Refunding Notes, shall not exceed 30 years, (iii) shall be subject to renewal in accordance with N.J.S.A. 40A:2-1 et seq., (iv) shall bear interest at the interest rate per annum as determined by the Director of Finance/Chief Financial Officer, (v) shall be sold at such price as determined by the Director of Finance/Chief Financial Officer, and (vi) may be subject to redemption prior to maturity as determined by the Director of Finance/Chief Financial Officer, as shall be set forth in the Note Purchase Agreement for the purchase of the Refunding Notes acceptance and approval of which is authorized pursuant to Section 4 hereof.

7. a) The Refunding Bonds shall be payable as to interest and principal at the corporate trust office of the Trustee not less than 90 days prior to an Interest Payment Date and Principal Payment Date, as applicable, of the Authority's Bonds.

b) The principal and interest on the Refunding Notes shall be paid by the City to the Trustee not less than 90 days prior to the maturity date of the Authority Notes.

c) Interest on the City Obligations shall be calculated on the basis of 360-day year or twelve 30-day calendar months.

8. The City Obligations shall be executed by the Mayor and the Director of Finance/Chief Financial Officer of the City, by their manual or facsimile signatures, and the corporate seal of the City shall be affixed thereto or imprinted or reproduced thereon and shall be attested by the manual or facsimile signature of the City Clerk or Deputy City Clerk of the City.

9. The Refunding Bonds and the registration provisions endorsed thereon shall be in substantially the form attached hereto as **Exhibit C**.

10. The Refunding Notes and the registration provisions endorsed therein shall be in substantially the form attached hereto as **Exhibit D**.

11. The City's Director of Finance/Chief Financial Officer is hereby authorized and directed (a) to cause a copy of the written opinions with respect to the City Obligations which are to be rendered by the firm of DeCotiis, FitzPatrick, Cole & Giblin, LLP (complete except for omission of its date) to be printed or referred to on the City Obligations, and at the time of the original delivery of payment for the City Obligations and when such written opinions are rendered, to cause the City Clerk to certify to the truth and correctness of such copy of such opinions by executing on each of said City Obligations, by manual or facsimile signature, a certificate subjoined to each such copy, and to file a signed duplicate of such written opinions in such City Clerk's Office and at each place at which the City Obligations are payable and (b) to cause the applicable CUSIP number (if any) assigned to each of said City Obligations by the CUSIP Service Bureau of Standard & Poor's

Corporation of New York, New York, to be printed on each of the City Obligations, as applicable.

12. Upon the date of issuance of the City Obligations, being the date of delivery of the City Obligations to the Authority and the payment of the purchase price therefor in accordance with the Purchase Agreements, the City's Director of Finance/Chief Financial Officer is hereby authorized and directed as of said date of issue, to execute and deliver to said Authority and the purchaser (a) an arbitrage certification with respect to the City Obligations under and for the purpose of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and (b) accompanying opinions of DeCotiis, FitzPatrick, Cole & Giblin, LLP as of said date of issue of said City Obligations with respect to said arbitrage certification for the purposes of said Section 148.

13. The proceeds of the City Obligations received from the Authority shall be applied to the payment of replacing 15,000 lead service lines within the City and paying design and engineering expenses and costs of issuance.

14. The terms and provisions of the City Obligations (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 Business Administrator or Director of Finance/Chief Financial Officer of the City as authorized by this Resolution or the Refunding Bond Ordinance heretofore adopted by the Municipal Council. The Mayor, the Business Administrator 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 the City Obligations to the Authority and the issuance and sale of the Authority Obligations, including, but not limited to the execution of the Continuing Disclosure Agreement(s) and the Purchase Agreements and all closing certificates, documents, agreements and opinions in connection therewith.

15. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the recitals hereof.

16. This Resolution shall take effect immediately upon adoption or upon the date the Refunding Bond Ordinance is valid and effective.

### **STATEMENT**

Resolution authorizing the private sale of not to exceed \$120,000,000.00 Refunding Bonds and/or Refunding Notes of the City to the Essex County Improvement Authority and delegating to and authorizing various City officials to approve, authorize, execute and deliver the City Obligations, the Purchase Agreement(s) and Continuing Disclosure Agreement(s) in connection therewith.