



Legislation Text

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AN ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY AUTHORIZING THE PROVISION OF A SUBSIDY BY THE CITY TO: (A) FUND DEFICIENCIES IN A DEBT SERVICE RESERVE FUND ESTABLISHED FOR AN AMOUNT NOT TO EXCEED \$110,000,000.00 MASS TRANSIT ACCESS TAX REVENUE BONDS (MULBERRY PEDESTRIAN BRIDGE REDEVELOPMENT PROJECT) (CITY SECURED) ISSUED TO FINANCE PROJECT COSTS FOR THE MULBERRY PEDESTRIAN BRIDGE REDEVELOPMENT PROJECT; AND (B) PAY THE PRINCIPAL OF AND INTEREST ON AN AMOUNT NOT TO EXCEED \$15,000,000.00 OF PROJECT NOTES WHEN DUE AND OWING ISSUED TO PROVIDE FUNDS TO PAY PRELIMINARY AND SOFT COSTS FOR SUCH PROJECT, TO PROVIDE ADDITIONAL SECURITY THEREFOR, AND AUTHORIZING THE EXECUTION AND DELIVERY OF ONE OR MORE SUBSIDY AGREEMENTS IN CONNECTION THEREWITH.

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WHEREAS, the Local Redevelopment and Housing Law of the State of New Jersey, N.J.S.A. 40A:12A-1 et seq. (the “Act” or “Redevelopment Law”) authorizes municipalities to determine whether certain parcels of land located in the municipality constitute areas in need of redevelopment; and

WHEREAS, the Act confers certain contract, planning and financial powers upon a redevelopment entity, as defined in Section 3 of the Act, in order to implement redevelopment plans adopted pursuant thereto; and

WHEREAS, the City of Newark, in the County of Essex, State of New Jersey (the “City”) has elected to exercise these redevelopment entity powers directly, as permitted by Section 4 of the Act; and

WHEREAS, the City’s Municipal Council by the adoption of ordinances has approved redevelopment plans, including the Downtown Core Redevelopment Plan, as amended and the Living Downtown Redevelopment Plan, as amended (collectively, the “Redevelopment Plan”), which include all or a portion of the Mulberry Pedestrian Bridge Project (the “Redevelopment Project”); and

WHEREAS, the cost of the Redevelopment Project is approximately \$110,000,000.00; and

WHEREAS, the City, acting as Redevelopment Entity (the “Redevelopment Entity”) plans to issue and sell, one or more series of not to exceed \$110,000,000.00 Mass Transit Access Tax Revenue Bonds and/or Project Notes (Mulberry Pedestrian Bridge Redevelopment Project) (City Secured) at any one time outstanding (collectively, the “Obligations” and individually, the “Bonds” and “Project Notes”, respectively), on a negotiated basis pursuant to Section 40A:12A-29(a)(3) of the Redevelopment Law; and

EAS, mass transit access tax revenues (the “Mass Transit Access Tax”) will be pledged and

assigned, pursuant to a pledge and assignment agreement (the “Pledge Agreement”), by the City to a trust institution (the “Trustee”) to secure the payment of the principal or redemption price of, and interest on the Obligations; and

WHEREAS, pursuant to N.J.S.A. 40A:12A-30(b)(3), any Obligations issued by the City as Redevelopment Entity may be additionally secured by a pledge of any subsidy by any political subdivision of the State of New Jersey (the “State”); and

WHEREAS, the City, as Redevelopment Entity issuing the Bonds, will fund out of proceeds of the Bonds a debt service reserve fund (the “Debt Service Reserve Fund”) for the Bonds in an amount that will meet the Debt Service Reserve Fund Requirement (as hereinafter defined) for the Bonds to enable the City to provide for the timely payment annually of the principal of and interest on the Bonds; and

WHEREAS, in order to provide for additional security for the Bonds, in the event of any draws on the Debt Service Reserve Fund resulting in a deficiency in the Debt Service Reserve Fund Requirement, the City will be obligated to provide for the replenishment of the Debt Service Reserve Fund to satisfy the Debt Service Reserve Requirement to the extent of any deficiencies/shortfalls therein; and

WHEREAS, in order to provide additional security for the Project Notes, the City will provide for the timely payment of principal of and interest on the Project Notes when due and owing, to the extent payment is not otherwise provided for; and

WHEREAS, pursuant to the Redevelopment Law, specifically N.J.S.A. 40A:12A-37 and 41, the City is authorized to incur indebtedness, appropriate and expend money to aid any redevelopment entity with respect to any redevelopment project within its jurisdiction, as well as to lend or donate money or make periodic subsidies to a redevelopment entity or agree to take such action; and

WHEREAS, in order to provide an inducement for potential purchasers to purchase the Obligations, the City, in accordance with the provisions of the Redevelopment Law, will provide, as necessary, a Subsidy to fund any deficiencies in the Debt Service Reserve Fund established for the Bonds and to provide for the timely payment of principal of and interest on the Project Notes due and owing, to the extent payment is not otherwise provided for (the “Subsidy”); and

WHEREAS, such Subsidy will be a full faith and credit obligation of the City, and the City’s full faith and credit will be pledged, to the extent necessary or required, to fulfill its obligations with respect to the replenishment of any deficiencies in the Debt Service Reserve Fund for the Bonds and the payment of principal of and interest on the Project Notes when due and owing, unless payment is otherwise provided for by the City, from, *inter alia*, the levy of *ad valorem* taxes on all taxable property within the City, without limitation as to rate or amount; and

WHEREAS, the terms of the Subsidy will be memorialized in one or more Subsidy Agreements which the City will execute and deliver and assign to the Trustee (the “Subsidy Agreement”) with respect to the Bonds and the Project Notes, as applicable, and such payments to be made thereunder shall be made to the Trustee to secure the payment of principal of and interest respectively, on the Bonds and the Project Notes, as applicable; and

WHEREAS, this Subsidy and one or more Subsidy Agreement(s) shall remain in full force and effect until the Bonds and/or Project Notes are paid in full and are no longer outstanding pursuant to the terms of the Trust Indenture.

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

1. The recitals set forth above are fully incorporated herein by this reference.

2. This Subsidy Ordinance shall be adopted by the Municipal Council in the manner provided for the adoption of a bond ordinance as provided in the Local Bond Law, N.J.S.A. 40A:2-1 et seq., as amended and supplemented (the "Local Bond Law").

3. Pursuant to and in accordance with the terms of the Act, specifically Sections 30, 37 and 41 of the Redevelopment Law, the City is hereby authorized to provide additional security for the Bonds in the form of a Subsidy for the replenishment of any deficiencies in the Debt Service Reserve Fund established for not to exceed \$110,000,000.00 principal amount of Bonds so that the Debt Service Reserve Fund Requirement for the Bonds is fully satisfied. The full faith and credit of the City are hereby fully, irrevocably, and unconditionally pledged to the full and punctual payment of the Subsidy. The City shall, if necessary and required, levy *ad valorem* taxes upon all taxable property therein for the payment of the Subsidy on the Bonds without limitation as to rate or amount, unless payment therefor is otherwise provided for. The Subsidy authorized herein shall be given solely in accordance with one or more Subsidy Agreements related to the Bonds.

4. The amount of the Subsidy for the replenishment of the Debt Service Reserve Fund shall not exceed the total maximum Debt Service Reserve Fund Requirement for the Bonds which shall not exceed the lesser of: (i) 10% of the aggregate stated principal amount of Bonds; (ii) 125% of the average annual debt service on the Bonds; or (iii) the maximum annual debt service on the Bonds (the "Debt Service Reserve Fund Requirement"). Any Bonds which are no longer considered outstanding under the Trust Indenture authorizing such Bonds shall not be counted for the purpose of the Debt Service Reserve Fund Requirement contained in this Subsidy Ordinance.

5. Pursuant to and in accordance with the terms of the Act, specifically Sections 30, 37 and 41 of the Redevelopment Law, the City is hereby authorized to provide additional security for the Project Notes in the form of a Subsidy for the timely payment of the principal of and interest on the Project Notes in the aggregate principal amount not to exceed \$15,000,000.00 when due and owing to the extent that payment is not otherwise provided for. The full faith and credit of the City are hereby fully, irrevocably, and unconditionally pledged to the full and punctual payment of the Subsidy on the Project Notes. The City shall, if necessary and required, levy *ad valorem* taxes upon all taxable property therein for the payment of the Subsidy on the Project Notes without limitation as to rate or amount, unless payment therefor is otherwise provided for. The Subsidy authorized herein shall be given solely in accordance with one or more Subsidy Agreements related to the Project Notes.

6. The Mayor of the City of Newark and the City Clerk are each hereby authorized and directed to execute, by manual or facsimile signature, on each of the Bonds Certificates or Project Notes Certificate, and to affix the seal of the City thereon, language evidencing the City's Subsidy of the Bonds and Project Notes to the extent provided herein in substantially the following form:

SUBSIDY OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY

Pursuant to the provisions of the Acts referred to in the within Bond [Project Note], the City of Newark, in the County of Essex, State of New Jersey (the "City") is hereby fully and unconditionally obligated to provide for the punctual replenishment of the debt service reserve fund on the Bonds to satisfy the Debt Service Reserve Fund Requirement in the event of a deficiency therein [or the punctual payment of the principal of and interest on the Project Notes, when due and owing to the extent payment is not otherwise provided for] in accordance with the terms of the Subsidy Ordinance and Subsidy Agreement.

IN WITNESS WHEREOF, the City of Newark, in the County of Essex has caused this Subsidy Certificate to be executed on its behalf by the manual or facsimile signature of its Mayor and the seal of said City to be affixed, imprinted or otherwise reproduced hereon, and attested to by the manual or facsimile signature of the City Clerk, as of the date of the within Bond [or Project Note].

City of Newark, in the County
of Essex, State of New Jersey

ATTEST:

CITY CLERK

MAYOR

7. The Mayor of the City of Newark is hereby authorized and directed to execute and deliver an agreement evidencing such Subsidy for: (i) the replenishment of deficiencies in the Debt Service Reserve Fund established for the Bonds so that the Debt Service Reserve Fund Requirement for the Bonds is satisfied; and (ii) the payment of principal of and interest on the Project Notes when due and owing to the extent that payment is not otherwise duly provided for (the "Subsidy Agreement"), in substantially in the form and with such additions, deletions, revisions and changes as may be approved by the Director of the Department of Finance, which approval authority for each such Subsidy Agreement is hereby delegated to the Director of the Department of Finance, in consultation with one or more counsels and advisors to the City, on behalf of the City, including the City's Bond Counsel and the City Clerk is hereby authorized and directed to attest to the signatures thereof and affix, imprint or reproduce the seal of the City thereon, and said Mayor of the City of Newark, Chief Financial Officer, City Clerk and all other officers of the City (collectively, the "City Representatives") are each hereby authorized and directed to execute and deliver any and all further instruments and documents, and to do and perform such other acts and things as may be necessary and proper, and to perform all obligations of the City under this Subsidy Ordinance and the Subsidy Agreement and to fully effectuate the same.

8. The Mayor of the City of Newark or the Chief Financial Officer of the City, upon the issuance of the Bonds or Project Notes by the City, shall report in writing to the Municipal Council, setting forth the principal amount and interest rate(s) of the Bonds so issued and the Debt Service

Reserve Fund Requirement for such Bonds and the principal amount of Project Notes so issued, including the amount of debt service therefor. The authorization of the Mayor of the City of Newark to execute the Subsidy Agreement and the Subsidy on each of the Bond Certificates and Project Notes Certificates, as applicable, is contingent upon: (a) the approval by the Local Finance Board of the City's application in the capacity of Redevelopment Entity for the issuance of the Obligations; (b) the City adopting one or more resolutions authorizing the issuance of one or more series of the Bonds and/or Project Notes; (c) the adoption of this Subsidy Ordinance by a 2/3 vote of the full membership of the Municipal Council; and (d) the issuance of one or more series of the Bonds and/or Project Notes by the City.

9. The following additional matters are hereby found, determined and declared by the City:

(a) This Subsidy Ordinance may be adopted notwithstanding any statutory requirement or other debt limitations, including, particularly, any limitation or requirement under or pursuant to the Local Bond Law, but the aggregate principal amount of the Bonds that shall be entitled to the benefits of this Subsidy Ordinance to replenish one or more Debt Service Reserve Funds for the Bonds shall not exceed the aggregate principal amount of \$110,000,000.00.

(b) This Subsidy Ordinance may be adopted notwithstanding any statutory requirement or other debt limitations, including, particularly, any limitation or requirement under or pursuant to the Local Bond Law, but the aggregate principal amount of Project Notes that shall be entitled to the benefits of this Subsidy shall not exceed the aggregate principal amount of \$15,000,000.00.

(c) The Subsidy shall be a full faith and credit obligation of the City and unless paid from other sources, the City shall be required to levy and valorem taxes on all taxable property within the City without limit as to rate or amount in order to fulfill its obligations hereunder. Any Obligations shall be deductible from gross debt until such time any bonds or bond anticipation notes are actually issued by the City to fund each such Subsidy.

(d) Notwithstanding the City's full faith and credit obligation authorized by this Subsidy Ordinance, the Bonds and/or Project Notes issued by the City acting as Redevelopment Entity shall be non-recourse obligations of the City and shall not be included in the gross debt of the City.

10. The following matters are hereby determined, declared, recited and stated:

(a) The Bonds which are subject to this Subsidy shall mature within forty (40) years from the respective dates of issuance thereof, if issued in one or more series.

(b) The obligation of the City to pay the Subsidy on the Obligations shall remain in effect until all Obligations are paid in full or payment duly provided for and such Obligations are no longer outstanding under the terms of the Trust Indenture.

(c) All other items to be contained in a bond ordinance adopted pursuant to the Local Bond Law are hereby determined to be inapplicable to this Subsidy Ordinance.

(d) The purpose described in this Subsidy Ordinance is not a current expense and

no part of the cost thereof shall be assessed on property.

11. The City, in providing the Subsidy, hereby covenants and agrees to comply, as applicable, with the requirements of Rule 15c2-12 (the "Rule") promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended and supplemented, including the requirement to file notices of the incurrence of "financial obligations" of the City to comply with, and in accordance with, the provisions of the Rule, and agrees to covenant to such compliance in the Subsidy Agreement.

12. The City Clerk is hereby authorized and directed to arrange for and cause the publication of the summary text of this Subsidy Ordinance after introduction and final adoption in accordance with the provisions of the Local Bond Law and to arrange for the public hearing and final adoption therefor.

13. Upon the final adoption and publication hereof, the City Clerk of the City Municipal Council shall forward certified copies of this Subsidy Ordinance and the proceedings related thereto to Bond Counsel to the City, William R. Mayer, Esq., DeCotiis, FitzPatrick, Cole & Giblin, LLP.

14. This Subsidy Ordinance shall take effect twenty (20) days after the first publication hereof after final adoption, according to the laws of the State of New Jersey.

STATEMENT

Ordinance authorizing the provision of a subsidy by the City to: (a) Fund deficiencies in a debt service reserve fund for the not to exceed \$110,000,000.00 Mass Transit Access Tax Revenue Bonds issued to finance project costs for the Mulberry Pedestrian Bridge Redevelopment Project; and (b) Pay the Principal of and interest on not to exceed \$15,000,000.00.