



Legislation Details (With Text)

File #: 22-1400 **Version:** 1 **Name:** Resolution Authorizing Emergency Appropriation
Type: Resolution **Status:** Adopted
File created: 9/28/2022 **In control:** Finance
On agenda: 10/19/2022 **Final action:** 10/19/2022

Title: Dept/ Agency: Finance
Action: Ratifying Authorizing Amending
Type of Service: Emergency Appropriation
Purpose: To provide funds for the City’s allocable share of the Joint Meeting Flood Mitigation Project Phase Ib.
Funding Source: Bonds - New Jersey Infrastructure Bank
Appropriation Amount: \$2,130,463.00
Budget Year: 2022
Contract Period:
Contract Basis: Bid State Vendor Prof. Ser. EUS
 Fair & Open No Reportable Contributions RFP RFQ
 Private Sale Grant Sub-recipient n/a
Additional Information:
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (“LOCAL UNIT”) AUTHORIZING AN EMERGENCY APPROPRIATION PURSUANT TO N.J.S.A. 40A:4-46 AND 40A:4-48 TO APPROPRIATE THE LOCAL UNIT’S ALLOCABLE SHARE OF THE UNFUNDED PORTION OF PHASE I OF THE FLOOD MITIGATION FACILITIES PROJECT OF THE JOINT MEETING OF ESSEX AND UNION COUNTIES IN AN AMOUNT NOT TO EXCEED \$2,130,463.00.
Operating Agency: Department of Water and Sewer Utilities
Two-Thirds vote of full membership required.

Sponsors: Council of the Whole

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Code sections:

| Date | Ver. | Action By | Action | Result |
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| 10/19/2022 | 1 | Municipal Council | Adopt | Pass |

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Additional Information:
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (“LOCAL UNIT”) AUTHORIZING AN EMERGENCY APPROPRIATION

PURSUANT TO N.J.S.A. 40A:4-46 AND 40A:4-48 TO APPROPRIATE THE LOCAL UNIT'S ALLOCABLE SHARE OF THE UNFUNDED PORTION OF PHASE I OF THE FLOOD MITIGATION FACILITIES PROJECT OF THE JOINT MEETING OF ESSEX AND UNION COUNTIES IN AN AMOUNT NOT TO EXCEED \$2,130,463.00.

Operating Agency: Department of Water and Sewer Utilities

Two-Thirds vote of full membership required.

WHEREAS, the Municipal Council of the City of Newark, in the County of Essex, State of New Jersey (the "Local Unit"), desires to adopt a Resolution providing for an emergency appropriation, pursuant to N.J.S.A. 40A:4-46 and 40A:4-48 to appropriate the Local Unit's allocable share of the unfunded portion of Phase 1 of the Project (as hereinafter defined) in an amount not to exceed \$2,130,463.00; and

WHEREAS, the Joint Meeting of Essex and Union Counties (the "Joint Meeting") is organized and exists pursuant to the provisions of N.J.S.A. 40:63-68 *et seq.*, and constitutes a public body corporate and politic of the State of New Jersey authorized to exercise essential public and governmental functions, and having all powers necessary or convenient to carry out and effectuate its corporate purposes; and

WHEREAS, on October 29, 2012, the Joint Meeting experienced floodwaters generated by Superstorm Sandy and high tide of over twelve (12) feet; and

WHEREAS, because of the extraordinary tidal surge during the storm, floodwaters entered and inundated a number of locations within the Joint Meeting's treatment plant; and

WHEREAS, following Superstorm Sandy, the Joint Meeting's consulting general engineers, CME Associates, were retained to conduct a Facilities Flood Control Report to assess the damage caused by the flooding, to review possible modifications to be made to structures to prevent damage from future flooding and to review alternative flood measures; and

WHEREAS, CME Associates also performed a Benefit Cost Analysis to determine the benefits of restoration and appropriate mitigation measures; and

WHEREAS, after both studies, CME Associates determined that it would be most beneficial to the Joint Meeting to protect the entire site from future flooding so as to prevent any future damage and to ensure the treatment of wastewater flows during any storm events; and

WHEREAS, the Executive Director, in conjunction with the Joint Meeting's General Consulting Engineer, developed a Flood Mitigation Facilities Project (as hereinafter defined) for the Joint Meeting, that involves among other work, the construction of a reinforced concrete levee wall, installation of automatic vehicle flood gates, isolation of on-site stormwater collection systems and pumps, an effluent pumping station, Cogeneration Upgrades, a stormwater pumping station for the Biosolids Facility site and the use of an existing Army Corps of Engineers Flood Control Pump Station at the treatment plant (collectively, the "Flood Mitigation Facilities Project"); and

WHEREAS, the Federal Emergency Management Agency, an agency of the United States of America, has indicated that it will reimburse approximately 90% of the costs associated with the Project and that only the remaining 10% of the costs will be financed by the member municipalities and the City of Elizabeth (collectively, the "Members"); and

WHEREAS, the funding commitment from the Federal Emergency Management Agency may be provided in multiple phases; and

WHEREAS, the Joint Meeting covenanted to the Members that the Flood Mitigation Facilities Project will be financed in phases as each phase is approved by FEMA; and

WHEREAS, in September of 2020, FEMA approved Phase I of the Flood Mitigation Facilities Project consisting of the construction of an Effluent Pumping Station, which will be connected to the existing twin outfall channels to the Arthur Kill (“Phase I of the Project”); and

WHEREAS, in October, 2020, the Local Unit issued and sold Construction Loan Financing Program Notes to the New Jersey Infrastructure Bank (the “I-Bank”) in the aggregate amount of \$2,045,000.00 to finance its allocable share of Phase I of the Project (the “2020 I-Bank Note”); and

WHEREAS, Phase I of the Project has experienced delays due to many factors, including but, not limited to, delays in receiving approval the New Jersey Department of Environmental Protection, the financing process, and, primarily, as a result of the COVID-19 pandemic; and

WHEREAS, due to these delays, the Joint Meeting did not solicit and receive bids on Phase I of the Project until July of 2022; and

WHEREAS, the bids received for Phase I of the Project were substantially more than originally projected and more than the \$21,392,365.00 amount that was financed through the I-Bank by the each of the Members through their respective 2020 I-Bank Notes; and

WHEREAS, in order to execute a contract with the lowest responsible bidder and lock in construction costs for Phase I of the Project, the Joint Meeting will need to have access to an additional \$31,361,958.00; and

WHEREAS, N.J.S.A. 40A:4-46 permits local governments to make emergency appropriations, after adoption of the annual budget, for purposes unforeseen at the time of adoption thereof; and

WHEREAS, the emergency appropriation shall be provided in full as a deferred charge in the Fiscal Year 2023 budget of the Local Unit, except to the extent that provision for paying, funding or refunding the emergency appropriation or the financing of the expenditures pursuant thereto shall previously have been made by the authorization of bonds, pursuant to N.J.S.A. 40A:2-3; and

WHEREAS, the Local Unit will finance the emergency appropriation via the adoption of a bond ordinance prior to the adoption of the Local Unit’s 2023 budget; and

WHEREAS, the emergency appropriation is being made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare of the residents of the Local Unit and is necessary for the protection and efficient operation of the Joint Meeting’s wastewater system; and

WHEREAS, the total amount of the emergency appropriations created in calendar year 2022, including the appropriation to be created by this resolution, is \$2,130,463.00 and three percent (3%) of the total current and utility operating appropriations in the budget for the year ending December

31, 2022 is \$28,181,022.09; and

WHEREAS, the foregoing emergency appropriation together with prior emergency appropriations does not exceed three percent (3%) of the total current and utility operating appropriations in the budget adopted for the year ending December 31, 2022.

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

By not less than 2/3 of all Governing Body members affirmatively concurring in accordance with N.J.S.A. 40A:4-48, as follows:

1. The above recitals are incorporated herein as though fully set forth at length.
2. The Local Unit hereby declares that an emergency exists requiring a supplementary appropriation.
3. An emergency appropriation in the amount of \$2,130,463.00 is hereby authorized and made for the purpose of appropriating the Local Unit's allocable share of the unfunded portion of Phase 1 of the Project, which was not a known or foreseen amount at the time of the adoption of the calendar year 2022 fiscal budget and, thus, an adequate provision for such cost was not made in said budget. The emergency appropriation is being made to meet a pressing need for public expenditure to protect or promote the public health, safety, morals or welfare of residents of the Local Unit and is necessary for the protection and efficient operation of the Joint Meeting's wastewater system. Due to the fact that no adequate provision was made in the budget for the year ended December 31, 2022 for the aforesaid purpose, N.J.S.A. 40A:4-46 provides for the creation of an emergency appropriation for the above referenced purpose.
4. The emergency appropriation shall be paid or funded by the Local Unit as a deferred charge in the budget for the fiscal year ending December 31, 2023 except, to the extent, if any, said emergency appropriation is paid or funded through the authorization of bonds or notes as an appropriation authorized by law pursuant to N.J.S.A. 40A:2-3. The Local Unit shall finance the emergency appropriation via the adoption of a bond ordinance prior to the adoption of the Local Unit's 2023 budget. The Local Unit hereby requests, if necessary, the emergency appropriation to be excluded from CAPS, pursuant to N.J.S.A. 40A:4-45.4(c)(1).
5. Two (2) certified copies of this Resolution shall be filed with the Director of the Division of Local Government Services and a certified copy of this Resolution shall be filed with the Acting City Clerk of the Local Unit and with Everett M. Johnson, Esq., Wilentz, Goldman & Spitzer, P.A., Bond Counsel to the Joint Meeting.
6. This Resolution shall take effect immediately.

STATEMENT

This Resolution authorizes an emergency appropriation, pursuant to N.J.S.A. 40A:4-46 and 40A:4-48 to appropriate the local unit's allocable share of the unfunded portion of Phase I of the Flood Mitigation Facilities Project of the Joint Meeting of Essex and Union Counties in an amount not

to exceed \$2,130,463.00.