



## Legislation Text

File #: 18-1398, Version: 1

**Dept/ Agency:** Finance

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

**Purpose:** Approving loan and escrow agreements for replacement of water distribution mains

**Amount to be Financed:** \$5,000,000.00

**Source of Appropriation:** New Jersey Infrastructure Bank (a/k/a NJIB)

**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 CONSTRUCTION FINANCING LOAN PROGRAM OF THE NEW JERSEY INFRASTRUCTURE BANK", TO BE ISSUED IN THE PRINCIPAL AMOUNT OF UP TO \$5,000,000.00, 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 AND IN CONNECTION WITH THE CITY'S REPLACEMENT OF WATER DISTRIBUTION MAINS PROJECT**

**Additional Information:**

Project authorized by Ordinance 6PSF-a adopted on April 19, 2017.

**WHEREAS**, the City of Newark (the "Local Unit"), in the County of Essex, New Jersey, has determined that there exists a need within the Local Unit to construct the City's replacement of water distribution mains project (the "Project"), and it is the desire of the Local Unit to obtain financing for such Project through participation in the environmental infrastructure financing program (the "Environmental Infrastructure Financing Program") of the New Jersey Infrastructure Bank (f/k/a the New Jersey Environmental Infrastructure Trust) (the "I-Bank"); and

**WHEREAS**, the Local Unit has determined to temporarily finance the construction of the Project prior to the closing with respect to the Environmental Infrastructure Financing Program, 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 Construction Financing Program of the I-Bank (the "Construction Financing Program"); 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 the "Note Relating to the Construction Financing Program of the New Jersey Infrastructure Bank" in a principal amount of up to \$5,000,000.00 (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.

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

1. In accordance with Section 28 of the Local Bond Law and N.J.S.A. 58:11B-9, the Local Unit hereby authorizes the issuance, sale and award the Note in accordance with the provisions hereof. The obligation represented by the Note has been appropriated and authorized by Section 3 of Bond Ordinance number 6PSF-a April 19, 2017, of the Local Unit (the “Bond Ordinance”), which Bond Ordinance is entitled “AN ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, PROVIDING FOR THE REPLACEMENT OF WATER MAINS AND OTHER RELATED EXPENSES IN AND FOR THE CITY OF NEWARK AND APPROPRIATING \$5,000,000.00 THEREFOR, AND PROVIDING FOR THE ISSUANCE OF \$5,000,000.00 IN BONDS OR NOTES OF THE CITY OF NEWARK TO FINANCE THE SAME”, and which Bond Ordinance was finally adopted by the Local Unit at a meeting duly called and held on April 19, 2017, at which time a quorum was present and acting throughout, all 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 up to \$5,000,000.00;
- (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 “CFP-18-3” or such other number as determined by the Chief Financial Officer upon consultation with the I-Bank;
- (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 (each, an “Authorized Officer” and, collectively,

the "Authorized Officers") under the official seal or a facsimile thereof affixed, printed, engraved or reproduced thereon and attested by the manual signature of the Local Unit Clerk.

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

6. The law firm of DeCotiis, FitzPatrick, Cole & Giblin, LLP, is hereby authorized to arrange for the printing of the Note, which law firm may authorize McCarter & English, LLP, Bond Counsel to the I-Bank for the Construction Financing Program, to arrange for same.

7. 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 the corporate seal of the Local Unit to, any document, instrument or closing certificate deemed necessary, desirable or convenient by the Authorized Officers or the City Clerk of the Local Unit, as applicable, 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 or other document by the party authorized hereunder to execute such certificate 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 participation of the Local Unit in the Construction Financing Program.

8. Upon the adoption hereof, the Local Unit, City Clerk shall forward certified copies of this resolution to William R. Mayer, Esq., DeCotiis, FitzPatrick, Cole & Giblin, LLP, Bond Counsel to the Local Unit, David Zimmer, Executive Director of the I-Bank, and Richard T. Nolan, Esq., McCarter & English, LLP, Bond Counsel to the I-Bank.

9. This resolution shall take effect immediately.

### **STATEMENT**

This resolution determines the form and other details of its notes relating to the construction financing loan program of the New Jersey Infrastructure Bank, to be issued in the principal amount of up to \$5,000,000.00, and provide for the issuance and sale of such note in connection to the City's replacement of Water Distribution Mains Project.