



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 19-0650, Version: 1

Dept/ Agency: Finance

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

Purpose: Approving loan and escrow agreements for Phase 1 of the City's Lead Service Line Replacement Program

Amount to be Financed: \$13,000,000.00

Source of Appropriation: Notes/Bonds

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 NOTES RELATING TO THE CONSTRUCTION FINANCING LOAN PROGRAM OF THE NEW JERSEY INFRASTRUCTURE BANK, TO BE ISSUED IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$13,000,000.00, AND PROVIDING FOR THE ISSUANCE AND SALE OF SUCH NOTES TO THE NEW JERSEY INFRASTRUCTURE BANK, AND AUTHORIZING THE EXECUTION AND DELIVERY OF SUCH NOTES 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 PHASE 1 OF THE CITY'S LEAD SERVICE LINE REPLACEMENT PROGRAM

Additional Information:

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 Phase 1 of the Local Unit's lead service line replacement 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 formerly known as the New Jersey Environmental Infrastructure Trust ("I-Bank"); and

WHEREAS, the Local Unit adopted Ordinance 6PSF-d on August 8, 2018, (the "Lead Service Lines Bond Ordinance"), authorizing the Local Unit to issue its bonds and notes in the principal amount of \$75,000,000.00, to finance the replacement of lead service lines in the Local Unit; and

WHEREAS, at a hearing of the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey (the "Local Finance Board") held on September 12, 2018, the Local Finance Board approved the City's application for Municipal Qualified Bond Act approval for the Lead Service Lines Bond Ordinance but conditioned this approval on the Local Unit specially assessing the costs of the lead service line improvements to the benefited property; and

WHEREAS, the Local Unit adopted Ordinance 6PSF-a on February 22, 2019, providing that a portion of the cost of Phase I of the Lead Service Line Replacement Program received by the

recipient properties shall be specially assessed on the properties benefitting therefrom (collectively, the "Special Assessments"); and

WHEREAS, the Local Unit has determined to temporarily finance the construction of the Project prior to the closing with respect to the 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 Loans") to the Local Unit, pursuant to the Construction Financing Program of the I-Bank (the "Construction Financing Program"); and

WHEREAS, the Local Unit and the I-Bank expect to permanently finance the Construction Loans with the proceeds of the Special Assessments and loans to be made by each of (i) the I-Bank (the "I-Bank Loan") and (ii) the State of New Jersey, acting by and through the New Jersey Department of Environmental Protection (the "Fund Loan"); 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 Loans 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 (a) its "Note Relating to the Construction Financing Program of the New Jersey Infrastructure Bank" in a principal amount anticipated to be in the amount of the I-Bank Loan (the "I-Bank Note") and (b) to issue and sell to the I-Bank its "Note Relating to the Construction Financing Program of the New Jersey Infrastructure Bank" in a principal amount anticipated to be in the amount of the Fund Loan (the "Fund Note" and, collectively with the I-Bank Note, the "Notes"), which Notes shall be issued in an aggregate principal amount of up to \$13,000,000.00; and

WHEREAS, it is the desire of the Local Unit to authorize, execute, attest and deliver the Notes 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 and N.J.S.A. 58:11B-9 allows for the sale of the Notes 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:

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 of the Notes in accordance with the provisions hereof. An amount exceeding the obligations represented by the Notes has been appropriated and authorized by the Lead Service Lines Bond Ordinance 6PSFd, which Lead Service Lines Bond Ordinance is entitled "AN ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, PROVIDING FOR THE LEAD SERVICE LINE REPLACEMENT PROGRAM AND APPROPRIATING \$75,000,000.00 THEREFOR, AND PROVIDING FOR THE ISSUANCE OF \$75,000,000.00 IN BONDS OR NOTES OF THE CITY OF NEWARK TO FINANCE THE SAME", and which Lead Service Lines Bond Ordinance was finally adopted by the Local Unit at a meeting duly called and held on August 8, 2018, at which time a quorum was present and acted throughout, all pursuant to the terms of the Local Bond Law and other applicable law.

2. To the extent the Special Assessments are received by the Local Unit prior to the receipt of

the Fund Loan the Local Unit expects to reimburse the costs of the Project or to prepay the Fund Note from the Special Assessments and to reduce the amount of the Fund Loan. To the extent the Special Assessments are received by the Local Unit after the receipt of the Fund Loan the Local Unit expects to apply the Special Assessments to the payment or prepayment of the Fund Loan.

3. 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 amounts of the Notes (subject to the maximum limitation set forth in Section 5(a) hereof), and (ii) the dated date of the Notes.

4. Any determination made by the Chief Financial Officer pursuant to the terms hereof shall be conclusively evidenced by the execution and attestation of the Notes by the parties authorized pursuant to Section 5(i) hereof.

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

- (a) the principal amount of the Notes to be issued shall be an aggregate amount up to \$13,000,000.00;
- (b) the maturity of the Notes shall be as determined by the I-Bank;
- (c) the interest rate of the Notes shall be as determined by the I-Bank;
- (d) the purchase price for the Notes shall be par;
- (e) the Notes shall be subject to prepayment prior to their stated maturity in accordance with the terms and conditions of the Notes;
- (f) the I-Bank Note and the Fund Note shall each be issued in a single denomination;
- (g) The I-Bank Note shall be numbered “CFP-19-2 (I-Bank Portion)” and the Fund Note shall be numbered “CFP-19-3 (Fund Portion)” or such other number or numbers or designation or designations as determined by the Chief Financial Officer upon consultation with the I-Bank;
- (h) the Notes 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
- (i) the Notes 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.

6. The I-Bank Note shall be substantially in the form attached hereto as Exhibit 1 and the Fund Note shall be substantially in the form attached hereto as Exhibit 2 with such revisions, insertions and revisions as may be required by the I-Bank and approved by Bond Counsel to the Local Unit and the Authorized Officers, such approval to be conclusively evidenced by the execution of the Notes by the Authorized Officers.

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

8. The Authorized Officers of the Local Unit are hereby further severally authorized to (i) execute

and deliver, and the 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 Notes 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 Notes and the participation of the Local Unit in the Construction Financing Program.

9. This resolution shall take effect upon adoption by the Governing Body of the Local Unit.

10. Upon the adoption hereof, the 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.

STATEMENT

Resolution 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 \$13,000,000.00, and providing for the issuance and sale of such note, 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 in connection with Phase 1 of the City’s Lead Service Line Replacement Program.