



Legislation Text

File #: 22-1472, Version: 1

Dept/ Agency: Finance

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

Purpose: Confirming Bond Sale

Amount to be Financed: \$110,000,000.00

Source of Appropriation: Mass Transit Access Tax Revenue Bonds

Purchaser: Open Market

Project Information:

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

SUPPLEMENTAL RESOLUTION OF THE CITY OF NEWARK ACTING AS REDEVELOPMENT ENTITY PROVIDING FOR THE ISSUANCE AND SALE OF MASS TRANSIT ACCESS TAX REVENUE BONDS (MULBERRY PEDESTRIAN BRIDGE REDEVELOPMENT PROJECT) (CITY SECURED); APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FIRST SUPPLEMENTAL TRUST INDENTURE AND RATIFYING AND CONFIRMING THE ADOPTION OF A BOND RESOLUTION ON NOVEMBER 9, 2021.

Additional Information:

WHEREAS, the P.L. 2019, c. 289 specifically N.J.S.A. 40:48C-1.7 et seq. (the “Mass Transit Access Parking Tax Law”) authorized municipalities of a certain population to impose a 3.5% tax within such municipality (the “Mass Transit Access Tax”) and to use the proceeds therefrom for the exclusive purposes of financing and funding capital improvements for pedestrian access to mass transit stations (see N.J.S.A. 40:48C-1.7(b), (the “Eligible Project”); and

WHEREAS, pursuant to Ordinance 6PSF-e, adopted by Municipal Council on March 24, 2020 (the “Mass Transit Access Tax Ordinance”), the City of Newark (the “City”) has heretofore authorized the imposition of a 3.5% Mass Transit Access Tax on fees generated from the parking, garaging and storing of motor vehicles, subject to certain exemptions and exceptions; and

WHEREAS, pursuant to and in accordance with the provisions of the Mass Transit Access Parking Tax Law, specifically N.J.S.A. 40:48C-1.7(b), and the provisions of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., (the “Local Redevelopment and Housing Law” or the “LRHL”), specifically N.J.S.A. 40A:12A-29, 30, 37 and 41, the City may fund or finance capital improvements for pedestrian access and issue bonds and project notes for the purpose of financing the Eligible Project, which bonds and project notes shall be payable from and secured by, inter alia, Mass Transit Access Tax revenues and the Subsidy Ordinance previously adopted by the City on October 20, 2021 (the “Subsidy Ordinance”) authorizing the execution and delivery of one (1) or more Subsidy Agreements (collectively, the “Subsidy Agreement”); and

WHEREAS, the City remains desirous of constructing the Mulberry Pedestrian Bridge Project, which is an Eligible Project pursuant to the Mass Transit Access Parking Tax Law and which is located in areas in need of redevelopment and rehabilitation within the City, including the Downtown

Core Redevelopment Plan, as amended, and the Living Downtown Plan, as amended, as applicable, to provide commuter and pedestrian access from and to Penn Station to and from the Ironbound and Downtown areas within the City; and

WHEREAS, to fund the Eligible Project, the City acting as Redevelopment Entity, by virtue of Bond Resolution 7R4-a(s) adopted by the Municipal Council on November 9, 2021 (the “Bond Resolution”) authorized the issuance of the City’s Mass Transit Access Tax Revenue Bonds (Mulberry Pedestrian Bridge Redevelopment Project) (City Secured) (the “Bonds”) and Project Notes issued in anticipation of the issuance of such Bonds (the “Project Notes” together with the Bonds, the “Obligations”) in the aggregate principal amount not to exceed \$110,000,000.00 to fund, (a) as to the Bonds (1) the costs of constructing the Eligible Project; (2) capitalized interest on the Bonds, if any; (3) a debt service reserve fund on the Bonds which is equal to the debt service reserve fund requirement which shall not exceed the lesser of (a) 10% of the aggregate amount of the Bonds, (b) 125% of the average annual debt service on the Bonds, or (c) the maximum annual debt service on the Bonds; (4) the refunding of the principal of and interest on the Project Notes at maturity or earlier redemption, as applicable; and (5) the costs and expenses incurred in connection with issuing the Bonds; and to fund (b) as to the Project Notes (1) preliminary, design, planning, consulting and professional fees and soft costs related to the Eligible Project and (6) the costs and expenses of issuing the Project Notes pursuant to the Local Redevelopment and Housing Law and authorized the sale of the Bonds and the Project Notes at private sale pursuant to N.J.S.A. 40A:12A: 29(a)(3); and

WHEREAS, in the Bond Resolution the Municipal Council approved a trust indenture and the City and US Bank National Association, as Trustee (the “Trustee”) entered into a Trust Indenture dated as of December 1, 2021 (the “Original Indenture”) and on December 9, 2021 the City issued pursuant to the Original Indenture the City’s \$15,000,000.00 Project Notes (Mulberry Pedestrian Bridge Redevelopment Project) (City Secured) maturing December 8, 2022; and

WHEREAS, by Resolutions adopted on October 20, 2021 and September 7, 2022, the Local Finance Board in the Division of Local Government Services in the Department of Community Affairs of the State of New Jersey approved the issuance of the Project Notes and the Bonds; and

WHEREAS, the City now desires to provide for the issuance of the Bonds and to approve and authorize the form of and the entering into a First Supplemental Trust Indenture between the City and the Trustee amending the Original Indenture and providing the terms of the Bonds (the “First Supplemental Indenture” and together with the Original Indenture, the “Trust Indenture”) and to ratify and confirm the adoption of the Bond Resolution.

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

1. The adoption of the Bond Resolution and the authorization of the issuance and sale of the Bonds of the City, acting in the capacity of Redevelopment Entity, in the aggregate principal amount not to exceed \$110,000,000.00 is hereby ratified and confirmed. The proceeds of the Bonds shall be applied for the purpose of: (i) paying the costs of planning, developing and constructing the Eligible Project; (ii) funding capitalized interest on the Bonds, if any; (iii) funding the debt service reserve fund requirement for the Bonds; (iv) refunding the principal of and interest on the Project Notes at maturity; and (v) paying the costs of issuing the Bonds, all as shall be provided in the Trust Indenture.

2. The Bonds will be dated as of their date of delivery, will mature on and be subject to prior redemption on the dates and in the years and in the amounts set forth in the First Supplemental Indenture. The Bonds shall bear interest as shall be provided in the First Supplemental Indenture. The Bonds shall be subject to redemption at the times and at the redemption prices as shall be provided in the First Supplemental Indenture.

3. The Bonds shall be issued as registered bonds in book entry only form and shall be executed by the City and authenticated by the Trustee as shall be provided in the Trust Indenture and shall be issued for a term not to exceed forty (40) years.

4. The Bonds shall be secured by the pledge and assignment of 100% of the Mass Transit Access Tax revenues and the Subsidy Ordinance to the extent required to replenish any deficiencies in the debt service reserve fund in an amount that shall not exceed the debt service reserve requirement, as shall be provided in the Pledge and Assignment Agreement and the Trust Indenture, and the full faith and credit of the City shall not be pledged to the payment of the principal of and the interest on the Bonds, except with respect to and limited by the Subsidy Ordinance and Subsidy Agreement with respect thereto. A debt service reserve fund for the payment of debt service on the Bonds shall be initially funded in an amount not to exceed the debt service reserve fund requirement.

5. The First Supplemental Indenture pertaining to the Bonds in substantially the form attached to this Resolution as Exhibit A and made a part hereof, is hereby approved and the Mayor of the City of Newark and the Acting City Clerk are each hereby authorized and directed to execute and deliver the Trust Indenture with such changes, revisions or alterations therefor as may be approved by the officer executing the same after consultation with the City's Director of the Department of Finance, Corporation Counsel and the City's Bond Counsel (the "Bond Counsel"), such approval to be conclusively evidenced by the execution thereof. U.S. Bank National Association is hereby appointed and designated as the initial trustee, registrar and paying agent with respect to the Bonds under the Trust Indenture (the "Trustee").

6. The approval in the Bond Resolution of the Pledge and Assignment Agreement from the City to the Trustee assigning the Mass Transit Access Tax revenues and other revenues and funds for the payment of the Bonds pursuant to the Subsidy Ordinance and Subsidy Agreement pledged as security for Obligations is hereby ratified and confirmed.

7. The delegation in the Bond Resolution to the City's Director of the Department of Finance/Chief Financial Officer the authority to approve a Purchase Agreement by and between the City and the purchaser thereof with respect to the Bonds is hereby ratified and confirmed.

8. The delegation to the City's Director of the Department of Finance/Chief Financial Officer the authority to approve one (1) or more Subsidy Agreements by and between the City and the Trustee with respect to the Bonds is hereby ratified and confirmed.

9. The Mayor of the city of Newark, the Deputy Mayor/Director of the Department of Economic and Housing Development, the Director of the Department of Finance/Chief Financial Officer, the Business Administrator and the Acting City Clerk (each an "Authorized Officer") are each hereby designated, authorized and directed to determine or perform, as applicable, any other matters or details relating to the sale and issuance of the Bonds, to do or perform or cause to be done or

performed any and all acts as such officers and the City's Corporation Counsel and the City's Bond Counsel may deem necessary or appropriate in order to effect the proper issuance, execution and delivery of the Bonds, and to execute and deliver, among other things, and any and all instruments, opinions, affidavits, certificates, resolutions, documents or other papers as may be deemed necessary.

10. The Bonds shall be special and limited obligations of the City, payable solely out of Mass Transit Access Tax revenues and other money derived under the Funds and Accounts held under the Trust Indenture and the Pledge and Assignment Agreement and pledged thereto. The payment of the principal of, premium, if any, and interest on the Bonds shall be secured by a pledge and assignment of monies and certain rights and obligations of the City under the Trust Indenture as provided in the Trust Indenture and the Subsidy Ordinance and Subsidy Agreement. Neither the members of the Municipal Council nor any person executing the Bonds issued pursuant to the Bond Resolution or this Resolution and the Trust Indenture shall be liable personally on the Bonds by reason of the issuance thereof. The Bonds shall not in any way be a debt or liability of the State, or any political subdivision thereof, either legal, moral or otherwise, except the City acting as Redevelopment Entity and except with respect to the City to the extent provided in and limited by the Subsidy Ordinance and the Subsidy Agreement.

11. NW Capital Markets, Inc., is hereby appointed as the senior managing underwriter for the Bonds and Siebert Williams Shank & Co., LLC is hereby appointed as co-managing underwriter for the Bonds (collectively, the "Underwriters") with such compensation as shall be negotiated by the Director of the Department of Finance and the Underwriters. The Director of the Department of Finance is hereby authorized to approve, execute and deliver the Purchase Agreement between the City and the Underwriters, with respect to the issuance and sale of such Bonds, with such insertions, deletions and changes therein and any supplements thereto as shall be negotiated with the Underwriters and as the City's Bond Counsel may advise and the Director of the Department of Finance executing the same may approve, such approval to be evidenced by her execution thereof.

12. PFM (Public Financial Management, LLC), municipal advisor to the City and DeCotiis, FitzPatrick, Cole & Giblin, LLP, the City's Bond Counsel and NW Capital Markets, Inc., the Underwriter, and its counsel are each hereby authorized and directed to prepare and to distribute one (1) or more Preliminary Official Statement(s) on behalf of the City in connection with the sale of the Bonds. The form and content of each such Preliminary Official Statement shall, prior to the distribution thereof, be approved by the City's Director of the Department of Finance on behalf of the City. Subsequent to obtaining such approval, the Preliminary Official Statement may be revised, if necessary, and may contain additional terms and information relating to the sale of the Bonds, which Preliminary Official Statement shall constitute the final Official Statement. The Preliminary Official Statement as so prepared and its use and distribution by the Underwriter in connection with the sale and issuance of the Bonds shall be approved by the City's Director of the Department of Finance. The City's Director of the Department of Finance is hereby authorized and directed to deem the Preliminary Official Statement "final" within the meaning of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 and to provide written evidence relating thereto in form acceptable to Bond Counsel. The City's Director of the Department Finance is hereby authorized and directed to execute the final Official Statement.

13. To the extent the Bonds are issued as a series of tax exempt obligations (which

determination shall be made prior to sale of the Bonds), the City shall covenant in a Tax and Arbitrage Certificate that it will comply with the provisions of the Internal Revenue Code of 1986, as amended (the "Code") and that it will take no action or omit to take any action that would cause the interest on such series of Bonds to lose its tax exemption under the Code. The Director of the Department of Finance/Chief Finance Officer of the City is hereby authorized and directed to execute and deliver the Tax and Arbitrage Certificate prepared by the City's Bond Counsel in connection with the issuance of the Bonds.

14. There is hereby delegated to the Director of the Department of Finance/Chief Financial Officer of the City the power and such Director of the Department of Finance/Chief Financial Officer is hereby authorized and directed to approve, execute and deliver one or more Continuing Disclosure Agreements between the City and the Trustee for the benefit of the purchasers of the Bonds in accordance with the provisions of the Securities and Exchange Commission Rule 15c2-12 (the "Rule"), including any revisions, changes and amendments which shall be approved by the Director of the Department of Finance/Chief Financial Officer, in consultation with the City's Bond Counsel, such approval to be conclusively evidenced by her execution thereof.

15. This Resolution shall take effect immediately upon adoption.

STATEMENT

This Resolution authorizes the issuance and sale by the City of \$110,000,000.00 of the City's Mass Transit Access Tax Revenue Bonds (Mulberry Pedestrian Bridge Redevelopment Project) (City Secured) and approves the form of the First Supplemental Trust Indenture and ratifies and confirms the adoption of Bond Resolution 7R4-a(S) by the Municipal Council on November 9, 2021.