



Legislation Text

File #: 22-1783, Version: 1

Dept/ Agency: Finance

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

Purpose: Approving loan and escrow agreements for Joint Meeting of Essex and Union Counties - Flood Mitigation Program Phase I

Amount to be Financed: \$4,350,000.00

Source of Appropriation: Notes

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 WATER BANK CONSTRUCTION FINANCING PROGRAM OF THE NEW JERSEY INFRASTRUCTURE BANK", TO BE ISSUED IN THE PRINCIPAL AMOUNT OF UP TO \$4,350,000.00, 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 WATER BANK CONSTRUCTION FINANCING PROGRAM.

Additional Information:

WHEREAS, the City of Newark (the "Local Unit"), in the County of Essex, State of New Jersey (the "State"), is a participant in the Joint Meeting of Essex and Union Counties, constituting a joint meeting of various municipalities located in the Counties of Essex and Union in the State (the "Joint Meeting"), which Joint Meeting is organized pursuant to N.J.S.A. 40:63-68 et seq., as a public body corporate and politic, duly created and validly existing pursuant to the laws of the State; and

WHEREAS, the Joint Meeting is not statutorily authorized to incur debt obligations for any purpose, including, without limitation, in order to finance any capital improvements thereof and, therefore, any capital improvements that are undertaken by the Joint Meeting must be financed by its member municipalities and other participating municipalities (collectively, the "Members"), including, without limitation, the Local Unit, through the incurrence of debt thereby or otherwise; and

WHEREAS, the Joint Meeting has determined that there exists a need to, as applicable, acquire, construct, renovate or install a Flood Mitigation Facilities Project consisting of, but not limited to, the construction of an Effluent Pumping Station, which will be connected to the existing twin outfall channels to the Arthur Kill (the "Joint Meeting Project"); and

WHEREAS, the Local Unit has determined to temporarily finance its allocable share of the Joint Meeting Project (such allocable share being referred to herein as the "Project") with the proceeds of a short-term loan (the "Construction Loan") from the New Jersey Infrastructure Bank (the "I-Bank"), pursuant to the Water Bank Construction Financing Program of the I-Bank (the "Construction Financing Program"); and

WHEREAS, on October 28, 2020, the Local Unit financed its allocable share of the Project ("Phase IA of the Project") in the amount of \$2,045,000.00 through the I-Bank (the "2020 Note"); and

WHEREAS, due to delays, primarily caused by the COVID-19 pandemic, the Joint Meeting did not receive bids on the Joint Meeting Project until July of 2022; and

WHEREAS, the low bid of \$52,754,323.00 was substantially more than the \$21,392,365 aggregate amount of Notes that was borrowed by the Members of the Joint Meeting to fund Phase IA of the Project; and

WHEREAS, in order to execute a contract with the lowest responsible bidder and lock in construction costs for the Project, each Member of the Joint Meeting, including the Local Unit, adopted either a temporary emergency resolution or an emergency resolution, as applicable, to provide a temporary emergency appropriation or emergency appropriation, as applicable, for each Member's allocable share of the funds needed to enable the Joint Meeting to accept the lowest responsible construction bid for the Joint Meeting Project; and

WHEREAS, thereafter, Local Unit adopted a bond ordinance to finance its emergency appropriation to fund the balance of its Project ("Phase IB of the Project"); and

WHEREAS, the Local Unit now desires to cancel the 2020 Note and borrow \$4,350,000.00 through a "Note Relating to the Water Bank Construction Financing Program of the New Jersey Infrastructure Bank" (the "2023 Note") to finance both Phase IA of the Project and Phase IB of the Project; and

WHEREAS, the United States Federal Emergency Management Agency ("FEMA") has approved the scope of the Joint Meeting Project and, consequently, has agreed to fund up to 90% of the costs of planning and constructing the Joint Meeting Project; and

WHEREAS, after receipt of the FEMA reimbursements, the Local Unit will finance the remaining approximately 10% percent of the costs of the Project via (i) the issuance of long term bonds; (ii) the payment of cash, or (iii) a combination thereof; and

WHEREAS, Section 28 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") allows for the sale of the 2023 Note to the I-Bank, without any public offering, and N.J.S.A. 58:11B-9 allows for the sale of the 2023 Note to the I-Bank without any public offering, all under the terms and conditions set forth therein; and

WHEREAS, in connection with its participation in the Joint Meeting and the issuance of its 2023 Note for the purpose of financing the costs of the Project, the Local Unit desires, if required and necessary, to enter into that certain Project Financing Agreement (the "Agreement"), by and between the Joint Meeting and the Local Unit, and acknowledged and agreed to by the I-Bank, in substantially the form attached hereto as Exhibit B.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, 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 of the 2023 Note in accordance with the provisions hereof. The \$2,045,000.00 portion of the obligation represented by the 2023 Note has been appropriated and authorized by Bond Ordinance 6PSF-a adopted on August 19, 2020 of the Local Unit, which bond ordinance is entitled “BOND ORDINANCE PROVIDING FOR THE LOCAL UNIT’S ALLOCABLE SHARE OF THE FLOOD MITIGATION FACILITIES PROJECT OF THE JOINT MEETING OF ESSEX AND UNION COUNTIES, BY AND IN THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (THE “LOCAL UNIT”); APPROPRIATING \$2,705,000.00 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$2,705,000.00 BONDS OR NOTES TO FINANCE THE COST THEREOF” adopted by the Local Unit at a meeting duly called and held on August 19, 2020, and the remaining \$2,305,000.00 portion of the obligation represented by the 2023 Note has been appropriated and authorized by Bond Ordinance 6PSF-a November 14, 2022 of the Local Unit, which bond ordinance is entitled “BOND ORDINANCE FUNDING AN EMERGENCY APPROPRIATION PROVIDING FOR 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, BY AND IN THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY (THE “LOCAL UNIT”); APPROPRIATING \$2,305,000.00 THEREFOR AND AUTHORIZING THE ISSUANCE OF \$2,305,000.00 BONDS OR NOTES TO FINANCE THE COST THEREOF”, and was adopted by the Local Unit at a meeting duly called and held on November 14, 2022, at which times quorums were present and acted 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 2023 Note (subject to the maximum limitation set forth in Section 4(a) hereof); and (ii) the dated date of the 2023 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 2023 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 2023 Note to be issued shall be an amount not to exceed \$4,350,000.00; and
- (b) the maturity of the 2023 Note shall be as determined by the I-Bank; and
- (b) the interest rate of the 2023 Note shall be as determined by the I-Bank; and
- (c) the purchase price for the 2023 Note shall be par; and
- (d) the 2023 Note shall be subject to prepayment prior to its stated maturity in accordance with the terms and conditions of the 2023 Note; and
- (e) the 2023 Note shall be issued in a single denomination and shall be numbered “NJWB -

CFP-2023-1-JM-FEMA”; and

- (f) the 2023 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 2023 Note shall be executed by the manual or facsimile signatures of the Mayor and the Chief Financial Officer (collectively, the “Authorized Officers”) under official seal or facsimile thereof affixed, imprinted or reproduced thereon and attested by the manual signature of the Local Unit Acting City Clerk.

5. The 2023 Note, in substantially in the form attached hereto as Exhibit A, with such additions, deletions, and omissions as may be recommended by the Chief Financial Officer of the Local Unit, upon the advice of bond counsel, general counsel, and/or the municipal advisor to the Local Unit, be and is hereby approved.

6. The law firm of DeCotiis, FitzPatrick, Cole and Giblin, LLP, is hereby authorized to arrange for the printing of the 2023 Note, which law firm may authorize McCarter and English, LLP, Bond Counsel to the I-Bank for the Construction Financing Program, to arrange for same.

7. The Agreement, in substantially the form attached hereto as Exhibit B, with such additions, deletions, and omissions as may be recommended by the Chief Financial Officer of the Local Unit, upon the advice of bond counsel, general counsel, and/or the municipal advisor to the Local Unit, be and is hereby approved. The Mayor of the City of Newark or Chief Financial Officer of the Local Unit is hereby authorized and directed on behalf of the Local Unit to enter into, execute and deliver, and consummate or perform any actions required under, the Agreement.

8. The Authorized Officers of the Local Unit are hereby further severally authorized to: (i) execute and deliver, and the Local Unit Acting City Clerk is hereby further authorized to attest to such execution and to affix, imprint or reproduce the corporate seal of the Local Unit to, any document, instrument or closing certificate deemed necessary, desirable or convenient by the Authorized Officers of the Local Unit, 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 2023 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, instrument or other document by the party authorized hereunder to execute such certificate, instrument 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 2023 Note and the Agreement and the participation of the Local Unit in the Construction Financing Program.

9. Upon the adoption hereof, the Local Unit Acting City Clerk shall forward certified copies of this Resolution to William R. Mayer, Esq., DeCotiis, FitzPatrick, Cole and Giblin, LLP, Bond Counsel to the Local Unit, Everett M. Johnson, Esq., Wilentz, Goldman and Spitzer, P.A., Bond Counsel to the Joint Meeting, David Zimmer, Executive Director of the I-Bank, and Richard T. Nolan, Esq., McCarter and English, LLP, Bond Counsel to the I-Bank.

STATEMENT

This resolution shall determine the form and other details of its Note relating to the Water Bank Construction Financing Program of the New Jersey Infrastructure Bank, to be issued in the principal amount of \$4,350,000.00, 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 Water Bank Construction Financing Program.