



Legislation Text

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AN ORDINANCE OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY, APPROVING AND AUTHORIZING THE ENTERING INTO, EXECUTION AND DELIVERY OF AN AMENDMENT TO THE USE, OCCUPANCY AND CAPITAL GRANT AGREEMENT WITH THE HOUSING AUTHORITY OF THE CITY OF NEWARK, NEW JERSEY RELATING TO THE ISSUANCE OF CITY SECURED POLICE FACILITY REVENUE REFUNDING BONDS OF THE HOUSING AUTHORITY AND AUTHORIZING A PUBLIC HEARING THEREON AND PUBLICATION THEREOF.

Deferred to Special 6PSF-c 042016

WHEREAS, the Housing Authority of the City of Newark (the "Authority" or "Housing Authority") has been created by an ordinance of the City of Newark, in the County of Essex (the "City"), State of New Jersey, duly adopted by the Municipal Council of the City on March 23, 1938, as a public body corporate and politic of the State of New Jersey, pursuant to the provisions of the Act (as hereinafter defined); and

WHEREAS, the Authority undertook a capital project entailing the acquisition of Land (as defined in the hereinafter defined Capital Grant Agreement) located in Block 2688 and generally bounded by Bergen Street, Clinton Avenue and Hunterdon Street in the South Ward of the City and the construction thereon of a state-of-the-art Police headquarters and an Office of Emergency Management (collectively, the "Police Facility") and other associated facilities, amenities and improvements (collectively, the "South Ward Project"), such Police Facility to be used, occupied, and operated by the Department of Public Safety of the City, pursuant to a Use, Occupancy and Capital Grant Agreement (the "Capital Grant Agreement") entered into by and between the City and the Authority; and

WHEREAS, the Authority, as redevelopment entity, issued its \$68,000,000.00, City-Secured Police Facility Revenue Bonds, Series 2009A (South Ward Police Facility) (the "2009 A Bonds") pursuant to the provisions of the Local Authorities Fiscal Control Law, N.J.S.A. 40A:5A-1 et seq., as amended and supplemented, and Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented (collectively, the "Act"), and other applicable provisions of law, to finance the South Ward Project; and

WHEREAS, the construction of the South Ward Project has been completed and the City's Department of Public Safety and other departments are occupying the building; and

WHEREAS, the Authority intends to refinance the outstanding callable 2009A Bonds maturing on December 1, 2020, on December 1, 2019 to achieve a net present value debt service savings of three percent (3%) (the "Refunding Bonds"); and

WHEREAS, to secure the payment of, inter alia, the principal of and interest on the Refunding Bonds, the Authority and the City intend to enter into an Amendment to the Use, Occupancy and

Capital Grant Agreement (the "Amendment"), whereby the City will agree to make periodic capital grant payments (the "Grants") to the Authority in amounts and at such times as shall be sufficient to pay the principal of and interest on the Refunding Bonds, plus administrative fees of the Authority and, if applicable, the Authority's duly appointed Trustee; and

WHEREAS, the Grants will not be subject to the City's annual appropriation but will be a general obligation full faith and credit pledge of the City to pay, inter alia, the debt service on the Refunding Bonds; and

WHEREAS, there has been prepared and submitted to the City the form of the Amendment to be entered into by and between the Authority and the City, which Amendment is being approved in substantially final form by the Municipal Council of the City pursuant to this ordinance, the form of which Amendment is attached hereto as Exhibit A and incorporated by reference herein (all terms used herein and not otherwise defined shall have the same meanings ascribed to such terms under the Capital Grant Agreement or the Amendment thereto).

WHEREAS, the City and the Authority have determined that it is in the best interests of the City to advance refund the Authority's Refunding Bonds in order to generate debt service savings; and

WHEREAS, to secure the Authority's Refunding Bonds, it is necessary to adopt an ordinance authorizing the execution and delivery of the Amendment to secure the Refunding Bonds.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring) THAT:

SECTION 1. Pursuant to Sections 22, 37, 39 and 41 of the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq., as amended and supplemented, and other applicable Sections of said Local Redevelopment and Housing Law, the City is hereby authorized and directed to enter into and perform the Amendment, which Amendment provides, inter alia, for the payment of the principal of and interest on the Refunding Bonds to be issued by the Housing Authority. The Amendment in substantially the form submitted herewith in Exhibit A, a copy of which is on file in the Office of the City Clerk, is hereby approved with such changes, amendments or modifications as may be approved by the City's Bond Counsel and/or the City's Corporation Counsel ("Corporation Counsel") and the Authority's Chief Legal Officer ("Chief Legal Officer") and/or the Authority's Bond Counsel.

SECTION 2. The full faith and credit of the City are hereby pledged to the punctual payment of the obligations set forth in the Amendment authorized by this ordinance, including without limitation, (i) all Grant obligations of the City under the Amendment including, the payment of the principal of, and redemption premium, if any, and interest on the Refunding Bonds, costs associated with the issuance of the Refunding Bonds, Authority Administrative Expenses, and all other amounts required to be paid by the City under the Amendment and the Capital Grant Agreement and (ii) all direct and indirect costs of the Authority related to the enforcement of the Amendment (i) and (ii) collectively, the "Amendatory Payment Obligation"). The Amendatory Payment Obligation under the Amendment shall be a direct, unlimited and general obligation of the City, not subject to annual appropriation by the City and unless paid from other sources, the City shall be obligated to levy ad valorem taxes upon all the taxable property within the City for the payment of the Amendatory Payment Obligation

thereunder without limitation as to rate or amount.

An Authorized City Representative (as defined in the Capital Grant Agreement) is hereby authorized and directed to execute and deliver the Amendment on behalf of the City to the Authority in substantially such form as attached hereto in Exhibit A and the City Clerk is hereby authorized and directed to attest to such signature and affix the seal of the City thereto. All representatives, officials and employees of the City are hereby authorized and directed to enforce, perform and implement provisions of the Amendment.

SECTION 3. The following additional matters are hereby determined, declared, recited and stated:

(A) The maximum Amendatory Payment Obligation for which the City shall be obligated hereunder, which among other things will be used for the payment of principal of and interest on the Refunding Bonds of the Authority, shall not exceed the sum necessary (a) to amortize the Refunding Bonds in an aggregate principal amount not exceeding Sixty-Seven Million Dollars (\$67,000,000.00) (including the funding of the debt service reserve, if any), (b) to pay interest on the Refunding Bonds in a maximum amount set forth in paragraph (B) below and (c) to pay the costs of issuance, Authority Administrative Expenses, and all other amounts required to be paid by the City under the Amendment, to the extent permitted by law, as and if applicable.

(B) The Refunding Bonds shall have a maximum interest rate not to exceed six and one half percent (6.50%) and shall mature in annual installments not later than 25 years from the date of their original issuance, so long as such final maturity date of the Refunding Bonds complies with the requirements of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(C) The Amendatory Payment Obligation authorized herein, the specific terms of which shall be evidenced by the signature of the Mayor of the City on the Amendment shall remain effective until all the Authority's Refunding Bonds shall have been paid in full in accordance with their terms and/or when all obligations of the City under the Amendment shall have been satisfied, notwithstanding the occurrence of any other event, including but not limited to, the termination of the Amendment.

(D) No down payment is required in connection with this ordinance, pursuant to N.J.S.A. 40A:12A-37(c)(2).

(E) A supplemental debt statement has been duly made and filed in the Office of the Clerk and an executed duplicate thereof has been filed in the Office of the Director of the Division of Local Government Services in the New Jersey Department of Community Affairs, and such statement shows that the gross debt of the City is increased by the authorization of the Grants provided for in this ordinance by not to exceed \$67,000,000.00.

(F) An aggregate amount not exceeding \$680,000.00, for items of expense is included in the estimated cost indicated herein for the purposes or improvements hereinbefore described.

SECTION 4. As an "Obligated Person" (as defined under the Rule (as hereinafter defined)) with respect to the Refunding Bonds, the City hereby agrees to comply with the requirements of Rule 15c2-12, as amended (the "Rule"), promulgated by the Securities and Exchange Commission

pursuant to the Securities Exchange Act of 1934, as amended and supplemented, including the secondary market disclosure requirements therein, and the City further agrees to covenant to such compliance in the Amendment. The Mayor, Business Administrator, City Clerk, Director of Finance or any other authorized City Representative are each hereby authorized and directed to execute and deliver a Continuing Disclosure Agreement, approve and "deem final" a Preliminary and Final Official Statement, as applicable, of the Authority to the extent the information contained therein relates to the City, the Capital Grant Agreement, the Continuing Disclosure Agreement and the South Ward Project, and to execute and deliver all certificates, documents and agreements to the Authority in connection therewith and to file budgetary, financial and operating data on an annual basis and notices of certain enumerated events as required to comply with and in accordance with the provisions of the Rule.

SECTION 5. The Mayor, Business Administrator, City Clerk, Director of Finance or any other authorized City Representative are each hereby authorized and directed to execute and deliver any and all certificates, documents, agreements and instruments and to do and cause to be done any and all acts and things necessary or proper for carrying out the execution and delivery of the Amendment for the purposes of refunding the callable and outstanding 2009A Bonds and the issuance of the Authority's Refunding Bonds and all related transactions contemplated by this ordinance. The Mayor, Business Administrator, City Clerk and Director of Finance or any other authorized City Representative are each hereby authorized and directed to provide information to the Authority and to the underwriter selected by the Authority to be incorporated into the Preliminary Official Statement and the Official Statement pertaining to the issuance of the Refunding Bonds (collectively, the "Official Statement"), the City and the South Ward Project, to execute and deliver any and all documents, including the bond purchase agreement and certificates that "deem final" such information in such Official Statement and to execute and deliver any and all documents, letters of representation and certificates to the Authority and any underwriter in connection with the offering and sale of the Refunding Bonds as may be required by the bond purchase agreement. The preparation, use and distribution of any of the above described information contained in such Official Statement relating to the offering and sale of the Refunding Bonds is hereby authorized.

SECTION 6. Upon the payment of all amounts referenced in Section 3 herein, the full faith and credit pledge of the City as to its Amendatory Payment Obligation authorized herein shall cease.

SECTION 7. Notwithstanding anything else to the contrary herein, the Capital Grant Agreement and the City's Use and Occupancy Payment Obligation as well as the Amendment and the City's Amendatory Payment Obligation shall remain in full force and effect until the City's obligations with respect to the 2009A Bonds and the Refunding Bonds have been satisfied, released and discharged.

SECTION 8. The provisions of this ordinance are severable. To the extent any clause, phrase, sentence, paragraph or provision of this ordinance shall be declared invalid, illegal or unconstitutional, the remaining provisions hereof shall continue to be in full force and effect.

SECTION 9. The City Clerk is hereby authorized and directed to cause the publication of the text of this ordinance in full after introduction and adoption on first reading and final adoption in accordance with applicable law and to arrange for the public hearing hereon and final adoption hereof.

SECTION 9. This ordinance shall take effect twenty (20) days after final adoption and publication in accordance with applicable law.

STATEMENT

Ordinance of the City of Newark approving an Amendment to the Use, Occupancy and Capital Grant Agreement with the Newark Housing Authority with respect to the refunding of the callable outstanding 2009A Bonds of the Authority originally issued to finance the South Ward Project (Police Facility).