



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 16-1767, Version: 1

Dept/ Agency: Finance

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

Purpose: Confirming Bond Sale

Amount to be Financed: \$65,000,000.00

Source of Appropriation: Refunding Bonds

Purchaser:

Project Information:

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

RESOLUTION OF THE CITY OF NEWARK APPROVING THE ISSUANCE OF NOT TO EXCEED \$65,000,000.00 PORT AUTHORITY-PORT NEWARK MARINE TERMINAL ADDITIONAL RENT-BACKED REFUNDING BONDS, SERIES 2016 TO BE ISSUED BY THE HOUSING AUTHORITY OF THE CITY OF NEWARK.

Additional Information:

WHEREAS, the Housing Authority of the City of Newark (the "Authority") is authorized, pursuant to Section 30 of the Act (*N.J.S. 40A:12A-30*), to issue bonds in such principal amounts as in its opinion shall be necessary to provide sufficient funds for achieving any of its corporate purposes; and

WHEREAS, in 2004, the City of Newark (the "City"), determined to cause the redevelopment of certain parcels of land located within the City through the Authority and the powers granted to it by its designation as a redevelopment entity under both the Act and the Code of the City of Newark, which powers include the power to expend money on redevelopment projects within the City; and

WHEREAS, the Mayor, on behalf of the City and in furtherance of such redevelopment, executed the Eighteenth Supplemental Agreement and the Nineteenth Supplemental Agreement, each dated as of January 1, 2002 (collectively, the "Supplemental Lease Agreement") to the lease agreement by and between the City and the Port Authority of New York and New Jersey (the "Port Authority") and dated October 22, 1947 for the lease of the City's marine and air terminals (as previously amended and supplemented, the "Lease"); and

WHEREAS, to maximize the economic benefits to the City and finance the Initial Project (as defined in the Indenture of Trust dated as of June 1, 2004 entered into by the Authority and Wachovia Bank, National Association, as Trustee and known as the "Trust Indenture") formulated under the redevelopment plan, the City determined under the Second Services Agreement (as hereinafter defined) and Supplemental Lease Agreement that certain payments designated in such agreement as the Marine Terminal Additional Rent shall be paid in the form of annual payments of Twelve Million Five Hundred Thousand Dollars and Zero Cents (\$12,500,000.00) (the "Annual Payments") instead of a lump sum payment and would be pledged to the payment of

debt service on any bonds issued by the Authority to accomplish such redevelopment purposes; and

WHEREAS, the Annual Payments from the dated date of the 2004 Bonds (as hereinafter defined) through the year 2036, inclusive (the "Future Annual Payments") were, pledged, transferred, assigned and/or delivered by the City to the Authority as permitted under the Supplemental Lease Agreement and the Second Services Agreement to secure the issuance of the Authority's "Port Authority-Port Newark Marine Terminal Additional Rent-Backed Bonds, Series 2004 (City of Newark Redevelopment Projects)" (the "2004 Bonds") to facilitate the Initial Project; and

WHEREAS, in connection with the issuance of the Series 2004 Bonds and pursuant to Section 22 of the Local Redevelopment and Housing Law found at N.J.S.A. 40A:12A-1 et seq. (the "Act") (N.J.S.A. 40A:12A-22) and Ordinance 6PhS&Fh finally adopted by the Municipal Council of the City on May 5, 2004, the City entered into a Services Agreement dated June 29, 2004 (the "Original Services Agreement"), with the Authority, by which the City and the Authority each undertook certain responsibilities in respect of the development of the Initial Project and/or the Alternate Projects (as defined in the Trust Indenture) and the application of the proceeds of the Series 2004 Bonds and other moneys; and

WHEREAS, the payment of the principal of, and interest on the 2004 Bonds was secured by the Authority's pledge of the Future Annual Payments assigned by the Original Services Agreement to the Trustee for the 2004 Bonds; and

WHEREAS, pursuant to Resolution 7Rbc adopted on October 6, 2004 (the "Designating Resolution"), the City appointed the Authority to act as the "redevelopment entity" for the City's previously-delineated Downtown Core District Redevelopment Area and the City's previously-designated Newark Plaza Urban Renewal Area or Gateway Area (collectively, the "Redevelopment Area") and to exercise all the powers of a "redevelopment entity" set forth in the Act; and

WHEREAS, the City subsequently determined to undertake the Initial Project and in connection therewith, and pursuant to Section 22 of the Act (N.J.S.A. 40A:12A-22), the City entered into a Services and Development Agreement, dated June 15, 2005 (the "Second Services Agreement") with the Authority, by which the City and the Authority each undertook certain additional responsibilities in respect of the development of the Initial Project and the application of the proceeds of the Series 2004 Bonds; and

WHEREAS, as contemplated by the Second Services Agreement the Authority entered into a Redevelopment Agreement, dated January 26, 2006 (the "Redevelopment Agreement"), with The Newark Downtown Core Redevelopment Corporation (the "NDCRC"), by which the Authority assigned the Second Services Agreement to the NDCRC and the NDCRC assumed the Authority's responsibilities under the Second Services Agreement as well as the Authority's powers, duties, rights and obligations as the City designated "redevelopment entity" for the Redevelopment Area; and

WHEREAS, the \$270,000,000.00 aggregate principal amount of 2004 Bonds of the Authority were issued on June 29, 2004 to fund the Initial Project; and

WHEREAS, on February 22, 2007, the Authority issued refunding bonds (the "Refunding Bonds") pursuant to and in accordance with the Trust Indenture and a supplemental indenture thereto (the "2007 Supplemental Indenture") in the principal amount of \$168,320,000.00 to (i) establish an escrow for the advance refunding of all or a portion of the outstanding 2004 Bonds, (ii) fund an additional deposit (if any) into the debt service reserve fund, and (iii) pay certain costs and expenses associated with the issuance of the Refunding Bonds and (B) issue a series of new money bonds (the "New Money Bonds" and together with the Refunding Bonds, the "2007 Bonds") pursuant to and in accordance with the Trust Indenture and the 2007 Supplemental Indenture in a principal amount of not to exceed \$7,780,000.00 to (i) finance additional redevelopment projects necessary to the successful implementation of the Initial Project, (ii) fund an additional deposit (if any) into the debt service reserve fund, and (iii) pay certain costs and expenses associated with the issuance of the New Money Bonds; and

WHEREAS, by Resolution duly adopted on January 23, 2007 the City approved the issuance of the 2007 Bonds and authorized and executed a supplement to the Original Services Agreement (the "Supplemental Services Agreement") that delineated certain responsibilities relating to the issuance of the 2007 Bonds and the application of the proceeds thereof; and

WHEREAS, the NDCRC was dissolved by its Board of Directors and is no longer in existence; and

WHEREAS, upon the dissolution of the NDCRC, all of the responsibilities and obligations granted to, and assumed by, the NDCRC in the Supplemental Services Agreement reverted back to, and were assumed by, the Authority, including the exercise of all of the powers of a "redevelopment entity" set forth in the Act; and

WHEREAS, the Authority has determined to issue not to exceed \$65,000,000.00 aggregate principal amount of its Port Authority - Port Newark Marine Terminal Additional Rent-Backed Refunding Bonds, Series 2016 (City of Newark Redevelopment Projects) the ("Series 2016 Refunding Bonds") pursuant to and in accordance with the Trust Indenture, as amended and supplemented by the 2007 Supplemental Indenture and a 2016 Supplemental Indenture, to be dated the date of issuance of the Series 2016 Refunding Bonds (the "2016 Supplemental Indenture" and together with the Trust Indenture and 2007 Supplemental Indenture, the "Indenture") to (i) establish an escrow for the current refunding of all or a portion of the outstanding 2007 Refunding Bonds and (ii) pay certain costs and expenses associated with the issuance of the Series 2016 Refunding Bonds; and

WHEREAS, the City and the Authority will enter into a 2016 Supplemental Services Agreement (the "2016 Supplemental Services Agreement") to delineate certain additional responsibilities and obligations of the parties hereto relating to the issuance of the Series 2016 Refunding Bonds and the application of the proceeds thereof; and

WHEREAS, pursuant to Section 2.05(d) of the Trust Indenture, the Authority is required, prior to the issuance of any refunding bonds, to obtain (i) a certificate of an Authorized Officer of each of the Authority and the City to the effect that the Original Services Agreement has been amended to cover the issuance of the Additional Bonds, if necessary, including the Series 2016 Refunding Bonds, (ii) a copy of such Original Services Agreement, including all amendments and

supplements thereto, and (iii) a Certificate of an Authorized Officer of the City, dated the date of issuance of such Additional Bonds, to the effect that all of the representations, warranties and covenants of the City contained in the Original Services Agreement, as amended and supplemented, including the 2016 Supplemental Services Agreement are as of such date, true, accurate and complete as of the date of issuance of the Series 2016 Refunding Bonds, and if no such amendment to the Original Services Agreement is required, a Counsel's opinion stating same shall be delivered to the Trustee; and

WHEREAS, the City has determined to approve the Authority's issuance of the Series 2016 Refunding Bonds, to comply with the provisions of the Trust Indenture, as supplemented and the 2016 Supplemental Indenture regarding the approval of such issuance and to approve and authorize the execution and delivery of the 2016 Supplemental Services Agreement with respect to such Series 2016 Refunding Bonds as required by the Trust Indenture.

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

Section 1. The City hereby approves the issuance of the Series 2016 Refunding Bonds, such approval to be conclusively evidenced by an Authorized Officer (as hereinafter defined) executing and delivering a certificate (the "Certificate") of the City to the Authority as required by Section 2.05 (d) of the Trust Indenture with respect thereto concurrently with the issuance and delivery of the Series 2016 Refunding Bonds to the Authority. The savings produced as a result of the issuance of the Series 2016 Refunding Bonds shall inure to the benefit of the City. The Mayor, the Chief Financial Officer and the Business Administrator, or each of them (each an "Authorized Officer"), are hereby authorized to execute and deliver such written Certificate requesting and authorizing the issuance of the Series 2016 Refunding Bonds on behalf of the City to the Authority; provided, that such officers may require that the 2016 Supplemental Services Agreement authorized in Section 2 hereof be executed and delivered by the Authority as a condition to executing and delivering such written request.

Section 2. The City hereby authorizes and approves the 2016 Supplemental Services Agreement to be entered into between the City and the Authority (the "2016 Supplemental Services Agreement") in connection with the issuance of the Series 2016 Refunding Bonds, in substantially the form set forth in **Exhibit A** attached hereto, with such changes as the Mayor, the Chief Financial Officer or the Business Administrator may approve upon consultation with the City's Bond Counsel ("Bond Counsel") and Financial Advisor ("Financial Advisor"), such approval to be conclusively evidenced by such officer's execution thereof. The Mayor, the Chief Financial Officer and the Business Administrator, or each of them, are hereby authorized and directed to execute and deliver such approved 2016 Supplemental Services Agreement on behalf of the City, and the City Clerk or Deputy City Clerk are hereby authorized and directed to attest to such execution and to affix the official seal of the City to such 2016 Supplemental Services Agreement. The 2016 Supplemental Services Agreement supplements the Original Services Agreement, the Second Services Agreement and the Supplemental Services Agreement and each agreement remains in full force and effect. Except as expressly provided herein with respect to the 2016 Supplemental Services Agreement authorized and approved hereby, none of the Original Services Agreement, the Second Services Agreement or the Supplemental Services Agreement shall be nullified, altered, amended or superseded and will remain in full force and effect.

Section 3. The Authorized Officers of the City are hereby authorized and directed to provide at closing of the Series 2016 Refunding Bonds (i) a Certificate of an Authorized Officer of the City, as described in Section 2.05 (d) of the Trust Indenture, stating that the Original Services Agreement as amended and supplemented by the Second Supplemental Services Agreement and the Supplemental Services Agreement and as further supplemented by the 2016 Supplemental Services Agreement to cover the issuance of the Series 2016 Refunding Bonds, (ii) a copy of such Original Services Agreement and all amendments and supplements thereto described above, including the 2016 Supplemental Services Agreement, and (iii) the Certificate of an Authorized Officer of the City, dated the date of issuance of such Series 2016 Refunding Bonds, to the effect that all of the representations, warranties and covenants of the City contained in the Original Services Agreement, the Second Supplemental Services Agreement, the Supplemental Services Agreement and as supplemented by the 2016 Supplemental Services Agreement are, as of such date, true, accurate and complete.

Section 4. The adoption of this Resolution by the Municipal Council approving the issuance of the Series 2016 Refunding Bonds by the Authority shall be deemed to satisfy the requirements of Section 303 of the Original Services Agreement for the issuance of the Series 2016 Refunding Bonds. Pursuant to Section 303 of the Original Services Agreement, the Business Administrator, Mayor and the Chief Financial Officer each hereby authorized and directed to execute and deliver a certificate to the Authority in connection with the issuance and delivery at closing of the Series 2016 Refunding Bonds reflecting the satisfaction of the conditions and requirements of Section 303 of the Original Services Agreement.

Section 5. The Authorized Officers are hereby authorized and directed to approve, execute and deliver such additional agreements, certificates and documents necessary to facilitate and effectuate the issuance of the Series 2016 Refunding Bonds by the Authority and the transactions contemplated by the 2016 Supplemental Services Agreement and the Trust Indenture as supplemented by the 2007 Supplemental Indenture and as further supplemented by the 2016 Supplemental Indenture, and the execution of such documents, certificates and agreements shall be conclusive evidence of such approval and no further action on the part of the Municipal Council shall be required to ratify and confirm such approval of such Authorized Officers.

Section 6. This Resolution shall take effect immediately.

Section 7. A duly executed copy of the 2016 Supplemental Services Agreement shall be filed in the Office of the City Clerk along with a copy of this Resolution.

STATEMENT

Resolution approving the issuance of not to exceed \$65,000,000.00 Port Authority-Port Newark Marine Terminal, Additional Rent-Backed Refunding Bonds, Series 2016 to be issued by the Housing Authority of the City of Newark