



Legislation Text

File #: 23-1498, Version: 1

Dept/ Agency: Finance

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

Purpose: Confirming Bond Sale

Amount to be Financed: \$18,000,000.00

Source of Appropriation: Redevelopment Area Bonds

Purchaser: Open Market

Project Information:

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

RESOLUTION AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE OF REDEVELOPMENT AREA BONDS (777 MCCARTER URBAN RENEWAL, LLC PROJECT, SERIES 2023) (FEDERALLY TAXABLE, NON-RECOURSE) OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY, PROVIDING FOR THE FORM, MATURITIES AND OTHER DETAILS OF SAID BONDS; AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A MASTER TRUST INDENTURE, A FIRST SUPPLEMENTAL INDENTURE, A PLEDGE AND ASSIGNMENT AGREEMENT AND SUCH OTHER DOCUMENTS AND INSTRUMENTS AS NECESSARY FOR THE ISSUANCE OF SAID BONDS.

Additional Information:

WHEREAS, on July 14, 2004, the Municipal Council of the City of Newark (the "City") adopted Resolution 7RBA declaring, *inter alia*, Block 161, Lot 1.02 (the "*Property*") as an Area in Need of Redevelopment pursuant to the Local Redevelopment and Housing Law, constituting Chapter 79 of the Pamphlet Laws of 1992 of the State and the acts amendatory thereof and supplemental thereto (the "*Redevelopment Law*", as codified by N.J.S.A. 40A:12A-1 et seq.); and

WHEREAS, on October 6, 2004, the City adopted Ordinance 6PSF-f adopting the Newark Downtown Core District Redevelopment Plan and Amendment to the Newark Plaza Urban Renewal Plan ("*Redevelopment Plan*"), which has been amended from time to time; and

WHEREAS, on October 6, 2004, the City appointed the Housing Authority of the City of Newark (the "*Authority*") as the redevelopment entity responsible for implementing the Redevelopment Plan and carrying out redevelopment projects pursuant to the Redevelopment Law; and

WHEREAS, on August 5, 2010, the Authority, Boraie Development, LLC ("*Boraie*"), Newark Plaza Development, LLC ("*Newark Plaza*," and together with the Authority, Boraie and Newark Plaza Urban Renewal Company, LLC, the "*Redevelopment Parties*") and the Newark Plaza Urban Renewal Company, LLC entered into that certain Redevelopment Agreement, as modified on January 17, 2012 (the "*Original Redevelopment Agreement*"); and

WHEREAS, on June 24, 2016, the Redevelopment Parties entered into that certain Amended and Restated Redevelopment Agreement that amended and restated the Original Redevelopment

Agreement (the “*Amended and Restated Redevelopment Agreement*”); and

WHEREAS, on July 7, 2016, the City adopted Ordinance 6PSF-c de-designating the Authority as the redevelopment entity for the Property; and

WHEREAS, on July 7, 2016 the City and the Authority entered into that certain Assignment and Assumption Agreement, whereby the City assumed the obligations of the Authority pursuant to the Redevelopment Agreement; and

WHEREAS, that certain Addendum to the Amended and Restated Redevelopment Agreement went into effect on or about July 7, 2016 (the Amended and Restated Redevelopment Agreement, as amended by the Addendum, the “*Redevelopment Agreement*”) and Newark Plaza voluntarily accepted the revocation of its status as co-redeveloper and released any rights or claims relating to the Project, as defined below, or the Property; and

WHEREAS, through an Assignment and Assumption Agreement between Newark Plaza Urban Renewal Company, LLC and its affiliate, 777 McCarter Urban Renewal, LLC, an urban renewal entity (the “*Entity*”), the Entity assumed the obligations under the Redevelopment Agreement; and

WHEREAS, the Entity, qualified to do business under and in accordance with the Long Term Tax Exemption Law of 1992, constituting Chapter 431 of the Pamphlet Laws of 1991 of the State of New Jersey (the “*State*”), and the acts amendatory thereof and supplemental thereto (the “*Tax Exemption Law*”, as codified in N.J.S.A. 40A:20-1 et seq.) is fee simple owner of the Property and proposes to redevelop same by constructing thereon a new thirty-two (32) story building consisting of approximately two hundred ninety-six (296) market-rate residential units, seventy-four (74) affordable housing rental units, 13,026 square feet of commercial space and two hundred twenty-five (225) structured parking spaces (collectively, the “*Project*”); and

WHEREAS, in order to improve the feasibility of the Project, the Entity submitted to the City the Exemption Application (as defined in the Financial Agreement) in accordance with N.J.S.A. 40A:20-8 requesting a long-term tax exemption and a financial agreement with respect to the Project pursuant to the Tax Exemption Law, which Exemption Application is on file with the City Clerk; and

WHEREAS, pursuant to and in accordance with the provisions of the Tax Exemption Law and the New Jersey Redevelopment Area Bond Financing Law, constituting Chapter 310 of the Pamphlet Laws of 2001 of the State, and the acts amendatory thereof and supplemental thereto (the “*Redevelopment Bond Law*”, as codified in N.J.S.A. 40A:12A-64 et seq., and together with the Redevelopment Law and the Tax Exemption Law, the “*Acts*”), the City is authorized to provide for and accept, in lieu of real property taxes, an annual service charge paid by the Entity to the City; and

WHEREAS, on August 19, 2020, the Municipal Council of the City finally adopted Ordinance 6PSF-c, entitled “AN ORDINANCE GRANTING A THIRTY YEAR (30) TAX ABATEMENT TO 777 MCCARTER URBAN RENEWAL, LLC, C/O BORAIE DEVELOPMENT, LLC, 120 ALBANY STREET, NEW BRUNSWICK, NEW JERSEY 08901, FOR A PROJECT TO CONSTRUCT A NEW THIRTY-TWO (32) STORY BUILDING CONSISTING OF APPROXIMATELY TWO HUNDRED NINETY-SIX (296) MARKET RATE RESIDENTIAL UNITS, SEVENTY-FOUR (74) AFFORDABLE HOUSING RENTAL UNITS, 13,026 SQUARE FEET OF COMMERCIAL SPACE AND TWO HUNDRED

TWENTY-FIVE (225) STRUCTURED PARKING SPACES LOCATED AT 769-781 MCCARTER HIGHWAY, NEWARK, NEW JERSEY AND IDENTIFIED ON THE CITY'S TAX MAP AS BLOCK 161, LOT 1.02 AND AUTHORIZING THE EXECUTION AND DELIVERY OF A FINANCIAL AGREEMENT AND OTHER APPLICABLE DOCUMENTS RELATED TO THE ISSUANCE OF REDEVELOPMENT AREA BONDS (NON-RECOURSE TO THE FULL FAITH AND CREDIT OF THE CITY), AUTHORIZING THE ISSUANCE OF THE REDEVELOPMENT AREA BONDS IN A PRINCIPAL AMOUNT NOT TO EXCEED \$18,000,000.00 AND DETERMINING VARIOUS OTHER MATTERS IN CONNECTION THEREWITH. (EAST WARD)", (the "*Ordinance*"), which Ordinance accepts and approves the Exemption Application, the Financial Agreement dated October 2, 2020, by and between the Entity and the City (the "*Financial Agreement*"), and the Project; and

WHEREAS, pursuant to the Redevelopment Bond Law, specifically N.J.S.A. 40A:12A-68, the Annual Service Charge (as such term is hereinafter defined) shall, upon the recordation of the Financial Agreement and the Ordinance, constitute a municipal lien on the Property and the Project within the meaning of Applicable Law; and

WHEREAS, in accordance with the Tax Exemption Law, the Financial Agreement provides for the payment of an Annual Service Charge (as defined in the Financial Agreement) to be made by the Entity to the City (the "*Annual Service Charge*") and further provides for a pledge of all or a portion of such Annual Service Charge to the debt service on the Bonds (defined below) issued to fund a portion of the cost of the Project (the "*Pledged Annual Service Charge*"); and

WHEREAS, pursuant to and in accordance with the provisions of the Redevelopment Bond Law, specifically, N.J.S.A. 40A:12A-67(a), the City may issue bonds in order to finance a portion of the costs of a redevelopment project, which bonds may be secured by all or a portion of the Annual Service Charge; and

WHEREAS, in order to assist in financing a portion of the costs of the Project, the City has determined to issue bonds to finance a portion of the costs of the Project (the "*Bonds*") in accordance with the terms and provisions of that certain "Master Indenture of Trust" (the "*Master Trust Indenture*"), to be dated the first day of the month in which the Bonds are issued, by and between the City and the trustee named therein (the "*Trustee*"), as supplemented by that certain "First Supplemental Indenture of Trust" (the "*First Supplemental Indenture*" and together with the Master Indenture of Trust, the "*Trust Indenture*"), to be dated the first day of the month in which the Bonds are issued, by and between the City and the Trustee, the Ordinance, this bond resolution (the "*Bond Resolution*"), the Financial Agreement and the Pledge Agreement (defined below); and

WHEREAS, pursuant to the terms of the Financial Agreement, the Trust Indenture and that certain "Pledge and Assignment Agreement," by and between the City and the Trustee (the "*Pledge Agreement*"), and in accordance with the Redevelopment Bond Law, specifically N.J.S.A. 40A:12A-67(c), the Pledged Annual Service Charge, as such term is defined in the Financial Agreement, shall be pledged to the payment of the principal of, redemption premium, if any, and interest on the Bonds; and

WHEREAS, in accordance with the Ordinance and the Acts, the City now desires to authorize and approve the sale and issuance of the Bonds in the aggregate principal amount not to exceed \$18,000,000.00 pursuant to the Ordinance, this Bond Resolution, the Trust Indenture, and the Pledge Agreement; and

WHEREAS, the City has determined to authorize a Bond Purchase Agreement (the “*Bond Purchase Agreement*”) and together with the Trust Indenture, Pledge Agreement, and such other documents, agreements, instruments, or certificates as may be necessary for the issuance of the Bonds, collectively, the “*Bond Documents*”) with The Prudential Insurance Company of America, as the purchaser of the Bonds (the “*Purchaser*”), pursuant to which the Purchaser will agree to purchase the Bonds upon satisfaction of the conditions precedent to issuance set forth therein; and

WHEREAS, in connection with the sale and issuance of the Bonds, the City also desires to approve and authorize the forms of and the entering into the Bond Documents and such other instruments, opinions, affidavits, certificates, resolutions, documents, agreements, or other papers as may be deemed necessary for the issuance of the Bonds.

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

1. The Municipal Council of the City of Newark (Council) hereby authorizes the issuance and sale of the Bonds of the City in the original principal amount not to exceed \$18,000,000.00. The proceeds of the Bonds shall be applied to the payment of the costs of the Project.

2. (a) The Bonds will be dated as of their date of delivery and will mature no later than thirty-five (35) years thereafter, subject to any prior mandatory sinking fund redemption and in the amounts set forth in the Trust Indenture. The Bonds shall bear interest at a rate not to exceed six percent (6%). Interest on the Bonds shall be paid as provided in the Trust Indenture.

3. The Bonds shall be secured by, *inter alia*, the pledge and assignment of Pledged Annual Service Charge as shall be provided in the Pledge 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.

4. The Trust Indenture pertaining to the Bonds shall be substantially in the form attached to this Resolution as **Exhibit A** and made a part hereof, and the Mayor, Deputy Mayor/Director, Acting Chief Financial Officer, the Business Administrator, and the City Clerk of the City (each an “*Authorized Officer*”) are each hereby authorized to execute the Trust Indenture with such changes, revisions, or alterations thereto or insertions therein as may be approved by the officer executing the same after consultation with the City’s Corporation Counsel and/or bond counsel, such approval to be conclusively evidenced by the execution thereof.

5. The Pledge Agreement from the City to the Trustee assigning the Pledged Annual Service Charges as security for Bonds shall be substantially in the form attached to this Resolution as **Exhibit B** and made a part hereof, and the Authorized Officers are each hereby authorized to execute the Pledge Agreement with such changes, revisions or alterations therefor as may be approved by the officer executing the same after consultation with the City’s Corporation Counsel and/or bond counsel, such approval to be conclusively evidenced by the execution thereof.

6. The Bond Purchase Agreement by and between the City and the Purchaser shall be substantially in the form attached to this Resolution as **Exhibit C** and made a part hereof, and the Authorized Officers are each hereby authorized to execute the Bond Purchase Agreement with such

changes, revisions or alterations therefor as may be approved by the officer executing the same after consultation with the City's Corporation Counsel and/or bond counsel, such approval to be conclusively evidenced by the execution thereof.

7. The distribution and, if necessary, the re-distribution by the City of a Preliminary Official Statement, a Preliminary Limited Offering Memorandum, or a Preliminary Private Placement Memorandum pertaining to the Bonds, in the form approved by the Acting Chief Financial Officer of the City, and the use of an Official Statement, a Limited Offering Memorandum or a Private Placement Memorandum in substantially the form of the Preliminary Official Statement, the Preliminary Limited Offering Memorandum Preliminary or the Private Placement Memorandum, is hereby authorized and approved. The Authorized Officers are each hereby authorized and directed to execute and deliver to the purchaser of the Bonds the final Official Statement, Limited Offering Memorandum, or Private Placement Memorandum with such changes as the City's bond counsel may advise, and the officer executing the same may approve, such approval to be evidenced by such officer's execution thereof. The Acting Chief Financial Officer is hereby authorized to deem final the Preliminary Official Statement, Preliminary Limited Offering Memorandum, or Preliminary Private Placement Memorandum for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

8. The Authorized Officers are hereby designated, authorized, and directed to execute and deliver any and all Bond Documents and perform or determine any other matters or details relating to the Bonds, to do or perform or cause to be done or performed any and all acts as such officers or the City's Corporation Counsel and/or bond counsel may deem necessary or appropriate in order to effect the proper issuance, execution, and delivery of the Bonds.

9. This Bond Resolution shall take effect immediately.

STATEMENT

Resolution authorizing and providing for the issuance and sale of Redevelopment Area Bonds (777 McCarter Urban Renewal, LLC Project, Series 2023) (Federally Taxable, Non-Recourse) of the City of Newark, providing for the form, maturities and other details of said bonds; authorizing the execution and delivery by the City of a Master Trust Indenture, a First Supplemental Indenture, a Pledge and Assignment Agreement and such other documents and instruments as necessary for the issuance of said bonds.