



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 23-1615, Version: 1

Dept/ Agency: Finance

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

Purpose: Approving Form of Sale of City-Secured Bonds

Amount to be Financed: \$20,000,000.00

Source of Appropriation: Bond Anticipation Notes

Purchaser: Open Market

Project Information:

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

RESOLUTION OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, STATE OF NEW JERSEY AUTHORIZING: (A) CITY OFFICIALS TO UNDERTAKE CERTAIN ACTIONS IN CONNECTION WITH THE ISSUANCE AND SALE OF NOT TO EXCEED \$20,000,000.00 BOND ANTICIPATION NOTES, SERIES 2023D TO FINANCE A LOAN TO THE NEWARK HOUSING AUTHORITY (THE "AUTHORITY") OR ITS RELATED ENTITIES FOR THE PURPOSE OF ACQUIRING AND MAINTAINING VARIOUS PROPERTIES FOR USE AS AFFORDABLE HOUSING; (B) THE EXECUTION AND DELIVERY OF ONE OR MORE LOAN AGREEMENTS, ONE OR MORE MORTGAGES, ONE OR MORE PLEDGE AND ASSIGNMENT AGREEMENTS, ONE OR MORE ASSIGNMENTS AND ASSUMPTIONS OF FINANCIAL AGREEMENTS, AND ANY OTHER AGREEMENTS AND DOCUMENTS RELATED TO THE LOAN TO THE AUTHORITY OR ITS RELATED ENTITIES; AND (C) THE ASSIGNMENT AND TRANSFER OF ONE OR MORE FINANCIAL AGREEMENTS TO THE AUTHORITY OR ITS RELATED ENTITIES.

Additional Information:

WHEREAS, the Housing Authority of the City of Newark (the "Authority") has been duly created as a public body corporate and politic of the State of New Jersey (the "State") by an Ordinance of the members of the Municipal Council of the City of Newark (the "City"), in the County of Essex (the "County"), New Jersey (the "State") duly adopted pursuant to and in accordance with all applicable law, including the Local Housing Authorities Law, constituting Chapter 19 of the Pamphlet Laws of 1938 (N.J.S.A. 55:14A-1 et seq.) of the State and the acts amendatory thereof and supplemental thereto, as repealed and replaced by the Local Redevelopment and Housing Law, constituting Chapter 79 of the Pamphlet Laws of 1992 (N.J.S.A. 40A:12A-1 et seq.) of the State and the acts amendatory thereof and supplemental thereto (the "Housing Law"); and

WHEREAS, Roizman Development Inc. (the "Developer") previously acquired, constructed, furnished, equipped and developed properties commonly known as West Kinney Gardens Phase I-A ("West Kinney"), West Kinney Gardens Phase I-B ("Hayes"), and Stella Gardens Apartments ("Prince" and together with West Kinney and Hayes, the "Properties") as affordable housing projects on land owned by the Authority and leased to the Developer; and

WHEREAS, the Developer financed the acquisition, construction, furnishing, equipping and development of the Properties, in part, with (i) low-income housing tax credits, (ii) loans from the Authority, the New Jersey Department of Community Affairs, and the New Jersey Housing and

Mortgage Finance Agency, and (iii) Developer equity; and

WHEREAS, since the fifteen (15) year tax compliance period for the low income housing tax credits has expired, the Authority desires to exercise its purchase option right to acquire the Properties from the Developer for the purpose of maintaining the Properties as affordable housing projects for the benefit of the residents of the City; and

WHEREAS, the Authority is the sole member of certain related entities known as Newark HP I, LLC ("Newark I"), Newark HP II, LLC ("Newark II") and Newark HP III, LLC ("Newark III" and together with Newark I and Newark II, the "Authority Entities"); and

WHEREAS, Newark I, Newark II and Newark III will be the acquiring properties commonly referred to as West Kinney, Hayes and Prince, respectively; and

WHEREAS, the Authority has requested the City's assistance in obtaining funds to assist the Authority Entities in acquiring the Properties from the Developer, including the payoff of any outstanding loans encumbering the Properties; and

WHEREAS, in order to aid the Authority Entities in acquiring the Properties for the purpose of maintaining low and moderate income housing in the City, the City desires to issue general obligation notes in one or more series in an aggregate principal amount of not to exceed \$20,000,000.00 (the "Notes") pursuant to the Local Bond Law, N.J.S.A. 40A:2-1 *et seq.*, as amended and supplemented (the "Local Bond Law"), and the Housing Law to provide loans in an aggregate amount not to exceed \$20,000,000.00 to the Authority Entities (the "Loans"), which will be used by the Authority Entities to fund the costs of acquiring the Properties, including, but not limited to, as applicable, the payoff of any outstanding loans encumbering the Properties, appraisal fees, environmental testing and remediation, surveys, title work, and legal and professional fees and expenses; and

WHEREAS, the City plans to issue the Notes, which, pursuant to Section 37(c)(2) of the Housing Law, may mature in annual installments commencing not more than two (2) and ending not later than forty (40) years from the date of initial issuance of the Notes, to finance the Loans, which Loans are expected to be paid in full by the Authority and/or the Authority Entities within twenty-four (24) months after the initial issuance of the Notes; and

WHEREAS, the City will capitalize the interest due on the Notes during the first year of issuance of such Notes and it is anticipated that the Authority Entities will pay any interest due on the Notes in the second year and, if necessary, in future years from revenues projected to be generated from the respective Properties; and

WHEREAS, the City now wishes to authorize and implement the issuance of the Notes, the making of the Loans and any and all actions related thereto via the adoption of this resolution; and

WHEREAS, pursuant to, and in accordance with, as applicable, (i) the Local Bond Law, (ii) the Housing Law, (iii) the Revised Uniform Limited Liability Company Act (N.J.S.A. 42:2C-1 *et seq.*) (the "Limited Liability Company Act"), and (iii) a bond ordinance duly adopted on September 20, 2023 by the Municipal Council of the City, approved by the Mayor, and published as required by law (the "Bond Ordinance"), the City is seeking to authorize the sale and issuance of the Notes; and

WHEREAS, the City, in order to issue the Notes at competitive market rates, seeks to, among other things, authorize the preparation and distribution of a Preliminary Official Statement (as hereinafter defined) and an Official Statement (as hereinafter defined); and

WHEREAS, the City, also seeks to, among other things, authorize the preparation, execution and delivery of, as applicable, the Notes, a Preliminary Official Statement (as hereinafter defined), an Official Statement (as hereinafter defined), a Continuing Disclosure Certificate (as hereinafter defined), one or more Loan Agreements (as hereinafter defined), one or more Mortgages (as hereinafter defined), one or more Pledge and Assignment Agreements (as hereinafter defined), one or more Assignment and Assumption of Financial Agreement (as hereinafter defined), and any other agreements or documents required for the authorization, sale, issuance, execution and delivery of the Notes.

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

1. The recitals set forth above are incorporated herein as if fully set forth herein.
2. The City of Newark (“City”) is hereby authorized to issue not to exceed \$20,000,000.00 Bond Anticipation Notes, Series 2023D (the “Notes”).
3. The Director of the Department of Finance/Chief Financial Officer or the Assistant Director of the Department of Finance/Chief Financial Officer are each hereby authorized, in accordance with the Bond Ordinance, to sell the Notes on a competitive basis and to award the Notes to the bidder based upon a bid of the lowest net interest cost or true interest cost. The Director of the Department of Finance/Chief Financial Officer or the Assistant Director of the Department of Finance/Chief Financial Officer are each also authorized, at his or her discretion, in accordance with the applicable provisions of the Bond Ordinance, to offer and sell the Notes on a negotiated basis.
4. The distribution by the City of a Preliminary Official Statement (the “Preliminary Official Statement”), in substantially the form attached hereto as Exhibit A, to be used in connection with the marketing and sale of the Notes, is hereby approved. The Mayor, City Administrator, Director of the Department of Finance/Chief Financial Officer, and Assistant Director of the Department of Finance/Chief Financial Officer of the City (each an “Authorized Officer(s)”) are each hereby authorized and directed, on behalf of the City, to execute and deliver a certificate that “deems final” the Preliminary Official Statement in accordance with the Rule (as herein defined).
5. After the sale of the Notes, the Preliminary Official Statement shall be modified to reflect the effect of the sale of the Notes and any other revisions not inconsistent with the substance thereof; and said Preliminary Official Statement, deemed “final” by an Authorized Officer in accordance with the Rule, as so modified, shall constitute the final Official Statement (the “Official Statement”). The Authorized Officers are each hereby authorized and directed on behalf of the City to execute and deliver said Official Statement.
6. All actions taken to date by the Authorized Officers, employees, professionals and agents of the City with respect to the authorization, sale, issuance, execution and delivery of the Notes, including, but not limited to, submissions and applications to rating agencies and the distribution and

dissemination of the Preliminary Official Statement and Notice of Sale for the Notes, as applicable, are hereby approved, ratified, adopted and confirmed, and each Authorized Officer is hereby authorized and directed to execute and deliver the Notes and any such agreements, documents or submissions required for the authorization, sale, issuance, execution and delivery of the Notes, and the City Clerk or Deputy City Clerk is hereby authorized and directed to attest to the signatures of the Authorized Officers and to affix, imprint or reproduce the seal of the City on such Notes and on any such agreements, documents or submissions related to the authorization, sale, issuance, execution and delivery of the Notes.

7. All other details or requirements of, as applicable, the Bond Ordinance, the Local Bond Law, the Limited Liability Company Act, the Housing Law shall be determined and approved by an Authorized Officer of the City, upon consultation with Wilentz, Goldman & Spitzer, P.A., Bond Counsel to the City ("Bond Counsel"), Samuel Klein and Company, CPAs, Auditor to the City (the "Auditor"), and NW Financial Group, LLC, Municipal Advisor to the City (the "Municipal Advisor"), and such approvals are to be conclusively evidenced by his or her execution of the Notes as provided herein or on any other document, certificate or agreement related to the authorization, sale, issuance, execution and delivery of the Notes.

8. The City hereby covenants and agrees to comply with the secondary market disclosure 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 agrees to covenant to such compliance, as required, in a Continuing Disclosure Certificate (the "Continuing Disclosure Certificate"), in substantially the form attached hereto as Exhibit B. In connection therewith, an Authorized Officer of the City, in consultation with Bond Counsel, the Auditor and the Municipal Advisor to the City, is hereby authorized and directed to enter into and execute the Continuing Disclosure Certificate, evidencing the contractual undertaking of the City to comply with the requirements of the Rule and to deliver the Continuing Disclosure Certificate in connection with the offer and sale of the Notes. Notwithstanding the foregoing, failure of the City to comply with the covenants set forth in the Continuing Disclosure Certificate shall not be considered a default on the Notes; however, any Noteholder may take such actions as may be necessary and appropriate, including seeking mandamus or specific performance, to cause the City to comply with its obligations hereunder and thereunder. The Authorized Officers, and any professionals or agents of the City acting on its behalf, are each hereby authorized and directed to execute and deliver all certificates, documents and agreements in connection therewith and, if necessary, 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.

9. The Director of the Department of Finance/Chief Financial Officer or the Assistant Director of the Department of Finance/Chief Financial Officer of the City are each hereby authorized and directed, upon consultation with Bond Counsel, the Auditor and the Municipal Advisor to the City, to, if applicable, submit information and financial data to ratings agencies to obtain a rating on the Notes.

10. The Director of the Department of Finance/Chief Financial Officer or the Assistant Director of the Department of Finance/Chief Financial Officer of the City are each hereby authorized and directed to determine all matters and terms in connection with the Notes, as applicable (including adjusting the principal amount of the Notes (not in excess of the amounts authorized in Section 2 hereof)), the terms set forth in the Notice of Sale, substantially in the form attached to this Resolution as Exhibit C, or any matters set forth in this Resolution that are deemed necessary and advisable to

change by the Director of the Department of Finance/Chief Financial Officer or the Assistant Director of the Department of Finance/Chief Financial Officer of the City in consultation with Bond Counsel, the Municipal Advisor, and the Auditor, prior to the sale or closing of the Notes.

11. The Authorized Officers of the City are each hereby authorized and directed, in consultation with Bond Counsel and Corporation Counsel to the City, to enter into, execute, and deliver, on behalf of the City, one or more loan agreements (the "Loan Agreement"), substantially in the forms attached to this Resolution as Exhibit D, to memorialize and set forth the terms of the Loans to the Authority Entities.

12. The Authorized Officers of the City are each hereby authorized and directed, in consultation with Bond Counsel and Corporation Counsel to the City, to enter into and execute, one or more mortgages (the "Mortgage"), as mortgagee, substantially in the forms attached to this Resolution as Exhibit E, to secure the payments due by the Authority and/or the Authority Entities under the Loans and, for the benefit of the holders of the Notes, secure the payment of principal of and interest on the Notes.

13. The Authorized Officers of the City are each hereby authorized and directed, in consultation with Bond Counsel and Corporation Counsel to the City, to enter into and execute, one or more pledge and assignment agreements (the "Pledge and Assignment Agreement"), substantially in the forms attached to this Resolution as Exhibit F, to pledge and assign the payments due by the Authority and/or the Authority Entities under the Loans.

14. The Authorized Officers of the City are each hereby authorized and directed, in consultation with Bond Counsel and Corporation Counsel to the City, to enter into and execute, one or more assignment and assumption of financial agreements, as further set forth below in Sections 15, 16, and 17 hereof (the "Assignment and Assumption of Financial Agreement"), substantially in the forms attached to this Resolution as Exhibit G.

15. Pursuant to Section 8.1 of the Financial Agreement by and between JS 2002 Urban Renewal, L.P. ("JS") and the City (the "West Kinney Financial Agreement"), the City hereby approves the assignment and transfer of the West Kinney Financial Agreement from JS, as assignor, to Newark I, as assignee. As a condition precedent to the assignment and transfer of the West Kinney Financial Agreement to Newark I, Newark I shall assume all obligations of JS under the West Kinney Financial Agreement. Any changes to the West Kinney Financial Agreement shall not be effective unless approved by the Municipal Council of the City via subsequent resolution or ordinance, as applicable.

16. Pursuant to Section 8.1 of the Financial Agreement by and between Hayes Associates 2003 Urban Renewal, L.P. ("Hayes") and the City (the "Hayes Financial Agreement"), the City hereby approves the assignment and transfer of the Hayes Financial Agreement from Hayes, as assignor, to Newark II, as assignee. As a condition precedent to the assignment and transfer of the Hayes Financial Agreement to Newark II, Newark II shall assume all obligations of Hayes under the Hayes Financial Agreement. Any changes to the Hayes Financial Agreement shall not be effective unless approved by the Municipal Council of the City via subsequent resolution or ordinance, as applicable.

17. Pursuant to Section 8.1 of the Financial Agreement by and between Prince 2004 Associates, L.P. ("Prince") and the City (the "Prince Financial Agreement"), the City hereby approves

the assignment and transfer of the Prince Financial Agreement from Prince, as assignor, to Newark III, as assignee. As a condition precedent to the assignment and transfer of the Prince Financial Agreement to Newark III, Newark III shall assume all obligations of Prince under the Prince Financial Agreement. Any changes to the Prince Financial Agreement shall not be effective unless approved by the Municipal Council of the City via subsequent resolution or ordinance, as applicable.

18. The Authorized Officers of the City are each hereby authorized and directed, in consultation with Corporation Counsel to the City, to enter into, execute and deliver any agreement, certificate, document or other instrument necessary or required by the City to authorize the sale, transfer or assignment, as applicable, of the Properties and any underlying agreements to the Authority and/or the Authority Entities.

19. This Resolution shall take effect immediately.

STATEMENT

This Resolution authorizes the issuance and sale of not to exceed \$20,000,000.00 Bond Anticipation Notes, Series 2023D to finance a loan to the Newark Housing Authority for the purposes of acquiring and maintaining various properties for use as affordable housing and execute and deliver loan agreements, mortgages, pledge and assignment agreements and documents related to the loan to the Newark Housing Authority.