



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 20-0722, Version: 1

Dept/ Agency: Finance

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

Purpose: Confirming Bond Sale

Amount to be Financed: \$123,500,000.00

Source of Appropriation: Bonds

Purchaser:

Project Information:

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

RESOLUTION OF THE CITY OF NEWARK, COUNTY OF ESSEX, STATE OF NEW JERSEY PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$88,000,000.00 QUALIFIED GENERAL IMPROVEMENT REFUNDING BONDS, NOT TO EXCEED \$30,000,000.00 QUALIFIED SCHOOL REFUNDING BONDS AND NOT TO EXCEED \$5,500,000.00 QUALIFIED WATER UTILITY REFUNDING BONDS (COLLECTIVELY, THE "REFUNDING BONDS") TO REFUND CERTAIN QUALIFIED GENERAL IMPROVEMENT REFUNDING BONDS, SERIES 2010A, QUALIFIED SCHOOL BONDS, SERIES 2010C AND QUALIFIED WATER UTILITY BONDS, SERIES 2010D, ALL DATED JUNE 16, 2010 AND PROVIDING FOR THE FORM, MATURITIES AND OTHER DETAILS OF SAID REFUNDING BONDS; AUTHORIZING A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT; PROVIDING FOR THE SALE OF SUCH REFUNDING BONDS ON A NEGOTIATED BASIS; AND APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A CONTINUING DISCLOSURE CERTIFICATE, AN ESCROW DEPOSIT AGREEMENT AND BOND PURCHASE CONTRACT (THE "BOND RESOLUTION").

Additional Information:

WHEREAS, on June 16, 2010, the City of Newark, in the County of Essex, New Jersey heretofore issued Qualified General Improvement Bonds, Series 2010A, in the aggregate principal amount of \$120,670,000.00 (the "Series 2010A Bonds"). The Series 2010A Bonds maturing on or after October 1, 2021 to and including 2028 in the amount of \$83,170,000.00 (the "Series 2010A Bonds to be Refunded") are subject to redemption on or after October 1, 2020 by the City, in whole at any time or in part from time to time. The City is desirous of issuing Qualified General Improvement Refunding Bonds in an amount not to exceed \$88,000,000.00 to refund all or a portion of the Series 2010A Bonds to be Refunded; and

WHEREAS, on June 16, 2010, the City heretofore issued aggregate principal amount \$43,917,000.00 Qualified School Bonds, Series 2010C (the "Series 2010C Bonds"). The Series 2010C Bonds maturing on or after October 1, 2021 are subject to redemption in whole or in part from time to time on or after October 1, 2020 in whole or in part from time to time. The City is desirous of refunding all or a portion of such Series 2010C Bonds maturing on or after October 1, 2021 to and including 2025 in the aggregate principal amount of \$27,877,000.00 (the "Series 2010C Bonds to be Refunded") through the issuance of not to exceed \$30,000,000.00 aggregate principal amount of

Qualified School Refunding Bonds, Series 2020; and

WHEREAS, on June 16, 2010, the City issued \$5,487,000.00 aggregate principal amount of Qualified Water Utility Bonds, Series 2010D (the "Series 2010D Bonds"). The Series 2010D Bonds maturing on or after October 1, 2021 to and including 2039 in the amount of \$4,422,000.00 (the "Series 2010D Bonds to be Refunded") are subject to redemption on or after October 1, 2020 by the City, in whole at any time or in part from time to time. The City is desirous of issuing Qualified Water Utility Refunding Bonds in an amount not to exceed \$5,500,000.00 to refund all or a portion of the Series 2010D Bonds to be Refunded; and

WHEREAS, pursuant to N.J.S.A. 40A:2-1 the City is authorized to issue refunding bonds pursuant to the provisions of 40A:2-51 and 52 et seq., (the "Local Bond Law") for the purpose of refunding outstanding obligations of the City to realize three (3.00%) percent net present value debt service savings; and

WHEREAS, in accordance with the Local Bond Law, and subsequent to the receipt of the consent of the Local Finance Board on October 9, 2019, the Municipal Council, on October 22, 2019, adopted the General Improvement Refunding Bond Ordinance 6PSF-a(S), (the "Qualified General Improvement Refunding Bond Ordinance"), the Water Utility Refunding Bond Ordinance 6PSF-c(S) adopted on October 22, 2019 (the "Qualified Water Utility Refunding Bond Ordinance"), and the School Refunding Bond Ordinance 6PSF-b(S) (the "Qualified School Refunding Bond Ordinance", together with the Qualified General Improvement Refunding Bond Ordinance and the Qualified Water Utility Refunding Bond Ordinance, the "Refunding Bond Ordinances") authorizing the issuance by the City of three (3) series of qualified refunding bonds in the aggregate amount not to exceed \$123,500,00.00 for the purpose of refunding all or a portion of the Bonds to be Refunded (as defined below) and a qualified maturity schedule therefor with respect to a forward delivery transaction and paying the costs relating to the issuance thereof; and

WHEREAS, the Local Finance Board, Division of Local Government Services Department of Community Affairs previously granted its approval for the issuance of three (3) series of qualified refunding bonds in amount not to exceed \$123,500,000.00 and the maturity schedule therefor (collectively the "Refunding Bonds") for the purposes of refunding, on a current basis in 2020, all or a portion of the Series 2010A Bonds to be Refunded, the Series 2010C Bonds to be Refunded and the Series 2010D Bonds to be Refunded (collectively, the "Bonds to be Refunded"), the maturity schedule thereof reflecting not less than 3% upfront net present value savings in years 2020 and 2021 and confirming issuance of such Refunding Bonds pursuant to the Municipal Qualified Bond Act (as hereinafter defined); and

WHEREAS, in accordance with the Local Bond Law, the City now desires to authorize and approve the sale and issuance of the Refunding Bonds pursuant to the Refunding Bond Ordinances in the aggregate principal amount not to exceed \$123,500,00.00 for an alternative financing plan to upfront savings, to which level savings in an amount not to exceed 3% net present value debt service savings and in accordance with the provisions hereof to provide for the form and sale of the three (3) series of Refunding Bonds; and

WHEREAS, each series of Refunding Bonds have been qualified under and entitled to the benefits of the provisions of the Municipal Qualified Bond Act, as amended (N.J.S.A. 40A:3-1 et seq.); and

WHEREAS, in connection with the sale and issuance of the Refunding Bonds, the City also desires to: (i) delegate to the Chief Financial Officer the authority to approve and authorize a preliminary official statement (the "Preliminary Official Statement") and the execution and distribution of an official statement (the "Official Statement"); and to (ii) approve and authorize the forms of and the execution and delivery of the hereinafter defined Continuing Disclosure Certificate, Escrow Deposit Agreement and Bond Purchase Contract; and

WHEREAS, to be able to take advantage of favorable market conditions, there is hereby delegated to the Chief Financial Officer of the City the authority to: (i) select and designate an underwriter and any co-managing underwriters (collectively, the "Underwriter") to serve as the investment bank for the purchase and sale of the Refunding Bonds; (ii) negotiate compensation to the Underwriter so long as such compensation shall not exceed \$7.50 per \$1,000.00 in the aggregate principal amount of Refunding Bonds issued, including Underwriter's costs and expenses, plus Underwriter's compensation in the amount not to exceed \$25,000.00; and (iii) approve, authorize, execute and deliver the Bond Purchase Contract (the "Purchase Contract") with the Underwriter thereof. Pursuant to such Purchase Contract the Underwriter will agree to purchase the Refunding Bonds upon satisfaction of the conditions precedent to issuance set forth therein and with such terms for the Refunding Bonds as shall be set forth therein; and

WHEREAS, the Underwriter shall complete and submit a Business Entity Disclosure Certification pursuant to which the Underwriter shall certify that the Underwriter has not made any reportable contributions to a political or candidate committee in the City in the previous one (1) year, and the Purchase Contract will prohibit the Underwriter from making any reportable contribution through the term of the Purchase Contract and the exercise of the Option to and the purchase of all or a portion of the Refunding Bonds.

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

1. There is hereby authorized the issuance and sale of the three (3) series of Refunding Bonds of the City in the aggregate principal amount not to exceed \$123,500,000.00. The proceeds of the Refunding Bonds shall be applied for the purpose of financing the refunding, on a current basis, of the Bonds to be Refunded and paying costs of issuance.

2. The Refunding Bonds shall be issued as three (3) series of bonds and shall be designated as follows: "Qualified General Improvement Refunding Bonds, Series 2020", or such other year and series designation as may be appropriate at time of issuance; "Qualified School Refunding Bonds, Series 2020", or such other year and series designation as may be appropriate at time of issuance; and "Qualified Water Utility Refunding Bonds, Series 2020", or such other year and series designation as may be appropriate at time of issuance (collectively, the "Refunding Bonds"). Each series of Refunding Bonds shall be designated as set forth in the applicable Bond Certificate attached hereto as Exhibit A-1, Exhibit A-2 and Exhibit A-3, shall be numbered from 1 upward in denominations of \$5,000 and integral multiples of \$1,000.00 in excess thereof, and shall be issued as fully registered bonds. The Refunding Bonds shall be dated their date of delivery, shall mature in each of the years and in the principal amounts and shall bear interest at the rate or rates specified by the successful bidder therefor as shall be determined by the City's Chief Financial Officer within the limitations hereinafter provided. Each series of Refunding Bonds certificates shall be substantially in

the form as provided in this Bond Resolution, with such omissions, insertions and variations as are required as determined by the City's Chief Financial Officer.

The Municipal Council hereby delegates to the City's Chief Financial Officer the power and authority to sell and award the Refunding Bonds to the Underwriter in accordance with this Bond Resolution and the terms of the Purchase Contract and in accordance with the following parameters: Refunding Bonds shall be issued in a maximum aggregate principal amount not to exceed \$123,500,000.00; the debt service on the Refunding Bonds shall achieve net present value level debt service savings in an amount not less than three (3.00%) percent of the principal amount of each series of the Bonds to be Refunded; the new debt service schedule for the Refunding Bonds shall be structured in such a way that no annual debt service payment on the Refunding Bonds shall be more than the annual debt service payment for the Bonds to be Refunded, the term of the Refunding Bonds shall not extend beyond the term of the Bonds to be Refunded and the amount of the Refunding Bonds shall not exceed the amounts authorized by the Refunding Bond Ordinances. The City's Chief Financial Officer is hereby directed, within ten (10) days of the closing on the sale of the Refunding Bonds, to file with the Local Finance Board and with the City's Business Administrator, the Mayor and the Municipal Council at its first meeting after the sale of the Refunding Bonds, a summary of the terms of the sale of each series of Refunding Bonds; a summary of the refunding and a comparison of the refunded bond debt service schedule showing annual net present value savings; and an itemized accounting of all costs of issuance in connection with the issuance of the Refunding Bonds.

3. The Refunding Bonds will be initially issued in book-entry form only in the form of one (1) certificate for the aggregate principal amount of each series of Refunding Bonds maturing in each year and, when issued, will be registered in the name of and held by Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York ("DTC"), which is hereby appointed to act as securities depository for the Refunding Bonds. As long as DTC or its nominee, Cede & Co., is the registered owner of the Refunding Bonds, payments of the principal of and interest on the Refunding Bonds will be made by the City, or by a bank or trust company (if any) selected by the Chief Financial Officer to act as paying agent and bond registrar for the Refunding Bonds pursuant to Section 10 hereof (the "Paying Agent"), directly to DTC or its nominee, Cede & Co., which will credit payments of principal of and interest on the Refunding Bonds to the participants of DTC as listed on the records of DTC fifteen (15) days preceding each interest payment date (each, a "Record Date" and together, the "Record Dates" for the payment of interest on the Refunding Bonds), which participants will in turn credit such payments to the beneficial owners of each series of Refunding Bonds. The registration books of the City shall be kept by the Chief Financial Officer (or, if appointed pursuant to Section 10 hereof, by the Paying Agent at its corporate trust office).

The Refunding Bonds shall be payable as to both principal and interest in lawful money of the United States of America. The Refunding Bonds shall be executed by the manual or facsimile signatures of the Mayor and the Chief Financial Officer under the official seal of the City or facsimile thereof affixed, printed, engraved or reproduced thereon and attested by the manual signature of the City Clerk. If a Paying Agent is appointed pursuant to Section 10 hereof, the foregoing attestation may be made by facsimile signature of the City Clerk provided that the Refunding Bonds shall be authenticated by the manual signature of the Paying Agent. The following matters are hereby determined with respect to the Refunding Bonds:

5. The Chief Financial Officer is hereby authorized to enter into a letter of representations or other agreement with DTC setting forth the respective obligations of DTC, the City and the Paying Agent (if any) with respect to the payment and transfer of the Bonds. The City agrees to comply with all obligations set forth in such agreement.

6. The distribution and, if necessary, the re-distribution, by the City of a Preliminary Official Statement pertaining to the Refunding Bonds, and the use of an Official Statement in substantially the form of the Preliminary Official Statement, are hereby authorized and approved. There is hereby delegated to the Chief Financial Officer of the City and the Chief Financial Officer is hereby authorized and directed to execute and deliver to the Underwriter of the Refunding Bonds the final Official Statement with such changes to reflect the pricing of the Refunding Bonds and 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. There is hereby delegated to the Chief Financial Officer the authority to approve the Preliminary Official Statement on behalf of the City and to approve its use and distribution by the Underwriter pertaining to the sale of the Refunding Bonds and is further hereby authorized and directed to execute a certificate which "deems final" the Preliminary Official Statement for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

7. PFM Financial Advisors, LLC ("PFM") is hereby designated as the City's municipal advisor ("Municipal Advisor") in connection with financial transaction related to the sale and issuance of the Refunding Bonds.

8. There is hereby delegated to the City's Chief Financial Officer the authority to designate and approve an escrow agent for the Bonds to be Refunded (the "Escrow Agent"). The Escrow Agent shall signify its acceptance of the duties imposed upon it by this Bond Resolution by a written certificate delivered to the City prior to the delivery of the Refunding Bonds. The Chief Financial Officer is hereby authorized and directed to accept the schedule of fees and execute and deliver any documents, certificates and agreements provided by the Escrow Agent.

9. Each series of Refunding Bonds shall be in substantially the form attached hereto as Exhibit A-1, Exhibit A-2 and Exhibit A-3, with such changes as may be appropriate to reflect the issuance and sale as determined of such Refunding Bonds by Bond Counsel to the City.

10. The Chief Financial Officer is hereby authorized and directed to designate, select and to enter into an agreement with a Paying Agent to ensure that the City can meet its obligations undertaken herein to the holders of the Refunding Bonds. The Chief Financial Officer may, however, elect not to select a Paying Agent for the Refunding Bonds, and may elect to select a Paying Agent at any time prior or subsequent to the issuance of the Refunding Bonds. However, the Chief Financial Officer shall select a Paying Agent upon any determination to cause the Refunding Bonds to be registered in the names of the beneficial owners thereof, as provided in Section 11 or Section 12 hereof.

11. In the event that DTC shall determine to discontinue providing its services as securities depository with respect to the Refunding Bonds, the City and the Paying Agent (if any) may enter into an agreement with a substitute securities depository, if available. Alternatively, the City and the Paying Agent may cause the Refunding Bonds to thereafter be registered in the names of, and delivered to, each beneficial owner of the Refunding Bonds and thereafter the principal of the

Refunding Bonds will be payable in lawful money of the United States of America at the office of the Paying Agent, and interest on the Refunding Bonds will be payable by check mailed to the respective addresses of the registered owners thereof as shown on the registration books of the City as of the close of business on the first day of the calendar month for the applicable interest payment date.

12. The City may terminate the services of DTC as securities depository with respect to the Refunding Bonds if the City determines that (i) DTC is unable to discharge its responsibilities with respect to the Refunding Bonds, or (ii) continued use of the book-entry system is not in the best interests of the beneficial owners of the Refunding Bonds. In such event, the City and the Paying Agent (if any) shall either contract with a substitute securities depository or cause the Bonds to be registered in the names of the beneficial owners thereof, as provided in Section 11 hereof.

13. A Continuing Disclosure Certificate in substantially the form attached hereto as Exhibit B (the "Continuing Disclosure Certificate") is hereby approved, and the Chief Financial Officer is hereby authorized and directed to execute and deliver the Continuing Disclosure Certificate on behalf of the City in substantially such form, with such insertions and changes therein as the Chief Financial Officer and bond counsel to the City may approve, such approval to be evidenced by his/her execution thereof.

14. In order to maintain the exclusion from gross income for federal income tax purposes of interest on the Refunding Bonds, and for no other purpose, the City will execute and deliver an Arbitrage and Tax Certificate and file an 8038 G. In connection therewith, the City covenants to comply with each applicable requirement of the Internal Revenue Code of 1986, as amended (the "Code") contained in the Arbitrage and Tax Certificate, applicable to the Refunding Bonds, and the City covenants not to take any action or fail to take any action which would cause the interest on the Refunding Bonds to lose the exclusion from gross income for federal income taxation purposes under Section 103 of the Code.

15. The City covenants and agrees with the holders of the Refunding Bonds that the City shall not take any action or omit to take any action which would cause the Refunding Bonds to be "private activity bonds" or "arbitrage bonds" within the meaning of Sections 141(a) or 148, respectively, of the Code, or any successor provision.

16. The City covenants that it will take no action which would cause the Refunding Bonds to be federally guaranteed (within the meaning of Section 149(b) of the Code).

17. The Escrow Deposit Agreement pertaining to the Bonds to be Refunded shall be substantially in the draft form attached to this Resolution as Exhibit C (the "Escrow Deposit Agreement") and made a part hereof which is hereby approved and the Chief Financial Officer of the City is hereby authorized and directed to execute and deliver same with such changes, revisions or alterations therefor as may be approved by the officer executing the Escrow Deposit Agreement, upon the recommendations of Bond Counsel to the City ("Bond Counsel"), such approval to be conclusively evidenced by the execution thereof by the Chief Financial Officer.

18. The Purchase Contract by and between the City and the Underwriter with respect to the Refunding Bonds shall be substantially in the draft form attached to this Bond Resolution as Exhibit D and made a part hereof is hereby approved and the Business Administrator or the City's Chief Financial Officer are each hereby authorized and directed to negotiate Underwriter's compensation

and counsel fee in accordance with the parameters contained in the recitals hereof, negotiate and execute the Purchase Contract with such changes, revisions or alterations therefor as may be approved by the officer executing the Purchase Contract after consultation with the City's Municipal Advisor and Bond Counsel, such approval to be conclusively evidenced by the execution thereof.

19. The Mayor, the Chief Financial Officer, the City's Business Administrator and the City Clerk are each hereby designated, authorized and directed to perform or determine any other matters or details relating to the Refunding Bonds, to do or perform or cause to be done or performed any and all acts as such officers or Bond Counsel may deem necessary or appropriate in order to effect the proper issuance, execution and delivery of the Refunding Bonds, and to execute, *inter alia*, one or more subscriptions for the purchase of United States Treasury Obligations, State and Local Government Series or such other securities and/or investment agreements in accordance with the Escrow Deposit Agreement, a tax and arbitrage certificate certifying that, among other things, the City, to the extent it is empowered and allowed under applicable law, covenants that it will do and perform all acts and things necessary or desirable for the purpose of monitoring compliance to assure that interest paid on the Refunding Bonds is and remains excludable from gross income under the Internal Revenue Code of 1986, as amended, an IRS Form 8038-G pertaining to the Refunding Bonds, and any and all instruments, opinions, affidavits, certificates, resolutions, documents or other papers as may be deemed necessary. The City's Chief Financial Officer is authorized and directed to provide for the payment of the costs of the City and its professionals incurred in connection with the issuance of the Refunding Bonds.

20. This Bond Resolution, which authorizes a plan of finance entailing a current refunding of the Bonds to be Refunded reflecting 3.00% level net present value debt service savings, is being presented to the Municipal Council for adoption as an alternative to a bond resolution authorizing a refunding structured with upfront 3% net present value debt service savings, shall take effect upon the adoption hereof by the municipal council so long as Local Finance Board approval has been previously obtained or upon the approval of the Local Finance Board after adoption hereof.

STATEMENT

Resolution providing for the issuance of not to exceed \$123,500,000.00 Qualified Refunding Bonds to refund certain qualified bonds and providing for the form, maturities and other details of said refunding bonds; authorizing a preliminary Official Statement and an Official Statement; providing for the sale of such refunding bonds on a negotiated basis; and approving and authorizing the execution and delivery by the City of a continuing disclosure certificate, and escrow deposit agreement and bond purchase contract.