



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 13-2135, **Version:** 2

Dept/ Agency: Finance

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

Type of Service: Preliminary/Official Statement and Disclosure Agreement for Issuance of Notes

Purpose: Approving official statement and disclosure agreement for sale of tax appeal refunding notes, special emergency notes and refunding notes

Amount to be Financed: \$14,539,500.00 and \$33,440.00.00

Project Information:

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

Tax Appeal Refunding Notes, Special Emergency Notes and Refunding Notes and Bond Anticipation Notes.

Additional Information:

Rollover of existing Notes related to Tax Appeals, Special Emergencies related to Super Storm Sandy and Refunding of previous Notes in the amount of \$14,539,500.00 and Bond Anticipation Notes in an Aggregate amount not to exceed \$33,440,000.00 in the event certain maturing notes are not permanently financed. The total Bond Issue would then be \$47,979,500.00 if Bond Anticipation Notes are included.

Invitation: Director of Finance, December 3, 2013

WHEREAS, the Municipal Council of the City of Newark, in the County of Essex, New Jersey (the "City"), has previously adopted the following ordinances which authorized the issuance of tax appeal refunding notes of the City: Ordinance No. 6PS&FA(S-1) finally adopted by the Municipal Council of the City on December 9, 2008 and Ordinance No. 6PSF-d112211 finally adopted by the Municipal Council of the City on November 22, 2011 (collectively, the "TARN Ordinances"); and

WHEREAS, the Municipal Council of the City has previously adopted the following ordinance and resolution which authorized the issuance of special emergency notes of the City: Ordinance No. 6PSF-g060211 finally adopted by the Municipal Council of the City on June 2, 2011; and Resolution No. 7R1-j 090811 adopted by the Municipal Council of the City on September 8, 2011 (collectively, the "SEN Legislation"); and

WHEREAS, the Municipal Council of the City has previously adopted the following ordinance which authorized the issuance of refunding notes of the City: Ordinance No. 6PFSF-d(s)072313 finally adopted by the Municipal Council of the City on July 23, 2013 (the "Refunding Ordinance"); and

WHEREAS, the City intends to issue its Tax Appeal Refunding Notes in one or more series, and on a tax-exempt and/or taxable basis in an aggregate amount not to exceed \$5,145,000 (collectively, the "2013 TARNs") under the TARN Ordinances for the purpose of refunding a portion of the City's \$6,955,000 Tax Appeal Refunding Notes, Series 2012E, which were issued on December 12, 2012 and mature on December 11, 2013, and used to finance certain tax appeals; and

WHEREAS, the City intends to issue its Special Emergency Notes in one or more series, and on a tax-exempt and/or taxable basis, in an aggregate amount not to exceed \$4,175,000 (collectively, the "2013 SENs")

under the SEN Legislation for the purpose of refunding a portion of the City's \$5,575,000 Special Emergency Notes, Series 2012F which were issued on December 12, 2012 and mature on December 11, 2013, and used to refinance the payment by the City of contractually required severance liabilities resulting from the layoff or retirement of City employees; and

WHEREAS, the City intends to issue its Refunding Notes in one or more series, and on a tax-exempt and/or taxable basis, in an aggregate amount not to exceed \$5,219,500 (collectively, the "2013 Refunding Notes", and together with the 2013 TARNs and the 2013 SENs, hereinafter referred to as the "Notes") under the Refunding Ordinance for the purpose of refunding a portion of the City's \$6,470,000 Emergency Notes, Series 2012G which were issued on December 28, 2012 and mature on December 11, 2013, and used to provide funds to pay the costs of certain expenses incurred by the City as a result of Hurricane Sandy, and to pay costs of issuance; and

WHEREAS, on October 25, 2013, the Director of Finance requested qualifications from potential purchasers and/or underwriters for the Notes, and has evaluated the submissions received from various investment banking firms in response to such solicitation; and

WHEREAS, the City presently intends to issue the 2013 TARNs, the 2013 SENs and the 2013 Refunding Notes, in an aggregate amount not to exceed \$14,539,500, on or about December 11, 2013; and

WHEREAS, the Municipal Council of the City has previously adopted the following ordinances which authorized the issuance of bond anticipation notes of the City: Ordinance No. 6S&FC finally adopted by the Municipal Council on November 14, 2005 (as amended by Ordinance No. 6PSFA finally adopted by the Municipal Council on September 2, 2009); Ordinance No. 6S&FA finally adopted by the Municipal Council on February 27, 2007 (as amended by Ordinance No. 6S&FF finally adopted by the Municipal Council on August 1, 2007); and Ordinance No. 6S&FA finally adopted by the Municipal Council on October 23, 2007 (as amended by Ordinance No. 6PSFA finally adopted by the Municipal Council on September 2, 2009) (collectively, the "Bond Ordinances"); and

WHEREAS, the City intends to permanently finance its \$33,440,000 General Improvement Bond Anticipation Notes, Series 2012D (the "Series 2012D Notes"), which were issued on December 12, 2012 and mature on December 11, 2013, and used to refinance certain capital improvements; and

WHEREAS, if, for any reason, the City does not permanently finance the Series 2012D Notes prior to their maturity, the City wishes to issue its Bond Anticipation Notes in one or more series, and on a tax-exempt and/or taxable basis, in an aggregate amount not to exceed \$33,440,000 (collectively, the "2013 BANs") under the Bond Ordinances for the purpose of refunding the Series 2012D Notes, in which event the "Notes" shall be deemed to include the 2013 BANs; and

WHEREAS, all matters pertaining to the sale of the 2013 TARNs, the 2013 SENs, the 2013 Refunding Notes and the 2013 BANs, have been delegated by the TARN Ordinances, the SEN Legislation, the Refunding Ordinance and the Bond Ordinances, respectively, to the Director of Finance or Chief Financial Officer of the City; and

WHEREAS, the City has received and/or expects to receive offer(s) to purchase the Notes from such purchaser(s) and/or underwriter(s) as approved by the Director of Finance (collectively, the "Underwriters") upon such terms and conditions as set forth in one or more note purchase agreements (collectively, the "Purchase Contracts") by and between the City and the Underwriters, the form of which is attached hereto as

Exhibit C and incorporated herein by reference; and

WHEREAS, in connection with the offering and sale of the Notes, the City intends to circulate one or more Preliminary Official Statements and final Official Statements setting forth certain information relating to the City and the Notes, and the City also intends to enter into one or more Continuing Disclosure Certificates.

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

SECTION 1. Authorization for Official Statement. The distribution by the City, and its financial advisor, of one or more Preliminary Official Statements relating to the Notes (a draft of which is attached hereto as **Exhibit A** and shall be filed with the records of the City) is hereby authorized in substantially such form, with such insertions, deletions and changes therein and any supplements thereto as bond counsel may advise and the City officer executing the same may approve, such approval to be evidenced by such City officer's execution thereof. The Business Administrator, Director of Finance or Chief Financial Officer is hereby authorized to deem the Preliminary Official Statement "final" within the meaning of Rule 15c2-12 of the Rules of the Securities and Exchange Commission and to execute and deliver a certificate to that effect. The Business Administrator, Director of Finance or Chief Financial Officer is hereby authorized to approve the contents and terms of the final Official Statement in respect of the aforementioned notes in substantially the form of the Preliminary Official Statement. The Business Administrator, Director of Finance or Chief Financial Officer is hereby authorized to sign such Official Statement on behalf of the City, in substantially such form, with such insertions, deletions and changes therein and any supplements thereto as bond counsel may advise and the City officer executing the same may approve, such approval to be evidenced by such City officer's execution thereof.

SECTION 2. Continuing Disclosure. The form of the Continuing Disclosure Certificate in substantially the form attached hereto as **Exhibit B** is hereby approved, and the execution of one or more Continuing Disclosure Certificates by the Director of Finance or Chief Financial Officer of the City is hereby authorized. The City hereby covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Certificate(s) executed by the City and dated the date of issuance and delivery of the Notes, as originally executed and as it may be amended from time to time in accordance with the terms thereof. Notwithstanding any other provision of this Resolution, failure of the City to comply with the Continuing Disclosure Certificate(s) shall not be considered a default on the Notes; however, any holder may take such actions as may be necessary and appropriate, including seeking specific performance by court order, to cause the City to comply with its obligations under this Section.

Section 3. Purchase Contract. The form of the Purchase Contract in substantially the form attached hereto as **Exhibit C** is hereby approved, and the execution of one or more Purchase Contracts by the Director of Finance or Chief Financial Officer of the City is hereby authorized with such changes as may be approved by the Director of Finance or Chief Financial Officer, based upon the advice of Bond Counsel and the City's financial advisor. Following execution, the fully executed Purchase Contract(s) shall be filed with the City Clerk.

Section 4. Further Action. Any matter relating to the award, sale or execution of the Notes which has been delegated by the TARN Ordinance, the SEN Legislation, the Refunding Ordinance to either the Director of Finance or the Chief Financial Officer may be performed by either said officer. In the event of the vacancy or unavailability of both the Director of Finance and the Chief Financial Officer, any such power may be performed, and any document authorized by this Resolution may be executed, by the Treasurer or the

Controller. On behalf of the City, the appropriate representatives of the City are authorized and directed to take all steps which are necessary or convenient to effectuate the terms of this Resolution with respect to the issuance, sale and delivery of the Notes, including, but not limited to the execution of all tax certificates and other closing documentation. All such actions heretofore taken are hereby ratified, approved and confirmed.

Section 5. Effective Date. This Resolution shall take effect upon adoption.

STATEMENT

This Resolution approves the distribution of one or more Preliminary Official Statements and Final Official Statements and the forms of one or more Note Purchase Agreements and Continuing Disclosure Certificates regarding the sale of the City's Tax Appeal Refunding Notes, Special Emergency Notes and Refunding Notes, in one or more series, and on a tax-exempt and/or taxable basis, in an aggregate amount not exceeding \$14,359,500 (and also to include the City's Bond Anticipation Notes, in one or more series, and on a tax-exempt and/or taxable basis, in an aggregate amount not exceeding \$33,440,000 in the event certain maturing notes are not permanently financed).

CERTIFICATE

I, Robert P. Marasco, Clerk of the City of Newark, in the County of Essex, New Jersey, HERBY CERTIFY that the foregoing annexed extract from the minutes of the meeting of the governing body of the City duly called and held on _____, 2013 has been compared by me with the original minutes as officially recorded in my office in the Minute Book of the governing body and is a true, complete and correct copy thereof and of the whole of the original minutes so far as they relate to the subject matters referred to in the extract.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City this ____ day of _____, 2013.

[SEAL]

ROBERT P. MARASCO, City Clerk

EXHIBIT A

EXHIBIT B

EXHIBIT C