



Legislation Text

File #: 14-0698, Version: 4

ORDINANCE APPROVING THE EXECUTION OF AN AMENDMENT TO FINANCIAL AGREEMENT WITH NEWARK TEACHERS VILLAGE URBAN RENEWAL, L.L.C. AND ITS PARTIAL ASSIGNEE, RBH-TRB 905/909 BROAD MEZZ URBAN RENEWAL ENTITY, LLC, AND DETERMINING VARIOUS OTHER MATTERS IN CONNECTION THEREWITH.

Deferred 6PSF-e 070914

WHEREAS, on June 15, 2005, the Municipal Council of the City of Newark (the "City") adopted Resolution No. 7RDO (A.S.) 061505, designating the entire City as an area in need of rehabilitation (the "Rehabilitation Area") for purposes of the Local Redevelopment and Housing Law, constituting Chapter 79 of the Pamphlet Laws of 1992 of the State of New Jersey (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 September 3, 2008, the Municipal Council of the City adopted Ordinance No. 6S&FE, approving a redevelopment plan for a portion of the Rehabilitation Area encompassing, inter alia, the Parcels (as defined below), entitled "The Living Downtown Plan" dated June 3, 2008 (the "Original Redevelopment Plan"); and

WHEREAS, on June 2, 2010, the Municipal Council of the City adopted Resolution No. 7R3-F (A.S.), designating various properties, including, inter alia, (i) Block 57, Lots 1, 3, 4, 5, 6, 8, 9, 12, 13, 14, 16, 18, 21, 23, 25, and 31, Block 58, Lots 1, 2, 4, 5, 6, 35, 36, 37, 38, 41, and 43, Block 93, Lot 24 (parking lot only, not building), Block 94, Lots 22, 24, 25, 26, and 27, and Block 95, Lots 4, 8, 9, 10, and 16, all on the then current official tax map of the City (collectively, the "Eligible Parcels") and (ii) Block 57 (now Block 57.05), Lots 27 and 29 on the current official tax map of the City (collectively, the "Additional Parcels"), as an area in need of redevelopment (the "Redevelopment Area") pursuant to the Redevelopment Law; and

WHEREAS, on June 30, 2010, the Municipal Council of the City adopted Ordinance No. 6PSFA (S) 063010, approving an amendment to the Original Redevelopment Plan, entitled "First Amendment to the Living Downtown Plan" (the "First Amendment to Redevelopment Plan"); and

WHEREAS, on September 21, 2010, the Municipal Council of the City adopted Ordinance No. 6PS&FA (S) 092110, approving an amendment to the Original Redevelopment Plan, entitled "Second Amendment to the Living Downtown Plan" (the "Second Amendment to Redevelopment Plan" and, collectively with the Original Redevelopment Plan and the First Amendment to Redevelopment Plan, the "Redevelopment Plan"); and

WHEREAS, the Redevelopment Plan provides, as permitted uses within the Redevelopment Area, inter alia, retail, restaurants, bars with sound proofing insulation installed to ensure compliance

with local and State noise regulations, building lobbies, parking garages, residential, and educational facilities uses, as well as any combination of these uses; and

WHEREAS, pursuant to the Tax Exemption Law, constituting Chapter 431 of the Pamphlet Laws of 1991 of 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.), the City is authorized to provide for tax exemption within a redevelopment area and for payments in lieu of taxes in accordance with the applicable provisions thereof; and

WHEREAS, pursuant to and in accordance with the provisions of the 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”), specifically N.J.S.A. 40A:12A-66(a), the City is authorized to provide for such tax exemption and payments in lieu of taxes in a manner that deviates from the structure otherwise established under the Tax Exemption Law, if the redevelopment project is to be financed with bonds issued in accordance with the Redevelopment Bond Law; and

WHEREAS, on August 9, 2010, Newark Teachers Village Urban Renewal, L.L.C., a New Jersey limited liability company (the “Initial URE”), submitted an application to the City for the approval of a project, as such term is used in the Tax Exemption Law, all in accordance with N.J.S.A. 40A:20-8 (the “Exemption Application”); and

WHEREAS, upon the Mayor’s recommendation and upon making the findings required by the Acts, on December 14, 2010, the Municipal Council of the City adopted Ordinance No. 6SF-A (S) 121410, entitled “ORDINANCE APPROVING THE EXECUTION OF A FINANCIAL AGREEMENT WITH TEACHERS VILLAGE URBAN RENEWAL, L.L.C. AND OTHER APPLICABLE DOCUMENTS RELATED TO THE AUTHORIZATION AND ISSUANCE BY THE NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY OF ITS REDEVELOPMENT AREA BONDS (NON-RECOURSE TO THE FULL FAITH AND CREDIT OF THE CITY) IN AN AMOUNT SUFFICIENT TO GENERATE UP TO \$5,264,998 IN PROJECT COSTS, AND DETERMINING VARIOUS OTHER MATTERS IN CONNECTION THEREWITH” (the “Ordinance”), accepting and approving the Exemption Application and authorizing the execution and delivery of a financial agreement with the Initial URE to implement the redevelopment project described therein; and

WHEREAS, on February 3, 2012, the City and the Initial URE entered into a Financial Agreement pursuant to the Ordinance (the “Financial Agreement”), which Financial Agreement provided for a tax exemption and payments in lieu of taxes in respect of all of the Eligible Parcels other than Block 56, Lot 6 and Block 95, Lots 4 and 8 (collectively, the “Parcels”), and for the construction upon the Parcels by the Initial URE, independently or together with one or more “Successor UREs” (as defined in the Financial Agreement), of a mixed-use rental residential, retail and school project, which will include (excluding basement and bulk heading square footage) (i) approximately 149,480 square feet of residential space and approximately 27,730 square feet of retail space to be located on the Parcels identified in Section 2.01(d)(ii) of the Financial Agreement (the “Workforce A Component”), (ii) approximately 83,537 square feet of residential space and approximately 9,719 square feet of retail space to be located on the Parcels identified in Section 2.01 (d)(iii) of the Financial Agreement (the “Workforce B Component”), and (iii) approximately 94,609 square feet of charter school space, approximately 13,156 square feet of pre-school/day care and

approximately 25,522 square feet of retail space to be located on the Parcels identified in Section 2.01(d)(i) of the Financial Agreement (the “Charter School Component”), as well as other site improvements (collectively, the “Improvements,” as such term is more fully defined in Section 1.02 of the Financial Agreement), all as more fully described in the Exemption Application, in accordance with the Redevelopment Plan (such Improvements, together with the land acquisition relating thereto, are collectively referred to herein as 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 defined in the Ordinance, upon the recordation of the Financial Agreement and the Ordinance, constituted a municipal lien within the meaning, and for all purposes, of law; 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 New Jersey Economic Development Authority, a public body corporate and politic constituting an instrumentality of the State (the “Authority”), created and existing under and by virtue of the New Jersey Economic Development Authority Act, constituting Chapter 80 of the Pamphlet Laws of 1974 of the State, and the acts amendatory thereof and supplemental thereto (the “Authority Law”, as codified in N.J.S.A. 34:1B-1 et seq.), has heretofore issued its \$5,625,000 Redevelopment Area Taxable Bonds (Newark Teachers Village - 2012 Project) (the “Bonds”), which are secured by a portion of the Annual Service Charge; and

WHEREAS, in accordance with the terms of the Ordinance and the Financial Agreement, the Initial URE has heretofore assigned its rights and obligations in respect of each of the three components of the Project to each of the respective Successor URE’s identified therein; and

WHEREAS, the Initial URE has represented that (i) construction on the Charter School Component has been substantially completed by Teachers Village School QALICB Urban Renewal, L.L.C., the permitted lessee from RBH-TRB East Mezz Urban Renewal Entity, L.L.C., the applicable Successor URE for the Charter School Component, and (ii) construction on the Workforce A Component has been financed and has been commenced by Teachers Village Project A QALICB Urban Renewal Entity, L.L.C., the permitted purchaser from RBH-TRB West I Mezz Urban Renewal Entity, LLC, the applicable Successor URE for the Workforce A Component; and

WHEREAS, and the Initial URE has further represented that RBH-TRB 905/909 Broad Mezz Urban Renewal Entity, LLC, the applicable Successor URE for the Workforce B Component (the “Workforce B Successor URE”), is in the process of obtaining financing for construction of Workforce B Component; and

WHEREAS, the Initial URE, the Workforce B Successor URE and the hereinafter-defined Project B QALICB (collectively, the “Applicant”) have jointly submitted to the Mayor correspondence dated March 12, 2014 with respect to the Workforce B Component (the “Submission”), stating that the design for the Workforce B Component has changed due to a reassessment of the suitability of the existing structure on one of the Parcels, resulting in a desire to construct the Workforce B Component on the Additional Parcels as well as on former Block 57, Lot 1, as originally intended; and

WHEREAS, in the Submission, the Applicant has further stated that as a result of such reconfiguration certain other of the Parcels, namely Block 93, Lot 24.03 (formerly Lot 24) and Block 94, Lot 21.02 (formerly Lots 22, 24, 25, 26 and 27) (collectively, the “Parcels to be Removed”), no

longer need to be included in the site for the Workforce B Component, and therefore should be removed from the Financial Agreement; and

WHEREAS, after giving effect to the addition of the Additional Parcels and the removal of the Parcels to be Removed, the Workforce B Component shall be located on Block 57.05, Lot 1 and Block 57.05, Lots 27 and 29; and

WHEREAS, portions of Block 57, Lots 23 and 25 have heretofore been subdivided to form new Block 57.05, Lot 3.02, and the remaining portions of such lots, together with Block 57, Lot 16, have heretofore been subdivided to form new Block 57.05, Lot 3.01; and

WHEREAS, pursuant to Section 10.01(a) of the Financial Agreement, said Block 57.05, Lot 3.02 has been or will be conveyed by the Successor URE for the Charter School Component to the Workforce B Successor URE, such that the Workforce B Component shall also be located on said Block 57.05, Lot 3.02; and

WHEREAS, said lots comprising, collectively, the Workforce B Component, shall be merged into a single tax lot as directed by the City in connection with the creation of the hereinafter-defined Residential Condo and Commercial Condo, and each of said Residential Condo and Commercial Condo will be identified with a unique tax identification qualifier; and

WHEREAS, in the Submission, the Applicant has further stated that as a result of such reconfiguration the total square footage of the Workforce B Component is changed, such that it will now consist of approximately 72,072 square feet of residential space and approximately 10,074 square feet of retail space, and that the total number of residential units will decrease from 82 to 81 (the "Revised Workforce B Configuration"); and

WHEREAS, the Applicant has further stated that due to the financing of the Workforce B Component via a New Markets Tax Credit transaction, the Applicant needs to create a condominium structure whereby the Applicant will own the residential condominium consisting of approximately 33,775 square feet of the residential space comprising 39 residential units (the "Residential Condo") and a related entity, Teachers Village Project B QALICB Urban Renewal Entity, LLC (the "Project B QALICB"), will own approximately 48,371 square feet of the residential, retail and community space including 42 residential units (the "Commercial Condo"); and

WHEREAS, in the Submission, the Applicant has also submitted to the Mayor the proposed form of an amendment to the Financial Agreement (the "First Amendment to Financial Agreement"), which would (i) add the Additional Parcels as Parcels to be abated under the Financial Agreement, and allocate the Additional Parcels to the Workforce B Component, (ii) remove the Parcels to be Removed from the Parcels to be abated under the Financial Agreement, (iii) redefine the Workforce B Component in accordance with the Revised Workforce B Configuration, (iv) permit the splitting of Workforce B Component into the Residential Condo and the Commercial Condo, (v) authorize the Commercial Condo to be transferred by the Workforce B Successor URE to the Project B QALICB (vi) divide the Annual Service Charge previously allocated to the Workforce B Successor URE on the basis of square footage between the Workforce B Successor URE (in respect of the Residential Condo) and the Project B QALICB (in respect of the Commercial Condo), and (vii) clarify that routine residential and commercial leases do not require City approval; and

WHEREAS, on the basis of such allocation, the Residential Condo shall be subject to an

Annual Service Charge equal to approximately 41% of the original Annual Service Charge for the Workforce B Component, and the Commercial Condo shall be subject to an Annual Service Charge equal to approximately 59% of the original Annual Service Charge for the Workforce B Component; and

WHEREAS, after giving effect to the permitted assignments effectuating the condominium structure, the Workforce B Successor URE will be solely responsible for payment of the Annual Service Charge in respect of the Residential Condo, and the Project B QALICB will be solely responsible for payment of the Annual Service Charge in respect of the Commercial Condo; and

WHEREAS, three of the Eligible Parcels, namely Block 56, Lot 6 and Block 95, Lots 4 and 8 (the “Unabated Parcels”), were not abated under the Financial Agreement, and it is the City’s desire to also remove such parcels from the list of parcels eligible for abatement under the Ordinance; and

WHEREAS, the Mayor has submitted the Submission, including the form of the First Amendment to Financial Agreement, to the Municipal Council with his written recommendation of approval (the “Mayor’s Recommendation”), a copy of which is attached hereto; and

WHEREAS, the Applicant has represented that, except as noted above and in the Submission, the Exemption Application, including specifically the general description of the Workforce B Component and the estimated project costs for the Workforce B Component, all as set forth in the Financial Agreement, remain unchanged; and

WHEREAS, the Annual Service Charge, all as set forth in the Financial Agreement, also remains unchanged; and

WHEREAS, the Exemption Application, as supplemented by the Submission (collectively, the “Application”), contains documentation evidencing financial responsibility and capability with respect to the proposed development; estimated total development costs; estimated time schedule for start and completion of the proposed development; and conceptual plans; and

WHEREAS, the City evaluated the Application according to criteria which included financial capabilities, experience, expertise, and project concept descriptions; and

WHEREAS, in the Ordinance the City made certain findings relating to the Project, which findings have not changed and are hereby reiterated in respect of the Project, including the Revised Workforce B Configuration (the “Revised Project”); and

WHEREAS, the City believes that (a) it is in the public interest for the Initial URE and the Successor UREs to undertake the Revised Project upon the Parcels, as supplemented by the Additional Parcels and with the removal of the Parcels to be Removed (the “Revised Parcels”); (b) the Revised Project is for the health, welfare, convenience or betterment of the inhabitants of the City; (c) the amounts to be expended by the City for said Revised Project are not unreasonable or exorbitant; and (d) the Revised Project is an efficient and feasible means of providing services for the needs of the inhabitants of the City and will not create an undue financial burden to be placed upon the City; and

WHEREAS, the City desires to amend the Financial Agreement for the purposes outlined

above by the execution and delivery of a First Amendment to Financial Agreement as provided herein;

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

1. The Submission, a copy of which is attached hereto as Exhibit A, is hereby approved in accordance with the Mayor's Recommendation, a copy of which is attached hereto as Exhibit B.

2. The Municipal Council hereby finds and determines that the First Amendment to Financial Agreement is to the direct benefit of the health, welfare and financial well-being of the City and its citizens because it, along with the Financial Agreement, allows for the development of a vacant and fallow site into a productive, useful and job-creating property, and further (a) the costs associated with the tax exemption granted herein are minor compared to the estimated Total Project Cost of \$123,149,839 and the benefit created by (i) the construction of the Improvements, (ii) approximately 416 jobs during the construction period and (iii) approximately 461 permanent jobs created through the permanent operation of the Improvements, and (b) without the tax exemption granted herein it is highly unlikely that the Revised Project would otherwise be undertaken, as a source of funding all or a portion of the costs thereof, other than from the proceeds of the Bonds, is not otherwise available.

3. The Revised Project is hereby approved as an amendment to the Project which was approved by the Ordinance. An exemption from taxation is hereby granted to the Owner (as such term is defined in the Financial Agreement) in respect of the Additional Parcels, to the same extent and with the same effect as previously granted under the Ordinance in respect of the Parcels. The exemption from taxation previously granted to the Owner in respect of the Parcels to be Removed is hereby rescinded. The exemption from taxation previously authorized by the Ordinance in respect of the Unabated Parcels is hereby rescinded. Accordingly, neither the Parcels to be removed nor the Unabated Parcels shall be entitled to any tax abatement under the Ordinance or the Financial Agreement. The First Amendment to Financial Agreement shall reflect the addition of the Additional Parcels and the removal of the Parcels to be Removed.

4. The First Amendment to Financial Agreement, in substantially the form attached hereto as Exhibit C, is approved. The Mayor and the Deputy Mayor/Director of the Department of Economic and Housing Development of the City (each, an "Authorized Officer") are each hereby authorized to execute, on the City's behalf, the First Amendment to Financial Agreement in substantially such form, with such changes as the Authorized Officers shall determine, in consultation with the Corporation Counsel, such determination to be conclusively evidenced by their execution of the First Amendment to Financial Agreement. The City Clerk is hereby authorized and directed to attest to the execution of the First Amendment to Financial Agreement by the Authorized Officers of the City as determined hereunder and to affix the corporate seal of the City to the Financial Agreement.

5. Executed copies of the First Amendment to Financial Agreement shall be certified by the City Clerk and filed with the Office of the City Clerk. The Office of the City Clerk shall also forthwith file certified copies of this ordinance and the First Amendment to Financial Agreement with the Director of the Division of Local Government Services pursuant to N.J.S.A.

40A:20-12.

6. Upon the execution of the First Amendment to Financial Agreement as contemplated herein, the Authorized Officers and the City Clerk are each hereby severally authorized and directed to file and record this ordinance and the First Amendment to Financial Agreement with the Essex County Register such that the First Amendment to Financial Agreement and this ordinance shall be reflected upon the land records of the County of Essex as a lien upon and a covenant running with each and every parcel of land constituting the Revised Parcels. Pursuant to and in accordance with the provisions of the Redevelopment Bond Law, specifically N.J.S.A. 40A:12A-68(c), and notwithstanding any other law to the contrary, upon recordation of both this ordinance and the First Amendment to Financial Agreement, the lien thereof shall be perfected as to the Additional Parcels for all purposes in accordance with law and the lien shall thereafter be superior to all non-municipal liens thereafter recorded or otherwise arising, without any additional notice, recording, filing, continuation filing or action, until payment of all of the Redevelopment Area Bonds.

7. The Authorized Officers of the City are hereby further severally authorized and directed to (i) execute and deliver, and the City Clerk is hereby further authorized and directed to attest to such execution and to affix the corporate seal of the City to, any document, instrument or certificate deemed necessary, desirable or convenient by the Authorized Officers or the City Clerk, as applicable, in their respective sole discretion, after consulting with the Corporation Counsel, to be executed in connection with the execution and delivery of the First Amendment to Financial Agreement and the consummation of the transactions contemplated thereby, which determination shall be conclusively evidenced by the execution of each such certificate or other document by the party authorized hereunder to execute such certificate or other document, and (ii) perform such other actions as the Authorized Officers deem necessary, desirable or convenient in relation to the execution and delivery thereof.

8. Except as specifically amended hereby, the Financial Agreement remains in full force and effect in accordance with its terms.

9. This ordinance shall take effect upon publication as provided by law.

STATEMENT

Ordinance approving the execution of a First Amendment to Financial Agreement with Newark Teachers Village Urban Renewal, L.L.C. and RBH-TRB Broad Mezz Urban Renewal Entity, LLC, amending a Financial Agreement dated February 3, 2012 between the City of Newark and Newark Teachers Village Urban Renewal, L.L.C. The Financial Agreement, as amended, relates to the "Teachers Village" redevelopment project and the authorization and issuance by the New Jersey Economic Development Authority of its Redevelopment Area Bonds (non-recourse to the full faith and credit of the City) in an amount sufficient to generate \$5,264,998 in project costs. The Ordinance authorizes the "Workforce B Component" of the redevelopment project to be divided into two separate condominium units, and also adds two parcels of land to the tax abatement.