



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 15-0351, Version: 1

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 bond anticipation notes and special emergency notes

Amount to be Financed: \$70,000,000.00

Project Information:

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

RESOLUTION OF THE CITY OF NEWARK AUTHORIZING THE CIRCULATION OF A PRELIMINARY OFFICIAL STATEMENT AND FINAL OFFICIAL STATEMENT IN CONNECTION WITH THE SALE OF TAX ANTICIPATION NOTES OF THE CITY, APPROVING A CONTINUING DISCLOSURE CERTIFICATE AND PURCHASE CONTRACT WITH RESPECT TO SAID NOTES, AND AUTHORIZING AND/OR RATIFYING OTHER ACTIONS IN CONNECTION THEREWITH.

Additional Information:

WHEREAS, the Municipal Council of the City of Newark, County of Essex, New Jersey (the "City"), is in the process of adopting a resolution authorizing the issuance of tax anticipation notes of the City in anticipation of the collection of taxes for the fiscal year that commenced January 1, 2015 whether levied or to be levied in such fiscal year, and in anticipation of other revenues for such fiscal year (the "Tax Anticipation Notes"); and

WHEREAS, in anticipation of such adoption, the City has received and/or expects to receive an offer to purchase the Tax Anticipation Notes from such purchaser and/or underwriter as approved by the Acting Director of Finance (the "Underwriter") upon such terms and conditions as set forth in a note purchase agreement (the "Purchase Contract") by and between the City and the Underwriter, the form of which is attached hereto as **Exhibit C** and incorporated herein by reference; and

WHEREAS, the City wishes to approve the form of the Purchase Contract, with such changes as may be approved by the Acting Director of Finance, based upon the advice of the City's Bond Counsel and Financial Advisor; and

WHEREAS, the City intends to issue the Tax Anticipation Notes on or about April 1, 2015; and

WHEREAS, in connection with the offering and sale of the Tax Anticipation Notes, the City intends to circulate a Preliminary Official Statement and a final Official Statement setting forth certain information relating to the City and the Tax Anticipation Notes, and to enter into a Continuing Disclosure Certificate as required by the federal securities laws; and

WHEREAS, pursuant to N.J.S.A. 40A:4-72, all other provisions of the Tax Anticipation Notes (including, without limitation, the maturity date or dates, the interest rate or rates, the registration and optional redemption terms, the authorized denominations and the form of the Tax Anticipation Notes) shall be determined by the Acting Director of Finance.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL 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 the Preliminary Official Statement relating to the Tax Anticipation 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 or the Acting Director of Finance 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 or the Acting Director of Finance is hereby authorized to approve the contents and terms of the final Official Statement in respect of the aforementioned Tax Anticipation Notes in substantially the form of the Preliminary Official Statement. The Business Administrator or the Acting Director of Finance 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 the Continuing Disclosure Certificate by the Acting Director of Finance 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 executed by the City and dated the date of issuance and delivery of the Tax Anticipation 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 shall not be considered a default on the Tax Anticipation 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 the Continuing Disclosure Certificate.

SECTION 3. Purchase Contract. The form of the Purchase Contract in substantially the form attached hereto as **Exhibit C**, with such changes as may be approved by the Acting Director of Finance, based upon advice of Bond Counsel and the City's financial advisor, is hereby approved in accordance with New Jersey law, and the execution of the Purchase Contract by the Acting Director of Finance of the City is hereby authorized. Following execution, the fully executed Purchase Contract shall be filed with the City Clerk.

SECTION 4. Redemption. The Tax Anticipation Notes are subject to redemption prior to maturity at the option of the City, as a whole at any time or in part from time to time, on or after December 1, 2015, in such amount and at such time, as determined by the Acting Director of Finance, at a redemption price equal to 100% of the principal amount to be redeemed (the "Redemption Price"), plus accrued interest thereon to the date fixed for redemption. Any Tax Anticipation Note subject to redemption as aforesaid may be called in part, provided that the portion not called for redemption shall be in the principal amount of \$5,000 or any integral multiple of \$1,000 in excess thereof. If less than all of the Tax Anticipation Notes are to be redeemed, the determination of

redemption shall be made by the Acting Director of Finance (or by the Paying Agent) by lot.

When any Tax Anticipation Notes are to be redeemed, the Acting Director of Finance (or the Paying Agent) shall mail notice of the redemption of the Tax Anticipation Notes by first class mail in a sealed envelope postage prepaid, at least twenty (20) but not more than sixty (60) days before the date fixed for redemption, to the registered owners of any Tax Anticipation Notes or portions thereof which are to be redeemed, at their respective addresses as they last appear on the registration books of the City. Notice of redemption having been given as aforesaid (and in the case of a conditional notice of redemption, if and to the extent funds shall be available for such purpose), the Tax Anticipation Notes, or portions thereof so to be redeemed, shall, on the date fixed for redemption, become due and payable at the redemption price specified therein plus accrued interest to the redemption date and, upon presentation and surrender thereof at the place specified in such notice, such Tax Anticipation Notes, or portions thereof, shall be paid at the redemption price, plus accrued interest to the redemption date. On and after the redemption date (unless the City shall default in the payment of the redemption price and accrued interest), such Tax Anticipation Notes shall no longer be considered as outstanding. The notice shall set forth, among other things, (i) the date fixed for redemption, (ii) the Redemption Price to be paid; (iii) that such Tax Anticipation Notes will be redeemed at the designated office of the City or the Paying Agent, (iv) if less than all of such Tax Anticipation Notes shall be called for redemption, the distinctive numbers or letters, if any, of such Tax Anticipation Notes to be redeemed, (v) in the case of Tax Anticipation Notes to be redeemed in part only, the portion of the principal amount thereof to be redeemed; and (vi) whether such redemption (or any portion thereof) shall be conditioned upon the availability of funds. The City may specify in any conditional notice that all or a portion of such Tax Anticipation Notes are to be redeemed, provided it provides a subsequent notice not less than 2 days before the redemption date, of the actual amount of Tax Anticipation Notes to be redeemed. Such notice shall further state that on the redemption date (and, in the case of a conditional notice of redemption, if and to the extent funds shall be available for such purpose) there shall become due and payable the Redemption Price of all Tax Anticipation Notes to be redeemed, together with interest accrued thereon to the redemption date, and that, from and after such date, interest thereon shall cease to accrue. If any Tax Anticipation Note is to be redeemed in part only, the notice of redemption that relates to such Tax Anticipation Note shall state also that on or after the redemption date, upon surrender of such Tax Anticipation Note, the holder thereof shall be entitled to a new Tax Anticipation Note, bearing interest at the same rate and in aggregate principal amount equal to the unredeemed portion of such Tax Anticipation Note.

During any period in which The Depository Trust Company (or any successor thereto) shall act as securities depository for the Tax Anticipation Notes, the notice referred to above shall be given only to such depository and not to the beneficial owners of the Tax Anticipation Notes. Such notice may be given via email transmission. Any failure of such depository to advise any of its participants or any failure of any participant to notify any beneficial owner of any notice of redemption shall not affect the validity of the redemption proceedings.

SECTION 5. Paying Agent. TD Bank, National Association, Cherry Hill, New Jersey, is hereby appointed to serve as paying agent for the Tax Anticipation Notes (the "Paying Agent"). The City hereby approves the preparation and execution of an agency agreement by and between the City and the Paying Agent, said agency agreement to be in substantially the form attached hereto as **Exhibit D** ("Agency Agreement"), which is hereby approved, and the Acting Director of Finance is hereby authorized and directed to execute and deliver the Agency Agreement on behalf of the City in substantially such form, with such insertions and changes therein as the Acting Director of Finance may approve, such approval to be evidenced by her execution thereof.

SECTION 6. Further Action. Pursuant to N.J.S.A. 40A:4-72, all other provisions of the Tax Anticipation Notes (including, without limitation, the maturity date or dates, the interest rate or rates, the registration and the authorized denominations and the form of the Tax Anticipation Notes) shall be determined by the Acting Director of Finance. 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, delivery and optional redemption of the Tax Anticipation Notes, including, but not limited to the execution of the Continuing Disclosure Certificate, the Purchase Contract, closing documentation and all actions and documentation necessary and/or required to effectuate the optional redemption of the Tax Anticipation Notes.

SECTION 7. This Resolution shall take effect upon adoption.

STATEMENT

Resolution authorizing the distribution of a Preliminary Official Statement and Final Official Statement, authorizing forms of Purchase Contract and Continuing Disclosure Certificate and related matters in connection with the issuance and sale of the City's Tax Anticipation Notes.