



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 15-2222, Version: 1

Dept/ Agency: Finance

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

Purpose: Approving Form of Sale of City-Secured Bonds

Amount to be Financed: \$16,000,000.00

Source of Appropriation: Bonds

Purchaser:

Project Information:

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

Resolution providing for the issuance of ESIP Refunding Bonds in an amount not to exceed \$16,000,000.00 for the purposes of financing the costs of the Emergency Savings Improvement Program (ESIP) and providing for the form, maturity and other details.

Additional Information:

Ordinance 6PFSFD 110515; Approved Refunding Bond Ordinance ESIP Program

WHEREAS, the City of Newark, in the County of Essex, State of New Jersey (the "City") has undertaken the implementation of an energy savings implementation program ("ESIP") pursuant to the provisions of N.J.S.A. 40A:11-4.6 et seq.; and

WHEREAS, N.J.S.A. 40A:11-4.6 authorizes the City to issue refunding bonds pursuant to N.J.S.A. 40A:2-52 et seq. (the "Local Bond Law") for the purpose of financing the costs relating to the implementation of the ESIP; and

WHEREAS, the Local Finance Board, Division of Local Government Services Department of Community Affairs granted its approval for the issuance of such bonds, the maturity schedule, thereof and the issuance of such bonds pursuant to the Municipal Qualified Bond Act on November 12, 2015; and

WHEREAS, in accordance with the Local Bond Law, the Municipal Council of the City did, on November 5, 2015, finally adopted Ordinance 6PSF-D, (the "ESIP Refunding Bond Ordinance") authorizing, the issuance by the City of its Refunding Bonds in an amount not to exceed \$16,000,000.00 for the purpose of financing the costs of acquisition and installation of energy savings improvements to be undertaken by the City (the "ESIP Refunding Bonds"); and

WHEREAS, in accordance with the Local Bond Law, the City now desires to authorize and approve the sale and issuance of the ESIP Refunding Bonds pursuant to the ESIP Refunding Bond Ordinance in the aggregate principal amount not to exceed \$16,000,000.00 and to provide for the form and sale of the ESIP Refunding Bonds; and

WHEREAS, the ESIP Refunding Bonds are 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 ESIP Refunding Bonds, the City also desires to approve and authorize (i) the distribution of a preliminary official statement (the "Preliminary Official Statement") and the execution and distribution of an official statement (the "Official Statement") and (ii) the forms of and the entering into of the hereinafter defined Continuing Disclosure Certificate and Bond Purchase Contract; and

WHEREAS, to be able to take advantage of favorable market conditions, there shall be delegated to the Chief Financial Officer of the City the authority to (i) select and designate an underwriter or underwriters (collectively, the "Underwriter") with whom to negotiate the purchase and sale of the ESIP Refunding Bonds and (ii) negotiate, authorize and execute a Contract of Purchase (the "Bond Purchase Contract") with the Underwriter pursuant to such Bond Purchase Contract, the Underwriter will agree to purchase the ESIP Refunding Bonds upon satisfaction of the conditions precedent to issuance set forth therein and with such terms for the ESIP 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 year, and the Bond Purchase Contract will prohibit the Underwriter from making any reportable contribution through the term of the Bond Purchase Contract.

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, IN THE COUNTY OF ESSEX, NEW JERSEY (not less than two-thirds of all members thereof affirmatively concurring), **THAT**:

Section 1. There is hereby authorized the issuance and sale of the ESIP Refunding Bonds of the City in the aggregate principal amount not to exceed \$16,000,000.00. The proceeds of the ESIP Refunding Bonds shall be applied for the purpose of financing the costs relating to the acquisition and installation of energy savings improvements and equipment, funding capitalized interest for a period of six (6) months and paying costs of issuance.

Section 2. The ESIP Refunding Bonds shall be issued as one series of bonds and shall be designated as "Qualified ESIP Refunding Bonds, Series 2016". The ESIP Refunding Bonds shall be dated their date of delivery, shall be numbered from 1 upward in the denomination of \$5,000.00 and integral multiples of \$1,000.00 in excess thereof, and shall be issued as fully registered bonds. The ESIP Refunding Bonds shall be dated their date of delivery, shall mature on January 15 in each of the years and in the principal amounts and shall bear interest at the rate or rates as shall be determined by the Chief Financial Officer of the City within the limitations hereinafter provided. Interest on the Bonds shall be payable on January 15 and July 15 of each year, commencing July 15, 2016.

The Council hereby delegates to the Chief Financial Officer of the City the power and authority to sell and award the ESIP Refunding Bonds in accordance with this Resolution and in accordance with the following parameters: ESIP Refunding Bonds shall be issued in a maximum aggregate principal amount not to exceed \$16,000,000.00; the debt service on the ESIP Refunding Bonds shall be structured in such a way so that the annual debt service schedule for the ESIP Refunding Bonds shall not exceed the projected annual energy savings resulting from the installation of the energy savings improvements and equipment, and the ESIP Refunding Bonds shall mature within 20 years

from the date of issuance. The Chief Financial Officer of the City is hereby directed, within 10 days of the closing on the sale of the ESIP Refunding Bonds, to file with the Local Finance Board and with the City Business Administrator, the Mayor and the Municipal Council of the City at their first meeting after the sale of the ESIP Refunding Bonds, a summary of the terms of the sale of the ESIP Refunding Bonds; a debt service schedule evidencing that the annual debt service does not exceed the projected annual energy savings resulting from the installation of the energy savings improvements and equipment; and an itemized accounting of all costs of issuance in connection with the issuance of the ESIP Refunding Bonds.

The ESIP Refunding Bonds shall be substantially in the form as provided in this Resolution, with such omissions, insertions and variations as are properly required.

Section 3. The ESIP Refunding Bonds will be initially issued in book-entry form only in the form of one certificate for the aggregate principal amount of the ESIP 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 ESIP Refunding Bonds. As long as DTC or its nominee, Cede & Co., is the registered owner of the ESIP Refunding Bonds, payments of the principal of and interest on the ESIP 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 ESIP Refunding Bonds pursuant to Section 11 hereof (the “Paying Agent”), directly to DTC or its nominee, Cede & Co., which will credit payments of principal of and interest on the Bonds to the participants of DTC as listed on the records of DTC as of each preceding January 1 and July 1 (each, a “Record Date” and together, the “Record Dates” for the payment of interest on the ESIP Refunding Bonds), which participants will in turn credit such payments to the beneficial owners of the ESIP Refunding Bonds. The registration books of the City shall be kept by the Chief Financial Officer (or, if appointed pursuant to Section 11 hereof, by the Paying Agent at its corporate trust office).

The ESIP Refunding Bonds shall be payable as to both principal and interest in lawful money of the United States of America. The ESIP Refunding Bonds shall be executed by the manual or facsimile signatures of the Mayor and the Chief Financial Officer under the official seal 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 11 hereof, the foregoing attestation may be made by facsimile signature of the City Clerk provided that the ESIP Refunding Bonds shall be authenticated by the manual signature of the Paying Agent. The following matters are hereby determined with respect to the ESIP Refunding Bonds:

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| Date of ESIP Refunding Bonds: | Date of Delivery |
| Interest Payment Dates: | Each January 15 and July 15 until maturity, or earlier redemption, commencing July 15, 2016, with payment being made to DTC or its authorized nominee, by the City or the Paying Agent |
| Bond Registrar/Paying Agent: | City of Newark, County of Essex, New Jersey, unless a Paying Agent is appointed pursuant to Section 11 hereof |

Securities Depository: The Depository Trust Company, New York, New York

Authorized Denominations: \$5,000.00 and integral multiples of \$1,000.00 in excess thereof

Section 4. There is hereby delegated to the Chief Financial Officer the authority, at the request of the Underwriter and after consulting with the City's financial advisor and the Underwriter, to provide that the ESIP Refunding Bonds may be subject to optional redemption prior to maturity at such times and upon the payment of such redemption premium (not to exceed 3% of the principal amount thereof), and that one or more maturities of the ESIP Refunding Bonds may be issued as term bonds subject to mandatory sinking fund redemption at a redemption price equal to 100% of the principal amount thereof on January 15 in specified years prior to the stated maturity date. If any of the ESIP Refunding Bonds are issued as bonds subject to optional redemption or as term bonds, the ESIP Refunding Bonds shall be subject to optional redemption or mandatory sinking fund redemption, upon notice as hereinafter provided, at the times specified by the Chief Financial Officer.

When any ESIP Refunding Bonds are to be redeemed, the Chief Financial Officer (or, if appointed pursuant to Section 11 hereof, the Paying Agent) shall give notice of the redemption of the ESIP Refunding Bonds by mailing such notice by first class mail in a sealed envelope postage prepaid to the registered owners of the portion of any ESIP Refunding Bonds which are to be redeemed, at their respective addresses as they last appear on the registration books of the City or the Paying Agent, as applicable, at least thirty (30) but not more than sixty (60) days before the date fixed for redemption. Notice of redemption having been given as aforesaid, the portion of the ESIP Refunding Bonds which are to be redeemed shall, on the date fixed for redemption, become due and payable at the redemption price, plus accrued interest to the redemption date and, upon presentation and surrender thereof at the place specified in such notice, such portion of the ESIP Refunding Bonds 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 ESIP Refunding Bonds shall no longer be considered as outstanding.

During any period in which DTC (or any successor thereto) shall act as securities depository for the ESIP Refunding Bonds, the notices referred to above shall be given only to such depository and not to the beneficial owners of the ESIP Refunding Bonds. 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. 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.

Section 6. The ESIP Refunding Bonds shall be executed by the Mayor and the Chief Financial Officer, by their manual or facsimile signatures, and the corporate seal of the City shall be affixed thereto, or imprinted or reproduced thereon, and attested by the manual signature of the City Clerk (except as provided above in Section 3 if a Paying Agent is appointed).

Section 7. The distribution and, if necessary, the re-distribution, by the City of a Preliminary Official Statement pertaining to the ESIP Refunding Bonds, in the form approved by the Chief

Financial Officer of the City, and the use of an Official Statement in substantially the form of the Preliminary Official Statement, is hereby authorized and approved. The Chief Financial Officer of the City is hereby authorized and directed to execute and deliver to the purchaser of the ESIP Refunding Bonds the final Official Statement with such changes 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. The Chief Financial Officer is hereby authorized to "deem final" the Preliminary Official Statement for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

Section 8. NW Financial is hereby designated as the City's financial advisor in connection with the ESIP Refunding Bonds.

Section 9. Reserved.

Section 10. The Qualified ESIP Refunding Bonds shall be in substantially the form attached hereto as Exhibit A, with such changes as may be appropriate.

Section 11. The Chief Financial Officer is hereby authorized to 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 ESIP Refunding Bonds. The Chief Financial Officer may, however, elect not to select a Paying Agent for the ESIP Refunding Bonds, and may elect to select a Paying Agent at any time prior or subsequent to the issuance of the ESIP Refunding Bonds. However, the Chief Financial Officer shall select a Paying Agent upon any determination to cause the ESIP Refunding Bonds to be registered in the names of the beneficial owners thereof, as provided in Section 12 or Section 13 hereof.

Section 12. In the event that DTC shall determine to discontinue providing its services as securities depository with respect to the ESIP 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 ESIP Refunding Bonds to thereafter be registered in the names of, and delivered to, each beneficial owner of the ESIP Refunding Bonds and thereafter the principal of the ESIP 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 ESIP 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.

Section 13. The City may terminate the services of DTC as securities depository with respect to the ESIP Refunding Bonds if the City determines that (i) DTC is unable to discharge its responsibilities with respect to the ESIP Refunding Bonds, or (ii) continued use of the book-entry system is not in the best interests of the beneficial owners of the ESIP 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 12 hereof.

Section 14. 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 may approve, such approval to be evidenced by his or her execution thereof.

Section 15. In order to maintain the exclusion from gross income for federal income tax purposes of interest on the ESIP Refunding Bonds, and for no other purpose, the City covenants to comply with each applicable requirement of the Internal Revenue Code of 1986, as amended (the "Code"), applicable to the ESIP Refunding Bonds, and the City covenants not to take any action or fail to take any action which would cause the interest on the ESIP Refunding Bonds to lose the exclusion from gross income for federal income taxation purposes under Section 103 of the Code.

The City covenants and agrees with the holders of the ESIP Refunding Bonds that the City shall not take any action or omit to take any action which would cause the ESIP 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.

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

Section 17. *Reserved.*

Section 18. The Bond Purchase Contract by and between the City and the Underwriter with respect to the ESIP Refunding Bonds shall be substantially in the draft form attached to this Resolution as Exhibit C and made a part hereof, and the Mayor or the Chief Financial Officer of the City are each hereby authorized and directed to execute the same with such changes, revisions or alterations therefor as may be approved by the officer executing the Bond Purchase Contract after consultation with the City's Corporation Counsel and/or Bond Counsel, such approval to be conclusively evidenced by the execution thereof. The Underwriter's discount in connection with the ESIP Refunding Bonds shall not exceed \$3.50 per \$1,000.00 of ESIP Refunding Bonds, including the fee for underwriter's counsel.

Section 19. The Mayor, the Chief Financial Officer, the Business Administrator and the City Clerk of the City are each hereby designated, authorized and directed to perform or determine any other matters or details relating to the ESIP 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 ESIP Refunding Bonds, and to execute, *inter alia*, 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 ESIP Refunding Bonds is excludable from gross income under the Internal Revenue Code of 1986, as amended, an IRS Form 8038-G pertaining to the ESIP Refunding Bonds, and any and all instruments, opinions, affidavits, certificates, resolutions, documents or other papers as may be deemed necessary. The Chief Financial Officer of the City is authorized and directed to provide for the payment of the costs of the City incurred in connection with the issuance of the ESIP Refunding Bonds.

Section 21. This resolution shall take effect upon the adoption hereof.

STATEMENT

Resolution providing for the issuance of ESIP Refunding Bonds in an amount not to exceed \$16,000,000.00 for the purposes of financing the costs of the Emergency Savings Improvement Program and providing for the form, maturity and other details.