



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 16-0663, Version: 1

Dept/ Agency: Finance

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

Purpose: Confirming Bond Sale

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

Source of Appropriation: Bonds

Purchaser: Deutsche Bank

Project Information:

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

RESOLUTION AMENDING RESOLUTION ADOPTED BY THE MUNICIPAL COUNCIL ON MARCH 2, 2016 ENTITLED, "RESOLUTION OF THE CITY OF NEWARK, COUNTY OF ESSEX, STATE OF NEW JERSEY 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 ENERGY SAVINGS IMPROVEMENT PROGRAM AND PROVIDING FOR THE FORM, MATURITY AND OTHER DETAILS OF SAID BONDS; AUTHORIZING A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT; PROVIDING FOR THE SALE OF THE ESIP REFUNDING BONDS; AND APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A CONTINUING DISCLOSURE CERTIFICATE AND A BOND PURCHASE CONTRACT" AND PROVIDING FOR THE DIRECT PURCHASE AND PRIVATE PLACEMENT OF SUCH BONDS AND AUTHORIZING DOCUMENTATION IN CONNECTION THEREWITH

Additional Information:

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 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 and the maturity schedule thereof 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 February 9, 2016, finally adopt Ordinance 6PSF-a (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" or "Bonds"); and

WHEREAS, in accordance with the Local Bond Law, the City authorized and approved the

sale and issuance of the ESIP Refunding Bonds in the aggregate principal amount not to exceed \$16,000,000 pursuant to a resolution adopted March 2, 2016, providing for the form and sale of the ESIP Refunding Bonds (the "March Bond Resolution"); and

WHEREAS, in connection with the sale and issuance of the ESIP Refunding Bonds, the March Resolution (i) approved and authorized the sale of such Bonds through a public offering, and (ii) appointed an underwriter for the purposes of conducting a negotiated sale of the Bonds; and

WHEREAS, the City has appointed NW Financial as the Financial Advisor to the City in the March Bond Resolution (the "Financial Advisor"), and the Financial Advisor has determined that it is in the best interests of the City to privately place the Bonds to achieve more favorable terms and interest rates than those achieved by a public offering and negotiated sale conducted by a selected underwriter; and

WHEREAS, the Financial Advisor solicited private placement/direct purchase proposals from various financial institutions; and

WHEREAS, Deutsche Bank AG has submitted a proposal for the direct purchase of the ESIP Refunding Bonds, which proposal is indicative of the terms and conditions under which Deutsche Bank AG will purchase the ESIP Refunding Bonds (the "Preliminary Term Sheet"); and

WHEREAS, the City desires to privately place the ESIP Refunding Bonds with Deutsche Bank AG and Deutsche Bank AG agrees to purchase such Bonds from the City, in accordance with the parameters contained in the Preliminary Term Sheet; and

WHEREAS, it therefore becomes necessary to amend certain provisions of the March Bond Resolution by the terms of this resolution (this "Amendatory Resolution", and together with the March 2, 2016 Bond Resolution, the "Bond Resolution") to (i) authorize the private placement/direct purchase of the City's ESIP Refunding Bonds by Deutsche Bank AG, and (ii) authorize the execution and delivery of certain documentation in connection therewith.

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. The private placement/direct purchase of the ESIP Refunding Bonds in an amount not to exceed \$16,000,000.00 to Deutsche Bank AG, such private placement/direct purchase to be in accordance with the parameters contained in the Preliminary Term Sheet is hereby authorized and approved. The Chief Financial Officer of the City upon consultation with the Financial Advisor and DeCotiis, FitzPatrick & Cole, LLP, Bond Counsel to the City ("Bond Counsel") is hereby authorized and directed to undertake all actions and execute all documents to facilitate and consummate the transaction contemplated hereby and by the March Bond Resolution. 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 and shall be issued as fully registered bonds. The ESIP Refunding Bonds shall mature on such dates 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, in consultation with the Bond Counsel and Financial Advisor to the City in accordance with the parameters contained in the Preliminary Term Sheet.

The Municipal Council hereby delegates to the Chief Financial Officer of the City, in consultation with the Financial Advisor and Bond Counsel to the City, the power and authority to award the ESIP Refunding Bonds to Deutsche Bank AG in accordance with the Bond Resolution and in accordance with the parameters contained in the Preliminary Term Sheet and 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 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 no later than 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 City Financial Officer is hereby authorized and directed to file the certificate required by N.J.S.A. 40A:3-7 and the provisions of the Municipal Qualified Bond Act, N.J.S.A. 40A:3-1, et seq., in particular Section 40A:3-7(a) with the State Treasurer.

The ESIP Refunding Bonds shall be substantially in the form as provided in Exhibit A of the March Bond Resolution, with such omissions, insertions and variations as are properly required by the provisions hereof in consultation with the Bond Counsel and the Financial Advisor.

Section 3. The ESIP Refunding Bonds will be initially issued in the form of one physical certificate for the aggregate principal amount of the ESIP Refunding Bonds or such other number of bond certificates in such denominations as shall be requested by Deutsche Bank AG and agreed to by the City and, when issued, will be registered in the name of and held by Deutsche Bank AG, as registered owner, or a nominee of Deutsche Bank AG. As long as Deutsche Bank AG or a nominee thereof, is the registered owner of the ESIP Refunding Bonds, payments of the principal of, redemption premium, if any, and interest on the ESIP Refunding Bonds will be made by the City, or by a bank or trust company selected by the Chief Financial Officer to act as paying agent and bond registrar for the ESIP Refunding Bonds pursuant to Section 11 of the March Bond Resolution and the provisions hereof (the "Paying Agent"), directly to Deutsche Bank AG, or a nominee thereof. The registration books of the City shall be kept by the Chief Financial Officer (or, the duly appointed Paying Agent, TD Bank, N.A. acting as registrar, at its corporate trust office).

The ESIP Refunding Bonds shall be payable as to principal, redemption premium, if any, 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 has been appointed, 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:

Date of ESIP Refunding Bonds:	Date of Delivery
Interest Payment Dates:	To Be Determined by the Chief Financial Officer
Bond Registrar/Paying Agent:	TD Bank, N.A.
Registered Owner:	Deutsche Bank AG or its nominee
Authorized Denominations:	To Be Determined by the City Bond Counsel and the Financial Advisor and Deutsche Bank AG

Section 4. There is hereby delegated to the Chief Financial Officer the authority, after consulting with the City's Financial Advisor and the Bond Counsel, to determine that the ESIP Refunding Bonds may be subject to optional redemption, in whole at any time or in part from time to time, prior to maturity without a redemption premium as set forth in the certificates delivered at closing, and (a) 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 specified dates in specified years prior to the stated maturity date, all in accordance with the parameters contained in the Preliminary Term Sheet. 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 optionally redeemed, the Chief Financial Officer (or, 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 (or in such other manner as the registered owners may authorize) to the registered owners that the ESIP Refunding Bonds are to be optionally redeemed in whole, 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, or such shorter time to which the registered owners have consented. Notice of redemption having been given as aforesaid, the portion of the ESIP Refunding Bonds which are to be optionally 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, the ESIP Refunding Bonds shall be paid at the redemption price, plus accrued interest to the redemption date. On and after the optional 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.

Section 5. The Chief Financial Officer is hereby authorized and directed to execute a Final Term Sheet and/or a Bond Placement Agreement for the private placement/direct purchase of the ESIP Refunding Bonds with Deutsche Bank AG, all such terms of the Bonds to be within the parameters of the Preliminary Term Sheet and the Bond Resolution.

Section 6. TD Bank, NA is hereby designated as the Paying Agent for the ESIP Refunding Bonds (the “Paying Agent”). The Chief Financial Officer of the City is hereby authorized and directed to execute and deliver a Paying Agent Agreement with the Paying Agent.

Section 7. The ESIP Refunding Bonds shall be in substantially the form attached as Exhibit A to the March Bond Resolution, with such changes as the Chief Financial Officer of the City may deem appropriate to reflect the private placement/direct purchase of the Bonds in consultation with the Financial Advisor and Bond Counsel to the City.

Section 8. 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 at the registered owners request, shall be payable by wire with electronic but without physical presentation. Interest, principal and redemption premium, if any, on the ESIP Refunding Bonds will be payable by check mailed or wire transfer 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 preceding the applicable interest payment date.

Section 9. A Continuing Disclosure Certificate in the form attached as Exhibit B (the “Continuing Disclosure Certificate”) to the March Bond Resolution was approved thereby, and the Chief Financial Officer is hereby authorized and directed to execute and deliver the Continuing Disclosure Certificate on behalf of the City in such form, with such insertions, revisions and changes therein as the Chief Financial Officer may approve, such approval to be evidenced by her execution thereof, in consultation with the Financial Advisor and Bond Counsel to the City.

Section 10. 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 11. The City covenants and agrees with the holders 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 12. The Bond Placement Agreement by and between the City and Deutsche Bank AG with respect to the ESIP Refunding Bonds shall be in substantially the form attached to this Amendatory Resolution as Exhibit A and made a part hereof, and the Chief Financial Officer of the City is hereby authorized and directed to execute the same with such changes, revisions or alterations therefor as may be approved by the Chief Financial Officer executing the Bond Placement Agreement after consultation with the City’s Financial Advisor and Bond Counsel, such approval to be conclusively evidenced by her execution thereof. Deutsche Bank AG shall be entitled to receive payment for its expenses (including counsel fee) in an amount not to exceed \$30,000.00 and such

payment is hereby authorized to be made by the City.

Section 13. The Mayor, the Chief Financial Officer, the City 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 issuance and private placement/direct purchase of the ESIP Refunding Bonds, to do or perform or cause to be done or performed any and all acts as such officers the Financial Advisor 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, among other things, that 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 Code, including the filing of an IRS Form 8038-G pertaining to the ESIP Refunding Bonds, and the execution, delivery of and filing, if necessary, of 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, including the costs of Deutsche Bank AG.

Section 14. To the extent applicable, Deutsche Bank AG shall complete and submit a Business Entity Disclosure Certification pursuant to which Deutsche Bank AG shall certify that it has not made any reportable contributions to a political or candidate committee in the City in the previous one year, and the final term sheet will prohibit the Deutsche Bank AG from making any reportable contribution.

Section 15. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to such terms in the March Bond Resolution.

Section 16. All other provisions of the March Bond Resolution not amended hereby shall remain in full force and effect. To the extent there are inconsistent provisions between the March Bond Resolution and this Amendatory Resolution, the provisions of this Amendatory Resolution shall control.

Section 17. This Amendatory Resolution shall take effect immediately.

STATEMENT

RESOLUTION AMENDING RESOLUTION ADOPTED BY THE MUNICIPAL COUNCIL ON MARCH 2, 2016 ENTITLED, "RESOLUTION OF THE CITY OF NEWARK, COUNTY OF ESSEX, STATE OF NEW JERSEY 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 ENERGY SAVINGS IMPROVEMENT PROGRAM."