



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 19-1213, Version: 1

Dept/ Agency: Finance

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

Purpose: Confirming Bond Sale

Amount to be Financed: \$120,670,000.00

Source of Appropriation: Refunding Bonds

Purchaser:

Project Information:

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

RESOLUTION OF THE CITY OF NEWARK, COUNTY OF ESSEX, STATE OF NEW JERSEY PROVIDING FOR THE ISSUANCE OF NOT TO EXCEED \$88,000,000.00 QUALIFIED GENERAL IMPROVEMENT REFUNDING BONDS, NOT TO EXCEED \$30,000,000.00 QUALIFIED SCHOOL REFUNDING BONDS AND NOT TO EXCEED \$5,500,000.00 QUALIFIED WATER UTILITY REFUNDING BONDS (COLLECTIVELY, THE "REFUNDING BONDS") FOR THE REFUNDING OF CERTAIN QUALIFIED GENERAL IMPROVEMENT REFUNDING BONDS, SERIES 2010A, QUALIFIED SCHOOL BONDS, SERIES 2010C AND QUALIFIED WATER UTILITY BONDS, SERIES 2010D, ALL DATED JUNE 16, 2010 AND PROVIDING FOR THE FORM, MATURITIES AND OTHER DETAILS OF SAID REFUNDING BONDS; AUTHORIZING A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT; PROVIDING FOR THE SALE OF SUCH REFUNDING BONDS ON A FORWARD REFUNDING BASIS; AND APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY BY THE CITY OF A NOTICE OF SALE, CONTINUING DISCLOSURE CERTIFICATE, AN ESCROW DEPOSIT AGREEMENT AND A FORWARD BOND PURCHASE CONTRACT (THE "BOND RESOLUTION")

Additional Information:

Exhibits attached

WHEREAS, on June 16, 2010 the City of Newark, in the County of Essex, New Jersey issued Qualified General Improvement Bonds, Series 2010A, in the aggregate principal amount of \$120,670,000.00 (the "Series 2010A Bonds"). The Series 2010A Bonds maturing on or after October 1, 2021 to and including 2028 in the amount of \$83,170,000.00 (the "Series 2010A Bonds to be Refunded") are subject to redemption on or after October 1, 2020 by the City, in whole at any time or in part from time to time. The City is desirous of issuing Qualified General Improvement Refunding Bonds in an amount not to exceed \$88,000,000.00 to refund all or a portion of the Series 2010A Bonds to be Refunded; and

WHEREAS, on June 16, 2010, the City issued aggregate principal amount \$43,917,000.00 Qualified School Bonds, Series 2010C (the "Series 2010C Bonds"). The Series 2010C Bonds maturing on or after October 1, 2021 are subject to redemption in whole or in part, from time to time, on or after October 1, 2020. The City is desirous of refunding all or a portion of such Series 2010C Bonds maturing on or after October 1, 2021 through and including 2025 in the aggregate principal amount of \$27,877,000.00 (the "Series 2010C Bonds to be Refunded") through the issuance of \$30,000,000.00 aggregate principal amount of Qualified School Refunding Bonds, Series 2020; and

WHEREAS, on June 16, 2010 the City issued \$5,487,000.00 aggregate principal amount of Qualified Water Utility Bonds, Series 2010D (the "Series 2010D Bonds"). \$4,422,000.00 principal amount of Series 2010D Bonds maturing on or after October 1, 2021 to and including 2039 (the "Series 2010D Bonds to be Refunded") are subject to redemption on or after October 1, 2020 at the option of the City. The City is desirous of authorizing the refunding of all or a portion of the Series 2010D Bonds to be Refunded through the issuance of not to exceed \$5,500,000.00 principal amount of Qualified Water Utility Refunding Bonds, Series 2020 (the "Water Utility Refunding Bonds, Series 2020"); and

WHEREAS, pursuant to N.J.S.A. 40A:2-1 the City is authorized to issue refunding bonds pursuant to the provisions of N.J.S.A. 40A:2-51 and -52 et seq. (the "Local Bond Law") for the purpose of refunding outstanding obligations of the City to realize three percent (3.00%) net present value debt service savings; and

WHEREAS, on August 14, 2019, the Local Finance Board, Division of Local Government Services Department of Community Affairs granted its approval for the issuance of three (3) series of qualified refunding bonds in amount not to exceed \$123,500,000.00 (collectively the "Refunding Bonds") for the purposes of refunding, on a current basis in 2020, all or a portion of the Series 2010A Bonds to be Refunded, the Series 2010C Bonds to be Refunded and the Series 2010D Bonds to be Refunded (collectively, the "Bonds to be Refunded"), the maturity schedule thereof and the issuance of such Refunding Bonds pursuant to the Municipal Qualified Bond Act and the School Qualified Bond Act (as hereinafter defined), as applicable; and

WHEREAS, in accordance with the Local Bond Law, the Municipal Council of the City did, on August 20, 2019, adopt the General Improvement Refunding Bond Ordinance (the "Qualified General Improvement Refunding Bond Ordinance"), Water Utility Refunding Bond Ordinance (the "Qualified Water Utility Refunding Bond Ordinance"), and School Refunding Bond Ordinance (the "Qualified School Refunding Bond Ordinance", together with the Qualified General Improvement Refunding Bond Ordinance and the Qualified Water Utility Refunding Bond Ordinance, the "Refunding Bond Ordinances") authorizing the issuance by the City of three (3) series of qualified refunding bonds in an amount not to exceed \$123,500,00.00 for the purpose of refunding all or a portion of the Bonds to be Refunded and paying the costs relating to the issuance thereof; and

WHEREAS, in accordance with the Local Bond Law, the City now desires to authorize and approve the sale and issuance of the Refunding Bonds pursuant to the Refunding Bond Ordinances in the aggregate principal amount not to exceed \$123,500,00.00 and in accordance with the provisions hereof, to provide for the form and sale of the three (3) series of Refunding Bonds; and

WHEREAS, the applicable series of Refunding Bonds have been 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 the School Qualified Bonds Act (N.J.S.A. 18A:24-85 et seq.), as applicable; and

WHEREAS, in connection with the sale and issuance of the Refunding Bonds, the City also desires to approve and authorize (i) a preliminary official statement (the "Preliminary Official Statement") and the execution and distribution of an Official Statement (the "Official Statement"), (ii) the distribution of the Notice of Sale and (iii) the forms of and the execution and delivery of the hereinafter defined Continuing Disclosure Certificate, Escrow Deposit Agreement and Forward Bond

Purchase Contract; and

WHEREAS, to be able to take advantage of favorable market conditions, there shall be delegated to the Director of Finance/Chief Financial Officer of the City the authority to (i) distribute a Notice of Sale, (ii) select and designate one or more purchasers (collectively, the “Purchaser”) for the purchase and sale of the Refunding Bonds and (iii) authorize, execute and deliver one or more Forward Bond Purchase Contracts (the “Forward Contract”) with the Purchaser thereof. Pursuant to such Forward Contract the Purchaser will agree to purchase the Refunding Bonds upon satisfaction of the conditions precedent to issuance set forth therein and with such terms for the Refunding Bonds as shall be set forth therein; and

WHEREAS, each Purchaser shall complete and submit a Business Entity Disclosure Certification pursuant to which the Purchaser shall certify that the Purchaser has not made any reportable contributions to a political or candidate committee in the City in the previous one year, and the Forward Contract will prohibit the Purchaser from making any reportable contribution through the term of the Forward Contract and the exercise of the Option to and the purchase of all or a portion of the Refunding Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

1. There is hereby authorized the issuance and sale of the three (3) series of Refunding Bonds of the City in the aggregate principal amount not to exceed \$123,500,000.00. The proceeds of the Refunding Bonds shall be applied for the purpose of financing the refunding, on a current basis, of the Bonds to be Refunded and paying costs of issuance.

2. The Refunding Bonds shall be issued as three (3) series of bonds and shall be designated as follows: “Qualified General Improvement Refunding Bonds, Series 2020”, or such other year and series designation as may be appropriate at time of issuance; “Qualified School Refunding Bonds, Series 2020”, or such other year and series designation as may be appropriate at time of issuance; and “Qualified Water Utility Refunding Bonds, Series 2020”, or such other year and series designation as may be appropriate at time of issuance (collectively, the “Refunding Bonds”). Each series of Refunding Bonds shall be designated as set forth in the applicable Bond Certificate attached hereto as Exhibit A-1, Exhibit A-2 and Exhibit A-3, shall be numbered from 1 upward in denominations of \$5,000.00 and integral multiples of \$1,000.00 in excess thereof, and shall be issued as fully registered bonds. The Refunding Bonds shall be dated their date of delivery, shall mature in each of the years and in the principal amounts and shall bear interest at the rate or rates specified by the successful bidder therefor as shall be determined by the Director of Finance/Chief Financial Officer of the City within the limitations hereinafter provided. Each series of Refunding Bonds certificates shall be substantially in the form as provided in this Bond Resolution, with such omissions, insertions and variations as are required as determined by the Director of Finance/Chief Financial Officer of the City.

The Municipal Council hereby delegates to the Director of Finance/Chief Financial Officer of the City the power and authority to issue the Notice of Sale and sell and award the Refunding Bonds to one or more Purchasers in accordance with this Bond Resolution and the terms of the Forward Contract and in accordance with the following parameters: Refunding Bonds shall be issued in a maximum aggregate principal amount not to exceed \$123,500,000.00; the debt service on the

Refunding Bonds shall be structured in such a way so as to achieve net present value debt service savings in an amount not less than three (3.00%) percent of the principal amount of each series of the Bonds to be Refunded; the new debt service schedule for the Refunding Bonds shall be structured in such a way that no annual debt service payment on the Refunding Bonds shall be more than the annual debt service payment for the Bonds to be Refunded, the debt service for the Refunding Bonds shall be substantially level across the life of the Refunded Bonds, the term of the Refunding Bonds shall not extend beyond the term of the Bonds to be Refunded and the amount of the Refunding Bonds shall not exceed the amounts authorized by the Refunding Bond Ordinances. In addition, the amount of the Upfront Fee (as defined in the Forward Contract) shall be taken into consideration when determining the successful Purchaser to whom the Refunding Bonds shall be awarded. The Chief Financial Officer of the City is hereby directed, within 10 days of the closing on the sale of the 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 its first meeting after the sale of the Refunding Bonds, a summary of the terms of the sale of each series of Refunding Bonds; a summary of the refunding and a comparison of the refunded bond debt service schedule showing annual net present value savings; and an itemized accounting of all costs of issuance in connection with the issuance of the Refunding Bonds.

3. The Refunding Bonds will be initially issued in book-entry form only in the form of one certificate for the aggregate principal amount of each series of 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 Refunding Bonds. As long as DTC or its nominee, Cede & Co., is the registered owner of the Refunding Bonds, payments of the principal of and interest on the Refunding Bonds will be made by the City, or by a bank or trust company (if any) selected by the Director of Finance/Chief Financial Officer to act as paying agent and bond registrar for the Refunding Bonds pursuant to Section 10 hereof (the "Paying Agent"), directly to DTC or its nominee, Cede & Co., which will credit payments of principal of and interest on the Refunding Bonds to the participants of DTC as listed on the records of DTC 15 days preceding each interest payment date (each, a "Record Date" and together, the "Record Dates" for the payment of interest on the Refunding Bonds), which participants will in turn credit such payments to the beneficial owners of each series of Refunding Bonds. The registration books of the City shall be kept by the Director of Finance/Chief Financial Officer (or, if appointed pursuant to Section 10 hereof, by the Paying Agent at its corporate trust office).

The Refunding Bonds shall be payable as to both principal and interest in lawful money of the United States of America. The Refunding Bonds shall be executed by the manual or facsimile signatures of the Mayor and the Director of Finance/Chief Financial Officer under the official seal of the City 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 10 hereof, the foregoing attestation may be made by facsimile signature of the City Clerk provided that the Refunding Bonds shall be authenticated by the manual signature of the Paying Agent. The following matters are hereby determined with respect to the Refunding Bonds:

Date of Refunding Bonds: Date of Delivery but not before July 3, 2020.

Interest Payment Dates: Interest payment and principal payment dates shall be determined by the Director of Finance/Chief Financial Officer of the City until maturity, or earlier redemption, as applicable, commencing on such date as determined by the Chief Financial Officer of the City, 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 10 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.

4. The Refunding Bonds may be subject to optional redemption prior to maturity at such times and upon the payment of a redemption premium equal to 100% of the principal amount of each series of the Series 2020 Refunding Bonds as shall be determined by the Purchaser thereof. If any of the Refunding Bonds are issued as bonds subject to optional redemption, the Refunding Bonds shall be subject to optional redemption upon notice as hereinafter provided upon the terms specified by the Director of Finance/Chief Financial Officer.

When any Refunding Bonds are to be redeemed, the Director of Finance/Chief Financial Officer (or, if appointed pursuant to Section 10 hereof, the Paying Agent) shall give notice of the redemption of the 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 series of the 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 30 but not more than 45 days before the date fixed for redemption. Notice of redemption having been given as aforesaid, the portion of the 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 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 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 Refunding Bonds, the notices referred to above shall be given only to such depository and not to the beneficial owners of the Refunding Bonds; not less than 30 days before the date fixed for redemption. 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.

5. The Director of Finance/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.

6. The distribution and, if necessary, the re-distribution, by the City of a Preliminary Official Statement pertaining to the Refunding Bonds, and the use of an Official Statement in substantially the form of the Preliminary Official Statement, are hereby authorized and approved. The Director of Finance/Chief Financial Officer of the City is hereby authorized and directed to execute and deliver to the Purchaser of the 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. There is hereby delegated to the Director of Finance/Chief Financial Officer the authority to approve the Preliminary Official Statement on behalf of the City and its distribution pertaining to the sale of the Refunding Bonds and is further hereby authorized and directed to execute a certificate which "deems final" the Preliminary Official Statement for purposes of Rule 15c2-12 of the Securities and Exchange Commission.

7. NW Financial, LLP, is hereby designated as the City's Financial Advisor ("Financial Advisor") in connection with the Refunding Bonds.

8. There is hereby delegated to the Chief Financial Officer of the City the authority to designate an escrow agent for the Bonds to be Refunded (the "Escrow Agent"). The Escrow Agent shall signify its acceptance of the duties imposed upon it by this Bond Resolution by a written certificate delivered to the City prior to the delivery of the Refunding Bonds. The Director of Finance/Chief Financial Officer is hereby authorized and directed to accept the schedule of fees provided by the Escrow Agent.

9. Each series of Refunding Bonds shall be in substantially the form attached hereto as Exhibit A-1, Exhibit A-2 and Exhibit A-3, with such changes as may be appropriate to reflect the issuance and sale as determined by Bond Counsel to the City.

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

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

12. The City may terminate the services of DTC as securities depository with respect to the Refunding Bonds if the City determines that (i) DTC is unable to discharge its responsibilities with respect to the Refunding Bonds, or (ii) continued use of the book-entry system is not in the best interests of the beneficial owners of the 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 11 hereof.

13. A Continuing Disclosure Certificate in substantially the form attached hereto as Exhibit B (the "Continuing Disclosure Certificate") is hereby approved, and the Director of Finance/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 Director of Finance/Chief Financial Officer may approve, such approval to be evidenced by his or her execution thereof.

14. In order to maintain the exclusion from gross income for federal income tax purposes of interest on the 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 Refunding Bonds, and the City covenants not to take any action or fail to take any action which would cause the interest on the 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 Refunding Bonds that the City shall not take any action or omit to take any action which would cause the 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.

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

16. The Escrow Deposit Agreement pertaining to the Bonds to be Refunded shall be substantially in the draft form attached to this Resolution as Exhibit C (the "Escrow Deposit Agreement") and made a part hereof and the Director of Finance/Chief Financial Officer of the City is hereby authorized to execute and deliver same with such changes, revisions or alterations therefor as may be approved by the officer executing the Escrow Deposit Agreement, such approval to be conclusively evidenced by the execution thereof.

17. The Forward Contract by and between the City and the Purchaser with respect to the Refunding Bonds shall be substantially in the draft form attached to this Bond Resolution as Exhibit D and made a part hereof is hereby approved and is authorized to be distributed to prospective purchasers of the Refunding Bonds in accordance with the terms of the Notice of Sale, and the Mayor or the Director of Finance/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 Forward Contract after consultation with the City's Financial Advisor and Bond Counsel, such approval to be conclusively evidenced by the execution thereof.

18. The form of the Notice of Sale which shall be substantially in the draft form attached to this Resolution as Exhibit E is hereby approved with such changes or revisions as may be approved

by the Chief Financial Officer upon consultation with the Financial Advisor and Bond Counsel. The Director of Finance/Chief Financial Officer is hereby authorized and directed to cause the distribution of the Notice of Sale to the financial community in connection with the sale of the Refunding Bonds.

19. The Mayor, the Director of Finance/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 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 Refunding Bonds, and to execute, *inter alia*, one or more subscriptions for the purchase of United States Treasury Obligations, State and Local Government Series or such other securities and/or investment agreements in accordance with the Escrow Deposit Agreement, 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 Refunding Bonds is excludable from gross income under the Internal Revenue Code of 1986, as amended, an IRS Form 8038-G pertaining to the Refunding Bonds, and any and all instruments, opinions, affidavits, certificates, resolutions, documents or other papers as may be deemed necessary. The Director of Finance/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 Refunding Bonds.

20. This resolution shall take effect the later of (i) the adoption hereof or (ii) the date that any of the Refunding Bond Ordinances for each series of Refunding Bonds is valid and effective.

STATEMENT

Resolution providing for the issuance of refunding bonds, authorizing a preliminary and final official statement, providing for the sale of refunding bonds and approving and authorizing the delivery of the notice of sale and other documents related to the sale of refunding bonds.