



Legislation Text

File #: 13-0030, Version: 2

Resolution Authorizing Property Assessed Clean Energy (PACE) Bonds

Pursuant to the Property Assessed Clean Energy Act, Act 270, Public Acts of Michigan, 2010 (the "PACE Act"), the City's Property Assessed Clean Energy Program Report (the "Report") as approved by Resolution of the City Council adopted on October 3, 2011, and the Revised Municipal Finance Act, Act 34, Public Acts of Michigan, 2001, as amended ("Act 34"), the City is authorized to issue and sell Property Assessed Clean Energy Bonds

Passage of this Resolution will permit and authorize the Chief Financial Officer and the Treasurer to negotiate the sale of the Bonds to one or more financial institutions on a direct placement basis. The proceeds of the bonds will be used to finance the costs of certain energy efficiency improvements and renewable energy systems to be acquired and installed on certain private properties located within the City who have applied to participate in the program and identified on Exhibit A. Participation of the listed properties is subject to a final determination based on PACE program requirements.

The bonds shall not be general obligations of the City, but shall be secured solely by the assessment revenues and the Reserve Fund. The City shall borrow an amount not to exceed \$1,000,000.00.

The City's bond counsel, Dykema Gossett, prepared the notice with further review by the City Attorney.

Prepared by: Matthew Horning, City Treasurer

Reviewed by: Tom Crawford, Financial Services Area Administrator, CFO

Mary Joan Fales, Senior Assistant City Attorney

Approved by: Steven D. Powers, City Administrator

Sponsored by: Mayor Hieftje and Councilmember Teall

CITY OF ANN ARBOR
County of Washtenaw, State of Michigan

RESOLUTION AUTHORIZING PROPERTY ASSESSED CLEAN ENERGY BONDS

Minutes of a regular meeting of the City Council of the City of Ann Arbor, County of Washtenaw, State of Michigan held on the 4th day of February, 2013, at 7:00 o'clock p.m. Eastern Time.

PRESENT: Councilmembers Kailasapathy, Briere, Petersen, Lumm, Kunselman, Teall, Warpehowski, Anglin and Mayor Hieftje, 9;

ABSENT: Councilmembers Taylor and Higgins, 2.

The following preamble and resolution were offered by Councilmember Briere and supported by Councilmember Lumm:

WHEREAS, the City of Ann Arbor, County of Washtenaw, State of Michigan (the “City”) proposes to issue and sell Property Assessed Clean Energy Bonds (the “Bonds”), pursuant to the Property Assessed Clean Energy Act, Act 270, Public Acts of Michigan, 2010 (the “PACE Act”), the City’s Property Assessed Clean Energy Program Report (the “Report”) as approved by Resolution of the City Council adopted on October 3, 2011, and the Revised Municipal Finance Act, Act 34, Public Acts of Michigan, 2001, as amended (“Act 34”), to finance the costs of certain energy efficiency improvements and renewable energy systems (collectively, the “Energy Projects”) to be acquired, constructed and installed on certain private properties located within the City and identified on Exhibit A hereto (the “Participating Properties”); and

WHEREAS, the record owners of the Participating Properties (the “Owners”) have applied to participate in the City’s property assessed clean energy program (the “Program”), and in connection with the issuance of the Bonds for purposes of financing the Energy Projects will each be required to execute a voluntary energy assessment agreement, in substantially the form attached as Appendix K to the Report subject to the modification stated in this Resolution, reflecting the Owners’ agreements that their respective Participating Properties will be subject to an assessment corresponding to the costs of the Energy Projects benefiting their respective Participating Properties and their proportionate share of bond financing costs, which shall be levied and be payable as to principal and accrued interest in accordance with the terms of City Code Section 1:292, the Report, and the PACE Act; and

WHEREAS, the payment of principal of and interest on the Bonds is to be primarily secured by a pledge of the assessment revenues, and further secured by the pledge of a reserve fund, to be funded by grant moneys the City has received from the U.S. Department of Energy, as described herein (the “Reserve Fund”); and

WHEREAS, the Bonds shall not be general obligations of the City, but shall be secured solely by the assessment revenues and the Reserve Fund; and

WHEREAS, Council Resolution R-11-425 authorized the City Administrator to make administrative, technical or procedural modifications to the Program and its procedures deemed necessary for continued effective and efficient operation of the Program consistent with the goals established by City Council, and upon the recommendation of the City’s Chief Financial Officer, the City Administrator has determined that the method of interest accrual on energy assessments as stated in the Program documents should be modified to allow interest to accrue from and after the date of issuance of the Bonds rather than from the date of disbursement of Program funds, such modification being appropriate and consistent with the goals established by City Council for the Program, and has requested that Program documents be modified accordingly prior to the execution of any voluntary energy agreement;

WHEREAS, the City Council wishes to approve the issuance of the Bonds within certain parameters, and to authorize the Chief Financial Officer and the Treasurer to negotiate the sale of the Bonds to one or more financial institutions on a direct placement basis.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Energy Projects. The Energy Projects, and the period of usefulness of the Energy Projects of 10 years or more, are hereby approved and confirmed.

2. Bond Details. The City shall borrow not to exceed \$1,000,000 and issue its bonds therefor (the "Bonds"), pursuant to the PACE Act, the Report and Act 34 for the purposes of financing the costs of the Energy Projects to be acquired, constructed and installed on the Participating Properties, capitalized interest on the Bonds as provided herein, and costs of issuance of the Bonds. The Bonds shall be designated as "City of Ann Arbor Property Assessed Clean Energy Bonds, Series 2013" (Federally Taxable), with such additional designations as appropriate to distinguish the Bonds from other series of property assessed clean energy bonds issued in the year 2013. The Bonds shall be fully registered Bonds, both as to principal and interest, registrable upon the books of the Bond Registrar (as hereinafter defined), and may be issued in any denomination which is \$1,000, or any integral multiple thereof up to a single maturity, numbered from 1 upwards. Bonds initially issued shall be dated the date of their original issuance and delivery, and shall bear interest payable semi-annually from that date or from the March 1 or September 1 through which interest has been paid. The Bonds shall mature serially on September 1 of each year in the period from 2014 through 2023, inclusive, in ten (10) approximately equal principal amounts (ranging from \$85,000 to \$100,000 in principal amount).

The Chief Financial Officer or the Treasurer of the City may adjust such maturity schedule and principal amounts prior to sale of the Bonds as required by changes in costs of the Energy Projects, timing of bond issuance, or bond market conditions, within the maximum aggregate principal amount of \$1,000,000 and the final maturity date being not later than September 1, 2023.

So long as the entire outstanding principal amount of the Bonds is held by one financial institution, all serial maturities may be embodied within a single fully-registered bond, and following each payment of principal in connection with scheduled maturities and optional redemptions, such bond need not be surrendered for cancellation and authentication and delivery of a new bond, but the outstanding principal amount of such bond shall be shown on the registration books of the Bond Registrar as having been reduced by such principal payment.

The Bonds shall be issued in a form consistent in all respects with the terms of this Resolution.

3. Capitalized Interest. Proceeds of the Bonds may be used to pay all or part of the interest due and payable on the Bonds on or before September 1, 2014. The amount of capitalized interest, as determined by the Treasurer, shall be deposited in the Bond Payment Fund from the proceeds of the Bonds as provided below.

4. Interest Payment and Date of Record. The Bonds shall bear interest payable on September 1, 2013 and each March 1 and September 1 thereafter until maturity. The rate of interest on Bonds maturing in any one year shall not exceed 5.0% per annum. Interest shall be paid by check or draft mailed by first class mail to the registered owner of each Bond as of the applicable date of record. The date of record shall be February 15 with respect to interest payments made on March 1 and August 15 with respect to interest payments made on September 1. The Chief Financial Officer or Treasurer may adjust such interest payment dates and corresponding record dates as necessary to conform to the customary payment requirements of the financial institution selected as purchaser of the Bonds.

5. Prior Redemption. The Bonds maturing in the year 2014 shall be subject to redemption prior to maturity to the extent determined by the Chief Financial Officer or Treasurer in connection with the negotiated sales of the Bonds. Bonds maturing on and after September 1, 2015 shall be subject to redemption prior to maturity, at the option of the City, in whole or in part (in increments of \$1,000), on any one or more dates on and after September 1, 2014, at par plus accrued interest to the date fixed for redemption, without premium.

With respect to partial redemptions, the amount being so redeemed shall be applied to the extent practicable on a pro rata basis to prepayment of each serial principal maturity of the Bonds. Any portion of a Bond outstanding in a denomination larger than the minimum authorized denomination may be redeemed provided such portion and the amount not being redeemed each constitutes an authorized denomination. In the event that less than the entire principal amount of a Bond is called for redemption, upon surrender of the Bond to the Bond Registrar, the Bond Registrar shall authenticate and deliver to the registered owner of the Bond a new Bond in the principal amount of the principal portion not redeemed.

Notice of redemption shall be sent by the Bond Registrar on behalf of the City to the registered holder of each Bond being redeemed by first class mail at least thirty (30) days prior to the date fixed for redemption, which notice shall fix the date of record with respect to the redemption if different than otherwise provided herein. Any defect in such notice shall not affect the validity of the redemption proceedings. Bonds so called for redemption shall not bear interest after the date fixed for redemption provided funds are on hand with the Bond Registrar to redeem the same.

6. Bond Registrar. The Treasurer is hereby appointed as the paying agent and bond registrar for the Bonds (the "Bond Registrar"), and shall perform all payment, registration, transfer, exchange and other functions otherwise required by this resolution to be performed by the Bond Registrar.

7. Transfer or Exchange of Bonds. Any Bond shall be transferable on the bond register maintained by the Bond Registrar with respect to the Bonds at any time prior to the applicable date of record preceding an interest payment date upon the surrender of the Bond together with an assignment executed by the registered owner or his or her duly authorized attorney in form satisfactory to the Bond Registrar. Upon receipt of a properly assigned Bond, the Bond Registrar shall authenticate and deliver a new Bond or Bonds in equal aggregate principal amount and like interest rate and maturity to the designated transferee or transferees.

Bonds may likewise be exchanged at any time prior to the applicable date of record preceding an interest payment date for one or more other Bonds with the same interest rate and maturity in authorized denominations aggregating the same principal amount as the Bond or Bonds being exchanged. Such exchange shall be effected by surrender of the Bond to be exchanged to the Bond Registrar with written instructions signed by the registered owner of the Bond or his or her attorney in form satisfactory to the Bond Registrar. Upon receipt of a Bond with proper written instructions, the Bond Registrar shall authenticate and deliver a new Bond or Bonds to the registered owner of the Bond or his or her properly designated transferee or transferees or attorney.

The Bond Registrar shall not be required to honor any transfer or exchange of Bonds during the period from the applicable date of record preceding an interest payment date to such interest payment date. Any service charge made by the Bond Registrar for any such registration, transfer or exchange shall be paid by the City. The Bond Registrar may, however, require payment by a bondholder of a sum sufficient to cover any tax or other governmental charge payable in connection with any such registration, transfer or exchange.

8. Execution and Delivery. The Mayor and the City Clerk are authorized and directed to execute the Bonds for and on behalf of the City by manually executing the Bonds, or by causing their facsimile signatures to be affixed to the Bonds, provided in the latter instance the Bonds are thereafter authenticated by the Bond Registrar. The Bonds shall be sealed with the seal of the City or a facsimile thereof. When so executed, the Bonds shall be delivered by the City Treasurer to the Bond Registrar for authentication, and thereafter to the purchaser upon receipt in full of the purchase price for the Bonds.

9. Bond Payment Fund. The City shall establish a separate depository account, to be designated "City of Ann Arbor Property Assessed Clean Energy Bonds, Bond Payment Fund", with appropriate references to the year of issue and/or bond series designation (the "Bond Payment Fund"), and to the extent legally necessary accounts therein corresponding to separate series of the Bonds, into which shall be deposited the assessment collections and other available funds to the extent provided in paragraph 11 below. Additionally, a portion of the proceeds of the Bonds designated for use as capitalized interest as described below shall be deposited in the Bond Payment Fund. The Bond Payment Fund may be established at the financial institution purchasing the Bonds, as determined by the Treasurer.

The amount of capitalized interest, as determined by the City Treasurer under paragraph 3 hereof, shall be deposited in the Bond Payment Fund from the proceeds of the Bonds.

Moneys in the Bond Payment Fund shall be used solely to pay principal of and premium, if any, and interest on the Bonds.

Moneys in the Bond Payment Fund may be continuously invested and reinvested in any legal investment for City funds, which shall mature, or which shall be subject to redemption by the holder thereof, not later than the dates when moneys in the Bond Payment Fund will be required to pay the principal of and interest on the Bonds. Obligations purchased as an investment of moneys of the Bond Payment Fund shall be deemed at all times to be a part of such fund, and the interest accruing thereon and any profit realized from such investment shall be credited to such fund.

10. Acquisition Fund. The City shall establish a separate depository account, to be designated "City of Ann Arbor Property Assessed Clean Energy Bonds, Acquisition Fund", with appropriate references to the year of issue and/or bond series designation (the "Acquisition Fund"), and to the extent legally necessary accounts therein corresponding to separate series of the Bonds. Except for amounts required by this resolution to be deposited in the Bond Payment Fund,

the proceeds from the sale of the Bonds shall be deposited in the Acquisition Fund, with the proceeds from separate series of the Bonds being deposited in the corresponding accounts established therein as described above.

Moneys at any time in the Acquisition Fund shall be used solely to pay costs of the Energy Projects, including the costs of issuance of the Bonds, except that upon payment (or provision for payment) in full of the costs of Energy Projects any remaining moneys in the Acquisition Fund shall be transferred to the Bond Payment Fund (if any Bonds are outstanding) or applied as required by law or the ordinances of the City.

Moneys in the Acquisition Fund may be continuously invested and reinvested in any legal investment for City funds, which shall mature, or which shall be subject to redemption by the holder thereof, not later than the estimated dates when moneys in the Acquisition Fund will be required to pay the costs of the Energy Projects. Obligations purchased as an investment of moneys of the Acquisition Fund shall be deemed at all times to be a part of such fund, and the interest accruing thereon and any profit realized from such investment shall be credited to such fund.

11. Assessments as Primary Security for Payment of Bonds. The City Council hereby confirms the assessments against the Participating Properties set forth on Exhibit A hereto (the "Assessments") for purposes of the PACE Act and Chapter 13 of the City Code, subject to the execution of energy assessment agreements by the respective Owners as set forth herein. Pursuant to the PACE Act and the Report, the Assessments, including any interest thereon and penalties, shall constitute liens against the respective Participating Properties until such amounts are paid in full, which liens shall run with such properties and shall have the same priority and status as other property tax and assessment liens. The principal of and interest on the Bonds shall be payable primarily from the Assessments, which are hereby irrevocably pledged to the payment of the Bonds. The Assessments shall be payable in ten (10) approximately equal annual installments of principal, with the first installment being due on June 1, 2014 and subsequent installments being due at intervals twelve (12) months from said due date. The amounts of the annual installments shall be calculated based upon the amounts necessary to pay the principal amount of the Bonds maturing in each year. Interest on the Assessments shall accrue and be payable as provided for in the Report and the PACE Act at a rate to be determined by the Treasurer, but not in excess of 1% per annum above the true interest cost of the Bonds; provided, however, that interest on the Assessments shall accrue from and after the date of issuance of the Bonds rather than from the date of disbursement of Program Funds as initially provided in the Report.

12. Reserve Fund. The Bonds shall be further secured by the Reserve Fund in the initial amount of up to \$200,000, which shall be funded solely by grant moneys received by the City from the U.S. Department of Energy, and which shall be established at the time of delivery of the Bonds as a separate depository account of the City. The Reserve Fund may be established at the financial institution purchasing the Bonds, as determined by the Treasurer. The City hereby irrevocably pledges the Reserve Fund as security for payment of principal of and interest on the Bonds. The City reserves the right to release funds from the Reserve Fund (following the first year of the term of the Bonds), provided that an amount equal to not less than 10% of the outstanding principal amount of the Bonds is at all times retained in the Reserve Fund as security for payment of the Bonds. To the extent the Reserve Fund is drawn on to make payments on the Bonds, the City is not required to replenish the Reserve Fund. The reserve fund may be used to pay issuance costs, capitalized interest, and/or a capital contribution, at the discretion of the Treasurer, subject to grant requirements as determined by the U.S. Department of Energy.

13. Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Mayor and the City Clerk may, on behalf of the City, execute and deliver, or order the Bond Registrar to authenticate and deliver, a new Bond having a number not then outstanding, of like date, maturity, interest rate and denomination as that mutilated, lost, stolen or destroyed Bond.

In the case of a mutilated Bond, a replacement Bond shall not be delivered unless and until such mutilated Bond is surrendered to the Bond Registrar. In the case of a lost, stolen or destroyed Bond a replacement Bond shall not be delivered unless and until the City and the Bond Registrar shall have received such proof of ownership and loss and indemnity as they determine to be sufficient, which shall consist at least of (i) a lost instrument bond for principal and interest remaining unpaid on the lost, stolen or destroyed Bond; (ii) an affidavit of the registered owner (or his or her attorney) setting forth ownership of the Bond lost, stolen or destroyed and the circumstances under which it was lost, stolen or destroyed; (iii) the agreement of the owner of the Bond (or his or her attorney) to fully indemnify the City and the Bond Registrar against loss due to the lost, stolen or destroyed Bond and the issuance of any replacement Bond in connection therewith; and (iv) the agreement of the owner of the Bond (or his or her attorney) to pay all expenses of the City and the Bond Registrar in connection with the replacement, including the transfer and exchange costs which

otherwise would be paid by the City.

14. Negotiated Sale of Bonds. Pursuant to Section 309(1) of Act 34, Public Acts of Michigan, 2001, as amended, the City hereby determines that because of the nature of and security for the Bonds it is more cost effective to sell the Bonds by negotiated sale as provided herein, which will further provide flexibility in the structure, terms and timing of the sale and delivery of the Bonds. The Chief Financial Officer and the Treasurer are each hereby authorized to solicit and evaluate proposals from one or more financial institutions for the purchase of the Bonds on a direct placement basis, to negotiate additional terms of the Bonds not inconsistent with the parameters of this Resolution, to determine which institution's proposal is most advantageous to the City, and to execute and deliver on behalf of the City a bond purchase agreement and such other agreements, instruments and documents as may be necessary in connection with the negotiated sale of the Bonds. The City Council hereby ratifies and approves all actions taken prior to the time of adoption of this Resolution by the Chief Financial Officer and/or the Treasurer with respect to the negotiated sale of the Bonds as provided above.

15. Discount and Premium. The Bonds shall be purchased at 100% of the par amount thereof.

16. Execution and Delivery of Energy Assessment Agreements and other Required Documents. The Mayor, City Clerk, Treasurer and Chief Financial Officer (each an "Authorized Officer"), or any one of them, are authorized on behalf of the City to apply for such rulings, orders and approvals and file or submit appropriate elections or other documents to any federal, state or local governmental agency, and to make such designations as may be required for the Bonds to be validly issued. Such Authorized Officers, or any one of them, are further authorized to execute and deliver on behalf of the City the voluntary energy assessment agreements relating to the properties identified in Exhibit A hereto, and such other certificates, documents, instruments and other papers as may be required or may be necessary or convenient to effectuate the valid sale and delivery of the Bonds in accordance with the terms hereof, and to record such instruments and documents as may be necessary and appropriate to provide notice of the existence of the liens created by the Assessments hereunder.

17. Filings with Local Audit & Finance Division. The Authorized Officers are, and each is, hereby authorized and directed to make all necessary filings with the Local Audit and Finance Division of the Michigan Department of Treasury with respect to the issuance and sale of the Bonds, including a post-issuance Security Report, and to pay all fees required in connection therewith.

18. Conflicting Resolutions. All resolutions and parts of resolutions in conflict with the foregoing are hereby rescinded.

As Amended by Ann Arbor City Council on February 19, 2013

A roll call vote on the foregoing resolution was taken, the result of which is as follows:

YES: Councilmembers Kailasapathy, Briere, Petersen, Lumm, Kunselman,
Teall, Warpehowski, Anglin and Mayor Hieftje, 9
NO: None, 0;
ABSTAIN: None, 0.

THE RESOLUTION WAS THEREUPON DECLARED ADOPTED.

CERTIFICATION

I, the undersigned, the duly qualified and acting Clerk of the City of Ann Arbor, Michigan, do hereby certify that the foregoing is a true and complete copy of a resolution adopted by the City Council at a regular meeting held on February 4, 2013, the original of which is on file in my office, and that such meeting was conducted and public notice thereof was given pursuant to and in compliance with Act No. 267, Michigan Public Acts of 1976, as amended, and that minutes of such meeting were kept and are available as required by such Act.

Jacqueline Beaudry
City Clerk

Dated: February ____, 2013

EXHIBIT A
SCHEDULE OF ANTICIPATED PARTICIPATING PROPERTIES
SUBJECT TO FINAL COMPLIANCE WITH ALL PROGRAM REQUIREMENTS