



## Legislation Text

File #: 23-0117, Version: 1

**Dept/ Agency:** Economic and Housing Development

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

**Type of Service:** Affordable Housing Agreement for SLFRF Funds

**Purpose:** To authorize the execution of a Deed Restrictive SLFRF Affordable Housing Agreement to Oak Towers Urban Renewal Entity, LLC.

**Entity Name:** Oak Towers Urban Renewal Entity, LLC

**Entity Address:** 150 East 52<sup>nd</sup> Street, 14<sup>th</sup> Floor, New York, New York 10022

**Grant Amount:** \$3,600,000.00

**Funding Source:** Federal SLFRF Program Funds

**Contract Period:** HOME Program Funds must be expended within forty-eight (48) months from the date of adoption

**Contract Basis:** ( ) Bid ( ) State Vendor ( ) Prof. Ser. ( ) EUS

( ) Fair & Open ( ) No Reportable Contributions ( ) RFP ( ) RFQ

( ) Private Sale (X) Grant ( ) Sub-recipient ( ) n/a

**List of Property:**

**(Address/Block/Lot/Ward)**

2-8, 18-22, 24, 26, 28 and 30 Stratford Place/Block 2668/Lots 1, 9, 12, 13, 14 and 15 (South Ward)

**Additional Information:**

This is an Affordable Housing Agreement for SLFRF Funds to Oak Towers Urban Renewal Entity, LLC for the construction of the Oak Towers Project consisting of a complete renovation of two (2) mid-rise multi-family residential affordable and supportive buildings that will consist of seventy-five (75) rental units (28 SLFRF subsidized), upon property located at 2-8, 18-22, 24, 26, 28 and 30 Stratford Place (Block 2668, Lots 1,9,12,13,14 and 15) (South Ward).

The Project will include seventy-five (75) residential units, twenty-eight (28) of which shall be SLFRF affordable housing units, on-site parking spaces, laundry facilities and a community room.

**WHEREAS**, on or about May 19, 2021, the U.S. Department of the Treasury (the "U.S. Treasury") notified the City of Newark (the "City") that it would receive a total of One Hundred Seventy-Six Million Six Hundred Sixty-Seven Thousand Six Hundred Six Dollars and Zero Cents (\$176,667,606.00) of federal stimulus funds under Public Law No: 117-2 (3/11/2021) American Rescue Plan Act of 2021, as amended or supplemented ("ARPA"), which President Biden signed into law on March 11, 2021, as awarded pursuant to the Coronavirus State and Local Fiscal Recovery Funds ("SLFRF" or the "SLFRF Award"), providing additional relief to address the continued impact of COVID-19 on the economy, public health, state and local governments, non-profits, individuals and businesses and build a strong, resilient, and equitable recovery (the "SLFRF Program"); and

**WHEREAS**, on or about May 19, 2021, the U.S. Treasury deposited with the City the first of two (2) equal payments in the amount of Eighty-Eight Million Three Hundred Thirty-Three Thousand Eight Hundred Three Dollars and Zero Cents (\$88,333,803.00) from the SLFRF Award and the Municipal Council of the City of Newark approved the receipt of the SLFRF Award by Resolution 7R1-a(S) adopted on June 22, 2021 to help the City respond to and recover from the economic crisis

brought on by the continued effects of the COVID-19 pandemic on the City; and

**WHEREAS**, the City is responsible for ensuring that the funds from the SLFRF Award it receives from the U.S. Treasury pursuant to this special funding program and then deployed to eligible uses by way of loan, grant or other financial means are utilized in accordance with the requirements of ARPA, the Coronavirus State and Local Fiscal Recovery Funds Final Rule (released by the U.S. Department of the Treasury on January 6, 2022; effective April 1, 2022), as amended from time to time (31 CFR Part 35), the Compliance and Reporting Guidance for State and Local Fiscal Recovery Funds, as amended from time to time (Version 4.2 released by the U.S. Department of the Treasury on August 15, 2022), the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards (2 CFR Part 200), as amended from time to time, the SLFRF Final Rule: Frequently Asked Questions, as updated from time to time (updated version released by the U.S. Department of the Treasury on July 27, 2022), the U.S. Department of the Treasury SLFRF Award Terms and Conditions applicable to the ARPA Funds, the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.), and all applicable City and State of New Jersey laws, rules, ordinances and regulations (collectively, hereinafter referred to herein as “Applicable Laws and Guidance”); and

**WHEREAS**, the U.S. Treasury granted the City the SLFRF Award subject to the completion of and compliance with the Applicable Laws and Guidance, which includes initial and periodic reporting requirements containing reports of the status and uses of funding, a report on projects funded, expenditures, contracts awarded and other information, and a recovery plan performance plan (the “Plan”), which highlights how the City expects to ensure program outcomes are achieved in an effective, efficient, and equitable manner; and

**WHEREAS**, the Applicable Laws and Guidance established certain federal requirements for funds awarded under the SLFRF Program and, except as described therein, funds from the SLFRF Award which is used for affordable housing projects under the public health and negative economic impacts eligible use category are preemptively eligible if the proposed project meets or aligns with the core requirements of other federal programs, including, without limitation, the Home Investment Partnerships Program enacted under Title II of the Cranston-Gonzalez National Affordable Housing Act (Title II, Pub. L. 101-625, approved November 28, 1990, 104 Stat. 4094-4128, 42 U.S.C. 12701-12839) and the HOME Program regulations codified at 24 C.F.R. Part 92, as amended by the “2013 HOME Final Rule” at 24 C.F.R. Part 92 (Complete Rule) (together, the “HOME Program”); and

**WHEREAS**, the core requirements of the HOME Program for presumptive eligibility under the Applicable Laws and Guidance include resident income restrictions, the period of affordability and related covenant requirements for assisted units, tenant protections and housing quality standards, all of which are core requirements for the Project (as defined below) as set forth herein which are designed to meet the City’s affordable housing production and repair goals; and

**WHEREAS**, ARPA also established funding for the HOME-ARP Program, which appropriated \$5 Billion to communities across the United States to provide housing, services and shelter to individuals experiencing homelessness and other vulnerable populations as defined in Notice CPD-21-10 issued by the Department of Housing and Urban Development (“HUD”) on September 13, 2021 (the “HOME-ARP Program”); and

**WHEREAS**, the City has determined that the requirements of the Project as set forth herein shall align with and be consistent with the core requirements of the HOME Program as supplemented by the HOME-ARP program in order to support and address the critical need in the City for homelessness assistance; and

**WHEREAS**, the Entity herein intends to perform a complete renovation of two (2) mid-rise multi-family residential affordable and supportive buildings that will consist of seventy-five (75) residential rental units. Twenty-eight (28) of such rental units will serve households who are at risk of being homeless (as defined in 24 C.F.R. §91.5 as part of the HOME-ARP Program) having annual incomes of thirty percent (30%) or less of Area Median Income ("AMI") as determined using the standards set by HUD for the HOME Program (the "Affordable Housing Units") upon real property located at 2-8, 18-22, 24, 26, 28 and 30 Stratford Place, Newark, New Jersey 07108 (Block 2668, Lots 1, 9,12,13,14 and 15) (South Ward) of the Official Tax Map of the City of Newark County of Essex, State of New Jersey (collectively, the "Property");

**WHEREAS**, the Entity has agreed to rehabilitate the Affordable Housing Units in connection with the Project provided it receives funds from the SLFRF Program from the City in order to provide it with a financial subsidy necessary for the construction of these Affordable Housing Units for the Project; and

**WHEREAS**, in connection with the foregoing, the Municipal Council desires to authorize, direct and empower the Mayor of the City of Newark and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development to enter into and execute a Deed Restrictive Department of Economic and Housing Development ARPA/Coronavirus State and Local Fiscal Recovery Funds Affordable Housing Agreement with the Entity for the payment of SLFRF Funds in the amount of Three Million Six Hundred Thousand Dollars and Zero Cents (\$3,600,000.00) to the Entity under the SLFRF Program (the "SLFRF Funds") in order to pay certain eligible acquisition and construction costs of the Project which provided for, among other things, a twenty (20) year period of affordability and a zero percent (0%) interest rate deferred payment loan in the amount of Three Million Six Hundred Thousand Dollars and Zero Cents (\$3,600,000.00) from SLFRF Funds (the "Loan"), which such amount may be forgiven by the City at the end of the Affordability Period in the sole discretion of the City, subject to satisfaction of all of the terms and conditions set forth herein; and

**WHEREAS**, the Entity has secured firm commitments from senior institutional lenders and banks and/or other governmental agencies, as applicable, but requires the award of SLFRF Funds from the City in order to bridge the funding gap for and to complete the Project and the Affordable Housing Units; and

**WHEREAS**, the Municipal Council has determined that it is in the best interests of the City and its residents for the Project to be constructed and authorizes the execution and delivery of this Agreement; and

**WHEREAS**, the Project is also located within an area in need of redevelopment as defined under the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq. (the "LRHL"), and is governed by and is to be built as part of the South Ward Redevelopment Plan, adopted by Ordinance

6S&FI(s), by the Municipal Council on April 7, 1999 (the “Redevelopment Plan”); and

**WHEREAS**, the Project currently has a significant funding gap that must be bridged in order to make the Project financially feasible; and

**WHEREAS**, N.J.S.A. 40A:12A-8(f) of the LRHL authorizes municipalities to provide grants or loans to redevelopers to provide financial assistance for the performance of redevelopment activities in order to implement redevelopment projects in accordance with redevelopment plans; and

**WHEREAS**, the Project qualifies for financial assistance since it is located within a redevelopment area and is being performed in order to implement an approved Redevelopment Plan.

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

1. The Mayor of the City of Newark and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development are hereby authorized to enter into and execute a Deed Restrictive Department of Economic and Housing Development ARPA/Coronavirus State and Local Fiscal Recovery Funds Affordable Housing Agreement with Oak Towers Urban Renewal Entity, LLC, 150 East 52<sup>nd</sup> Street, 14<sup>th</sup> Floor, New York, New York 10022 for Federal SLFRF Funds in the amount of Three Million Six Hundred Thousand Dollars and Zero Cents (\$3,600,000.00) to perform a complete renovation of two (2) mid-rise multi-family residential affordable and supportive buildings that will consist of seventy-five (75) residential rental units. Twenty-eight (28) of such rental units will serve households who are at risk of being homeless (as defined in 24 C.F.R. § 91.5 as part of the HOME-ARP Program) having annual incomes of 30% or less of AMI as determined using the standards set by HUD for the HOME Program (the “Affordable Housing Units”) upon real property located at 2-8, 18-22, 24, 26, 28 and 30 Stratford Place, Newark, New Jersey 07108 (Block 2668, Lots 1, 9,12,13,14 and 15) (South Ward) of the Official Tax Map of the City of Newark, County of Essex, State of New Jersey (collectively, the "Property).
2. The Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to establish a declaration of covenants, conditions and restrictions to ensure that the Project remains affordable for a period of twenty (20) years in accordance and consistent with the affordability standards of the HOME Program and all Applicable Laws and Guidance. Said covenants, conditions and restrictions shall run with the land and bind the Entity and any subsequent purchasers and owners, their heirs, executors, administrators and assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns with the AHA for a period of twenty (20) years.
3. The Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to establish and record a declaration of covenants, conditions and restrictions to ensure that the City shall be repaid the full amount of the SLFRF Funds disbursed to the Entity upon the occurrence of an event of default under the AHA by the Entity by requiring the Entity to execute a separate SLFRF Mortgage and Security Agreement and SLFRF Mortgage Note for the full amount of funding provided to the Entity in the AHA. Said covenants, conditions and restrictions shall run with the land and bind the Entity and any subsequent purchasers and owners, their heirs, executors, administrators and assigns and all

persons claiming by, through or under their heirs, executors, administrators and assigns during the term of the AHA and the City shall discharge such Mortgage and lien in connection therewith upon its issuance of a Certificate of Completion for the Project.

4. The Entity shall be responsible for the recordation of the final fully executed AHA and the related Mortgage and any amendments thereto in the Office of the Essex County Register's Office
5. The Mortgage and Mortgage Note given by the Entity in favor of the City of Newark shall ensure compliance consistent with all of the requirements of the HOME Program, pursuant to the HOME Program Statute and Regulations (24 C.F.R. Part 92) and all Application Laws and Guidance.
6. Subject to the satisfaction in the sole discretion of the City of all of the terms, covenants and other conditions set forth in the AHA and other documents and agreements executed and delivered by the Entity in connection herewith and the Project, the Mortgage Note and the Mortgage made in favor of the City shall be forgiven and discharged by the City upon the expiration of the twenty (20) year affordability period. Notwithstanding the foregoing, the loan will be required to be repaid in full at the end of the twenty (20) year affordability period or earlier if any of the terms, covenants and other conditions of the Agreement and/or other documents and agreements executed and delivered by the Entity in connection herewith and the Project have been violated and/or breached by the Entity or the Entity otherwise defaults with respect to their respective terms, covenants and/or conditions as provided therein.
7. The Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to effectuate certain business terms and conditions related to the AHA, as amended, as permitted by New Jersey Law and may enter into subordination agreements, access and right of entry agreements and other relevant documents related to these fund allocations in forms subject to the approval of the Corporation Counsel. In addition, the Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to enter into a maximum of two (2) six (6) month extensions of the term set forth in the AHA, as amended, and any contract timelines and milestones contained therein, provided that any contract timelines and milestones are not extended beyond the two (2) permitted six (6) month extensions, subject to full written disclosure (in the form of a signed memorandum to be submitted prior to adoption) to the Municipal Council by the Deputy Mayor/Director of the Department of Economic and Housing Development and the approval of the Corporation Counsel.
8. Disbursement of the Federal HOME Program Funds for the Project in the amount of Three Million Six Hundred Thousand Dollars and Zero Cents (\$3,600,000.00) shall be subject to the terms and conditions set forth in the AHA, which is attached hereto and a made a part hereof.
9. The Entity must adhere to all milestones and timelines in the Project Schedule approved by the Department of Economic and Housing Development. The Property must conform to the City of Newark Design and Construction Standards Guidelines for New Home Construction, including standards for environmental sustainability and energy efficiency, as established by the Department of Economic and Housing Development. Should the Entity fail to complete the Project within the specified time frame, then the City, in its sole discretion, in addition to any

other remedy available by the Agreement or as allowed by law, may direct the Entity to repay all HOME Program Funds expended on the Project back to the City.

10. The term of the AHA shall be for a period of twenty (20) years from the date of adoption of this authorizing Resolution by the Municipal Council. SLFRF Funds must be expended within forty-eight (48) months from the date of adoption.
11. The Entity must remain in compliance with Municipal, State and Federal Laws including, but not limited to the City of Newark's Minority Set-Aside Ordinance (6S&Fd adopted on April 5, 1995) and its Affirmative Action Plan (7Rbp adopted on March 1, 1995) and Federal Executive Order 11246 (as amended by Executive Orders 1137 and 12086) with respect to the award of goods and services. The Entity has agreed to ensure that a minimum of forty percent (40%) of the workers employed during the construction of the project shall be Newark residents and that thirty (30%) of all contractors, subcontractors and suppliers shall be Newark companies.
12. Units assisted with SLFRF Program Funds must be designated upon execution of the AHA and must remain fixed Affordable Housing Units for the duration of the affordability period. Households seeking to occupy a SLFRF-assisted unit must be certified prior to occupancy and recertified annually consistent with the requirements of the HOME Program.
13. Attached hereto are Certification of Funds from the Municipal Comptroller, which states:
  - a) there are sufficient funds in the aggregate amount of Three Million Six Hundred Thousand Dollars and Zero Cents (\$3,600,000.00) for the purpose set forth herein and above; and that the line appropriation of Official Budget, which shall be charged as follows:

Business Unit	Department	Div./Proj.	Activity	Account #	Budget Ref.:	Amount
NW051	G22	ARP2W	A	71280	B2022	\$2,724,840.00
NW051	G21	ARPG0	A	72050	B2021	\$100,000.00
NW051	G21	ARPG0	A	71280	B2021	\$775,160.00

### **STATEMENT**

This Resolution hereby authorizes the Mayor of the City of Newark and/or his designee, or the Deputy Mayor/Director of the Department of Economic and Housing Development to enter into and execute an Affordable Housing Agreement with Oak Towers Urban Renewal Entity, LLC, 150 East 52<sup>nd</sup> Street, 14<sup>th</sup> Floor, New York, New York 10022, for Federal SLFRF Funds in the amount of \$3,600,000.00 to subsidize the complete renovation of two (2) mid-rise multi-family residential and supportive buildings containing seventy-five (75) residential units (28 SLFRF subsidized), upon real property located at 2-8, 18-22, 24, 26, 28 and 30 Stratford Place, Newark, New Jersey 07108 (Block

2668, Lots 1, 9,12,13,14 and 15) (South Ward) of the Official Tax Map of the City of Newark, County of Essex, State of New Jersey. The HOME assisted units must remain affordable for a period of twenty (20) years, pursuant to the requirements under the HOME Program (24 C.F.R. Part 92).