



## Legislation Text

File #: 23-0216, Version: 1

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

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

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

**Purpose:** To authorize the execution of an Affordable Housing Agreement with Urban League of Essex County Opportunity Corporation to construct a new affordable housing project consisting of eight (8) two-family owner-occupied residential buildings for a total of sixteen (16) housing units of which eight (8) housing units shall be affordable and designated as deed-restricted affordable homeownership housing units offered for sale to qualified low-income single family households.

**Entity Name:** Urban League of Essex County Opportunity Corporation

**Entity Address:** 508 Central Avenue, Newark, New Jersey 07107

**Grant Amount:** \$750,000.00

**Funding Source:** Federal HOME 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)**

147 Camden Street/Block 262/Lot35/West Ward

172-178 Fairmount Avenue/Block 262/Lots 26, 27, and 28/West Ward

208-210 Fairmount Avenue/Block 262/Lots 10 and 11/West Ward

187 Fairmount Avenue/Block 263/ Lot 41/West Ward

195 Fairmount Avenue/Block 263/Lots 45/West Ward

**Additional Information:**

**WHEREAS**, the City of Newark, New Jersey (the "City"), desires to enter into and execute a Deed Restrictive Affordable Housing Agreement (the "AHA") with Urban League of Essex County Opportunity Corporation (the "Entity"), 508 Central Avenue, Newark, New Jersey 07107; and

**WHEREAS**, the City desires to provide the Entity with Federal HOME Program Funds in the form of a deferred zero percent (0%) interest bearing loan for a period of twenty (20) years, pursuant to 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) ("NAHA") and the Federal HOME Program regulations codified at 24 CFR Part 92, as amended by the "2013 HOME Final Rule" at 24 CFR Part 92 (Complete Rule) (together with NAHA, the "HOME Program"); and

**WHEREAS**, the AHA is for the loan amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) in Federal HOME Program funds for a Project, which shall include the construction of a new affordable housing project upon property located at 147 Camden Street, 172-178 Fairmount Avenue, 208-210 Fairmount Avenue, 187 Fairmount Avenue and 195 Fairmount Avenue, Newark, New Jersey (West Ward) and identified on the Official Tax Map of the City of Newark, as Block 262, Lots 35, 26, , 27, 28, 10 and 11, and Block 263, Lots 41 and 45, respectively (collectively, the "Property"), and consisting of eight (8) two-family owner-occupied residential buildings (collectively, the

"Homes") for a total of sixteen (16) residential housing units (each a "Unit," collectively, the "Units") (collectively, the "Project"); and

**WHEREAS**, the Entity intends to construct and sell the Homes to qualified and eligible low-income third-party purchasers (collectively, the "Purchasers") who shall reside in the Home as his or her principal residence after the Project is completed and a Certificate of Occupancy has been issued by the City for each of the Homes; and

**WHEREAS**, the City has determined and the Entity has agreed that: (i) eight (8) owner-occupied housing units constructed for the Project shall be designated as HOME Program deed-restricted affordable housing units offered for sale to single family households earning 51% to 80% or less of Area Median Income, as determined by HUD from time to time ("AMI") (collectively, the "HOME-Assisted Units"); and (ii) the remaining eight (8) housing units constructed for the Project shall be market rate rental units, unless otherwise required by senior financing; not subject to the HOME Program rental requirements set forth in 24 CFR §92.252 (see 24 CFR §92.254(a)(ii)(6) and HUD HOME fires, Volume 1, No. 2 July 1, 1997); and

**WHEREAS**, the City has further determined that the HOME Funds loaned to the Entity hereunder shall be used to assist low-income homebuyers to acquire a designated HOME-Assisted Unit, which shall be his or her principal residence, subjecting such homebuyer to the HOME Program's income, affordability and recapture requirements as provided herein in accordance with 24 CFR §92.254 (see also HUD HOMEfires, Volume 1, No. 2 July 1, 1997); and

**WHEREAS**, to ensure that the HOME-Assisted Units shall remain affordable and the principal residence of the low-income Purchaser, the Property shall be subject to continuing affordability, recapture and other restrictions for a twenty (20) year period pursuant to a Deed-Restrictive Beneficiary Agreement and Acknowledgment of Affordability Requirements with the City on forms to be prepared by the City (the "Beneficiary Agreement") to be executed by each of the Purchasers; and

**WHEREAS**, the Entity has agreed to construct the Project and the HOME-Assisted Units in connection with the Project provided it receives an award of HOME Funds from the City in order to provide it with a financial subsidy for the construction of these HOME-Assisted Units for the Project; and

**WHEREAS**, it is in the best interest of the City and the Department of Economic and Housing Development to establish contractual guarantees and procedures by which the City will ensure the Entity's compliance with the requirements of the Federal HOME Program for the time and in the manner set forth in the AHA for the receipt of said HOME Program Funds; 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 as declared by the Municipal Council by Resolution 7Rdo(AS), adopted on June 15, 2005, and is governed by and is to be built as part of the City's West Ward Redevelopment Plan, as amended (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; and

**WHEREAS**, the Municipal Council recognizes the need to complete the above Project and desires to finance the making of a loan in the amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) to the Entity to be used as a subsidy to develop the Project and construct the HOME-Assisted Units.

**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 Affordable Housing Agreement (the "AHA") with Urban League of Essex County Opportunity Corporation (the "Entity"), 508 Central Avenue, Newark, New Jersey 07107, for Federal HOME Program funds in the amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) to subsidize the new construction of the Homes consisting of sixteen (16) housing units to be constructed within the Project of which eight (8) housing units shall be HOME-Assisted Units and designated as deed-restricted affordable homeownership housing units offered for sale to single family households earning 51 to 80% or less of Area Median Income ("AMI"), and the remaining eight (8) housing units constructed for the Project shall be market rate rental units not subject to the HOME Program rental requirements set forth in 24 CFR §92.252. The site of the Project will be located at 147 Camden Street, 172-178 Fairmount Avenue, 208-210 Fairmount Avenue, 187 Fairmount Avenue and 195 Fairmount Avenue, Newark, New Jersey (West Ward) and identified on the Official Tax Map of the City of Newark as Block 262, Lots 35, 26, , 27, 28, 10 and 11, and Block 263, Lots 41 and 45.

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 with the HOME Program. 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 Mayor of the City of Newark and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development, are each hereby authorized to enter into and execute a Deed Restrictive Beneficiary Agreement ("Beneficiary Agreement") with each of the Purchasers, which shall ensure that the HOME-Assisted Units remain the principal residence of the Purchaser, subject to recapture of funds, and are affordable during the twenty (20) year period of affordability and otherwise in compliance with the terms therein and the HOME Program.
4. The Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to establish and record the Beneficiary Agreement executed with each Purchaser, which is a declaration of covenants, conditions and restrictions to ensure that the City shall be repaid the full amount of the HOME Funds disbursed to the Entity to subsidize the costs of constructing the HOME-Assisted Units, a portion of which loan is assumed by each Purchaser at closing, upon the occurrence of an event of default under the Beneficiary Agreement, by the Purchaser by requiring the Purchaser to execute a separate Mortgage and Security Agreement, which shall be recorded and Mortgage Note for the full amount of financial assistance provided to the Entity and the Purchaser in the AHA and the Beneficiary Agreement. Said covenants, conditions and restrictions shall run with the land and bind the Purchaser 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 Beneficiary Agreement, and the City shall discharge such Mortgage and lien in connection therewith at the end of the period of affordability upon the determination of the City that the Purchaser has complied with all terms and conditions of the Beneficiary Agreement.
5. The term of the AHA shall commence on the date of execution and delivery of the AHA by the Entity and the City and expire upon issuance of a Certificate of Occupancy for each of the Homes and the sale, closing and transfer of all of the Property and Homes to the Purchasers and the funding of the HOME Program funds as provided herein.
6. The term of each Beneficiary Agreement shall commence on the date of execution and delivery of the Beneficiary Agreement by the respective Purchaser and the City and shall expire at the end of the twenty (20) year period of affordability upon the determination of the City that the respective Purchaser has complied with all terms and conditions of the Beneficiary Agreement.
7. 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 Home Funds disbursed to the Entity upon the occurrence of the event of default under the AHA by the Entity, by requiring the Entity to execute a separate HOME Mortgage and Security Agreement and Home 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, administrator and assigns during the term of the AHA and the City shall discharge such HOME Mortgage and lien in connection therewith upon its issuance of a Certificate of Completion for the Project.

8. The Entity shall be responsible for the recordation of the final fully executed: (i) AHA, the related Mortgage and any amendments thereto; and (ii) the Beneficiary Agreement, the related Mortgage and any amendments thereto, in the Essex County Register's Office.
9. The HOME Mortgage and HOME Mortgage Note given by the Entity and each of the Purchasers in favor of the City of Newark shall ensure compliance with all of the requirements of the HOME Program, pursuant to the HOME Program Statute and Regulations (24 C.F.R. Part 92).
10. 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 (including the Beneficiary Agreements), the HOME Mortgage Note and the HOME Mortgage made by the Entity and/or Purchaser in favor of the City shall be forgiven and discharged by the City. Notwithstanding the foregoing, the loan will be required to be repaid in full if any of the terms, covenants and other conditions of the AHA and/or other documents and agreements executed and delivered by the Entity and/or Purchaser in connection herewith and the Project have been violated and/or breached by the Entity and/or Purchaser or the Entity and/or Purchaser otherwise defaults with respect to their respective terms, covenants and/or conditions as provided therein.
11. 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, and applicable Beneficiary Agreements, 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.
12. Disbursement of the HOME Program Funds for the Project in the amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) shall be subject to the terms and conditions set forth in the AHA, which is attached hereto and a made a part hereof.
13. 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 AHA or as allowed by law, may direct the Entity to repay all HOME Program Funds expended on the Project back to the City.
14. HOME Program Funds must be expended within forty-eight (48) months from the date of adoption of this authorizing Resolution by the Municipal Council.
15. 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 11375 and 12086) with respect to the award of goods and services. The Entity has agreed to ensure that a minimum of 40% of the workers employed during the construction of the Project shall be Newark residents and that 30% of all contractors, subcontractors and suppliers shall be Newark companies.
16. Units assisted with HOME Program Funds must be designated upon execution of the AHA and must remain fixed

units for the duration of the affordability period. Households seeking to own and occupy a HOME-Assisted Unit must be certified by the City prior to purchase and occupancy, and recertified annually.

17. Attached hereto is a Certification of Funds from the City's Municipal Comptroller, which states:

- a) there are sufficient funds in the aggregate amount of Seven Hundred Fifty Thousand Dollars and Zero Cents (\$750,000.00) for the purpose set forth herein and above; and
- b) that the line appropriation of Official Budget which shall be charged is as follows:

| Business Unit | Department | Div./Proj. | Activity | Account # | Budget Ref.: | Amount       |
|---------------|------------|------------|----------|-----------|--------------|--------------|
| NW051         | G21        | D21G0      | A        | 72090     | B2021        | \$750,000.00 |
|               |            |            |          |           |              |              |

**STATEMENT**

This Resolution hereby authorizes 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 an Affordable Housing Agreement with Urban League of Essex County Opportunity Corporation, 508 Central Avenue, Newark, New Jersey 07107, and the Beneficiary Agreements with certain qualified and eligible low-income homebuyers or purchasers for Federal HOME Program Funds in the amount of \$750,000.00 to subsidize the construction of a new affordable housing project upon the Property and consisting of eight (8) two-family owner-occupied residential buildings for a total of sixteen (16) housing units of which eight (8) housing units shall be fixed HOME-Assisted Units offered for sale to single family households earning 51 to 80% or less of AMI. The HOME-Assisted Units must: (i) be occupied by the homebuyer as his or her principal residence; (ii) be acquired by a homebuyer whose family qualifies as a low-income family; (iii) remain affordable for a period of twenty (20) years; and (iv) otherwise comply with the requirements under the HOME Program (24 C.F.R. Part 92). The remaining eight (8) housing units constructed for the Project shall be market rate rental units not subject to the HOME Program rental requirements set forth in 24 CFR §92.252.