



## Legislation Text

File #: 12-2309, Version: 3

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

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

**Type of Service:** Grant Agreement and Affordable Housing Agreement

**Purpose:** Construction of a mixed used project known as the "One Theater Square Project", consisting of a 22 story structure with 244 rental residential units (24 of which shall be affordable to households earning 50% or less of Area Median Income).

**Entity Address:** c/o Dranoff Properties, 3180 Chestnut Street, Philadelphia, Pennsylvania 19104

**Entity Name:** Two Center Street Urban Renewal, LLC

**Grant Amount:** \$11,000,000.00

**Funding Source:** \$9,500,000.00 from Motor Vehicle Rental Tax Revenues collected pursuant to the Motor Vehicle Rental Tax Ordinance and \$1,500,000.00 HOME Program Funds.

Total Project Cost:

**City Contribution:** \$11,000,000.00

**Other Funding Source/Amount:**

**Contract Period:** Grant agreement - commences on effective date and terminates on the completion date as defined in grant agreement. Affordable Housing Agreement - commences any time that Entity has obtained all governmental approvals, but no later than March 31, 2014 and terminates within two years from the date of commencement of construction.

**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: (if applicable)

(Address/Block/Lot/Ward)

34-40 Park Place, Newark, New Jersey /Block 125/ Lot 26/ East Ward

**Additional Information:**

**No Action Taken, December 11, 2012**

**WHEREAS**, Two Center Street Urban Renewal, LLC (the "Redeveloper") has approached the City with a proposal to construct a mixed used project upon property located at 34-40 Park Place, Newark New Jersey and identified on the official tax map of the City as Block 125, Lot 26 (the "Property") consisting of a 22 story structure with 244 rental residential units (a percentage of which shall, as described more fully below, be deed-restricted affordable housing) and approximately 15,000 square feet of ground floor retail space along with structured parking and other amenities (the "Project"); and

**WHEREAS**, the Project is 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 the Urban Renewal Plan for the Educational Center Redevelopment Project (as amended); and

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

**WHEREAS**, the City has determined that the Project serves important public purposes in that it will result in the redevelopment of property that has been determined to be in need of such redevelopment under the LRHL and will provide affordable and market rate housing along with retail space in an area of the City needing these services; and

**WHEREAS**, the City therefore wishes to provide financial assistance to the Redeveloper for the Project in order to bridge this funding gap; and

**WHEREAS**, N.J.S.A. 40:48H-1 et seq. (the “Municipal Motor Vehicle Rental Tax Law”) authorizes qualifying municipalities to impose, by ordinance, a tax upon motor vehicle rental transactions occurring within designated industrial zones of the municipality and to utilize the tax revenues collected thereunder (hereinafter, the “Motor Vehicle Rental Tax Revenues”) for specified eligible purposes; and

**WHEREAS**, the City of Newark is one of the municipalities which qualifies under the Municipal Motor Vehicle Rental Tax Law to impose, by ordinance, a tax upon motor vehicle rental transactions occurring within designated industrial zones; and

**WHEREAS**, as authorized by the Municipal Motor Vehicle Rental Tax Law, the Municipal Council of the City of Newark adopted Ordinance 6PSF-I 050110 (the “Motor Vehicle Rental Tax Ordinance”) imposing a tax upon motor vehicle rental transactions occurring within the Second and Third Industrial Districts of the City; and

**WHEREAS**, certain motor vehicle rental companies filed litigation entitled Avis Budget Group, Inc., et al. v. City of Newark, et als., Docket No. A-3801-10T4 challenging the validity of the Motor Vehicle Rental Tax Ordinance (the “Litigation”); and

**WHEREAS**, although the Litigation is still pending as the plaintiffs have filed a petition for certification with the New Jersey Supreme Court, the validity of the Motor Vehicle Rental Tax Ordinance has been upheld by the Law Division and by the Appellate Division and no court has stayed the City’s collection or use of the Motor Vehicle Rental Tax Revenues collected pursuant to the Motor Vehicle Rental Tax Ordinance; and

**WHEREAS**, both the Municipal Motor Vehicle Rental Tax Law and the Motor Vehicle Rental Tax Ordinance authorize the use of Motor Vehicle Rental Tax Revenues for specified eligible purposes, including but not limited to the payment or reimbursement of costs of any redevelopment project or other undertaking in furtherance of a redevelopment plan in any area in need of redevelopment or area in need of rehabilitation within the municipality; and

**WHEREAS**, the Motor Vehicle Rental Tax Ordinance provides that Motor Vehicle Rental Tax Revenues may be disbursed from the City’s rental tax account for the payment of the costs of eligible purposes by resolution of the Municipal Council; and

**WHEREAS**, the provision of financial assistance to the Redeveloper for the Project is an eligible purpose for Motor Vehicle Rental Tax Revenues since the Project involves the redevelopment of property located within a redevelopment area in order to implement the Urban Renewal Plan for the Educational Center Redevelopment Project (as amended); and

**WHEREAS**, N.J.S.A. 40A:12A-8(f) of the LRHL authorizes municipalities to provide grants 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 City wishes to provide a grant to the Redeveloper in an amount not to exceed Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) funded by Motor Vehicle Rental Tax Revenues and subject to the terms and conditions of the Grant Agreement attached to this Resolution; and

**WHEREAS**, there are sufficient Motor Vehicle Rental Tax Revenues currently available within the rental tax account maintained by the City's Finance Director pursuant to the Municipal Motor Vehicle Rental Tax Law and the Motor Vehicle Rental Tax Ordinance to fund the purpose set forth herein; and

**WHEREAS**, the City has determined that the Redeveloper should be required to set aside twenty-four (24) of the two hundred forty four (244) rental housing units constructed for the Project for use and occupancy by households earning 50% or less of Area Median Income (the "Affordable Housing Units"); and

**WHEREAS**, the Redeveloper has agreed to construct the Affordable Housing Units within the Project so long as it receives financial assistance from the City for the construction of these units; and

**WHEREAS**, the City has received a federal block grant from the United States Department of Housing and Urban Development ("HUD") under the Home Investment Partnerships Program (the "HOME Program") to be used to provide financial assistance for the construction or rehabilitation of low or moderate income housing; and

**WHEREAS**, the City wishes to provide the Redeveloper with a repayable zero percent loan in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) through the HOME Program in order to provide the Redeveloper with financial assistance for the construction of the Affordable Housing Units; and

**WHEREAS**, the HOME funds will be disbursed to the Redeveloper pursuant to the terms and conditions of the HOME Program and the attached Affordable Housing Agreement.

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

1. The Municipal Council of the City of Newark hereby authorizes the use of up to Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) of Motor Vehicle Rental Tax Revenues collected pursuant to the Motor Vehicle Rental Tax Ordinance for the purpose of funding a grant to Two Center Street Urban Renewal, LLC, c/o Dranoff Properties, 3180 Chestnut Street, Philadelphia, Pennsylvania 19104, for the Project.

2. The above grant for the Project is expressly subject to a final non-appealable determination in the Litigation that the collection and use of Motor Vehicle Rental Tax Revenues under the Motor Vehicle Rental Ordinance is lawful.

3. The Mayor 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 Grant Agreement with Two Center Street Urban Renewal, LLC in the form attached hereto providing that the City will provide a grant

in an amount not to exceed Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) to the Redeveloper for the Project, subject to the terms and conditions of the Grant Agreement.

4. Upon the certification of any funding for the use of Motor Vehicle Rental Tax Revenues for the purpose enumerated in paragraphs 1 and 2 above, the Deputy Mayor/Director of the Department of Economic and Housing Development shall file such certification of funds with the Office of the City Clerk. Additionally, upon full execution of the Grant Agreement referenced within paragraph 2 above, the Deputy Mayor/Director of Economic and Housing Development shall file the executed Grant Agreement with the Office of the City Clerk.

5. Pursuant to N.J.S.A. 52:27D-329.9(d) and N.J.A.C. 19:31-9.3(h), the Municipal Council hereby determines that twenty-four (24) out of the two hundred forty-four (244) rental housing units constructed for the Project shall be reserved for occupancy by low income households (i.e. households earning 50% or less of Area Median Income).

6. The Mayor and/or his designee, the Deputy Mayor/Director of the Department of Economic and Housing Development, are hereby authorized to enter into and execute an Affordable Housing Agreement with Two Center Street Urban Renewal, LLC in the form attached hereto for the payment of Home funds in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) to the Redeveloper under the HOME Program in order to subsidize the construction costs of the twenty-four (24) rental housing units in the Project which shall be reserved for occupancy by low income households (i.e. households earning 50% or less of Area Median Income).

7. 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 twenty-four (24) Affordable Housing Units remain affordable for a period of twenty (20) years. Said covenants, conditions and restrictions shall run with the land and bind the Redeveloper and any subsequent purchasers and owners, their heirs, executors, administrators and assigns for a period of twenty (20) years.

8. The Redeveloper shall execute a Mortgage and Mortgage Note with the City on the Property to ensure compliance with the requirements of the HOME Program pursuant to the statutes and regulations governing the HOME Program (24 CFR Part 29). The Redeveloper shall be responsible, at its sole cost and expense, to record the Affordable Housing Agreement and Mortgage (and any amendments thereto) with the Essex County Register and to provide recorded copies of such documents to the Deputy Mayor/Director of the Department of Economic and Housing Development.

The Deputy Mayor/Director of the Department of Economic and Housing Development is hereby authorized to enter into subordination agreements, mortgages and other relevant documents relating to the Grant Agreement and the HOME fund allocation in forms approved by 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 six month extensions of the milestones and time deadlines set forth within the Grant Agreement and the Affordable Housing Agreement, providing that such milestones and deadlines are not extended beyond the two permitted six month extensions, subject to full written disclosure (in the form of a signed memorandum) to the Newark Municipal Council by the Deputy Mayor/Director of the Department of Economic and Housing Development.

9. Housing units assisted with HOME funds must be designated upon execution of the

Affordable Housing Agreement. Households seeking to occupy a housing unit assisted by HOME funds must be certified prior to occupancy and recertified annually.

10. Attached hereto is a certification from the Municipal Comptroller of the City of Newark which states that:

(a) there are sufficient funds in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) for the purpose of paying the HOME funds to the Redeveloper pursuant to the Affordable Housing Agreement and the HOME Program; and

(b) that the line appropriation of the official budget which should be charged is as follows:

2011 HOME	051-G11-D11D0	\$1,490,645.00
2004 HOME	051-G08-D18M0	\$9,355.00

11. Upon final non-appealable determination in the Litigation that the collection and use of Motor Vehicle Rental Tax Revenues under the Motor Vehicle Rental Tax Ordinance is lawful, a certification of the availability of sufficient funds shall be executed covering the amount of the grant.

12. Upon full execution of the Affordable Housing Agreement referenced within paragraph 5 above, the Deputy Mayor/Director of Economic and Housing Development shall file the executed Affordable Housing Agreement with the Office of the City Clerk.

### STATEMENT

This resolution (i) authorizes the Deputy Mayor/Director of the Department of Economic and Housing Development to enter into and execute a Grant Agreement with Two Center Street Urban Renewal, LLC, c/o Dranoff Properties, 3180 Chestnut Street, Philadelphia, Pennsylvania, 19104, in an amount not to exceed Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) funded by Motor Vehicle Rental Tax Revenues to provide financial assistance for a mixed used redevelopment project to be constructed upon property located at 34-40 Park Place, Newark New Jersey and identified on the official tax map of the City as Block 125, Lot 26 consisting of a 22 story structure with 244 rental residential units (24 of which shall be deed-restricted affordable housing) and approximately 15,000 square feet of ground floor retail space along with structured parking and other amenities (the "Project"), provided that a certification of funds will not be issued for the use of the Motor Vehicle Rental Tax Revenues for this purpose unless and until there is a final non-appealable determination in the Litigation that the collection and use of Motor Vehicle Rental Tax Revenues under the Motor Vehicle Rental Tax Ordinance is lawful, (ii) determines that twenty-four (24) out of the two hundred forty-four (244) rental housing units constructed for the Project shall be reserved for occupancy by low income households (i.e. households earning 50% or less of Area Median Income), (iii) authorizes the Mayor 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 Two Center Street Urban Renewal, LLC for the payment of Home funds in the amount of One Million Five Hundred Thousand Dollars (\$1,500,000.00) to the Redeveloper under the HOME Program in order to subsidize the construction costs of the twenty-four (24) rental housing units in the Project which shall be reserved for occupancy by low income households and to enter into subordination agreements, access and right of entry agreements, mortgages and other relevant documents relating to this HOME fund allocation in forms approved by Corporation Counsel, and (iv) authorizing the Deputy Mayor/Director of Economic and

Housing Development to enter into a maximum of two six month extensions of the milestones and time deadlines set forth within the Grant Agreement and the Affordable Housing Agreement.