



City of Newark

City Hall
920 Broad Street
Newark, New Jersey 07102

Legislation Text

File #: 19-1969, **Version:** 1

Dept/ Agency: Economic and Housing Development

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

Type of Service: Loan Agreement / Promissory Note Pursuant to Section 108 Loan Guarantee Program

Purpose: A resolution authorizing the execution and delivery of a Variable/Fixed Rate Note and related documents for funds awarded under the United States Department of Housing and Urban Development ("HUD") Section 108 Loan Guarantee Program, for the purpose of funding a redevelopment project to be undertaken by Newark Makerhoods, LLC.

Entity Name: United States Department of Housing and Urban Development

Entity Address: 451 7th Street S.W., Washington, DC 20410

Loan Amount: \$5,000,000.00

Loan Term: Twenty (20) years

Project Property Information: (Address/Block/Lot/Ward)

597-601 Dr. Martin Luther King, Jr. Boulevard/Block 2508/Lot 29/Central Ward

129-145 Court Street/Block 2508/Lot 52/Central Ward

Additional Information:

Application for loan funds authorized by Resolution 7R2-a(AS) adopted on November 1, 2017.

Contract for Loan Guarantee Assistance authorized by Resolution 7R2-c(AS) adopted on March 6, 2019.

WHEREAS, Section 108 of the Housing and Community Development Act of 1974 (42 U.S.C. 5308) ("Section 108"), authorizes the U.S. Department of Housing and Urban Development ("HUD") to guarantee loans as part of its Community Development Block Grant ("CDBG") program; and

WHEREAS, HUD has designated the City of Newark, State of New Jersey ("City"), as an Urban Entitlement Area under the Community Development Block Grant Program; and

WHEREAS, the City has been receiving CDBG program funds since the program's inception in 1974; and

WHEREAS, HUD administers the Section 108 Loan Guarantee Program, which provides communities who receive CDBG funds with an additional source of financing for economic development, housing rehabilitation, public facilities, and other physical development projects as outlined by 24 CFR 570.202 and 24 CFR 570.702 (the "Section 108 Regulations"); and

WHEREAS, in order to receive loan guarantees under Section 108, an applicant pledges its current and future CDBG funds as the principal security for the loan guarantee, and may be required to pledge additional security for each loan, as determined by HUD on a case by case basis; and

WHEREAS, on October 26, 2012, on behalf of the City of Newark, the Business Administrator submitted an application to HUD (the "Section 108 Application", annexed herein as Exhibit "A")

requesting loan funding in the amount of \$12,000,000.00 from the Section 108 Program; and

WHEREAS, as a result of the Section 108 Application, on July 29, 2013, HUD awarded to the City a loan guarantee commitment (the "Section 108 Loan Guarantee Commitment" annexed herein as Exhibit "B"), also known as the Funding Approval/Agreement, Grant Number B-12-MC-34-0111, in the amount of \$12,000,000.00 from the Section 108 program; and

WHEREAS, by Funding Approval/Agreement, Grant No. B-18-MC-34-011 dated December 20, 2018, and annexed hereto, HUD authorized the re-issuance of the Section 108 Loan Commitment in the amount of \$8,291,000.00, which amount represents the \$12,000,000.00 commitment less the funds disbursed for the 505 Clinton Loan (\$3,709,000.00); and

WHEREAS, in accordance with the Section 108 Regulations, the City may utilize the loan proceeds to fund certain economic development projects, or may lend those loan proceeds to qualified entities to fund economic development projects which meet certain criteria as determined by HUD; and

WHEREAS, by Resolution 7R2-d (AS) adopted August 2, 2017, and annexed herein as Exhibit "C", the Municipal Council of the City of Newark (the "Municipal Council") authorized the execution of a redevelopment and land sale agreement (the "Redevelopment Agreement") with Newark Makerhoods, LLC, (the "Redeveloper") to provide for the rehabilitation of the Krueger-Scott Mansion, and construction of a project to include 66 units of residential space, including affordable units, and 16 commercial/retail spaces where building tenants will operate small businesses at 597-601 Dr. Martin Luther King, Jr., Boulevard and 129-145 Court Street in the Central Ward of the City (the "Project"); and

WHEREAS, by amendment to the Redevelopment Agreement currently under consideration by the Municipal Council, the Parties intend, among other things, to provide for the financing of the Project by naming Newark Makerhoods Master Lease, LLC as a co-redeveloper of the Project (the "Co-Redeveloper"); and

WHEREAS, upon approval of the Municipal Council of a loan and collateral documents which are in accordance with HUD requirements, as further set forth below, the City intends to loan a portion of the Section 108 Loan Guarantee Commitment to the Co-Redeveloper, in order to provide partial funding in the amount of Five Million Dollars and Zero Cents (\$5,000,000.00), for the Project; and

WHEREAS, by Resolution 7R2-c (AS), adopted March 6, 2019, and annexed herein as Exhibit "D", the Municipal Council has authorized the City to enter into a Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974 with HUD, (the "Contract", which was executed on March 22, 2019, annexed herein as Exhibit "F") and to execute related documents and certifications which were needed for the establishment of deposit and loan repayment accounts with financial institutions (the "Section 108 Deposit Account" and the "Section 108 Loan Repayment Account", collectively, the "Section 108 Accounts"); and

WHEREAS, by letter dated February 20, 2019 and annexed herein as Exhibit "E", HUD has determined that the Project as proposed meets eligibility, national objective, public benefit, and additional security requirements of the CDBG and Section 108 Loan Guarantee Assistance Programs

(24 CFR 570); and

WHEREAS, the Contract governs the use of all of the HUD Section 108 Program funds (the “Loan”), the terms and conditions of the Loan, and provides that the City will open and maintain separate bank accounts and maintain separate records for the Section 108 loan funds in accordance with the Section 108 Regulations; and

WHEREAS, the Contract provides that the City may expend the Loan funds in accordance with the Section 108 Regulations, or may lend the funds to other entities upon the approval of HUD; and

WHEREAS, in order to facilitate financing for the Project, Redeveloper has heretofore proposed to enter into a New Markets Tax Credit (“NMTC”) transaction in accordance with 26 U.S.C. § 45D; and

WHEREAS, NMTC transactions necessitate the borrower to be a bankruptcy-remote, special purpose entity, which under a NMTC structure would be the borrower of loan funds resulting from the NMTC transaction; and

WHEREAS, Newark Makerhoods, LLC has designated Newark Makerhoods Master Lease, LLC, (“Master Lease”), a bankruptcy-remote, special purpose entity to be the borrower of funds; and

WHEREAS, in order to accommodate the NMTC transaction, HUD requires that the City execute a rider to the Contract named “Attachment 3, HUD-Approved Alternative Collateral or Security Arrangements, Section 108 Loan Guarantee Number: B-18-MC-34-0111” (“Attachment 3”, annexed herein as Exhibit ‘F’) which provides for certain collateral and security arrangements related to the NMTC transaction; and

WHEREAS, Attachment 3 provides that the Loan shall be solely used to fund the Project through the use of the NMTC structure, which is set forth in Appendix B to Attachment 3; and

WHEREAS, Attachment 3 obligates the City to execute certain documents with Master Lease, including a promissory note (the “Obligor Loan Note”) and a loan agreement (the “Obligor Loan Agreement”, together the “Obligor Loan Documents”), which Obligor Loan Documents shall be in form and content consistent with Attachment 3 (with such provisions as are necessary to ensure compliance with requirements applicable to the use of the Krueger-Scott Guaranteed Loan Funds); and

WHEREAS, the City shall approve and authorize the execution of the Obligor Loan Documents through separate legislation; and

WHEREAS, the City wishes to authorize the Mayor and/or his designee to execute a promissory note (the “Variable/Fixed Rate Note”, or “Note”, attached herein as Exhibit “G”) in the amount of Five Million Dollars and Zero Cents (\$5,000,000.00), in order to provide partial funding for the Project, and to deposit the Loan funds into the City’s Section 108 Accounts; and

WHEREAS, upon adoption of a resolution by the Municipal Council approving the execution of the Obligor Loan Documents, the City will then loan the funds to the Redeveloper.

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

1. The form Note and Attachment 3 are hereby approved and authorized and that the Mayor, and/or his designee, the Acting Director of the Department of Economic and Housing Development, are hereby authorized and directed to enter into, execute and deliver the Variable/Fixed Rate Note and Attachment 3 to HUD, 451 7th Street S.W., Washington, DC 20410, for the Section 108 Loan Guarantee Assistance Program funds in an amount not to exceed Five Million Dollars and Zero Cents (\$5,000,000.00), to subsidize the Project.
2. Upon further authorization by the Council of the execution of the Obligor Loan Documents, the Mayor and/or his designee are authorized to request advances from HUD pursuant to the terms and conditions of the Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. §5308).
3. Disbursement of the HUD Section 108 Loan Guarantee Program funds to Newark Makerhoods Master Lease, LLC for the Project in the amount of Five Million Dollars and Zero Cents (\$5,000,000.00), shall be subject to the terms and conditions set forth in the Contract, which is attached hereto and made a part hereof, and subject to the further approval of the Municipal Council of an Obligor Loan Note and Obligor Loan Agreement with Newark Makerhoods Master Lease, LLC.
4. The term of the Note and Attachment 3 shall be for a period of twenty (20) years from the date of execution and delivery of the Agreement by the City and HUD.
5. A copy of the fully executed Contract, Variable/Fixed Rate Note, Attachment 3, and any related documents and certifications authorized by this Resolution shall be placed on file with the Office of the City Clerk by the Acting Director of the Department of Economic and Housing Development.

STATEMENT

This Resolution authorizes the Mayor and/or his designee, the Acting Director of Economic and Housing Development to execute and deliver to the United States Department of Housing and Urban Development ("HUD") a Variable/Fixed Rate Note in the amount of Five Million Dollars and Zero Cents (\$5,000,000.00), Attachment 3, HUD-Approved Alternative Collateral or Security Arrangements, Section 108 Loan Guarantee Number: B-18-MC-34-0111, and related documents, for the benefit of the Newark Makerhoods LLC through its co-developer Newark Makerhoods Master Lease LLC, to finance the proposed redevelopment project located at 597-601 Dr. Martin Luther King, Jr. Boulevard and 129-145 Court Street, shown on the tax maps of the City of Newark as Block 2508, Lots 29 and 52 in the Central Ward.

