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OFFICE OF THE CITY CLERK
OAKLAND

APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89646 C.M.S.

RESOLUTION ALLOCATING FUNDS FROM MEASURE U HOUSING BOND FUNDS AND OTHER NON-BOND FUNDS IN A TOTAL AMOUNT NOT TO EXCEED \$63,000,000 TO FUND NEW CONSTRUCTION OF MULTIFAMILY RENTAL AFFORDABLE HOUSING PROJECTS, AND AUTHORIZING THE CITY ADMINISTRATOR TO MAKE DEVELOPMENT LOANS UNDER THE NEW CONSTRUCTION OF MULTIFAMILY RENTAL AFFORDABLE HOUSING PROGRAM WITHOUT RETURNING TO COUNCIL, CONTINGENT ON FUNDING AVAILABILITY

WHEREAS, on January 31, 2023, the City of Oakland issued a Notice of Funding Availability ("NOFA") soliciting applications for funding for new construction of affordable housing development projects; and

WHEREAS, the application period for the aforementioned NOFA shall close on March 24, 2023; and

WHEREAS, the City's Consolidated Plan for Housing and Community Development indicates that there is a need for affordable rental housing, and has identified this activity as a priority; and

WHEREAS, the projects that apply for funding through the NOFA must be consistent with the City's Project Development Guidelines, and each developer must meet the City's Threshold Developer Criteria in order to qualify for funding; and

WHEREAS, the projects that apply for funding through the NOFA are evaluated and scored on criteria specified in the NOFA, and the highest ranked projects will be recommended for funding; and

WHEREAS, City funding commitments through the NOFA process are critical for affordable housing developers to secure other sources of affordable housing funding from County, State and Federal sources, and the NOFA's established funding priorities seek to align with both the City's funding priorities for affordable housing spending and those of other funders; and

WHEREAS, funds for affordable housing development in the amount of \$13,000,000 are available, or will become available in Fiscal Year 2023-2024, from the Affordable Housing Trust Fund (Fund 1870) (Jobs/Housing Impact Fees, Affordable Housing Impact Fees, and the Former Redevelopment Funds portion of the Affordable Housing Trust Fund), the Low and Moderate Income Housing Asset Fund (Fund 2830), the State Local Housing Trust Fund (Fund 2144), and the HUD HOME Investment Partnership Program Fund (Fund 2109) to assist the projects; and

WHEREAS, unfunded affordable housing pipeline projects from the 2022 New Construction NOFA pipeline and expressions of interest in the 2023 New Construction Notice of Funding Availability appear to represent more demand for local subsidy than the previously identified sources of funding will be able to accommodate; and

WHEREAS, multiple new construction affordable housing projects funded by previous City funding opportunities require additional local subsidy to be competitive for tax credits and tax-exempt bonds allocated by the State of California due to rising interest rates and construction cost increases; and

WHEREAS, the Affordable Housing and Infrastructure Bond (Measure U) was adopted by the Oakland voters in November, 2022, and authorized the City of Oakland to issue \$350 million in General Obligation Bonds to support affordable housing; and

WHEREAS, the first issuance of the bonds authorized by Measure U is expected to take place in late 2023 or early 2024; and

WHEREAS, pursuant to Section 3(C) of Measure U, prior to issuance of the bonds, Council must identify how the projects authorized for funding with Measure U bond proceeds address social and geographic equity and provide greater benefit to underserved populations and geographic areas of greatest need, address improvements to the City's existing core capital assets, and maintain or decrease the City's existing operations and maintenance costs; and

WHEREAS, the City is the Lead Agency for these projects for purposes of environmental review under the California Environmental Quality Act of 1970 ("CEQA"); and

WHEREAS, the requirements of CEQA, the CEQA Guidelines as prescribed by the Secretary for Resources, and the provisions of the Environmental Review Regulations of the City of Oakland have been satisfied or will be satisfied for these projects prior to the City making a funding commitment to projects; and

WHEREAS, for those projects receiving federal funds, execution of loan documents or other documents legally committing the City to fund the projects shall be expressly conditioned on compliance with the requirements of the National Environmental Protection Act ("NEPA"), as certified by the City Administrator or his or her designee; now, therefore, be it

RESOLVED: That the City Council hereby authorizes the City Administrator to provide loans in a total amount not to exceed \$63,000,000, to be used for development of new construction affordable housing projects that previously received an award of City funds or are selected by the City Administrator as a potential recipient through the 2023 New Construction Notice of Funding Availability, without returning to Council; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator to issue forward commitments for the use of up to \$50,000,000 in proceeds from the first available sale of Measure U bonds as a portion of the \$63,000,000 authorized above; and be it

FURTHER RESOLVED: That the funding for the loans in an amount up to \$13,000,000 is or will be allocated from the Affordable Housing Trust Fund (Fund 1870) (Jobs/Housing Impact Fees, Affordable Housing Impact Fees, and the Former Redevelopment Funds portion of the Affordable Housing Trust Fund), the Low and Moderate Income Housing Asset Fund (Fund 2830), the State Local Housing Trust Fund (Fund 2144), and the HUD HOME Investment Partnership Program Fund (Fund 2109) in fiscal year 2022-23 and/or fiscal year 2023-24; and be it

FURTHER RESOLVED: That the making of each loan shall be contingent on the availability of sufficient funds in the above funds in fiscal years 2022-23 and/or 2023-2024; and be it

FURTHER RESOLVED: That each loan shall be for a maximum term of 55 years, with an interest rate to be determined by the City Administrator in his or her discretion, with repayment to the City from surplus cash flow from the project and other available funds during the term of the loan, with the balance due at the end of the term, or on such other repayment terms and schedule as the City Administrator determines are in the best interests of the City and the project; and be it

FURTHER RESOLVED: That as a condition of each loan, the City will require that appropriate restrictions on project occupancy, rents and operations be recorded against project land and/or improvements; and be it

FURTHER RESOLVED: That each loan shall be secured by a deed of trust on the project land and/or improvements; and be it

FURTHER RESOLVED: That loan funds shall be reserved for a period of no more than 24 months from the date of the commitment letter, and shall be subject to reprogramming at the end of this period unless the developer has secured commitments for full project funding or provided other assurances of adequate project funding that the City Administrator deems sufficient within his or her discretion, within the reservation period; and be it

FURTHER RESOLVED: That the making of each loan shall be contingent on and subject to such other appropriate terms and conditions as the City Administrator may establish; and be it

FURTHER RESOLVED: That the City hereby authorizes the City Administrator in his or her discretion to subordinate the priority of any of the City's recorded interests in each project property to a lien or encumbrance of another private or governmental entity providing financial assistance to the project, if the City Administrator or his or her designee determines that (1) an economically feasible alternative method of financing the project on substantially comparable terms and conditions but without subordination is not reasonably available, (2) the City's investment in the project in the event of default is reasonably protected, and (3) subordination is in the best interests of the City; and be it

FURTHER RESOLVED: That the City Council hereby authorizes the City Administrator to make specific allocations of the loan funds approved under this Resolution among the projects without returning to Council; and be it

FURTHER RESOLVED: That the City Council finds and determines that the New Construction of Multifamily Rental Affordable Housing Program funded by this Resolution (1) will address social and geographic equity and provide greater benefit to underserved populations and geographic areas of greatest need by increasing the stock of affordable rental housing with long-term affordability restrictions throughout Oakland; (2) will not impact the City's existing core capital assets, but may provide collateral improvements to such assets as part of project development; and (3) will not impact the City's existing operations and maintenance costs, since the operations and maintenance cost of the projects will be covered by the property owner; and be it

FURTHER RESOLVED: That the City Council finds and determines that this action is not subject to CEQA since it is not funding any specific projects, but that the City Administrator will make the environmental determinations under CEQA for each project that is selected prior to making a loan; and be it

FURTHER RESOLVED: That the City Administrator shall cause to be filed with the County of Alameda a Notice of Exemption or Notice of Determination for each project as appropriate; and be it

FURTHER RESOLVED: That execution of loan documents or other documents legally committing the City to fund a project with federal funds will be expressly conditioned on compliance with the requirements of NEPA, as certified by the City Administrator; and be it

FURTHER RESOLVED: That all loan documents shall be reviewed and approved by the City Attorney's Office for form and legality prior to execution; and be it

FURTHER RESOLVED: That the City hereby authorizes the City Administrator to determine funding allocations, conduct negotiations, execute documents, administer the loans, extend or modify the repayment terms, and take any other action with respect to the loans, funding allocations, and the projects consistent with this Resolution and its basic purpose.

IN COUNCIL, OAKLAND, CALIFORNIA,

MAR 21 2023

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, ~~WILLIAMS~~, KAPLAN, RAMACHANDRAN, REID, AND
PRESIDENT FORTUNATO BAS 7

NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - Kalb

ATTEST:



ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California