

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2019 JUN 13 PM 5:04

Approved as to Form and Legality


City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION NO. 87798 C.M.S.

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR, OR HER DESIGNEE, TO AMEND A REGULATORY AGREEMENT BETWEEN THE CITY OF OAKLAND AND FRUITVALE DEVELOPMENT CORPORATION, INC. UPDATING CERTAIN RESERVE REQUIREMENT OBLIGATIONS AT FRUITVALE TRANSIT VILLAGE TO BE CONSISTENT WITH THE CITY'S CURRENT RESERVE REQUIREMENTS

WHEREAS, on or about June 6, 2000, the Oakland City Council adopted Resolution No. 75769, which authorized a development loan in an amount not to exceed \$750,000.00 (the "City's Loan") to the Spanish Speaking Unity Council (the "Unity Council") for the development of ten residential units for low-income persons as part of a building at 3400 East 12th Street in the City of Oakland (the "Project"); and

WHEREAS, Resolution No. 75769 C.M.S. conditioned the issuance of the City's Loan on the securing of full funding commitments for the Project no later than December 7, 2001; and

WHEREAS, Resolution No. 75769 C.M.S. further conditioned the issuance of the City's Loan on the execution and recording of appropriate restrictions on Project occupancy, rents, and operations; and

WHEREAS, Resolution No. 76581 C.M.S., passed on or about July 17, 2001, acknowledged and authorized the issuance of tax-exempt bonds by the Oakland Joint Powers Financing Authority that would be sufficient to fund the acquisition and construction of the Project and would, with respect to bonds issued for the Project, be the exclusive responsibility and debt of Fruitvale Development Corporation, a nonprofit benefit corporation organized to carry out the development of the Project on behalf of the Unity Council (the "JPA Financing"); and

WHEREAS, on or about December 19, 2001, pursuant to the terms of the City's Loan, the City and Fruitvale Development Corporation entered into a "Regulatory Agreement" containing appropriate restrictions on Project occupancy, rents, and

operations, which was then recorded in the Official Records of Alameda County (the "Official Records"); and

WHEREAS, Section 13 of the Regulatory Agreement provides for certain required "replacement reserves" and "operating reserves" (collectively, the "Reserve Requirements"), which may be used by Fruitvale Development Corporation to fund certain replacement, capital, and maintenance activities for the Project; and

WHEREAS, following the execution of the Regulatory Agreement, the City updated its form terms for reserves requirements in regulatory agreements to clarify the amounts required to be reserved and ensure proper funding for contemplated replacement, capital, and maintenance activities;

WHEREAS, on or about May 10, 2019, the Fruitvale Development Corporation closed a refinancing of the debt associated with the JPA Financing that paid off the bonds associated with the JPA Financing; and

WHEREAS, in the course of performing due diligence related to the refinancing of the debt associated with the JPA Financing, Fruitvale Development Corporation, the lenders providing the refinancing, Local Initiatives Support Corporation ("LISC") and Capital Impact Partners ("CIP"), and City staff agreed to update the contractual language associated with the Reserve Requirements to match the City's updated form terms for reserve requirements in regulatory agreements; and

WHEREAS, the proposed updated Reserve Requirements language provides a clear standard for the Unity Council's reserve obligations and would, in the opinion of City staff, provide for sufficient reserves to meet the City's original intent pursuant to Section 13 of the Regulatory Agreement; and

WHEREAS, in exchange for replacing the language of the Reserve Requirements, Fruitvale Development Corporation, LISC, and CIP requested certain assurances and clarifications regarding the City's timeline for responding to any requests for disbursements from the reserve funds created by Section 13 of the Regulatory Agreement; and

WHEREAS, the clarification of the Reserve Requirements and the City's timeline for responding to requests for disbursements from the reserve funds created by Section 13 is in the best interests of the City and the Project; now, therefore, be it

RESOLVED: That the City Council authorizes the City Administrator or his or her designee, to amend Section 13 of the Regulatory Agreement to read substantially as follows:

13. RESERVES. Owner must deposit each year into a replacement reserve for the Property a minimum amount equal to 0.6% of the replacement cost of the structure up to \$600 per Project Unit, as

such replacement cost is determined based on the actual cost of construction or an appraisal. Oakland reserves the right to request an updated replacement reserve analysis every five years. Owner must deposit each month into an operating reserve for the Property a minimum amount equal to 2% of the gross rental income from the Property, until the operating reserve is equal to at least six months of operating costs (including debt service) of the Property. Owner must maintain the operating reserve at that level, or, following draws on that reserve, must bring the reserve back up to that level from available sources within a reasonable time, for the term of this Regulatory Agreement. Oakland must approve in advance any withdrawal from the replacement reserve or the operating reserve;

and be it

RESOLVED: That the City Council authorizes the City Administrator or his or her designee, to execute an amendment to the Regulatory Agreement in addition to a letter, substantially in the form of the letter included with the staff report associated with this Resolution, providing certain assurances and clarifications regarding the City's timeline for responding to any requests for disbursements from the reserve funds created by Section 13 of the Regulatory Agreement; and be it

FURTHER RESOLVED: That the amendment to the Regulatory Agreement shall be reviewed and approved by the City Attorney for form and legality and recorded in the Official Records, and a copy of such amendment shall be placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

JUL - 9 2019

PASSED BY THE FOLLOWING VOTE:


AYES - FORTUNATO BAS, GALLO, GIBSON MCELHANEY, KALB, REID, TAYLOR, THAO AND PRESIDENT KAPLAN - 8

NOES - 0

ABSENT - 0

ABSTENTION - 0

ATTEST:



LATONDA SIMMONS
City Clerk and Clerk of the Council of the
City of Oakland, California