



Roll Call Number

19-1408

Agenda Item Number

43A

Date September 9, 2019

RESOLUTION APPROVING FIRST AMENDMENT TO CONTRACT FOR
LOAN GUARANTEE ASSISTANCE WITH THE U.S. DEPARTMENT OF
HOUSING AND URBAN DEVELOPMENT REGARDING THE SECTION 108
LOAN USED FOR THE GRAY'S LANDING PROJECT

WHEREAS, on July 23, 2007, by Roll Call No. 07-1456, the City Council approved a *Contract for Loan Guarantee Assistance* with the U.S. Department of Housing and Urban Development ("HUD") whereby the City obtained a loan (the "Section 108 Loan") of \$8.5 million that was used to fund an economic development loan (the "City Loan") to River Point West, LLC, represented by George Sherman, Manager (the "Developer"); and,

WHEREAS, the Section 108 Loan was secured in part by an assignment of the City's interests in the *Urban Renewal Development Agreement* (the "Original Agreement") with the Developer approved on July 9, 2007, by Roll Call No. 07-1341, whereby the Developer undertook the acquisition, clearance, installation of public infrastructure, and the preparation and sale of 'pad-ready' sites within an area (the "Original Area") generally bounded on the north by Martin Luther King, Jr. Parkway, on the east by SW 9th Street, on the west by the Mid-American Energy electrical substation, and on the south by Tuttle Street and the western extension of Tuttle Street west of SW 11th Street, and by Murphy Street east of SW 11th Street, in consideration of financial incentives provided by the City which included the City Loan; and,

WHEREAS, on January 14, 2019, by Roll Call No. 19-0071, the City Council approved refinancing the Section 108 Loan, which then had an outstanding principal balance of \$8,326,000, to lower the effective interest rate and the amount of the semi-annual installments on both the refinanced Section 108 Loan to be repaid by the City and the City Loan to be repaid by the Developer; and,

WHEREAS, the *Contract for Loan Guarantee Assistance* with HUD requires the City obtain HUD's prior written approval of any amendment to the Original Agreement; and,

WHEREAS, the City has negotiated with the Developer to finalize a proposed *Third Amended and Restated Urban Renewal Development Agreement* (the "Restated Agreement") which is intended to replace the Original Agreement and all prior amendments thereto, for consideration for approval by the City Council concurrently with this resolution and roll call; and,

WHEREAS, HUD's approval of the Restated Agreement is conditioned upon the City's approval of a proposed *First Amendment to Contract for Loan Guarantee Assistance and Amended Pledge, Assignment and Security Agreement* (respectively the "First Amendment" and "Amended Pledge") which are on file and available for inspection in the office of the City Clerk; and,



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WHEREAS, the First Amendment and Amended Pledge operate to update the collateral given for the Section 108 Loan to replace the Deed in Escrow originally given by the Developer as security for repayment of the City Loan, with a guarantee given by Sherman Associates, Inc., and a Reserve Fund to be maintained by the City in a restricted sub-account within the Special Fund established for the Metro Center Urban Renewal Area pursuant to Iowa Code §409.19(2), and initially funded with \$631,500 of Metro Center TIF revenues, and with a second deposit in the amount of \$649,624.05. to be deposited on the first anniversary of HUD's execution of Amended Pledge; and,

WHEREAS, the Reserve Fund exists to assure HUD that if the City were to ever elect to affirmatively not appropriate sufficient funds in any single fiscal year to pay in full the two installments due in that fiscal year on the Section 108 Loan, the unappropriated amount could be paid from the previously appropriated funds in the Reserve Fund, as more specifically described in the Amended Pledge; and,

WHEREAS, the original Contract for Loan Guarantee Assistance and the First Amendment further require that the City assign to HUD or its designee the City's interests in the Security Documents identified below, as additional security for the repayment of the Section 108 Loan, and that the Security Documents be held in escrow by Bankers Trust Company pursuant to a *Section 108 Guaranteed Loan Custodial Agreement* in the form on file and available for inspection in the office of the City Clerk.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of Des Moines, Iowa, as follows:

1. The proposed *First Amendment to Contract for Loan Guarantee Assistance and Amended Pledge, Assignment and Security Agreement*, together with the Security Documents listed below, are hereby approved, and the Mayor and City Clerk are hereby authorized and directed to execute such documents on behalf of the City.

Security Documents

- *Section 108 Guaranteed Loan Custodial Agreement.*
- The collateral assignment to HUD or its designee, of the City's rights and interest in the following documents:
 - *Third Amended and Restated Urban Renewal Development Agreement* (the "Restated Agreement").
 - *Amended and Restated Limited Conditional Guarantee* (Exhibit "F" to the Restated Agreement).
 - *Amended and Restated Loan Agreement* and the *Amended and Restated Promissory Note* (Exhibit "L" to the Restated Agreement).



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2. On or before October 1, 2019, the Finance Director is hereby further directed to allocate \$631,500 of Metro Center TIF revenues currently held in the Special Fund established for the Metro Center Urban Renewal Area pursuant to Iowa Code §409.19(2), to a restricted sub-account within such Special Fund, to be held and used exclusively as the Reserve Fund as defined in the Amended Pledge. On or before October 1, 2020, the Finance Director is hereby further directed to allocate an additional \$489,034.80 from the said Special Fund established for the Metro Center Urban Renewal Area to the said Reserve Fund. The amounts so allocated to the Reserve Fund are hereby expressly appropriated exclusively for repayment of the Section 108 Loan.

3. The City Manager or the City Manager's designee are hereby authorized and directed to administer the First Amendment and Amended Pledge on behalf of the City. The City Manager is further directed to forward to City Council all matters and documents that require City Council review and approval regarding the First Amendment and Amended Pledge.

4. The Director of the Office of Economic Development or the Director's designee are directed to submit a copy of the fully executed First Amendment and Pledge to the Finance Department for purposes of required Electronic Municipal Market Access disclosure filings.

(Council Communication No. 19- 387)

MOVED by Boesen to adopt.

FORM APPROVED:

By: Roger K Brown
Roger K. Brown, Assistant City Attorney

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Table with 5 columns: COUNCIL ACTION, YEAS, NAYS, PASS, ABSENT. Rows include COWNIE, BOESEN, COLEMAN, GATTO, GRAY, MANDELBAUM, WESTERGAARD, and TOTAL (7).

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

MOTION CARRIED APPROVED
J.M. Frank... Mayor

Diane Rauh City Clerk