

COUNCIL OF THE COUNTY OF MAUI
BUDGET AND FINANCE COMMITTEE

November 2, 2018

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Budget and Finance Committee, having met on October 16, 2018, makes reference to a Miscellaneous Communication dated May 21, 2018, from the Deputy County Clerk, reporting that the Council referred the matter relating to the County's contribution for Front Street Apartments pursuant to Senate Bill 2293.

By correspondence dated October 8, 2018, the Director of Housing and Human Concerns transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION RELATING TO THE FRONT STREET APARTMENTS."

The purpose of the proposed bill is to authorize the Mayor to enter into an intergovernmental agreement with the Hawaii Housing Finance and Development Corporation ("HHFDC") relating to the Front Street Apartments. The purpose of the Memorandum of Agreement ("MOA") is to establish the terms of the County's financial obligation and encumber the appropriation for the appraisal and other preparations for the condemnation of the ground lease for the Front Street affordable housing project ("Project").

Your Committee notes it previously reported on this matter through Committee Report 18-122, which recommended first reading of proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING APPENDIX A OF THE FISCAL YEAR 2019 BUDGET FOR THE COUNTY OF MAUI AS IT PERTAINS TO PART II, SPECIAL PURPOSE REVENUES – SCHEDULE OF REVOLVING/SPECIAL FUNDS FOR FISCAL YEAR 2019, AFFORDABLE HOUSING FUND." At its meeting August 3, 2018, the Council adopted the recommendation in Committee Report 18-122.

COUNCIL OF THE COUNTY OF MAUI
BUDGET AND FINANCE COMMITTEE

Page 2

Committee
Report No. _____

Your Committee further notes the Project owner is Front Street Affordable Housing Partners, and the leasehold land is owned by 3900 Corp. The Project consists of 142 rental units of which 70 units are rented at 50 percent of area median income, 71 units are rented at 60 percent of area median income, and 1 unit is available for the resident manager.

Your Committee further notes the Project was originally built utilizing Federal and State Low-Income Housing Tax Credits, in addition to certain exemptions and waivers provided by the County. While the low-income cap on the rent is for 50 years, the Project's owner has the option to sell the Project after 15 years based on a provision in the Internal Revenue Service ("IRS") Tax Code. The IRS Tax Code provides that if the Project is not sold at the Qualified Contract Price within the Qualified Contract Period, the owner may sell the Project at market price. If a sale occurs at market price, the affordable rent caps will be void after three years from date of sale. The Qualified Contract Period ended on August 4, 2016.

Your Committee further notes Resolution 18-75 authorized the Council Chair to contract for an appraisal of the Project's six buildings at 1056 Front Street, Lahaina, Maui, Hawaii. By correspondence dated May 11, 2018, from the Front Street Affordable Housing Partners, the County's request for permission to enter the Project to conduct an appraisal was denied.

Your Committee notes Act 150 (2018) (Senate Bill 2293, Senate Draft 2, House Draft 3, Conference Draft 1) appropriated \$250,000 from the general revenues of the State of Hawaii for Fiscal Year 2018-2019 for an appraisal and other preparations for instituting the condemnation proceedings of the ground lease for the Project pursuant to Chapter 101, Hawaii Revised Statutes. Act 150 (2018) also states that no funds authorized shall be made available unless the County provides dollar-for-dollar matching funds and the sum appropriated shall be expended by the HHFDC for said purpose.

COUNCIL OF THE COUNTY OF MAUI
BUDGET AND FINANCE COMMITTEE

Page 3

Committee
Report No. _____

Your Committee further notes Ordinance 4872 (2018) appropriates \$250,000 from the County's Affordable Housing Fund as the County's match. The County's funds shall not be expended until the HHFDC provides dollar-for-dollar matching funds, and the County and HHFDC have entered into an MOA detailing the terms of the County's financial obligation.

A representative from the HHFDC said the execution of the MOA would allow the appraisal process to proceed. He said the acquisition of the ground lease would assure the existing tenant mix, or residents at varying income levels, to remain at the Project.

The representative said a Deputy Attorney General would be assigned to assist the HHFDC with fulfilling the requirements of Act 150 (2018).

Your Committee deferred action on the Miscellaneous Communication pending further discussion.

Your Committee voted 8-0 to recommend passage of the proposed bill on first reading. Committee Chair Hokama, Vice-Chair White, and members Atay, Carroll, Cochran, Crivello, King, and Sugimura voted "aye." Committee member Guzman was excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

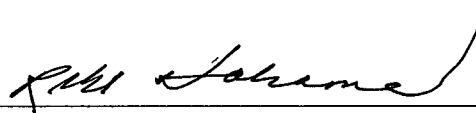
Your Budget and Finance Committee RECOMMENDS that Bill _____ (2018), attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION RELATING TO THE FRONT STREET APARTMENTS," be PASSED ON FIRST READING and be ORDERED TO PRINT.

COUNCIL OF THE COUNTY OF MAUI
BUDGET AND FINANCE COMMITTEE

Page 4

**Committee
Report No.** _____

This report is submitted in accordance with Rule 8 of the Rules of the Council.



RIKI HOKAMA, Chair

bf:cr:18150ab:mmy

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
OF THE COUNTY OF MAUI TO ENTER INTO AN
INTERGOVERNMENTAL AGREEMENT WITH THE HAWAII HOUSING
FINANCE AND DEVELOPMENT CORPORATION RELATING TO THE FRONT
STREET APARTMENTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. The State of Hawaii, Hawaii Housing Finance and Development Corporation (“HHFDC”) and the County of Maui desire to enter in Memorandum of Agreement (“MOA”), attached hereto and incorporated herein as Exhibit “A”, relating to the Front Street Apartments.

Front Street Apartments located adjacent to Kenuei Street and Wainee Street, Lahaina, Maui, Hawaii consists of 142 affordable housing units and related structures, totaling six buildings on 8.538 acres of land, and situated on property identified by tax map key (2) 4-5-003:013.

The Hawaii State Legislature, pursuant to section 1 of ACT 150, Session Laws of Hawaii 2018, authorizes HHFDC to institute proceeds for the condemnation of the ground lease for the Front Street Apartments affordable housing project.


County of Maui’s Budget and Finance Committee approved a budget amendment to add an appropriation out of the Affordable Housing Fund to provide for the County’s matching funds for the appraisal and other preparations for the condemnation of the ground lease for the Front Street Apartments affordable housing project.

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui
2018-1212/2017-0093
BF-150 2018-10-17 Ord IGA

MEMORANDUM OF AGREEMENT
BETWEEN THE
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION
AND THE
COUNTY OF MAUI

This Memorandum of Agreement ("Agreement") is made this ____ day of _____ 2018, by and between the Hawaii Housing Finance and Development Corporation, a public body and body corporate and politic of the State of Hawaii ("HHFDC"), and the County of Maui ("County"), a political subdivision of the State of Hawaii, through its Mayor (collectively, "the Parties").

WITNESSETH:

WHEREAS, Front Street Apartments, located in Lahaina, Maui, Hawaii, was developed by Front Street Affordable Housing Partners (the "Partners") as an affordable housing project consisting of 142 units reserved for families earning 50% (70 units) and 60% (71 units) or less of the area median income (AMI). More than \$40 million in public resources was invested in developing the Project, including millions in low income housing tax credits (LIHTC) allocated by HHFDC. In return, the project was subject to remain affordable for a period of 50 years.

WHEREAS, after 15 years, in accordance with section 42 of the Internal Revenue Code (IRC), the Partners became eligible and applied for a Qualified Contract from HHFDC. Under the Qualified Contract process, the allocating agency has one year to find a buyer to enter into a Qualified Contract to purchase and maintain operation of the property as a LIHTC affordable housing project. If a qualified buyer is not secured within that time, the affordability restrictions on the project terminate. The Partners applied for a Qualified Contract in 2015. The deadline for finding a qualified buyer expired in 2016. Since no Qualified Contract was executed, the Partners retained ownership of the project and intend to terminate the affordability restrictions by 2019.

WHEREAS, the need for affordable housing in Hawaii is at an all-time high, making opportunities for not just creating but also preserving existing affordable housing critical and in the public interest.

WHEREAS, the Hawaii State Legislature (the "Legislature"), pursuant to section 1 of Act 150, Session Laws of Hawaii 2018 ("Act 150"), authorized HHFDC to "institute proceedings for the condemnation of the ground lease for the Front Street Apartments affordable housing project".

WHEREAS, the Legislature, pursuant to section 2 of Act 150, authorized an appropriation out of the general revenue fund "of \$250,000 or so much thereof as may be necessary for fiscal year 2018-2019 for an appraisal and other preparations for instituting the condemnation proceedings under section 1; provided that no funds authorized pursuant to this section shall be made available unless the county of Maui provides dollar-for-dollar matching funds."

WHEREAS, the County of Maui's Budget and Finance Committee approved a budget amendment to add an appropriation out of the Affordable Housing Fund to provide for the County's matching funds for the Project.

WHEREAS, the proposed bill states that "\$250,000 shall be the County's match for the appraisal and other preparations for the condemnation of the ground lease for the Front Street Apartments affordable housing project. Funds shall not be expended until the Hawaii Housing

EXHIBIT "A"

Finance and Development Corporation provides dollar-for-dollar matching funds and the County and the Hawaii Housing Finance and Development Corporation have entered into a Memorandum of Agreement detailing the terms of the County's financial obligation."

WHEREAS, the Legislature designated the HHFDC as the expending agency for the Appropriation.

WHEREAS, Section 2 of Act 150 states that no funds shall be made available unless the County of Maui provides dollar-for-dollar matching funds.

WHEREAS, unless funds are encumbered, the Appropriation is scheduled to lapse on June 30, 2019.

NOW, THEREFORE, the Parties mutually agree as follows:

1. Purpose. The purpose of this Agreement is to encumber the Appropriation and fulfill the Legislature's intent to preserve affordable housing by condemning the ground lease of the Front Street Apartments (the "Project," which refers collectively to all activities required to complete an appraisal and other preparations for instituting condemnation proceedings of the ground lease of the Front Street Apartments).

2. Scope, Obligations, and Conditions. Upon execution of this Agreement, to encumber the Appropriation authorized by Section 2 of Act 150, the County shall pay to HHFDC the full amount of \$250,000 designated as matching funds ("Match Funds").

HHFDC shall perform the following tasks:

- A. Obtain the necessary approvals to encumber the Appropriation.
- B. Hold the Match Funds provided by the County in a restricted account of the Dwelling Unit Revolving Fund ("DURF") to be used exclusively for the Project.
- C. Provide oversight and management of the Project, including the procurement of any goods or services in accordance with Chapter 103D, Hawaii Revised Statutes.

Any expenses paid out of the Match Funds shall amount to no more than 50-percent of the total cost of the expenses. Since the Project is being funded by both HHFDC and the County, any procurements paid for with the Appropriation and Match Funds may be subject to cooperative purchasing approval from the respective Chief Procurement Officers of the State of Hawaii and the County. HHFDC will be responsible for securing any such required procurement approvals provided that the County shall assist HHFDC in expediting, and agree to any such approvals as needed.

If the total cost of the Project is less than the total of the Appropriation and Match Funds available to pay for the Project, the remaining Match Funds, if any, will be returned to the County upon completion of the Project. HHFDC, in its sole discretion, shall determine when the Project is complete.

Use of the Match Funds from DURF funds under this Agreement shall be subject to HHFDC Board of Directors approval, release of funds by the Governor, and availability of DURF funds.

3. Best Efforts. Each party will use its best efforts to take all actions and to do all things necessary, proper, or advisable to consummate, make effective and comply with all terms of this Agreement.

4. Term. This Agreement shall be effective as of the date listed above and shall continue until such time that the Parties determine that the objectives of this Agreement have been fulfilled, unless sooner terminated as provided herein.

5. Notices. Any written notice required to be given by any party to this Agreement shall be (1) delivered personally, or (b) sent by United States first class mail, postage prepaid. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The Parties are responsible for notifying each other in writing of any change of address.

Notice to HHFDC shall be addressed to:

Craig K. Hirai, Executive Director
Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813

Notice to County shall be addressed to:

William Spence, Director
Department of Housing and Human Concerns
County of Maui
2200 Main Street,
Suite 546
Wailuku, HI 96793

6. Termination of Agreement.

- A. Either party may terminate this Agreement with sixty (60) days' prior written notice to the other party.
- B. Upon termination of this Agreement, HHFDC and County shall be released from any further obligations hereunder.

7. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

8. Waiver. The failure of either party to enforce, or the granting of a waiver of, any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

9. Amendment. This Agreement may be modified, amended or extended only by mutual written agreement signed by both Parties.

10. Applicable Law. This Agreement shall be governed by the laws of the State of Hawaii.

11. Counterparts. This Agreement may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

IN VIEW OF THE ABOVE, HHFDC and County execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

County of Maui

Hawaii Housing Finance and Development Corporation

Alan M. Arakawa
Mayor

Craig K. Hirai
Executive Director

Date

Date

Approved as to Form and Legality:

Approved as to Form:

Deputy Corporation Counsel

Deputy Attorney General

Approval Recommended:

Mark R. Walker, Director
Department of Finance