



City of Madison

City of Madison
Madison, WI 53703
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Master

File Number: 52607

File ID: 52607

File Type: Resolution

Status: Council New
Business

Version: 2

Reference:

Controlling Body: FINANCE
COMMITTEE

Lead Referral:

File Created Date : 07/24/2018

File Name: SUBSTITUE - Authorizing the execution of a Purchase and Sale Agreement with Gorman & Company, Inc. or its assigns ("Developer) for the purchase and redevelopment of City-owned property located at 2507 Winnebago Street ("the Property"); and 2) Authorizing

Final Action:

Title: SUBSTITUTE - Authorizing the execution of a Purchase and Sale Agreement with Gorman & Company, Inc. or its assigns ("Developer) for the purchase and redevelopment of City-owned property located at 2507 Winnebago Street ("the Property"); and 2) Authorizing the Mayor and City Clerk to execute a development agreement to sell the Property, valued at Six Hundred Eighty Six Thousand Dollars (\$686,000) ("Land Value"), to Developer or its assigns for One Dollar (\$1.00) and the Land Value financed by the City as a \$686,000 loan to Developer ("TIF Loan").

Notes:

CC Agenda Date: 07/24/2018

Agenda Number: 16.

Sponsors: Marsha A. Rummel

Effective Date:

Attachments: Version 1.pdf

Enactment Number:

Author: Joe Gromacki

Hearing Date:

Entered by: dfields@cityofmadison.com

Published Date:

Approval History

Version	Date	Approver	Action
2	07/27/2018	Laura Larsen	Approve

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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1	Economic Development Division	07/24/2018	Referred for Introduction		
	Action Text: This Resolution was Referred for Introduction				
	Notes: Finance Committee				
1	COMMON COUNCIL	07/24/2018	Refer	FINANCE COMMITTEE	Pass
	Action Text: A motion was made by Baldeh, seconded by Carter, to Refer to the FINANCE COMMITTEE. The motion passed by voice vote/other.				
	Notes:				
2	FINANCE COMMITTEE	07/30/2018			

Text of Legislative File 52607

Fiscal Note

The proposed resolution authorizes a development agreement with Gorman Holdings Inc for property located within TID 37. Under the proposal, the City will provide a loan (\$686,000) to the Developer through a land transaction. The loan will be repaid through future increment in the district. Based on current projections TID 37 is currently generating \$1.5m in increment annually with \$4.5m of unrecovered costs. The district was opened in 2006. This resolution requires no additional appropriation.

Title

SUBSTITUTE - Authorizing the execution of a Purchase and Sale Agreement with Gorman & Company, Inc. or its assigns ("Developer) for the purchase and redevelopment of City-owned property located at 2507 Winnebago Street ("the Property"); and 2) Authorizing the Mayor and City Clerk to execute a development agreement to sell the Property, valued at Six Hundred Eighty Six Thousand Dollars (\$686,000) ("Land Value"), to Developer or its assigns for One Dollar (\$1.00) and the Land Value financed by the City as a \$686,000 loan to Developer ("TIF Loan").

Body

WHEREAS, On October 30, 2013 the City of Madison (the "City") executed a Purchase and Sale Agreement (the "PSA") with Gorman Holdings, Inc. f/k/a Gorman & Company, Inc. (the "Guarantor") for the conveyance and redevelopment of properties owned by the City located at 2504, 2507 and 2340 Winnebago Street, Madison, WI and which may be collectively referred to as the "Union Corners Parcels"), for a mixed-use redevelopment project to be partially financed by a six million dollar (\$6,000,000) TIF loan; and

WHEREAS, to date, Phases 1-4 and 6 of the PSA have been conveyed to the Guarantor or its assigns; and

WHEREAS, Phase 5 of the PSA is subject to an Option Agreement (the "Option") dated August 14, 2015 which is set to expire on August 14, 2018, which was to be exercised upon the Guarantor proposing a project with a financing gap of \$686,000; and

WHEREAS, the Guarantor proposes to construct a housing project supported in part by tax credits, but does not meet the requirements of the Option due to a deficiency in gap under the TIF Policy, and the City has agreed to terminate the Option, and provide the land comprising of Phase 5 under the PSA under the terms stated herein; and

NOW THEREFORE BE IT RESOLVED, the Common Council hereby authorizes the Mayor and

City Clerk to terminate the Option, and provide the land comprising of Phase 5 under the PSA in accordance with substantially the following terms and conditions:

1. The Project. Developer agrees to develop on the Property all of the following:
 - a. Construction of approximately 60 units of affordable housing, and
 - b. Not less than approximately 65 underground parking stalls and 11 surface parking stalls.
2. Prior Agreement. The Parties previously entered into an Option Agreement dated August 14, 2015 for the Property (the "Option"). The terms of the Option required that there be a gap in the amount of the land value. The City has agreed to terminate the Option in favor of providing the land in exchange for a guaranty in the amount of the TIF Loan as defined below, which is above the appraised land value.
3. Form of Assistance. TIF assistance shall be provided in the form of land valued at Six Hundred Eighty Six Thousand Dollars (\$686,000) sold to Developer or its assigns for One Dollar (\$1.00) at closing, and the land value financed as a 0% loan in the amount of Six Hundred Eighty Six Thousand Dollars (\$686,000) ("TIF Loan") to be repaid either through increment or a guaranty payment pursuant to Section 5 through tax year 2025 (final payment due in August of 2026).
4. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds and/or equity in the aggregate amount of not less than \$15,203,000 ("Financing").

Bank financing shall be evidenced in the form of a bank commitment letter and evidence that Developer has met all of the lender's conditions of financing such as commercial pre-leasing requirements, if any.

Equity investment shall be evidenced by paid invoices or other documentation of prepaid project costs paid by Developer and/or a financial statement demonstrating Developer's financial capacity to invest equity in the Project. The Developer's Equity investment may include a cash contribution from the tenant that will occupy the Project, the Developer's contribution of land, and a deferred developer's fee. In aggregate, Developer's equity investment, as established through financing documents shall not be less than the amount of the TIF Loan at closing.

In the event of a self-financed Project, evidence includes but is not limited to, sources and uses, cash flows, pro formas, account statements and other documents to establish capacity to finance the Project, and other construction documents and plans establishing preparedness to begin work, in the reasonable discretion of the City.

After closing, the TIF Loan shall be used solely for the purpose of funding the TIF eligible portion of the total project costs as stated in the TIF Application. The total project costs estimated therein at approximately \$15,889,000 ("Project Cost"). Upon completion of the Project defined as issuance of a certificate of occupancy for all elements of the Project, Developer shall provide the City with an audit of the total Project Cost and Financing ("Audit"), to the City's satisfaction, for the City's review and approval. If the City does not approve the Developer's Audit of Project Cost, the City may request additional information from the Developer and may perform its own audit of Developer's books and

records related to Project Cost and Financing. In the event that the financing gap for the Project (which is equal to the amount of the TIF Loan) is reduced by a decrease, as established by the Audit, in the Project Cost ("Audited Actual Cost") and/or an increase, as established by the Audit, in Financing ("Audited Actual Financing"), the following formula shall apply to determine the clawback payment due to the City ("Clawback"):

The Clawback shall be calculated as follows:

1. "Cost Savings" = \$15,889,000, minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus \$15,203,000.

If the sum of (1) Cost Savings and (2) Financing Increase is a negative number, there shall be no Clawback. If the sum is a positive number, Developer shall pay the City Fifty Percent (50%) of such positive number as a Clawback. Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Section 7 below and shall reduce the outstanding amount of the TIF Loan pursuant to Section 5 below.

4. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan for the Project shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Gorman Holdings, Inc. (the "Guarantor") pursuant to Section 6. A schedule of the projected increment used to calculate the TIF Loan amount shall be attached to the Agreement ("Increment Schedule").
5. Sale to Tax Exempt Entity - PILOT Payment. Developer shall be prohibited from selling or transferring the Property prior to the Developer's repayment of the TIF Loan without the prior written consent of the City (except for transfers made pursuant to foreclosure of senior loan on the Project). If Developer sells or transfers the Property to a tax-exempt entity ("Buyer"), whereupon such ownership renders the Property as property tax-exempt, Buyer shall pay the City an annual payment in lieu of taxes (PILOT) in the amount of property tax last levied as of the date of sale to Buyer, frozen, through 2035. The City of Madison shall share said PILOT in proportion with the overlying taxing jurisdictions. Buyer shall execute a PILOT Agreement and a mortgage in favor of the City in the amount of the PILOT payments ("Buyer's Mortgage") at the time of Buyer's acquisition of the Property. The Buyer's Mortgage and PILOT Agreement shall be released and terminated by the City upon the receipt by the City of the required PILOT payments.
6. Security and Corporate Guaranty. The TIF Loan shall be evidenced by a Note executed by Developer, or its assigns, to the City of Madison in the amount of Six Hundred Eighty Six Thousand Dollars (\$686,000) bearing zero percent (0%) interest ("Note"). Developer shall execute a mortgage in favor of the City of Madison securing payment of the TIF Loan ("Mortgage"). The City shall agree, if necessary, to execute a subordination of mortgage in a form approved by the City Attorney and acceptable to Developer and Developer's lender(s). The Guarantor shall execute a corporate guaranty guaranteeing payment of the TIF Loan.
7. Satisfaction and Early Termination. The TIF Mortgage and Agreement shall be satisfied and the Note cancelled via a recordable release upon full payment of the TIF Loan. Further, it is agreed that in the event Developer fails to close on tax credits or other financing for the project by October 15, 2018, the City shall be paid the amount of the TIF Loan and the

Agreement shall be terminated and mortgage satisfied.

8. Affirmative Action MGO 39.02 (9). Developer and its contractors/subcontractors shall comply with all applicable provisions of the Madison General Ordinance (MGO) 39.02 (9), concerning contract compliance requirements. Prior to commencing construction, Developer shall contact the City's Affirmative Action Division to assure that Developer is in compliance with the aforementioned requirements. Developer shall assist and actively cooperate with the Affirmative Action Division in obtaining the compliance of contractors and subcontractors with such applicable provisions of the Madison General Ordinance. Developer shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract. The Developer understands that it is obligated to meet the goal set by the Department of Civil Rights, or show best efforts to meet the goal based on documented evidence of efforts.

Furthermore, in order to ensure compliance with the above provisions, Developer and its contractor agree to the following:

- a. The general contractor provide a schedule of values as soon as reasonably possible following the execution of this Term Sheet.
- b. A meeting shall take place before loan closing to set affirmative action goals for the project. Additional meetings may be scheduled at the request of DCR and must be held within 10 days of the request.
- c. At 80% completion, the goal is either met, signed contracts establish that the goal will be met, or documented good faith efforts are shown as to why the goal is not met.

For the purposes of this paragraph, "Completion" shall mean expenditure of total project costs as described in the TIF Application.

9. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
10. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
11. Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.
12. Material Changes. At the time of Closing, if any material changes to the size, use or ownership of the Project or Property stated in the TIF Application have been made, this TIF Loan commitment shall be subject to reconsideration by the City. Following Closing, any material change made without consent of the City shall subject the TIF Loan to immediate repayment. Notwithstanding the foregoing, the City acknowledges that the Developer may, with the prior approval of the City, which approval may not be unreasonably withheld, reconfigure the size and use of the Project to address current market conditions (for example, the number and configuration of parking stalls may be increased or decreased, and certain space designated for office use may be converted to retail use).
13. Project Completion. Developer shall guarantee that the construction of the Project will be completed by March 1, 2020. Project completion shall be evidenced by the issuance of a

certificate of occupancy. Failure to complete the Project by said date will require payment under the increment guaranty in Section 6.

14. Property Insurance. Prior to funding, evidence shall be provided that a property insurance policy of the proper type and amount of coverage to protect the City's participation has been obtained. The policy shall name the City of Madison as an additional insured.
15. Title Insurance. At least fifteen (15) days prior to closing, Developer shall provide a commitment for a title insurance policy of the proper type and amount of coverage to the City. The City shall receive a lender's policy in a form to be approved by the City Attorney, which will require, among other things, an updated survey of the Property. Developer shall be responsible for all lending costs and fees.
16. Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff.
17. Automatic Expiration. The TIF Loan to Developer shall be null and void in the event that Developer does not take possession of the Property, by December 31, 2018.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are hereby authorizes to sell Phase 5 to the Guarantor or its assigns for \$1 and in accordance with terms stated in this resolution.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution all in a form to be approved by the City Attorney .