



## Legislation Text

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**File #:** 25561, **Version:** 1

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### **Fiscal Note**

Funding of \$5.5 million for financial assistance for potential development projects within TID #36, Capitol Gateway Corridor, is included in the 2012 adopted capital budget of the Planning and Community and Economic Development agency (PCED) (project No. 3, "TID 36 - Capitol Gateway Corridor," Acc't. No. 823601). This Resolution will authorize the expenditure of \$3,432,000. The funding source is General Obligation debt proceeds, with debt that is TIF-eligible. Due to the timing of the proposed loan, the City will likely provide the proceeds through internal borrowing prior to the City's general borrowing that will occur later in 2012, but there is little or no additional cost to utilize this funding mechanism. No additional appropriation is required.

While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 8 years, the Developer is required to guaranty a minimum payment if sufficient future tax increment is not available. (In the event the TID is not certified by the State Department of Revenue, as referenced in Item 4 of the Resolution, only the City-portion of tax increment levied on the project will be applied toward repayment of the loan; thus, in this instance, the loan repayment based only on the estimated additional City portion of the tax increment will take an estimated 17 years in total, or will be paid off in about 2029.)

The Developer is also obligated to return an equity participation payment equal to either eight and five tenths percent (8.5%) of the gross selling price of the Property, including improvements thereon, on the day of sale or eight and five tenths percent (8.5%) of the assessed valuation of the Property, including improvements thereon on September 6, 2032 whichever occurs first, in an amount not to exceed \$3,432,000, less any Clawback payment the City receives upon completion of an audit of the project costs and financing.

The increment guarantee and equity participation payment are secured by a subordinated mortgage on the property. The TIF Loan also requires that Developer be prohibited from selling or transferring the Property prior to repayment of the TIF Loan. If Developer sells or transfers the Property to a tax-exempt entity, Buyer shall pay an annual payment in lieu of taxes (PILOT) in the amount of the property tax paid as of the date of sale, frozen, through 2032.

### **Title**

Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$3,432,000 Tax Incremental Finance Loan to The Constellation Project, LLC to assist in the development of housing and commercial redevelopment project located at 754 East Washington Avenue and 741 East Mifflin Street in a proposed project plan and boundary amendment to TID #36 (Capitol Gateway).

### **Body**

WHEREAS the City of Madison is in the process of amending TID #36 (Capitol Gateway) during 2012 and has completed a blight survey indicating that 72% of the proposed boundary amendment qualifies as blighted; and

WHEREAS the intent and purpose of the Project Plan, among other things, is to eliminate blighting conditions and encourage development of a wide range of housing options and attract and retain business and employment along East Washington Avenue; and

WHEREAS, The Constellation Project, LLC ("Developer") has proposed to construct approximately 220 apartment units and approximately 36,000 gross square feet of commercial and retail or other use(s) allowed by the zoning text at an estimated development cost of approximately \$39,000,000 ("Project") on City-owned

property generally located at 754 East Washington Avenue and 741 East Mifflin Street (“Property”); and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined the gap to be \$3,432,000 and that, but for TIF assistance, the Project could not occur; and

WHEREAS, in conformance to City of Madison TIF Policy, the \$3,432,000 gap is attributable to parking cost; and

WHEREAS, \$3,432,000 of said TIF assistance represents approximately 59% of the present value of the estimated tax incremental revenues generated by the Project and requires an exception to TIF Policy that no more than 50% be made available to a project; and

WHEREAS, the TIF Loan becomes a grant when tax increment received from the Project and/or Developer out-of-pocket payments are sufficient to repay the TIF Loan; and

WHEREAS, in addition to any other powers conferred by law, the City may exercise any power necessary and convenient to carry out the purpose of the TIF law, including the power to cause project plans to be prepared, to approve such plans, and to implement the provisions that effectuate the purpose of such plans; and

WHEREAS, funding of the loan proceeds to this project is authorized in the City of Madison 2012 Capital Budget; and

WHEREAS, in order to make loan funds available the City may have to internally borrow until General Obligation borrowing occurs in the fall of 2012.

NOW, THEREFORE, BE IT RESOLVED that the City hereby finds and determines that the Project is consistent with the public purposes of Tax Increment Finance Law and the plans and objectives set forth in City of Madison TIF Policy, the City’s loan to Developer demonstrates the potential to eliminate blighting conditions, encourage development of a wide range of housing options and attract and retain businesses and employment in the East Washington Avenue corridor and finance additional public works and improvements that would stimulate planned commercial redevelopment in TID #36, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan and its amendment, the TIF Law and City TIF Policy.

BE IT FURTHER RESOLVED that funding is subject to the following conditions:

1. The Project. Developer agrees to develop:
  - a. Approximately 220 apartment units and approximately 36,000 gross square feet of commercial and retail or other use(s) allowed by the zoning text.
  - b. A parking ramp of approximately 280 parking stalls allocated for apartment tenants, commercial or retail customers and employees or other use allowed by the zoning text.
2. Form of Assistance. TIF assistance shall be provided in the form of a zero interest (0%) loan from the City to Developer, in the amount of Three Million Four Hundred Thirty Two Thousand Dollars (\$3,432,000) (“TIF Loan”) to partially finance Developer’s development of the Project. Said TIF Loan becomes a grant when tax increment recovered from the Project and/or cash payments by Developer are sufficient to repay the TIF Loan and the City’s associated borrowing costs.
3. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, BREWD Grant funds and equity in the aggregate amount of not less

than \$36,000,000 ("Financing"), as stated in Developer's TIF Application dated January 15, 2012 and its amendments or attachments ("TIF Application"). 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. 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. In aggregate, Developer's equity investment shall not be less than the amount of the TIF Loan. The TIF Loan shall be used solely for the purpose of partially funding the TIF-eligible total project costs stated in the TIF Application, estimated therein at approximately \$39,000,000 ("Project Cost"). Upon completion of the Project, Developer shall provide the City with an audit of the total Project Cost and Financing, 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 audited actual Project Cost is less than \$39,000,000, on or before July 1, 2015, Developer shall pay the City a clawback payment of fifty percent (50%) of the difference between the audited actual Project Cost and the greater of \$36,000,000 or the audited actual Financing ("Clawback"). Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Section 5 below.

4. Event of No TID Certification. The TIF Loan shall be disbursed to Developer in advance of TID base value certification being provided by the Wisconsin Department of Revenue (DOR), anticipated in the first quarter of 2013. In the event that the TID #36 amendment is not certified by DOR, Developer shall perform on all requirements of the TIF Loan Agreement for the loan funds disbursed to Developer by the City ("City Loan"), including but not limited to the Clawback provision (Section 3), the Tax Increment Guaranty (Section 5) and Equity Participation Payment (Section 7). In such event, the City shall credit Developer for the annual estimated incremental property taxes levied on the Project, as set forth in the Tax Increment Guaranty provision in Section 5 as though the TID were successfully amended, until the City Loan is repaid. If in any year, the actual annual tax levy on the Project is less than the amount set forth in the Tax Increment Guaranty, Developer shall pay the City the annual difference as a guaranty payment. Developer shall repay to the City remaining principal on the City Loan, if any, on September 6, 2032.
5. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Developer. Developer shall guaranty the City's receipt of increment revenue. A schedule of the projected tax increments used to calculate the TIF loan amount shall be attached to the TIF Loan Agreement.
6. Security. If the base value is certified by DOR, the TIF Loan shall be evidenced by a Note to the City of Madison in the amount of the TIF Loan bearing zero percent (0%) interest ("Note"). Developer shall execute a second mortgage in favor of the City of Madison securing payment of the TIF Loan and Equity Participation Payment ("TIF Mortgage"). The City shall agree to execute a subordination of mortgage in a form approved by the City Attorney. An individual principal of the Developer shall execute a personal guaranty guaranteeing payment of the TIF Loan and Equity Participation Payment.
7. Equity Participation Payment. In addition to all other payments required to be made by Borrower to the City, Developer shall pay the City eight and five tenths percent (8.5%) of the gross sale proceeds, representing the percentage of TIF assistance disbursed for TIF-eligible project costs, not to exceed Three Million Four Hundred and Thirty Two Thousand Dollars (\$3,432,000), reduced by the amount of any Clawback paid by Developer, on the day of sale or transfer of the Property, or any portion thereof, including improvements thereon or on September 6, 2032, whichever occurs first ("Equity Participation"). In the event that Developer demonstrates that the Project indebtedness is greater than its estimated appraised value on said date, the Equity Participation Payment shall not apply. Such equity loss shall be evidenced by a real estate appraisal commissioned by Developer as of said date, provided to and

reviewed by the City to its satisfaction.

8. Sale to Tax Exempt Entity - PILOT Payment. If Developer sells or transfers any portion of the Property to a tax exempt entity ("Buyer"), whereupon such ownership renders the Property or any portion thereof 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 2032. 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.
9. Satisfaction. The TIF Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan and Equity Participation Payment.
10. 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.
11. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Borrower to provide a living wage.
12. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
13. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
14. Material Changes. Any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application as of the date of introduction of a resolution to the Common Council to approve this TIF Loan, shall subject this TIF Loan commitment to reconsideration by the City, or if the loan has been made to immediate repayment of the TIF Loan by Developer.
15. Project Completion. Developer shall guarantee that the construction the Project shall be completed by December 31, 2014. Project completion shall be evidenced by the issuance of a certificate of occupancy.
16. 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.
17. 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.
18. Land Use Approval Contingency. The terms and conditions of this TIF assistance are contingent upon approval and recording of the GDP/SIP for the Project as described in the TIF Application and its

amendments and attachments including approximately 220 apartment units, approximately 36,000 gross square feet of retail and commercial land uses and a parking ramp of approximately 280 parking stalls.

19. Automatic Expiration. The TIF Loan to Developer shall be null and void in the event that Developer does not commence construction on the Project, as evidenced by issuance of construction permits, by December 31, 2012.

BE IT STILL FURTHER RESOLVED that the TIF Loan to the Developer is hereby approved and that the Mayor and City Clerk are hereby authorized to execute a development agreement and other documents as may be necessary to effectuate the transaction, all of which are subject to the approval of the City Attorney.

BE IT STILL FURTHER RESOLVED that the Common Council hereby authorizes internal borrowing to fund the Loan to be reimbursed from the proceeds of 2012 General Obligation borrowing.