



Legislation Text

File #: 46538, Version: 1

Fiscal Note

No additional appropriation required.

Title

Amendment to RES-16-00238 Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$565,000 Tax Incremental Finance Loan to assist in the development of an affordable housing redevelopment project located at the former Madison Dairy property in the proposed Project Plan and Boundary Amendment area of TID #36 (Capitol Gateway).

Body

WHEREAS, the Common Council adopted RES-16-00238 (the "Resolution") on March 29, 2016 to provide \$565,000 in tax incremental finance (TIF) assistance to SHD, Inc. (the "Borrower") in order to finance an affordable housing development at the former Madison Dairy site; and,

WHEREAS, the Resolution contained a provision that caused the assistance to expire if the Borrower did not have building permits secured by December 31, 2016; and,

WHEREAS, pursuant to Paragraph 6 of the Resolution, the Wisconsin Department of Revenue certified the amendment to tax incremental district (TID) #36 to incorporate this project as of January 1, 2017; and

WHEREAS, the Common Council adopted an ordinance providing an exemption to park impact fees for affordable housing projects; and

WHEREAS, in order to utilize the new exemption, the Borrower requires an extension of the deadline for receiving a building permit under Paragraph 22 of the Resolution; and

WHEREAS, Borrower and City agree to amend the Audit and Clawback provisions to more accurately reflect the method of financing the project, as well as, providing the City with an additional review of the project costs before closing.

NOW THEREFORE BE IT RESOLVED, that RES-16-00238 is hereby amended as follows:

1. Paragraph 3 of the Resolution is amended to read:

3. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds and equity in the aggregate amount of not less than \$10,435,000 ("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. In aggregate, Developer's equity investment shall not be less than the amount of the TIF Loan at closing. ~~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 \$11,000,000 ("Project Cost"). Upon completion 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"):

Additionally, within 30 days of closing, Developer shall provide to City, a certified pro forma with final sources and uses ("Certified Pro Forma"). TIF funding will be contingent upon verification that the project has a gap in the amount of the TIF Loan based on the total sources and uses. Should the gap be less than the TIF Loan, then the TIF Loan shall be reduced to the amount of the gap shown in the Certified Pro Forma.

After closing, 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 \$11,000,000 ("Project Cost"). Upon completion 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" = \$11,000,000 minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus \$10,435,000.

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. Notwithstanding anything contained herein to the contrary, the amount of deferred developer fee shall not be used for purposes of calculating the amount of Cost Savings, Audited Actual Financing, Financing Increase or the Clawback. By way of example, but not in limitation of the foregoing, should the Audited Actual Financing increase or Audited Actual Cost decrease, such that the deferred development fee is reduced to zero, there shall be no associated Clawback.

Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Section 9 below and shall reduce the outstanding amount of the TIF Loan pursuant to Section 6 below.

2. Paragraph 18 is amended to read as follows:

18. Project Completion. Developer shall guarantee that the construction of the Project shall be completed by ~~June 30~~ December 29, 2018. Project completion shall be evidenced by the issuance of a certificate of occupancy for all of the apartment units.

3. Paragraph 22 is amended to read as follows:

22. 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, 20167.

BE IT FURTHER RESOLVED, that all other provisions of the Resolution not specifically amended herein shall remain in full force and effect.

BE IT FINALLY RESOLVED, that 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.