Legislation Details (With Text)

File #:	36357	**Version:**	1	**Name:**	10442 Anchor Bank TIF Loan
Type:	Resolution			**Status:**	Passed
File created:	11/25/2014			**In control:**	COMMON COUNCIL
On agenda:	3/3/2015			**Final action:**	3/3/2015
Enactment date:	3/5/2015			**Enactment #:**	RES-15-00208

Title: Authorizing the Mayor and City Clerk to execute a development agreement to fund a $13,317,000 Tax Incremental Finance Loan to 25 West Main, LLC, or assigns, to assist in the development of and commercial redevelopment project located at 126 South Carroll Street and within the boundary of a proposed TID #45.

Sponsors: Paul R. Soglin, Michael E. Verveer

Indexes:

Code sections:

Attachments: 1. Anchor Bank TIF Report (AMENDED) 2-3-15.pdf, 2. Anchor Bank TIF Report 11-25-14.pdf, 3. 36357 w Amend Master22-Jan-2015-04-02-59.pdf, 4. 36357 May Comments.pdf, 5. 36357 Info.pdf

Date	Ver.	Action By	Action	Result
3/3/2015	1	COMMON COUNCIL	Adopt	Pass
2/3/2015	1	COMMON COUNCIL	Refer to a future Meeting to Adopt	Pass
1/20/2015	1	COMMON COUNCIL	Refer	Pass
1/12/2015	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
12/2/2014	1	COMMON COUNCIL	Referred	
11/25/2014	1	Economic Development Division	Referred for Introduction	

Fiscal Note

This resolution would authorize a $13,317,000 loan to 25 West Main, LLC ("Developer") for the redevelopment of property located at 126 South Carroll and subterranean lands located beneath the City right of way at Carroll Street connecting to 25 West Main. The site would be included in a new proposed TID #45 (Capitol Square West). A boundary and Project Plan is required to be adopted in 2015 by the Common Council and approved by the TIF Joint Review Board.

The Project consists of approximately 186,000 square feet of office, approximately 100 apartment units, 43,000 gross square feet of commercial and retail space, 2,400 square feet of storage and approximately 548 parking stalls ("Project"). This loan would be repaid through incremental taxes generated by the Project and represents approximately 71% of the present value of all incremental taxes anticipated from the Project throughout the 27-year life of proposed TID #45.

Due to construction timing, $5,000,000 of the TIF Loan for this Project is anticipated to be disbursed to the Project in 2015, upon Joint Review Board approval of the new TID but in advance of the TID #45 boundary and Project Plan being certified by the Wisconsin Department of Revenue (DOR). Such certification is anticipated during the first quarter of 2016. Upon the City's receipt of such DOR certification, the City will disburse the balance of the TIF Loan in 2016.

In the event that the TID is not certified by the Wisconsin Department of Revenue, Developer shall be credited

for the City portion of annual actual taxes levied on the Project to repay the $5,000,000 disbursed prior to DOR certification. The City portion of such taxes is estimated at approximately $700,000 per year. Developer shall be obligated to repay all funds disbursed by the City as a conventional loan, amortized over ten years, together with the costs of issuance and interest on the unpaid principal balance at a rate equal to the rate of the City's borrowing, plus one hundred basis points. Payments of principal and interest shall be made quarterly. In the event that the TID is not certified, this estimated credit is sufficient to recover the $5,000,000 disbursed in advance of DOR certification within ten (10) years. Under this provision, all other provisions of the TIF Loan Agreement would apply. Developer would guaranty that annual property taxes levied against the project would equal or exceed a tax increment schedule provided in the TIF Loan Agreement.

Once the TID is certified by DOR, the City disburses the balance of the TIF Loan to the title company and the full $13,317,000 loan is recovered through tax increments estimated at an average of approximately $2,000,000 per year. The full TIF Loan is anticipated to be recovered in ten (10) years.

Upon completion of the Project, the City will review the Developer's audit of project costs and financing, to the City's satisfaction, or conduct its own audit. In the event that project costs are less and/or financing is greater than stated in the TIF Application, Developer shall make a clawback payment to the City of 50% of the difference between actual project cost and actual project financing ("Clawback"). This Clawback formula is consistent to the formula recently utilized for condominium projects over the last several years.

The TIF Loan is also contingent upon a sale of the right of way below South Carroll Street required for the construction and operation of the underground parking ramp, upon terms mutually agreeable to the parties.

Funds to capitalize this loan were authorized in the 2015 Capital Budget, funded with general obligation debt. The City's General Obligation may not occur until after this TIF Loan is proposed for disbursal. Therefore, funds will be internally borrowed until they are reimbursed by scheduled General Obligation borrowing in the fall of 2015. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 10 years, the Developer is required to guaranty a minimum payment if sufficient future tax increment is not available.

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 2042.

Title

Authorizing the Mayor and City Clerk to execute a development agreement to fund a $13,317,000 Tax Incremental Finance Loan to 25 West Main, LLC, or assigns, to assist in the development of and commercial redevelopment project located at 126 South Carroll Street and within the boundary of a proposed TID #45.

Body

WHEREAS the City of Madison is in the process of creating a new TID #45 (Capitol Square West) during 2015 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 commercial and housing options and attract and retain business and employment in Downtown Madison; and

WHEREAS, 25 West Main, LLC ("Developer") has proposed to construct approximately 186,000 gross square feet of office, 100 apartment units comprising approximately 94,000 square feet and approximately 43,000 gross square feet of commercial, approximately 2,400 square feet of storage, and an underground parking ramp of approximately 548 stalls allocated for the office tenants, apartment tenants, commercial or retail customers, employees or other use allowed by the zoning text at an estimated development cost of approximately $98,105,000 ("Project") located at 126 South Carroll and including those portions of

subterranean lands connecting below the right of way to 25 West Main ("Property"); and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined the gap to be $13,317,000 and that, but for TIF assistance, the Project could not occur; and

WHEREAS, in conformance to City of Madison TIF Policy, the $13,317,000 gap is attributable to parking cost; and

WHEREAS, $13,317,000 of said TIF assistance represents approximately 71% 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 55% be made available to a project ("55% Gateway"); and

WHEREAS, in conformance to TIF Policy 3.1(7), TIF staff met with the Board of Estimates on September 30, 2014, information to be found under Legistar File number 35269, and received the Board's direction to draft a term sheet for the Project, providing TIF assistance that exceeded the 55% Gateway; and

WHEREAS, the TIF Loan shall be disbursed to Developer from the proceeds of the City of Madison's 2015 and 2016 general obligation borrowing in advance of a proposed TID #45 base value certification being provided by the Wisconsin Department of Revenue (DOR); and

WHEREAS, as such certification is anticipated in the first quarter of 2016, the City shall disburse, prior to the general obligation borrowing, $5,000,000 to the title company in the year 2015 for project costs incurred in 2015, with the remainder of the TIF Loan disbursed to the title company in 2016 upon the City's receipt of a TID #45 base value certification by DOR; 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 2015 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 2015.

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, attract and retain businesses and employment in the Capitol Square West area, encourage development of a wide range of housing options and finance additional public works and improvements that would stimulate planned commercial redevelopment in the proposed TID #45, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan, 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 or redevelop, as applicable:

a. Approximately 186,000 gross square feet of office
b. Approximately 100 apartment units comprising approximately 94,000 gross square feet
c. Approximately 43,000 gross square feet of commercial and retail

d. Approximately 2,400 square feet of storage
e. An underground parking ramp of approximately 548 parking stalls allocated for the office tenants, apartment tenants, commercial or retail customers, 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 or its assigns, in the aggregate amount of Thirteen Million Three Hundred Seventeen-Thousand Dollars ($13,317,000) ("TIF Loan") to partially finance Developer's development of the Project. The TIF Loan shall be placed into escrow with the title company on the showing of evidence of construction financing and following the creation of TID #45 as described in Section 4. The portions of the TIF Loan shall be disbursed in accordance with a Development Agreement. The TIF Loan becomes a grant when tax increment recovered from the Project and/or cash payments by Developer, or any guarantor, are sufficient to repay the TIF Loan and the City's associated borrowing costs.

3. 2015 Capital Budget Authorization. Funding of the TIF Loan shall be contingent upon authorization in the adopted 2015 City of Madison Capital Budget.

4. Creation of Proposed Blighted Area TID #45. Funding of the TIF Loan shall be contingent upon the successful creation and TIF Joint Review Board approval of a project plan and boundary for a proposed 27-year, blighted area TID#45.

5. TIF Loan Disbursal Prior to TID #45 Certification of Boundary and Project Plan. The TIF Loan shall be disbursed to Developer from the proceeds of the City of Madison's 2015 and 2016 general obligation borrowing in advance of a proposed TID #45 base value certification being provided by the Wisconsin Department of Revenue (DOR). Such certification is anticipated in the first quarter of 2016. Prior to the general obligation borrowing, the City shall disburse Five Million Dollars ($5,000,000.00) to the title company in the year 2015 for project costs incurred in 2015, with the remainder of the TIF Loan disbursed to the title company in 2016, upon the City's receipt of a TID #45 base value certification by DOR.

6. No TID Certification. In the event that the TID #45 creation is not certified by DOR on or about April 30, 2016, City shall disburse an additional sum based on project costs incurred by the Developer and the Developer's ability to repay in accordance with the terms set forth in this paragraph. Developer shall be obligated to repay all funds disbursed by the City as a conventional loan, amortized over ten years, together with the costs of issuance and interest on the unpaid principal balance at a rate equal to the rate of the City's borrowing, plus one hundred basis points. Payments of principal and interest shall be made quarterly. 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 7), as adjusted for the partial funding, and the Tax Increment Guaranty (Section 8). In such event, the City shall credit Developer for the City's portion of annual estimated incremental property taxes levied on the Project, as set forth in the Tax Increment Guaranty provision in Section 8, 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, at its ten-year maturity in 2025. In the event of the TID #45's non-certification, the City shall make its best effort to secure TID certification in 2016 and receive such TID certification by DOR no later than on or about April 30, 2017.

7. 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 $84,788,000 ("Financing"), as stated in Developer's TIF Application dated October 1, 2014 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 $98,105,000 ("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 Audit, in the Project Cost ("Audited Actual Cost") and/or an increase, as established by 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" = $98,105,000 minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus $84,788,000.

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 8 below.

8. Method of Payment and Tax Increment Guaranty. Except as provided in Section 6, 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.

9. Security. 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 mortgage in favor of the City of Madison securing payment of the TIF Loan ("TIF Mortgage"). The City shall agree to execute a subordination of its mortgage to any other third party mortgages granted by the Developer in connection with its financing of the Project, in a form approved by the City Attorney and the Developer's mortgagee(s). Individual principals of the Developer shall execute a personal guaranty guaranteeing payment of the TIF Loan and PILOT payment, if applicable.

10. 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 2042. 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.

11. Satisfaction. The TIF Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan and PILOT payment.

12. Parking Use Restriction. Developer shall execute a parking use restriction agreement with the City that protects the City of Madison's interests with regard to parking rental to tenants, employees, customers, and visitors of the Project ("Project Users"). The agreement will reflect that the City has committed to financing the cost of constructing the parking ramp on behalf of the Developer despite ownership remaining with the Developer. This arrangement is made with the understanding that Parking Utility's interests will not be

negatively impacted during the times the ramp is open to the public. The restriction will comprised of two parts:

a. From date of parking ramp completion until such time as stalls are needed to satisfy Project occupancy:

i. Developer will maintain up to 200 of the total constructed parking stalls open to the "Public" (i.e., public users other than Project Users) except as provided in (ii) and (iii) below.
ii. The City will have an option to lease up to 200 stalls that are available and not being used by Project Users at its sole discretion at $150 per stall per month.
iii. As to any of the stalls not being used by Project Users, and not being leased by the City as provided in (ii) above, such stalls may be available for lease to the Public on a transient or monthly basis only between the hours of 7 a.m. until 6 p.m., as determined by Developer.

b. Following the date of full occupancy of the Project until the end of the TIF Loan term:

i. Parking in the Parking Facility shall be restricted to the Project Users from 9:00 AM to 5:00 PM Monday through Friday (excluding holidays) ("Business Hours").
ii. Rental of stalls to the Public in the Parking Facility shall be prohibited during the Business Hours.
iii. There shall be no restrictions on parking in the Parking Facility during times other than the Business Hours.

13. 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.

14. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Borrower to provide a living wage.

15. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.

16. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.

17. Material Changes. Any material changes to the size, use or ownership (by a third party not affiliated with Developer) 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. 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 size of apartments may be increased or decreased, and certain space designated for office use may be converted to residential use).

18. Project Completion. Developer shall guarantee that the construction of the Project shall be completed by December 31, 2017. Project completion shall be evidenced by the issuance of a certificate of occupancy for the parking ramp, office, commercial and apartment units.

19. 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.

20. 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 (i.e. the amount of the TIF Loan) of coverage to the City. The City shall receive a lender's policy.

21. Land Use Approval Contingency. The terms and conditions of this TIF assistance are contingent upon approval of zoning and other land use approvals for the Project as described in the TIF Application and its amendments and attachments as approximately 186,000 square feet of office, construction of approximately 100 apartment units comprising approximately 94,000 square feet and approximately 43,000 gross square feet of commercial and retail space, approximately 2,400 gross square feet of storage and a 548 stall parking ramp, or other use allowed by the zoning text.

22. Land Purchase Contingency. The terms and conditions of this TIF assistance are contingent upon a sale of the right of way below South Carroll Street required for the construction and operation of the underground parking ramp, upon terms mutually agreeable to the parties.

23. 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, 2015.

24. The Developer and the City recognize the economic benefit to the City that results from hiring a local workforce to perform construction work. In recognition of the financial benefit provided by the City for development, the City and the Developer will discuss the use of local workers and contractors in the construction projects that are part of the TIF application, after the loan approval. This paragraph does not create or provide any legal rights or benefits to third parties.

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 2015 and 2016 General Obligation borrowing.

BE IT STILL FURTHER RESOLVED that the Common Council hereby makes an exception to TIF Policy 1(7) and 3.1(7) to provide TIF Loan assistance that is greater than 55% of the net present value of tax increments generated by the Project.

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