



Legislation Text

File #: 26844, **Version:** 1

Fiscal Note

This resolution would authorize two end-loans, disbursed to two separate borrowers upon completion of their respective projects, in the aggregate amount of \$3,106,000 for the development of apartments and a parking structure ("Apartment Project") and an office building ("Office Project") on the former Erdman property located at the southwest corner of University Avenue and Whitney Way. The two end-loans would be repaid through incremental taxes generated by the Apartment Project and Office Project and, in aggregate, represent approximately 62% of the present value of all incremental taxes anticipated from the Apartment Project and Office Project throughout the 27-year life of TID #41, created on September 6, 2011. This requires an exception to the 50% Rule in City of Madison TIF Policy.

Funds to capitalize this loan would require authorization in the 2013 Capital Budget, funded with internal borrowing or general obligation debt. While it is anticipated that the incremental taxes generated by each Project will be sufficient to repay their respective loans within approximately 10 years, both Borrowers are required to guarantee a minimum payment on their respective loan if sufficient future tax increment is not available.

The Apartment Borrower is also obligated to return an equity participation payment equal to either nine percent (9%) of the gross selling price of the Property, including improvements thereon, on the day of sale or nine percent (9%) of the assessed valuation of the Property, including improvements thereon on September 6, 2038 whichever occurs first, in an amount not to exceed \$2,019,000. The Office Borrower is also obligated to return an equity participation payment equal to either seven percent (7%) of the gross selling price of the Property, including improvements thereon, on the day of sale or seven percent (7%) of the assessed valuation of the Property, including improvements thereon on September 6, 2038 whichever occurs first, in an amount not to exceed \$1,087,000.

The increment guarantees and equity participation payments of both Borrowers are secured by subordinated mortgages on the respective properties. The TIF Loans also require that both Borrowers be prohibited from selling or transferring the Property prior to repayment of the TIF Loan. If either Borrower 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 2038.

Title

Authorizing the Mayor and City Clerk to execute development agreements to fund: 1) a \$2,019,000 Tax Incremental Finance (TIF) Loan to University Row Apartments, LLC to assist in the development of a 118-unit apartment building and 335-stall parking structure, and 2) a \$1,087,000 TIF Loan to University Crossing Office, LLC to assist in the development of approximately 62,000 gross square feet of commercial uses-both projects located within the University Crossing redevelopment project located on the southwest corner of the intersection of University Avenue and the Whitney Way in the TID #41 (University-Whitney).

Body

WHEREAS the City of Madison has on September 6, 2011 by adoption on of RES-11-00752 File ID Number 23263, created the boundary and Project Plan for Tax Incremental District (TID) #41; and

WHEREAS the intent and purpose of the Project Plan, among other things, is to eliminate blighting conditions and attract and retain business and employment in the former Erdman property located southwest corner of the intersection of University Avenue and Whitney way; and

WHEREAS Krupp Construction is developing residential, commercial and parking structure project components to be constructed and owned by separate borrowers; and

WHEREAS, University Row Apartments, LLC (“Apartment Borrower”) has proposed to construct 118-unit apartment building and not less than 335 parking stalls at an estimated development cost of \$22,561,397 (“Apartment Project”) on property generally located at 725 University Row (“Property”); and

WHEREAS, University Crossing Office, LLC (“Office Borrower”) has proposed to construct 62,000 gross square feet of commercial uses at an estimated development cost of \$13,403,319 (“Office Project”); and

WHEREAS, the Apartment Project and Office Project, in aggregate, would generate additional tax increment that would pay for additional public works and improvements to the University Avenue - Whitney Way area, and stimulate additional new employment and housing, these outcomes being consistent with said intent and purposes of the Project Plan and City of Madison TIF Policy; and

WHEREAS, in conformance to City of Madison TIF Policy, the \$2,019,000 Apartment Project gap is attributable to the construction of structured parking stalls to be used by the Apartment Project; and

WHEREAS, in conformance to City of Madison TIF Policy, the \$1,087,000 Office Project gap is attributable to the construction of structured parking stalls to be used by the Office Project; and

WHEREAS, City staff has conducted an analysis (See Attached Report) of both the Apartment Project and Office Project and has determined that, but for TIF assistance, neither Project could occur; and

WHEREAS the City shall provide such assistance to the Apartment Borrower and the Office Borrower in the form of two end-loans, to be disbursed to said Borrowers upon completion of the Apartment Project and Office Project respectively, as evidenced by certificates of occupancy; and

WHEREAS, the aggregate TIF assistance made available to the Apartment Project and Office Project represents approximately 62 percent (62%) of the present value of the estimated tax incremental revenues generated by both the Apartment Project and Office Project and requires an exception to TIF Policy 4.1(8) 50% Rule that no more than 50% be made available to a project; and

WHEREAS, the respective TIF Loans of the Apartment Borrower and Office Borrower become grants when tax increment received from the Apartment Project and Office Project and/or out-of-pocket payments made by the Apartment Borrower and Office Borrower are sufficient to repay their respective TIF Loans; 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 end-loan proceeds to these projects is anticipated in 2013 and thereby would require authorization in the City of Madison 2013 Capital Budget; and

NOW, THEREFORE, BE IT RESOLVED that the City hereby finds and determines that the Projects are consistent with the public purposes, plans and objectives set forth in the TID #41 Project Plan and that the City’s loan to each Borrower demonstrates the potential to eliminate blighting conditions and attract and retain businesses and employment in the University Avenue - Whitney Way area and finance additional public works and improvements that would stimulate planned commercial redevelopment in TID #41, 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 for the Apartment Project is subject to the following conditions:

1. The Project. Apartment Borrower (referred to as Borrower in paragraphs 1 through 21 herein) agrees to develop:
 - a. Not less than 130,000 gross square feet of residential construction to develop 118 apartment units or other use allowed by the zoning text.
 - b. No fewer than 335 parking stalls to be used by residents of the Project, employees, visitors and customers of the office building to be constructed on the adjacent Lot 1 or other use allowed by the zoning text.
2. Form of Assistance. Disbursement of the TIF assistance is contingent upon the City's receipt of an approvable audit in accordance with Section 6 below. TIF assistance shall be provided in the form of a zero percent interest (0%) end-loan from the City to Borrower, in the amount of Two Million and Nineteen Thousand Dollars (\$2,019,000) ("TIF Loan") to partially finance Borrower's development of 118 apartment units and 335 structured parking stalls constructed in the Project. Said TIF Loan becomes a grant when tax increment recovered from the 118 apartment units, 335 structured parking stalls and/or cash payments by Borrower are sufficient to repay the TIF Loan and the City's associated borrowing costs.
3. Transfer of Parking, Evidence of Parking Lease. Upon completion of the Project, Borrower shall transfer to University Crossing, LLC ("Parking LLC") a condominium unit consisting of 335 structured parking stalls. The transfer to the Parking LLC shall not trigger payment of the equity participation payment required in Section 9 below. Prior to disbursement of TIF Loan funds, Borrower shall provide evidence to the City's satisfaction of a long-term lease between the Borrower and Parking LLC.
4. 2013 Capital Budget Authorization. Funding of the TIF Loan is anticipated for 2013. The TIF Loan is contingent upon funding being authorized in the 2013 City of Madison Capital Budget.
5. Evidence of Financing. Prior to the execution of the TIF Agreement, Borrower shall provide evidence of bank financing and equity in the aggregate amount of not less than \$22,561,397 ("Financing"), as stated in Borrower's TIF Application dated March 5, 2012 and its amendments or attachments ("TIF Application"). Bank financing shall be evidenced in the form of a bank commitment letter and evidence that Borrower 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 Borrower and/or a financial statement demonstrating Borrower's financial capacity to invest equity in the Project. Contribution of land shall be considered equity to the extent the value is supported by Borrower's appraisal used for Project financing purposes, net of debt assumption, if any, by Borrower. Borrower's equity investment in the Project 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 equaling \$22,561,397 ("Project Cost"). Construction costs relating to the structured parking stalls shall be included as Project Cost to the extent otherwise TIF-eligible.
6. Audit Provision. Fifteen (15) days prior to disbursement, Borrower shall provide the City with an audit of the total expended Project Cost and Financing of not less than \$22,561,397, to the City's satisfaction, for the City's review and approval. If the City does not approve the Borrower's audit, the City may request additional information from the Borrower and may perform its own audit of Borrower's books and records related to Project Cost expenditures and Financing.

7. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan shall be repaid by Borrower through tax increments generated by the Project and/or cash payments by Borrower. Borrower's principals shall guaranty the City's receipt of increment revenue based upon 65% of the estimated tax increments generated by the Apartments Project, the 335-stall structured parking ramp transferred to the Parking LLC and an approximately 62,000 SF office and retail project to be constructed on Lot 1 adjacent to the Apartments Project.
8. 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"). Borrower and Parking LLC shall execute a second mortgage in favor of the City of Madison securing payment of the TIF Loan and equity participation payment ("Mortgage"). The City shall agree to execute a subordination of mortgage in a form approved by the City Attorney. As principals of the Borrower, Joseph D. Krupp and Paul G. Lenhart shall execute a personal guaranty guaranteeing payment of the TIF Loan and equity participation payment.
9. Equity Participation Payment. In addition to all other payments required to be made by Borrower to the City, Borrower shall pay the City nine percent (9%) of the gross sale proceeds, representing the percentage of TIF assistance disbursed for TIF-eligible project costs, not to exceed Two Million and Nineteen Thousand Dollars (\$2,019,000) on the day of sale or transfer of the 118 apartment units and/or 335 structured parking stalls, except for the transfer of parking to the Parking LLC described in Section 2 above, or pay to the City \$2,019,000 on September 6, 2038, whichever occurs first. ("Equity Participation").
10. Sale to Tax Exempt Entity - PILOT Payment. Borrower shall be prohibited from selling or transferring the Property (other than the 335 structured parking stalls to the Parking LLC) prior to the Borrower's repayment of the TIF Loan. If Borrower 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 2038. 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 Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan, equity participation payment and PILOT payment, if any, through September 6, 2038.
12. Affirmative Action MGO 39.02 (9). Borrower 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, Borrower shall contact the City's Affirmative Action Division to assure that Borrower is in compliance with the aforementioned requirements. Borrower 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. Borrower shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract.
13. Living Wage (MGO 4.20) and Equal Benefits (MGO 39.07). Borrower shall comply with Madison General Ordinance (MGO) 4.20 that requires Borrower to provide a living wage and Equal Benefits.
14. Accessibility (MGO 39.05). Borrower shall submit a written assurance of compliance with Madison

General Ordinance 39.05.

15. Equal Opportunity. Borrower shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
16. Material Changes. Any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application dated March 5, 2012 and its attachments and amendments submitted to the City 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 Borrower.
17. Project Completion. Borrower shall guarantee that the construction of the Apartments Project shall be completed by June 30, 2014. Project completion shall be evidenced by the issuance of a certificate of occupancy.
18. 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.
19. Title Insurance. At least fifteen (15) days prior to closing, Borrower 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.
20. Environmental Assessment. Borrower shall provide the City an environmental assessment of the site which is acceptable to staff.
21. 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 March 5, 2012 TIF Application and its amendments and attachments including no less than 118 apartment units and 335 structured parking stalls.

BE IT STILL FURTHER RESOLVED that funding for the Office Project is subject to the following conditions:

22. The Project. Office Borrower (referred to as Borrower in paragraphs 22 through 49 herein) agrees to develop not less than 62,000 gross square feet of commercial uses including approximately 57,000 gross square feet of office space and approximately 5,000 gross square feet of retail or other use allowed by the zoning text.
23. Form of Assistance. Disbursement of the TIF assistance is contingent upon the City's receipt of an approvable audit in accordance with Section 27 below. TIF assistance shall be provided in the form of a zero percent interest (0%) end-loan from the City to Borrower, in the amount of One Million and Eighty-Seven Thousand Dollars (\$1,087,000) ("TIF Loan") to partially finance Borrower's development of not less than 62,000 gross square feet of commercial use including approximately 57,000 square feet of office and 5,000 square feet of retail or other use allowed by zoning text. Said TIF Loan becomes a grant when tax increment recovered from the Office Project and/or cash payments by Borrower are sufficient to repay the TIF Loan and the City's associated borrowing costs.
24. Evidence of Parking Lease. Upon completion of the Office Project, Borrower shall provide evidence to the City's satisfaction of a long-term lease between the Borrower and University Crossing, LLC ("Parking LLC").

25. 2013 Capital Budget Authorization. Funding of the TIF Loan is anticipated for 2013. The TIF Loan is contingent upon funding being authorized by a budget amendment to the 2013 City of Madison Capital Budget.
26. Evidence of Financing. Prior to the execution of the TIF Agreement, Borrower shall provide evidence of bank financing and equity in the aggregate amount of not less than \$13,403,319 ("Financing"), as stated in Borrower's TIF Application dated March 5, 2012 and its amendments or attachments ("TIF Application"). Bank financing shall be evidenced in the form of a bank commitment letter and evidence that Borrower 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 Borrower and/or a financial statement demonstrating Borrower's financial capacity to invest equity in the Project. Contribution of land shall be considered equity to the extent the value is supported by Borrower's appraisal used for the Project's financing purposes, net of debt assumption, if any, by Borrower. Borrower's equity investment in the Project 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 equaling \$13,403,319 ("Project Cost").
27. Audit Provision. Fifteen (15) days prior to disbursement, Borrower shall provide the City with an audit of the total expended Project Cost and Financing of not less than \$13,403,319, to the City's satisfaction, for the City's review and approval. If the City does not approve the Borrower's audit, the City may request additional information from the Borrower and may perform its own audit of Borrower's books and records related to Project Cost expenditures and Financing.
28. Lease-up Provision - Evidence of Lease(s). Prior to the TIF Loan closing, Borrower shall provide an executed lease or leases in a form acceptable to the City, with office and/or retail tenant(s), with primary terms of not less than 5 years and such tenant(s) occupying not less than 34,000 square feet of the Office Project, approximately 60% of leaseable area stated as of the March 5, 2012 TIF Application and its amendments or attachments or the pre-lease percentage that is required by Borrower's lender, whichever is less.
29. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan shall be repaid by Borrower through tax increments generated by the Office Project and/or cash payments by Borrower. Borrower's principals shall guaranty the City's receipt of increment revenue based upon 35% of the estimated tax increments generated by the Office Project, the 335-stall structured parking ramp transferred to the Parking LLC and a 118-unit apartment project to be constructed adjacent to the Office Project.
30. 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"). Borrower shall execute a second mortgage in favor of the City of Madison securing payment of the TIF Loan and equity participation payment ("Mortgage"). The City shall agree to execute a subordination of mortgage in a form approved by the City Attorney. As principals of the Borrower, Joseph D. Krupp and Paul G. Lenhart shall execute a personal guaranty guaranteeing payment of the TIF Loan and equity participation payment.
31. Equity Participation Payment. In addition to all other payments required to be made by Borrower to the City, Borrower shall pay the City seven percent (7%) of the gross sale proceeds, representing the percentage of TIF assistance disbursed for TIF-eligible project costs, not to exceed One Million and Eighty Seven Thousand Dollars (\$1,087,000) on the day of sale or transfer of the Office Project, or on September 6, 2038 pay to the City \$1,087,000, whichever occurs first. ("Equity Participation").
32. Sale to Tax Exempt Entity - PILOT Payment. Borrower shall be prohibited from selling or transferring

the Property prior to the Borrower's repayment of the TIF Loan. If Borrower 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 2038. 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.

33. Satisfaction. The Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan and equity participation payment and PILOT payments, if any, through September 6, 2038.
34. Affirmative Action MGO 39.02 (9). Borrower 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, Borrower shall contact the City's Affirmative Action Division to assure that Borrower is in compliance with the aforementioned requirements. Borrower 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. Borrower shall allow maximum feasible opportunity to small business enterprises to compete for any contracts entered into pursuant to the contract.
35. Living Wage (MGO 4.20) and Equal Benefits (MGO 39.07). Borrower shall comply with Madison General Ordinance (MGO) 4.20 that requires Borrower to provide a living wage and Equal Benefits.
36. Accessibility (MGO 39.05). Borrower shall submit a written assurance of compliance with Madison General Ordinance 39.05.
37. Equal Opportunity. Borrower shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
38. Material Changes. Any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application dated March 5, 2012 and its attachments and amendments submitted to the City 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 Borrower.
39. Project Completion. Borrower shall guarantee that the construction of the Office Project shall be completed by June 30, 2014. Project completion shall be evidenced by the issuance of a certificate of occupancy.
40. 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.
41. Title Insurance. At least fifteen (15) days prior to closing, Borrower 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.
42. Environmental Assessment. Borrower shall provide the City an environmental assessment of the site which is acceptable to staff.

43. Land Use Approval Contingency. The terms and conditions of this TIF assistance are contingent upon approval and recording of the GDP/SIP for the Office Project as described in the March 5, 2012 TIF Application and its amendments and attachments including no less than 62,000 gross square feet of commercial uses including approximately 57,000 gross square feet of office and approximately 5,000 gross square feet of retail.

BE IT STILL FURTHER RESOLVED that the Common Council hereby makes an exception to TIF Policy 4.1(8) 50% Rule by providing 62% of the net present value of estimated tax increments generated by the Apartment Project and Office Project as TIF Loan assistance.

BE IT STILL FURTHER RESOLVED that the Common Council hereby authorizes internal borrowing to fund each loan, to be reimbursed from the proceeds of a 2013 or 2014 General Obligation borrowing.