



Legislation Text

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Fiscal Note

The proposed project is located within the boundaries of a Tax Incremental District (TID) that anticipates certification by the Wisconsin Department of Revenue during the first quarter of 2014. The proposed resolution provides that no City loan disbursement would occur prior to DOR certification of the new TID. The City's loan would be funded by general obligation debt of \$400,000. The debt incurred for this project would be eligible for reimbursement from a newly created TID #44. The TIF Loan represents approximately 56% of the present value of tax increments generated by the project, requiring a minor exception to TIF Policy. In addition, the TIF Loan is contingent upon the project being awarded Section 42 Low Income Housing tax credits by the Wisconsin Housing and Economic Development Authority (WHEDA), \$394,000 in City CDBG assistance, \$266,000 from the Madison Affordable Housing Trust Fund and \$420,000 from the Federal Home Loan Bank during 2014. The 2014 adopted capital budget of the Planning and Community and Economic Development agency authorizes the expenditure of \$400,000 for the project (project no. 22, "TID 44 - Royster Clark").

Title

Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$400,000 Tax Incremental Finance Loan to Pinney Lane Apartments, LLC ("Developer") to assist in the development of an approximately 70-unit income-restricted housing project located at Lot 5 of the Royster Corners plat, generally located at the corner of Cottage Grove Road and Dempsey Road in TID #44 (Royster Clark).

Body

WHEREAS on September 23, 2013 the City of Madison adopted RES 31246 approving the creation of a Project Plan and Boundary for Tax Incremental District (TID) #44 (Royster Clark) ("District"); and

WHEREAS the District is bounded by whole parcels of real property along Cottage Grove Road starting at Monona Drive, going east past US Hwy 51 to Flora Street; and

WHEREAS, Pinney Lane Apartments, LLC ("Developer") proposes to construct approximately 70 units of income-restricted housing at an estimated development cost of approximately \$11,925,000 ("Project") on property generally located at Lot 5 of the Royster Commons plat ("Property"); and

WHEREAS, as the City of Madison ("City") anticipates that the District will be certified by the Wisconsin Department of Revenue in the first quarter of 2014; and

WHEREAS, a financing gap of \$400,000 is attributable to insufficient equity being generated by Section 42 Low Income Housing Tax Credits; and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined the gap to be \$400,000 and that, but for TIF assistance, the Project could not occur; and

WHEREAS, said TIF assistance represents approximately 56% of the present value of the estimated tax incremental revenues generated by the Project, requiring a minor exception to the TIF Policy 50% Rule; and

WHEREAS said TIF assistance is contingent upon award of Section 42 Low-Income Housing Tax Credits to the Project in 2014; and

WHEREAS said TIF assistance is also contingent upon Developer receiving \$394,000 of assistance from the City of Madison Community Development Block Grant ("CDBG") program and award of \$266,000 from the

Madison Affordable Housing Trust Fund; and

WHEREAS said TIF assistance is also contingent upon Developer receiving approximately \$420,000 in Federal Home Loan Bank assistance; 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 estimated to occur in approximately six (6) years; 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, the TIF Loan proceeds to be made available to the Project require authorization in the 2014 Capital Budget.

NOW, THEREFORE, BE IT RESOLVED that the City hereby finds and determines that the Project is consistent with the public purposes, plans and objectives set forth in the District Project Plan and that the City's loan to Developer demonstrates the City's efforts to create affordable housing, eliminate blight and stimulate planned commercial redevelopment upon the long-vacant and blighted Royster Clark site, thereby making more likely an accomplishment of the public purpose objectives set forth in TIF Law and City TIF Policy.

1. The Project. Developer agrees to develop on the Property:
 - a. Approximately 70-unit affordable housing project with approximately 106 parking stalls and approximately 2,5000 SF of commercial space.
2. Form of Assistance. TIF assistance shall be provided in the form of a zero interest (0%) loan at closing from the City to Developer in the amount of Four Hundred Thousand Dollars (\$400,000) ("TIF Loan"). Said TIF Loan becomes a grant when the tax increment recovered from the Project and/or cash payments from Developer are sufficient to repay the TIF Loan and the City's associated borrowing costs.
3. 2014 Capital Budget Authorization. Funding for the Four Hundred Thousand Dollar (\$400,000) TIF Loan is contingent upon authorization in the City of Madison 2014 Capital Budget.
4. Creation of TID #44 Boundary and Project Plan. The City shall make TIF funds available no sooner than the date the City receives certification from the WI Department of Revenue of the creation of TID #44 Boundary and Project Plan, such certification anticipated in the first half of 2014.
5. Tax Credit Approval. TIF assistance to the Project is contingent upon Developer receiving an award of Section 42 low-income housing tax credits from Wisconsin Housing and Economic Development Authority ("WHEDA") in 2014.
6. CDBG and Other Approvals. TIF assistance to the Project is contingent upon Developer receiving approximately \$394,000 of Community Development Block Grant (CDBG) assistance in 2014 from HOME funds and approximately \$266,000 from the City of Madison Affordable Housing Trust Fund.
7. Federal Home Loan Bank. TIF assistance to the Project is contingent upon Developer receiving approximately \$420,000 in Federal Home Loan Bank assistance.
8. 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 Developer.

9. Equity Participation Payment. In addition to all other payments required to be made by Developer to the City, Developer shall pay the City on the earlier of September 17, 2040 or the day of sale or transfer of the Project an equity participation payment ("Equity Participation Payment") equal to either 3% of the gross sales price on the date of sale, or the assessed value of the Property, including improvements thereon, as of September 17, 2040, not to exceed \$400,000. Said payment shall constitute complete satisfaction and payment of the Equity Participation Payment.
10. 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 2040. 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. Affordability. Developer shall obtain an allocation of federal low-income housing tax credits from the Wisconsin Housing and Economic Development Authority ("WHEDA"). Developer shall maintain approximately fifty-nine (59) apartment units as affordable low-income units subject to the applicable tenant income and rent restrictions imposed by WHEDA and Section 42 of the Internal Revenue Code. Such restrictions shall be evidenced by a "land use restriction agreement" in WHEDA's standard form, and shall be specifically enforceable for a period of no less than fifteen (15) years.
12. Security and Personal Guaranty. The TIF Loan shall be evidenced by a Note executed by Developer to the City of Madison in the amount of Four Hundred Thousand Dollars (\$400,000) bearing zero percent (0%) interest ("Note"). Developer shall execute a subordinate 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 and acceptable to Developer and Developer's lender(s). Individual principals of the Developer shall execute a personal guaranty guaranteeing payment of the TIF Loan and Equity Participation Payment.
13. Satisfaction. The Mortgage shall be satisfied and the cancelled upon full payment of the TIF Loan and Equity Participation Payment. At Developer's request, the City shall provide a letter to Developer's lender indicating whether Developer has satisfied any of the terms of the Loan Agreement.
14. 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.
15. Living Wage (MGO 4.20 and Equal Benefits (MGO 39.07)). Developer shall comply with Madison General Ordinance 4.23 that requires Developer to provide a living wage and MGO 39.07 Equal Benefits.
16. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison

General Ordinance 39.05.

17. Section 8. Developer agrees to not refuse to lease or otherwise make unavailable units in the Project solely because any applicant for a unit is a direct recipient of federal, state, or local housing subsidy. Developer shall comply with the provisions of Section 32.12(13), MGO, for as long as the TIF Loan and the Equity Participation remain outstanding.
18. Material Changes. Any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application dated October 29, 2013 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 Developer.
19. Project Completion. Developer shall guarantee that the construction of the Project will be completed by December 31, 2015.
20. 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.
21. 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.
22. Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff.
23. Land Use Approval Contingency The terms and conditions of this TIF assistance are contingent upon approval and recording of the PUD/SIP for the Project as described in the October 29, 2013 TIF Application and its attachments and amendments including approximately 70 units of which approximately fifty-nine (59) are affordable housing units, approximately 106 parking stalls and approximately 2, 5000 SF of commercial space.

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.