



Council Communication

Office of the City Manager

Date

August 7, 2006

Agenda Item No. 53

Roll Call No. 06-

Communication No. 06-484

Submitted by: Richard A. Clark, City Manager

AGENDA HEADING:

Approving Section 108 Loan Guarantee Application and Amended Brownfield Economic Development Initiative (BEDI) Grant Application for Redevelopment of Riverpoint West.

SYNOPSIS:

Recommend approval of the City's application for a \$17.5 million U.S. Department of Housing and Urban Development (HUD) Section 108 loan. This action also authorizes staff to re-program an existing \$2 million Brownfield Economic Development Initiative (BEDI) grant to assist in the commercial redevelopment of Riverpoint West. Commercial development is planned along SW 9th Street and Martin Luther King, Jr. Parkway south of the Central Business District. Section 108 loan funds will be used primarily for land acquisition (including relocation and demolition), environmental remediation, geo-technical work and infrastructure installation. The BEDI grant will fund a debt service reserve to repay a portion of the interest-only payments on the Section 108 loan during the first five years of the loan term following a two-year draw down period.

FISCAL IMPACT:

Amount: \$19.5 million

Funding Source: There are two sources. At this time, accounts have not yet been established but will be created when the contracts are executed.

1. The \$17.5 million Section 108 loan will be drawn down over a two-year period and will have a 20-year term. It is anticipated that the City will repay the loan with 75% of the TIF revenue generated by the housing and the commercial aspects of the Riverpoint West redevelopment project over 22 years, provided that certain assumptions (listed below) are met. Interest-only payments will be made during the first five years following a two-year draw down period. Principal payments will begin in the sixth year to more closely match the anticipated TIF from the project, following the two-year draw down period. Non-project related TIF from the Metro Center District is expected to be used to address part of the loan repayment from Year 4 to Year 14 until there is sufficient tax increment from the project to cover the entire repayment.

It is important to note that the TIF anticipated to be generated by the Riverpoint West redevelopment project is predicated on several assumptions:

- The total assessed value related to construction of 642 townhomes/condominiums and 384,000 square feet of commercial space.
- Completion of the Riverpoint West development in accordance with the projected six-year build-out schedule.

- The residential components of the project being limited to the 5-year, 100% tax abatement schedule and the commercial aspects being limited to the 3-year 100% tax abatement schedule.

If the conservatively-projected assessed value is less than expected, if the project is delayed, or if Council allows a more beneficial tax abatement schedule, more than 75% of the project-related TIF revenue, more than 22 years of the project-related TIF revenue, or the use of non-project related TIF revenue may be needed to support the Section 108 loan.

2. The \$2 million BEDI grant will be used to fund a debt service reserve to pay a portion of the interest-only payments on the Section 108 loan during the first five years following a two-year draw down period.

ADDITIONAL INFORMATION:

On October 24, 2005, Council approved Preliminary Terms of Agreement with River Point West, LLC for redevelopment of the Riverpoint West area. River Point West, LLC is an affiliate of Sherman Associates, Inc. (George Sherman, President, 233 Park Avenue South, Suite 201, Minneapolis, MN). River Point West, LLC intends to develop 642 townhomes/condominiums, 384,000 s.f. of commercial space and other improvements. About one-half of the commercial space (192,000 s.f.) is anticipated to be comprised of retail and the balance (192,000 s.f.) for office uses. Approximately 445 jobs will be created. The initial market value of the project is estimated at \$165 million with a six-year build-out. Any reduction in market value or delay in build-out will adversely impact the City's ability to repay the Section 108 loan with project-related TIF.

In accordance with the Preliminary Terms of Agreement, the developer generated pro-formas that the City reviewed. In addition, the City worked with a consultant from the National Development Council to assist in analyzing and structuring the deal, identifying other financing options, and submitting a Section 108 loan and amended BEDI grant applications.

Section 108 loan and BEDI funds are proposed to be used only for the commercial component of the project in order to meet the national objective of benefiting low- and moderate-income persons through job creation. Listed below are the proposed sources and uses of funds for this component.

<i>USES OF FUNDS</i>	<i>AMOUNT</i>	<i>SOURCES OF FUNDS</i>	<i>AMOUNT</i>
Land (incl. Relocation/Demolition)	\$14,950,000	Developer Lot Purchases	\$ 4,950,000
Environmental	1,000,000	Section 108 Loan	17,500,000
Geo-technical	500,000	BEDI Grant	2,000,000
Infrastructure	10,355,000	RISE Grant	500,000
Developer Administration	2,300,000	Hubbell—SW 11 th Street/Murphy Street Improvements	325,000
Construction Interest	600,000	Federal Earmarks	1,155,000
Debt Service Reserve	3,350,000	New Markets Tax Credits Equity	6,625,000
<i>TOTAL</i>	<i>\$33,055,000</i>	<i>TOTAL</i>	<i>\$33,055,000</i>

Prior to entering into the Final Development Agreement, which is projected to occur in fall/winter 2006, the developer and the City will create a financing contingency plan should all of the funding not be obtained. To date, the developer has pledged \$4,950,000 for the purchase of the pad-ready commercial

lots, and the Hubbell Realty Company has committed \$325,000 toward construction of SW 11th Street between Tuttle Street and MTA Lane as well as Murphy Street, which will serve its proposed 143,000 s.f. flex space development. The Iowa Department of Transportation has committed a \$500,000 grant for construction of SW 11th and Murphy Streets. U.S. Bancorp has submitted a Letter of Interest for providing \$6,625,000 in equity, net of load and fees, through the New Markets Tax Credit Program. Of the \$1,155,000 anticipated to be received from federal earmarks, the City has secured \$300,000 in Federal appropriations for FY2006 and has requested additional funds for Riverpoint West in FY2007. The U.S. House of Representatives has preliminary earmarked \$700,000 for sewer infrastructure and \$300,000 for land acquisition and related expenditures for FY2007. The U.S. Senate will vote on appropriations in the next several months. The City will know the level of federal investment in the project for FY2007 in fall 2006.

The Section 108 loan will be drawn down over two years: \$8,125,000 in Year 1 and \$9,375,000 in Year 2. The developer will be required to have optioned at least 75% of the land and demonstrated commitments for the balance of the funding before funds will be released in Year 1, and will have to meet performance benchmarks in the first year before funds will be released in Year 2.

The primary source of repayment for the Section 108 loan is 75% of the anticipated TIF generated over 22 years from the residential and commercial aspects of the redevelopment project. This is contingent on several factors, which include (1) meeting the total projected assessed value, (2) completing the project in accordance with the anticipated schedule, and (3) developers being limited to 5-year, 100% tax abatement for the residential development and 3-year, 100% tax abatement for the commercial re-use. The secondary source of repayment is TIF generated from the Metro Center District as a whole. (NOTE: The Preliminary Terms of Agreement anticipated that it would take 20 years, not 22 years, to repay the Section 108 loan from 75% of the anticipated TIF generated by the project.)

The City will agree to repay the Section 108 loan from annual appropriations of TIF revenues. The annual pledge of funds will be subject to non-appropriation and, consequently, will not count in determining the City's constitutional debt.

Section 108 loan and other funds are projected to leverage over \$6.6 million in New Markets Tax Credits (NMTC) equity, which is an essential part of the project financing. Due to the infusion of NMTC, there are two impacts related to risk and security: First, the Section 108 loan is to be drawn down in two installments rather than three (\$8,125,000 in Year One and \$9,375,000 in Year Two). Second, the security arrangement will become more complicated.

Based on the Preliminary Terms of Agreement, security for repayment of the Section 108 loan was for the City to hold mortgages on the land acquired for the project; however, the NMTC financing structure does not allow for this. Instead, the City will lend Section 108 funds to the investment entity that will make a qualified New Markets Tax Credit investment in a New Markets Community Development Entity (CDE) that will subsequently make a loan with the Section 108 funds to the development entity (River Point West, LLC) to complete the project. River Point West, LLC will use Section 108 funds to acquire property for re-sale and redevelopment of commercial space. The New Markets CDE will hold the first mortgage on the property, which will be a single-purpose entity to finance the commercial aspect of the Riverpoint West project. The City will have a security interest in the investment entity's 99.99% membership interest in the New Markets CDE. As such, the New Markets CDE will have no authority to amend the extensive set of mortgage, security and other documents without the City's authorization. Otherwise, the developer would be in breach of the Master Agreement, and the City could foreclose on the investment entity's membership interest and consequently cause the New Markets CDE to foreclose

on the property. The Master Agreement will include the loan documents, promissory note and pledge of security agreement as well as will govern the disbursement of funds to ensure that the developer performs and that the City has appropriate remedies in case of default.

An additional source of collateral is that the developer has committed \$4,950,000 to purchase the pad-ready commercial lots, and the principal will back this by corporate and personal guarantees.

The Section 108 loan is ultimately secured by the City's future allocations of CDBG funds. If the Section 108 loan is not timely repaid by the City, the remaining principal and interest due on the loan may be withheld from future allocations of CDBG funds.

The final acceptance of the Section 108 loan and BEDI grant is subject to a future finding by the City Council as part of the final Development Agreement that adequate security will be provided for timely repayment of the Section 108 loan. Although the security arrangements proposed by the developer and outlined above are acceptable in theory, the details are extremely complicated and still need to be resolved to the City's satisfaction prior to execution of the final Development Agreement.

The Preliminary Terms of Agreement also stated that the City of Des Moines would be responsible for facilitating infrastructure installation. It is critical that the infrastructure be developed and installed in conjunction with the project as a whole. Due to provisions of *Iowa Code* Sec. 384.95, the City of Des Moines must construct public improvements as City construction projects. To the extent that any portion of the cost of construction of the planned public improvements in Riverpoint West is paid for with money that comes from (or through) the City, the contract for the construction will be between the City and the contractor and the contract will be awarded to the "lowest responsible bidder." Again, the New Market Tax Credits flow-of-funds structure complicates this process.

The Final Development Agreement will detail the mechanisms whereby the City competitively bids the infrastructure improvements as well as the requirements for reserving the funds for the infrastructure improvements. There are several mechanisms that could work. One option would be to have the City bid the public improvements, enter into one or more contracts for the infrastructure work and then assign some or all of the contracts to the developer. Another option would be for the developer to remit a sufficient amount of the Section 108 loan funds to the City, which would contract for the infrastructure work.

Due to the complicated financing requirements of the Riverpoint West Redevelopment Project, the City will need to employ outside legal counsel and financial consultants. The expense of outside counsel and consultants will be significant and will be included in the overall cost of the project to be paid with project funds.

It is likely there will be further changes in the developer's pro forma or build-out schedule before the City enters into the Final Development Agreement, Section 108 Loan Guarantee Agreement and BEDI Agreement. The impact on the projected TIF must be recalculated at that time.

The developer has made progress to date regarding land acquisition in Riverpoint West. Most notable is that it has entered into a purchase agreement for the Merchants property at 1350 Martin Luther King, Jr. Parkway. Sherman Associates and Nelson Development have signed a Letter of Intent to develop a 50,000 square foot speculative office building on part of this 10-acre parcel. Construction is projected to commence in late spring 2007. The developer continues to discuss opportunities to locate in Riverpoint West with several companies.

PREVIOUS COUNCIL ACTION(S):

Date: October 24, 2005

Roll Call Number: 05-2603

Action: Preliminary Agreement with Riverpoint West, LLC for redevelopment of Riverpoint West Area. ([Council Communication No. 05-611](#)) Moved by Hensley to adopt. Motion Carried 7-0.

Date: September 12, 2005

Roll Call Number: 05-2217

Action: Revitalize Iowa's Sound Economy (RISE) Grant Application to construct and reconstruct roadways in Riverpoint West area, SW 11th Street from Martin Luther King, Jr. Parkway to MTA Lane, Murphy Street from SW 9th to SW 11th Streets and Tuttle Street from SW 11th Street to 300' east. ([Council Communication No. 05-501](#)) Moved by Hensley to adopt. Motion Carried 7-0.

Date: July 25, 2005

Roll Call Number: 05-1832

Action: Authorizing continued Negotiations with Riverpoint West, LLC for redevelopment of Riverpoint West Development Area. ([Council Communication No. 05-419](#)) Moved by Hensley to adopt. Motion Carried 6-1.

BOARD/COMMISSION ACTION(S):

Date: May 3, 2006

Roll Call Number: N/A

Action: The Neighborhood Revitalization Board recommended approval of the Section 108 loan application to redevelop Riverpoint West. It also encouraged the development of affordable housing in the area if the return on investment to the tax base and to the developers will allow it.

ANTICIPATED ACTIONS AND FUTURE COMMITMENTS:

The U.S. Department of Housing and Urban Development will review the Section 108 loan and BEDI applications concurrently. It is anticipated they will decide on the funding in November 2006 and issue contracts in early 2007.