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by Sidney Davy Miller

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April 4, 2017

Tim Dempsey
Director of Planning, Building and Development
410 Abbot Road
East Lansing, MI 48823

Lori Mullins
Community and Economic Development Administrator
410 Abbot Road
East Lansing, MI 48823

Dear Tim and Lori:

Attached is a memorandum, as you requested, regarding issuance of revenue bonds under the Brownfield Redevelopment Financing Act, Act 381 Public Acts of Michigan 1996.

If this memorandum does not adequately cover the subject matter or if you have any additional questions, please feel free to contact me.

Very truly yours,

Miller, Canfield, Paddock and Stone, P.L.C.

By: 
William J. Danhof

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MEMORANDUM

TO: Tim Dempsey, Director of Planning, Building and Development
Lori Mullins, Community and Economic Development Administrator

FROM: William J. Danhof
Donovan C. McCarty

RE: Issuing Revenue Bonds under the Brownfield Redevelopment Financing Act

DATE: April 4, 2017

This memorandum (1) explains how revenue bonds may be issued under the Brownfield Redevelopment Financing Act, Act 381 Public Acts of Michigan 1996 (“Act 381”), without a full faith and credit pledge to finance the City of East Lansing’s Center City Project (the “Project”) and (2) describes the specific security for bonds issued under Act 381 for the Project.

I. BONDS UNDER ACT 381

Act 381 allows a Brownfield Redevelopment Authority (BRA) to, among other things, issue tax increment revenue bonds. Specifically Section 17 of Act 381 provides:

By resolution of its board, the authority may authorize, issue, and sell its tax increment bonds and notes, subject to the limitations set forth in this section, to finance the purposes of a brownfield plan. The bonds or notes shall be payable in the manner and upon the terms and conditions determined, or within the parameters specified, by the authority in the resolution authorizing issuance of the bonds or notes. The resolution authorizing the bonds shall create a lien on the tax increment revenues and other revenues pledged by the resolution that shall be a statutory lien and shall be a first lien subject only to liens previously created. The resolution may provide the terms upon which additional bonds or notes may be issued of equal standing and parity of lien as to the tax increment revenues and other revenues pledged under the resolution.

MCL 125.2667(1) (emphasis added). The developer has not requested the bonds be backed by the full faith and credit of the City of East Lansing; therefore, the bonds will not have a full faith and credit pledge. Act 381, moreover, would require East Lansing City Council to make the full faith and credit pledge. The BRA has no legal authority to make a full faith and credit pledge. See MCL 125.2667(2).

In Michigan, bonds issued under tax increment finance laws – like Act 381 – are frequently issued with a full faith and credit pledge, but, again, it is not required. One recent example of tax increment bonds issued without a full faith and credit pledge is the \$250,000,000 City of Detroit Downtown Development Authority bonds for the Little Caesars Arena Project, issued in 2014. The security language included on the cover page of the official statement for the Bonds of that issue explained that:

The Obligation is a special, limited obligation of the DDA payable solely from the Pledged Tax Increment Revenues and the other sources provided under the DDA Resolution (as defined herein), without recourse to any other revenues of the DDA, or to any other properties or assets, now owned or hereafter acquired, tangible or intangible, of the DDA. Payments under the Obligation are secured solely by the sources described above and do not represent a general obligation of the DDA, the City of Detroit (the "City") or the State of Michigan (the "State"), and do not constitute or give rise to any pecuniary liability or charge against the general credit of the DDA or the general credit or taxing powers of the City or the State.

Historically, the City of Battle Creek and the City of Grand Rapids have also issued revenue bonds payable with tax increments without a full faith and credit pledge.

In addition, issuers in Illinois rarely include a full faith and credit pledge when issuing revenue bonds because of legal constraints. For example, Miller, Canfield, Paddock and Stone, P.L.C. recently acted as bond counsel on two tax increment revenue bond issuances for the Village of Bedford Park and the Village of Hodgkins in Illinois that did not include a full faith and credit pledge. The Tax Increment Revenue Bonds, Series 2017 for the Village of Hodgkins described the security of the bonds as follows:

THE BONDS ARE BEING ISSUED BY THE VILLAGE PURSUANT TO SECTION 6 OF ARTICLE VII OF THE 1970 CONSTITUTION OF THE STATE OF ILLINOIS, AS SUPPLEMENTED BY THE TAX INCREMENT ALLOCATION REDEVELOPMENT ACT OF THE STATE OF ILLINOIS, AND THE BOND ORDINANCE OF THE VILLAGE. THE BONDS ARE LIMITED OBLIGATIONS OF THE VILLAGE SOLELY PAYABLE FROM THE INCREMENTAL PROPERTY TAXES AND PLEDGED SALES TAXES AND CERTAIN OTHER MONEYS HELD IN ACCORDANCE WITH THE BOND ORDINANCE AND THE INDENTURE. THE BONDS DO NOT CONSTITUTE AN INDEBTEDNESS OF THE VILLAGE WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION OR LIMITATION. NO REGISTERED OWNER OF THE BONDS SHALL HAVE THE RIGHT TO COMPEL THE EXERCISE OF ANY TAXING POWER OF THE VILLAGE, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION OF THE STATE OF ILLINOIS FOR PAYMENT OF PRINCIPAL OF THE BONDS OR INTEREST OR PREMIUM, IF ANY, ON THE BONDS.

While this language is obviously written to comply with Illinois law, similar language could be drafted to comply with Michigan law.

As bond counsel, we will draft the relevant language and include it in the bonds and other offering documents, including the preliminary official statement and final official statement, to make clear to investors that these are truly revenue bonds, payable solely from tax increments and other agreed upon revenues.

II. SECURITY FOR THE BONDS

The Center City Project will redevelop the Albert Avenue Parking lot as a mixed-use development with housing, retail, and public parking. The bonds issued for this development will be secured by taxes captured by the City of East Lansing's BRA and Downtown Development Authority (DDA). The BRA and DDA may enter into an agreement whereby the DDA tax capture is transferred to the BRA. The bonds may also be secured by other agreed upon revenues, possibly including parking revenues, to be determined by an agreement between the developer and the City of East Lansing.

It is important to note that the bonds cannot be sold publicly until the Project is complete and sufficient tax revenues are being generated to support a bond sale. The Brownfield Plan allows for the capture of 90% of the new tax increment revenue created by the Project but no capture of existing taxes. So, there is no stream of revenue to support the bonds until the Project is complete. For that reason, an initial bond will be placed with the construction lender or other bank to provide financing until the Project is complete and sufficient revenues are being generated to support a bond sale.

The interest rate and principal amount of the bonds will be determined at the time of the bond sale. The principal amount of the bonds will be based on the amount of tax increments to be collected and the interest rate on the bonds. If interest rates are higher or tax increment capture is lower at time of sale than assumed in the bond model, then the principal of bonds issued will be reduced as necessary to ensure that the total debt service can be repaid from available tax increment revenues. Proceeds of the take out bonds would be used to pay off the initial bond. The only obligation of the BRA to support either the initial bond or the take out bonds is paying over the captured tax increments and any other pledged revenue to the bondholders.