

May 13, 2014

MEMORANDUM

TO: Representative Jane E. Powdrell-Culbert, Chair, and Senator Joseph Cervantes, Vice Chair, New Mexico Finance Authority Oversight Committee

FROM: Peter van Moorsel, Chief Economist, LFC

THROUGH: David Abbey, Director, LFC

CC: Senator John Arthur Smith, Chair, and Representative Jimmie C. Hall, Vice Chair, Legislative Finance Committee; Tom Clifford, Executive Officer, NM Board of Finance; and Gary Goodman, CEO, Goodman Realty Group

SUBJECT: Winrock TIDD Indenture Review

Chapter 58 of Laws 2009 authorized the issuance of bonds to finance the Winrock/Quorum Town Center redevelopment tax increment development project. The statute states the authorization is subject to:

- the review by the New Mexico Finance Authority (NMFA) *and the LFC* and by a third party with expertise in development financing, selected by the NMFA oversight committee, prior to issuance of any bonds of the master indenture applicable to bonds issued for the Winrock/Quorum Town Center redevelopment tax increment development project, provided that the costs incurred for the review by the third party shall be paid by the Winrock/Quorum Town Center redevelopment tax increment development project.
- the review by the NMFA of any amendments to the master indenture prior to the issuance of any bonds subsequent to such amendments; and
- *the review and recommendation of the LFC* and the determination by the New Mexico finance authority that the master indenture and any amendments to the master indenture contain covenants and other provisions that assure that the proceeds of the bonds will be used as described in the tax increment development plan for the Winrock/Quorum Town Center redevelopment tax increment development project.

This memorandum represents this review and recommendation of LFC staff, which concurs that all the requirements of statute and rule have been met. This memorandum also identifies areas of interest where additional clarification could be of benefit. Further,

it is unknown if the NMFA has selected a third party with expertise in development financing for the review required in statute.

1) 5-15-20 NMSA 1978 reads as follows:

“Prior to the issuance of indebtedness evidenced by the gross receipts tax increment bonds or property tax increment bonds issued by a district pursuant to the Tax Increment for Development Act, the property owners within the district shall contribute a minimum of twenty percent of the initial public infrastructure costs, which may be reimbursed with proceeds of gross receipts tax increment or property tax increment bonds”.

LFC staff was initially unclear how it will be determined that the developer has “contribute[d] a minimum of twenty percent of the initial public infrastructure costs” which is required prior to the issuance of any bonds. In an April 30, 2015 telephone conversation, Gary Goodman of Goodman Realty indicated the initial phase of the project would consist of about \$30 million in public infrastructure – primarily the underground parking structure – and about \$20 million in retail, commercial and office structures on top of the parking garage. Of this \$30 million in initial public infrastructure, Goodman indicated at least \$6 million would be Goodman Realty’s or Winrock Partners LLC contribution.

In the absence of a definition of “contribute” in section 101 of the master indenture, the common definition of “contribute” would prevail. Money must be transferred from the owners of the project to the construction project account.

- 2) In addition to the statutory 20 percent contribution test prior to issuing any bonds, the BoF approval requires the developer to complete \$22 million in public infrastructure in the TIDD 1 by June 30, 2015 to avoid cancellation of the dedications. The developer has requested and been granted a two-year extension of this provision.
- 3) LFC staff were somewhat concerned about a property transfer issue. The initial phase consists of an underground parking structure, some surface parking on the top story of the parking structure and a number of retail and commercial spaces and some offices. This entire \$50 million phase mixes public infrastructure (the parking structure and the surface parking areas) and private development. The TIDD act requires the developer to transfer title and responsibility for the public infrastructure to the sponsoring government entity – in this case, the City of Albuquerque acting through the TIDD board. The developer’s solution is to create a building-by-building condominium. The land is held in common by the condominium association. The parking structure will have a condominium title.
- 4) There is no clear provision in the master indenture that money deposited in the revenue fund may not be used directly to reimburse the developer for public infrastructure built and title transferred. This could be included.

- 5) LFC staff is unfamiliar with the term “Qualified Exchange Agreement” used in the definitions section of the master indenture and must defer to the “third party with expertise in development financing” to determine if this is relevant to the document and whether it constitutes a material issue.

- 6) The master indenture makes provision for orderly repayment in the case of insufficient funds being available for repayment of all bonds. Statute provides for what seems to be a permanent transfer of TIDD funds to the repayment of debt obligations of cities and counties. The contingency provisions of 5-15-23 NMSA 1978 would allow a GRT TIDD increment to be used to pay required debt service on regular revenue bonds of the sponsoring jurisdictions. This contingency is a remote possibility for a class A county; a representative of Winrock Partners, LLC noted Albuquerque’s coverage ratio on all of its outstanding GRT bonds in August 2014 was about 12 to 1, and likely much greater as to bonds issued before 2006. The state has no GRT bonds outstanding. As a practical matter this provision should have no effect on the issuance of TIDD bonds by the Winrock Districts.