



## Legislation Text

---

**File #:** 46229, **Version:** 2

---

### **Fiscal Note**

This resolution would authorize a \$913,000 loan to Landmark Oaks Development, LLC or its assigns ("Developer") for the redevelopment at 2921 Landmark Place in the existing TID #35 (Todd Drive - West Beltline) boundary.

The Project consists of approximately 109,000 square feet of office space and approximately 353 parking stalls ("Project"). This loan would be repaid through incremental taxes generated by the Project and represents approximately 37% of the present value of all incremental taxes anticipated from the Project over the 15 years of life remaining in TID #35.

Funding of the \$913,000 TIF Loan to the Project requires an amendment to the 2017 Adopted Capital Budget for the Economic Development Division authorizing the expenditure. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 7 years, the Developer is required to guaranty a minimum payment if sufficient future tax increment is not available.

The increment guarantee is secured by a subordinated mortgage on the property. The TIF Loan also requires that Developer be prohibited from selling or transferring the Property prior to repayment of the TIF Loan. If Developer 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, until 2044.

### **Title**

SUBSTITUTE - Amending the 2017 Adopted Capital Budget for the Economic Development Division to appropriate \$913,000 in GO Borrowing authority for TID 35 and Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$913,000 Tax Incremental Finance Loan to Landmark Oaks Development, LLC or its assigns to assist in the development of approximately 109,000 square feet of office space and 353 parking stalls located at 2921 Landmark Place within the boundary of TID #35 (Todd Drive - West Beltline).

### **Body**

WHEREAS, the City of Madison (the "City") adopted RES 05-00580 approving a Project Plan and Boundary for TID #35 (Union Corners) on July 5, 2005; and

WHEREAS, the intent and purpose of the Project Plan, among other things, is to eliminate blighting conditions and encourage development of a wide range of office and commercial options and attract and retain business and employment in the district; and

WHEREAS, Landmark Oaks Development, LLC, or its assigns, ("Developer") has proposed to construct 109,000 square feet of commercial space on the Property at an estimated development cost of approximately \$26,330,000 ("Project") located at 2921 Landmark Place ("Property"); and

WHEREAS, City staff has conducted an analysis (see attached Report) of the Project and has determined the gap to be approximately \$913,000 such that, but for TIF assistance, the Project could not occur; and

WHEREAS, \$913,000 of said TIF assistance represents approximately 37% of the present value of the estimated tax incremental revenues generated by the Project, thus being in conformance to TIF Policy that no

more than 55% be made available to a project ("55% Gateway") without Board of Estimates prior authorization; and

WHEREAS, funding for the \$913,000 TIF Loan requires an amendment to the 2017 Capital Budget; 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

NOW, THEREFORE, BE IT RESOLVED that the City hereby finds and determines that the Project is consistent with the public purposes of Tax Increment Finance Law and the plans and objectives set forth in City of Madison TIF Policy, the City's loan to Developer demonstrates the potential to and encourage development of office and commercial uses to retain employment within TID #35, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan, the TIF Law and City TIF Policy.

BE IT FURTHER RESOLVED that funding is subject to the following conditions:

1. The Project. Developer agrees to develop on the Property:
  - a. Approximately 109,000 gross square feet of office.
  - b. Approximately 42 underground parking stalls and 311 surface parking stalls for a total of approximately 353 parking stalls.
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, or its assigns, not to exceed Nine Hundred Thirteen Thousand Dollars (\$913,000) ("TIF Loan"). The TIF Loan shall be apportioned in a draw schedule with the final draw being issued upon or prior to 80% completion of the project. The draw schedule shall be attached to the Agreement ("Draw Schedule").
3. Evidence of Financing, Audit and Clawback Provision. Prior to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds and/or equity in the aggregate amount of not less than \$24,928,000 ("Financing").

Bank financing shall be evidenced in the form of a bank commitment letter and evidence that Developer has met all of the lender's conditions of financing such as commercial pre-leasing requirements, if any.

Equity investment shall be evidenced by paid invoices or other documentation of prepaid project costs paid by Developer and/or a financial statement demonstrating Developer's financial capacity to invest equity in the Project. In aggregate, Developer's equity investment shall not be less than the amount of the TIF Loan at closing.

After closing, the TIF Loan shall be used solely for the purpose of funding the TIF eligible portion of the total project costs as stated in the TIF Application. The total project costs estimated therein at approximately \$26,330,000 ("Project Cost"). Upon completion of the Project, Developer shall provide the City with an audit of the total Project Cost and Financing ("Audit"), to the City's satisfaction, for the City's review and approval. If the City does not approve the Developer's Audit of Project Cost, the City may request additional information from the Developer and may perform its own audit of Developer's books and records related to Project Cost and Financing. In the event that the financing gap for the Project (which is equal to the amount of the TIF Loan) is reduced by a decrease, as established by the Audit, in the Project Cost ("Audited Actual Cost") and/or an increase, as established by the Audit, in Financing ("Audited Actual Financing"), the following formula shall apply to determine the clawback payment due to the City

("Clawback"):

The Clawback shall be calculated as follows:

1. "Cost Savings" = \$26,330,000, minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus \$25,417,000.

If the sum of (1) Cost Savings and (2) Financing Increase is a negative number, there shall be no Clawback. If the sum is a positive number, Developer shall pay the City Fifty Percent (50%) of such positive number as a Clawback. Notwithstanding anything contained herein to the contrary, the amount of deferred developer fee shall not be used for purposes of calculating the amount of Cost Savings, Audited Actual Financing, Financing Increase or the Clawback. By way of example, but not in limitation of the foregoing, should the Audited Actual Financing increase or Audited Actual Cost decrease, such that the deferred development fee is reduced to zero, there shall be no associated Clawback.

Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Section 7 below and shall reduce the outstanding amount of the TIF Loan pursuant to Section 5 below.

4. 2017 Capital Budget Authorization. Funding for the Nine Hundred Thirteen Thousand Dollar (\$913,000) TIF Loan is contingent upon an amendment to the City of Madison 2017 Capital Budget authorizing the expenditure of funds stated herein.
5. 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. A schedule of the projected increment used to calculate the TIF Loan amount shall be attached to the Agreement ("Increment Schedule").
6. Sale to Tax Exempt Entity - PILOT Payment. Developer shall be prohibited from selling or transferring the Property prior to the Developer's repayment of the TIF Loan without the prior written consent of the City (except for transfers made pursuant to foreclosure of senior loan on the Project). If Developer 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 2044. 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.
7. Security and Personal Guaranty. The TIF Loan shall be evidenced by a Note executed by Developer, or its assigns, to the City of Madison in the amount of Nine Hundred Thirteen Thousand Dollars (\$913,000) 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 ("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.
8. Satisfaction. The Mortgage shall be satisfied and the cancelled, via a recordable mortgage release, upon full payment of the TIF Loan.
9. 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.

10. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Developer to provide a living wage.
11. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
12. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
13. Equal Benefits. Developer shall comply with Madison General Ordinance 39.07 that requires Developer to provide equal benefits.
14. Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.
15. Material Changes. Any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application 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. Notwithstanding the foregoing, the City acknowledges that the Developer may, with the prior approval of the City, which approval may not be unreasonably withheld, reconfigure the size and use of the Project to address current market conditions (for example, the number and configuration of parking stalls may be increased or decreased, and certain space designated for office use may be converted to retail use).
16. Project Completion. Developer shall guarantee that the construction of the Project will be completed by June 30, 2019. Project completion shall be evidenced by the issuance of a certificate of occupancy.
17. 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.
18. 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.
19. Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff.
20. Automatic Expiration. The TIF Loan to Developer shall be null and void in the event that Developer does not commence construction on the Project, as evidenced by issuance of construction permits, by June 30, 2017.

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.

BE IT FINALLY RESOLVED that the 2017 Adopted Capital Budget be amended to appropriate \$913,000 in GO Borrowing authority within the Economic Development Division for TID 35 to provide TIF Loan assistance to the Project.

for TID 35 to provide TIF Loan assistance to the Project.