



## Legislation Text

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**File #:** 18356, **Version:** 1

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### **Fiscal Note**

The \$16,000,000 Edgewater project funding gap is attributable to the construction cost of a public access component, comprised of a plaza structure constructed over the 1970's addition to the Edgewater overlooking Lake Mendota, a staircase and waterfront amenities. The Common Council has authorized \$8,000,000 to partially fund the project in the 2010 Capital Budget. The additional \$8,000,000 required to fully fund this \$16,000,000 TIF loan would require 2011 Capital Budget authorization. It is anticipated that the \$16,000,000 TIF loan for the project would be disbursed in 2011 at the time the Developer closes on private financing and meets other conditions of the TIF loan as outlined in this resolution.

The proposed project is not currently located within TID #32. A boundary and project plan amendment, approved by the Common Council and the Joint Review Board, would be required to provide TIF loan assistance to this project. There is sufficient time to complete the boundary and project plan amendment process in 2010.

In lieu of an Equity Participation Payment required by TIF Policy at some time in the future, the developer would satisfy this obligation by deeding to the City, at closing, a conservation easement that allows public access, with some limitation, to the lakefront in return for a credit of its value, verified by the City, against the Equity Participation Payment. The developer will maintain, repair and operate the public space according to a Public Access Management Agreement at no cost or liability to the City.

Funding authorization for the project requires exceptions to the City's TIF policy. Most notable are Policy 4.1 (8), the "50% Rule" and 4.1 (10), "Self-Supporting Projects." According to the 50% Rule, the City's contribution to a development project would not constitute more than 50% of the projected increment generated by the project. The incremental value of the proposed development, as estimated by City Assessor's Office, would generate sufficient tax increment to support a TIF loan of approximately \$3,300,000 if the 50% rule was applied. Thus, the proposed loan amount significantly exceeds the limit of this policy provision. Approval of an exception that allows 100% of the tax increment generated by the project would support approximately \$6,600,000 of the \$16,000,000 TIF Loan.

Funding of the project would also require an exception to the policy provision requiring that projects be self-supporting. In this case, excess tax increments generated by other properties within the existing and amended boundary of TID #32 would support the remaining \$9,400,000 of the TIF Loan. TID #32 is currently generating sufficient excess tax increment, estimated at approximately \$1,500,000 per year. We project that this excess, combined with an estimated \$900,000 of increment generated by the project, will be sufficient to repay the entire \$16,000,000 TIF Loan by approximately 2019. The City has previously utilized a similar repayment structure for both the Block 89 and Marcus Hilton at Monona Terrace projects.

### **Title**

Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$16,000,000 Tax Incremental Finance (TIF) Loan to Landmark X, LLC ("Developer") to assist in the development of the Edgewater Hotel redevelopment project.

### **Body**

WHEREAS, the City of Madison has, by adoption on July 1, 2003 of Resolution Number 60,678, ID Number 33,974, created the boundary and project plan for Tax Incremental District (TID) #32; and

WHEREAS, an amendment to said TID boundary and project plan is anticipated for consideration by the City of Madison Common Council, Joint Review Board of overlying taxing jurisdictions during 2010, such consideration to be completed prior to September 30, 2010; and

WHEREAS, Landmark X, LLC (“Developer”) has proposed to redevelop the existing Edgewater Hotel and construct a new 8-story structure (including 9<sup>th</sup> floor roof access level) above Langdon Street of not less than 210,000 gross square feet comprising program elements including guest rooms, suites, and other accommodations with a minimum of 180 guest suites, banquet and meeting facilities, a restaurant and other commercial spaces including all other uses allowed by the PUD zoning text (“Hotel Component”), no fewer than 325 total parking stalls (“Parking Component”), outdoor private improvements allowing access to the public, which shall include infrastructure and other improvements such as landscaping/buffering improvements, view corridor improvements, general beautification improvements, waterfront and shoreline condition improvements, public and ADA access improvements, transportation circulation improvements and the creation of open spaces which are made part of private developments but which are accessible to the public in accordance with the Public Access Management Agreement as described below and which otherwise meet the terms of the public access easements recorded against the Property (“Public Access Component”) at an estimated development cost of approximately \$90,500,000 (“Project”) on property generally located at 666 Wisconsin Avenue (“Property”); and

WHEREAS, in conformance to City of Madison TIF Policy, the \$16 million gap is attributable to the cost of the construction of the Public Access Component; and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined the gap to be \$16,000,000 and that, but for TIF assistance, the Project could not occur; and

WHEREAS, \$6,600,000 said TIF assistance represents an estimated 100% of the present value of the estimated tax incremental revenues generated by the Project and is not consistent with TIF Policy that no more than 50% be made available to a project and would require an exception to TIF Policy; and

WHEREAS, \$9,400,000 of said TIF assistance represents tax increments generated by TID #32 and its boundary amendment, such that the Project is not consistent with TIF Policy 4.1 (10)(b) that each TIF project be self-supporting and would require an exception to TIF Policy; and

WHEREAS, Robert P. Dunn shall provide a limited personal guaranty of the first \$1,000,000 and the Developer \$15,000,000 in the event of a performance default, to secure the Developer’s performance of the Development Agreement, such that this guaranty is inconsistent with TIF Policy requiring a personal guaranty of the entire TIF Loan amount and would require an exception to TIF Policy; and

WHEREAS, the TIF Loan becomes a grant when tax increment received from the Project, District and/or Developer out-of-pocket payments are sufficient to repay the TIF Loan estimated to occur in approximately nine (9) 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, \$8,000,000 of the funding of the loan proceeds to this project is authorized in the 2010 Capital Budget and the additional \$8,000,000 is to be disbursed to the Project in 2011 thereby requiring authorization in the City of Madison 2011 Capital Budget; and

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 TID #32 Project Plan and that the

City's loan to Developer demonstrates the potential to finance additional public works and improvements in the existing TID and amended boundary and stimulate planned commercial redevelopment in TID #32, thereby making more likely an accomplishment of the public purpose objectives set forth in the Project Plan and its amendment, the TIF Law and City TIF Policy.

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute a development agreement to fund a \$16,000,000 Tax Incremental Finance (TIF) Loan to Landmark X, LLC ("Developer") to assist in the development of the Edgewater Hotel redevelopment project.

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

1. The Project. Developer agrees at a minimum the Project ("Project") will include:
  - a. Redevelopment of the existing Edgewater Hotel and construction of a new 8-story structure (including 9<sup>th</sup> floor roof access level) above Langdon Street of not less than 210,000 gross square feet comprising program elements including guest rooms, suites, and other accommodations with a minimum of 180 guest suites, banquet and meeting facilities, a restaurant and other commercial spaces including all other uses allowed by the PUD zoning text ("Hotel Component").
  - b. No fewer than 325 total parking stalls allocated for employees, visitors and customers of the Hotel Component and/or Public Access Component, or all other use allowed by the PUD zoning text ("Parking Component").
  - c. Outdoor private improvements allowing access to the public, which shall include infrastructure and other improvements such as landscaping/buffering improvements, view corridor improvements, general beautification improvements, waterfront and shoreline condition improvements, public and ADA access improvements, transportation circulation improvements and the creation of open spaces which are made part of private developments but which are accessible to the public in accordance with the Public Access Management Agreement as described below and which otherwise meet the terms of the public access easements recorded against the Property ("Public Access Component") and the terms and conditions of the Public Access Management Agreement described herein.
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 Sixteen Million and 00/100 Dollars (\$16,000,000.00) ("TIF Loan"). Said TIF Loan shall partially finance only those elements included in the Public Access Component. Said TIF Loan becomes a grant when the tax increment recovered from the Project and Tax Incremental District #32 (TID #32), and/or cash payments by the Developer pursuant to Section 12 below are sufficient to repay the TIF Loan and the City's reasonable associated borrowing costs, allocated as follows:
  - a) 100% of the increment generated by the Project shall be used to repay the TIF Loan disbursed for the Public Access Component.
  - b) TID #32 excess increment shall be used to repay the balance of the TIF Loan disbursed for the Public Access Component.
3. 2011 Capital Budget Authorization. Funding for Eight Million and 00/100 Dollars (\$8,000,000.00) of the Sixteen Million and 00/100 Dollar (\$16,000,000.00) TIF Loan is authorized in the City of Madison 2010 Capital Budget. The remaining Eight Million and 00/100 Dollars (\$8,000,000.00) of the TIF Loan shall be budgeted in the 2011 City of Madison Executive Capital Budget.

4. Amendment of TID #32 Boundary and Plan. The City shall make TIF funds available no sooner than the date the City adopts a resolution amending the Boundary and Project Plan to TID #32 and all other statutory requirements are met.
5. Independent Analysis of Public Access Component Cost. The TIF Loan to the Project is contingent upon the construction of the Public Access Component, estimated at a cost of Twenty Million Four Hundred Thousand and 00/100 Dollars (\$20,400,000.00). Prior to disbursement of TIF funds, the City shall engage a private, independent engineering firm ("City Consultant") to analyze and verify the cost of the Public Access Component. Developer shall make representatives of its contractor available to meet with the City's Consultant.
6. Disbursement Agreement Concerning Public Access Project. Disbursement of the Sixteen Million and 00/100 Dollar (\$16,000,000.00) TIF Loan shall conform to a disbursement agreement and such disbursement must be authorized by the City Comptroller contingent upon review and approval of construction draws by a Supervising Architect retained by the City.
7. Evidence of Purchase Agreements. At Closing, Developer shall provide copies of purchase agreements executed between Developer and National Guardian Life Insurance Company and Midwest Realty & Investment Corporation for the Hotel Component.
8. Public Access Management Agreement. Developer and City shall execute a Public Access Management Agreement that establishes the operations, maintenance, public accessibility guidelines, to the mutual satisfaction of the City and Developer for the Public Access Component, including the outdoor private improvements and internal ADA-accessible route that provide public access to Lake Mendota.
9. Subterranean Agreement. Developer and City shall execute an agreement to the mutual satisfaction of the City and Developer for Developer's subterranean use of the Wisconsin Avenue public right-of-way.
10. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan for the Public Access Component shall be repaid by tax increments generated by the Project, tax increments generated by TID #32 and the proposed boundary amendment and if necessary, cash payments from Developer pursuant to Section 12 below. The Developer shall guaranty the City's receipt of incremental tax revenue generated by the Project to repay a portion of the TIF Loan to the City for the Public Access Component in accordance with a tax increment schedule to be established by the City. Said tax increment schedule will be to the mutual satisfaction of the parties and included in the Development Agreement between the Developer and City. The City shall account for any excess tax increment generated by the Project, in excess of those tax increment payments as outlined on the tax increment schedule described above, including increment generated by residential condominium units and/or the Parking Component, and use such excess increment, if any, as the first source of payment of any monies owed by the Developer pursuant to the Developer's guaranty of tax increment generated by the Project as described in this term sheet.
11. Equity Participation Payment. The City's TIF Policy 4.1 (15) requires an Equity Participation Payment that, as applied to the Project would otherwise require a payment to the City at a future date not to exceed Sixteen Million and 00/100 Dollars (\$16,000,000.00). In lieu of such payment, the Developer shall at Closing:
  - (i) Execute a Development Agreement with the City which shall obligate the Developer, to construct the Public Access Components; and
  - (ii) Enter into a Public Access Management Agreement with the City which further obligates the Developer to operate, maintain and be responsible for the repair and general maintenance of improvements to the

Public Access Components in accordance with the standards set forth in the Public Access Management Agreement at no cost to the City; and,

- (iii) Execute a conservation easement and public access easement providing certain public rights of use, access and view preservation to the Public Access Component (collectively the "Public Agreements").

Before Closing, the Developer shall review with the City, Developer's independent, cost-based appraisal of the value associated with the Public Access Component to be constructed and the associated rights set forth in the Public Agreements with a value of not less than Sixteen Million and 00/100 (\$16,000,000.00) Dollars.

At Closing, the City's receipt of the Development Agreement obligating the Developer to construct the Public Access Component with an estimated cost of Twenty Million Four Hundred Thousand and 00/100 Dollars (\$20,400,000.00), combined with the value of Developer's obligation to operate, maintain and be responsible for the repair and general maintenance of improvements to the Public Access Component in accordance with the standards set forth in the Public Access Management Agreement at no cost to the City and the City receiving all rights set forth in the Public Agreements, shall equal or exceed Sixteen Million and 00/100 (\$16,000,000.00) Dollars, as confirmed by the City's review of Developer's appraisal. The City's rights in such agreements shall represent complete satisfaction and payment of the Equity Participation Payment from the Developer to the City pursuant to the terms and conditions of the TIF Loan.

12. Security and Personal Guaranty. The TIF Loan shall be evidenced by a Note to the City of Madison in the amount of Sixteen Million and 00/100 Dollars (\$16,000,000.00) bearing zero percent (0%) interest ("Note"). Developer shall execute a second mortgage on the Hotel Component and including the 140 parking stalls located beneath the 1970's addition, in favor of the City securing payment of the TIF Loan ("Mortgage"). The City shall agree to execute partial releases from its Mortgage of any residential condominium units for no release price. 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). The managing principal of the Developer will execute and provide a personal guaranty in the amount of One Million and 00/100 Dollars (\$1,000,000.00) securing only the Developer's performance obligations set forth in the Note. All other obligations of the Developer, including specific obligations for repayment of the TIF Loan from the TIF increment generated from the Project as described in Section 9, shall be secured by a corporate guaranty of the Developer in an amount which shall not exceed the amount of the TIF Loan. The Developer will not be obligated to provide any means of security to support the City's borrowing obligations.
13. Satisfaction. The Mortgage shall be satisfied, the Note cancelled and the personal guaranty shall be released upon full payment of the TIF Loan. At Developer's request, the City shall provide a letter to Developer's lender indicating whether Developer has satisfied certain terms of the TIF 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 for minority/disadvantaged women business enterprises to compete for any contracts entered into pursuant to this Term Sheet.
15. Prevailing and Living Wage (MGO 4.20 & 4.23). Developer shall comply with Madison General Ordinances 4.20 and 4.23 that require Developer to provide a living wage and a prevailing wage. Developer shall also comply with the State's Prevailing Wage requirements at Section 66.0904, Wisconsin Statutes.

16. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
17. Material Changes. Any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application dated April 28, 2010 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.
18. Project Completion. Developer shall guarantee that the construction of the Project will be completed by December 31, 2014.
19. 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.
20. 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.
21. Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff.
22. 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 April 27, 2010 TIF Application and amendments including no less than 180 rooms, 210,000 gross square feet of hotel, banquet facility, restaurant or other use allowed by the PUD zoning text and no less than 325 parking stalls.

BE IT FURTHER RESOLVED that the Common Council hereby makes an exception to TIF Policy 4.1 (8) "50% Rule".

BE IT FURTHER RESOLVED that the Common Council hereby makes an exception to TIF Policy 4.1 (10)(b) "Self-Supporting Projects" that stipulates that "no increment from other private development projects within a tax increment district may be used to supplement another project's inability to generate sufficient tax increment."

BE IT FURTHER RESOLVED that the Common Council hereby makes an exception to TIF Policy 4.1 (12) "Personal Guaranty" allowing a limited personal guaranty of Robert P. Dunn in the amount of \$1,000,000 and a corporate guaranty of Landmark X, LLC and its assigns in the amount of \$15,000,000.