



## Legislation Text

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**File #:** 47525, **Version:** 1

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### **Fiscal Note**

The proposed resolution authorizes a development agreement with Royster Corners LLC to assist with the completion of Phase I of the Royster Corners development. If adopted, the resolution will amend the 2017 Adopted Capital Budget to appropriate \$820,000 in GO Borrowing for a developer loan to Royster Corners LLC. The loan will be pay back by tax increment generated in future years. The TIF Loan represents approximately 25% of the present value of tax increments generated by the project, falling within the limits of the 55% Gateway in TIF Policy. Tax increments estimated to be generated by the Project are forecasted to recover the TIF Loan in six (6) years.

### **Title**

Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$820,000 Tax Incremental Finance Loan to Royster Corners, LLC or its assigns to assist in the development of the Project in Phase I of the Royster Corners development in TID #44 (Royster Clark) and amend the 2017 Capital Budget to authorize the expenditure.

### **Body**

WHEREAS on September 23, 2013 the City of Madison adopted RES-13-00876, File No. 31246 approving the creation of a Project Plan and Boundary for Tax Incremental District (TID) #44 (Royster Clark) ("District"); and

WHEREAS the District is bounded by whole parcels of real property along Cottage Grove Road starting at Monona Drive, going east past US Hwy 51 to Flora Street; and

WHEREAS, Royster Corners, LLC or its assigns ("Developer") proposes to construct approximately 86 apartment units comprising 101,300 square feet, 146 underground and surface parking stalls, 16,600 square feet of commercial at an estimated development cost of approximately \$18,021,000 ("Project") on Phase I of the Royster Commons development generally located at the corner of Cottage Grove Road and Dempsey Road ("Property"); and

WHEREAS, TIF staff has conducted an analysis of the Project as shown in the attached Report; and

WHEREAS, said TIF assistance represents approximately 25% of the present value of the estimated tax incremental revenues generated by the Project, within the boundary of the 55% Gateway policy; 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, the TIF Loan proceeds to be made available to the Project require an amendment to the 2017 Capital Budget.

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 District Project Plan and that the City's loan to Developer demonstrates the City's efforts to eliminate blight and stimulate planned commercial redevelopment upon the long-vacant and blighted Royster Clark site, thereby making more likely an accomplishment of the public purpose objectives set forth in 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 with the following improvements:
  - a. Approximately 86 residential units and approximately 16,000 square feet of commercial space, comprising approximately 101,000 gross square feet of space; and
  - b. Approximately 96 underground parking stalls and 50 surface parking stalls, for a total of approximately 146 parking stalls.
2. Form of Assistance. TIF assistance shall be provided in the form of a zero percent interest (0%) loan at closing from the City to Developer, or its assigns, not to exceed Eight Hundred Twenty Thousand Dollars (\$820,000) ("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 a disbursing 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 \$17,201,000 ("Financing").

Bank financing may 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, or may be evidenced by a prior or simultaneous closing of bank financing.

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 (as supplemented with a submittal on January 5, 2017). The total project costs estimated therein are approximately \$18,021,000 ("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" = \$18,021,000, minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus \$17,201,000.

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.

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 Eight Hundred Twenty Thousand Dollar (\$820,000) 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 Eight Hundred Twenty Thousand Dollars (\$820,000) 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 note 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 supplemented with a submittal on January 5, 2017), 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 March 30, 2019. Project completion shall be evidenced by the issuance of a certificate of occupancy provided, however, leasing and build out of commercial tenant spaces shall not be required to be completed by March 30, 2019 and the Project Audit under Section 3 shall not be completed until full build out and occupancy of all commercial spaces within the Project.
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 in the amount of the TIF Loan to the City. The City shall receive a lender's policy.
19. 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 September 30, 2017.

BE IT 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 STILL FURTHER RESOLVED that the City hereby finds and determines that the project is consistent with the public purposes of Tax Increment Finance Law, representing the potential to eliminate blighting conditions, attract and retain businesses and employment in the Royster Commons area that would stimulate redevelopment in TID #44, thereby making more likely the accomplishment of the public purpose objectives set forth in the Project Plan, the TIF Law and City TIF Policy.

BE IT FINALLY RESOLVED that the 2017 Capital Budget is hereby amended to appropriate \$820,000 in GO Borrowing for a developer loan in TID #44.