



Legislation Text

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Fiscal Note

The proposed resolution authorizes a loan agreement to fund a \$2,100,000 TIF loan to Madison Interstate East, LLC ("Developer"), or its assigns, for a three-phased project located at 2930 and 3030 Ohmeda Drive in the recently adopted TID 49 (Femrite Drive) boundary. General obligation borrowing, recovered through tax increments generated by the project would be required to fund the \$2,100,000 TIF Loan to this project and would require authorization in the 2022 Capital Budget. TIF funding is also contingent upon approval of the TID #49 Project Plan and Boundary in 2021.

The Project consists of three phased components. Project A in the first phase, commencing in 2022 is an approximately 169,000 square foot industrial building, Project B in the second phase, commencing in 2023 is an approximately 91,200 square foot industrial building, and Project C in the third phase, commencing in 2024 is an approximately 169,000 square foot industrial building ("Project"). The TIF Loan would be repaid through incremental taxes generated by the Project and represents approximately 55% of the present value of all incremental taxes anticipated from the Project over the 20-year life of TID #49.

Upon completion of the Project defined as issuance of a Certificate of Occupancy for Projects A, B and C, 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. In the event that the financing gap for Project A, B or C is less than the TIF Loan, then the City shall receive 50% of the amount of the reduced gap as a clawback.

Funding of the \$2,100,000 TIF Loan to the Project requires authorization in the 2022 Capital Budget authorizing the expenditure. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 9 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 September 1, 2041.

Title

Authorizing the execution of a loan agreement to fund a \$2,100,000 Tax Incremental Finance Loan to Madison Interstate East, LLC or its assigns within the proposed TID #49 (Femrite Drive) boundary along the Interstate 90/94 corridor within the TID #49 boundary.

Body

WHEREAS on July 20, 2021, the City of Madison (the "City") adopted Resolution RES-21-00512 approving a Project Plan and Boundary for Tax Incremental District (TID) #49 Femrite Drive; and

WHEREAS the intent and purpose of the Project Plan, among other things, is to encourage a wide range of industrial and commercial development and attract and retain business and employment in the City of Madison; and

WHEREAS, Madison Interstate East, LLC, or its assigns, ("Developer") has proposed to commence construction of a 169,000 square foot industrial building by May 23, 2022 ("Project A"), a 91,200 square foot

industrial building by May 22, 2023 (“Project B”) and a 169,000 square foot industrial building by May 22, 2024 (“Project C”) (collectively the “Project”) at a total estimated development cost of approximately \$39,894,000 located at 2930 and 3030 Ohmeda Drive commonly known as the former GE Medical property in the City of Madison and within the proposed TID #49 (Femrite Drive) boundary (“Property”); and

WHEREAS, City staff has conducted an analysis of the Project and has determined a gap for said Project to be approximately \$2,100,000 such that, but for TIF assistance, the Project could not occur; and

WHEREAS, due to the phased commencement of construction of the Project occurring between 2022 and 2024, TIF loan assistance shall be also disbursed to each of Project A, Project B, and Project C at the time its construction commences, specifically \$840,000 for Project A by May 23, 2022, \$420,000 for Project B by May 22, 2023, and \$840,000 for Project C by May 22, 2024; and

WHEREAS, provisions shall be made in the TIF Loan Agreement that reduce TIF assistance by 40% for failure to construct a Project prior to a May 22 deadline of each subsequent construction year and forfeiture of TIF loan assistance for failure to construct by the December 31 deadline of each subsequent year; and

WHEREAS authorization for the \$2,100,000 TIF Loan requires an authorization in the 2022 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 encourage industrial development and attract and retain business and employment in the City of Madison in the proposed TID #49, 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 perform all of the following at the Property:
 - a. Purchase of the Property, extending utility service, installation of required City infrastructure at Developer’s cost, and construct approximately 169,000 square foot industrial building at a cost of \$20,449,000, which construction shall commence by May 23, 2022 “Project A”; and
 - b. Construct 91,200 square foot industrial building at a cost of approximately \$7,880,000, which construction shall commence by May 22, 2023 “Project B.”
 - c. Construct 169,000 square foot industrial building at a cost of approximately \$11,565,000, which construction shall commence by May 22, 2024 “Project C.”
2. Form of Assistance. TIF assistance shall be provided in the form of a TIF loan at closing from the City to Developer, or its assigns, in an amount not to exceed Two Million One Hundred Thousand Dollars (\$2,100,000) (the “TIF Loan”). Additionally, the City shall provide \$1,000,000 in additional infrastructure investment in support of the TID, the details of which are enumerated in a separate document.
3. Disbursement Method. The TIF Loan shall be disbursed to a title company in escrow and released upon the submission of evidence that Developer, or its assigns, has incurred TIF eligible expenses as defined by

Wis. Stat. §66.1105(2)(f).

4. Primary Payment Structure. This section shall be applicable if the following conditions are met: the Developer shall provide the City with evidence that it has secured a footings and foundations permit and commenced construction of Project A on or before May 23, 2022.
 - a. First Payment. The first payment to **Project A** shall not exceed Eight Hundred and Forty Thousand Dollars (\$840,000) (the “First Payment”). The First Payment shall be disbursed following closing of the TIF Loan in escrow upon verification that the Developer has secured a footings and foundations permit and commenced construction of Project A on or before May 23, 2022 and Project A demonstrates incurred TIF eligible expenses in the amount of the First Payment for said Project.
 - b. Second Payment. The second payment to **Project B** shall not exceed Four Hundred Twenty Thousand Dollars (\$420,000) (the “Second Payment”). The Second Payment shall be disbursed to Developer following verification that on or before May 22, 2023, the Developer has secured a footings and foundations permit and commenced construction of Project B and incurred TIF eligible expenses in the amount of the Second Payment for said Project.
 - c. Third Payment. The third payment to **Project C** shall not exceed Eight Hundred and Forty Thousand Dollars (\$840,000) (the “Third Payment”). The Third Payment shall be disbursed following verification that the Developer has secured a footings and foundations permit and commenced construction of Project C on or before May 22, 2024 and Project C demonstrates incurred TIF eligible expenses in the amount of the Third Payment for said Project.
5. Delayed Projects - Alternative Payment Structure. As a complete alternative to Section 4, this section shall be applicable if Project A is not commenced by May 23, 2022.
 - a. First Alternative Payment. The First Payment shall be reduced by 40% to Five Hundred and Four Thousand Dollars (\$504,000) (“First Alternative Payment”). The First Alternative Payment shall be disbursed upon verification that Developer has secured a construction permit and commenced construction on or before December 31, 2022 and Project A has incurred TIF eligible expenses in the amount of the First Alternative Payment. Any payment to Project A shall be null and void for a construction start after December 31, 2022.
 - b. Second Alternative Payment. The Second Payment shall be reduced by 40% to Two Hundred and Fifty Two Thousand Dollars (\$252,000) (“Second Alternative Payment”). The Second Alternative Payment shall be disbursed upon verification that Developer has secured a construction permit and commenced construction on or before December 31, 2023 and Project B has incurred TIF eligible expenses in the amount of the Second Alternative Payment. Any payment to Project B shall be null and void if Project A and Project B fails to commence construction on or before December 31, 2023. For clarity, only the Second Alternative Payment would be made by the City conditioned on both Project A and Project B commencing construction on or before December 31, 2023.
 - c. Third Alternative Payment. The Third Payment shall be reduced by 40% to Five Hundred and Four Thousand Dollars (\$504,000) (“Third Alternative Payment”). The Third Alternative Payment shall be disbursed upon verification that Developer has secured a construction permit and commenced construction on or before December 31, 2024 and Project C has incurred TIF eligible expenses in the amount of the Third Alternative Payment. For clarity, any payment to Project C shall be null and void if:
 - (i) Project A and B are not under construction on or before December 31, 2023 as described in subparagraphs (a) and (b); or
 - (ii) Project C starts construction after December 31, 2024.
6. Evidence of Financing. Prior to the TIF Loan closing Developer shall provide evidence of bank financing,

grant funds and/or equity for Project A in the aggregate amount of not less than \$19,609,000, calculated as the \$20,449,000 Project A cost, less the First Payment of the TIF Loan (\$840,000) ("Project A Financing"). In the event the City disburses the First Alternative Payment set forth in 4a, evidence of Project A Financing shall increase to \$19,945,000.

Bank financing shall be evidenced in the form of a bank or institutional investor 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 \$38,894,000 ("Total Project Cost") - \$20,449,000 for Project A, \$7,880,000 for Project B and \$11,565,000 for Project C.

At each disbursement subsequent to the TIF Loan closing, Developer shall provide evidence of bank financing, grant funds, and/or equity in the amount of the following:

Project B - Evidence of Financing:

\$7,460,000 (calculated as the \$7,880,000 Project B Cost - \$420,000 Second Payment); or
\$7,628,000 (calculated as the \$7,880,000 Project B Cost - \$252,000 Second Alternative Payment)

Project C - Evidence of Financing:

\$10,725,000 (calculated as the \$11,565,000 Project C Cost - \$840,000 Third Payment); or
\$11,061,000 (calculated as the \$11,565,000 Project C Cost - \$504,000 Third Alternative Payment)

7. Audit and Clawback. Upon completion of the Project defined as issuance of a Certificate of Occupancy for Projects A, B and C, 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 Total 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 aggregate financing gap for Projects A, B and C (which is equal to the amount of 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" Total Project Cost = \$38,894,000, minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing (aggregate financing of Projects A, B and C, minus \$36,794,000.

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 Sections 12 and 14 below and shall reduce the outstanding amount of the TIF Loan pursuant to Sections 12 and 14 below.

8. Alternative Audit and Clawback. In the event that Developer does not complete all elements of the proposed Project on or before December 31, 2025, the Developer shall provide the City with an audit of the Total Project Cost and Financing of those project elements that have been completed ("Alternative Audit"), to the City's satisfaction, for the City's review and approval. If the City does not approve the Developer's Audit of Total 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.

The Alternative Clawback shall be calculated as follows:

1. "Cost Savings" = Total Project Cost, minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing, minus the Evidence of Financing for the completed element(s).

If the sum of (1) Cost Savings and (2) Financing Increase is a negative number, there shall be no Alternative Clawback. If the sum is a positive number, Developer shall pay the City Fifty Percent (50%) of such positive number as an Alternative Clawback.

Developer's payment of the Clawback shall be applied as a payment to the tax increment guaranty under Sections 12 and 14 below and shall reduce the outstanding amount of the TIF Loan pursuant to Sections 12 and 14 below. Developer's obligation under this paragraph shall not exceed the amount of TIF actually disbursed under this Agreement, and cannot exceed the amount of the TIF Loan.

4. 2022 Capital Budget Authorization. Funding for the Two Million One Hundred Thousand Dollar (\$2,100,000) TIF Loan is contingent upon Common Council authorization in the City of Madison 2022 Capital Budget authorizing the expenditure of funds stated herein.
5. TID 49 Project Plan and Boundary. The City shall not make TIF funds available until the date of an approval of a TID 49 Project Plan and Boundary by the TIF Joint Review Board.
6. No TID Certification. In the event that the proposed TID #49 Project Plan and Boundary is not certified by DOR on or about April 30, 2022, Developer shall be obligated to repay all funds disbursed by the City as a conventional loan, amortized over ten years, together with the costs of issuance and interest on the unpaid principal balance at a rate equal to the rate of the City's borrowing, plus one hundred basis points. Developer and Borrower shall perform on all requirements of the TIF Loan Agreement for the loan funds disbursed to Developer by the City ("City Loan"). In such event, the City shall credit Developer for the City's portion of annual estimated incremental property taxes levied on the Project, as set forth in the Tax Increment Guaranty provision in Section 12, until the City Loan is repaid. If in any year, the actual annual tax levy on the Project is less than the amount set forth in the Tax Increment Guaranty, Developer shall pay the City the annual difference as a guaranty payment. Developer shall repay to the City remaining principal on the City Loan, if any, at its ten-year maturity in 2032. In the event of the TID #49's non-certification, the City shall make its best effort to correct any issues that prevented Plan Amendment certification in 2021 and secure certification by DOR in 2022.
7. 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 TIF Loan Agreement ("Increment Schedule").

8. Sale to Tax Exempt Entity - PILOT Payment. Developer and Borrower shall be prohibited from selling, leasing or transferring the Property prior to the Developer's repayment of the TIF Loan without the prior written notice to the City (except for transfers made pursuant to foreclosure of senior loan on the project). If Developer sells the Property to a tax-exempt entity ("Buyer"), whereupon such ownership renders the Property as property tax-exempt, during the life of TID #49, 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 2041. This obligation shall be documented in the Loan Agreement during the life of the TIF Loan, and by a land use restriction agreement recorded on the Property upon satisfaction of the Borrower's obligations. The City shall share said PILOT in proportion with the overlying taxing jurisdictions. Buyer shall, in the discretion of the City, 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 upon closure of TID #49.
9. Security and Personal Guaranty. The TIF Loan shall be evidenced by a note or notes in the amount of the TIF Loan executed by Developer, or its assigns, to the City of Madison in the amount of the TIF Loan bearing an interest rate matching the applicable federal rate published by the Internal Revenue Service plus 1% during the month of closing ("Note"). Developer shall execute a mortgage or mortgages in favor of the City of Madison securing payment of the TIF Loan ("Mortgage"). If necessary, 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). Principals of Developer shall execute a personal guaranty signed by John Shaffer and Eric Ogden guaranteeing, jointly and severally, the payment of the TIF Loan and the PILOT payment if necessary.
10. Satisfaction. The Mortgage shall be satisfied and the Note cancelled, via a recordable mortgage release, upon full payment of the TIF Loan.
11. 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. The Developer understands that it is obligated to meet the goal set by the Department of Civil Rights, or show best efforts to meet the goal based on documented evidence of efforts.

Furthermore, in order to ensure compliance with the above provisions, Developer and its contractor agree to the following:

- a. The general contractor provide a schedule of values as soon as reasonably possible following the execution of this Term Sheet.
- b. A meeting shall take place before loan closing to set affirmative action goals for the project. Additional meetings may be scheduled at the request of DCR and must be held within 10 days of the request. The goals for the Project shall be finalized after DCR review, and incorporated into the authorizing resolution for the TIF Loan.
- c. At 80% completion, the goal is either met, signed contracts establish that the goal will be met, or documented good faith efforts are shown as to why the goal is not met.

For the purposes of this paragraph, "Completion" shall mean expenditure of total project costs as described in the TIF Application.

12. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
13. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
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 changes to the use or material reduction in the size and/or scope as described in Paragraph 1 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 without impacting the validity of the TIF Loan.
16. Project Completion. Developer shall guarantee that the construction of the Project will be completed by December 31, 2025. Project completion shall be evidenced by the issuance of a Certificate of Occupancy for each demised tenant space. Failure to complete the Project by said date, unless the total property tax revenue generated by the completed spaces within Projects A, B, and C is sufficient to satisfy the tax increment requirement as provided by the TIF Increment Schedule referenced in Section 12, will require payment under the increment guaranty in Sections 12 and 14. This obligation shall be documented in the Loan Agreement.
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, its officers, officials, agents, and employees as an additional insureds.
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 with a standard Phase I environmental assessment of the Property which is acceptable to staff.
20. Automatic Expiration. As set forth in Sections 4 and 5, disbursement of payments of the TIF Loan shall be null and void in the event that Developer does not commence construction on Project A in accordance with the deadlines stated in Section 4 or 5 as applicable. In that case, no payments will be made to Projects B and C.

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 loan agreement and other documents as may be necessary to effectuate the transaction, all of which are subject to the approval of the City Attorney.