



## Legislation Text

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**File #:** 52413, **Version:** 1

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### Fiscal Note

The proposed resolution amends the 2018 Adopted Capital Budget to appropriate \$2,086,000 in GO Borrowing for a TIF loan for Exact Sciences in TID 46. If adopted, these funds will be used for Phase 2 of improvements at 1 Exact Lane. This phase of improvements includes renovating existing office space and constructing an addition to the existing building along with constructing a 970-stall parking structure.

The 2018 Adopted Capital Budget includes \$2,500,000 for Phase 1 of the project; these funds were added to the budget through an amendment approved by the Finance Committee. This phase of the project included the renovation of the first floor of the existing facility along with the construction of laboratory and warehouse space.

If adopted, total funding for both phases of the project will be \$4,586,000.

### Title

Amending the 2018 Capital Budget and authorizing the Mayor and City Clerk to execute a development agreement to fund a \$2,086,000 Tax Incremental Finance Loan to assist in the renovation and development of office and structured parking for Exact Sciences Corporation in the Project Plan and Boundary Amendment area of TID #46 (Research Park).

### Body

WHEREAS the Common Council adopted the current TIF Policy on February 25, 2014; and,

WHEREAS this TIF Policy contemplates “Jobs Projects” that foster the retention and creation of new employment opportunities throughout the community; and,

WHEREAS employers in the “Medical/Biotechnology” field are identified as eligible for “Jobs Projects;” and,

WHEREAS Exact Sciences Corporation is an existing Madison employer involved in the research and production of a colorectal cancer screening test; and,

WHEREAS Exact Sciences Corporation (“Employer”) through its development entity CG Growth, LLC (“Developer”) desires to Renovate approximately 66,000 gross square feet of office space on the second and third floors of the existing building located 1 Exact Lane (formerly 601 Forward Drive) (the “Existing Building”) and construct approximately 109,000 gross square feet of office and amenity space to be attached to the Existing Building and located on 650 Forward Drive (together referred to as “Office Component”) and construct a 970-stall parking structure (“Parking Component”) to be used by the Office Component. Together the Office Component and the Parking Component are referred to as the “Project”; and,

WHEREAS Exact Sciences Corporate will retain, create, or maintain 250 full time equivalent (“FTE”) jobs that pay a living wage within the Office Component for five years beginning upon occupancy; and,

WHEREAS the property being purchased by CG Growth, LLC is home to the former headquarters of Spectrum Brands; and,

WHEREAS the property has sat vacant since Spectrum Brands moved from the site in 2013; and,

WHEREAS City plans and zoning call for continued employment use at the site; and,

WHEREAS CG Growth, LLC submitted a TIF Application to the City of Madison and the project qualifies for TIF assistance under the "Jobs Project" category of the City's TIF Policy; and,

WHEREAS an investment of \$2,086,000 of TIF, represents approximately 40% of the net present value of tax increment generated by the project; 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 plans and objectives set forth in the City of Madison TIF Policy.

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

The Project. Developer and Employer agree to renovate and develop on the Property:

- a. Renovate approximately 66,000 gross square feet of office space on the second and third floors of the existing building located 1 Exact Lane (formerly 601 Forward Drive) (the "Existing Building") and construct approximately 109,000 gross square feet of office and amenity space to be attached to the Existing Building and located on 650 Forward Drive (together referred to as "Office Component") and construct a 970-stall parking structure ("Parking Component") to be used by the Office Component. Together the Office Component and the Parking Component are referred to as the "Project".
- b. Create 250 full time equivalent ("FTE") jobs that pay a living wage, as defined by the City, (the "FTE Jobs") within five years beginning upon occupancy of Office Component by the Employer as described in more detail in Section 5 below.

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, in an amount not to exceed Two Million and Eighty Six Thousand Dollars (\$2,086,000) ("TIF Loan").

Evidence of Financing, and Job Creation/Retention Provision. Prior to the TIF Loan closing, Developer shall provide evidence of cash, bank financing, grant funds and/or equity in the aggregate amount of not less than \$68,914,000 [calculated as the \$71,000,000 total project cost, less the amount of TIF provided to the Project] ("Financing") to partially finance Developer's development of the Project as described in a loan agreement to be executed between the City and Developer ("TIF Loan Agreement"). The TIF Loan shall be disbursed to Developer into escrow with the title company in the fourth quarter of 2018, subject to Paragraph 5 below. Upon completion of the disbursing conditions of the TIF Loan Agreement, including evidence of Project Costs incurred in the amount of the TIF Loan, the TIF Loan shall be disbursed in accordance with a Disbursing Agreement.

Disbursing Agreement Formula. Subject to Paragraphs 5 and 6 below, the TIF loan shall be disbursed to Developer in accordance with the following formula:

The City shall disburse 40% of the TIF Loan proceeds at the TIF Loan closing upon full execution and recording, as necessary, of the TIF Loan documents (the "First Disbursement"), upon receipt of a draw request and evidence of the expenditure of eligible Project Costs, as that term is defined in Wis. Stat. §66.1105, in the amount of the First Disbursement.

The City shall disburse an additional 40% of the TIF Loan proceeds when the Employer occupies the project (the "Second Disbursement"), occupancy being evidenced by Certificate of Occupancy, provides evidence that Employer has created and/or retained fifty percent (50%) of the total jobs guaranteed (125 jobs), as described

in Section 5 below, upon receipt of a draw request, and evidence of the expenditure of Project Costs in the amount of the TIF Loan minus the amount of the First Disbursement.

The City shall disburse the remaining 20% of the authorized TIF Loan when the Employer demonstrates that it has created and/or retained 100% of the projected jobs upon receipt of a draw request.

Evidence of Financing and Jobs Guaranty. Bank financing shall be evidenced in the form of a bank or institutional investor commitment letter and evidence that Developer has met, or will meet upon closing, 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.

In the event of a self-financed Project, evidence includes but is not limited to, sources and uses, cash flows, pro formas, account statements and other documents to establish capacity to finance the Project, and other construction documents and plans establishing preparedness to begin work, in the reasonable discretion of the City.

The Guarantor shall guaranty to create or maintain for each of the five years following the date of the issuance of a certificate of occupancy ("COO") for the Office Component of the Project by the Employer, at least the following number of FTE Jobs (the "Jobs Guaranty"):

Year 1 (one year after COO)	50 new jobs, 50 total FTE Jobs Created
Year 2 after COO	50 new jobs, 100 total FTE Jobs Created
Year 3 after COO	50 new jobs, 150 total FTE Jobs Created
Year 4 after COO	50 new jobs, 200 total FTE Jobs Created
Year 5 after COO	50 new jobs, 250 total FTE Jobs Created

Verification of the number of FTE Jobs will be evidenced by a certified statement by Employer sent to the Office of Business Resources, or other designated City department, subject to verification to the City's reasonable satisfaction, of compliance with this provision at the first, second, third, fourth, and fifth anniversaries of the date of occupancy of the Office Component of the Project by the Employer.

In the event that the Jobs Guaranty is not met as evidenced by Employer's certification and City verification, then the Guarantors shall be required to pay a penalty in the amount of \$26,020 per job (calculated as the 2018 Living Wage Standard (\$13.01 per hour) x 40 hours a week x 50 weeks a year = \$26,020/FTE job) below the Jobs Guaranty for the applicable year with an annual cap of \$417,200 [calculated as the total amount of the TIF Loan divided by 5 years].

2018 Capital Budget Amendment Authorization. Funding for the Two Million and Eighty Six Thousand Dollar TIF Loan is contingent upon an approval of an amendment to the City of Madison 2018 Capital Budget authorizing the expenditure of funds stated herein.

Method of Payment and Tax Increment Guaranty. In addition to the Jobs Guaranty, TIF Loan shall be repaid by Developer through tax increments generated by the Project and/or cash payments by Developer or Guarantor. A schedule of the projected increment used to calculate the TIF Loan amount shall be attached to the TIF Loan Agreement ("Increment Schedule").

No TID Certification. In the event that the TID #46 Plan Amendment is not approved by the Department of Revenue, Employer 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 Employer 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 5, 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 (maturing 10 years after COO). In the event of the TID #46 Project Plan Amendment is not approved, the City shall make its best effort to correct any issues that prevented the Plan Amendment approval.

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, 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 2035. The City 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.

Security and Corporate 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 the TIF Loan bearing zero percent (0%) interest ("Note"). Developer shall execute a mortgage or mortgages against the Property 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). Exact Sciences Corporation shall execute a corporate guaranty guaranteeing the payment of the TIF Loan and the PILOT payment if necessary. The parties agree and understand that the City has approved and agreed to provide Developer with a previous tax increment financing loan in the amount of \$2,500,000 which has not closed, but is also required to be secured by a mortgage on the Property (the "First City Mortgage"). The City may, in the discretion of the City Attorney, combine the Mortgage and the First City Mortgage (together the "Combined Mortgages") into one, or choose any other method of securing the Combined Mortgages, using its business judgment.

Satisfaction. The TIF Loan Agreement and Mortgage shall be satisfied and the Note cancelled, via a recordable mortgage and TIF Loan Agreement release, upon full repayment of the TIF Loan.

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, including, but not limited to, goal setting for small business, women owned business, and minority owned business utilization. Prior to commencing construction, Developer shall contact the City's Department of Civil Rights to assure that Developer is in compliance with the aforementioned requirements. Developer shall assist and actively cooperate with the Department of Civil Rights in obtaining the compliance of contractors and subcontractors with such applicable provisions of the Madison General Ordinance. The Developer and Employer understand that they are 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.

Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.

Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.

Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.

Material Changes. Any material changes to the size or use 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 or Guarantor. 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 of the Project to address current market conditions.

Project Completion. Developer shall guarantee that the construction of the Project will be completed by March 31, 2020. Project completion shall be evidenced by the issuance of a certificate of occupancy.

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.

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.

Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff.

Automatic Expiration. The TIF Loan to Developer and Employer 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 December 31, 2018.

BE IT STILL FURTHER RESOLVED that the 2018 Capital Budget is hereby amended to authorize \$2,086,000 to provide TIF Loan Assistance to the Project.

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute and record any documents necessary for carrying out the intentions of this resolution all in a form to be approved by the City Attorney.