



Legislation Text

File #: 29898, **Version:** 1

Fiscal Note

This resolution would authorize a \$225,000 TIF Loan, disbursed to Borrower when certain Borrower obligations are met, for the renovation of a long-vacant property at 4916 and 4930 East Broadway ("Project"). The loan would be repaid through incremental taxes generated by the Project and represent approximately 50% of the present value of all incremental taxes anticipated from the Project through the remaining 15-year life of TID #39, created on September 2, 2008.

Funds to capitalize this loan would require an authorizing amendment to the 2013 Capital Budget. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 8 years, the Borrower and its personal guarantor is required to guaranty a minimum payment on their respective loan if sufficient future tax increment is not available.

Staff concludes that the Equity Participation Payment and PILOT provisions normally required in TIF Policy are not applicable concerning this Project.

Generally, the equity participation payment is triggered by the sale of a TIF-assisted, speculative real estate project to an unrelated party when the actual sale price greatly exceeds the sale value projected at the time of TIF Application. In such an event, the City receives a payment upon sale of a percentage of the project's gross sales proceeds, capped at the amount of TIF assistance provided. In part, this policy has been in place to deter developers from exaggerating the gap.

In this case, however, the value of the property at completion is not the primary cause of a gap. The gap is caused by the private sector lender restrictions placed upon the Borrower's working capital reserves, such that Borrower may not invest more into the Project without defaulting on the terms of its private sector financing.

Staff concludes that the customary PILOT payment is also not applicable. The tenant is a for-profit entity. The PILOT provision was instituted recently to address potential tax increment loss when a large non-profit tenant in a speculative real estate project purchases its space, thus rendering it property tax-exempt. The Borrower and tenant, being related for-profit companies, demonstrate no such possibility that would necessitate a PILOT requirement.

The Borrower increment guaranty is secured by a subordinated mortgage on the respective properties.

There are sufficient available proceeds within TID 39 such that the need for additional borrowing is not anticipated. The 2013 adopted Capital Budget of PCED (Project No. 18, "TID 39 - Stoughton Rd.," Account No. 823901) will be amended as follows:

\$225,000 CT39-57700-823901 Loan to Developer
(\$225,000) CT39-71120-823901 Available TID Proceeds

Title

1) Authorizing an amendment to the 2013 Capital Budget and 2) authorizing the Mayor and City Clerk to execute development agreement to fund a \$225,000 Tax Incremental Finance (TIF) Loan to Dane County Data Exchange LLC ("Borrower") to assist in the renovation of the former Rodeway Inn at 4916 and 4930 East Broadway as a 115,000 SF headquarters facility to be leased and occupied by Facility Gateway Corporation, a Subchapter (s) corporation ("Facility Gateway") that is the operating company of Borrower located within TID

#39 (Stoughton Road) ("Project").

Body

WHEREAS the City of Madison has on September 2, 2008 by adoption on of RES-08-0817File ID Number11506, created the boundary and Project Plan for Tax Incremental District (TID) #39; and

WHEREAS the intent and purpose of the Project Plan, among other things, is to attract and retain business and employment in the southeast industrial area generally bounded by Stoughton Road, US Hwy 12 & 18, Interstate Hwy 90 and the Union Pacific railroad right of way; and

WHEREAS, Borrower has proposed to renovate the former Rodeway Inn property and an adjacent lot located at 4916 and 4930 East Broadway respectively into a 115,000 square foot office headquarters to be leased and occupied by Facility Gateway, retaining 45 jobs and creating 80 jobs; and

WHEREAS, the Project would retain and create jobs within a targeted industrial area, renovate a long-vacant commercial property and is consistent with job creation and blight removal objectives in the Comprehensive Plan and City of Madison TIF Policy; and

WHEREAS, in conformance to City of Madison TIF Policy, the \$225,000 of gap is attributable to the construction cost exceeding the amount of financing being leveraged through private sector financing and the requirements of such private sector financing that Facility Gateway maintain sufficient working capital reserves such that additional equity investment in the Project would deplete such reserves; and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined that, but for TIF assistance, the Project could not occur; and

WHEREAS, the TIF assistance made available to the Project and represents approximately 50 percent (50%) of the present value of the estimated tax incremental revenues generated by the Project;

WHEREAS, the TIF Loan becomes a grant when tax increment received from the Project and/or out-of-pocket payments made by the Borrower and/or its personal guarantor are sufficient to repay the TIF Loan; 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, funding of the loan proceeds to this project is anticipated in 2013 and thereby would require authorization in the City of Madison 2013 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 TID #39 Project Plan and that the City's loan to Borrower demonstrates the potential to reduce under-utilization and attract and retain businesses and employment in the southeast industrial area 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 funding for the Project is subject to the following conditions:

1. The Project. Borrower agrees at a minimum the Project will include:
 - a. Construction of interior and exterior building improvements located within the existing Property comprising approximately 115,000 gross square feet that facilitates its use as a corporate headquarters facility.
2. Form of Assistance. TIF Loan assistance shall be provided in the form of a zero interest (0%) loan at

closing from the City to Borrower, in the amount of Two Hundred Twenty-Five Thousand Dollars (\$225,000.00) ("TIF Loan") to partially finance Borrower's development of the Project. Said TIF Loan becomes a grant when tax increment recovered from the Project and/or cash payments by Borrower and its personal guarantor are sufficient to repay the TIF Loan and the City's associated borrowing costs.

3. 2013 Capital Budget Amendment. Funding of the TIF Loan is contingent upon an amendment to the 2013 City of Madison Capital Budget.

4. Evidence of Lease and Financing. Prior to the TIF Loan closing, Borrower shall provide an executed lease or leases in a form acceptable to the City by July 1, 2013 between Borrower and Facility Gateway, with primary terms of not less than 10 years and Facility Gateway occupying not less than 115,000 square feet of the Project. Borrower shall also provide evidence to the City of private sector financing of approximately \$3,675,000 and Borrower's bank statement demonstrating that equity of at least \$225,000 is made available for investment or evidence of pre-paid construction expenditures, paid by Borrower, demonstrating equity invested of at least \$225,000 in the project.

5. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing the TIF Loan shall be repaid by Borrower through tax increments generated by the Project and/or cash payments by Borrower and its personal guarantor. Borrower shall guaranty the City's receipt of increment revenue.

6. Security. The TIF Loan shall be evidenced by a Note to the City of Madison in the amount of the TIF Loan bearing zero percent (0%) interest ("Note"). Borrower shall execute a 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. An individual principal of the Borrower shall execute a personal guaranty guaranteeing payment of the TIF Loan.

7. Satisfaction. The Mortgage shall be satisfied and the Note cancelled upon full payment of the TIF Loan.

8. Changes of Ownership in Borrower. Any material changes to the ownership of the Borrower or Facility Gateway Corporation than as stated in the TIF Loan Application dated February 19, 2013 and received by the City on March 6, 2013, and its attachments and amendments submitted to the City, shall require prior written notification of and approval by the City of Madison. Any such changes made without prior notification and approval of the City of Madison 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 Borrower.

9. Affirmative Action MGO 39.02 (9). Borrower 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, Borrower shall contact the City's Affirmative Action Division to assure that Borrower is in compliance with the aforementioned requirements. Borrower 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). Borrower shall comply with Madison General Ordinance 4.20 that requires Borrower to provide a living wage.

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

12. Equal Opportunity and Equal Benefits. Borrower shall comply with all applicable local, state and federal provisions concerning Equal Opportunity. Borrower shall also comply with the City's equal benefits ordinance,

at 39.07, Madison General Ordinances.

13. Material Changes. Any material changes to the size, use or ownership of the Project or Property that is stated in the TIF Application dated February 19, 2013, received by the City on March 6, 2013, 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 ("TIF Application"), 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 Borrower.

14. Project Completion. Borrower shall guarantee that the construction the Project shall be completed by December 31, 2014. Project completion shall be evidenced by the issuance of a certificate of occupancy for not less than 115,000 SF of the Project.

15. 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.

16. 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.

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

18. Automatic Expiration. The TIF Loan to Borrower shall be null and void in the event that Borrower does not commence construction on the Project, as evidenced by issuance of construction permits, by December 31, 2013.

BE IT STILL FURTHER RESOLVED that the City of Madison hereby authorizes an amendment to the 2013 Capital Budget to fund this TIF Loan.