File #: 46447, **Version:** 2

Fiscal Note

The 2017 Adopted Capital Budget authorizes $2.5 million in GO borrowing for tax increment financing loans in TID 46. This resolution authorizes a development agreement for a $1.89 million tax increment financing loan in TID 46 to Epicentre, Inc.

Title

SUBSTITUTE Authorizing the Mayor and City Clerk to execute a development agreement to fund a $1,890,000 Tax Incremental Finance Loan to assist in the development of a Corporate Headquarters for Epicentre, Inc. 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 Epicentre Technologies is an existing Madison employer involved in the production, testing, storage, and distribution of life science products, including enzymes produced in bacteria, nucleotides, and oligonucleotides; and,

WHEREAS Epicentre Technologies desires to grow its Madison presence by constructing a new 132,000 square foot facility at 6102 Odana Road; and,

WHEREAS Epicentre Technologies will retain and maintain at least 100 full time equivalent positions at this location; and,

WHEREAS Epicentre Technologies will be a complimentary addition to the adjacent University Research Park, helping to insure that this area of the City remains important center for biotechnology-related companies; and,

WHEREAS Epicentre Technologies submitted a TIF Application to the City of Madison and City staff have determined that the project qualifies for TIF assistance under the “Jobs Project” category of the City’s TIF Policy and complies with the provisions for a gap analysis waiver due to the assistance representing 40% of the net present value of tax increment.

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.

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

1. The Project. GCDR Research, LLC~~.~~ (“Developer”) and Epicentre Technologies, Inc. (the “Employer”) agree to develop on the Property:

   a. Approximately 132,000 gross square feet of commercial space for the production, testing, storage and

distribution of life science products, including but not limited to, enzymes produced in bacteria, nucleotides, and oligonucleotides.

b. Maintain 100 full time equivalent ("FTE") jobs that pay a living wage (the "FTE Jobs") on the Property for five years beginning upon occupancy of the Project by the Employer. The City recognizes and agrees that Employer is entitled to rely on the transfer of some or all employees of 5602 Research Park Boulevard and 5801 Research Park Boulevard in the City and 8410 Murphy Drive in the City of Middleton to the Project to satisfy this obligation.

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, or its assigns, in an amount not to exceed One Million Eight Hundred Ninety Thousand Dollars ($1,890,000) ("TIF Loan"). The TIF Loan shall be disbursed in two payments. The first payment of One Million Six Hundred Thousand Dollars ($1,600,000) (the "First Payment") shall be disbursed at or following closing of the TIF Loan upon verification that the Developer has incurred TIF eligible expenses in the amount of the First Payment. The second payment of Two Hundred Ninety Thousand Dollars ($290,000) (the "Second Payment") shall be disbursed to Developer on the date of occupancy of the Project by the Employer and verification that Employer has one hundred FTE Jobs on the Property.

3. Evidence of Financing, and Job ~~Creation/Retention~~ Maintenance 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 $33,032,017 ("Financing").

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.

The parties understand that Employer is a wholly-owned subsidiary of Illumina, Inc. Employer and Illumina, Inc. (together the "Guarantors") shall guaranty to maintain at least one hundred FTE Jobs at the Project starting on the date of occupancy of the Project by the Employer (the "Jobs Guaranty").

The Guarantors agree that for each of the ~~four~~ five years following the date of occupancy of the Project by the Employer, Employer will be required to maintain at least one hundred FTE Jobs at the Project. Verification of the number of FTE Jobs will be evidenced by a certified statement by Employer, subject to verification to the City's reasonable satisfaction, of compliance with this provision at the first, second, third, ~~and~~ fourth, and fifth anniversaries of the date of occupancy of the Project by the Employer.

In the event that the Jobs Guaranty is not met as evidenced by Employer's certification, then the Guarantors shall be required to pay a penalty in the amount of $25,700 per job below the 100 FTE Jobs Guaranty with an annual cap of $400,000 (2017 Living Wage Standard ($12.85 per hour) x 40 hours a week x 50 weeks a year = $25,700/FTE job).

4. 2017 Capital Budget Authorization. Funding for the One Million Eight Hundred Ninety Thousand Dollar ($1,890,000) 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. In addition to the Jobs 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").

6. No TID Certification. In the event that the TID #46 Plan and Boundary Amendment is not certified by DOR on or about April 30, 2018, 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 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 in 2027. In the event of the TID #46's non-certification, the City shall make its best effort to correct any issues that prevented Plan Amendment certification in 2018 and secure certification by DOR in 2019.

7. 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.

8. 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 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). David Weiss shall execute a personal guaranty guaranteeing the payment of the TIF Loan and the PILOT payment if necessary.

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

10. 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.

11. Living Wage (MGO 4.20). Developer shall comply with Madison General Ordinance 4.20 that requires Developer to provide a living wage.

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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. Equal Benefits. Developer shall comply with Madison General Ordinance 39.07 that requires Developer to provide equal benefits.

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

16. Material Changes. Any material 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 other than the transfer from CUNA Mutual Insurance to Developer, 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 or the Jobs Guaranty.

17. Project Completion. Developer shall guarantee that the construction of the Project will be completed by June 30, 2019. Project completion shall be evidenced by the issuance of a certificate of occupancy.

18. 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.

19. 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.

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

21. 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 June 30, 2017.

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.

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