



Legislation Text

File #: 48934, **Version:** 2

Fiscal Note

The proposed resolution authorizes a development agreement to fund a \$2,500,000 Tax Incremental Finance (TIF) Loan for Exact Sciences Corporation in the Project Plan and Boundary Amendment area of TID #46 (Research Park). Exact Sciences Corporation, through its development entity CG Growth, LLC ("Developer"), desires to renovate approximately 157,000 gross square feet of office space at 601 Rayovac Drive and construct approximately 137,000 gross square feet of laboratory and warehouse space at the adjacent 650 Forward Drive. Funding for the \$2,500,000 TIF Loan is contingent upon approval of the 2018 Capital Budget authorizing the expenditure of funds stated herein. The 2017 Adopted Capital Budget will not be amended by the proposed resolution. 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.

Title

Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$2,500,000 Tax Incremental Finance Loan to assist in the renovation and development of office, laboratory, and warehouse space 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 157,000 gross square feet of office space at 601 Rayovac Drive ("Office Component") and construct approximately 137,000 gross square feet of laboratory and warehouse space at the adjacent 650 Forward Drive ("Laboratory Component"); and,

WHEREAS Exact Sciences Corporate will retain, create, or maintain 250 full time equivalent ("FTE") jobs that pay a living wage within the Laboratory 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 the size (157,000 square feet), age (over 30 years), and condition of the office building suggest that it will be challenging to find a suitable employment user for the site; and,

WHEREAS should CG Growth, LLC not move forward with this project, there exists a risk that the building will remain vacant for an indeterminate amount of time; and,

WHEREAS the property is located in a neighborhood in great need of employment opportunities, in proximity to the Park Edge/Park Ridge Neighborhood Resource Team Focus Area; and,

WHEREAS through the Laboratory Component of the project at 650 Forward Drive, Exact Sciences Corporation will provide at least 250 guaranteed new FTE positions to the City of Madison, with an additional 350 FTE relocated and new positions at the Office Component of the project at 601 Rayovac Drive; and,

WHEREAS Exact Sciences Corporation has pledged to work with the nearby Park Edge/Park Ridge Employment Center to connect neighborhood residents with employment opportunities within the facility; 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 to move forward with the project, CG Growth, LLC requires an investment of \$2,500,000 of TIF, representing approximately 55% of the net present value of tax increment generated by the project; and,

WHEREAS 55% exceeds the gap analysis waiver policy of providing 40% of the net present value of tax increment generated by a project.

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 the City finds that the project warrants a "Jobs Project" gap analysis waiver of approximately 55% of the net present value of the tax increment generated by the project given the project involves the reuse of a significant vacant facility, the attraction of new jobs to a neighborhood in great need of employment opportunities, and a willingness of Exact Sciences Corporation to connect neighboring residents with employment opportunities within the facility.

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

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

a. Approximately 157,000 gross square feet of office space at 601 Rayovac Drive ("Office Component") and 137,000 gross square feet of laboratory and warehouse space at 650 Forward Drive ("Laboratory Component") (together the Office Component and the Laboratory Component are referred to as the "Project").

b. Retain, create or maintain 250 full time equivalent ("FTE") jobs that pay a living wage, as defined by the City, (the "FTE Jobs") within the Laboratory Component for five years beginning upon occupancy of the Laboratory Component by the Employer. The City recognizes and agrees that Employer is entitled to rely on the transfer of some or all employees of other of Employer's facilities to the Laboratory Component to satisfy this obligation in the event those facilities close or the transferred jobs are from outside the City of Madison.

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 Five Hundred Thousand

Dollars (\$2,500,000) ("TIF Loan"). The TIF Loan shall be disbursed in two payments. The first payment of One Million Eight Hundred Twelve Thousand Dollars (\$1,812,000)(the "First Payment") shall be distributed at or following closing of the TIF Loan upon verification that the Employer has incurred TIF eligible expenses in the amount of the First Payment. The second payment of Six Hundred Eighty Eight Thousand Dollars (\$688,000) shall be disbursed to Employer on the date of occupancy of the Project by the Employer and verification that Employer has at least one hundred twenty-five (125) FTE Jobs in the Laboratory Component on the Property.

2. 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 \$54,800,000 [calculated as the \$57,300,000 total project cost, less the amount of TIF provided to the Project] ("Financing") to partially finance Developer's development of the Laboratory Component 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 first quarter of 2018, subject to Paragraph 4 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.
3. 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 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 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 Laboratory Component of the Project by the Employer, at least the following number of FTE Jobs at the Laboratory Component of the Project (the "Jobs Guaranty"):

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| Year 1 (one year after COO), | 125 total FTE Jobs |
| Year 2 after COO | 50 new jobs, 175 total FTE Jobs retained |
| Year 3 after COO | 25 new jobs, 200 total FTE Jobs retained |
| Year 4 after COO | 25 new jobs, 225 total FTE Jobs retained |
| Year 5 after COO | 25 new jobs, 250 total FTE Jobs retained |

Verification of the number of FTE Jobs will be evidenced by a certified statement by Employer sent to the Office of Business Resources, 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 Laboratory 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 \$500,000 [calculated as the total amount of the TIF Loan divided by 5 years].

4. 2018 Capital Budget Authorization. Funding for the Two Million Five Hundred Thousand Dollar (\$2,500,000) TIF Loan is contingent upon an approval of the City of Madison 2018 Capital Budget authorizing the expenditure of funds stated herein.

5. 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”).
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 (maturing 10 years after COO). 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 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. Prior to closing, Developer shall provide the City with an appraisal of the Property dated within 6 months prior to closing.
9. Satisfaction. The TIF Loan Agreement and Mortgage shall be satisfied and the Note cancelled, via a recordable mortgage release, upon full repayment 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.
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 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.
17. Project Completion. Developer shall guarantee that the construction of the Project will be completed by December 31, 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 December 31, 2017; and,

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.