



Legislation Text

File #: 51623, **Version:** 1

Fiscal Note

The proposed resolution authorizes a \$2,600,000 TIF Loan to University Research Park, Inc. or its assigns ("Developer") for the redevelopment at 501 Charmany Drive in the existing TID #46 (Research Park) boundary.

The Project consists of approximately 186,000 square feet of renovated and new office space and approximately 472 parking stalls ("Project"). Exact Sciences Corporation shall lease and occupy the space as its office headquarters and innovation laboratory. This loan would be repaid through incremental taxes generated by the Project and represents approximately 50% of the present value of all incremental taxes anticipated from the Project over the 17 years of life remaining in TID #46.

Funding of the TIF Loan to the Project requires an amendment to the 2018 Adopted Capital Budget authorizing issuance of \$2,600,000 in General Obligation (GO) Borrowing and authorizing its expense as a payment to a developer. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 7 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 2035.

The 2018 Adopted Capital Budget includes a separate \$2,500,000 TIF Loan, funded by GO Borrowing, to Exact Sciences Corporation within TID #46. The TIF Loan proposed by this resolution is within TID #46's authorized expense amount and will not require a TID Project Plan amendment.

Title

Amending the 2018 Capital Budget and Authorizing the Mayor and City Clerk to execute a development agreement to fund a \$2,600,000 Tax Incremental Finance Loan, funded by GO Borrowing, to University Research Park, Inc. or its assigns to assist in the renovation of approximately 48,316 gross square feet of existing office, construction of approximately 137,874 of new office and approximately 472 parking stalls located at 501 Charmany Drive Place to be occupied by Exact Sciences Corporation as an office headquarters and innovation laboratory within the boundary of TID #46 (Research Park).

Body

WHEREAS, the City of Madison (the "City") adopted RES 15-00676 approving a Project Plan and Boundary for TID #46 (Research Park) on September 1, 2015 and adopted RES 17-00763 on September 19, 2017 to amend the TID boundary and Project Plan; and

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

WHEREAS, University Research Park, Inc. or its assigns, ("Developer") has proposed to renovate approximately 48,316 gross square feet of an existing office and construct approximately 137,874 square feet of office space and 472 parking stalls on the Property at an estimated development cost of approximately \$60,831,000 ("Project") located at 501 Charmany Drive ("Property"); and

WHEREAS said Project shall be leased and occupied by Exact Sciences Corporation as an office headquarters and innovation laboratory; and

WHEREAS, City staff has conducted an analysis (see attached Report) of the Project and has determined the gap to be approximately \$2,600,000 such that, but for TIF assistance, the Project could not occur; and

WHEREAS, \$2,600,000 of said TIF assistance represents 50% of the present value of the estimated tax incremental revenues generated by the Project, thus being in conformance to TIF Policy that no more than 55% be made available to a project ("55% Gateway") without Board of Estimates prior authorization; and

WHEREAS, funding for the \$2,600,000 TIF Loan requires an amendment to the 2018 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 and encourage development of office and commercial uses to retain and create employment within TID #46, 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 develop on the Property all of the following:
 - a. Renovation of approximately 48,316 gross square feet of existing office, and
 - b. Construction of approximately 137,874 gross square feet of new office, and
 - c. Approximately 338 underground parking stalls and 134 additional surface parking stalls for a total of approximately 472 parking stalls.

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, not to exceed Two Million Six Hundred Thousand Dollars (\$2,600,000) ("TIF Loan"). The TIF Loan shall be apportioned in a draw schedule with the final draw being issued upon 80% completion of the project. The draw schedule shall proceed as follows:
 - 50% of funds at closing;
 - 30% of funds at 30% completion;
 - 10% of funds at 50% completion;
 - 10% of funds at 80% completion.

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

3. Evidence of Financing, Audit and Clawback 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 \$58,231,000 ("Financing").

Bank financing shall be evidenced in the form of a bank 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. The Developer's Equity investment may include a cash contribution from the tenant that will occupy the Project, the Developer's contribution of land, and a deferred developer's fee. In aggregate, Developer's equity investment, as established through financing documents 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 \$60,831,000 ("Project Cost"). Upon completion of the Project, 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 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 financing gap for the Project (which is equal to the amount of the 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" = \$60,831,000, minus the Audited Actual Cost; and
2. "Financing Increase" = Audited Actual Financing minus \$58,231,000.

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 Section 7 below and shall reduce the outstanding amount of the TIF Loan pursuant to Section 5 below.

4. 2018 Capital Budget Authorization. Funding for the Two Million Six Hundred Thousand Dollar (\$2,600,000) TIF Loan is contingent upon an amendment to the City of Madison 2018 Capital Budget authorizing the expenditure of funds stated herein.
5. 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 Agreement ("Increment Schedule").
6. Sale to Tax Exempt Entity - PILOT Payment. Developer shall be prohibited from selling or transferring the Property prior to the Developer's repayment of the TIF Loan without the prior written consent of the City (except for transfers made pursuant to foreclosure of senior loan on the Project). If Developer sells or transfers 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 of Madison 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.

7. 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 Two Million Six Hundred Thousand Dollars (\$2,600,000) bearing zero percent (0%) interest ("Note"). Developer shall execute a subordinate mortgage in favor of the City of Madison securing payment of the TIF Loan ("Mortgage"). The City shall agree, if necessary, to execute a subordination of mortgage in a form approved by the City Attorney and acceptable to Developer and Developer's lender(s). The Developer shall execute a corporate guaranty guaranteeing payment of the TIF Loan.
8. Satisfaction. The TIF Mortgage and Agreement shall be satisfied and the Note cancelled via a recordable release upon full payment of the TIF Loan.
9. 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.

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.
 - 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.
10. Accessibility (MGO 39.05). Developer shall submit a written assurance of compliance with Madison General Ordinance 39.05.
 11. Equal Opportunity. Developer shall comply with all applicable local, state and federal provisions concerning Equal Opportunity.
 12. Ban the Box. Developer shall comply with Madison General Ordinance 39.08 related to job applicant arrest and conviction records.
 13. Material Changes. At the time of Closing, if any material changes to the size, use or ownership of the Project or Property stated in the TIF Application have been made, this TIF Loan commitment shall be subject to reconsideration by the City. Following Closing, any material change made without consent of the City shall subject the TIF Loan to immediate repayment. 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 (for example, the number and configuration of parking stalls may be increased or decreased, and certain space designated for office use may be converted to retail use).
 14. Project Completion. Developer shall guarantee that the construction of the Project will be completed by December 31, 2020. Project completion shall be evidenced by the issuance of a certificate of occupancy.

Failure to complete the Project by said date will require payment under the increment guaranty in Section 7.

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 in a form to be approved by the City Attorney, which will require, among other things, a updated survey of the Property. Developer shall be responsible for all lending costs and fees.
17. Environmental Assessment. Developer shall provide the City an environmental assessment of the Property which is acceptable to staff.
18. Automatic Expiration. The TIF Loan to Developer 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 TIF Loan to the Developer is hereby approved and that the Mayor and City Clerk are hereby authorized to execute a development agreement and other documents as may be necessary to effectuate the transaction, all of which are subject to the approval of the City Attorney.

BE IT FINALLY RESOLVED that the 2018 Capital Budget be amended to authorize \$2,600,000 of General Obligation (GO) Borrowing to fund the TIF Loan assistance to the Project.