



Legislation Text

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Fiscal Note

The proposed resolution authorizes a \$2,556,000 loan to University Park Acquisitions LLC or its assigns ("Developer") for the redevelopment at adjacent to the TID #46 (Research Park) boundary. Funding for this project is included in the TID 46 Research Park capital program in the Economic Development Division's 2021 Adopted Capital Budget. TIF funding is contingent upon amending the TID #46 Project Plan and Boundary in 2021.

The Project consists of approximately 82 senior affordable apartment units, 68 affordable and 156 market rate) ("Project"). The TIF Loan would be repaid through incremental taxes generated by the Project and represents approximately 69% of the present value of all incremental taxes anticipated from the Project over the 15 years of life remaining in TID #46.

When either Project achieves stabilization, defined as 90 days at 90% physical occupancy of the applicable Project, Developer shall provide the City with a cost certification of the total Project Cost and Financing ("Audit"). In the event that the financing gap for Project A and/or B is less than the TIF Loan, then the City shall receive 50% of the amount of the reduced gap as a clawback.

The \$2,556,000 TIF Loan will be funding GO Borrowing in TID 46, which is authorized in the \$7 million budgeted for developer loans in the 2021 Adopted Capital Budget. While it is anticipated that the incremental taxes generated by the Project will be sufficient to repay the loan within approximately 9 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 September 1, 2035.

Title

Authorizing the Mayor and City Clerk to execute a development agreement to fund a total of \$2,556,000 in Tax Incremental Finance Loans to University Park Acquisitions LLC or its assigns, consisting of an approximately 82-unit senior affordable housing project, approximately 68 units of affordable housing and approximately 156 units of market rate housing located at Lots 2, 4 and 6 of the attached draft of the Westgate Redevelopment Plat, commonly known as the former Westgate property on Whitney Way in the City of Madison and adjacent to the TID #46 (Research Park) boundary.

Body

WHEREAS the City of Madison (the "City") adopted Resolution RES-15-00676 approving a Project Plan and Boundary for Tax Incremental District (TID) #46 on September 1, 2015; and

WHEREAS, the City adopted Resolution RES-17-00763 approving the First Amendment to the Project Plan and Boundary to TID #46 on September 19, 2017 to facilitate the business expansion of Exact Sciences; and

WHEREAS the City adopted Resolution RES-18-00772 approving an amendment to the Project Plan for TID #46 on October 30, 2018 to facilitate additional business expansion; and

WHEREAS the intent and purpose of the Project Plan, among other things, is to eliminate blighting conditions and encourage development of a wide range of commercial and housing options and attract and retain

business and employment in the district; and

WHEREAS, University Park Acquisitions LLC, or its assigns, ("Developer") has proposed to construct 82 senior residential units ("Project A"), 68 affordable units ("Project B") and 156 market rate units ("Project C"), on the Property at a total estimated development cost for Projects A and B of approximately \$37,214,000 ("Project") located at Lots 2, 4 and 6 of the attached draft of the Westgate Redevelopment Plat, commonly known as the former Westgate property on Whitney Way in the City of Madison and adjacent to the TID #46 (Research Park) boundary ("Property"); and

WHEREAS, City staff has conducted an analysis (See Attached Report) of the Project and has determined a gap for Project A to be approximately \$1,782,000 and a gap for Project B to be approximately \$774,000 such that, but for TIF assistance, the overall Project could not occur; and

WHEREAS, Project C did not demonstrate the need for TIF assistance but is projected to generate a significant amount of tax increment to support TIF assistance to Projects A and B; and

WHEREAS TID #46 is adjacent to the Project, is demonstrating a positive financial performance such that amending the district Project Plan and Boundary to include the Project that further mitigates the City's financial risk; and

WHEREAS, \$1,782,000 of TIF assistance to Project A represents approximately 270% of the present value of the estimated tax incremental revenues generated by the Project, and \$774,000 of TIF assistance to Project B represents 102% of TIF generated by the Project, thus being out of 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 on February 8, 2021 the Finance Committee authorized exceptions to TIF Policy allowing 1) tax increments from Project C to support Project A and B, and 2) to exceed the 55% Gateway to provide \$2,556,000 of TIF assistance to Projects A and B, representing 69% of the TIF generated by all three projects; 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 a wide range of housing options in 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. Construction of approximately 82 units of senior affordable housing, "Project A" and
- b. Construction of approximately 68 units of affordable housing "Project B" and
- c. Construction of approximately 156 units of market rate housing "Project C".

2. Form of Assistance. TIF assistance shall be provided in the form of a 0% loan in the amount of One Million Seven Hundred Eighty Two Thousand Dollars (\$1,782,000) to University Park Acquisitions LLC or its assigns for the purposes of constructing Project A ("TIF Loan A"), and a 0% loan in the amount of Seven Hundred Seventy Four Thousand Dollars (\$774,000) ("TIF Loan B") to University Park Acquisitions LLC or its assigns for the purposes of constructing Project B (TIF Loan A and TIF Loan B together the "TIF Loan" of \$2,556,000).

The TIF Loan to be repaid either through increment or a guaranty payment pursuant to Section 11 herein.

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 (the "Project Sources") in the aggregate amount of not less than \$17,477,200 for Project A and/or of not less than \$17,180,000 for Project B (together, "Financing"). For the avoidance of doubt, the issuance of a building permit for Project C shall be the condition for disbursement for the remaining \$1,387,000 of TIF funds for TIF Loan A and for disbursement for the remaining \$319,500 of TIF funds for TIF Loan B; however, TIF Loan A shall not be a requirement for the closing of TIF Loan B and TIF Loan B shall not be a requirement for the closing of TIF Loan A. However, in the event TIF Loan A or TIF Loan B does not close on financing before the Automatic Expiration (defined below), then the release of TIF funds related to Project C, shall be limited to the amount of TIF Loan A or TIF Loan B respectively. Evidence of the Project Sources may include a term sheet from a lender, a letter of intent from a tax credit investor, a grant award letter from a nonprofit or governmental entity, a financial model by a tax credit investor evidencing deferred developer fee, or such other documents as may be produced from time to time in a similar transaction.

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.

Grant funds shall be evidenced in the form of an award or commitment letter and evidence that the developer has met all of the nonprofit or governmental entity's conditions of financing.

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 and/or an equity letter of intent from a tax credit investor. The Developer's Equity investment may include equity from the sale of Low-Income Housing Tax Credits, the Developer's contribution of land whether in whole or in part and/or a deferred developer's fee. In aggregate, Developer's Equity investment as established through evidence of financial sources 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 \$19,260,000 for Project A (the "Project A Cost") and \$17,954,000 for Project B (the "Project B Cost" and together with the Project A Cost, the "Project Cost"). Upon stabilization of each Project, defined as 90 days at 90% physical occupancy of the applicable Project, Developer shall provide the City with a cost certification of the total Project Cost and Financing ("Audit"), or of either Project if Project A and Project B are not completed simultaneously, prepared by SVA Certified Public Accountants or other certified public accountants reasonably acceptable to the City, to the City's satisfaction, for the City's review and approval, not to be unreasonably withheld, conditioned, or delayed. 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 Project A and/or B (which is equal to the amount of TIF Loan A or TIF Loan B, respectively) 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 provision shall only be applicable if the Building Permit for Project C has been issued and the full amount of either or both TIF Loans have been disbursed.

The Clawback shall be calculated as follows:

1. "Cost Savings" Project A = \$19,260,000, minus the Audited Actual Cost; and
2. "Financing Increase" Project A = Audited Actual Financing minus \$17,477,200.

1. "Cost Savings" Project B = \$17,954,000 minus the Audited Actual Cost; and
2. "Financing Increase" Project B = Audited Actual Financing minus \$17,180,000.

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.

4. Tax Credit Approval. TIF assistance to Project A is contingent upon Developer receiving an award of Section 42 low-income housing tax credits ("LIHTC") from Wisconsin Housing and Economic Development Authority ("WHEDA") in 2021. TIF assistance to Project B is contingent upon Developer receiving an award of LIHTC from WHEDA in 2021.

5. Disbursement Method. At closing for the applicable Project, the City shall disburse the TIF Loan applicable to that Project to a title company to be held in escrow. Developer shall have the right to lend a portion of the TIF Loan to each project, with the remainder held until the Developer secures a building permit for Project C ("Conditional TIF Funds").

At Closing, Project A shall not receive in excess of Three Hundred Ninety Five Thousand Dollars (\$395,000), and Project B shall not receive in excess of Four Hundred Fifty Four Thousand Five Hundred Dollars (\$454,500), subject to the following sentence.

The remaining One Million Seven Hundred and Seven Thousand Five Hundred Dollars (\$1,707,500) of TIF funding shall remain in escrow with the title company subject to release if Developer secures a construction permit for Project C on or before December 31, 2022.

6. 2021 Capital Budget Authorization. Funding for the TIF Loan is contingent upon an amendment to the City of Madison 2021 Capital Budget authorizing the expenditure of funds stated herein.

7. Exception to TIF Policy. Funding for the TIF Loan represents 69% of the TIF generated by all components of said Projects. Funding is contingent upon Finance Committee approval of an exception to the 50% Rule in TIF Policy. For the avoidance of doubt, this has been completed.

8. TID 46 Project Plan and Boundary Amendment. The City shall not make TIF funds available until the date of an approval of a TID 46 Project Plan and Boundary Amendment by the TIF Joint Review Board.

9. No TID Project Plan and Boundary Amendment Certification. In the event that the TID #46 Project Plan and Boundary amendment is not certified by DOR on or about April 30, 2022, Developer shall be obligated to repay all funds disbursed by the City and used by Developer as a conventional loan or loans, 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. Payments of principal and interest shall be made quarterly. All funds not spent or remaining in escrow shall be returned to the City.

For either Project A or B described herein, Developer shall perform on all requirements of the respective TIF Loan Agreement for the loan funds disbursed to Developer by the City ("City Loan"), including but not limited to the Clawback provision (Section 3), as adjusted for the partial funding, and the Tax Increment Guaranty (Sections 11 and 13). 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 Sections 11 and 13, 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 2031. In the event of the TID #46's non-certification, the City shall make its best

effort to secure TID certification in 2022 and receive such TID certification by DOR no later than on or about April 30, 2023.

10. Affordable Housing Fund Loan. TIF assistance to Project B is contingent upon the concurrent closing to Developer of \$1,680,000 of City of Madison Affordable Housing Initiative Fund financial assistance to the 68-unit affordable Project B. TIF assistance to Project A is not contingent upon any proceeds from the Madison Affordable Housing Initiative Fund financial assistance being deployed to Project A.

11. Method of Payment and Tax Increment Guaranty. The City's expenditure in providing each TIF Loan for the Project shall be repaid by Developer through tax increments generated by the applicable Project and/or cash payments by Developer. A schedule of the projected increment used to calculate each TIF Loan amount shall be attached to the Agreement ("Increment Schedule"). For the avoidance of doubt, TIF Loan A's Increment Schedule and TIF Loan B's Increment Schedule shall not rely upon one another.

12. 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. This obligation will be secured by a land use restriction terminable upon closure of TID 46.

13. Security and Personal Guaranty. The TIF Loan shall be evidenced by notes executed by Developer, or its assigns, to the City of Madison in the amount of One Million Seven Hundred Eighty Two (\$1,782,000) for Project A and Seven Hundred Seventy Four Thousand Dollars (\$774,000) for Project B bearing zero percent (0%) interest (together the "Note"). Developer shall execute mortgages in favor of the City of Madison securing payment of each TIF Loan (together the "Mortgage"). Upon release of the Conditional TIF Funds, a mortgage shall be recorded on the Project C parcel reflecting the amount of the Conditional TIF Funds. The City agrees, 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). A principal of Developer and its assigns, Jacob T. Klein, shall provide a personal guaranty of the respective TIF Loans to Project A and B.

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

15. 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. The Developer understands that it is 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.

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. For this Project, the goal is 25% utilization of Emerging Business Enterprises as defined by the Wisconsin Housing and Economic Development Authority.

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.

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

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

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

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

19. Material Changes. At the time of Closing, if any material changes to the size, use, financing 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).

20. Project Completion. Developer shall guarantee that the construction of the Project will be completed by December 31, 2023. 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 Sections 11 and 13.

21. 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.

22. 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, an updated survey of the Property. Developer shall be responsible for all lending costs and fees.

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

24. Automatic Expiration. The TIF Loan shall be null and void in the event that Developer does not commence construction on Project A and Project B, as evidenced by issuance of construction permits, by July 31, 2022.

25. Aggregation. At Developer's written request, but only in the circumstance that Project A and Project B are financed as a single tax credit project, the City will reasonably consider aggregating Project A, and Project B into a single development project, with a combined available increment equal to the amount allocated to Project A and Project B (i.e., \$2,557,000) based on total costs for the Project as set forth above, and with a Clawback based on the combined Cost Savings and Financing Increases as set forth in Section 3 above.

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.