



TO: Mayor Paul R. Soglin and Members of the Common Council

FROM: Judge Doyle Square Negotiating Team

RE: Addendum to the Report to the Judge Doyle Square Negotiating Team – BOE Motion

DATE: August 31, 2015

As of 3 pm on Monday, August 31st, agreement hasn't been reached by the parties to all of the items included in the August 24, 2015 Board of Estimates motion. While agreement has been reached by the parties on Issues (3) and (4) below, Items (1), (2) and (5) below remain open. Since these matters are not satisfactorily resolved and consistent with the Board of Estimates adopted motion, the Mayor has recommended referral of the matter to the September 15, 2015 meeting.

On Monday, August 24, 2015, the Board of Estimates considered the Report of the Judge Doyle Square Negotiating Team, the draft Amended and Restated Development Agreement and a Common Council Resolution, Legistar No. 39800. The Board of Estimates recommended approval of the resolution with the addition of the following language:

"The BOE recommends approval of the resolution, subject to satisfactory resolution of these issues prior to September 1:

- (1) Language on a Labor Peace Agreement;
- (2) Language on the timing and nature of reacquisition by the City of the hotel condominium unit and the future office expansion condominium unit;
- (3) Completion of the Real Estate Purchase Agreement;
- (4) Removal of the Developer's right of first refusal on leasing of parking utility spaces; and
- (5) More information on the TIF jobs grant and the other questions of the TIF Coordinator.

If these matters are not satisfactorily resolved, the BOE recommends referral of the resolution to the Council's September 15 meeting."

Subsequent to the Board of Estimates meeting, the City Negotiating Team conducted an additional negotiating session on Wednesday, August 26 to address the five areas identified in the motion.

A brief summary of the items is provided below.

(1) Labor Peace Agreement

The Developer has engaged in discussions to enter into a Labor Peace Agreement (LPA) with Unite Here, a labor union representing hotel employees. Due to both legal and practical issues, the Developer must negotiate directly with Unite Here in coming to the final terms of the agreement. Unite Here is the only interested union in representing hotel employees and have negotiated LPAs with developers and hotel operators around the country.

While the Developer has provided a workforce development agreement which asserts that it will enter into a LPA with hotel employees, as of 3 pm on August 31st, Unite Here does not find the agreement to be adequate. The agreement permits the Developer to enter into a LPA after the Project Commencement closing. However, this leaves the City with limited ability to enforce the agreement since the City's financing will have already been spent on the Project. Normally, the City could withhold its financing in order to enforce the agreement, but that will not be possible here.

(2) Reacquisition of Block 105 Condominium Units

Hotel Unit

One of the City's high priorities in pursuing the Judge Doyle Square development is to add additional hotel rooms adjacent to Monona Terrace with a room-block agreement to support Monona Terrace. The City and the JDS Development LLC agree that construction on the hotel must commence by May 1, 2017. It is the most efficient timing for the hotel since the construction team will already be mobilized on site and the hotel tower construction can continue without interruption or re-mobilization at a later date. Further, the developer will have posted approximately \$17.5 million in equity capital with the commercial lender at the Project Commencement closing in December, 2015. That equity capital isn't in a productive use until the hotel is completed and is operating, which is a significant motivation for JDS Development to move forward on the project in a timely manner.

To the extent that market or financial conditions prevent the hotel project from proceeding by May 1, 2017, there will be an agreement between the parties to permit the developer to extend its deadline and for the City to reacquire the hotel unit in order to complete the hotel if the developer does not.

As of 3 pm on August 31st, there wasn't satisfactory resolution of the preceding provision.

The cost for reacquiring the Hotel Unit is \$232,000 which is the proportionate share of the actual price the Developer will pay for the land.

Exact Sciences Office Expansion Unit

The Exact Sciences office expansion site is the third and final phase of the Judge Doyle Square development. Based on the underwriting analysis, the completion of the office building is targeted for 2023 with the property tax payments on the completed facility commencing in 2024. The Amended and Restated Development Agreement provides that in addition to expansion space for Exact Sciences, the site could also include another office tenant, additional hotel capacity or residential use (Section 5.4 (a) of the Amended and Restated Agreement). Given the development schedule to start construction in 2022, the multiple land uses that can be developed on the site and the fact that the site will have the

authorized zoning and approvals in place and available parking to support those uses, the City Negotiating Team did not seek a reacquisition option for this development site.

(3) Real Estate Purchase Agreement

At the time the Negotiating Team Report was submitted to the Board of Estimates on August 21, 2015, the Real Estate Purchase Agreement wasn't finalized. That has now been completed and is provided as Exhibit B to the Amended and Restated Development Agreement.

(4) Developer's Right of First Refusal on Leasing Parking Utility Spaces

The Lease Term Sheet included a provision to give JDS Development a right of first refusal (ROFR) on any blocks of spaces in the Public Ramp that the City may wish to make available to any third parties on a long-term basis (e.g. for a year or longer) along with an option to acquire any stalls in the public portion of the ramp that may become available during the lease term in the event the City constructs or secures other stalls for public use in the downtown and no longer desires to maintain all 600 stalls within the ramp.

This provision has been removed from the Lease Term Sheet.

(5) Additional TIF Jobs Grant and Related TIF Questions

JDS Development forwarded additional financial information to the Negotiating Team and City's TIF Coordinator on Thursday, August 27th. One piece of new information presented to the City was an enumeration of the extraordinary costs of locating Exact Sciences at this downtown location. The information provided note that these costs total \$12.1 million.

JDS Development also provided revised financial information for the parking structure, office building, and hotel. Of note is a budget of \$14,126,000 for Tenant Improvements by Exact Sciences. This is in excess of the \$12 million negotiated for Exact Sciences Tenant Improvements. The Negotiating Team wants to insure that the \$12 million TIF investment to Exact Sciences is only used for their Tenant Improvements, and as such, is recommending a change within the Restated Development Agreement to protect the City's interest in this regard.

As of 3 pm on August 31st, additional analysis is still being completed.

TIF Grant

There has been debate about the jobs-based TIF grant to Exact Sciences. TIF policy and state TIF law interpretation defines the TIF support as a grant where the property tax increment generated by the project, and by the increment guarantee, will be insufficient during the life of the TID to recover that cost.

Due to the fact that TID 25, the source of the funds, will close in 2023 or 2024 (prior to the recovery of the cost) renders the Exact Sciences financial support a grant. Regarding the guarantee of the property tax increment, the Amended and Restated Development Agreement seeks to address this issue in three ways:

1. By requiring a corporate *jobs* guarantee for the Jobs TIF subsidy, rather than a personal/corporate guarantee on the property tax increment (the developer would not agree to the latter).

2. By requiring a *modified* corporate property tax guarantee for the \$20.8 million TIF subsidy provided for the private accessory parking. That guarantee is a \$6.8 million net worth requirement of the JDS LLC along with a property tax increment test in 2032, with any shortfall either being made up by the developer through a cash payment or through assignment of all of the revenues from the private accessory parking to make up the shortfall.

3. By requiring a \$115,000 annual lease payment for the private accessory parking, and a \$4 million acquisition payment after 27 years, which offsets some of the \$20.8 million in TIF subsidy.

The estimated property taxes generated by the project are projected to cover the entire \$42.8 million contribution from TID 25, within approximately 20 years. Those taxes are being paid directly to the taxing jurisdictions rather than TID 25, because TID 25, similar to a sinking fund concept, paid those amounts in advance in lieu of issuing debt and repaying with interest through a new TID. The end result is the same; the project recovers the subsidy within the usual maximum statutory lifespan of a TID. The net effect on the taxing jurisdictions is a net positive – the property value is placed on the tax rolls in 2023/2024 rather than 2037 (or later), interest costs are avoided, and a portion of the parking revenues, including sale of the ramp, are returned to the City.