



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 – Guaranty Provisions

DATE: July 7, 2015

In the Report of the Judge Doyle Square Negotiating Team dated June 25, 2015 and presented to the Board of Estimates on June 29, 2015, the Negotiating Team described the developer guaranty provisions under negotiation and indicated they remained under discussion. Since the Board of Estimates meeting, two additional sessions between JDS Development LLC/Exact Sciences and the City Negotiating Team have been held (July 2 and July 6) and the following agreement has been reached on the guaranty terms. Those understandings are presented below as an addendum to the June 25, 2015 Negotiating Team Report.

As was discussed in the Negotiating Team Report to the Board of Estimates, the probability that these guaranties will be exercised is relatively low. These agreements are sought by the Negotiating Team to further mitigate risk in the event that little to none of the property value and jobs that JDS Development LLC and Exact Sciences represents will be created. The property tax revenues associated with the development are based on the developer's estimated assessed property values, which are somewhat less than an independent analysis made by the City Assessor. Those property values are multiplied by a tax rate that declines at 2% annually, which is conservative compared to recent actual tax rates.

Jobs- Based TIF Guaranty by Exact Sciences Corporation and JDS Development LLC

Exact Sciences Corporation (EXAS) and JDS Development LLC will provide a two stage guaranty of the jobs based TIF loan.

For the first stage, EXAS will execute a TIF Jobs Guaranty Agreement to guaranty that EXAS will retain and/or create 300 living wage jobs in the City of Madison by the date the Block 88 corporate headquarters office and research facility on Block 88 is occupied on July 1, 2017. EXAS will further guaranty that the number of jobs created and retained will grow to 400 jobs by January 1, 2019 and those jobs will be located in the Block 88 facility. Each job created will be valued at \$30,000 based on the City's provision of \$12.0 million in the form of a jobs-based TIF loan (\$12.0 million divided by 400 jobs = \$30,000 per job). To the extent the number of jobs created and/or retained doesn't meet or exceed the agreed upon number in 2017 and again in 2019, EXAS will have six months from each date to cure the situation and meet the guaranteed number. To the extent a deficiency exists following the cure period, EXAS will owe the City of Madison \$30,000 times the number of deficient jobs. To the extent the guaranteed

number of jobs are retained and/or created, EXAS’s guaranty will have been satisfied on January 1, 2019. Any payments of penalty will be deducted from the then current remaining TIF loan balance in the TIF increment schedule.

For the second stage, the lease between JDS Development, LLC and EXAS will include a relocation penalty. The City of Madison requires a means for recovery of Jobs-Based TIF amounts invested in the event of relocation of the jobs by EXAS. JDS Development LLC will be required to include this obligation in the lease’s relocation penalty based on a repayment schedule of \$1.5 M/year over the initial 8 years of the lease term. This amount is a portion of the total lease relocation penalty that would be allocated to the City of Madison as a means of satisfying the Jobs-Based TIF guaranty. The guaranty amount is summarized below.

End of Year Following Occupancy	Initial TIF Loan Amount	Amount of Loan Repaid	Guaranty Amount
Occupancy	\$12.0M	-	\$12.0M
1 <sup>st</sup>		\$1.5M	\$10.5M
2 <sup>nd</sup>		\$1.5M	\$9.0M
3 <sup>rd</sup>		\$1.5M	\$7.5M
4 <sup>th</sup>		\$1.5M	\$6.0M
5 <sup>th</sup>		\$1.5M	\$4.5M
6 <sup>th</sup>		\$1.5M	\$3.0M
7 <sup>th</sup>		\$1.5M	\$1.5M
8 <sup>th</sup>		\$1.5M	Fully Satisfied

Private Accessory Parking Ramp TIF Increment Repayment Obligation (Guaranty)

JDS Development LLC would be required to guaranty the incremental property tax revenues from development on Blocks 88 and 105 sufficient to offset the tax incremental financing used to construct the private accessory parking on Block 105 (\$20.8 million). JDS Development LLC’s form of guaranty would be structured as follows:

- Tier 1 – Collateral Assignment of Parking Income
  - Collateral assignment provides for allocation of 100% of the income from private accessory parking to cover the first \$10.0 M of TIF repayment obligation.
  - Title remains in the name of City or CDA until guaranty obligations are satisfied and it is transferred in accordance with the terms of the development agreement. The incremental revenue schedule will be reviewed at end of Year 15 (True-up) which triggers the collateral assignment mechanism in the event of any shortfall against the agreed-to TIF increment schedule. The collateral assignment remains in effect until the entire TIF increment schedule is satisfied.
  - The TIF increment schedule will account for the \$4.0 M lease buyout / annual lease payments / participation payments before the collateral assignment will trigger.
- Tier 2 – JDS Development LLC Corporate Guaranty

- JDS Development LLC will provide a \$10.8 M corporate guaranty at closing. JDS Development LLC will also provide a \$10.8 million net worth covenant.
- The corporate guaranty triggers at end of 27th year in the event of any deficit under the TIF increment schedule.
- The City will place a subordinated mortgage on the Block 105 development that the City would exercise only if the senior mortgage holders exercise their senior mortgages.

In addition to the guaranties described above, JDS Development LLC will make an annual base lease payment for the private accessory parking facility of \$40,000 per year. In addition, JDS Development LLC would execute a participation agreement for the private parking structure whereby the City shares in 20% of the ramp's net income during the lease term. This participation revenue stream is estimated to be approximately \$75,000 per year.

The parking structure buyout in Year 27, based on \$4.0 M purchase price after 27 years subject to collateral assignment provisions as described above. The payments to the City over the term of the lease plus the buyout are approximately \$7.0 million.