



DATE: June 24, 2016

TO: Board of Estimates

FROM: Judge Doyle Square Negotiating Team

RE: Addendum to the June 10, 2016 Informational Report on the Development Agreement with Beitler Real Estate Services, LLC

### **Introduction**

On June 13, 2016, the Board of Estimates received an informational report from the City Negotiating Team regarding the status of the negotiations and the unresolved issues in the development agreement. As of June 10, 2016, there were four issues that remained unresolved:

1. Development Services Agreement terms;
2. Timing of the demolition of the Government East Garage;
3. Project Labor Agreement and Labor Peace Agreement language;
4. Termination language.

Beitler had asked that the Board of Estimates review these issues at its meeting of June 13, 2016 and determine its position on the respective items. Based on the direction from the Board of Estimates, the City Negotiating Team and Beitler continued negotiations and have reached a negotiated development agreement for the Board of Estimates consideration.

The proposed resolution of the four unresolved issues is provided in the Table on Page 2.

Appendix A to this Informational Report provides a brief summary of each proposed Article of the proposed development agreement. Appendix B provides a schedule of key actions going forward. Appendix C provides a summary of the financial elements of the proposed Beitler development.

The proposed development agreement is attached for your review. Further, a draft resolution is also attached if you choose to take action and move the item to the Common Council for consideration.

The history of the project, the goals for the development, the RFP issued by the City, as well as the Beitler responses and interview can also be found in the Gallery section on the Judge Doyle Square website at: [www.cityofmadison.com/planning/judgedoylesquare/](http://www.cityofmadison.com/planning/judgedoylesquare/).

## Review of the Unresolved Issues in the Development Agreement

Item at Issue	City Position	Beitler Position	Negotiated Position
Development Services Agreement (DSA) Terms (Section 5.1(a))	City to coordinate design and construction of the public development (new parking garage) with Beitler. City would execute a DSA with Beitler for services and pay time and materials up to a maximum not-to-exceed contract of \$250,000.	Beitler to have day-to-day management of the public development including directing team members of the public development. The City would execute a DSA in the amount \$1.5 million, payable over 20 months at \$75,000 per month. (Estimated design and construction period)	Beitler modified language in Section 5.1 of the agreement and Exhibit D to be more responsive to the City's concerns.  City accepted Beitler's proposed fee structure.
GE Garage Demolition Timing Section 5.1(e)	Beitler has the right to request that GE be demolished in advance of the completion of the new garage on Block 88, subject to the City, in its sole discretion, finding adequate replacement parking.	Beitler has the right to request, after securing financing for at least one of the private development elements to be constructed on Block 105, that the City, on sixty-day notice, vacate the GE ramp and commence demolition.	Beitler accepted City's language.
Project Labor and Labor Peace Agreements Sections 5.2(f) & 5.3(c)	City wanted a Beitler commitment to enter into a Project Labor Agreement during the construction period and a Labor Peace Agreement for the operation of the hotel.	Beitler has offered language that the private development's general contractor will be responsible for all organized labor agreements in accordance with customary practices in the Madison market. Beitler has offered good faith negotiations for a labor peace agreement.	City accepted Beitler's language.
Termination Provisions Section 12.1(b)	Beitler must comply with the Schedule in Section 5.2(d) unless the parties agree to extend the date.	Once Beitler has commenced one private development element, the schedule in Section 5.2(d) for the remaining elements no longer would apply.	Beitler accepted City's language.

## Appendix A - Summary of the Proposed Development Agreement

### *Article I – Development of the Project*

The project will implement option B of the Beitler Request for Proposals response which was selected by the Common Council on April 19, 2016, and is comprised of three private development project elements.

1. On Block 88, an apartment element of approximately 144 units and a retail/commercial component of approximately 33,400 square feet plus ancillary parking.
2. On Block 105, an apartment element of approximately 210 apartments and a retail/commercial component of approximately 7,800 square feet plus ancillary parking.
3. On Block 105, an urban mixed-use hotel element of no less than 250 guest rooms within approximately 164,000 gross square feet of floor area plus ancillary parking.

The public development consists of two public development project elements, the replacement of the City's Government East garage with an approximately 600 stall underground ramp, and a bike center on Block 88.

### *Article II - Division and Leasing of the Property*

Upon completion of the public ramp on Block 88, the City will lease to Beitler portions of the property on Blocks 88 and 105 under terms provided in Exhibit B of the development agreement. Key elements of those terms are:

Term: 98 years with two 50-year extensions options

Rent: Block 88 apartment parcel: \$180,000 annually

Block 105 apartment portion: \$225,000 annually

Block 105 hotel portion: \$350,000 annually

Rent Escalation: Beginning in the 5<sup>th</sup> lease year, rent will escalate 5% every 5 years.

Rent Commencement: First payment will begin 10 months after issuance of the Certificate of Occupancy by the City.

Property Taxes: The private development will pay its property taxes.

Subordination: Any debt will be subordinate to the ground lease agreements.

Termination: 1. At the end of the term of the ground lease agreements, including extensions;  
2. In the event of default under the ground lease agreements;  
3. Failure to comply with the timeframes of Article V of the dev agreement;  
4. By mutual agreement of the parties.

The City will create, approve and record a two-lot certified survey map for Block 88 prior to the public development closing on Block 88 to create a MMB parcel and a Block 88 development parcel.

### *Article III - Public Development Financing*

The City will start the construction of the underground public parking facility by May 1, 2017 and be responsible for all costs of the public ramp, City fleet parking and the bike center. Sources of funds for the public development are Parking Utility reserves (estimated at \$13 million) and TID #25 cash (estimated \$24 million).

### *Article IV - Land Use Approvals; Permitting*

The City and Beitler will each pursue the needed land use approvals for their respective developments on Blocks 88 and 105, following the Master Development Schedule in Exhibit C.

*Article V - Construction of the Project*

Section 5.1 - Public Ramp. The City of Madison will be responsible for the design and engineering of the public ramp, including the bike center, the preparation of bid documents, the bidding process and the construction of the public ramp on Block 88, and the demolition of the Government East facility on Block 105 prior to the private development closing. The public ramp shall be completed by November 30, 2018.

Beitler has the right to request that the Government East Ramp be demolished in advance of the completion of the public ramp on Block 88, subject to the City, in its sole discretion, finding adequate replacement parking.

The City will contract with Beitler to provide pre-construction and construction phase coordination services as described in Attachment D, on a time and materials basis, for a not-to-exceed cost of \$1,500,000 to be paid in level amount over 20 months.

Section 5.2 – Private Development. All private development costs are to be responsibility of Beitler. The closing of the financing of not fewer than one private development element, as described in Article I, must occur within 24 months of the public ramp completion date. The closing of the financing for the second and third private development elements must occur no later than 36 months after the public ramp completion date.

Prior to commencement of the private development, Beitler shall cause its general contractor to execute an agreement with the City governing targeted business participation with a private development goal of at least 10% of all construction contracts awarded to targeted businesses.

The private development general contractor will be responsible for all organized labor agreements in accordance with customary practices in the Madison market.

Section 5.3 – Block 105 Hotel. The plans for the Block 105 Hotel advanced by Beitler will incorporate the brand and operator of the hotel and a room block agreement to support Monona Terrace and will be subject to review and approval by resolution of the Common Council prior to the private development closing.

No later than the Block 105 Hotel opening date, Beitler and/or its successor in interest shall supply to the City evidence that Beitler, or its successor in interest, has entered into (or caused the Hotel operator to enter into) good faith negotiations for a labor peace agreement with a labor organization that validly represents hotel employees and seeks to represent the Block 105 Hotel workers.

*Article VI - Conditions Precedent to Project Commencement*

Prior to the public development commencement, the City must (1) approve and record the Block 88 certified survey map, (2) budget funding for all of the public development, (3) receive certification of a TID #25 Project Plan Amendment from the Wisconsin Department of Revenue, and (4) receive land use approvals for the public ramp including the bike center.

Prior to the private development commencement, City must (1) complete the public ramp and (2) deliver to Beitler a Phase I environmental report and any recommended follow-up testing covering the entire property. Beitler must (1) execute the ground lease agreements, (2) receive land use approvals for each private development element and (3) receive approval from the Common Council of each element of the Block 105 Hotel development set forth in Section 5.3 of the agreement.

*Article VII – Article XI – City Boiler Plate Provisions*

*Article XII – Termination of the Agreement*

The development agreement will terminate if:

1. The City fails to satisfy all of the public development conditions by the public development closing deadline;
2. Beitler fails to comply with the schedule in Section 5.2 of this development agreement; and
3. The date on which all of the parties' other respective obligations under this development agreement are satisfied.

## Appendix B - Schedule

### *City Financial Participation, Land Use Approvals*

- Development Agreement to BOE June 27, 2016
- Development Agreement to Common Council July 5, 2016
- Sign Development Agreement July 15, 2016
- 2017 Executive Capital Budget to Council Sept 6, 2016
- Board of Estimates Action on Capital Budget Sept 26, 2016
- Final 2017 Capital Budget Adopted by Council Nov 14-15, 2016
- Land Use and CSM Approvals/Recordings/Permits By May 1, 2017
- Public Development Commencement Closing May, 2017

### *TID #25 Project Plan Amendment*

- Letter to Overlying Taxing Jurisdiction July 25, 2016
- Introduce Resolution to Common Council August 2, 2016
- Organizational Joint Review Board Meeting August, 2016
- Plan Commission Public Hearing and Action August 29, 2016
- Board of Estimates Action September 12, 2016
- Common Council Action September 20, 2016
- Joint Review Board Action Early Oct, 2016
- Documentation to DOR (deadline) October 31, 2016
- DOR approval of Project Plan Amendment First Quarter 2017

### *Public Ramp Construction*

- Design, Bid and Award Public Ramp Construction July 2016 - May 17
- Demolition of MMB Annex By May 1, 2017
- Complete Construction of Block 88 Public Ramp November 2018
- Commence Demolition of Government East Garage on Block 105 November 2018

## Appendix C - Financial Elements of the Beitler Development

	<u>BEITLER</u>
	<u>Option B</u> <u>Underground</u>
Hotel Square Feet	164,166
City Offices	
Residential Square Feet	320,435
Office Square Feet	in retail s.f.
Retail and Bike Center Square Feet	58,240
Parking Square Feet	<u>371,102</u>
Gross Square Feet	913,943
Hotel Rooms	252
Hotel Location	Block 105
Hotel Style	Select Service
Function Space Square Feet	19,545
Parking Stalls	1,097
Parking Structure Cost per Stall (public stalls only for Beitler)	<b>\$63,312</b>
Public Stalls (Govt East Replacement; not needed for development)	576
City Fleet Stalls	40
<b>Total Cost</b>	<b>\$170 million</b>
Cost per Square Foot	\$186
Debt	\$85 million
Equity	<u>\$46 million</u>
<b>Total Private Contribution</b>	<b>\$131 million</b>
<b>Total Cost less Private Contribution ("Gap")</b>	<b>\$39 million</b>
TIF	\$24 million
Parking Utility	\$13 million
City Fleet Parking	\$1 million
Bike Center	<u>\$1 million</u>
<b>Direct Public Investment</b>	<b>\$39 million</b>
City Land Value -- <b>Indirect Public Investment</b>	<b>\$11 million+</b>
<b>Public Investment before Land Sale Proceeds</b>	<b>\$50 million</b>
<b>Net Land Sale Proceeds</b>	<u><b>-\$7 million*</b></u>
<b>Total Public Investment</b>	<b>\$43 million</b>
Estimated Assessed Value of Project	<b>\$87 million</b>
Assessed Value Added per TIF Invested	<b>3.6 to 1</b>
New TIF from Project Value over 27 years	<b>\$18 million</b>
TIF from remaining time in TID 25 from Project Value	<b>\$4 million</b>
Estimated post-2014 TID 25 Balance with Project	<b>\$40 million</b>

\* Block 88 lease of \$180,000 / year for 10 years and Block 105 lease of \$575,000 / year for 10 years using 3% discount rate