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TO: Mayor Paul R. Soglin and Members of the Board of Estimates

FROM: Judge Doyle Square Negotiating Team

RE: Report to the Judge Doyle Square Negotiating Team

DATE: August 20, 2015

## **SUMMARY AND RECOMMENDATIONS**

### **Summary of Key Provisions in the Proposed Amended and Restated Agreement**

As directed by the Common Council at its July 7, 2015 meeting, the Judge Doyle Square Negotiating Team has continued the negotiation regarding an Amended and Restated Development Agreement with JDS Development LLC and Exact Sciences Corporation. Based on those continuing negotiations and periodic check-ins with the Mayor and the Board of Estimates during July and August, the City Negotiating Team has made continued progress in its negotiations and is presenting the product of that work in the form of a Common Council Resolution, a City Negotiating Team Report and an Amended and Restated Development Agreement comprised of the following key elements. An asterisk at the end of the bullet point below indicates a provision that was amended or added since the execution of the Development Agreement on July 15, 2015.

- Land Use Elements
  - A 250,000 square foot corporate headquarters and research facility for Exact Sciences on Block 88 with a 107,000 square foot expansion site on East Doty/South Pinckney Street corner of Block 105.
  - A 216 room urban-style hotel, at a minimum, on the East Wilson/South Pinckney Street corner of Block 105.\*
  - A 600 stall public parking facility to replace the Government East Ramp to be owned and operated by the Madison Parking Utility on Block 105, including 40 replacement stalls for municipal fleet parking to be displaced from Block 88.
  - A 650 stall private parking facility to serve Exact Sciences and the hotel on Blocks 88 and 105. This ramp would be owned by the City of Madison Community Development Authority and leased to the developer for 27 years.

- Retail uses at grade along South Pinckney Street including a 2,790 square foot bicycle center on East Doty Street.\*
- Financial Terms
  - Private investment by JDS Development LLC of at least \$130 million.
  - City funding of the Government East replacement parking facility in the amount of \$19.2 million.
  - City capital funding for a Bicycle Center of \$1 million.
  - Public investment in the JDS Development LLC/Exact Sciences development of \$46.7 million, including \$42.5 million from TID # 25 and \$4.2 million from the proceeds of the sale of Blocks 88 and 105; comprised of:
    - Direct City financial support in the amount of \$12.0 million to Exact Sciences to retain and create 300 living wage jobs in the City of Madison by initial occupancy of the Block 88 office facility in July 2017 and a total of 400 jobs by January 2019, all of which are to be located at the Judge Doyle Square site.
    - City funding for the private accessory parking facility in the amount of \$20.8 million.
    - JDS Development LLC will charge all private parking users a commercially reasonable parking rent, including Exact Sciences.\*
    - City financing for the land acquisition cost for the private development of \$13.9 million, the estimated fair market value of the land to be acquired for the private development on Blocks 88 and 105. This amount includes \$9.7 million from TID # 25 and \$4.2 million from land sale proceeds.
  - Exact Sciences will provide a financial guaranty to create 400 jobs at the Judge Doyle Square site by January 2019 and a relocation penalty is built into the lease between JDS Development LLC and Exact Sciences.
  - JDS Development LLC will 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).
  - The City will use TID 25 for (1) the Exact Sciences jobs-based TIF loan, (2) for construction of the private accessory parking and (3) the land acquisition costs.
- Other Provisions and Terms
  - The transfer of the City's Block 88 and 105 property rights to JDS Development will occur at the Project Commencement closing in December 2015.\*
  - The City will remove the Annex on the Madison Municipal Building by December 2015. Site work will be initiated on Block 88 by JDS Development LLC in December 2015 following the clearance of conditions on rezoning of the site and the Project Commencement closing.
  - The Government East parking facility demolition will require that the facility be out of service for 17 months from March 2016 through July 2017. Temporary parking solutions are being sought by the City.

- JDS Development LLC will utilize a construction phase targeted business participation goal of 10%, and workforce utilization goals of 6% for racial ethnic and 4% for women participation as recommended by the City's Department of Civil Rights.\*
- Exact Sciences has committed to support diverse hiring through their existing relationship with the Urban League of Greater Madison, launching featured employer events twice a year around Exact Sciences' hiring cycles and summer internships.\*
- JDS Development LLC will enter into a Project Labor Agreement for the construction of the privately owned elements of Judge Doyle Square.\*
- JDS Development LLC has engaged in discussions to enter a Labor Peace Agreement but has not agreed to include this term in the Development Agreement.\*
- The City Negotiating Team and JDS Development LLC continue to work on a mechanism for the City's reacquisition of the Block 105 condo units for the hotel and the office tower if those elements don't proceed within the expectations established in the negotiating sessions. A resolution of this issue is expected prior to September 1, 2015.\*

### **Request for Proposals Process**

On February 3, 2015, the Common Council approved the Judge Doyle Square Request for Proposals (RFP) document and the issuance of the RFP and directed the Board of Estimates to make the final selection and recommendations for the Common Council's consideration following the receipt of development proposals on May 1, 2015. The Judge Doyle Square Negotiating Team was directed to analyze the proposals and to report to the Mayor and the Board of Estimates throughout the process. The RFP specified that the City may reject or accept proposals at its own discretion, and holds the right to independently negotiate the final terms of the project.

On May 1, 2015, four proposals were received by the City for the development of the Judge Doyle Square project, including the JDS Development LLC/Exact Sciences proposal. On May 19, 2015, the Common Council, with recommendations from the Judge Doyle Square Negotiating Team and the Board of Estimates, directed the Judge Doyle Square Negotiating Team to immediately engage JDS Development LLC/Exact Sciences in an exclusive negotiation of a preliminary development agreement and report back to the Board of Estimates with a report and draft agreement by its June 29<sup>th</sup> meeting. Subject to the future action by the Board of Estimates and the Common Council, the Resolution also directed that a final development agreement be completed for the Board of Estimates consideration by its August 24<sup>th</sup> meeting.

On July 7, 2015, the Common Council, with recommendations from the Judge Doyle Square Negotiating Team and the Board of Estimates, authorized the Mayor and City Clerk to execute a Development Agreement with JDS Development LLC for the Judge Doyle Square Project. The Development Agreement was executed by both parties on July 15, 2015. The Common Council also directed that the Judge Doyle Square Negotiating Team continue the exclusive negotiation with JDS Development/Exact Sciences over an Amended and Restated Development Agreement and prepare a Negotiating Team Report with an Amended and Restated Development

Agreement for the Board of Estimates' consideration at its August 24, 2015 meeting, to be followed by Council action.

The City Negotiating Team has analyzed the JDS Development LLC/Exact Sciences RFP response, and with oversight from the Mayor and the Board of Estimates, has negotiated with JDS Development LLC/Exact Sciences as directed by the Common Council on May 19, 2015. Twenty negotiating sessions were conducted with JDS Development LLC through August 20, 2015. The Negotiating Team reported back to the Board of Estimates on June 8, July 27 and August 10 for negotiating instructions and met with the Mayor on six occasions during this process for feedback and direction. In addition, JDS Development LLC and Exact Sciences made a presentation of their proposal to elected officials and the public on June 2, 2015.

A summary of the JDS Development LLC/Exact Sciences proposal submitted on May 1, 2015 is attached as Appendix A. The complete proposal can be accessed in its entirety on the Judge Doyle Square website at: <https://www.cityofmadison.com/planning/judgedoylesquare/gallery>.

## **RFP NEGOTIATIONS TO ACHIEVE COMMON COUNCIL OBJECTIVES – JUNE 25 to AUGUST 20**

### **Items to be provided by JDS Development for the August 20 Negotiating Team Report**

The Development Agreement required JDS Development LLC to provide the following information and documents:

- Completed TIF Application by July 31 (See TIF Analysis Section)
- Preparation of a mutually acceptable Purchase Agreement by August 15 (See Exhibit D of the Amended and Restated Agreement)
- Preparation of a mutually acceptable Interim City Ground Lease (No longer required due to the change in the real estate closing date)
- Debt and Equity commitments and the amount of construction loan proceeds to be disbursed at closing by the lender(s) (See Project Financing Section/Debt and Equity Commitments)
- EXAS lease agreement (See Project Financing Section/Exact Sciences Lease Terms)

### **Items to be provided by the City Negotiating Team for the August 20 Report**

The Common Council Resolution adopted on July 7, 2015 required:

- TIF Gap Analysis with the Financial Term Sheet (See TIF Analysis Section and Appendix C to this Report)
- Analysis of potential impacts on the parking utility of 650 additional parking stalls if public parking is allowed in leased area during "off hours" (See Parking and Transportation Section/Financial Impacts on the Parking Utility)
- Analysis of impact on Parking Utility and City budget from 17-month loss of revenue from Government East parking structure (See Parking and Transportation Section/Financial Impacts on Parking Utility)
- Evidence of the viability of a 1:4 or 1:5 car/room ratio for the proposed hotel as used in other "shared parking" environments (See Parking and Transportation Section/Hotel Parking)

- Clarification of the type of financial instrument and terms of the City's \$12M investment in jobs TIF (See Project Financing Section/Guarantees)
- Clarification of the type of financial instrument for the \$12M/12 year jobs guarantee offered by Exact Science (See Project Financing Section/Guarantees)
- Clarification of reporting and oversight mechanism for ensuring compliance with jobs TIF terms (See Project Financing Section/Reporting and Oversight)
- Clarification on whether or not Exact Sciences will guarantee the lease of the entire space, and if so, what type of financial instrument will be used for the guarantee (See Project Financing Section/Guarantees)
- Report by real estate attorney consulting with the City on how optimal protections of the City's interests in the 1031 tax credit land swap (See Appendix B to this Report)

One of the conditions that Exact Sciences required of the City in the RFP response in order to relocate its corporate headquarters and research facility to the Judge Doyle Square site was a rigorous timeline to execute a Development Agreement (Council action by July 7, 2015 and execution of the Agreement by July 15, 2015) and an Amended and Restated Agreement (Council action by September 1, 2015 and execution of the Agreement by September 15, 2015).

JDS Development LLC has worked with its 1031 exchange partner to change the properties to be used in the 1031 transaction at Judge Doyle Square. As a result of this change, there no longer needs to be an early real estate closing at the time the Amended and Restated Agreement is executed, which is scheduled for September 15, 2015. This change will remove the need to transfer all the property to the developer prior to project commencement and will remove the need to negotiate and execute the requisite interim City ground leases and reacquisition provisions for the period prior to project commencement. However, it is important to note that Exact Sciences has not changed its condition to act on the Amended and Restated Agreement by September 1, 2015 and to execute that agreement by September 15, 2015.

#### **Deliverables Related to Project Commencement Closing in December 2015**

The July 15, 2015 Development Agreement requires a number of deliverables associated with the Project Commencement Closing in December 2015 that are not needed for the execution of the Amended and Restated Agreement. Per the Amended and Restated Agreement, the items that need to be provided prior to the Project Commencement closing are as follows:

- Hiring Diversity MOU from Exact Sciences (See Other Provisions Section/Project Commitment to Diversity)
- EXAS TDM Plan (See Parking and Transportation Section/Exact Sciences TDM)
- Land Use Approvals (See Master Schedule Section)
- Construction Administration Agreement (Not included in this Report/To be completed prior to Project Commencement Closing)
- Council Approval of Hotel Plans (e.g., style, size, location, room count, brand, operator, room block agreement, targeted business participation, labor agreements) (Not included in this Report/To be completed prior to Project Commencement Closing)

The items that need to be provided prior at the Project Commencement closing in December are as follows. These legal documents have not been drafted at this time but will be drafted in accordance with the provisions of the Amended and Restated Development Agreement following its execution.

- Conveyance of Public Units
- Master Lease to Developer
- Condo Declaration Recording
- Disbursing Agreement
- Exact Jobs TIF Guaranty
- JDS Relocation Guaranty
- Parking TIF Guaranty
- Collateral Assignment Guaranty
- Developer’s Corporate Parking Guaranty

## **PROJECT FINANCING**

### **Debt and Equity Commitments**

The response by JDS Development LLC, to the City’s Request for Proposals for the development of the Judge Doyle Square project envisioned debt and equity commitments of approximately \$130 million on a total project cost of approximately \$200 million. The \$130 million was allocated approximately \$85 million to debt financing and \$45 million from private equity sources.

In addition, the developer is utilizing a land transaction allowed under Internal Revenue Code Section 1031 (“1031 transaction”) to bring an additional \$13.9 million in equity to the project. Through the 1031 transaction, an investor will use \$15 million in proceeds from a sale of land and property to purchase the land and development rights for the private elements of the project on Blocks 88 and 105.

However, the developer has identified the land cost as a gap in the project – in other words, the developer cannot pay the full market value for the land and finance the remainder of the project. As such, the developer has proposed that the City retain \$1,063,000 (equal to \$20 per square foot for the private land and air rights on the two blocks) of the \$15 million in purchase proceeds and return the remaining \$13.9 million to the developer through a grant from TID 25 proceeds.

The TIF application submitted by the developer further reinforces this level of private financing, with a total of \$133.6 million of debt and equity, allocated as follows by phase of the project (the figures in the table below do not include the cost of public elements of the project – including a public parking ramp, parking for City fleet vehicles and a bike center, estimated at \$20 million):

TIF Application	Block 88 Bldg	Hotel	Block 105 Bldg	Total	Private Parking	Grand Total
Debt	\$ 36,709,000	\$ 34,852,000	\$ 17,701,000	\$ 89,262,000	\$ -	\$ 89,262,000
Direct Equity	15,066,000	17,636,000	11,655,000	44,357,000	-	44,357,000
	\$ 51,775,000	\$ 52,488,000	\$ 29,356,000	\$ 133,619,000	\$ -	\$ 133,619,000
Jobs TIF	\$ 12,000,000	\$ -	\$ -	\$ 12,000,000	\$ -	\$ 12,000,000
Equity / Land Cost TIF Grant	13,937,000	-	-	13,937,000	-	13,937,000
TIF for Private Parking	-	-	-	-	20,800,000	20,800,000
	\$ 25,937,000	\$ -	\$ -	\$ 25,937,000	\$ 20,800,000	\$ 46,737,000
Sources Total	\$ 77,712,000	\$ 52,488,000	\$ 29,356,000	\$ 159,556,000	\$ 20,800,000	\$ 180,356,000
Development Cost	\$ 77,712,000	\$ 52,488,000	\$ 29,356,000	\$ 159,556,000	\$ 20,800,000	\$ 180,356,000
Debt Share	47.2%	66.4%	60.3%	55.9%	0.0%	49.5%
Equity Share	19.4%	33.6%	39.7%	27.8%	0.0%	24.6%
Public Share	33.4%	0.0%	0.0%	16.3%	100.0%	25.9%
	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%

JDS Development LLC has submitted materials identifying the sources of debt and equity for the project. These materials have been reviewed by the Negotiating Team and reference calls were made to two of the banks providing debt financing.

Regarding debt financing, a consortium of banks led by Wisconsin-based Greenwoods State Bank (headquartered in Lake Mills), will provide financing for the entire project. The \$36.7 million of debt for Phase 1 (the Block 88 office building where Exact Sciences will be located) is under review by the consortium which will number no more than 8 banks. At this time, Greenwoods State Bank believes that at least 5 banks in the consortium will be Wisconsin-based. A major bank in the transaction is Simmons First National Bank, headquartered in Pine Bluff, AK, which is wholly-owned by Simmons First National Corporation, with assets of \$7.6 billion. According to Greenwoods State Bank, each of the banks has the ability to provide between \$5 million to \$20 million to the transaction.

The loan for Phase 1 will have a 25 year amortization schedule with a 7 year term, meaning that a balloon payment will be necessary in the 7<sup>th</sup> year, necessitating a refinancing at that time by the developer. This length of term is common in real estate financing, reflecting business cycles, as well as the possibility that anchor tenants, in this case Exact Sciences, may have changing space needs. As collateral, the lenders will hold a first mortgage on all phases of the development, including development rights and assignment of all rents.

The banks have conducted a due diligence review of developer pro formas and conducted market analyses. According to the lenders, the strengths of the transaction include the level of developer equity in the project, the City's level of commitment, strong (two to three times) net income to debt service ratios in the pro formas and the location of the development in downtown Madison. Risks of the project are primarily the long-term business growth of Exact Sciences. The banks have also reviewed Exact Sciences balance sheet and are encouraged by the level of cash held by the company which provides confidence that it can absorb a number of challenges as it grows. Specifically, the banks are confident that Exact Sciences will be a strong company if it meets its projections.

There are two provisions that the banks are requiring that should give the City additional confidence in the transaction. First, the banks are requiring that all of the equity (\$43 million) be deposited as cash or marketable securities in an account at Greenwoods State Bank. Second, the lease with Exact Sciences will include a reserve fund (similar to a security deposit) – an amount equal to 24 months of lease payments will be deposited and held by a third party and outside of the control of Exact Sciences.

With debt financing supporting two-thirds of the cost of the hotel, a secondary concern of the banks is the hotel market dynamics in downtown Madison. Specifically, the construction of the Marriott AC Hotel on the former Pahl Tire site at the corner of East Washington Avenue and North Webster Street, could be proximate enough to the Judge Doyle Square development and the Monona Terrace Convention Center to affect the ability to meet pro forma estimates for the Judge Doyle Square hotel.

All of the banks in the consortium still have to review materials to be provided by the developer, including the final Exact Sciences lease terms, land use documents, TIF financing agreements, parking lease, environmental analyses, and the Amended and Restated Development Agreement between the developer and the City. The proposed debt will also need to be reviewed and approved by the respective loan committees at each of the participating banks. This process is expected to conclude by September 15, 2015.

Regarding the equity contribution to the development, JDS Development, LLC, submitted letters from Bank of the West (a subsidiary of the BNP Paribas Group) and Bank Mutual asserting the ability of the developer group, including Hammes Company and Majestic Realty, to bring the represented equity to the transaction. Bank of the West has financed in excess of \$1 billion of real estate loans with Edward Roski, Jr., the owner of Majestic Realty Co., and, as such, has a working understanding of the financial capacity of Mr. Roski and his company. Bank Mutual made a similar representation regarding its work with both Hammes Company and Majestic Realty. According to Forbes Magazine, Mr. Roski's net worth is approximately \$4 billion. Finally, as mentioned above, the banks involved in the debt financing for the development are taking strong steps to ensure the equity commitment for all phases of the development is provided up front.

### **Exact Sciences Lease Terms**

Exact Sciences and the developer are currently in negotiations to establish a letter of intent ("LOI") that will include the outline of terms for leasing the office building to be constructed on Block 88. The developer and its legal counsel have represented that the lease will also reference development of a second office tower on Block 105, but the LOI reviewed by the Judge Doyle Square Negotiating Team did not make any reference to such a provision. The LOI does state that the construction of the Block 88 office tower and the associated tenant lease is not contingent on the timing of construction of a hotel on Block 105.

The parties are required to negotiate the LOI in good faith. The LOI is non-binding to both parties, and can be revoked with written notice. A lease will be finalized prior to project commencement closing. The LOI includes the following key provisions and appears to be consistent with representations made by Exact Sciences and the developer regarding inclusion



of parking within the lease, termination fees if Exact Sciences chooses to vacate the building, and the per square foot lease threshold that Exact Sciences stated it was willing to pay relative to suburban lease space.

#### Lease Space

The office building will include 250,000 square feet. Exact Sciences' space requirements at the time of occupancy have not been finalized. Therefore, Exact will lease 200,000 square feet, unless the developer ("Landlord") can lease 75,000 square feet to a tenant that is acceptable to both Exact Sciences and the landlord. Under that condition, Exact Sciences will lease 175,000 square feet and can expand into more space by giving the Landlord at least 12 month's notice. If that condition is not fulfilled, then Exact Sciences will lease the 200,000 square feet and the Landlord will attempt to lease the remaining space. Exact Sciences can expand into the remaining 50,000 square feet with 24 month's notice and a requirement to pay the cost of any leases of that space, as well as relocation costs for the tenants.

#### Parking

The lease will include 1.85 parking spaces per 1,000 square feet of leased space in a 600 stall ramp. At the lease space levels described above, Exact Sciences will initially have access to between 324 and 370 spaces as part of its lease. Annually, Exact Sciences will make a rent payment equal to the per stall share of \$40,000 divided by 600 stalls. As such, Exact Sciences will pay between \$21,600 and \$24,667 annually for its stalls (or approximately \$5.55 per month). Exact Sciences will also be able to lease additional parking stalls at commercial market rates. The difference between the Developer's rent payment to the CDA and Exact's rent to the development will be assumed by the Developer.

#### Lease Term

The base lease term is 15 years, with four (4) 5-year extensions. The lease payment will increase by 2.25% annually.

#### Rent

The rent is based on a percentage of the hard and soft construction cost of the office building, less city, county and state financial support (i.e., Jobs TIF). There is a maximum rent level that cannot be exceeded, regardless of the construction cost of the building. If the construction costs are less than a pre-established budget, and within the contingency amount, Exact Sciences will realize all of the savings in its rent amount. If the savings is more than the contingency, the additional savings are split 40% to the Landlord and 60% to Exact Sciences.

The actual rental rate was redacted in the letter of intent. The developer and its legal counsel have represented that the rate is consistent with Exact Sciences requirement of approximately \$30 per square foot.

#### Security Deposit / Reserve Fund

Exact Sciences will be required to provide the equivalent of 24 months of rent in either case or an irrevocable letter of credit. This will be held in the name of Landlord.

### Jobs TIF Guaranty

The provisions of the Jobs TIF guaranty that are defined in the Development Agreement will also be included in the lease.

### Termination Fee

The lease will include a requirement that Exact Sciences make a payment, based on a present value calculation of rent to be paid in the remaining years of the lease, in the event that it chooses to terminate the lease. Exact Sciences can terminate the lease and make this payment only after the first five years of the lease has elapsed. Under the Development Agreement, it is from this termination fee that the developer will pay the City any remaining amount of the Jobs TIF during the 8 year guaranty period. The developer and its legal counsel have represented that the amount of this termination fee is well in excess of the remaining amount of the Jobs TIF guaranty after 5 years.

### Contingencies in Finalizing the Lease

Contingencies that need to be fulfilled in order to finalize the lease include property acquisition, TIF financing and developer financing.

### Building Use

Exact Sciences will use the building for office, laboratory and manufacturing purposes.

### Net Real Estate Taxes

This is a triple net lease, meaning Exact Sciences pays a prorata share of property taxes and related building operation costs, including a property management fee of up to 3% of the rent.

### Board Approval

The lease is subject to approval by the Exact Sciences Board of Directors.

### **Exact Sciences and Developer Guarantees**

The Judge Doyle Square Negotiating Team negotiated Jobs-Based TIF and Private Parking Ramp TIF Increment guaranty provisions that were the subject of the July 7, 2015 Addendum to the June 25, 2015 Negotiating Team Report that was presented to the Common Council. The probability that these guaranties will be exercised is relatively low. These agreements 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 eight 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 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 \$4.0M 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 \$10.8M 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.

### **Reporting and Oversight Mechanism for Jobs Based TIF Compliance**

The following three-step process shall be used for each audit of Exact Sciences' jobs and is set forth in the Amended and Restated Agreement.

(1) *Certification by Exact.* Within thirty (30) days following the deadline for each stage of the Minimum Job Requirement and each anniversary of occupancy thereof during the term of the Relocation Guaranty, Exact shall deliver written documentation to the City certifying employment levels (the "Annual Jobs Certification Letter"). The Annual Jobs Certification Letter shall be a public record as defined under Wisconsin's Public Records Law and will be subject to release upon request. The Annual Jobs Certification Letter shall be signed by an authorized representative of Exact's executive team and shall indicate the number of individuals employed by Exact as of the applicable deadline or anniversary date, both on a full-time basis (*i.e.*, individuals employed at least 40 hours per week) and a part-time basis (*i.e.*, individuals employed less than 40 hours per week), whose primary work location is at a facility within the City of Madison and whose wage is equal to or greater than the "living wage" defined in Sec. 4.20, MGO. The Jobs Certification Letter shall provide a breakdown of these employment levels at each facility operated by Exact within the City of Madison (*e.g.*, University Research Park, Block 88, other, etc.).

(2) *On-site Review of Payroll Report.* Upon receipt of the Jobs Certification Letter, a representative from the City's finance department (the "Internal Auditor") shall schedule a time to conduct an audit of the payroll records at Exact's offices pertaining to the employees identified by Exact in the Jobs Certification Letter. During this audit, the Internal Auditor will be permitted to review digital or paper versions of a "Payroll Report" prepared by Exact. Exact shall not be required to deliver a copy of the Payroll Report to the City and the Payroll Report reviewed by the Internal Auditor at Exact's offices shall not be construed as a public record under Wisconsin's Public Records Law and will not be subject to release. The Payroll Report shall include, at a minimum, the following: (a) a listing of all individuals (identified by employee identification number) who are employed by Exact at a facility located in the City of Madison and who are earning a wage equal to or greater than the "living wage" defined in Sec. 4.20, MGO; (b) the title of each employee; (c) the primary work location of each employee (*i.e.*, University Research Park, Block 88, other); (d) indication of whether the employee is

employed full-time (at least 40 hours per week) or part-time (less than 40 hours per week); and (e) the hourly wage of the employee (based on a 2,080-hour per year basis). The Internal Auditor will not have unrestricted access to all of Exact Science's underlying personnel files but will be permitted to review payroll records in order to verify the accuracy of the Payroll Report. The City acknowledges and agrees that the sole purpose of the audit is to confirm whether the Jobs Certification Letter provided by Exact is accurate and whether Exact has met the Minimum Job Requirement. Accordingly, the City agrees that, notwithstanding anything to the contrary set forth herein, all information obtained by the City during the inspection of the Payroll Report and Exact's employment records shall be treated as strictly confidential and shall not be disclosed for any purpose. In keeping with this obligation, the City's Internal Auditor shall be required to execute a nondisclosure agreement before reviewing Exact Sciences's records.

(3) *Preparation of Audit Report.* Following the audit of the Payroll Report, the Internal Auditor shall prepare a report (the "Audit Report") indicating whether the Payroll Report is consistent with the Jobs Certification Letter and whether Exact has met the Minimum Job Requirement. The Audit Report shall be a public record as defined under Wisconsin's Public Records Law and will be subject to release upon request, provided, however, the Audit Report shall not include any personally-identifiable information of Exact employees or the specific wage levels paid by Exact to individual employees. If the Audit Report concludes that the Payroll Report is inconsistent with the Jobs Certification Letter in a way that does not impact the Development Agreement, Exact shall have a reasonable opportunity to deliver an amended Jobs Certification Letter or other responsive information to the City. If the Audit Report concludes that Exact has not met the Minimum Job Requirement and Exact has a right to cure the shortfall as set forth in Section 3.4(a)(i) above, the same audit process described herein shall be used at the end of the cure period to confirm whether Exact has cured the shortfall.

## **TIF ANALYSIS SUMMARY**

The Request for Proposals process and negotiation process for the Judge Doyle Square project was established by the Common Council. It has been led by a negotiating team appointed by the Mayor. The Negotiating Team, with input from the Board of Estimates and the Mayor, has negotiated the terms of TIF support prior to the receipt of a formal TIF application by the City as well as the Amended and Restated Development Agreement in accordance with the process established for Judge Doyle Square.

Negotiation of TIF investments in the City of Madison is usually led by the City's TIF Coordinator upon receipt of a TIF application. The TIF Coordinator will then underwrite the project in accordance with the City's TIF Policy and will forward a recommendation for consideration by the Common Council. In this case, based on the process that was established for the RFP process, the TIF application was filed after the business points of the transaction had been negotiated by the Negotiating Team. The TIF application was then submitted by JDS Development LLC by July 31, 2015 in accordance with the terms of the Development Agreement executed on July 15, 2015. That application, with subsequent follow-up support information has been reviewed by the TIF Coordinator and the TIF Analysis Report is attached as Appendix C.

TIF assistance is usually invested in a private development project based on a demonstrated financial gap, and to the extent that the project can re-pay the TIF assistance on its own throughout the remaining life of the TID. This project and this TID presented the Negotiating Team with several opportunities and constraints that set this TIF analysis apart from the standard methodology. TID # 25 currently has a healthy cash balance of approximately \$19 million. TID # 25 will continue to generate a revenue stream based off of increment of development already located within the TID, and there is very little in the way of expenses that currently need to be paid from this revenue. The TID can legally remain open until September 19, 2022, generating a substantial amount of additional revenue that could be applied to the Judge Doyle Square project. This revenue figure increases when taking into considering that the first couple phases of the Judge Doyle Square project will generate their own increment once completed.

On the constraint side of the equation, all expenditures in TID # 25 must be made by September 19, 2017. Therefore, timing is key if TID # 25 is to be used toward the project. Further, the amount of TIF assistance available to be provided through TID # 25 is limited by the fact that the TID must be closed by 2022. In other words, although TID # 25 is doing extremely well, there is a clear limit to the amount of assistance that can be provided through this TID.

Along with TID # 25, the project itself has opportunities and constraints from a TIF perspective. On the opportunity side, the project will attract a major headquarters employer downtown. As such, the first phase of the project is not speculative in nature; the City knows who the anchor tenant will be. The project enables the City to replace Government East parking and attract a new hotel as part of a single transaction. The City can, therefore, analyze the project in its entirety from a TIF perspective.

The project does, however, present constraints from a TIF perspective. Exact Sciences will be a tremendous addition to the downtown, and having a significant employer as an anchor tenant is a great aspect of the JDS Development proposal. The construction of Exact Sciences space will have extra costs associated with the lab and research space constructed within the facility, along with expenses associated with all mid-rise urban projects. As a young, publicly traded company, Exact Sciences and JDS Development, must be mindful of the costs associated with constructing an Exact Sciences facility at this location when compared with alternative suburban locations. The required schedule of Exact Sciences also places limitations on the construction schedule and phasing of the overall redevelopment of Blocks 88 and 105.

Recognizing the opportunities and constraints of the project and TID # 25, the Negotiating Team and JDS Development negotiated an appropriate level of TIF investment into the project. The Negotiating Team and the JDS Development LLC agreed upon the following TIF elements: \$20.8 million for private structured parking, \$12 million for a "Jobs Project" TIF to Exact Sciences, and \$13.9 million as a grant for land for private portions of the project. The negotiations of these amounts, and related guarantees, took place over a series of twenty sessions with the Negotiating Team and JDS Development, and they attempt to meet the financial requirements for JDS Development and Exact Sciences while satisfying the interests of the City.

Taking a look at each of these components individually, JDS Development's original proposal called for parking to be entirely publicly funded at a cost of \$55.6 to \$65.5 million. When combining the \$20.8 million of proposed TID support for private parking with the \$18 million (technically \$17.6 million plus \$0.4 million from TID # 25) from the Parking Utility for public parking, \$1.3 million for fleet parking, and \$1 million for a bike center, the total parking costs have dropped to approximately \$41.1 million. The Negotiating Team was able to negotiate a guarantee with JDS Development for the \$20.8 million private parking TIF investment for a period of 27 years.

The JDS Development proposal called for the City to own and fund a Civic Core on Block 88. The Civic Core would have been, in large-part, function space of Exact Sciences. The Negotiating Team wasn't comfortable with this approach, and instead negotiated a \$12 million "Jobs Project" TIF with Exact Sciences directly. The Negotiating Team recognizes that the Exact Sciences' proposal does not meet every aspect of a "Jobs Project" as outlined in TIF Policy; however, the Negotiating Team believes that the number and quality of the jobs, the catalytic impact of the these jobs downtown, and the competitive factors associated with attracting this employer warrant the consideration of Exact Sciences in the spirit of a "Jobs Project."

The \$12 million "Jobs Project" funds will be used by Exact Sciences for tenant improvements within their space. As such, the funds will be deposited into an escrow account at the start of the project, to be withdrawn toward the end of the project as Exact Sciences is completing the build-out of their space.

The Negotiating Team successfully negotiated a two-part jobs guarantee with Exact Sciences and JDS Development for this \$12 million investment. The first part sets a threshold of 300 employees within the City of Madison at the time of occupancy and 400 employees at Judge Doyle Square as of January 1, 2019. The second part of the jobs guarantee with Exact Sciences includes a penalty should Exact Sciences relocate. Exact Sciences already maintains a diverse workforce, and they have committed to expanding these efforts through this project. To this end, Exact Sciences and the Urban League of Greater Madison have executed a Memorandum of Agreement to draw more individuals in need of employment into training programs and jobs at Exact Sciences.

The final use of TIF investment for this project is in the form of a grant toward land costs in the amount of \$13,937,000. As described further elsewhere in this document, this support was necessary to attract additional private equity into the project through an IRS 1031 exchange. This equity will be used to pay \$15 million to the City for the land and development rights on Blocks 88 and 105. The City will deposit \$4.2 million of that amount into TID 25, which, when combined with \$9.7 million of TID 25 resources, will support the \$13,937,000 grant toward land costs.

The aforementioned paragraphs have described the use of TIF investment into this project. The Negotiating Team also considered the source of funds available through TID # 25. The City's Finance Director calculated the remaining increment that is expected to be generated within TID # 25 through its closure in 2022 by considering both the increment revenue stream of existing development within the District and the additional revenue that can be anticipated

through the new development proposed by JDS Development. The City's Finance Director used estimates of value provided by the JDS Development team. Based on consultation with the City Assessor's Office, these estimates appear to be conservative. The Finance Director utilized the City's standard assumptions for calculating potential future increment generation from the JDS project.

## **PARKING AND TRANSPORTATION**

### **Parking Lease Term Sheet**

In the deliberation on the Development Agreement at the Common Council's July 7, 2015 meeting, considerable emphasis was placed on a number of parking issues, both public and private. As a part of the response to the issues raised, the Development Agreement included a provision in Section 6.1, requiring that:

“on or before September 1, 2015, the parties agree on a term sheet setting forth the principal terms and conditions to be incorporated within the Parking Lease, including, without limitation, revenue generation and the use of the Private Parking by tenants of the project and others on commercially reasonable terms. The term of the Parking Lease shall be 27 years and the Developer shall pay to the CDA annual base rent of Forty Thousand and no/100 Dollars throughout the term.”

Based on the negotiations on the parking issues, the Community Development Authority will construct the entire parking ramp using the sources of funds identified in the Development Agreement. JDS Development LLC will administer construction of the ramp for the CDA pursuant to an agreement to be executed by the parties at closing. The condominium documents to be recorded at closing will divide the ramp into a 600-space Public Unit and a 650-space Private Unit. The condominium documents will address issues such as reciprocal access rights between the units and easements for common structural support, etc. Upon completion of construction, the CDA will (i) convey the Public Unit to the City for operation by the City's Parking Utility and (ii) lease the Private Unit to JDS subject to the terms of the Parking Lease.

The 650 parking spaces within the Private Unit are located as follows: approximately 69 spaces on Basement Level 1 and 581 spaces on Basement Levels 2, 3 and 4. The physical assignment of the public and private spaces will be subject to continuing review during the land use approval process and the preparation of the final construction documents for the ramp.

The term of the Parking Lease will be 27 years, corresponding with the underwriting period for the City's TIF investment in the ramp, with ownership of the Private Unit being transferred to JDS Development LLC at the end of the term subject to the terms of the Guaranty. The City's investment will be recouped through (i) tax increment generated by new development on Block 88 and Block 105, (ii) an annual rent payment of \$115,000, and (iii) a terminal purchase price to be paid by JDS of \$4,000,000.

During the term, JDS Development LLC will have the right to use all 650 spaces within the Private Unit. Fifty spaces will be reserved for use by the hotel to be constructed on Block 105.



JDS Development LLC will charge all users a commercially reasonable parking rent, including Exact Sciences. In exchange for the annual rent payment to the CDA, the obligation to maintain the Private Unit and the obligation to generate tax increment, JDS Development will retain the net operating income generated from the 650 spaces within the Private Unit.

Although there will be two separate parking units for purposes of ownership, the ramp has been designed as a single, integrated ramp with common entrances/exits. All parking entrances/exits to the ramp will be operated by the City Parking Utility. The Parking Utility and JDS Development LLC will cooperate with one another to ensure compatible parking management systems and equipment. Hotel guests and individuals with monthly parking passes issued by JDS Development LLC (e.g., tenants of the Block 88 office building) will be required to park in the private portion of the ramp. The parking management system will be configured so it is capable of tracking any hourly parkers who park in Private Unit spaces vs. Public Unit spaces. The Parking Utility shall account for all hourly parking revenues received and shall transmit the portion attributable to the Private Unit to JDS on a monthly basis. These understandings are memorialized in the following Term Sheet:

Lessor:	City of Madison Community Development Authority
Lessee:	JDS Development, LLC
Premises:	The area depicted on the attached Appendix D of this Report, consisting of approximately 69 spaces on Basement Level 1, and 581 spaces on Basement Levels 2, 3 and 4, for a total of 650 parking spaces.
Term:	27 years
Rent:	\$115,000 annually
Operation:	Lessee will be responsible, at its sole cost, for operation and management of the Premises. Lessee shall cooperate with the Parking Utility on the parking management system and the operation of the common entrances/exits to the ramp. Reciprocal easements or similar cross-access rights will be put in place allowing for seamless flow of pedestrian vehicular traffic throughout the entire parking ramp.
Maintenance:	Lessee will be responsible, at its sole cost, for all routine maintenance and repair of the Premises.
Capital Expenses:	Lessee will be responsible, at its sole cost, for all structural repairs and improvements to the Premises of a capital nature.
ROFR:	Lessee will have a right of first refusal 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.

**Transfer of Title:** At the end of the Term, the Lessor shall convey to the Lessee fee title to the Premises. As consideration for the conveyance, the Lessee shall pay to the Lessor the lump sum of Four Million and 00/100 Dollars (\$4,000,000.00).

**Subleasing** Lessee is expressly permitted, without Lessor's consent, to sublease parking spaces provided such subleases are on commercially reasonable terms, at commercially reasonable rates.

**Insurance:** Lessee shall maintain, at its sole cost, a policy of commercial general liability insurance, in an amount to be agreed upon by the parties.

### **Exact Sciences TDM**

At the request of the City, Exact Sciences has provided a summary of potential traffic demand management actions that would reduce automobile trips related to their proposed new headquarters. The strategies outlined in this summary will become part of a Traffic Demand Management Plan (TDM) being developed by Ayres Associates. The TDM will be reviewed and approved by the City as part of the land use approval process.

Exact Sciences has stated its commitment to promoting alternative means of transportation and will implement elements of one or more of the following programs with the intent to find the right set of incentives to encourage use of alternative transportation. The list includes:

- In collaboration with Madison Metro, Exact Sciences will promote the Commute Card Program, providing a subsidized ride pass to employees utilizing this mode of transportation instead of commuting by automobile to/from the headquarters location. This benefit would be proactively communicated and encouraged during the interview, onboarding and ongoing internal employee communication processes.
- An alternative option will be explored to reward employees who opt to use alternate means of transportation (walk, bike, carpool, vanpool, etc.). Through a "cash out" program design, Exact Sciences could provide a financial incentive to employees who voluntarily opt out of the need for a parking spot at the headquarters location. The financial benefit would be at a level that can be used to contribute toward other means of transportation or toward a benefit of employee's choice. This cash out option may be offered as an alternative to the subsidized bus pass program, or as a complementary program. This cash out program will need additional study by Exact Sciences to determine the most appropriate balance between this and the subsidized bus pass program. Part of that study will involve the level of employment and interest in the subsidized bus pass program as construction of the new headquarters nears completion.

Exact Sciences will designate an employee to be the Transportation Coordinator for their new headquarters. This person will be the key contact for interaction with the City to coordinate major events, traffic and parking considerations.

- The Traffic Coordinator will ensure continuous employee education and communication regarding access, options and tools regarding alternate means of transportation. The Transportation Coordinator will stock maps and other information that is generated by the City, Greater Madison Convention and Visitors Bureau and/or other organizations to help inform and guide employees and guests to use public transportation and/or alternative forms of transportation to the new headquarters.
- The designated Transportation Coordinator will help facilitate a rideshare program for employees. This would involve facilitating a way for employees interested in car pools to connect and arrange logistics (i.e., using internal communication platform to create discussions, sign-ups and distribution lists for groups who wish to participate in the rideshare program). The Transportation Coordinator would also regularly distribute and post information relating to ridesharing to employees, including details on the benefits of reduced automobile trips in favor of public transportation, biking and walking.
- The Transportation Coordinator will provide information to new employees related to the accessibility of public transportation and/or alternative modes of transportation. This information will be made available as part of the standard employee onboarding on employee's first day of employment. Information relating to transit schedules, route maps and other information provided by Madison Metro, the Madison Area Transportation Planning Board or other organizations will be displayed and available in the lobby for employees and guests.
- The Transportation Coordinator will reserve prime employee parking spaces for carpool employees and will implement the carpool parking policy to govern the use of these spots.
- Exact Sciences will encourage employees to walk and/or ride bikes to the new headquarters. Employee lockers with secured storage for bike helmets, backpacks and other cycling gear will be provided. The provision of bike storage facilities will include employee access to on-site shower facilities.

### **Public Parking During Construction**

A number of factors should be considered when assessing the impact of losing the use of Government East Parking ("GE") while new parking ramp is being constructed.

First, the users of GE are predominantly transient parkers. GE contains 520 parking stalls. Approximately 119 stalls are leased on a monthly basis and the remaining 401 stalls are leased on an hourly basis. More than 75% of the spaces are occupied for 3 hours or less. The loss of GE for an estimated 17 months will have the greatest impact on the hourly parking supply in the downtown area. Monthly parkers will be relocated to Parking Utility's facility at State and Frances Streets.

Second, transient parking demand is highest on days when Monona Terrace is booked by state-wide associations which draw a greater than usual number of people to the downtown with vehicles. These peak days will require coordination with Monona Terrace, the Greater Madison Convention and Visitors Bureau ("GMCVB") and the event coordinators. Alternatives specific to the heavy use days need to be identified.

Third, excess capacity for nights and weekends (with the exception of special events such the Art Fair on the Square and Ironman) seems to be sufficient to meet demand.

The current schedule calls for demolition of GE in March 2016 with completion of the new JDS parking structure in July 2017.

To address the loss of GE parking, City staff are exploring the following:

- Operation by ULI of 200 newly constructed parking spaces in the Anchor Bank building as hourly parking. The Anchor Bank parking should be available for use beginning in November 2016.
- Near east and west side locations for shuttle service for special events and days when Monona Terrace has significant events.
- Sixty to ninety-day delay in demolition of GE.

Regarding the opportunity to delay the demolition of GE, the Negotiating Team asked JDS Development to request their contractor, CG Schmidt, to study options to delay the demolition and accelerate the project schedule to have the ramp completed by the July 2017 completion date.

- First, CG Schmidt looked at keeping the two east parking bays of the GE Ramp open while demolition and excavation is performed at the west bay. They found that the required earth retention, structural bracing and other temporary measures to keep two-thirds of the GE Ramp open did not save any time in the schedule. CG Schmidt estimated the costs for this option to be \$2.4 million with no savings in the schedule. Bulk demolition of the GE Ramp would still need to start in March 2016.
- CG Schmidt also investigated extending their work hours to accelerate the demolition, excavation and construction of the parking ramp on Block 105. They estimated a premium of \$1.9 million to \$2.6 million to delay the demolition of the GE Ramp from March 2016 to June 2016 and still complete the ramp in June 2017. Completion in June 2017 is required to meet the Exact Sciences opening of July 2017.

As the design process progresses, the Negotiating Team will continue to explore opportunities to compress the schedule for construction that don't have a prohibitive cost.

An additional mitigating factor is the possibility that in summer or fall of 2016, the City may move all City functions and staff currently housed in MMB to a location outside of the downtown core. MMB houses approximately 180 employees and brings people to the downtown for building permits, housing services, postal services, and parking/traffic permits.

Staff will continue to work on a full understanding of the parking market and options for addressing the impacts of the GE demolition.

### Financial Impacts on the Parking Utility

The Judge Doyle Square project has always reflected the required replacement of the 60-year old GE Ramp. This facility is beyond its useful life and has been slated for replacement by the Parking Utility for several years. Short of constructing a new ramp at a nearby location, replacement of GE would have meant a net loss of revenues to the Parking Utility during construction, regardless of the size or scope of the larger Judge Doyle Square project.

The demolition of the existing GE Ramp and its replacement as part of the proposed Judge Doyle Square project is anticipated to impact revenues and expenditures for a 17 months. The Parking Utility has estimated the following general impacts from closure of the GE Ramp:

Gross Revenues from Government East	\$2,829,273
Revenues recovered from Higher Volumes at Other Ramps and Move of Permit Parking	<u>(520,198)</u>
Net Projected Revenue Loss	\$2,309,705
Gross Expenses from Government East	<u>(\$1,556,721)</u>
Impact before Adjustments	\$752,984
No Reduction in Staffing	\$744,924
Other Expenses	<u>\$146,502</u>
Net Impact to Parking Utility Reserves	\$1,643,781

As of December 31, 2014, the Parking Utility had an undesignated fund balance of approximately \$25 million. This balance has been accumulated over the past several years in anticipation of replacement of aging parking ramps, including the GE facility. The current Judge Doyle Square project estimates assume that the Parking Utility will allocate the equivalent cost of an aboveground parking structure from its reserves. This cost is estimated at \$13.1 million for the 560 stalls that will be the responsibility of the Parking Utility in the proposed project. As described above, the closure of GE will further reduce net revenues by \$1,643,781.

The new parking structure that is to be built on Blocks 88 and 105 will include 1,250 stalls. Of that total amount, 650 stalls will be allocated for private uses as part of the project, including Exact Sciences employees, other office tenants and hotel users. The parking stalls for these uses will be in the below ground portion of the structure and with controlled access. The Parking Utility stalls will be located near ground level or above. Given this allocation and operating structure, it is expected that general parking on evenings and weekends will first migrate to the Parking Utility-operated stalls. As such, given the location of Parking Utility parking within the ramp and assuming that the developer does not actively promote weekend and evening parking or direct the public to the private accessory parking, the accessory parking use is not expected to have a measurable impact on Parking Utility revenues.

The Parking Lease and the Condominium Agreement between the developer and the CDA will need to address the allocation of costs for operation of the ramp, particularly the cost of parking revenue equipment, maintenance standards, and common structural elements.

## **Parking Facility Redesign**

With input from Traffic Engineering and Parking Utility staff, the 1,250 parking stall garage has been redesigned. JDS Development met with Parking Utility and Traffic Engineering staff on June 4, June 23 and July 13. As a result of those meetings, the ramp is now designed as a single, integrated ramp with common entrances/exits. More specifically, the changes include:

1. Revising the ramp from two separate ramps into one contiguous ramp. The initial plans had an above-grade ramp separate from the below-grade ramp. Providing the contiguous ramp allows parkers to enter and exit at either Doty or Wilson Street, no matter where they enter the ramp.
2. An additional access point was added to the ramp on Block 88 along Doty Street. This allows traffic exiting the ramp to enter Doty Street upstream of Pinckney Street and further upstream of the traffic lights at King Street. It also allows traffic entering the ramp to enter at the earliest point of the development along Doty rather than driving another block to the Block 105 access.
3. Parking was extended toward the west at the lowest three levels to add stalls lost when making the ramp contiguous and when the access ramp was added from Doty Street on Block 88. This was needed to maintain parking counts at approximately 1,250.
4. The Doty Street access to the ramp on Block 105 was revised to include three lanes and stay as far to the west of King Street as possible.
5. All parking entrances/exits to the ramp will be operated by the City Parking Utility. The Parking Utility and JDS Development will cooperate with one another to ensure compatible parking management systems and equipment.
6. Hotel guests and individuals with monthly passes issued by JDS Development will be required to park in the private portion of the ramp on the lower levels including basement level 1, 2, 3, and 4.
7. Hourly parkers and monthly parkers contracting with the Parking Utility will be directed to the upper levels.

Traffic Engineering and Parking Utility staffs are working with the JDS Development Team on additional refinements to the parking structure as the land use approval process commences in August. It should also be noted that the Community Development Authority of the City of Madison will build the entire 1,250 car ramp, transferring the public portion of the ramp to the City on completion and leasing the private component to JDS Development LLC. The Parking Utility staff and its consultants will be a part of a coordinated development team to complete the plans and specs and oversee the construction of the ramp component should the Common Council decide to proceed with the Amended and Restated Development Agreement and move the project forward.

### Number of Parking Levels under Block 88

One of the most discussed by the Negotiating Team, City staff, elected officials and the public has been the number of parking levels under the Exact Sciences Building on Block 88. The Negotiating Team has continued to explore ways to add additional parking under the Exact Sciences building.

The key factor in this analysis is Exact Sciences occupancy date for the headquarters facility of July 2017, to which the company has been resolute for business reasons. Exact Sciences'

schedule was prominent in JDS Development's RFP response on May 1, 2015. As outlined in that proposal and in subsequent and public testimony, Exact Sciences is expanding quickly and needs to consolidate many of their corporate functions into the co-located, highly collaborative environment to succeed. Exact Sciences had initially wanted to be in their new facility by January 2017, To be able to move to the Judge Doyle Square site however, they agreed to move the occupancy date to July 2017. Exact Sciences has continued to reinforce that if it doesn't have the ability to move into their new headquarters until late 2017 or 2018, it will select an alternative location outside downtown and potentially outside Madison for their headquarters.

At the Negotiating Team's request, JDS Development LLC asked CG Schmidt to evaluate and consider the impact of two alternatives for the addition of below grade parking levels at Block 88 of the Judge Doyle Square development. It is important to note that in the current design, through a revised excavation and structural erection scheme, the lowest three levels of parking were pushed to the west approximately one-third under the Exact Sciences headquarters. This could be accomplished with adding piles at the east end of the new building while the above-grade structure is started on the west two-thirds of the building without an impact to the schedule. Excavation could then proceed while above-grade construction is underway on the west third of the building. This process allows additional parking below Block 88, but this scheme cannot be extended to provide additional underground parking further to the west without significant cost and delay. The CG Schmidt memo describing the issue of adding parking below grade on Block 88 to the westerly edge is attached as Appendix D and is summarized as follows. CG Schmidt determined that:

1. Another two months will be required to redesign the parking ramp and Block 105 program.
2. Approximately five to six additional months will be required to provide the excavation, earth retention and construction of the additional levels.
3. A more significant earth retention and foundation wall structural system will be required due to the proximity to the Madison Municipal Building and over 40' of difference in elevation between footings of the two structures.
4. In total, CG Schmidt estimates the cost impact to be \$3.1 Million to extend two additional levels and \$4.0 Million to extend three additional levels. The delay to the project would be a total of seven to eight months.

In the Negotiating Team's opinion, the delay caused by the additional construction that Exact Sciences isn't willing to accept, plus the additional cost to the project and the City, make these solutions to add additional layers of parking under Block 88 impractical.

#### Public Surface Transportation System

As a final item to note, Traffic Engineering is updating the traffic model with trip generation rates to understand the potential impacts and mitigation strategies of the public and private parking ramp on the existing public transportation system. This information will be reviewed as a component of the land use approval process.

#### **Hotel Parking**

JDS Development plans to manage parking at Judge Doyle Square to ensure adequate parking stalls will be available for the proposed hotel that will serve the Monona Terrace Community

and Convention Center. Based on the most current ramp design, it appears that an additional 15 stalls can be added to the private ramp's total number. These stalls can be added to the 50 stalls being reserved for hotel guests for a total of 65 hotel parking stalls. In addition, 600 parking stalls will be provided for City and public use and another 600 parking stalls dedicated to the office buildings on Blocks 88 and 105. In total, approximately 1,250 to 1,265 parking stalls will be constructed at Judge Doyle Square.

Upon the planned opening of the hotel in 2018, Exact Sciences will have occupied the Block 88 building for one year. The JDS Development facilities staff will have a year's worth of data on parking demand and behavior. Exact Sciences will be one year into their Traffic Demand Management program and JDS Development will be able to determine overall demand on parking. By the time Phase 3—Exact's Expansion onto Block 105—is underway, there will be several additional years of data that will inform JDS Development as to how the ramp parks. JDS Development will be able to determine the typical vacancy of Exact Sciences parking stalls to include in potential overflow parking.

Typical parking stall to guest room ratios in downtown Madison are between 0.50 and 0.75. The closest existing hotel to Judge Doyle Square is the Hilton Madison Monona Terrace, which has a 0.60 parking stall to guest room ratio. The recently approved 164 room Marriott AC hotel at the Pahl Tire site has a planned parking stall to guest room ratio of 0.48. It is important to note that the new AC hotel will utilize valet parking to achieve their ratio of 0.48.

The majority of Judge Doyle Square hotel guests are anticipated to attend events at the Monona Terrace Convention Center and travel into Madison through the Dane County Airport. Most of these guests will arrive at the hotel using cab service or a hotel shuttle from the airport and will not require a parking space. However, there will be several events each year where most guests will drive their cars to the hotel. The following factors and strategies will ensure enough parking is provided to hotel guests for all events:

- At 216 hotel rooms, 65 parking spaces relates to a stall to room ratio of 0.30, at 250 hotel rooms this ratio is 0.26.
- Valet parking may be implemented on the top level of parking which could allow for up to 110 parking spaces. At 216 hotel rooms, the 110 spaces results in a stall to room ratio 0.51. For 250 hotel rooms, this ratio is 0.44.
- For typical occupancy rates of 70%, parking stall to room ratios should be adequate. If needed, after consideration of learned parking behaviors and yield management of parking following completion of all phases of Judge Doyle Square, valet parking could be implemented to increase the ratio and provide additional parking. For a typical occupancy rate of 70%:
  - For 216 rooms, the stall to room ratio is 0.43 for the 65 stalls without valet parking and 0.73 for the 110 stalls using valet parking.
  - For 250 rooms, the stall to room ratio is 0.37 for the 65 stalls without valet parking and 0.63 for the 110 stalls using valet parking.
- Valet parking areas may be expanded into other portions of the ramp during non-business hours when City, public and office occupancy of the ramp is significantly reduced. These off-business hours are when hotel parking will be at its peak. During



those evenings when valet parking area is expanded, valet staff could move vehicles back into hotel-only parking areas early in the morning before ramp use for the City, public and office employees increases. Hotel parking needs will increase at the same time City, public and office parking needs would decrease, allowing for shared parking stalls within the approximate 1,250 to 1,265 stall ramp.

- For the limited events during the year where more guests will be travelling to the hotel using their own car, valet parking will be utilized and overflow parking may also be provided through other area ramps when needed. In extreme cases when on-site parking is not available, shuttle service to other ramps may be required and can be implemented with valet staff.
- Online and call center reservations systems will request parking information from guests to determine if valet parking or overflow parking in other structures will be required.
- Until the future phase of the Exact Sciences office building construction is completed, additional parking stalls will be available that may be shared and will provide flexibility for the hotel parking demands.

### **Bicycle Center**

The RFP stated that the City of Madison would construct and own a bicycle center as a component of the development. In 2012, the City engaged Kimley Horn to study the feasibility of a bicycle center (which provides a variety of bicycle-oriented amenities) as a component of the Block 105 concept plan. That conceptual plan identified the need for secure indoor bicycle parking and other cyclist amenities, which may include the following:

- Secure bicycle parking
- Bicycle and personal lockers
- Bicycle repairs
- Bicycle retail services
- Bicycle rental/bike sharing
- Internet kiosk
- Bicycle wash station

The City has projected \$1.0 million in capital cost for the center as part of the project financing. The operations of the center would be contracted out to a private entity. It will be the City's responsibility to select and contract the bicycle center vendor.

JDS Development's proposed location of the bicycle center is at grade on East Doty Street on Block 105 on the east side of the parking ramp entry next to the Great Dane Brew Pub. The proposed size of the facility is 2,790 square feet. The exact location of the bicycle center within the facility will be determined as part of the land use approval process.

## **MASTER SCHEDULE**

While prior schedules called for a September 2015 transfer of Block 88 and 105 to accommodate a 1031 exchange, JDS Development LLC has worked with its partners to identify an alternate property for the 1031 exchange. The real estate transfer/closing is now scheduled for December 2015 after all conditions to closing (including land use approvals and subdivision) have been met.

Demolition of the MMB Annex is required prior to subdivision of Block 88 and subdivision of Block 88 is required for the real estate transfer in December 2015. Demolition of the Annex is now scheduled to commence in November 2015 with completion by December 2015. Completion of plans for the demolition, public bidding of the demolition work, and review by the State Preservation Office, Landmarks Commission, Board of Estimates and Common Council are all necessary prior to demolition.

Project Commencement continues to be scheduled for December 2015 so that the Exact Sciences Building on Block 88 can be completed by July 2017.

## **OTHER PROVISIONS**

### **Project Commitment to Diversity**

There are two aspects of the project commitment to diversity. The first is the construction period and the second aspect is Exact Sciences workforce.

### Construction Phase

The City's Request for Proposals required that the selected Judge Doyle Square developer must comply with the City of Madison's Affirmative Action Articles of Agreement, which are a component of the Amended and Restated Agreement. JDS Development LLC, in submitting its RFP response on May 1, 2015, committed to meet the City's W/M/SBE goals for the project. To accomplish these goals, the developer further committed to establish a Targeted Business and Workforce Diversity Program for the construction phase of the project. The draft program has been written and the City's Department of Civil Rights has reviewed the plan (attached as Appendix E).

The Department of Civil Rights and JDS Development LLC have agreed to a construction phase targeted business participation goal of 10%, and workforce goals for racial ethnic employee hours of 6% and female employee hours of 4%. In addition, a goal of five percent (5%) of all employee hours will be obtained through employees who have been trained in any of the following programs funded by the City of Madison: Construction Trades, Inc., Latino Workforce Academy, Construct-U, Workforce Development Board Foundations for the Trades, WRTP-Big Step, Operation Fresh Start, and the Urban League of Greater Madison. JDS Development LLC has further agreed to establish a Targeted Business Coordinator to manage and ensure compliance with the plan objectives.

### Exact Sciences' Workforce

The Development Agreement required Exact Sciences to execute a Hiring Diversity Memorandum of Understanding prior to the Project Commencement closing in December 2015. At the July 27, 2015 meeting of the Board of Estimates, Exact Sciences CEO Kevin Conroy briefly described his company's commitment to a partnership with the Urban League of Greater Madison to promote hiring diversity. Exact Sciences (EXAS) and the Urban League of Greater Madison (ULGM) have executed a Memorandum of Agreement as of August 11, 2015, memorializing this relationship. The purpose of the Memorandum of Agreement (MOA) is to clearly describe the work EXAS and ULGM are currently conducting and developing for future training, recruiting and hiring for a diverse workforce. The provisions of the MOA are as follows:

Financial Support and Community Involvement: In addition to the specific programming listed here, EXAS will continue to be a dedicated financial supporter of all ULGM work through sponsorship of initiatives such as the annual Diversity Summit, the Urban Cabaret, and other activities as mutually agreed upon. Furthermore, EXAS CEO, Kevin Conroy, is a second-term member on the ULGM Board of Directors with a term that expires in December 2017.

Available Jobs and the ULGM Pipeline: EXAS will post all of its corporate and lab job opportunities directly with ULGM via email to [jobs@ulgm.org](mailto:jobs@ulgm.org). ULGM will share these postings as appropriate through a variety of systems and channels including an online job board at [www.ulgm.org](http://www.ulgm.org), via email networks, and via various closed social media networks focused on business-job seeker matching. ULGM will look to connect specific job skills and workers available in its current pipeline to identify potential matches.

Training for Customer Care Center: EXAS and ULGM will continue to work directly on training programs specific to the hiring needs at the EXAS customer care center. This partnership has resulted in a few hires to date and is continuously customized to ensure that the training programs result in the candidates that EXAS needs and provide the correct skills needed to the applicants. This partnership may include EXAS staff making presentation to trainees in ULGM Customer Service and other related worker training academies; EXAS staff assisting with worker training activities such as mock interviews; and EXAS hosting site visits to allow ULGM trainees to observe first-hand the career opportunities available at EXAS.

Partnering in the upcoming DWD Fast Forward Grant: ULGM is re-applying for a second Fast Forward grant in order to sustain, expand, and enhance Customer Service & Sales Academy (CSSA) and its Health Care Administration Training Program (HATP). This will include additional training cohorts of existing programs, a new certification from Madison College for graduates of CSSA, and a potential new training module focused on medical coding.

EXAS agrees to partner on this grant and continue to partner on the existing programs and help with the development of the new ones. EXAS has specific job needs in the lab and the billing department. These jobs will be a target of the training programs being developed. ULGM will also serve as a connection for EXAS to other public and private workforce development initiatives in the region that share our goal of serving under-represented

populations such as the new Madison College Workforce Development unit and WIOA WorkSmart Network.

Featured Employer Program Participation: EXAS is committed to presenting as featured employer to ULGM multiple times each year to highlight who EXAS is as a corporation and what its hiring needs and expectations are.

Exact Sciences has also provided information to the City Negotiating Team on its current workforce profile in relation to the latest US Census data as follows:

African American

EXAS: 21%

Madison: 7.3%

Latino

EXAS: 2% (noted that SVP of Operations is Latino female)

Madison: 6.8%

Female

EXAS: 71%

Madison: 50.8%

### **Project Labor Agreement**

The Developer has been working with the South Central Federation of Labor (SCFL) on a Project Labor Agreement (PLA). The agreement is modeled on the terms of the PLA used at the Edgewater Hotel. Ultimately the terms of the PLA will be determined by SCFL, but the Development Agreement sets the PLA as a requirement. Key provisions are as follows:

1. The PLA shall apply to all construction work at the Project site.
2. Work excluded from the terms of the PLA include:
  - a. Work of the Developer and its consultants including the management staff of the Contractor and members of the design team.
  - b. Laboratory or specialty testing and inspection services.
  - c. Specialized system installation, testing and turn-over, including for items such as computer equipment, audio-visual systems, point-of-sale systems, theming and display exhibits and laboratory related equipment.
  - d. Off-site work.
  - e. Artwork including sculptures, paintings and murals.
  - f. Curbs, walks, drainage, lighting, etc. not within the property boundaries that may be contracted for or by the City of Madison.
  - g. Furniture, fixtures & equipment delivery and installation.
3. Terms of the PLA will supersede any and all other national, area or local collective bargaining agreements.
4. Contractor and Subcontractors performing job site work shall be signatory to and bound by the local area agreement of the appropriate craft signatory to the PLA. Any party working on the Project that is not signatory to the appropriate local collective bargaining agreement must abide by the terms of the PLA, including:
  - a. Prevailing and living wage as determined by the Madison General Ordinances.
  - b. Affirmative Action requirements as required by the Madison General Ordinances.

- c. Any Contractor or Subcontractor working on the Project site that is not signatory to a local agreement must maintain an active workforce training program.
5. Contractor and Subcontractors recognize the signatory Local Unions as the sole and exclusive bargaining representative of all craft employees.
6. The Contractor and all of its Subcontractors agree not to engage in any lockout and the Local Unions agree not to engage in any strikes, slowdowns, work interruptions or interference with any of the work covered by the PLA.
7. A Management Committee shall be established consisting of the Developer, Contractor and Building and Construction Trades Council of South Central Wisconsin. The Management Committee will be responsible to monitor progress of the Project and address and settle any disputes on the Project.
8. Assignment of the work will be the sole responsibility of the Contractor or Subcontractor performing the work involved and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry.
9. All jurisdictional disputes, between or among Building and Construction Trades Unions shall be settled according to the current Plan established by the Building and Construction Trades Department. All jurisdictional disputes shall be resolved without the occurrence of any strike, work stoppage or slow-down.
10. The Contractor agrees that neither it nor any of the Subcontractors on the Project site shall subcontract any work to be done on the Project site except to a firm who adheres to the PLA.
11. The Contractor and Subcontractors agree that it shall recruit employees for the Project by first contacting the appropriate Local Union for referrals. In the event the appropriate Union is unable to refer qualified employees within forty-eight (48) hours, the Contractor or Subcontractor may obtain employees from any source.
12. Grievances shall be processed in accordance with the procedures in the Local Union's collective bargaining agreement.
13. In the event a Local Union's collective bargaining agreement permits the withholding of services in response to an employer's willful failure to pay any Local Union trust fund contributions, withholding of services by employees of those employers who have failed to make payments to any Local Union trust funds for established fringe benefits shall not be considered in violation of the PLA.
14. Term of the PLA shall commence upon execution of the Agreement and shall continue in effect until all work on the Project is completed.

### **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, but, at this point, the Developer has not agreed to include this term in the Development Agreement.

Note that the only term the City will require in the LPA is that no strikes occur. Due to both legal and practical issues, the Developer will negotiate directly with Unite Here in coming to the final terms of the agreement. Unit Here is the only interested union in representing hotel employees and have negotiated LPAs with developers and hotel operators around the country. As such, they are the most appropriate entity to negotiate the terms of the LPA.

### **Reacquisition of Block 105 Condominium Units**

The City and the Developer have been working on a mechanism for reacquiring the condo units that will contain the hotel and the second office tower. Both sides agree that construction on the hotel must commence by May 1, 2017 unless extended by the developer for a period yet to be determined. Note that any significant extensions would change the City's increment projections in TID 25. At the end of such time, the City will have the right to reacquire the hotel condo at the prorated price of the Developer's land acquisition price. The timetable and price for reacquisition of the condo for the Block 105 office tower is also under discussion.

The parties disagree on the appropriate legal mechanism for achieving the reacquisition. Several methods can ultimately work but each has risks and benefits. The City's outside counsel, Rick Schmidt, has detailed his position in a separate report.

In either case, the parties agree that the City should enter into an entity called a bankruptcy remote, which is a special purpose entity that exists for the purpose of protecting a lender from a voluntary bankruptcy by the Developer. The City has never used entered into such arrangement before, but it has been supported by the City's outside counsel.

The parties continue to negotiate on these issues.

### **APPENDICES**

- A. JDS Development LLC/Exact Sciences May 1, 2015 Proposal
- B. Report by City's Consulting Real Estate Attorney on the Section 1031 Transaction
- C. TIF Analysis
- D. CG Schmidt Analysis of Block 88 Underground Parking Expansion Options
- E. Targeted Business and Workforce Diversity Program

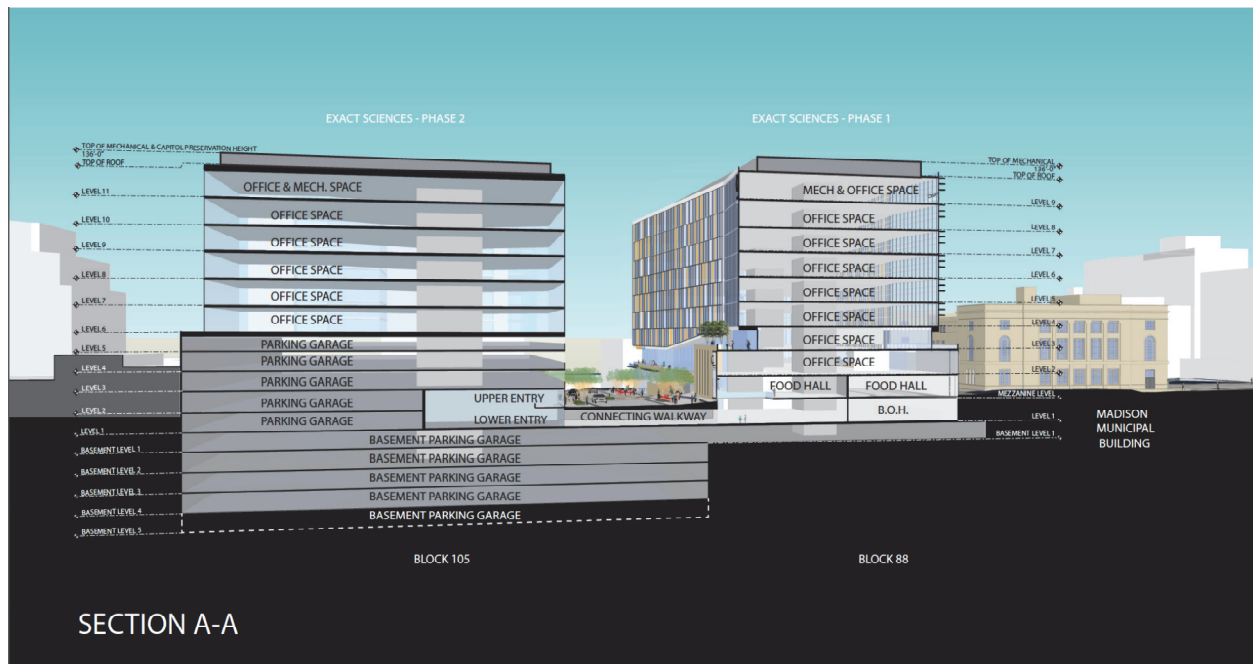
**APPENDIX A**  
**JDS Development LLC/Exact Sciences May 1, 2015 Proposal**

On May 1, 2015, **JDS Development, LLC**, a joint venture of the Hammes Company of Madison, WI and Majestic Realty of Los Angeles, CA, proposed 580,200 square feet of development including a 250,000 square foot Corporate Headquarters and Research Facility on Block 88 and an additional 107,000 of office expansion space on Block 105 for Exact Sciences of Madison, WI. An additional 65,500 square feet for a food hall, health and wellness facility, lobby, conference center and broadcast studio/digital media center were proposed on Block 88. The proposal envisioned this component would be publicly funded.

A 210 to 250 room hotel and 16,700 square feet of retail, restaurant, lobby, and bicycle center was proposed for Block 105. A 1,410 to 1,540 stall parking facility is proposed primarily on Block 105 to replace the Government East public parking facility and to serve the new development.

The total project cost was estimated to be \$186.4 to \$203.2 million. The estimated cost of the proposed public elements of the project is \$55.6 to \$65.5 million. No public financing for the other private components of the project was proposed. The proposal can be found in its entirety on the Judge Doyle Square website at:

<https://www.cityofmadison.com/planning/judgedoylesquare/gallery>.





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## MEMORANDUM

TO: City of Madison

FROM: Boardman & Clark LLP

DATE: August 14, 2015

RE: Right to reacquire property pursuant to development agreement

### I. Executive Summary

City of Madison ("City") plans to convey to JDS Development, LLC ("Developer") as part of the Judge Doyle Square Project certain real property (the "Property"). City and Developer intend to develop the Property pursuant to a development agreement (the "Development Agreement"). City is concerned that Developer may not timely fulfill its obligation to construct a 200+ room hotel. As such, City would like the ability to reacquire title to the Property in the event that Developer does not substantially complete the Project or reach certain milestones by a specified date ("Substantial Default"). We have been asked to recommend strategies that City should employ to accomplish this goal.

Three mechanisms by which City could establish rights to reacquire the Property or otherwise protect its interests in the event of a Substantial Default include: (i) inserting a reversionary clause in the deed; (ii) acquiring a right to repurchase the Property upon a Substantial Default; and (iii) obtaining a mortgage on the Property.

We believe, for reasons explained below, that the reversionary clause is a better option than a repurchase contract. The mortgage mechanism could be used in conjunction with either a reversionary clause or a repurchase contract.

In addition, because of the size of the Project there may be a concern that Developer could become financially distressed at some point after City conveys the Property but before Developer completes the Project or reaches other major milestones. We have also included a brief discussion regarding this issue, including a few strategies that City could employ to protect its interests.

### II. Options for Reacquiring Property

#### a. Reversionary Clause in Deed (Possibility of Reverter or Right of Re-Entry)

A possibility of reverter provides that upon the occurrence of a certain event (e.g., Substantial Default by Developer), City would get the Property back automatically, without taking any further action.



In contrast, a right of re-entry gives the grantor the right and option to retake the Property if a certain event occurs, but it is not an automatic reversion. This may be a favorable alternative to the possibility of reverter if, for example, City is not certain that it will want the Property back if Developer fails.

**b. Option to Repurchase the Property**

Options to repurchase typically provide that if a developer fails in some material way (e.g., a Substantial Default), the grantor has the right to repurchase the property from the developer at an agreed-upon price.

**c. Second Mortgage**

A mortgage (typically a second mortgage) can be used to secure performance of a developer's obligations. One benefit of a mortgage is that it would represent an encumbrance on the Property, and Developer could not refinance or transfer the Property without dealing with City.

**III. Bankruptcy**

**a. Effect of a Bankruptcy on Reversionary Interest and Option to Repurchase**

Bankruptcy law is extremely nuanced and fact-specific. However, one risk is that a party will file bankruptcy and seek to "reject" a contract under Section 365 of the Bankruptcy Code. Although a full analysis of this risk is outside the scope of this Memorandum we can provide upon request a more thorough analysis of these (or other) bankruptcy law issues.

**i. Background**

When a debtor files for bankruptcy, the trustee has the authority to assume or reject "executory contracts" and unexpired leases. There is no uniform definition of an "executory contract", but it is generally understood as a contract in which both the bankrupt and the other party still have unfulfilled obligations.

**ii. Effect on Option to Repurchase and Reversionary Interest**

Option Contract: A majority of courts have held that option contracts are executory, and thus can be rejected under Section 365 of the Code.

Reverter: Courts have generally found that reversionary clauses are not executory; thus, the agreements generally cannot be rejected under Section 365 of the Code. However, exceptions to this rule exist.

**iii. Effect of Rejection on Executory Contract**

If a trustee rejects an executory contract, the executory contract is deemed to have been rejected the day before the bankruptcy petition was filed. The rejection entitles the non-debtor to a claim for damages stemming from the rejection, but those damages are treated as general unsecured debts that are entitled to no special treatment or priority. Also, City would likely not be able to obtain specific performance upon the rejection of an executory contract (i.e., a court-ordered transfer of the Property).

**b. Hindrance Mechanisms; "Bankruptcy Proofing" Strategies**

Below are some strategies that practitioners commonly employ to attempt to "bankruptcy proof" or "hinder" a debtor from filing for bankruptcy. This discussion contains some techniques that *may* be available in this situation. However, some of these strategies may not be applicable depending on the ultimate structure of the Development Agreement, and others may not be enforceable depending on the

particular facts and/or the particular court where the bankruptcy petition is ultimately filed. A comprehensive analysis of these techniques is outside the scope of this Memorandum. We can provide a more thorough analysis of any of these techniques upon request.

**i. Special Purpose Entity**

One common method to hinder or prevent an unwanted bankruptcy filing is to create a "special purpose entity" by adding provisions to a company's articles of organization that make a voluntary bankruptcy filing difficult or practically impossible. Such provisions typically require a unanimous or supermajority consent of all directors or managers before the company may file for bankruptcy. Some lenders require that at least one disinterested person be a director or manager (selected by the lender) of the special purpose entity. In the real estate context, special purpose entities generally own only one asset: the real estate project. This requirement is imposed to prevent events involving other assets or projects from affecting the value of the collateral.

**ii. Personal Guaranties**

Another common method is to obtain personal guaranties contingent upon a bankruptcy filing. Often, such guaranties provide for personal liability against the counterparty and its principals upon the occurrence of certain acts committed by the counterparty such as bankruptcy, violation of single purpose entity covenants, or incurring subordinate debt without consent.

**iii. Perfecting Liens**

Probably the single most important bankruptcy insulation vehicle is to perfect liens and security interests in the collateral. This would include any mortgage from Developer to City, as discussed above.

**iv. Terminating Agreement Prior to Bankruptcy**

As discussed above, a debtor's power to reject an executory contract is a strong one. However, a debtor's rejection power is limited to contracts that are actually executory. If a contract has been terminated prior to the debtor's bankruptcy filing, the debtor has no right to "resurrect" it (in most cases). The ability to terminate the contract before bankruptcy allows for flexibility by providing the option to end the relationship or to reinstate and renegotiate the contract on more favorable terms. The Development Agreement between City and Developer contains such a right to terminate.

**IV. Conclusion**

In summary, we recommend including a possibility of reverter in the deed over an option to repurchase the Property because we believe it would have a better chance of being enforced in bankruptcy. We also recommend obtaining a second mortgage because it would be unaffected by bankruptcy. Finally, we recommend considering the use of a special purpose entity, including the possibility of appointing a disinterested manager or director, in order to hinder or prevent a bankruptcy filing.

## MEMORANDUM

TO: City of Madison

FROM: Boardman & Clark LLP

DATE: August 14, 2015

RE: Outline of Deferred Exchange with Intermediary Process

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City of Madison (“City”) is negotiating with JDS Development, LLC (“Developer”) the terms of a development agreement (“Development Agreement”) for development of the Judge Doyle Square project (“Project”). Under the Development Agreement, City will initially sell to Developer the Project real estate. The agreement also states that Developer may assign its rights to acquire the Project real estate to an entity to be formed by Developer (the “Holding Company”). Developer has stated that the Holding Company will be owned by a third party investor using proceeds from a “1031 exchange”. This memorandum briefly outlines the steps involved in completing a “1031 exchange”, which is an exchange under §1031 of the Internal Revenue Code.

### I. Overview of Deferred Exchange Utilizing Intermediary

The driving force behind exchanging property rather than selling it outright is deferral of gain. IRC §1031 provides that “no gain or loss shall be recognized on the exchange of property held for productive use in a trade or business or for investment if such property is exchanged solely for property of like-kind which is to held either for productive use in a trade or business or for investment.” By exchanging rather than selling real estate, a taxpayer may be able to defer substantial amounts of gain that would otherwise be recognized on sale.

An exchange under §1031 must meet the following requirements: (1) Property, whether real or personal, is required. (2) Property must be held for a qualified purpose. (3) Property relinquished must be like-kind with replacement property. (4) An exchange (as opposed to a sale) is required.

In the case of real estate, nearly any kind of real estate that is held for productive use in a trade or business or for investment purposes may be exchanged for any other kind of real estate that is held for productive use in a trade or business or for investment purposes. For example, a Walgreen's could be exchanged for an apartment building as part of a §1031 exchange.

In order to comply with these requirements, Holding Company will presumably utilize an intermediary to accommodate a deferred exchange. This arrangement is considered a "safe harbor" under Treasury Regulations, provided that certain requirements are met. The basic idea of this transaction is that the exchanger/taxpayer (here, Holding Company) is transferring property to the intermediary and subsequently received like-kind property from the intermediary. In other words, the "exchange" is between the exchanger/taxpayer and the intermediary, even though at least one outside buyer and one outside seller will be involved.

## **II. Basic Rules and Effects of an Exchange**

In order to defer ALL gain in a transaction, three rules must be followed:

1. The acquired property(ies) must be equal or greater in value than the relinquished property.
2. All of the proceeds from transfer of the relinquished property must be used to acquire the new (replacement) property. If the exchanger keeps any of this money, it is called "boot" and tax must be paid on the money that is kept.
3. The exchanger must not have "debt relief." If a mortgage is retired with transfer of the relinquished property, then a mortgage of equal or greater value must be placed on the acquired property at the time of acquisition. If the new mortgage is less than the old mortgage balance, this is considered "debt relief" and exchanger will be taxed on the difference. This can be overcome if Exchanger puts new "fresh" cash into the purchase of an amount at least equal to the "debt relief".

A 1031 exchange is not an "all or nothing", technique, so that even if the above rules are not completely met, the exchanger may still recognize deferral of some of the gain that would otherwise be recognized. In simplest terms, the exchanger will be taxed on the greater of the trade down in value or in equity from the relinquished property to the replacement property. This recognition would be limited to the extent of the gain realized from the initial transfer.

A 1031 exchange does come at a price: The exchanger's basis in the replacement property equals the fair market value of the replacement property less the amount of gain deferred by the exchanger from the exchange. For example, if the property is subsequently sold, there would be greater gain than if the replacement property had simply been purchased in a normal transaction (which would result in an initial basis equal to the purchase price). This is the "deferral" of gain. Also, the decreased basis could result in lower depreciation.

### **III. Steps in an Exchange**

The exchange involves two steps.

Under the first step, Holding Company conveys the "relinquished" property to the intermediary. This conveyance may have already occurred but will definitely occur before closing on City's conveyance of the Project real estate to Developer (or Holding Company). It is the intermediary, not Holding Company, that receives and places into escrow the closing proceeds from step one. That completes the first step of the transaction.

When the relinquished property transaction closes, two important time periods are triggered concurrently. There are the "45 day identification period" and the "180 day exchange period" (which is actually the earlier of 180 days or the due date for taxpayer's tax return, including extensions).

The second step is acquiring the replacement property. In this case, the Project real estate would be at least one of the replacement properties. Within the 45 day identification period, the exchanger (Holding Company) must identify all replacement property that it might acquire. Within the 180 day exchange period, the intermediary will use the funds from the first step of the transaction to pay the seller of the replacement property, who then conveys that property to the intermediary. The intermediary then conveys the replacement property to the exchanger (ie., Holding Company). Here, the replacement property would include the Project real estate. This type of transaction usually involves "direct deeding." That means that even though the intermediary is technically the acquiring party of the replacement property, it will direct the seller of the replacement property (City) to issue the deed directly to the the exchanger (Holding Company). The closing should otherwise proceed as normal (but within the replacement period). When all of the replacement property is acquired, the exchange is complete.

## APPENDIX C

### MEMORANDUM

TO: Board of Estimates  
FR: Joe Gromacki, TIF Coordinator  
DATE: August 24, 2015

**SUBJECT: Judge Doyle Square TIF Report**

**Background**

On July 31, 2015, JDS Development, LLC (“the Developer”) submitted two TIF Applications on for two project components; 1) a 250,000 SF office to be occupied by Exact Sciences; and 2) a 216- to 250- room hotel. Neither application demonstrated a gap. The applications were also incomplete in several respects.

On August 7, Staff was directed to draft a TIF report by August 20 for Board of Estimates review at their August 24 meeting. As a significant number of questions were unanswered, Staff submitted lists of questions to the Negotiating Team and Developer on August 12, expecting a response by August 16. The Negotiating Team provided their responses on time. Staff received Developer’s response at the end of the day on August 17.

Certain crucial Developer responses were still unclear or lacked the requested detail. In particular, Developer declined to demonstrate numerical project costs, or demonstrate why \$12 million of City TIF assistance was necessary for Exact Sciences.

Given the deadline, there was insufficient time to cure these deficiencies. Further, the Developer asserted that Exact Science was eligible for a gap analysis waiver, implying that it was granted by the Negotiating Team. As the \$12 million request and the terms and conditions for Jobs TIF assistance to Exact Sciences far exceed TIF underwriting parameters, this omission is most problematic.

**Procedural Irregularity, Exceptions to TIF Policy**

There are 13 exceptions to TIF Policy as a result of this project. A copy of these exceptions is attached with this report (**EXHIBIT A**). TIF Policy requires that staff submit such exceptions to the Board of Estimates in closed session, prior to going forth with terms and conditions of a project later evidenced in a signed Term Sheet and TIF funding resolution. In this case, exceptions were presented at a prior BOE meeting, but without a TIF application at that time, the list were best guesses. Procedurally, TIF Policy establishes TIF staff’s role during negotiations. Staff was not involved in negotiation concerning these projects.

**Limited Purview of a TIF Report**

In light of these limitations, TIF staff is only able to provide a limited report that covers a limited range of topics concerning TIF Policy and Law. The remaining issues to be considered by the Common Council are broad policy issues concerning the parking utility, market competition, risk, land sales policy, and other issues that are not the purview of a TIF report.

## TIF Report

The following are TIF staff's conclusions concerning both project components:

### Exact Sciences

- Although Developer did not demonstrate a gap in the TIF Application, Developer is provided \$12 million of Jobs TIF via the development agreement to be provided directly to Exact Science.
- Developer will receive parking revenues averaging over \$900,000 per year.
- Developer claims a gap analysis waiver for Exact Science under Section 1.8 of TIF Policy as Exact Science is an anchor tenant, retaining 300 jobs and creating 100 jobs in the City of Madison.
- Per TIF Policy, Exact Science must qualify for at least one of the conditions stipulated under 1.8 (4).
- Under the Jobs TIF Policy, with a gap analysis waiver, Exact Science would be eligible for up to 40% of the TIF generated by its project within TID 25.
- Per TIF Policy, Jobs TIF assistance is provided as a loan, repaid by tax increments generated by the project and guaranteed by either Developer or Exact Science over the remaining life of the TID.
- In narrative, Developer states that the need for \$12 million to Exact Science is based upon excess construction cost between the suburbs and downtown and the cost of delivering specialized use building elements. There is no numerical estimate confirming this amount.

### Findings

- **Waiver Eligibility**—Staff sees no reason to dispute whether Exact is an anchor tenant at this time, although staff does not have sufficient evidence concerning either the retained or created jobs. As it meets at least one of the standards in 1.8(4), the gap analysis waiver would apply. However the final decision to grant a gap analysis waiver belongs to the Board of Estimates as stipulated in TIF Policy.
- **Using TIF for Capital vs. Operational Cost**-- TIF Law stipulates that TIF shall only be used for capital costs and forbids its use to cover operational costs such as rent, salaries, etc. In previous documents provided to the City, Developer asserted that the reason for TIF was to offset a rent differential between a suburban location and downtown. Without numerical estimates verifying the \$12 million of excess construction costs, staff is uncertain whether TIF is used to write down rent, which is not allowed by law, or construction cost. These assertions might otherwise be verified with proper time and information, i.e. gap analysis. However, Developer declines to provide the necessary detail, citing the gap analysis waiver. This is problematic.

- **Receipt of Parking Revenues**—Although TIF will pay for the \$20.8 million cost of constructing a parking ramp to serve the Exact Science and Hotel projects, the projects appear dependent upon receiving an average of approximately \$1.2 million per year in parking revenues. In particular, the Exact Science project receives an average of about \$900,000 per year. This is unusual for a TIF-funded project. Generally, developers request TIF assistance with parking COST as the issue, i.e. they cannot attract enough capital to pay for the construction cost of the building and parking. In this case, a rudimentary scan of the proposed cash flows demonstrates that the Exact project is also significantly dependent upon parking revenues. Although parking revenues are not TIF, they are generated through the use of TIF to construct parking. Why is this necessary? Staff can draw no conclusion based upon the facts at hand.
- **A Grant, Not a Loan**—The development agreement proposes \$12 million of TIF assistance. There is no repayment by tax increment and likewise no tax increment guaranty. This structure defines a grant, not a loan as required in the Jobs TIF Policy.
- **Jobs Guaranty Provision**—The development agreement includes a jobs guaranty, however. It claws-back any portion of the proposed \$12 million of grant funds, at a rate of \$30,000 per job deficiency if the project does not meet job retention or creation standards. The total Developer's guaranty responsibility diminishes by \$1.5 million per year over eight years. This provision protects the public purpose (i.e. job creation) required by law in order to provide public funds to a private entity.
- **Infeasible Percentage of TIF**—The \$12 million TIF grant represents approximately 499% of the TIF generated by the Exact Science project. Tax increments from the project are insufficient to recover this amount in the remaining life of TID 25. This is also far outside the 40% allowed in TIF Policy for a gap analysis waiver. A TIF run estimate is attached with this report (**EXHIBIT B**).
- **Deal Structure Does Not Meet Jobs Project Policy Standards**—This proposal is not a Jobs TIF project as defined by TIF Policy. It is a grant. It exceeds a feasible cost recovery period and lacks the proper increment guaranty provisions. Common Council approval of this structure would set a precedent that would significantly alter the Jobs Project TIF program.



### **Recommendation:**

With a waiver of gap analysis, Exact Science is eligible for approximately \$1M of Jobs TIF loan assistance from TID 25. A TIF run indicating the increment generated over time, supporting approximately \$1 million is attached (**EXHIBIT B**). With gap analysis, the maximum allowable under TIF Policy is 60%, or \$1.4 million.

#### Hotel Project

The Developer did not indicate a financing gap in the TIF Application. City financial assistance is proposed in the development agreement, including:

- A \$13.9 million redistributed from purchase price funds of Blocks 88 and 105.
- A \$20.8 million grant of excess TID 25 funds to the CDA to construct and own a private parking ramp, to be leased by the Developer for 27 years.
- Hotel collects parking revenues estimated at approximately \$300,000 per year.

#### Findings

- **TIF Grant, Not a Loan**—The City will disburse \$20.8 million of excess accumulated tax increments to the CDA. The Wisconsin Department of Revenue defines the use of excess accumulated tax increment to fund projects as a grant. CDA will use the funds to construct a parking ramp that it will lease to Developer for 27 years.
- **TID 25 Closure**—TID 25 closes in 2022. TIF Law does not allow the collection of tax increments, representing the tax levies of the City and other taxing jurisdictions after TID closure. The City would have to enter into some form individual tax levy agreement with each of the overlying tax jurisdictions to use their portions of the property tax levy to recover the \$20.8 million expenditure.
- **Property Tax Guaranty**—Developer is required to provide a guaranty that property taxes will achieve amounts established in the development agreement.

For the first \$10 million of the TIF funds, the Developer will collaterally assign parking income to the City which gives the City the right to assign parking income to itself in the event that the project does not meet the increment schedule or Developer does not comply with the \$6.8 million net worth requirement.

For the second \$10.8 million—Developer will provide a corporate guaranty, i.e. the LLC, stating that the project will generate the increment described in the Increment Schedule by the end of 27 years, and it will comply with the corporate net worth requirement.

**Recommendation:**

**Land Write-Down**—No recommendation. Neither City property was purchased nor developed with TIF. As authorized by Council, land sale is the purview of the Negotiating Team.

**Parking Ramp Eligibility**— **As an infrastructure cost, no gap analysis is required.** Parking construction cost is eligible under TIF Law, as long as it is authorized by the TIF Joint Review Board (JRB) in the TID Project Plan. However, the TID 25 Project Plan does not authorize this expenditure. The new \$20.8 million expenditure would require JRB review and authorization via an amended TID 25 Project Plan. The plan would also need to be amended to authorize approximately \$26 million of unauthorized expenditures from the 1990's. In addition, TIF Law requires that City must provide the following data to the JRB (Wis. Stats. 66.1105) to amend the TID Project Plan:

1. The specific items that constitute the project costs, the total dollar amount of these project costs to be paid with tax increments;
2. The amount of value increment when the project costs are paid in full and the TID is terminated;
3. The reasons why the projects costs may not or should not be paid by the owners of property that benefits by improvements within the TID;
4. The share of projected tax increments estimated to be paid by the owners of taxable property in each of the taxing jurisdictions overlying the TID, and;
5. The benefits that the owners of taxable property in the overlying taxing jurisdictions will receive to compensate them for their share of the projected tax increments.

Therefore, the final review authority resides with the TIF Joint Review Board.

## EXHIBIT A:

### Exceptions to the "City of Madison TIF Loan Underwriting Policy"

The JDS Negotiating Team is requesting the following exceptions to the City's TIF policies ( TIF Policy in italics).

#### 1. Section 1 Sub 7 – 55% Gateway

Reference section 3.1(7) of the TIF Goals, Objectives and Process exceptions below.

#### 2. Section 1 Sub 8 – C – 3 – A (p. 3)

*"..... shall not exceed 60% of the net present value of tax increments generated by the Employer's project."*

The project will use 499% of the net present value of tax increments.

#### 3. Section 1 Sub 8 – C – 3 – c

*"Developer shall guaranty that tax increments are sufficient to recover the Jobs Project TIF Loan from the date of loan disbursal to Employer "*

Developer will not provide an increment guarantee on the Jobs Project TIF.

#### 4. Section 1 Sub 8 – C – 4 – Gap Analysis Waiver

The City is aware that Exact Sciences is exploring options outside of the City of Madison, which would justify a Gap Analysis Waiver; however, the City has not received documented evidence to this effect.

#### 5. Section 1 Sub 9 – TIF Underwriting Criteria

TIF Staff has not reviewed the proposal in order to make a recommendation on the project due to accelerated timeframe.

#### 6. Section 1 Sub 11 – No Rent or Sale Price Write-Down

*"TIF assistance will be limited to the amount necessary to make a project competitive with other similar projects in the Madison metropolitan market area."*

Based on information provided from developer, it has been suggested that Exact Sciences would pay a lease rate that is higher than what the company would need to pay in a suburban location, but lower than a comparable downtown space.

#### 7. Section 1 Sub 14 - Guaranty

*"The City will require a personal guaranty of increment, sufficient to recover the City's debt service on City-financed TIF loans."*

Developer will not provide a personal guarantee, but will provide a corporate guarantee. Policy permits a corporate guarantee if the guarantee provides adequate security.

Developer's corporate guarantee would come from a single purpose LLC and its liability for increment deficit would be capped at \$10.8 million instead of the full increment value of \$20.8 million on the Block 105 portion of the project. In exchange, Developer proposes to guarantee \$10.8 million of increment above the City's projections.

Exceptions to the “City of Madison TIF Goals, Objectives, and Process”

1. Section 2.4 Tenant-Shifting Office Development

*“The City may consider providing TIF to retain an employer within the City or to accommodate an employer’s expansion. The City will seek to avoid providing TIF to relocate an employer within the City.”*

Exact Sciences is already located in the City of Madison, but plans a significant expansion which would likely require City assistance regardless of location.

2. Section 3.1 Sub 3 (p. 3)

*“The TIF application shall be submitted to the TIF Coordinator. The TIF Coordinator, in consultation with appropriate City staff, shall make an initial review of the TIF application based upon the City’s adopted TIF Underwriting Policy and the adopted TIF Goals, Objectives, and Process”*

Due in part to the accelerated time frame for negotiations, no TIF application was submitted and the developer has not provided sufficient information to constitute a TIF application.

The application was received on July 31<sup>st</sup> and was incomplete.

3. Section 3.1 Sub 4 (p.3) - Application Documents

As noted above, the standard TIF application documents were not used. Rather, the Negotiating Team requested the information that they needed to advance discussions regarding TIF assistance.

4. Section 3.1 Sub 5 (p. 3) - TIF Team

As noted above, the Negotiating Team led the discussion regarding TIF assistance due to the nature of the negotiation timeline and the role of the Negotiating Team in carrying out the Common Council’s directive.

5. Section 3.1 Sub 6 (p. 4) - Application Fee

No application has been submitted, and, as a result, no application fee has been submitted in accordance with MGO 4.28.

Note, however, that the developer did not request TIF assistance specifically in the RFP. The use of TIF was determined to be the appropriate funding source by the Negotiating Team. Under the circumstances, the fee could be waived.

6. Section 3.1 Sub 7 (p. 4) – Term Sheet

*“Requests for TIF assistance that request more than 55% of the Net Present Value of the increment generated by that project will require approval from the Board of Estimates prior the completion of a term sheet.”*

The project will require more than 55% of the Net Present Value of the increment generated and has additional exceptions to policy.

**EXHIBIT B:**

**TIF Increment Projection**

**Exact Sciences Project \$48M Value, TID 25, 40% of TIF, Jobs TIF Gap Analysis Waiver**

<u>TAX RATE PROJECTION</u>				<u>INCREMENT CALCULATION</u>				<u>AVAILABLE FOR ASSISTANCE</u>	
YEAR	CITYWIDE TAX BASE AS OF JAN 1 PRIOR YEAR	NET TAX LEVY	TAX RATE	DISTRICT VALUE AS OF JAN 1	PROJECT VALUE ADDED	INCREMENTAL VALUE AS OF JAN 1	INCREMENT REVENUE	INCREMENT AFTER COVERAGE	PRESENT VALUE
2016	21,362,962,100	517,050,810	0.02420	0	6,841,000	6,841,000	0	0	0
2017	22,644,739,826	537,732,842	0.02375	6,841,000	4,155,900	6,841,000	0	0	0
2018	24,003,424,216	559,242,156	0.02330	11,133,720	18,701,550	11,133,720	162,450	64,980	56,756
2019	25,443,629,668	581,611,842	0.02286	30,057,944	18,701,550	30,057,944	259,398	103,759	84,698
2020	26,970,247,449	604,876,316	0.02243	49,360,653	0	49,360,653	687,090	274,836	209,671
2021	28,588,462,296	629,071,369	0.02200	50,347,866	0	50,347,866	1,107,038	442,815	315,721
2022	30,303,770,033	654,234,223	0.02159	51,354,824	0	51,354,824	1,107,874	443,149	295,289
					48,400,000		3,323,849	1,329,540	962,136
							NPV= 2,405,339	<b>962,136</b>	<b>40% of TIF w/ Gap Analysis Waiver</b>
						<b>TIF Request</b>	<b>\$ 12,000,000</b>	<b>499%</b>	<b>of TIF</b>

<u>ASSUMPTIONS:</u>	
Annual Increase in Citywide Tax Base	6.00%
Annual Increase in Tax Levy	4.00%
Annual Increase in Assessment after construction	2.00%
Percent of Estimated Increment Available	40.00%
Assumed Interest Rate (Discount Rate)	7.00%
NPV Assumes Discounting to	2015
Est. Project Value	48,400,000

Assumes 2015 tax rate. Don't have 2016 rate
Block 88 land purchase appears on the tax roll.
Assessed 10%-45%-45% until full occupancy.

45

## APPENDIX D

### CG Schmidt Analysis of Block 88 Underground Parking Options

**Note for JDS Development LLC.**

**8/17/2015**

**Subject: Judge Doyle Square Block 88 Increase to the Number of Below Grade Parking Levels**

**By: CG Schmidt, Inc.**

Hammes Company Sports Development asked CG Schmidt to evaluate and consider the impact of two alternatives for the addition of below grade parking levels at Block 88 of the Judge Doyle Square development. The first alternative is the addition of two additional levels of parking and the second alternative is the addition of three levels of parking.

The current design configuration anticipates a minimal amount of parking below the first level of parking. Currently, this small intrusion below the parking level has been designed to allow the building of the office building to start prior to the excavation and placement of the lower levels of parking. A system of piles and pile caps working in conjunction with the first two levels of post tensioned concrete will allow the building to be erected above grade at the same time the excavation and construction is happening on the lower levels for the added row of parking below the first level.

If the lower levels of parking were extended to the western property edge the start of the office building would be delayed. An extensive redesign would be required which is estimated to take two months. Another five to six months will be required for construction which would result in an overall delay to the project schedule of seven to eight months (dependent on the alternative selected).

The delay may be longer dependent on the engineered solution to insure protection and support of the soils below the Landmark Madison Municipal Building (MMB). This solution may require underpinning of the MMB foundation, a braced earth retention system to support the soil below the foundation of the MMB, and or a soil nail system extending under the MMB.

Additionally, there would be a significant cost increase to the project budget for below grade parking in place of above grade parking. Other costs would include extended management, general conditions, construction services and hoisting and lifting requirements. The Order of Magnitude cost for the addition of two levels of below grade parking on Block 88 is \$3,135,000. The Order of Magnitude budget for three levels of below grade parking on Block 88 is \$3,981,900.

## APPENDIX E

### SECTION 00 7336 TARGETED BUSINESS & WORKFORCE DIVERSITY PROGRAM

#### PART 1 - GENERAL

##### 1.1 RELATED DOCUMENTS

- A. Attention is directed to Bidding Requirements and Contracting Requirements, and to Division 1, General Requirements, which are hereby made a part of this Section 00 7336.
- B. The Contractor is responsible to administer the Targeted Business & Workforce Diversity Program for the Project, which is hereby made a part of this Section 00 7336.

##### 1.2 SUMMARY REQUIREMENTS

- A. Companies awarded contracts for the Judge Doyle Square Project shall demonstrate good faith efforts to use minority (MBE), disadvantaged (DBE), women-owned (WBE), small (SBE), and Section Three (S3BE) business enterprises and, hereafter referred to as, "Targeted Businesses" and to meet workforce diversity goals established for the Project by the Owner. The criteria for inclusion as a Targeted Business will be included in the Targeted Business & Workforce Diversity Manual.

Failure to comply could result in the contract being awarded to another contractor demonstrating good faith efforts to utilize targeted businesses and a diverse workforce.

- B. The Contractor shall use its best efforts to engage local contractors whose primary offices are located in Wisconsin, with an emphasis on City of Madison employers.

##### 1.3 TARGETED BUSINESS & WORKFORCE DIVERSITY GOALS

- A. The following goals have been established for the Judge Doyle Square Project:
- B. Contract dollar goals:
  - 1. It is the goal of all construction contractors involved in the Judge Doyle Square Project to achieve at least percent (10.00%) of the aggregate dollar value of the contract(s) being awarded to Targeted Businesses. All bidders must submit a Targeted Business Affidavit of Contracting Plan with their bid. All construction contractors of the Project will be required to submit a monthly Targeted Business Program Affidavit of Payment.

- C. Workforce diversity goals:
1. It is the goal of all construction contractors involved in the Judge Doyle Square Project to achieve at least six percent (6%) utilization for racial/ethnic employee hours and four percent (4%) utilization for female employee hours for the overall work on this project. In addition, a goal of five percent (5%) of all employee hours will be obtained through employees which have been trained in any of the following programs funded by the City of Madison: Construction Trades, Inc., Latino Workforce Academy, Construct-U, Workforce Development Board Foundations for the Trades, WRTP-Big Step, Operation Fresh Start, and the Urban League of Greater Madison. All construction contractors of the Project will be required to submit a monthly Workforce Diversity Affidavit that tracks the demographics and hours worked of employees and new hires.
- D. What constitutes a good faith effort?
1. A Contractor and/or Bidder can show that they have made a good faith effort to use Targeted Businesses, and to hire minorities, disadvantaged, women or underemployed by:
    - a. Contacting the local Trade Unions, requesting assistance in locating Targeted Businesses, minority, disadvantaged, female and underemployed individuals.
    - b. If a company contacts the local Trade Unions, requests assistance, provides descriptions of the types of subcontractor or supplier needed, and follows through with the local Trade Unions' suggestions, the company shall be determined to have made a good faith effort.

OR

2. If a company chooses not to use the services of the local Trade Unions, that company shall:
  - a. Make all reasonable efforts to contact Targeted Businesses, solicit bids from them, evaluate those bids, and document the efforts made to use those Targeted Businesses. (See Section 1.06 Documentation of "Good Faith Efforts")

For the purposes of this Project, in order to be counted as Targeted Business, a company must meet the eligibility standards of the City of Madison and be certified by a recognized certifying agency. These include but may not be limited to:

Approved Certifying Agency - an organization whose certifies a business as a disadvantaged, minority, small, section three, or women business enterprise. The approved certifying agencies are:

- City of Madison - Disadvantaged, Minority, Small, Section 3 and Women Business Enterprise
- National Minority Supplier Development Council ("NMSDC") or a regional council - Minority Business Enterprise



- North Central Minority Supplier Development Council ("NCMSDC") - Minority Business Enterprise
- Women Business Enterprise National Council ("WBENC") - Women Business Enterprise
- Wisconsin Department of Administration ("WDOA") - Minority and Women Business Enterprise
- Wisconsin Unified Certification Program ("WI UCP") - Disadvantaged Business Enterprise. Also identifies the business as minority or woman owned

Inclusion - The active, intentional, and ongoing engagement which seeks, accepts, and welcomes diverse suppliers and workers.

Disadvantaged Business Enterprises ("DBE") - A business that has been certified by an approved agency and that is at least 51% owned, operated and controlled by a disadvantaged individual or group. In the case of publicly owned businesses, at least 51% of the stock is owned, controlled, and managed by one or more such individuals.

Minority Business Enterprises ("MBE") - A business that has been certified by an approved agency and that is at least 51% owned, operated and controlled by a minority individual or minority group. In the case of publicly owned businesses, at least 51% of the stock is owned, controlled, and managed by one or more such individuals.

Small Business Enterprises ("SBE") - A business that has been certified by an approved agency and that is independently owned and controlled with annual gross receipts of \$4 million or less when averaged over the past three years, and a personal net worth maximum of \$1.32 million dollars.

Section Three Enterprise ("S3BE") - A business that has been certified by an approved agency and that is at least 51% owned, operated and controlled by a Section 3 resident, at least 30% of the permanent, full-time employees are Section 3 residents or were within 3 years of the date of employment, or provides evidence of a commitment to subcontract in excess of 25% of all subcontracts to Section 3 Business Concerns.

Women Business Enterprises ("WBE") - A business that has been certified by an approved agency and that is at least 51% owned and controlled by a woman or women. In the case of publically owned business, at least 51% of its stock is owned by one or more women, and whose management and daily business operations are controlled by one or more women.

NCMSDC - North Central Minority Supplier Development Council is a regional council of NMSDC and certifies businesses in Iowa, Minnesota, North Dakota, South Dakota and Wisconsin as minority business enterprise.

NMSDC - National Minority Supplier Development Council advances business opportunities for certified Asian, Black, Hispanic and Native American business enterprises and connects them to corporate members. NMSDC's rigorous certification process is considered the gold standard for certifying minority-owned businesses by corporate America.

WBENC - Women's Business Enterprise National Council is dedicated to advancing the success of Corporate Members, certified women business enterprises and government entities in partnership with its 14 Regional Partner Organizations. WBENC is the largest third-party certifier of businesses owned, controlled and operated by women in the United States.

WI UCP - Wisconsin Unified Certification Program (UCP) is a cooperative of 24 different Wisconsin cities, counties, and airport authorities that benefit from USDOT funding. These state and local agencies certify minority and women owned enterprises as disadvantaged business enterprises.

#### 1.4 PROGRAM OVERSIGHT

The Owner will assign a Targeted Business Coordinator to assist the Contractor in understanding the requirements for the inclusion of Targeted Businesses in the construction of Judge Doyle Square. The Targeted Business Coordinator will serve as a monitor on behalf of the Owner to evaluate and measure the Contractor's compliance with the Targeted Business & Workforce Diversity Program.

The Targeted Business Coordinator will perform the following duties in relation to the Targeted Business & Workforce Diversity Program:

- Provide internal and external communication of the goals and scope of the Targeted Business & Workforce Diversity Program.
- Assist the Contractor in the development and implementation of outreach programs.
- Work with the Contractor's management and technical staff to ensure inclusion of qualified Targeted Businesses on bid invitation lists.
- Attend scope review and pre-award meetings to ensure understanding of Project requirements by all Subcontract and Sub-subcontractor bidders.
- Consult with the City of Madison Department of Civil Rights prior to subcontract awards which do not meet or exceed the Targeted Business goals for the public project to ensure progress toward Targeted Business goals.
- Monitor Contract Revisions and Change Orders to ensure that the Targeted Business & Workforce Diversity Program requirements are maintained.
- Participate in job-site meetings to discuss strategies for greater levels of targeted business participation.
- Convene review meetings with the Contractor, Subcontractors, Sub-subcontractors and suppliers to assure achievement of agreed-upon goals.
- Monitor payment procedures to ensure that payment is withheld from firms that are delinquent in the submission of required reports or documentation.

## 1.5 CONTRACTOR'S (AND BIDDER'S) RESPONSIBILITIES

- A. The Contractor and/or Bidder shall contact the Project Manager to coordinate and seek assistance in satisfying the Owner's requirements for demonstrating good faith efforts, and in developing a plan to reach those goals.

The Contractor and/or Bidder shall take the following steps to the fullest extent possible to accomplish the stated goals:

1. Identify the trades, services and suppliers needed for the Project.
  2. Identify Targeted Businesses that have the resources to participate in the Project.
  3. Contact Targeted Businesses to solicit bids for work on the Project.
  4. Refer currently uncertified companies for participation in the Project.
  5. Track participation of targeted and City of Madison businesses, as well as workforce demographics and hours.
  6. Prepare reports required by the Owner.
- B. The Project Manager will further assist the Contractor and/or Bidder by performing the following activities:
1. Further identifying, contacting, and assisting in referring targeted businesses that can provide trades, services and supplies associated with changes in the Project or its staffing.
  2. Find those that can assist contractors in hiring minority and women workers.

## 1.6 DOCUMENTATION OF "GOOD FAITH EFFORTS"

Documentation of "Good Faith Efforts" shall contain all of the following:

- A. A list of all subcontractors, suppliers and other firms to be used on the Project, including name of company, contact person, telephone and fax numbers, and email address.
- B. Documentation that non-targeted subcontractors were notified of the Judge Doyle Project's Targeted Business requirements early enough so that they could contact Target Businesses in a timely fashion and prepare and submit their individual *Targeted Business Affidavit of Contracting Plan*.<sup>1</sup>
- C. Documentation that, upon request by any targeted businesses, the firm has either provided targeted businesses with plans, specifications and other information relevant to the Project or provided a list of individuals and firms in possession of plans, specifications and other information relevant to the Project that they might access for such information.
- D. Documentation that the Contractor or Subcontractor has either reached out to targeted workers when hiring new people for any project at Judge Doyle Square, or has signed and submitted the *Judge Doyle Square Contractor Work Force Declaration* form declaring that you will be hiring no new workers to complete work in Judge Doyle Square. Outreach documentation must clearly state what steps have been taken to hire minority and women workers.

## 1.7 REMEDIES

- A. The Owner may withhold payment to the Contractor and/or any Subcontractor or Sub-subcontractor that is not in compliance with the reporting and demonstration of a good faith effort, as described in the Summary Requirements above, of this Targeted Business and Workforce Diversity Program. Payment may be withheld until that firm demonstrates that it is in compliance with the requirements of the Targeted Business & Workforce Diversity Program and/or that it has satisfied the requirement to demonstrate a good faith effort toward the goals to the satisfaction of the Owner.
  
- B. The Owner may impose monetary sanctions on the Contractor and any Subcontractor or Sub-subcontractor that is not in compliance with this Targeted Business & Workforce Diversity Program and has failed to meet the criteria for measuring good faith effort as described in Summary Requirements above to the satisfaction of the Owner. Such monetary sanctions shall be established by the Owner after evaluation of the scope of the contract and good faith effort toward the inclusion of Targeted Businesses in the work and commensurate with the anticipated costs of achieving such participation to mitigate the impact of not meeting the goals of this Targeted Business & Workforce Diversity Program for that specific phase of the Project.

### **END OF SECTION 00 7336**

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<sup>1</sup> Targeted Business Affidavit of Contracting Plan shows how a company will meet Targeted Business and workforce diversity goals. Form is attached.