

Authorizing an Amendment to the Executed Development Agreement between the City of Madison and Beitler Real Estate Services LLC and Directing Further Actions as a Component of the Judge Doyle Development Project

Refer: Finance Committee, Monona Terrace Board

Sponsors: Mayor Paul R. Soglin; Alder Michael Verveer

Fiscal Note:

To Be Inserted

WHEREAS, on April 19, 2016, the Common Council adopted RES-16-00317 to approve the selection of Beitler Real Estate Services LLC (the “Developer”) as the Judge Doyle Development Team with which to commence negotiations on proposal version B (underground public parking garage, retail space, bicycle center and apartments on Block 88, and a hotel and apartments on Block 105) (the “Project”), and directed the Judge Doyle Negotiating Team to immediately initiate negotiations with the selected development team and to report back to the Board of Estimates by June 27, 2016; and

WHEREAS, on July 5, 2016, the Common Council adopted RES-16-00510, to authorize the Mayor and City Clerk to execute the Development Agreement with the Developer for the Project; which was executed by the parties on July 12, 2016, and

WHEREAS, the City and Developer worked together to plan and coordinate the development of the Project during 2016 and 2017 including the preparation of a land use application to rezone the sites, which was approved by the Common Council on May 1, 2017; and

WHEREAS, the City of Madison prepared plans and specifications for the public garage and bicycle center, issued plans for the construction of the garage and bicycle center and awarded the construction to JP Cullen Construction, the low bidder, on September 5, 2017, for which construction started in October 2017; and

WHEREAS, the Developer continued to develop the plans for the above grade apartments, retail, and private accessory parking including updated pricing from JP Cullen Construction which identified substantial increases in construction costs from earlier estimates; and

WHEREAS, the Developer informed the City in April 2018 that it would not proceed with Block 88 development at this time without significant cost reductions to the Developer, and requiring the City to assume the cost of accessory parking, retail and load transfer slab (together the “Podium”); and

WHEREAS, on May 15, 2018, the Common Council adopted RES-18-00403 to authorize an amendment to the 2018 Capital Budget to increase the funding authorization for the public garage project by \$ 4.4 million to design and construct the Podium at an estimated cost of \$11 million, and directed that the City continue to work with the Developer on amendments to the executed Development Agreement and Developer

Services Contract between the City and Developer and to report back to the Common Council by November 15, 2018; and

WHEREAS, the Developer filed a lawsuit on June 4, 2018 against the City in Federal Court alleging a contract violation by the City under the Development Agreement, which the Developer voluntarily dismissed on August 23, 2018; and

WHEREAS, the City and the Developer have communicated during September and October to resolve the continuing dispute.

NOW, THEREFORE BE IT RESOLVED that the Common Council does hereby authorize an amendment to the executed Development Agreement, subject to final language being drafted and approved by the City Attorney, but substantially on the following terms:

1. Transfer the development rights to, and ownership of, the Podium component of the Block 88 development to the City of Madison by the Developer in exchange for \$600,000, the sum estimated by the Developer to be the cost of the delay in starting the construction of the hotel project on Block 105 due to the City's delay in completing the municipal garage on Block 88 because of the Podium construction. The payment shall be made in eight (8) monthly installments starting thirty (30) days after execution of the amendment authorized by this resolution.
2. Inclusion of mutually agreeable terms for the use of the Podium parking by Developer's Block 88 tenants subject to the approval of the Transportation Commission.
3. That the time to commence construction of the hotel project on Block 105 is advanced to require commencement no later than 18 months after the City completes the Podium, and the time to commence construction on the balance of the private development is moved up to 30 months after the City completes the Podium.
4. That Beitler must file for a building permit for the Block 105 Hotel as a condition precedent to the demolition of Government East.
5. All other terms and conditions in the executed Development Agreement between the City and Developer to remain unchanged, except where necessary to effectuate the terms of this Resolution.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are authorized to sign the First Amendment to the Development Agreement upon approval of the final language by the City Attorney; and

BE IT FURTHER RESOLVED, that the Common Council does hereby approve the Room Block Agreement for the new hotel to be built on Block 105 as a component of the Judge Doyle Development, substantially on the terms of Attachment A, and the Mayor and City Clerk are authorized to sign the Room Block Agreement at closing or such other time as approved by the City Attorney.

Note: On February 6, 2018, the Common Council adopted RES-18-0013, to approve the Developer's selection of Hilton Embassy Suites as the hotel franchise company and Aimbridge Hospitality as the operator for the new hotel to be built on Block 105 as a component of the Judge Doyle development project. Section 5.3(b)(2) of the Development Agreement provides for a room block agreement to support the Monona Terrace Community and Convention Center between the Developer and the City to be approved by the Common Council. Section 2.2 and Exhibit B of the Development Agreement permits the Developer to establish and form "Tenant" as the Holding Company and for this Room Block Agreement to

be incorporated into that certain Ground Lease of the Block 105 Hotel portion of the Block 105 Development Parcel (the "Ground Lease") as an exhibit thereto. The City and Developer completed the negotiation of the terms for the Room Block Agreement in May 2018, which is being presented to the Common Council for its consideration as a component of this resolution.