



## Legislation Text

File #: 53530, Version: 3

### **Fiscal Note**

**This resolution authorizes an amendment to the development agreement with Beitler Real Estate Services LLC, for the development of the Judge Doyle Project on Blocks 88 and 105. The amendment would require the first private development to be a hotel, return the development right on Block 88 to the city, require a \$700,000 payment by the city to Beitler for release of the development right on Block 88, place a 20 year restrictive covenant prohibiting development of a hotel on Block 88 if a hotel is built by Beitler on Block 105, and accelerate the pace of the development on Block 105.**

**The 2018 capital budget (reauthorized in the 2019 adopted capital budget) included \$41,791,659 for construction of the Judge Doyle Public Parking Structure (MUNIS project #11471), \$1 million for a bicycle center (MUNIS project #11160), and \$1.3 million for city fleet stalls in the public parking structure (MUNIS project #11319) for a total of \$45,965,112. This amount was increased by \$4.4 million to a total of \$50.4 million through a separate budget amendment resolution (Legistar #51484, RES-18-0403, adopted May 15, 2018) to fund estimated hard and soft costs of completing first floor retail space, two above-grade parking decks and associated access ramps, as well as a load transfer slab on top of the structure (together called "the podium") that can serve as the foundation for future development (e.g., office, apartment). Total estimated cost of the podium is \$11 million, funded by a combination of the \$4.4 million added through the budget amendment and \$6.6 million of savings in the 2018 adopted budget amount due to bids for constructing the underground public garage coming in lower than estimated. Funding sources for the project include \$23.5 million from Parking Utility Reserves, \$24 million from TID 25, \$2.3 million GO debt and \$565,322 from a federal TIGER grant.**

**According to the City's Development Agreement with Beitler Real Estate Services (see Exhibit B - Ground Lease Agreements Term Sheet - of the Development Agreement), Beitler was scheduled to pay \$755,000 to lease Blocks 88 (\$180,000) and 105 (Block 105 hotel -- \$350,000; Block 105 Apartment -- \$225,000), with these amounts escalating by 5% every 5 years. With the amendment included in this resolution, a ground lease with Beitler would not be executed on Block 88. However, the city would have the right to seek development on Block 88 and presumably this development would include a ground lease provision or some other form of compensation for the development right. Ground lease revenues from both blocks, plus anticipated lease revenues from ground floor space in the podium on Block 88 would be used to replenish the Parking Utility reserves for the \$11 million cost of the podium, with interest, over a 12 year period.**

**The development agreement adopted by the Council on July 5, 2016, authorized a \$1.5 million developer administration fee for developer services. The fee was paid to Beitler Real Estate Services LLC, in 20 monthly installments of \$75,000. This resolution would authorize an additional payment to Beitler Real Estate Services LLC of \$700,000 to be paid in one lump sum within 10 days of approval of the amendment. The \$700,000 is compensation for the transfer of the Block 88 development right to the city.**

**Based on project construction costs to date, including change orders and contingency, it is estimated that sufficient budget authority is available to make the \$700,000 payment.**

The 2018 adopted capital budget includes \$41,791,659 for construction of the Judge Doyle Public Parking Structure (MUNIS project #11471), \$1 million for a bicycle center (MUNIS project #11160), and \$1.3 million for

city fleet stalls in the public parking structure (MUNIS project #11319) for a total of \$45,965,112. This amount was increased by \$4.4 million to a total of \$50.4 million through a separate budget amendment resolution (Legistar #51484, RES-18-0403, adopted May 15, 2018) to fund estimated hard and soft costs of completing first floor retail space, two above-grade parking decks and associated access ramps, as well as a load transfer slab on top of the structure (together called "the podium") that can serve as the foundation for future development (e.g., office, apartment). Total estimated cost of the podium is \$11 million, funded by a combination of the \$4.4 million added through the budget amendment and \$6.6 million of savings in the 2018 adopted budget amount due to bids for constructing the underground public garage coming in lower than estimated. Funding sources for the project include \$23.5 million from Parking Utility Reserves, \$24 million from TID 25, \$2.3 million GO debt and \$565,322 from a federal TIGER grant.

According to the City's Development Agreement with Beitler Real Estate Services (see Exhibit B—Ground Lease Agreements Term Sheet—of the Development Agreement), Beitler will pay \$755,000 to lease Blocks 88 (\$180,000) and 105 (Block 105 hotel—\$350,000; Block 105 Apartment—\$225,000), with these amounts escalating by 5% every 5 years. In addition, the Parking Utility could realize net revenues of approximately \$300,000 annually from retail leases and the above-grade parking stalls. Under the May 15, 2018, resolution, these revenues are dedicated to replenishing the \$11 million allocated for the cost of constructing the podium that was to have been paid by the developer. Based on this revenue stream, the \$11 million would be repaid to the parking utility Reserve Fund in approximately 12 years, assuming an interest rate of 2.5%.

The development agreement adopted by the Council on July 5, 2016, authorized a \$1.5 million developer administration fee for developer services. The fee was paid to Beitler Real Estate Services LLC, in 20 monthly installments of \$75,000. This resolution would authorize an additional payment to Beitler Real Estate Services LLC of \$600,000 to be paid in 8 monthly installments of \$75,000, commencing 30 days after the execution of the amendment to the development agreement authorized by this resolution. The \$600,000 is compensation for the transfer of the development right to the city to construct the podium and for delay in the timing of the first date that Beitler Real Estate Services LLC can begin construction on Block 105 due to construction of the podium on Block 88.

#### Title

SECOND SUBSTITUTE - 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.

#### Body

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; and,

**WHEREAS, the Common Council approved the room block agreement, as required by the Development Agreement, on December 4, 2018 as RES-18-00845;**

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 \$600,700,000, ~~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.~~ **as consideration for release of development rights on Block 88.** The payment shall be made in ~~eight (8) monthly installments starting thirty (30)~~ **within ten (10) 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.~~
- 3.2 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. ~~3.~~ That Beitler must file **an application** for a building permit for the Block 105 Hotel as a condition precedent to the demolition of Government East.
- ~~3.~~ **4. The City agrees to record a restrictive covenant on Block 88 preventing the development of a hotel or similar lodging establishment above the Podium for a period of twenty (20) years effective from the date the Block 105 Hotel is open for business to the public. If the Block 105 Hotel does not open for business to the public, then the restrictive covenant shall not become effective.**
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, **and further execute and record any additional documents as necessary to carry out the terms of the Development Agreement and First Amendment thereto,** 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.~~