Legislation Details (With Text)

File #:	39800	**Version:**	4	**Name:**	SECOND SUBSTITUTE Accepting the Report of the Board of Estimates and the August 20, 2015, Report of the Judge Doyle Square Negotiating Team; Authorizing the Mayor and City Clerk to Execute an Amended and Restated Development Agreement with JDS Development
Type:	Resolution			**Status:**	Passed
File created:	8/20/2015			**In control:**	COMMON COUNCIL
On agenda:	9/15/2015			**Final action:**	9/29/2015
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Title: AMENDED SECOND SUBSTITUTE - Accepting the Report of the Board of Estimates and the August 20, 2015, Report of the Judge Doyle Square Negotiating Team; Authorizing the Mayor and City Clerk to Execute an Amended and Restated Development Agreement with JDS Development LLC for the Judge Doyle Square Project and Related Agreements, and Directing Follow-up Actions by the City as Described and Agreed to in the Amended and Restated Development Agreement.

Sponsors: Paul R. Soglin, Denise DeMarb, Maurice S. Cheeks, Sara Eskrich, Barbara Harrington-McKinney, Michael E. Verveer

Indexes:

Code sections:

Attachments: 1. 9-22-15 Updated Addendum to Report JDS Negotiating Team.pdf, 2. 9-22-15 Amended & Restated Development Agreement JDS.pdf, 3. RESJI Review & Recommendations of JDS Project.pdf, 4. 9/24/15 Monona Terrace Board JDS Letter.pdf, 5. Substitute 39800.pdf, 6. Original Resolution 39800.pdf, 7. 9-14-15 LETTER Landlords re JDS Parking Ongoing Subsidy.pdf, 8. 9-1-15 Resolution Fiscal Note Memo.pdf, 9. 8-31-15 City - Negotiating Team Addendum - 8.31.15.pdf, 10. 8-24-15 City Negotiating Team Report.pdf, 11. 8-21-15 DRAFT JDS - Amended and Restated Development Agreement 08-21-15.pdf, 12. 8-21-15 JDS TIA COMMENTS.pdf, 13. JDS Council Briefing -- 9-25-2015 update.pdf, 14. affidavit.pdf, 15. Harrington-McKinney amendment.pdf, 16. Second Substitute language

Date	Ver.	Action By	Action	Result
9/29/2015	2	COMMON COUNCIL	Adopt	
9/29/2015	3	COMMON COUNCIL	Amend the Substitue	Pass
9/29/2015	3	COMMON COUNCIL	Adopt Substitute As Amended	Pass
9/15/2015	2	COMMON COUNCIL	Re-refer	Pass
9/1/2015	1	COMMON COUNCIL	Refer to a future Meeting to Adopt	Pass
8/24/2015	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL WITH THE FOLLOWING RECOMMENDATIONS - REPORT OF OFFICER	Pass
8/20/2015	1	Finance Department	Refer	

Fiscal Note

Fiscal Note: The adopted 2015 capital budget includes $700,000 under PCED project #12 for the South Capitol Transit Oriented District ($380,000 in Federal TIGER II grant funds and $320,000 in TID 25 proceeds). The Parking Utility budget includes $11.95 million in 2015 for replacement of the Government East parking garage (Parking Utility project #2, Judge Doyle Square Garage).

Additional background information on the project can be found at the Judge Doyle Square page on the City Planning website (<http://www.cityofmadison.com/planning/judgeDoyleSquare/>).

Staff resources from the Department of Planning & Community & Economic Development, Finance, Traffic Engineering, Parking Utility, Monona Terrace and City Engineering will be allocated to provide support for the negotiation process without the need for an additional appropriation.

All future expenditures associated with the project will require further Council approval other than the costs associated with the review and developer selection and negotiations with the selected developer.

A separate memo from the City Finance Director (attached in Legistar) outlines the various financial elements of the proposal, including anticipated appropriations that will need to be authorized as part of the 2016 Capital Budget. Under the Amended and Restated Development Agreement, the City will receive $15 million for property it owns on Blocks 88 and 105. These proceeds will be deposited in the City's General, Capital Projects and Parking Utility Enterprise Funds as determined by the City Finance Director. Most of these proceeds will be used to finance various elements of the project through appropriations in the 2016 Capital Budget.

Title

AMENDED SECOND SUBSTITUTE - Accepting the Report of the Board of Estimates and the August 20, 2015, Report of the Judge Doyle Square Negotiating Team; Authorizing the Mayor and City Clerk to Execute an Amended and Restated Development Agreement with JDS Development LLC for the Judge Doyle Square Project and Related Agreements, and Directing Follow-up Actions by the City as Described and Agreed to in the Amended and Restated Development Agreement.

Body

WHEREAS, on May 19, 2015, the Common Council accepted the Report of the Board of Estimates and 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 preliminary agreement by its June 29th meeting; and

WHEREAS, on May 19, 2015, the Common Council further directed that, if directed by the Board of Estimates at its June 29, 2015 meeting and concurred on by the Common Council, the Judge Doyle Square Negotiating Team continue the exclusive negotiation with JDS Development/Exact Sciences over a final development agreement and report back with a report and final development agreement at its August 24, 2015 meeting, to be followed by Common Council action; and

WHEREAS, on July 7, 2015, the Common Council (1) accepted the June 29, 2015 Report of the Board of Estimates and the June 25, 2015 Report of the Judge Doyle Square Negotiating Team, (2) authorized the Mayor and City Clerk to execute the Development Agreement with JDS Development LLC, and (3) directed the Judge Doyle Square Negotiating Team to continue the exclusive negotiation with JDS Development/Exact Sciences over an Amended and Restated Development Agreement and to report back with a report and the Amended and Restated Development Agreement to the August 24, 2015 meeting of the Board of Estimates; and

WHEREAS, the Judge Doyle Square Negotiating Team has engaged the JDS Development LLC/Exact Sciences in negotiations and submitted a Report to the Board of Estimates dated August 20, 2015 along with the proposed Amended and Restated Development Agreement; and

WHEREAS, on August 24, 2015, the Board of Estimates recommended acceptance of the Report of the Judge Doyle Square Negotiating Team and execution of the Amended and Restated Development Agreement with JDS Development LLC/Exact Sciences;

NOW, THEREFORE BE IT RESOLVED, that the Common Council does hereby accept the Report of the Board of Estimates and the August 20, 2015 Report of the Judge Doyle Square Negotiating Team and authorizes the Mayor and City Clerk to execute the Amended and Restated Development Agreement with JDS Development LLC for the Judge Doyle Square Project to include the terms set forth in the Report of the Judge Doyle Square Negotiating Team and subject to final approval of the City Attorney, and directs follow-up actions by the City as described and agreed to in the Amended and Restated Development Agreement.

BE IT FURTHER RESOLVED, that the Mayor and City Clerk are authorized to enter into other agreements as described in the Amended and Restated Development Agreement, including the Purchase Agreement, which includes an indemnification provision from the City that has been reviewed by the City Risk Manager, the TIF Agreements, the Disbursing Agreement, Construction Administration Agreement, Parking Lease, any necessary deeds, leases or options to carry out the terms of the real estate transactions, or other necessary agreements.

BE IT FURTHER RESOLVED, that under the Development Agreement, the City is anticipated to receive a payment of $15 million for the value of City owned property on Blocks 88 and 105, with the funds to be deposited in the City's General, Capital Projects and Parking Utility Enterprise Funds, as determined by the City Finance Director.

BE IT FURTHER RESOLVED, that the City hereby finds and determines that the Project is consistent with the public purposes of Tax Increment Finance Law and the plans and objectives set forth in City of Madison TIF Policy, the City's loan to Developer demonstrates the potential to eliminate blighting conditions, attract and retain businesses and employment in the Capitol Square area that would stimulate planned commercial redevelopment in TID #25, thereby making more likely the accomplishment of the public purpose objectives set forth in the Project Plan, the TIF Law and City TIF Policy, and that TIF agreements entered into with the Developer and Exact Science shall conform to the terms in the Report.

BE IT STILL FURTHER RESOLVED, that the Common Council hereby makes the following exceptions to TIF Policy:

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

(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.**~~

4 ~~**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.

5 ~~**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 31st 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.**~~

2 ~~**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.

3 ~~**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.

4 ~~**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.

BE IT STILL FURTHER RESOLVED, that the Common Council hereby finds that the following conditions stated in RES-15-00598 have been satisfied:

a. Completed TIF application
b. TIF Gap Analysis with the Financial Term Sheet
c. Analysis of potential impacts on the parking utility of 650 additional parking stalls if public parking is allowed in leased area during "off hours."
d. Analysis of impact on parking utility and city budget from 17-month loss of revenue from Government East parking structure
e. 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;
f. Clarification of the type of financial instrument and terms of the city's $12M investment in jobs TIF
g. Clarification of the type of financial instrument for the $12M/12 year jobs guarantee offered by Exact Science
h. Clarification of reporting and oversight mechanism for ensuring compliance with jobs TIF terms
i. 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.
j. 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.

BE IT FURTHER RESOLVED, that the Common Council accepts that the hotel room count will be, at minimum, 216 rooms.

BE IT FURTHER RESOLVED, that the language in the last paragraph of section 3.4(a) of the amended and restated development agreement (page 9), after the word "through" in the second line, add the following: "the establishment of aspirational hiring goals for the business units in Judge Doyle Square, annual reporting to the City on the progress on these hiring goals and the establishment of partnerships with community organizations and"

BE IT FINALLY RESOLVED, that the Common Council hereby creates a Judge Doyle Square Monitoring Team to oversee the equity initiatives for the Project. The team will be appointed by the Mayor and report to the Board of Estimates approximately every 60 days until the team is dissolved by the Mayor. This team constitutes a sub-unit of the City and is subject to the open meetings law.