

Communication from Public

Name: James E. Pugh, Esq.
Date Submitted: 06/27/2022 11:03 AM
Council File No: 14-0425-S4
Comments for Public Posting: Honorable City Council Members - please see the attached letter for Item 5 on the June 28, 2022 Economic Development & Jobs Committee hearing regarding Angels Landing. Thank you.

June 24, 2022

VIA ELECTRONIC MAIL ONLY

Economic Development & Jobs Committee
Los Angeles City Council
City of Los Angeles
200 North Spring Street
Los Angeles, CA 90012
E-Mail: adam.lid@lacity.org; and uploaded
<https://cityclerk.lacity.org/publiccomment/>

Re: Angels Landing Project

Dear Honorable City Council Members:

We represent Angels Landing Partners, LLC ("ALP") and its interest in acquiring Parcel Y-1 from the Community Redevelopment Agency/Los Angeles ("CRA/LA"). The City of Los Angeles ("City"), acting through the Mayor's Office of Economic Development, and the CRA/LA are parties to the Option Agreement for Parcel Y-1 ("Property"). In addition, ALP and the City are parties to an Exclusive Negotiating Agreement ("ENA") to negotiate the transactions required to transfer the Property to ALP so it can develop the Angels Landing Project ("Project"). Currently, the City and ALP are negotiating a Disposition and Development Agreement ("DDA") for sale and operation of the Property. This letter addresses a few important issues related to the DDA term sheet that ALP would like the Economic Development & Jobs Committee ("EDJC") to consider at its June 28, 2022 hearing.

On June 24, 2022, the City released a staff report from the Office of the Chief Legislative Analyst ("CLA") regarding the future development of the Property. That report provides a holistic update about the Property. We are focused mostly on two outstanding issues in the DDA term sheet for the upcoming hearing. Those issues are: (1) the value of the Property in a potential City repurchase scenario; and (2) the contractual structure of permitted transfers and assignments for this Project. We explain each of these points below and set forth ALP's specific requests for EDJC consideration.

First, regarding the repurchase option, ALP has infused great value into the Property and spent over \$11 million to complete the California Environmental Quality Act ("CEQA") process and fully entitle the Property. These are only the initial expenses and will increase over time. The effort thus far spanned nearly five years and weathered political turmoil, economic volatility, and a pandemic. It would be unjust to strip that investment from ALP. Similarly, it would be unjust for the City to enrich itself, or provide a windfall to a future developer off the backs of ALP, using contract terms that allow a repurchase option at potentially "less" than fair

market value. Yet, the CLA is proposing exactly that in the staff report. We trust and hope that EDJC recognizes that is an inequitable position.

Specifically, the CLA is requesting that the City shall have the option "to purchase the Site for an amount equal to the lesser of (i) the Purchase Price or (ii) the fair market value of the Property." See Section 18(e) in the draft DDA term sheet. ALP is asking EDJC to change one word – change "lesser" to "greater." That is a fair and reasonable request supported by precedent. In fact, this EDJC committee, and the full City Council, have approved similar deals (such as the Fig+Pico Conference Center Hotels) for prior projects on city-owned land. We see no reason why the City should treat ALP differently. This is especially true here because the City does not own the land and is merely acting as a pass-through broker between the CRA/LA (as the seller) and ALP (as the buyer) of the Property. Therefore, ALP respectfully requests the following:

Requested Action

- EDJC instructs the CLA to amend in part Section 18(e) of the draft Disposition and Development Agreement term sheet to provide that the City's repurchase option shall be either for an amount equal to the greater of (i) the Purchase Price or (ii) the fair market value of the Property.

To close this issue, we also note a few contextual points for EDJC. The staff report justifies its position by claiming that the City will not receive a direct benefit from the sale of the Property until the Project is built. That is not true because the City will receive its share of the sale proceeds, along with the CRA/LA and other taxing entities, upon closing. Also, the City is not "paying a premium" for the Property (as claimed in the staff report) by simply paying ALP's \$50 million purchase price or fair market value. To the contrary, paying the "greater" of either what ALP paid for the land or the current fair market value is simply level setting the investment ALP made to acquire the land and acknowledging the carrying costs and liabilities for ALP to hold the land until the unlikely, if ever, event whereby the City exercises its repurchase right. Moreover, fair market value at that time would be determined by appraisers selected by both the City and ALP. That seems inherently fair and accurate. Thus, we believe that ALP's request on this issue is consistent with industry practice, city precedent, and fair dealings.

Second, regarding permitted transfers, ALP requires a reasonable contractual structure to ensure financing and deal feasibility. As an initial matter, we were surprised by how the staff report presented this issue because we thought we had agreed in concept with the CLA regarding the permitted transfer provision. In a nutshell, the parties agreed on June 7, 2022 during an in-person meeting at City Hall that the DDA would include an expanded permitted transfer provision due to the magnitude of the Project and the anticipated financing and ownership structures. Accordingly, as requested by the CLA, we provided a revised permitted transfer provision to the City Attorney to consider on June 13, 2022. See attached Exhibit A: Draft Permitted Transfer Provision that includes the transfer language ALP proposed and our related email correspondence. On June 15, 2022, the parties finished the DDA term sheet negotiation and agreed that (in the interest of time) we could finalize the expanded transfer provision after the EDJC hearing and advise the committee of the parties intent to do so. But,

the staff report did not do that. Instead, the staff report states (on page 7) that the transfer language proposed by ALP is not typical for the City and would result in the City not having any control over who it does business with. That statement is not correct.

As you can see in Exhibit A, the DDA would include transfer and assign guardrails that limit pre-approved transfers to specific entities under the control of the developer and equity partners that meet demanding economic, longevity, and ethical criteria. We modeled this provision from contracts the City has signed for other large real estate deals like the (former) Staples Center development. In addition, the provision permits membership interest transfers between ALP estate entities upon the occurrence of incapacity or between ALP managing members. Granted, this is an oversimplification of the provision. EDJC can review in detail the actual provision in Exhibit A, if desired. The point being, ALP feels strongly that it needs a robust transfers and assigns provision that matches the needs of the Project and its foreseeable financing and ownership structure. Therefore, we have solution for EDJC to consider that allows the parties to proceed either way. The councilmembers could do the following:

Requested Action:

Either

- Instruct the CLA, with assistance of the City Attorney, to include Section 23 as proposed by ALP, in the DDA term sheet for City Council approval;

or

- Instruct the CLA, with assistance of the City Attorney, to negotiate the final language of Section 23 substantially in accordance with the provisions provided by ALP, with the understanding that the parties intend to draft and include the expanded transfers and assigns provision in the final DDA for City Council consideration.

We understand that EDJC may not have had sufficient time to consider all of the language proposed in Exhibit A and thus may not be comfortable approving it at the June 28, 2022 hearing. That is why – as we believed was going to be the case – the staff report would have indicated that the parties intended to craft final language for Section 23 as part of the continuing negotiations. The second option above would allow the parties that opportunity while also advancing the DDA term sheet to City Council for timely approval.

To close this issue, we also note a few contextual points for EDJC. ALP is not asking the City to give up its discretion for transfers. Instead, we are merely asking that when the City exercises its discretion, that the exercise not be unreasonably withheld, conditioned, or delayed. The City has agreed to this type of provision previously and we would like the same reasonableness standard here. Next, we believe the CLA intended to work with ALP to craft an expanded transfers and assigns provision based on our verbal and email communications leading up to the hearing. Maybe we are mis-reading the CLA's intent in the staff report. So, if the CLA in fact intends to continue drafting Section 23 as previously discussed, we would welcome that and urge EDJC to instruct CLA accordingly per the second bullet solution above.

In conclusion, we would like to note that the CLA and ALP have worked collaboratively (especially in the past month) to draft terms for the non-binding DDA term sheet. We appreciate the CLA's and the City Attorneys' engagement and hard work to bring this matter before the City councilmembers. We know that all of the parties preferred to have no outstanding issues to comment on at the hearing. We have worked in good-faith to narrow the issues before EDJC. We look forward to continuing our work with the CLA, City Attorney, and other City departments involved in disposition of the Property. We will be prepared to answer any questions the councilmembers have during the hearing.

Thank your for the attention and consideration of this important matter for ALP and the City.

Sincerely,

A handwritten signature in blue ink, reading "James E. Pugh". The signature is fluid and cursive, with the first name "James" and last name "Pugh" clearly legible.

James E. Pugh
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:4863-9969-5910.1

CC:

Don Peebles, Angels Landing Partners
Victor MacFarlane, Angels Landing Partners
Sharon Tso, Chief Legislative Analyst

EXHIBIT A

23. Transfers and Assignments. Except as otherwise provided in the DDA, the Developer shall not transfer or assign its interest in the DDA without the prior written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Permitted transfers that do not require prior approval by the City shall be specifically set forth in the DDA, but shall include, without limitation, the following:

a. A transfer or assignment of the Developer's interest to an Approved Development Entity (as defined below). For purposes of this Section:

i. "Approved Development Entity" means an entity that is under the Control (as defined below) of the Developer and has one or more Qualified Equity Partners (as defined below).

ii. "Qualified Equity Partner" means an entity that satisfies the following criteria:

A. It has, within the preceding ten (10)-year period, on its own or through partnership with an assembled ownership team, successfully financed, developed, owned or operated projects similar to the Project;

B. Either alone or in combination with other members or partners (or their constituent members, partners or shareholders) or guarantors has a demonstrated net worth of not less than One Hundred Million Dollars (\$100,000,000);

C. Neither it nor any of its principals, members, partners or shareholders owning ten percent (10%) or more of the ownership interests in the proposed Qualified Equity Partner (1) has been convicted of, admitted or assumed (including any plea of no contest) criminal or civil liability for any felony or fraud or any act of moral turpitude (such as robbery, embezzlement, burglary, arson, murder, perjury), but in any event excluding convictions or pleas relating to DUI/DWI or the like, or (2) is currently or has been a party adverse to the City in any lawsuits, claims or other actions within the preceding three (3) years; and

D. Neither it nor, to its knowledge, any of its principals, member or partners, have engaged in any dealings or transactions (1) in contravention of any U.S., international or other anti-money laundering regulations or conventions, including without limitation the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, the United States International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, the Trading with the Enemy Act (50 U.S.C. § 1 et seq., as amended), any foreign asset control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) or any enabling legislation or executive order relating thereto, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56 and the regulations promulgated thereunder, or any order issued with respect to anti-money laundering by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), (2) in

contravention of Executive Order No. 13224 issued by the President of the United States on September 24, 2001 (Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), as may be amended or supplemented from time to time ("Executive Order 13224") or (3) on behalf of terrorists or terrorist organizations, including those persons or entities that are included on any relevant lists maintained by the United Nations, North Atlantic Treaty Organization, Organization of Economic Cooperation and Development, OFAC, Financial Action Task Force, U.S. Securities & Exchange Commission, U.S. Federal Bureau of Investigation, U.S. Central Intelligence Agency, U.S. Internal Revenue Service, or any country or organization, all as may be amended from time to time. In addition, neither it nor, to its knowledge, any of its principals, member or partners, a person or entity (a) that is listed in the Annex to or is otherwise subject to the provisions of Executive Order 13224, (b) whose name appears on OFAC's most current list of "Specifically Designated Nationals and Blocked Persons," (which list may be published from time to time in various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>), (c) who commits, threatens to commit or supports "terrorism," as that term is defined in Executive Order 13224, or (d) who has been associated with or is otherwise affiliated with any entity or person listed above.

iii. "Control" means having (A) the sole managing general partner interest, more than 50% of the general partner interests in a partnership, or day-to-day responsibility for the development of the Project, (B) the sole managing member interest, more than 50% of the managing membership interests in a limited liability company, or day-to-day responsibility for the development of the Project, or (C) more than 50% of the ownership interest in a corporation or day-to-day responsibility for the development of the Project.

b. A transfer or assignment of a membership interest in the Developer as the result of the death or incapacity of R. Donahue Peebles, Jr. ("Peebles") or Victor MacFarlane ("MacFarlane"), following which (i) Peebles acquires, directly or indirectly, all or a portion of the ownership interest held directly or indirectly by MacFarlane, (ii) MacFarlane acquires, directly or indirectly, all or a portion of the ownership interest held directly or indirectly by Peebles and/or (iii) a family member or members of the applicable deceased or incapacitated individual, and/or one or more trusts for the benefit of a family member or members of the applicable deceased incapacitated individual, acquires, directly or indirectly, all or a portion of the ownership interest held directly or indirectly by the deceased or incapacitated individual.

c. A transfer or assignment of (i) MacFarlane's direct or indirect membership interest in the Developer to Peebles or an entity owned by Peebles and/or (ii) Peebles' direct or indirect membership interest in the Developer to MacFarlane or an entity owned by MacFarlane.

All permitted assignments and transfers specifically set forth in the DDA, including those set forth above, shall require the Developer to provide written notice to the City of any such assignment or transfer, accompanied by a written assignment and assumption agreement, in a form reasonably acceptable to City, pursuant to which the Developer shall assign its rights and

obligations to such affiliate or other entity, and such affiliate or other entity shall expressly assume the rights and obligations of Developer.

From: Jack Rubens <JRubens@sheppardmullin.com>

Sent: Monday, June 13, 2022 6:25 PM

To: Justin Winegar <justin.winegar@lacity.org>

Cc: Robert Moore <robert.p.moore@lacity.org>; John Wickham <john.wickham@lacity.org>; Oscar Ixco <oscar.ixco@lacity.org>; R. Donahue Peebles <rdpceo@peeblescorp.com>; Victor MacFarlane <victor@macfarlanepartners.com>; Dirk Hallemeier <dirk@macfarlanepartners.com>; Scott Rynders <scott@rynderscorp.com> <scott@rynderscorp.com>; James Pugh <JPugh@sheppardmullin.com>

Subject: RE: Angels Landing | Revised Term Sheet

Justin,

Thank you for sending the revised DDA term sheet. While we've reached agreement on much of the language, there are still several unresolved issues, as well as some new issues presented by your revisions.

In the hope of substantially paring down the number of points that will require the further participation of the principals, are Robert and you available to speak with Jim and me either tomorrow afternoon or on Wednesday?

Also, as promised, attached for your review is a revised and expanded draft of Section 23. We'd like to discuss this provision on the attorney call.

Best,
Jack

Jack Rubens

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