



PLANNING & COMMUNITY DEVELOPMENT DEPARTMENT
ADMINISTRATION DIVISION

December 17, 2020

Mr. Rob Kane
Executive Vice President
Lincoln Property Companies, West
915 Wilshire Boulevard, Suite 2050
Los Angeles, CA 90017

Dear Mr. Kane:

On November 5, 2020, a public hearing was conducted pursuant to Pasadena Municipal Code (PMC) Section 17.66.070 and Section 23 of Development Agreement No. 30469 (Attachment A, Development Agreement). The hearing was conducted to determine whether the applicant has complied in good faith with the terms and conditions of the development agreement.

In support of the applicant's position, a report was submitted to the City on October 29, 2020, with a cover letter addressed to Ms. Jennifer Paige, Deputy Director (together, the "Report", Attachment B). The Report provides documentation regarding compliance with the terms and conditions of the Development Agreement.

COMPLIANCE WITH DEVELOPMENT AGREEMENT EXCEPT FOR SECTION 10.L.

Concerning all items except for Section 10.L, based on the evidence presented in Attachment B, I find that the applicant has complied in good faith with the terms and conditions of the Development Agreement and do not recommend any amendments to the Development Agreement.

DEVELOPMENT AGREEMENT SECTION 10.L.

Section 10.L. of the Development Agreement states that:

Local Hire Initiative: Mentoring/Apprenticeships. PPF agrees to implement a local hire initiative that will give priority hiring consideration to local workers and businesses, with the goal of directing 20% of building construction related jobs and contracting opportunities to Pasadena residents and Pasadena-based businesses.

PPF will also explore opportunities for mentoring and apprenticeships for participants so that the project will serve as a training ground and springboard for future employment and contracting opportunities.

The company will do extensive outreach to promote and advertise the local hire program, including participating in job fairs in Pasadena, placing notices in local and online media, and posting information on a dedicated website to encourage potential participants to apply directly and track their applications. In addition, PPF agrees to make a good-faith effort to engage Local Businesses to obtain at least 15% of the building materials required to construct the buildings, provided that these materials are readily available and comparably priced to the same materials available elsewhere.

COMPLIANCE WITH SECTION 10.L

In determining whether or not the applicant has complied in good faith with Section 10.L, it is necessary to review the express terms of the condition, which has multiple components. Each of these **components** is listed below, along with how the applicant *has or has not complied with the terms of the contract*.

1. **PPF agrees to implement a local hire initiative that will give priority hiring consideration to local workers and businesses.** *The applicant did implement a local hire initiative. The local hire initiative, as indicated in Attachment B, Sections 3 and 4), was multi-faceted and appears to have provided for priority hiring consideration to local residents and businesses.*
 - a. **Goal of directing 20% of building construction related jobs to Pasadena residents.** *Despite the implementation of a local hire initiative, the applicant failed to reach the goal identified in the contract. There are 1,926 workers that have been hired for the construction project of which 112 are from Pasadena. Instead of the 20% local workforce goal envisioned by the condition, only 6% of the workers hired for the construction project are from Pasadena (Attachment B, Section 6).*
 - b. **Goal of 20% of contracting opportunities to Pasadena-based businesses.** *Similar to the local hiring initiative, the applicant has fallen well short of its goal to direct 20% of its contracting opportunities to Pasadena-based businesses. The total amount of contracting opportunities identified is \$195,280,954.00. Instead of directing approximately \$40M to local businesses, the applicant, to date has engaged with local businesses resulting in contracts totaling \$14,282,996.00, or 7% of the total (Attachment B, Section 6).*

2. **PPF will explore opportunities for mentoring and apprenticeships for participants so that the project will serve as a training ground and springboard for future employment and contracting opportunities.**

The applicant has partnered with Flintridge Center to take advantage of their construction pre-apprenticeship program. To date, 18 workers have been hired from the Flintridge Center Program. The applicant has also collaborated with the construction program at Pasadena Community College to provide students hands on experience in the field. No students have been hired from the program but students were exposed to an active construction site, augmenting their classwork.

3. **The company will do extensive outreach to promote and advertise the local hire program, including:**

- a. **Participating in job fairs in Pasadena;** *The applicant participated in job fairs in Pasadena as follows: three onsite; one Community Resource Fair; La Pintoresca Library; one at the Robinson Community Center; one at Flintridge Center. In addition, three job fairs were conducted at FWDB. All of these fairs occurred in 2019 and 2020. (Attachment B, Section 3).*
- b. **Placing notices in local and online media;** *The applicant has developed a marketing program that includes advertising in local print and online publications. (Attachment 3, Section 4).*
- c. **Posting information on a dedicated website to encourage potential participants to apply directly and track their applications.** *The applicant has developed and maintains a dedicated website that allows contractors and laborers to apply directly to the applicant for a job or contract. The website is <https://tenwestwalnut.com>*

4. **PPF agrees to make a good-faith effort to engage Local Businesses to obtain at least 15% of the building materials required to construct the buildings, provided that these materials are readily available and comparably priced to the same materials available elsewhere.** *The total cost of building materials has been identified as \$82,374,790.00. To date, the applicant has purchased \$6,741,624.00 of materials from local businesses, or 8% of the total. (Attachment B, Section 6).*

Although the applicant instituted a local hire and procurement program, it woefully underachieved reaching the stated goals for local hire of workers, local hire for businesses and purchase of local materials. The applicant implemented certain procedures and established policies and processes to advance the goals as required by the contract. However, despite the efforts put forth, the applicant identified challenges

in meeting the stated goals as identified in the Cover Letter to Attachment B. The terms of the Development Agreement do not *require* that the applicant hire a percentage local workers or businesses or purchase a specific amount of local supplies, but instead expressly requires that the applicant establish programs and implement procedures that would allow such activity to take place towards the aspirational goals stated for each activity.

GOOD FAITH EFFORT

The PMC requires an inquiry not only as to whether the applicant has complied with the terms of the Development Agreement, but whether or not they have complied in good faith with the terms and conditions of the Development Agreement. The intent of reviewing this from a “good faith” standard is, in part, to ensure that the reasonable expectations created by the Development Agreement are protected.

The City recognized that the project would cost nearly \$300M to construct and, through the inclusion of Section 10.L, expected that the applicant would spend some of that money on local labor, local contractors and local supplies. To achieve this end, certain requirements were agreed to by the applicant, including developing and implementing a local hire program, developing an outreach and advertising campaign regarding the local hire program, and establishing apprenticeship and mentor opportunities. Goals were agreed to, which quantified a specified percentage of local workers, local contractors and local supplies. It is these stated goals, or, more specifically, the applicant’s failure to meet these goals, whether aspirational or not, that begs the question of whether the applicant acted in good faith to implement the contract.

Acting in good faith assumes faithfulness to an agreed common purpose, consistent with reasonable expectations of the contracting parties. It is important to determine whether the applicant’s failure to reach the local hire and procurement goals was due to bad faith or opportunistic business dealings – exploiting circumstances for selfish advantage without regard to giving priority preference to local workers, contractors or businesses. In the instant situation, the applicant did implement a local hire and procurement program as required by the contract including hiring local and hired a consulting firm, the Construction Services Group, Inc. (CSG) to administer the program. CSG offers services in construction project and program management and community relations, among others. In addition to the dedicated website, advertising and outreach, the majority of the subcontractors agreements contain language regarding the local hire initiative requiring documenting and reporting local hire and local procurement. As a result of the applicant’s efforts, Pasadena based businesses were engaged in contracts totaling \$14,282,996.00 and \$6,741,624.00 was spent on materials and supplies from Pasadena based businesses. In addition, 112 local employees have been hired to work

on the project. Absent the applicant's implementation of the local hire and procurement program required by the Development Agreement, it is unlikely that that the approximate \$20M worth of contracting and supplies identified above would have gone to Pasadena based businesses.

According to the applicant, there are multiple reasons that the goals identified in the Development Agreement were not reached, chief among them are the scale of the project, the relatively small pool of opportunities presented by Pasadena's size and the limitations in the Development Agreement as to the area from which the applicant could seek workers (Cover Letter, Attachment B). While the challenges identified by the applicant represent factual realities, it is not possible to quantify the exact impact of these issues.

CONCLUSION OF REVIEW

Pursuant to the requirements and procedures outlined in PMC Section 17.66.070, there is no evidence in the record to indicate that the applicant did not act in good faith to comply with the terms of the Development Agreement. The applicant did comply with the express terms of the Development Agreement and implemented a local hire program and a local procurement program. Moreover the applicant took steps it would not otherwise have taken and were not always in the applicant's best economic interest in implementing the program. If broken down over time, however, it is important to note that the applicant moved much closer toward meeting the goals. In short, it appears that the applicant did what was required by the Development Agreement, and over time learned that greatly increased efforts were necessary to move toward the goals, but by the time those efforts were implemented, the first phase of the project was nearly complete. Therefore, I find that the applicant complied in good faith with the terms of the Development Agreement to this point in time.

NEXT STEPS

Since the agreement identified *goals* for local hire and procurement, and not required minimum percentages, the applicant is found to be in compliance with the Development Agreement. However, as noted, compliance with the terms and conditions of the Development Agreement have produced less than optimal results. Greater community benefits can be realized by modifying the Development Agreement to require the increased efforts by the applicant made of late continue, and even progress further. **Accordingly, it is strongly recommended that, pursuant to PMC 17.66.080 A, that the Development Agreement be modified.** The applicant should propose modifications to the Development Agreement to memorialize its increased efforts (and success) over time and propose such modifications to be brought forward for the City Council's consideration at a future meeting.

You are hereby notified that, pursuant to Pasadena Municipal Code Chapter 17.72 (Appeals), any person affected or aggrieved by the decision of the Hearing Officer has the right to appeal this decision within ten days (December 28, 2020). The effective date of this case will be December 29, 2020. Prior to such effective date, a member of the City Council or Planning Commission may request that it be called for review to the Board of Zoning Appeals. For more information, please email Jennifer Paige, AICP, Deputy Director at jpaige@cityofpasadena.net.

Sincerely,



David M. Reyes
Director
Planning & Community Development Department

Encl: Attachments A (Development Agreement) and B (Report), are maintained in the offices of the Planning and Community Development Department and are available upon request.

cc: Steve Mermell, City Manager
Michele Bagneris, City Attorney
Jennifer Paige, Deputy Director
City Council
City Clerk