Appendices

Appendix FEIR-1

Draft EIR Comment Letters

Alan Como <alan.como@lacity.org>

Caltrans District 7 Comment Letter - Angels Landing Project - DEIR - SCH# 2019039164 - GTS# 07-LA-2019-03475

1 message

Higgins, Anthony@DOT <Anthony.Higgins@dot.ca.gov> Thu, Feb 25, 2021 at 9:27 AM
To: "alan.como@lacity.org" <alan.como@lacity.org>
Cc: "state.clearinghouse@opr.ca.gov" <state.clearinghouse@opr.ca.gov>

Greetings,

Please see the attached Caltrans comment letter for the following project:

Angels Landing Project – DEIR

SCH# 2019039164

GTS# 07-LA-2019-03475

Best,

Anthony Higgins

Associate Transportation Planner

Caltrans District 7, Division of Planning

100 S. Main Street, MS-16

Los Angeles, CA 90012

(213) 266-3574

anthony.higgins@dot.ca.gov

07-LA-2019-03475 Angels Landing Project - DEIR - SIGNED.pdf
131K

DEPARTMENT OF TRANSPORTATION
DISTRICT 7- OFFICE OF REGIONAL PLANNING
100 S. MAIN STREET, SUITE 100
LOS ANGELES, CA 90012
PHONE (213) 266-3574
FAX (213) 897-1337
TTY 711
www.dot.ca.gov

Making Conservation a California Way of Life.

February 25, 2021

Alan Como, AICP
City of Los Angeles, Department of City Planning
221 North Figueroa Street, Suite 1350
Los Angeles, CA 90012

RE: Angels Landing Project – Draft Environmental Impact Report (DEIR)
SCH# 2019039164
GTS# 07-LA-2019-03475
Vic. LA-110 PM 23.117

Dear Alan Como:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above referenced project. The Project would involve a two-tower mixed-use development consisting of: 180 residential for-sale condominium units; 252 residential apartments (including a mix of market rate and affordable units); two hotels with a combined total of 515 guest rooms, restaurants, ballrooms, meeting rooms, and amenities (fitness/spa); and 72,091 square feet of general commercial (retail/restaurant) uses. The proposed uses would be distributed through a series of terraced levels in a podium structure and two towers (Tower A and Tower B) that would be constructed above a three-level subterranean parking garage. The Project would also provide public and private open space areas and would retain the existing on-site Metro Pershing Square Station portal. In all, the Project would result in up to 1,269,150 square feet of floor area with a maximum floor area ratio (FAR) of up to 13:1. Tower A would include 63 floors with a building height of up to 854 feet. Tower B would include 42 floors with a building height of up to 494 feet. Excavation would occur to a depth of approximately 70 feet below ground surface as measured from the elevation of Hill Street adjacent the Project Site.

The nearest State facility to the proposed project is Interstate 110. After reviewing the DEIR, Caltrans has the following comments:

Caltrans acknowledges and supports infill development that provides a mix of land uses which allow a neighborhood to meet their needs for housing, work, and services, like the proposed Project aims to facilitate. Caltrans also applauds the inclusion of bicycle parking and the relatively low number of car parking spaces, as research looking at the relationship between land-use, parking, and transportation indicates that car parking prioritizes driving above all other travel modes and undermines a community's ability to choose public transit and active modes of transportation.

Caltrans concurs with the included Freeway Safety Analysis and does not expect project approval to result in a direct adverse impact to the existing State transportation facilities. Additionally, any transportation of heavy construction equipment and/or materials which requires use of oversized-transport vehicles on State highways will need a Caltrans transportation permit. We recommend large size truck trips be limited to off-peak commute periods.

If you have any questions, please contact project coordinator Anthony Higgins, at anthony.higgins@dot.ca.gov and refer to GTS# 07-LA-2019-03475.

Sincerely,

Miya Edmonson

MIYA EDMONSON
IGR/CEQA Branch Chief
cc: Scott Morgan, State Clearinghouse

Los Angeles Unified School District

Office of Environmental Health and Safety

AUSTIN BEUTNER
Superintendent of Schools

CARLOS A. TORRES
Director, Environmental Health and Safety

JENNIFER FLORES
Deputy Director, Environmental Health and Safety

February 11, 2021

Milena Zasadzien
Los Angeles Department of City Planning
200 North Spring Street, Room 763
Los Angeles, CA 90012

PROJECT LOCATION: 361 S. Hill Street (332-358 S. Olive Street, 351-361 S. Hill Street, 417-425 W. 4th Street), Los Angeles, CA 90013
PROJECT: Angel's Landing Project

Presented below are comments submitted on behalf of the Los Angeles Unified School District (LAUSD) regarding the subject project located at 361 S. Hill Street (332-358 S. Olive Street, 351-361 S. Hill Street, 417-425 W. 4th Street). Based on the extent/location of the proposed development, it is our opinion that significant environmental impacts on the surrounding community (air quality, noise, traffic, pedestrian safety) may occur. Due to the fact that Ramon C. Cortinez Visual & Performing Arts since the project site is approximately 365 ft from the school. While COVID-19 has caused LAUSD to implement remote learning for the time being, we request that these comments apply when LAUSD clears students to return to campus.

Air Quality
District students and school staff should be considered sensitive receptors to air pollution impacts. Construction activities for the proposed project would result in short term impacts on ambient air quality in the area resulting from equipment emissions and fugitive dust. To ensure that effective mitigation is applied to reduce construction air pollutant impacts on the schools, we ask that the following language be included as a mitigation measure for air quality impacts

- If the proposed mitigation measures do not reduce air quality impacts to a level of insignificance, the project applicant shall develop new and appropriate measures to effectively mitigate construction related air emissions at the affected schools. Provisions shall be made to allow the school and or designated representative(s) to notify the project applicant when such measures are warranted.

Noise
Noise created by construction activities may affect the school in proximity to the proposed project site. These construction activities include grading, earth moving, hauling, and use of heavy equipment. The California Environmental Quality Act requires that such impacts be quantified and eliminated or reduced to a level of insignificance.

LAUSD established maximum allowable noise levels to protect students and staff from noise impacts. These standards were established based on regulations set forth by the California Department of Transportation and the City of Los Angeles. LAUSD's exterior noise standard is 67 dBA Leq and the interior noise standard is 45 dBA Leq. A noise level increase of 3 dBA or more over ambient noise levels is considered significant for existing schools and would require mitigation to achieve levels within 2 dBA of pre-project ambient level. To ensure that effective mitigations are employed to reduce construction related noise impacts on District sites, we ask that the following language be included in the mitigation measures for noise impacts:

If the proposed mitigation measures do not reduce noise impacts to a level of insignificance, the project applicant shall develop new and appropriate measures to effectively mitigate construction related noise at the affected schools. Provisions shall be made to allow the school and or designated representative(s) to notify the project applicant when such measures are warranted.

Traffic/Transportation

LAUSD's Transportation Branch **must be contacted** at (213) 580-2950 regarding the potential impact upon existing school bus routes. The Project Manager or designee will have to notify the LAUSD Transportation Branch of the expected start and ending dates for various portions of the project that may affect traffic within nearby school areas. To ensure that effective conditions are employed to reduce construction and operation related transportation impacts on District sites, including the net increase of 1000 or more daily vehicle trips, we ask that the following language be included in the recommended conditions for traffic impacts:

- School buses must have unrestricted access to schools.
- During the construction phase, truck traffic and construction vehicles may not cause traffic delays for our transported students.
- During and after construction changed traffic patterns, lane adjustment, traffic light patterns, and altered bus stops may not affect school buses' on-time performance and passenger safety.
- Construction trucks and other vehicles are required to stop when encountering school buses using red-flashing-lights must-stop-indicators per the California Vehicle Code.
- Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure vehicular safety.
- Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing vehicle routes to school may be impacted.
- Parents dropping off their children must have access to the passenger loading areas.

Pedestrian Safety

Construction activities that include street closures, the presence of heavy equipment and increased truck trips to haul materials on and off the project site can lead to safety hazards for people walking in the vicinity of the construction site. To ensure that effective conditions are employed to reduce construction and operation related pedestrian safety impacts on District sites, we ask that the following language be included in the recommended conditions for pedestrian safety impacts:

- Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing pedestrian routes to school may be impacted.
- Contractors must maintain safe and convenient pedestrian routes to all nearby schools. The District will provide School Pedestrian Route Maps upon your request.

- Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure pedestrian and vehicular safety.

- Haul routes are not to pass by ***any*** school, except when school is ***not*** in session.

- No staging or parking of construction-related vehicles, including worker-transport vehicles, will occur on or adjacent to a school property.

- Funding for crossing guards at the contractor's expense is required when safety of children may be compromised by construction-related activities at impacted school crossings.

- Barriers and/or fencing must be installed to secure construction equipment and to minimize trespassing, vandalism, short-cut attractions, and attractive nuisances.

- Contractors are required to provide security patrols (at their expense) to minimize trespassing, vandalism, and short-cut attractions.

The District's charge is to protect the health and safety of students and staff, and the integrity of the learning environment. The comments presented above identify potential environmental impacts related to the proposed project that must be addressed to ensure the welfare of the students Based on the extent/location of the proposed development, it is our opinion that significant environmental impacts on the surrounding community (air quality, noise, traffic, pedestrian safety) may occur. Due to the fact that Ramon C. Cortinez Visual & Performing Arts their teachers and the staff, as well as to assuage the concerns of the parents of these students. However, due to COVID - 19 the school is currently closed, and health and safety concerns are minimized. Therefore, the recommended conditions set forth in these comments should be adopted as conditions of project approval to offset environmental impacts on the affected school students and staff when school is in session.

Thank you for your attention to this matter. If you need additional information, please contact me at (323) 286-7377.

Regards,

Alex Campbell
Assistant CEQA Project Manager

Alan Como <alan.como@lacity.org>

Case Number: ENV-2018-3273-EIR; Project Location: 361 S. Hill Street, Los Angeles, CA 90013

Camacho, Dana <Dana.Camacho@alston.com> Fri, Feb 26, 2021 at 1:03 PM
To: "alan.como@lacity.org" <alan.como@lacity.org>
Cc: "Casey, Ed" <Ed.Casey@alston.com>

Dear Mr. Como,

Attached please find correspondence from Mr. Ed Casey regarding the above-referenced matter.

Thank you for your courtesy,

Dana Camacho | Legal Administrative Assistant

ALSTON & BIRD

Nicki Carlsen | James R. Evans | Andrea S. Warren | Maya Lopez Grasse | Kaitlin H. Owen

333 South Hope Street |Suite 1600 | Los Angeles, CA 90071

Dana.Camacho@alston.com | d:213-576-1125 | f: 213-576-1100 | m: 562-714-1197

2021-02-23 Letter to Alan Como re Comments to DEIR.pdf
116K

ALSTON & BIRD

333 South Hope Street, 16th Floor
Los Angeles, CA 90071-1410
213-576-1000 | Fax: 213-576-1100

Edward J. Casey Direct Dial: **213-576-1005** Email: **ed.casey@alston.com**

February 26, 2021

Via Electronic and U.S. Mail
alan.como@lacity.org

Alan Como, AICP
City of Los Angeles, Department of City Planning
221 N. Figueroa Street, Suite 1350
Los Angeles, CA 90012

Re: Case Number: ENV-2018-3273-EIR; Project Location: 361 S. Hill Street (332-358 S. Olive Street, 351-361 S. Hill Street, 417-425 W. 4th Street), Los Angeles, CA 90013

Dear Mr. Como:

We are submitting this letter to provide comments on the Draft Environmental Impact Report ("DEIR") prepared for the Angels Landing Project (the "Project"). This law firm represents the owner of the property located at 336 South Hill Street ("La Cita") and the operator of the La Cita Bar at that location. The La Cita property is located immediately across Hill Street from the Project site. The La Cita Bar is also located immediately adjacent to the Grand Central Market.

The La Cita Bar is housed in a one-story building that is approximately 123 years old and is made of unreinforced masonry and brick. Since La Cita purchased the bar in 2006, our client has invested a substantial amount of money in making the bar an important part of the downtown community. The La Cita Bar includes an outdoor patio area, which (pre-COVID) is typically frequented by patrons throughout the day and evening and serves a mix of blue and white collar workers during the day, as well as a diverse group of young and older music lovers of all nationalities at night.

We submit this comment letter to raise a number of concerns about the environmental impacts that the Project may cause to La Cita.

Construction Noise and Vibration

Based on the analysis included in the DEIR, the Project would result in significant and unavoidable noise and vibration impacts (specifically, on-site construction noise, and both on- and off-site construction vibration). Further, the Project would also result in significant and unavoidable cumulative noise and vibration impacts Consequently, La Cita is concerned that these significant construction impacts will adversely affect La Cita's customers in its outdoor patio area. Those customers are sensitive receptors and it is unclear if the DEIR analysis has properly accounted for

the impact on those customers and sensitive receptors. Further, La Cita questions whether sufficient analysis has been performed to determine if the Project's significant construction vibration impacts will damage the structural integrity of La Cita's building, which is 123 years old. It is critical that the DEIR expand the scope of its studies to evaluate these impacts and to develop a more robust construction mitigation program and not defer the formulation of such measures to the building permit phase.

Construction Air Quality

The quality of the air at La Cita's outdoor patio area may also be adversely affected by the construction of the Project. Debris and dust particles during such construction could infect the air at La Cita's patio area and potentially cause a significant effect on the health of its customers and employees. Again, it is not clear if the DEIR examined the impact to those sensitive receptors.

Historic Resources

La Cita's building is 122 years old and could be eligible for designation as a significant historic resource. However, the DEIR does not evaluate whether the La Cita building is an historic resource and if so, would the Project's significant construction vibration impacts damage the structural integrity of La Cita's building.

Construction Traffic

Finally, we raise concerns over construction traffic and the effect on road and sidewalk closures. Maintain viable and walkable access to the La Cita Bar is of utmost importance to our client.

We appreciate the opportunity to provide comment on the DEIR.

Very truly yours,

Edward J. Casey

EJC:dtc

Alan Como <alan.como@lacity.org>

Angels Landing Project -- ENV-2018-3273-EIR

John H. Welborne <john@welborne.net> Mon, Mar 1, 2021 at 2:49 PM
To: alan.como@lacity.org
Cc: Charles Shumaker <Shumaker@smcounsel.com>, Kevin Roberts <kroberts@macfarlanepartners.com>

Dear Mr. Como:

I attach a letter from the Angels Flight® Railway Foundation indicating that the Foundation, the immediate next-door neighbor to the project, supports the Angels Landing project and urges the City to approve it.

Please “Reply” as soon as possible to confirm that you have received this letter for the DEiR file.

— John H. Welborne / 323-935-1914

AFRF to City re Angels Landing DEIR.pdf
377K

ANGELS FLIGHT™ RAILWAY FOUNDATION
CALIFORNIA PLAZA, LOS ANGELES
BUNKER HILL POST OFFICE BOX 712345
LOS ANGELES, CALIFORNIA 90071

March 1, 2021

By E-Mail: alan.como@lacity.org

Alan Como, AICP
City of Los Angeles, Department of City Planning
221 N. Figueroa Street, Suite 1350
Los Angeles, CA 90012

Re: Angels Landing Project; Case No. ENV-2018-3273-EIR

Dear Mr. Como:

The Angels Flight® Railway Foundation ("AF") will be next-door neighbor to the project (the "Project") proposed by Angels Landing Partners, LLC ("AL") if the City of Los Angeles sells to AL the former CRA property south of the property now owned by AF and occupied by the historic Angels Flight® Railway. AF is a California nonprofit corporation charged with stewardship of the Railway for the benefit of the community. AF also is effectuating the legacy of the City of Los Angeles's official 1981 bicentennial committee, the Los Angeles 200 Committee, whose monument and time capsule are to be incorporated as part of the overall California Plaza development, near the top of Angels Flight®.

For several years, representatives of AL and AF have discussed items of mutual concern relating to the adjacency of their properties, future construction upon them, future operation of them, and similar matters. AF also has reviewed the Draft Environmental Impact Report (DEIR) prepared for the Project. Please consider the following comments in your and other City decision-makers' ensuing environmental and other reviews for the Project.

Community Benefits. AF is very pleased that AL will provide certain community benefits that address matters of community concern, including relocating the official *Los Angeles Bicentennial Monument* to a new, permanent location on the Upper Plaza level of the Project, overlooking Angels Flight®. In addition, AL will provide the community benefit of an *Angels Flight® Museum and Store* on the Lower Plaza level of the AL property, overlooking the Angels Flight® right-of-way, to fulfill the original California Plaza master plan requirement for a local history museum (and subject to final negotiations and AL's review of AF's viable business plan for museum and store operations). Finally, and also as contemplated in the master plan for California Plaza, AL has agreed to *improve pedestrian linkage* by modifying slightly the Project's Upper Plaza design to better connect our two properties near the location of the Angels Flight® Station House. Also, AL's proposed design for the Project improves public pedestrian linkages up and down Bunker Hill and between the Project and the Railway at various elevations and is respectful of vistas of the Railway from multiple points on and around the Project.

Common Boundary and Miscellaneous Matters. AF believes that a few minor design modifications to the Project possibly are needed along the common boundary line, and discussions are continuing between AF and AL on such matters, including fencing at the common boundary. Also, AF will remain in discussion with AL, as the Project design evolves, concerning matters of mutual concern such as signage, coordination of security, landscaping adjacent to each other's property, and support from, and coordination with, AF for the construction of AL's Project.

Therefore, based on the above and the ongoing coordination between AF and AL, we support the Angels Landing project and urge the City to approve it.

Sincerely yours,

HAL BASTIAN
President
Angels Flight® Railway Foundation

cc: Directors, AFRF
Charles Shumaker, Esq.
John H. Welborne, Esq.
Kevin Roberts, Angels Landing Partners, LLC

Connect Create Collaborate

Alan Como <alan.como@lacity.org>

Support for the Angels Landing Project – ENV-2018-3273-EIR

Michael Shilstone <mshilstone@ccala.org> Tue, Feb 9, 2021 at 9:47 AM
To: "alan.como@lacity.org" <alan.como@lacity.org>
Cc: Marie Rumsey <mrumsey@ccala.org>, Clara Karger <ckarger@ccala.org>, Jessica Lall <jlall@ccala.org>

Alan,

Please find attached a letter of support from our organization regarding the Angels Landing Project (ENV-2018-3273-EIR). Thank you for your consideration.

Best,

Michael

CCA
CENTRAL CITY ASSOCIATION OF LOS ANGELES

Michael Shilstone
Director of Economic Development

213.607.2433 | mshilstone@ccala.org | ccala.org

626 Wilshire Blvd., Suite 850, Los Angeles, CA 90017

DTLA Insights | Member Development Projects

2020 02 09 - LA City - Letter of Support for Angels Landing - CCA Letter.pdf
152K

CCA
CENTRAL CITY ASSOCIATION OF LOS ANGELES

February 9, 2021

Alan Como, AICP
City of Los Angeles
Department of City Planning
221 N. Figueroa Street, Suite 1350
Los Angeles, CA 90012
alan.como@lacity.org

Re: Support for the Angels Landing Project – ENV-2018-3273-EIR

Dear Mr. Como,

Established in 1924, Central City Association (CCA) is committed to advancing policies and projects that enhance Downtown Los Angeles' vibrancy and increase investment in the region. We are a membership organization representing over 300 members that have played a leading role in transforming Downtown Los Angeles and our city by building over 17,000 units of new housing, and more than 6.6 million square feet of office and retail space and 3,600 hotel rooms that have resulted in hundreds of thousands of jobs and tax revenue dollars to the City.[1] **CCA supports projects that bring more housing units online in DTLA to enable people to live near where they work, provide new hospitality and employment options in our city center and create unique and compelling places, and we're pleased to offer our support for the Angels Landing project with that in mind.**

Angels Landing Partners, LLC will develop an iconic 1.3 million square foot, two-tower, mixed-use development consisting of 180 for-sale condominiums, 252 apartments (including affordable units), two hotels with a total of 515 guest rooms, restaurants, ballrooms, meeting rooms, and amenities, and more than 70,000 square feet of general commercial uses. The project will also create over 56,000 square feet of new open space with its Angels Plaza, Angels Terrace, and Upper Cal Plaza terrace.

It will serve as a capstone for Bunker Hill and connect it to the Historic Core community with a series of functional pedestrian linkages, as well as dramatically improve the context around, and experience using, the historic Angels Flight funicular. Importantly, the project integrates an existing Los Angeles County Metropolitan Transportation Authority portal and thereby advances the region's transportation goals. This integration aligns with our desire for more workers and visitors to utilize public transportation to access downtown – it is a true transit-oriented development.

This project will be an asset for DTLA. It has the ability to stimulate direct and indirect economic investment in the City, which is critical in the wake of COVID-19. Projects like Angels Landing demonstrate DTLA's resiliency and are vital to help its economy recovery. Moreover, the project will create thousands of new construction jobs and hundreds of new permanent jobs that help workers in the City and region regain employment opportunities.

Finally, the project advances equity by its workforce hiring commitments. The project endeavors to have 30 percent minority workforce, employ skilled labor unions, and integrate local and women-owned business. CCA applauds this commitment to racial and gender inclusion, especially on a project of this scale.

[1] https://www.ccala.org/what-we-do/member-development-projects/

CCA supports Angels Landing wholeheartedly and looks forward to the City's approval of this exciting and important project. Please include this letter in the administrative record for the project. Thank you for your consideration.

Sincerely,

Jessica Lall
President & CEO,
Central City Association of Los Angeles

cc: Milena Zasadzien, City of Los Angeles, Department of City Planning

626 Wilshire Blvd., Suite 850, Los Angeles, CA 90017
213.624.1213 | **ccala.org**

Alan Como <alan.como@lacity.org>

Fwd: Peebles Angels Landing Fraud Docs

1 message

Panda Ware <ozypandias010101@gmail.com> Thu, Feb 25, 2021 at 7:00 AM
To: angelslanding@lacity.org, cityclerk@lacity.org, ethics@lacity.org, jessica.montanez@lacity.org, blanca.perea@lacity.org, diana.alvarado@lacity.org, lisa.ishimaru@lacity.org, samantha.rodriguez@lacity.org, carlos.patzi@lacity.org, nicole.enriquez@lacity.org, kirsten.pickenpaugh@lacity.org, stephen.colon@lacity.org, marisol.aguayo@lacity.org, sabrina.gonzales@lacity.org, dylan.gleadall@lacity.org, deena.wahba@lacity.org
Cc: doane.liu@lacity.org, milena.zasadzien@lacity.org, richard@lozeaudrury.com, theresa@lozeaudrury.com, vince.bertoni@lacity.org, alan.como@lacity.org, kmccarthy@theregister.co.uk

Peebles bid at Angels Landing is a fraud and is the result of bidding misrepresentations and graft.

See the attached audited financial statements. P**eebles is massively overextended and does not have financial assets to begin either project.**

Attached is relevant due diligence to Don Peebles bid at Angel's Landing. Of central importance is Peebles audited statement of net worth. Peebles does not have the financial capacity to oversee the project at Angel's Landing, and as such, makes reference to a Forbes article to establish his assets. Attached is the most recent audited financial statement showing Peebles' net worth at slightly more than $20,000,000.

Peebles has not completed any substantial projects at a profit since these documents, and as such, his net worth is approximately the same.

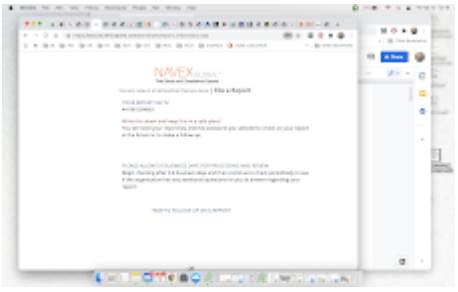
Peebles failed to disclose bankruptcies, lawsuits, and bid disqualifications. Peebles has a long track record of fraudulent bidding, where he leverages the RFP with no expectation of meeting his proposal representations.

The lack of meaningful candor and non-disclosure of relevant adverse actions, combined with Peebles financial inability to complete the project at Angel's Landing, represents a massive fraud perpetrated on LA taxpayers.

---------- Forwarded message ---------
From: **Panda Ware** <ozypandias010101@gmail.com>
Date: Fri, Feb 12, 2021 at 5:16 PM
Subject: Peebles Angels Landing Fraud Docs
To: <ozypandias010101@gmail.com>

Sent out to all CA gov today.

12 attachments



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Angels Landing_ Bid Fraud, Waste, and Corruption=.pdf
74K

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14-0425-S4_rpt_edc_12-12-17.pdf
3054K

Don Peebles Net Worth Statement (2011).pdf
56K

EXHIBIT-22-Affirmation-of-Ruth-E-Booher.pdf
1186K

bpd_SF20140322.pdf
2923K

14-0425-S4_rpt_CLA_12-08-2017.pdf
10173K

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HOW TO FOLLOW-UP ON A REPORT

OR

aronson LLC
ASSURANCE | TAX | CONSULTING

2175 King Farm Boulevard
Suite 300
Rockville, Maryland 20850
301 231 6200
301 231 7630
www.aronsonllc.com
info@aronsonllc.com

April 4, 2012

New York City Department of
Housing Preservation and Development
100 Gold Street
New York, NY 10038
Attn: RuthAnne Visnauskas, Deputy Commissioner for Development

New York City Housing Authority
250 Broadway, 24th Floor
New York, NY 10007
Attn: Patricia Barrera, Senior Deputy Director of Development

RE: Re-Vision Prospect Plaza RFP

Dear Ms. Visnauskas and Ms. Barrera:

We are the outside accounting firm that performs tax and accounting services for R. Donahue Peebles and are familiar with his financial condition and circumstances.

In connection with the submission from Peebles/TCG Communities, LLC in response to the Re-Vision Prospect Plaza Request for Proposal ("RFP") issued by the Department of Housing Preservation and Development ("HPD") of the City of New York ("City") in cooperation with the New York City Housing Authority ("NYCHA"), this will confirm that as of December 31, 2011, Mr. R. Donahue Peebles had liquid assets in excess of $20,000,000.

Very Truly Yours,

Aronson LLC
Stuart A. Rosenberg, Partner

January 6, 2009, RPSI tendered an Assignment and Transfer of the entirety of the Membership Interests to Carbon Capital, which became owner and managing member of the Hotel.

On January 6, 2009, the day of the scheduled foreclosure sale, counsel for R. Donahue Peebles ("Peebles"), who has a minority equity interest in RPSI, filed on behalf of RPSI a voluntary Chapter 11 petition in the United States Bankruptcy Court for the Southern District of Florida, which automatically stayed the foreclosure sale. The bankruptcy petition was dismissed as improperly filed because, among other reasons, Peebles was not the managing member of RPSI at the time he filed the petition and, therefore, did not have the authority to make such a filing. As of the date of this Opinion and Order, a foreclosure sale has not yet occurred.

MOTION TO DISMISS I. Standard

In deciding a motion to dismiss, a court ordinarily accepts as true all well-pleaded factual allegations and draws all reasonable inferences in the plaintiff's favor. See Levy v. Southbrook Int'l Invs., Ltd., 263 F.3d 10, 14 (2d Cir. 2001). In order to survive such a motion, however, "the plaintiff must provide the grounds upon which his claim rests through factual allegations sufficient `to raise a right to relief above the speculative level.'" ATSI Commc'ns, Inc. v.

Angels Landing: Bid Fraud, Waste, and Corruption

A billion dollar fraud: RFP Bidding at Angels Landing, DTLA, Against Roy Donahue Peebles, The Peebles Corporation, Angels Landing Partners, LLC

My name is Daniel Hoeg and I am a black real estate developer who started in Brooklyn, New York. I am writing this complaint based on personal knowledge and a contentious partnership with Don Peebles and The Peebles Corporation. I am writing this fraud complaint because I am certain Don Peebles is committing fraud in Los Angeles, California by, among other things, misrepresenting his financial capacity, misrepresenting partners' financial and development capacity, submitting fraudulent bid documents, and omitting material information in conjunction with the Angels Landing Project in Los Angeles.

Specifically, I can point to numerous misrepresentations and omissions in documents submitted to the City of Los Angeles by Angels Landing Partners, LLC.

It seems apparent that Oscar Ixco is either incapable in evaluating Peebles' numerous misrepresentations, or complicit in Peebles' attempt to defraud the taxpayers of Los Angeles. I suggest that the City and County perform it's due diligence on Don Peebles, The Peebles Corporation, and Peebles' related entities, such as the hundred of LLCs under Peebles control. I would also submit that *many of the statements and documents presented by Sharon M. Tso and Oscar Ixco are flatly wrong and contrary to easily obtained evidence*. In light of the investigation into Jose Huizar by the FBI, this has increased importance.

It is flatly impossible that Peebles can be considered a viable developer for Angel's Landing, as he lacks the financial and technical background to develop this project on-time, within budget, and consistent with his RFP response submission. Without subpoena power, I can readily identify and present evidence of over 50 misrepresentations in Peebles' documentation. For a project of this scale and scope, this is baffling.

In the interest of full disclosure, I worked with Don Peebles and successfully acquired 108 Leonard (346 Broadway) in New York City while working in a joint venture. After successfully responding to an RFP, I was cut out of the deal. I sued Peebles after he breached our partnership agreement and was ultimately unsuccessful: https://law.justia.com/cases/new-york/appellate-division-second-department/2017/2016-01383.html . Nonetheless, I am personally familiar with Peebles business methods and strategies.

Peebles has a dangerous and patent business strategy of intentionally overpromising during RFP bids, misrepresenting virtually every material element of his business, and then slowly eroding

and renegotiating the deal before flipping the interest to a third party. Peebles strategy is that of attrition, corruption, illegal campaign contributions to elected officials, and reliance on the absence of due diligence. Peebles resists hard deposits of any substance and eventually defrauds the taxpayers while rarely completing the deal or constructing the project.

Peebles Fundraising in China: Peebles has increasingly turned to China as a fund source. Considering the FBI's investigation into corruption and Chinese influence in Los Angeles City Hall, Peebles sudden presence as a campaign contribution and lobbying influence in Los Angeles should raise red flags and alarms.

- Peebles TRD Conference in Shanghai: https://therealdeal.com/2016/08/15/new-panelists-to-join-the-real-deal-in-shanghai-2/
- China City Construction buys site from Peebles (Miami): https://www.thenextmiami.com/china-city-construction-buys-north-beach-lot-from-peebles-for-38-5-million/

Peebles Development History is a misrepresentation: Peebles representations about pipeline and active and completed projects were inaccurate and known to be inaccurate at the time of its submission.

Peebles Net Worth Overstated: Despite Peebles representations about his net worth, in 2012, a certified audit revealed his net worth to be approximately $20,000,000. Peebles had few illiquid assets at the time. Source: https://www.docdroid.net/22m05Xb/don-peebles-net-worth-statement-2011-pdf

No Experience (inclination) Building Affordable Housing: Peebles has never built an affordable housing unit: Throughout Peebles entire career, he has never once built an affordable housing unit, even when RFP responses stated he would and could.

Specific Errors

- Peebles portfolio size: Peebles has not completed 10 million SF of real estate.
    - Current, delayed, unstarted projects, Viola Back Bay (Parcel 13), Angels Landing and Brooklyn Village account for 5.3MM SF of Peebles claimed totals
    - Actually completed projects account for 2.2MM SF of construction.
    - Adjusting pro-rata for Peebles ownership interests accounts for less than 1MM SF of total construction.
- Peebles has not completed $8 billion of real estate development.
- Philadelphia, PA
    - 1801 Vine: Peebles has not completed real estate projects in Philadelphia, PA. Peebles only property was 1801 Vine St.. 1801 Vine was awarded by PIDC via RFP, and the contract was recently terminated by the City for Peebles' failure to obtain

financing and make meaning progress towards construction: https://www.inquirer.com/business/peebles-philadelphia-family-court-hotel-redevelopment-purchase-agreement-cancelled-20201124.html

- Boston, MA
    - Parcel 13 (Haynes Station): Peebles has not completed real estate projects in Boston, MA. Peebles is only under contract on one plot of land obtained via RFP award, Back Bay Viola (Parcel 13) in Boston, has been delayed for over 6 years.
- Charlotte, NC
    - Brooklyn Village: Peebles has not completed any real estate projects in Charlotte, Peebles is only under contract on one plot of land, Brooklyn Village in Charlotte, which has been delayed for years. Peebles made specific, demonstrable misrepresentations to the Board of County Commissioners in Charlotte. See "Peebles Fraud at Brooklyn Village", https://www.scribd.com/doc/313593447/Don-Peebles-Fraud-at-Brooklyn-Village
- Los Angeles, CA
    - Angels Landing: Peebles has not completed any real estate projects in Los Angeles, Peebles is only under contract on one plot of land, Angel's Landing in DTLA, which is the subject of this fraud report.
- San Francisco, CA
    - 250 Brannan: Peebles completed one small real estate deal in San Francisco was 250 Brannan, which was a small property Peebles flipped.
- New York
    - 108 Leonard: Peebles only real estate project in New York is 20% occupied/sold after 8 years. 108 Leonard has been delayed beyond the City's completion deadline, and the subject of numerous lawsuits. Peebles flipped his interest to a third party firm after being awarded development rights and unsuccessfully sued to have his remaining interest bought out. Peebles retained only a minority interest and the developer is El Ad Group. Both parties have sued each other multiple times.
    - LICH: Peebles most recent RFP award in New York City was for the Long Island Community Hospital, resulting in lawsuits against the City. The City publicly stated Peebles "acted in bad faith": This resulted in a Federal Investigation and the hospital shutting down: https://patch.com/new-york/carrollgardens/defying-court-orders-and-despite-heat-wave-suny-is-closing-lich , https://www.suny.edu/media/suny/content-assets/documents/hospitals/lich-0515/EXHIBIT-22-Affirmation-of-Ruth-E-Booher.pdf . SUNY went so far as to issue a public statement denouncing Peebles "bad faith negotiations": https://www.suny.edu/suny-news/press-releases/may-2014/5-28-14-lich/statement-from-communications-director-david-doyle.html
    - Aqueduct Casino: Peebles other notable RFP award in New York was at the Aqueduct Casino site, resulting in a NYS OIG investigation, specifically detailing

Peebles' fraud: "Investigation Regarding the Selection of Aqueduct Entertainment Group to Operate a Video Lottery Terminal Facility at Aqueduct Racetrack", http://s3.amazonaws.com/attachments.readmedia.com/9f047d7606996729a6f0d95a50998a86.pdf

- Washington D.C.
    - 5th and I: Peebles most recent project in Washington D.C. resulted in lawsuits and a failure to complete pursuant to his RFP proposal.
    - See "The Debacle at Fifth and I": https://www.bizjournals.com/washington/news/2019/04/04/the-debacle-at-fifth-and-eye-why-the-lot-is-still.html
    - See Walker Group lawsuit against Peebles: https://www.bizjournals.com/washington/news/2019/03/19/peebles-sued-by-partner-on-fifth-and-eye-hotel.html
    - See Peebles affordable housing: https://www.bizjournals.com/washington/news/2019/03/28/where-does-fifth-and-eye-s-demise-leave-its.html
- Miami, Florida
    - Overtown Gateway: Peebles most recent project in Miami, Florida, was Overtown Gateway, another RFP, which Peebles could not obtain financing and then sued the subsequent purchaser, Michael Swerdlow, the lawsuit is ongoing.
    - Bath Club: Peebles largest success story eventually went bankrupt: https://www.miaminewtimes.com/news/black-owned-miami-beach-hotel-goes-belly-up-6522074
- Also of note: Peebles numerous attempts at Casino projects that have failed, with NYS Gaming Department declaring Peebles "unaware of his own impotence" as a potential gaming operator. Peebles has attempted to build casinos in
    - Queenss, NY; Aqueduct;
    - Philadelphia, PA
    - Las Vegas, NV; Las Palmas
    - Atlantic City, NJ; The Former Atlantic Club & Casino

Peebles Omissions and Misrepresentations

- Peebles omitted to disclose bankruptcy filings: U.S. Bankruptcy Court Southern District of Florida (Miami) Bankruptcy Petition #: 09-17709-LMI
- Peebles omitted lawsuits against cities
- Peebles omitted investigations and bidding restrictions in other cities
- Peebles omitted fraud complaints and civil litigation

Ricardo Pagan, Partner, Misrepresentations:

Claridge Properties lists its projects as "The Pencil Factory, Angels Landing, the Book Tower Complex in Detroit and the Greenpoint waterfront site in Brooklyn."

- **The Pencil Factory:** I can find no information about any "Pencil Factory" and Claridge makes no mention of the project, its city, or its size (other than 43 stories). The only sources as those by Angel's Landing and lacounty.gov.
- **Angel's Landing**: The subject of this fraud complaint. Claridge uses the rendering as its homepage background and cites it as an accomplishment.
- **Book Tower, Detroit:** Ricardo Pagan did not develop the Book Tower in Detroit, in fact, he defaulted on the debt and was then sued by the lender. The property was foreclosed and sold at a Sheriff sale to the lender. See KSI Capital Corporation: Defendant: Ricardo Pagan: Case Number: 2:2007cv12501: Filed: June 11, 2007, https://ia800609.us.archive.org/24/items/gov.uscourts.mied.221761/gov.uscourts.mied.221761.14.0.pdf

Peebles Lawsuit Omissions

- In the past decade, Peebles has been the subject of over 50 lawsuits for breach of contract and other civil actions
- Puig v. (Peebles): 26 So.3d 45 (2009)
- Washington D.C. v. (Peebles): (1) https://washingtoncitypaper.com/article/350556/d-c-suing-don-peebles/ , (2) https://www.washingtonpost.com/news/digger/wp/2016/08/26/d-c-mayor-bowser-to-don-peebles-give-me-my-affordable-housing/
- Tawan Davis v. (Peebles):
- Daniel Newhouse v. (Peebles):
- Daniel Hoeg v. (Peebles):
- Elad Group v. (Peebles):
- Walker Group v. (Peebles):
- Judith Werner v. (Peebles):
- Broward County v. (Peebles):
- Save the Clocktower v. (Peebles):
- Grimm v. (Peebles):
- Otho Green v. (Peebles):

Peebles Political Fallout

- Peebles publicly stated he made illegal campaign contributions to NYC Mayor Bill de Blasio: https://www.dnainfo.com/new-york/20160504/civic-center/de-blasio-asked-me-for-20k-it-was-hard-say-no-developer-says/

Peebles Fund Offerings:

- Peebles has been claiming to have raised a minority real estate fund since 2011.
- Peebles cannot obtain institutional investors or regulatory approval due to his financial state, litigation history, and history of bankruptcy filings.
- Peebles first began touting a failed private equity fund in the 1990s.

I believe it is my civic duty to present this complaint. I attest that these facts are true to the best of my knowledge, and would be willing to meet and discuss the specific misrepresentations and omissions that I believe constitute a specific fraud against the taxpayers and an attempt to defraud the government.

Sincerely,

Daniel Hoeg
CEO, The Hoeg Corporation
dan@thehoegcorporation.com
(213) 915 - 4634

CITY OF LOS ANGELES
OFFICE OF THE CHIEF LEGISLATIVE ANALYST

SHARON M. TSO
CHIEF LEGISLATIVE ANALYST

KAREN E. KALFAYAN
EXECUTIVE OFFICER

ROOM 255, CITY HALL
200 N. SPRING STREET
LOS ANGELES CA 90012
213.473.5709
FAX: 213.485.8983

August 27, 2020

CRA/LA Governing Board
c/o Steve Valenzuela, Chief Executive Officer
CRA/LA, A Designated Local Authority
448 South Hill Street, Suite 1200
Los Angeles, CA 90013

Re: **Bi-Monthly Progress Report on the Angels Landing Project**

Dear Mr. Valenzuela:

As per the CRA/LA Governing Board's request on November 1, 2018, the following is our bi-monthly progress report on the Angels Landing project (Project) for the period of May 9, 2020, through August 27, 2020.

The Department of City Planning (DCP) reports that they are nearing completion of their first screen check of the Draft Environmental Impact Report (EIR) and expect to complete their second screen check by late September 2020. This would allow the Draft EIR to be published in late October 2020. Both DCP and the applicant, Angels Landing Partners, LLC (ALP), are confident that they can commit to this timeframe. With that commitment in hand, attached is a revised entitlement schedule that reflects the new Draft EIR publication date and all subsequent dates involved in the entitlement and CEQA review process.

Also, as you are aware, the City recently remitted to the CRA/LA letters on May 21, 2020 and July 31, 2020 that involve a request for an amendment to the Option Agreement for the Bunker Hill Parcel Y-1 property. As the July 31, 2020 letter from the Office of the Mayor further clarified, the City's request focuses on an extension to the term of the Option as well as establishing a fixed purchase price for the property. The extension to the term is necessary in order to accommodate the revised entitlement schedule provided in this update. The City Council and Mayor cannot act on approving the Project's definitive agreements to allow the City to exercise the Option until the entitlement and CEQA review process is complete. The definitive agreements are currently being negotiated and will be prepared concurrently during the entitlement process. Establishing a fixed purchase price for the property would provide a hard number for the acquisition price and produce a financial model better suited to determine Project costs and future financing. In order for the City and ALP to continue moving forward with the entitlement process and definitive agreements, it is imperative that the CRA/LA consider approval of these amendments to the Option Agreement.

Lastly, ALP has begun the Community Outreach component of the project and met with various community groups and stakeholders. Also attached is a handout prepared by ALP which highlights the Project's main features and economic benefits. Over the next 60 days, ALP will be ramping up their community outreach efforts in advance of the Draft EIR publication in late October 2020.

I understand the CRA/LA Governing Board will be considering the City's request at its Special Meeting on Tuesday, September 1, 2020. Should you have any questions related to that request and/or the Project in general, please contact Oscar Ixco of my staff at oscar.ixco@lacity.org.

Thank you in advance for your consideration and I look forward to your response.

Sincerely,

Sharon M. Tso

Sharon M. Tso
Chief Legislative Analyst

Enclosures: Angels Landing Project Entitlement Timeline
Angels Landing Project Handout

cc: Chief Legislative Analyst, Caretaker of the 14th Council District
William Chun, Deputy Mayor for Economic Development
Richard H. Llewellyn, Jr., City Administrative Officer
Vincent P. Bertoni, Director of City Planning

ANGELS LANDING PROJECT
ENTITLEMENT TIMELINE

Completed Actions:	**Date**	**Status**	**Notes**
Entitlement application materials submitted to the Department of City Planning (DCP)	7-Jun-18	**Completed**	
DCP deemed application complete	13-Jun-18	**Completed**	
DCP mailed Request for Service Information to City agencies for Initial Study	6-Jul-18	**Completed**	
DCP initiated AB 52 tribal consultation	12-Jul-18	**Completed**	
DCP received City agency comments back for Initial Study	30-Aug-18	**Completed**	
Applicant submitted Initial Study to DCP for review/revisions	11-Jan-19	**Completed**	
Initial Study was published (30 day review period)	29-Mar-19	**Completed**	
DCP held Public Scoping meeting for public comment	9-Apr-19	**Completed**	
Initial Study public comment period.ended	29-Apr-19	**Completed**	
Applicant to submit Draft EIR to DCP	31-Jan-20	**Completed**	
Future Anticipated Actions:	**Target Date**	**Status**	
DCP first and second screen check of Draft EIR	30-Sep-20	**Ongoing**	
Publication of Draft EIR (45 day comment period)	30-Oct-20	**On target**	
End of Draft EIR public comment period	14-Dec-20		
Preparation of Response to Comments and FEIR	26-Feb-21		
Completion of FEIR	31-Mar-21		
24-Day Public Notice for Joint Hearing; 10-Day Onsite Posting	Apr-21		
Joint Hearing Officer and Advisory Agency Hearing	May-21		
Advisory Agency Issues Tract Map Letter of Determination	Jun-21		
10-Day Appeal Period of Tract Map Determination	Jun-21		
24-Day Public Notice for City Planning Commission Hearing; 10-Day Onsite Posting	Jun-21		
City Planning Commission Hearing	Jul-21		
CPC Issues Letter of Determination	Sep-21		
15-Day Appeal Period Expires (assumes no appeal on DA recommendation by applicant and appeal period for quasi-judicial actions)	Oct-21		
20-Day Appeal Period Expires (assumes applicant appeals a recommended denial in whole or part of DA)	Oct-21		
10-Day Public Notice for PLUM Committee Hearing (assumes CPC determination appealed)	Nov-21		
PLUM Committee Hearing	Nov-21		
City Council Hearing	Jan-22		
City Council Hearing – Second Readings	Feb-22		
30-Day CEQA Statute of Limitations	Mar-22		
90-Day Land Use Statute of Limitations	Jun-22		
City Approval of Definitive Agreements to Exercise Option:	**Target Date**	**Status**	
City/ALP Negotiation of Definitive Agreements	Mar-22	**Ongoing**	
Municipal Facility Committee Action	Apr-22		
City Council Committee Action	May-22		
City Council Action	Jun-22		
Mayor Action	Jun-22		
Request Mayor to submit letter to CRA/LA to exercise Option	TBD		
City request to open escrow	TBD		
Option Agreement Extension Expiration	TBD		
CRA/LA Approval of Option			
Governing Board, Oversight Board, and DOF approval as required	TBD		

Angels Landing

trans·form·a·tive | tran(t)s·fôrm·div | adjective
causing a marked change in someone or something.

Angels Landing is an iconic twin-tower hotel and residence "halo-project" for historic Bunker Hill. Greater L.A. visitors and tourists will be beckoned to Angels Landing's two five-star hotel properties offering luxury accommodations in downtown Los Angeles rivaling upscale hotels in Beverly Hills, Bel Air, Century City and Santa Monica.

In addition to its two magnificent hotels, Angels Landing will offer an array of city-view condominiums and apartments. Angels Landing Plaza – a multi-level, publicly accessible and privately managed open space – will create a new pedestrian-centered mecca for downtown Los Angeles residents, transit commuters and tourists.

ANGELS LANDING FEATURES

Tower A – 63 floors, 854 feet

Tower A features a 13 floor, 260-room luxury five-star hotel, surpassing any current hotel property in downtown L.A. It will be combined with 180 condominiums on 32 upper floors, featuring a Sky Lounge and 60 rental apartments encompassing six floors. With the finest of hotel amenities, retail stores and restaurants, Angels Landing will quickly become a destination for downtown L.A.'s social media influencers.

Tower B – 42 floors, 494 feet

Tower B features a 15 floor, 255 guestroom luxury five-star hotel that will serve as a high-rise companion to Tower A highlighted by a spacious lobby, meeting rooms, ballrooms, retail stores and restaurants and a rooftop terrace. Nineteen floors will be devoted to 192 apartments. Residents will have access to the tower's 42nd floor terrace. Hotel guests and residents will have access to an additional terrace on Level 2.

Project characteristics subject to change during ongoing economic and environmental review.

ANGELS LANDING BENEFITS

Angels Landing will have a major positive economic impact on downtown L.A. and Greater Los Angeles. Angels Landing is projected to create a $1.6 billion* local economic infusion. More than 8,300 new jobs* would be created during Angels Landing's construction. Workers associated with Angels Landing's design and construction would earn an estimated $731 million* in direct, indirect and induced earnings.

When Angels Landing is completed and open to the public, a permanent workforce will be central to its operations. More than 300 workers* would hold positions at Angels Landing's two five-star hotels. More than 87 workers* would hold positions at Angels Landing's retail stores and restaurants.

More than 500* new jobs will be created by vendors serving Angels Landing's hotels, restaurants and retail stores. Angels Landing will create an estimated 37* new jobs for its property management operations.

Angels Landing is committed to 30% minority-owned and women-owned business procurement.

**Analysis provided by BJH Advisors LLC*

LOS ANGELES BENEFITS

Angels Landing is the transformative culmination of Bunker Hill's redevelopment that was begun in earnest in 1959. Angels Landing will provide a significant economic stimulus for downtown L.A. arts and cultural venues, such as MOCA, Walt Disney Concert Hall and The Broad Museum. Angels Landing will be the anchor development for Bunker Hill and California Plaza. With Angels Landing as an unmatched resource in downtown L.A. accommodations and hospitality, Bunker Hill will become a signature travel, tourism and convention destination.

Los Angeles and L.A. County will benefit from increased revenues generated by the development:

- **Transient Occupancy Tax Revenue: $3.8 million**
- **Property Tax Revenue: $2.4 million per year**
- **Business Tax Revenue: $180,000 per year**
- **Land Purchase: $50 million**
- **One-Time Tax Revenues: $4.3 million***
- **Recurring Tax Revenues: $12 million***

**Analysis provided by BJH Advisors LLC*



Ownership Group – Angels Landing Partners, LLC

MacFarlane Partners – Victor MacFarlane
macfarlanepartners.com

MacFarlane Partners has provided real estate investment management services to institutional investors via commingled funds and separate accounts since 1987. MacFarlane Partners has managed real estate separate accounts on behalf of more than 25 institutional investors, including the AFL-CIO Building Investment Trust, the California Public Employees' Retirement System, the Sacramento County Employees' Retirement System, the Teacher Retirement System of Texas, and the pension plans of AT&T, General Motors, United Technologies and Verizon. MacFarlane Partners focuses exclusively on investments that promote smart growth, urban revitalization and sustainability in urban and high-density suburban submarkets of select "Gateway Cities" within the United States with the objective to achieve investment success while making a difference in the communities in which we invest.

Development Project Portfolio (Partial):

Park Fifth, a 24-story, transit adjacent downtown L.A. high-rise consisting of 347 rental apartments, 360-degree-view rooftop deck and 5,300 square feet of retail space. **Trademark**, a seven-story, transit adjacent residential building with 313 rental apartments, 14,000 sq. ft. outdoor courtyard and street-level retail space across from L.A.'s historic Pershing Square. **Legacy at Westwood**, a multifamily residential property developed on Wilshire Boulevard in Los Angeles. **South Bay Galleria**, a Redondo Beach, Calif., regional mall. **1100 Wilshire**, an office high-rise in downtown Los Angeles that was converted to residential use. **Ladera Center**, a neighborhood shopping center in the Ladera Heights neighborhood of Los Angeles. **Metropolitan Lofts**, a rental apartment community built in downtown Los Angeles. **Wilshire Vermont Station**, a mixed-use community built atop a subway station along the Mid-Wilshire Corridor of Los Angeles. **The Hotel & Residences at L.A. Live**, a 54-story high-rise built adjacent to the Staples Center and the LA Convention Center in downtown Los Angeles.

The Peebles Corporation – Don Peebles
peeblescorp.com

The Peebles Corporation is a privately held national real estate investment and development company specializing in residential, hospitality, retail and mixed-use commercial properties. The company has corporate offices in New York City, Miami, and Washington D.C. Founded in 1983 by Don Peebles, the company has become an industry leader with a portfolio of active and completed developments totaling more than 10 million square feet and $8 billion in the gateway cities of New York, Boston, Philadelphia, Washington D.C., Charlotte, Miami, San Francisco, and Los Angeles. Through construction excellence, sustainable practices, historic preservation and innovative design, every project is strategically selected to achieve transformative results for the company and community.

Development Project Portfolio (Partial):

Brooklyn Village (Charlotte, NC) a 3,000,000 square-foot mixed-use (apartments, hotels, office space and ground level retail) public-private partnership with Mecklenburg County. **Viola Back Bay** (Boston, MA) a 400,000 square-foot landmark mixed-use (condominiums, 175-room boutique lifestyle hotel, retail and community space) public-private partnership with MassDOT. **108 Leonard Street** (New York City, NY) a 400,000 square-foot (landmark luxury condominiums, parking facility and 15,000 square-foot community space) public-private partnership with the NYCEDC. **1801 Vine Street** (Philadelphia, PA) a 250,000 square-foot (200-room landmark hotel and historic neo-classical courthouse preservation) public-private partnership with PAID. **SLS Hotel and Residences** (Washington, D.C.) a 50,000 square-foot (175-room luxury hotel and residences) public-private partnership with DMPED. **The Royal Palm Hotel** (Miami Beach, FL) a 350,000 square-foot (17-story, twin tower hotel preservation with new construction) public private partnership with City of Miami Beach. **The Residences at The Bath Club** (Miami Beach, FL) a 675,000 square-foot (107-unit condominium tower plus six ocean-front villas with amenities comparable to a 5-star hotel). **Courtyard by Marriott Convention Center** (Washington, D.C.) a 135,000 square-foot (188-room ornate landmark hotel built within a restored circa 1891 bank building near Smithsonian Mall).

Claridge Properties – Ricardo Pagan
claridgeprop.com

Claridge Properties is a privately held real estate development and investment firm which acquires, develops and operates urban-infill real estate assets primarily in the New York and Los Angeles metro areas. We specialize on the acquisition and development of historic adaptive re-use assets, value-add mixed-use residential projects and ground-up land development. Since its founding in 2001, Claridge has excelled in this core focus and has consistently generated risk-adjusted returns for its investors and delivered top tier urban projects in the markets which it serves.

Development Project Portfolio (Partial):

Pencil Factory, a new 43-story waterfront mix-use asset with 522 units of which 140 are affordable along with 47,000 square feet of retail space delivered in November 2019. **The Olive**, a new 30 story, 315-unit multifamily development in Downtown L.A.'s History Core. **The Westin Book Cadillac Hotel & Residences**, a 453 room, $180 Million renovation of an existing Historic asset in Downtown Detroit, MI. **The Book Tower**, a 30 story, 530,000 square foot, 1920's vintage office tower converted to a mix-use residential and office facility in Downtown Detroit, Michigan.

MacFarlane Partners

The Peebles Corporation – Real Estate Investment and Development

Claridge Properties – New York | Los Angeles

CITY OF LOS ANGELES
OFFICE OF THE CHIEF LEGISLATIVE ANALYST

SHARON M. TSO
CHIEF LEGISLATIVE ANALYST

KAREN E. KALFAYAN
EXECUTIVE OFFICER

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200 N. SPRING STREET
LOS ANGELES CA 90012
213.473.5709
FAX: 213.485.8983

August 27, 2020

CRA/LA Governing Board
c/o Steve Valenzuela, Chief Executive Officer
CRA/LA, A Designated Local Authority
448 South Hill Street, Suite 1200
Los Angeles, CA 90013

Re: **Bi-Monthly Progress Report on the Angels Landing Project**

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Sincerely,

Sharon M. Tso

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Angels Landing Project Handout

cc: Chief Legislative Analyst, Caretaker of the 14th Council District
William Chun, Deputy Mayor for Economic Development
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CITY OF LOS ANGELES
OFFICE OF THE CHIEF LEGISLATIVE ANALYST

SHARON M. TSO
CHIEF LEGISLATIVE ANALYST

KAREN E. KALFAYAN
EXECUTIVE OFFICER

ROOM 255, CITY HALL
200 N. SPRING STREET
LOS ANGELES CA 90012
213.473.5709
FAX: 213.485.8983

August 27, 2020

CRA/LA Governing Board
c/o Steve Valenzuela, Chief Executive Officer
CRA/LA, A Designated Local Authority
448 South Hill Street, Suite 1200
Los Angeles, CA 90013

Re: **Bi-Monthly Progress Report on the Angels Landing Project**

Dear Mr. Valenzuela:

As per the CRA/LA Governing Board's request on November 1, 2018, the following is our bi-monthly progress report on the Angels Landing project (Project) for the period of May 9, 2020, through August 27, 2020.

The Department of City Planning (DCP) reports that they are nearing completion of their first screen check of the Draft Environmental Impact Report (EIR) and expect to complete their second screen check by late September 2020. This would allow the Draft EIR to be published in late October 2020. Both DCP and the applicant, Angels Landing Partners, LLC (ALP), are confident that they can commit to this timeframe. With that commitment in hand, attached is a revised entitlement schedule that reflects the new Draft EIR publication date and all subsequent dates involved in the entitlement and CEQA review process.

Also, as you are aware, the City recently remitted to the CRA/LA letters on May 21, 2020 and July 31, 2020 that involve a request for an amendment to the Option Agreement for the Bunker Hill Parcel Y-1 property. As the July 31, 2020 letter from the Office of the Mayor further clarified, the City's request focuses on an extension to the term of the Option as well as establishing a fixed purchase price for the property. The extension to the term is necessary in order to accommodate the revised entitlement schedule provided in this update. The City Council and Mayor cannot act on approving the Project's definitive agreements to allow the City to exercise the Option until the entitlement and CEQA review process is complete. The definitive agreements are currently being negotiated and will be prepared concurrently during the entitlement process. Establishing a fixed purchase price for the property would provide a hard number for the acquisition price and produce a financial model better suited to determine Project costs and future financing. In order for the City and ALP to continue moving forward with the entitlement process and definitive agreements, it is imperative that the CRA/LA consider approval of these amendments to the Option Agreement.

Lastly, ALP has begun the Community Outreach component of the project and met with various community groups and stakeholders. Also attached is a handout prepared by ALP which highlights the Project's main features and economic benefits. Over the next 60 days, ALP will be ramping up their community outreach efforts in advance of the Draft EIR publication in late October 2020.

I understand the CRA/LA Governing Board will be considering the City's request at its Special Meeting on Tuesday, September 1, 2020. Should you have any questions related to that request and/or the Project in general, please contact Oscar Ixco of my staff at oscar.ixco@lacity.org.

Thank you in advance for your consideration and I look forward to your response.

Sincerely,

Sharon M. Tso

Sharon M. Tso
Chief Legislative Analyst

Enclosures: Angels Landing Project Entitlement Timeline
Angels Landing Project Handout

cc: Chief Legislative Analyst, Caretaker of the 14th Council District
William Chun, Deputy Mayor for Economic Development
Richard H. Llewellyn, Jr., City Administrative Officer
Vincent P. Bertoni, Director of City Planning

ANGELS LANDING PROJECT
ENTITLEMENT TIMELINE

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File No. 14-0425-S4

ECONOMIC DEVELOPMENT COMMITTEE REPORT relative to the selection of Angels Landing Partners, LLC (ALP) as the preferred development team to purchase and develop Angels Landing located at 361 South Hill Street (APN 5149-010-939).

Recommendations for Council, SUBJECT TO THE APPROVAL OF THE MAYOR:

1. DETERMINE that the City-controlled property referred to as Angels Landing located at 361 South Hill Street (APN 5149-010-939; Angels Landing is an Economic Development property under the Asset Management Strategic Planning Asset Evaluation Framework.

2. APPROVE the selection of ALP as the preferred development team to purchase and develop Angels Landing in accordance with the terms of the Option Agreement, attached to the Council file, by and between the City of Los Angeles and the Community Redevelopment Agency Los Angeles (CRA/LA), A Designated Local Authority, dated January 8, 2015 (Contract No. C-125178).

3. INSTRUCT the Chief Legislative Analyst (CLA) and REQUEST the City Attorney, with the assistance of the City Administrative Officer (CAO) and Economic and Workforce Development Department (EWDD), to negotiate and execute an Exclusive Negotiation Agreement (ENA) with ALP, a joint venture between The Peebles Corporation, MacFarlane Partners, and Claridge Properties, to effectuate the purchase and sale of Angels Landing and incorporate requirements that the proposed project provide the City with certain community benefits.

4. INSTRUCT the CLA and CAO, with the assistance of EWDD, to report in regard to the:

    a. Proposed term sheet for a Disposition and Development Agreement with ALP.

    b. Proposed term sheet for a Purchase and Sale Agreement with CRA/LA for the purchase of Angels Landing.

    c. Proposed term sheet for a Purchase and Sale Agreement with ALP for the subsequent sale of Angels Landing.

    d. Terms for any other necessary documents to effectuate the purchase and sale to include a list of required community benefits.

5. AUTHORIZE and INSTRUCT the CLA to hire consultants necessary to evaluate the proposed Angels Landing development.

6. ACCEPT $150,000 for consultant services from ALP to analyze and financing associated with this instruction.

7. REQUEST and AUTHORIZE the City Controller to deposit, appropriate, and expend all funds received as a result of this action in Fund 100/28, Contractual Services Account No. 3040; and, AUTHORIZE the CLA to make any technical corrections, revisions, or clarifications to the above instructions in order to effectuate the intent of this action.

Fiscal Impact Statement: The CLA reports that approval of the recommendations in this report will not have an impact on the General Fund. The extent of any future impact on the General Fund is unknown at this time.

Community Impact Statement: None submitted.

Summary:

On December 12, 2017, your Committee considered a December 8, 2017 CLA report relative to the selection of ALP as the preferred development team to purchase and develop Angels Landing located at 361 South Hill Street (APN 5149-010-939). According to the CLA, on March 21, 2017, a Motion (Huizar - O'Farrell; Council File No. 14-0425-S4) was introduced instructing the CLA, with the assistance of the EWDD, CAO, and City Attorney, to serve as the lead City Department in soliciting development interest of real property located at 361 South Hill Street (APN 5149-010-939) in Downtown Los Angeles (Site). The Site is owned by CRA/LA, A Designated Local Authority, but controlled by the City through an Option Agreement dated January 8, 2015 (Council File No. 14-0425). The Option Agreement allows the City to market and develop the Site in a manner that is consistent with the redevelopment objectives of the Bunker Hill Redevelopment Plan and in a manner that best serves the needs of the City and affected taxing entities.

Through the EWDD, the City hired Jones Lang LaSalle as its consultant to assist in the public solicitation and evaluation process to identify and select a preferred development team for the Site. As a marketing strategy, the Site was branded "Angels Landing" to pay homage to the City and its neighboring parcel, the Historic Angels Flight. Marketing material was distributed on a global scale to draw as much interest as possible. On April 12, 2017, the City released a Request for Qualifications (RFQ) via its Los Angeles Business Virtual Network to seek qualified developers capable of building a product that not only meets the development potential of the Site, but also meets key City objectives. Responses were due on May 22, 2017, and the City received 10 qualified responses.

The Angels Landing Review Panel, comprised of representatives from various City Departments and the business community, evaluated and scored the proposals. The top four scored development teams were invited to participate in the next phase of the public solicitation process. On August 7, 2017, the City released a Request for Proposals (RFP) to the four selected development teams from the RFQ process. Responses were due on October 16, 2017, and the City received three qualified proposals:

a. Angels Landing Development Partners, LLC

b. Angels Landing Partners, LLC

c. The Onni Group.

The same Angels Landing Review Panel that served during the RFQ process evaluated the proposals and interviewed the development teams on October 23, 2017. A community presentation was held the same night to allow the public an opportunity to comment on the proposed project concepts. At the conclusion of this process, ALP, received the highest overall

score of the three development teams.

ALP, which is joint venture of The Peebles Corporation, MacFarlane Partners, and Claridge Properties, is proposing to build a world-class mixed-use development (Project) consisting of two hotels, multifamily housing, condominiums, restaurant and retail spaces, open space, and a K-5 public charter school. Some of the key tenant partnerships include SBE as the hotel operator with two complementary brands, the SLS and Mondrian Hotels, and Los Angeles Academy of Arts and Enterprise as the public charter school operator. The Project looks to provide community benefits in the form of affordable housing opportunities, business opportunities for Minority and Women Business Enterprises, an academic institution, and a hospitality training program. During construction, the project would generate an estimated $54.3 million in one-time fiscal impacts to the City and $12 million in annual on-going revenue once the project reaches stabilization. The CLA has reviewed the recommendation provided by the Angels Landing Review Panel and recommends that Council select ALP to develop the Angels Landing Site and provide the CLA the authority to negotiate and execute an Exclusive Negotiation Agreement with ALP.

After further consideration and having provided an opportunity for public comment, the Committee move to recommend approval of the recommendations contained in the December 8, 2017 CLA report and detailed in the above recommendations. This matter is now submitted to Council for its consideration.

Respectfully Submitted,

ECONOMIC DEVELOPMENT COMMITTEE

MEMBER	VOTE
PRICE:	YES
BUSCAINO:	YES
HUIZAR:	YES

ARL
12/12/17

-NOT OFFICIAL UNTIL COUNCIL ACTS-

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April 4, 2012

New York City Department of
Housing Preservation and Development
100 Gold Street
New York, NY 10038
Attn: RuthAnne Visnauskas, Deputy Commissioner for Development

New York City Housing Authority
250 Broadway, 24th Floor
New York, NY 10007
Attn: Patricia Barrera, Senior Deputy Director of Development

RE: Re-Vision Prospect Plaza RFP

Dear Ms. Visnauskas and Ms. Barrera:

We are the outside accounting firm that performs tax and accounting services for R. Donahue Peebles and are familiar with his financial condition and circumstances.

In connection with the submission from Peebles/TCG Communities, LLC in response to the Re-Vision Prospect Plaza Request for Proposal ("RFP") issued by the Department of Housing Preservation and Development ("HPD") of the City of New York ("City") in cooperation with the New York City Housing Authority ("NYCHA"), this will confirm that as of December 31, 2011, Mr. R. Donahue Peebles had liquid assets in excess of $20,000,000.

Very Truly Yours,

Aronson LLC
Stuart A. Rosenberg, Partner

EXHIBIT 22

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

In the Matter of the Application of	:	
	:	
DOWNSTATE AT LICH HOLDING COMPANY, INC.	:	Index No. _____
	:	
For an Order Approving the Sale of the Assets of Downstate at LICH Holding Company, Inc., pursuant to Sections 510 and 511 of the Not-for-Profit Corporation Law.	:	**AFFIRMATION OF RUTH E. BOOHER**

RUTH E. BOOHER, an attorney admitted to practice law in New York State, affirms the following under penalties of perjury and in accordance with C.P.L.R. § 2106:

1. I am Deputy Counsel for Health Affairs within the Office of General Counsel of the State University of New York (the "State University"). I have personal knowledge of the facts stated herein, and I submit this affirmation in support of the Verified Petition (the "Petition") of Downstate at LICH Holding Company, Inc. ("Petitioner") for an order approving the sale of substantially all of its assets.

2. I oversaw the process by which the State University of New York Health Science Center of Brooklyn ("Downstate"), on behalf of itself and Petitioner, solicited and negotiated the contract to sell substantially all of Petitioner's assets.

3. In 2013, after approximately two years of significant losses at the facility known as SUNY Downstate Medical Center at LICH or Long Island College Hospital (the "Hospital") that showed no sign of reversing, and faced also with a broader financial crisis at the University Hospital of Brooklyn ("UHB") as identified in the Audit Report issued by the Office of the State

Comptroller dated January 13, 2013 (the "OSC Audit Report"), the New York State Legislature, in accordance with Article VII Budget Bill: Health and Mental Hygiene (HMH) (S2606-D/A3006-D), Chapter 56 Part Q of the Laws of 2013-14, authorized the Chancellor of the State University to develop a plan to restructure UHB to achieve continued fiscal viability. The Hospital was operated by Downstate as a division and campus of UHB under a single operating certificate.

4. In accordance with Article VII Budget Bill: Health and Mental Hygiene (HMH) (S2606-D/A3006-D), Chapter 56 Part Q of the Laws of 2013-14, and pursuant to the authority provided by the Board of Trustees of the State University, the Chancellor submitted a plan to restructure UHB to achieve continued fiscal viability while preserving its status as a teaching hospital. This plan was duly approved by the Commissioner of Health of the State of New York and the Director of the New York State Division of the Budget on June 13, 2013 ("Sustainability Plan").

5. The Sustainability Plan included a determination that Downstate and UHB must exit the operations of the Hospital as soon as possible. Further, the Sustainability Plan directed: "Any cash flow pressures on Downstate Medical Center in its 2013-2014 fiscal year associated with the exit of UHB operation of Long Island College Hospital (LICH) will be accommodated by accelerated State funding or deferred payments in 2013-14 and, thereafter, will be accommodated by monetization of LICH assets or other revenue resulting from the LICH transaction."

6. In February 2013, Downstate filed a closure plan with the New York State Department of Health to close the Hospital, prompting litigation described below. Starting in 2012 and continuing through 2013, the Hospital experienced a significant number of resignations

from physicians, and patient volume at the Hospital dropped. As a result, Downstate voluntarily withdrew accreditation for the graduate medical education residency programs as it was unable to find sufficient physician staffing for training and was unable to provide sufficient clinical experience to the residents. In July 2013, the State University took additional actions to ensure patient safety at the Hospital, but temporary restraining orders issued in several actions described below prevented the State University from closing the Hospital.

7. The State University, on behalf of Downstate, issued Request for Information C002521, Downstate Medical Center Long Island College Hospital Campus, on May 1, 2013, requesting expressions of interest from qualified parties who could provide health services at or around the Hospital campus. Thereafter, having determined that pursuing a request for proposal was an appropriate next step, the State University issued Request for Proposal X002539 on July 17, 2013 ("2013 RFP") to request proposals from qualified parties to provide, or to arrange to provide, health services at the Hospital campus, consistent with the healthcare needs of the community, and to purchase the Hospital property, plant, and equipment (the "LICH Assets").

8. Proposals received in response to the 2013 RFP were reviewed and evaluated in accordance with the provisions set forth in the 2013 RFP, including a determination of the financial sufficiency of each such proposal based on appraisals provided by third party appraisers of the highest and best use of each parcel of the LICH Assets.

9. No award was made under the 2013 RFP due to continuing litigation brought (in two instances) and revived (in another instance) in the Supreme Court of the State of New York, County of Kings, styled *New York State Nurses Association, et al., vs. New York State Department of Health, et al.* (Index Number 5814/13; the "NYSNA Action"), *Boerum Hill Association, et al., vs. State University of New York, et al.* (Index Number 13007/13; the

"Boerum Hill Action"), and *In the Matter of the Application of The Long Island College Hospital* (Index Number 9188/2011; the "2011 LICH Petition").

10. The NYSNA Action was brought in April 2013 by 1199 SEIU United Healthcare Workers East ("1199"), the New York State Nurses Association ("NYSNA"), and Concerned Physicians of LICH, LLC ("CPL"). The Boerum Hill Action was brought in July 2013, initially by the New York City Public Advocate and then joined by various community groups, each of which opposed Downstate's proposed exit from the operation of the Hospital. Proceedings in the 2011 LICH Petition with respect to Downstate and the State University were commenced in August 2013, by Justice Carolyn Demarest, *sua sponte*.

11. Temporary restraining orders issued in the NYSNA Action and the Boerum Hill Action prevented the State University from closing the Hospital, prevented the New York State Department of Health from approving the closure plan for the Hospital, and required the State University to continue operating the Hospital with services as they existed as of 4:00 pm on July 19, 2013. At that time, to ensure patient safety, all inpatient and outpatient procedures and surgeries had been discontinued and none of the inpatient units other than the intensive care unit consisting of 15 beds, the medicine unit consisting of 30 beds, and the Emergency Department, were in service. The State University, however, was prohibited from reducing staff at the Hospital.

12. In settlement of the aforesaid litigation, the State University and all other parties thereto entered into a Stipulation and Proposed Order that was filed with the Kings County Clerk's Office on February 25, 2014 ("Stipulation"). The Stipulation was "so ordered" by Justices Johnny Lee Baynes and Carolyn Demarest. Pursuant to the Stipulation, the State University was authorized and directed to issue a new request for proposals from qualified

parties to provide, or to arrange to provide, health services at the LICH campus, consistent with the healthcare needs of the community, and to purchase the LICH Assets. Also pursuant to the Stipulation, the State University was authorized to discontinue providing medical services on the Hospital premises at any time on or after May 22, 2014. Importantly, the State University was authorized to make appropriate staffing reductions at the Hospital thereby reducing the monthly operating losses.

13. In accordance with the Stipulation, the State University issued Request for Proposal X002654, dated February 26, 2014, titled "Healthcare Services at Long Island College Hospital and Purchase of Property" (the "2014 RFP"). Proposals were received and scored according to the methodology set forth in the Stipulation and the 2014 RFP.

14. In April 2014, the State University first entered into negotiations with the offeror whose proposal received the highest score, Brooklyn Health Partners Development Group, LLC ("BHP"), but those negotiations were terminated in accordance with the process set forth in the Stipulation and the 2014 RFP when it became apparent, among other things, that BHP had not secured commitments from its healthcare partners and was not in a position to fulfill its obligations as set forth in its response to the 2014 RFP.

15. In May 2014, the State University next entered into negotiations with the offeror whose proposal received the second highest score, The Peebles Corporation ("Peebles"), but those negotiations were terminated in accordance with the process set forth in the Stipulation and the 2014 RFP when, among other things, Peebles declined to provide the State University, Petitioner, and the State of New York with an uncapped indemnity for environmental liabilities relating to the Hospital property (such uncapped indemnity was an absolute requirement under the terms of the 2014 RFP). *See* Verified Petition, Exhibit 10, 2014 RFP at Exhibit D, ¶ C.2.

16. While negotiations with Peebles continued, on May 8, 2014, Plaintiffs in the Boerum Hill Action filed an order to show cause seeking to disqualify the scores provided by several of the technical evaluators in the 2014 RFP. Plaintiffs asserted that scores resulting from the 2014 RFP were not in accord with the Stipulation and certain of those scores should therefore be disqualified. After several court appearances involving a withdrawal and refiling of the order to show cause, as well as motions to intervene by certain offerors and others, the Court during the hearing held June 10, 2014, upheld the process by which the State University terminated negotiations with BHP and Peebles, stating that "from a legal perspective…[the State University] had the right to walk away," citing the case *IDT Corp. v. Tyco Group, S.A.R.L.*, 2014 NY Slip Op 04044, decided on June 5, 2014, for this proposition. The Court further stated that "[t]he 30 days—in my opinion it was a maximum of 30 days that [the State University] could negotiate. If [the State University] came to the conclusion that negotiations were going nowhere, that perhaps a party was not acting in good faith, then [the State University] could walk away." *See* Boerum Hill Action, Transcript of Hearing Proceedings, June 10, 2014, annexed hereto as **EXHIBIT 1**, pages 14-15. The Court then denied the motion and upheld the evaluation and scoring process of the 2014 RFP. *See* Decision and Order of Justice Baynes, dated June 13, 2014, annexed hereto as **EXHIBIT 2**.

17. The State University next entered into negotiations with the offeror whose proposal received the third highest score, Fortis Property Group, LLC ("Fortis"). In letters to the State University dated June 3 and June 6, 2014, Peebles protested the State University's award to Fortis of an opportunity to enter into a transaction. The State University issued a determination on the protest unfavorable to Peebles, and Peebles appealed that determination to the New York State Office of the State Comptroller ("OSC"). On October 28, 2014, OSC denied the appeal in

its Determination of Appeal, annexed hereto as **EXHIBIT 3**, finding that "the grounds advanced by The Peebles Corporation…[were] insufficient to merit the overturning of the award made by [the State University] to the Fortis Property Group, LLC." Specifically, OSC found the following: (1) neither the Stipulation nor the RFP created an obligation on the part of the State University to negotiate with a successful offeror for a full 30 days; (2) the State University's decision to terminate negotiations with Peebles was not in bad faith; and (3) there was no basis to find Fortis non-responsible as a vendor. **EXHIBIT 3** at page 5. In pertinent part, OSC found that the State University had a good faith basis for its determination that the parties had reached an impasse on an issue that was critical to the transaction, that issue being that the "Successful Offeror" under the 2014 RFP would be required to provide a broad and uncapped indemnification to the State of New York for any environmental liabilities, and that Peebles, as the "Successful Offeror," was not willing to meet this requirement. *See* **EXHIBIT 3** at pages 7-8.

18. The negotiations with Fortis were successful and, ultimately, Fortis and a special purpose entity established by Fortis, FPG Cobble Hill Acquisitions, LLC ("FPG"), entered into a Purchase and Sale Agreement (as amended and restated through the date of this Affirmation, the "PSA") with Petitioner regarding, *inter alia*, the sale of the LICH Assets to FPG and the commitment by FPG to use parts of the LICH Assets to provide, or to cause its affiliates and/or contractors to provide, health services to the community in which the LICH Assets are located after execution of, and in accordance with, the PSA (the "Transaction").

19. NYU Hospitals Center ("NYUHC"), Fortis's health care provider, also is a signatory to the PSA and, as part of the Transaction, committed to providing various health services on a portion of the Hospital's premises.

20. In conformity with the terms of the Stipulation, Downstate discontinued providing most medical services at the Hospital on or about May 22, 2014, but, as a service to the community, Downstate elected to keep its emergency department on the Hospital premises (the "LICH ED") open and operating on a temporary, voluntary basis until such time as NYUHC was able to commence operation of its own emergency department on the Hospital premises in accordance with the terms of the PSA.

21. On August 26, 2014, New York State Nurses Association filed a motion in the NYSNA Action seeking to enjoin the State University from "taking action inconsistent with the [Stipulation], including, the effectuation of the sale of Long Island College Hospital…to the Fortis Property Group LLC…and/or New York University Langone Medical Center…or any other entity." On September 18, 2014, this Court issued an interim decision requiring that Fortis and NYUHC become parties to the NYSNA Action. *See* Interim Decision, dated September 18, 2014, annexed hereto as **EXHIBIT 4**. A decision was then issued by this Court on September 29, 2014, after neither Fortis nor NYUHC submitted papers on the matter, denying NYSNA's motion. *See* Order, dated September 29, 2014, annexed hereto as **EXHIBIT 5**.

22. On October 28, 2014, the PSA and other Transaction documents received necessary government and regulatory approvals from the New York State Office of the Attorney General, the New York State Office of the State Comptroller, the Dormitory Authority of the State of New York, and the New York State Executive Department's Division of the Budget. Additionally, the New York State Department of Health ("DOH") approved the certificate of need and issued the operating certificate for NYUHC to commence operating the emergency department at the Hospital.

23. On October 31, 2014, Downstate ceased operating the LICH ED and, pursuant to the provisions of the Stipulation and Downstate's closure plan approved by the New York State Department of Health, Downstate fully and finally exited health care operations at the Hospital site (other than the operation of a supporting laboratory service function that terminated on or about December 31, 2014).

24. On October 31, 2014, in accordance with the provisions of the PSA, NYUHC commenced operations of an emergency department at the Hospital site under the name NYU Langone-Cobble Hill.

Albany, New York
April 9, 2015

Ruth E Booher
RUTH E. BOOHER

EXHIBIT 1

8UPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS - CIVIL TERM - PART 68
----------X

BOERUM HILL ASSOCIATION, CARROLL GARDENS, NEIGHBORHOOD ASSOCIATION, COBBLE HILL ASSOCIATION, RIVERSIDE TENANTS' ASSOCIATION WYCOFF GARDENS ASSOCIATIONS, INC., and KATE MACKENZIE,

Petitioners,

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rule

-against-

STATE UNIVERSITY OF NEW YORK, TRUSTEES OF STATE UNIVERSITY OF NEW YORK, NEW YORK STATE DEPARTMENT OF HEALTH, NIRAV R. SHAH, as Commissioner of the New York State Department of Health,

Respondents.
----------X

Index # 13007/13 Hearing

360 Adams Street
Brooklyn, New York
June 10, 2014

B E F O R E:

HONORABLE JOHNNY LEE BAYNES,
Justice.

A P P E A R A N C E S:

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BY: FRANK CARONE, ESQ.

SUSAN MAURO, ESQ.
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BY: MARIANNE MONROY, ESQ.
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New York, New York 10019
BY: ALLAN J. ARFA, ESQ.
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BY: JAMES WALDEN, ESQ.
ADAM P. COHEN, ESQ.
Attorneys for Public Advocate, Community Groups, Concerned Physicians of LICH

Richard L. Yellen & Associates
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Attorneys for Brooklyn Health Partners Development Group, LLC

MARC ZAFRIN, ESQ.
Brooklyn Health Partners Development Group, LLC

Lonuzzi & Woodland
BY: JOHN LONUZZI, ESQ.
Attorney for Fortis

Marc Shiffman
Senior Court Reporter

THE CLERK: Today's index 13007 of '13, Boerum Hill Association, Carroll Gardens Neighborhood Association, Cobble Hill Association, Riverside Tenants' Association, Wycoff Gardens Association, Inc., and Kate MacKenzie, Petitioners, for a judgment pursuant to Article 78 of the Civil Practice Law and Rules, against State University of New York, Trustees of State University of New York, New York State Department of Health, and Nirav R. Shah, as Commissioner of the New York State Department of Health.

Counselors, petitioners first, note your appearance.

MS. REISBAUM: Good morning, your Honor Emily Reisbaum for New York State Department of Health and as Commissioner.

MS. GUERON: Nicole Gueron from the same firm for the same defendant.

MR. SELTZER: Richard Seltzer, Cohen, Weiss and Simon, LLP, for the New York State Nurses Association.

MS. CAMERON: Susan Cameron, Levy Ratner, 1199 SEIU, United Healthcare Workers East 44.

MR. FISHER: Good morning. Kenneth K.

Fisher, Cozen, O'connor for the Downstate LICH Holdings.

MR. SPIRO: Good morning. Edward Spiro of Morvillo, Abramowitz, Grand, Iason & Anello, for SUNY.

MS. MAURO: Good morning, your Honor. Susan Mauro, Abrams Fensterman, for SUNY.

MR. CARONE: Good morning, Judge. Frank Carone, Abrams Fensterman, for SUNY, respondents.

MR. COHEN: Good morning. Adam Cohen representing the six community groups, public advocate, and concerned physicians of LICH.

MR. WALDEN: Jim Walden, Gibson, Dunn, counsel for the community groups, public advocate, and concerned physicians.

MS. MONROY: Yes, your Honor. Marianne Monroy from Garfunkel Wild, counsel for Prime Healthcare Foundation.

MR. ARFA: Allan Arfa, Paul, Weiss, Rifkind, Wharton, & Garrison, LLP, on behalf of the Peebles Corporation.

MR. YELLEN: Richard Yellen, Richard Yellen & Associates, Brooklyn Health Partners Development Group, LLC, which was the initial bidder and it's proposal. We don't have a motion

before the Court today, your Honor.

MR. ZAFRIN: Marc Zafrin, Brooklyn Health Partners.

THE COURT: Okay.

MR. KOMBOL: Brendan Kombol of Richard Yellen & Associates.

THE COURT: When we adjourned this case I wanted to give each and every intervener that's submitted court papers an opportunity to speak. And I think Peebles were speaking or getting ready to pursue an oral argument at this time. Is that correct?

MR. ARFA: Judge, I want to inform the Court of our position. We have provided Mr. Walden with an affidavit that he referred to at the very beginning of his argument. We do not believe SUNY negotiated with us in good faith.

THE COURT: Wait. Wait. One person at a time.

MR. SPIRO: The argument by Mr. Arfa is not responsive to the motion that's before your Honor.

THE COURT: Strike that from the record.

MR. ARFA: The reason I was explaining our position was, A, so your Honor understood, B,

responding to what Mr. Walden said at the beginning, which is that if his motion was to be denied, then he would make a motion that would require SUNY to re-enter into negotiations with us on that ground. And I've given him an affidavit. If the motion is denied, we would like that motion to be heard by your Honor because we, I'll say it again, do not believe that complied with the stipulation of settlement. We do not believe they negotiated with us in good faith. And I can explain the reasons why, but I don't want to go into detail if the Court doesn't want to hear it at this time.

THE COURT: That's what you're supposed to be doing. You wanted to intervene, you wanted to speak before this Court, and the purpose -- well, one of the reasons for adjourning this case was so that you would not feel rushed. If you check the record those were the words that I used. That I do not want you to feel rushed. That I wanted you to put on whatever your case was, whatever your oral argument is. So if, indeed, you have an oral argument now is the time.

MR. ARFA: We would point out there is an affidavit we have given Mr. Walden. Your Honor

may recall we came here, we negotiated a deal with Neighborhood Groups. Thereafter, A, SUNY refused ever to meet with us in person not once; B, took what we believe were unreasonable positions; C, they sent us a letter on Memorial Day demanding a response in 24 hours; and four, they then terminated negotiations prior to the end of the 30 day period that's required by the RFP and your Honor's order and the stipulation of settlement.

So, no, I'm not here today because of that. What I'm here today, to be clear, if Mr. Walden's motion is granted and all of the scores are thrown out, that portion is granted, we will submit another proposal. We wanted your Honor to understand that. And, number two, if the motion is denied then we would like to join with Mr. Walden in making a motion before your Honor to require them to negotiate with us further because we don't believe they did so. That's our position, Judge, just so you understand.

MR. WALDEN: And, your Honor, if there is confusion, it may be theconfusion was my fault. I am sorry to Mr. Arfa if this confusion was for me.

When we were here last, your Honor, in oral argument I stated that our motion was

essentially a motion in the alternative. And that if this Court were to find that the process was broken, that the stipulation was supposed to be applied as Ms. Booher, B-O-O-H-E-R, described it to SUNY Trustees and throw the scores out, that that was our primary motion. But if your Honor decided -- and we believe the evidence is clear -- but if your Honor decided that you either lack legal authority or that there were not sufficient facts and your Honor was going to deny our motion for discovery, which I think there is ample reason for, especially given Ms. Booher's statements, that we would be making a motion in the alternative. And I made that motion orally and that was this: Mr. Arfa has a partner named Merideth Kane. And Merideth Kane, I had come to learn, is one of the most experienced transactional attorneys particularly dealing with governmental entities. And when a woman -- when a lawyer of Ms. Kane's experience says to this court that SUNY intended for the negotiation to fail and the minute that the ink was dry on your settlement SUNY then turned its back and refused to negotiate any further, you have -- I have to take those words seriously, your Honor.

And I'm fond of an old expression I think I have heard your Honor use from time to time, "If it walks like a duck and it talks like a duck it's probably a duck." Your Honor, I think that the affidavit from Mr. Davis makes clear that this is a document screaming at you "I'm a duck." This process was broken.

Mr. Spiro is fond of saying we "traded justice for process." And although I have taken issue with the context of that quote, we never traded justice for a broken process. There are plenty of bidders remaining in this courtroom that are willing to give this community what it needs. And while the body count in Brooklyn starts to rise with the summer months and we already have deaths that could have been avoided if there was a hospital, here what we ask your Honor to do is primarily throw out the scores and let these people re-bid and do the process right this time because SUNY did not do the process correctly.

And we will have evidence. If your Honor is unsatisfied with that evidence, we will demand more from SUNY because they have not turned over the scorers' notes. They have not turned over their e-mails with the scores. When the

record is clear, your Honor will see how deeply broken this process is. After that discovery is heard and a hearing is held, your Honor chose to declined our motion. We would ask you to read Mr. Davis's very clear affidavit which makes it abundantly plain that SUNY did not put their signature on our settlement with Peebles because they don't intend to abide by it.

Your Honor remembers that when we first drafted that stipulation of settlement that we worked so hard with this court. That at the last minute Mr. Carone said that SUNY was not going to sign it. Now I think I understand why. After that settlement was done with all the thought and care and negotiation that when went in it, SUNY turned their back on Peebles and LIJ and Maimonides and that's not fair. That's not right and that's not consistent with the good faith they promised this court in signing our settlement stipulation.

So again, your Honor, to make sure that our position is clear, we had asked your Honor to throw out the scores or, in the alternative, to grant our request for discovery so that we can show your Honor the full record. And in the

alternative, if you decided to reject either of those motions, to force SUNY to go back to Peebles, LIJ and North Shore, the one set of bidders that have promised to do a healthcare assessment for the first time for this community, and then to build a hospital under reasonable, feasible conditions.

THE COURT: Excuse me. Sit down, everybody.

You can't be heard. You don't have any papers in that I am aware. This is not a free for all. This is not where you come and you don't put your adversaries on notice of what your arguments are. That's not what we do here.

I guess I need to speak just from a legal perspective from all the research that I've done and everything that I have, it appears to me that SUNY had the right to walk away. Okay. Let's just be clear. I think I have a Court of Appeal's case that I'll use to cite you something that just came down.

Alex, you got the case? Give it to me.

(Handing to the Court.)

THE COURT: Okay. This was decided June 5, 2014. Okay. IDT Corporation, et al.,

respondents, versus Tyco Group, T-Y-C-O group, S.A.R.L. et al., these were of Appellate's number 96, NY Slip Op 04044. And it definitely stands for the proposition that SUNY could walk away.

The 30 days -- in my opinion it was a maximum of 30 days that SUNY could negotiate. If SUNY came to the conclusion that negotiations were going nowhere, that perhaps a party was not acting in good faith, then SUNY could walk away. So on that particular issue speaks for itself.

Now, Mr. Carone, you felt that you needed to say something.

MR. CARONE: I'm not sure if I originally wanted to respond to Mr. Arfa, who's no question a capable attorney, I think your Honor just cleared the record nonetheless. But just so I could check this box off in my head right now, I just want to be clear, Judge, that the Peebles Corporation certainly is not a party to the present motion either as an intervenor or otherwise. And I understand the court's rationale for allowing relevant parties to express themselves in court so everyone feels an opportunity to be heard. But it's important from SUNY's perspective that the record is clear.

Well, we heard Mr. Arfa, the Pebbles Corporation, Mr. Walden, they may in fact bring new motions. We'll address those as they come. Before this court right now is a motion by the Community Groups, not the Public Advocate or the Concerned Physicians, just the Community Groups. So I want to say that first, Judge. And then Mr. Walden I think concluded oral argument on his motion. If he didn't, he will. If I could just make a few comments about that.

Before I do, on the topic of SUNY's right to discontinue negotiations, your Honor is very, very accurate and we have that in our papers. But in addition to what has been said in court -- and I have the transcript from May 8th, May 13th, May 17th -- and what was said in the court was very much a mirror image of what is contained in the stipulation and order that everyone in this audience has heard over and over again that we worked so hard to accomplish in February of 2014.

What was said here by this very Court: "SUNY may, in its sole discretion, terminate negotiations if the successful offerer was unable to enter into the agreement in accordance with the terms of the RFP and their ultimate proposals."

If we did a motion that said otherwise, we'll gladly respond to it.

Judge, if briefly, I did spend some time with co-counsel, Mr. Spiro, reading the transcripts from Mr. Walden's application. As he, eloquently as always, I looked to see if I missed anything. Just to be clear, Judge, Mr. Walden began his argument sort of highlighted what he calls "a commitment to the RFP." And he is right. The word commitment was there. The commitment was to the language of the RFP, to the spirit of the RFP. And the language was very carefully chosen to give the evaluators discretion when discretion was called for, and to require mandatory consideration when mandatory consideration was called for. And he began to speak about four hospital potential bidders, I had BHP, Prime, Trindade and the Chinese American Group, all purported to be hospitals to run hospitals. But guess what, Judge, all four of those proposals guaranteed one thing from the eyes of the evaluators back in March. This hospital would most certainly close on May 22. There was no continuity of care in any of those proposals.

Judge, you heard all in the past the

section of law 2806. Very simple: No application, not relevant. None. In fact, Judge, none of the proposed hospitals sought to propose a Certificate of Need. That was another issue that the evaluators had before them, your Honor. So what you heard essentially from Mr. Walden is a lot of hyperbole, sensationalism, children's books, cartoons, but what you don't hear are facts, didn't hear law. Not an affidavit and no facts to support his application. There is simply nothing in this record that should give this court any comfort in granting his application in the alternative, either one, either to discharge some of the evaluators or to grant discovery. This process must move forward. That is what SUNY bargained for. We stood by our word. We stood by our deal.

In fact, we went further. When we saw continuity was possible, we voluntarily kept the ED open because we knew we needed to do it if we were going to keep with our word. And we're very, very cognizant of keeping our word in that stipulation, Judge. So we voluntarily keep the ED open so continuity is possible. It's right before us now. We can taste it, we can smell it. I

don't think there is anything in the record or in the papers or oral argument or otherwise that gives this court any comfort in granting Mr. Walden's application, either in the alternative or otherwise.

Thank you, Judge.

MR. FISHER: Kenneth Fisher for Downstate at LICH Holding. If I can be heard on Mr. Walden's application briefly.

Judge, I want to just call your attention to three words that Mr. Walden used in his argument. I think I am going to make a point that no one else had made before. And just, first of all, Mr. Walden used the word "bidders." I think it's "bidder" multiple times, bidder this, bidder that. Just so there is no misunderstanding on the record, "this is a request for proposals, not a request for bids." That's a quote from Exhibit D, section L, item 8 on page 45 of the RFP. In fact, the word not -- "This is a request for proposals not a request for bids," not is actually in bold.

And the reason that I call that out, your Honor, is that it's been noted actually in a very interesting article by First Assistant Corporation Counsel Jeff Friedlander in the Law Journal March

28, 2011. "The RFP process differs from competitive bidding in several material respects. First, RFPs are flexible and allow the city to take into account factors other than price in making an award." It goes on to say: "In contrast, awards made pursuant to a competitive sealed bid must be to the lowest responsible bidder."

Now, the reason I called that out, your Honor, is because Mr. Walden not only used the word bid, he relied on a case, I think it was Tri-State, it's a waste hauling case, that he mentioned in oral argument in his papers.

I want to call your Honor's attention to a decision NBC Decaux, D-E-C-A-U-X, LLC, versus New York City DOT. And this was decided in 2006. I have the official cite someplace. I misplaced it. In that case, however, Justice Wetzel in New York County specifically held that, quote, application -- that when a case involves an RFP the case is required "application of an entirely different body of law which recognizes the distinction between the search for the lowest responsible bidder and a competition seeking a request for proposals."

That leads me to the second word, Judge, which -- that Mr. Walden used which was "judges." Your Honor will recall during his very eloquent remarks that on several occasions he described the evaluators as "judges." Now, you know better than anyone else in the room, Judge, that when you're acting as a judge you make decisions based on the record before you, the facts that are introduced into evidence according to the rules. While you didn't check your common sense at the courthouse door, you are limited to the record that's made before you.

These were not judges. They were members of an evaluation committee. An evaluation committee that was celebrated for its diversity. It was celebrated toward the fact that there were people there which had been recommended by the unions, by the public officials, by the community groups. And, Mr. Walden, in order to get to his mathematical analysis, had to attack not only the scores but also the SUNY representatives without any allegation that they had been directed, one of whom is at least an independent person, that's evaluator number nine. But he also attacked evaluation by other people not recommended by SUNY

and certainly not within their control. And in one case there was an evaluator who had the same score of somebody that he attacked, but he didn't attack that one for reasons that are not particularly quite clear. And so we have evaluators that were selected because they brought their own experience and knowledge to the evaluation process. They were not instructed to be judges and only go based on the record before them. Because if they had, Judge, then anybody could have promised anything without any evaluation of whether it was real or not it could have been selected.

You know, Judge, SUNY probably would have been within its rights to reject the BHP proposal, and several of the others right from the get go, because they didn't comply with the terms of the RFP. I suspect if we had, we would have been castigated for tossing out the highest ranked proposal that had a hospital in it. But your Honor yourself right from the very beginning was skeptical about their ability to meet all of their promises. And so the point, Judge, is that the evaluators, if it were simply a question of reading the evaluations and no matter what they

said treating them as if they were bids and whatever the best price was was going to get it, then you didn't have to have this diversity involved. Rather, by making it a request for proposals, we invited to -- people to bring their expertise.

That brings me to the last word, Judge. That was "unicorn." Mr. Walden talked about the fact that people on the SUNY side had referenced the prospect of a hospital as a "unicorn." And it was mentioned on more than one occasion so I guess it was pretty important. He didn't say what context he attributed it to so let me take responsibility. For the record, Judge, I was the one that introduced it into the vocabulary. I was skeptical about the opportunity whether a bona fide feasible, buyable hospital was going to appear.

But here's the part and let me tell you why, Judge. I could have been an evaluator if I wasn't in this case. I'm a community resident. My daughter was born in the hospital. I am a former elected official. I know a lot about public policy. I am a former healthcare lawyer. In fact, I was a trustee of Interfaith Medical

Center in the 1980s. So I have a whole variety of criteria. I would have been a good candidate if I wasn't in this case. I don't forget all of my experience in that.

Here's the other part of the phrase, Judge. This is how I said it: "I don't care if it's a unicorn as long as it's a unicorn driven by a leprechaun with a bag of gold," because I was focused on SUNY's objectives and SUNY's objectives to criteria. That was the basis of the -- of the frame work that Mr. Walden started negotiating. As he told you when you approved the settlement, it was based on exhibit of operations on the date certain, an end to litigation, and a minimum purchase price. So from SUNY'S point of view, from Downstate Holding's point of view if a viable hospital operator came forward, great. But if a viable hospital operator didn't come forward, then we had additional criteria and this waterfall system to be able to follow up on; and, therefore, we negotiated in good faith with BHP, with Peebles, we negotiated in good faith with Fortis.

Your Honor, if anybody broke this process, I believe it was the community groups and Mr. Walden by interjecting themselves into the

negotiations with Peebles. Because no sooner had they signed their side agreement than North Shore, the hospital provider, started to back off on some of the things that you were told in the court. By the time I got back to my office, we were finding out that maybe North Shore wasn't going to be sending us people right away, a basis on which we volunteered to keep the Emergency Department open. Maybe North Shore wasn't ready quite yet to enter into any type of arrangement for us.

And, Judge, I think it's not an accident that when we were here the last time our colleagues from Paul Weiss appeared on behalf not only of Peebles, but on behalf of North Shore and Maimonides and Pro Health. And if I heard correctly this morning, they're now only appearing on behalf of Peebles. And, quite frankly, Judge, I'm concerned that unless your Honor promptly decides the application and denies it, that we run the risk of the same thing happening here, of NYU or any of the other healthcare component of Fortis's proposal being dissuaded from going forward because they don't know whether they're negotiating with SUNY or whether they're negotiating with Mr. Walden or both.

But to get back to the main point, your Honor. The main point is that when it came to the evaluation process, you couldn't simply look at what Peebles were claiming. You had to consider it in context. So if an evaluator looked at the Prime proposal, which is now part of the record, and they saw that Prime said that for any offer to be -- that is going to be selected it would take several months to obtain the necessary government approval process during this period an agreement needed to be reached with SUNY to keep the hospital functioning, and if they read that Prime Health Care will be prepared to close immediately upon receipt of regulatory approval and they took into account the fact that the only New York State licensed hospitals that chose to participate in the program had not proposed a hospital, that might lead an evaluator to the honest conclusion that perhaps these proposals were not viable and feasible. Words that were also used in the RFP.

So, Judge, there is -- I don't mean to make light of a rather serious situation -- when Mr. Walden talks about "Humpty Dumpty" and I think he quoted Lewis Carroll, the words don't mean what he says, he wanted to put the word unicorn on the

record, there is another fable that I think is applicable in this situation, your Honor, and it's a movie called "Duck Soup." And in it Chico Marks says, "Who are you going to believe, me or your own eyes?" That's what Mr. Walden says the evaluator should have done. They should have believed what the proposal said, not what they knew, not their own eyes. That's not what the RFP intended and that's not something your Honor should countenance.

THE COURT: Ms. Cameron, it looks like you want to say something.

MS. CAMERON: Your Honor, I want to make two brief points. The first is that the affirmation that was referred to before the court hasn't been served on 1199. I haven't seen it. I haven't responded to what's in it. I don't think the substance of it is before the court. I want to make that point. So direct the parties to serve that or, in the alternative, to strike the reference to that affirmation because it's not before the court.

But secondly, and more importantly, what is before the Court is the Community Groups motion. And I want to reiterate there is no basis

to grant the relief requested and now the expanded relief, the discovery and presumably an evidentiary hearing. And just briefly make the point that the motion before the Court in paragraph 27, the moving parties specifically say that their relief is based on the law and that there are questions of law before the Court and so for that reason there is no basis to grant discovery. You can decide questions of law without this, this request for discovery, and I would submit that it seems that the request for discovery and evidentiary hearing is really just manufactured and calculated to prolong the process that these petitioners can get more than what is before the Court. And while those efforts on some respects may be fruitful at a certain point, they are no longer, and we just request the Court to decide the motion so we can all move on with the what the future is at LICH.

THE COURT: Mr. Seltzer, I haven't heard from you for a while.

MR. SELTZER: I don't think I have much to add to what Mr. Sesendra (ph) said last time. But NYSNA does not take a position for or against his motion. But we do believe the process needs

to move forward and the court needs to determine this motion.

MS. GUERON: Nicole Gueron for the Department of Health.

Two quick points. What's really clear is the evaluator had a choice between a hospital and a continuity. Part 2 -- project specifics 2.a.I. speaks to continuity, 2.a.II. speaks to a hospital. Both are subjective criteria the evaluators were supposed to consider in their discretion. They figured let's keep the continuity. Let's keep the doors open.

We heard in this courtroom over and over how important it is to keep these doors open. If that's what they chose, that's a rational choice. It's well within the parameters of the RFP. It's well within the discretion they were given, your Honor. There is no basis whatever to say that they had to choose a hospital over continuity or vise versa. Those are two important aspects of proposed healthcare and different offerers made different offers about those two goals.

Second, when we were here last I think I heard the words what DOH did was "a sham." They had their thumb on the scale. They proposed or

described fake regulatory hurdles. And we were told "the fix was in" because Fortis had already put in its papers. And, honestly, we just wanted to make very clear on the record that all of that is absurd. How many times in this courtroom did we hear "let's" -- and from your Honor, "let's get the ball rolling. Everybody get your papers in to the Department of Health." And the Department of Health tried really hard to reach out and successfully in some instance.

At this point NYU has a Certificate of Need approved if they can reach a deal. If, it's a big if, but at least that hurdle is met. To the contrary, Prime, which put in some papers, were told, "Okay, thanks. Your papers are incomplete" gets the next round. The Department of Health hasn't heard from them in weeks. The regulatory hurdles are not fake. The Department of Health did not and could not leave its regulatory authority at the door. So when it signed the stipulation and your Honor so ordered, of course, we still had to meet our regulatory obligation.

To this day we cannot understand why a phone call with evaluators, where we wanted to explain why non-New York licensed entities might

have more trouble overcoming hurdles than licensed New York entities, why that was deemed improper? The fact that NYU Langone is now approved for Certificate of Need proves this can happen. In fact, that was just an administrative review process because they're a New York licensed entity. If the evaluators, because they knew things, recognized that it might provide less regulatory hurdles, that's why they chose that very rational choice. Nobody says to overturn the scores.

THE COURT: I just want to cite two more cases I have. Let me speak. I have already cited the case from the Court of Appeals. And this is in support of my decision where I indicate that SUNY did have a right to discontinue negotiations. There's Aivaliotis -- I have a copy of the decision for later -- versus Continental Broker-Dealer Corporation. It's 30 AD3d 446. Also I also have in re Madison Square Garden versus New York Metropolitan Transportation Authority. And we have 19 AD3d 284. So with regard to that particular issue, the law speaks for itself. The most recent Court of Appeals case, of course, that came down on June 5th says

it all.

I just want to thank everyone.

Now, Mr. Walden you have something to say.

MR. WALDEN: I do, your Honor. We now had two rounds of oral argument by four attorneys on the other side. I am just going make a couple of points, your Honor. I think I will take less than seven minutes.

THE COURT: I'm not rushing. You can have all the time that you think you need within reason.

MR. WALDEN: Judge, I don't mind arguments. What I think the Court should expect and what the Court deserves are fair arguments. And I think what we heard today, aside from a vocabulary lesson and information about Mr. Fisher's resume, is not fair arguments. And I say that they're not fair arguments, your Honor, because I very clearly stood here -- the last proceeding I stood here and I made an invitation to everyone. And the invitation was, you say that there are no facts? Don't play three card monte with the Court. Don't say, "Here. It's over here. It's over here" and you lift the cup and

it's not there. We've put evidence before this court and we've invited them to explain it, to deny it, to challenge it.

Ms. Booher was here. She's probably still here in the building. I assumed that when she was here, Mr. Carone was going to call her to the stand to deny saying to the trustees words that could have come from our papers. If you put a hospital in, you get a higher score. If you submit a proposal without an ED and without inpatient beds, your score gets lower. That is precisely what we're arguing is the plain meaning of the words.

When Mr. Carone concedes well, yes, our scoring instructions did require a commitment from the proposers but it was a different commitment, it was a commitment to the RFP in general, Mr. Carone couldn't have it both ways. The words are plain on the page, your Honor. I submitted them and so did Mr. Carone. I am going to read them again. Not commitment to the RFP in general; commitment to provide health services consistent with objectives set forth in Part 2, section 8T above. That's the section that deals with hospitals, not continuity. That's the section

that says if you have a hospital proposal it gets a higher score, just as Ms. Booher told you.

But, your Honor, I also said that I was prepared to call Dr. Melman. He is here in the courtroom. And if he testifies, your Honor -- and to be clear, the motion that we submitted was not just for the community groups, it was all those doctors that had been here from the beginning who we now represent filed this motion as well. Your Honor, they were here from the beginning to make sure that the process was a fair process. Not that they would necessarily get the result that they wanted. But at the end of day after their fight, they could look you in the eyes and look their community members in the eye to say we fought for justice through a fair process.

What Dr. Melman is going to tell you is that this arrangement that DOH --

THE COURT: Stop. Stop. I don't want to hear what Dr. Melman is going to tell me. Legally Dr. Melman will not be called here today. If you have anything new to say, I need you to say it, please. Anything else new?

MR. WALDEN: To respond to their argument, they said we lacked facts and we lacked

law. But, in point of fact, they never denied Ms. Booher's statement. They never explained to you, never once how, Judge, number nine, whose scores are in the record, could possibly have followed the instructions and scored every hospital zero. And they have never cited one case that is contrary to the case that we cited in our affidavit. That makes it abundantly clear that this court has preliminary authority, through all of its power, to order so ordered stipulation over which this court maintains jurisdiction.

So, your Honor, with that, I just want to make two other points. One. Mr. Spiro argued, and I don't think this is an argument the Court will take seriously because it's obviously legally and factually incorrect, that somehow the community groups should be estopped, estopped from enforcing their settlement by disqualifying the scorers because of the settlement proposal we reached with the Peebles Corporation. But Mr. Spiro knows full well that in that proceeding where your Honor signed the stipulation they were given an opportunity to object to our motion to withdraw our application without prejudice. And to the extent that they are going to make a claim

of estoppel, that was the time to make it, they would have had to ask for us to withdraw with prejudice. So they waived that argument. That they can't possibly ask for estoppel when they weren't a party to the settlement agreement, that argument lacks the facts and law that SUNY claims our argument lacks.

Your Honor, DOH has invited you to a grave misunderstanding of what this is about. They said the hospital proposal very squarely put continuity over a hospital. And, your Honor, if you look back at the proposals, every single one of those hospital proposals allowed for continuity of care, provided for continuity of care, assured continuity care, which is the whole basis of our argument. If you have two proposals, both of which is assure continuity of care and one of which provides for a hospital, by definition the hospital would have had to have gotten a higher score. So for those reasons, your Honor, we ask that you grant our relief, restart this RFP process, or disqualify the six scorers and put Prime in the winning position.

THE COURT: We're not to keep going back and forth with this. I will give you the last

word over here. Counsel, I haven't given you a chance to speak but pretty much I've already heard enough to make a decision. And I hope that -- let's hear what you have to say.

MS. MONROY: Marianne Monroy, Prime Healthcare. I will only be a brief couple of minutes.

Prime had made a motion to intervene in the Community Groups' motion. We do support it and also seek an order to the extent of disqualifying certain scorers who have evaluated the bids, as such scorers were arbitrary and certifying Prime as the second highest bidder so that SUNY will negotiate with them.

We believe that there is Article 78, 7802d gives the Court broad discretion to allow an interested party to intervene into such a proceeding. And, by all accounts, we believe that Prime is an interested party. The relief sought and the outcome will directly affect Prime's right to negotiate with SUNY. And, in fact, I believe at the May 15th court conference the Court had asked Prime, Peebles and Fortis to talk in connection with trying to reach a resolution.

I believe he is recognizing that we're

interested parties to this particular motion. And, that being said, Prime has submitted a proposal that we believe is consistent and with the letter and spirit of the RFP and the settlement agreement. We echo the argument Mr. Walden made in connection with the application. Prime has experience and operates about 25 hospitals across the country along with its affiliate Prime Health Service System. It has a reputation of turning around failing hospitals, particularly community based hospitals. The proposal that we submitted also we put in a letter -- or Prime put in a letter to SUNY dated May 16th with a temporary -- with a proposed temporary operating agreement and work plan with the mechanism -- proposing a mechanism where they can take over the hospital and start operating at I believe it was by May 23rd, it would have required DOH's cooperation as well as SUNY's cooperation.

Of course, I believe DOH's counsel had mentioned my client has already started the application in the process of the paperwork for a Certificate of Need. They have done this in the past. They have a reputation of doing this in the

past where they have stepped in the 12th hour, the 11th hour, and have infused facilities with capital and taken over. Our proposal -- or Prime's proposal talks about keeping most or substantially all of the staff on board, investing capital into it, bringing services up to prior levels and then some. So we do believe that we have a viable, feasible proposal, contrary to what some counsel at the table has said, and we ask that you your Honor grant the application to the extent of disqualifying certain scores and making -- recognizing or certifying Prime as the second highest bidder.

THE COURT: Let me just do this. I don't think any attorney has really read verbatim from the request for proposal commonly referred to as an RFP. Page 45 of the RFP, number 8 you alluded to it but you didn't say it verbatim. I am going to read it verbatim.

"This is a request for proposals not a request for bids. SUNY and Holding Company shall be the sole judge of each offerer's conformance with the requirements of this RFP and of merits of the individual proposals. SUNY and Holding Company reserve the right to waive any conditions

or modify any provision of this RFP with respect to one or more offerors, to negotiate with one or more of the offerors with respect to all or any portion of the property, to require supplemental statements and information from any offerors, to establish additional terms and conditions, to encourage applicants to work together, or to reject any or all proposals, if in its judgment it is in the best interest of SUNY or the Holding Company to do so."

So pretty much the stipulation, which incorporated the request for proposal, is the law of the case. That speaks for itself. It can never be changed. All parties -- relevant parties signed off on it, all negotiated in good faith for it, so this is where we stand. Obviously -- I will stop there.

It's come to my attention, and I'm not going to say anything, but I think that Fortis, who was referred to here, may well have some type of offer for this Court or statement for this Court. You have it, counsel?

MR. LONUZZI: Yes.

THE COURT: Mr. Walden, we're going to go off the record for a few minutes.

(Whereupon, a discussion was held off the record.)

THE COURT: Okay. Things are going on. Mr. Lonuzzi, you have something that you want to bring before the court? Stand before the court reporter. He has your business card?

MR. LONUZZI: Yes, Judge.

THE COURT: You want to stand in front of the court reporter.

MR. LONUZZI: That's not a problem, Judge.

THE COURT: Face him and me and the court.

MR. LONUZZI: So Fortis is happy to report that we have had very fruitful and productive discussions and negotiations with counsel for SUNY. One of the issues that we believe we were able to resolve, we've agreed on a statement of principles between Fortis and it's healthcare partners, with SUNY, that addresses the needs of the community group or the community groups. We've have a written statement of principles, which is going to be incorporated in Fortis's deal with SUNY. And that statement of principles, just an outline of it, discusses

ongoing needs assessment, prior healthcare partners, and it discusses the additional observation beds that your Honor has discussed with us. It discusses the HIV/AIDS outpatient services clinic. It creates a clinical advisory panel to look at the needs of the community, the healthcare needs of the community, a LICH transformation advisory panel. It creates a community foundation which is kick started by a contribution or a substantial contribution by Fortis. It creates or we're going to have a point person, ombudsman person so that there is a contact person at NYU with NYU, with the healthcare partners with Fortis who can deal with the issues as they arise by the community groups. So that is something that we've agreed to in principle with SUNY, and we're expecting that that that's going to be incorporated in our agreement with SUNY and I think it addresses all the issues that are before you.

THE COURT: I want to ask you one question. It's my understanding that this proposal encompasses that NYU would hold 10,000 square feet in abeyance in the event that it becomes necessary to provide additional

healthcare; is that correct? You have got to say yes or no in open court.

MR. LONUZZI: Yes, your Honor. That's what he was trying to get out. Yes, your Honor, Fortis is putting aside, reserving 10,000 square feet of space. And the intended to purpose of that is to accommodate the additional healthcare needs that NYU in performing the -- it's not just one needs assessment, they're going to continually perform these needs assessments. It's going to be done on an ongoing basis. If NYU determines there are additional needs that are not being met that makes sense, that's what that space is going to be used for.

THE COURT: This is in addition to the free standing emergency room 24/7.

MR. LONUZZI: Yes, your Honor.

THE COURT: Also -- and this will be for Fortis and all other potential bidders, etcetera.

Mr. Spiro, I need you to stand up. And you know who's paying for this right now to keep this emergency room open to the best of your knowledge?

MR. SPIRO: Currently SUNY is paying for it. But based upon our discussions before your

Honor in your Honor's robing room, it is SUNY's understanding that any successful offerer will be responsible for covering any shortfall in the cost of operation of the emergency department at LICH after May 22, 2014.

THE COURT: The reason I ask that question is I don't want anyone to say all of this is going on and the state is losing all of this money. The request for proposal has specific clauses which indicate that whoever the successful bidder is, because we're taking so much time, they have to bear the cost of this. So the State of New York, to the best of my knowledge, will not be bearing the cost of this; is that correct? Not correct?

MR. SPIRO: That is my understanding, your Honor, yes.

THE COURT: Now, what about the ambulances. When are they coming back with regards to your proposal? Do you know yet? I know that there's been some kind of license issue. I may as well ask, Ms. Gueron, what is the extent of this license? What have they done as best you can say?

MS. GUERON: I can't speak to an

ambulance date, I don't believe that's in the Certificate of Need, but that I have seen all -- I've seen a letter of approval. I saw this for the first time. I can get back to you, your Honor, very quickly on that. But standing here today, I don't know what the proposed date on that is. And you should know the Certificate of Need, the approval is obviously contingent for Fortis and SUNY consummating their deal. But I can certainly get you more details on that, your Honor.

THE COURT: I need to know when the ambulances were coming back.

MR. LONUZZI: Judge, the best answer we can give you is that question can't be answered until we finance a deal with SUNY. But I can tell you this: I can promise you that we're working very hard at trying to finalize a deal with SUNY. I know all the principles and attorneys were in a meeting, I think, until 2:30 this morning. We've made a lot of ground. We've made a lot of progress. And I can give you Fortis's commitment that if we get -- if and when we get a deal done with SUNY, we'll put forth or best efforts to get ambulances back in operation as soon as possible.

If you're asking for a date and a commitment on a date, I can't do that today, your Honor, and I apologize. But that just can't be done with what's left to be resolved on the table. We understand the importance of the issue and we commit to do the best we possibly can to address that.

THE COURT: I see Mr. Walden. I will give you an opportunity to speak briefly because you have some concerns. And one of the concerns I had, and I will just say it openly, but I think that it may have been addressed by NYU and Fortis, was in the event that if it became apparent to whatever studies or surveys that NYU and Fortis intended to do, pursuant to this proposal, that additional healthcare was needed -- now, just so that everybody in the courtroom knows, by definition a hospital does not necessarily have to be as large as what you see now, okay? And there is always a possibility that there can be an expansion. I'm not saying there will. Just like I was the judge who sat and said when I signed off on the stipulation, which created all of this, there was a possibility that nothing will exist after May 22nd. Okay? So everyone went in with

their eyes wide open and they published in the newspapers and what have you. There is always the possibility that whatever assessment, when it comes, may say that additional healthcare is necessary. It may say that it's not necessary. But I like the fact that you're keeping 10,000 square feet, in addition to the free-standing emergency room, in the event that it is determined that additional healthcare services are necessary, be it a hospital or something else. So I will leave it at that.

Counsel Walden.

MR. WALDEN: Yes, your Honor. Your Honor, I -- just in favor to the community, I made a promise. I would try to be measured in my remarks. I will be as measured as I can. I will make two comments, after thanking the principals of Fortis, NYU and Lutheran for expanding, in response to your Honor's request for them to expand.

So, we now understand there's now going to be 20 observation beds, which they had resisted doing. Grateful for that. There's going to be HIV/AIDS outpatient clinic as soon as possible. We're grateful for that. And they're going to

reserve 10,000 square feet. Again, your Honor, understand what that 10,000 square feet is for. It's not for a hospital. There is not going to be as part of their assessment department to determine whether or not the community needs a hospital. If you ask Mr. Lonuzzi point blank right now are you going to study whether the community needs a hospital and, if so, are you going to put a hospital in that 10,000 square feet, albeit it a small one, his answer to both of those things are no.

We were prepared, despite how long we fought and how much this community believes to its core, not because of Danny Cruz, because of their day to day experience, that a hospital is needed, we were prepared to come to Fortis to say yes, in the same way they were prepared to say yes to Peebles, and that is if they undertook, with our paying half of the fee, a meaningful study, that was never done in the catchment area to LICH, to determine whether or not, in point of fact, what the community has been saying and the doctors have been saying and the nurses have been saying it's true, that it needs a hospital. That's a settlement that we bargained with Peebles. That's

the assessment that we thought Peebles, Fortis was going to do. That's the assessment we found out just last night they are unwilling to do.

We are going to leave here with good faith. I hope in the meeting, if we are invited to the meeting to try and bridge that gap, I hope to come back to the court with a settlement that is much like the settlement with Peebles, with the additional things that for Fortis and NYU have been willing to do so we can put this matter to rest.

I don't understand it. Frankly, it is even after our discussion in chambers, I don't understand what the objection can be to a study that we help fund, unless there's a concern that that study, fairly and objectively done, is going to say that the area needs a hospital.

MR. LONUZZI: Your Honor, may I just very briefly?

THE COURT: Yes, sir.

MR. LONUZZI: There is one point of correction and then clarification. One is the statement of principles that we've agreed to with SUNY doesn't state that there will be 20 observation beds. It says up to. There is

actually two stages of that. We discussed this in detail with your Honor before. It's based on NYU's needs assessment. Your Honor is very well aware of that, Mr. Walden is very well aware of that.

THE COURT: Mr. Walden was aware when he said 20 beds the original deal was 12 beds. And if a healthcare survey required additional up to 20 beds, it would be 20. That's my understanding.

MR. LONUZZI: What we agreed to do, with your Honor involved in the negotiations, was based on -- based on NYU's needs assessment, based on what they determined after operating the facility, if it requires more, then there will be room for additional beds up to 20. So I just want to make sure we're clear on that.

I also want to make sure that the purpose of making this statement on the record today, my understanding was, and I think your Honor will agree, was to report some of the progress that's been made. This is not a negotiation on the record. I'm not negotiating.

THE COURT: No, no.

MR. LONUZZI: I want to make sure that's clear. We've agreed -- we have an agreement in

principle with SUNY. We believe that we've agreed to the terms. This is not a negotiation with Mr. Walden or his clients at this point. We did -- well, I will leave it at that. Okay.

MR. WALDEN: Your Honor, just to join issue with Mr. Lonuzzi, that Fortis has made it abundantly clear at this moment it's not negotiating with the community. I hope that is as disappointing to the Court as it is to us, given how hard we worked.

MR. LONUZZI: If I can clarify. We met with Mr. Walden yesterday. We invited him to come up to Mr. Philip's offices and he insisted we go to his office. We went to his office. We presented this proposal. We asked if he wants to talk about it. He said there was nothing to talk about.

THE COURT: Let's not do that. Strike all of that from the record. I don't want to hear it.

MR. LONUZZI: I agree.

THE COURT: I don't want anymore inflammatory statements at this stage. Everyone here is a professional. Conduct yourselves as a professional.

With regard to the motion --

MR. LONUZZI: May I step down, your Honor?

THE COURT: Yes, sir.

-- I am reserving decision, so that everyone knows -- because I have always strived for transparency -- so everyone knows what's going on here. I know there are still negotiations going on outside of this courtroom. There will probably be some later on today, tonight. Various entities are getting involved. My decision will be rendered sometime Friday. So decision is reserved.

I will really try for Friday. There's always the possibility that may not happen, but there will be reserved decision. It will not be a long, drawn out thing where someone has to wait as long as 30 days. Although the law at this time says the Court does have as much as 60 days to make a decision, it is my desire that it will not take 60 days to make a decision. So I still want to give the parties an opportunity to before I rule on their motion. That's where we stand right now. So decision is reserved.

With regard to what I said about Friday,

strike that from the record. It's just decision reserved. It could be Friday, it could be after. It will be coming.

All right. All rise.

(Matter concluded.)

* * * *

It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

Marc Shiffman

Marc Shiffman

Official Court Reporter

EXHIBIT 2

At a Special Term Part 68 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, at 360 Adams St, Brooklyn, New York, on the 13th day of June, 2014

PRESENT:

HON. JOHNNY L. BAYNES

Justice

----------x **Index No. 13007/13**

BOERUM HILL ASSOCIATION, BROOKLYN HEIGHTS ASSOCIATION, CARROLL GARDENS NEIGHBORHOOD ASSOCIATION, COBBLE HILL ASSOCIATION, RIVERSIDE TENANTS' ASSOCIATION and WYCKOFF GARDENS ASSOCIATION, INC.,

Petitioners,,

DECISION AND ORDER

For A Judgment Pursuant to Article 78 of the Civil Practice Law and Rules,

-against-

STATE UNIVERSITY OF NEW YORK, TRUSTEES OF STATE UNIVERSITY OF NEW YORK, NEW YORK STATE DEPARTMENT OF HEALTH and NIRAV R. SHAH, as Commissioner of the New York State Department of Health,

Respondents.

----------x

Petitioners, various community groups (hereinafter "Petitioners"), move by Order to Show Cause to enforce a Stipulation and Order of Settlement dated February 25, 2014 (hereinafter "the Stipulation") for an Order disqualifying certain scorers registered by Technical Committee members during a Request for Proposal dictated by the Stipulation, and re-scoring certain proposals made pursuant to a Request for Proposal (hereinafter "RFP").Oral argument

was held on Tuesday June 6, 2014, and continued on June 10, 2014, whereupon the matter was submitted to the Court for determination.

The Stipulation forming the basis of the Petitioner's Order to Show Cause was that which resolved the matter of two cases concerning the fate of Long Island College Hospital (hereinafter "LICH") which for the past year and a half has been the subject of protracted litigation pitting the interests of those in need of healthcare in the locale of the hospital with the interests of the State University of New York (hereinafter "SUNY") and Downstate Medical Center (hereinafter "Downstate". The parties resolved the LICH litigations by arriving at the terms of the Stipulation which appeared to take into consideration those competing interests. The centerpiece of the Stipulation and the section which is now before this Court provided, a means for a process allowing proposers under the RFP to offer various scenarios which could assure that the health care needs of the community would be met as substantially as possible. To that end, the Stipulation provides at Paragraph 1 that "SUNY shall issue a new [RFP] to all interested and eligible members of the public" which were required at Paragraph 2 of the Stipulation to include the following:

> 2. The content of the New RFP shall include
> a. Medical-services plan:
> I. Stated elements of the New RFP response: Offers are strongly encouraged to include a facility with services/ departments sufficient to support a full-service emergency room, an intensive care unit, and in-patient beds. Any Offer lacking these services will be subject to receiving a lower technical score.
> ii. Desired elements of medical services plan: full-service hospital with at least 100 in-patient beds. Any offer including these medical services will be eligible for a higher technical score.
> iii. Offers that include a teaching hospital or an affiliation with a teaching hospital will be eligible for a higher technical score.

> iv. Offers providing a realistic method to continue health care operations after SUNY exits from health care operations as contemplated by paragraph 6 of this Stipulation and Order, and thereby avoid any gap in the provision of health care services at the LICH campus at no additional cost to SUNY, are preferred. While Offers with more comprehensive health care services are preferred, Offers that provide for maintenance of some health care operations during the interim period prior to a closing of a transaction resulting from an Offer will be eligible for a higher technical score.....
> v. Specific elements of offered medical-services plan: To be considered, any Offer must specify the medical services anticipated in the medical services plan, including (a) for proposed in-patient services, the expected number of beds, if any; (b) the medical specialties (e.g., obstetric, oncology) to be included in the medical-services plan; and (c) how the medical-services plan will meet the needs of the Community.

The mandatory requirement of any RFP was set forth in Paragraph 2(b) of the Stipulation, to wit: "No award shall be made to any Offeror whose proposal provides for less than $210,000,000 in non-contingent sales proceeds (the 'Minimum Purchase Price').

> Thereafter, the RFP was held and the candidates judged in accordance with the provisions of the Stipulation. Paragraph 2(d)(I) requires: "the qualified Offeror whose proposal meets all mandatory requirements in the New RFP and that receives the highest final composite score (technical plus financial) (the 'Initial Successful Offeror') will be awarded the initial opportunity to enter into the transaction with SUNY. If SUNY and the Initial Successful Offeror are unable to enter into an agreement in accordance with the new RFP....SUNY may, in its sole discretion, terminate such negotiation and the qualified Offeror whose proposal meets all mandatory requirements in the New RFP and that receives the next highest final composite score .... will be awarded the next opportunity to enter into the transaction with SUNY.

The agreement provides that SUNY determines, in its sole discretion whether, it is reasonable to continue to negotiate or close a transaction with any particular Offeror.

The highest ranked Offeror after the issuance of the RFP was Brooklyn Health Partners (hereinafter "BHP") which failed to meet the financial requirements set forth in the RFP, whereupon SUNY in its discretion, terminated negotiations with BHP. Thereafter, SUNY attempted, during the course of this matter, to enter into an Agreement with a second entity, Peebles, which attempts failed when the parties could not arrive at an agreement.

The parties are now in negotiations with Fortis. Petitioner seeks to terminate those discussions and have this Court negate the scores of a number of the Technical Scorers. The Petitioner argues that it is impossible for the targeted Scorers to have arrived legitimately at their scores. Petitioner opines that only a proposal for a full hospital should have prevailed. Counsel claimed that the process was flawed, yet did not submit a single Affidavit of a person with knowledge of the circumstances to say that. Moreover, it is only certain Scorers' who did not award the RFP to a full service hospital with whom Petitioners take umbrage. Others are allowed to stand without objection. No explanation is given for this selectivity.

The question now before this Court is whether it can and should interfere with the valuation process established by the Stipulation and applied via the RFP. The Court believes it cannot and should not. It is not the function of the Court to rewrite the terms of the carefully and painstakingly negotiated Stipulation. Nor is it the province of the Court to substitute it's judgment for that of the evaluators. Contrary to Petitioner's bald assertions, unsubstantiated by Affidavit or other admissible evidence, an RFP is not like a bid. Unlike competitive bidding, where the lowest credible bidder automatically wins, an "RFP is a more flexible alternative to competitive bidding. *Matter of Madison Sq. Garden, L.P., v New York Metro. Transp. Auth.*, 19 AD3d 284, 287 [1st Dept 2005], *App dismissed*, 5 NY3d 878 [2005]. It falls well within the evaluators' discretion to consider non-technical reasons for the scores they give.

This process is controlled by the scores given by the evaluators which, absent a clear showing of misfeasance, based on admissible evidence. Conclusory allegations and conjecture, no matter how well-meaning, cannot form the basis of any action taken by the Court.

Ultimately, the decision to accept a particular Offer, as provided in the Stipulation, lies solely in the discretion of SUNY, subject to the implicit requirement that the parties negotiate in good faith. *See, IDT Corp. v Tyco Group, S.A.R.L.*, 2014 NY SlipOp 04044 [Ct. App. 2014]. When SUNY accepts an offer, such offer is subject to the approval of the New York State Comptroller's Office, as set forth in the RFP, Ex A. (Standard Contract Clauses) § 3 (c). Thereafter, the appropriate administrative remedies exist, if any are appropriate.

WHEREFORE, it is hereby

ORDERED and ADJUDGED that Petitioners' Order to Show Cause is denied in all respects.

The foregoing constitutes the Decision and Order of this Court.

ENTER Forthwith

J Baynes

JOHNNY L. BAYNES, JSC

HON. JOHNNY LEE BAYNES

FILED
KINGS COUNTY CLERK
2014 JUN 13 PM 4:28

EXHIBIT 3

THOMAS P. DiNAPOLI
STATE COMPTROLLER

110 STATE STREET
ALBANY, NEW YORK 12236

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

October 28, 2014

Allan J. Arffa
Paul, Weis, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019-6064

Dear Mr. Arffa:

Re: Bid Protest Appeal Filed by Paul, Weis, Rifkind, Wharton & Garrison LLP, with Respect to the Procurement of Healthcare Services and the Purchase of Property at the Long Island College Hospital (LICH) by the State University of New York

Attached please find the Office of the State Comptroller's determination regarding the above referenced subject matter. Based upon the information provided to this Office, we have determined that there are insufficient grounds to merit overturning the award to FPG Cobble Hill Acquisitions, LLC and Fortis Property Group, LLC, made by the State University of New York. As such, we are approving the contract for the sale of LICH today.

Sincerely,

Charlotte E. Breeyear

Charlotte E. Breeyear
Director of Contracts

vmk
Att.
cc: Gregory P. Cola, Peebles Corporation
Joel Kestenbaum, Fortis Property Group LLC
Thomas J. Hippchen, State University of New York
Ruth Booher, State University of New York
C. William Phillips, Covington & Burling LLP

STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Appeal filed by The Peebles Corporation, along with its development and healthcare partners, with respect to the procurement of healthcare services and the purchase of property at the Long Island College Hospital by the State University of New York.

Contract Number – X002654

Determination of Appeal

SF– 20140322

October 28, 2014

The Office of the State Comptroller has completed its review of the above-referenced procurement conducted by the State University of New York (SUNY) seeking a qualified party to provide or arrange to provide health care services at the Long Island College Hospital (LICH) and to purchase the LICH property, plant and equipment. We have determined that the grounds advanced by The Peebles Corporation (Peebles) are insufficient to merit the overturning of the award made by SUNY to the Fortis Property Group, LLC (Fortis) and, therefore, we deny the Appeal. As a result, we are today approving the agreement between Downstate at LICH Holding Company, Inc. (DLHC), Fortis, FPG Cobble Hill Acquisitions, LLC and NYU Hospitals Center to effectuate this transaction.

BACKGROUND

Facts

In early 2011, the State University Downstate Medical Center (SUNY Downstate) formed a not-for-profit corporation known as DLHC for the purpose of acquiring LICH in the Cobble Hill neighborhood in Brooklyn, New York (*see* Laws of 2011, ch. 57 Part P). In May of that year, the sale was consummated and DLHC took title to the LICH real property containing the existing medical facilities. The acquisition required several governmental approvals as well as the approval of Supreme Court (*see* Not-For-Profit Corporation Law §§ 510, 511). To provide SUNY Downstate with the ability to run the hospital and to fund the debt obligations assumed by DLHC, SUNY Downstate entered into a long-term lease with DLHC and staffed the hospital through an agreement with another specially formed not-for-profit corporation, Staffco of Brooklyn, LLC, created for the purpose of privately employing the LICH staff.

In March 2013, the Legislature enacted Chapter 56 of the Laws of 2013 (Part Q) as part of the Budget Bill for Health and Mental Hygiene, which required SUNY to submit to the Executive and Legislature a Sustainability Plan to secure the ongoing fiscal viability of the Downstate Hospital enterprise. The finally approved Sustainability

Plan, dated June 1, 2013, provides that "Downstate has determined that it must exit from the operation of the LICH facility as soon as possible" (Sustainability Plan for SUNY Downstate Medical Center, dated June 1, 2013, at pg. 14 [as supplemented and approved on June 13, 2014]). To put this plan into effect, SUNY issued a Request for Proposals in July 2013 seeking a qualified party to provide or arrange to provide health care and purchase the LICH property, plant and equipment.

Shortly thereafter, community groups, current staff at LICH and the New York City Public Advocate (hereinafter collectively referred to as the Petitioners) began publicly expressing concerns over SUNY's plan to close, or substantially reduce services and staff at, LICH. This turned into formal litigation wherein the Petitioners sought to enjoin SUNY from closing LICH (*see Boerum Hill Association, et al. v. State University of New York, et al.,* Index No. 13007/2013; *New York State Nurses Association, et al. v. New York State Dep't of Health et al.*, Index No. 5814/2013; *In the Matter of the Application of The Long Island College Hospital,* Index No. 9188/2011, all in the Supreme Court of New York State, Kings County). In addition, the Supreme Court Justice who originally approved the sale of LICH to SUNY issued an opinion chastising SUNY for not following through on its previously stated intent of taking over and improving the quality of services offered at LICH (*see* Decision and Order of Justice Demarest, dated Aug. 20, 2013, *In the Matter of the Application of The Long Island College Hospital,* Index No. 9188/2011). In February 2014, SUNY entered into a Stipulation of Settlement with the Petitioners (Stipulation) wherein all the parties agreed to a specific process for the sale of LICH (*see* Stipulation and Proposed Order, Index Nos. 13007/2013, 5814/2013, 9188/2011, filed February 25, 2014).

The Stipulation, which was approved and so ordered by Supreme Court, provided for a new Request for Proposal process with explicit evaluation criteria and the following key points: (1) the technical evaluation team will be comprised of both members designated by SUNY, as well as members designated by the Petitioners (whose combined, weighted score shall equal 49% of the total technical score); (2) proposals that offer continuation of healthcare operations during the interim period prior to the closing of a transaction and/or a full service hospital or a teaching hospital, would be eligible for additional technical points over those proposals that did not offer such elements; (3) a minimum "non-contingent" purchase price of $210 million to go to SUNY; (4) if SUNY is unable to enter into an agreement with the Initial Successful Offeror within 30 days of making the award to such offeror, then SUNY may, in its sole discretion, terminate such negotiations and make a new award to the offeror whose proposal received the next highest score. This selection process would continue "with the same time constraints" until either an agreement is reached or SUNY determines, in its sole discretion, that it is not reasonable to make an award to any other offeror; and (5) deed restrictions shall be placed on any property to be used for medical services restricting the use of such property for health services for 20 years.

On February 26, 2014, SUNY issued Request for Proposal X002654 (RFP) with responses due by March 19th.[1] SUNY received nine qualifying proposals and, on April 3, 2014, SUNY announced an initial award to Brooklyn Health Partners Development Corporation, LLC (BHP). BHP's proposal offered to build a new full service hospital. However, SUNY and BHP were not able to reach an agreement within the 30-day period and, pursuant to the terms of the Stipulation, SUNY exercised its discretion to terminate negotiations with BHP and render a new award to Peebles whose proposal received the second highest score (Letter from Ruth Booher to R. Donahue Peebles, dated May 5, 2014). Peebles, in conjunction with its development and healthcare partners, proposed to build a new free-standing emergency department, an urgent care center and other primary, preventative and specialty health services, but it did not propose a full service hospital.

SUNY commenced formal negotiations with Peebles but, in the meantime, the Petitioners filed a motion in court asserting, among other things, that the scores resulting from the RFP were not in accord with the Stipulation and that certain of those scores should therefore be thrown out (*see* Decision and Order of Justice Baynes, dated June 13, 2014, in *Boerum Hill Ass'n, et al. v. SUNY, et al.*, Index No. 13007/13, at pg. 1). SUNY continued to defend itself on this motion and Peebles intervened by attempting to negotiate a resolution directly with the Petitioners. On May 22, 2014, Peebles entered into a Statement of Principles with the Petitioners whereby Peebles, along with its healthcare partner, North Shore-LIJ, agreed to provide healthcare services consistent with the community's needs and to avoid any break in service at the LICH Emergency Department upon SUNY's exit from the facility (*see* Statement of Principles, signed by the parties on May 22, 2014). However, following that progress in the litigation, negotiations began to break down between SUNY and Peebles in the days that followed. Having concluded that the parties had reached an impasse on certain critical issues, SUNY terminated negotiations with Peebles on May 28, 2014, several days before the 30-day timeframe would have elapsed on June 4th (Letter from Ruth Booher to Meredith Kane, dated May 28, 2014).

SUNY immediately offered Fortis, the third ranked offeror, the next opportunity to enter into a transaction with SUNY. By letters to SUNY dated June 3 and 6, 2014, Peebles protested the award to Fortis. SUNY issued an unfavorable determination on such protest to Peebles, and Peebles appealed that determination to this Office by letter dated July 22, 2014 (Appeal).

Procedures and Comptroller's Authority

Under Section 112(3) of the State Finance Law (SFL), before any revenue contract made for or by a state agency, which exceeds ten thousand dollars ($10,000) in amount, becomes effective it must be approved by the Comptroller. We consider the issues raised in this Appeal as part of the contract review function pursuant to such section of law.

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[1] While DLHC is the record owner of the LICH real property (and some of the furniture and equipment), SUNY, on behalf of DLHC, managed the entire RFP process.

In carrying out the aforementioned responsibilities proscribed by SFL §112, this Office has issued a Contract Award Protest Procedure that governs the process to be used when an interested party challenges a contract award by a State agency.[2] These procedures govern initial protests to this Office of agency contract awards and appeals of agency protest determinations. Because this is an appeal of an agency protest decision, the Appeal is governed by this Office's procedures for protest appeals.

In the determination of this Appeal, this Office considered:

1. The documentation forwarded to this Office by SUNY in connection with the transaction with Fortis.

2. The correspondence between this Office and SUNY arising out of our review of the transaction with Fortis.

3. The following correspondence/submissions from the parties (including the attachments thereto):

    a. Peebles' Appeal of SUNY's protest determination, dated July 22, 2014;

    b. SUNY's Answer to the Appeal, dated July 25, 2014;

    c. Fortis' Answer to the Appeal, dated July 24, 2014;

    d. Peebles' letter dated July 24, 2014 (correspondence from Allan J. Arffa to Charlotte Breeyear);

    e. SUNY's letter, dated July 28, 2014 (correspondence from SUNY to Allan J. Arffa); and

    f. Peebles' submission, dated July 29, 2014 (correspondence from Allan J. Arffa to Charlotte Breeyear).

Applicable Statutes

This procurement is not subject to the competitive bidding requirements of State Finance Law § 163, as this is not an expenditure contract but is rather a revenue contract, i.e. a contract which generates revenue for the State without any expenditure of state funds. This Office has consistently taken the position that the competitive bidding requirements of State Finance Law § 163 do not apply to revenue contracts, since such transactions do not involve the purchase of commodities or services. That being said, in fulfilling this Office's statutory duty under SFL §112, we generally require that revenue contracts be let pursuant to a reasonable procurement process.

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[2] OSC Guide to Financial Operations, Chapter XI.17.

In addition, in this instance, SUNY has been legally authorized to conduct this procurement by the Sustainability Plan that was approved pursuant to Chapter 56 of the Laws of 2013 (Part Q), discussed above. Finally, in conducting this sale, SUNY is further bound by the terms of the Stipulation and Proposed Order, Index Nos. 13007/2013, 5814/2013, 9188/2011, filed February 25, 2014. In light of these non-statutory standards, we will proceed to analyze the issues raised in this Appeal.

ANALYSIS OF BID PROTEST

Appeal to this Office

In its Appeal, Peebles challenges the procurement conducted by SUNY on the following grounds:

1. SUNY breached its obligation to negotiate with Peebles for 30 days;

2. SUNY failed to negotiate with Peebles in good faith; and

3. Fortis is not a responsible vendor.

Response to the Appeal

In its Answer, SUNY contends the Appeal should be rejected and the award upheld on the following grounds:

1. Neither the Stipulation nor the RFP created an obligation on the part of SUNY to negotiate with a successful offeror for a full 30 days;

2. SUNY's decision to terminate negotiations with Peebles was not in bad faith; and

3. There is no basis to find Fortis nonresponsible as a vendor.

In addition, in Fortis' Answer, Fortis contends that the allegations of wrongdoing made by Peebles against Fortis are false and do not warrant a finding of nonresponsibility.

DISCUSSION

SUNY Alleged Obligation to Negotiate with Peebles for 30 Days

As an initial matter, Peebles contends that SUNY breached an obligation to continue negotiations with Peebles for a full 30 days. In support of this proposition, Peebles relies on a term of the Stipulation that set forth the expectation for the negotiation process:

> "If SUNY and the Initial Successful Offeror are unable to enter into an agreement in accordance with the terms of the New RFP within thirty (30) days of such award (provided that SUNY must notify the Initial Successful Offeror of such thirty (30) day *limit* before commencing negotiations with such Initial Successful Offeror), then SUNY may, in its sole discretion, terminate such negotiation, and the qualified Offeror whose proposal meets all mandatory requirements in the New RFP and that receives the next highest final composite score (technical plus financial) will be awarded the next opportunity to enter into the transaction with SUNY with the same time constraints..." (Stipulation, at § [2][d][i] [emphasis added]).

In addition, Peebles points to similar language in the RFP and SUNY's award notification letter sent to Peebles on May 5, 2014 (*see* RFP, at Part 2, Section M, Phase 3).

With respect to the Stipulation, we do not believe that the cited language requires SUNY to continue negotiations with an offeror, regardless of how fruitless such negotiations are, for 30 days. The Stipulation was intended to settle the issues between SUNY and the Petitioners, not to create rights in a third-party future offeror (Stipulation, at § 10). The intent of the Stipulation was to find a compromise that allowed SUNY to exit operations as soon as possible and, at the same time, to provide the community with needed healthcare. A term that forced a stalemate between SUNY and a potential purchaser would not serve either of these interests, but only that of the offeror. We do not believe that the intent of the Stipulation was to require a thirty day waiting period before SUNY could negotiate with the next highest scoring offeror – since such an interpretation would have unnecessarily delayed the sale and construction of a new medical facility. Furthermore, Justice Baynes, who presided over this protracted litigation and signed the Stipulation, came to the same conclusion during oral arguments in court on June 10th when Peebles attempted to intervene on the Petitioners' motion and argue that SUNY failed to negotiate in good faith. In response to Peebles' argument, Justice Baynes said "SUNY had the right to walk away .... The 30 days – in my opinion it was a *maximum* of 30 days that SUNY could negotiate. If SUNY came to the conclusion that negotiations were going nowhere ... then SUNY could walk away" (Transcript of June 10, 2014 Proceedings in *Boerum Hill Ass'n, et al. v. SUNY, et al.,* Index No. 13007/13, attached as Exh. B to SUNY's Answer to the Appeal, at pgs. 14-15 [emphasis added]; *see also* Decision and Order of Justice Baynes, dated June 13, 2014, Index No. 13007/13, at pg. 3).[3] We agree with the court's interpretation and find that the Stipulation did not create an obligation whereby SUNY was prohibited from terminating negotiations with the successful offeror if, in fact, an impasse had been reached.

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[3] We have reviewed the case cited by Peebles in its Appeal, *American Broadcasting Companies, Inc. v. Wolf,* 52 NY2d 394, 397, 400 (1981), and find that it is not on point here. In that case, it was uncontested that the employee was bound to negotiate in good faith with ABC for the 90-day period. Conversely, here, we find no such duty on the part of SUNY.

Turning to the RFP, we conclude that the intent of its drafters was to further the terms of the Stipulation which, as discussed above, do not prohibit SUNY from terminating negotiations prior to the expiration of the 30-day period. In addition, the RFP expressly reserved to SUNY the right to "[b]egin contract negotiations with another Offeror in order to serve the best interests of SUNY, should SUNY or Holding Company be unsuccessful in negotiating an Agreement with the Successful Offeror *within an acceptable time frame*" (RFP, at § 1.R.14 [emphasis added]) and "to waive any conditions or modify any provision of this RFP with respect to one or more Offerors, to negotiate with one or more of the Offerors with respect to all or any portion of the Property ... if in its judgment it is in the best interest of SUNY or Holding Company to do so" (RFP, at Exh. D, § D.4). The award letter mimics the language of the Stipulation and the RFP. Accordingly, we find that the same analysis applies to the award letter and, therefore, none of the three documents relied on by Peebles supports its position that Peebles had a guaranteed right to negotiate with SUNY for a period of 30 days. As such, Peebles' request for relief on the basis that SUNY breached such an obligation should be rejected.

SUNY's Basis for Terminating Negotiations with Peebles

Peebles also argues that SUNY failed to negotiate in good faith in the days leading up to its termination of negotiations. Specifically, Peebles alleges that, after Peebles entered into the Statement of Principles with the Petitioners on May 22nd (i.e., the side agreement that SUNY was not a party to), SUNY inexplicably began to take a hard-line and unreasonable negotiating positions that ultimately culminated in the deal with Peebles falling apart. SUNY, on the other hand, contests the facts as presented by Peebles and both parties have submitted sworn affidavits with conflicting factual recitations.

The only uncontested facts that we have before us are letters and emails between Peebles and SUNY in the final days of its negotiations and, based on this record before us, we do not find any factual basis to conclude that SUNY acted in bad faith or had ulterior motives to terminate negotiations with Peebles. Indeed, even assuming the facts in a light most favorable to Peebles, it appears that SUNY had a good faith basis for its determination that the parties had reached an impasse on at least one issue that was critical to the transaction. The RFP made clear that SUNY would require the "Successful Offeror" to provide a broad and uncapped indemnification to the State for any environmental liabilities (RFP, at Exh. D § C). SUNY's letter to Peebles on May 26th memorializes SUNY's understanding at that point that Peebles was not willing to meet this requirement (Letter from Ruth Booher, to Meredith Kane, dated May 26, 2014). Peebles responded the next day with its position that "the Buyer," to wit, the new special purpose entity that was formed to take title to the property and not The Peebles Corporation, as the parent, was willing to provide the requisite indemnification (Letter from Meredith Kane to Ruth Booher, dated May 27, 2014). Thus, a corporation with presumably no ascertainable assets besides the LICH property was the only entity providing the indemnification. Moreover, Peebles indicated in this letter

that if it was not permitted to conduct environmental testing prior to signing the sale agreement, the indemnification would be subject to a "mutually satisfactory cost-sharing arrangement to cover required remediation costs" (Letter from Meredith Kane to Ruth Booher, dated May 27, 2014). SUNY found this response, as well as Peebles' response on other outstanding issues, to be unsatisfactory and terminated negotiations the following day.

We find SUNY's actions in this regard not to be unreasonable. Clearly, the suggestion of "cost-sharing" does not meet the broad uncapped indemnification called for in the RFP. Moreover, we reject Peebles' argument on appeal that the term "Successful Offeror" as used in the RFP should be construed to mean a yet-to-be-formed special purpose subsidiary created to take title to the LICH property. We believe that "Successful Offeror" was intended to refer to the entity that submitted the proposal in response to the RFP, here, The Peebles Corporation along with its partners (*see* RFP, at pg. 6 [defining "Successful Offeror" as "the Offeror who is given the award"]; *see also* Peebles' Response to the RFP, Executive Summary at pg. 1; Peebles' Proposal, at § 1.A "Description of Offeror" [describing the Offeror as The Peebles Corporation, along with its named development and healthcare partners]). Agreeing to an indemnification only from the subsidiary would therefore be inconsistent with this material requirement of the RFP and, for obvious reasons, imprudent from a business standpoint.[4]

While we believe that this issue alone could form a good faith basis for SUNY to have terminated negotiations on May 28th, there were additional issues that thwarted the deal. For instance, in continuing to operate the Emergency Department at the Downstate at LICH campus pursuant to the Statement of Principles, North Shore-LIJ was not able to take over such operations under its own operating certificate. Thus, in order to comply with the agreement reached on May 22nd (to which SUNY was not a party), SUNY would be required to allow North Shore-LIJ to staff and manage operations under SUNY's existing operating certificate. As SUNY has explained, this came with a number of complex issues for resolution, including who would ultimately bear the costs of such operation prior to closing and the potential risk for medical malpractice liability. SUNY felt strongly that it should be immediately relieved from all such costs and liabilities for the deal with Peebles to move forward. However, the record indicates that Peebles was not able to agree to such relief, absent a signed agreement for sale, nor was it able to confirm that North Shore-LIJ would step in and run the Emergency Department immediately so as to allow SUNY to exit operations (Letter from Meredith Kane to Ruth Booher, dated May 27, 2014, at pg. 3). These additional open issues also provide a basis for SUNY's conclusion that the parties had reached an impasse.

While SUNY had a duty to negotiate with Peebles in good faith, we see no reason to conclude that SUNY has breached such obligation. As recently stated by the

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[4] We note that under the current transaction before this Office, Fortis Property Group, LLC, as the parent company, has agreed to guarantee the indemnification provided by FPG Cobble Hill Acquisitions, LLC under the Purchase and Sale Agreement (First Amended and Restated Purchase and Sale Agreement § 19.2).

Court of Appeals, "Parties who agree to negotiate are not bound to negotiate forever .... Parties are obliged to negotiate in good faith. But that obligation can come to an end without a breach by either party. There is such a thing as a good faith impasse; not every good faith negotiation bears fruit" (*IDT Corp. v Tyco Group, S.A.R.L.,* 2014 NY Slip Op 4044, at **3-**5). Based on all of the foregoing, we conclude that SUNY reasonably determined on May 28, 2014, that an acceptable agreement with Peebles could not be reached. Therefore, we decline to overturn the award to Fortis on the basis that SUNY failed to negotiate in good faith.

Vendor Responsibility of Fortis

In its supplemental filing with SUNY and in its Appeal, Peebles raises "serious concerns regarding Fortis's integrity and consequently its capacity to fulfill the requirements of the RFP" (Peebles' Letter to SUNY, dated June 6, 2014). In short, the State only conducts business with responsible vendors (see, e.g., State Finance Law § 163[9][f] which requires that, "[p]rior to making an award of contract, each state agency shall make a determination of responsibility of the proposed contractor").[5] Furthermore, the RFP issued by SUNY expressly stated that SUNY would conduct an affirmative review of the proposers' responsibility and would require that "Offerors, including any subcontractors, partners and collaborators of Offeror who will be involved in effectuating the Proposal, are required to provide a copy of their Vendor Responsibility Questionnaire with their proposals ..." (RFP, pg. 10). While the agency's determination in this regard is subject to the Comptroller's review under State Finance Law § 112 (*see Konski Engineers, P. C. v. Levitt,* 69 A.D.2d 940, 942 [3d Dept 1979]), we find nothing raised in Peebles' protest or Appeal that provides a basis for overturning SUNY's determination that Fortis is a responsible vendor. SUNY provided our Office with the required vendor responsibility documentation and we find that Fortis' Response to the Appeal, dated July 24, 2014, sufficiently disposes of the concerns alleged by Peebles. In addition, this Office has conducted its own review of Fortis and has found Fortis to be a responsible vendor. Accordingly, we also decline to overturn the award to Fortis on the basis that it is not a responsible vendor.

CONCLUSION

For the reasons outlined above, we have determined that the issues raised in the Appeal are not of sufficient merit to overturn the award by SUNY to Fortis. As a result, the Appeal is denied and we are today approving the agreement between DLHC, Fortis, FPG Cobble Hill Acquisitions, LLC and NYU Hospitals Center to effectuate this transaction.

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[5] While, as noted above, this revenue contract is not technically subject to State Finance Law § 163, we still require as a condition of our approval that the contracting agency make the requisite determination of vendor responsibility and document such determination in the procurement record.

EXHIBIT 4

At a Special Term Part 68 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, at 360 Adams St, Brooklyn, New York, on the 18th day of September, 2014

PRESENT:

HON. JOHNNY L. BAYNES

Justice

----------x **Index No. 5814/13**

THE NEW YORK STATE NURSES ASSOCIATION, 1199 SEIU UNITED HEALTHCARE WORKERS EAST, CONCERNED PHYSICIANS OF LICH, LLC and CARL BIERS,

Plaintiffs-Petitioners,

-against- **INTERIM ORDER**

NEW YORK STATE DEPARTMENT OF HEALTH, NIRAV SHAH, MD, in his capacity as Commissioner of the Department of Health, STATE UNIVERSITY OF NEW YORK, TRUSTEES OF STATE UNIVERSITY OF NEW YORK, STATE UNIVERSITY OF NEW YORK DOWNSTATE MEDICAL CENTER, STATE UNIVERSITY OF NEW YORK DOWNSTATE MEDICAL CENTER COUNCIL, and JOHN F. WILLIAMS, in his capacity as President of State University of New York Downstate Medical Center,

Defendants-Respondents..

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Plaintiff-Petitioner, New York State Nurses Association (hereinafter "NYSNA") moves by Order to Show Cause dated, August 26, 2014, for, inter alia, an Order enjoining

Defendants-Respondents State University of New York and Trustees of the State University of New York (hereinafter "SUNY") from taking action "inconsistent with the Court-Ordered Settlement Agreement in this matter entered into on February 25, 2014, including, the effectuation of the sale of Long Island College Hospital (hereinafter "LICH") to the Fortis Property Group LLC (hereinafter "Fortis") and/or New York University Langone Medical Center (hereinafter "NYU") or any other entity.

The matter came before the Court for oral argument on September 18, 2014. During the course of Oral Argument, it became clear that counsel for the NYSNA petitioners no longer seeks an injunction, but rather seeks to compel the SUNY defendants-respondents to force non-parties to this proceeding, Fortis and NYU to take certain actions not provided for in the Settlement Agreement between the parties, but in accordance with their response to the Request for Proposal (hereinafter "RFP") which was the result of the aforesaid settlement of the within action.

The non-parties were never served in this Action, nor have they been made parties hereto. In the interest of justice, their presence in this Action is required, at least for purposes of the instant Order to Show Cause.

WHEREFORE, it is

ORDERED that plaintiffs-petitioners NYSNA, and the SUNY defendants-respondents, are hereby directed to serve all papers filed by each of them to the attorneys for Fortis and the Attorneys for NYU, by personal service, no later than close of business on September 22, 2014; and it is further

ORDERED that Fortis and NYU serve and file any responsive pleadings no later than

close of business on September 30, 2014; and it is further

ORDERED that this matter is set down for further Argument at 10 a.m. on Monday, October 6, 2014, in Courtroom 461, 360 Adams Street, Brooklyn, New York.

E N T E R F O R T H W I T H

/s

JOHNNY L. BAYNES, JSC

EXHIBIT 5

Enter Forthwith

03387

HON. JOHNNY LEE BAYNES

At a Special Term Part 68 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse thereof, at 360 Adams St, Brooklyn, New York, on the 29th day of September, 2014

PRESENT:

HON. JOHNNY L. BAYNES

Justice

----------x **Index No. 5814/13**

THE NEW YORK STATE NURSES ASSOCIATION, 1199 SEIU UNITED HEALTHCARE WORKERS EAST, CONCERNED PHYSICIANS OF LICH, LLC and CARL BIERS,

Plaintiffs-Petitioners,

-against- **INTERIM ORDER**

NEW YORK STATE DEPARTMENT OF HEALTH, NIRAV SHAH, MD, in his capacity as Commissioner of the Department of Health, STATE UNIVERSITY OF NEW YORK, TRUSTEES OF STATE UNIVERSITY OF NEW YORK, STATE UNIVERSITY OF NEW YORK DOWNSTATE MEDICAL CENTER, STATE UNIVERSITY OF NEW YORK DOWNSTATE MEDICAL CENTER COUNCIL, and JOHN F. WILLIAMS, in his capacity as President of State University of New York Downstate Medical Center,

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The matter came before the Court for oral argument on September 18, 2014. During the course of Oral Argument, it became clear that counsel for the NYSNA petitioners no longer seeks an injunction, but rather seeks to compel the SUNY defendants-respondents to force non-parties to this proceeding, Fortis and NYU to take certain actions not provided for in the Settlement Agreement between the parties, but in accordance with their response to the Request for Proposal (hereinafter "RFP") which was the result of the aforesaid settlement of the within action.

Thereafter, an interim Order was issued directing service of all papers upon non-parties. This was done to allow NYU and Fortis the opportunity to state their positions with respect to NYSNA's application, on the record. The Court has been advised that neither NYU nor Fortis wish to submit papers on this matter. Therefore, the Court now renders decision on NYSNA's Motion, having advanced the return date from October 6, 2014, to September 23, 2014, at which time the parties once again appeared.

It is the Court's finding that the relief sought by NYSNA was never contemplated by the Settlement Agreement between the parties. Nor is NYSNA now seeking either injunctive relief, as stated by counsel for NYSNA on the record on September 18, 2014. NYSNA also does not

claim, nor [redacted] it is a signatory to any contract between SUNY and Fortis nor a third-party beneficiary of any such contract. Frankly, it is unclear what it is that NYSNA seeks, and the instant application must fail procedurally and substantively.

WHEREFORE, it is hereby

ORDERED and ADJUDGED, that Petitioner-Plaintiff's Order to Show Cause is denied in all respects.

ENTER

J Baynes

JOHNNY L. BAYNES, JSC

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STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

In the Matter of the Appeal filed by The Peebles Corporation, along with its development and healthcare partners, with respect to the procurement of healthcare services and the purchase of property at the Long Island College Hospital by the State University of New York.

Contract Number – X002654

Determination of Appeal

SF– 20140322

October 28, 2014

The Office of the State Comptroller has completed its review of the above-referenced procurement conducted by the State University of New York (SUNY) seeking a qualified party to provide or arrange to provide health care services at the Long Island College Hospital (LICH) and to purchase the LICH property, plant and equipment. We have determined that the grounds advanced by The Peebles Corporation (Peebles) are insufficient to merit the overturning of the award made by SUNY to the Fortis Property Group, LLC (Fortis) and, therefore, we deny the Appeal. As a result, we are today approving the agreement between Downstate at LICH Holding Company, Inc. (DLHC), Fortis, FPG Cobble Hill Acquisitions, LLC and NYU Hospitals Center to effectuate this transaction.

BACKGROUND

Facts

In early 2011, the State University Downstate Medical Center (SUNY Downstate) formed a not-for-profit corporation known as DLHC for the purpose of acquiring LICH in the Cobble Hill neighborhood in Brooklyn, New York (*see* Laws of 2011, ch. 57 Part P). In May of that year, the sale was consummated and DLHC took title to the LICH real property containing the existing medical facilities. The acquisition required several governmental approvals as well as the approval of Supreme Court (*see* Not-For-Profit Corporation Law §§ 510, 511). To provide SUNY Downstate with the ability to run the hospital and to fund the debt obligations assumed by DLHC, SUNY Downstate entered into a long-term lease with DLHC and staffed the hospital through an agreement with another specially formed not-for-profit corporation, Staffco of Brooklyn, LLC, created for the purpose of privately employing the LICH staff.

In March 2013, the Legislature enacted Chapter 56 of the Laws of 2013 (Part Q) as part of the Budget Bill for Health and Mental Hygiene, which required SUNY to submit to the Executive and Legislature a Sustainability Plan to secure the ongoing fiscal viability of the Downstate Hospital enterprise. The finally approved Sustainability

Plan, dated June 1, 2013, provides that "Downstate has determined that it must exit from the operation of the LICH facility as soon as possible" (Sustainability Plan for SUNY Downstate Medical Center, dated June 1, 2013, at pg. 14 [as supplemented and approved on June 13, 2014]). To put this plan into effect, SUNY issued a Request for Proposals in July 2013 seeking a qualified party to provide or arrange to provide health care and purchase the LICH property, plant and equipment.

Shortly thereafter, community groups, current staff at LICH and the New York City Public Advocate (hereinafter collectively referred to as the Petitioners) began publicly expressing concerns over SUNY's plan to close, or substantially reduce services and staff at, LICH. This turned into formal litigation wherein the Petitioners sought to enjoin SUNY from closing LICH (*see Boerum Hill Association, et al. v. State University of New York, et al.,* Index No. 13007/2013; *New York State Nurses Association, et al. v. New York State Dep't of Health et al.*, Index No. 5814/2013; *In the Matter of the Application of The Long Island College Hospital,* Index No. 9188/2011, all in the Supreme Court of New York State, Kings County). In addition, the Supreme Court Justice who originally approved the sale of LICH to SUNY issued an opinion chastising SUNY for not following through on its previously stated intent of taking over and improving the quality of services offered at LICH (*see* Decision and Order of Justice Demarest, dated Aug. 20, 2013, *In the Matter of the Application of The Long Island College Hospital,* Index No. 9188/2011). In February 2014, SUNY entered into a Stipulation of Settlement with the Petitioners (Stipulation) wherein all the parties agreed to a specific process for the sale of LICH (*see* Stipulation and Proposed Order, Index Nos. 13007/2013, 5814/2013, 9188/2011, filed February 25, 2014).

The Stipulation, which was approved and so ordered by Supreme Court, provided for a new Request for Proposal process with explicit evaluation criteria and the following key points: (1) the technical evaluation team will be comprised of both members designated by SUNY, as well as members designated by the Petitioners (whose combined, weighted score shall equal 49% of the total technical score); (2) proposals that offer continuation of healthcare operations during the interim period prior to the closing of a transaction and/or a full service hospital or a teaching hospital, would be eligible for additional technical points over those proposals that did not offer such elements; (3) a minimum "non-contingent" purchase price of $210 million to go to SUNY; (4) if SUNY is unable to enter into an agreement with the Initial Successful Offeror within 30 days of making the award to such offeror, then SUNY may, in its sole discretion, terminate such negotiations and make a new award to the offeror whose proposal received the next highest score. This selection process would continue "with the same time constraints" until either an agreement is reached or SUNY determines, in its sole discretion, that it is not reasonable to make an award to any other offeror; and (5) deed restrictions shall be placed on any property to be used for medical services restricting the use of such property for health services for 20 years.

On February 26, 2014, SUNY issued Request for Proposal X002654 (RFP) with responses due by March 19th.[1] SUNY received nine qualifying proposals and, on April 3, 2014, SUNY announced an initial award to Brooklyn Health Partners Development Corporation, LLC (BHP). BHP's proposal offered to build a new full service hospital. However, SUNY and BHP were not able to reach an agreement within the 30-day period and, pursuant to the terms of the Stipulation, SUNY exercised its discretion to terminate negotiations with BHP and render a new award to Peebles whose proposal received the second highest score (Letter from Ruth Booher to R. Donahue Peebles, dated May 5, 2014). Peebles, in conjunction with its development and healthcare partners, proposed to build a new free-standing emergency department, an urgent care center and other primary, preventative and specialty health services, but it did not propose a full service hospital.

SUNY commenced formal negotiations with Peebles but, in the meantime, the Petitioners filed a motion in court asserting, among other things, that the scores resulting from the RFP were not in accord with the Stipulation and that certain of those scores should therefore be thrown out (*see* Decision and Order of Justice Baynes, dated June 13, 2014, in *Boerum Hill Ass'n, et al. v. SUNY, et al.,* Index No. 13007/13, at pg. 1). SUNY continued to defend itself on this motion and Peebles intervened by attempting to negotiate a resolution directly with the Petitioners. On May 22, 2014, Peebles entered into a Statement of Principles with the Petitioners whereby Peebles, along with its healthcare partner, North Shore-LIJ, agreed to provide healthcare services consistent with the community's needs and to avoid any break in service at the LICH Emergency Department upon SUNY's exit from the facility (*see* Statement of Principles, signed by the parties on May 22, 2014). However, following that progress in the litigation, negotiations began to break down between SUNY and Peebles in the days that followed. Having concluded that the parties had reached an impasse on certain critical issues, SUNY terminated negotiations with Peebles on May 28, 2014, several days before the 30-day timeframe would have elapsed on June 4th (Letter from Ruth Booher to Meredith Kane, dated May 28, 2014).

SUNY immediately offered Fortis, the third ranked offeror, the next opportunity to enter into a transaction with SUNY. By letters to SUNY dated June 3 and 6, 2014, Peebles protested the award to Fortis. SUNY issued an unfavorable determination on such protest to Peebles, and Peebles appealed that determination to this Office by letter dated July 22, 2014 (Appeal).

Procedures and Comptroller's Authority

Under Section 112(3) of the State Finance Law (SFL), before any revenue contract made for or by a state agency, which exceeds ten thousand dollars ($10,000) in amount, becomes effective it must be approved by the Comptroller. We consider the issues raised in this Appeal as part of the contract review function pursuant to such section of law.

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[1] While DLHC is the record owner of the LICH real property (and some of the furniture and equipment), SUNY, on behalf of DLHC, managed the entire RFP process.

In carrying out the aforementioned responsibilities proscribed by SFL §112, this Office has issued a Contract Award Protest Procedure that governs the process to be used when an interested party challenges a contract award by a State agency.[2] These procedures govern initial protests to this Office of agency contract awards and appeals of agency protest determinations. Because this is an appeal of an agency protest decision, the Appeal is governed by this Office's procedures for protest appeals.

In the determination of this Appeal, this Office considered:

1. The documentation forwarded to this Office by SUNY in connection with the transaction with Fortis.

2. The correspondence between this Office and SUNY arising out of our review of the transaction with Fortis.

3. The following correspondence/submissions from the parties (including the attachments thereto):

    a. Peebles' Appeal of SUNY's protest determination, dated July 22, 2014;

    b. SUNY's Answer to the Appeal, dated July 25, 2014;

    c. Fortis' Answer to the Appeal, dated July 24, 2014;

    d. Peebles' letter dated July 24, 2014 (correspondence from Allan J. Arffa to Charlotte Breeyear);

    e. SUNY's letter, dated July 28, 2014 (correspondence from SUNY to Allan J. Arffa); and

    f. Peebles' submission, dated July 29, 2014 (correspondence from Allan J. Arffa to Charlotte Breeyear).

Applicable Statutes

This procurement is not subject to the competitive bidding requirements of State Finance Law § 163, as this is not an expenditure contract but is rather a revenue contract, i.e. a contract which generates revenue for the State without any expenditure of state funds. This Office has consistently taken the position that the competitive bidding requirements of State Finance Law § 163 do not apply to revenue contracts, since such transactions do not involve the purchase of commodities or services. That being said, in fulfilling this Office's statutory duty under SFL §112, we generally require that revenue contracts be let pursuant to a reasonable procurement process.

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[2] OSC Guide to Financial Operations, Chapter XI.17.

In addition, in this instance, SUNY has been legally authorized to conduct this procurement by the Sustainability Plan that was approved pursuant to Chapter 56 of the Laws of 2013 (Part Q), discussed above. Finally, in conducting this sale, SUNY is further bound by the terms of the Stipulation and Proposed Order, Index Nos. 13007/2013, 5814/2013, 9188/2011, filed February 25, 2014. In light of these non-statutory standards, we will proceed to analyze the issues raised in this Appeal.

ANALYSIS OF BID PROTEST

Appeal to this Office

In its Appeal, Peebles challenges the procurement conducted by SUNY on the following grounds:

1. SUNY breached its obligation to negotiate with Peebles for 30 days;

2. SUNY failed to negotiate with Peebles in good faith; and

3. Fortis is not a responsible vendor.

Response to the Appeal

In its Answer, SUNY contends the Appeal should be rejected and the award upheld on the following grounds:

1. Neither the Stipulation nor the RFP created an obligation on the part of SUNY to negotiate with a successful offeror for a full 30 days;

2. SUNY's decision to terminate negotiations with Peebles was not in bad faith; and

3. There is no basis to find Fortis nonresponsible as a vendor.

In addition, in Fortis' Answer, Fortis contends that the allegations of wrongdoing made by Peebles against Fortis are false and do not warrant a finding of nonresponsibility.

DISCUSSION

SUNY Alleged Obligation to Negotiate with Peebles for 30 Days

As an initial matter, Peebles contends that SUNY breached an obligation to continue negotiations with Peebles for a full 30 days. In support of this proposition, Peebles relies on a term of the Stipulation that set forth the expectation for the negotiation process:

> "If SUNY and the Initial Successful Offeror are unable to enter into an agreement in accordance with the terms of the New RFP within thirty (30) days of such award (provided that SUNY must notify the Initial Successful Offeror of such thirty (30) day *limit* before commencing negotiations with such Initial Successful Offeror), then SUNY may, in its sole discretion, terminate such negotiation, and the qualified Offeror whose proposal meets all mandatory requirements in the New RFP and that receives the next highest final composite score (technical plus financial) will be awarded the next opportunity to enter into the transaction with SUNY with the same time constraints..." (Stipulation, at § [2][d][i] [emphasis added]).

In addition, Peebles points to similar language in the RFP and SUNY's award notification letter sent to Peebles on May 5, 2014 (*see* RFP, at Part 2, Section M, Phase 3).

With respect to the Stipulation, we do not believe that the cited language requires SUNY to continue negotiations with an offeror, regardless of how fruitless such negotiations are, for 30 days. The Stipulation was intended to settle the issues between SUNY and the Petitioners, not to create rights in a third-party future offeror (Stipulation, at § 10). The intent of the Stipulation was to find a compromise that allowed SUNY to exit operations as soon as possible and, at the same time, to provide the community with needed healthcare. A term that forced a stalemate between SUNY and a potential purchaser would not serve either of these interests, but only that of the offeror. We do not believe that the intent of the Stipulation was to require a thirty day waiting period before SUNY could negotiate with the next highest scoring offeror – since such an interpretation would have unnecessarily delayed the sale and construction of a new medical facility. Furthermore, Justice Baynes, who presided over this protracted litigation and signed the Stipulation, came to the same conclusion during oral arguments in court on June 10th when Peebles attempted to intervene on the Petitioners' motion and argue that SUNY failed to negotiate in good faith. In response to Peebles' argument, Justice Baynes said "SUNY had the right to walk away .... The 30 days – in my opinion it was a *maximum* of 30 days that SUNY could negotiate. If SUNY came to the conclusion that negotiations were going nowhere ... then SUNY could walk away" (Transcript of June 10, 2014 Proceedings in *Boerum Hill Ass'n, et al. v. SUNY, et al.*, Index No. 13007/13, attached as Exh. B to SUNY's Answer to the Appeal, at pgs. 14-15 [emphasis added]; *see also* Decision and Order of Justice Baynes, dated June 13, 2014, Index No. 13007/13, at pg. 3).[3] We agree with the court's interpretation and find that the Stipulation did not create an obligation whereby SUNY was prohibited from terminating negotiations with the successful offeror if, in fact, an impasse had been reached.

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[3] We have reviewed the case cited by Peebles in its Appeal, *American Broadcasting Companies, Inc. v. Wolf*, 52 NY2d 394, 397, 400 (1981), and find that it is not on point here. In that case, it was uncontested that the employee was bound to negotiate in good faith with ABC for the 90-day period. Conversely, here, we find no such duty on the part of SUNY.

Turning to the RFP, we conclude that the intent of its drafters was to further the terms of the Stipulation which, as discussed above, do not prohibit SUNY from terminating negotiations prior to the expiration of the 30-day period. In addition, the RFP expressly reserved to SUNY the right to "[b]egin contract negotiations with another Offeror in order to serve the best interests of SUNY, should SUNY or Holding Company be unsuccessful in negotiating an Agreement with the Successful Offeror *within an acceptable time frame*" (RFP, at § 1.R.14 [emphasis added]) and "to waive any conditions or modify any provision of this RFP with respect to one or more Offerors, to negotiate with one or more of the Offerors with respect to all or any portion of the Property ... if in its judgment it is in the best interest of SUNY or Holding Company to do so" (RFP, at Exh. D, § D.4). The award letter mimics the language of the Stipulation and the RFP. Accordingly, we find that the same analysis applies to the award letter and, therefore, none of the three documents relied on by Peebles supports its position that Peebles had a guaranteed right to negotiate with SUNY for a period of 30 days. As such, Peebles' request for relief on the basis that SUNY breached such an obligation should be rejected.

SUNY's Basis for Terminating Negotiations with Peebles

Peebles also argues that SUNY failed to negotiate in good faith in the days leading up to its termination of negotiations. Specifically, Peebles alleges that, after Peebles entered into the Statement of Principles with the Petitioners on May 22nd (i.e., the side agreement that SUNY was not a party to), SUNY inexplicably began to take a hard-line and unreasonable negotiating positions that ultimately culminated in the deal with Peebles falling apart. SUNY, on the other hand, contests the facts as presented by Peebles and both parties have submitted sworn affidavits with conflicting factual recitations.

The only uncontested facts that we have before us are letters and emails between Peebles and SUNY in the final days of its negotiations and, based on this record before us, we do not find any factual basis to conclude that SUNY acted in bad faith or had ulterior motives to terminate negotiations with Peebles. Indeed, even assuming the facts in a light most favorable to Peebles, it appears that SUNY had a good faith basis for its determination that the parties had reached an impasse on at least one issue that was critical to the transaction. The RFP made clear that SUNY would require the "Successful Offeror" to provide a broad and uncapped indemnification to the State for any environmental liabilities (RFP, at Exh. D § C). SUNY's letter to Peebles on May 26th memorializes SUNY's understanding at that point that Peebles was not willing to meet this requirement (Letter from Ruth Booher, to Meredith Kane, dated May 26, 2014). Peebles responded the next day with its position that "the Buyer," to wit, the new special purpose entity that was formed to take title to the property and not The Peebles Corporation, as the parent, was willing to provide the requisite indemnification (Letter from Meredith Kane to Ruth Booher, dated May 27, 2014). Thus, a corporation with presumably no ascertainable assets besides the LICH property was the only entity providing the indemnification. Moreover, Peebles indicated in this letter

that if it was not permitted to conduct environmental testing prior to signing the sale agreement, the indemnification would be subject to a "mutually satisfactory cost-sharing arrangement to cover required remediation costs" (Letter from Meredith Kane to Ruth Booher, dated May 27, 2014). SUNY found this response, as well as Peebles' response on other outstanding issues, to be unsatisfactory and terminated negotiations the following day.

We find SUNY's actions in this regard not to be unreasonable. Clearly, the suggestion of "cost-sharing" does not meet the broad uncapped indemnification called for in the RFP. Moreover, we reject Peebles' argument on appeal that the term "Successful Offeror" as used in the RFP should be construed to mean a yet-to-be-formed special purpose subsidiary created to take title to the LICH property. We believe that "Successful Offeror" was intended to refer to the entity that submitted the proposal in response to the RFP, here, The Peebles Corporation along with its partners (*see* RFP, at pg. 6 [defining "Successful Offeror" as "the Offeror who is given the award"]; *see also* Peebles' Response to the RFP, Executive Summary at pg. 1; Peebles' Proposal, at § 1.A "Description of Offeror" [describing the Offeror as The Peebles Corporation, along with its named development and healthcare partners]). Agreeing to an indemnification only from the subsidiary would therefore be inconsistent with this material requirement of the RFP and, for obvious reasons, imprudent from a business standpoint.[4]

While we believe that this issue alone could form a good faith basis for SUNY to have terminated negotiations on May 28th, there were additional issues that thwarted the deal. For instance, in continuing to operate the Emergency Department at the Downstate at LICH campus pursuant to the Statement of Principles, North Shore-LIJ was not able to take over such operations under its own operating certificate. Thus, in order to comply with the agreement reached on May 22nd (to which SUNY was not a party), SUNY would be required to allow North Shore-LIJ to staff and manage operations under SUNY's existing operating certificate. As SUNY has explained, this came with a number of complex issues for resolution, including who would ultimately bear the costs of such operation prior to closing and the potential risk for medical malpractice liability. SUNY felt strongly that it should be immediately relieved from all such costs and liabilities for the deal with Peebles to move forward. However, the record indicates that Peebles was not able to agree to such relief, absent a signed agreement for sale, nor was it able to confirm that North Shore-LIJ would step in and run the Emergency Department immediately so as to allow SUNY to exit operations (Letter from Meredith Kane to Ruth Booher, dated May 27, 2014, at pg. 3). These additional open issues also provide a basis for SUNY's conclusion that the parties had reached an impasse.

While SUNY had a duty to negotiate with Peebles in good faith, we see no reason to conclude that SUNY has breached such obligation. As recently stated by the

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[4] We note that under the current transaction before this Office, Fortis Property Group, LLC, as the parent company, has agreed to guarantee the indemnification provided by FPG Cobble Hill Acquisitions, LLC under the Purchase and Sale Agreement (First Amended and Restated Purchase and Sale Agreement § 19.2).

Court of Appeals, "Parties who agree to negotiate are not bound to negotiate forever .... Parties are obliged to negotiate in good faith. But that obligation can come to an end without a breach by either party. There is such a thing as a good faith impasse; not every good faith negotiation bears fruit" (*IDT Corp. v Tyco Group, S.A.R.L.,* 2014 NY Slip Op 4044, at **3-**5). Based on all of the foregoing, we conclude that SUNY reasonably determined on May 28, 2014, that an acceptable agreement with Peebles could not be reached. Therefore, we decline to overturn the award to Fortis on the basis that SUNY failed to negotiate in good faith.

Vendor Responsibility of Fortis

In its supplemental filing with SUNY and in its Appeal, Peebles raises "serious concerns regarding Fortis's integrity and consequently its capacity to fulfill the requirements of the RFP" (Peebles' Letter to SUNY, dated June 6, 2014). In short, the State only conducts business with responsible vendors (see, e.g., State Finance Law § 163[9][f] which requires that, "[p]rior to making an award of contract, each state agency shall make a determination of responsibility of the proposed contractor").[5] Furthermore, the RFP issued by SUNY expressly stated that SUNY would conduct an affirmative review of the proposers' responsibility and would require that "Offerors, including any subcontractors, partners and collaborators of Offeror who will be involved in effectuating the Proposal, are required to provide a copy of their Vendor Responsibility Questionnaire with their proposals ..." (RFP, pg. 10). While the agency's determination in this regard is subject to the Comptroller's review under State Finance Law § 112 (*see Konski Engineers, P. C. v. Levitt,* 69 A.D.2d 940, 942 [3d Dept 1979]), we find nothing raised in Peebles' protest or Appeal that provides a basis for overturning SUNY's determination that Fortis is a responsible vendor. SUNY provided our Office with the required vendor responsibility documentation and we find that Fortis' Response to the Appeal, dated July 24, 2014, sufficiently disposes of the concerns alleged by Peebles. In addition, this Office has conducted its own review of Fortis and has found Fortis to be a responsible vendor. Accordingly, we also decline to overturn the award to Fortis on the basis that it is not a responsible vendor.

CONCLUSION

For the reasons outlined above, we have determined that the issues raised in the Appeal are not of sufficient merit to overturn the award by SUNY to Fortis. As a result, the Appeal is denied and we are today approving the agreement between DLHC, Fortis, FPG Cobble Hill Acquisitions, LLC and NYU Hospitals Center to effectuate this transaction.

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[5] While, as noted above, this revenue contract is not technically subject to State Finance Law § 163, we still require as a condition of our approval that the contracting agency make the requisite determination of vendor responsibility and document such determination in the procurement record.

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: December 8, 2017

TO: Honorable Members of the City Council

FROM: Sharon M. Tso
Chief Legislative Analyst

Council File No: 14-0425-S4
Assignment No: 17-12-1126

CRA/LA FUTURE DEVELOPMENT OPTION SITE
ANGELS LANDING

SUMMARY

On March 21, 2017, Motion (Huizar-O'Farrell, C.F. 14-0425-S4, Attachment A) was introduced instructing the Office of the Chief Legislative Analyst (CLA), with the assistance of the Economic and Workforce Development Department (EWDD), City Administrative Officer (CAO), and City Attorney, to serve as the lead City Department in soliciting development interest of real property located at 361 South Hill Street (A.P.N. 5149-010-939) in Downtown Los Angeles (Site). The Site is owned by CRA/LA, A Designated Local Authority, but controlled by the City of Los Angeles (City) through an Option Agreement dated January 8, 2015 (C.F. 14-0425). The Option Agreement allows the City to market and develop the Site in a manner that is consistent with the redevelopment objectives of the Bunker Hill Redevelopment Plan and in a manner that best serves the needs of the City and affected taxing entities.

Through EWDD, the City hired Jones Lang LaSalle as its consultant to assist in the public solicitation and evaluation process to identify and select a preferred development team for the Site. As a marketing strategy, the Site was branded *"Angels Landing"* to pay homage to the City and its neighboring parcel, the Historic Angels Flight. Marketing material was distributed on a global scale to draw as much interest as possible.

On April 12, 2017, the City released a Request for Qualifications (RFQ) via its Los Angeles Business Virtual Network to seek qualified developers capable of building a product that not only meets the development potential of the Site, but also meets key City objectives. Responses were due on May 22, 2017, and the City received 10 qualified responses. The Angels Landing Review Panel, comprised of representatives from various City departments and the business community, evaluated and scored the proposals. The top four scored development teams were invited to participate in the next phase of the public solicitation process.

On August 7, 2017, the City released a Request for Proposals (RFP) to the four selected development teams from the RFQ process. Responses were due on October 16, 2017, and the City received three qualified proposals: Angels Landing Development Partners, LLC; Angels Landing Partners, LLC; and the Onni Group. The same Angels Landing Review Panel that served during the RFQ process evaluated the proposals and interviewed the development teams on October 23, 2017. A community presentation was held the same night to allow the public an opportunity to comment on the proposed project concepts.

At the conclusion of this process, Angels Landing Partners, LLC (ALP), received the highest overall score of the three development teams. ALP, which is joint venture of The Peebles Corporation, MacFarlane Partners, and Claridge Properties, is proposing to build a world-class mixed-use development

(Project) consisting of two hotels, multifamily housing, condominiums, restaurant and retail spaces, open space, and a K-5 public charter school. Some of the key tenant partnerships include SBE as the hotel operator with two complementary brands, the SLS and Mondrian Hotels, and Los Angeles Academy of Arts and Enterprise as the public charter school operator. The Project looks to provide community benefits in the form of affordable housing opportunities, business opportunities for Minority and Women Business Enterprises, an academic institution, and a hospitality training program. During construction, the project would generate an estimated $54.3 million in one-time fiscal impacts to the City and $12 million in annual on-going revenue once the project reaches stabilization.

The CLA's Office has reviewed the recommendation provided by the Angels Landing Review Panel and recommends that the City Council select ALP to develop the Angels Landing Site and provide the CLA the authority to negotiate and execute an Exclusive Negotiation Agreement with ALP.

RECOMMENDATIONS

That the City Council, subject to the approval of the Mayor:

1. DETERMINE that the City-controlled property referred to as Angels Landing located at 361 South Hill Street (A.P.N. 5149-010-939) (Angels Landing) is an Economic Development property under the Asset Management Strategic Planning Asset Evaluation Framework;

2. APPROVE the selection of Angels Landing Partners, LLC, as the preferred development team to purchase and develop the Angels Landing in accordance with the terms of the Option Agreement by and between the City of Los Angeles (City) and CRA/LA, A Designated Local Authority (CRA/LA), dated January 8, 2015 (Contract No. C125178);

3. INSTRUCT the Chief Legislative Analyst (CLA) and REQUEST that the City Attorney, with the assistance of the City Administrative Officer (CAO) and Economic and Workforce Development Department (EWDD), to negotiate and execute an Exclusive Negotiation Agreement (ENA) with Angels Landing Partners, LLC (ALP), a joint venture between The Peebles Corporation, MacFarlane Partners, and Claridge Properties, to effectuate the purchase and sale of Angels Landing and incorporate requirements that the proposed project provide the City with certain community benefits;

4. INSTRUCT the CLA and CAO, with the assistance of EWDD, to report to Council on the proposed term sheet for a Disposition and Development Agreement with ALP; proposed term sheet for a Purchase and Sale Agreement with CRA/LA for the purchase of Angels Landing; proposed term sheet for a Purchase and Sale Agreement with ALP for the subsequent sale of Angels Landing, and terms for any other necessary documents to effectuate the purchase and sale, and that will include a list of required community benefits; and

5. AUTHORIZE and INSTRUCT the CLA to hire consultants necessary to evaluate the proposed Angels Landing development; ACCEPT $150,000 for consultant services from ALP to analyze the economic and financing associated with this instruction; REQUEST/AUTHORIZE/INSTRUCT the City Controller to deposit/appropriate/expend all funds received as a result of this action in Fund 100, Department 28, Contractual Services Account 3040; and AUTHORIZE the CLA to make any technical corrections, revisions, or clarifications to the above instructions in order to effectuate the intent of this action.

FISCAL IMPACT STATEMENT

Approval of the recommendations in this report will not have an impact on the General Fund. The extent of any future impact on the General Fund is unknown at this time.

BACKGROUND

Option Agreement

On December 16, 2014 (C.F. 14-0425), the City Council authorized the Mayor, or designee, to execute Option Agreements related to the transfer of 10 real property interests held by CRA/LA, A Designated Local Authority (CRA/LA) classified as "Property Retained for Future Development" (Future Development) under the Long Range Property Management Plan approved by the State Department of Finance. CRA/LA is the successor agency to the former Community Redevelopment Agency of the City of Los Angeles. AB1484 (Blumenfield) affords an opportunity for successor agencies to retain certain assets for future development to fulfill redevelopment objectives within the redevelopment plans and five-year implementation plans. CRA/LA does not have the capacity to carry out any new development activity so the City has been provided the opportunity to take on this effort. The Option Agreements allow the City to market and develop the 10 Future Development sites in a manner that is consistent with the redevelopment objectives and best serves the needs of the City and affected taxing entities. Most of the Option Agreements were fully executed in January 2015 and eight of the 10 properties are now under the control of the City. Two properties were returned to CRA/LA due to the City's inability to exercise the Option.

Consistent with the State redevelopment dissolution statutes, the Option Agreement requires that the property be purchased from CRA/LA at fair market value (FMV). In accordance with the terms of the Option Agreement between the City and CRA/LA, the FMV of the property will be determined by an average of appraised values obtained by the City and CRA/LA. The FMV only represents the transfer value between the City and CRA/LA. Under the terms of the Option Agreement, the final transfer value between the City and CRA/LA must be based on appraisals completed within six (6) months of the sale and will ultimately represent the minimum sales price the City will accept as compensation from the selected developer for the underlying fee interest in the property.

Site Description

Among the eight remaining Future Development sites is real property located at 361 South Hill Street (A.P.N. 5149-010-939) (Site). The Site, commonly referred to as Bunker Hill Parcel Y-1, is a 2.24 acre commercially zoned parcel located on the southern edge of Bunker Hill in Downtown Los Angeles. It is bordered by Hill Street to the east, Olive Street to the west, 4th Street to the south, and the Historic Angels Flight parcel to the north. It also serves as a nexus between the Historic Core and Bunker Hill neighborhoods and includes a portal to the Metro Pershing Square Station providing for access to transit throughout the City. The Site was originally purchased by the former redevelopment agency as part of its Bunker Hill renewal project and remains one of the last sizeable development parcels in the Downtown Los Angeles.

The Bunker Hill Specific Plan, in conjunction with the Site's C2-4D zoning, allows for residential and commercial mixed-uses, and provides the Site with a floor area ratio of approximately 13:1. This allows for development potential of up to 1.3 million square feet with unlimited developable height, making it an unrivaled opportunity to make a significant mark on the Downtown Los Angeles skyline. The FMV of the Site was last appraised in early 2017 for $45,700,000.

Public Solicitation Process

In an effort to effectively market the Site, the City hired Jones Lang LaSalle as its consultant to assist in a public solicitation and evaluation process to identify and select a preferred development team. Pre-marketing efforts were conducted in the first quarter of 2017 to draw developer interest. As part of this effort, the Site was branded *"Angels Landing"* to pay homage to the City of Los Angeles and its neighboring parcel the Historic Angels Flight. Marketing material was distributed through various forms of media to reach interest on a global scale.

The pre-marketing process was followed by a RFQ and subsequent RFP to identify qualified developers capable of building a product that not only met the development potential of the Site, but also met key City objectives as follows:

1. Maximize density and floor area ratio (FAR) on the Site with the highest level of intensity, creating a high-energy urban experience with a mix of uses;
2. Provide publicly accessible open space and incorporate community amenities into the development including the Historic Angels Flight funicular; and
3. Provide active and accessible linkage between the residential, office, and cultural amenities on Bunker Hill and the Los Angeles County Metropolitan Transportation Authority (Metro) regional transportation system portal for pedestrians, transit users, and cyclists.

Request for Qualifications

On April 12, 2017, the City released a RFQ through its Los Angeles Business Assistance Virtual Network to solicit development interest in Angels Landing. Interested parties were allotted 40 calendar days to provide responses to the RFQ which were due on May 22, 2017. The City received 10 qualified responses to the RFQ that were evaluated and scored by the Angels Landing Review Panel made up of representatives from various City departments and the business community. The evaluation criteria was based on the following:

- Financial – an evaluation of the team's financial information submitted; the team's past ability to commit sufficient equity to the project to satisfy conventional lending requirements; the team's past ability to secure financing for similar projects, including relationships with current lenders; the team's financial standing, capacity, experience, and resources to undertake, finance and the deliver the project; an evaluation of the team's experience over the last 10 years in closing the financing of at least three projects of similar size and nature to that described in the RFQ, each in excess of $100 million of debt and/or equity; and confirmation that the team's experience with at least one of the projects meeting the requirements above was under the control of the equity member for at least four years following the financial close and the project is currently in operations.

- Technical – an evaluation of the proposed project concept; the assembled team includes a Developer with experience in planning, designing, and constructing projects in a downtown urban environment similar to the respondent's proposed concept, within the last ten years; the Designer/Architect with experience, as lead architect, in designing projects in a downtown urban environment similar to the respondent's proposed concept, within the last ten years; any other key personnel; and the team's experience and capability to successfully entitle projects from the concept state, through construction, and post construction mitigation; and an evaluation of the team's past projects and performance.

- Key Personnel Evaluation – an evaluation of the assembled team members; an evaluation of the respondent's key personnel and their ability to meet the applicable minimum qualifications outlined in the RFQ.

The top four scoring development teams were selected to participate in the subsequent RFP phase. The final scores for the ten proposals received are listed below.

No.	RFQ Response Development Team	Score
1	Angels Landing Partners*	563
2	Trammell Crow*	563
3	Angels Landing Development Partners*	537
4	Onni Group*	519
5	Mack Urban	485
6	CIM Group	392
7	Carpenter & Company	378
8	Project Development Enterprise	374
9	Intergulf	350
10	Brookfield/Rising Realty	n/a

*Top four scores

Request for Proposals

On August 7, 2017, the City released a Request for Proposals (RFP) to the four development teams with the highest scores from the RFQ process. The teams were allotted 65 days to prepare their responses to the City, with required milestones along the way.

On August 17, 2017, the City conducted a Technical Briefing that included in-depth presentations on relevant technical issues such as land use and entitlements, the Pershing Square Metro Station, the Historic Angels Flight Railway, and Grand Performances. Representatives from City Planning, the Department of Building and Safety, the Fire Department, the Los Angeles County Metropolitan Transportation Authority, Angels Flight Railway Foundation, and Grand Performances presented information to help guide the project concepts being contemplated by each individual team.

On September 11, 2017, the City held a Design Review that was an opportunity to provide participants with feedback on how the design of the project meets key City objectives, as previously mentioned and further described in the RFP. Representatives from various City Departments including the Chief Legislative Analyst, City Administrative Officer, Mayor's Office, Council District 14, City Planning, the Bureau of Engineering, and the Angels Landing Review Panel were given an opportunity to provide constructive feedback to the development teams on their preliminary design concepts. The goal was to help guide the design process to make certain City policies and objectives were being incorporated.

Responses to the RFP were due on October 16, 2017, and the City received three qualified responses: Angels Landing Development Partners, LLC; Angels Landing Partners, LLC; and the Onni Group. The three proposal were evaluated and scored by the same City panel that served during the RFQ stage. The evaluation criteria was based on a review of the following categories:

- Project Concept – overall design of the project; open space and public integration; accessibility and linkages; sustainability; and degree to which respondent's project schedule presents a credible approach to efficient execution of the project.

- Development Team – expertise of the project team and personnel's ability to plan, design, finance, construct, manage, and operate the proposed project; relevant experience of the individual personnel assigned to the project.

- Financial Capabilities and Pricing – development team's ability to commit sufficient equity to the project to satisfy conventional lending requirements; development team's ability to secure financing for similar project, including relationships with current lenders; project financing plan; evaluation of value offered for the Site; and economic benefits and revenue generated by the project.

- Community Outreach – degree to which the community outreach plan presents a credible approach to engaging the community and stakeholders and soliciting input during the development process.

On October 23, 2017, the Angels Landing Review Panel interviewed the three participating development teams to allow for an opportunity to gain further insight on the proposed project concept, the financial strategy and capacity to finance the project, and on the plan to engage the community throughout the development process. Later the same day, the three development teams participated in a community presentation to provide residents and the business community an opportunity to review the project concepts and provide feedback.

At the conclusion of the above, the Angels Landing Review Panel finalized their scores, which resulted in Angels Landing Partners, LLC, receiving the highest overall score the group. ALP received 553 out of 600 points total and were ranked first by five out of the six review panelists. Their proposal excelled above the other teams in the Project Concept and Community Outreach component. They were on par with the other teams in the Development Team category and fell slightly below their competitor with a project of similar nature in the Financial Capabilities and Pricing category. The final scores for the three proposals received are listed below.

No.	RFP Response Development Team	Score
1	Angels Landing Partners, LLC	553
2	Onni Group	543
3	Angels Landing Development Partners, LLC	438

Angels Landing Partners, LLC

Angels Landing Partners, LLC (ALP), is a joint venture between The Peebles Corporation, MacFarlane Partners, and Claridge Properties. Founded in 1983 by Chairman and Chief Executive Officer R. Donahue Peebles, The Peebles Corporation (Peebles) is recognized as one of the largest minority-owned real estate development companies in the nation, having acquired and developed a multi-billion dollar portfolio of luxury hotels, high-rise residential, and class-A commercial properties over the course of its history. Peebles is headquartered in New York City and Miami. MacFarlane Partners Investment Management (MacFarlane) was founded in 1987 by Victor B. MacFarlane, Chairman and Chief Executive Officer. MacFarlane is a minority-owned real estate investment management firm that develops, acquires, and manages properties on behalf of some of the world's largest pension plans and institutions. The firm is headquartered in San Francisco and operates a regional office in Los Angeles. Claridge Properties (Claridge) is a real estate firm with an 18-year history of successfully acquiring, developing, and operating urban in-fill real estate assets with a primary focus on major U.S. gateway cities including New York City, Detroit, and Los Angeles. Claridge was founded by Ricardo Pagan, Chief Executive Officer. ALP is partnered with Handel Architects (Handel), an architecture, interior design, and planning firm that began in New York City in 1994. Handel is regarded as a world-class

design architect firm responsible for many iconic projects primarily in San Francisco and Los Angeles. Glenn Rescalvo FAIA, Partner-in-Charge, is a founding partner of Handel.

Together, ALP and Handel have demonstrated a strong track record of successful and innovative developments of residential, commercial, and mixed-use properties in Los Angeles and throughout the United States. A shortlist of successful developments include The Hotel & Residences at L.A. Live, Wilshire Grand Center, Ten Thousand Santa Monica, Times Warner Center (New York), 15 Central Park West (New York), and the Beach Club (Miami). ALP is a 100 percent minority-owned development entity committed to exceeding the Minority and Women Business and Enterprise (M/WBE) participation requirements and generating significant and diverse employment opportunities.

Project Concept

ALP's vision for the Angels Landing Site is to create an active, vibrant, unique, and regionally significant mixed-use landmark by creating a distinctive urban design that connects and enhances the multifaceted character of the neighboring areas through diversity of program and activity. This vision is presented in their proposal to build a 1.27 million square foot world-class mixed-use development that includes two towers over a shared podium with a multitude of uses including residential, hotel, restaurant and retail space, a public institution, and an array of open space elements (Project). One tower is 24 stories and the second tower is 88 stories, rising above its neighboring Cal Plaza One and Two buildings. A summary of the proposed development in approximate figures is as follows:

- 400 residential rental units
- 250 condominium units
- 500 luxury/lifestyle hotel rooms (operated by SBE and divided between the SLS and Mondrian Hotels)
- 50,000 square feet of restaurant and retail space
- 32,500 square feet for a K-5 public charter school operated by the Los Angeles Academy of Arts and Enterprise (LAAAE)

ALP has indicated they are committed to providing five percent or approximately 20 units of affordable rental housing units, reserved for individuals earning between 80 to 120 percent of the area median income.

Another highlight of ALP's project concept is the inclusion of approximately 54,000 square feet of publicly accessible open space which translates to approximately 58 percent of the Site. The open space component includes a 13,700 square foot plaza and a 25,400 square foot flexible-use, multi-season public terrace located in the center of the project. The open space will be programmed to host year-round recreational, entertainment, and arts-oriented activities and events to engage the public and activate the site and surrounding neighborhoods.

Proposed Purchase Terms

The following is a summary of the proposed purchase terms under which ALP would acquire the Site:

- Purchase Price: $50 million
- Deposits: $1.1 million provided in various stages and conditions as described in the ALP proposal
- Due Diligence Period: 120 days but subject to extensions if a due diligence report, as described in the ALP proposal, reports a recommendation that additional time in necessary to investigate

- Contingencies / Conditions: Subject to environmental studies and issues requiring mitigation, levels of affordable housing and community space outlined, receipt of a Hotel Incentive Agreement from the City, design and use flexibility in response to changing situations and environments

Although ALP has offered to purchase the Angels Landing Site for $50 million, which exceeds the current appraised value of $45.7 million, the Option Agreement requires that the property be purchased from CRA/LA at fair market value. As a result, the final purchase price will be subject to an updated appraisal completed within six (6) months of the sale of the property and will be the minimum purchase price the City will accept for the Site. The final purchase price will be subject to further negotiations with the City and will be established in a future Purchase and Sale Agreement.

The Deposits, Due Diligence Period, Contingencies/Conditions, and any other terms and conditions not mentioned here are subject to further negotiations with the City and will be included in an Exclusive Negotiation Agreement between the City and ALP.

Proposed Project Financing

ALP's cost to acquire the Site and develop the proposed project is approximately $1.2 billion. Of that amount, 70 percent, or approximately $827 million, would come from debt financing and the remaining 30 percent, or approximately $355 million, would come from equity financing. Letters of interest for financing were included in ALP's proposal from the Bank of the Ozarks for debt financing and Ares Management for equity financing.

The ALP project also contemplates receiving gap financing in the form of a Hotel Development Incentive Agreement from the City similar to those provided to other hotel developments in the Downtown Los Angeles area. The City has entered into such Agreements with developers in an effort to boost the amount of hotel rooms available to attract more tourism and increase use of the Los Angeles Convention Center. As the project scope is further defined, the project financing will be further evaluated for eligibility of a Hotel Development Incentive Agreement and value engineering will be part of the project moving forward in an effort to minimize the need for a Hotel Development Incentive Agreement. A Hotel Development Incentive Agreement from the City is not guaranteed. The City will further refine the financing elements in negotiations, including any proposed Hotel Development Incentive Agreement and the impacts on City revenues. During this process, the City will evaluate the request for Hotel Development Incentive Agreement and work with ALP to value engineer the design to reduce project costs. ALP has indicated that the project timeline and feasibility are not dependent on receipt of a Hotel Development Incentive Agreement and that the City would receive a world-class mixed-use development regardless of receiving such a Hotel Development Incentive Agreement.

Projected Economic Benefits

During the construction period, the Project is estimated to generate a direct, indirect, and induced total output of approximately $1.6 billion in the Los Angeles County economy. Direct, indirect, and induced earnings during the same period are projected to be approximately $731 million and 8,285 worker years would be generated. Construction employment is expressed in total job-years, where a job-year is defined as one year of employment for one employee. The City would receive approximately $54.3 million in one-time fiscal impacts generated from the Project.

During the ongoing operations of the Project, the economic impacts would result in approximately $105.9 million in direct, indirect, and induced annual output in the Los Angeles County economy. There would be approximately $28.6 million in direct, indirect, and induced earnings and 709 jobs would be generated.

The on-going annual fiscal revenue to the City is projected to be approximately $12 million in the first stabilized year projected to be 2027. This amount does not factor out any proposed Hotel Development Incentive Agreement included in the financing of the Project. The figures presented above are current projections and are subject to change as the project is further refined.

Proposed Community Benefits

The Community Benefits provided by the Project include an affordable housing component that would reserve five percent, or 20 apartment units, for individuals or families earning 80 to 120 percent of the Area Median Income. The final percentage of affordable housing included in the Project will be subject to further negotiations with the City.

The Project would generate business opportunities for Minority and Women Business Enterprise (M/WBE) firms with a target participation rate of 25 percent. The inclusion of a K-5 public charter school would benefit the growing population of residents in the Downtown Los Angeles area. ALP also proposes to include a hospitality training program that would provide career building opportunities for the community.

Proposed Development Schedule

Upon selection as the "Developer" of the Angels Landing Site, ALP has estimated entering into an Exclusive Negotiation Agreement (ENA) with the City within three months, depending on their due diligence period findings. State and City approvals needed to obtain environmental clearances and secure entitlements is projected to take 17 months. The Design development period would take up to 24 months. Construction is estimated to take 41 months with a projected completion date of December 31, 2024.

Option Agreement Schedule

The initial term of the Option Agreement for Angels Landing expires on January 10, 2018. On November 6, 2017, the City, through the Office of the Mayor, submitted a written request to the CRA/LA to exercise an 18-month extension already contemplated in the Agreement. The CRA/LA Governing Board will consider the request at its regular meeting on January 4, 2018. According to the proposed development schedule, the additional 18 months would provide ALP with sufficient time to obtain the necessary State and City approvals that will allow them to enter into a Disposition and Development Agreement and related Purchase and Sale Agreement for Angels Landing.

Exclusive Negotiation Agreement

Should Council approve the selection of Angels Landing Partners, LLP, City staff would immediately begin negotiating the terms and conditions of the ENA. A sample draft of an ENA was included in the RFP to allow participants an opportunity to familiarize themselves with the document and provide any comments if they were selected as a result of the RFP. During the term of the ENA, the City and ALP will work to complete a Disposition and Development Agreement and Purchase and Sale Agreement that would allow the City to exercise its Option with CRA/LA.

Oscar O. Ixco
Analyst

Attachment A: Motion (Huizar-O'Farrell) C.F. 14-0425-S4