



## AGENDA REPORT

**Meeting Date:** March 1, 2016  
**Item Number:** D-12  
**To:** Honorable Mayor & City Council  
**From:** David Lightner, Deputy City Manager  
Mahdi Aluzri, City Manager  
**Subject:** A DEPOSIT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS  
AND ANGELO GORDON REAL ESTATE INC.  
**Attachments:** 1. Deposit Agreement  
2. February 2, 2016 Staff Report without attachments

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### **RECOMMENDATION**

It is recommended that the City Council approve the deposit agreement with Angelo Gordon Real Estate, Inc. associated with the informal public evaluation of the Townscape Partners development proposal for City property surrounding 336 Foothill Road and 9268 Third Street. The framework for the public process will be developed and brought back for City Council review at a future meeting.

### **INTRODUCTION**

Townscape Partners, Gehry Partners and Angelo Gordon Real Estate, Inc. have jointly requested City consideration of development of approximately 6.5 acres of City property and 0.5 acres of private property along Foothill Road at Third Street. The City Council has authorized initiation of an informal public review process in order for the community to discuss the proposal and consider options, prior to the potential issuance of a Request for Proposals (RFP) for development of the property. As part of that authorization, the City Council directed that a deposit agreement should be drafted securing sufficient funding from the developer to assure their commitment to the process and to assure that the developer would fund all out of pocket costs to the City related to the public review.

### **DISCUSSION**

At the City Council study session of February 2, 2016, the City Council was presented with a development proposal outlined by developer, Tyler Siegel, and architect, Frank

Gehry. The proposal included a request to initiate a public review of the opportunity and a request to consider issuance of an RFP at the conclusion of the public process.

The City Council indicated that neither they nor the community had enough information yet about the proposal and potential alternative uses of the property to speak to its merits and impacts or whether an RFP is warranted. However, support was expressed for initiating a public review process, subject to a deposit agreement providing for developer funding of the process.

The agreement requires a deposit of \$1 million. This amount includes funding of City costs as follows:

- Cost of appraisals and determination of fair market rent.
- Economic and financial studies
- Land use planning studies
- Costs of preparing an RFP if issued
- Public notice costs
- Certain legal and support staff overtime costs

The costs shall initially be capped at \$150,000. If the City approaches that cost cap and anticipates a need for further expenditures, the developer will be given the option to either conclude the process and be refunded the unexpended balance of the deposit or to agree to increase the cap by \$100,000 and to continue the review process.

At the conclusion of the public process, the City Council will be provided a report outlining the results of the studies completed and the public commentary received and will be asked whether an RFP should be issued to solicit proposals at large. If an RFP is issued, an additional \$100,000, the non-refundable portion of the deposit, will be retained by the City.

Upon termination of the agreement by the developer, the balance of the deposit will be refunded, after City direct costs are deducted, and, if after issuance of an RFP, the non-refundable portion of the deposit is deducted. If an RFP is issued and if Townscape is selected as developer, the remaining balance of the deposit will be applied to the deposit to be required under the terms of the RFP.

### **FISCAL IMPACT**

The deposit agreement is structured to avoid any direct fiscal impact from the informal public process it supports. The potential fiscal impacts of the proposed project are outlined in the attached February 2, 2016 staff report.

Council will be advised if agreement is not signed by  
Tuesday, March 1, 2016.

Don Rhoads  
Finance Approval

Mahdi Aluzri  
Approved By

# **Attachment 1**

## DEPOSIT AGREEMENT

This DEPOSIT AGREEMENT (“Agreement”) is dated as of March 1, 2016, and is entered into by the CITY OF BEVERLY HILLS (the “City”) and ANGELO GORDON REAL ESTATE INC., a Delaware Corporation (the “Developer”). The City and the Developer are sometimes collectively referred to in this Agreement as the “Parties” and individually as a “Party”.

### RECITALS

- A. Developer has proposed that City conduct a “request for proposals” (“RFP”) process for a park and commercial development on property owned by the City that is described on Exhibit “A” (the “Site”). (Developer’s initial development concept is for a site that includes adjacent property not owned by the City.)
- B. The City has responded that while it welcomes a public process to review the proposal and consider alternatives, it does not have enough information to commit to issuance of an RFP. In order to initiate a public process to consider issuance of an RFP, the City requires a cash deposit from Developer in order to pay for expenses that will be incurred by the City in conjunction with the informal public process and to demonstrate that the project has sufficient financial support from Developer to warrant the City effort.
- C. At the conclusion of the informal public process, the City Council will review all public input and determine whether or not to issue an RFP. If an RFP is issued, it would be for the purpose of identifying a proposal and alternatives that would become part of a development application for environmental assessment and consideration under the standard project entitlement public hearing process.

NOW, THEREFORE, in consideration of the foregoing, and other consideration, the sufficiency of which is hereby acknowledged, the Developer and the City hereby agree as follows:

- 1. **Deposit.** Developer will deliver to the City a cash deposit (the “Deposit”) of One Million and No/100 (\$1,000,000.00) on or before the date that is ten (10) days after an original of this Agreement, executed by City, is delivered to Developer. City shall not be obligated to pay interest on the Deposit.
- 2. **Use of Deposit.** The City may use up to One Hundred and Fifty Thousand and No/100 Dollars (\$150,000.00) (“Cost Cap”) of the Deposit, which may be increased as provided in Section 3 below, to pay for direct costs incurred by the City that relate to the proposed public process, including:
  - A. Costs of appraisal(s) of the Site and costs of determining fair market rent under one or more potential ground leases.
  - B. Economic and financial studies, such as hotel demand studies, financial projections and pro-formas.
  - C. Land use planning studies, including parking studies (excluding CEQA costs).

- D. Costs of preparing and disseminating an RFP if issued.
  - E. Costs associated with noticing and conducting public outreach meetings.
  - F. Up to Twenty-Five Thousand and No/100 Dollars (\$25,000.00) for legal fees of the firm that provides city attorney services to the City.
  - G. City staff overtime.
  - H. Other third-party related costs deemed necessary by City in order to reach a decision on whether or not to issue an RFP.
3. **Costs in Excess of Initial Cost Cap.** If City anticipates that its costs in connection with the public process will exceed the initial Cost Cap, City shall so notify Developer in writing and Developer shall then have ten (10) days to notify City in writing that the Cost Cap is unconditionally increased to Two Hundred and Fifty Thousand and No/100 Dollars (\$250,000.00) or that Developer unconditionally elects to terminate this Agreement. Failure to timely give one of the two types of notices shall be deemed an election by Developer to terminate this Agreement.
  4. **Termination.** Subject to Section 5 below, if Developer notifies the City in writing that it has decided to terminate this Agreement, or if this Agreement is deemed terminated under Section 3 above, then the City shall return any unapplied portion of the Deposit to Developer after using it to pay for expenses described in Section 2 that have been incurred prior to the termination. If City elects not to issue an RFP at the conclusion of the informal public process, this Agreement shall terminate ten (10) days after such decision.
  5. **City Decision to Issue RFP; Nonrefundable Portion of Deposit.** If City decides to issue the RFP for a project on the Site before this Agreement is terminated or deemed terminated under Section 3 above, then City shall be entitled to retain from the Deposit the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) (“Nonrefundable Portion”) in addition to applying other portions of the Deposit to costs incurred by the City in connection with the public process pursuant to Paragraph 2 or 3 above, and City will apply the remainder of the Deposit to any deposit required under the terms of the RFP.

However, if an RFP is issued and Developer does not submit a project proposal by the RFP submission deadline, this Agreement shall terminate ten (10) days after such deadline. In such instance, the City will be entitled to retain the Nonrefundable Portion and the additional portion of the Deposit that is used to pay City costs pursuant to Section 2 or 3 above, and City will return the remainder of the Deposit to Developer within thirty (30) days after the termination.

If an RFP is issued, and the Developer timely submits a project proposal, but that proposal is not selected by the City (either because no proposal is selected or because a superior proposal, as determined by the City, is selected), then the City will promptly return to Developer the Deposit less both: (i) the portion of the Deposit used to pay City

costs pursuant to Section 2 or 3 above, and (ii) the Nonrefundable Portion. (For an abundance of clarity, no less than \$750,000 would be returned if the Cost Cap is \$150,000, and no less than \$650,000 would be returned if the Cost Cap is \$250,000.)

6. **No Project Commitment.** Neither Party is obligated in any way to enter into any further agreements, and City is not obligated in any way to issue any permits or approvals for any project. This Agreement shall not give rise to any implied obligation to negotiate, or to any implied consent of good faith and fair dealing on which such an obligation (or a similar obligation) might be based. Developer acknowledges that if an RFP is issued, the RFP may be for a project that has none of the elements of the Developer's proposed project and that, if there is an RFP and a project is selected from that process, the City reserves the right to approve, approve as modified or conditioned or disapprove such project after full compliance with the environmental review process under the California Environmental Quality Act and all other relevant laws.
7. **Notices.** Any notices shall be in writing and shall be sent by reputable overnight messenger service (such as Federal Express) for next business day delivery, or by certified mail, return receipt requested, and addressed as follows:

City:

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, CA 90210  
Attn: City Manager

Developer:

Angelo Gordon Real Estate, Inc.  
2000 Avenue of the Stars, Suite 1020  
Los Angeles, CA 90067  
Attn: Steve White

8. **Time of Essence.** Time is of the essence of every provision hereof in which time is a factor.
9. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous communication or agreements.

**"CITY":**

CITY OF BEVERLY HILLS

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: Mayor \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Byron Pope, City Clerk

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Mahdi Aluzri,  
City Manager

\_\_\_\_\_  
David Lightner,  
Deputy City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
David M. Snow,  
Interim City Attorney

**“DEVELOPER”:**

ANGELO GORDON REAL ESTATE,  
a Delaware Corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "A"**

**DESCRIPTION OF CITY SITE**

(Attached.)



# **Attachment 2**



## STAFF REPORT

**Meeting Date:** February 2, 2016  
**To:** Honorable Mayor & City Council  
**From:** David Lightner, Deputy City Manager  
**Subject:** Townscape Proposal – 336 Foothill  
Road, 9268 Third Street  
**Attachments:** Townscape Proposal Submittal

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### INTRODUCTION

Townscape Partners, real estate developers, along with Gehry Partners, Frank Gehry's architecture firm, and their finance partner, Angelo Gordon, have proposed a mixed-use development project for City-owned property in the Entertainment Business District. They have requested a Request for Proposals (RFP) process to select a ground-lease development tenant for the City property. This proposal is for a 99-year ground lease that would allow a specific development project to be built on the property. They, and any other interested developers, would submit competing proposals through an RFP process. If a proposal were selected through this process, it would then go through the public entitlement process. This report describes a preliminary informal public process that could be initiated to evaluate the idea of an RFP.

### DISCUSSION

The City owns approximately 6.5 acres of property surrounding 336 Foothill Road and 9268 Third Street. The Foothill property has various short-term leases on the site as well as some Public Works Services uses relocated from other City sites. The building on this site is to be refurbished for short-term lease as well. This site also includes the shallow ground water wells under construction and the future site of the dog park. The Third Street property is leased to Lakeshore Entertainment and the City Employee Credit Union. Although these properties were under consideration for potential ground lease development from 2004 - 2008, with the onset of the recession the City Council placed redevelopment of the sites on hold pending a more comprehensive review of the best use of the property.

An unsolicited proposal for development of both sites has been submitted by the Townscape development team for City consideration. The City Council has indicated that the proposal should be presented to and considered by the community at large at a series of informal public meetings before making a decision on whether to pursue an RFP process for a ground lease and formal entitlement review of a project.

Meeting Date: February 2, 2016

The attached project submittals, which have not yet been analyzed by the City, outline a mixed-use development including:

Foothill Site

- 500,000 sf of entertainment, media and tech office space
- 150 residential condominium units
- 50,000 sf of neighborhood retail and restaurants
- A 3-acre public park, dog park, multi-purpose venue

Third Street Site

- 180- key Five-Star Hotel

The hotel proposed for the Third Street site would also include the privately owned property along Foothill Road immediately west of the City's Lakeshore lease site and currently occupied by two temples.

The development concept is to create an elevated public open space on a podium with buildings surrounding this elevated green space. The ground floor at street level would consist of retail and office at or near the property lines. The office and residential buildings above would be set back surrounding the 3-acre public open space. The hotel would be similarly sited on a raised podium with pedestrian bridges connecting the two sites. 1500 subterranean parking spaces are proposed. The buildings, as proposed, would vary in height with the tallest at 12 stories. The proposed Floor Area Ratio (FAR) is 3:1 on the Foothill site and 3.5:1 on the Third Street site.

Townscape is proposing a ground lease with the City and has requested an RFP process, which would be necessary under State Law to receive a 99-year term for the ground lease. A 55-year term for a ground lease is the maximum allowable without an RFP process. The RFP process could include requests for proposals matching the currently proposed program, or proposals with the same or a modified program but matching current height and density limits, or a completely different long-term development of the site as identified through the public process. The public process might also identify alternatives to 99-year ground lease of the property such as municipal, open space or other uses.

**FISCAL IMPACT**

The submittal includes a ground lease proposal of \$4 million annually, in addition to an upfront payment of \$75 million in prepaid ground rent. A project of this nature would also generate substantial tax revenue to the City, however, it should be noted that none of the estimates in the submittal have been evaluated for accuracy. The true value of the ground lease is dependent on the magnitude of development allowed, which at this point is very preliminary in nature.

**RECOMMENDATION**

The potential for the City of a significant Frank Gehry designed campus along with a potentially significant near-term and long-term revenue source to fund municipal priorities would appear to make this proposal worth considering. As proposed, it is a substantial amount of development, with as yet unquantified impacts, on a site where there is not consensus about the best long-term use. The public process under consideration would provide an opportunity for the developer to familiarize the public with their project and proposed ground lease terms and to hear responses and suggestions directly from the public.

Meeting Date: February 2, 2016

The public is likely to expect the process to include the ability for the City to facilitate discussion of the pros and cons of monetizing these valuable properties to fund municipal objectives versus holding them for municipal expansion or other uses. It is expected that the public would also want further evaluation and explanation of the options for how to consider an RFP that would be responsive to community issues.

At the end of the informal public process, the City Council would receive a report on the results of the process and would conduct a public meeting at which they would decide whether to proceed to issuance of an RFP or not.

If the public process is to be conducted, it is recommended that the developer should fund City expenses for this preliminary informal review of the opportunity and that a substantial deposit should be required to evidence their commitment to pursue this effort and to cover City evaluation expenses.

City Council direction is requested regarding whether to return at a future meeting with a Deposit Agreement to initiate the 4 to 6 month informal public review process described in this report.

David Lightner  
Approved By

