

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: November 9, 2012

TO: Honorable Members of the Trade, Commerce,
and Tourism Committee

FROM: Gerry F. Miller  Assignment No: 12-09-0757
Chief Legislative Analyst C.F. 11-1980-S5

The Village at Westfield Topanga Memorandum of Understanding (MOU)

SUMMARY

On May 9, 2012, City Council adopted Motion (Zine-Wesson, CF# 11-1980-S5) instructing the Chief Legislative Analyst (CLA) to evaluate possible forms of economic development incentives for The Village at Westfield Topanga (Project) and accept up to \$200,000 from Westfield, LLC (Developer) to hire a consultant to conduct the necessary financial analysis.

At this time, the Developer is proposing to develop a 1,027,994 square-foot, mixed-use project consisting of approximately 444,744 square-feet of shopping center uses, office space, and a hotel. The Project includes approximately 167,759 square-foot for an anchor retailer which would support an ancillary member-only fueling station, approximately 278,985 square-feet of additional retail space, 285,000 square-feet of office use, 53,635 square-feet of restaurant uses, a 36,765 square-foot grocery store, approximately 3,362 parking spaces, a 14,250 square-foot community/cultural center, and a 193,000 square-foot hotel with up to 275-rooms, ground floor dining and retail uses.

The Developer has requested assistance to complete the financing package for this Project. A draft non-binding Memorandum of Understanding (MOU) has been prepared to allow for negotiation of terms and conditions necessary to implement such assistance. Further, the Developer would be required to provide up to \$200,000 for consultants who will verify the economic impacts and financial needs for the Project. Such assistance would conform with established City policies on economic development and would be consistent with other hotel and mixed-use projects recently approved by the City.

RECOMMENDATIONS

That the Council:

1. AUTHORIZE the CLA to execute a Memorandum of Understanding substantially in conformance with the attached document relative to negotiation of the terms and conditions necessary to implement assistance for the development of The Village at Westfield Topanga;
2. INSTRUCT the Controller to deposit all funds received as a result of this action in Fund 100, Department 28, Contractual Services Account 003040, and authorize the CLA to make any technical corrections, revisions, or clarification to the above instructions in order to effectuate the intent of this action; and
3. AUTHORIZE the CLA to select a consultant(s) as needed to conduct the analyses necessary to evaluate the economic impacts of this Project.

BACKGROUND

The Los Angeles Economic Development Corporation has reported that the tourism and hospitality industry is the largest business sector in Los Angeles County, supporting nearly half a million jobs. Hotels provide lodging to visitors who shop and eat in the City, attend events at City cultural attractions, and access local transportation hubs, such as the harbor and airport. All of these activities generate important revenues for the City's General Fund, including transient occupancy tax, sales tax, business tax, and utility tax funds. For that reason, the City has from time-to-time provided economic assistance for the development / renovation of local hotels and other developments.

On May 9, 2012, the City Council approved Motion (Zine- Wesson) instructing the CLA to evaluate the Village at Westfield Topanga project for possible forms of economic development incentives. The Project is designed to be a large scale mixed-use development that will include, retail establishments, restaurant, a Costco with a gas station, a hotel, additional parking, and is designed to compliment the existing Westfield Topanga Shopping Mall. On February 29, 2012, Council approved the entitlements for the Project, including a 15-year development agreement (C.F. 11-1980). However, on March 29, 2012, the Woodland Hills Homeowners' Association filed a lawsuit challenging the Project. Since the case is under litigation, no permits have been issued and a hearing is scheduled for December 2012.

The Developer reports that the Project is expected to create 3,000 on-site construction jobs and 4,500 on-site permanent jobs. The Developer's economic analysis indicates a total annual economic benefit of \$7.9 million in annual tax revenue for the City and economic output of the Project will generate approximately \$636 million in economic activity in the City.

Available Assistance

At this time, the City has limited options for providing economic development assistance. The model currently available for hotel developments involves the creation of a community taxing district and the provision of transient occupancy tax revenues support financing of the development. The amount of assistance for both the hotel and retail projects however, is limited to no more than 50% of the total net new revenues generated by the Project. This is the model used for recent hotel and mixed-use projects, such as the Olympic North Hotels, Wilshire Grand Hotel, and Midtown Plaza. The steps required to move forward include adoption of a non-binding MOU that describes how the City and the Developer would determine whether and how much assistance would be provided and the terms of any definitive agreements necessary to implement any assistance.

Memorandum of Understanding

If the City is to enter into negotiations to provide development assistance for the Project, the draft MOU attached to this report provides terms on which final, definitive agreements would be based. The terms of this MOU are consistent with past City economic development projects, including recently approved projects.

The draft MOU provides the following terms:

- All pro-formas and other applicable data and documents necessary to evaluate the financing of the Project will be provided for the analysis;
- Funds will be provided by the Developer to pay for a full independent analysis of

The draft MOU provides the following terms:

- All pro-formas and other applicable data and documents necessary to evaluate the financing of the Project will be provided for the analysis;
- Funds will be provided by the Developer to pay for a full independent analysis of construction costs and financing of the Project to determine the funding gap and the actual assistance needed by the Project and the expected net new revenues generated by the Project;
- An assistance cap will be established which will not exceed 50% of the net new revenues accruing to the City;
- Payment of current annual revenues equal to the amount generated by the existing property will be guaranteed by the Developer;
- Following completion of construction, the City will have access to all records necessary to determine actual construction and financing needs and to adjust the assistance provided. The assistance may not exceed the assistance cap, but may be based on the actual constructions costs and gap;
- The hotel will be operated at Three-Star Lodging establishment grade or higher, as defined and determined by the Mobile Travel Guide;
- Actions will be taken to ensure that the City is designated as “point of sale” for all eligible construction contracts, including purchases by subcontractors; and
- A community benefits package will be developed and approved by the City.

These terms will ensure that the City continues to receive an amount of City tax revenue equal to the amount currently generated by the property through construction and the entire subsidy period. In addition, these terms provide that the City will be able to conduct an independent analysis of the Project to ensure an understanding of financing and construction costs and that the City’s subsidy for the project is limited to funds needed to ensure completion of the Project. All studies associated with this effort will be funded by the Developer with the City overseeing the contractor’s efforts.

FISCAL IMPACT

There is no impact to the General Fund as a result of this action.



Michael K. Kek
Analyst

Attachment A: Memorandum of Understanding

**Memorandum of Understanding (“MOU) Between the City of Los Angeles (“City”) and
Westfield, LLC (“Developer”)**

The above listed parties agree to this MOU to provide guidelines for the negotiations between the parties for redevelopment of real properties located at 6360 North Topanga Canyon Boulevard, 21700 – 21870 West Victory Boulevard, 6351 North Owensmouth Avenue, and 21919 – 21945 Erwin Street (“Property”). All terms and issues set forth in this MOU are subject to further discussion.

BACKGROUND

Developer is proposing to redevelop a 1,027,994 square-foot, mixed-use project consisting of approximately 444,744 square-feet of shopping center uses, including an approximately 167,759 square-foot anchor retailer which would support an ancillary member-only fueling station, approximately 278,985 square-feet of additional retail space, 285,000 square-feet of office use, 53,635 square-feet of restaurant uses, a 36,765 square-foot grocery store, approximately 3,362 parking spaces, a 14,250 square-feet community/cultural center, and a 193,000 square-foot hotel with up to 275-rooms, ground floor dining and retail uses (collectively "Project").

The City’s willingness to contribute to the financial feasibility of the Project is based on the projected job creation, net new economic activity and community benefits package pursuant to Section 9 herein.

DEPOSIT FOR FINANCIAL ADVISORS

The Developer shall deposit with the City \$100,000 to hire financial advisors with expertise in hotel operations and development, commercial/retail project development, and outside legal counsel as necessary thereto (collectively, the “Professionals”). The City shall be the client of the Professionals for the purposes of reporting and duty of loyalty. The amount deposited with the City shall cover all charges for services performed by the Professionals. The Developer acknowledges that the City shall have no obligation to continue with the financial analysis and negotiations of the Agreements should the funding provided by the Developer be insufficient to cover the work of the Professionals. However, City will provide written notice to Developer at the point which 75% of the deposit amount has been spent by City.

FUTURE PROJECT FUNDING NEGOTIATIONS

The Developer is interested in entering into definitive written agreements (“Agreements”) with the City in relation to development of the Project. The terms to be further discussed and negotiated are as follows:

1. Determination of Funding Gap. City will hire outside consultants to determine whether or not there exists a funding gap for the Project.
 - (i) The Developer shall provide to the City the pro-formas for all elements of the Project, including all Hotel, retail, and commercial portions in sufficient detail for the City’s consultants to conduct an independent analysis of the Project pro-formas.

- (ii) In order to calculate the funding gap, if any, for the Project, which amount shall be used to determine the Subvention Amount, the City and the Developer shall agree on a rate of return for the Developer at a level reasonably sufficient for the Developer to proceed with the Project.
 - (iii) Based on the agreed-upon pro-forma assumptions and the rate of return as described above, the City's consultants shall calculate the net present value (NPV) gap in the Project funding necessary for the Developer to achieve the agreed-upon rate of return for the Project ("Funding Gap").
2. Subvention Amount. The parties propose that, should a Funding Gap be identified, the City will consider setting up a Community Taxing District ("CTD"), or other mechanism to assist in Project financing, which would provide Developer with a NPV amount up to 50% of the City's share of the sources of Net New Revenue (collectively, the "Subvention Amount") listed below. The payment period of the Subvention Amount provided to Developer would commence with the issuance of a temporary certificate of occupancy for the Hotel or the retail component of the Project, whichever is issued first, and expire upon the earlier of the termination date as provided in the agreements (for example, events of default) or when the Subvention Amount has been received ("Subvention Term"). Potential sources of funding to calculate the Subvention Amount include:
- (A) Transient Occupancy Tax ("TOT") generated by the Hotel;
 - (B) construction sales tax;
 - (C) gross receipts tax;
 - (D) property tax;
 - (E) utility user's tax;
 - (F) sales tax;
 - (G) property tax in-lieu of VLF tax; and,
 - (H) parking revenues taxes.

Net New Revenues shall be defined as General Fund tax revenues to the City as a result of the project less the revenues currently generated by the Project site and revenues transferred from other areas/projects within the City.

Upon completion of construction of the Project, the City, through its independent consultant, would conduct a review of the construction costs and financing to confirm the Funding Gap. Upon completion of this review, the Subvention Amount may be adjusted, but may not be higher than the amount originally calculated. The discount rate used to calculate the Funding Gap would be the Developer's actual blended cost of capital.

3. Subvention Term. On an annual basis, the City shall calculate Project Related City Revenues accruing to Developer from Project operations. Should the Funding Gap be achieved prior to the end of the Subvention Term, the Subvention shall cease and all future Project Related City Revenues shall accrue to the City.
4. Developer Guarantee. The Developer shall provide to the City of Los Angeles a guarantee of current annual revenues to the City's General Fund equal to the amount generated by the existing property.
5. Transfer of Hotel and Property. The parties propose that during the Subvention Term, the Developer shall not sell, assign, convey or transfer the Hotel without the prior written administrative consent of the City, which consent shall not be unreasonably withheld; provided however, without consent of the City the Developer may permit transfers of direct or indirect financial interests in the Hotel and may ground lease the property to a hotel developer.
6. Hotel Operator. During the Subvention Term, any change in the Hotel operator shall require the prior written administrative approval of the City, which consent shall not be unreasonably withheld. The City will agree to a pre-approved list of acceptable Hotel operators and standards, which shall be attached as an exhibit to the Agreements.
7. Hotel Standards. The parties propose that the Hotel shall have a minimum number of lodging rooms, as more particularly set forth in the Agreements. During the Subvention Term, the Hotel shall be operated, furnished, serviced, maintained and refurbished to the standard of quality, commonly known as a Three-Star Lodging Establishment, as defined and as determined by the Mobil Travel Guide, or at an equivalent level by an alternative nationally recognized hotel rating service.
8. Construction Sales Tax. The Developer will cause the City to be designated as the "point of sale" for all construction related purchases (including purchases made by any subcontractors of the Developer's general contractor) for the Project. It would be the sole responsibility of the Developer to ensure that all contractors on qualified construction contracts obtain the necessary permits from the State to self-report sales tax, and credit would only be given for Construction Sales Tax that the City actually receives.
9. Community Benefits Package. The parties propose that the development of a pedestrian-oriented shopping environment and redevelopment of an underutilized partially vacant site is a public benefit that will create jobs and spur additional economic development. Further, a Community Benefits Package will be adopted by the Developer and implemented in association with development of the Project as a condition of receipt of the Subvention Amount. The Community Benefits Package would include elements above and beyond existing City contracting requirements, and shall be subject to City Council approval. Elements for consideration would include, but not be limited to, living wage for hotel workers and opportunities for local hiring and job training programs. The Community Benefits Package shall also

provide that, similar to the Airport Hospitality Enhancement Zone under Section 104.110, et seq, of the Municipal Code, living wage provisions for hotel workers could be replaced by a collective bargaining agreement.

10. Preconstruction Activities. The parties propose that the Developer shall proceed with applications for permits for, and seeking financing for, the initial Site work necessary for the Project's construction, including demolition of the existing structures.
11. Construction Commencement. The parties propose that the Developer commence construction of the Project within 180 days of the approval by the City Council of the Subvention Agreement.

IMPLEMENTING THIS MOU

This MOU authorizes City staff, with the assistance and consultation of the City Attorney, to negotiate Agreements consistent with the terms and conditions of this MOU with the Developer and to report to the City Council or any committee selected by the City Council on the progress of such negotiations. The Developer understands that any and all final Agreements are subject to the requirements of the Los Angeles City Charter and the City Council. The parties further understand that this MOU is merely an expression of the City's intent to negotiate the terms and issues outlined herein and further understand that this MOU is not binding on any of the parties.

IN WITNESS WHEREOF, the parties executed this Memorandum of Understanding on the dates indicated.

THE CITY OF LOS ANGELES:

By: _____
Chief Legislative Analyst

Date: _____

By: _____
City Clerk

Date: _____

DEVELOPER:

WESTFIELD, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____