



AGENDA STAFF REPORT

City of West Covina | Office of the City Manager

DATE: December 19, 2017

TO: Mayor and City Council

FROM: Chris Freeland
Executive Director

SUBJECT: **EXCLUSIVE NEGOTIATION AGREEMENT WITH SINGPOLI GROUP LLC FOR DEVELOPMENT OF FORMER BKK LANDFILL (APN NOS: 8735-002-906, 8735-002-909, 8735-002-910, 8735-002-018)**

RECOMMENDATION:

It is recommended that the City Council authorize the City Manager to execute an Exclusive Negotiation Agreement (ENA) with Singpoli Group LLC (Singpoli) for the development of the former BKK landfill (APN Nos: 8735-002-906, 8735-002-909, 8735-002-910, and 8735-002-018).

BACKGROUND:

The Successor Agency (Agency) to the former West Covina Redevelopment Agency received a Finding of Completion (FOC) from the Department of Finance (DOF) on December 16, 2015. Shortly thereafter on December 18, 2015, the Agency also obtained DOF approval of the Long Range Property Management Plan (LRPMP), which include the disposition of properties previously owned by the former Redevelopment Agency.

On October 17, 2016, the Agency received an unsolicited Letter of Intent (LOI) from Singpoli Group LLC (Singpoli) for the development of three of the Agency properties located at the BKK Landfill site (130-acres), and rights to the area on the top deck the Agency has under license (84.27-acres) (see Attachment No. 1 for referenced areas). The three assets Singpoli would like to purchase for development are the following:

LRPMP Asset #	Parcel No.	Description	Lot Size
30	8735-002-906	Coastal Sage Scrub Habitat / Golf Course	71.52-Acres

31	8735-002-909	Coastal Sage Scrub Habitat / Golf Course	24.52-Acres
32	8735-002-910	Coastal Sage Scrub Habitat / Golf Course	26.03-Acres
TOTAL			122.07- Acres

Pursuant to conversations with Singpoli, they indicated their intent to develop the site into an outdoor recreational park. At the time, Singpoli was partnering with Lan Kawi Fong Group (LKF) and Mr. Tom Mehrmann. Singpoli includes a variety of companies that focus on real estate development, real estate brokerage, financial services (insurance agency & mortgage brokerage), architecture, construction, restaurant management, and a media network. Mr. Mehrmann and LKF Group have experience working on park development, specifically having experience working on Ocean Park in Hong Kong. Ocean Park is a combination of a marine mammal park, oceanarium, and animal themed amusement park.

On December 6, 2016, the City Council, acting as the Successor Agency, approved a 90-day Exclusive Negotiating Agreement (ENA) with Singpoli for the purchase of the Agency assets at the BKK Landfill site, and rights to the area on the top deck the Agency has under license.

On March 20, 2017, Singpoli, LKF, and Mr. Mehrmann, in a Closed Session City Council Meeting, made a presentation to the City Council concerning its interest in purchasing the property for possible development. City Council discussed the possible sale but requested more information. The Successor Agency approved a 90-day extension, which would have expired on June 4, 2017. Due to the time and resource commitment required to further conduct the due diligence of the proposed purchase, Singpoli requested an additional extension from 90-days to 180-days.

On May 16, 2017, the City Council, acting as the Successor Agency, approved an extension to the ENA with Singpoli. However, the ENA extension approved was through September 2017. On September 12, 2017, Singpoli made a presentation to the City Council in a Closed Session Meeting presenting a revision to their proposal with respect to acquisition of the property. At that time, Council did not extend the ENA and allowed the ENA with Singpoli to expire. Council requested that Singpoli make a presentation regarding their proposed development at a public City Council Meeting before additional discussions regarding sale of the site.

At the November 7, 2017 City Council meeting, Singpoli presented their proposed project to the City Council. The City Council, acting as the Successor Agency, directed staff to host two community meetings with Singpoli to obtain additional feedback from the community. These meetings were held on December 4th and 6th, 2017.

Singpoli's proposal includes a hotel, virtual reality park, horse training facility with event space and pavilion, horse barns and stalls, aerial adventure park (zipline), a solar and greenhouse program, and a K-9 unit and Fire Department training facilities (Attachment No. 2). The attached site plan of the proposed development project is preliminary and is being submitted for consideration by the City Council. The proposed development would feature a hotel with approximately 270 rooms and include 20,000 square feet of meeting space and banquet facilities on approximately 3-4 acres. Singpoli is proposing to build subterranean parking to maximize efficient use of the site's elevated surface area. In addition, the virtual reality (VR) park would

encompass approximately 5-acres. The VR park would consist of large buildings similar to warehouse buildings. The building would be designed to be aesthetically pleasing on the exteriors and the interiors would accommodate the VR experiences, similar to Disneyland's ride "Soarin' Around the World" or Universal Studios "Harry Potter and the Forbidden Journey".

The proposed development includes a horse training facility the size of Arcadia's Santa Anita Park on top of the Class III landfill, which would include an event space and pavilion in the infield area of the track. The track would be for training purposes only; no formal racing or betting would be conducted on the site. As Santa Anita Park hosts events in the infield for family-friendly carnivals and cultural festivals, Singpoli is proposing to similarly take advantage of the infield space to enable a wide variety of events for the community to enjoy. To accommodate the Equestrian Center, the proposed development includes approximately 47 barns with 1,400 horse stalls and an employee village including 264 dormitories with a cafeteria and recreation center. The zipline and aerial park would include ziplines and rock climbing. In addition, Singpoli proposes the installation of a trail from Big League Dreams to Galster Wilderness Park Nature Center along the property line to Los Angeles County trail in the City of Walnut. Lastly, Singpoli is proposing a K-9 unit and Fire Department training facilities.

While the Class I landfill is not part of the Agency property, Singpoli is considering opportunities for the site. Singpoli has included a solar greenhouse, a new concept of a solar farm with agriculture below. New solar technology allows solar panels to be translucent enough to allow sunlight through. As it is a common use for landfills to have solar farms, this new technology allows additional use of the site. The solar panels act as the roof to the greenhouse, allowing agriculture to grow in raised planters so as to not disturb the landfill cap. The solar panels also collect rainwater that can be used to water the plants/crops in the greenhouse. As the site is a former landfill, there would be measures taken to ensure the safety of the food grown on the site. Singpoli would partner with a proven solar energy developer for this component of the project.

DISCUSSION:

As directed by the City Council, staff coordinated two community meetings; one held on Monday, December 4, 2017 at the Cameron Community Center and the other on Wednesday, December 6, 2017 at Shadow Oak Park (both started at 6:30 p.m.). The community meetings included a presentation by the City regarding the status of the former redevelopment agency properties, a presentation by Singpoli, followed by Q&A session. The intent of the community meetings was to obtain community feedback on the proposed development. The community meetings were attended by a total of over 170 residents and stakeholders at both meetings combined.

Residents and stakeholders provided the following comments and concerns regarding the proposed development project:

- **Increase in traffic on Azusa Avenue -**
The main concern raised is in regard to the increase in traffic on Azusa Avenue, an already heavily trafficked street and intersection at Amar Road. The traffic concerns referenced the number of horse trailers, the 1,400 horse stalls will regenerate, the 264-employee housing proposed for the training facility, and the barns. Residents stated traffic would be impacted beyond Azusa Avenue, as

commuters would use other West Covina residential streets to bypass the heavy traffic on Azusa Avenue.

- **Declining horse racing industry -**

The other primary concern is the development of a horse training facility for a declining industry. Residents voiced concerns over the perceived declining horse racing industry and the prospect of the development not being successful. Comments made included the closure of surrounding race tracks and the decline in patronage of race tracks.

- **Odors from the barns/stalls -**

Another concern is the perceived odors the 47 barns and 1,400 horse stalls will generate in the surrounding neighborhoods. Residents living adjacent to the site are concerned the location of the barns/horse stalls are close to their properties, which they believe will cause them to deal with odors and flies.

- **Environmental risks associated with development on a landfill -**

Another a concern community members raised regarding the proposed development is the environmental risks associated with the site being adjacent to the landfill and various components of the project that are proposed to be located on top of the Class I and Class III landfills. The concerns include having residential units near the landfill, the exposure of chemicals with development, and the greenhouses that are proposed to be directly on top of the Class I landfill. Community members want to ensure the safety of the community with any future development on the site.

In addition, residents requested the jobs created by the development to be prioritized for West Covina residents. Additional comments included support for the K-9 unit and Fire Department training facilities, the zipline and aerial park, the amphitheater, connection to the hiking trails, the solar farm, as well as the hotel.

Residents and stakeholders provided the following positive comments and feedback stating their support for the following:

- Community members are strongly in favor of the proposed training facilities for our City's K-9 unit and the Fire Department
- Residents are interested in the zipline and aerial part, stating it would be a unique use to the region.
- A lot of the comments made are in favor of the amphitheater, mentioning it would be a great venue for community events, including concerts in the park.
- Community members continue to express a desire to see the connection of the trail system to Galster Wilderness Park and Walnut City.
- Residents are also in favor of the solar farm on the landfill and want the City to consider partnering with the developer to using that solar power for the community.
- The hotel is also a supported component of the proposed development project. The hotel would provide more hospitality options in West Covina, including servicing the demand generated by Big League Dreams.

Community members also provided feedback on potential amenities they would like included in the proposed development, including a soccer complex, basketball courts, and other sports facilities for the community.

In order to further pursue the project, Singpoli is requesting to enter into an Exclusive Negotiation Agreement (ENA) for the purchase of the properties. The ENA would provide Singpoli and the City time to negotiate the terms of the sale and a disposition/development agreement. If Singpoli wishes to include portions of the landfill site not owned by the Agency, it would have to negotiate separately with the owners of those properties. Singpoli, as well as the City of West Covina, and the Successor Agency, would need to negotiate/re negotiate agreements already in place with regulatory agencies pertaining to the environmental regulations and conditions of the former landfill site (United States Environmental Protection Agency (EPA), California Department of Toxic Substances Control (DTSC), and among others). In addition, any proposed development project would have to go through the proper procedures to obtain federal, state, regional, and local approvals including the City's entitlement process and the California Environmental Quality Act (CEQA) requirements.

As part of the ENA, Singpoli will take into account the feedback received by the community and assess their proposed development to see what they can incorporate into the project. While Singpoli would like to incorporate all the comments by the community, they will need to ensure the project remains feasible both physically and economically.

Staff is recommending approval to execute an ENA with Singpoli to further pursue the feasibility of the proposed project and negotiate the price and terms of a Development and Disposition Agreement (DDA) for the site. Singpoli is requesting a one hundred eighty (180) day ENA to allow them time to determine if the project is feasible on the site. The ENA will offer Singpoli the opportunity to conduct necessary studies on the property and develop a conceptual development site plan and elevations. In addition, Singpoli will be required to provide a deposit to cover staff costs associated with the ENA with any remaining balance returned to Singpoli. If Singpoli provides the required deliverables within the timeframe, the City will be able to extend the ENA for an additional one hundred eighty (180) days. Terms of the ENA (Attachment No. 3):

- One Hundred Eighty (180) day ENA (expire on June 17, 2018)
- Deliverables required within first ninety (90) days include conceptual plans, elevations of proposed project and preliminary proforma of the project.
- Developer to provide a Deposit of \$15,000
- Possible one hundred eighty (180) day extension approved by City (expire on December 14, 2018)

The attached proposed development is preliminary and subject to change based on environmental factors associated with the site being a former landfill, mitigation measures required pursuant to the site's post closure plan, obtaining approval from the regulatory agencies, obtaining approval from the property owners, and City approval of the development project.

It is important to note that any studies or analysis done for the Singpoli project will be shared locally.

COUNCIL GOALS & OBJECTIVES:

This item supports the 2016-17 City Council Goal of *Optimize Development Land for the Brownfields (BKK) Land*.

LEGAL REVIEW:

The City Attorney's Office/Successor Agency Counsel has reviewed and approved the ENA as to form.

OPTIONS:

The Successor Agency has the following options:

1. Approve staff's recommendation; or
2. Pursue ENA with Singpoli for a different ENA term; or
3. Pursue an RFP for the sale of assets #30-#32 and sub-lease/transfer lease of Licensed Area; or
4. Put all three (3) assets #30-#32 on the open market; or
5. Provide alternative direction.

FISCAL IMPACT:

As the assets are still Successor Agency owned, any expenses associated with the disposition of the assets will be paid by the Recognized Obligation Payment Schedule (ROPS). As the properties will be sold under the LRPMP, pursuant to Redevelopment dissolution law, revenues from the sale will be shared among the various taxing entities. The City's share of sales proceeds is approximately 16 cents to the dollar. The appraised value of the land is \$6,380,000, which is less than the \$9.8 million in outstanding principal on the bonds. The fiscal impact to the City will vary if it is successful in obtaining ownership of the parcels or agreements for the taxing entities on the use of the properties.

Prepared by:



Paulina Morales
Economic Development & Housing Manager

Additional Approvals:

Approved via Email

Kimberly Hall Barlow
City Attorney

ATTACHMENTS:

Attachment No. 1 – Aerial of Agency Assets

Attachment No. 2 – Singpoli’s Site Program - Proposed Site Plan

Attachment No. 3 – Draft Exclusive Negotiation Agreement (ENA)

Development Opportunity Sites

Property: Open Space / Golf Course
APN: 8735-002-906, 909, 910
Site: 122.07 - Acres

Property: Licensed Area
APN: 8735-002-018
Site: 84.27 - Acres





SITE PLAN ILLUSTRATIVE

EXCLUSIVE NEGOTIATION AGREEMENT

BKK LANDFILL DEVELOPMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT (the “Negotiating Agreement”) is entered into on December 19, 2017, between **THE CITY OF WEST COVINA** a public body, corporate and politic (the “City”), the **SINGPOLI GROUP, LLC** (referred to as the “Developer”) (the Developer, and the Agency are collectively referred to herein as the “Parties”), on the terms and provisions set forth below.

RECITALS

The following recitals are a substantive part of this Negotiating Agreement.

A. The Council of the City of West Covina (the “City Council”) approved and adopted the Redevelopment Plan (the “Plan”) for the West Covina Redevelopment Project (the “Project Area”) by the merger of the Central Business district and Eastland Redevelopment Plans on December 21, 1993 by Ordinance No. 1928, and the City Council did duly pass and approve Ordinance No. 1951 on December 20, 1994, and did thereby amend the Plan.

B. In furtherance of the objectives of the Community Redevelopment Law of the State of California, Health and Safety Code Section 33000, *et seq.* (the “CRL”), the West Covina Redevelopment Agency acquired certain parcels of land from BKK Corporation by purchase and by license agreement. Subsequently, certain restrictions on use of some parcels were imposed by agreement with the United States Environmental Protection Agency (EPA), California Department of Toxic Substances Control (DTSC), and through various project approvals.

C. Pursuant to Assembly Bill 26x1 and Assembly Bill 1484 (hereinafter “Dissolution Bills”) as set forth in California Health and Safety Code Section 34163, *et seq.*, the West Covina Redevelopment Agency was dissolved and the West Covina Successor Agency was created for the purpose of carrying out the functions of the West Covina Redevelopment Agency. Subsequently the City of West Covina submitted to the Department of Finance a Long Range Property Management Plan which reflects the City of West Covina’s intent to sell most of the property making up the Site, which Plan was approved. The City of West Covina desires to review the feasibility and consider options for the development of those certain parcels of land, of approximately 215 acres, within the Project Area, located at the West Covina Sportsplex project site, City of West Covina, as shown on the site map attached hereto as Exhibit “A” (the “Site”).

D. The Parties agree and acknowledge that the purpose of this Negotiating Agreement is to establish a period during which the Developer shall have the exclusive right to negotiate with the City of West Covina the terms of an Disposition and Development Agreement or other agreement (the “DDA”) for the development of an equestrian training facility and hotel project (the “Proposed Development”). The City of West Covina is interested in reviewing the Proposed Development’s feasibility, and, if mutually agreed, to take all required legal steps to facilitate and implement the Proposed Development.

E. The Parties intend that during and for the period of negotiations set forth herein (the “Negotiating Period”) each will perform certain actions and fulfill certain obligations and responsibilities under this Negotiating Agreement.

THE CITY OF WEST COVINA AND THE DEVELOPER HEREBY AGREE AS FOLLOWS:

I. [100] Agreement to Negotiate

A. [101] Agreement to Engage in Good Faith Negotiations

The City of West Covina, by and through its staff and consultants, and the Developer, acknowledging that time is of the essence, agree for the Negotiation Period set forth below to negotiate diligently and in good faith to prepare a Disposition and Development Agreement (the “DDA”) and ancillary agreements to be considered for execution between the City of West Covina and the Developer, in the manner set forth herein with respect to the Proposed Development of the Site. The City of West Covina agrees, for the period set forth below, not to negotiate with any other person or entity regarding development of the Site or any portion thereof.

B. [102] Duration of this Negotiating Agreement

The duration of this Negotiating Agreement (the “Negotiation Period”) shall be one hundred eighty (180) days from December 19, 2017. If upon expiration of the Negotiation Period, the Developer has not provided the deliverables to the City of West Covina or engaged in substantial progress towards finalizing the deliverables required, as determined by the City of West Covina Board, then this Negotiating Agreement shall automatically terminate unless this Negotiating Agreement has been mutually extended by the City of West Covina and the Developer. However, if in the opinion of the City of West Covina City Council the Parties have made substantial progress in finalizing the deliverables and all other conditions of Developer’s Submissions, as set forth in paragraph 202, below, have been filed, the City of West Covina City Council in its sole and absolute discretion may extend the Negotiating Period for an additional one hundred eighty (180) days in order to process the DDA and other applications required by this Negotiating Agreement.

C. [103] Deposit

(a) Deposit. Prior to execution of this Negotiating Agreement, Developer shall deposit with the City of West Covina the sum of \$15,000.00 as a good faith deposit (the “Deposit”). The Deposit shall be promptly returned to the depositing party should this Negotiating Agreement expire or terminate, should a DDA not result from the Negotiating Agreement, except as provided below:

(b) City of West Covina Costs. The Developer hereby agrees that from the Deposit, City of West Covina may deduct expenses to pay out of pocket City of West Covina Costs before returning any remainder of the Deposit as provided for in subsection (a) above. As used in this Agreement, “out of pocket City of West Covina Costs” means all costs incurred by the City of West Covina in connection with the negotiation, execution and approval of a DDA and sale of the property subject to the DDA, except for time expended by salaried City of West Covina employees (which time shall be tracked for later reimbursement), including without limitation the following:

(i) the fees and expenses of any consultants to the City of West Covina engaged by the City of West Covina in connection with the property and DDA (such as engineers, legal counsel, and financial advisors),

(ii) the costs of appraisals, studies and other reports necessary or deemed advisable by City of West Covina staff in connection with the property and DDA,

(iii) costs of publication of notices, preparation and mailing of notices relating to sales of the property or approval and execution of the DDA,

(iv) any and all other actual costs and expenses incurred by the City of West Covina with respect to the sale of the property or the DDA.

II. [200] Development Concept

A. [201] Scope of Development

The negotiation hereunder shall be based on a development concept, which shall include the development on the Site of a horse training facility with amenities, Virtual Realty park, zipline and aerial adventure park, K-9 unit training facility, and a hotel and other related uses as approved by the City of West Covina to be included in the DDA.

B. [202] Developer Submissions

Within the times specified below the Developer must complete certain submissions to the City of West Covina. Failure of Developer to timely complete the specified submissions may result in termination of this Negotiating Agreement by City of West Covina.

1. Developer shall submit a concept development site plan and elevations (the Deliverables) within ninety (90) days from the effective date of this Negotiating Agreement.

2. Developer shall submit a preliminary project proforma within ninety (90) days from the effective date of this Negotiating Agreement which includes the following:

- Development costs, including construction and non-construction costs, and
- Project income and return

3. Other relevant business development information requested by the City of West Covina in order to allow the City Council to reasonably evaluate the terms of the DDA or related negotiations.

C. [203] Developer's Findings, Determinations, Studies and Reports

Upon reasonable notice, as from time-to-time requested by the City of West Covina, the Developer agrees to make oral and written progress reports advising the City of West Covina on all non-confidential or non-proprietary matters and all studies being made by the Developer. In the event the City of West Covina and the Developer do not enter into a DDA, and the Deposit, less costs incurred, is returned to the depositing party, the Developer shall submit to the City of West Covina copies of all studies and reports prepared for the proposed development of the Site by or for the Developer to the extent the Developer is legally able to do so, and the City of West Covina shall have the right to the use and benefit of all such non-confidential or non-proprietary studies and reports.

D. [204] Acquisition of the Site and Costs of Appraisals and Related Consulting Work

The consideration to be paid by the Developer to the City of West Covina will be established by the City of West Covina after negotiation with the Developer. Such consideration will be based upon such factors as market conditions, density of development, costs of development, risks of the City of West Covina, risks of the Developer, estimated or actual Developer profit, public purpose and/or reuse value for the uses permitted to be developed and financial requirements of the City of

West Covina, and will be subject to approval by the City of West Covina City Council after a public hearing or other public meeting as required by law. Any costs, fees and charges associated with the appraisals for the value of the land and/or costs associated for retaining and utilizing consultants necessary to evaluate the feasibility of the proposed projects or work related thereto shall be paid solely by the Developer. The selection of the appraiser(s) and other consultant(s) and type of appraisal report(s) or other consultant report(s) necessary for the project is at the sole discretion of the City of West Covina. Final sale of the Property may require approval from other agencies.

III. [300] The Developer

A. [301] Nature of the Developer and Tenant

The Developer is:

Singpoli Group, LLC, a California Limited Liability Company.

B. [302] Office of the Developer

The principal office of the Developer is:

25 E. Foothill Blvd.
Arcadia, CA 91006

C. [303] Full Disclosure

Pursuant to Section 202, the Developer will make full disclosure to the City of West Covina of its principals, officers, major stockholders, major partners, joint venturers and key managerial employees. Any significant change in the principals, associates, partners, joint venturers, negotiators, development manager, consultants, professional and directly-involved managerial employees of the Developer is subject to the approval of the City of West Covina. Notwithstanding the foregoing, the Developer reserves the right, subject to written approval of the City of West Covina, to join and associate with other entities in joint ventures, partnerships or otherwise for the purpose of developing the Site, provided that the Developer retains responsibility for day to day management of such entities and remains fully responsible to the City of West Covina hereunder.

IV. [400] City of West Covina's Responsibilities

[401] Redevelopment Plan

This Negotiating Agreement and the DDA are subject to the provisions of the Redevelopment Plan as it currently exists, as modified by the laws of California affecting the dissolution of Redevelopment Agencies. The City of West Covina will work diligently with Developer to obtain necessary approvals from all governmental agencies which may be necessary to allow the development proposed by Developer, but the City of West Covina makes no representation or warranty that the actual Proposed Development will be permitted by any agency whose consent or permission may be required.

[402] City of West Covina Assistance and Cooperation

The City of West Covina shall cooperate fully in providing the Developer with appropriate information and assistance for development of the Site, including existing documents, surveys, maps and reports concerning the Site and the feasibility of the Proposed Development.

[403] Environmental Documents

The City of West Covina of West Covina shall prepare any and all environmental documents required for the Proposed Development under the California Environmental Quality Act. The Developer shall cooperate with the City of West Covina in preparing environmental documents by supplying necessary technical data and other related information and/or development plans concerning the proposed development on the Site. Any costs, fees and charges associated with the requirements of the California Environmental Quality Act shall be paid by the Developer, unless otherwise agreed by the City of West Covina.

D. [404] Regulatory Agencies

The Developer shall cooperate with any and all regulatory agencies pertaining to the regulations on and monitoring of the former landfill located adjacent to the Site. Such agencies include but are not limited to The Department of Toxic Substances Control (DTSC), and the United States Environmental Protection Agency (EPA).

[405] City of West Covina Public Hearings

A DDA resulting from the negotiations hereunder shall become effective only after and if the DDA has been considered and approved by the City of West Covina Council at a public hearing, if required, and called for such purpose, and any other agencies whose approval is required

V. [500] No Predetermination of Agency Discretion

The Parties agree and acknowledge that nothing in this Negotiating Agreement in any respect does or shall be construed to affect or prejudice the exercise of the City of West Covina's discretion concerning consideration of any submittal by the Developer or any other party. Further, nothing in this Negotiating Agreement in any respect does or shall be construed to affect or prejudice the City of West Covina's discretion to consider, negotiate, or undertake the Proposed Development or any required approvals necessary by the laws, rules, and regulations governing the development of property.

VI. [600] Hazardous Materials and Development Assessment

The Developer at its sole cost and expense shall conduct or cause to be conducted environmental assessments, audits and/or testing and any other activities, audits, tests and assessments to determine the feasibility of the Proposed Development ("Tests") of the Site, as and if permitted by the owner of such property. The Developer shall have the right to terminate this Negotiating Agreement if the Developer is not reasonably satisfied with the findings and the recommendations made in the Tests, if either Party is unable to gain access to the property to conduct Tests or if the Development is determined not to be feasible in the sole discretion of the Developer. However, both Parties acknowledge and agree that specific representations or warranties, agreements, obligations, liabilities or responsibilities pertaining to the condition or title of the Site and/or the Proposed Development may be the subject of negotiations between the Parties in connection with the negotiations of any DDA or other agreement entered into by the Parties.

VII. [700] Costs and Expenses

Except as provided herein, each party shall be responsible for its own costs and expenses in connection with any activities and negotiations undertaken in connection with the performance of its obligations under this Negotiating Agreement.

VIII. [800] Non-Discrimination

Developer shall not discriminate against nor segregate any person, or group of persons on account of sex, sexual orientation, gender expression, race, color, marital status, pregnancy, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer establish or permit any such practice or practices of discrimination or segregation in the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

IX. [900] Real Estate Commission

Each party represents that it has not engaged any broker, agent or finder in connection with this transaction and each party agrees to hold the other party harmless from any claim by any broker, agent or finder retained by or claimed through such party.

X. [1000] Limitations of this Negotiating Agreement

By its execution of this Negotiating Agreement, the City of West Covina is not committing itself to or agreeing to undertake: (1) disposition of land to the Developer; (2) approval of the project concept, tenants or design; or (3) any other acts or activities requiring the subsequent independent exercise of discretion by the City of West Covina or any agency or department thereof.

This Negotiating Agreement does not constitute a disposition of property by the City of West Covina. Execution of this Negotiating Agreement by the City of West Covina is merely an agreement to enter into a period of exclusive negotiations according to the terms hereof reserving final discretion and approval by the City of West Covina as to any Disposition and Development Agreement and all proceedings and decisions in connections therewith.

XI. [1100] Governing Law

This Negotiating Agreement shall be constructed in accordance with the laws of the State of California.

XII. [1200] Attorney's Fees

In the event any action is taken by either party to this Negotiating Agreement to enforce this Negotiating Agreement, the prevailing party shall be entitled to recover from the other party its actual attorneys' fees and costs.

XIII. [1300] Implementation of Agreement

The City of West Covina shall maintain authority to implement this Negotiating Agreement through the City of West Covina City Manager (or his or her duly authorized representative). The City of West Covina City Manager shall have the authority to issue interpretations, waive provisions, and/or enter into certain amendments of this Negotiating Agreement on behalf of the City of West Covina so long as such actions do not materially or substantially change the uses or concept of the Proposed Development, or add to the costs incurred or to be incurred by the City of West Covina as specified herein.

XIV. [1400] Time of Essence

Time is of the essence of every portion of this Negotiating Agreement in which time is a material part. During the Negotiating Period the time periods set forth in this Negotiating Agreement for the performance of obligations hereunder shall apply and commence upon a complete submittal

of the applicable information or occurrence of an applicable event. In no event shall an incomplete submittal by the Developer trigger any of the City of West Covina's obligations for review, approval and/or performance hereunder: provided, however, that the City of West Covina shall notify the Developer of an incomplete submittal as soon as is practicable and in no event later than the applicable time set forth for the City of West Covina's action on the particular item in question.

XV. [1500] Entire Agreement

This Negotiating Agreement contains the entire understanding and agreement of the Parties, integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Negotiating Agreement as of the date set opposite their signatures. The effective date of this Negotiating Agreement is December 19, 2017.

“CITY OF WEST COVINA”

CITY OF WEST COVINA, a public body, corporate and politic

By: _____
Chris Freeland, City Manager

ATTEST:

Secretary

APPROVED AS TO FORM:

Kimberly Hall Barlow
City Attorney

“DEVELOPER”

SINGPOLI GROUP, LLC

By: _____
Kin Hui, CEO & President