

# TPC-NOLA, INC.

April 23, 2021

## **VIA EMAIL**

City of New Orleans  
Bureau of Purchasing  
Attn: Julien Meyer  
1300 Perdido Street, 4W07  
New Orleans, Louisiana 70112

RE: RFQ #961 - Six Flags/Jazzland Site Redevelopment  
Protest per Policy Memorandum No. 130

To Whom It May Concern:

TPC-NOLA, Inc., respectfully submits our protest to the RFQ 961 process.

## **STANDING**

TPC-NOLA, Inc., submitted one of the 6 definitive responsive responses to RFQ #961.

This is a timely filed protest. Per Policy Memorandum No. 130: "A protest of a Selection must be filed no later than the earlier of: (1) the close of business fifteen (15) business days after the Protester knew or should have known of the factual basis for the protest; or (2) the City's execution of any contract arising from the Selection."

The City issued a letter dated April 22, 2021 indicating that we were not included on the "short list" for this RFQ. This letter is the triggering event that would start the time deadline for which to file a protest.

## **BACKGROUND**

Since at least 2019, the City's Economic Development Office has been working on producing this RFQ. The RFQ's stated goals:

Objectives of the RFQ include the identification of a Team that can demonstrate the experience, capacity, and access to resources to:

- Bring the site back into commerce as an amenity that will benefit the community and make use of the site's assets and location.
- Create a catalytic economic development anchor project that will spur job-creation and investment in alignment with the City's priority economic development industries.
- Develop appropriate commercial, light industrial, and other uses for the site.
- Create a coherent, unified environment through integration of adjacent land uses and spaces, emphasizing green and blue site design elements.
- Spur vibrancy in the New Orleans economy by providing new, well-paying permanent jobs in priority industries and/or industries appropriate to the use.

Six definitive responsive responses were received by the February 23, 2021 deadline.

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On March 16, 2021 the RFQ Selection Committee met virtually, scored the responses, and orally agreed to short list to the three that scored the highest: Kiernan-West/S.H.I.E.L.D.1; SITUS Development; and TKTMJ/Henry. As we will demonstrate, this ranking was the result of inconsistent, biased, and subjective scoring.

It is the duty of each selection committee member to score objectively, without bias, and equitably. Whether due to haste or bias, individual score sheets show several inconsistencies that should not be present if responses were objectively reviewed. Further, comments made while crafting the RFQ and during the March 16<sup>th</sup> call demonstrate bias against a specific use with attempts to marginalize our response. Specifically, the drastic discrepancy by which 2 of the 5 members scored us gives us great pause.

TPC-NOLA	Qualifications	Financial	Staff	References	DBE	TOTAL	RANK
Jeffrey	18 (5 <sup>th</sup> )	5 (5 <sup>th</sup> )	15 (5 <sup>th</sup> )	10 (5 <sup>th</sup> )	10	58	5
Courtney	18 (3 <sup>rd</sup> )	15 (5 <sup>th</sup> )	20 (1 <sup>st</sup> )	15 (1 <sup>st</sup> )	10	78	2*
Nicole	10 (4 <sup>th</sup> )	0 (5 <sup>th</sup> )	15 (2 <sup>nd</sup> )	5 (5 <sup>th</sup> )	10	40	5
Gilbert	18 (3 <sup>rd</sup> )	16 (4 <sup>th</sup> )	20 (2 <sup>nd</sup> )	10 (5 <sup>th</sup> )	10	74	4
Norman	23 (1 <sup>st</sup> )	15 (3 <sup>rd</sup> )	20 (2 <sup>nd</sup> )	10 (3 <sup>rd</sup> )	10	78	3
Total	87	51	90	50	50	328	4

\*Tie at 1<sup>st</sup> with 80 points.

## INCONSISTENT SCORING

The committee members agreed on the #1 score and the #6 score. However, scores varied widely between the remaining four respondents. Even when the committee members generally agreed with each other, the scores allocated to each respondent were not equitably applied based on the content of the response, and in some cases, were not awarded based on the stated scoring criteria.

The scoring devolved into essentially a beauty contest, where each respondent's qualifications were judged on looks, rather than substance.

## QUALIFICATIONS

For this category, the stated scoring requirement was "Qualifications, specialized experience, and track record of success on similar projects [e.g. examples of successful redevelopment projects]". Rather than an objective review of 9 pages of resumes and 5 pages of successfully completed projects that resulted in similar scores by each committee member, our scores in this category varied widely. Indeed, Norman White awarded us more points than any other respondent (23/25), while Nicole Heyman scored us 5<sup>th</sup> (10/25). Ms. Heyman's stated rationale was "The responding entity did not identify its 'partner company' and therefore the ability to assess qualifications was limited." The score should have been based strictly on the information provided, of which there was ample.

Further, Jeffrey Schwartz's score, while within a few points of other respondents, also put ours in 5<sup>th</sup> place without any specific reasoning. Mr. Schwartz's comment referred only to our intended use, not our qualifications: "This respondent has been envisioning the redevelopment of the site for many years, and the respondent has additional entertainment sector experience. Largely revolves around the redevelopment of the site as an entertainment destination." Per the RFQ, "The selection committee will first evaluate and rank responsive submissions on the following selection Technical Criteria and weighting factors listed below and provide an assessment of that score." While respondents were encouraged to include future plans, it was not required and the scoring was not to be based on it.

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## FINANCIAL ABILITY

The RFQ instructions clearly indicated that all information submitted would be public. As such, we were not able to include information about our Partner Company. The RFQ Selection Committee meeting agenda included the option of the Committee going into Executive Session, which would have allowed us to answer questions about our Partner Company confidentially. We were not given this opportunity either.

Kiernan-West, conversely, has been afforded the opportunity to keep their financial submission confidential giving them an unfair advantage over all other groups. Via a public records request, pages 34-36 have been omitted from their response. According to their Table of Contents, page 35 contained their financial information. If that is indeed true, they are the only respondent to include such.

One respondent, TKTMJ/Henry has since indicated that they now have a potential finance partner. If they are allowed to significantly modify their submission to include added experience and financing, the same consideration should be afforded to all six respondents. Otherwise, there exists an uneven playing field which is in conflict with the Procurement Office's stated policies.

Per the RFQ, the technical scoring for this section was to be based on "Financial capacity, and financial and technical competence [e.g. financial statements, balance sheets, other financial or technical competencies]". Again, the scores should be based on an objective review of what was submitted. Presumably, Kiernan-West was the only respondent to include the requested information, which was on the redacted page. No other respondent, TPC-NOLA included, supplied financial statements, balance sheets, or other "proof" of financial competencies. With respect to the scoring in this category, we again see inconsistent and biased scoring. Again, we see Mr. Schwartz scores and rationales:

A Squared: 18/25 "Firm and partners are some of the larger names in real estate development and leasing, urban design and planning, construction, and development. While specific balance sheets and other financial information was not provided, the projects. A Squared is a new venture, with less demonstrated financial capacity in its own right."

SITUS: 19/25 "Team's financial capacity not presented, but letter and term sheet from family offices and PE."

TKTMJ/Henry: 18/25 "Some questions about capacity to do Master Development—experience is on specific construction and real estate transactions."

Conversely, Mr. Schwartz scored TPC-NOLA at 5/25. His only rationale being "Response purports to have financial backing, but provides not {sic} demonstrated evidence that such financing exists. After years of contemplating this project, I was hoping for some more details about the financing partner." The information submitted is no different in substance than A Squared, SITUS, or TKTMJ/Henry. Neither A Squared, SITUS, nor TKTMJ/Henry provided "demonstrated evidence" that any financing existed, yet Mr. Schwartz seems to have held our response to a different standard. Further, had we been able to submit information confidentially, as Kiernan-West was able to do, the details would have been available initially. The length of time that we have been pursuing the project should not impact this section of the technical score and is irrelevant.

Likewise, Ms. Heyman's scores among the respondents for this category were also inequitably applied.

A Squared: 5/25 "Financial capacity not proven. The submission did not include financial statements, balance sheets, other financial or technical competencies."

SITUS: 15/25 "Partnership with funder established but response lacks financial competence for developer."

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TKTMJ/Henry: 10/25 "Financial capacity evidenced."

TPC-NOLA: 0/25 "The responding entity did not identify its "partner company" nor did the responding entity provide proof of their financial capacity and therefore the ability to assess financial capacity and competency was limited."

Ms. Heyman's score allocations do not match her rationale, nor do they reflect the information provided in the proposals.

## STAFF

For this technical section, scores were based on "Staff and organizational capacity, demonstrated ability including, without limitation, responsiveness to public and community goals, cost control, work quality and the ability to meet schedules and deadlines [e.g. staff and CV/resumes assigned to project, organizational charts, work samples, percentage of time dedicated to project]." Four of the five members scored us in 1<sup>st</sup> or 2<sup>nd</sup> place in this category. Mr. Schwartz, again, scored us 5<sup>th</sup>. His rationale is incomplete: "This respondent provided a very clear sense of the timeline and their process for their redevelopment, and the qualifications of their principals. The response leaves some questions about the". What exact questions were left that resulted in his low marks?

## REFERENCES

A technical scoring section that should be rather straight forward. Did we include the required reference letters? Unfortunately, again, inequitable distribution of scores are seen. A Squared, who did not provide letters of reference, only contact information for references, received marks of 13, 10, 15, 15, and 8. SITUS, who did not provide letters of reference, only contact information for references, received marks of 13, 10, 15, 15, and 12. Conversely, TPC-NOLA included the required reference letters and received marks of 10, 15, 5, 10, and 10. The low mark was received again from Ms. Heyman who noted "references provided were dated and not responsive to this solicitation". The date of the reference letters is immaterial. It was not a requirement for the reference letters to be written specifically for this solicitation. As Ms. Heyman awarded 15/15 to A Squared and SITUS, both of whom did not have the required reference letters, our score of 5/15 is unjustified.

If bias and inequity can be demonstrated in this category, a simple one that should not be scored subjectively, it affected all categories.

## BIAS AND MARGINILIZATION

Scoring based on "opinion" renders the process subjective and vulnerable to favoritism and abuse. A study by Purdue University found that "subjective criteria elements can be used by committee members motivated by personal bias to manipulate the scoring process in order to satisfy a hidden agenda." (Letsinger, <https://docs.lib.purdue.edu/cgi/viewcontent.cgi?article=1020&context=techdirproj>)

It is known that our intended use, to create an entertainment destination resort, is not favored by some at City Hall. During the drafting of the RFQ, "entertainment" as a use was not included in the document until later in the process, and then, only because "it would raise eyebrows if it wasn't included" (V. Phipps email, 12/8/20). While NOLABA and the Office of Economic Development both proffered lists of targeted developers to Procurement, no entertainment owner or operator was included, only one aquatic design company. Indeed, there was no effort to try to attract an entertainment developer to the RFQ process.

While discussing the TKTMJ/Henry response, Mr. Schwartz stated "We're not evaluating this on specific proposals here". And yet the main comments from three of the committee members about the TPC-NOLA project dwelled on our specific proposed use, with two members questioning the viability. Ms. Sedgewick-Wong stated that she "would have liked to see information about market demand in the local market for entertainment uses such as that proposed." Ms. Heyman opined "it's not clear that there is ...

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demand for this type of development and would like to see more to see what that demand really is". It is not a leap to speculate that such bias against this specific use had an impact on scoring given the inconsistencies and inequities previously noted.

Subjective scoring also opens the door for gender bias. According to a study by the Department of Defense:

Research reveals that unconscious gender bias permeates society and continues to perpetuate gender inequality even when equality has been legally established. Many unconscious biases are rooted in gender stereotypes that reflect traditional gender roles and norms, such as that of women as housewives and caretakers or men as career-driven breadwinners. Even though these traditional gender roles are no longer standard in society, research has found that most people continue to have implicit biases toward these stereotypes. (Gaddes, et al;  
[https://dacowits.defense.gov/Portals/48/Documents/General%20Documents/RFI%20Docs/Dec2018/Insight\\_RFI%204.pdf?ver=2018-12-08-000555-027](https://dacowits.defense.gov/Portals/48/Documents/General%20Documents/RFI%20Docs/Dec2018/Insight_RFI%204.pdf?ver=2018-12-08-000555-027))

It is no secret that commercial development is a male dominated industry. Females comprise less than 4% of commercial or industrial developers in the U.S. Women in the industry face perception bias and confirmation bias routinely. Perception bias takes the form of letting stereotypes about groups influence our thinking about individuals. For example, the stereotype of a successful commercial developer being male. Confirmation bias is the tendency to seek information that confirms our pre-existing beliefs. (Neber; <https://www.nawrb.com/breaking-down-the-barriers-unconscious-bias-and-its-effects-on-women-in-commercial-real-estate-careers/>)

By way of introducing the TPC-NOLA response, Mr. Schwartz led with "This respondent is obviously one in Ms. Pope who is very well known to the city and the IDB and very grateful for Ms. Pope for continuing to stay at the table." TPC-NOLA, Inc., is a Louisiana corporation. It is not an individual. Every other respondent was referred to by company name. Indeed, Drew Brees' name was never mentioned during the discussion of the Kiernan/S.H.I.E.L.D.1 proposal.

By referring to Ms. Pope specifically, Mr. Schwartz reinforced that it was a woman-led company, implying that it was a "one woman show", thereby marginalizing the entire TPC-NOLA team, several of whom were on the call. In a preliminary list of potential targeted developers created by the Office of Economic Development and last saved by Mr. Schwartz, "Tanya Pope???" was listed, while MCC Group was listed by company name, not as "Joe Jaeger". This again illustrates gender bias and the marginalization of TPC-NOLA's efforts and experience.

There was no substantive difference between A Squared's and TPC-NOLA's financial information. If anything, TPC-NOLA's was stronger. The main difference was the gender of each company's lead. Yet Mr. Schwartz awarded A Squared 18/25 points, versus TPC-NOLA's 5/25. This disparity cannot be justified objectively. Rather, it indicates a perception bias that the male-led teams were more capable than a woman-led team. Further, Mr. Schwartz's scoring sheet comments indicate a confirmation bias as he focused on elements that confirmed previous misinformation about our efforts, rather than reviewing the information supplied objectively.

Mr. Schwartz's comments during the March 16<sup>th</sup> meeting marginalized TPC-NOLA and may have also impacted the scores of his fellow committee members, effectively spoiling the scoring.

When scores are tallied utilizing only three committee members who appear to have had the most consistent scoring between respondents, omitting Mr. Schwartz and Ms. Heyman, the overall results are a tighter grouping of four respondents.

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TOTALS	Qualifications	Financial	Staff	References	DBE	TOTAL	RANK
A Squared	53	40	45	33	28	199	5
Kiernan/Brees	64	66	63	40	30	263	1
Pace	20	5	25	2	24	76	6
Situs	58	63	57	37	30	245	2
TKTMJ/Henry	54	51	52	41	29	227	4
TPC-NOLA	59	46	60	35	30	230	3

## SUMMARY

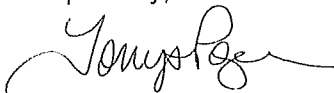
Respondents to an RFQ are entitled to fair, impartial, and equitable scoring. The first round of scoring for RFQ#961 was to be based on technical merits. As a group, the committee failed to objectively score the respondents on the technical merits.

## RELIEF REQUESTED

We respectfully request to be included in the remainder of the RFQ process as a "short list" respondent. Further, we request that the proceedings, future scoring, and final determination be conducted in a non-biased, objective and equitable manner.

It has been indicated that the short list will be scored again. In order to prevent another round of inequitable scoring, we request that the scoring matrix be clearly defined so as to prevent bias and inequity, that the scoring matrix be distributed to all respondents ahead of the next meeting, and that all respondents have the opportunity to address specific questions relevant to the revised scoring matrix that may not have been included in the original RFQ.

Respectfully,



Tonya Pope  
President

Local team representative:

Tonya Pope, President  
TPC-NOLA, Inc.  
10175 Mammoth Ave.  
Baton Rouge, LA 70814

RFQ@JazzlandPark.com

**Sent:** Tuesday, December 8, 2020 5:08 PM

**To:** Victoria Adams Phipps <[vphipps@nolaba.org](mailto:vphipps@nolaba.org)>; Louis David <[ldavid@nolaba.org](mailto:ldavid@nolaba.org)>; Jeffrey E. Schwartz <[jeschwartz@nola.gov](mailto:jeschwartz@nola.gov)>

**Cc:** Elle M. Schmidt <[elle@thespearsgroup.com](mailto:elle@thespearsgroup.com)>; Valerie Huntley <[vhuntley@nolaba.org](mailto:vhuntley@nolaba.org)>

**Subject:** Re: Upcoming Six Flags / Jazzland RFQ

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Agreed. And thanks! Looks great to me.

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**From:** Victoria Adams Phipps <[vphipps@nolaba.org](mailto:vphipps@nolaba.org)>

**Sent:** Tuesday, December 8, 2020 5:04 PM

**To:** Courtney A. Stuckwisch Wong <[castuckwisch@nola.gov](mailto:castuckwisch@nola.gov)>; Louis David <[ldavid@nolaba.org](mailto:ldavid@nolaba.org)>; Jeffrey E. Schwartz <[jeschwartz@nola.gov](mailto:jeschwartz@nola.gov)>

**Cc:** Elle M. Schmidt <[elle@thespearsgroup.com](mailto:elle@thespearsgroup.com)>; Valerie Huntley <[vhuntley@nolaba.org](mailto:vhuntley@nolaba.org)>

**Subject:** RE: Upcoming Six Flags / Jazzland RFQ

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Thanks Courtney. I've made all of the requested changes, and took the liberty of including "entertainment" as a use case. I think it would raise eyebrows if it wasn't included.

Please let me know if there are any additional needs.

Best,  
VAP



**Victoria Adams Phipps** | Chief Strategy Officer

**New Orleans Business Alliance** | 1250 Poydras Street, Suite 2150 | New Orleans, LA 70113

[vphipps@nolaba.org](mailto:vphipps@nolaba.org) | [www.nolaba.org](http://www.nolaba.org)

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<b>Company</b>	<b>Email</b>	<b>Name</b>
Alembic Community Development	<a href="mailto:ileit@alembiccommunity.com">ileit@alembiccommunity.com</a>	Jon Leit
Aquatic Development Group	<a href="mailto:Ray.Lauenstein@aquaticgroup.com">Ray.Lauenstein@aquaticgroup.com</a>	Ray Lauenstein
Aquatic Development Group	<a href="mailto:matthew.johnson@aquaticgroup.com">matthew.johnson@aquaticgroup.com</a>	Matthew Johnson
Beta Group	<a href="mailto:rglapion@betagroupgc.com">rglapion@betagroupgc.com</a>	Roy Glapion
Brookfield		
Catellus	<a href="mailto:info@catellus.com">info@catellus.com</a>	General Info
Catellus	<a href="mailto:gweaver@catellus.com">gweaver@catellus.com</a>	Greg Weaver
Corenet		
Corporate Realty	<a href="mailto:alavin@corp-realty.com">alavin@corp-realty.com</a>	Austin Lavin
Corporate Realty	<a href="mailto:msiegel@corp_realty.com">msiegel@corp_realty.com</a>	Mike Siegel
Eskew + Dumez + Ripple	<a href="mailto:mripple@eskewdumezripple.com">mripple@eskewdumezripple.com</a>	Mark Ripple
Fuqua Development	<a href="mailto:jeff.fuqua@fuquadev.com">jeff.fuqua@fuquadev.com</a>	Jeff Fuqua
Green Coast Enterprises	<a href="mailto:will@greencoastenterprises.com">will@greencoastenterprises.com</a>	Will Bradshaw
Green Coast Enterprises	<a href="mailto:jackie@greencoastenterprises.com">jackie@greencoastenterprises.com</a>	Jackie Dadakis
Gulf Coast Housing Partnership	<a href="mailto:laborde@gchp.net">laborde@gchp.net</a>	Kathy Laborde
HRI Properties	<a href="mailto:pkabacoff@hriproperties.com">pkabacoff@hriproperties.com</a>	Pres Kabacoff
HRI Properties	<a href="mailto:jcollen@hriproperties.com">jcollen@hriproperties.com</a>	Josh Collen
HRI Properties	<a href="mailto:tleonhard@hriproperties.com">tleonhard@hriproperties.com</a>	Tom Leonard
IAMC		
IEDC		
Iris Development	<a href="mailto:cdoucette@irisdevco.com">cdoucette@irisdevco.com</a>	Curtis Doucette
Jacoby Development	<a href="mailto:avari@jacobydevelopment.com">avari@jacobydevelopment.com</a>	Armand Vari
JCH Development	<a href="mailto:tara@jchpropertiesplus.com">tara@jchpropertiesplus.com</a>	Tara Hernandez
Kupperman Companies	<a href="mailto:zach@kuppermancompanies.com">zach@kuppermancompanies.com</a>	Zach Kupperman
Latter & Blum	<a href="mailto:lconway@latterblum.com">lconway@latterblum.com</a>	Lacey Conway
LED	<a href="mailto:steve.baham@la.gov">steve.baham@la.gov</a>	Steve Baham
Manning Architects	<a href="mailto:wmanning@manningarchitects.com">wmanning@manningarchitects.com</a>	Walter Manning
Max Derbes	<a href="mailto:gerard@maxderbes.com">gerard@maxderbes.com</a>	Gerard Henry
Max Derbes	<a href="mailto:peter@maxderbes.com">peter@maxderbes.com</a>	Peter Roy
Max Derbes	<a href="mailto:ben@maxderbes.com">ben@maxderbes.com</a>	Ben Derbes
MCC Group	<a href="mailto:joseph.jaeger@mccgroup.com">joseph.jaeger@mccgroup.com</a>	Joe Jaeger
New Orleans Redevelopment Fund	<a href="mailto:cullan@norf.build">cullan@norf.build</a>	Cullan Maumus
Ogden Development	<a href="mailto:rogerogden@ogdendev.com">rogerogden@ogdendev.com</a>	Roger Ogden
Perkins + Will	<a href="mailto:chi.lee@perkinswill.com">chi.lee@perkinswill.com</a>	Chi Lee
Perkins + Will	<a href="mailto:stephen.coulston@perkinswill.com">stephen.coulston@perkinswill.com</a>	Stephen Coulston
Pope & Land	<a href="mailto:kbillings@popeandland.com">kbillings@popeandland.com</a>	Kirk Billings
Provident Realty	<a href="mailto:pknowlton@providentrealty.net">pknowlton@providentrealty.net</a>	Paul Knowlton
Russell Glen	<a href="mailto:tgr Maiden@russellglen.com">tgr Maiden@russellglen.com</a>	Terrence Maiden
Seawall	<a href="mailto:tmanekin@seawalldevelopment.com">tmanekin@seawalldevelopment.com</a>	Thibault Manekin
Sherman Strategies	<a href="mailto:mike@shermanstrategiesllc.com">mike@shermanstrategiesllc.com</a>	Mike Sherman
SIOR		
Stirling Properties	<a href="mailto:mmayer@stirlingprop.com">mmayer@stirlingprop.com</a>	Marty Mayer
Stirling Properties	<a href="mailto:lstirling@stirlingprop.com">lstirling@stirlingprop.com</a>	Lewis Stirling
Tanya Pope???		
The Cordish Companies	<a href="mailto:zed@cordish.com">zed@cordish.com</a>	Zed Smith
The Cordish Companies	<a href="mailto:info@cordish.com">info@cordish.com</a>	General Info



The Domain Companies	<a href="mailto:mschwartz@thedomaincos.com">mschwartz@thedomaincos.com</a>	Matt Schwartz
The Domain Companies	<a href="mailto:cbrierre@thedomaincos.com">cbrierre@thedomaincos.com</a>	Christian Brierre
ULI		
Wisznia Architecture and Development	<a href="mailto:mwisznia@wisznia.com">mwisznia@wisznia.com</a>	Marcel Wisznia
Woodward Design Build	<a href="mailto:phflower@woodwarddesignbuild.com">phflower@woodwarddesignbuild.com</a>	Paul Flower
Woodward Design Build	<a href="mailto:whoffman@woodwarddesignbuild.com">whoffman@woodwarddesignbuild.com</a>	Bill Hoffman
Jim Wilson & Associates	<a href="mailto:info@jwacompanies.com">info@jwacompanies.com</a>	
Gulf States Real Estate Services	<a href="mailto:msaucier@gsres.com">msaucier@gsres.com</a>	Mike Saucier
Wainer Companies	<a href="mailto:bruce@wainerco.com">bruce@wainerco.com</a>	Bruce Wainer
Wendell Armant	<a href="mailto:wendellarmant@gmail.com">wendellarmant@gmail.com</a>	
Waggoner and Ball	<a href="mailto:president@friendsofculture.org">president@friendsofculture.org</a>	requested to be on the list

Jon Leit list

Prologis  
Houston, TX  
 1296 North Post Oak Road  
 Houston, TX 77055  
 United States  
 713 682 2292  
Atlanta, GA  
 3475 Piedmont Road NE, Suite 650  
 Atlanta, GA 30305  
 United States  
 404 760 7200  
<https://www.prologis.com/real-estate-developer>

Brookfield Properties  
 Brookfield Place New York  
 250 Vesey Street, 15th Floor  
 New York, New York 10281  
 212 417 7000  
<https://www.brookfieldproperties.com/development/logistics/>

Logistics Property Company, LLC  
 Kent Newsom, EVP - South Region  
 469-706-9102  
[knewsom@logisticspropco.com](mailto:knewsom@logisticspropco.com)  
<https://logisticspropco.com/development/>

Dermody Properties

Greg Ryan, Partner - Southeast

[gryan@dermody.com](mailto:gryan@dermody.com)

404-596-8625

<https://dermody.com/>

IDI Logistics

MEMPHIS

Memphis, TN

901-680-7100

<https://www.idilogistics.com/expertise/#development>

Attendees

Eugene Ben

Branden Henry

Edway Blouen

Tonya Pope