City of
Santa Monica®

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May 29, 2012

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Mark Hill, Project Budget Management
Department of Finance
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Re: ***City of Santa Monica - ROPS February – June 2012***

Dear Department of Finance Administrators:

Our office represents the City of Santa Monica ("City") in its capacity as the Successor Agency ("Successor Agency") to the former Santa Monica Redevelopment Agency ("RDA") in accordance with ABx1 26. The Successor Agency submitted its February – June 2012 Recognized Obligation Payment Schedule ("ROPS") and July – December 2012 ROPS to the Department of Finance on April 26, 2012.

On May 22, 2012, the DOF issued a letter, confirming that all payments listed on the July – December 2012 ROPS would be authorized, but rejecting items 9, 11, and 13 plus the administrative cost allowance on the January – June 2012 ROPS (see enclosed copy of the May 22 letter). The Successor Agency disputes DOF's asserted positions on the rejected items in the January – June 2012 ROPS.

I.

<u>The CCJUP payments to the School District are enforceable obligations.</u>

A. The School District payments were included on the Amended EOPS, which the DOF accepted.

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DOF's May 22, 2012 letter disallowed two payments listed on the January – June 2012 ROPS, which were scheduled to be paid to the Santa Monica Malibu Unified School District (the "School District"), a school entity within the meaning of Health and Safety Code section 34183(a)(4). The first payment, in the amount of $4,065,000, was paid by the former RDA to the School District in January 2012 from 2011 Tax Allocation Bond proceeds.[1] The second payment, in the amount of $4,065,000, is scheduled to be paid in June 2012, from Redevelopment Property Tax Trust Fund ("RPTTF"). The payments are in accordance with the Civic Center Joint Use Agreement ("CCJUA"), which was executed by the former RDA and School District and dated June 28, 2011. The DOF rejected both payments on the grounds that the payments were made in accordance with a contract executed after June 27, 2011.

The Successor Agency objects to DOF's rejection because the CCJUA payments were listed on the former RDA's amended enforceable obligation payment schedule ("Amended EOPS"), which was forwarded to the DOF for review on January 25, 2011 and remained in effect through May 1, 2012.[2] While DOF staff made inquiries with staff about certain payments on the Amended EOPS, including the CCJUA payments, the DOF never returned the Amended EOPS to the former RDA or Successor Agency (after February 1, 2012) for reconsideration, in accordance with the procedure set forth under Health and Safety Code section 34169(i). By not returning the Amended EOPS for reconsideration, DOF effectively approved the Amended EOPS, including the CCJUA payments. Consequently, the former RDA made the January 2012 CCJUA payment to the School District in reliance upon DOF's actions.

B. The CCJUA payments occurred as the result of actions taken before June 27, 2011.

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[1] The January – June 2012 ROPS needs to be corrected to reflect that the January 2012 payment was made from bond proceeds rather than the RPTTF.

[2] The California Supreme Court reformed the ROPS reporting dates in Health and Safety Code section 34177(l)(3) from January – June 2012 to May – June 2012, as follows:

> Accordingly, we exercise our power of reformation ***and revise each effective date or deadline for performance of an obligation in part 1.85 of division 24 of the Health and Safety Code (§§ 34170-34191) arising before May 1, 2012 to take effect four months later****.*...
>
> Where a provision imposes obligations in both this and subsequent fiscal years, we reform the provision only as it relates to obligations arising before May 1, 2012. Thus, for example, section 34183 requires certain calculations from county auditor-controllers by January 16, 2012 and June 1, 2012, for this fiscal year, and on January 16 and June 1 in subsequent years. (§ 34183, subd. (a).). ***We reform the January 16, 2012 deadline by extending it to May 16, 2012, and leave the remaining deadlines unchanged.*** *(Emphasis added.)*

California Redevelopment Association v. Matosantos (2011) 53 Cal.4th 231.

The Successor Agency also objects to DOF's rejection of both CCJUA payments because the effective date of the CCJUA was preceded by authorizing resolutions of the former RDA and School District on August 10, 2010 and August 18, 2010, respectively, copies of which are enclosed (and were already provided to DOF) for reference. The approvals for RDA expenditures contemplated by the CCJUA thus occurred well before June 27, 2011. Moreover, the School District incurred over $4 million of capital expenditures in reliance upon such approvals (see enclosed correspondence from the School District).

C. The effective date of AB1x 26 is not June 28, 2011, but is instead June 30, 2011.

The Successor Agency further objects to DOF's rejection of these payments on the grounds that AB1x 26 was a "trailer budget bill" that did not become effective until Governor Brown signed the 2011 Budget Bill (SB 87) on June 30, 2011. Article 4, section 12(4) of the California Constitution provides as follows:

> (4) Until the budget bill has been enacted, the legislature shall not send to the Governor for consideration any bill appropriating funds for expenditure during the fiscal year for which the budget bill is to be enacted, except emergency bills recommended by the Governor or appropriations for the salaries and expenses of the Legislature.

AB1x 26 purported to be a bill appropriating funds for expenditure (see preamble). AB1x 26 was not an emergency bill or a bill for appropriation of salaries and expenses of the Legislature. Consequently, in accordance with the State Constitution, ABx1 26 was not effective until June 30, 2011. Obviously, the DOF cannot interpret AB1x 26 in a way that violates the State's Constitution. Accordingly, the DOF has no authority to unilaterally reject the CCJUA payment on the grounds that the CCJUA was executed on June 28, 2011, two days before the State's budget was approved. Therefore, the effective date of AB1x 26 cannot be June 28, 2011.

II.

The Affordable Housing Agreement is also an enforceable obligation

The May 22, 2012 DOF letter also disallowed a payment to the City's Housing Authority, which was listed on the January – June 2012 ROPS. The payment, in the amount of $1,000,000, is scheduled to be made in accordance with a Cooperation Agreement, entered into by and between the former RDA and City in 2003. This Cooperation Agreement (enclosed for reference) was assigned by the City to the Housing Authority on January 26, 2012, to carry out the City's responsibility for maintaining the former RDA's housing assets, which were transferred to the City in accordance with Health and Safety Code section 34176(a), which provides as follows:

> (a) The city, county, or city and county that authorized the creation of a redevelopment agency may elect to retain the responsibility for performing housing functions previously formed by a redevelopment agency. If a city, county, or city and county elects to retain responsibility for performing housing functions previously formed by a redevelopment agency, all rights, powers, duties, and obligations ... shall be transferred to the city, county, or city and county.

As with the CCJUA payment, the Successor Agency objects to DOF's rejection of the $1,000,000 payment to the Housing Authority on the grounds that the obligation to make the annual payment occurred in 2003, well before DOF's artificial June 27, 2011 deadline. But more importantly, the payment covers the City's costs (as implemented by its Housing Authority) for monitoring affordability covenants and performing related duties pursuant to applicable provisions of the Community Redevelopment Law, as specifically authorized in Health and Safety Code section 34176(c). Such payment should be recognized by the DOF as an "enforceable obligation" under Health and Safety Code section 34171(d)(1) because this payment is necessary to implement the former RDA's housing duties relating to *existing affordable housing stock.* DOF's rejection of this annual payment is thus improper and will inhibit the City from performing affordable housing obligations as required by State law.

III.

The forfeiture of the 1978 Promissory Notes constitutes an invalid forfeiture

The May 22, 2012 DOF letter disallows a June 2012 payment in the amount of $1,580,308, which is owed to the City and listed on the January – June 2012 ROPS, due to the fact that the notes constitute an agreement between the City and former RDA.

The promissory notes were issued by the former RDA to the City in October 1978 in consideration for the City's transfer of parcels to the Agency ("City Parcels"), which were then transferred to Santa Monica Associates, the developer of the Santa Monica Place shopping mall and public parking facilities. Concurrent with these transfers, the former RDA issued the Downtown Redevelopment Project Parking Lease Revenue Bonds, which were issued to finance the construction of the Santa Monica Place shopping mall public parking facilities (see enclosed copy of November 2, 1978 Official Statement). The public parking facilities were then leased back to the City and the lease payments from the City were pledged as security for repayment of the Lease Revenue Bonds. The payment obligation to the City for the City Parcels was evidenced by an October 24, 1978 resolution of the City Council (enclosed for reference). The City Parcels were acquired by the City using its general funds.

The promissory notes qualify as an "enforceable obligation" within the meaning of Health and Safety Code section 34171(d)(2) because the notes were issued by the former RDA at

the time of issuance of the Lease Revenue Bonds to finance a redevelopment project undertaken by the former RDA, which was well before December 31, 2010. The transfer of the City Parcels was necessary to facilitate the redevelopment and securitize lease revenues for the bond payments. Consequently, any denial of repayment on the promissory notes would result in an improper forfeiture of the City's general funds and an indirect transfer of City assets to the other affected taxing entities, constituting a breach of the City's constitutional protection under Proposition 1A (2004) and fiduciary duty to the City as an affected taxing entity under AB1x 26.

IV.

The DOF improperly applied the administrative allowance formula under Health and Safety Code section 34171(b)

DOF's May 22, 2012 letter states that the Successor Agency's administrative cost allowance on the January – June 2012 ROPS must be reduced from $1,224,104 to $376,121.The DOF's purported justification is that its revision takes into account the payment amounts that DOF disallowed to the School District, Housing Authority, and City, each of which the City believes was done in error. Compounding those errors, DOF appears to be applying a formula to calculate the administrative cost allowance which has no legal support. DOF's asserted method of calculating the administrative cost allowance does not comply with the formula provided under Health and Safety Code section 34171(b).

The Successor Agency's calculation of the "administrative cost allowance" for the January – June 2012 fiscal year is based upon Health and Safety Code section 34171(b), which states as follows:

> (b) "Administrative cost allowance" means an amount that, subject to the approval of the oversight board, is payable from property tax revenues of up to 5 percent *of the property tax allocated to the successor agency for the 2011-12 fiscal year* and up to 3 percent of the property tax allocated to the Redevelopment Obligation Retirement Fund.

According to Los Angeles County Auditor-Controller remittance statements, the Successor Agency received $32.5 million in property tax allocated for the 2011-12 fiscal year. Five percent of $32.5 million equals $1.625 million. However, the Successor Agency only listed $1.224 of administrative expenses as its "administrative cost allowance". Consequently, the Successor Agency listed an administrative cost allowance on the January-June ROPS that is ***25% less than*** the 5% cap allowed under Section 34171(b). The DOF has, without any approval from the oversight board, imposed a 5% cap on the amount of property taxes allocated RPTTF, *which excludes any amounts that the DOF does not consider as an enforceable obligation.* In doing this, it has ignored the plain language of Section 34171(b). Health and Safety Code section

34171(b) by its clear language fails to support DOF's calculation. However, Health and Safety Code section 34171(b) supports the Successor Agency's calculation.

DOF has also failed to honor the clear legislative intent to differentiate between the administrative cost allowance in fiscal year 2011-12 (which is the transition year for enforcing the Successor Agency's obligations) and all subsequent fiscal years. Consequently, the Successor Agency objects to DOF's unilateral reduction of the Successor Agency's properly calculated administrative cost allowance.

In closing, our office sends this letter to clearly delineate the Successor Agency's position that the items listed on the January – June 2012 ROPS are enforceable. I hope that in the next few days we can reach agreement on this. It is in the spirit of resolving differences amicably that this information is provided to DOF. Nonetheless, the City, acting in its capacity as the Successor Agency, does not intend to waive any constitutional, statutory, legal, or equitable rights. It expressly reserves any and all rights, privileges, and defenses available whether existing under law or equity, including but not limited to all legal rights arising under Article I, Section 10 of the United States Constitution and Article I, Section 9 of the California Constitution.

Thank you for your consideration,

MARSHA JONES MOUTRIE
City Attorney

MJM/bcm

Enclosures

cc: Ms. Kristina Burns, Program Specialist III, Los Angeles County
Veronica Green, DOF Analyst
Rod Gould, City Manager, City of Santa Monica
Joseph Lawrence, Assistant City Attorney
Andy Agle, Director of Housing and Economic Development, City of Santa Monica
Gigi Decavalles, Finance Director, City of Santa Monica
Susan Y. Cola, Deputy City Attorney, City of Santa Monica
Murray O. Kane, Special Counsel, Kane Ballmer & Berkman

DEPARTMENT OF FINANCE

EDMUND G. BROWN JR. • GOVERNOR

915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

May 22, 2012

Tina Rodriguez, Administrative Services Officer
City of Santa Monica
1685 Main Street
Santa Monica, CA 90401

Dear Ms. Rodriguez:

Subject: Recognized Obligation Payment Schedule Approval Letter

Pursuant to Health and Safety Code (HSC) section 34177 (l) (2) (C), the City of Santa Monica Successor Agency (City) submitted Recognized Obligation Payment Schedules (ROPS) to the California Department of Finance (Finance) on May 16, 2012, for the January through June 2012 and July through December 2012 ROPS periods. Finance is assuming appropriate oversight board approval. Finance has completed its review of your ROPS, which may have included obtaining clarification for various items.

HSC section 34171 (d) lists enforceable obligation (EO) characteristics. Based on a sample of line items reviewed and application of the law, the following do not qualify as EOs:

January through June 2012 ROPS

- Items 9 and 11 – Civic Center Joint Use and Affordable Housing agreements totaling $5 million. HSC section 34163 (b) prohibits a redevelopment agency from entering into a contract with any entity after June 27, 2011. It is our understanding that contracts for these line items were awarded after June 27, 2011.

- Item 13 – 1978 Promissory Notes in the amount of $1.6 million. HSC section 34171 (d) (2) states that agreements, contracts, or arrangements between the city, county, or city and county that created the redevelopment agency and the former redevelopment agency are not enforceable obligations.

- Administrative cost exceeds allowance by $847,983 out of $1,224,104 claimed. HSC section 34171 (b) limits the fiscal year 2011-12 administrative cost allowance to five percent of the property tax allocated to the successor agency or $250,000, whichever is greater. Five percent of the property tax allocated is $376,121.

Except for the items noted above that are disallowed in whole or in part as enforceable obligations, Finance is approving the remaining items listed in your ROPS for both periods. This is our determination with respect to any items funded from the Redevelopment Property Tax Trust Fund for the June 1, 2012 property tax allocations. If your oversight board disagrees with our determination with respect to any items not funded with property tax, any future resolution of the disputed issue may be accommodated by amending the ROPS for the appropriate time

period. Items not questioned during this review are subject to a subsequent review, if they are included on a future ROPS. If an item included on a future ROPS is not an enforceable obligation, Finance reserves the right to remove that item from the future ROPS, even if it was not removed from the preceding ROPS.

Please refer to Exhibit 12 at http://www.dof.ca.gov/assembly_bills_26-27/view.php for the amount of Redevelopment Property Tax Trust Fund (RPTTF) that was approved by Finance based on the schedule submitted.

As you are aware the amount of available RPTTF is the same as the property tax increment that was available prior to ABx1 26. This amount is not and never was an unlimited funding source. Therefore as a practical matter, the ability to fund the items on the ROPS with property tax is limited to the amount of funding available in the RPTTF.

Please direct inquiries to Evelyn Suess, Supervisor or Michael Barr, Lead Analyst at (916) 322-2985.

Sincerely,

Mark Hill

MARK HILL
Program Budget Manager

cc: Ms. Kristina Burns, Manager, Community Redevelopment Administration Section, Property Tax Division, Los Angeles County Auditor Controller

Santa Monica Malibu Schools

Extraordinary Public Education

August 26, 2010

CITY OF
SANTA MONICA

AUG 30 2010

RECEIVED

Andy Agle
Director of Housing and Economic Development Department
The City of Santa Monica Redevelopment Agency
1901 Main Street
Suite #D
Santa Monica, CA 90405

Dear Mr. Agle:

At the August 18, 2010 Board Meeting, the Santa Monica-Malibu Unified School District's Board of Education adopted Resolution No. 10-06, *Adopt Resolution No. 10-06 of the Santa Monica-Malibu Unified School District Making Certain Findings Pursuant to Health and Safety Code Section 33445 on the Civic Center Joint Use Project.*

Enclosed is a copy of the approved Board action, along with a copy of the Resolution, which has been signed by Barry Snell, Board President and Tim Cuneo, Superintendent and Secretary to the Board of Education.

If you have any questions or need further information, please do not hesitate to give me a call at (310) 450-8338, extension 70-269.

Thank you.

Sincerely yours,

Janece L. Maez, Assistant Superintendent
Business and Fiscal Services
Chief Financial Officer

JLM/dms
ENCLS
cc: Tim Cuneo, Superintendent
Stuart Sam, Director of Facility Improvement Projects
Judith Meister, CCJUP Consultant

TO: BOARD OF EDUCATION

ACTION/CONSENT
08/18/10

FROM: TIM CUNEO / JANECE L. MAEZ

RE: ADOPT RESOLUTION NO. 10-06 OF THE SANTA MONICA-MALIBU UNIFIED SCHOOL DISTRICT MAKING CERTAIN FINDINGS PURSUANT TO HEALTH AND SAFETY CODE SECTION 33445 ON THE CIVIC CENTER JOINT USE PROJECT

CITY OF SANTA MONICA
AUG 30 2010
RECEIVED

RECOMMENDATION NO. A.14

It is recommended that the Board of Education adopt Resolution No. 10-06 that outlines the Civic Center Joint Use Project at Santa Monica High School and formally finds that without the Redevelopment Agency funding of the project there are no other sources of funding available to the District at this time.

COMMENT: The District submitted the Civic Center Joint Use Project (CCJUP) to the City of Santa Monica's Redevelopment Agency (RDA) for funding consideration on February 25, 2009. The proposed three-phase $235 million joint use project included cultural and recreational redevelopments on the campus of Santa Monica High School that implemented principles, goals and objectives of the City Open Space Element, Recreation and Parks Master, Civic Center Specific Plan and Creative Capital.

On May 12, 2009, the Redevelopment Agency unanimously voted to prioritize $57 million to the CCJUP (Phase I of school project)

A careful evaluation of Phase I Alt I of the CCJUP, at a project cost of $57 million, revealed certain shortcomings that would adversely affect the campus. First among them, doing this phase only would leave the campus without a baseball field, a core intramural activity for the school.

On February 4, 2010, the Board approved a contract with R.L. Binder FAIA Architects, LLP to develop two new concepts. Each concept was to contain two designs for a total of four new designs. The goal was to develop designs that would meet the community and City needs and wishes and leave the campus intact. A resulting presentation was made to the Board on June 18, 2010.

The Board received new concepts each with a phased approach. Each concept had a $57 million project that met all of the criteria established.

The next step to receive funding of this project from the RDA is for the Board to adopt findings that no other reasonable means of financing is available to the District.

After examining the various funding sources for capital projects, staff has reached the conclusion that there are no other reasonable means of financing the CCJUP. The following sources of funds were considered and found not to be viable options for funding of the CCJUP:

Measure BB GO Bond Funds

Santa Monica Malibu Unified School District received voter approval on November 7, 2006 authorizing the issuance and sale of $268 million of general obligation bonds. The Board has fully allocated the proceeds from these bond sales to other capital projects throughout the District. Those include modernization and new construction projects at each secondary school, a newly rebuilt elementary school at the Edison site and various safety projects.

Redevelopment Agency "Pass Through" Funds

The District annually receives statutory pass through funding from the Redevelopment Agency of Santa Monica. These funds are fully committed to the debt services on Certificates of Participation issued several years ago.

Developer Fee Funds

These funds come to the District through the statutory limits that can be applied to new or reconstructed development within the District. The current revenue from this funding source has been included in the allocation of projects identified as Measure BB. There are no uncommitted developer fee funds.

State of California School Facility Funding

The District routinely checks the availability of state dollars for capital projects. In most cases, state money is available only when a district is growing and has a demand for additional facilities. There are very specific eligibility requirements that must be met before the state will allocate funding for capital projects to a district. Santa Monica Malibu Unified does not currently meet those eligibility requirements.

District General Funds

The significant strain placed on school district general fund budgets by the lack of state funds is commonly known. Santa Monica Malibu Unified has lost over 20% of funding normally provided by the state over the past several years. In order to balance the 2010-11 budget, the Board was forced to make reductions totaling over $7.2 million dollars. Class sizes were increased, the number of teachers was reduced, nurses, counselors, security guards, administrators, reading specialists, music programs, and many more cuts were made. The General Fund budget does not include appropriations for capital projects at this time. Capital expenditures would most likely not be the first priority to restore if additional funding became available.

MOTION MADE BY: Mr. Allen
SECONDED BY: Mr. Mechur
STUDENT ADVISORY VOTE: Aye
AYES: Six (6)
NOES: One (1) (Mr. de la Torre)

RESOLUTION NUMBER 10-06

A RESOLUTION OF THE SANTA MONICA MALIBU UNIFIED SCHOOL DISTRICT MAKING CERTAIN FINDINGS PURSUANT TO HEALTH AND SAFETY CODE SECTION 33445 ON THE CIVIC CENTER JOINT USE PROJECT

WHEREAS, on November 17, 2009, the Redevelopment Agency of the City of Santa Monica (the "Agency") adopted its Five-Year Implementation Plan (the "Plan") for the period of FY 2009-10 through FY 2013-14, with established goals to support affordable housing, disaster prevention and mitigation, community revitalization, commercial revitalization, and institutional revitalization; and

WHEREAS, the Earthquake Recovery Redevelopment Project was adopted in part to provide for and facilitate the repair, restoration, demolition and/or replacement of facilities damaged as a result of the Northridge earthquake; and

WHEREAS, the Agency's Five-Year Implementation Plan establishes goals to support affordable housing, disaster prevention and mitigation, community revitalization; and institutional revitalization to support joint-use opportunities on the campus of Santa Monica High School; and

WHEREAS, to implement the programs and activities (the "Projects") associated with each goal, the Agency prioritized redevelopment funding totaling approximately $283 million, based on a variety of assumptions regarding growth in tax increment, borrowing costs, timing of borrowing, State grabs of local funds, leveraging opportunities and State law; and

WHEREAS, the capital improvements and affordable housing activities associated with the Projects are considerable undertakings; and

WHEREAS, the Projects are comprised of, but not limited to, the following efforts:

- ***Affordable Housing:*** In addition to the Project Areas' anticipated 20 percent housing set-aside increment revenues, invest non-housing funds toward the preservation and production of affordable housing.

- ***Disaster Prevention and Mitigation:*** To fund disaster prevention and mitigation programs to meet the City's seismic retrofit needs and mitigate against effects of future disasters. Funds will be used for rehabilitation of the Santa Monica Civic Auditorium, implementation of the Traffic Signal Master Plan and property acquisition to support the reconstruction and expansion of parking resources called for in the Downtown Parking Strategic Plan.

- ***Community Revitalization:*** To improve, repair, rebuild and provide parks and community facilities including: the Palisades Garden Walk and Town Square parks, open space and facilities in the Civic Auditorium District, the Civic Center early childhood education center, the Pico Neighborhood Library, planning and design for the Civic Center parks and facilities, and the Memorial Park expansion.

- ***Commercial Revitalization:*** To revitalize and promote economic investment and business expansion in the Project Areas or of benefit to the Project Areas, and preserve the area's existing employment base by supporting improved access to the Project Areas by employees and customers, primarily by supporting enhancements to the Exposition Light Rail Station Areas.

- ***Institutional Revitalization:*** To help achieve community goals associated with the Santa Monica-Malibu School District's master plan for the Santa Monica High School campus, including designing and constructing facilities for joint-use between the school and the broader community; and

WHEREAS, on May 12, 2009 the Agency unanimously voted prioritize $57 million to the CCJUP "Project" (Phase I of school project); and

WHEREAS, the Santa Monica-Malibu Unified School District received voter approval on November 7, 2006 authorizing the issuance and sale of $268 million of general obligation bonds; and

WHEREAS, the Santa Monica-Malibu Unified School District has fully allocated proceeds from those bonds to other capital facility projects throughout the District; and

WHEREAS, the Santa Monica-Malibu Unified School District does not have eligibility for State facility funds; and

WHEREAS, statutory Redevelopment Agency pass-through funds are fully committed to repayment of Certificates of Participation (COP) debt services; and

WHEREAS, current and future Developer Fee funds have been allocated to other capital facility projects throughout the District; and

WHEREAS, significant deficits applied to the District's general operating revenue by the State has caused the reduction or elimination of all capital projects from the District's General Fund.

NOW, THEREFORE, BE IT RESOLVED THAT:

Based on substantial evidence in the record, the District hereby finds and determines:

(1) that the foregoing recitals are true and correct;

(2) that the Project is of benefit to the Earthquake Recovery Redevelopment Project Area;

(3) that after the School District considered other funding mechanisms to fund the proposed Project, there is no reasonable means available to the District to fund the CCJUP;

(4) that the Project is consistent with the Earthquake Recovery Redevelopment Project Area;

(5) that the Project is consistent with the Agency's Implementation Plan and that it meets the goals of the Agency's Five-Year Implementation Plan.

PASSED AND ADOPTED ON AUGUST 18, 2010 BY THE FOLLOWING VOTES:

AYES: 6
NOES: 1 (Mr. DelaTorre)
ABSTENTIONS: Ø
ABSENT: Ø

Barry Snell, President of the Board of Education

Tim Cuneo, Superintendent and Secretary to the Board of Education

ATTACHMENT B

Redevelopment Agency Meeting 8-10-10 Santa Monica, California

RESOLUTION NUMBER 527 (RAS)

(Redevelopment Series)

RESOLUTION OF THE REDEVELOPMENT AGENCY CONSENTING TO THE USE OF AGENCY FUNDS FOR PAYMENT OF COSTS ASSOCIATED WITH THE RDA FUNDED PROJECTS IN THE AGENCY'S CURRENT AND PROSPECTIVE FIVE-YEAR IMPLEMENTATION PLANS AND MAKING CERTAIN FINDINGS PURSUANT TO HEALTH AND SAFETY CODE SECTIONS 33445 AND 33334.2

WHEREAS, the Redevelopment Agency of the City of Santa Monica (the "Agency") has prepared a Redevelopment Plan for the Santa Monica Earthquake Recovery Redevelopment Project, the Downtown Redevelopment Project, and Ocean Park 1A and 1B Redevelopment Projects (the "Redevelopment Plans") which would result in the allocation of taxes from the Santa Monica Earthquake Recovery Redevelopment Project Area, the Downtown Redevelopment Project Area, and Ocean Park 1A and 1B Redevelopment Project Areas (the "Project Areas") to the Agency for the purposes of redevelopment; and

WHEREAS, the intent of the Redevelopment Plans is, in part, 1) to provide for and facilitate the repair, restoration and/or replacement of facilities damaged as a result of a 1994 Northridge Earthquake and to perform specific actions necessary to prevent or mitigate against the effects of a disaster; 2) promote economic and commercial

revitalization in the Downtown; and 3) increase, improve and preserve the community's supply of low and moderate income housing, some of which may be located or implemented outside of a Redevelopment Project Area;

WHEREAS, pursuant to Section 33445 and 33679 of the California Community Redevelopment Law (Health & Safety Code Section 33000 *et seq.)* ("CRL"), with the consent of City Council ("Council") after a duly noticed public hearing, the Agency may pay all or part of the cost of land and construction of any building, facility, structure or other improvement which is publicly owned either within or outside a project area, if the City Council makes certain determinations; and

WHEREAS, the Agency wishes to delegate to the City of Santa Monica (the "City") the Agency's authority to carry out the acquisition, development of design criteria, design, planning, preparation of construction bid documents, financial analysis and new construction or rehabilitation associated with the programs and activities (collectively, the "Projects" and presented in Exhibit 1) and the City wishes to accept that delegation, pursuant to Section 33205 of the Health and Safety Code; and

WHEREAS, a joint public hearing of the City and Agency on the proposed Cooperation Agreement (the "Agreement") was noticed in accordance with the requirements of 33445 and 33679; and

WHEREAS, the Summary Report meeting the requirements of Health and Safety Code Section 33679 was available for public inspection consistent with the requirements of Health and Safety Code Section 33679; and

WHEREAS, on August 10, 2010, the City and Agency held a joint public hearing on the proposed Agreement, at which time the Council reviewed and evaluated all of the information, testimony and evidence presented during the joint public hearing; and

WHEREAS, all actions required by all applicable law with respect to the proposed Agreement have been taken in an appropriate and timely manner; and

WHEREAS, Council has reviewed the Summary Report required pursuant to Health and Safety Code Section 33679 and evaluated other information provided to it pertaining to the findings required pursuant to Health and Safety Code Section 33445 and 33679; and

WHEREAS, the Projects are of benefit to the Project Areas and the immediate neighborhood in which the Projects are located; and

WHEREAS, the Cooperation Agreement will provide that actual payment for the Projects will be contingent upon their preparation in accordance with the applicable provisions of federal, state and local laws, including the obligation to comply with environmental laws such as CEQA and the Santa Monica-Malibu Unified School District's compliance with Health and Safety Code Section 33445; and

WHEREAS, since there are no reasonable means available to the City to complete the financing of the Projects; and

WHEREAS, the improvements and related work efforts of the Projects are consistent with the Agency's Five-Year Implementation Plan in that they help achieve the goals as set forth in the Implementation Plan; and

WHEREAS, the Agency wishes to fund the Projects with a pledge of net available tax increment funds from the Project Areas available this current fiscal year and forthcoming fiscal years, until the expiration of the Earthquake Recovery Redevelopment Project area in 2042, the Downtown Redevelopment Project area in 2029 and the Ocean Park 1A and 1B Redevelopment Project areas in 2022; and

WHEREAS, the City and Agency have proposed to enter into a Cooperation Agreement to provide a means of carrying out the Projects; and

WHEREAS, the Agency may use its Housing Funds to assist in the financing of those Projects that increase, improve and preserve the community's supply of low and moderate income housing, some of which may be located or implemented outside of the Redevelopment Project Areas and Section 33334.2(g) of the California Health and Safety Code requires requiring a finding by resolution that the Agency's use of its Housing Funds outside of a Redevelopment Project Area will be of benefit to the Project Areas;

WHEREAS, the Agency may use its non-housing funds to assist in the financing of those Projects that increase, improve and preserve the community's supply of low and moderate income housing, some of which may be located or implemented outside of the Redevelopment Project Areas;

WHEREAS, all other legal prerequisites to the adoption of this resolution have occurred.

NOW, THEREFORE, THE REDEVELOPMENT AGENCY OF THE CITY OF

SANTA MONICA DOES RESOLVE AS FOLLOWS:

SECTION 1. Based on substantial evidence in the record, the Agency hereby finds and determines:

(1) that the foregoing recitals are true and correct;

(2) that the Projects are of benefit to the Project Areas;

(3) that there are no other reasonable means available other than those to be set forth in the Cooperation Agreement to finance the Projects;

(4) that the payment of funds for the Projects will assist in the recovery from and the elimination of one or more of the conditions resulting from the Earthquake Recovery Redevelopment Project, the Downtown Redevelopment Project, and Ocean Park 1A and 1B Redevelopment Projects;

(5) the Agency's allocation and use of Housing Funds and Non-Housing for the purpose of funding affordable housing projects and programs which may be located outside of the Project Area will be a benefit to the Project Areas;

(6) that the Projects and their related work efforts are consistent with the implementation plan adopted pursuant to Section 33490 of the California Redevelopment Law.

SECTION 2. The Agency hereby consents to the use of Agency funds from the Project Areas for the costs associated with the Projects.

SECTION 3. The Agency Executive Director is hereby authorized to execute the Cooperation Agreement on behalf of the Agency. The Agency Executive Director is authorized to take any action and execute any and all documents and agreements necessary to implement that Agreement.

SECTION 4. The Secretary of the Agency shall certify the adoption of this Resolution and thenceforth and thereafter the same shall be in full force and effect.

APPROVED AS TO FORM:

Marsha Jones Moutrie

MARSHA JONES MOUTRIE
General Council

Exhibit 1

The costs associated with the Projects are current estimates based on approximate costs in 2010 dollars.

Tier 1 Improvements

- Affordable Housing – new construction and rehab – project area-wide: $43.6 million
- Civic Center Planning and Design – community revitalization: $2.5 million
- Palisades Garden Walk and Town Square- community revitalization: $60 million
- Civic Center Auditorium Renovation – community revitalization: $70 million
- Civic Auditorium District Projects- community revitalization: $197 million
- Early Childhood Education Center-community revitalization: $12.6 million
- Civic Center Freeway Capping - community revitalization: $165 million
- Expo Green Streets and Pathways: $32 million
- Santa Monica High School Joint-Use Project (also known as the Civic Center Joint-Use Project at Santa Monica High) - institutional revitalization: $57 million
- Civic Center Shared Parking-community and commercial revitalization: $50 million
- Downtown Strategic Plan Property Acquisition- community revitalization: $27 million
- Traffic Signal Master Plan- community and commercial revitalization: $4.4 million
- Memorial Park Expansion-community revitalization: $40 million
- Pico Neighborhood Branch Library-community revitalization: $12.8 million
- Expo Light Rail Station enhancements- community and commercial revitalization: $31 million

Tier 2 Improvements

Affordable Housing

- Acquisition, rehabilitation, deed restriction of existing apartments – project area: $237 million
- Affordable family housing – new construction – project area: $97 million
- Affordable senior housing – new construction – project area: $63 million
- Affordable special needs housing – new construction – project area: $77 million
- Acquisition, rehabilitation, deed restriction of existing apartments – Citywide: $378 million
- Affordable family housing – new construction – Citywide: $112 million
- Affordable senior housing – new construction – Citywide: $78 million
- Affordable special needs housing – new construction – Citywide: $53 million
- Workforce housing demonstration project – property acquisition: $37 million

Disaster Prevention and Mitigation

- Fire Station #1 Essential Public Facility Redevelopment: $50 million
- Fire Station #3 Essential Public Facility Redevelopment: $25 million
- Emergency Preparedness Training Facility: $18 million

- Facility for Public Safety Equipment Accessibility: $5 million
- Newcomb and Municipal Pier reconstruction: $21 million
- Pier Bridge replacement: $27 million
- Streetlight retrofits – project area-wide: $15 million

Community Revitalization

- Open Space Element implementation – property acquisition: $95 million
- Open Space Element implementation – park development: $87 million
- Open Space Element implementation – park rehabilitation: $46 million
- Open Space Element implementation – community recreational facility rehabilitation and development: $25 million
- School grounds joint-use recreational and cultural improvements: $180 million
- Arizona Corridor streetscape improvements: $13 million
- Broadway Corridor streetscape improvements: $16 million
- Downtown Urban Design Plan implementation: $73 million
- Green Alleys program – project area-wide: $129 million
- Green Streets program – project area-wide: $137 million
- Neighborhood streetscape improvements – project area-wide: $43 million
- Freeway capping – 4th Street to Lincoln: $173 million
- Freeway capping – Lincoln to 11th Street: $198 million
- Freeway capping – 11th Street to 14th Street: $187 million
- Freeway capping – 14th Street to 17th Street: $183 million
- Freeway capping – 17th Street to 20th Street: $185 million
- Freeway capping – 20th to Cloverfield: $211 million
- Bicycle infrastructure – project area-wide: $9 million
- Bicycle transit facilities – project area-wide: $15 million
- Seventh Street pedestrian / bicycle bridge: $13 million
- Oceanfront district enhancements – property acquisition: $43 million
- Civic Center bridge improvements: $12 million
- Light-rail-serving street improvements: $129 million
- Bus/rail interface infrastructure: $20 million
- Streetcar infrastructure: $235 million
- Transit public service facility: $3 million

Commercial Revitalization

- Downtown Parking Strategy implementation – property acquisition: $117 million
- Downtown Parking Strategy implementation: $120 million
- Downtown Parking information system: $3 million
- Lincoln Corridor streetscape improvements: $17 million
- Lincoln Corridor improvements – property acquisition: $65 million
- Lincoln Corridor improvements – public parking: $76 million
- Pico Corridor improvements – property acquisition: $49 million

- Pico Corridor improvements – public parking: $57 million
- Santa Monica Corridor streetscape improvements: $23 million
- Santa Monica Corridor improvements – property acquisition: $57 million
- Santa Monica Corridor improvements – public parking: $43 million
- Olympic Corridor streetscape improvements: $19 million
- Colorado Corridor improvements – streetscape: $9 million
- Colorado Corridor improvements – property acquisition: $43 million
- Colorado Corridor improvements – public parking: $41 million
- Wilshire Corridor improvements – property acquisition: $86 million
- Wilshire Corridor improvements – public parking: $48 million
- Light-rail-serving street improvements: $129 million
- Light-rail station/activity center -shared parking: $90 million
- Light-rail station transit-oriented development-property acquisition: $23 million

Adopted and approved this the 10th day of August, 2010.

Pam O'Connor, Chair Pro Tem

I, Maria M. Stewart, City Clerk of Santa Monica, do hereby certify that the foregoing Resolution No. 527 (RAS) was duly adopted at a special meeting of the Redevelopment Agency held on the 10th day of August, 2010, by the following vote:

Ayes:	Agency members:	McKeown, O'Day, Davis, Holbrook, Bloom Chair Pro Tem O'Connor
Noes:	Agency members:	None
Absent:	Agency members:	Chair Shriver

ATTEST:

Maria M. Stewart, Agency Secretary

ORBACH HUFF + SUAREZ LLP

Attorneys at Law

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1901 Avenue of the Stars
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File Number
4423.015

May 29, 2012

VIA U.S. MAIL

Pedro R. Reyes, Chief Deputy Director
Department of Finance
915 L Street, Floor 8
Sacramento, CA 95814

Jennifer K. Rockwell, Chief Counsel
Department of Finance
915 L Street, Floor 8
Sacramento, CA 95814

Mark Hill, Project Budget Management
Department of Finance
915 L Street, Floor 8
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Evelyn Suess, Supervisor
Department of Finance
915 L Street, Floor 8
Sacramento, CA 95814

Michael Barr, Lead Analyst
Department of Finance
915 L Street, Floor 8
Sacramento, CA 95814

Re: City of Santa Monica - ROPS February – June 2012

Dear Department of Finance Administrators:

This firm represents the Santa Monica-Malibu Unified School District ("District") concerning that certain agreement entitled, Memorandum of Understanding Regarding the Civic Center Joint-Use Project by and Among the City of Santa Monica, and the District entered into on June 28, 2011 ("CCJUPA"), which is identified as Item No. 9 on the January-June 2012 Recognized Obligation Payment Schedule ("ROPS").

Today, we received a copy of the Department of Finance's ("DOF") letter dated May 22, 2012 to the City of Santa Monica Successor Agency ("Successor Agency") from the Successor Agency. The District is extremely displeased at DOF's arbitrary and capricious determination that the CCJUPA does not qualify as an enforceable obligation. DOF's stated reason is that the former

redevelopment agency was prohibited from entering into such a contract after June 27, 2011. DOF is mistaken.

The District hereby objects to DOF's determination for three reasons. First, the District joins with the Successor Agency's objections in that: (A) DOF has already acquiesced that the CCJUPA is an enforceable obligation by DOF's lack of objection to the Amended EOPS that was forwarded to DOF on January 24, 2011; (B) the payments per the CCJUPA were approved by the by the former redevelopment agency and the District by governing board actions predating June 27, 2011; and (C) AB X1 26 did not become effective until the budget was signed by Governor Brown on June 30, 2011.

Second, even if the AB X1 26 is an urgency measure not dependent upon the signing of the budget (which it is not), the effective date of AB X1 26 is not June 28, 2011 as inferred by DOF—but its effective date is June 29, 2011. Article IV, § 8(a)(3) of the Constitution of the State of California 1879 and Government Code § 9600 both state:

> "Statutes calling elections, statutes providing for tax levies or appropriations for the usual current expenses of the State, and ***urgency statutes shall go into effect immediately upon their enactment***." (Emph. added.)

"Enactment" occurs upon the signature of the Governor AND filing with the Secretary of State. In *People v. Cargill* (1995) 38 Cal.App.4th 1551, the Court of Appeal ruled that a statute is enacted once it has been filed with the Secretary of State. Therein, a defendant was arrested about 10:15 p.m. on March 7, 1994 for driving under the influence of drugs. (*Id.* at p. 1553.) The three strikes law was signed by the Governor and filed with the Secretary of State at 2:45 p.m. earlier that day. (*Id.* at p. 1554.) The Court of Appeal held that the three strikes law, which was an urgency statute, applied to defendant:

> "Plainly, the three strikes law, an urgency measure, ***went into effect at the time it was filed by the Governor with the Secretary of State*** and was validly in place when Cargill committed the current offenses." (Emph. added.)

Here, AB X1 26 was signed by Governor Brown on June 28, 2011. However, the signed bill was not filed with the Secretary of State until the next day on June 29, 2011. This is clear from the chaptered bill. See Exhibit "A" for the first page of chaptered AB X1 26 from the Official California Legislative Information's website. This is further confirmed by a simple Westlaw search on the first Health & Safety Code amended by AB X1 26. See Health & Safety Code § 33500 as printed by Westlaw as Exhibit "B". Thus, the CCJUPA was entered into prior to AB X1 26's effective date and is a valid enforceable obligation that DOF must recognize.

Third, since the inception of the CCJUPA, the District has incurred contractual debts exceeding $4.7 million. Of that amount, the District has already completed the first part of the project by installing synthetic turf on the Santa Monica High School main athletic field at a cost of $1.7 million. The DOF is barred by the doctrines of laches and estoppel from any attempt to recover these expenditures incurred by the District. Such a recovery would send the District into severe financial hardship.

Accordingly, we respectfully request that DOF immediately retract its May 22, 2012 determination and confirm that the CCJUPA is an enforceable obligation so that the District can move forward with its important joint-use school project that will benefit the District's students and public at large.

We look forward to your prompt response.

Very truly yours,
ORBACH, HUFF & SUAREZ LLP

Stan M. Barankiewicz II, Esq.

cc: Sandra Lyon, Superintendent, SMMUSD
Janece L. Maez, Assistant Superintendent Business and Fiscal Services, SMMUSD
Marsha Moutrie, City Attorney, Santa Monica
Susan Cola, City Attorney, Santa Monica

Assembly Bill No. 26

CHAPTER 5

An act to amend Sections 33500, 33501, 33607.5, and 33607.7 of, and to add Part 1.8 (commencing with Section 34161) and Part 1.85 (commencing with Section 34170) to Division 24 of, the Health and Safety Code, and to add Sections 97.401 and 98.2 to the Revenue and Taxation Code, relating to redevelopment, and making an appropriation therefor, to take effect immediately, bill related to the budget.

[Approved by Governor June 28, 2011. Filed with Secretary of State June 29, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 26, Blumenfield. Community redevelopment.

(1) The Community Redevelopment Law authorizes the establishment of redevelopment agencies in communities to address the effects of blight, as defined. Existing law provides that an action may be brought to review the validity of the adoption or amendment of a redevelopment plan by an agency, to review the validity of agency findings or determinations, and other agency actions.

This bill would revise the provisions of law authorizing an action to be brought against the agency to determine or review the validity of specified agency actions.

(2) Existing law also requires that if an agency ceases to function, any surplus funds existing after payment of all obligations and indebtedness vest in the community.

The bill would suspend various agency activities and prohibit agencies from incurring indebtedness commencing on the effective date of this act. Effective October 1, 2011, the bill would dissolve all redevelopment agencies and community development agencies in existence and designate successor agencies, as defined, as successor entities. The bill would impose various requirements on the successor agencies and subject successor agency actions to the review of oversight boards, which the bill would establish.

The bill would require county auditor-controllers to conduct an agreed-upon procedures audit of each former redevelopment agency by March 1, 2012. The bill would require the county auditor-controller to determine the amount of property taxes that would have been allocated to each redevelopment agency if the agencies had not been dissolved and deposit this amount in a Redevelopment Property Tax Trust Fund in the county. Revenues in the trust fund would be allocated to various taxing entities in the county and to cover specified expenses of the former agency. By imposing additional duties upon local public officials, the bill would create a state-mandated local program.

West's Annotated California Codes
Health and Safety Code (Refs & Annos)
Division 24. Community Development and Housing (Refs & Annos)
Part 1. Community Redevelopment Law (Refs & Annos)
Chapter 5. Legal Actions (Refs & Annos)
Article 1. Actions Involving Redevelopment Plans or Bonds (Refs & Annos)

West's Ann.Cal.Health & Safety Code § 33500

§ 33500. Limitation of actions

Effective: June 29, 2011
Currentness

(a) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within 90 days after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance occurred prior to January 1, 2011.

(b) Notwithstanding any other provision of law, including Section 33501, an action may be brought to review the validity of any findings or determinations by the agency or the legislative body at any time within 90 days after the date on which the agency or the legislative body made those findings or determinations, if the findings or determinations occurred prior to January 1, 2011.

(c) Notwithstanding any other law, including Section 33501, an action may be brought to review the validity of the adoption or amendment of a redevelopment plan at any time within two years after the date of the adoption of the ordinance adopting or amending the plan, if the adoption of the ordinance occurred after January 1, 2011.

(d) Notwithstanding any other law, including Section 33501, an action may be brought to review the validity of any findings or determinations by the agency or the legislative body at any time within two years after the date on which the agency or the legislative body made those findings or determinations, if the findings or determinations occurred after January 1, 2011.

Credits
(Added by Stats.1963, c. 1812, p. 3702, § 3. Amended by Stats.1977, c. 797, p. 2446, § 13; Stats.2006, c. 595 (S.B.1206), § 15; Stats.2011-2012, 1st Ex.Sess., c. 5 (A.B.26), § 2, eff. June 29, 2011.)

Notes of Decisions (17)

Current with urgency legislation through Ch. 12 of 2012 Reg.Sess. and all propositions on the 6/5/2012 ballot.

End of Document

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COOPERATION AGREEMENT BY AND BETWEEN THE CITY OF SANTA MONICA AND THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA MONICA

THIS COOPERATION AGREEMENT (this "Agreement") is entered into this 9th day of January, 2003, by and between the CITY OF SANTA MONICA (the "City") and the REDEVELOPMENT AGENCY OF THE CITY OF SANTA MONICA (the "Agency"), with reference to the following facts:

A. The Agency has prepared a Redevelopment Plan ("Redevelopment Plan") for the Santa Monica Earthquake Recovery Redevelopment Project (the "Project Area"), which results in the allocation of taxes from the Project Area to the Agency for the purposes of redevelopment.

B. Pursuant to Section 33445(a) of the California Community Redevelopment Law (Health & Safety Code Section 33000 *et seq.*) ("CRL"), the Agency may, with the consent of the City Council ("City Council") of the City, pay all or part of the value of the land for and the cost of the installation and construction of any building, facility, structure, or other improvements which is publicly owned either within or outside a project area, if the City Council makes certain determinations.

C. For the purposes of earthquake repair and/or seismic retrofit, the Agency proposes to complete the work of retrofitting and stabilizing the Santa Monica Palisades Bluffs along 1.6 miles of the east side of the Pacific Coast Highway (the "Work"). The Work is more specifically described in Exhibit A of this Agreement, which exhibit is attached hereto and incorporated herein by reference.

D. Pursuant to Sections 33334.2(a) and 33334.6(c) of the CRL, not less than 20% of all taxes which are allocated to the Agency for the Project Area ("Housing Funds") are set aside by the Agency in a Low and Moderate Income Housing Fund.

E. Pursuant to the terms and conditions of this Agreement, for the purpose of increasing, improving and preserving the City's supply of low and moderate housing available at affordable housing costs to persons and families of low and moderate income, including very low income persons, the Agency proposes to expend a portion of its Housing Funds (and to the extent Housing Funds are insufficient, other tax increments generated by the Project Area) on certain activities, which are consistent with the provisions of Sections 33334.2 *et seq.* of the CRL and which will assist in the implementation, facilitation and/or furtherance of the City's goals and policies related to affordable housing within the City (collectively, "Permitted Housing Activities"). The Permitted Housing Activities will be of benefit to the Project Area by providing affordable housing for a segment of the population of the City in need of affordable housing.

F. The City and the Agency have made the determinations and findings required by

CRL Sections 33445 and 33334.2(g).

NOW, THEREFORE, the parties hereto do mutually agree as follows:

I. COMPLETION OF WORK

A. Completion of Work The Agency hereby agrees to complete the Work pursuant to a specific work order to be issued by the City Manager. The Agency currently estimates that the cost to complete the Work will be approximately Twenty million dollars ($20,000,000). The City hereby agrees that the Agency shall not be obligated to complete any Work which exceeds in the aggregate a total of Twenty million dollars ($20,000,000).

B. Schedule or Performance The Agency hereby agrees to complete the Work in accordance with the Schedule of Performance attached hereto as Exhibit B, which exhibit is incorporated herein by reference.

II. PERMITTED HOUSING ACTIVITIES

Beginning in fiscal year 2002-2003, the Agency hereby agrees to expend an aggregate maximum total of Thirty million dollars ($30,000,000) of Housing Funds in an amount not less than Two million dollars ($2,000,000) per fiscal year for fifteen (15) consecutive fiscal years on Permitted Housing Activities. The City Manager shall from time to time provide the Agency Executive Director a prioritized list of Permitted Housing Activities. The Agency hereby agrees to expend the Housing Funds up to the aggregate maximum total amount on the City Manager's prioritized list of Permitted Housing Activities. The parties acknowledge and agree that some Permitted Housing Activities will be for affordable housing projects located outside of the Project Area; therefore, Housing Funds for some Permitted Housing Activities may be used either inside or outside of the Project Area depending on the circumstances.

III. GENERAL PROVISIONS

A. Liability and Indemnification In contemplation of the provisions of California Government Code Section 895.2 imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Government Code Section 895, the parties hereto, as between themselves, pursuant to the authorization contained in Government Code Sections 895.4 and 895.6, shall each assume the full liability imposed upon it, or any of its officers, agents or employees, by law for injury caused by negligent or wrongful acts or omissions occurring in the performance of this Agreement to the same extent that such liability would be imposed in the absence of Government Code Section 895.2. To achieve the above-stated purpose, each party indemnifies, defends and holds harmless the other party for any liability, losses, cost or expenses that may be incurred by such other party solely by reason of Government Code Section 895.2.

B. Exhibits and Recitals The "Exhibits" and "Recitals" of this Agreement constitute a

material part of this Agreement and are incorporated by reference as though fully set forth hereto.

C. Entire Agreement This Agreement may be executed in counterpart originals, each of which is deemed to be an original. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supercedes all negotiations or previous agreements between the parties with respect to the subject matter of this Agreement.

D. No Third Party Beneficiaries This Agreement is intended solely for the benefit of the City and the Agency. Notwithstanding any reference in this Agreement to persons or entities other than the City and the Agency, there shall be no third party beneficiaries under this Agreement.

E. Waivers and Amendments All waivers of the provisions of this Agreement and all amendments to this Agreement must be in writing and signed by the authorized representatives of the parties.

F. Enforced Delay For purposes of any provision of this Agreement, no party, nor any successors or assign of any party, shall be considered in breach of, or default in, its obligations under this Agreement as a result of the enforced delay in the performance of such obligations due to causes beyond such party's reasonable control, including, without limitation, failure of governmental agencies to act or to issue necessary permits or licenses, acts of God, acts of the public enemy, acts of the State or Federal governments, acts of any other party (including, but not limited to, delays in performing such other party's obligations pursuant to this Agreement), fires, floods, epidemics, quarantine restrictions, strikes, labor disputes, freight embargoes, inability to obtain materials or supplies or unusually severe weather or delays of contractors and subcontractors due to such causes; it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of such party shall be extended for the period of the enforced delay.

G. Indebtedness The Agency's obligation under this Agreement shall constitute an indebtedness of the Agency for the purpose of carrying out the redevelopment project for the Project Area, payable from Housing Funds and, to the extent Housing Funds are insufficient for such purpose, other tax increments received by the Agency from the Project Area .

H. Notices Any notice to be given or other document to be delivered by either party to the other may be delivered in person or may be deposited in the United States mail, with first class postage prepaid, and addressed as follows:

City: City of Santa Monica
1685 Main Street
Santa Monica, CA 90401
Attn: City Manager

Agency: Redevelopment Agency of the City of Santa Monica
1685 Main Street
Santa Monica, CA 90401
Attn: Executive Director

I. Further Documents The parties hereto hereby agree to execute such other documents and to take such other actions as may be reasonably necessary to further the purposes of this Agreement.

J. Time of the Essence Time is of the essence in this Agreement.

K. Successors and Assigns This Agreement shall be binding upon and inure to the benefit of the successors, assignees, personal representatives, heirs and legatees of all the respective parties hereto.

L. Invalidity If any term or provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefit by any party hereunder, shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. It is the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement an enforceable clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible.

M. Interpretation No provision in this Agreement is to be interpreted for or against any party because that party or its legal representatives drafted such provision.

N. Voluntary Agreement The parties hereto further represent and declare that they carefully read this Agreement and know the contents thereof, and that they sign the same freely and voluntarily.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Attest:

By: _____
Maria Stewart
City Clerk

CITY OF SANTA MONICA

By: _____
Susan E. McCarthy
City Manager

Attest:

By: _____
Maria Stewart
Secretary

REDEVELOPMENT AGENCY OF THE CITY OF SANTA MONICA

By: _____
Susan E. McCarthy
Executive Director

APPROVED AS TO FORM:

_____
Marsha Jones Moutrie
City Attorney and Agency General Counsel

APPROVED AS TO FORM:

KANE, BALLMER & BERKMAN

_____
Murray O. Kane
Agency Special Counsel

cg:\sm\2003Financing\Coop.Agmt(1-08-03)

EXHIBIT A

DESCRIPTION OF WORK

[behind this page]

Santa Monica Palisades Bluff Stabilization Project

The Santa Monica Palisades Bluff Stabilization project extends approximately 1.6 miles along Pacific Coast Highway (PCH) with various heights from 50 to 180 feet. The project will encompass the design and construction of stabilization systems along the east side of the PCH in the City of Santa Monica. The stabilization of the bluffs adjacent and above PCH will prevent further erosion effects and coastal instability and reduce the risk to the public from future landslide hazards.

EXHIBIT B

SCHEDULE OF PERFORMANCE

[behind this page]

SCHEDULE OF PERFORMANCE

1.	Conceptual Design - The conceptual design will be based on different possible geotechnical alternatives.	Within ninety (90) days following the final geotechnical report (due to be completed March 2003), the conceptual design will be completed.
2.	Approval of Conceptual Design- The City Council and Redevelopment Agency shall approve or disapprove the Conceptual design.	Within ninety (90) days following the completion of the conceptual design, the City Council and Redevelopment Agency will be presented with the conceptual design.
3.	Environmental Review- The environmental review will take into consideration the conceptual design approaches.	Within five hundred and forty-five (545) days following the approval of the conceptual design by the City Council and the Redevelopment Agency, the environmental review will be completed.
4.	Award of Contract on Final Design- The Award of contract on the final design work shall be approved or disapproved by the City Council and Redevelopment Agency.	Within one hundred and twenty (120) days from the completion of the environmental review process, the award of contract for final design work will be completed.
5.	Final Detail Design- The final detail design will be completed.	Within one hundred and twenty (120) days, following award of contract by the City Council and the Redevelopment Agency the final design will be completed.
6.	Final Design and Award of Construction Contract- Staff shall prepare and submit to the City Council and Redevelopment Agency for review and approval final design and recommendation for the award of contract for the construction work.	Within one hundred and twenty (120) days, following the completion of the final design, the approval of the final design and award of the construction contract by City Council and the Agency will be completed.
7.	Start of Construction- Work will commence.	Within thirty (30) days, following the award of the construction contract, construction will commence on the project.

8.	Construction Completion- The work on the project will be completed.	Within five hundred and forty-five (545) days following start of construction, the project will be completed.

RESOLUTION NO. 352

(Redevelopment Agency)

A RESOLUTION OF THE REDEVELOPMENT AGENCY OF THE CITY OF SANTA MONICA ESTABLISHING A VALUE FOR PROPERTIES RECEIVED FROM THE CITY AND AUTHORIZING THE REPAYMENT TO THE CITY FOR SAID PROPERTIES

WHEREAS, under the authority of City Council Ordinance No 1021, adopted January 13, 1976, the Redevelopment Agency has proceeded to acquire the site for the Downtown Redevelopment Project, and

WHEREAS, in order to assist the Redevelopment Agency in this effort, the City Council has transferred title to several parcels of land within the project to the Agency; and

WHEREAS, the City Council in transferring title to the Agency has placed a certain value for those parcels

NOW BE IT HEREBY RESOLVED THAT:

SECTION 1. The Redevelopment Agency of the City of Santa Monica acknowledges the transfer of title of Parcels 196-907, 908, 910, 911 and 197-900, 902 to the Redevelopment Agency from the City.

SECTION 2 The Agency hereby pledges to repay the City the amount of Four Million, Four Hundred Thousand Dollars ($4,400,000) in exchange for the transfer of title, as funds become available.

SECTION 3. The Agency agrees that interest shall accrue on all unpaid principal at the same rate as shall be paid to the purchaser of the Agency's Downtown Project Lease/Revenue Bonds.

SECTION 4. The Agency agrees that payments from available funds shall be applied first to accrued and second to outstanding principal.

ADOPTED and APPROVED this 24th day of October, 1978.

Seymour A. Cohen
Chairman Pro Tempore

ATTEST:

John Fahle

Resolution No. 352
Redevelopment Agency

I hereby certify that the foregoing resolution was duly adopted by the Redevelopment Agency of the City of Santa Monica at a special meeting thereof, held on the 24th day of October, 1978.

AYES: Bambrick, Reed, Trives, van den Steenhoven, Cohen

NOES: Scott

ABSENT Swink

John Jalili

John Jallli, Secretary

APPROVED AS TO LEGAL FORM
AND ADEQUACY:

Richard L. Rinehart

City Attorney

Redevelopment Agency of the City of Santa Monica

(Los Angeles County, California)

OFFICIAL STATEMENT

Relating to

$14,470,000

Downtown Redevelopment Project Parking Lease Revenue Bonds

THE DATE OF THIS OFFICIAL STATEMENT IS NOVEMBER 2, 1978

THE SANTA MONICA DOWNTOWN REDEVELOPMENT PROJECT

Background

On January 13, 1976, following requisite studies and hearings by the Planning Commission, the Agency and the City Council, the City of Santa Monica passed Ordinance No. 1021 which approved and adopted the Redevelopment Plan for the Santa Monica Downtown Redevelopment Project (the "Redevelopment Plan"). The Redevelopment Plan provides for the elimination and prevention of the spread of blight and deterioration in the Project Area, a ten-acre area bounded by Second and Fourth streets, Broadway and Colorado Avenue, and sets forth the causes of action available to the Agency to accomplish this.

Pursuant to the Redevelopment Plan, the Agency proposes to redevelop the Project Area into a retail center. The basic goal of the retail center development is to create in downtown Santa Monica an attractive shopping center complex which would serve as a stabilizing influence on the retailing activities in the Central Business District and serve as an impetus to draw people to the City's downtown core.

The retail center is to be constructed in the 10-acre Project Area and will consist of two components—the retail facilities and public parking facilities. This development, which is to be on a site near the Pacific Ocean is the first regional shopping mall to be granted a permit by the California State Coastal Commission since its formation in 1972.

The Retail Facilities

The retail facilities will consist of an enclosed mall up to three stories high connecting two major department stores, approximately 100 specialty shops, and entertainment facilities. The center will provide 280,000 square feet of gross leasable area. The two prominent retailers will be The Broadway, a division of Carter, Hawley, Hale and J. W. Robinson, the California-based division of Associated Dry Goods. In 1977, Carter, Hawley, Hale's 117 general department stores and 31 high fashion outlets generated sales volume of $1.5 billion, while Robinson's volume in 15 stores was $200 million.

At the time the Redevelopment Plan was adopted in January 1976, the Agency owned approximately one-half of the land in the Project Area. The Agency has since acquired the balance of the parcels, relocated the remaining 35 businesses and 22 residents and is 90% completed with demolition and site clearance work. When the site is cleared, the Agency will sell to the developers, Santa Monica Place Associates, the land for the retail facilities. The land to be sold to the developers will not include the Site which will contain both structures of the Parking Facility. Price of the land for the retail facilities has been set at $3,620,000 with the sale expected to be in escrow by December 1, 1978.

Construction on the retail facilities is expected to commence later in December 1978 and is scheduled to be ready for opening in September 1980. The Parking Facility is expected to be completed by August 1, 1980.

The enclosed mall and small stores are to be developed on approximately 5 acres by Santa Monica Place Associates, a general partnership of Rouse Development Company of California, Inc., a wholly owned subsidiary of The Rouse Company, and Ernest W. Hahn, Inc. Frank O. Gehry & Associates, Inc. of Santa Monica, in association with Victor Gruen Associates, are the architects for the mall and small stores (as well as for the Parking Facility). Ernest W. Hahn, Inc. will be the general contractor and the Rouse organization will merchandise and lease the mall stores.

The Parking Facility

The Parking Facility will consist of two public parking garages and various public improvements necessary for the retail center, e.g., street improvements and utility extensions. The two public parking structures constituting the Parking Facility will be constructed at approximately the northeast (Public Parking Garage A) and southwest (Public Parking Garage B) corners of the Project Area. Although the

Parking Facility will have several direct connections to the retail facilities, the two parking structures will be essentially free-standing.

Both parking structures will be multi-story buildings, one of six levels with 910 parking spaces and the other with seven levels containing 1,120 parking spaces, all above grade. Both will be constructed of reinforced concrete, open between levels and will contain a total of three elevators. In both garages, the uppermost level is recessed 57 feet to lower the effective height of the structure at the street line, thereby lessening its impact on surrounding buildings. Architectural facades have also been designed to include a variety of scale elements, providing visual interest for pedestrians.

Cost of the Parking Facility

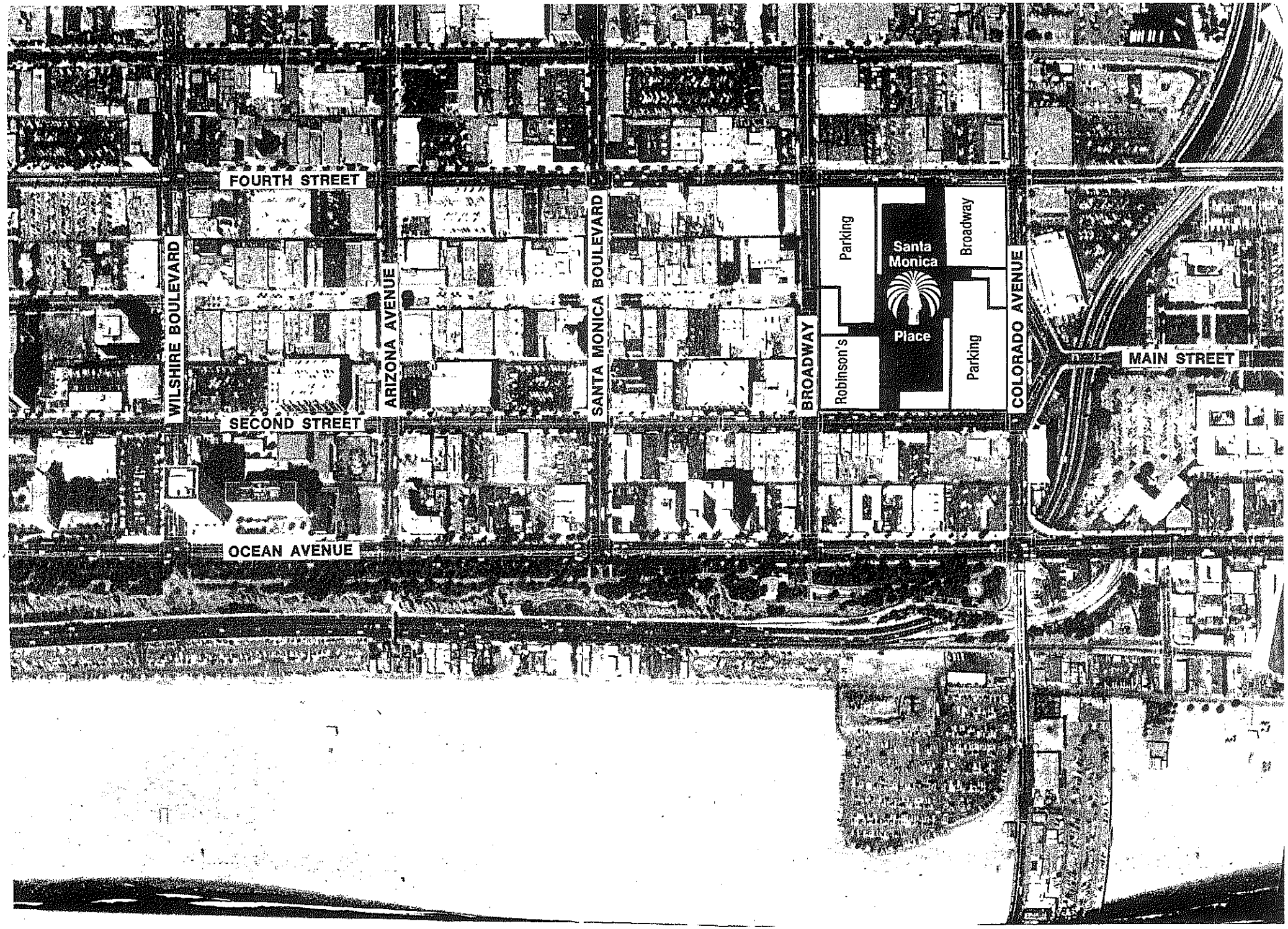
The Parking Facility is to be financed with proceeds from the Bonds. While construction bids will not be received until mid-November, Santa Monica Place Associates has agreed to submit a maximum guaranteed bid of $7,548,000. On this basis, and assuming a borrowing rate of 7%, the total issue size of $14,470,000 on the Bonds is determined using the estimate of costs shown below. Reflected in the Net Project Cost are moneys to permit repayment by the Agency of a $3,700,000 note issued on May 1, 1978, the proceeds of which were expended to acquire certain parcels of land in the Project Area and to pay expenses related thereto.

Construction (Maximum Guaranteed Bid)		$ 7,548,000
Acquisition		2,026,000
Design		430,000
Utility Relocation		400,000
Relocation		250,000
Insurance during Construction		200,000
Allowance for Contingencies		160,000
Costs of Bond Issuance		100,000
Appraisals, Condemnation		100,000
Demolition, Grading		70,000
Administration		70,000
Repayment to City		647,000
Subtotal		$12,001,000
Less:	Investment Income	751,200
	Net Project Cost	$11,249,800
Add:	Funded Interest (2 years @ 7%)	2,025,800
	Reserve Fund (Maximum Annual Debt Service)	1,194,400
Size of Issue		$14,470,000

The Developers

The developers are Santa Monica Place Associates, a partnership of Rouse Company of California (75%), a wholly owned subsidiary of The Rouse Company of Columbia, Maryland and Ernest W. Hahn, Inc. of El Segundo, California (25%). Santa Monica Place Associates anticipates that Hahn will bring a 5% limited partner into the partnership and thereby transform the existing general partnership into a limited partnership with Rouse (75%) and Hahn (20%) as general partners.

To date, the developers report that they have expended $3.2 million on planning, design, loan commitments and partnership costs for Santa Monica Place. A commitment for interim construction financing has been obtained from The First National Bank of Chicago and Teachers Insurance and Annuity Association has agreed to provide a $26 million long-term loan for the development.


FOURTH STREET
SECOND STREET
OCEAN AVENUE
WILSHIRE BOULEVARD
ARIZONA AVENUE
SANTA MONICA BOULEVARD
BROADWAY
COLORADO AVENUE
MAIN STREET
Parking
Robinson's
Santa Monica
Place
Broadway
Parking

The Rouse Company had a total equity value as of December 31, 1977, of $173,888,000 compared to $128,457,000 a year earlier, according to estimates of fair market value as determined by Landauer Associates, Inc., real estate consultants of New York. The Rouse Company's Operating Properties Division had an interest in 28 different shopping centers in operation during 1977 with its ownership accounting for 9,979,000 square feet of the 18,436,000 square-foot total. Seven other shopping centers under construction and five others under development, including Santa Monica Place, will boost Rouse's ownership to 11,901,000 square feet of the 23,181,000 total square feet represented by the 40 such shopping centers. Prominent among The Rouse Company's developments are the City of Columbia, Maryland, the Gallery at Market East in Philadelphia and the Faneuil Hall Marketplace in Boston.

Earnings before non-cash charges of the Operating Properties Division of The Rouse Company as of December 31, 1977 increased by $2,108,000 or 22% over the $9,789,000 for comparable period in 1976. The Company's common stock is traded over-the-counter and in January 1978, The Rouse Company announced its initial quarterly dividend of $0.05 per share of common stock to holders of record on March 15, 1978.

Ernest W. Hahn, Inc. is a diversified real estate company involved in the development, construction and management of community and regional shopping centers. As of February 1978, the Hahn Company operated and had an equity interest in 18 regional shopping centers and was involved in the development of six more then under construction and 20 others in the planning stages. Among completed centers in California redevelopment projects are those in Cerritos, Culver City and Hawthorne and construction is underway in Pasadena and in Sunnyvale. The Company recently had its assets and liabilities revalued resulting in current value equity of $98,153,000 as reviewed by Joseph J. Blake and Associates, Inc., independent real estate consultants. Financial highlights for fiscal years ended February 28, 1977 and 1978 are as follows:

	Year Ended February 28	
	1977	1978
Net earnings (restated)	$ 1,671,000	$ 676,000
Net earnings per share (restated)	$ .32	$ .14
Total assets (restated)	$355,249,000	$405,306,000
Average shares outstanding	5,180,718	4,726,688

Historical earnings of Ernest W. Hahn for the past five years are shown below. The amounts shown are restated pursuant to a change in the Company's method of accounting as requested by the Securities and Exchange Commission.

	Restated	
	Net Earnings	Earnings Per Share
Year Ended February 28 (29)		
1974	$4,504,000	$.88
1975	71,000	.01
1976	2,218,000	.42
1977	1,671,000	.32
1978	676,000	.14

The Company's common stock is traded over-the-counter.

Copies of the annual reports for The Rouse Company and Ernest W. Hahn, Inc. are available upon request from the Agency.