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June 22, 2020

Via U.S. and Electronic Mail

Santa Monica City Council
1685 Main Street, Room 209
Santa Monica, California 90401

Council@smgov.net

Re: Agenda Item 8.A – Application of Surplus Land Act to the Plaza at Santa Monica Project

Dear Members of the Santa Monica City Council,

Strumwasser & Woocher LLP represents the Santa Monica Coalition for a Livable City (SMCLC), an all-volunteer group of Santa Monica residents concerned about unsustainable commercial development in Santa Monica. SMCLC has long-sought to ensure citizens have a meaningful voice in the review of planning and development in the City, including of the Plaza at Santa Monica Project, located on City-owned property between Fourth and Fifth Street and Arizona Avenue. This project is especially meaningful to SMCLC because it would be constructed on publicly owned land. In a park-poor city with an affordable housing crisis, it is imperative that all uses for scarce public property be carefully and thoughtfully considered.

This firm has conducted a detailed review of the staff report prepared in advance of the Council's June 23, 2020 discussion on the Plaza Project, as well as documents the City has produced in response to recent Public Records Act requests, and has performed a comprehensive analysis of the statutory text and legislative history of the state's Surplus Land Act (SLA). Our conclusion is clear: **contrary to the advice of City staff, the City cannot continue negotiations with this developer or make any further arrangements for the disposition of this publicly-owned property without first declaring the property is "surplus property" and offering it to entities interested in buying or leasing the land for open-space purposes or affordable housing development.** In short, unless the City chooses to retain the property for its own municipal purposes as a public park, the City must comply with the newly-amended SLA *before* deciding to re-start negotiations with the Plaza Project developers.

In order to provide the City Council with the necessary information to properly and thoughtfully evaluate the course of action it should take with respect to the property at Fourth and Arizona, this letter provides key information omitted from the staff report: details about the state Surplus Land Act and its recent amendments, information regarding City law that governs

the adoption of Exclusive Negotiating Agreements, and analysis of California law governing contracts with public entities. While the staff report relies upon the conclusion of the California Department of Housing and Community Development (HCD) that the project is exempt from the new amendments to the SLA, as this letter demonstrates, HCD's scant analysis rests on the legally unsupportable assumption that an expired agreement between a private party and a developer could be extended by behind-the-scenes conduct without any formal public process. Moreover, even if HCD's spurious conclusion were correct, the SLA does not *entirely* exempt the project, but rather requires compliance with the law as it existed on December 31, 2019. These requirements include notification of potential purchasers *prior* to the disposition of property, similar to what is required under the current version of the Act.

Thus, there exists no legal pathway for the City to enter a *new* agreement with respect to the disposition of this property without compliance with some version of the SLA. Authorizing the City Manager to resume exclusive negotiations with the Developer will expose the City to litigation and will vastly increase the legal risks of proceeding with the proposed Plaza Project.

BACKGROUND

A. The Plaza Project

The City is contemplating a 99-year ground lease of publicly-owned property located on Arizona Avenue between Fourth and Fifth Streets in Santa Monica to developers DLJ Real Estate Capital Partners and Clarett West Development (Developer). The latest iteration of Developer's controversial Santa Monica Plaza Project proposal crowds out limited public open space in favor of high-end apartments, a luxury hotel, retail shopping, and thousands of square feet of commercial office space. Even before the COVID-19 crisis sapped demand for retail outlets, commercial office space, and City revenue streams, the Project faced significant opposition from residents who would prefer to see the land used for a much needed public park in a city that is significantly starved for such space.

Developer proposes to build the Plaza Project on a site consisting of several assembled parcels, some of which are owned by the City and some of which are owned by the City's Successor Agency to the former Redevelopment Agency. (City Letter to Developer (1/27/20), attached as Exhibit A, at p. 1; City Council Staff Report (6/17/20), at p. 3.) The Successor Agency parcels are subject to a Long-Range Property Management Plan (LRPMP) approved by the Department of Finance. (Exh. A, at p. 1.) The City has never pursued the SLA processes on this site.

B. The "Exclusive Negotiation Agreement"

The City regularly enters into Exclusive Negotiating Agreements (ENAs) with developers. According to City staff, an ENA "affirms that the City will not negotiate with any other developer for the development of the site for the duration of the ENA." (City Council Staff Report (12/10/2013), Agenda Item 8-B, available at https://www.smgov.net/departments/Council/agendas/2013/20131210/s2013121008-B.htm.)

Critically, the written provisions of an ENA also set the particular terms under which a developer and the City will work together to hone a particular project. (*Id*.) Generally, ENAs establish a schedule of performance for a developer to solicit community input and receive conceptual approval from the City Council. (*Id*.) Once these concept plans are approved, ENAs provide a limited period for negotiation, typically six to twelve months (including a base period and extension options) to fully negotiate a Disposition and Development Agreement (DDA). DDAs contain the details and agreement terms, and must receive City Council approval. (*Id*.)

In this case, City staff originally sought authorization from City Council to enter into an ENA with Developers in August 2013. (City Council Staff Report (8/27/13), Agenda Item 8-A, available at https://www.smgov.net/departments/Council/agendas/2013/20130827/s2013082708-A.htm; City Council Staff Report (12/10/13).) The City and Developer did not enter into the ENA until March 2014. (ENA Between Developer and the City (3/19/14), attached as Exhibit B.)

The ENA provided for a one-year initial term and a 90-day administrative extension from the City Manager. City Council approval was required for any additional extensions. (Exh. B, at §§ 402, 403.) If, at the end of the allotted time, Developer had not received City Council's approval to further extend the exclusive negotiating period, then the ENA "shall automatically terminate." (*Id*., § 500.)

In May 2015, having exhausted the one-year initial term and the 90-day extension from the City Manager, City Staff returned to City Council to seek the authorization to extend the exclusive negotiating period by six months, with an additional three-month option. (City Council Staff Report (5/12/15), Agenda Item 3-K.) City Council authorized a 6-month extension, with an additional three-month option at the City Manager's discretion. (Modification to ENA (6/23/15), attached as Exhibit C, at p.1.) According to the City, the ENA finally "terminated by its own terms on December 19, 2015." (City Letter to Developer (1/23/19), attached as Exhibit D, at p. 1; see also City Council Staff Report (6/17/20), at p. 4 ["The ENA expired by its own terms in 2015."].)[1]

On January 23, 2019—more than three years after the contractual period of exclusive negotiation had ended—the City wrote to Developer to "memorializ[e] the understanding" that "***non-binding negotiations*** for disposition of City-owned property . . . may continue ***without any commitment to negotiate*** for any definite period." (Exh. D, at p. 1.) The City reiterated its assertion that the ENA had "terminated by its own terms on December 19, 2015," and sought to record its understanding "and material reliance" on the Developer waiving any right to claim damages for negotiations occurring "subsequent to the termination of the ENA" (*id.*), meaning

[1] The Modified ENA extended the Original ENA for a period of 6 months, commencing from June 19, 2015. Because the City indicates that the ENA terminated by its own terms on December 19, 2015, it would appear that the City Manager did not authorize an additional three-month extension.

the period between December 2015 and January 2019. Nowhere does the City indicate its intention to continue negotiating with the Developer on an exclusive basis.

Just as the January 23, 2019 letter requested, the Developer signified its agreement with the City's offer to continue "non-binding" negotiations by remitting a $100,000 deposit to cover the costs the City incurred for the continuing negotiations and continuing to attend bi-weekly meetings with the City's Economic Development Division. (*Id.*, at p. 2.)

C. The Legislature Amends the Surplus Land Act

A product of the Legislature's belief that California suffers from a shortage of land available for affordable housing, recreational, and open-space purposes, the California Surplus Land Act (SLA) has long required cities to offer "surplus land" to various preferred entities before selling or leasing the property on the open market. (See Gov. Code §§ 54220, 54222.)[2] In short, **the SLA seeks to ensure that surplus government land is made available for affordable housing or open-space purposes before any others**.

The SLA directs local agencies, such as the City, to prioritize the development of low-income housing, parks, or other recreation uses, when selling or leasing their surplus land, defined as land owned by a local agency which is no longer necessary for that local agency's use. (*See* § 54221(b)(1).) Prior to disposing of surplus land that is available for open-space purposes—meaning land available for "public recreation, enjoyment of scenic beauty, or conservation or use of natural resources" (section 54221, subdivision (d))—local agencies must issue a "written notice of availability"

> (1) To any park or recreation department of any city within which the land may be situated.
> (2) To any park or recreation department of the county within which the land is situated.
> (3) To any regional park authority having jurisdiction within the area in which the land is situated.
> (4) To the State Resources Agency or any agency that may succeed to its powers.

(§ 54222, subd. (b).) These entities have 60 days to notify the disposing agency of their interest in buying or leasing the land, at which point the disposing agency and the entity "shall enter into good faith negotiations to determine a mutually satisfactory sales price and terms or lease terms." (§ 54223, subd. (a).) If more than one entity responds to the "notice of availability" for land already being used as a park or recreational purposes, the SLA gives first priority to the entity agreeing to continue to use the site for a park or recreational purposes. (§ 54227, subd. (b).)

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[2] All subsequent citations to state law are to the Government Code, unless specifically noted otherwise.

Local agencies must issue similar written notices of availability to other preferred parties, including those who may be interested in developing low- or moderate-income housing or purchasing property suitable for school facilities construction. (§ 54222, subds. (b), (c).)

In September 2019, the Legislature enacted Assembly Bill No. 1486 (AB 1486), containing various amendments to the SLA. AB 1486 sought to respond to the loopholes found by local agencies seeking to sidestep the SLA's procedures, which thwarted the law's goal of expanding the supply of land available for affordable housing development. (Bill Analysis of AB 1486, Senate Committee on Governance and Finance (6/26/19), attached as Exhibit E, at p. 7 [explaining "reports of some local agencies attempting to avoid the requirements of the Surplus Land Act."].) "[I]n one high-profile case in 2015, the City of Oakland attempted to sell property to a market-rate developer despite interest from affordable housing developers." (*Ibid*.)

AB 1486 only made cosmetic changes to the language requiring cities to make first surplus land available to preferred entities, replacing the mandatory "written offer to sell or lease the property" to preferred entities with mandatory "written notice of availability of the property" to those same preferred entities. (§ 54222.) However, before the 2019 amendments, Government Code section 54222 only imposed duties on a local agency disposing of surplus land "prior to disposing of that property." As amended by AB 1486, Government Code section 54222 now requires local agencies send written notice to preferred parties before the agency even "participat[es] in negotiations to dispose of that property with a prospective transferee."

In addition to amending the timing of a local agency's duties to notify preferred parties, newly-amended Government Code section 54230.5, subdivision (b) imposes an obligation on local agencies, prior to agreeing to the terms for disposition of surplus land, to provide HCD with a description of the process followed to dispose of the land (the provision likewise imposes an obligation on HCD to review the description and submit findings to the local agency in the event HCD concludes that the proposed disposal violates state law). If a local agency disposes of land in violation of the Act, the new Government Code section 54230.5, subdivision (a) imposes a penalty of "30 percent of the final sale price" on a local agency.

Considering the new AB 1486 language imposing steep fines for a city's failure to make land available to preferred entities prior to participating in negotiations to dispose of the property, it makes sense why AB 1486 expressly exempted two categories of surplus land, instead making them subject to the pre-AB 1486 version of the SLA. (Bill Analysis of AB 1486, Senate Floor (9/10/19), attached as Exhibit M, at p. 4.) First, newly-added Government Code section 54234, subdivision (a)(1) limits AB 1486 from applying to land already subject to an "exclusive negotiating agreement":

> If a local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property, the provisions of this article as it existed on December 31, 2019, shall apply, without regard to the changes made to this article by the act adding this section, to the disposition of the property to the party that had entered into such agreement or its

> successors or assigns, provided the disposition is completed not later than December 31, 2022.

Second, newly-added Government Code section 54234, subdivision (b)(1) exempts land designated in a long-range property management plan from the new regime. Specifically, it states:

> With respect to land . . . designated in a long-range property management plan pursuant to Section 34191.5 of the Health and Safety Code, either for sale or retained for future development, this article as it existed on December 31, 2019, without regard to the changes made to this article by the act adding this section which take effect on January 1, 2020, shall apply to the disposition of such property if both of the following apply:
>
> (A) An exclusive negotiating agreement or legally binding agreement for disposition is entered into not later than December 31, 2020.
> (B) The disposition is completed not later than December 31, 2022.

Notably, both provisions above provide strict limitations on the two categories of land exempt from AB 1486. That is, both provisions apply in a narrow set of circumstances; there must be an ENA *plus* the disposition must be completed by December 2022. If the ENA stretched any further, delaying the disposition past the December 2022 deadline, the land would thus lose its exempted status and the disposing agency would be required to comply with the SLA as amended by AB 1486.

Further, though both provisions above would exempt two categories of land from AB 1486, those "exempted" lands ***remain subject to "this article as it existed on December 31, 2019."*** Thus, even if a particular piece of land qualified under one of these two "exemptions," a disposing agency must comply with the pre-AB 1486 SLA, which required "[a]ny local agency disposing of surplus land [to] send, prior to disposing of that property, ***a written offer to sell or lease the property*****"** for affordable housing, park, recreational, or open-space purposes. (§ 54222, emphasis added.)[3]

Governor Newsom signed AB 1486 into law on October 9, 2019.

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[3] The City should also note that neither of the exemptions discussed "authorize or excuse any violation of the provisions of this article as it existed on December 31, 2019, in the disposition of any property to which such provisions apply pursuant to subdivision (a) or (b)." (§ 54234(c).) The City has never undertaken steps to comply with the SLA.

D. Subsequent Correspondence Between the City, the Developer, and HCD

Likely recognizing that AB 1486 carried potentially expensive new penalties for violations, the City wrote to the Developer in mid-December seeking the Developer's take on the impact of the new law before it went into effect on January 1, 2020. (See City Letter to Developer, (12/12/19), attached as Exhibit F, at p. 2.) Developer effectively asserted (1) a long-term ground lease is not one of the "dispositions" that triggers the Act;[4] (2) the Site is not "surplus land;" and (3) even if the Site is "surplus land" and the contemplated lease does qualify as a "disposition," one or the other of the exemption provisions applies, meaning the project would be governed by the SLA "as it existed on December 31, 2019" rather than AB 1486. (See Developer Letter to City (12/16/19), attached as Exhibit G; City Letter to HCD (1/22/20), attached as Exhibit H, at p. 2.)

On January 22, 2020, the City sought advice from HCD on whether the AB 1486 amendments applied to the contemplated project, forwarding the Developer's letter for HCD's reference. (Exh. H, at p. 1; City Email to HCD (1/23/2020), attached as Exhibit I.)

HCD responded to the City by email on February 12, 2020. (See HCD Email to City (2/12/20), attached as Exhibit J.) Dismissing Developer's argument that the City was not required to undertake any of the steps required by the SLA because the proposed 99-year lease is not a "disposition" subject to the Act, HCD noted that the Act repeatedly uses the term "lease" to refer to a disposition under the Act. (*Id*., at pp. 1-2.) HCD also dismissed Developer's argument that the Site is not "surplus land." (*Ibid*.) Further, HCD indicated Developer failed to explain why AB 1486 did not apply to the Site. (*Id*., at p. 2.) Specifically, HCD did not agree that "an expired exclusive negotiating agreement" qualified the Site for the exemption from the amended SLA in section 54234, subdivision (a), or that provision exempting parcels in a long-range property management plan applied when, as is the case here, "some of the parcels are designated in a long-range property management plan and some are not." (*Id*.) Based on this feedback, the City Council directed staff to cease negotiations with Developer. (City Council Staff Report (6/17/20), at p. 2.)

However, after a private telephone conversation with Developer's representative, HCD reversed course. (HCD Letter to Developer (3/24/20), attached as Exhibit K, at p. 1.) Carefully qualifying that its opinion was "[b]ased on the facts and circumstances provided to HCD," the agency explained that the Developer's attorney had represented that on September 30, 2019 (the relevant date in the statute), the City and the Developers had a "non-written (i.e., constructive) ENA in place." (*Ibid*.) HCD's letter offered no legal authority to explain how City staff possessed the legal authority to enter into a "non-written" ENA absent City Council approval, nor did it make even a passing attempt to explain why the Legislature's intent to *reduce* behind-the-scenes negotiations by local agencies was best served by turning a blind eye to precisely that kind of behavior. Importantly, HCD's opinion letter is not binding on the City and, for the reasons below, the City should not risk relying on its cursory analysis, which bears none of the

[4] Each of the arguments in Developer's 236-page response to the City are addressed below.

legal hallmarks for deference under *Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7.

Nevertheless, City staff has adopted wholesale HCD's newly-revised conclusion that AB 1486 does not apply. (City Council Staff Report (6/17/20), at pp. 8, 16 ["If Council were to discontinue negotiations with the Developer, then the property would be considered surplus land and be subject to the requirements of the Surplus Land Act (AB 1486)."].) According to staff, even though "[t]he original ENA expired several years ago, and the City is not required to continue negotiations with Developer" (*id*., at p. 16), the initial step is for City Council to decide whether to re-start negotiations with Developer—rather than making the property first available to preferred parties, as required by the SLA. Equally absurd as staff's reliance on an ENA that expired "by its terms own terms in 2015," (*id*., at p. 4) to meet the statutory exemption for an ENA in effect "as of September 30, 2019" (see § 54234, subd. (a)(1)), staff advises the Council to authorize staff to enter into a new ENA with Developer—again without first complying with the SLA's mandate to provide written notices of availability "prior to disposing of that property or participating in negotiations to dispose of that property with a prospective transferee." (§ 54222.) As stated earlier, this would expose the City to litigation and legal risks the City is not under now.

Notably, the staff report offers no explanation for why staff negotiated with the Developer for more than four years absent a formal, Council-authorized ENA. Nor does it fully apprise the Council of the plain text of the SLA, which clearly requires the City to offer the property to preferred entities prior to disposing of the land—even if there was such an "implied" ENA. As such, unless City Council seeks to retain the property for municipal purposes such as a public park, it must comply with the SLA before taking any further steps toward disposing of the property.

LEGAL ANALYSIS

Contrary to the recommendations by City staff, City Council may not authorize staff to continue negotiating with Developer until the City has complied with the SLA. Staff's misunderstanding stems primarily from its incorrect assumption that the project is exempt from AB 1486 based on an expired ENA; this conclusion has no support in the text of the statute or in the law of municipal contracts. However, even if the property were exempted from AB 1486, the City would still need to comply with the SLA as it existed on December 31, 2019 prior to disposing of the property. Finally, Developer's other arguments urging the City not to comply with the SLA are meritless. Proceeding with an ENA will place the City at risk of litigation.

1. AB 1486 APPLIES BECAUSE THE PROJECT IS NOT EXEMPTED BY VIRTUE OF A "CONSTRUCTIVE" ENA.

Parroting HCD's conclusion that "the Site qualified for an exemption because of the City's on-going negotiations prior to September 30, 2019," (City Council Staff Report (6/17/20), at p. 7), City staff never justifies its conclusion that AB 1486 does not apply to the Project. However, Developer's December 2019 letter to the City argues that the prior version of the SLA

applies to these properties under the exception in AB 1486 for situations where "a local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property." (§ 54234, subd. (a)(1).)

Developer's first argument can be rejected out of hand. Developer argues that the site is clearly grandfathered in to the prior versions of the SLA because "[i]t is inarguable" that the City and Developer had entered into an ENA before the statutory cut-off date, September 30, 2019. (Exh. G, at p. 10.) In other words, Developer seeks to qualify for the exemption on the theory that, because there was an ENA in effect between March 2014 and December 2015, the City and Developer had an ENA in effect "as of September 30, 2019." (*Id*.) But there is no dispute that the original ENA *expired* before September 30, 2019 and AB 1486 only exempts property subject to an ENA to dispose of the property *in effect* as of September 30, 2019. Even City staff seems to reject Developer's argument, recognizing that "[t]he original ENA expired several years ago, and the City is not required to continue negotiations with Developer." (City Council Staff Report (6/17/20), at p. 16.) Developer's interpretation of "as of September 30, 2019" offends the California Supreme Court's instruction to give statutes reasonable, practical, and common sense interpretations, consistent with the apparent purpose and intention of the Legislature, rather than an overly-technical reading that rewards mischief or absurdity. (See *People v. Zambia* (2011) 51 Cal.4th 965, 972.)

Nevertheless, Developer argues the property should still qualify for the exemption because the parties continued to negotiate exclusively and the Developer relied on statements by the City in its January 23, 2019 Letter. (Exh. G, at pp. 9-10.) Developer's assertion, made to HCD, that the City and the Developer had a "non-written (i.e., constructive) ENA in place" (Exh. K, at p. 1) reflects a fundamental confusion over basic public contract law principles, which HCD and City staff has apparently accepted uncritically. (*Id.*, pp. 1-2.) In fact, scores of California cases recognize limitations on a city's ability to enter non-written agreements or bind a city to informal agreements.

California law allows for two forms of contract: "either express or implied." (Civ. Code, § 1619.) An express contract is one with terms "stated in words," (Civ. Code, § 1620), meaning it can be written or oral. As explained above, standard ENAs would be "express" contracts because the parties express their agreement to negotiate on an exclusive basis using words.

By contrast, an implied contract—also known as a contract "implied-in-fact"— is one "the existence and terms of which are manifested by conduct." (Civ. Code, § 1621; *Zenith Ins. Co. v. O'Connor* (2007) 148 Cal.App.4th 998, 1010 quoting *Division of Labor Law Enforcement v. Transpacific Transportation Co.* (1977) 69 Cal.App.3d 268, 275 ["Although an implied in fact contract may be inferred from the 'conduct, situation or mutual relation of the parties, the very heart of this kind of agreement is an *intent* to promise.'"].) Whether a contract is express or implied-in-fact, however, simply refers to the evidence by which the agreement between the parties is shown (*Marvin v. Marvin* (1976) 18 Cal.3d 660, 678, fn. 16)—an implied-in-fact contract is still a "true contract." (*Arcade County Water Dist. v. Arcade Fire Dist.* (1970) 6 Cal.App.3d 232, 236.)

For present purposes, an implied-in-fact contract must be distinguished from a contract implied-in-law—a "constructive" or "implied-in-law" contract is not a true contract. Rather, such a constructive contract operates without an actual agreement of the parties—it is a theory "based on quantum meruit or restitution considerations" (*Katsura v. City of San Buenaventura* (2007) 155 Cal.App.4th 104, 109 (*Katsura*)) and "is actually not a contract at all, but merely an obligation imposed by the law to bring about justice." (*Arcade County Water Dist. v. Arcade Fire Dist.*, *supra*, 6 Cal.App.3d at p. 236; *see also Maglica v. Maglica* (1998) 66 Cal.App.4th 442, 455.) The difference between an implied-in-fact and implied-in-law agreement is critical because, as discussed further below, California law bars "implied-in-law" contracts involving cities. (*See Retired Employees Assn. of Orange County, Inc. v. County of Orange* (2011) 52 Cal.4th 1171, 1187 [distinguishing between implied-in-fact contracts and those implied-in-law]; *Green Valley Landowners Assn. v. City of Vallejo* (2015) 241 Cal.App.4th 425, 438 (*Green Valley*) ["*all* implied[-in-law] contracts against public entities are barred because, by definition, they have not formally been approved by the entity"].)

As set forth below, there was no express agreement to re-enter into any exclusive negotiating agreement. Moreover, there can be no "implied" or "constructive" ENA between the Developer and the City for three reasons: (1) City staff lacked authority to enter into such an agreement absent City Council approval; (2) the City's conduct does not give rise to an implied-in-fact agreement; and (3) Developer is a sophisticated party that assumed the risk of proceeding without a formal ENA.

A. There was no express contract—written or oral—to negotiate exclusively.

The City and Developer did not have an express agreement to continue negotiations on an exclusive basis "as of September 30, 2019." (See § 54234, subd. (a)(1).) City staff does not dispute this assertion—indeed, the staff report acknowledges "[t]he original ENA expired several years ago, and the City is not required to continue negotiations with Developer." (City Council Staff Report (6/17/20), at p. 16.)

B. There is no implied agreement to negotiate on an exclusive basis because City staff would have lacked authority to enter such an agreement.

Because an ENA cannot be entered without approval by the City Council, evidence regarding communications between City staff and Developer does not establish an "implied" agreement. As the California Supreme Court has long-held, "[t]he law never implies an agreement against its own restrictions and prohibitions, or [expressed differently], 'the law never implies an obligation to do that which it forbids the party to agree to do.'" (*Katsura*, 155 Cal.App.4th., at p. 110 [quoting *Reams v. Cooley* (1915) 171 Cal. 150, 156–157]; see also *Nash v. City of Los Angeles* (1926) 78 Cal.App. 516, 521–522.) "In other words, contracts that disregard applicable code provisions are beyond the power of the city to make." (*Katsura*, 155 Cal.App.4th at p. 110 [quoting *Amelco Electric v. City of Thousand Oaks* (2002) 27 Cal.4th 228, 235].)

Accordingly, California decisions continue to hold that, where a statute specifies "the measure of the power to act," (*San Diego County v. California Water & Tel. Co.* (1947) 30 Cal.2d 817, 825) and the statutory procedures are not followed, a court will not imply an agreement. (See *G.L. Mezzetta, Inc. v. City of American Canyon* (2000) 78 Cal.App.4th 1087, 1093—1094; *Green Valley*, 241 Cal.App.4th at p. 435; *Katsura*, 155 Cal.App.4th at p. 109.) "Limitations on a municipality's power to contract should be strictly construed because such restrictions are designed to protect the public, not those who contract with the municipality." (*Green Valley*, 241 Cal.App.4th at p. 438.)

These principles directly apply here, where City law requires City Council authorization prior to entering into an ENA, but no such authorization was ever sought or received between December 2015 and June 2020.

Section 2.40.060 of the Santa Monica Municipal Code provides that the City Council "shall" award purchases of goods or services of more than $250,000 and "any other purchases and contracts that have not been otherwise authorized under this Chapter, unless the City Council has authorized a City officer or employee to negotiate a contract on behalf of the City without further Council approval." (SM Municipal Code, § 2.24.060(e).) Thus, City Council must award an ENA, because an ENA is a "contract" that "ha[s] not been otherwise authorized under this Chapter" and, at no point did the City Council authorize City staff to negotiate an ENA "on behalf of the City without further Council approval." (*Id*.)

There can be no doubt about the limited authority of City staff vis-à-vis negotiating an ENA. When City Council authorized staff to negotiate an execute the ENA in December 2013, the vote expressly limited the authorization to "enter[ing] into a maximum negotiating period of one year with a possible three month extension at the behest of the City Manager, with regular, at a minimum, six month updates to Council via information item." (Minutes of City Council Meeting, (12/10/13), at p. 7, available at https://www.smgov.net/departments/council/agendas/2013/20131210/m-121013.pdf.)

Indeed, City staff recognized the limits on its authority by seeking formal authorization from City Council before extending the original ENA with Developer for a 6-month period in May 2015. (City Council Staff Report (5/12/2015) [recommending a 6-month extension to the ENA between City and Developer prior to its original expiration date, June 19, 2015].) This is not the first time City staff has understood the need to re-seek authorization from City Council to extend an ENA. (*See* City Council Report (6/6/2017), available at http://santamonicacityca.iqm2.com/Citizens/FileOpen.aspx?Type=30&ID=15387&MeetingID=1095, at p. 22 ["The ENA between the City and the Worthe Group expires on August 31, 2017. If Council is supportive of proceeding with the revitalization of the Arts Center and continuing to partner with the Worthe Group, staff recommends Council authorize an extension to the ENA."].)

Yet City staff never sought further authorization to enter an ENA with Developer after December 2015, when the extension to the ENA lapsed. Nor did City Council delegate such authority to City staff. Absent such authorization, City staff would have acted beyond its

authority by entering into such an agreement to negotiate on an exclusive basis. (See *Katsura*, 155 Cal.App.4th, at p. 110 ["[C]ontracts that disregard applicable code provisions are beyond the power of the city to make."].) Implied agreements cannot arise under such circumstances. (See *G.L. Mezzetta, Inc. v. City of American Canyon*, *78* Cal.App.4th at pp. 1093-1094; *Green Valley*, 241 Cal.App.4th at p. 435; *Katsura*, 155 Cal.4th at pp. 109-110.) For HCD to indicate that there "does not appear to be any case law prohibiting such an agreement" is flat wrong. (Exh. K, at p. 2.)

C. Dealings between the Developer and the City do not give rise to an implied agreement to re-start the exclusive negotiating period.

Based on Developer's recitations of conduct between the parties, Developer appears to assert that there was an implied agreement to negotiate on an exclusive basis. Specifically, Developer alleges that the City and Developer had regular meetings following the expiration of the ENA, that Developer has made multiple payments to the City, and that both parties have negotiated exclusively with one another. (Exh. G, at pp. 2-4, 9; see also City Council Staff Report (6/17/20), at p. 4.)

The regular meetings and Developer's payment of money are not probative of an implied agreement to negotiate on an exclusive basis because the meetings and payments were how the Developer accepted the City's offer—memorialized in the January 2019 letter—to continue non-binding, non-exclusive negotiations. The City's January 2019 letter expressly provides that "the Developer's submittal of the deposit and continuing attendance at the scheduled bi-weekly meetings will signify its agreement with the memorialization expressed in this letter"—a memorialization of "the understanding . . . that non-binding negotiations for disposition of City-owned property . . . may continue without any commitment to negotiate for any definite period." (Exh. D, at pp. 1-2.)

SMCLC agrees with City staff's recent statement that "[t]he original ENA expired several years ago, and the City is not required to continue negotiations with Developer." (City Council Staff Report (6/17/20), at p. 16.) This statement is precisely why any court would dismiss Developer's argument that, because it and the City both continued to negotiate on an exclusive basis, there was an *agreement* to negotiate exclusively. Developer's reasoning is obviously circular. Just because the City may have declined to negotiate the disposition with other entities cannot mean the City had no right to do so. Again, such an understanding runs counter to the City's offer to continue "non-binding negotiations" provided there was not "any commitment." (Exh. D, at pp. 1-2.)

To reiterate, the law will not recognize an agreement between a private party and a public entity where the public entity does not adhere to the appropriate public processes. (See *G.L. Mezzetta, Inc. v. City of American Canyon*, *78* Cal.App.4th at pp. 1093-1094; *Green Valley*, 241 Cal.App.4th at p. 438 ["[T]he holding in *Katsura* was that *all* implied contracts against public entities are barred because, by definition, they have not formally been approved by the entity"]; *Katsura*, 155 Cal.4th at pp. 109-110; *Citizens for Amending Proposition L v. City of Pomona* (2018) 28 Cal.App.5th 1159, 1189 (*Pomona*).) For example, in *Pomona*, the city argued that the

conduct of the parties demonstrated the existence of an implied-in-fact contract. (*Id*., at p. 1189.)[5] However, the Court of Appeals held that, as a matter of law, there could be no implied-in-fact contract in light of the need for the contract "to be processed through public channels and reduced to writing" and "the need to comply with public notice, publication, and city council procedures." (*Id*., at pp. 1189-1190.)

Santa Monica law imposes the same kind of public notice, publication, and City Council procedures that would convince a court to rule, as a matter of law, there was no implied ENA in effect as of September 2019. As explained above, City codes require a contract with the City be approved by the City Council (SM Municipal Code, § 2.24.060(e)) and executed by the City Manager (SM Municipal Code § 2.32.030), indicating that City contracts must be memorialized in writing.[6] Indeed, the parties recognized the need for formal authorization and a written agreement by returning to City Council for authorization to extend the original ENA for an additional six months. (See City Council Staff Report (5/12/2015) [recommending a 6-month extension to the ENA between City and Developers prior to its original expiration date, June 19, 2015].) That City staff now seeks prior authorization to enter into a new ENA proves this point perfectly.

Nor does the factual record indicate the City possessed the necessary intent to be bound to exclusive negotiations, or that Developer considered itself bound to a schedule of performance critical to every ENA. (See *Division of Labor Law Enforcement v. Transpacific Transportation Co.* (1977) 69 Cal.App.3d 268, 275 ["[T]he very heart of this kind of agreement is an intent to

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[5] A court would certainly reject any argument that the Developer and City *extended* the written ENA for a period of time, forcing Developer and the City to argue that, based on their conduct, they had entered into a *new* ENA after the expiration of the original ENA in December 2015. "It is the general rule that when a contract specifies its duration, it terminates on the expiration of such period." (*Pomona*, 28 Cal.App.5th at p. 1189.) "A terminated contract cannot be extended or modified; both extension and modification as those terms are commonly understood presuppose the existence of a valid contract to extend or modify." (*Id*.) Here, after the ENA terminated by its terms in December 2015, there was "no valid contract to amend, modify, or extend." (*Id*.)

[6] Hence, HCD's conclusory statement that an ENA "is not required to be in writing" because the statute of frauds does not apply is a non-sequitur. (See Exh. K, at p. 2.) First, as should now be apparent, a contract with the City must be in writing by virtue of the City's Municipal Code, whether or not the statute of frauds requires that kind of contract to be in writing. Second, the statute of frauds deals with whether a contract is *enforceable*, not whether an agreement *existed* at all. (See Civ. Code, § 1624.) In other words, there can be an oral agreement to lease real property for a period longer than one year, but this agreement would be *unenforceable* unless an exception to the statute of frauds applied. The issue here is whether there was ever an ENA in *existence* between the City and Developer after December 2015, not whether such an agreement would be *enforceable.*

promise."].) To the contrary, the City made its intent crystal clear when it memorialized its understanding back in January 2019 that the exclusive period for negotiation had terminated in 2015 and that negotiations were continuing subject to "an understanding" that they were "non-binding." (Exh. D, at p. 1.) This statement demonstrates that both parties had recognized—for months before the Surplus Land Act trigger date in September 2019—that the negotiations were proceeding purely on a non-binding basis and negates any notion that they intended to create a new agreement to negotiate on an exclusive basis solely by virtue of their conduct. Again, even today, City staff acknowledges that "[t]he original ENA expired several years ago, and the City is not required to continue negotiations with Developer." (City Council Staff Report (6/17/20), at p. 16.)

D. Developer is a sophisticated party who assumed the risk of continuing negotiations absent a formal agreement.

As the letter from Developer to the City publicly illuminates, Developer and the City recognized that the original ENA and the written extension thereto had expired and openly discussed with the City "whether it was necessary to formally renew the ENA." (Exh. G, at p. 4.) Developer claims that the City expressed such formal steps were "unnecessary" because the parties were "negotiating exclusively in good faith." (*Id*.) Claiming reliance on the City's assertions—which may have been made prior to the passage of AB 1486, Developer does not specify—Developer admits it did not seek a "formal" renewal of the ENA. (*Id*.)[7]

First and foremost, the law charges Developer with knowledge of the Municipal Code provisions that require a City Council vote to create or extend an ENA (see *Katsura*, at p. 109), making any reliance on the City's representations (if such representations even occurred) entirely unjustifiable. That is, the law provides no basis for Developer to claim it justifiably relied on the existence of such a supposed constructive contract when it made significant payments to the City. More than likely, Developer and City staff understood it would be controversial to bring yet another ENA up for a vote before City Council, and simply preferred to continue negotiating under the radar and out of public view. Having sought to avoid the public scrutiny that entering an ENA through the proper channels would garner, Developer has no business claiming the benefits of a lawfully-authorized ENA.

In any event, Developer's revelation that the City and Developer discussed whether such formal steps were necessary only serves to show that Developer had actual knowledge of the process for obtaining the requisite authorization to enter into a new ENA—it was not the victim of an innocent mistake. California courts are unsympathetic to parties, such as Developer, who knowing full well that the ENA had expired, went ahead at its own peril. (See *Katsura*, 155

[7] The Developer also claims that it "relied upon the City's statements in its January 23, 2019 letter." (Exh. G, at p. 9.) As explained above, the City made no promises to continue negotiating on an exclusive basis in the January 23, 2019 letter—in fact, it expressly disclaimed any duty to negotiate exclusively by memorializing its understanding that continuing negotiations were "non-binding." (Exh. D, at p. 1.)

Cal.4th at p. 109; *San Diego County v. California Water & Tel. Co.* (1947) 30 Cal.2d 817, 827; *Amelco Electric v. City of Thousand Oaks, supra,* 27 Cal.4th at p. 235 ["If the statute forbids the contract which he has made, he knows it, or ought to know it, before he places his money or services at hazard."]; *cf Fountain v. City of Sacramento* (1905) 1 Cal.App. 461, 464 ["Instances are becoming too frequent where parties endeavor to fix illegal liabilities upon municipalities under the doctrine of equitable estoppel, thus seeking to avoid injurious consequences which they knowingly brought upon themselves."].) Developer was told by the City that the on-going negotiations were nonbinding and that the ENA had terminated. (Exh. D.) Developer did not ask the City to undertake the necessary public process to renew the ENA, so it cannot now create an agreement by virtue of its participation in the environmental review process for the Plaza Project. There is no ENA, and there was no ENA as of September 2019 that would prevent the City from taking the steps required by AB 1486, so the City is under a legal obligation to comply with the Legislature's newest mandate.

2. EVEN IF THE CITY IS EXEMPT FROM AB 1486, THE PRE-AB 1486 VERSION OF THE SLA STILL APPLIES.

For the reasons explained above, the City's wholesale adoption of HCD's revised conclusion is contrary to law. But the City staff report also leaves City Council with the impression that, so long as negotiations continue with Developer, there is no risk of violating the SLA. This misunderstanding demands a correction.

As explored in-depth above, the exemptions in AB 1486—even if they applied—do not eliminate the City's responsibility to comply with the pre-AB 1486 SLA, which required "[a]ny local agency disposing of surplus land [to] send, prior to disposing of that property, *a written offer to sell or lease the property*" for affordable housing, park, recreational, or open-space purposes. (§ 54222, emphasis added.) Bearing in mind that neither of these provisions "authorize or excuse any violation of the provisions of this article as it existed on December 31, 2019" (§ 54234, subdivision (c)), it is notable that the City has never undertaken to comply with the SLA for the Plaza Project.

Nor would the existence of an expired ENA somehow prevent the City from complying with the pre-AB 1486 version of the SLA. Indeed, during the legislative history of AB 1486, the Legislature specifically referenced a controversial deal to dispose of city-owned land in Oakland. (See Exh. E, at p. 7). The details of that transaction provide a factually similar illustration of how the SLA applies to the Plaza project.

According to a widely-publicized letter from the Oakland City Attorney, the City Council sought to sell public land to a developer for a luxury apartment tower that opponents feared would worsen the area's affordability crisis. (Letter from Barbara J. Parker, Oakland City Attorney (2/17/15), attached as Exhibit L, at p. 2.) In July 2013, the City entered into an ENA, and while the developer undertook significant predevelopment work on the project, the ENA expired in January 2015. (*Id.*) Seeking to persuade the City it did not need to comply with the SLA's requirement to offer the property to preferred entities, the developer argued that the City was "estopped" from offering the property by virtue of the expired ENA and an implied

determination of the City prior to entering into the ENA that the property was not subject to the Act. (*Id*., at p. 5.)

The City Attorney concluded that "[p]rinciples of estoppel do not override state law requirements," and because the ENA had expired, entering into negotiations with a preferred entity would not have breached the exclusive negotiations clause of the ENA. (*Id*.) In other words, there was nothing that would legally preclude the City from complying with the SLA by sending out the requisite offers. (*Id*.) The Oakland City Council was convinced, and promptly brought the City into compliance by issuing a notice of intent and offer to convey the property to affordable housing developers. (East Bay Express, *City of Oakland Finally Obeys Law; Offers Publicly Owned East 12th St. Land to Affordable Housing Developers*, 7/16/15, available at https://www.eastbayexpress.com/SevenDays/archives/2015/07/16/breaking-news-oakland-finally-obeys-law-offers-publicly-owned-east-12th-st-land-to-affordable-housing-developers.)

The situation before the Council is not meaningfully different from that reviewed in Oakland. Nothing prevents the City from first making the property available to the SLA's preferred entities because—as the City staff readily admits— the only ENA in existence has long-since expired and the City has no duty to continue negotiations with Developer. (City Council Staff Report (6/17/20), at p. 16.) Oakland's City Attorney recognized the risk that ignoring the SLA would impose, and when her analysis was disclosed to the public, city leaders took heed of the outcry. Oakland's experience should serve as a cautionary tale for this city.

3. DEVELOPER'S OTHER ARGUMENTS ARE MERITLESS.

A. The Provision Exempting Lands Designated in a Long-Range Management Plan Does Not Apply Here.

The Developer has also sought to evade AB 1486 by arguing that the Project was exempted under the new Government Code section 54234(b)(1), which now provides:

> With respect to land . . . designated in a long-range property management plan pursuant to Section 34191.5 of the Health and Safety Code, either for sale or retained for future development, this article as it existed on December 31, 2019, without regard to the changes made to this article by the act adding this section which take effect on January 1, 2020, shall apply to the disposition of such property if both of the following apply:
>
> (A) An exclusive negotiating agreement or legally binding agreement for disposition is entered into not later than December 31, 2020.
> (B) The disposition is completed not later than December 31, 2022.

However, the site on which Developers propose to build the Plaza Project consists of several assembled parcels, some of which are owned by the City and some of which are owned

by the City's Successor Agency to the former Redevelopment Agency (RDA). (Exh. A, at p. 1; City Council Staff Report (6/17/20), at p. 3.) Yet only the Successor Agency parcels are subject to the LRPMP approved by the Department of Finance. (Exh. A, at p. 1.) In other words, not all of the parcels that make up the site—i.e., not all of the surplus land—has been "designated in a long-range property management plan." (§ 54234, subd. (b)(1).) This carve-out simply does not apply to the facts at hand.

Nor would it make much sense to apply the section 54234, subdivision (b)(1) exemption to exclude the whole site on which Developers propose to build if only some of the parcels qualify for the exemption. After all, the proposed disposition is for the whole site—i.e., the contiguous parcels. Applying AB 1486 to the City-owned parcels and applying the pre-existing SLA to former RDA parcels creates a logistical headache with no support in the text or legislative history of the bill. Indeed, legislative history demonstrates legislative intent to limit the carve-out only to "certain properties", one category being property subject to an ENA and the other being "[f]ormer RDA properties that enter into an agreement for the property by December 31, 2020 and disposes of the property by December 31, 2022." (Exh. M, at pp. 4-5.) The plans at issue involve the entire site, not just the properties in the LRMP, so the carve-out from the SLA does not apply.[8]

B. Contrary to Developer's Contention, the SLA Clearly Applies to Long Term Ground Leases.

The Developer has argued that the City is not required to take any of steps laid out in the SLA because the Act only requires cities to take certain steps "prior to disposing" of surplus land (§ 54222), whereas the Plaza Project involves a ground lease, which is not a "disposition" subject to the act. (Exh. G, at p. 5.) That City staff has recommended that the property be listed as surplus property (City Council Staff Report (6/17/20), at p. 2) suggests it agrees with HCD and SMCLC that leases are "dispositions" for purposes of the SLA, but City staff has not made its conclusion express.

When interpreting a statute, California courts "begin with its text, as statutory language typically is the best and most reliable indicator of the Legislature's intended purpose." (*Larkin v. Workers' Comp. Appeals Bd.* (2015) 62 Cal.4th 152, 157.) Courts "do not look at each term as if 'in a vacuum,' but rather gather 'the intent of the Legislature . . . from the statute taken as a whole." (*Id.*, at p. 158 quoting *People v. Rogers* (1971) 5 Cal.3d 129, 142 (conc. & dis. opn. of Mosk, J).) Only where the statutory language remains ambiguous after analyzing the text and statutory structure will a court examine extrinsic sources, such as legislative history. (*Larkin v. Workers' Comp. Appeals Bd.*, 62 Cal.4th at p. 158.)

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[8] Even if the exemption did apply to the parcels subject "designated in a long-range property management plan" (§ 54234, subd. (b)(1)), meaning the site of the Project was partially exempted from AB 1486, the City would still need to (1) comply with the prior version of the SLA to those parcels that are exempted, and (2) comply with AB 1486 for the parcels not exempted.

Here, the SLA does not define "disposition," which the Developer asserts refers exclusively to a sale of City-owned property. But several other provisions of the Act refer to "leases." (See § 54222, subd. (e) ["The entity or association desiring to purchase or *lease* the surplus land . . . shall notify in writing the disposing agency of its interest in purchasing or *leasing* the land. . . .] (emphasis added.); § 54223, subd. (a) ["After the disposing agency has received a notice of interest from the entity desiring to purchase or *lease* the land . . . the disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price and terms or *lease* terms."] (emphasis added.); § 54226 ["This article shall not be interpreted to limit the power of any local agency to sell or *lease* surplus land at fair market value . . . and any sale or *lease* at or less than fair market value consistent with this article shall not be construed as inconsistent with an agency's purpose."] (emphasis added.); § 54227, subd. (a) ["In the event that any local agency disposing of surplus land receives a notice of interest to purchase or *lease* that land from more than one of the entities . . . ."] (emphasis added.)

Heeding the California Supreme Court's instruction to gather the intent of the Legislature from the statute as a whole (*Larkin v. Workers' Comp. Appeals Bd.*, 62 Cal.4th at p. 158), the City should focus on the Legislature's repeated use of the term "lease" in conjunction with "sale" or "purchase." Developer's interpretation reads statutory text— "the most reliable indicator of the Legislature's intended purpose," (*id*.)—entirely out of the statute.

Developer argues the Legislature meant to exclude "leases" from the meaning of "disposition," pointing to proposed bill language that would have defined "dispose of" to mean "sell, lease, transfer, or otherwise convey any interest in real property." (See Exh. G, at p. 5.) Developer attributes the Legislature's decision to strike a definition of "dispose of" altogether to local governments' opposition to including leases in the definition. (*Id*., at p. 6.)

As an initial matter, legislative history only serves to elucidate statutory *ambiguity*, but here, the repeated references to "sale" alongside "leases" removes any latent ambiguity that a city can "dispose" of surplus land by leasing it. (*Quarterman v. Kefauver* (1997) 55 Cal.App.4th 1366, 1371 ["When the words are clear and unambiguous, there is no need for statutory construction or resort to other indicia of legislative intent, such as legislative history."]; *Exxon Mobil Corp. v. Allapattah Services, Inc.* (2005) 545 U.S. 546, 568 ["Extrinsic materials have a role in statutory interpretation only to the extent they shed a reliable light on the enacting Legislature's understanding of otherwise ambiguous terms."].)

Moreover, the fundamental premise of Developer's argument—that the Legislature considered and ultimately declined to extend the SLA to cover public leases—assumes that, under prior law, dispositions-by-lease were unregulated. This assumption is not supported by the express language of the SLA itself. Under prior law, Government Code section 54222 required "[a]ny local agency disposing of surplus land [to] send, prior to disposing of that property, ***a written offer to sell or lease the property.*"** (Emphasis added.) Developer has offered no reason why pre-AB 1486 SLA would not have applied to a long term ground lease such as the one at issue in the Plaza Project.

C. The City Cannot Sidestep the SLA by Characterizing the Project Site as Land Necessary for the Agency's Use.

Developer finally argues that, unless the AB 1486 amendments apply to the project, the City need not comply with the SLA at all because the site does not meet the definition of "surplus land" under the pre-AB 1486 version of the Act. (Exh. G, at p. 10.) City staff has recommended that the property be listed as surplus property (City Council Staff Report (6/17/20), at p. 2), but does not expressly reject Developer's argument otherwise.

Under the pre-AB 1486 version of the SLA, "surplus land" was defined as land "owned by any local agency, that is determined to be no longer necessary for the agency's use." (§ 54221(b).) Because the prior version did not expressly define what it meant to be "necessary for the agency's use," Developer urges the City to simply decide the site is "necessary for the agency's use"—if the land is necessary, it is not "surplus," and the SLA does not apply. (Exh. G, at p. 10.)

Developer's invitation must be rejected out of hand. To say that the Plaza Project, which prominently features nongovernmental hotel, retail, and office development, is suddenly "necessary for the agency's use" strains credulity, and would certainly invite litigation.

* * *

In passing AB 1486, the Legislature re-affirmed its concern over the two chief problems the SLA was designed to solve: a pressing shortage of sites available for affordable housing and an identifiable dearth of land available for recreation and open-space purposes. (§ 54220, subds. (a)-(b).) As such, the Legislature declared, any surplus government land should be made available for these purposes before others. (*Id*.)

As the City now knows, local agencies' circumvention of this important law triggered AB 1486's significant amendments. As we have established above, AB 1486 applies to the City's review of the Plaza Project. The City has no choice but to comply with the letter of the law, including providing written notice of availability of the property to all of the entities required by statute *before* continuing negotiations with Developer regarding the Plaza Project. (§ 54222, subds. (a)-(b).)

We expect that the City will comply with the requirements of the Surplus Land Act, now that we have demonstrated that there is no basis to ignore the law and proceed with negotiations with the Developer. If the City chooses to continue these negotiations and enters a new ENA, the City will expose itself and Developer to liability, because the SLA can be enforced in the courts by third parties. Given the significance of these properties to the residents of this City, SMCLC will not allow the laws governing the disposition of public lands to be flouted, and will seek judicial intervention to enforce the laws if it becomes necessary to do so.

Yours truly,

Beverly Grossman Palmer
Counsel for Santa Monica Coalition for a Livable City (SMCLC)

Enclosed:

Exhibit A:	City Letter to Developer, (1/27/20)
Exhibit B:	ENA Between Developer and the City, (3/19/14)
Exhibit C:	Modification to ENA, (6/23/15)
Exhibit D:	City Letter to Developer (1/23/19)
Exhibit E:	Bill Analysis of AB 1486, Senate Committee on Governance and Finance (6/26/19)
Exhibit F:	City Letter to Developer (12/12/19)
Exhibit G:	Developer Letter to City (12/16/19)
Exhibit H:	City Letter to HCD (1/22/20)
Exhibit I:	City Email to HCD (1/23/20)
Exhibit J:	HCD Email to City (2/12/20)
Exhibit K:	HCD Letter to Developer (3/24/20)
Exhibit L:	Oakland City Attorney letter (2/17/15)
Exhibit M:	Bill Analysis of AB 1486, Senate Floor (9/10/19)

Cc: Lane Dilg, Interim City Manager, City of Santa Monica
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EXHIBIT A

City Letter to Developer, (1/27/20)

City of
Santa Monica®

Office of the City Attorney
1685 Main St., Rm 310
Santa Monica
CA 90401-2200

January 27, 2020

VIA U.S. MAIL AND E-MAIL

Dave Rand
Armbruster Goldsmith & Delvac LLP
12100 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90025
Dave@AGD-LandUse.com

Re: Application of Surplus Lands Act to the Plaza at Santa Monica Project

Dear Mr. Rand:

This letter responds to your correspondence to me, dated December 16, 2019, regarding the applicability of Assembly Bill No. 1486 to a site located at 4th/5th Street and Arizona Avenue in Santa Monica (the "Site") that your clients (collectively, the "Developer") have proposed for development of a project known as "the Plaza" (the "Project"). The Site consists of several assembled parcels, half of which are owned by the City and half of which are owned by the City's Successor Agency to the former Redevelopment Agency. The Successor Agency parcels are subject to a Long-Range Property Management Plan (the "LRPMP") approved by the Department of Finance. The City and Developer had previously entered into an Exclusive Negotiating Agreement ("ENA") with respect to the Site, but that ENA expired by its terms in 2015. Since the expiration of the ENA, the City and Developer have remained in ongoing negotiations regarding a long-term lease of the Site to Developer for development of the Project. Since the expiration of the ENA, the City has not engaged in negotiations with any other party regarding the Site.

As you know, Assembly Bill No. 1486 (AB 1486) (codified as Government Code sections 54220 et seq.) went into effect on January 1, 2020. This bill modifies the existing Surplus Lands Act to impose new restrictions on the "disposition" of "surplus property" owned by local government agencies, including the City. More specifically, as amended by AB 1486, Government Code Section 54222 provides that any local agency disposing of surplus land shall, "prior to disposing of that property or participating in negotiations to dispose of that property with a prospective transferee," send a notice of written availability of the property for various specified uses to various housing sponsors and other local government agencies. As amended by AB 1486, Government Code Section 54230.5(b) imposes an obligation on the local agency, prior to agreeing to terms for disposition of surplus land, to provide the Department of Housing and Community Development ("HCD") with a specified description of the process followed to dispose of the land, and imposes an obligation on HCD to review the description and submit findings to the local agency if HCD

determines that the proposed disposal violates state law. As added by AB 1486, Government Code Section 54230.5(a) imposes a penalty of "30 percent of the final sale price" on a local agency "that disposes of land in violation of this article after receiving a notification from [HCD] pursuant to subdivision (b) that the local agency is in violation of this article," and provides for a third-party cause of action to enforce the law.

As added by AB 1486, Government Code section 54234 creates exemptions from AB 1486's modifications of the Surplus Lands Act if: (1) the local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property and the disposition is completed not later than December 31, 2022; or (2) for properties designated in a long-range property management plan ("LRPMP") either for sale or retained for future development, the local agency enters into an exclusive negotiating agreement or legally binding agreement for disposition not later than December 31, 2020 and disposition is completed not later than December 31, 2022.

Your December 16, 2019 letter states the Developer's position that AB 1486 does not apply to the City's ongoing negotiations with Developer regarding a long-term lease of the Site to Developer for development of the Project. To summarize, we understand the Developer's position to be that AB 1486 does not apply because: (i) the property that makes up the site is not "surplus land" as defined under the Surplus Lands Act as amended by AB 1486; (ii) a long-term ground lease of the type and duration that has been the subject of negotiation does not qualify as a "disposition" of the property that makes up the Site; and (iii) even if the property that makes up the site is "surplus land" and even if a long-term ground lease of the type and duration that has been the subject of negotiation qualifies as a "disposition" of that property, one or the other of the exemptions referenced above applies to all of the property that makes up the Site.

In light of Developer's position, the absence of any legal authority interpreting or applying AB 1486 (which became effective only as of January 1, 2020), and the potential adverse ramifications to the City were the City to engage in conduct found to violate AB 1486, the City intends to submit a request to HCD pursuant to Government Code 54230.5(b) seeking an expedited determination of whether AB 1486 would apply to a long-term ground lease of the property that makes up the site to Developer for development of the Project, as has been the subject of the ongoing negotiations. In light of Developer's position, the absence of any legal authority interpreting or applying AB 1486, and a desire not to unnecessarily disrupt ongoing negotiations, the City will continue to engage in negotiation with Developer while awaiting an opinion from HCD.

This action should not be taken as the City's agreement with the Developer regarding any of the positions set forth in your December 16, 2019 correspondence. In particular, the City rejects any contention that there is any limitation on the City's ability, should it choose, not to proceed with a disposition of the property that makes up the Site, or to dispose of the property in any manner determined at the discretion of the City Council, subject to applicable laws. Rather, this action reflects the City's good faith effort to support continuing negotiations within the confines of applicable law.

As reiterated on numerous occasions, the City's willingness to continue negotiations at the staff level is contingent upon the City's understanding (as previously stated in the City's January 23, 2019 letter) that non-binding negotiations can proceed and also terminate without Developer's claim to any monetary damages. Furthermore, nothing herein or in any prior correspondence should be interpreted to preclude Developer from seeking to enter into a new ENA by action of City Council, to the extent authorized by law.

In short, the City believes that seeking HCD's position regarding the applicability or non-applicability of AB 1486 will provide much needed clarity and certainty to both the City and Developer.

Sincerely

Susan Y. Cola
Deputy City Attorney

cc: Lane Dilg, City Attorney
George Cardona, Special Counsel/Chief of Staff
Andy Agle, Director, Housing and Economic Development Department

EXHIBIT B

ENA Between Developer and the City, (3/19/14)

Contract No. 9844 (CCS)

EXCLUSIVE NEGOTIATION AGREEMENT

THIS EXCLUSIVE NEGOTIATION AGREEMENT ("AGREEMENT") is entered into this 19th day of March 2014 by and between the CITY OF SANTA MONICA ("City"), a municipal corporation organized and existing pursuant to the laws of the State of California and the Charter of the City of Santa Monica, and METROPOLITAN PACIFIC CAPITAL, INC., a California corporation, CLARETT WEST DEVELOPMENT, LLC, a Delaware limited liability company, and DLJ REAL ESTATE CAPITAL PARTNERS, LLC, a Delaware limited liability company (each individually and collectively, referenced herein as "Developer") on the terms and provisions set forth below.

RECITALS

A. The City is the owner or master lessee of certain real property (the "Site") located within the City of Santa Monica, California. The Site is comprised of approximately two and a half acres (112,000 square feet) bound by Arizona Avenue on the north, 4th Street on the west, 5th Street on the east, and the property line to the south. Approximately half of the site (1324-1334 5th Street) is owned by the City, and the other half of the site (1301-1333 4th Street) was acquired by the former Redevelopment Agency of the City of Santa Monica ("RDA") and leased to the City as the "Lessee" pursuant to that certain Lease and Vesting Agreement ("City Lease") dated as of October 29, 2010, recorded as Memorandum of Lease and Vesting Agreement by and between the City of Santa Monica and Redevelopment Agency of the City of Santa Monica on November 2, 2010, as Document No. 20101568941. The residual fee interest in 1301-1333 4th Street was transferred to the City in March 2011, subject to all existing encumbrances on title, including the City Lease. Two buildings initially on the Site were listed in the Historic Resources Inventory; one building has been demolished and one building remains on Site. A Site Map is attached hereto and incorporated herein as Exhibit A.

B. In February 2013, the City issued a Request for Proposals ("RFP") with respect to the ground leased development of a mixed use project on the Site consisting of public and programmed open space, public parking, activating ground-floor uses, a mix of upper-floor uses, and associated infrastructure ("Project").

C. In response to the RFP, Developer submitted a proposal on May 1, 2013 entitled "The Plaza at Santa Monica." Developer also submitted responses to follow-up questions regarding the proposal in June and in October. The proposal and responses to follow-up questions are collectively referred to herein as the "Proposal," incorporated by reference, with the most recently submitted information superseding any conflicts with the initial proposal submission.

D. On December 10, 2013, the City Council authorized staff to enter into exclusive negotiations with Developer for the development of the Project and the ground leasing of the portion of the Site not subject to the City Lease, and the sub-ground leasing of the portion of the Site subject to the City Lease, to Developer, subject to the Council's approval of the terms and

conditions of a Disposition and Development Agreement ("DDA") with respect to the ground leasing and sub-ground leasing of the Site and the development of the Project on the Site.

E. The parties acknowledge that AB1X 26 (enacted Stats. 2011, 1st Ex. Sess. 2011-2012) and AB 1484 (2011-2012) (collectively, the "Dissolution Laws") provide certain oversight authority with respect to transfers of former Redevelopment Agency property that occurred after January 1, 2011, including the transfer of the Property to the City in March 2011. Notwithstanding the Dissolution Laws, Developer understands, acknowledges and agrees that nothing in this Agreement shall be deemed as a warranty or representation regarding the transferability of the City's fee and/or leasehold interest in the Site and that Developer's decision to enter into exclusive negotiations with the City, notwithstanding the Dissolution Laws, is undertaken with City's full disclosure of this risk to Developer.

F. City and Developer wish to enter into this Agreement to exclusively negotiate the terms and conditions for development of the Site, subject to all of the terms and conditions of this Agreement.

IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

I. [§ 100] Purpose of Agreement

The purpose of this Agreement is to provide a period of exclusive negotiations and to set forth the terms and conditions under which the parties shall work together in developing the scope of the Project and any actions required to be taken by Developer or City with respect thereto and to negotiate diligently and in good faith to achieve the Milestones set forth in the Schedule of Performance attached hereto as Exhibit B (the "Schedule of Performance").

II. [§ 200] Elements of Proposal

In making its determination to enter into this Agreement with Developer, the Developer agrees that the City relied upon the project components, programs, and objectives contained within the Proposal (collectively, the "Elements"). The parties acknowledge that the Project will change based on community and City input. The pro forma for the Project as it evolves shall reflect the Developer's commitment to key Elements (as such key Elements may evolve), including but not limited to ground lease and sub-ground lease payments, Project program, design flexibility, design and management team, and sustainability, outlined in the initial Proposal and the supplemental response as submitted in October 2013, both of which are incorporated herein by reference.

The parties agree that this Agreement and the DDA shall be guided by all of the Elements that are approved by the City Council as the Project design specifics are refined. The negotiations shall address, but need not conform to the exact details of the Proposal; it being understood that the ultimate scope of the Project is subject to change in connection with the development of the scope of the Project outlined below in Article III, as approved by the City Council.

III. [§ 300] Development of Scope of Project

[§ 301] Generally

The Developer agrees that Developer's design of the Project shall be consistent with the Elements and the Design Concept Plans (defined below) approved by the City Council following the community process outlined below in Section 302.

[§ 302] Community Input Process

The Developer agrees that community input will play a major role in the design process for the Project. At Developer's sole cost and expense, the Developer agrees to facilitate community input by implementing a community engagement process of no more than twelve (12) months. The main purpose of the community engagement process is to elicit community input and facilitate consensus-building with regard to the design concept and program for the Project. Key Developer principals, as well as key Developer design consultants, will be active in the process, drawing on the resources of the two Developer architectural teams, the Developer landscape architecture team, and the open space management team.

The Developer and its design team shall work with City staff to structure and refine the community process for the Project consistent with the community input section of the Proposal, and, at Developer's sole cost and expense, Developer agrees to facilitate and implement the community process as refined. The Developer agrees that the refined community process shall proceed in accordance with and pursuant to the Schedule of Performance, subject to City cooperation.

It is anticipated that the community input process will culminate in the approval of the Design Concept Plans (defined below) by the City Council. The Design Concept Plans shall include a site plan, elevations and sections of the Project improvements as they are to be developed and constructed on the Site. Through the community input process, the team will establish the proposed scope and physical appearance of the Project to be presented to the City Council for conceptual approval prior to submission of the Project to the entitlement process. If approved for submission, the Project will then proceed through the entitlement approval process, which may involve the Planning Commission, Architectural Review Board, City Council and Coastal Commission.

[§ 303] Initial Business Terms

As the scope of the Project is defined through the community input process, Initial Business Terms (defined below) will be developed for approval by the City Council. The Initial Business Terms shall include preliminary terms and constitute a general framework for good faith negotiations of the terms and conditions of the DDA, which shall be subject to City Council approval. The Initial Business Terms shall be in conformance with the terms and conditions listed in section 404 of this agreement.

IV. [§ 400] Exclusive Good Faith Negotiations

[§ 401] Good Faith Negotiations

The parties agree to negotiate diligently and in good faith the terms and conditions of the DDA and related documents relating to the ground leasing and sub-ground leasing of the Site and the development, use and operation of the Project on the Site. Good faith negotiations shall mean negotiations based upon the City-approved Design Concept Plans and Initial Business Terms, and a scope of work for any required public improvements, consistent with the Project Elements that are approved by the City Council (referenced collectively hereinafter as "Scope"). Without limiting the foregoing, City shall use its good faith reasonable efforts to schedule public hearings before the City Council and City boards and commissions consistent with the time frames set forth in the Schedule of Performance.

[§ 402] Period of Negotiations

Unless earlier terminated in accordance with the provisions of this Agreement, the parties agree to negotiate diligently and in good faith the Project Scope and the Initial Business Terms for 365 days, commencing upon the full execution of this agreement ("Original Term"). The City Council may approve further extension of the Original Term after approval of the Scope.

[§ 403] Extension of Negotiations

Unless earlier terminated in accordance with the provisions of this Agreement, one ninety (90) day extension beyond the Original Term ("Extension Period") is possible with the written agreement of the City Manager, exercised in the City Manager's sole and absolute discretion. The City Council may authorize additional extensions.

[§ 404] DDA Terms and Conditions

The terms and conditions of any DDA entered into with the Developer shall be in conformance with the following components:

A. The Developer and City would enter into (a) a long-term ground lease with a 55 year base term, plus option periods agreed to by the City and Developer, with respect to the portion of the Site not subject to the City lease, and (b) a long-term sub-ground lease with a 55 year base term, plus option periods agreed to by the City and Developer, with respect to the portion of the Site subject to the City Lease (collectively, the "Ground Leases"). The terms of the Ground Leases, rental, sublease and use restrictions, mortgagee protections, default provisions and such other provisions as City and the Developer shall determine may be necessary or appropriate shall be negotiated and incorporated into the Ground Leases. The exact terms and schedule under which the City would ground lease and sub-ground lease the Site to Developer will be negotiated and set forth in the DDA.

B. In addition, the Developer and City shall discuss the concept of a profit sharing payment.

C. The Developer shall design and construct the Project on the Site in accordance with a schedule of performance to be negotiated as part of the DDA, the approved Scope included in the DDA, all approved discretionary entitlements including Architectural Review Board approval, and technical approvals from the City and other agencies (the "Entitlements").

D. The Developer shall submit to the City a good faith performance deposit and a cost recovery deposit pursuant to sections 701 and 702 of this agreement.

E. The DDA shall contain the following provisions, though if Design Concept Plans or Entitlements approved by the City Council modify the Proposal design, the provisions regarding Project design shall be modified accordingly:

1. Total public open space shall meet or exceed the proposed total area of 56,000 square feet;
2. Total cultural space shall meet or exceed the proposed 12,000 square feet;
3. Total public parking spaces shall exceed the minimum threshold of 339;
4. Minimum number of affordable Project units shall be 48;
5. Developer is responsible for the costs of relocating the two banks that are currently on the Site and for acquiring approvals for and covering the costs of demolition of existing structures as necessary;
6. Prevailing wages under state law are required for construction of the Project; and
7. The execution of the Ground Leases shall occur on or before the start of construction and shall be subject to conditions stated in the executed DDA.

[§ 405] Essential Terms Not Agreed Upon

The parties acknowledge that the Proposal and this Agreement do not establish the essential terms of the development of the Project (sometimes referred to herein as the "Transaction") and that although they have set forth below a framework for negotiation of the essential terms of the Transaction, (A) they have not set forth herein nor agreed upon all essential terms of the Transaction, including, for example, price, terms and timing of the Ground Leases; (B) they do not intend the Proposal or this Agreement to be a statement of all of the essential terms of the Transaction; and (C) the essential terms of the Transaction, if agreed to by the parties, shall be set forth, if at all, in the DDA and Ground Leases approved and executed by authorized representatives of each of the parties.

[§ 406] Not a Final Agreement

This Agreement is solely an agreement providing for the exclusive opportunity to negotiate a DDA and Ground Leases; the parties do not intend this Agreement to be, nor shall it be, a purchase agreement, ground lease, license, option or similar contract, nor does this agreement grant any discretionary approvals or entitlements.

V. [§ 500] Termination of Agreement

In addition to other provisions of this Agreement which provide for the termination of this Agreement, this Agreement may be terminated by the City in the event any of the following occurs:

A. If, for any reason, the City Council has not approved Design Concept Plans and Initial Business Terms as outlined in Sections 301-303, above, by January 31, 2015, then the City shall have the right to immediately terminate this Agreement;

B. If, for any reason, by the end of the Original Term (or the Extension Period, if applicable), the Developer has not received City Council approval to further extend the exclusive negotiating period, then this Agreement shall automatically terminate;

C. If the City reasonably determines that Developer has failed to negotiate diligently and in good faith, the City shall first provide written notice to Developer of such default and provide thirty (30) calendar days to cure the default;

D. If Developer fails to prepare and/or submit any plans, drawings or related documents as required by this Agreement by the dates respectively provided in the Schedule of Performance, the City shall first provide written notice to Developer of such default and provide thirty (30) calendar days to cure the default; and

E. If Developer is in default under any other provision of this Agreement, the City shall first provide written notice to Developer of such default and provide thirty (30) calendar days to cure the default.

F. Notwithstanding anything to the contrary contained herein, if a default is of a nature that it cannot be cured within thirty (30) calendar days, Developer shall be deemed to have cured the default provided that Developer commences the cure within such thirty (30)-day period and diligently prosecutes such cure to completion; provided, however, that in no event shall the time period to cure the default be deemed to extend the term of this Agreement, as set forth in sections 402 and 403, herein.

[§ 502] Effect of Termination

In the event this Agreement is terminated as provided in this Section, no party shall have any liability hereunder following such termination. In the event of such termination of this Agreement, unused portions of the Cost Recovery Deposit shall be allocated as provided in Section 702.

VI. [§ 600] Site Access

[§ 601] Developer Access to the Site

Subject to existing lease and license agreements with Bank of America, JP Morgan Chase, and Downtown Santa Monica, Inc., Developer shall have access to the Site pursuant to and in accordance with a License Agreement to be entered into by the City and Developer, substantially in the form attached hereto as Exhibit C ("License Agreement").

[§ 602] Insurance

Prior to any entry upon the Site and throughout the entire term of this Agreement, the Developer shall furnish or cause to be furnished to the City, evidence of the insurance policies required in the License Agreement, and shall maintain, or cause to be maintained, the insurance policies required in the License Agreement.

[§ 603] Indemnification

The Developer hereby indemnifies and agrees to defend and hold the City of Santa Monica and the City and their respective officers, employees, contractors and agents harmless from and against any and all obligations, losses, injuries, damages, claims, liens, demands, liabilities and other costs and expenses, including, without limitation, attorneys' fees and costs (collectively, "Claims"), incurred in connection with or arising out of or resulting from any work or activity of Developer, its employees, agents, contractors, representatives or consultants permitted pursuant to the License Agreement and/or the grant of access to Developer pursuant to the License Agreement, except to the extent any such Claim arises due to the gross negligence or willful misconduct of any indemnified party.

VII. [§ 700] Deposits

[§ 701] Good Faith Deposit

Prior to execution of this Agreement by the City, the Developer shall submit a good faith deposit to the City in the amount of $325,000 in the form of an unconditional, irrevocable letter of credit, cashier's check or certified check, naming the City as Beneficiary or Payee, as applicable, to ensure that Developer will proceed diligently and in good faith to negotiate and perform all of the Developer's obligations under this Agreement. If the good faith deposit is in the form of a letter of credit, the term shall be at least twelve (12) months, and if this Agreement is still in effect, shall be renewed at least thirty (30) days prior to its expiration for a like period or the City may draw on the letter of credit and hold the proceeds as the good faith deposit. If the Developer has negotiated diligently and in good faith, the deposit shall be returned to Developer upon termination of negotiations.

[§ 702] Cost Recovery Deposit

A. Within sixty (60) days following the City's execution of this Agreement, the Developer shall submit a deposit to the City in the amount of $150,000 in the form of a cashier's check or certified check as a deposit toward the reimbursement of City actual and reasonable staff and third party costs ("Cost Recovery Deposit"). The Cost Recovery Deposit will not earn interest and is intended to be used for the reimbursement of City actual and reasonable staff and third party costs. The Cost Recovery Deposit will be expended to cover the City's actual and reasonable staff and third party costs during the term of this Agreement, and the Cost Recovery Deposit will be depleted accordingly. The City reserves the right to increase the amount of the Cost Recovery Deposit for reimbursement of unforeseen City reasonable and actual staff and third party costs associated with the negotiation of the DDA. Unused portions of the Cost Recovery Deposit remaining at the time of the termination of this Agreement, or at the time the DDA is executed, will be disbursed in accordance with subsection C., below. City presently anticipates that such costs would not exceed $150,000.

B. From and after the date of this Agreement, the Cost Recovery Deposit may be used by the City to pay the City's actual and reasonable staff and third party costs incurred in connection with the drafting, negotiation, and execution of the DDA, including all staff costs and third party fees and costs incurred for legal counsel, financial and other consultants, (collectively, the "City Transaction Expenses"). Developer shall upon request be entitled to receive detailed invoices from the City setting forth amounts constituting City Transaction Expenses.

C. In the event that this Agreement terminates or is terminated as provided herein, the Cost Recovery Deposit will become nonrefundable as and to the extent necessary to pay City Transaction Expenses incurred with respect to services performed on behalf of the City through the date of termination, and the City shall return to the Developer any portion of the Cost Recovery Deposit that is not applicable to such City Transaction Expenses.

VIII. [§ 800] Need for DDA

The parties acknowledge and agree that this Agreement states the intention of the parties to negotiate and enter into a DDA. The parties have not reached agreement on such DDA, and do not intend to be bound to any DDA terms until a final written DDA is executed by both parties. With respect to the exclusive negotiations for the DDA, City's acknowledgment of this Agreement is merely an agreement to enter into a period of exclusive negotiations according to the concepts presented herein, reserving final discretion and approval by the City of Santa Monica or any other agencies of the City as to any actions required of them, if any. If the negotiations hereunder culminate in a DDA which involves the lease of property to the Developer, such an agreement becomes effective only after and if the agreement has been considered and approved by the City Council after public hearing.

IX. [§ 900] General Provisions

[§ 901] Developer's Findings, Determinations, Studies, and Reports

From time-to-time, as requested by the City, the Developer agrees to submit to the City reports and analyses, advising the City on all matters related to the Project, including, without limitation, financial feasibility analyses, construction cost estimates, marketing studies and similar due diligence matters. Should negotiations not result in a DDA between the City and Developer, City may use any non-confidential and non-proprietary information provided by the Developer in any way deemed by the City to be of benefit to the Site, subject to applicable laws including but not limited to the Public Records Act.

[§ 902] Full Disclosure

The Developer agrees to make continuing full disclosure to the City of the methods of financing and the financing documents to be used in the Project. The Developer also agrees to make continuing full disclosure to City of its partners, principals, officers, stockholders, and associates and of all other pertinent information concerning the Project, Developer and all other consultants, site developers and other participants. The developer-design team shall remain the same as described in the Proposal submitted by the Developer to the City in May 2013, unless approved by the City Manager, which approval shall not be unreasonably withheld.

[§ 903] Provision of Additional Information and Data

The Developer and the City shall cooperate with each other and provide such additional information and data relating to the Project, the financing or the Developer as either may request.

[§ 904] Real Estate Commissions

The City shall not be liable for any real estate commission or brokerage fees which may arise herefrom. The Developer agrees to indemnify and hold the City harmless from any claim by any broker, agent, or finder retained by the Developer.

[§ 905] No City Liability for Costs

The Developer acknowledges and agrees that the City shall not have any responsibility to pay or reimburse Developer for costs and expenses incurred by the Developer in connection with the RFP, this Agreement or the DDA; design, development or construction of the Project; the compliance by Developer with its obligations under this Agreement or otherwise unless the City expressly assumes any such specific responsibility in the fully executed DDA, but this Section shall not preclude Developer from allocating these costs as Project costs for pro forma purposes.

[§ 906] Remedies

The Developer specifically agrees that it shall have no right to obtain monetary damages, including for reimbursement, lost profit or consequential damages, with respect to this Agreement, the RFP, or the selection process and no right to specifically enforce this Agreement or any provision hereof and expressly waives any right it may have to file a notice of *lis pendens* against the Site, or any part thereof, with the sole exception that, if the City has acted in bad faith in pursuing its obligations under this Agreement, the Developer shall, as its sole and exclusive remedy, be entitled to the return of the Good Faith Deposit and the full amount of the Cost Recovery Deposit.

[§ 907] Interpretation

Wherever required by the context of this Agreement, the singular shall include the plural and the feminine shall include the masculine and vice versa. The words "include", "including" and "included" wherever used in this Agreement shall be construed to be followed by the words: "without limitation".

[§ 908] Notices

All notices or submittals required or permitted hereunder shall be delivered in person, by overnight courier, or by registered or certified mail, postage prepaid, return receipt requested to such party at its address shown below, or to any other place designated in writing by such party.

City: City of Santa Monica
1685 Main Street, Room 212
Santa Monica, CA 90401
Attn: City Manager

Developer: Metropolitan Pacific Capital, Inc.
201 Santa Monica Blvd., Suite 620
Santa Monica, CA 90401
Attn: John Warfel

Clarett West Development
1901 Avenue of the Stars, Suite 1465
Los Angeles, CA 90067
Attn: Frank Stephan

DLJ Real Estate Capital Partners
11150 Santa Monica Blvd., Suite 1020
Los Angeles, CA 90025
Attn: Jay Glaubach

Any such notice or submittal shall be deemed received upon delivery, if delivered personally, one (1) business day after delivery to the courier if delivered by nationally recognized overnight

courier, and three (3) business days after deposit into the United States mail if delivered by registered or certified mail.

[§ 909] Assignments

The Developer shall not assign, sell, convey, hypothecate or otherwise transfer this Agreement or any of the Developer's rights under this Agreement to any person or entity without the expressed written consent of the City, which consent may be withheld in its sole and absolute discretion; provided, however, that each Developer may assign this Agreement without the City's consent or approval to (a) an entity that is controlled by or under common control with such Developer, and (b) an affiliated entity that will develop the Project. Following such assignment, the assignor shall be relieved of all obligations hereunder, provided that the assignee expressly assumes all such obligations.

[§ 910] No Third Party Beneficiaries

Except as otherwise specifically set forth herein, execution of this Agreement is not intended to confer any third party beneficiary rights in or create any liability on the part of any party to any third parties.

[§ 911] Governing Law/Exclusive Venue

The Agreement shall be interpreted in accordance with California law, without giving effect to choice of law provisions. The parties agree that in the event of litigation, exclusive venue shall be in the County of Los Angeles, California, and the parties waive any objection to such forum as inconvenient or inappropriate.

[§ 912] Counterparts

This Agreement may be signed in one or more counterparts, each complete set of which shall constitute an original and all of which together shall constitute one and the same agreement.

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[§ 913] City Acting in Proprietary Capacity

By executing this Agreement, Developer acknowledges, understands and agrees that City, in implementing its duties under this Agreement, is acting solely in its proprietary capacity and nothing herein shall be deemed as a waiver or modification of any local, state or federal regulatory requirements for development of the Site.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set opposite their signatures.

ATTEST:

SARAH P. GORMAN
City Clerk

APPROVED AS TO FORM:

MARSHA JONES MOUTRIE
City Attorney

CITY OF SANTA MONICA
a municipal corporation

By: _____
ROD GOULD
City Manager

Metropolitan Pacific Capital, Inc.,
a California corporation

By: _____
John Warfel
President

Clarett West Development, LLC,
a Delaware limited liability company

By: _____
Frank Stephan
Senior Managing Director

DLJ Real Estate Capital Partners, LLC,
a Delaware limited liability company

By: _____

Title: _____

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a municipal corporation

By: _____
ROD GOULD
City Manager

_____
SARAH P. GORMAN
City Clerk

APPROVED AS TO FORM:

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MARSHA JONES MOUTRIE
City Attorney

Metropolitan Pacific Capital, Inc.,
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By: _____
John Warfel
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a municipal corporation

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By: _____
ROD GOULD
City Manager

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SARAH P. GORMAN
City Clerk

APPROVED AS TO FORM:

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MARSHA JONES MOUTRIE
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APPROVED AS TO FORM:

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City Attorney

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President

Clarett West Development, LLC,
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By: _____
Frank Stephan
Senior Managing Director

DLJ Real Estate Capital Partners, LLC,
a Delaware limited liability company

By: _____

Title: AUTHORIZED SIGNATORY

EXHIBIT A

SITE MAP

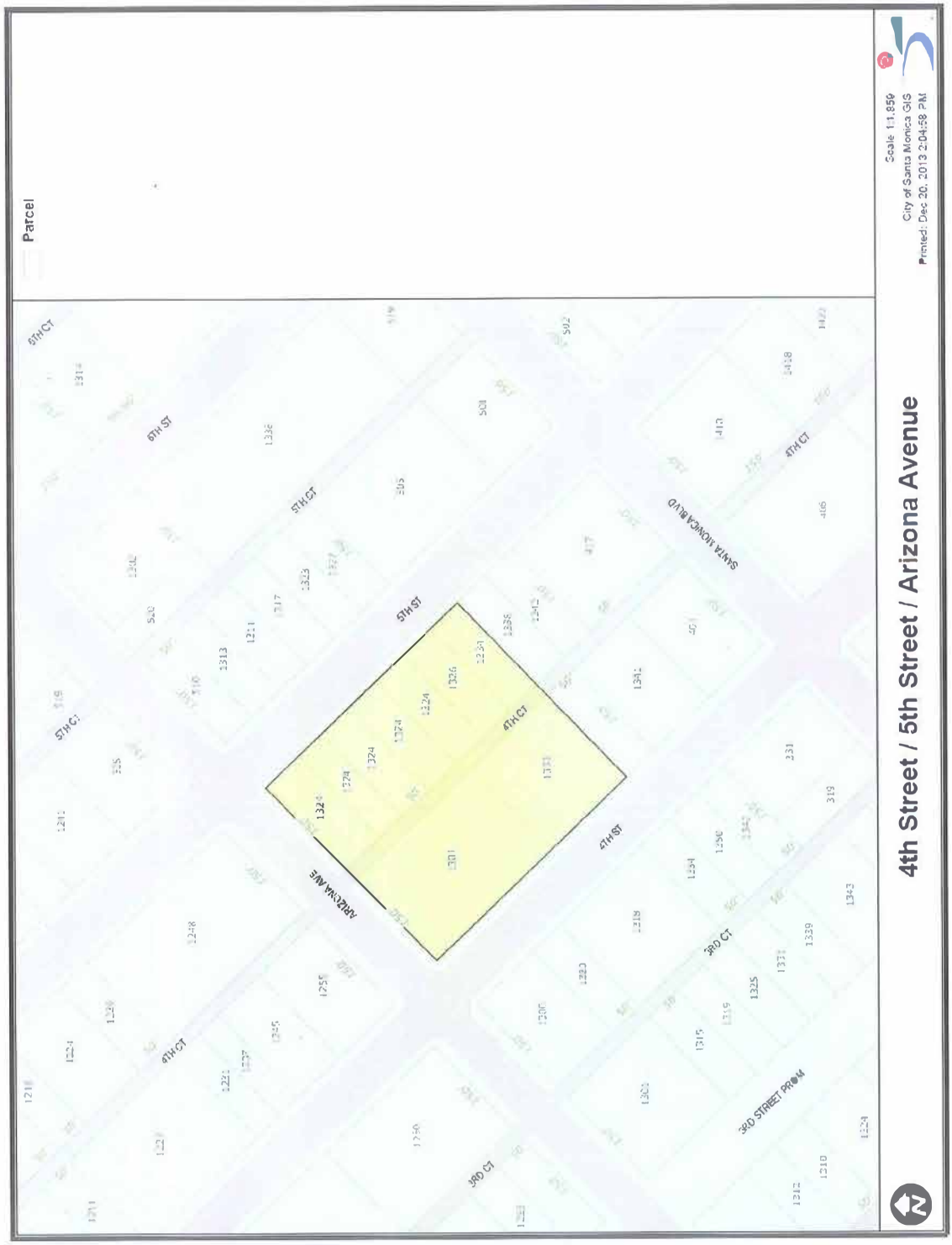

EXHIBIT B

SCHEDULE OF PERFORMANCE

MILESTONES
Phase I – January-May 2014
ENA executed
Developer conducts public workshops and seeks community and City input
Presentation of preliminary designs to Architectural Review Board
Check in with City Council to get direction on Project scope
Phase II – June-December 2014
Developer submits Design Concept Plans and Development Agreement application
Design Concept Plan review and feedback
Visits to appropriate City Boards and Commissions
Formal "float-ups" to Architectural Review Board and Planning Commission
Parties negotiate Initial Business Terms
"Float Up" to City Council and consideration of Design Concept Plans and Initial Business Terms
Extend ENA – 2015
Contingent on Council approval of Design Concept Plans and Initial Business Terms, extend ENA and begin environmental review and negotiation of Development Agreement (DA), Disposition and Development Agreement (DDA), and Ground Leases

Anticipated dates subject to change.

EXHIBIT C

FORM OF LICENSE AGREEMENT

[after this page]

LICENSE AGREEMENT

This LICENSE AGREEMENT ("Agreement") is made as of this ___ day of _____, 2014 (the "Effective Date"), by and between CITY OF SANTA MONICA, a public body corporate and politic, (the "City"), and METROPOLITAN PACIFIC CAPITAL, INC., CLARETT WEST DEVELOPMENT, LLC AND DLJ REAL ESTATE CAPITAL PARTNERS, LLC (each individually and collectively "Licensee").

RECITALS

A. The City is the current owner or master lessee of certain real property located in the City of Santa Monica, Los Angeles County, California, as more particularly shown on the site map attached hereto as Exhibit "A" (the "Property").

B. The Property is the subject of that certain Exclusive Negotiation Agreement by and between the City and Licensee. The purpose of the Exclusive Negotiation Agreement is to provide an exclusive negotiation agreement regarding the Property to set forth the terms and conditions under which City and Licensee ("Developer" therein) shall work together in developing the scope of the Project and any actions required to be taken by Licensee or City with respect thereto and to negotiate diligently and in good faith to prepare a Disposition and Development Agreement to be entered into between the City and Licensee with respect to the Project, subject to all of the terms and conditions of the Exclusive Negotiation Agreement. The term "Project" as used herein shall mean a mixed use project on the Property including residential uses, commercial uses, open space improvements, and associated infrastructure.

C. Subject to the covenants and conditions set forth below, the parties desire to enter into this Agreement to provide Licensee with access to the Property for the purposes and in accordance with the terms and provisions set forth herein.

TERMS

1. Grant of License. The City hereby grants to Licensee and its affiliates and Licensee's consultants ("Consultants") a temporary, nonexclusive license and right of entry to perform the following acts on the Property (1) obtain soil samples and make surveys and tests necessary to determine the suitability of the Property for the development of the Project; (2) conduct reasonable investigations on and beneath the Property to determine the presence of Hazardous Materials; and (3) other studies reasonably approved by City Manager or designee as requested by Licensee to assess the feasibility of the Project (collectively, the "Permitted Purpose"), subject to all licenses, easements, encumbrances and claims of title affecting the Property for the period of time set forth in this Agreement (the "License"). As used herein the phrase "Hazardous Materials" means any substance, whether in the form of a solid, liquid, gas or any other form whatsoever, which by any governmental requirements is defined as "hazardous" or harmful to the environment. Licensee agrees that the Permitted Purpose shall be completed in accordance with any permits and authorization issued by the City or any other governmental entity having jurisdiction over the Property in connection with the Permitted Purpose. Licensee's or its duly authorized employees', agents', consultants', independent contractors' (collectively,

"Licensee's Representatives") use of the Property shall not interfere with the use and enjoyment of the Property by the City or its directors, officers, members, employees, agents and independent contractors (collectively, "City's Representatives"), or anyone claiming under or through them. Licensee shall not permit any other party associated with Licensee, except Licensee's Representatives, to enter onto the Property during the term of this Agreement without the prior written consent of the City Manager or his designee, which may be withheld in his or her sole and absolute discretion. Licensee and Licensee's Representatives shall not perform any work other than the Permitted Purpose upon the Property.

2. Term. This Agreement shall commence upon the date the City executes this Agreement (the "Effective Date") and shall automatically expire upon the earliest to occur of: (i) conveyance of the Ground Leasehold estates in the Property to Licensee; (ii) termination of the Exclusive Negotiation Agreement; or (iii) termination of this Agreement (the "Term").

3. No Possessory Interest. Licensee acknowledges and agrees that City's grant of this License to use the Property creates no possessory interest in the Property and therefore Licensee shall abandon the use of the Property without the necessity of a judicial proceeding by the City no later than the expiration of this Agreement, or, in the event of an earlier termination of this Agreement, Licensee shall abandon the use of the Property immediately upon such earlier termination. Licensee further acknowledges and agrees that any failure to abandon the use of the Property upon expiration or termination of this Agreement shall constitute a trespass. This Agreement is intended to be for a short term duration.

4. Purpose of License. Subject to the provisions of this Agreement, Licensee and Licensee's Representatives may, during the Term, enter onto the Property at reasonable times to perform the Permitted Purpose in a good, substantial and workmanlike manner. Once undertaken, the Permitted Purpose shall be diligently pursued to completion.

5. Permits; Compliance with Laws and Regulations. Any and all work undertaken by Licensee pursuant to this Agreement shall be performed in conformance with all laws, ordinances, codes, and regulations of, or approved by, the applicable federal, state and local governments with respect to Licensee's or Licensee's Representatives use of and activities upon the Property. Licensee, at Licensee's sole cost and expense, shall obtain all required governmental permits and authorizations for Licensee's use of and activities upon the Property pursuant to this Agreement, and Licensee's use of and activities upon the Property shall be in conformance with any such permits and authorizations. City, in its capacity as owner or master lessee of the Property, shall cooperate with Licensee in applying for such permits and authorizations, subject to the approval of City Manager or designee.

6. Reports and Studies. In consideration of the City's granting of this License, Licensee shall promptly provide the City with a copy of all reports and test results arising from this License, without creating any liability for Licensee or the preparer of such reports.

7. Condition of the Property. The Property is licensed to Licensee in an "as is" condition, existing as of the Effective Date of this Agreement. Licensee shall not construct any temporary or permanent improvements or make any material changes to the Property as part of

Licensee's use of the Property without City's prior written consent, which may be withheld in its sole and absolute discretion. Such prohibition on construction of improvements or material changes to the Property shall include but shall not be limited to any signs, paving, construction of fencing, retaining walls, buildings or structures, or the removal of any living trees.

8. Maintenance and Condition of the Property. Licensee shall at all times cause its use of and activities upon the Property to be conducted in a safe, neat and orderly fashion. Licensee shall be responsible for clean-up of the Property from any activities undertaken by Licensee or any Licensee Representative on the Property, including any improvements thereon, in compliance with all zoning, building, safety, health, environmental and other laws, codes, ordinances, regulations, orders, requirements, permits or authorizations of any federal, state or local government applicable to the Permitted Purpose.

9. Restoration of Site. Upon the termination or expiration of this Agreement, and provided that the Property has not been conveyed to Licensee, Licensee shall at its sole cost and expense, cause the Property to be restored from any damage or material change caused by Licensee or any Licensee Representative to substantially the same condition as the Property was in prior to Licensee's entry onto the Property under this Agreement. Licensee shall be responsible for any damage done to the Property by Licensee or Licensee's Representatives. Within forty-eight (48) hours of the termination or expiration of this Agreement, and provided that the Property has not been conveyed to Licensee, Licensee shall at Licensee's sole cost and expense, remove, or cause to be removed, any garbage and debris on the Property caused by Licensee or any Licensee Representative and restore the Property to substantially the same condition as the Property was in prior to Licensee's entry onto the Property under this Agreement caused by activities of Licensee or any Licensee Representative.

10. Liens. Licensee shall not suffer or permit to be enforced against the Property, or any part thereof, any mechanics', materialmen's, contractors' or subcontractors' liens or any claim for damage arising from any work performed by Licensee or Licensee's Representatives or Licensee or Licensee's use of and activities upon the Property pursuant to this Agreement. Subject to any contest undertaken by Licensee in accordance with the requirements of this Paragraph 10 to challenge payment, Licensee shall pay, or cause to be paid, all said liens, claims or demands before any action is brought to enforce the same against the Property. The City reserves the right at any time and from time to time to post and maintain on the Property, or any portion thereof or improvement thereon, such notices of non-responsibility as may be necessary to protect City against any liability for all such liens, claims or demands. In the event Licensee undertakes a contest of any lien, claim or demand to challenge payment, Licensee shall first deliver to the City bonds or other adequate security in form and amount approved in writing by City Manager or designee.

11. Indemnification. Licensee shall indemnify, defend and hold harmless the City of Santa Monica (the "City"), members of the City Council, the City's boards and commissions, the City, City Representatives and their officers, agents, contractors, employees and volunteers from and against any and all loss, liabilities, damages, judgments, actions, costs, claims and expenses arising out of or resulting from (i) any acts or omissions, negligence, fault or violation of law or ordinance by Licensee or its officers, representatives, employees, agents, subcontractors, patrons

or invitees, (for this Section only, hereinafter collectively, "Licensee") or any Licensee Representative entering or using the Property with the permission of Licensee; and (ii) from and against any and all loss, liabilities, damages, judgments, actions, costs, claims and expenses arising in connection with Licensee's use of the Property. Notwithstanding the forgoing, Licensee has no obligations to indemnify the City, City Representatives and their officers, agents, contractors, employees and volunteers against the City's and City Representative's gross negligence or willful misconduct. Licensee shall give to the City prompt and timely written notice of any claim made or suit instituted related to the subject matter of this Agreement to its knowledge which may in any way directly or indirectly, contingently or otherwise affect either party. Approval of insurance policies by the City shall in no way affect or change the terms and conditions of the indemnification obligations of Licensee described herein.

12. Waiver Of Subrogation. Licensee hereby waives any and every claim which arises or may arise in its favor and against the City during the term of this Agreement or any extension or renewal hereof for any and all loss or damage to Licensee's property, or property of Licensee's officers, representatives, employees, agents, subcontractors, patrons or invitees covered by valid and collectible property insurance policies to the extent that such loss or damage is covered under such insurance policies. Such waiver shall be in addition to, and not in derogation of, any other waiver or release contained in this Agreement. Licensee also agrees that any insurer providing worker's compensation coverage for Licensee shall agree to waive all rights of subrogation against the City and City Representatives for losses arising from activities and operations of Licensee and the use of the Property pursuant to this Agreement.

13. Liability For Loss, Injury Or Damage. In addition to any other assumption of liability set forth herein, and excluding any loss or damage to the extent resulting from the City's negligence or willful misconduct, Licensee agrees that it assumes the sole risk and responsibility for any damage, destruction or theft of Licensee's equipment, materials or personal property placed on the Property and for any injury to persons which occurs on the Property as a result of the permitted use licensed pursuant to Section 1, above, of this Agreement.

14. Insurance. Prior to commencing work, Licensee shall procure, maintain, and pay for insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by Licensee, its agents, representatives, employees or subcontractors for the duration of the License Agreement. The insurance requirements are set forth in the Insurance Requirements and Verifications, which is attached as Exhibit "B".

15. Termination. In the event that Licensee or Licensee's Representatives violate any of the terms or conditions set forth in this Agreement, the City Manager or designee, after giving Licensee written notice of such violation and a thirty (30) calendar day period within which to cure the same, shall have the right to immediately terminate this Agreement by providing written notice to Licensee of said termination. No termination or expiration of this Agreement shall relieve Licensee of performing any of its obligations required hereunder which were either required prior to or which survive such termination or expiration.

16. Licensee As Independent Contractor. Licensee is, and at all times during the term of this Agreement shall be deemed to be, an independent contractor. City shall not be liable for any acts or omissions of Licensee, or its officers, representatives, employees, agents, subcontractors, patrons or invitees and nothing herein contained shall be construed as creating the relationship of employee and employer between Licensee and City. Licensee shall be solely responsible for all matters relating to payment of its employees, including payment of Social Security taxes, withholdings and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such employees, including any related assessments or contributions required by law or any other regulations governing such matters.

17. Assignability. This Agreement may not be assigned or transferred without the express written consent of the City Manager (which may be withheld in his or her sole and absolute discretion), whether voluntarily or involuntarily, and Licensee shall not permit the use of the Property, or any part thereof, except in strict compliance with the provisions hereof, and any attempt to do otherwise shall be null and void; provided, however, that Licensee may assign this Agreement without the City's consent or approval to (a) an entity that is controlled by or under common control with such Licensee, and (b) an affiliated entity that will develop the Project. Any approved assignee of this Agreement shall enter into an assignment and assumption agreement in a form reasonably approved by the City Manager. No legal title or leasehold interest in the Property is created or vested on Licensee. Following such assignment, the assignor shall be relieved of all obligations hereunder, provided that the assignee expressly assumes all such obligations.

18. Governing Law. The laws of the State of California shall govern this Agreement.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.

20. Attorneys' Fees. If any action, proceeding, or arbitration arising out of or relating to this Agreement is commenced by either party to this Agreement, then the prevailing party shall be entitled to receive from the other party, in addition to any other relief that may be granted, the reasonable attorneys' fees, costs and expenses incurred in the action, proceeding or arbitration by the prevailing party.

21. City's Proprietary Capacity. Licensee agrees that City, in making and entering into this Agreement, is acting and shall be deemed to be acting solely in City's proprietary capacity for all purposes and in all respects; and nothing contained in this Agreement shall be deemed directly or indirectly to restrict or impair in any manner or respect whatsoever any of City's governmental powers or rights or the exercise thereof by City, whether with respect to the Property or Licensee's use thereof or otherwise. It is intended that Licensee shall be obligated to fulfill and comply with all such requirements as may be imposed by any governmental City or authority of the City having or exercising jurisdiction over the Property in its governmental capacity.

22. Authority to Sign. Licensee hereby represents that the persons executing this Agreement on behalf of Licensee have full authority to do so and to bind Licensee to perform pursuant to the terms and conditions of this Agreement.

23. Notice. Any notice provided for in this Agreement shall be given by mailing such notice by certified, return receipt mail addressed as follows:

If to Licensee:

Metropolitan Pacific Capital, Inc.
201 Santa Monica Blvd., Suite 620
Santa Monica, CA 90401
Attn: John Warfel

Clarett West Development
1901 Avenue of the Stars, Suite 1465
Los Angeles, CA 90067
Attn: Frank Stephan

DLJ Real Estate Capital Partners
11150 Santa Monica Blvd., Suite 1020
Los Angeles, CA 90025
Attn: Jay Glaubach

If to City:

City of Santa Monica
1685 Main Street, Room 212
Santa Monica, CA 90401
Attn: City Manager

24. Time is of the Essence. Time is of the essence as to every term and condition of this Agreement.

25. Recordation. Neither party shall record this Agreement.

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26. Severability. In the event that any provisions of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of the Agreement.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the Effective Date.

ATTEST:

CITY OF SANTA MONICA
a municipal corporation

By: _____
ROD GOULD
City Manager

_____
SARAH P. GORMAN
City Clerk

APPROVED AS TO FORM:

_____
MARSHA JONES MOUTRIE
City Attorney

Metropolitan Pacific Capital, Inc.,
a California corporation

By: _____
John Warfel
President

Clarett West Development, LLC,
a Delaware limited liability company

By: _____
Frank Stephan
Senior Managing Director

DLJ Real Estate Capital Partners, LLC,
a Delaware limited liability company

By: _____

Title: _____

Exhibit "A"

SITE MAP

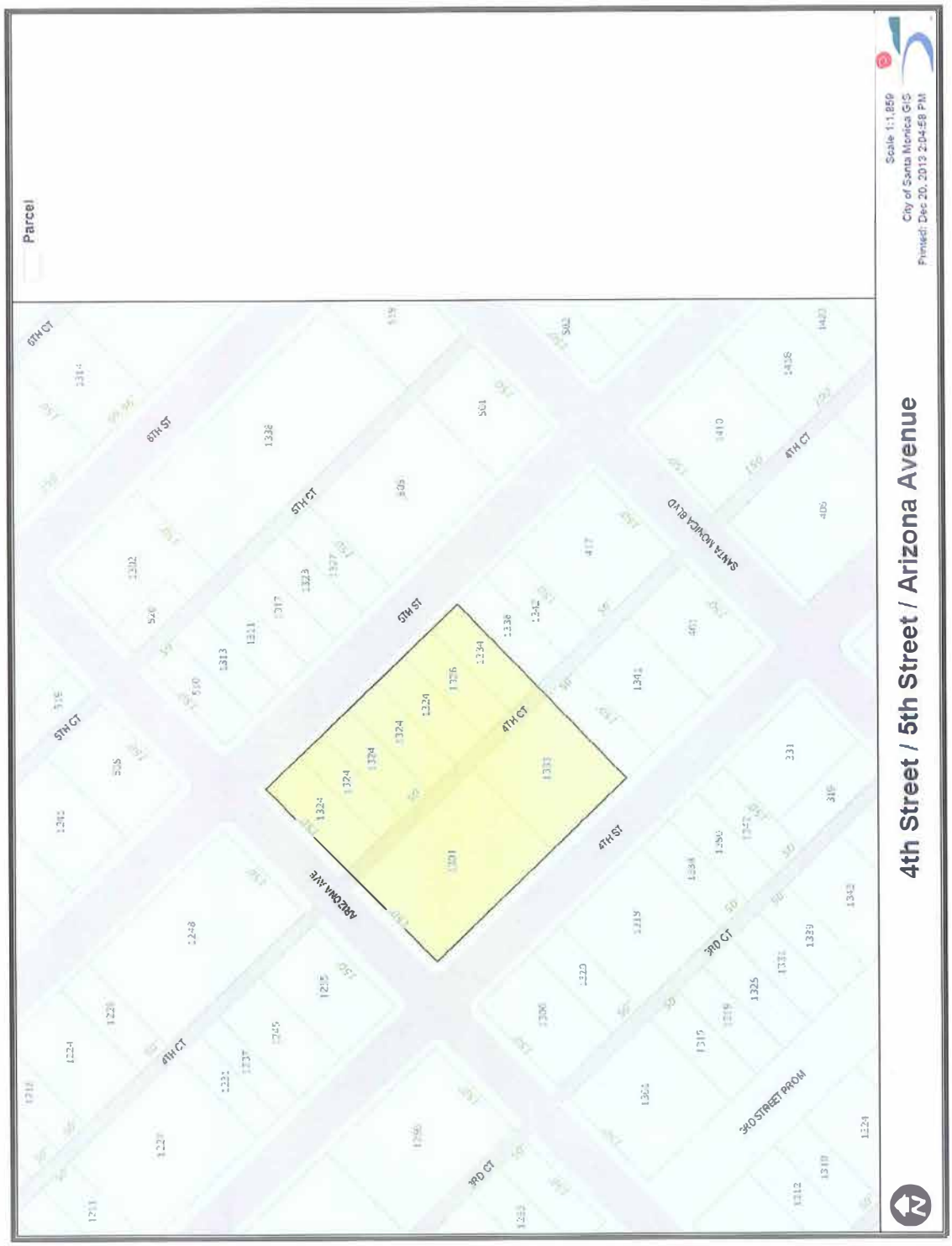

Exhibit B
Insurance Requirements

Licensee and its Consultants shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Licensee and its Consultants and their respective agents, representatives, employees or subcontractors.

Minimum Scope/Limits of Insurance

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering GCL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury, with limits of no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** Insurance Services Office Form CA 00 01 covering Code 1 (any auto), or if the Licensee has no owned autos, Code 8 (hired) and Code 9 (non-owned), with limits of no less than $1,000,000 per accident for bodily injury and property damage.

3. **Workers' Compensation:** Workers' Compensation insurance as required by the State of California, with Statutory Limits and Employers' Liability Insurance with limits of no less than $1,000,000 per accident for bodily injury or disease.

4. **Professional Liability:** Insurance appropriate to the Consultant's profession with a limit of no less than $1,000,000 each occurrence/$2,000,000 in the annual aggregate.

5. **Pollution Legal Liability:** Insurance for environmental hazards with limits of no less than $1,000,000 each occurrence/$2,000,000 in the annual aggregate.

If the Licensee maintains higher limits than the minimums shown above, the City of Santa Monica requires and shall be entitled to coverage for the higher limits maintained by the Licensee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Santa Monica.

Other Insurance Provisions

1. The policies are to contain, or be endorsed to contain, the following provisions:

   a. **Additional Insured Status:** The City of Santa Monica, its officers, officials, employees and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Licensee including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance at least as broad as Insurance Services Office Form CG 20 10 11 85. Licensee will also name the City of Santa Monica, its officers, officials, employees and volunteers as an additional insured on the Pollution Legal Liability policy. Should the Licensee use a Subconsultant to provide evidence of Pollution Legal Liability Insurance, the Licensee will require the Subconsultant to name the Licensee and the City of Santa Monica, its officers, officials, employees and volunteers as an additional insured on the Pollution Legal Liability policy.

   b. **Primary Coverage:** For any claims related to this contract, the Licensee's insurance shall be primary as respects the City of Santa Monica, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Santa Monica, its officers, officials, employees or volunteers shall be in excess of the Licensee's insurance and shall not contribute with it.

   c. **Notice of Cancellation:** Each insurance policy required herein shall state that coverage shall not be cancelled except after notice has been given to the City of Santa Monica.

   d. **Waiver of Subrogation:** Licensee hereby grants to the City of Santa Monica a waiver of any right of subrogation which any insurer of said Licensee may acquire against the City of Santa Monica by virtue of payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Santa Monica has received a waiver of subrogation endorsement from the insurer.

      The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City of Santa Monica for all work performed by the Licensee, its employees, agents and subcontractors.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Santa Monica. The City of Santa Monica may require the Licensee to

purchase coverage with a lower deductible or retention or provide satisfactory proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best rating of no less than A:VII, unless otherwise acceptable to the City of Santa Monica.

Claims Made Policies

1. If the Professional Liability or Pollution Legal Liability policy provides "claims made" coverage:

    a. The Retroactive Date must be shown, and must be before the date of this Agreement or the start of work.

    b. The insurance must be maintained and evidence of insurance must be provided for at least 5 years after completion of work.

    c. If the policy is cancelled or not renewed, and not replaced with another "claims made" policy form with a Retroactive Date prior to the effective Agreement date, the Licensee must purchase "extended reporting" coverage for a minimum of 5 years after completion of work.

Verification of Coverage

Licensee shall furnish the City of Santa Monica with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required herein. All certificates and endorsements are to be received and approved by the City of Santa Monica before work commences. However, failure to obtain required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The City of Santa Monica reserves the right to require complete, certified copies of all required insurance policies, including the endorsements required herein, at any time.

Failure to Maintain Insurance Coverage

If Licensee, for any reason, fails to maintain or cause to be maintained insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. The City of Santa Monica, at its sole option, may terminate this Agreement and obtain damages from the Licensee resulting from said breach. Alternatively, the City of Santa Monica may purchase such coverage (but has no special obligation to do so), and without further notice to the Licensee, the City may deduct from sums due to the Licensee any premium costs advanced by the City for such insurance.

Subcontractors

Licensee shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein. All exceptions must be approved in writing by the Risk Manager.

EXHIBIT C

Modification to ENA, (6/23/15)

FIRST MODIFICATION TO EXCLUSIVE NEGOTIATION AGREEMENT

This First Modification to Exclusive Negotiation Agreement Number 9844 (CCS) ("First Modification"), entered into as of June 23, 2015, by and between the City of Santa Monica, a municipal corporation ("City"), and METROPOLITAN PACIFIC CAPITAL, INC., a California corporation, CLARETT WEST DEVELOPMENT, LLC, a Delaware limited liability company, and DLJ REAL ESTATE CAPITAL PARTNERS, LLC, a Delaware limited liability company (each individually and collectively, referenced herein as "Developer"), is made with reference to the following:

RECITALS

A. The City is the owner or master lessee of certain real property (the "Site") located within the City of Santa Monica, California. The Site is comprised of approximately two and a half acres (112,000 square feet) bound by Arizona Avenue on the north, 4th Street on the west, 5th Street on the east, and the property line to the south. Approximately half of the site (1324- 1334 5th Street) is owned by the City, and the other half of the site (1301-1333 4th Street) was acquired by the former Redevelopment Agency of the City of Santa Monica ("RDA") and leased to the City as the "Lessee" pursuant to that certain Lease and Vesting Agreement ("City Lease") dated as of October 29, 2010, recorded as Memorandum of Lease and Vesting Agreement by and between the City of Santa Monica and Redevelopment Agency of the City of Santa Monica on November 2, 2010, as Document No. 20101568941. The residual fee interest in 1301-1333 4th Street was transferred to the City in March 2011, subject to all existing encumbrances on title, including the City Lease.

B. In February 2013, the City issued a Request for Proposals ("RFP") with respect to the Ground Leased development of a mixed use project on the Site consisting of public and programmed open space, public parking, activating ground-floor uses, a mix of upper-floor uses, and associated infrastructure ("Project").

C. On December 10, 2013, the City Council authorized staff to enter into exclusive negotiations with Developer for the development of the Project and the sub-ground leasing of the Site, subject to the Council's approval of the terms and conditions of a Disposition and Development Agreement ("DDA") with respect to the sub-ground leasing of the Site and the development of the Project on the Site.

D. On March 19, 2014, the City and Developer entered into Exclusive Negotiation Agreement Number 9844 (CCS) ("the Agreement") for an Original Term of 365 days with one 90 day extension which will expire on June 19, 2015.

E. On May 12, 2015, the City Council authorized an additional extension of the term of the Agreement by an additional six (6) months with an additional three-month option at the City Manager's discretion.

F. The parties seek to extend the term of the Agreement as set forth herein.

TERMS AND CONDITIONS

Now, therefore, the undersigned parties do hereby mutually agree to modify the Agreement as follows:

1. Section [§403] Extension of Negotiations shall be modified to add the following paragraph:

> Commencing from June 19, 2015, the term of this Agreement shall be extended for a period of six (6) calendar months on the same terms and conditions as set forth in the Agreement. Unless terminated earlier in accordance with this agreement, the City Manager may authorize an additional three month extension.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set opposite their signatures.

ATTEST:

SARAH P. GORMAN
City Clerk

APPROVED AS TO FORM:

MARSHA JONES MOUTRIE
City Attorney

CITY OF SANTA MONICA
a municipal corporation

By: _____
ELAINE M. POLACHEK
Interim City Manager

Metropolitan Pacific Capital, Inc.,
a California corporation

By: _____
JOHN WARFEL
President

Clarett West Development, LLC,
a Delaware limited liability company

By: _____
FRANK STEPHAN
Senior Managing Director

DLJ Real Estate Capital Partners, LLC,
a Delaware limited liability company

By: _____
Title: AUTHORIZE SIGNATORY

EXHIBIT D

City Letter to Developer, (1/23/19)

City of
Santa Monica®

January 23, 2019

Frank Stephan
Clarett West Development, LLC
1901 Avenue of the Stars, Suite 1465
Los Angeles, CA 90067

Timan Khoubian
DLJ Real Estate Capital Partners, LLC
1901 Avenue of the Stars, Suite 1465
Los Angeles, CA 90067

Dear Mr. Stephan and Mr. Khoubian:

As you know, the City of Santa Monica ("City") and Clarett West Development, LLC and DLJ Real Estate Capital Partners, LLC (the "Developer") entered into an Exclusive Negotiating Agreement, dated March 19, 2014 ("ENA"), which terminated by its own terms on December 19, 2015. This letter memorializes the understanding of Developer and the City's Economic Development Division (the "City Team") that non-binding negotiations for disposition of City-owned property, located at 4th Street and Arizona Avenue in the City of Santa Monica (the "Property"), may continue without any commitment to negotiate for any definite period.

In furtherance of this understanding, the City Team will continue to schedule and attend bi-weekly negotiation meetings, and evaluate the Developer's pro forma submittals. The Developer will submit a deposit in the amout of $100,000, a cashier's or certified check made payable to the City of Santa Monica, to cover the City's continued actual and reasonable staff and third party costs of continuing negotiations, reviewing Developer submittals, and drafting transactional documents ("City Transaction Expenses"). The City understands that any funds remaining at the end of these negotiations will be returned to the Developer. Please refer to the attached detailed summary of City Transaction Expenses spent to date.

This letter also memorializes the City's understanding, and material reliance thereon, that the Developer will not claim any right to obtain monetary damages, including for reimbursement, lost profit or consequential damages, with respect to any negotiations occurring either prior or subsequent to the termination of the ENA.

The Developer's submittal of the deposit and continuing attendance at the scheduled bi-weekly meetings will signify its agreement with the memorialization expressed in this letter. We look forward to completing the negotiations and finalizing the associated transactional documents.

Sincerely,

Andy Agle
Director of Housing & Economic Development

cc: Jason Harris, Economic Development Manager
Susan Cola, Senior Special Projects Deputy City Attorney

City Transaction Expenses
(2013-2019)

Fiscal Year	Staff Time	Consultant(s)	TOTAL
FY 2013-14	$5,180.40	$608.75	$5,789.15
FY 2014-15	$10,607.09	$24,063.14	$34,670.23
FY 2015-16	$7,518.33	$26,050.63	$33,568.96
FY 2016-17	$2,952.57	$11,978.75	$14,931.32
FY 2017-18	$7,846.36	$23,875.00	$31,721.36
FY 2018-19	$2,081.91	$3,786.25	$5,868.16
TOTAL	$36,186.66	$90,362.52	$126,549.18

Remaining Deposit - $23,450.82

EXHIBIT E

Bill Analysis of AB 1486, Senate Committee on Governance and Finance, (6/26/19)

SENATE COMMITTEE ON GOVERNANCE AND FINANCE

Senator Mike McGuire, Chair
2019 - 2020 Regular

Bill No:	AB 1486	**Hearing Date:**	6/26/19
Author:	Ting	**Tax Levy:**	No
Version:	5/16/19	**Fiscal:**	Yes
Consultant:	Favorini-Csorba		

SURPLUS LAND

Imposes additional requirements on the process that public agencies must use when disposing of surplus property.

Background

Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to their needs, public officials want to sell the land to recoup their investments. The Surplus Land Act spells out the steps public agencies must follow when they want to dispose of land they no longer need. It requires state departments and local governments to give a "first right of refusal" to other governments and some nonprofit groups. The statute's implicit public policy is that real property should remain in public ownership if it's still useful for certain favored purposes.

Before state and local officials can dispose of surplus land, they must send a written offer to sell or lease surplus land to various public agencies and nonprofit groups, referred to as "housing sponsors," if they want to sell or lease the property for:

- Low- and moderate-income housing.
- Park and recreation.
- School facilities or open space.
- Enterprise zones.
- Infill opportunity zones or transit village plans.

If another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must tell the disposing agency within 60 days. The two entities have an additional 90 days to negotiate a mutually satisfactory price in good faith. If they can't agree, the agency that owns the surplus land can sell the land on the private market. The Act says that nothing in its provisions prevent a local agency from disposing of the land at or below fair market value, where not in conflict with other law.

The Surplus Land Act's provisions don't apply to "exempt surplus land," which means either:

- Land that a county transfers at less than fair market value for affordable housing development; or
- Small parcels that are sold to contiguous property owners.

Counties have the option of developing a central inventory of all the surplus land in that county. Under a separate provision of law, local governments must annually make an inventory of all land that it holds to determine what land, including air rights, if any, is in excess of its foreseeable needs and describe the excess parcels. The local government must make this list available for free to entities that request it.

State agencies must make a similar list of excess land and send it to the Department of General Services (DGS). Land reported as excess must then be transferred to DGS, which requests authorization to sell the land from the Legislature if it isn't needed by other state agencies.

In 2014, the Legislature updated the Surplus Land Act to enhance the affordable housing requirements under the law (AB 2135, Ting). Specifically, if a local agency sells the land for housing, a few inclusionary requirements apply. First, if the land is to be used for low- or moderate-income housing, at least 25 percent of the units must be offered at an affordable housing cost or rent. If the local agency doesn't come to terms with a housing sponsor or other local agency, and a housing project with 10 or more units is subsequently built on the land, at least 15 percent of the units must be affordable.

The 2014 changes to the Act were intended to expand the supply of land available for affordable housing. Since then, reports of some local agencies attempting to avoid the requirements of the Surplus Land Act have emerged. In one high-profile case in 2015, the City of Oakland attempted to sell property to a market-rate developer despite interest from affordable housing developers. Affordable housing advocates want the Legislature to increase the requirements on local agencies that want to dispose of surplus property.

Proposed Law

Assembly Bill 1486 expands the requirements and application of the Surplus Land Act in numerous ways.

Local agency surplus land. AB 1486 expands the definition of "surplus land" to mean land owned by any local agency that is not necessary for the agency's governmental operations, which the bill defines to mean land that is being used for the express purpose of agency work or operations, including utility sites, watershed property, land being used for conservation purposes, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants. Surplus land also includes land held in a Community Redevelopment Property Trust Fund and land that has been designated in a long-range property management plan either for sale or for retention for future development and that was not subject to an exclusive negotiating agreement or legally binding agreement to dispose of the land.

AB 1486 presumes land to be "surplus land" when a local agency initiates an action to dispose of it. However, AB 1486 also expands the definition of "exempt surplus land" to include:

- Surplus land held by the local agency for the express purpose of exchange for another property necessary for its governmental operations;
- Surplus land held by the local agency for the express purpose of transfer to another local agency for its governmental operations;
- Surplus land that is put out to open, competitive bid by a local agency for specified affordable housing developments.

- Surplus land that is subject to legal restrictions that would make housing prohibited or incompatible on the site due to state or federal statutes, voter-approved measures, or other legal restrictions that are not imposed by the local agency. AB 1486 provides that existing zoning alone is not a legal restriction that would make housing prohibited or incompatible.

When disposing of surplus land for the purpose of developing low- and moderate-income housing, AB 1486 requires a local agency to send a notice of availability of surplus land located in an urbanized area to housing sponsors that have notified the applicable regional council of governments (COG), or in the case of a local agency without a COG, the Department of Housing and Community Development (HCD), of their interest. This requirement replaces the requirement in current law to send a written offer to housing sponsors that request an offer. The notice of availability that AB 1486 requires must be sent by first class mail and, if possible, email. The bill also makes conforming changes to require notices of availability for land that a local agency disposes for other purposes.

AB 1486 specifies that negotiations between a disposing agency and an entity desiring to purchase or lease land must be limited to sales price and lease terms, including the amount and timing of any payments.

If a local agency receives notices of interest in the land from multiple entities that proposed the same number of housing units, first priority must be given to the entity that proposes the deepest average level of affordability for the affordable units. AB 1486 defines priority to mean that the local agency must negotiate exclusively with that entity. However, AB 1486 allows a local agency to negotiate concurrently with all entities that provide notice of interest to purchase or lease land for the purpose of developing affordable housing.

AB 1486 says that if a local agency fails to comply with provisions of the Surplus Land Act, the sale or transfer of the property is invalidated unless the local agency makes an alternative site available that can accommodate an equal or greater number of housing units as the original site.

AB 1486 also clarifies that the existing 15percent minimum affordability requirement applies whenever surplus land is used for housing; reiterates the types of agencies that must comply with the Surplus Land Act; and adds the Surplus Land Act to provisions that allow HCD to notify the city or county and notify the Office of the Attorney General that that city or county is in violation of state law.

Local reporting requirements. AB 1486 modifies the existing requirement for local agencies to make an inventory of excess lands to also include all lands not needed for its governmental operations, and requires this information to be reported to HCD no later than April 1 of each year, beginning in 2021. The bill also requires HCD to create and maintain a searchable and downloadable public inventory of all publicly owned or controlled lands and their present uses in the state on its internet website by September 30, 2021, which must be updated annually.

AB 1486 also requires a city or county, by April 1 of each year, in the Annual Progress Report submitted to HCD and the Governor's Office of Planning and Research, to additionally include a listing of sites owned or leased by the city or county that have been sold, leased or otherwise disposed of in the prior year, and a listing of sites with leases that expired in the prior year. The bill also specifies that the list must include the entity to whom each site was transferred and the intended use for the site.

AB 1486 requires, in a city or county's identification of sites required pursuant to Housing Element law, the description of nonvacant sites to also include whether the city or county plans to dispose of the property during the planning period, and how the agency will comply with the Surplus Land Act.

State surplus land. AB 1486 clarifies the existing requirement that each state agency must review the land it owns in excess its foreseeable needs "for governmental operations," and defines "governmental operations" consistent with the definition for local agencies. AB 1486 requires DGS, when authority is granted for the sale or other disposition of lands declared excess, and DGS has determined that the use of land is not needed by any other state agency, to sell the land or otherwise dispose of it. DGS must also dispose of 10 percent or more of the land designated as unneeded by other state agencies each year and try to conclude the pending disposition of surplus land within 24 months.

Zoning. AB 1486 provides that surplus land disposed of by DGS or a local agency shall be permitted for a residential use if the project is 100% affordable housing, exclusive of managers' units.

AB 1486 makes other technical and conforming changes and includes findings and declarations to support its purposes.

State Revenue Impact

No estimate.

Comments

1. Purpose of the bill. According to the author, "California is facing a housing crisis and unused public land has the potential to promote affordable housing development throughout the state. AB 1486 clarifies and strengthens provisions in the Surplus Land Act that will promote the use of public land for affordable housing."

2. Robbing Peter to pay Paul. Local governments hold property for a variety of reasons, and they dispose of it for many reasons as well. Faced with tight budgets, state departments and local governments should be selling their surplus real estate for the highest possible prices, thereby recouping the public's investments. Recent legislation has eaten away at the ability of public agencies to maximize the value of their land: because any public land sold to a residential developer must include affordable housing, the value of that land is lower to a potential developer. AB 1486 goes a step further and imposes additional restrictions that will delay property sales, reduces the value that local governments can get for their land, and increases the red tape that the agencies and potential buyers must wade through before they can complete a transaction. By doing so, AB 1486 potentially undermines the services that local agencies provide to their constituents: if public agencies can't get the maximum sale price because of constraints on public land, they'll have less money to put towards other important programs. For example, water agencies that want to subsidize the water rates of low-income customers can't use ratepayer dollars to do so because of Constitutional limitations; instead, they rely on other types of revenues, including from property sales and leases. Similarly, AB 1486 restricts DGS's ability to appropriately time the disposal of state surplus land, potentially resulting in lower sales

prices that could have a General Fund impact. To provide some protection against potential revenue losses, the Committee may wish to consider amending AB 1486 to eliminate the restrictions on state agencies and specify that nothing in the bill requires a local agency to sell surplus land or receive less than fair market value for its property.

3. Who decides? Local officials are elected to best serve their constituents, and accordingly, current law provides local governments a lot of flexibility to dispose of land as they see fit. AB 1486 declares all land surplus that isn't being used for governmental operations, defined narrowly to mean only land that is currently being used for the express purpose of agency work or operations. But cities and counties have broad authority to look out for the welfare of their citizens and to take actions to ensure their wellbeing. Accordingly, some local agencies might consider selling land for economic development to be an important and valuable use of property, even though it might not be necessary for the agency's "operations." Furthermore, the bill's definition means that land reserved for future or planned uses would be designated as surplus. Finally, it is unclear who determines whether land is declared not necessary for government operations. The Committee may wish to consider amending AB 1486 to expand the uses of land that would not trigger a designation of surplus land and to specify that the local agency determines what land it needs, rather than leaving unspecified the entity that determines when land is no longer needed for an agency's use.

4. Give me some space. Local agencies impose restrictions on surplus lands for a variety of reasons. For example, some agencies reserve land to act as buffer sites between government activities (such as wastewater treatment) and other land uses that might affect, or be affected by, those activities. Local agencies therefore sometimes sell land with restrictions that may preclude incompatible uses on the site. However, AB 1486 prohibits local agencies from negotiating on terms other than price and timing of payments and automatically rezones surplus land sites to allow residential use if the project is 100% affordable. Accordingly, local governments may not be able to impose necessary restrictions on residential use that are protective of the agency and the public. This may result in housing being developed on surplus land in areas that may undermine the local agency operations or expose future residents to environmental harms. The Committee may wish to consider amending AB 1486 to delete the provisions that rezone surplus land as residential and to allow local agencies to make findings that restrictions on residential use are needed to protect the public or local agency operations.

5. Practical considerations. AB 1486 raises several operational concerns, outlined below:

- AB 1486 prohibits local agencies from participating in negotiations prior to sending a notice of availability to housing sponsors or other entities that get first crack at the land. However, the bill leaves "participating in negotiations" undefined. Some local agencies have raised concerns that it is unclear whether they could conduct informal surveys of land value to test the waters without running afoul of this provision.
- AB 1486 invalidates the sale of property if it is found that the local agency violated the Surplus Land Act, unless the local agency makes an alternative site available that can accommodate an equal or greater number of housing units as the original site. This provision is intended to give the Act some teeth, but it also potentially penalizes innocent parties that may have purchased the land not knowing that the local agency has violated the Act. Furthermore, if such violations are discovered at a later date, the purchaser may have invested significant capital in the property, only to find the transfer of ownership invalidated. To encourage compliance with the Act while avoiding the negative

consequences of this provision, the Committee may wish to consider amending AB 1486 to reinstate the provision of existing law that says that transfers cannot be invalidated and instead include an alternative penalty structure that also allows a local agency to cure an inadvertent error.

- AB 1486 requires local agencies to physically mail notices of availability to any housing sponsor that notifies the COG that they want to hear about surplus lands. But COGs can span broad areas, and some developers that sign up for notices may only be interested in land in one small part of the region. Accordingly, AB 1486 requires local governments to send out countless mailed notices that are likely to be ignored. This costs more money and is less convenient for agencies and developers alike than emailing the notices or posting them online in a readily searchable and accessible form. The Committee may wish to consider amending AB 1486 to instead designate HCD as the official keeper of the list of interested parties and to require electronic notification instead of mailing when a surplus parcel becomes available.

6. The Ghost of Redevelopment. State law regulates the use and disposition of properties owned by former Redevelopment Agencies (RDAs) and directs "successor agencies" to oversee the wind-down of RDA affairs and the payment of RDA obligations. Once a successor agency takes over for an RDA, it reviews the RDA's outstanding assets and obligations, and develops a plan to resolve those obligations and a Long-Range Property Management Plan (LRPMP) to address how successor agencies plan to use or dispose of former RDAs' real properties. Successor agencies can dispose of assets by selling them to other governments or interested parties, provided that they are disposed of expeditiously and in a manner that maximizes value to the local governments that receive money as a result of the dissolution of RDAs. The successor agency can also transfer ownership of assets that were constructed and used for a governmental purpose, such as police and fire stations, to the appropriate public jurisdiction. Revenue from properties sold goes towards repaying former RDA's obligations. AB 1486 explicitly designates former RDA-owned land as surplus. By doing so, it requires these lands to go through the Surplus Lands Act disposition process before they can be sold, which may slow down or impair the ability of successor agencies to dispose of former RDA properties and use the resulting revenue to pay off obligations. As a result, AB 1486 could lengthen the time that it takes to pay off RDA obligations. The Committee may wish to consider amending AB 1486 to exclude RDA properties from the Surplus Lands Act.

7. Mandate. The California Constitution requires the state to reimburse local governments for the costs of new or expanded state mandated local programs. Because AB 1486 imposes additional duties on local agencies, Legislative Counsel says that it imposes a new state mandate. AB 1486 says that if the Commission on State Mandates determines that it creates a state-mandated local program, the state must reimburse local agencies by following the existing statutory process for mandate claims.

8. Related legislation. AB 1255 (R. Rivas) requires cities and counties to include an inventory of surplus sites that are infill, "high-density" sites in the housing element and requires DGS to create a searchable database of surplus sites. AB 1255 is currently pending in the Senate Housing Committee. AB 2065 (Ting, 2018) would have amended the Surplus Lands Act expand the types of local agencies required to comply with the Act, require a "written notice of availability" of property to specified entities prior to disposal of property, require that notice to be sent to housing sponsors that have notified both HCD and the COG of their interest in surplus

land, placed parameters on the negotiations to dispose of the property, and would have provided that the existing 15 percent affordability requirements applies whenever surplus public land is used for housing. AB 2065 died in the Assembly Appropriations Committee. Most of the changes that were contained in AB 2065 are in also in AB 1486.

9. Triple Referral. The Senate Rules Committee has ordered a triple referral of AB 1486: first to the Senate Governance and Finance Committee to consider issues related to local agencies; second to the Senate Housing Committee to hear issues related to housing; and finally to the Senate Governmental Organization Committee, which has jurisdiction over state agencies.

Assembly Actions

Assembly Local Government Committee:	6-2
Assembly Housing and Community Development Committee:	5-1
Assembly Appropriations Committee:	12-4
Assembly Floor:	53-20

Support and Opposition (6/21/19)

Support: Bay Area Regional Health Inequities Initiative; Building Industry Association of the Bay Area; California Community Builders; Chan Zuckerberg Initiative; Enterprise Community Partners, Inc.; Habitat for Humanity California; Hamilton Families; Midpen Housing Corporation; North Bay Leadership Council; Related California; San Francisco Foundation; TMG Partners; Transform.

Opposition: Association Of California Healthcare Districts; Association Of California Water Agencies; California Association Of Sanitation Agencies; California Municipal Utilities Association; California Special Districts Association; California State Association Of Counties; Irvine Ranch Water District; Mesa Water District; Orange County Water District; Rural County Representatives Of California; Santa Margarita Water District; Urban Counties Of California; Vista Irrigation District

-- END --

EXHIBIT F

City Letter to Developer (12/12/19)

City of
Santa Monica®

Office of the City Attorney
City Hall
1685 Main St., Rm 310
Santa Monica, CA
90401

December 12, 2019

VIA U. S. MAIL AND EMAIL

Frank Stephan (frank.stephan@clarettwest.com)
Clarett West Development, LLC
1901 Avenue of the Stars, Suite 1465
Los Angeles, CA 90067

Timan Khoubian (timan.khoubian@dljrecp.com)
DLJ Real Estate Capital Partners, LLC
1901 Avenue of the Stars, Suite 1465
Los Angeles, CA 90076

Keith Elkins (KElkins@elkinskalt.com)
Elkins Kalt Weintraub Reuben Gartside LLP
10345 W. Olympic Boulevard, Los Angeles, CA 90064

Dear Mr. Stephan, Mr. Khoubian, and Mr. Elkins:

The purpose of this letter is to notify you of the City's concerns regarding new legislation that may impact pending property negotiations, as further discussed, below.

Assembly Bill No. 1486 (AB 1486) was approved by the Governor on October 9, 2019 and will become effective on January 1, 2020. This bill expands the requirements of Surplus Land Act (Government Code sections 54220 *et seq.*), which applies to local agencies, including charter cities and successor agencies to former redevelopment agencies. Among other things, this bill requires any local agency disposing of surplus land to send, prior to disposing of that property or participating in negotiations to dispose of the property with a prospective transferee, a written notice of availability of the property to specified public agencies and housing sponsors for the purpose of developing low- and moderate-income housing or open space on the property.

As you know, the City and its Successor Agency to the City's former redevelopment agency have interests in the properties located in the general vicinity of 4th/5th Street Arizona, in the City of Santa Monica. The City and Clarett West Development, LLC and DLJ Real Estate Capital Partners, LLC (the "Developer") entered into an Exclusive Negotiating Agreement, dated March 19, 2014 ("ENA"), which terminated by its own terms on December 19, 2015. Though the ENA terminated, the parties have continued negotiations, subject to an understanding, which was memorialized in a letter, dated January 23, 2019, that non-binding negotiations could proceed and could also terminate without Developer's claim to any monetary damages.

After reviewing the language of AB 1486, we believe that the 4th/5th Street properties may be deemed to be "surplus" property and subject to the bill's requirements.

Given the bill's impending applicability on January 1, 2020, we would appreciate your review of AB 1486 with respect to negotiations for the 4th/5th Street properties and encourage you to voice any concerns regarding its implementation so that we may consider your views in determining how to proceed with respect to these properties. In light of the bill's effective date, we would appreciate a response from you as soon as possible but no later than December 23, 2019.

Sincerely,

Susan Cola
Senior Special Projects Deputy City Attorney

SYC/EK

cc: Lane Dilg, City Attorney
George Cardona, Chief of Staff/Special Projects
Andy Agle, Director Housing and Economic Development
Jason Harris, Economic Development Manager

EXHIBIT G

Developer Letter to City, (12/16/19)

ARMBRUSTER GOLDSMITH & DELVAC LLP

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December 16, 2019

VIA U.S. MAIL AND E-MAIL

Ms. Susan Cola
Senior Special Projects Deputy City Attorney
City of Santa Monica Office of the City Attorney
1685 Main Street, Room 310
Santa Monica, CA 90401

Susan.cola@smgov.net

Re: Application of Surplus Lands Act to the Plaza at Santa Monica Project

Dear Ms. Cola:

As you know, this firm is land use counsel to Clarrett West Development, LLC and DLJ Real Estate Capital Partners, LLC (collectively, the "Developer") with respect to the proposed Plaza at Santa Monica project (the "Project") on City-owned property located at 4th/5th Street and Arizona Avenue in the City of Santa Monica (the "Site"). We are in receipt of your December 12, 2019 letter to Frank Stephan, Timan Khoubian, and Keith Elkins (the "Letter") requesting our input as to whether recent amendments to the state Surplus Lands Act ("SLA" or the "Act") adopted pursuant to Assembly Bill No. 1486 ("AB 1486," the final adopted version of which is enclosed as Attachment A), which will become effective on January 1, 2020, are potentially applicable to the Project. We appreciate the opportunity to respond to the Letter and, in particular, to:

- Describe the multiyear course of dealing between the Developer and the City evidencing an ongoing, exclusive negotiating process with respect to the proposed ground lease of the Site to Developer and development of the proposed Project;

- Explain why a ground lease would not qualify as a "disposition" of the Site under AB 1486;

- Analyze why, even if the SLA were deemed to apply to a ground lease, the Site qualifies for two "grandfathering" exceptions included in AB 1486 and therefore at most the existing SLA (prior to the enactment of AB 1486) should apply in this case; and

- Clarify that the Site would not constitute "surplus land" under the existing version of the Surplus Lands Act.

A. The City and Developer Are Exclusively Negotiating the Project

1. The City and Developer have worked together for nearly a decade in furtherance of the proposed Project.

The City has been seeking to develop the Site for nearly a decade, and the Developer and the City have been negotiating the ground lease of the Site and development of the Project for seven years.

The Site was purchased by the City between 2007 and 2010. Following community workshops and study sessions regarding the vision for development of the Site in 2010 and 2011, in 2012 the City Council authorized the issuance of a Request for Qualifications (RFQ) and directed staff to issue a Request for Proposals (RFP) to the top three teams selected through the RFQ. The City issued the RFP to three potential developers on February 1, 2013, and Developer submitted its proposal on May 1, 2013. Following an extensive review and due diligence effort, including input from independent real estate finance consultants, staff issued an information item recommending selection of the Developer on July 10, 2013.

On December 10, 2013, the Council authorized staff to enter into exclusive negotiations with Developer regarding the Project. On March 19, 2014, the City and Developer entered into an Exclusive Negotiation Agreement (the "ENA") which provided for a one-year initial term and a 90 day administrative extension.

During and after the term of the ENA, the Developer and City continued work on the proposed Project. On June 10, 2014, the City Council reviewed and commented on the Developer's design study and analysis of project alternatives. On June 3, 2015, the Planning Commission held a float up meeting and recommended that the City commence the Development Agreement (DA) negotiation process. The City Council then directed staff on October 20, 2015 to proceed with negotiating the DA with Developer.

In addition, the California Environmental Quality Act (CEQA) review process and preparation of the Environmental Impact Report (EIR) for the proposed Project occurred almost entirely *after* the original ENA term. The City held a scoping meeting on January 3, 2017 and released a revised Notice of Completion/Availability for the EIR on December 13, 2018, announcing a 60-day comment period that ended on February 13, 2019. The City is currently in the processing of preparing the Final EIR.

2. Recent events evidence an ongoing, exclusive negotiation of the Project.

In recent years, and even within the past few weeks and months, Developer and City have continued to proceed with work on various aspects of the proposed Project, including multiple

meetings, conference calls, and exchanges of drafts regarding the following documents pertaining specifically to the development of the Project:

- Disposition and Development Agreement (DDA):
  - Developer's team, its real estate counsel, and the City Attorney's office have expended countless hours of negotiation and drafting time to prepare the DDA, which is nearly in final form.
  - Developer and the City exchanged drafts of the DDA as recently as October 25, 2019 and October 30, 2019.

- Development Agreement: Developer has submitted a draft to the City.

- Parking Agreement: Developer has submitted a draft to the City.

- Sustainability Plan: Developer submitted a sustainability plan and received and responded to City comments. A meeting is now scheduled for December 18, 2019 with multiple City departments to discuss and negotiate the sustainability plan for the Project.

- Open Space Agreement and Open Space Management Plans:
  - Developer, its open space management consultants, and City staff from the Housing, Planning, and Cultural Affairs apartments have held regular meetings regarding the Project's open space components.
  - The parties have exchanged numerous drafts describing future operations, management, governance and budget for the proposed open space, including multiple rounds of comments and feedback from City staff.
  - City staff recently indicated that the plans are essentially in final form.

- Participation Agreement: The City provided a draft and Developer is currently preparing comments.

Developer's team has also coordinated and communicated with Planning staff on an ongoing basis to answer questions and provide information to be incorporated in the EIR. The City's ongoing management of the EIR process provides further indication that the City and Developer have worked collaboratively to develop a vision for the Site and proposed Project and that the City is exclusively negotiating with Developer.

The Developer has also had standing meetings every two weeks with Housing and Economic Development Director's office and has made multiple payments to the City, both before and after the term of the ENA, in furtherance of negotiating the ground lease and Project and in

reliance upon the City's assurances that good faith, exclusive negotiations were ongoing, including:

- $325,000 payment invoiced on March 17, 2014.
- $150,000 payment invoiced on May 20, 2014.
- $15,000 payment invoiced on July 9, 2014.
- $112,413.90 payment made on December 2, 2016 (non-refundable EIR administrative fee).
- $315,505 payment made on December 2, 2016 (refundable EIR deposit).
- $85,045 payment made on December 14, 2017 (EIR cost reimbursement).
- $100,000 payment made on March 13, 2019 (replenishment of City administrative expenses)

Prior to the most recent payment in March 2019, the Director of Housing & Economic Development sent a letter to Developer on January 23, 2019 stating that the City would continue to schedule and attend bi-weekly negotiation meetings and evaluate Developer's pro forma submittals in consideration of the $100,000 deposit. Although the January 23 letter states that negotiations are "non-binding"—in other words, that the City and Developer are under no obligation to consummate the ground lease and move forward with the Project—the letter also states that the City "look[s] forward to completing the negotiations and finalizing the associated transactional documents" and strongly suggests that the parties are negotiating with each other exclusively.

Moreover, at one of the biweekly meetings with the Director's office, shortly before the most recent $100,000 payment in March 2019, City staff, including representatives from the City Attorney's office, and Developer's team discussed the ENA. Specifically, the parties discussed the expiration of the original term and whether it was necessary to formally renew the ENA. The City expressed its view that such formal steps were unnecessary, because the parties were negotiating exclusively in good faith, as evidenced by both sides' continued, diligent efforts. Based on the City's assertions, the Developer did not seek to formally renew the ENA, made the $100,000 payment, and the parties continued to negotiate the ground lease and Project.

In short, at every step along the way, the City and Developer have acted as parties engaged in an exclusive negotiating process. Relying in good faith upon the City's assurances that good faith, exclusive negotiations are ongoing, the Developer's team and City staff have devoted thousands of hours—and the Developer has spent millions of dollars—in support of this effort. There is clearly a meeting of the minds with respect to consummating the ground lease and proceeding with the Project, and negotiations are nearly complete. Therefore, despite the formal expiration of the original term of the ENA, it is clear that, for all intents and purposes, the parties are negotiating exclusively.

B. The Ground Lease Is <u>Not</u> a "Disposition" Subject to the Act

The City is not required to undertake *<u>any of</u>* the steps required by the Act, because—even if the amended version of the Surplus Lands Act per AB 1486 applied to the Site and Project—the proposed ground lease of the Site is *<u>not</u>* a disposition that is subject to the Act.

Both the existing and amended versions of the Surplus Lands Act provide that a "local agency *<u>disposing of</u>* surplus land" must take certain actions "prior to *<u>disposing of</u>* that property." *(Emphasis added.)* Government Code Section 54222. Neither the existing nor the amended versions of the Act define the terms "dispose of," "disposing of," or "disposition." However, the legislative history of AB 1486, together with other provisions of the amended Act, indicate that the legislature did not intend for "disposition" to include leases of City-owned property.

1. The legislative history of AB 1486 shows that the legislature considered, but ultimately rejected—in response to local government opposition—a definition of "dispose of" that would have included leases.

Under the initial version of AB 1486, introduced on February 22, 2019 (enclosed as <u>Attachment B</u>), proposed Section 54221 *<u>did</u>* include a definition of "dispose of" that would have covered leases: "(f) "Dispose of" shall mean sell, lease, transfer, or otherwise convey any interest in real property owned by a local agency."

As amended in the State Assembly on March 28, 2019 (enclosed as <u>Attachment C</u>), the revised version of Section 54221 maintained the proposed definition of "dispose of" and added several narrow categories of leases that qualified a potential disposition site as "exempt surplus land," including:

> (E) A lease of land expressly designated for a local agency's future governmental operations that is leased on an interim basis prior to development.
>
> (F) An easement for utility, conservation, or governmental purposes.
>
> (G) A lease of land with an existing structure and lease furthering an express governmental operation of the local agency, including, but not limited to, a concession lease on recreational property.
>
> (H) A financing lease in furtherance of governmental operations, including, but not limited to, a lease and lease-back transaction.
>
> (I) A lease of undeveloped land, provided that construction of any permanent structure is not permitted under the lease.
>
> (J) A short-term lease of one year or less that may be renewed or extended on an annual basis for temporary or seasonal activities.

> (K) A lease of more than one year, but less than 10 years, that is not eligible for renewal or extension.
>
> (L) The renewal of an existing lease of one or more years for the same purpose, provided the lease was in effect as of January 1, 2018.
>
> (M) Leases of existing agency-owned facilities for short-term use, such as park facilities, community rooms, and other uses where a facility is being rented on a temporary, short-term basis of days or months.

On April 10, 2019, however, Assembly Local Government Committee staff published its analysis of the March 28 version of the bill for the Local Government Committee of the State Assembly (enclosed as Attachment D), which specifically noted local governments' opposition to the broadened definition of "dispose of" among a list of policy issues for the Committee to consider:

> **Local Agency Leases.** Opposition from local governments argue that the bill redefines and substantially broadens the term "dispose of" to include the sale, ***lease***, transfer, or other conveyance of an interest in real property, which would pose many problems for public agencies. According to these groups, the bill narrowly exempts certain very specific leasing scenarios from the requirements of the bill, but fails to address the global problems associated with making the surplus land requirements applicable to leasing or conveyance of easements of other nonpossessory interests. They write that local governments lease property in a wide array of circumstances in support of their governmental operations and public purposes, not all of which can be predicted or micromanaged in advance as this bill attempts. They ask that the author amend the definition of "disposal" in AB 1486 to apply only to the sale of surplus land. *(Emphasis in original.)*

In order to address this issue, the analysis suggests that the Local Government Committee "may wish to consider" an amendment to "[r]emove new "dispose of" definition added by the bill, and delete corresponding lease exemption language contained in local Surplus Land Act provisions."

The analysis also includes the following among the "Arguments in Opposition" to AB 1486: "Opponents argue that the new definition of "disposal" is problematic for many public agencies that have valid reasons to lease or otherwise protect land they own . . . ."

Following the recommendation in the analysis, the Local Government Committee amended AB 1486 the very next day, on April 11, 2019, to eliminate the definition of "dispose of" and corresponding lease exemptions entirely (see enclosed Attachment E). Through subsequent iterations of the bill, the definition of "dispose of" that included leases was never restored.

Therefore, the timing and sequence of events plainly shows that (1) AB 1486 was originally drafted to cover leases (with some narrow exceptions) as well as sales of City-owned property, (2) local governments specifically objected to the inclusion of leases within the definition of "dispose of", and (3) the Local Government Committee removed the definition of "dispose of" and any corresponding references to "disposition" including leases directly in response to these objections. Accordingly, it is clear from the legislative history of AB 1486 that "disposition" of City-owned property *does not* include leases of City-owned property.

2. Other provisions of AB 1486 reinforce the conclusion drawn from the legislative history that "disposition" does not include leases.

Several other provisions of the final version of AB 1486 are consistent with the conclusion that "disposition" under the Act does not include leases of City-owned property.

For example, amended Government Code Section 54221(f)(1)(B), in the definition of "exempt surplus land," refers to land "*sold* to an owner of contiguous land." In addition, amended Section 54230.5 includes penalties for local agencies that dispose of land in violation of the Act, and specifically reference "a penalty of 30 percent of the final *sale price* of the land *sold* in violation of this article." Finally, new Section 54230.6 also provides that a local agency's failure to comply with the SLA "shall not invalidate the transfer or conveyance of real property to a *purchaser or encumbrancer* for value." *(Emphasis added in all instances.)* All of the sections refer to sales only, and none of them include any corresponding references to leasing, lease value, or lessees. It would be illogical for the Act to cover leases when penalties only apply to the sale of municipal property.

New Government Code Section 65400.1 provides that cities must, in their annual General Plan reports to the state Office of Planning and Research and Department of Housing and Community Development, include a list of sites (1) owned by the city, (2) included in the inventory of land suitable for residential development prepared pursuant to new Section 65583.2, and (3) "sold, leased, or otherwise disposed of in the prior year." This section of AB 1486 does not concern the process and requirements for disposing of individual sites, but rather the legislature's distinct public policies of disclosure and transparency with respect to sites suitable for residential development in an entirely separate title of the Government Code. It is logical that local governments, in the course of objecting to the definition of "dispose of" with respect to the SLA's mechanics for individual sites, would have accepted the obligation to simply disclose their leases as part of a separate inventory to OPR and HCD. This interpretation is supported by the specific comments from local governments in the Committee staff analysis, which criticized the initial draft's attempts to "predict[] or micromanage[] in advance" the "wide array of circumstances" in which local governments lease property in support of their public purposes. Moreover, Section 65400.1 was not even added to AB 1486 until the September 6, 2019 senate amendments to the

bill (enclosed as Attachment F), long after the definition of "dispose of" had been removed and the issue with respect to leases of City-owned property had been resolved.

Especially when read in conjunction with the legislative history, the overall structure of AB 1486 evidences the legislature's intent to exclude leases from the processes required for dispositions of individual City-owned properties. In response to the specific concerns of local governments, the legislature amended the draft bill to remove the proposed expansive definition of "dispose of" and maintain local agencies' flexibility to lease their property without having to take the actions prescribed by the Act. In short, "dispose of" only means sales, not leases.

Therefore, even under AB 1486, the City may validly lease the Site to Developer, as contemplated, without complying with any of the requirements of the Surplus Lands Act.

C. The Site and Project Are Grandfathered Under the Existing SLA

Even if the City disagreed with the logical interpretation, drawn directly from the legislative history and corresponding sections of the bill, that the proposed ground lease of the Site to Developer is not a "disposition" under the amended version of the Act, the Site and Project should be grandfathered under the existing SLA (and not subject to AB 1486) as they qualify for either of two exemptions set forth in AB 1486 under new Government Code Section 54234.

1. The Site has been designated for sale or future development under a long-range property management plan.

The Site qualifies for the exception set forth in Section 54234(b)(1), which provides that land "that has been designated in a long-range property management plan pursuant to Section 34191.5 of the Health and Safety Code, either for sale or retained for future development," shall be subject to the existing SLA rather than the amended SLA if certain conditions are satisfied.

The Site has been designated for sale or future development under the Long-Range Property Management Plan of the Successor Agency to the Redevelopment Agency of the City of Santa Monica (the "LRPMP," enclosed as Attachment G), approved pursuant to Health and Safety Code Section 34191.5 on December 21, 2015 by Resolution No. 33 of the Oversight Board of the Successor Agency (enclosed as Attachment H). Section I.1. of the LRPMP describes the "4th and Arizona" property and subsection B) thereof identifies the purpose for which such property was acquired:

> The 4th and Arizona property was assembled by the former redevelopment *along with two other parcels already owned by the City of Santa Monica* to form a larger development site for mixed use transit oriented development, as contemplated in the City's draft specific plan for the City's downtown area. *(Emphasis added.)*

The Site includes the "two other parcels" referenced in the LRPMP for purposes of forming a larger development site for mixed use transit oriented development. The LRPMP explicitly references the Site as intended for future development. Consistent with Section 54234(b), the entire Site has been designated for future development in the LRPMP, and is therefore eligible for the exception provided the remaining conditions in Section 54234(b) are satisfied.

Because the Site has been designated for future development in the LRPMP, it should be subject to the existing SLA so long as (1) an exclusive negotiating agreement or legally binding agreement for disposition is entered into not later than December 31, 2020 and (2) the disposition is completed not later than December 31, 2022. Given the late stages of the negotiations, these time periods provide ample time for the parties to enter into a new ENA and finalize and execute the DDA and related Project documents.

2. The City and Developer have entered into an exclusive negotiating agreement with respect to the Site.

Alternatively, the Site qualifies for the exception set forth in Section 54234(a)(1), which provides:

> If a local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property, the provisions of this article as it existed on December 31, 2019, shall apply, without regard to the changes made to this article by the act adding this section, to the disposition of the property to the party that had entered into such agreement or its successors or assigns, provided the disposition is completed not later than December 31, 2022.

Read literally, Section 54234(a)(1) only requires that the ENA "has" been entered into by that date, not that it remains effective on that date (or, for that matter, as of January 1, 2020). It is inarguable that the City and Developer entered into the ENA by September 30, 2019, and therefore the exception should apply to the Site based upon the plain meaning of the statute. Application of the plain meaning of the statute would be consistent with the public policy behind the exception, which is intended to grandfather sites that local agencies have considered for disposition under the existing version of the Act.

However, even if construed more liberally to require that an exclusive negotiating agreement actually be in effect as of September 30, 2019, the Site should still qualify for the exception because, as discussed above, the parties have continued to negotiate exclusively and in good faith despite the expiration of the original term of the ENA. In particular, Developer relied upon the City's statements in its January 23, 2019 letter and its assurances in subsequent meetings

in making the most recent payment to the City in March 2019. Recent actions taken by the City and Developer and the late stage of the negotiations themselves further support the conclusion that the parties are exclusively negotiating the ground lease of the Site and development of the Project.

Therefore, so long as the actual disposition of the Site is completed by December 31, 2022, the Site should qualify for grandfathering under the existing Act based upon the exception provided for ongoing exclusive negotiations.

Only one of the two exceptions need apply for the Site to be subject to the existing rather than the amended SLA. These grandfathering provisions were intended to protect against exactly this situation, and prevent the eleventh-hour disruption of extended—in this case decade-long—complex negotiations.

D. The Site is <u>Not</u> "Surplus Land" Under the Existing Act

Assuming the existing SLA applies based on one of the exceptions above, then even if the City concluded that the ground lease would be a disposition under the Act, the City ***<u>still</u>*** would not be required to take any of the steps prescribed by the Act prior to leasing the Site to Developer, because the Site is ***<u>not</u>*** "surplus land" under the existing Act and remains required for the City's use thereunder.

The current version of the SLA defines "surplus land" as "land owned by any local agency, that is determined to be no longer necessary for the agency's use . . . ." Government Code Section 54221(b). The current statute does not (1) include any additional specificity regarding the meaning of "agency's use," (2) specify a process for making such a determination, or (3) require that such a determination be made affirmatively or negatively prior to disposing of local agency-owned property. Rather, it simply requires that the City take certain actions prior to disposing of property that it ***<u>has</u>*** determined to be "surplus land."

By contrast, the SLA as amended pursuant to AB 1486 adds significant new requirements and procedures to the disposition process. In particular, Government Code Section 54221(b)(1), as amended, requires (a) that the City Council take "formal action in a regular public meeting" declaring that land is surplus and (b) that land be "declared either "surplus land" or "exempt surplus land," as supported by written findings," before the City may take any action to dispose of it. In other words, if AB 1486 applies to City-owned property, unlike under the current law, the City would have to make an express determination that land is or is not surplus property before disposing of it.

Moreover, the amended SLA substantially narrows the definition of "agency's use." New Section 54221(c)(2)(A) provides:

> "Agency's use" shall not include commercial or industrial uses or activities, including nongovernmental retail, entertainment, or office development. Property disposed of for the sole purpose of investment or generation of revenue shall not be considered necessary for the agency's use.

As noted above, there is no such limitation on disposing of City-owned land for economic development and/or public benefit purposes under the current version of the law.

Therefore, under the current version of the SLA, the Site would not be "surplus land" because the City has not determined that it is no longer necessary for the City's use. In fact, under the current implied meaning of "agency's use," as inferred from the contours of the definition in the amended Act, the Site *is* still necessary for the City's use as: (i) the Project furthers an important economic development objective and will provide extraordinary community benefits to the City, including either a one-time $24 million dollar payment for affordable housing or the construction of 48 deed-restricted affordable housing units, (ii) the City will potentially have a financial participation opportunity in the Project that could generate substantial, ongoing revenue streams for City policy priorities such as the construction of affordable housing, and (iii) the City is retaining its fee interest in the Site. Thus, under the existing SLA, the Site is still required for the City's use and the City *may* dispose of the Site without declaring it surplus or taking any of the steps required by the Act.

E. Upending the Current Negotiations Would Set an Unfortunate Precedent

Upending the long-running negotiations between the City and Developer with respect to the Site and Project would set an unfortunate precedent for future public/private partnerships in the City. It would unnecessarily derail a Project that will bring enormous benefits to the City and the community as a whole—including either a sizable affordable housing subsidy or the actual construction of affordable housing units.

There are several reasons why the City should not have to undertake the onerous steps prescribed by the Surplus Lands Act. First, under the amended Act, the proposed lease of the Site would not constitute a "disposition" triggering the requirements of the Act. Second, even if, contrary to the legislative history and clear statutory language, the lease was a disposition under the Act, the Site is exempt from AB 1486 based upon either of two available exceptions. Finally, under the existing Act, the Site is not "surplus land" and therefore would not be subject to the provisions of the Act at all.

The City faces a clear choice: if it disagrees with *each of* the reasonable interpretations of the SLA set forth in this letter, it would likely have to determine affirmatively that the Site is "surplus land" and take the remaining actions required by the Act before it could consummate the

ground lease. By contrast, if the City agrees with ***any of*** our analysis, then it need not comply with ***any of*** the Act's obligations (other than potentially meeting the outside dates for the grandfathering exceptions). Thank you for the opportunity to present this analysis and for your time and consideration of this matter. We look forward to your response. Please do not hesitate to contact us with any questions.

Sincerely,

Dave Rand

cc: Frank Stephan, Clarrett West Development, LLC
Timan Khoubian, DLJ Real Estate Capital Partners, LLC
Keith Elkins, Elkins Kalt Weintraub Reuben Gartside LLP
Lane Dilg, City Attorney
George Cardona, Chief of Staff/Special Projects
Andy Agle, Director, Housing and Economic Development
Jason Harris, Economic Development Manager

Enclosures:
Attachment A - AB 1486 - Chaptered - October 9, 2019
Attachment B - AB 1486 - Introduced - February 22, 2019
Attachment C - AB 1486 - Amended in Assembly - March 28, 2019
Attachment D - AB 1486 - Bill Analysis - Assembly Local Government Committee - April 10, 2019
Attachment E - AB 1486 - Amended in Assembly - April 11, 2019
Attachment F - AB 1486 - Amended in Senate – September 6, 2019
Attachment G - Long-Range Property Management Plan
Attachment H - Oversight Board Resolution No. 33 - December 21, 2015

EXHIBIT H

City Letter to HCD, (1/22/20)

City of
Santa Monica®

Housing and Economic Development Department
1901 Main Street, Suite C
Santa Monica, CA 90405
310-458-2251

VIA U.S. MAIL AND E-MAIL

January 22, 2020

Zachary Olmstead, Deputy Director
Department of Housing and Community Development, Division of Housing Policy Development
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
PublicLands@hcd.ca.gov

Re: Application of Surplus Lands Act to the Plaza at Santa Monica Project

Dear Mr. Olmstead:

This letter requests a determination from the Department of Housing and Community Development ("HCD") on whether AB 1486 applies to the City of Santa Monica's contemplated ground lease of certain properties located on Arizona Avenue between Fourth and Fifth Streets in Santa Monica (collectively the "Properties") to a single-purpose development entity formed by Clarett West Development, LLC and DLJ Real Estate Capital partners, LLC (collectively, "the Developer"). The Properties were assembled and are owned by the City of Santa Monica (as to approximately one half of the site) and the Successor Agency to the City's former redevelopment agency (as to the other approximately one half of the site). The Successor Agency properties are listed on a Long-Range Property-Management Plan ("LRPMP") that was approved by the Department of Finance.

The Properties currently exist as surface parking with two commercial banks on short-term leases. The proposed redevelopment project being negotiated for the Properties (the "Project") would include construction of an approximately 17,800 SF ground-level public plaza, a smaller plaza at Fifth Street and Arizona Avenue, two ground-level pocket parks, an approximately 11,000 SF second-level public urban garden, an approximately 12,000 SF cultural space, approximately 42,200 SF of ground-floor retail and restaurant space, approximately 40,000 SF second-floor gym/retail/restaurant space, a 190 to 240-room boutique hotel of approximately 117,000 square feet, approximately 106,800 SF of office space, and below-grade parking.

The City and Developer have been engaged in negotiations for the ground leases and the Project since 2014. The parties entered into an Exclusive Negotiating Agreement in 2014 ("ENA"), a copy of which is attached for your reference), but the ENA expired by its own terms in 2015. Notwithstanding the expiration of the ENA, the parties have continued good-faith negotiations, and the City has not engaged in negotiations with any other party regarding the Properties.

As you know, Assembly Bill No. 1486 (AB 1486) (codified as Government Code sections 54220 et seq.) went into effect on January 1, 2020. This bill modifies the existing Surplus Lands Act to impose new

restrictions on the "disposition" of "surplus property" owned by local government agencies, including the City. More specifically, as amended by AB 1486, Government Code Section 54222 provides that any local agency disposing of surplus land shall, "prior to disposing of that property or participating in negotiations to dispose of that property with a prospective transferee," send a notice of written availability of the property for various specified uses to various housing sponsors and other local government agencies. As amended by AB 1486, Government Code Section 54230.5(b) imposes an obligation on the local agency, prior to agreeing to terms for disposition of surplus land, to provide HCD with a specified description of the process followed to dispose of the land, and imposes an obligation on HCD to review the description and submit findings to the local agency if HCD determines that the proposed disposal violates state law. As added by AB 1486, Government Code Section 54230.5(a) imposes a penalty of "30 percent of the final sale price" on a local agency "that disposes of land in violation of this article after receiving a notification from [HCD] pursuant to subdivision (b) that the local agency is in violation of this article," and provides for a third-party cause of action to enforce the law.

As added by AB 1486, Government Code section 54324 creates exemptions from AB 1486's modifications of the Surplus Lands Act if: (1) the local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property and the disposition is completed not later than December 31, 2022; or (2) for properties designated in a LRPMP either for sale or retained for future development, the local agency enters into an exclusive negotiating agreement or legally binding agreement for disposition not later than December 31, 2020 and disposition is completed not later than December 31, 2022.

Given the long history of negotiations between the City and Developer, the Developer's attorney has provided a written analysis, dated December 16, 2019, effectively asserting that AB 1486 is not applicable to the contemplated transaction because: (i) the Properties are not "surplus land" as defined under the Surplus Lands Act as amended by AB 1486; (ii) a long-term ground lease of the type and duration that has been the subject of negotiation does not qualify as a "disposition" of the Properties; and (iii) even if the Properties are "surplus land" and even if a long-term ground lease of the type and duration that has been the subject of negotiation qualifies as a "disposition" of the Properties, one or the other of the exemptions referenced above applies to all of the Properties. Without addressing these arguments in turn, the City believes, in the absence of binding judicial interpretations to the contrary, that the Developer's position merits review and consideration.

In light of Developer's position and the potential adverse ramifications to the City were the City to engage in conduct found to violate AB 1486, the City is simultaneously continuing negotiations with Developer and seeking an expedited determination from HCD on whether AB 1486 applies to the contemplated long-term ground lease of the Properties to Developer for development of the Project. In sum, the City believes that obtaining HCD's position on an expedited basis as to whether AB 1486 applies will provide much needed clarity and certainty to both the City and Developer prior to executing a long-term ground lease for the Properties.

Sincerely,

Andy Agle
Director

EXHIBIT I

City Email to HCD, (1/23/20)

From: Susan Cola
To: Jamie Wand
Subject: FW: Application of Surplus Lands Act to the Plaza at Santa Monica Project
Date: Monday, March 2, 2020 4:18:47 PM
Attachments: image002.png
image003.png
image004.png

Susan Y. Cola, Senior Special Projects Deputy City Attorney
City Attorney's Office
1685 Main Street, Room 310
Santa Monica, CA 90401
Tel: (310) 458-8342
Fax: (310) 395-6727
Susan.cola@smgov.net

From: PublicLands@HCD <publiclands@hcd.ca.gov>
Sent: Friday, February 7, 2020 3:02 PM
To: Susan Cola <Susan.Cola@SMGOV.NET>
Cc: Andy Agle <Andy.Agle@SMGOV.NET>; PublicLands@HCD <publiclands@hcd.ca.gov>; Byers, Stephen@HCD <Stephen.Byers@hcd.ca.gov>; Wisotsky, Sasha@HCD <Sasha.Wisotsky@hcd.ca.gov>
Subject: RE: Application of Surplus Lands Act to the Plaza at Santa Monica Project

EXTERNAL

Susan,

Do you/city staff have availability the week of 2/10 for a call with HCD staff/counsel regarding the city's request for a determination on the applicability of AB 1486 to the project in question?

Thank you,

Harrison Anixter
Housing and Community Development Specialist
Housing and Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.1781

From: Susan Cola <Susan.Cola@SMGOV.NET>
Sent: Thursday, January 23, 2020 9:20 AM
To: PublicLands@HCD <publiclands@hcd.ca.gov>
Cc: Andy Agle <Andy.Agle@SMGOV.NET>
Subject: Application of Surplus Lands Act to the Plaza at Santa Monica Project

Dear Mr. Olmstead,

This e-mail is being sent at the request of Andy Agle, Director of the City of Santa Monica Housing and Economic Development Department. Attached are: Mr. Agle's request for a determination on the applicability of the recently enacted modification to the Surplus Lands Act (AB 1486) to a specific project and supporting documentation, as further explained in the request.

Susan Y. Cola, Senior Special Projects Deputy City Attorney
City Attorney's Office
1685 Main Street, Room 310
Santa Monica, CA 90401
Tel: (310) 458-8342
Fax: (310) 395-6727
Susan.cola@smgov.net

EXHIBIT J

HCD Email to City, (2/12/20)

From: Susan Cola
To: Jamie Wand
Subject: FW: Application of Surplus Lands Act to the Plaza at Santa Monica Project
Date: Monday, March 2, 2020 4:19:43 PM
Attachments: image003.png
image004.png
image005.png
Rand Letter Part 1.pdf

Susan Y. Cola, Senior Special Projects Deputy City Attorney
City Attorney's Office
1685 Main Street, Room 310
Santa Monica, CA 90401
Tel: (310) 458-8342
Fax: (310) 395-6727
Susan.cola@smgov.net

From: PublicLands@HCD <publiclands@hcd.ca.gov>
Sent: Wednesday, February 12, 2020 12:58 PM
To: Susan Cola <Susan.Cola@SMGOV.NET>; Andy Agle <Andy.Agle@SMGOV.NET>
Subject: RE: Application of Surplus Lands Act to the Plaza at Santa Monica Project

EXTERNAL

HCD has reviewed and considered the December 16, 2019 letter from the attorneys for Clarrett West Development, LLC and DLJ Real Estate Capital Partners, LLC (collectively, "Developer"). The letter contains three main arguments which are briefly summarized and responded to below:

1. Developer's First Argument - "The City is not required to undertake any of the steps required by the Act, because—even if the amended version of the Surplus Lands Act per AB 1486 applied to the Site and Project—the proposed ground lease of the Site is not a disposition that is subject to the Act." (pg. 5 (underline and italics omitted).)

    a. HCD's Response – The Surplus Land Act ("SLA") does not specifically define the term "disposition." However, the SLA refers multiple times to a "lease" as a disposition under the Act. (See e.g. Gov't Code § 54223(a) ["After the disposing agency has received a notice of interest from the entity desiring to purchase or lease the land . . . the

disposing agency and the entity shall enter into good faith negotiations to determine a mutually satisfactory sales price and terms or lease terms.] (Emphasis added.); Gov't Code § 54222(e) ["The entity or association desiring to purchase or lease the surplus land . . . shall notify in writing the disposing agency of its interest in purchasing or leasing the land....] (Emphasis added.); Gov't Code § 54227(a) ["In the event that any local agency disposing of surplus land receives a notice of interest to purchase or lease that land from more than one of the entities to which notice of available surplus land was given pursuant to this article...."] (Emphasis added.))

2. Developer's Second Argument – "[T]he Site and Project should be grandfathered under the existing SLA (and not subject to AB 1486) as they qualify for either of two exemptions set forth in AB 1486 under new Government Code Section 54234." (pg. 8.)

   a. HCD's Response – The Developer does not adequately explain how Gov't Code § 54234(a) applies to an expired exclusive negotiating agreement.
   b. HCD's Response – The Developer does not adequately explain how Gov't Code § 54234(b) applies to disposition of property where some of the parcels are designated in a long-range property management plan and some are not.

3. Developer's Third Argument – "[T]he Site is not 'surplus land' under the existing Act and remains required for the City's use thereunder." (pg. 10 (underline and italics omitted.)

   a. HCD's Response – This argument is premised on the applicability of either Gov't Code § 54234(a) or (b). As noted above, the Developer does not adequately explain how either subdivision applies.

Please let me know if you have any questions.

Thank you,

Harrison Anixter
Housing and Community Development Specialist
Housing and Community Development
2020 W. El Camino Avenue, Suite 500 | Sacramento, CA 95833
Phone: 916.263.1781

EXHIBIT K

HCD Letter to Developer, (3/24/20)

STATE OF CALIFORNIA - BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY GAVIN NEWSOM, Governor

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT
2020 W. El Camino Avenue, Suite 500
Sacramento, CA 95833
(916) 263-2911 / FAX (916) 263-7453
www.hcd.ca.gov

March 24, 2020

Dave Rand, Esq.
Partner
Armbruster Goldsmith & Delvac LLP
12100 Wilshire Boulevard, Suite 1600
Los Angeles, CA 90025

Dear Dave Rand:

RE: Application of Recent Amendments to the Surplus Land Act (Assembly Bill 1486) to the Plaza at Santa Monica Project

Based on the facts and circumstances provided to HCD, it appears that the City of Santa Monica (City) qualifies for the following exemption from Government Code section 54234(a)(1):

"If a local agency, as of September 30, 2019, has entered into an exclusive negotiating agreement or legally binding agreement to dispose of property, the provisions of this article as it existed on December 31, 2019, shall apply, without regard to the changes made to this article by the act adding this section, to the disposition of the property to the party that had entered into such agreement or its successors or assigns, provided the disposition is completed not later than December 31, 2022."

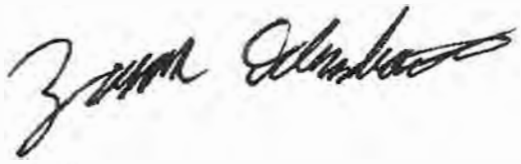
The City of Santa Monica, a "local agency" under the Surplus Land Act ("SLA"), previously entered into a written exclusive negotiating agreement ("Written ENA") with multiple developers regarding land owned by the City. The parties subsequently agreed to an amendment to the Written ENA to briefly extend its term. The Written ENA subsequently expired by its terms. The City and the developers then proceeded for a number of years to continue exclusive negotiations regarding the real property but failed to further amend the Written ENA to memorialize those negotiations. In a telephone conversation with Dave Rand, attorney for the developers, Mr. Rand stated that on September 30, 2019 (the date listed above in the relevant statute) the City and the developers had a non-written (i.e. constructive) ENA in place. Furthermore, Mr. Rand informed HCD that the City, after the expiration of the Written ENA, has not negotiated with any other person or entity regarding the property. Lastly, Mr. Rand advised HCD that the only reason the parties recently stopped negotiations was because of HCD's involvement in providing advice to the City on the SLA issues. These facts, taken together, strongly evidence the fact that the City and the developers had an exclusive negotiating agreement in place as of September 30, 2019.

The SLA does not define "exclusive negotiating agreement" and does not state that it must be in writing. Furthermore, the statute of frauds (which requires that certain contracts be in writing) does not appear to require the type of ENA discussed here to be in writing. The statute of frauds requires that the following real property transactions (neither of which apply here) be in writing: "an agreement to lease real property for a period longer than one year or for the sale of real property or an interest therein." (1 Cal. Real Est. § 1:70 (4th ed.).) The ENA at issue here deals with exclusive negotiations regarding the possible long-term lease of real property but the ENA here does not itself constitute a lease or sale of the property so is not required to be in writing.

The SLA also does not explicitly prohibit an oral or constructive ENA. There also does not appear to be any case law prohibiting such an agreement.

To conclude, the City of Santa Monica qualifies for the exemption found in Government Code section 54234(a)(1).

Sincerely,



Zachary Olmstead
Deputy Director of Housing Policy

EXHIBIT L

Letter from Barbara J. Parker, Oakland City Attorney (2/17/15)

CITY OF OAKLAND

ONE FRANK H. OGAWA PLAZA • 6TH FLOOR • OAKLAND, CALIFORNIA 94612

Office of the City Attorney
Barbara Parker
City Attorney

(510) 238-3601
FAX: (510) 238-6500
TDD: (510) 839-6451

LEGAL OPINION

ATTORNEY-CLIENT COMMUNICATION
PRIVILEGED AND CONFIDENTIAL

February 17, 2015

HONORABLE CITY COUNCIL
Oakland, California

RE: APPLICATION OF SURPLUS LANDS ACT AMENDMENTS TO 12TH STREET REMAINDER PROJECT

Dear President Gibson McElhaney and Members of the Council:

I. Introduction

This opinion addresses the surplus Land's Act application to the 12th Street Remainder Project. The opinion accompanies closed session reports from the City Attorney's Office and the City Administrator's Office.

II. Questions and Brief Answers

Question No. 1:

Does the California Surplus Lands Act require that the City offer the 12th Street remainder property to other entities before agreeing to convey the property to UrbanCore?

Brief Answer

Yes, the 12th Street remainder project site qualifies as surplus land, and the California Surplus Lands Act therefore requires the City to offer the property to "preferred entities" designated in the Act, for 60 days before agreeing to convey the property to UrbanCore.

Question No. 2:

Does the recent amendment to the California Surplus Lands Act that imposes a fifteen percent (15%) inclusionary housing requirement on surplus land conveyed for residential projects apply to the 12th Street remainder project?

Brief Answer:

Yes, the recent amendment to the Surplus Lands Act (AB 2135) which took effect in January 2015 applies to the 12th Street remainder project. AB 2135 sets aside units for lower income households if a designated "preferred entity" responds to the City's offer to convey the property, but does not reach agreement with the City on the terms of conveyance. The subsequent purchaser of the property or long term lessee pursuant to ground lease then would be required to rent or sell at least 15% of project units to lower income households at an affordable rent or housing cost if the project has at least ten residential units.

III. Analysis

A. Background on the 12th Street remainder project.

The 12th Street remainder parcel is an approximately one acre, developable parcel that resulted from the reconfiguration of 12th Street as part of the Lake Merritt Park improvement project. The Redevelopment Agency acquired the property from the City in 2011.

The Redevelopment Agency received several unsolicited expressions of interest from developers, but, pursuant to Council direction, issued a Request for Proposals ("RFP") for development of the site in 2012. (Since the Redevelopment Agency was not subject to the Surplus Lands Act, the Agency did not pursue the Surplus Lands Act process prior to issuing the RFP.) After evaluating proposals in response to the RFP, Council authorized an Exclusive Negotiating Agreement ("ENA") with UrbanCore Development, LLC, for development of 298 residential units, plus retail space, on the site. The City entered into the ENA in July, 2013.

Meanwhile, the State Controller's Office, pursuant to its "clawback" powers under the state law dissolving redevelopment agencies, concluded that the 2011 transfer of the 12th Street remainder property from the City to the Redevelopment Agency was not authorized, and in August, 2013, ordered that the property be returned to the City. The Oakland Redevelopment Successor Agency (as successor to the Redevelopment Agency) reconveyed the property to the City in April, 2014. The City has never pursued the Surplus Lands Act process on this site.

UrbanCore has undertaken significant predevelopment work on the project under the ENA. However, the ENA is clear that entering into the ENA does not entitle the developer to acquire the property, that the City Council reserves sole discretion whether or not to move forward with the project, that any transaction is subject to compliance with all applicable laws, and that if the City decides not to move forward with a sale or lease, the City will have no obligations or liability to the developer.[1] The ENA expired on January 5, 2015.

B. The Surplus Land Act applies to the 12th Street remainder property.

The California Surplus Lands Act (California Government Code Sections 54220, et seq.) has long required cities[2] and other public agencies to offer "surplus land" to various "preferred entities" before selling or leasing the property on the open market.[3] "Surplus lands" means land that is "determined to be no longer necessary for the agency's use," except property held for the purpose of exchange. There are various exemptions, such as land parcels less than 5,000 square feet. "Preferred entities" include local housing public entities (such as the county housing department, the housing authority, and state housing agencies), parks agencies, school districts,

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[1] Recital C states the parties' "...understanding that this does not constitute a binding commitment on the part of the City to any project or developer for the Property." Section 1.2 repeats the "...understanding that no commitment has been made by the City or Developer to the Project as set forth therein," and further states that "...if the City Council declines to authorize execution of the DDA or similar instruments for any reason, then, without further action, this Agreement shall automatically terminate and no Party shall have further rights or obligations with respect to the other." Similarly, Section 6 provides that "Developer understands that the City Council retains the sole and absolute discretion to approve or not approve the Project or any alternative project proposed by Developer. If the terms of a mutually satisfactory DDA have not been negotiated by Developer and City staff during the Negotiation Period, or if the City Council declines to authorize a DDA for any reason, then, without further action, this Agreement shall automatically terminate and no Party shall have further rights or obligations with respect to the other." Finally Section 9 provides that "This Agreement does not obligate the City to transfer the Property to Developer or any other person, nor does it obligate the City to approve the Project or any other project. Developer acknowledges and agrees that no City commitment to move forward with the Project can be made other than by an ordinance of the City Council and subject to the requirements of CEQA and other applicable laws, and understands that adoption of any such ordinance will be at the City Council's sole and absolute discretion. Any costs incurred by Developer, Developer's members or partners, or other members of the Project development team to comply with its obligations under this Agreement or to negotiate the DDA shall be the sole responsibility of Developer, and in no event shall the City have any responsibility to pay for or reimburse Developer for any of said costs."

[2] The Surplus Lands Act applies to charter cities.

[3] "Any local agency disposing of surplus land shall send, prior to disposing of that property, a written offer to sell or lease the property as follows: (a) A written offer to sell or lease for the purpose of developing low and moderate income housing shall be sent to any local public entity, as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall be sent, upon written request, a written offer to sell or lease surplus land for the purpose of developing low and moderate income housing. . ." (Gov. Code section 54222

nonprofit enterprise zone associations and transportation agencies (if the property is in an infill zone or transit village area). In addition, the Act provides that "housing sponsors" are entitled to offers "upon written request." "Housing sponsors" means any entity certified by the agency as qualified to develop housing.

In the past, no housing sponsors in Oakland have requested to receive Surplus Lands Act notices, and therefore the practice in the City has been to send notices only to public entities. Recently, staff have discussed expanding the practice to send notices to the nonprofit housing developers on the City's "NOFA list" (i.e., the list of developers that receive the Notice of Funding Availability for affordable housing development funds), but thus far no notices have been sent out to this expanded list. While the language in the Surplus Lands Act says that housing sponsors only get sent offers "upon written request," the Legislature's declaration of the statute's purpose to encourage affordable housing development on public land could be the basis for an argument for a more expansive practice:

> The Legislature reaffirms its declaration that housing is of vital statewide importance to the health, safety and welfare of the residents of this state and that provision of a decent home and a suitable living environment for every Californian is a priority of the highest order. The Legislature further declares that there is a shortage of sites available for housing for persons and families of low and moderate income and that surplus government land, prior to disposition, should be made available for that purpose. (Gov. Code section 54220.)

There is no case law on whether a city that has received no written requests from housing sponsors for Surplus Lands Act notices has any legal obligation to send notices to housing sponsors.

1. <u>The Surplus Lands Act requires that the City offer surplus property to the preferred entities in writing.</u>

The Act requires that the conveying public agency send a written offer to sell or lease the surplus property to the preferred entities. A preferred entity then has 60 days to respond to the offer. If there is no response, the agency is free to convey the land on the open market. If there is a response, the agency and the responder must enter into good faith negotiations over conveyance terms. If there is no agreement on terms within 90 days, the agency is free to convey the property on the open market. The Act does not require an agency to convey property to a preferred entity for less than its fair market value, although it does authorize such below-market transactions if the agency so chooses.

The Surplus Lands Act did not apply to conveyances of property by redevelopment agencies, nor to conveyances from a city to a redevelopment agency. In Oakland, compliance with the Act was rarely an issue because nearly all

conveyances of land for economic development projects were handled by the Redevelopment Agency.

Now that redevelopment agencies have been dissolved, economic development conveyances will be handled by the City, and compliance with the Surplus Lands Act will be more of an issue. However, the City has taken the position that land that has never been in City use, such as land that was purchased by the City or the Redevelopment Agency to be land-banked for eventual transfer to a developer, is not "surplus land" for purposes of the Act. Since the Act defines surplus land as land "no longer necessary" for the City's use, this presupposes that surplus land is only land that was at some point necessary for the City's use, such as land that supported a City public facility. If the City acquired land simply with the intention to reconvey the land to a developer, that land does not fit within the statutory meaning of "surplus." This position has not been challenged; but it also has not been an issue in the past since the Redevelopment Agency owned most of the land that was conveyed for economic development projects.

In any event, the 12th Street remainder property clearly qualifies as "surplus lands" under the Act. It is former City right-of-way that is no longer necessary for the City's use as a roadway. None of the exemptions in the Act apply. Therefore, the Act imposes a legal duty on the City to offer the property to the preferred entities for 60 days prior to entering into an LDDA or a DDA,[4] and to enter into good faith negotiations for up to 90 days with whatever preferred entity responds to the offer. However, the City is not required to agree to convey the property for less than its fair market value.

The developer's attorney has suggested that the City may not be subject to the Act for this property under a theory that the City is "estopped" from offering the property by virtue of the ENA and the implied determination of the City prior to entering into the ENA that the property is not subject to the Act. This theory is without merit. A city cannot contract away its statutory obligations under state law. Principles of estoppel do not override state law requirements. Plus the terms of the ENA (which has since expired) clearly put the developer on notice that the City was not committing to convey the property to the developer, and that any conveyance would be subject to compliance with state law. Accordingly, there is nothing that would legally preclude the City from complying with the Surplus Lands Act now by sending out the required offer notices.[5] Nor would the City face any legal liability if it agreed to convey the property to a preferred entity or another entity other than UrbanCore.

[4] Council recently adopted a policy preferring long-term ground leases of City property over fee sales. That policy would apply to this project.

[5] Since the ENA has expired, entering into negotiations with a preferred entity would not breach the exclusive negotiations clause of the ENA.

2. Amendments to the Surplus Lands Act imposing an inclusionary housing requirement on surplus land would likely apply to the 12th Street remainder project.

The Surplus Lands Act was recently amended by Assembly Bill 2135. The governor signed the bill into law on September 27, 2014, and it took effect in January 2015. The bill was sponsored by various affordable housing advocates.

AB 2135, among other things, provides that, if the conveying agency fails to reach agreement regarding price and terms with a preferred entity and then conveys the property on the open market, and if the property then is developed with 10 or more residential units by the purchasing entity, the purchasing entity must rent or sell not less than 15% of the units to lower income households at an affordable rent or affordable housing cost (generally at no more than 30% of a lower income household's income). Lower income household are households at or below 80% of area median income. The affordability restrictions must be included in covenants recorded on the property prior to land use entitlements for the project. The restrictions for rental units must be in effect for 55 years. In effect, AB 2135 triggers an inclusionary housing requirement on conveyed surplus land, whether or not the land is conveyed to an affordable housing developer.

As noted above, the City is required to send written offers to convey the 12th Street remainder property to the list of preferred entities. If a preferred entity does not respond within the 60-day notice period, our Office believes that the City likely would then be free to enter into a LDDA or DDA with UrbanCore, and no inclusionary requirement would attach to the property.[6] However, if a preferred entity does respond within 60 days, and the City and the entity do not reach agreement on the price and terms of a conveyance, the City is free to enter into an LDDA or DDA with UrbanCore, **but** UrbanCore thereafter would be subject to the 15% inclusionary requirement.

Note: given that the affordable housing organizations sponsored AB 2135 and are aware of the pending nature of the 12th Street remainder project, it is highly likely that one or more nonprofit housing developers will request that the City send them the City's offer to purchase, even if they are not interested in buying the property at its

[6] There is some ambiguity in the law whether the inclusionary requirement would be triggered even if no preferred entity responds to the City's offer. AB 2135 provides that the 15% set aside applies "if the local agency does not agree to price and terms with an entity to which notice and an opportunity to purchase or lease are given pursuant to this article…" The reference to a failure to "agree" to price and terms presupposes that there has been an offer of price and terms for a conveyance from a preferred entity and some negotiations between the agency and a preferred entity over the price and terms. Thus, it assumes a scenario in which a preferred entity has responded to the offer and triggers the negotiation requirement, but there is never a meeting of the minds on the terms of a transaction. We conclude that if there is no response at all to the City's offer, there has been no failure to "agree" on price on terms since there were no negotiations at all on price and terms to begin with.

current fair market value, to trigger the inclusionary requirements of AB 2135 on the eventual development.

3. If the City does not comply with its statutory legal duty to offer the 12th Street remainder property, a preferred entity and possibly an Oakland taxpayer could block the conveyance to UrbanCore.

If the City does not comply with its statutory obligation to send the written offer to the preferred entities to acquire the 12th Street remainder site as required under the Surplus Lands Act, a preferred entity could file a lawsuit asking a court to prevent the disposition of the property to UrbanCore, under the theory that the City has failed to comply with mandatory state law. There also is the possibility (which we are researching) that a taxpayer would have standing to file a lawsuit challenging the disposition. The plaintiff likely would file a writ petition asking the court to issue a writ of mandamus compelling the City to comply with the state law, i.e., to send the written offer to the preferred entities; the plaintiff also likely would request the court to issue a temporary restraining order or preliminary injunction ordering the City not to move ahead with the disposition until the court hears the writ petition. Given the plain language of the state law, it is likely that the court would issue a TRO or preliminary injunction and that the court would issue a writ compelling the City to comply with the state law. The City likely would be liable for the plaintiff's attorneys' fees in such a case.

The language in the statute that states that the City has a duty to provide a written offer to housing sponsors "upon written request" would allow the City to argue that it had no duty to send a written offer to housing sponsors who did not submit a written request therefor. Housing sponsors could file a standing request with the City asking that the City send them written offers to sell or lease surplus property. Given the tension between the statutory language and the statement of legislative intent, we cannot advise that it is more likely than not that such an argument would prevail in court. In any event, the statute explicitly imposes a legal duty on the City to send written offers to the designated public entities, and housing sponsors who were the proponents of AB 2135 likely will submit written requests for offers, and the City then would clearly be obligated to make offers to those housing sponsors.

With regard to other remedies, the Act does not explicitly provide for an action for damages against the City once an LDDA or DDA has been executed or the property has been conveyed. Nor would it be clear what damages a preferred entity would suffer, given that the Act does not entitle the preferred entity to purchase the property for less than fair market value. The Act provides that "the failure by a local agency to comply with this article shall not invalidate the transfer or conveyance of real property to a purchaser or encumbrancer for value." Thus, a plaintiff could not invalidate the transfer of the 12th Street remainder property once it is conveyed to UrbanCore by lease or sale or, arguably, once the City and UrbanCore enter into an LDDA or DDA legally committing the City to convey the property to UrbanCore. A plaintiff would therefore have to take legal action prior to execution of the LDDA or DDA.

III. Conclusion

Our Office appreciates the policy and equity issues given that this project and negotiations have been ongoing for some time before the enactment of AB 2135, and the value of having a minority-owned developer involved in developing Oakland. We also understand the importance of preserving economic diversity in Oakland and support the policy underpinnings of the State Surplus Lands Act, namely to make surplus government land available for housing for low and moderate income families and persons. However, the law is in effect and it will impact not just this project but a number of properties. Perhaps the reduction in Fair Market Value will allow the project to pencil out with a 15% affordable housing requirement in place.

Also, the general policy to lease vs. sell City property is in effect. That policy requires that the City dispose of property by long term lease unless the Council, pursuant to the City Administrator's recommendation makes an exception based on findings that a sale is in the City's best interests. (A copy of Resolution No. 85324 C.M.S. which established the policy is attached.) Our Office and the City Administrator agree that these exceptions and findings should be made at the outset, before the issuance of an RFP based on a robust analysis if the City Administrator believes an exception to the policy is in the City's best interests. Otherwise, in accordance with the Council's policy, the RFP and other negotiations would proceed on the basis of a long term lease. The latter occurred with the Forest City Uptown project and the development of the former Oakland Army Base and OMSS.

Given that the policy was adopted in December 2014, the Council will need to make appropriate findings and policy decisions regarding projects that were in negotiations before the policy took effect.

Very truly yours,

BARBARA J. PARKER
City Attorney

cc: City Administrator

Attorneys Assigned:
Daniel Rossi, Senior Deputy City Attorney
Dianne Millner, Special Counsel

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ATTORNEY-CLIENT COMMUNICATION
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EXHIBIT M

Bill Analysis of AB 1486, Senate Floor, (9/10/19)

SENATE RULES COMMITTEE AB 1486
Office of Senate Floor Analyses
(916) 651-1520 Fax: (916) 327-4478

THIRD READING

Bill No: AB 1486
Author: Ting (D), et al.
Amended: 9/6/19 in Senate
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 4-3, 6/26/19
AYES: McGuire, Beall, Hertzberg, Wiener
NOES: Moorlach, Hurtado, Nielsen

SENATE HOUSING COMMITTEE: 8-3, 7/2/19
AYES: Wiener, Caballero, Durazo, McGuire, Roth, Skinner, Umberg, Wieckowski
NOES: Morrell, Bates, Moorlach

SENATE APPROPRIATIONS COMMITTEE: 5-2, 8/30/19
AYES: Portantino, Bradford, Durazo, Hill, Wieckowski
NOES: Bates, Jones

ASSEMBLY FLOOR: 53-20, 5/29/19 - See last page for vote

SUBJECT: Surplus land

SOURCE: Nonprofit Housing Association of Northern California
San Diego Housing Federation

DIGEST: This bill imposes additional requirements on the process that public agencies must use when disposing of surplus property.

Senate Floor Amendments of 9/6/19 exempt some special district lands if the district's statute expressly authorizes sale or use for commercial or retail purposes, specified land transferred to local governments, modify the penalty provisions to only impose a penalty of 30% of the land value and 50% for future violations, grandfather in specified properties under the existing surplus land act, and make other minor and clarifying amendments.

ANALYSIS:

Existing law:

The Surplus Land Act:

1) Requires any local agency, when disposing of surplus land, to first offer it for sale or lease for the purpose of developing low- and moderate-income housing. First priority must be given to affordable housing for lower income seniors or disabled persons or households, and other lower income households.

2) Requires each local agency, on or before December 31 of each year, to make an inventory of all lands it holds, owns, or controls, including a description of each parcel found to be in excess of its needs.

3) Defines "surplus land" as land owned by any local agency that is determined to be no longer necessary for the agency's use, except property being held by the agency for the purpose of exchange or property meeting other exemptions.

Housing element law:

4) Requires every city and county to prepare and adopt a general plan, including a housing element, to guide the future growth of a community. The housing element must identify and analyze existing and projected housing needs, identify adequate sites with appropriate zoning to meet the housing needs of all income segments of the community, and ensure that regulatory systems provide opportunities for, and do not unduly constrain, housing development.

5) Requires each city and county to submit an annual progress report (APR) to the Department of Housing and Community Development (HCD) and the Office of Planning and Research that includes specified information relating to progress in meeting the jurisdiction's share of regional housing needs pursuant to its housing element.

This bill:

Surplus Lands Act

1) Clarifies the public agencies to which the Surplus Land Act applies and adds successor agencies, joint powers authorities, housing authorities, and any other political subdivision of the state.

2) Revises the definition of "surplus land" to be any land owned by a local agency that the local agency declares is not necessary for the agency's use. Defines "use" to include, but is not limited to, and that is being used or is planned to be used for the express purpose of agency work or operations pursuant to a written plan, including utility sites, watershed property, land being used for conservation purposes, land for demonstration, exhibition, or educational purposes related to greenhouse gas emissions, and buffer sites near sensitive governmental uses, including, but not limited to, waste water treatment plants. However, "use" does not include commercial or industrial use or activities, as defined, except that use may include these activities for special districts if it directly furthers the agency's operations or is expressly authorized by statute governing the local agency. Additionally, defines surplus land to include land formerly owned by redevelopment agencies.

3) Expands the list of exemptions from the Surplus Land Act to include, among other exemptions:

   a) Land that is put out to open, competitive bid by a local agency for either:

      i) A housing development that restricts 100% of units to low- or moderate-income households, with at least 75% of units restricted to low-income, for at least 55 years, with a maximum affordable sales price or rent level that does not exceed 20% below median market rents or sales prices for the neighborhood in which the development is located.
      ii) A mixed-use development that includes at least 300 units and restricts at least 25% of the units to lower-income households, with an affordable rent or sale price, for at least 55 years for rental housing, or 45 years for ownership.

   b) Land that is subject to legal restrictions that would make housing prohibited on the site and that are not imposed by the local agency, as specified.
   c) Land that was granted by the state in trust to a local agency, that was acquired by the local agency for trust purposes by purchase or exchange, or for which disposal of the land is authorized or required subject to conditions established by statute.
   d) Land transferred to a local agency pursuant to specified provisions of existing law and that plans minimum density of affordable housing.

4) Requires a local agency that is disposing of surplus land for purpose of developing low- and moderate-income housing to send a notice of availability,

as specified, to housing sponsors that have notified HCD (rather than the appropriate council of governments) of their interest. Requires HCD to maintain a list of all notices of availability on its Web site.

5) Prohibits a local agency from participating in negotiations, as defined, prior to notifying the entities that request notification of the availability of surplus land.

6) Prohibits the negotiations between a disposing agency and interested entities to determine price and terms to:

   a) Disallow residential use of the site as a condition of its sale or lease, except where the condition is required to mitigate impacts to public health and safety or agency operations.
   b) Reduce the allowable number of residential units or the maximum lot coverage below what may be allowed by zoning or general plan requirements.
   c) Require as a condition of sale or lease, any design standards or architectural requirements that would have a substantial adverse effect on the viability or affordability of a housing development for very low-, low-, or moderate-income households, other than the minimum standards required by general plan, zoning, and subdivision standards and criteria.

7) Provides that the prohibitions in 6) do not restrict a local agency's discretion regarding land use decisions, as specified.

8) Requires a local agency to give preference in exclusive negotiations to those affordable housing entities that propose the deepest level of affordability.

9) Requires a housing element's site inventory to include, for non-vacant sites that are owned by the city or county, a description of whether there are plans to dispose of the property during the planning period and how the city or county will comply with the Surplus Lands Act. Sunsets this provision on Dec. 31, 2028.

10) Grandfathers in certain properties to the process under existing law, as follows:

   a) If a local agency has entered into an agreement to dispose of property by September 30, 2019 and disposes of the property by December 31, 2022.
   b) Former RDA properties that enter into an agreement for the property by December 31, 2020 and disposes of the property by December 31, 2022.

c) These dates may be extended for properties under litigation until 6 months after the litigation is resolved.

11) Requires a city or county to include in its annual progress report to HCD a list of properties sold, leased, or disposed of in the prior year, with specified information.

Surplus Land Act violations

12) Requires a local agency, prior to agreeing to the terms for the disposition of surplus land, to provide specified information about its disposition process to HCD. Requires HCD to submit to the local agency, within 30 days, written findings of any process violations that have occurred. Provides the local agency at least 30 days to either correct the violations or adopt a resolution with findings explaining why the process is not in violation.

13) Provides that a local agency that disposes of land in violation of this bill following a notification from HCD is liable for a penalty of 30% of the final sale price for a first violation and 50% for subsequent violations. Penalty assessments shall be deposited into a local housing trust fund, the state Building Homes and Jobs Fund, or the Housing Rehabilitation Loan Fund, as specified. Allows specified individuals to bring an action.

14) Adds Surplus Land Act violations to the list of violations of which HCD may notify the Attorney General.

15) Requires HCD to make available educational resources and materials to inform each agency of its obligations under the Surplus Land Act and adopt guidelines for this penalty process, among other requirements, by January 1, 2021.

Background

Public agencies are major landlords in some communities, owning significant pieces of real estate. When properties become surplus to their needs, public officials want to sell the land to recoup their investments. The Surplus Land Act spells out the steps public agencies must follow when they want to dispose of land they no longer need. It requires state departments and local governments to give a "first right of refusal" to other governments and some nonprofit groups. The statute's implicit public policy is that real property should remain in public ownership if it's still useful for certain favored purposes.

Before state and local officials can dispose of surplus land, they must send a written offer to sell or lease surplus land to various public agencies and nonprofit groups, referred to as "housing sponsors," if they want to sell or lease the property for:

- Low- and moderate-income housing.
- Park and recreation.
- School facilities or open space.
- Enterprise zones.
- Infill opportunity zones or transit village plans.

If another agency or housing sponsor wants to buy or lease the surplus land for one of these purposes, it must tell the disposing agency within 60 days. The two entities have an additional 90 days to negotiate a mutually satisfactory price in good faith. If they can't agree, the agency that owns the surplus land can sell the land on the private market. The Act says that nothing in its provisions prevent a local agency from disposing of the land at or below fair market value, where not in conflict with other law.

The Surplus Land Act's provisions don't apply to "exempt surplus land," which means either:

- Land that a county transfers at less than fair market value for affordable housing development; or
- Small parcels that are sold to contiguous property owners.

Counties have the option of developing a central inventory of all the surplus land in that county. Under a separate provision of law, local governments must annually make an inventory of all land that it holds to determine what land, including air rights, if any, is in excess of its foreseeable needs and describe the excess parcels. The local government must make this list available for free to entities that request it.

State agencies must make a similar list of excess land and send it to the Department of General Services (DGS). Land reported as excess must then be transferred to DGS, which requests authorization to sell the land from the Legislature if it isn't needed by other state agencies.

In 2014, the Legislature updated the Surplus Land Act to enhance the affordable housing requirements under the law (AB 2135, Ting, Chapter 677, Statutes of 2014). Specifically, if a local agency sells the land for housing, a few inclusionary

requirements apply. First, if the land is to be used for low- or moderate-income housing, at least 25 percent of the units must be offered at an affordable housing cost or rent. If the local agency doesn't come to terms with a housing sponsor or other local agency, and a housing project with 10 or more units is subsequently built on the land, at least 15 percent of the units must be affordable.

The 2014 changes to the Act were intended to expand the supply of land available for affordable housing. Since then, reports of some local agencies attempting to avoid the requirements of the Surplus Land Act have emerged. In one high-profile case in 2015, the City of Oakland attempted to sell property to a market-rate developer despite interest from affordable housing developers. Affordable housing advocates want the Legislature to increase the requirements on local agencies that want to dispose of surplus property.

Comments

1) *Purpose of the bill*. According to the author, "California is facing a housing crisis and unused public land has the potential to promote affordable housing development throughout the state. AB 1486 clarifies and strengthens provisions in the Surplus Land Act that will promote the use of public land for affordable housing."

2) *Robbing Peter to pay Paul*. Local governments hold property for a variety of reasons, and they dispose of it for many reasons as well. Faced with tight budgets, state departments and local governments should be selling their surplus real estate for the highest possible prices, thereby recouping the public's investments. Recent legislation has eaten away at the ability of public agencies to maximize the value of their land: because any public land sold to a residential developer must include affordable housing if there was an affordable housing developer who wanted it, the value of that land is lower to other developers. AB 1486 goes a step further and imposes additional restrictions that could delay property sales, reduces the value that local governments can get for their land, and increases the red tape that the agencies and potential buyers must wade through before they can complete a transaction. By doing so, AB 1486 potentially undermines the services that local agencies provide to their constituents: if public agencies can't get the maximum sale price because of constraints on public land, they'll have less money to put towards other important programs. Additionally, cities and counties have broad authority to look out for the welfare of their citizens and to take actions to ensure their wellbeing. Accordingly, some local agencies might consider selling land for economic development to be an important and valuable use of property, even

though it might not be necessary for the *agency's* use. AB 1486 could impair these legitimate actions by local agencies.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- HCD estimates costs of $1.17 million in 2020-21 and $1.1 million ongoing for 6.5 PY of new staff to conduct outreach and provide technical assistance to local agencies, maintain notices of availability on its Web site, conduct compliance activities (including potential referrals of noncompliance to the Attorney General), and provide continual updates on compliance processes and submission/review status. (General Fund)

- Unknown, potentially significant, state-mandated costs for local agencies to revise procedures for identifying and disposing of surplus lands, and provide specified information to HCD. To the extent an affected local agency files a successful claim with the Commission on State Mandates, these costs would be state-reimbursable. (General Fund)

- Any mandated costs incurred by local governments related to the requirement to include specified excess land inventory information in the housing element are not reimbursable by the state because local governments have authority to levy fees to cover the costs of planning mandates.

- Unknown, potential penalty revenue gains, to the extent local agencies dispose of land in violation of the Surplus Land Act and enforcement actions are finalized. Revenues could be deposited into local housing trust funds, or into specified state funds. The latter would occur at a local agency's discretion, or if funds deposited into a local housing trust fund remain unspent after five years. (Building Homes and Jobs Trust Fund or the Housing Rehabilitation Loan Fund)

SUPPORT: (Verified 9/9/19)

Nonprofit Housing Association of Northern California (co-source)
San Diego Housing Federation (co-source)
Association of Bay Area Governments
Bay Area Council
Bay Area Housing Advocacy Coalition
Bay Area Regional Health Inequities Initiative

Bridge Housing Corporation
Building Industry Association of the Bay Area
Burbank Housing Development Corporation
California Apartment Association
California Building Industry Association
California Community Builders
California Community Builders
California Housing Consortium
California Rural Legal Assistance Foundation
California YIMBY
Chan Zuckerberg Initiative
Community Legal Services in East Palo Alto
EAH Housing
East Bay Asian Local Development Corporation
East Bay Housing Organizations
Enterprise Community Partners
Greenbelt Alliance
Habitat for Humanity California
Habitat for Humanity East Bay/Silicon Valley
Hamilton Families
Metropolitan Transportation Commission
Midpen Housing Corporation
North Bay Leadership Council
Oakland Metropolitan Chamber of Commerce
Related California
San Francisco Foundation
San Francisco Housing Action Coalition
Silicon Valley at Home
Silicon Valley Community Foundation
Southern California Association of Nonprofit Housing
Tenderloin Neighborhood Development Corporation
TMG Partners
Transform
Urban Displacement Project, UC Berkeley
Western Center on Law & Poverty
Working Partnerships USA

OPPOSITION: (Verified 9/10/19)

Beaumont-Cherry Valley Water District
Byron Bethany Irrigation District

Calaveras Public Utility District
Cambria Community Services District
Central Contra Costa Sanitary District
Chino Valley Independent Fire District
City of Concord
City of San Marcos
Coachella Valley Water District
Costa Mesa Sanitary District
County of Santa Clara
County of Solano
Crestline Sanitation District
Cucamonga Valley Water District
Denair Community Services District
Desert Recreation District
Dublin San Ramon Services District
East Contra Costa Fire Protection District
Eastern Kern County Resource Conservation District
Edgemont Community Services Districts
El Dorado Hills Community Services District
Fallbrook Public Utilities District
Fresno Mosquito and Vector Control District
Garberville Sanitary District
Georgetown Divide Public Utility District
Goleta Sanitary District
Goletta West Sanitary District
Greenfield County Water District
Helix Water District
Humboldt Bay Municipal Water District
Ironhouse Sanitary District
Kern County Cemetery District
Leucadia Wastewater District
McKinleyville Community Services District
Merced County Mosquito Abatement District
Montara Water and Sanitary District
Mt. View Sanitary District
North County Fire Protection District
Northern Salinas Valley Mosquito Abatement District
Oceano Community Services District
Ojai Valley Sanitary District
Olivehurst Public Utility District

Orange County Cemetery District
Orange County Mosquito Abatement and Vector Control District
Palo Verde Cemetery District
Rainbow Municipal Water District
Reclamation District 1000
Rio Linda Elverta Community Water District
Ross Valley Sanitary District
San Bernardino Valley Water District
San Juan Water District San Ramon Valley Fire Protection District
Silveyville Cemetery District
Solano Irrigation District
South Coast Water District
Stallion Springs Community Services District
Stege Sanitary District
Stockton East Water District
Tahoe City Public Utility District
Templeton Community Services District
Three Valleys Municipal Water District
Town of Discovery Bay Community Services District
Transportation Agency for Monterey County
Valley Center Municipal Water District
Ventura Port District
Visalia Public Cemetery District
Vista Irrigation District
West County Wastewater District
West Side Recreation & Park District
Yucaipa Valley Water District

ASSEMBLY FLOOR: 53-20, 5/29/19
AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bloom, Boerner Horvath, Bonta, Burke, Calderon, Carrillo, Cervantes, Chau, Chiu, Chu, Cooper, Eggman, Friedman, Gabriel, Cristina Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Levine, Limón, Low, McCarty, Medina, Mullin, Muratsuchi, Nazarian, O'Donnell, Petrie-Norris, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Smith, Mark Stone, Ting, Weber, Wicks, Wood, Rendon
NOES: Bigelow, Brough, Chen, Choi, Cunningham, Dahle, Diep, Flora, Fong, Frazier, Gallagher, Kiley, Lackey, Mathis, Mayes, Melendez, Obernolte, Patterson, Voepel, Waldron

NO VOTE RECORDED: Cooley, Daly, Eduardo Garcia, Kamlager-Dove, Maienschein, Quirk, Blanca Rubio

Prepared by: Anton Favorini-Csorba / GOV. & F. / (916) 651-4119
9/10/19 10:13:56

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