

City of Los Angeles
Housing Department
Multi-family Bond Policies and Procedures

April 2005

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TABLE OF CONTENTS

	Page
I. General.....	1
A. Eligible Projects.....	1
B. Types of Bonds.....	2
C. Bond Sale Modes.....	3
D. Statewide Issuers.....	4
E. Other Issuers.....	4
II. Bond Requirements.....	4
A. Bond Security.....	4
B. Bond Rating and Credit Enhancement Requirements.....	5
III. Affordability Requirements.....	6
A. Number of Affordable Units.....	6
B. Term.....	6
C. Income Limits.....	6
D. Annual Certification of Tenant Income.....	6
E. Rent Limits.....	6
IV. Prevailing Wage Requirements.....	7
A. Prevailing Wage.....	7
B. Rent and Prevailing Wage Monitoring.....	7
C. Intercreditor Agreement.....	7
V. Transfer of Ownership.....	7
VI. Fees and Expenses.....	8
A. Borrower's Agreement.....	8
B. Application Processing Fee.....	8
C. TEFRA Hearing.....	8
D. Costs of Issuance.....	8
E. Initial Issuer Fee.....	8
F. Annual Issuer Fee.....	8
G. Consent Fee, Approval Fee, and Waiver Fee.....	9

VII.	Special Financing.....	9
VIII.	The Finance Team.....	9
	A. Selection.....	9
	B. Fees and Expenses	9
IX.	Departmental Review and Procedures/Timetable.....	9
	A. Receiving and Reviewing Applications.....	10
	B. Deposit and Commitment to Pay Fees.....	11
	C. Inducement Resolution	11
	D. TEFRA Hearing	11
	E. Preparation and Submittal of the CDLAC Application	11
	F. Document Preparation and Approval (including bond resolution).....	12
	G. Scheduling and Approval of the Bond Resolution	12
	H. Bond Sale and Closing.....	12
X.	Program Marketing	13

City of Los Angeles Housing Department Multi-Family Bond Policies and Procedures

Program Description

I. General

The City of Los Angeles, through the Los Angeles Housing Department (LAHD), acts as the primary issuer of tax-exempt and taxable multi-family housing bonds for qualified developments located in the City of Los Angeles. The City maintains the role of primary issuer in view of the potentially substantial impact of housing development projects to the neighborhoods and citizens of the City of Los Angeles. The City's Multi-family Bond Policies and Procedures adhere to the Financial Policies of the City, which can be viewed at the City Administrative Office's (CAO) website http://www.lacity.org/cao/Debt_Mgmt/index.htm

The following procedures outline LAHD's program requirements for issuing multi-family housing bonds.

A. Eligible Projects

1. *Location*

Projects must be located in the City of Los Angeles.

2. *Minimum Transaction Size*

Although Only 2% of the proceeds of tax-exempt private activity bonds may be used to pay costs of issuance. Costs of issuance for smaller projects may substantially exceed the 2% restriction and must be paid from other sources of financing secured by the developer. Financings of any size must demonstrate the commitment of project lenders, credit enhancers, and other critical financial parties.

3. *Priority Projects*

Projects to be considered on a priority basis include: projects that will contribute to neighborhood revitalization, provide significant public benefit, and preserve existing affordable housing.

4. *Application Requirement*

Applications must be submitted for all multi-family projects seeking bond financing where LAHD will act as issuer, or where LAHD will sponsor or hold the public hearing required under the Tax Equity and Fiscal Responsibility Act of 1982 (the "TEFRA" hearing). This requirement includes all new money issuances requiring an allocation of bond authority from the California Debt Limit Allocation Committee (CDLAC), new 501(c)(3) issues, and refundings of existing bond issues. This requirement also includes projects for which bonds

will be issued by an issuer other than LAHD, such as the California Statewide Communities Development Authority.

CDLAC applications must be submitted at least 90 days prior to the relevant CDLAC application deadline to allow sufficient time for LAHD review and approval. Applications not requiring CDLAC approval must be submitted at least 120 days prior to desired bond-closing date.

B. Types of Bonds

LAHD may issue either tax-exempt or taxable bonds. Taxable bonds would generally be issued only in combination with tax-exempt bonds.

1. *Tax-Exempt Private Activity Bonds (Non-Refunding)*

a. *Non-501(c)(3) private activity bonds*

Non-501(c)(3) private activity bonds require an allocation of bond authority from CDLAC. To obtain the allocation, LAHD must submit an application to CDLAC on behalf of the developer. Submittal of the application is at the discretion of LAHD, not the developer. The developer must pay all required CDLAC fees and post any CDLAC required deposits in advance of application submittal.

b. *501(c)(3) private activity bonds*

LAHD may issue 501(c)(3) bonds on behalf of qualified not-for-profit organizations.

2. *Taxable Bonds*

Taxable bond issues must meet all applicable requirements of these policies and procedures (including certain State law and rating requirements) and any additional regulations which may, from time to time, be promulgated by LAHD.

3. *Refundings*

LAHD will allow refundings of bond issues that meet the following conditions:

- * The project sponsor agrees to cover all costs of LAHD including the Fees and Expenses set forth in Section VI.
- * The affordability and tenant income restrictions of the existing bond regulatory agreement are subject to extension at the discretion of the issuer. LAHD reserves the right to impose requirements in addition to regulatory agreement extension. All specifics of refunding proposals must be approved by the Mayor and City Council.

- * Default refunding applications require a default refunding analysis to determine the eligibility for a default refunding. LAHD shall choose an outside firm to conduct the analysis. The project applicant will deposit the cost for the study with LAHD before the study begins. In general, a default refunding analysis determines whether the default was out of the control of the project owner or sponsor such as poor market conditions or other extraordinary circumstances.
- * Credit substitutions which are the functional equivalent of a refunding will be treated by LAHD in the same manner as refundings for purposes of these policies and procedures.

C. Bond Sale Modes

Housing bonds may be sold in a public sale transaction, where bonds are marketed to the bond-purchasing “public,” or on a private placement basis, where the bonds usually are placed with a single purchaser. LAHD will issue bonds for either a public sale or private placement, so long as its issuing criteria are met.

1. *Public Sale / Competitive Bid*

In this structure, the issuer structures the bonds with the assistance of its finance team, including the financial advisor. Underwriters or underwriter syndicates then bid on the bonds. The bid that results in the lowest cost to the issuer wins the competitive bid. The winning underwriter or underwriter syndicate then executes a bond purchase contract obligating the winning entity to purchase the bonds. Upon purchasing the bonds, the underwriter generally re-sells the bonds to other investors. Housing bonds are not usually sold via competitive bid since the underlying real estate and credit of these transactions require significant description and explanation to potential buyers. Underwriters purchasing bonds in a competitive structure usually are not able to spend significant time analyzing the structure and underlying real estate/credit issues prior to the bid, and therefore cannot “premarket” the bonds to gauge the interest of potential investors.

2. *Private Placement*

Bonds that are privately placed are purchased directly by, most often, a single buyer. These transactions usually occur without the use of an underwriter (although often include a placement agent). Because an underwriter is not involved, transaction costs may be significantly less, allowing for smaller feasible transaction sizes. LAHD reserves the right to require that any member of its finance team under the terms described herein take part in any private placement financing.

3. *Pricing Requirements for Projects Receiving LAHD Subordinate Financing*

The permanent period interest rate for privately placed bonds on projects receiving LAHD subordinate financing shall be within an acceptable market range compared with bonds in like amount, terms and conditions if such similar bonds were to be purchased directly by Fannie Mae (including forward delivery premium, if any).

D. Statewide Issuers

Projects financed with subordinate financing from LAHD will not be eligible to be financed by bonds issued by a statewide issuer or any issuer other than LAHD.

The City of Los Angeles may consent to the use of statewide issuers for private activity bonds (including 501(c)(3) bonds) to finance projects located in the City of Los Angeles only when such projects are part of a common plan of finance with one or more projects that are not located in the City of Los Angeles. Necessary elements of a common plan of finance shall include: 1) common credit enhancement; 2) common indenture (that may include multiple series of bonds) or separate but identical or parity indentures; and 3) common financing schedule (including common pricing and closing dates).

The General Manager of LAHD may, at his or her sole discretion, waive the limitations on the use of statewide issuers.

E. Other Issuers

Other City agencies and authorities with statutory authority to issue bonds may issue housing bonds for projects in the City of Los Angeles. In particular, the Community Redevelopment Agency of the City of Los Angeles may issue bonds for projects located in redevelopment project areas, and the Housing Authority of the City of Los Angeles may issue bonds for projects in which it has a substantial interest (e.g., as owner or land lessor) or for which it provides a substantial subsidy. Projects financed with subordinate financing from LAHD must use LAHD as a bond issuer unless a waiver is obtained from the General Manager of LAHD.

II. Bond Requirements

A. Bond Security

LAHD issues bonds solely on a conduit basis. Repayment of principal or interest on bonds issued by LAHD will not be secured by any assets of the City of Los Angeles or LAHD.

All Bonds issued by LAHD must be credit enhanced or privately placed as provided in (B) below.

B. Bond Rating and Credit Enhancement Requirements

LAHD requires that bonds for which it acts as issuer be both credit enhanced and have a minimum rating in the “A” category by Standard and Poor’s, Fitch or Moody’s (equivalent from another bona fide agency rating also acceptable), except as noted below. LAHD reserves the right to impose these minimum requirements on bond issues for which LAHD or the City holds a TEFRA hearing.

Credit enhancement may take any form, including a letter of credit (LOC), credit enhancement guaranty, bond insurance or collateral pledge. The form of credit enhancement must be sufficient to meet the minimum rating criteria. The bond rating must be obtained before the closing of the bond issue.

For privately placed bond issues that do not meet the minimum rating requirements noted above, the following requirements shall apply:

- * There may not be more than one bond owner at any one time.
- * The bonds must be purchased by an entity meeting the definition of an institutional “accredited investor” or “qualified institutional buyer” as defined in the Securities Act of 1933.
- * The investor must provide an investor letter in a form acceptable to LAHD wherein the investor acknowledges having sufficient knowledge and experience to evaluate the bond investment and wherein the investor waives any due diligence obligation on the part of the City.
- * LAHD must approve all transfers of bond ownership.
- * Subsequent bond owners (i) must be institutional “accredited investors” or “qualified institutional buyers” and (ii) must sign an investor letter and certify that they have reviewed the financial feasibility of the project.
- * The developer must indemnify LAHD against any costs incurred by the City, including any lawsuit initiated by the bondholder or any other party, regardless of whether the developer is negligent.
- * Unrated bonds may not be issued to finance any portion of a continuing care retirement facility.
- * The developer entity shall not be related to the bondholder.
- * The following redemption provisions would apply in a default scenario:

If the bonds are subject to redemption upon a loan default, the documents must provide for a deemed redemption mechanism, whereby all bond security is assigned absolutely to the bondholder and the bonds are deemed cancelled.

III. Affordability Requirements

A. Number of Affordable Units

At the option of the developer, at least 20% of the units in each project must be rented to or held available for rent to very low-income tenants (50% of median income, adjusted for household size) or 40% of the units in such project must be rented to or held available for rent to tenants at or below 60% of median income. Project rents must be structured to maximize competitiveness under the CDLAC Affordability Matrix. The City reserves the right to impose additional restrictions.

B. Term

The term of the affordability requirement is the longer of: (a) 15 years from the beginning of the Qualified Project Period (as defined in the Internal Revenue Code of 1986), (b) as long as the bonds remain outstanding, or (c) such period as may be required in the opinion of bond counsel to meet federal or state law. The rent of “in-place” tenants at the conclusion of the required affordability period will continue to be governed by the applicable affordability restriction, to the extent required by State or Federal law. The City reserves the right to impose additional restrictions.

C. Income Limits

Total household income for income-restricted units may not exceed 50% or 60% of the Area Median Income, as applicable, adjusted by household size, as set by the U.S. Department of Housing and Urban Development (HUD). These limits will be adjusted periodically when HUD adjusts the median-income standards it imposes. The City reserves the right to impose additional restrictions.

D. Annual Certification of Tenant Income

The project owner must certify tenant eligibility annually. If at the annual certification a tenant’s income exceeds 1.4 times the then income limit for initial occupancy, the owner must rent the next available unit of comparable or smaller size to a new income-eligible tenant. The owner may raise the current tenant’s rent to market rent only upon renting the next available unit to a new low-income or very low-income household, as applicable, to be counted toward meeting the affordable unit requirements.

E. Rent Limits

The maximum rents for all the affordable units are adjusted based on the percentage increase in the HUD-determined median-income for Los Angeles County. These rents are based on 1/12 of 30% of the appropriate income limits, assuming one person in a studio, two persons in a one-bedroom, three persons in a two-bedroom and four persons in a three-bedroom unit. These assumptions differ for projects using Low Income Housing Tax Credits (LIHTC). In the event tax-exempt bonds are used with LIHTCs, the more restrictive rents apply.

IV. Prevailing Wage Requirements

A. Prevailing Wage

Any tax-exempt bond financed project located in the City of Los Angeles, including projects funded by tax-exempt bonds issued by any statewide issuer (including the California Housing Finance Agency), must adhere to the State of California and City of Los Angeles prevailing wage requirements and the federal Davis-Bacon requirements. Details of the requirements are available upon request from LAHD. Project sponsors shall be responsible for determining the applicability of residential versus commercial wage scales.

B. Rent and Prevailing Wage Monitoring

LAHD intends to select outside consulting firms to monitor compliance with prevailing wage, Davis Bacon wage, and rent restrictions requirements for City bond financed projects. All costs associated with these monitoring activities shall be the responsibility of the project developer.

C. Intercreditor Agreement

LAHD, at its sole discretion, will enter into an intercreditor agreement with a lender for disbursement of bond proceeds for construction costs. The agreement will ensure that all construction costs will be reviewed by the LAHD compliance unit prior to disbursement. LAHD has prepared a standard form of agreement which will be used in all projects; any deviations from the form will require the approval of LAHD staff and the City Attorney.

V. Transfer of Ownership

A. LAHD reserves the right to approve any voluntary change in ownership (i) that results in a transfer of 50% or more of the total equity interests in a developer or (ii) that results in a transfer of any general partner or managing member interest in the developer. Such approval to transfer ownership shall be at the discretion of LAHD and, lacking any specific requirement or directive to the contrary, shall not require the approval of the Mayor and City Council. Transfers made by a limited partner tax credit investor to its affiliates may, in LAHD's discretion, be exempted from this requirement.

B. LAHD shall review management practices of the applicant's current and previously owned properties. Any applicant (including individuals within an ownership) whose currently owned properties have been found by City inspection to have deficiencies that have not been resolved within the time frame prescribed by the Systematic Housing Code Enforcement Program or other governmental housing inspection programs, including but not limited to the City Department of Building and Safety, City Attorney, Housing Authority of the City of Los Angeles, Fire Department or County Health Department, may not assume ownership of any bond financed project. LAHD may initiate additional inspections as needed to verify findings.

C. Any applicant (including individuals within an ownership) whose previously or currently owned properties indicate a pattern of deficiencies may not assume ownership of any bond financed project.

D. LAHD shall review financial statements and credit histories of the proposed owner or all individuals within an ownership entity. Applicants whose financial statements do not meet with the City's satisfaction may not assume ownership of a bond financed project.

VI. Fees and Expenses

A. Borrower's Agreement

At initial approval of the application and notification to the applicant, the applicant must agree, in writing, to pay all costs of issuing the bonds, including all fees of the issuer in the amounts and at the times indicated below. Such costs to the extent incurred must be paid whether or not the bond issue closes. For pooled issues, borrowers shall pay their equitably distributed pro rata share of all costs.

B. Application Processing Fee

A non-refundable fee of \$3,000 must accompany each application. This fee shall apply for all applications, irrespective of the issuer.

C. TEFRA Hearing

The applicant shall pay a minimum \$3,000 per project for TEFRA notice publication, and hearing fee.

D. Costs of Issuance

Borrowers shall pay all costs of issuance at bond closing, including, but not limited to, fees of bond counsel, underwriter, trustee and financial advisor, as well as rating fees. Only 2% of the proceeds of a tax-exempt bond issue may be used to pay costs of issuance. Costs in excess of 2% must be paid from other sources secured by the developer including, potentially, the proceeds of taxable bonds.

E. Initial Issuer Fee

Borrowers shall pay an initial issuer fee of 25 basis points (0.25%) of the bond amount. This fee is paid at the bond closing and covers LAHD's administrative costs as Issuer.

F. Annual Issuer Fee

During the construction period, Borrower shall pay an annual issuer fee in arrears, of 12.5 basis points (0.125%) of the original principal amount of the Bonds. Upon completion of construction, and conversion of financing to permanent, Borrower shall pay in arrears, an issuer fee that is the greater of, 12.5 basis points (0.125%) of the permanent principal

amount of the bonds as of the conversion date, or \$2,500 annually. The fee must be paid so long as the bonds remain outstanding.

G. Consent Fee, Approval Fee, Transfer Fee, Amendment Fee, and Waiver Fee

LAHD will charge a processing fee equal to the greater of \$5,000 or .125% of the permanent principal amount of the relevant bond issue for any consent, approval, transfer, amendment, or waiver requested of the City.

VII. Special Financing

These procedures generally apply to single project financings and developer initiated pooled financings. However, LAHD may from time to time develop special programs to meet particular housing needs (e.g., pooled financings for earthquake recovery, etc.). At such time as these programs are developed, LAHD may promulgate regulations to govern the implementation of the special programs.

VIII. The Finance Team

The City selects, at its sole and absolute discretion, the bond financing team to be utilized by LAHD including bond counsel, co-bond counsel (if any), disclosure counsel (if any) issuer's counsel and financial advisor, trustee and investment banker. The City, through LAHD, from time to time, shall promulgate policies regarding the selection of its finance team. The project sponsor may, at its own expense, add additional members to the finance team to represent its interests. The City requires the use of a Trustee relative to all its bond financings.

A. Selection

Bond counsel, co-bond counsel, disclosure counsel, financial advisor, trustee, and investment banker are chosen through a Request for Qualification (RFQ) process approved by the Mayor and City Council. The Office of the City Attorney has historically served as issuer counsel.

B. Fees and Expenses

Payment of the fees and expenses of the finance team, excluding special studies and required consulting work, are paid solely from bond proceeds or otherwise by the project sponsor. LAHD shall not be liable for any fees or expenses of the finance team in the event of a failed transaction. Deposits will be credited against amounts due at bond closing. The borrower shall pay costs relating to modifications initiated by such borrower to close financings directly to the parties to whom fees are due.

IX. Departmental Review and Procedures/Timetable

All projects seeking bond financing or significant modifications to existing bond financings are subject to departmental review. Per the "new Business" policy adopted by City Council on April 16, 2003 (CF99-1272), LAHD is authorized to prevent borrowers,

their related entities, and other partnerships that have common general partners, from accessing LAHD's bond programs, if the borrower is non compliant with loan obligations, including both monetary and non-monetary obligations (non payment of amount due, failure to complete project on time, failure to abide by regulatory agreement, loan written off as uncollectible, etc.). Projects must submit an application for review. Upon successful review and initial approval of the application, financing of the project will be contingent upon, as required, payment of fees and expenses, adoption of an inducement resolution by LAHD's General Manager, TEFRA hearing, adoption of a bond resolution by City Council with the Mayor's concurrence, submittal of an application to CDLAC and award of a bond allocation from CDLAC. The following outlines the procedural steps from application to closing for a bond financed transaction.

A. Receiving and Reviewing Applications

1. *Solicitation and Intake*

Applications may be received on an on-going basis at the discretion of LAHD according to the criteria below. Applicants shall submit a separate application for each project.

2. *CDLAC Application Review and Evaluation*

a. *CDLAC Application Review and Initial Approval*

LAHD requires at least 30 days to review and submit for approval of completed applications. During this review period, LAHD has no obligation to initiate or conclude any discretionary action regarding the bonds, including project inducement or TEFRA hearings. Upon completion of its review, LAHD will notify the applicant of its initial approval and intent to proceed with the financing or its disapproval of the application.

b. *Meetings of the Staff, Finance Team and Development Team*

LAHD may require that the applicant and relevant members of the development team meet with Department staff and/or the finance team to review the application.

c. *CDLAC Application Approval Time Period*

LAHD requires approximately 60 days after initial approval to complete the process of inducement resolution approval by the General Manager of LAHD, and obtaining Mayor and City Council authorization to adopt the TEFRA resolution and TEFRA hearing minutes. In total, applicants should anticipate approximately 90 days between the date an application is submitted to LAHD and the date on which the CDLAC application is received by CDLAC. Applications not requiring CDLAC approval must be submitted at least 120 days prior to desired bond closing date.

The default analysis that is required of default refunding applications will add an additional 20 days to the application review period. No such time periods are guaranteed. The above periods are minimums subject to change.

B. Deposit and Commitment to Pay Fees

Upon notification to applicant of LAHD initial approval, the applicant shall submit to LAHD the required CDLAC deposit, and may be required to execute a developer's agreement wherein the applicant agrees to pay all the issuer's costs related to the financing, including all third party costs and costs of issuance in addition to any deposit amounts. The developer shall further indemnify LAHD for all costs or liabilities related to the proposed bond transaction. Under no circumstances will fees be refundable if the developer decides not to proceed with the transaction.

C. Inducement Resolution

After initial approval, staff recommends the inducement resolution for approval by the LAHD's General Manager. The resolution is drafted by bond/issuer counsel.

D. TEFRA Hearing

After initial approval, the TEFRA hearing shall be noticed and scheduled. A notice of the TEFRA hearing must be published 14 days prior to the scheduled hearing date. The TEFRA hearing may occur concurrently with the adoption of the bond resolution. LAHD staff may prepare the TEFRA notice for publication, but the notice shall be reviewed by LAHD counsel and bond counsel.

E. Preparation and Submittal of the CDLAC Application

New-money tax-exempt private activity bond issues (except 501(c)(3) issues) require application to and allocation from CDLAC. The application to CDLAC is from LAHD, not the applicant or the project sponsor. Therefore, while the developer may prepare the application, it must be completed to the satisfaction of and reviewed by LAHD before submittal.

In order to submit the application, the following must be completed:

- * A completed CDLAC application must be submitted to LAHD at least 90 days prior to the relevant CDLAC application deadline.
- * The CDLAC application must be reviewed and approved by LAHD.
- * A \$3,000 LAHD processing fee, and \$3,000 TEFRA fee payable to the City of Los Angeles, must be delivered to LAHD as a cashiers check.
- * A 0.5% CDLAC good faith deposit (not to exceed \$100,000) must be received from borrower. The deposit shall be delivered to LAHD as a cashiers check payable to the City of Los Angeles.

- * A \$600 application fee payable to CDLAC (or such higher amount as may be required by CDLAC) must be provided by the borrower.

F. Document preparation and approval (including bond resolution)

Bond counsel and LAHD may begin work on bond documents, at the sole and absolute discretion of LAHD, after initial approval of the application and after the agreement to proceed (including any required fee) has been received from the developer. No deemed consent is given for any document amendment. Subsequent amendments may require Mayor and City Council approval (as determined by Issuer's counsel).

G. Scheduling and Approval of the Bond Resolution

The transaction may not close without the adoption of the bond resolution by the City Council and concurrence of the Council action by the Mayor. Bond counsel prepares the bond resolution with review by Issuer counsel. The bond resolution is adopted, and the bond documents are approved concurrently by the City Council with the concurrence of the Mayor. The CAO will review any disclosure documents involved in a public or private offering. In order for any resolution to be approved by City Council, the following must occur:

- * Resolutions must be submitted by LAHD for consideration to the Housing, Community, and Economic Development Committee (HCEDC) of the City prior to consideration by the full City Council. If the resolution under consideration is the final bond resolution, commitments from credit enhancers or bond purchasers and substantially final bond documents must be provided to LAHD prior to this date.
- * Upon approval by the Housing, Community, and Economic Development Committee, the resolution will be forwarded to the City Council and Mayor for consideration and approval. Approvals by the HCEDC, City Council, and Mayor may, depending on their schedules, require eight weeks, (subject to the approval of the final bond documents by the City Attorney's office before the issuance of the bonds.) If the financial structure is substantially modified, LAHD shall seek Mayor and Council approval for the modification.

H. Bond Sale and Closing

Except as provided below, the following may occur, in the approximate order presented, only after the City Council adopts the bond resolution and approves the bond documents and the Mayor concurs with the Council action.

1. *Mail the Preliminary Official Statement (POS)*

The developer and the investment banker may assume the risk of mailing the POS prior to final Council approval.

2. *Bond Pricing*

Pricing call with underwriter, LAHD staff, financial advisor and developer. Final pricing occurs with the concurrence of LAHD.

3. *Bond Purchase Agreement (BPA)*

Following pricing, the BPA is executed by LAHD, the developer and the underwriter.

4. *Pre-closing*

The parties should allow approximately five business days to obtain required City approvals.

5. *Closing*

X. Program Marketing

In order to facilitate optimal use of the bond program, LAHD may, from time to time, actively market the program to potential developers and project sponsors. The program marketing will be intended to reach sophisticated project sponsors in a broad range of Los Angeles neighborhoods who are able to utilize bond financing.

The marketing program may have two parallel tracks:

- * Continuous marketing on a scheduled, periodic basis of LAHD's ongoing bond financing programs. This marketing could take the form of simple newspaper ads (e.g., the Los Angeles Times) or targeted advertisements intended to reach specific markets or groups.
- * Occasional marketing of special programs to occur as the special programs are developed.

The marketing efforts should clearly provide to potential applicants the following:

- * Description of the program and all appropriate application deadlines;
- * Phone number and name of contact person who can answer questions or place a request for more information regarding the application.
- * Address where additional information or an application can be obtained.