

# **CALIFORNIA HEALTH FACILITIES FINANCING AUTHORITY**

## **Beckman Research Institute of the City of Hope Amendment to Loan Agreement**

### **Staff Summary Resolution No. 2007-08**

October 25, 2007

#### **ISSUE:**

Beckman Research Institute of the City of Hope (“Beckman”) is requesting a 5<sup>th</sup> amendment to its Loan Agreement to: (i) change certain reporting requirements; (ii) refine the Events of Default provision; (iii) revise financial condition covenants (including maintaining certain levels of eligible securities, debt service coverage and profitability) and; (iv) add environmental warranties.

#### **BACKGROUND:**

The Authority approved the issuance of bonds for Beckman in the aggregate amount of \$12,650,000 on March 30, 2000, for the purposes of construction, renovation, equipment purchases and seismic retrofitting projects in Duarte. The bonds were privately placed with Wells Fargo Bank (“Wells Fargo”) in April 2000 in the amount of \$12,650,000.

As of September 30, 2007, approximately \$3,724,166 remains outstanding.

At the request of staff, the Attorney General’s office reviewed a draft of the proposed amendments. Counsel recommended minor edits, all of which have been incorporated, but otherwise approved the amendments in their entirety. A memorandum prepared by bond counsel, briefly summarizing the provisions of this Amendment, and detailing the changes to be made to the Loan Agreement, is attached.

#### **STAFF RECOMMENDATION:**

Staff recommends the Authority approve the proposed 5<sup>th</sup> amendment to the Loan Agreement.

MEMORANDUM

TO: MR. RONALD WASHINGTON, CALIFORNIA HEALTH FACILITIES  
FINANCING AUTHORITY

FROM: NEDA J. NORBASH

DATE: AUGUST 9, 2007

RE: SUMMARY OF FIFTH AMENDMENT TO LOAN AGREEMENT  
(BECKMAN)

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Dear Ronald,

Below please find a brief summary of the provisions contained in the Fifth Amendment to Loan Agreement dated as of August 1, 2007 by and among among Beckman Research Institute of the City of Hope, a California non-profit public benefit corporation (“Borrower”), the California Health Facilities Financing Authority (“Issuer”) and Wells Fargo Bank, National Association, a national banking association (“Lender”).

(1) **Definitions**: The definition amendments reflect necessary changes to meet the timeline, construction periods and loan periods related to this particular financing.

(2) **Environmental Representations and Warranties**. The amendment reflects the addition of the following disclosure and carve-out with respect to the environmental representations:

Borrower is aware of asbestos which was present in buildings formerly occupying the real property underlying the Facility. City of Hope retained a contractor to clean up and remove asbestos from one former building and another contractor to perform asbestos abatement work at that building and another building. An independent advisor retained by City of Hope to conduct project management and monitoring for the removal project and the abatement project has reported that the first contractor successfully completed the asbestos cleanup and removal project in 2006 and that the second contractor successfully completed the asbestos abatement in 2007.

(3) **Reporting Requirements**. The reporting requirements were changed to (i) add an additional reporting requirement for the Borrower and (ii) to increase the monetary threshold for providing notices to Lender in situations where Borrower becomes aware of litigation or there is loss or destruction relating to the Property. For your convenience, I’ve pasted the relevant blacklined sections:

the new reporting requirement:

- as soon as available, and within 60 days after the end of each March 31 and September 30, brokerage and/or liquidity statements from the investment provider and/or custodian evidencing compliance with the covenant set forth in Section 8.13(a); provided, that if Borrower has elected to deliver Eligible Marketable Securities in accordance with Section 8.13(c) below, Borrower shall deliver such reports monthly, no later than the 15th day of each month;

changes to existing reporting requirements:

-immediately after the commencement thereof, notice in writing of all litigation and of all proceedings before any governmental or regulatory agency affecting Borrower of the type described in Article V hereof or which seek a monetary recovery against Borrower in excess of ~~\$100,000~~1,000,000;

-promptly upon knowledge thereof, notice of any loss or destruction of any portion of the Facility or the Property in excess of ~~\$100,000~~1,000,000;

(4) **Financial Condition.** The provisions are all new and reflect additional requirements of the Lender in connection with this financing.

(5) **Additional Indebtedness.** The additional indebtedness provision was changed to simply reflect the financial relationship between the Borrower and the Lender...

I've pasted the relevant blackline below:

Borrower shall not incur, without the prior written consent of Lender, any additional indebtedness secured or unsecured, direct or contingent or related to the Project or improvements thereto except for (a) its existing line of credit or any replacement thereof, operating or capital leases, purchase money debt for equipment or other personal property incurred in the ordinary course of business which shall not exceed ~~\$2,000,000 in any fiscal year, at any time, an aggregate outstanding balance of~~ \$8,000,000 during the Construction Loan Period and \$30,000,000 during the Permanent Loan Period and (b) other obligations owed to Lender.

(6) **Events of Default.** The changes to the Events of Default reflect the reality of the financial conditions of Borrower as well as the relationship between Borrower and Lender.

I've attached the relevant sections for your convenience:

- an event of default (following the expiration of any cure period) under any agreement, indenture, instrument or contract (including notes and capitalized leases) ~~to which the Borrower is a party, including~~ for an obligation of Borrower in the amount of \$10,000,000 or more;

- The filing of a notice of judgment lien against Borrower, or the recording of any abstract of judgment against Borrower in any county in which Borrower has an interest in real property; or the service of a notice of levy and/or writ of attachment or execution or other like process against the assets of the Borrower;

or the entry of a judgment against Borrower, in any case for an uninsured claim in excess of \$~~100,000~~.10,000,000.

- an event of default (following the expiration of any cure period) under any other loan agreement ~~with Lender~~between Lender and Borrower;

(7) **Arbitration**. The Arbitration is just the new standard arbitration provisions that Lender's counsel uses in their documents.

Please feel free to contact Sam Balisy or me if you have any questions or comments. Thank you.

cc: Sam Balisy, Esq.