Date: January 23, 2014

TO: Santa Monica City Council

FROM: Santa Monica Coalition for a Livable City

RE: Hines Development Agreement Analysis of Issues

The Development Agreement ("DA") for the Hines Project remains a deeply flawed document, failing to ensure that the City's legitimate needs are protected, while giving Hines an unnecessarily sweet deal. After extensive comments by the Santa Monica Coalition for a Livable City (SMCLC), neighborhood groups, the Planning Commission and the City Council, several of serious problems from the earlier draft DA have been remedied. Unfortunately, too many remain and they cannot be corrected with this current Project.

These comments are in addition to SMCLC'S overarching objections to the Hines Project as much too big, to be built in that perfect storm of gridlock, the 26th Street/Olympic corridor, with devastating unmitigatable impacts on traffic and the quality of all our lives. Regrettably, appropriate alternatives were not studied.

Examples of the DA's Deficiencies

- **1. Affordable Housing.** The 20% of housing set aside for income deed-restrictions in Hines, is **significantly short of the 30% of new housing standard set in the very recently passed Bergamot Area Plan ("BAP").** With the ink not yet dry, the Hines DA falls far short.

- **The Staff Report admits this significant shortfall**, but argues that achieving 49 additional units to reach BAP's balance "would likely necessitate trade-offs in other proposed community benefits." (@ p. 45) It may be **easier** to get a developer to provide some other benefits—which are inadequate here anyway for a project of this size, and many of which are required by law or are really tenant improvements--when you agree to limit Affordable Housing so drastically, instead of insisting on both, but the Affordable Housing percentage balance in BAP should not be thrown under the bus. Not in Santa Monica. And not where development rights in our City are so sought after.

- **2. The DA Sets Up 5 Separate Projects Instead of 1.** Much of the confusion in the structuring of this DA, and the repeated limiting of responsibility between the different Building owners and the "allocating of obligations" to the different 5 sites, is because Hines has structured this as 5 separate Projects. **With the benefits of one DA. Without many of the responsibilities.** The 5 Buiidings and the land under them, each can be owned, financed and built separately, by third-party developers or by different Hines entities, all owned or controlled by Hines. Under the DA, each of the 5 Sites is a separate Project. They can be built at separate times, or not built at all.

- Obligations for public benefits, traffic mitigation, parking, streets, defaults and so on are frequently separated and diffuse in the DA. Additionally, with this phased and diffuse approach, each Developer can somehow build its part of the single underground parking garage building by building, over years, or not if some buildings are not built in this time frame.

- While the DA claims these are 5 separate projects, **the FAR calculation is made as if this is a single project.** Perhaps not surprisingly, **some of these 5 separate Projects do NOT meet the FAR requirements**, even as calculated using the developer's methodology. If this is really 5 separate Projects, each should have to meet the FAR standard. While treating this as five projects to avoid liability, and one project when it helps Hines, for example as with the FAR calculations, may be good for Hines, it is not for the City. It is a major and improper giveaway**.**

- **3. Development Under the DA, Can Extend Over a 10-15 Year Period.** This extraordinary time frame comes from the Staff Report, which admits, perhaps sardonically, is an "unusually long period." (@ pp/ 34, 48.) **So, instead of a so-called "Gateway into SM at Expo," we are faced with a decade plus long construction site,** as the separate Buildings, parking and areas, are or are not built on their own drawn out timetables. And, with traffic congestion inevitably caused by such protracted construction. This "unusually long period" also leads to other problems as discussed elsewhere in these objections.

- **4. Standards Are Only Going to Get Tougher over the Next 10 Yrs, Yet the DA Frequently Locks SM to Current Standards.** The DA, except for certain standards, limits the City to requiring Developers to only meet standards 10 or 20% above 2008 Title 24 OR meet the 2013 California Building Code for a host of energy, gas and water issues. (See Exhibit "D," pp 10-13.) Yet, it is likely that these **standards are going to tighten significantly in the coming 10 years,** more than 10-20%, with the drought, global warming, new technology, etc. Additionally, other laws will change. Under the DA, the Developer(s) are largely grandfathered in under the less stringent standards.

- **5. There are Big Holes in the TDM Plan -- 2.7.1 -- Which Seriously Taint the Resulting Data; and the Plan Is Not Robust, Failing to Negate the Terrible Traffic Impacts from the Project.**

- The TDM Plan contains many loopholes that fatally compromise its integrity, and is insufficient to make a serious enough dent in the thousands of additional car trips this Project will add each day to the existing gridlock.

- First, a good part of the TDM Plan as set forth in the DA is based on reporting results. The length of the section hides significant flaws. There are both initial reports and thereafter regular reports.

- The **initial reports** are grossly inadequate, requiring only a survey, to be conducted by the Developer itself.

- The standards set forth for the regular **PM Peak Hour Trip reports** also fall far short of accurately monitoring Peak traffic and will result in a serious undercount. For example: **(a)** amazing as it may seem, under the DA **the monitoring can be conducted in the summer** or other periods of known reduced traffic such as **Easter week** or even certain days in Christmas week, **resulting in a serious undercount (see Section 1.4)**; **(b**) a 50% credit is given for any car where the driver answers a developer survey that s/he also "went off-site" that day—also resulting in an undercount; **(c)** the monitoring report occurs only once a year; **(d)** the entity monitoring the traffic need not be "independent"; **(e)** the developer may know in advance when the monitoring is going to occur and therefore can prepare; **(f)** only those parking in the project's garage are included; no effort is made to include those parking nearby but not on site. (@ pp. 20-23).

- Next, the DA's remedies for exceeding the PM Peak Hour Trips are not nearly strong enough for a project this size, located in this traffic bottleneck. **T**he **period of time to correct is at a leisurely pace**: 60 days plus 30 days plus 120 days plus time for staff review, for a total potentially **over 8 months**. This after the leisurely only once-a-year review. And the penalties for non-compliance are not robust for a project of this size and cost. (See p. 23.)

- While the TDM's pace for correction for exceeding the number of trips is leisurely, and the penalties not strong enough, under the DA the **TDM Plan may be re-written to reduce the developers' obligations,** subject to certain conditions, if there is a slight reduction in car trips (20 overall or 6 for residents.) This is immediate, not leisurely. And starts **after one slight reduction.** And remember, these reviews can be in the **summer** or other light traffic periods (with the slight exception of certain holiday days, but ok to conduct otherwise during holiday weeks—See 1.4), and have the other problems discussed above. Additionally, the Peak PM monitoring is of those leaving the project between 5-7pm only. This time frame is **outdated** as we all know, choking traffic begins before 4 p.m. Given this, if business days are reset to end at 4:30 or 4:45, those trips are not counted.

- **Moreover, the DA acknowledges and accepts that those working at the project will park in the neighborhoods surrounding the site.** At one point it even requires an employee receiving a Transportation Allowance ("TA") to promise not to park within a 2-mile radius of the Project more than **20%** of the time. (@ p. 29.) Apparently, many are expected to park in the surrounding area, including those receiving TAs—those so parking are not counted in the Peak PM Reports which is limited to those parking in the project's garage. Such a provision is a violation of the LUCE promise of protection of residential neighborhoods from new development.

- **Finally, overall, the TDM Plan fails to take the tough steps necessary to eliminate the tremendous increase of traffic projected in the EIR. And, it does not seem that it can in a project this massive.** The project is too big with too much commercial space. Increased gridlock will become unbearable if this project were to be approved.

- **6. Vital Earthquake Testing—Upcoming State Seismic Study Ignored—No Council & Public Review.** Given the location, size and significance of this Project**, the potential devastating impacts to life** if (when) a sizeable earthquake occurs, the fact that the Santa Monica Fault is next on the State's list for full mapping and a fault study, and the City's **repeated recent failures to monitor** or require testing on 4 sites as reported by the *LA Times*, one would have expected this section of the DA to be extremely strong. Instead, it encourages distrust among residents and fails to adequately protect the City.

- For example, **(a) The earthquake report and analysis is only required by the DA to be submitted to the Building and Safety Department before a permit is issued—not be set for a public hearing before the City Council,** so neither the public nor the Council has input on this vital decision**; (**b) the report and analysis doesn't require trenching; **(c) a permit may be rushed and issued prior to the issuance by the State of California of its seismic study of the Santa Monica fault,** which surprisingly is not taken into account in the DA.

- **7. First Responders, Size of Units, Families and Preferences.** The DA claims that it strongly benefits First Responders and others in the City, but it sets aside no apartments for them or special rates, instead offering them **market-rate units**, and a preference to pay market-rate—i.e. the landlord "generously" offers to rent to First Responders and Teachers at the high rates anyone else would pay. This is of little benefit.

- Moreover, the units proposed are going to be small, overwhelmingly not conducive to families, "traditional" or not, including single parents and others with a long-term interest in our schools. Market rate rentals of small units may be shorter term and highly profitable to the landlord, but they should not be claimed as a great benefit conferred on our City. The financial benefit is to the developer. Similarly, two-thirds of the Affordable Housing units are studios (mostly) and 1 bedrooms. This appears to violate the terms of the HUD Grant the City was awarded to plan the Bergamot Area and ensure a housing mix that includes workforce housing.

- **8. Reports, Monitoring and Public Locked Out.** The DA calls for many reports, analysis, plans, permits, applications, test results, notifications, responses, approvals, timetables and the like. Very unfortunately, as recently uncovered by the *LA Times*, the *SM Daily Press* and residents, often only after time-intensive public record requests, the **City repeatedly has failed to enforce key provisions in DA's or to require or review compliance reports.**

- There is no transparency here. There are no provisions for **ALL** of these reports and related documents to be made public (*e.g.,* posted on the City's website) so that residents and the Council can have **timely, informed input in the process**. The press and residents are forced to continually have to send public record requests (and follow up requests) to obtain this important information.

- **9. Periodic Notice of Compliance.** While there are requirements in the DA for the City to provide the developer with copies of all staff reports in connection with the Developers' Yearly affirmations of Compliance with the DA, what must be in the Notice of Compliance is not set out, but is to be provided later by the City in a "form." There are no requirements that the Notice be detailed, obligation by obligation, with detailed backup to support each point. This is of particular importance here, of course, where there can be 5 different responses, one by each Developer, with a confusing overlap of perceived responsibility.

- **10. Section 11.6 Prohibits the City from Terminating the DA for Any Developer If Any Other Developer has performed Substantial Work on Any Building.** While many of the 5 Developers' obligations and responsibilities are separated and cross-default prohibited under the DA, under Section 11.6, when one Developer has performed substantial work on one building, all Developers have vested rights to complete all 5 Buildings and can build them, occupy them and use and rent them out no matter what default they may commit. This is in the Default section of the DA, which also prohibits the City from obtaining monetary relief for non-monetary defaults. In essence, the City is thus prohibited from terminating the DA or in certain situations seeking monetary damages as to any of the 5 Developers, no matter how egregious and continuous the conduct and even if the breaching Developer has not performed substantial work on its Building. The City would mostly be limited to suing for Specific Performance. Perhaps over and over again.

- Developers thus (a) get the benefits of separate ownership and can use that as a shield when separate ownership is protective, and (b) ignore separate ownership looking at this as one project when that is helpful and protective, as with 11.6.

- In dividing the Project into 5 separate Projects, Buildings and Sites, the DA's construct thus provides Hines and its successors with tremendous flexibility, protections and avoidance of liability and responsibility at the expense of the City.

CONCLUSION

The DA is fatally flawed in that it fails to adequately protect the interests of Santa Monica, undermines its progressive values and will result in an unsustainable increase in traffic. As the EIR confirms, traffic impacts on many intersections will be unmitigatable. 26th Street will only get much worse, with more time lost by residents, workers and visitors, and resulting, increased pollution. Olympic—a major East-West

corridor, sometimes used to avoid the jammed I-10 freeway—will slow down even more. All of this will back up into the rest of Santa Monica, impacting all our neighborhoods and downtown. The woefully inadequate ingress and egress to parking shown in the project plans guarantee that traffic will seriously block lanes on Olympic and overwhelm Nebraska as a “shared” street. The City Council should reject this Project. Santa Monica must do much better.

These objections to the proposed Development Agreement between the City and Hines are to be read in conjunction with the entire record in this matter, including without limitation, the Santa Monica Coalition for a Livable City’s other objections to this Project, the letter and documents presented by its lawyers, statements and presentations at the hearings, and the record before the Planning Commission and the City Council. These objections should be included in the public record for the Council hearing set for this coming January 28, 2014.

Sincerely yours,

(oriiginal signed and sent)

Diana Gordon
Co-Chair, for SMCLC

Cc: Rod Gould
Marsha Moutrie
David Martin
The Planning Commission
Neighborhood Leaders.