

MEMORANDUM

DATE: March 14, 2017
TO: Board Members
Chief Healy
FROM: John Bakker
BY: Stephanie Downs
RE: **District Lease Financing for Construction of New Fire Station**

This memorandum is provided at the request of the Board of the Moraga-Orinda Fire District (the “District”) with respect to questions recently raised regarding the lease lease-back documents entered into by District for the financing of the new fire station.

Lease Financing

Generally, the California Constitution requires voter approval for issuance of long-term debt to be paid from the general fund of a city, county, special district, or the state. This is known as the “constitutional debt limit.” In order to get around the constitutional debt limit, public agencies enter into various different forms of tax-exempt leases that are judicially created exceptions to the constitutional debt limit. The obligations of public agencies under lease arrangements are specifically designed to avoid classification of the lease as “debt” for purposes of the constitutional debt limit.

Any public agency with the authority to acquire or dispose of either real or personal property can enter into a tax-exempt lease for financing purposes. The District has the authority to acquire property and enter into leases under Health and Safety Code Section 13861(b). The authority of the District to enter into the lease arrangement is in addition to the District’s ability to borrow monies under Sections 13897 and 13906 of the California Health and Safety Code pursuant to the Fire District Safety Code of 1987 (the “Fire Code”).

A long-term lease does not have a time limitation as long as there is an obligation by the District to pay fair-market rental in each year in which the District has beneficial use and

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occupancy of the leased property. This is distinguished from the sections of the Fire Code that restrict the amount of time that the District may “borrow” funds. As previously noted above, the lease is not considered “debt” or a borrowing. Under the lease arrangement, lease payments may only be paid in those periods in which the District has beneficial use and occupancy of the leased property, the lease payments may not be accelerated, and the District must covenant to appropriate funds to make the lease payment during each fiscal year.

In order to enter into a lease arrangement, the public agency must enter into a site lease with a third party, which is generally a public financing joint powers agency or a joint powers financing corporation. In order to minimize future costs of District financing, the District determined that the best course of action would be to form a separate financing corporation. The financing corporation is discussed further below.

Since the lease arrangement is not a “debt” or a “borrowing,” the District would not show a long term debt in its annual CAFR. It will, however, show a current lease payment due, and will include the appropriation of the lease payment in each annual budget.

Public Financing Corporation

At its meeting on March 16, 2016 the District Board voted to form the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation (the “Corporation”) by a 3-1 vote of the Board Members present at the meeting. The creation of the Corporation is not in any way related to the approval of a borrowing under Section 13906 of the Fire Code, and therefore Section 13906(c) requiring a 2/3 vote for a borrowing is not applicable to the vote creating the Corporation, and the Corporation is a valid legal entity under California Law. The Corporation is a separate legal entity, separate and apart from the District, with its own bylaws and meeting requirements. A copy of the registration of the Corporation with the Secretary of the State of California is attached for your reference.

Conclusion

A lease financing arrangement, such as the one approved by the District and entered into between the District and the Corporation, are not “debt” under the constitutional debt limit and are also not subject to the restrictions of Fire Code Sections 13897 and 13906. For more information regarding the constitutional debt limit and lease financing arrangements see the California Debt and Investment Advisory Commission website at www.treasurer.ca.gov/cdiac.

The Corporation is a valid legally existing financing corporation under the laws of the State of California. It is not a subsidiary of the District.

JB:smd

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