



# Moraga-Orinda Fire District

## Public Facilities Financing Corporation

**BOARD OF DIRECTORS MEETING**  
Wednesday, April 20, 2016 - 7:00 p.m.

**MEETING LOCATION:**

Moraga Library Community Room  
1500 Saint Mary's Road  
Moraga, CA 94556

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### AGENDA

1. CALL TO ORDER
2. PLEDGE OF ALLEGIANCE
3. DETERMINATION OF QUORUM AND CONFIRMATION OF AGENDA
4. PUBLIC COMMENT  
Any person may address the District Board on any subject pertaining to Moraga-Orinda Fire Protection District Financing Corporation business, which is not listed on the agenda. This comment is provided by the Ralph M. Brown Open Meeting Act (Government Code 54950 *et seq.*) and may be limited to three minutes for any person addressing the Board.
5. NEW BUSINESS
  - 5.1 Adopt Resolution No. 16-01 Approving Bylaws, Appointing Officers and Approving and Authorizing Organizational Actions of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation.
  - 5.2 Adopt Resolution No. 16-02 Approving the Forms of and Authorizing the Execution and Delivery of a Site Lease, a Lease/Purchase Agreement and an Assignment Agreement and Authorizing Related Matters.
6. ADJOURNMENT TO A REGULAR DISTRICT BOARD MEETING IMMEDIATELY FOLLOWING THIS MEETING

Prepared by:

A handwritten signature in blue ink that reads "Grace Santos".

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Grace Santos, District Clerk

Any disclosable public records related to an open session item on a regular meeting agenda and distributed by the Moraga-Orinda Fire District to a majority of members of the Board of Directors less than 72 hours prior to that meeting are available for public inspections at 1280 Moraga Way, Moraga, during normal business hours.

I hereby certify that this agenda in its entirety was posted on April 15, 2016, at the Moraga and Orinda Fire Administration offices, Stations 41, 42, 43, 44, and 45. Agenda provided to the Moraga Town Office (Hacienda) and Orinda City Hall.

*The Moraga-Orinda Fire Protection District ("District"), in complying with the Americans with Disabilities Act ("ADA"), requests individuals who require special accommodations to access, attend and/or participate in District Board meetings due to a disability, to please contact the District Chief's office, (925) 258-4599, at least one business day prior to the scheduled District Board meeting to ensure that we may assist you.*



# Moraga-Orinda Fire District

**TO:** Board of Directors

**FROM:** Gloriann Sasser, Administrative Services Director

**DATE:** April 20, 2016

**SUBJECT:** Item 5.1 – Adopt Resolution 16-01 Approving Bylaws, Appointing Officers and Approving and Authorizing Organizational Actions of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation

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## **BACKGROUND**

On March 16, 2016, the Board authorized formation of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation (Financing Corporation). The purpose of the Financing Corporation is to facilitate the public financing for acquisition, construction and improvement of the District's public buildings, works and equipment. The next step in the formation of the Financing Corporation is to approve the bylaws, appoint officers and authorize organizational actions.

## **RECOMMENDATION**

- 1) Discuss; 2) Deliberate; 3) Adopt Resolution 16-01 Approving Bylaws, Appointing Officers and Approving and Authorizing Organizational Actions of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation.

## **ATTACHMENTS**

1. Attachment A – Resolution 16-01 Approving Bylaws, Appointing Officers and Approving and Authorizing Organizational Actions of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation
2. Attachment B – Bylaws of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation
3. Attachment C – Articles of Incorporation
4. Attachment D – Action by Sole Incorporator

**RESOLUTION NO. 16-01**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
MORAGA-ORINDA FIRE PROTECTION DISTRICT  
PUBLIC FACILITIES FINANCING CORPORATION  
APPROVING BYLAWS, APPOINTING OFFICERS AND  
APPROVING AND AUTHORIZING ORGANIZATIONAL ACTIONS**

The Board of Directors (the “Board of Directors”) of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation (the “Corporation”), hereby resolves as follows:

1. Articles. The Articles of Incorporation of the Corporation filed by the Incorporator of the Corporation are hereby ratified and approved.
2. Bylaws. The Bylaws of the Corporation in the form attached hereto as Exhibit A and incorporated herein by reference are hereby adopted and approved and shall stand as the Bylaws of this Corporation until valid amendment thereof.
3. Directors. The appointment of the initial Board of Directors of the Corporation as appointed by the Incorporator of the Corporation is hereby ratified and approved.
4. Appointment of Officers. Pursuant to the Bylaws of the Corporation, the following persons are hereby appointed to the offices set forth opposite their respective names, to hold such offices until their successors are duly qualified and appointed:

Stephen Anderson – President  
Fred Weil – Vice-President  
Kathleen Famulener – Secretary  
Brad Barber – Treasurer  
Stephen Healy – Executive Director  
Gloriann Sasser – Finance Director  
Grace Santos – Assistant Secretary

5. Bank Accounts. Any officer of the Corporation is hereby authorized and directed to open such bank accounts as are necessary to carry on the business of the Corporation, and this Board hereby adopts any standard form of resolution for a corporate account required by any bank selected by the officers, and directs that a copy of any such resolution be inserted in the minute book of the Corporation.
6. Application for Tax-Exemption. The officers of the Corporation are authorized and directed to consult with legal counsel as to the availability of exemptions from taxation under state and federal law and to execute and file all necessary applications for exemption from such tax with the appropriate state and federal authorities and to pay necessary filing fees in connection with such applications.

## Attachment A

7. Fiscal Year. The accounting and fiscal year of the Corporation shall be July 1 through June 30.
8. Tax Identification Number. The officers of the Corporation are authorized and directed to apply to the IRS District Director for an employer's identification number on Form SS-4.
9. Expenses of Incorporation. The Treasurer of the Corporation is authorized and directed to pay the expenses of the incorporation and organization of the Corporation, and to reimburse the persons advancing funds to the Corporation for such purpose.
10. Conflict of Interest Code. Whereas, Government Code Section 87300 requires every local government agency and their affiliate agencies to adopt and promulgate a conflict of interest code, and Section 18730 of Title 2 of the California Code of Regulations permits local government agencies and their affiliate agencies to incorporate by reference the terms of Section 18370 along with the designation of employees and formulation of disclosure categories in the Appendix referred to in Section 18730, and permits such action to constitute adoption and promulgation of a conflict of interest code with the meaning of Government Code 87300, the Board of Directors hereby resolves as follows:

The Corporation incorporates by reference the terms of Section 18730 of Title 2 of the California Code of Regulations, as that section may from time to time be amended, along with the description of employees and the formulation of disclosure categories in the Appendix referred to in Section 18730, as that Appendix may from time to time be amended, as the Corporation's Conflict of Interest Code required pursuant to Government Code Section 87300.

11. The officers of the Corporation are hereby authorized and directed to undertake such other actions and to execute and deliver such other instruments as necessary to carry out the intent of this Resolution.

\* \* \* \* \*

PASSED, APPROVED and ADOPTED this 20th day of April, 2016 at a special meeting of the Board of Directors of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation held on April 20, 2016, at 1500 St. Mary's Road, Moraga, California 94556, on motion made by Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, and duly carried with the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

# Attachment A

Dated: April 20, 2016

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Stephen Anderson, President  
Board of Directors

ATTEST:

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Grace Santos, Assistant Secretary  
Board of Directors

**BYLAWS**

**OF**

**MORAGA-ORINDA FIRE PROTECTION DISTRICT  
PUBLIC FACILITIES FINANCING CORPORATION  
A California Nonprofit Public Benefit Corporation**

**ARTICLE I - NAME AND OFFICES**

1.1 Name. The name of this corporation is Moraga-Orinda Fire Protection District Public Facilities Financing Corporation (hereinafter, the “Corporation”).

1.2 Principal Office. The principal office of the Corporation shall initially be located at 1280 Moraga Way, Moraga, CA 94556, in Contra Costa County, California. The board of directors of the Corporation (hereinafter, the “Board of Directors”) may change the location of the principal office to another location within the cities of Moraga or Orinda. Any such change of address will be noted by the Secretary of the Corporation in these Bylaws. The fixing or changing of such address shall not be deemed an amendment to these Bylaws.

1.3 Other Offices. The Board of Directors may establish branch or subordinate offices at any time and at any place within the cities of Moraga or Orinda.

**ARTICLE II – PURPOSES, OBJECTIVES AND POWERS; LIMITATIONS**

2.1 Public and Charitable Purpose; Nonpartisan Activities. The Corporation has been formed under the California Nonprofit Public Benefit Corporation Law for public and charitable purposes. No substantial part of the activities of the Corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office. The Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the public and charitable purposes described in its Articles of Incorporation. Notwithstanding any other provision of these Bylaws, no director, officer, employee or agent of the Corporation shall take any action or carry on any activity by or on behalf of the Corporation not permitted to be carried on by an organization exempt from Federal income tax under Section 501(3) of the Internal Revenue Code or by an organization to which contributions are deductible under Section 170(c)(2) of the Internal Revenue Code.

## Exhibit A - Attachment B

2.2 Purpose and Objectives. The mission of the Corporation is to provide assistance to the Moraga-Orinda Fire Protection District (the “District”) in financing the acquisition, construction and improvement of public buildings, works and equipment for the District, together with site development, landscaping, utilities, furnishings and appurtenance and related facilities.

### **ARTICLE III – DEDICATION OF ASSETS**

The property of the Corporation is irrevocably dedicated to public and charitable purposes, and no part of the net earnings of the Corporation shall ever inure to the benefit of any of its directors, officers or members or to the benefit of any private person. Upon the dissolution and winding up of the Corporation, its assets remaining after payment, or provision for payment, of all debts, obligations and liabilities of this Corporation shall be distributed to the District for a public purpose, or to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under Internal Revenue Code section 501(c)(3) or the corresponding section of any future federal tax code, which has been designated by the District to receive such assets and which is organized and operated for a charitable purpose meeting the requirements of California Revenue and Taxation Code Section 214.

### **ARTICLE IV – MEMBERS**

4.1 No Members. The Corporation shall have no “members” as that term is defined by California Corporations Code Section 5056, and shall be governed solely by its Board of Directors in accordance with these Bylaws. Pursuant to California Corporations Code Section 5310, any action which would otherwise require approval by a majority of all members, shall instead require the approval of a majority of the Board of Directors.

### **ARTICLE V - DIRECTORS**

5.1 Powers. Subject to the limitations stated in the Articles of Incorporation, these Bylaws, the California Nonprofit Public Benefit Corporation Law, and all other applicable laws, all corporate powers shall be exercised by or under the direction of, and the business and affairs of the Corporation shall be managed by, the Board of Directors.

5.2 Number of Directors; Designation, Tenure; Vacancies. The Corporation shall have five (5) directors. The individuals who serve as the members of the board of directors of the District (the “District Board”) shall constitute the members of the Board of Directors, and each member of the District Board shall be and remain a member of the Board of Directors for so long as he or she remains a member of the District Board.

## Exhibit A - Attachment B

5.3 Compensation. Directors shall serve without compensation, but each director may be reimbursed his or her necessary and actual expenses, including travel incident to his or her services as director, subject to any rules that may be imposed upon the adoption of a reimbursement policy by the Board of Directors. Any director may decline such reimbursement.

5.4 Restriction on Interested Directors. Not more than forty-nine percent (49%) of the persons serving on the Board of Directors at any time may be interested persons. An interested person is (a) any person compensated by the Corporation for services rendered to it other than those performed as a director within the previous twelve (12) months, whether as a full-time or part-time employee, independent contractor, or otherwise; and (b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of such person. Any violation of the provisions of this paragraph shall not, however, affect the validity or enforceability of any transaction entered into by the Corporation.

5.5 Nonliability for Debts. The private property of the directors shall be exempt from execution or other liability for any debts, liabilities or obligations of the Corporation, and no director shall be liable or responsible for any debts, liabilities or obligations of the Corporation.

5.6 Indemnity by Corporation for Litigation Expenses of Officers and Directors. To the fullest extent permitted by law, the Corporation shall indemnify any present or former director, officer, employee or other “agent” of the corporation, as that term is defined in California Corporations Code Section 5238(a), against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any “proceeding,” as that term is used in that Section, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that section. “Expenses,” as used in this bylaw, shall have the same meaning as in California Corporations Code Section 5238(a). Expenses incurred in defending any proceeding may be advanced by the Corporation as authorized in Section 5238 prior to the final disposition of such proceeding, upon receipt of an undertaking by or on behalf of the director or officer to repay such amount unless it shall be ultimately determined that the director or officer is entitled to be indemnified.

5.7 Insurance. The Corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents, against any liability asserted against or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer’s, director’s, employee’s or agent’s status as such. The Corporation may obtain liability insurance or the equivalent of insurance which covers the directors and executive officers issued either in the form of a general liability policy or a director’s and officer’s liability policy consistent with the requirements of California Corporations Code Section 5239.

## **ARTICLE VI – MEETINGS OF THE BOARD OF DIRECTORS**

6.1 Ralph M. Brown Act. All meetings of the Board of Directors, including, without limitation, regular, adjourned regular, special, and adjourned special meetings of the Board of



## Exhibit A - Attachment B

Directors shall be called, noticed, held and conducted in accordance with the provisions of the Ralph M. Brown Act (commencing with Section 54950 of the California Government Code), or any successor legislation hereinafter enacted (the "Brown Act").

6.2 Regular Meetings. The Board of Directors may provide by resolution the time and place for the holding of regular meetings of the Board of Directors. If the President of the Board of Directors determines that there is no business required to be transacted by the Board of Directors at any such regular meeting, such regular meeting shall not be required to be held. Notice of regular meetings of the Board of Directors shall be given in accordance with Section 6.1 and 6.6 of these Bylaws and shall state the time and place of the meeting and the business to be transacted.

6.3 Special Meetings. Subject to the provisions of Section 6.1 of these Bylaws, special meetings of the Board of Directors may be held whenever called by the President of the Board of Directors or any two (2) directors of the Corporation. Notice of special meetings shall be given in accordance with Section 6.1 and 6.6 of these Bylaws and shall state the time and place of the meeting and the business to be transacted.

6.4 Place of Meetings. Subject to the provisions of Section 6.1 of these Bylaws, meetings of the Board of Directors shall be held at any place within or without the state of California which may be designated in the notice of the meeting. In the absence of such designation, meetings of the Board of Directors shall be held at the principal office of the Corporation.

6.5 Telephonic Meetings. Provided that all requirements of the Brown Act are satisfied, members of the Board of Directors may participate in a regular or special meeting through use of conference telephone or similar communications equipment, so long as all members participating in such meeting can communicate with each other concurrently and each member is provided the means of participating in all matters before the Board of Directors, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the Corporation.

6.6 Notice of Meetings. Notice of any meeting of the Board of Directors shall be delivered to the directors and publicly posted pursuant to the Brown Act not less than seventy-two (72) hours prior to each regular meeting and not less than twenty-four (24) hours prior to each special meeting. Notice to the directors may be communicated in person or by first-class or express mail (provided however, at least four (4) days notice shall be required if delivered by regular mail), telephone, including a voice messaging system, email, facsimile or other electronic means of communication.

6.7 No Action Without Meeting. The Board of Directors may not take any action by unanimous written consent or in any other manner without a meeting and without prior notice as required by this Article VI.

6.8 Quorum. A majority of the authorized number of directors shall constitute a quorum for the transaction of business. Every action taken or decision made by a majority of the directors present at a meeting duly held at which a quorum is present shall be the act of the

## Exhibit A - Attachment B

Board of Directors, unless the Articles, these Bylaws, or the California Nonprofit Public Benefit Corporation Law specifically requires a greater number. In the absence of a quorum at any meeting of the Board of Directors, a majority of the directors present may adjourn the meeting as provided in Section 6.9 of these Bylaws. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of enough directors to leave less than a quorum, if any action taken is approved by at least a majority of the required quorum for such meeting.

6.9 Adjournment. Subject to the provisions of Section 6.1 of these Bylaws, any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned to another time and place by the vote of a majority of the directors present. If the meeting is adjourned for more than 24 hours, notice of any adjournment to another time or place shall be given, prior to the time of the adjourned meeting, to the directors who were not present at the time of the adjournment.

### ARTICLE VII - COMMITTEES

7.1 Committees of the Board of Directors. The Board of Directors may, by resolution designate committees, consisting of two (2) or more directors to serve at the pleasure of the Board of Directors. Such committees shall have such power and authority as may be determined by resolution of the Board of Directors, subject to the limitations imposed on such power and authority by the Nonprofit Corporation Law or the Articles. No committee shall have authority to bind the Corporation in a contract or agreement or expend corporate funds.

7.2 Advisory Committees. The Board of Directors may establish one or more Advisory Committees to the Board of Directors. The members of any Advisory Committee may consist of directors and non-directors. Advisory Committees may not exercise the authority of the Board of Directors to make decisions on behalf of the Corporation, but shall be limited to making recommendations to the Board of Directors and to implementing Board decisions and policies. Advisory Committees shall be subject to the supervision and control of the Board of Directors.

7.3 Meetings and Actions of Committees. Meetings and actions of all committees, except advisory committees (unless otherwise required by the Brown Act), shall be governed by, and held and taken in accordance with, the provisions of Article 6 of these bylaws, concerning meetings and actions of directors, with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board of Directors and its members, except that the time for regular meetings of committees may be determined either by resolution of the Board of Directors or by resolution of the committee. Special meetings of committees may also be called by resolution of the Board of Directors, by the chair of such committee or by a majority of the members of such committee. Notice of special meetings of committees shall also be given to any and all alternate members, who shall have the right to attend all meetings of the committee.

7.4 Minutes and Reports. Each committee shall keep regular minutes of its proceedings, which shall be filed with the Secretary of the Corporation. All action by any

## Exhibit A - Attachment B

committee shall be reported to the Board of Directors at the next meeting thereof, and shall be subject to revision and alteration by the Board of Directors.

### ARTICLE VIII - OFFICERS AND EMPLOYEES

8.1 Officers. The officers of the Corporation shall be a President, a Vice-President, a Treasurer, a Secretary, an Executive Director, a Finance Director and an Assistant Secretary. The same person may hold any number of offices, except that the Secretary, the Treasurer, Executive Director, the Finance Director and the Assistant Secretary may not serve concurrently as the President or the Vice-President.

8.2 Appointment of Officers. The officers of the Corporation shall be appointed as follows: (i) the President shall be the President of the District Board, (ii) the Vice-President shall be the Vice President of the District Board, (iii) the Secretary shall be the Secretary of the District Board, (iv) the Treasurer shall be the Treasurer of the District Board, (v) the Executive Director shall be the Fire Chief of the District, (vi) the Finance Director shall be the Administrative Services Director of the District, and (vii) the Assistant Secretary shall be the Clerk to the District Board.

8.3 Subordinate Officers. The Board of Directors may appoint such other officers as the business of the Corporation may require, each of whom shall hold office for such period, have such authority and perform such duties as are required in these Bylaws or as the Board of Directors may from time to time determine. Subordinate officers of the Corporation, if any, shall be appointed by the Board of Directors to a one-year term.

8.4 Resignation. Any officer may resign at any time by giving written notice to the Board of Directors, subject to the rights, if any, of the Corporation under any contract to which the officer is a party. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

8.5 Removal of Officers. Any officer may be removed, either with or without cause, by a majority of the directors then in office at any regular or special meeting of the Board of Directors, or by any officer upon whom such power of removal may be conferred by the Board of Directors.

8.6 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointments to such office.

8.7 President. The President shall, if present, preside at all meetings of the Board of Directors and exercise and perform such other powers and duties as may be, from time to time, assigned to the President by the Board of Directors or prescribed by these Bylaws.

8.8 Vice-President. If the President is absent or disabled, the Vice-President shall perform all duties of the President. When so acting, the Vice-President shall have all powers of

## Exhibit A - Attachment B

and be subject to all restrictions on the President. The Vice-President shall have such other powers and duties as the Board of Directors or the Bylaws may require.

8.9 Secretary. The Secretary (or Assistant Secretary) shall keep, or cause to be kept, a book of minutes in written form of the proceedings of the Board of Directors and committees of the Board of Directors. Such minutes shall include all waivers of notice, consents to the holding of meetings or approvals of the minutes of meetings executed pursuant to these Bylaws or the Nonprofit Corporation Law. The Secretary (or Assistant Secretary) shall give, or cause to be given, notice of all meetings of the Board of Directors required by these Bylaws or by law to be given, and shall cause the seal of the Corporation to be kept in safe custody, and shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or these Bylaws.

8.10 Treasurer and Finance Director. The Treasurer (or the Finance Director) shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of account or the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and other matters customarily included in financial statements. The Treasurer (or the Finance Director) shall deposit, or cause to be deposited, all monies and other valuables in the name and to the credit of the Corporation with such depositaries or depositories as may be designated by the Board of Directors. The Treasurer (or the Finance Director) shall disburse, or cause to be disbursed, the funds of the Corporation as may be ordered by the Board of Directors, and shall render to the President, the Executive Director and the directors whenever they request it, an account of all of the Treasurer's (or the Finance Director's) transactions as Treasurer (or Finance Director), and of the financial condition of the Corporation.

8.11 Executive Director. Subject to the control, advice and consent of the Board of Directors, the Executive Director shall be responsible for the day-to-day administration of the Corporation, and shall be authorized to employ and discharge employees and agents of the Corporation; contract, receive, deposit, disburse and account for funds of the corporation; execute in the name of the Corporation all contracts and other documents authorized, either generally or specifically, by the Board of Directors to be executed by the Corporation; and negotiate all material business transactions of the Corporation.

### **ARTICLE IX - BOOKS AND RECORDS.**

9.1 Maintenance of Articles and Bylaws. The Corporation shall keep at its principal office the original or a copy of its Articles of Incorporation and Bylaws as amended to date and all applications and information returns filed in connection with obtaining and maintaining state and federal tax-exempt status.

9.2 Maintenance and Inspection of Other Corporate Records. The Corporation shall keep adequate and correct books and records of accounts, written minutes of the proceedings of the Board of Directors and committees of the Board of Directors, and a record of each director's name and address. All such records shall be kept at the principal office of the Corporation. The

## Exhibit A - Attachment B

minutes shall be kept in written or typed form, and other books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed, or printed form.

9.3 Inspection Rights. Every director shall have the absolute right at any reasonable time to inspect, copy and make extracts of, in person or by agent or attorney, all corporate books, records and documents of every kind and to inspect the physical properties of the Corporation.

9.4 Annual Report. The Board of Directors shall cause an annual report (hereinafter the "Annual Report") to be sent to the directors not later than one hundred twenty (120) days after the close of the Corporation's fiscal year. The Annual Report shall contain in appropriate detail the following:

- A. The assets and liabilities, including the trust funds, of the Corporation as of the end of the fiscal year;
- B. The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- C. The revenue or receipts of the Corporation, both unrestricted and restricted to particular purposes, during the fiscal year;
- D. The expenses or disbursements of the Corporation, for both general and restricted purposes, during the fiscal year; and
- E. Any information required by Section 6322 of the Nonprofit Corporation Law concerning certain self dealing transactions, indemnifications or advances took place during the fiscal year.

The Annual Report shall be accompanied by any report thereon of independent accountants or, if there is no such report, the certificate of an authorized officer of the Corporation that such statements were prepared without audit from the books and records of the Corporation.

9.5 Audits. The Corporation shall obtain a financial audit for any fiscal year in which it receives or accrues gross revenue of \$2 million or more, excluding grant or contract income from any governmental entity for which the governmental entity requires an accounting. Any audited financial statements obtained by the Corporation, whether or not required by law, shall be made available for inspection by the Attorney General and by the general public within nine (9) months after the close of the fiscal year to which the statements relate. For three (3) years, such statements (a) shall be available at the Corporation's principal offices during regular business hours, and (b) shall be made available either by mailing a copy to any person who so requests in person or in writing, or by posting them on the Corporation's website.

## **ARTICLE X - CONSTRUCTION AND DEFINITIONS**

Unless the context otherwise requires, the general provisions, rules of construction and definitions contained in the California Nonprofit Public Benefit Corporation Law as amended from time to time shall govern the construction of these bylaws. If any competent court of law shall deem any portion of these bylaws invalid or inoperative, then so far as is reasonable and possible: (i) the remainder of these bylaws shall be considered valid and operative; and (ii) effect shall be given to the intent manifested by the portion deemed invalid or inoperative.

## **ARTICLE XI - CORPORATE SEAL AND FISCAL YEAR.**

11.1 Corporate Seal. The Board of Directors may adopt, use and alter a corporate seal. The seal shall be kept at the principal office of the corporation. Failure to affix the seal to any corporate instrument, however, shall not affect the validity of that instrument.

11.2 Fiscal Year. The fiscal year of the Corporation shall be determined, and may be changed, by resolution of the Board of Directors.

## **ARTICLE XII - AMENDMENTS**

New bylaws may be adopted or these bylaws may be amended or repealed by the affirmative vote of a majority of the Board of Directors or by the written consent thereof, except as otherwise provided by law or by the Articles. Notwithstanding the foregoing, amendment of these bylaws shall require the approval of a majority of the authorized number of directors

CERTIFICATE OF ASSISTANT SECRETARY

I hereby certify that:

I am the duly elected and acting Assistant Secretary of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation, a California nonprofit public benefit corporation; and

The foregoing Bylaws are the full, true and correct copy of Bylaws of this Corporation as adopted by the Board of Directors on April 20, 2016, and these Bylaws have not been amended or modified since that date and are in full force and effect as of the date hereof.

Dated: April 20, 2016

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Assistant Secretary

**ARTICLES OF INCORPORATION**

of

**MORAGA-ORINDA FIRE PROTECTION DISTRICT  
PUBLIC FACILITIES FINANCING CORPORATION**  
a California nonprofit public benefit corporation

I.

The name of this corporation is Moraga-Orinda Fire Protection District Public Facilities Financing Corporation.

II.

A. This corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public and charitable purposes.

B. The specific purpose of this corporation is to provide assistance to the Moraga-Orinda Fire Protection District (the "District") in financing the acquisition, construction and improvement of public buildings, works and equipment for the District, together with site development, landscaping, utilities, furnishings and appurtenance and related facilities.

III.

The name and address in the State of California of this corporation's initial agent for service of process is:

A. Name: Stephen Healy

B. Address: 1280 Moraga Way, Moraga, CA 94556

IV.

A. This corporation is organized and operated exclusively for public and charitable purposes set forth in Article II hereof within the meaning of Internal Revenue Code Section 501(c)(3) or the corresponding provision of any future federal tax code.

B. No substantial part of the activities of this corporation shall consist of carrying on propaganda, or otherwise attempting to influence legislation, and this corporation shall not participate or intervene in any political campaign (including the publishing or distribution of statements) on behalf of any candidate for public office.

C. The property of this corporation is irrevocably dedicated to public and charitable purposes set forth in Article II hereof, and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member or to the benefit of any private person.

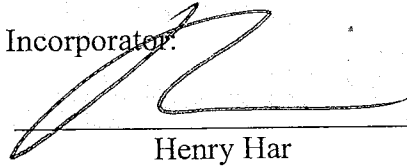


## Attachment C

D. Upon the dissolution and winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts, obligations and liabilities of this corporation shall be distributed to the Moraga-Orinda Fire Protection District for a public purpose, or to a nonprofit fund, foundation or corporation which is organized and operated exclusively for charitable, educational and/or religious purposes and which has established its tax-exempt status under Internal Revenue Code section 501(c)(3) or the corresponding section of any future federal tax code, which has been designated by the Moraga-Orinda Fire Protection District to receive such assets.

Dated: April 4, 2016

Incorporator:



Henry Har

**ACTION BY  
SOLE INCORPORATOR  
OF  
MORAGA-ORINDA FIRE PROTECTION DISTRICT  
PUBLIC FACILITIES FINANCING CORPORATION**  
a California Nonprofit Public Benefit Corporation

The undersigned, being the sole incorporator of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation, a California nonprofit public benefit corporation (the "Corporation"), and acting pursuant to the provisions of Section 5134 of the California Nonprofit Corporation Law, hereby takes the following action and adopts the following resolutions:

**APPOINTMENT OF BOARD OF DIRECTORS**

RESOLVED, that the following individuals be, and they hereby are, appointed as the directors of the Corporation, effective as of the date hereof:

Stephen Anderson

Fred Weil

Kathleen Famulener

Brad Barber

Alex Evans

**RESIGNATION OF INCORPORATOR**

RESOLVED, that the undersigned, having appointed the board of directors of the Corporation, hereby resigns as the incorporator of the Corporation, effective as of the date hereof.

Attachment D

IN WITNESS WHEREOF, the undersigned has executed this Action by Sole Incorporator, effective as of the 11th day of April, 2016.



---

Henry Har, Incorporator

2614873.1



# Moraga-Orinda Fire District

**TO:** Board of Directors

**FROM:** Gloriann Sasser, Administrative Services Director

**DATE:** April 20, 2016

**SUBJECT:** Item 5.2 – Adopt Resolution No. 16-02 Resolution of the Board of Directors of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation Approving the Forms of and Authorizing the Execution and Delivery of a Site Lease, a Lease/Purchase Agreement and an Assignment Agreement and Authorizing Related Matters

---

## **BACKGROUND**

On October 21, 2015, the Board authorized Phases 1 and 2 of the Station-43 rebuild construction project. During October and November, staff met with Brandis Tallman LLC (“BTLLC”), a full service investment banking firm, to discuss financing options. Brandis Tallman identified two methods of sale for issuance of the District’s financing: direct placement or public offering.

At its November 18<sup>th</sup> meeting, the Board considered financing options and authorized the District to contract with BTLLC to issue a direct placement lease agreement in the amount of \$4,000,000 for a 20-year term.

At its March 16, 2016 meeting, the Board adopted Resolution No. 16-06 “approving the formation of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation as a California nonprofit public benefit corporation and related matters”. The purpose of the newly formed financing corporation is to facilitate the 2016 financing and any future financing needs of the District.

On March 23<sup>rd</sup>, BTLLC sent a request for proposal (“RFP”) to 11 lenders interested in this financing type, size, and term, to obtain the most favorable financing provisions and interest rates. The RFP requested interest rates for a 10-year, 15-year, and 20-year term to provide the District with a range of options given current market conditions. On April 11<sup>th</sup>, BTLLC received bids from seven lenders and summarized results for discussion with District staff. The bids were discussed between staff and BTLLC. The Board of Directors of the District will select a lender at their scheduled Board meeting on April 20<sup>th</sup>.

If the Board approves the Resolution before it tonight the financing team will work with staff and the selected lender to finalize and execute the documents.

## **RECOMMENDATION**

- 1) Discuss; 2) Deliberate; 3) Adopt Resolution No. 16-02 Resolution of the Board of Directors of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation Approving the Forms of and Authorizing the Execution and Delivery of a Site Lease, a Lease/Purchase Agreement and an Assignment Agreement and Authorizing Related Matters

## **ATTACHMENTS**

1. Attachment A – Resolution No. 16-02 Resolution of the Board of Directors of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation Approving the Forms of and Authorizing the Execution and Delivery of a Site Lease, a Lease/Purchase Agreement and an Assignment Agreement and Authorizing Related Matters
2. Attachment B – Site Lease
3. Attachment C – Lease Purchase Agreement
4. Attachment D – Assignment Agreement

**RESOLUTION NO. 16-02**

**RESOLUTION OF THE BOARD OF DIRECTORS OF THE  
MORAGA-ORINDA FIRE PROTECTION DISTRICT  
PUBLIC FACILITIES FINANCING CORPORATION  
APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND  
DELIVERY OF A SITE LEASE, A LEASE/PURCHASE AGREEMENT AND AN  
ASSIGNMENT AGREEMENT AND AUTHORIZING RELATED MATTERS**

WHEREAS, the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation is a nonprofit public benefit corporation (the “Corporation”) organized and existing under the laws of the State of California, including, without limitation, the Nonprofit Public Benefit Corporation Law (Sections 5110 *et. seq.* of the State of California Corporations Code) and is authorized to assist in financing public improvements for the Moraga-Orinda Fire Protection District (the “District”); and

WHEREAS, the District intends to enter into a lease financing in order to finance the construction, renovation and equipping of Station 43 in Orinda, California and the financing costs relating thereto; and

WHEREAS, the District has requested the Corporation to assist the District in the financing; and

WHEREAS, such financing will be accomplished by (i) the Corporation’s entering into a site lease (the “Site Lease”) with the District, whereby the District will lease Station 42 and Station 44 (collectively, the “Leased Property”) to the Corporation in exchange for an advance rental, (ii) the Corporation’s leasing the Leased Property back to the District pursuant to a leaseback agreement (the “Lease/Purchase Agreement”), under which the District will be obligated to make Rental Payments (as such term is defined in the Lease/Purchase Agreement) to the Corporation; and (iii) the Corporation’s assignment without recourse of all rights to receive such Rental Payments to a lender to be selected (the “Lender”), in exchange for the amount of the advance rental payable by the Corporation under the Site Lease, pursuant to an assignment agreement (the “Assignment Agreement”); and

WHEREAS, the Site Lease, the Lease/Purchase Agreement and the Assignment Agreement, which are incorporated herein by reference, have been presented to the Board of Directors of the Corporation (the “Board”) for its review and approval; and

WHEREAS, the authorization, approval, execution and delivery of the Site Lease, the Lease/Purchase Agreement, the Assignment Agreement and other documents contemplated thereby or incidental thereto are desirable and in the best interests of the Corporation;

NOW, THEREFORE, the Board of Directors of the Corporation does hereby resolve as follows:

Section 1. Recitals. This Board finds and determines that all of the above recitals are true and correct.

## Attachment A

Section 2. Authorization of Officers to Execute and Deliver Documents. The Board hereby approves the forms of the Site Lease, the Lease/Purchase Agreement and the Assignment Agreement as presented to this meeting and on file with the Assistant Secretary of the Corporation. The Board hereby authorizes and directs the President, the Executive Director and the Finance Director of the Corporation, and their respective designees (the “Authorized Officers”), and each of them individually, for and in the name of and on behalf of the Corporation, to execute and deliver the Site Lease, the Lease/Purchase Agreement and the Assignment Agreement in substantially the forms presented to this meeting, with such changes, insertions, revisions, corrections, or amendments as shall be approved by any Authorized Officer executing the documents for the Corporation. The execution of the foregoing by any Authorized Officer shall constitute conclusive evidence of such officer’s or officers’ and the Board’s approval of any such changes, insertions, revisions, corrections, or amendments to the respective forms of documents presented to this meeting.

Section 3. Other Actions. The Authorized Officers and other officers of the Corporation, and each of them individually, are hereby authorized and directed, for and in the name of and on behalf of the Corporation, to execute and deliver any and all documents, to do any and all things and take any and all actions that may be necessary or advisable, in their discretion, in order to consummate the delivery of the Site Lease, the Lease/Purchase Agreement and the Assignment Agreement and to effect the purposes of this Resolution. All actions heretofore taken by officers, employees, and agents of this Corporation that are in conformity with the purposes and intent of this Resolution are hereby approved, confirmed and ratified.

Section 4. Effective Date. This Resolution shall take effect immediately upon its passage.

PASSED, APPROVED and ADOPTED this 20th day of April, 2016 at a special meeting of the Board of Directors of the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation held on April 20, 2016, at 1500 St. Mary’s Road, Moraga, California 94556, on motion made by Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, and duly carried with the following vote.

AYES:

NOES:

ABSENT:

ABSTAIN:

# Attachment A

Dated: April 20, 2016

---

Stephen Anderson, President  
Board of Directors

ATTEST:

---

Grace Santos, Assistant Secretary  
Board of Directors

2614766.2



Recording Requested By: )  
 Moraga-Orinda Fire Protection District )  
 When Recorded Mail To: )  
 Meyers Nave )  
 575 Market Street, Suite 2080 )  
 San Francisco, California 94105 )  
 Attn: Henry Har, Esq. )

This transaction is exempt from California documentary transfer tax pursuant to section 11929 of the California Revenue and Taxation Code. This document is recorded for the benefit of the Moraga-Orinda Fire Protection District, and recording is fee-exempt under section 27383 of the Government Code. (Lease less than 35 years.)

**SITE LEASE**

Dated as of May 1, 2016

by and between the

MORAGA-ORINDA FIRE PROTECTION DISTRICT

and the

MORAGA-ORINDA FIRE PROTECTION DISTRICT  
 PUBLIC FACILITIES FINANCING CORPORATION

relating to

**MORAGA-ORINDA FIRE PROTECTION DISTRICT  
 2016 LEASE/PURCHASE**

**SITE LEASE**

This SITE LEASE is dated and entered into as of May 1, 2016 (this “Site Lease”), by and between the MORAGA-ORINDA FIRE PROTECTION DISTRICT, a fire protection district organized and existing under the laws of the State of California (the “District”), as lessor hereunder, and the MORAGA-ORINDA FIRE PROTECTION DISTRICT PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation organized and existing under the laws of the State of California (the “Corporation”), as lessee hereunder.

**WITNESSETH:**

WHEREAS, pursuant to the request of the Board of Directors (the “Board”) of the District, the Corporation intends to assist the District in financing the construction, renovation and equipping of Station 43 in Orinda, California and delivery costs relating thereto; and

WHEREAS, such financing will be accomplished by (i) the Corporation’s entering into a site lease (the “Site Lease”) with the District, whereby the District will lease property (the “Leased Property”) to the Corporation in exchange for an advance rental, (ii) the Corporation’s leasing the Leased Property back to the District pursuant to a leaseback agreement (the “Lease/Purchase Agreement”), under which the District will be obligated to make Rental Payments (as such term is defined in the Lease/Purchase Agreement) to the Corporation; and (iii) the Corporation’s assignment without recourse of all rights to receive such Rental Payments to [LENDER], a \_\_\_\_\_ (the “Lender”), in exchange for the amount of the advance rental payable by the Corporation under the Site Lease, pursuant to an assignment agreement (the “Assignment Agreement”); and

NOW, THEREFORE, it is hereby mutually agreed as follows:

SECTION 1. District Representations and Certifications to Lender. The District hereby certifies and represents, warrants, covenants, agrees and acknowledges as follows:

(a) This Site Lease is in full force and effect, and there have been no amendments, modifications, changes or additions since its execution.

(b) To the best of its knowledge, the District is not in breach or default of any of the terms, conditions or provisions of this Site Lease.

(c) To the best of the District’s knowledge, neither the Corporation or the Lender is or will be, in any respect, in default under the terms and provisions of the Site Lease. Further, to the best of the District’s knowledge, the District knows of no event which would, currently or with the passage of time or giving of notice, or both, constitute a default under the terms of the Site Lease by the District.

(d) The District has not currently encumbered its fee interest in the Leased Property to any lender or financial institution, whether by way of mortgage, deed of trust or other security instruments, except for this Site Lease and the Lease Agreement which is being recorded concurrently herewith.

## Attachment B

(e) The District acknowledges and hereby consents to the Lease Agreement.

(h) Except to for the amount referenced in Section 4, no additional rent is or will be due under the Site Lease by the Corporation or Lender through the Term of this Site Lease and the Corporation and Lender have satisfied all of its obligations under this Site Lease through the Term of this Site Lease.

(j) During the term of this Site Lease, the District will not further encumber its interest in the Leased Property without the prior written consent of Lender.

(k) The District acknowledges that this Site Lease cannot be terminated by the District for any reason, other than as provided in Section 3.

(l) Notwithstanding any Site Lease provisions to the contrary, policies casualty, and extended coverage insurance shall be carried by the District covering the Leased Property with a loss payable clause to Lender.

**SECTION 2. Leased Property.** The District hereby leases to the Corporation, and the Corporation hereby hires from the District, on the terms and conditions hereinafter set forth, Station 42 and Station 44 and the real property immediately under said buildings and the improvements thereon, located at 555 Moraga Road, Moraga, CA 94556 and 295 Orchard Road, Orinda, CA 94563, respectively, on a portion of the real property of the District described in Exhibit A attached hereto and made a part hereof (the “Leased Property”).

**SECTION 3. Term.** The term of this Site Lease shall commence on the Funding Date, as that term is defined in the Lease/Purchase Agreement, and shall end on [\_\_\_\_\_, 20\_\_], unless such term is extended or sooner terminated as hereinafter provided. If the term of the Lease/Purchase Agreement is extended, the term of this Site Lease shall be extended commensurately. If the District has paid and performed in full all of its obligations under the Lease/Purchase Agreement, the term of this Site Lease shall end.

**SECTION 4. Rental.** As and for advance rental hereunder for the entire term hereof, the Corporation shall transfer to or for the account of the District the sum of [\_\_\_\_\_ DOLLARS (\$\_\_\_\_\_)], on or before the date of commencement of the term of this Site Lease. The Corporation hereby waives any right that it may have under the laws of the State of California to a rebate of such rental in full or in part in the event there is substantial interference with the use and right to possession by the Corporation of the Leased Property or portion thereof as a result of material damage, destruction, or condemnation.

**SECTION 5. Application of Rental.** The funds representing the advance rental hereunder shall be deposited as follows:

(a) the amount of \$[\_\_\_\_\_] shall be deposited into a project fund held by the District.

**SECTION 6. Purpose.** The Corporation shall use the leased property solely for the purpose of leasing the Leased Property to the District pursuant to the Lease/Purchase Agreement

## Attachment B

and for such purposes as may be incidental thereto; provided that in the event of default by the District under the Lease/Purchase Agreement the Corporation may exercise the remedies provided in the Lease/Purchase Agreement.

SECTION 7. Owner in Fee. The District covenants that it is the owner in fee of the Leased Property described on Exhibit A. The District is conveying an estate for a term of years in the Leased Property to the Corporation pursuant to this Site Lease. If a defect in the District's title to the Leased Property impairs its right to use and occupy the Leased Property, the District covenants that it will exercise its condemnation powers to the extent permitted by law to obtain the necessary rights in the Leased Property to cure such defect and limitation of its right to use and occupancy.

SECTION 8. Assignment and Subleases. The Corporation may not assign its rights under this Site Lease or sublet the Leased Property, without the written consent of the District; provided, however, that this Site Lease may be assigned and the Leased Property subleased, as a whole or in part, by the Corporation or its successor in interest without the consent of the District, if any event of default occurs under the Lease/Purchase Agreement.

SECTION 9. Right of Entry. The District reserves the right for any of its duly authorized representatives to enter upon the Leased Property at any reasonable time to inspect the same or to make any repairs, improvements, or changes necessary for the preservation thereof.

SECTION 10. Surrender of Possession. The Corporation agrees, upon the termination of this Site Lease, to quit and surrender the Leased Property to the District, without warranty as to condition, and agrees that any permanent improvements and structures existing upon the Leased Property at the time of the termination of this Site Lease shall remain thereon and title thereto shall vest in the District.

SECTION 11. Default. If the Corporation defaults in the performance of any obligation on its part to be performed under the terms of this Site Lease, which default continues for thirty (30) days following notice and demand for correction thereof to the Corporation, the District may exercise any and all remedies granted by law, except that no merger of this Site Lease and of the Lease/Purchase Agreement shall be deemed to occur as a result thereof; provided, however, that the District shall have no power to terminate this Site Lease by reason of any default on the part of the Corporation if such termination would affect or impair any assignment or sublease of all or any part of the Leased Property then in effect between the Corporation and any assignee or subtenant of the Corporation (other than the District under the Lease/Purchase Agreement). So long as any such assignee or subtenant of the Corporation shall duly perform the terms and conditions of this Site Lease and of its then existing sublease (if any), such assignee or subtenant shall be deemed to be and shall become the tenant of the District hereunder and shall be entitled to all of the rights and privileges granted under any such assignment.

SECTION 12. Quiet Enjoyment. The Corporation at all times during the term of this Site Lease, subject to the provisions of Section 11 hereof, shall peaceably and quietly have, hold and enjoy all of the Leased Property.



## Attachment B

SECTION 19. Execution in Counterparts. This Site Lease may be executed in any number of counterparts, each of which shall be deemed to be an original, and which together shall constitute but one and the same instrument.

*[SIGNATURE PAGE FOLLOWS]*

Attachment B

IN WITNESS WHEREOF, the parties have caused this Site Lease to be executed by their duly authorized officers as of the date and year first above written.

MORAGA-ORINDA FIRE PROTECTION DISTRICT  
PUBLIC FACILITIES FINANCING CORPORATION

By: \_\_\_\_\_  
Executive Director

MORAGA-ORINDA FIRE PROTECTION DISTRICT

By: \_\_\_\_\_  
Fire Chief

## Attachment B

[NEW NOTARY FORM TO BE COMPLETED AND INSERTED]



## Attachment B

[NEW NOTARY FORM TO BE COMPLETED AND INSERTED]

EXHIBIT A

PROPERTY DESCRIPTION

Station 42 and Station 44 and the real property immediately under said buildings and the improvements thereon, located at 555 Moraga Road, Moraga, CA 94556 and 295 Orchard Road, Orinda, CA 94563, respectively, on a portion of the real property of the District described as follows:

[TO COME]

APN/Parcel ID(s): \_\_\_\_\_

2604635.2

Recording Requested By: )  
Moraga-Orinda Fire Protection District )  
  
When Recorded Mail To: )  
  
Meyers Nave )  
575 Market Street, Suite 2080 )  
San Francisco, California 94105 )  
Attn: Henry Har, Esq. )

---

This transaction is exempt from California documentary transfer tax pursuant to section 11929 of the California Revenue and Taxation Code. This document is recorded for the benefit of the Moraga-Orinda Fire Protection District, and recording is fee-exempt under section 27383 of the Government Code. (Lease less than 35 years.)

## **LEASE/PURCHASE AGREEMENT**

Dated as of May 1, 2016

by and between the

MORAGA-ORINDA FIRE PROTECTION DISTRICT  
PUBLIC FACILITIES FINANCING CORPORATION

and the

MORAGA-ORINDA FIRE PROTECTION DISTRICT

relating to

**MORAGA-ORINDA FIRE PROTECTION DISTRICT  
2016 LEASE/PURCHASE**

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**LEASE/PURCHASE AGREEMENT**

This LEASE/PURCHASE AGREEMENT is dated and entered into as of May 1, 2016 (this “Lease/Purchase Agreement”), by and between the MORAGA-ORINDA FIRE PROTECTION DISTRICT PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation organized and existing under the laws of the State of California (the “Corporation”), as lessor hereunder, and the MORAGA-ORINDA FIRE PROTECTION DISTRICT, a fire protection district organized and existing under the laws of the State of California (the “District”), as lessee hereunder.

WITNESSETH:

WHEREAS, Section 13861(b) of the Health and Safety Code of the State of California authorizes the District to manage, sell, lease, or otherwise dispose of its property as the interests of its inhabitants require, which include providing for the financing and refinancing of facilities for the use of the District;

WHEREAS, the District wishes to finance the construction, renovation and equipping of Station 43 in Orinda, California and delivery costs relating thereto, and pursuant to the request of the District, the Corporation will assist the District in the financing; and

WHEREAS, such financing will be accomplished by (i) the Corporation’s entering into a site lease (the “Site Lease”) with the District, whereby the District will lease property (the “Leased Property”) to the Corporation in exchange for an advance rental, (ii) the Corporation’s leasing the Leased Property back to the District pursuant to a leaseback agreement (the “Lease/Purchase Agreement”), under which the District will be obligated to make Rental Payments (as such term is defined in the Lease/Purchase Agreement) to the Corporation; and (iii) the Corporation’s assignment without recourse of all rights to receive such Rental Payments to [LENDER], a \_\_\_\_\_ (the “Lender”), in exchange for the amount of the advance rental payable by the Corporation under the Site Lease, pursuant to an assignment agreement (the “Assignment Agreement”); and

WHEREAS, the District is authorized to enter into this Lease/Purchase Agreement for the purposes and subject to the terms and conditions set forth herein; and

WHEREAS, the Corporation is a nonprofit public benefit corporation duly organized under the laws of the State of California; and

WHEREAS, the Corporation is authorized to provide financial assistance to the District by constructing, improving, acquiring, financing and leasing various public facilities, land and equipment for the use, benefit and enjoyment of the public served by the District or any other purpose incidental thereto;

NOW, THEREFORE, in consideration of the above premises and of the mutual covenants hereinafter contained and for other good and valuable consideration, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS AND EXHIBITS

Section 1.1. Definitions and Rules of Construction. For all purposes of this Lease/Purchase Agreement and of any certificate, opinion, or other document herein mentioned, unless the context otherwise requires:

(A) The terms defined in this Section shall have the meanings herein specified and include the plural as well as the singular.

(B) All accounting terms not otherwise defined herein have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with generally accepted accounting principles.

(C) All references herein to “generally accepted accounting principles” refer to such principles as they exist at the date of applicability thereof.

(D) All references herein to “Articles,” “Sections,” and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Lease/Purchase Agreement as originally executed.

(E) The words “herein,” “hereof,” “hereby,” “hereunder,” and other words of similar import refer to this Lease/Purchase Agreement as a whole and not to any particular Article, Section, or other subdivision.

(F) Words of any gender shall mean and include words of all other genders.

**Applicable Environmental Laws** means and shall include, but shall not be limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 USC Sections 9601 et seq.; the Resource Conservation and Recovery Act (“RCRA”), 42 USC Sections 6901 et seq.; the Federal Water Pollution Control Act, 33 USC Sections 1251 et seq.; the Clean Air Act, 42 USC Sections 7401 et seq.; the California Hazardous Waste Control Law (“HWCL”), California Health & Safety Code Sections 25100 et seq.; the Hazardous Substance Account Act (“HSAA”), California Health & Safety Code Sections 25300 et seq.; the Porter-Cologne Water Quality Control Act (the “Porter-Cologne Act”), California Water Code Sections 1300 et seq.; the Air Resources Act, California Health & Safety Code Sections 3900 et seq.; the Safe Drinking Water & Toxic Enforcement Act, California Health & Safety Code Sections 25249.5 et seq.; and the regulations under each thereof; and any other local, state, and/or federal laws or regulations, whether currently in existence or hereafter enacted, that govern:

- (1) the existence, cleanup, and/or remedy of contamination on property;
- (2) the protection of the environment from spilled, deposited, or otherwise emplaced contamination;
- (3) the control of hazardous wastes; or
- (4) the use, generation, transport, treatment, removal, or recovery of Hazardous Substances, including building materials.

## Attachment C

**Assignment Agreement** means the assignment agreement dated as of May 1, 2016, between the Corporation and the Lender pursuant to which the Corporation assigns certain of its rights under the Site Lease and the Lease/Purchase Agreement to the Lender.

**Board** means the Board of Directors of the Moraga-Orinda Fire Protection District.

**Business Day** means any day other than a Saturday, Sunday, or a day on which banking institutions in the State of California are authorized or obligated by law or executive order to be closed.

**Code** means the Internal Revenue Code of 1986 and the regulations applicable to or issued thereunder.

**Corporation** means Moraga-Orinda Fire Protection District Public Facilities Financing Corporation, or its successors or assigns as lessee under the Site Lease and lessor hereunder.

**Closing Date** means May \_\_, 2016.

**District** means the Moraga-Orinda Fire Protection District.

**Effective Interest Rate** means the rate of interest per annum specified on Exhibit B.

**Event of Default** means any of the events specified in Section 7.1 (Events of Default).

**Fiscal Year** means the period beginning on July 1 of each year and ending on the next succeeding June 30 or any other twelve-month period hereafter selected and designated as the official fiscal year period of the District.

**Funding Date** means the date payment is made by the Corporation to or for the account of the District under the Site Lease.

**Governmental Corporation** means any governmental or quasi-governmental entity, including any court, department, commission, board, bureau, agency, administration, central bank, service, District or other instrumentality of any governmental entity or other entity exercising executive, legislative, judicial, taxing, regulatory, fiscal, monetary or administrative powers or functions of or pertaining to government, or any arbitrator, mediator or other person with authority to bind a party at law.

**Hazardous Substance** means any substance that shall, at any time, be listed as “hazardous” or “toxic” in any Applicable Environmental Law or that has been or shall be determined at any time by any agency or court to be a hazardous or toxic substance regulated under Applicable Environmental Laws; and also means, without limitation, raw materials, building components, the products of any manufacturing, or other activities on the Leased Property, wastes, petroleum, and source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (42 USC Sections 3011 et seq.).



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**Leased Property** means Station 42 and Station 44 and the real property immediately under said buildings and the improvements thereon located at 555 Moraga Road, Moraga, CA 94556 and 295 Orchard Road, Orinda, CA 94563, respectively, on a portion of the real property of the District described in Exhibit A attached to this Lease/Purchase Agreement, together with all present and future improvements located on the real property immediately thereunder and furniture installed or located therein.

**Lease/Purchase Agreement** means this Lease/Purchase Agreement between the Corporation and the District, dated as of May 1, 2016, wherein the Corporation leases the Leased Property to the District, as originally executed and as it may from time to time be supplemented, modified, or amended pursuant to the provisions hereof.

**Lender** means [LENDER], a \_\_\_\_\_, or its successors or assigns as assignee of the Corporation under the Assignment Agreement.

**Material Adverse Effect** means an event or occurrence which adversely affects in a material manner (a) the assets, liabilities, condition (financial or otherwise), business, facilities or operations of the District, (b) the ability of the District to carry out its business in the manner conducted as of the date of this Lease/Purchase Agreement or to meet or perform its obligations under this Lease/Purchase Agreement on a timely basis, (c) the validity or enforceability of this Lease/Purchase Agreement, or (d) the exclusion of the interest component of the Rental Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes, and shall include, amongst other events or occurrences, any material, adverse change to the rating by Moody's Investors Service, Inc., Standard & Poor's, a Standard & Poor's Financial Services LLC business, or Fitch Ratings, Inc. of any debt securities issued by the District.

**Material Litigation** means any action, suit, proceeding, inquiry or investigation against the District in any court or before any arbitrator of any kind or before or by any Governmental Corporation, (i) if determined adversely to the District, may have a Material Adverse Effect, (ii) seek to restrain or enjoin any of the transactions contemplated by this Lease/Purchase Agreement, or (iii) may adversely affect (A) the exclusion of the interest component of the Rental Payments from gross income for federal income tax purposes or the exemption of such interest for state income tax purposes or (B) the ability of the District to perform its obligations under this Lease/Purchase Agreement.

**Net Proceeds** means the amount remaining from the gross proceeds of any insurance claim or condemnation award made in connection with the Leased Property, after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

**Payment Date** means [\_\_\_\_\_ in each year, commencing \_\_\_\_\_, 201\_\_].

**Permitted Encumbrances** means (1) liens for general ad valorem taxes and assessment, if any, not then delinquent, or that the District may, pursuant to this Lease/Purchase Agreement, permit to remain unpaid, (2) easements, rights of way, mineral rights, drilling rights, and other rights, reservations, covenants, conditions, or restrictions that exist of record as of the date of recordation of this Lease/Purchase Agreement and that the District certifies in writing will not materially impair the use of the Leased Property, (3) the Site Lease, as it may be amended from



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If to the Lender: [LENDER]  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

The District, the Corporation, and the Lender may, by notice given hereunder, designate any further or different address to which subsequent notices shall be sent.

Section 1.3. Successors and Assigns. Whenever in this Lease/Purchase Agreement either the District, the Corporation, or the Lender is named or referred to, such reference shall be deemed to include the successors or assigns thereof, and all the covenants and agreements in this Lease/Purchase Agreement contained by, on behalf of, or for the benefit of the District, the Corporation, or the Lender shall bind and inure to the benefit of the respective successors and assigns thereof whether so expressed or not.

Section 1.4. Benefits of Agreement. Nothing in this Lease/Purchase Agreement expressed or implied is intended or shall be construed to give to any person other than the District and the Corporation any legal or equitable right, remedy, or claim under or in respect of this Lease/Purchase Agreement or any covenant, condition, or provision therein or herein contained; and all such covenants, conditions, and provisions are and shall be held to be for the sole and exclusive benefit of the District, the Corporation, and the Lender as the Corporation's assignee.

Section 1.5. Amendments. This Lease/Purchase Agreement may be altered, amended, or modified in writing as may be mutually agreed by the Corporation and the District, subject to the prior written approval of the Lender.

Section 1.6. Effect of Headings and Table of Contents. The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not affect the meaning, construction, or effect of this Lease/Purchase Agreement.

Section 1.7. Validity and Severability. If any one or more of the provisions contained in this Lease/Purchase Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions contained in this Lease/Purchase Agreement and such invalidity, illegality, or unenforceability shall not affect any other provision of this Lease/Purchase Agreement, and this Lease/Purchase Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. The District and the Corporation hereby declare that they would have adopted this Lease/Purchase Agreement and each and every other Section, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Lease/Purchase Agreement may be held illegal, invalid, or unenforceable.

If for any reason it is held that any of the covenants and conditions of the District hereunder, including the covenant to pay rentals hereunder, is unenforceable for the full term hereof, then and in such event this Lease/Purchase Agreement is and shall be deemed to be a

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lease from year to year under which the rentals are to be paid by the District annually in consideration of the right of the District to possess, occupy, and use the Leased Property, and all of the rental and other terms, provisions, and conditions of this Lease/Purchase Agreement, except to the extent that such terms, provisions, and conditions are contrary to or inconsistent with such holding, shall remain in full force and effect.

Section 1.8. Governing Law. This Lease/Purchase Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 1.9. Execution in Counterparts. This Lease/Purchase Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

### ARTICLE II

#### REPRESENTATIONS, COVENANTS AND WARRANTIES

Section 2.1. Representations, Covenants and Warranties of the District. The District represents, covenants and warrants to the Corporation as follows:

(a) Due Organization and Existence. The District is a fire protection district organized and existing under the laws of the State.

(b) Authorization: Enforceability. The Constitution and laws of the State authorize the District to enter into the Site Lease and this Lease/Purchase Agreement and to enter into the transactions contemplated by and to carry out the District's obligations under all of the aforesaid agreements, and the District has duly authorized and executed all of the aforesaid agreements. This Lease/Purchase Agreement and Site Lease constitute the legal, valid and binding obligations of the District enforceable in accordance with their respective terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws or equitable principles affecting the rights of creditors generally.

(c) No Violation of Law or Breach of Contract. The execution and delivery of the Site Lease and this Lease/Purchase Agreement and compliance with the provisions thereof and hereof will not (i) violate any applicable provision of statutory law or regulation, (ii) breach or otherwise violate any existing obligation of the District under any court order or administrative decree to which the District is subject, or (iii) breach, or result in a default under, any loan agreement, note, resolution, indenture, contract, agreement, or other instrument to which the District is a party or is otherwise subject or bound.

(d) No Adverse Litigation. No litigation is pending before any court or administrative agency or, to the knowledge of the District, threatened against the District (i) regarding the Leased Property or the District's use of the Leased Property for the purposes contemplated by the Site Lease or the Lease/Purchase Agreement or (ii) that

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will materially adversely affect the ability of the District to perform its obligations under the Site Lease and this Lease/Purchase Agreement.

(e) No Defaults. The District has never non-appropriated or defaulted under any of its payment or performance obligations or covenants, either under any financing lease of the same general nature as this Lease/Purchase Agreement, or under any of its bonds, notes, or other debt obligations.

(f) Fee Title; Encumbrances. The District is the owner in fee of title to the Leased Property. No lien or encumbrance on the Leased Property materially impairs the District's use of the Leased Property for the purposes for which it is, or may reasonably be expected to be, held. The Site Lease and this Lease/Purchase Agreement are the only leases that encumber the Leased Property.

(g) Use of the Leased Property. During the term of this Lease/Purchase Agreement, the Leased Property will be used by the District only for the purpose of performing one or more governmental or proprietary functions of the District consistent with the permissible scope of the District's authority.

(h) Current Compliance. The District is in all material respects in compliance with all laws, regulations, ordinances, and orders of public authorities applicable to the Leased Property.

(i) Hazardous Substances. To the knowledge of the District, the Leased Property is free of all Hazardous Substances.

(j) Flooding Risk. To the knowledge of the District, the Leased Property is not located in a flood hazard area.

(k) Value of Leased Property. As of [\_\_\_\_\_] 2016, the insured real-property value of the Leased Property is \$[\_\_\_\_\_].

(l) Fair Rental Value. The Leased Property has a fair rental value, for each Rental Period and in the aggregate, that is at least equal to the Rental Payments for each Rental Period and in the aggregate.

(m) Financial Condition. The financial statements of the District for the year ended June 30, 2015, supplied to the Lender (i) were prepared in accordance with generally accepted accounting principles, consistently applied, and (ii) fairly present the District's financial condition as of the date of the statements. There has been no material adverse change in the District's financial condition subsequent to June 30, 2015.

(n) Role of the Lender. The District acknowledges that: (i) the Lender has no fiduciary duty pursuant to Section 15B of the Securities Exchange Act of 1934 to the District with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Lender has provided other services or is currently providing other services to the District on other matters); (ii) the Lender is acting solely as an assignee of the Corporation's interests in

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the Lease/Purchase Agreement for its own account and not as a fiduciary for the District or in the capacity of financial advisor or placement agent with respect to the Lease/Purchase Agreement or in the capacity of broker, dealer, municipal securities underwriter or municipal advisor; (iii) the Lender has not provided, and will not provide, financial, legal (including securities law), tax, accounting or other advice to or on behalf of the District (including to any financial advisor or placement agent engaged by the District) with respect to its purchase of the Corporation's interests in the Lease/Purchase Agreement; and (iv) each of the District, its financial advisor, and its placement agent (if any) will seek and obtain financial, legal (including securities law), tax, accounting and other advice (including as it relates to structure, timing, terms and similar matters and compliance with legal requirements applicable to such parties) with respect to the execution and delivery of this Lease/Purchase Agreement from its financial, legal, and other advisors (and not the Lender) to the extent that the District, its financial advisor or its placement agent (if any) desires, should, or needs to obtain such advice. The District acknowledges that the Lender has expressed no view regarding the legal sufficiency of its representations for purposes of compliance with any legal requirements applicable to any other party, including but not limited to the District's financial advisor or placement agent (if any), or the correctness of any legal interpretation made by counsel to any other party, including but not limited to counsel to the District's financial advisor or placement agent, with respect to any such matters.

(o) Essential Facilities. The Leased Property is essential to the fulfillment of the District's governmental purposes.

(p) Useful Life. The Leased Property has a remaining useful life that extends to at least [\_\_\_\_\_, 20\_\_].

(q) No Material Adverse Change. Other than as described in the Audited Financial Report for fiscal year 2013-14 and otherwise disclosed to the Lender, (i) there has been no change in the assets, liabilities, financial position or results of operations of the District which might reasonably be anticipated to cause a Material Adverse Effect; (ii) the District has not incurred any obligations or liabilities which might reasonably be anticipated to cause a Material Adverse Effect; or (iii) the District has not (A) incurred any material indebtedness on, or lease obligations payable from, its general fund, other than the Rental Payments, and trade accounts payable arising in the ordinary course of the District's business and not past due, or (B) guaranteed the indebtedness of any other person.

(r) Accuracy of Information. All information, reports and other papers and data furnished by the District to the Lender were, at the time the same were so furnished, complete and accurate in all material respects and insofar as necessary to give the Lender a true and accurate knowledge of the subject matter and were provided in expectation of the Lender's reliance thereon in entering into the transactions contemplated by this Lease/Purchase Agreement. No fact is known to the District which has had or, so far as the District can now reasonably foresee, may in the future have a Material Adverse Effect, which has not been set forth in the financial statements previously furnished to the Lender or in other such information, reports, papers and data or otherwise disclosed in

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writing to the Lender prior to the Closing Date. Any financial, budget and other projections furnished to the Lender by the District or its or their agents were prepared in good faith on the basis of the assumptions stated therein, which assumptions were fair and reasonable in light of the conditions existing at the time of delivery of such financial, budget or other projections, and represented, and as of the date of this representation, represent the District's best estimate of its future financial performance. No document furnished nor any representation, warranty or other written statement made to the Lender in connection with the negotiation, preparation or execution of this Lease/Purchase Agreement contains or will contain any untrue statement of a material fact or omits or will omit to state (as of the date made or furnished) any material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were or will be made, not misleading.

(s) Notices. During the Term of this Lease/Purchase Agreement, the District shall provide to the Lender: (i) immediate notice by telephone, promptly confirmed in writing, of any event, action or failure to take any action which constitutes an event of default under this Lease/Purchase Agreement, together with a detailed statement by a representative of the District of the steps being taken by the District to cure the effect of such Event of Default; (ii) prompt written notice of any Material Litigation or event causing a Material Adverse Effect, or any investigation, inquiry or similar proceeding by any Governmental Corporation; and (iii) with reasonable promptness, such other information respecting the District, and the operations, affairs and financial condition of the District as the Lender may from time to time reasonably request.

Section 2.2. Representations, Covenants and Warranties of the Corporation. The Corporation represents, covenants and warrants to the District as follows:

(a) Valid Existence. The Corporation has been duly organized and is validly existing as a nonprofit public benefit corporation organized and existing under the laws of the State.

(b) Power to Enter into Agreements. The Corporation is authorized under the terms of its articles of incorporation and bylaws to enter into the Site Lease, this Lease/Purchase Agreement, and the Assignment Agreement and perform all of its obligations thereunder and hereunder.

(c) Due Authorization. The Site Lease, this Lease/Purchase Agreement, and the Assignment Agreement have been duly authorized by all necessary action on the part of the Corporation.

(d) Enforceability of Agreements. The Corporation represents, covenants, and warrants that all requirements have been met and procedures have occurred in order to ensure the enforceability of the Site Lease, this Lease/Purchase Agreement, and the Assignment Agreement (except as such enforceability may be limited by bankruptcy, insolvency, or other laws affecting creditors' rights generally and by the application of equitable principles).

ARTICLE III

LEASE OF LEASED PROPERTY

Section 3.1. Lease of Leased Property. The Corporation hereby demises and leases to the District, and the District hereby rents and hires from the Corporation, the Leased Property in accordance with the provisions of this Lease/Purchase Agreement, to have and to hold for the term of this Lease/Purchase Agreement.

Section 3.2. No Merger of Estates. The leasing by the Corporation to the District of the Leased Property pursuant to this Lease/Purchase Agreement shall not effect or result in a merger of the District's leasehold estate pursuant hereto and its fee estate. The Corporation shall continue to have and hold a leasehold estate in the Leased Property pursuant to the Site Lease throughout the term thereof and the term of this Lease/Purchase Agreement. As to the Leased Property, this Lease/Purchase Agreement shall be deemed and constitute a sublease.

Section 3.3. Lease Term; Occupancy.

(a) Term. The term of this Lease/Purchase Agreement shall commence on the Funding Date and shall end on [\_\_\_\_\_, 20\_\_], unless such term is extended or sooner terminated as hereinafter provided. If on [\_\_\_\_\_, 20\_\_], the rental payable hereunder shall have been abated at any time and for any reason and not otherwise paid from rental abatement insurance or other sources, or the District shall have defaulted in its payment of rental hereunder or any Event of Default has occurred and continues without cure by the District, then the term of this Lease/Purchase Agreement shall be extended for the actual period of abatement or for so long as the default remains uncured, but not to exceed ten (10) years. When the aggregate rental paid under this Lease/Purchase Agreement equals the total rental originally scheduled herein, and the District has paid and performed in full all of its other obligations under this Lease/Purchase Agreement, the term of this Lease/Purchase Agreement shall end ten (10) days thereafter or ten (10) days after written notice by the District to the Corporation, whichever is earlier.

(b) Occupancy. The District will take possession of the Leased Property upon commencement of the term of this Lease/Purchase Agreement.

Section 3.4. Modifications to the Leased Property. Subject to Section 5.5 (Liens) hereof, the District shall, at its own expense, have the right to remodel, make alterations or improvements to, or attach fixtures, structures, or signs to the Leased Property if the alterations, improvements, fixtures, structures, or signs are necessary or beneficial for the use of the Leased Property by the District, provided, however, that such actions by the District shall not materially adversely affect the value of the Leased Property.

Section 3.5. Title to the Leased Property. Upon the termination or expiration of the term of this Lease/Purchase Agreement, title to the Leased Property shall vest in the District.



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### Section 3.6. Actions in the Event of Uninsured Casualty.

(a) Substitution of Property. If the Leased Property is damaged or destroyed owing to a risk (such as earthquake) against which the District is not insured and for which rental abatement insurance is not available, the District shall substitute under the Site Lease and this Lease/Purchase Agreement one or more parcels of unimpaired and unencumbered real property the insured value of which is at least one hundred ten percent (110%) of the unpaid principal components of the Rental Payments, unless Lender shall consent, in writing, to a lesser value.

(b) Refinancing. If the District is unable to substitute real property for the Leased Property in the amount required under subsection A above, the District shall use its best efforts to prepay principal components of the Rental Payments such that the insured value of the undamaged Leased Property is at least one hundred ten percent (110%) of the remaining unpaid principal components of the Rental Payments.

(c) Subordination. If the District is unable to implement either (A) or (B) above, the District and the Corporation hereby agree that the obligations evidenced by this Lease/Purchase Agreement shall be the senior encumbrance on the Leased Property and any future encumbrance, including without limitation any lease, mortgage, deed of trust or security interest, shall be subordinate to this Lease/Purchase Agreement and there shall be no payments during the Lease Term on the obligations evidenced or secured thereby until all of the scheduled Rental Payments set forth on Exhibit B hereto have been paid in full.

Section 3.7. Substitution, Addition or Deletion. The District and the Corporation may substitute alternate real property for any real property that constitutes the Leased Property, or add or delete real property that constitutes the Leased Property for purposes of the Site Lease and this Lease/Purchase Agreement, or alter the term of the Site Lease and this Lease/Purchase Agreement as to any portion of the property constituting the Leased Property with the prior written consent of the Lender, which consent shall be conditioned upon the Lender's credit review and approval of the proposed substitution, addition or deletion to the Leased Property. Any substitution, addition, or deletion of real property hereunder shall occur only after the District shall have filed with the Lender all of the following:

(a) Documents. Executed copies of the amended Site Lease, this Lease/Purchase Agreement, and the Assignment Agreement containing the amended description of the leased property.

(b) Recording. A Statement of the District certifying that the amended Site Lease, Lease/Purchase Agreement, and Assignment Agreement, or memoranda thereof, have been duly recorded in the official records of the

(c) Insured Value. Evidence showing that the insured value of the property that will constitute the leased property after such substitution, addition, deletion, or change of term will be at least equal to 110% of the outstanding principal component of Rental Payments, unless Lender consented, in writing, to a lesser value.

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(d) Fair Rental Value. A Statement of the District certifying that the property that will constitute the leased property after the substitution, addition, deletion, or change of term has a fair rental value, for each Rental Period and in the aggregate, that is at least equal to the remaining Rental Payments for each Rental Period and in the aggregate.

(e) No Prior Liens. A Statement of the District certifying that the property that will constitute the leased property after the substitution, addition, deletion, or change of term is not subject to any liens securing monetary obligations (other than Permitted Encumbrances), unless such liens are subordinate to the interest of the Corporation created by this Lease/Purchase Agreement.

(f) Essential Leased Property; No Abatement. A Statement of the District certifying that the property that will constitute the leased property after the substitution, addition, deletion, or change of term (i) is essential to the fulfillment of the District's governmental purposes and (ii) is not subject to an event giving rise to an abatement of Rental Payments under Section 4.6 hereof.

(g) No Effect on Occupancy; Useful Life. A Statement of the District certifying that such substitution, addition, deletion, or change of term does not adversely affect the District's use and occupancy of the Leased Property and that the Leased Property, as amended, have a useful life extending at least to the date of termination of this Lease/Purchase Agreement.

(h) Opinion of Counsel. An Opinion of Counsel stating that the amendments to the Site Lease, this Lease/Purchase Agreement, and the Assignment Agreement that implement the substitution, addition, deletion, or change of term (1) are authorized or permitted by and comply with the Constitution and laws of the State of California; and (2) upon execution and delivery will be valid, binding, and enforceable obligations of the District and the Corporation.

(i) Upon the submission to the Lender of the information set forth above following designation of the alternate property, the Lender may initially request additional evidence or other such information from the District regarding the insurable value of the property that will constitute the leased property after the substitution, addition, deletion, or change of term, indicating that such value is in excess of the then unpaid principal component of the Rental Payments. The District shall promptly respond to any such request from the Lender for additional information. If further evidence and information is necessary to establish the insurable value of the property, an independent appraisal may be required by the Lender, and in such event, the District will provide such independent appraisal to the Lender upon request at the Lender's expense.

Such other information, documents, and instruments as the Lender shall reasonably request, including (if requested and at the Lender's expense) an independent appraisal or evidence of the insurable value of the property that will constitute the leased property after the substitution, addition, deletion, or change of term indicating that such value is in excess of the then unpaid principal component of the Rental Payments.

ARTICLE IV

RENTAL PAYMENTS

Section 4.1. Rental Payments. The District agrees to pay to the Corporation, its successor or assigns, as rental for the use of the Leased Property (subject to the provisions of Section 4.6 (Abatement of Rental) hereof) the following amounts, at the following times, in the manner hereinafter set forth:

(a) Amount and Timing. The District shall pay rental payments, comprising principal and interest components, in installments of the amounts and at the times set forth in the Schedule of Rental Payments attached as Exhibit B hereto. The interest components of the Rental Payments shall be paid by the District as and constitute interest paid on the principal components of the Rental Payments.

(b) Extension of Lease Term. If the term of this Lease/Purchase Agreement shall have been extended pursuant to Section 3.3 (Lease Term; Occupancy) hereof because of an abatement of rental, Rental Payments shall continue to be due as described herein. Rental Payment installments shall continue to be payable in installments on [\_\_\_\_\_] in each year, continuing to and including the date of termination of this Lease/Purchase Agreement. Upon such extension of this Lease/Purchase Agreement, the principal and interest components of the Rental Payments shall be established so that the principal components will, in the aggregate, be sufficient to pay all unpaid principal components and the interest components will be sufficient to pay all unpaid interest components plus interest on the extended principal components at the Effective Interest Rate, computed on the basis of a 360-day year composed of twelve 30-day months.

(c) Rental Period. Each payment of Rental Payments shall be for the use of the Leased Property for the twelve-month period ending on the Payment Date.

(d) Medium and Place of Payment. Each installment of rental payable hereunder shall be paid in lawful money of the United States of America to or upon the order of the Lender, as assignee of the Corporation.

(e) Rate on Overdue Payments. Any Rental Payment installment that is not paid when due shall bear interest at the rate of twelve percent (12%), or such lesser rate allowed by law, from the date the installment was due hereunder until the same shall be paid.

Section 4.2. Allocation of Rental Payments. All Rental Payments received shall be applied first to the interest components of the Rental Payments due hereunder, then to the principal components of the Rental Payments due hereunder, but no such application of any payments that are less than the total rental due and owing shall be deemed a waiver of any default hereunder.

Section 4.3. No Offsets. Notwithstanding any dispute between the Corporation and the District, the District shall make all Rental Payments when due without deduction or offset of any

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kind and shall not withhold any Rental Payments pending the final resolution of such dispute. If it is determined that the District was not liable for the Rental Payments or any portion thereof, the payments or excess payments, as the case may be, shall, at the option of the District, be credited against subsequent Rental Payments due hereunder or be refunded at the time of such determination.

Section 4.4. Net Lease. This Lease/Purchase Agreement shall be deemed and construed to be a “net-net-net lease” and the District hereby agrees that the Rental Payments shall be an absolute net return to the Corporation, free and clear of any expenses, charges, or setoffs whatsoever.

Section 4.5. Covenant to Budget and Appropriate. The District covenants and agrees to take such action as may be necessary to include all Rental Payments due hereunder in its annual budgets and to make the necessary annual appropriations for all such Rental Payments. Annually within thirty (30) days of the adoption of the budget, the District will furnish to the Lender a Certificate of the District certifying that such budget contains the necessary appropriation for all Rental Payments. If requested in writing by the Lender, the District will furnish a copy of such budget.

The agreements and covenants on the part of the District herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of the District to take such action and do such things as are required by law in the performance of the official duty of such officials to enable the District to carry out and perform the agreements and covenants in this Lease/Purchase Agreement agreed to be carried out and performed by the District.

Section 4.6. Abatement of Rental. Rental Payments shall be abated proportionately during any period in which, by reason of damage to, destruction of, taking under the power of eminent domain (or sale to any entity threatening the use of such power) of, or title defect with respect to any portion of the Leased Property, there is substantial interference with the use and possession of the Leased Property or a portion thereof. The amount of abatement shall be such that the resulting Rental Payments represent fair consideration for the use and possession of the portion of the Leased Property not so interfered with. Such abatement shall commence with the date of such interference and shall end only with cure thereof.

Section 4.7. No Termination Upon Damage or Destruction. The District waives the benefits of Civil Code Sections 1932, subd. 2, and 1933, subd. 4, and any and all other rights to terminate this Lease/Purchase Agreement by virtue of any damage to or destruction of the Leased Property.

Section 4.8. Contributions/Advances. Nothing contained in this Lease/Purchase Agreement shall prevent the District from making contributions or advances to the Corporation from time to time for any purpose now or hereafter authorized by law, including the making of repairs to, or the restoration of, the Leased Property in the event of damage to or the destruction of the Leased Property.

Section 4.9. Prepayment. On any date on or after [\_\_\_\_\_, 20\_\_], the District may prepay its obligations hereunder in whole by paying to the Lender a prepayment price equal to the

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[100%] of the unpaid principal components of the Rental Payments plus interest thereon from the last Payment Date to the date fixed for prepayment at the Effective Interest Rate, computed on the basis of a 360-day year composed of twelve 30-day months, plus the amount of any interest components of the Rental Payments that were abated and that have not been otherwise paid from rental abatement insurance or other sources or paid during an extension of the lease term. The District shall, at least thirty (30) days prior to such prepayment, notify the Lender of its intention to prepay its obligations hereunder, unless the Lender shall agree to a shorter notification period.

The District agrees that, if following such prepayment the Leased Property is damaged or destroyed or taken by eminent domain, it is not entitled to, and by such prepayment waives the right of, abatement of such prepaid Rental Payments and shall not be entitled to any reimbursement of such Rental Payments. Upon such prepayment, and satisfaction of all other obligations of the District hereunder, the term of this Lease/Purchase Agreement shall terminate.

### ARTICLE V

#### COVENANTS

Section 5.1. Quiet Enjoyment. The Corporation hereby covenants to provide the District during the term of this Lease/Purchase Agreement with quiet use and enjoyment of the Leased Property and the District shall during the term of this Lease/Purchase Agreement peaceably and quietly have, hold, and enjoy the Leased Property without suit, trouble, or hindrance from the Corporation, so long as the District observes and performs its covenants and agreements and is not in default hereunder.

Section 5.2. Right of Entry. Upon reasonable notice and in accordance with District policies regarding entry into District sites, the Corporation and its assignees shall have the right (but not the duty) to enter the Leased Property during reasonable business hours (and in emergencies at all times) (a) to inspect the same, (b) for any purpose connected with the Corporation's or the District's rights or obligations under this Lease/Purchase Agreement, and (c) for all other lawful purposes.

Section 5.3. Maintenance of the Leased Property by District. The District agrees that, at all times during the term of this Lease/Purchase Agreement, the District will, at the District's own cost and expense, maintain, preserve, and keep the Leased Property and every portion thereof in good repair, working order, and condition and that the District will from time to time make or cause to be made all necessary and proper repairs, replacements, and renewals.

Section 5.4. Taxes and Other Governmental Charges; Utility Charges; Contest of Charges.

(a) Taxes and Other Governmental Charges on the Leased Property. The parties to this Lease/Purchase Agreement contemplate that the Leased Property will be used for governmental purposes of the District and, therefore, that the Leased Property will be exempt from all taxes presently assessed and levied with respect to property. In

## Attachment C

the event that the use, possession, or acquisition by the District, the Corporation, or the Lender of the Leased Property, or the assignment of the Corporation's interests therein to the Lender, is found to be subject to taxation in any form, the District will pay during the term of this Lease/Purchase Agreement, as the same respectively become due, all taxes and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Leased Property, and any equipment or other property acquired by the District in substitution for, as a renewal or replacement of, or a modification, improvement or addition to the Leased Property; provided that, with respect to any governmental charges or taxes that may lawfully be paid in installments over a period of years, the District shall be obligated to pay only such installments as are accrued during such time as this Lease/Purchase Agreement is in effect.

(b) Utility Charges. The District shall pay or cause to be paid all gas, water, steam, electricity, heat, power, air conditioning, telephone, utility, and other charges incurred in the operation, maintenance, use, occupancy, and upkeep of the Leased Property.

(c) Contest of Charges. The District may, at the District's expense and in its name, in good faith contest any such taxes, assessments, or other charges and, in the event of any such contest, may permit the taxes, assessments, or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Lender shall notify the District that, in the opinion of independent counsel, by nonpayment of any such items, the interest of the Lender in the Leased Property will be materially endangered or the Leased Property, or any part thereof, will be subject to loss or forfeiture, in which event the District shall promptly pay such taxes, assessments, or charges or provide the Lender with full security against any loss that may result from nonpayment, in form satisfactory to the Lender.

Section 5.5. Liens. If the District shall at any time during the term of this Lease/Purchase Agreement cause any changes, alterations, additions, improvements, or other work to be done or performed or materials to be supplied, in or upon the Leased Property, the District shall pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, or equipment furnished or alleged to have been furnished to or for the District in, upon or about the Leased Property and shall keep the Leased Property free of any and all mechanics' or materialmen's liens or other liens against the Leased Property or the Corporation's interest therein. In the event any such lien attaches to or is filed against the Leased Property or the Corporation's interest therein, the District shall cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, except that if the District desires to contest any such lien it may do so in good faith. If any such lien is reduced to final judgment and such judgment or such process as may be issued for the enforcement thereof is not promptly stayed, or if so stayed and the stay thereafter expires, the District shall forthwith pay (or cause to be paid) and discharge such judgment. The District agrees to and shall, to the maximum extent permitted by law, indemnify and hold the Corporation, the Lender, their directors, agents, successors and assigns, harmless from and against, and defend each of them against, any claim, demand, loss, damage, liability or expense (including attorney's fees) as a result of any such lien or claim of lien against the Leased Property or the Corporation's interest therein.

## Attachment C

### Section 5.6. Environmental Covenants.

(a) Compliance with Laws; No Hazardous Substances. The District will comply with all Applicable Environmental Laws with respect to the Leased Property and will not use, store, generate, treat, transport, or dispose of any Hazardous Substance thereon or in a manner that would cause any Hazardous Substance to later flow, migrate, leak, leach, or otherwise come to rest on or in the Leased Property. The District shall indemnify and hold the Corporation and the Lender harmless from any liabilities, damages, or expenses incurred in connection with a violation by the District of this Section 5.6(A) (Compliance with Laws; No Hazardous Substances).

(b) Remediation. The District shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal, and other actions necessary to clean up and remove all Hazardous Substances on, from, or affecting the Leased Property, in accordance with all Applicable Environmental Laws and (b) in accordance with the orders and directives of all Federal, State and local governmental authorities.

(c) Notification of the Lender. The District will transmit copies of all notices, orders, or statements received from any governmental entity concerning violations or asserted violations of Applicable Environmental Laws with respect to the Leased Property and any operations conducted thereon or any conditions existing thereon to the Lender, and the District will notify the Lender in writing immediately of any release, discharge, spill, or deposit of any Hazardous Substance that has occurred or is occurring that in any way affects or threatens to affect the Leased Property, or the people, structures, or other property thereon, provided that no such notification shall create any liability or obligation on the part of the Lender.

(d) Access for Inspection. The District will permit the Lender, its agents, or any experts designated by the Lender to have full access to the Leased Property during reasonable business hours for purposes of such independent investigation of compliance with all Applicable Environmental Laws, provided that the Lender has no obligation to do so, or any liability for any failure to do so, or any liability should it do so.

Section 5.7. Assignment and Subleasing by District. Neither this Lease/Purchase Agreement nor any interest of the District hereunder shall be mortgaged, pledged, assigned, sublet, or transferred by the District by voluntary act or by operation of law or otherwise, except with the prior written consent of the Lender, which, in the case of subletting, shall not be unreasonably withheld; provided such subletting shall not affect the tax-exempt status of the interest components of the Rental Payments payable by the District hereunder. No such mortgage, pledge, assignment, sublease, or transfer shall in any event affect or reduce the obligation of the District to make the Rental Payments required hereunder.

Notwithstanding the foregoing, the District may allow occasional use of the Leased Property by civic groups for their public purpose and by State and local agencies for their governmental purposes pursuant to joint use agreements and similar arrangements.

## Attachment C

Section 5.8. District Consent to Assignments. Certain of the Corporation's rights under the Site Lease and this Lease/Purchase Agreement, including the right to receive and enforce payment of the Rental Payments, are being assigned to the Lender pursuant to the Assignment Agreement. The District hereby consents to such assignment and to any additional assignment of such rights by the Lender or its assignees. The District agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements, that may be reasonably requested by the Lender or its assignees to protect their interests in the Leased Property and in this Lease/Purchase Agreement.

Section 5.9. Corporation's Disclaimer of Warranties. THE CORPORATION MAKES NO AGREEMENT, WARRANTY, OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, HABITABILITY, MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR FITNESS FOR USE OF THE LEASED PROPERTY, OR WARRANTY WITH RESPECT THERETO. THE DISTRICT ACKNOWLEDGES THAT THE CORPORATION HAS NOT CONSTRUCTED THE LEASED PROPERTY AND IS NOT A REAL ESTATE BROKER, THAT THE DISTRICT LEASES THE LEASED PROPERTY AS-IS, ITS BEING AGREED THAT ALL OF THE AFOREMENTIONED RISKS ARE TO BE BORNE BY THE DISTRICT. In no event shall the Corporation or the Lender be liable for any incidental, indirect, special, or consequential damage in connection with or arising out of this Lease/Purchase Agreement or the existence, furnishing, functioning, or the District's use of the Leased Property or any item or products or services provided for in this Lease/Purchase Agreement.

Section 5.10. Corporation and Lender Not Liable; Indemnification of the Corporation and the Lender. The Corporation and the Lender and their directors, officers, agents, and employees shall not be liable to the District or to any other party whomsoever for any death, injury, or damage that may result to any person or property by or from any cause whatsoever in, on or about the Leased Property.

The District shall to the full extent then permitted by law, indemnify, protect, hold harmless, save, and keep harmless the Corporation and its assignees (including the Lender) and their directors, officers, and employees from and against any and all liability, obligations, losses, claims, and damages whatsoever, regardless of the cause thereof, and expenses in connection therewith, including, without limitation, counsel fees and expenses, penalties and interest arising out of or as the result of the entering into of this Lease/Purchase Agreement or any other agreement entered into in connection herewith or therewith, the design or ownership of the Leased Property, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage, or return of any part of the Leased Property, or any accident in connection with the operation, use, condition, possession, storage, or return of any item of the Leased Property resulting in damage to property or injury to or death to any person including, without limitation, any claim alleging latent and other defects, whether or not discoverable by the District or the Corporation; any claim for patent, trademark, or copyright infringement; and any claim arising out of strict liability in tort. The indemnification arising under this section shall continue in full force and effect notwithstanding the full payment of all obligations under this Lease/Purchase Agreement or the termination of the term of this Lease/Purchase Agreement for any reason. The District and the Corporation mutually agree to promptly give notice to each



## Attachment C

other and the Lender of any claim or liability hereby indemnified against following either's learning thereof.

Section 5.11. Federal Income Tax Covenants. The District shall at all times do and perform all acts and things permitted by law and this Lease/Purchase Agreement that are necessary and desirable in order to assure that the interest component of the Rental Payments will be excludable from gross income for federal income tax purposes and shall take no action that would result in such interest not being so excludable. Without limiting the generality of the foregoing, the District agrees to comply with the provisions of the Tax Certificate. This covenant shall survive the payment in full of the District's obligations hereunder.

Section 5.12. Further Assurances. The District and the Corporation agree that they will, from time to time, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered such supplements hereto and such further instruments as may be necessary or proper to carry out the intention or to facilitate the performance of this Lease/Purchase Agreement.

Section 5.13. Financial Statements. During the term of this Lease/Purchase Agreement, the District shall, at the request of the Lender, furnish or cause to be furnished to the Lender, at the District's expense, (i) the audited financial statements of the District within six (6) months of the end of the Fiscal Year, or as soon as practicable thereafter, and (ii) any interim or unaudited financial statements that may be reasonably requested by the Lender as soon as available. Any audited financial statements furnished to the Lender shall be prepared in accordance with generally accepted accounting principles, consistently applied, and shall fairly present the District's financial condition as of the date of the statements.

Section 5.14. Additional Lease Financings. The District shall not enter into additional lease financings of the same general nature as this Lease/Purchase Agreement (each an "Additional Financing") that encumber its interest in the Leased Property without the prior written consent of Lender. Notwithstanding the foregoing, nothing herein shall prohibit the District from entering into Additional Financings that encumber its interest in other property of the District, including for the avoidance of any doubt, other property located on the same parcel on which the Leased Property is located; provided, however, that any Additional Financing that encumbers the District's interest in other property of the District located on the same parcel as the Leased Property shall require the consent of the Lender only as to the necessary documentation to effectuate such an Additional Financing.

## ARTICLE VI

### INSURANCE; EMINENT DOMAIN

Section 6.1. Insurance Coverage. At its own expense, the District shall maintain (i) "all risk" property insurance (which may exclude the risk of earthquake and may exclude the risk of flood, unless the Leased Property is mapped into a flood hazard zone) insuring the Leased Property against loss or damage, which insurance shall be provided by an insurer rated no less than "A" by A.M. Best, or as otherwise approved by the Lender, in an amount equal to 100% of

## Attachment C

the replacement cost without deduction for depreciation; (ii) liability insurance that protects the Lender from liability in all events in a reasonable amount satisfactory to the Lender; (iii) rental abatement insurance in an amount equal to at least two years' Rental Payments; (iv) workers' compensation insurance covering all employees working on, in, near or about the Leased Property; [and (v) title insurance on the Leased Property, in the form of a CLTA leasehold owner's title policy in an amount equal to the aggregate principal amount due under this Lease/Purchase Agreement, issued by a company of recognized standing duly authorized to issue the same, subject only to Permitted Encumbrances].

If the Leased Property is mapped into a flood hazard zone, at its own expense, the District shall also maintain insurance insuring the Leased Property against loss or damage by flood in an amount equal to the least of (i) the maximum amount of National Flood Insurance Program flood insurance available, (ii) the unpaid principal components of the Rental Payments, and (iii) 100% of the replacement cost of the Leased Property.

Section 6.2. Alternative Risk Management. The District may provide the insurance required by Section 6.1 through (1) a self-insurance method or plan of protection, but only with the Lender's prior written consent, (2) a program involving captive insurance companies, (3) participation in state or federal insurance programs, (4) participation with other public agencies in mutual or other cooperative insurance or other risk management programs, including those made available through joint exercise of powers agencies, or (5) establishment or participation in other alternative risk management programs; provided that the District may not self-insure against the risk of rental abatement. The District may not increase any of its self-insurance retention amounts with respect to the insurance required by Section 6.1 without the Lender's prior written consent.

Section 6.3. General Provisions. All such insurance shall be with insurers that are authorized to issue such insurance in the State of California, (other than the workers' compensation insurance) shall name the Lender as an additional insured, and shall contain a provision to the effect that such insurance shall not be cancelled or modified materially and adversely to the interest of the Lender without first giving written notice thereof to the Lender in accordance with the policy terms or memorandum of coverage. The District shall not agree to such changes' becoming effective without the Lender's prior consent, which consent shall not be unreasonably withheld. The District shall, at the Lender's request, furnish to the Lender certificates evidencing such coverage.

The "all risk" insurance shall contain a provision making any losses payable to the Lender and the District as their respective interests may appear. All insurance proceeds from rental abatement insurance shall be paid to the Lender or its assigns and shall be credited toward the payment of Rental Payments in the order in which the Rental Payments come due and payable.

Section 6.4. Advances. In the event the District shall fail to maintain the full insurance coverage required by this Lease/Purchase Agreement or shall fail to keep the Leased Property in good repair and operating condition, the Lender may (but shall be under no obligation to) purchase the required policies of insurance and pay the premiums on the same or may make such repairs or replacements as are necessary and provide for payment thereof; and the District

## Attachment C

agrees to reimburse the Lender all amounts so advanced within thirty (30) days of a written request therefor.

Section 6.5. Damage, Destruction, and Condemnation. If (a) the Leased Property or any portion thereof is damaged or destroyed, in whole or in part, or (b) title to, or the temporary use of, the Leased Property or any part thereof is taken under the exercise or threat of the power of eminent domain by any governmental body or by any person, firm or corporation acting pursuant to governmental authority, the District and the Corporation shall cause the proceeds of any insurance claim, condemnation award or sale under threat of condemnation to be applied to the prompt repair, reconstruction, or replacement of the Leased Property, unless the District has exercised its right to prepay this Lease/Purchase Agreement as provided herein. Any balance of the proceeds not required for such repair, reconstruction, or replacement shall be paid to the District.

### ARTICLE VII

#### DEFAULT AND REMEDIES

Section 7.1. Events of Default. The following events shall be Events of Default:

(a) Payment Default. Failure of the District to pay any Rental Payments payable hereunder when the same become due and payable, time being expressly declared to be of the essence of this Lease/Purchase Agreement;

(b) Breach of Covenant. Failure of the District to keep, observe, or perform any other term, covenant or condition contained herein to be kept or performed by the District for a period of thirty (30) days after notice of the same has been given to the District by the Lender; provided that the Lender shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the District within the applicable period and diligently pursued until the default is corrected, except that such grace period shall not exceed 120 days without the prior written consent of the Lender;

(c) Transfer of District's Interest. Assignment or transfer of the District's interest in this Lease/Purchase Agreement or any part hereof without the written consent of the Lender, either voluntarily or by operation of law or otherwise;

(d) Bankruptcy or Insolvency. Institution of any proceeding under the United States Bankruptcy Code or any federal or state bankruptcy, insolvency, or similar law or any law providing for the appointment of a receiver, liquidator, trustee, or similar official of the District or of all or substantially all of its assets, by or with the consent of the District, or institution of any such proceeding without its consent that is not permanently stayed or dismissed within sixty (60) days, or agreement by the District with the District's creditors to effect a composition or extension of time to pay the District's debts, or request by the District for a reorganization or to effect a plan of reorganization, or for a readjustment of the District's debts, or a general or any assignment by the District for the benefit of the District's creditors;

## Attachment C

(e) Abandonment of the Leased Property. Abandonment by the District of any part of the Leased Property.

Section 7.2. Remedies on Default. Upon the occurrence and during the continuance of an Event of Default, it shall be lawful for the Corporation to exercise any and all remedies available pursuant to law or the following remedies granted pursuant to this Lease/Purchase Agreement:

(a) Termination of Lease:

(1) Notice of Termination; Re-entry. By written notice to the District, to terminate this Lease/Purchase Agreement and to re-enter the Leased Property and remove all persons in possession thereof and all personal property whatsoever situated upon the Leased Property and place such personal property in storage in any warehouse or other suitable place in the District in which the District is located. In the event of such termination, the District agrees to surrender immediately possession of the Leased Property, without let or hindrance, and to pay the Corporation all damages recoverable at law that the Corporation may incur by reason of default by the District, including, without limitation, any costs, loss or damage whatsoever arising out of, in connection with, or incident to any such re-entry upon the Leased Property and removal or storage of such property by the Corporation or its duly authorized agents in accordance with the provisions herein contained.

(2) No Termination Except by Notice. Neither (a) notice to pay rent or to deliver up possession of the Leased Property given pursuant to law, nor (b) any entry or re-entry by the Corporation, nor (c) any proceeding brought by the Corporation to recover possession of the Leased Property, nor (d) the appointment of a receiver upon initiative of the Corporation to protect the Corporation's interests under this Lease/Purchase Agreement shall of itself operate to terminate this Lease/Purchase Agreement. No termination of this Lease/Purchase Agreement on account of default by the District shall be or become effective by operation of law or acts of the parties hereto, unless and until the Corporation shall have given written notice to the District of the election on the part of the Corporation to terminate this Lease/Purchase Agreement. The District covenants and agrees that no surrender of the Leased Property or of the remainder of the term hereof or any termination of this Lease/Purchase Agreement shall be valid in any manner or for any purpose whatsoever unless stated or accepted by the Corporation by such written notice.

(b) Continuation of Lease; Reletting.

(1) Continuation Remedies. Without terminating this Lease/Purchase Agreement, (a) to collect each installment of rent as it becomes due and enforce any other term or provision hereof to be kept or performed by the District, regardless of whether or not the District has abandoned the Leased Property, and/or (b) to enter, retake possession of, and re-let the Leased Property. The term

“re-let” or “re-letting” as used in this Article shall include, but not be limited to, re-letting by means of the operation by the Corporation of the Leased Property.

(2) District to Remain Liable. If the Corporation does not elect to terminate this Lease/Purchase Agreement in the manner provided for in subsection (A) hereof, the District shall remain liable and agrees to keep or perform all covenants and conditions herein contained to be kept or performed by the District. If the Leased Property is not re-let, the District agrees to pay the full amount of the rent to the end of the term of this Lease/Purchase Agreement; if the Leased Property is re-let, the District agrees to pay any deficiency in rent that results therefrom. The District further agrees to pay the rent punctually at the same time and in the same manner as for the payment of rent hereunder (without acceleration), notwithstanding the fact that the Corporation may have received in previous years or may receive thereafter in subsequent years rental in excess of the rental herein specified and notwithstanding any entry or re-entry by the Corporation or proceeding brought by the Corporation to recover possession of the Leased Property.

(3) Agency. Should the Corporation elect to enter or re-enter the Leased Property as herein provided, the District hereby irrevocably appoints the Corporation as the agent and attorney-in-fact of the District to re-let the Leased Property, or any item or part thereof, from time to time, either in the Corporation’s name or otherwise, upon such terms and conditions and for such use and period as the Corporation may deem advisable. The District further appoints the Corporation as its agent to remove all persons in possession of the Leased Property and all personal property whatsoever situated upon the Leased Property and to place such personal property in storage in any warehouse or other suitable place in the District in which the District is located, for the account of and at the expense of the District. The District hereby exempts and agrees to save harmless the Corporation from any costs, loss, or damage whatsoever arising out of, in connection with, or incident to any such retaking of possession and re-letting of the Leased Property and removal and storage of such property by the Corporation or its duly authorized agents in accordance herewith.

(4) Adequate Notice. The District agrees that the terms of this Lease/Purchase Agreement constitute full and sufficient notice of the right of the Corporation to re-let the Leased Property and to do all other acts to maintain or preserve the Leased Property as the Corporation deems necessary or desirable in the event of such retaking or re-entry without effecting a surrender of this Lease/Purchase Agreement, and further agrees that no acts of the Corporation in attempting such re-letting shall constitute a surrender or termination of this Lease/Purchase Agreement, irrespective of the use or the term for which such re-letting is made or the terms and conditions of such re-letting, or otherwise, but that, on the contrary, in the event of such default by the District the right to terminate this Lease/Purchase Agreement shall vest in the Corporation to be effected in the sole and exclusive manner provided for in subsection (A) hereof.

(5) Waiver of Right to Excess Rent; Agreement to Pay Costs. The District further waives the right to rental obtained by the Corporation in excess of the rental herein specified and hereby conveys and releases such excess to the Corporation as compensation to the Corporation for its services in re-letting the Leased Property or any items or part thereof. The District further agrees to pay the Corporation the cost of any alterations or repairs or additions to the Leased Property or any items or part thereof necessary to place the Leased Property or any items or part thereof in condition for re-letting immediately upon notice to the District of the completion and installation of such additions or repairs or alterations.

The District hereby waives any and all claims for damages caused or that may be caused by the Corporation in entering or re-entering and taking possession of the Leased Property as herein provided and all claims for damages that may result from the destruction of or injury to the Leased Property and all claims for damages to or loss of any property belonging to the District, or any other person, that may be in or upon the Leased Property.

Section 7.3. No Acceleration. Notwithstanding anything herein to the contrary, there shall be no right under any circumstance to accelerate the Rental Payments or otherwise declare any Rental Payments not yet due to be immediately due and payable.

Section 7.4. No Remedy Exclusive. Each and all of the remedies given to the Corporation hereunder or by any law now or hereafter enacted are cumulative and the exercise of one right or remedy shall not impair the right of the Corporation to any or all other remedies. If any statute or rule of law validly shall limit the remedies given to the Corporation hereunder, the Corporation nevertheless shall be entitled to whatever remedies are allowable under any statute or rule of law.

Section 7.5. Corporation Defaults; District Remedies.

(a) Corporation Defaults. The Corporation shall in no event be in default in the performance of any of its obligations hereunder or imposed by any statute or rule of law unless and until the Corporation shall have failed to perform such obligation within thirty (30) days or such additional time as is reasonably required to correct any such default after notice by the District to the Corporation properly specifying wherein the Corporation has failed to perform any such obligation.

(b) District Remedies. The Corporation's failure to perform any of its obligations hereunder shall not be an event permitting the nonpayment of rent by the District. The parties hereto agree that the performance of the Corporation is unique, that the remedies at law for the Corporation's nonperformance would be inadequate, and that the District shall institute a suit for specific performance by the Corporation upon any default by the Corporation.

Section 7.6. Attorneys' Fees. Upon the occurrence of an Event of Default, the District agrees to pay to Corporation or reimburse Corporation for, in addition to all other amounts due hereunder, all of Corporation's costs of collection, including reasonable attorneys' fees, whether or not suit or action is filed thereon. Any such costs shall be immediately due and payable upon

## Attachment C

written notice and demand given to the District. If suit or action is instituted to enforce any of the terms of this Lease/Purchase Agreement, the prevailing party shall be entitled to recover from the other party such sum as the court may adjudge reasonable as attorneys' fees at trial or on appeal of such suit or action or in any bankruptcy proceeding, in addition to all other sums provided by law.

Section 7.7. No Additional Waiver. Failure of the Corporation to take advantage of any default on the part of the District shall not be, or be construed as, a waiver thereof, nor shall any custom or practice that may grow up between the parties in the course of administering this Lease/Purchase Agreement be construed to waive or to lessen the right of the Corporation to insist upon performance by the District of any term, covenant or condition hereof, or to exercise any rights given the Corporation on account of such default. A waiver of a particular default shall not be deemed to be a waiver of the same or any subsequent default. The acceptance of rent hereunder shall not be, nor be construed to be, a waiver of any term, covenant or condition of this Lease/Purchase Agreement.

Section 7.8. Application of Amounts Collected. All amounts collected by the Corporation under this Article shall be credited towards the Rental Payments in order of Payment Dates.

### ARTICLE VIII

#### MISCELLANEOUS

Section 8.1. Binding Effect. This Lease/Purchase Agreement shall inure to the benefit of and shall be binding upon the Corporation and the District and their respective successors and assigns.

Section 8.2. Severability. In the event any provision of this Lease/Purchase Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 8.3. Applicable Law. This Lease/Purchase Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 8.4. Interested Parties. To the extent that this Lease/Purchase Agreement confers upon or gives or grants to the Insurer any right, remedy or claim under or by reason of this Lease/Purchase Agreement, the Insurer is hereby explicitly recognized as being a third-party beneficiary hereunder and may enforce any such right remedy or claim conferred, given or granted hereunder.

## Attachment C

Section 8.5. Execution in Counterparts. This Lease/Purchase Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

*[SIGNATURE PAGE FOLLOWS]*



Attachment C

IN WITNESS WHEREOF, the Corporation has caused this Lease/Purchase Agreement to be executed in its name by its duly authorized officer, and the District has caused this Lease/Purchase Agreement to be executed in its name by its duly authorized officer, as of the date first above written.

MORAGA-ORINDA FIRE PROTECTION DISTRICT  
PUBLIC FACILITIES FINANCING CORPORATION

By: \_\_\_\_\_  
Executive Director

MORAGA-ORINDA FIRE PROTECTION DISTRICT

By: \_\_\_\_\_  
Fire Chief

## Attachment C

[NEW NOTARY FORM TO BE COMPLETED AND INSERTED]

## Attachment C

[NEW NOTARY FORM TO BE COMPLETED AND INSERTED]

EXHIBIT A

PROPERTY DESCRIPTION

Station 42 and Station 44 and the real property immediately under said buildings and the improvements thereon, located at 555 Moraga Road, Moraga, CA 94556 and 295 Orchard Road, Orinda, CA 94563, respectively, on a portion of the real property of the District described as follows:

[TO COME]

APN/Parcel ID(s): \_\_\_\_\_

Attachment C

CERTIFICATE OF ACCEPTANCE  
BY PUBLIC AGENCY  
(Cal. Gov. Code §27281)

This is to certify that the interest in real property conveyed by the within and foregoing Lease/Purchase Agreement to the Moraga-Orinda Fire Protection District, a fire protection district formed under the laws of the State of California, by the Moraga-Orinda Fire Protection District Public Facilities Financing Corporation, is hereby accepted by order of its Board of Directors, and the District consents to recordation thereof by its duly authorized officer.

Moraga-Orinda Fire Protection District,  
a fire protection district formed under the laws  
of the State of California

Date: \_\_\_\_\_, 2016

\_\_\_\_\_  
Fire Chief

## Attachment C

[NEW NOTARY FORM TO BE COMPLETED AND INSERTED]

EXHIBIT B

SCHEDULE OF RENTAL PAYMENTS

| <u>DATE</u> | <u>PRINCIPAL</u> | <u>INTEREST</u> | <u>TOTAL</u> |
|-------------|------------------|-----------------|--------------|
|-------------|------------------|-----------------|--------------|

TOTAL

Effective Interest Rate: \_\_\_\_%

2604636.2

Recording Requested By: )  
Moraga-Orinda Fire Protection District )  
  
When Recorded Mail To: )  
  
Meyers Nave )  
575 Market Street, Suite 2080 )  
San Francisco, California 94105 )  
Attn: Henry Har, Esq. )

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This transaction is exempt from California documentary transfer tax pursuant to section 11929 of the California Revenue and Taxation Code. This document is recorded for the benefit of the Moraga-Orinda Fire Protection District, and recording is fee-exempt under section 27383 of the Government Code. (Lease less than 35 years.)

## **ASSIGNMENT AGREEMENT**

Dated as of May 1, 2016

by and between the

**MORAGA-ORINDA FIRE PROTECTION DISTRICT  
PUBLIC FACILITIES FINANCING CORPORATION**

and

[LENDER]

**MORAGA-ORINDA FIRE PROTECTION DISTRICT  
2016 LEASE/PURCHASE**



**ASSIGNMENT AGREEMENT**

This ASSIGNMENT AGREEMENT is dated and entered into as of May 1, 2016 (this “Assignment Agreement”), by the MORAGA-ORINDA FIRE PROTECTION DISTRICT PUBLIC FACILITIES FINANCING CORPORATION, a nonprofit public benefit corporation organized and existing under the laws of the State of California (the “Corporation”) and accepted by [LENDER], a \_\_\_\_\_ (the “Lender”);

**WITNESSETH:**

WHEREAS, the Corporation and the Moraga-Orinda Fire Protection District (the “District”) have executed and entered into a Lease/Purchase Agreement (the “Lease/Purchase Agreement”) dated the date hereof and recorded with the District Recorder concurrently herewith, whereby the Corporation has agreed to lease to the District Station 42 and Station 44 and the real property immediately under said buildings and the improvements thereon, located at 555 Moraga Road, Moraga, CA 94556 and 295 Orchard Road, Orinda, CA 94563, respectively, on a portion of the real property of the District described in Exhibit A hereto (the “Leased Property”);

WHEREAS, under and pursuant to the Lease/Purchase Agreement, the District is obligated to make Rental Payments, as defined therein, to the Corporation for the lease of the Leased Property;

WHEREAS, the Corporation desires to assign without recourse all of its rights to receive the Rental Payments scheduled to be paid by the District under and pursuant to the Lease/Purchase Agreement to the Lender;

WHEREAS, in consideration of such assignment, the Lender has agreed to deliver \$[\_\_\_\_\_] to the District in satisfaction of the Corporation’s obligation under the Site Lease dated the date hereof, between the Corporation and the District (the “Site Lease”), to make a payment for the account of the District; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Assignment Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law and the parties hereto are now duly authorized to execute and enter into the Assignment Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE PREMISES AND OF THE MUTUAL AGREEMENTS AND COVENANTS CONTAINED HEREIN AND FOR OTHER VALUABLE CONSIDERATION, THE PARTIES HERETO DO HEREBY AGREE AS FOLLOWS:

SECTION 1. Definitions.

Unless the context otherwise requires, capitalized terms used herein shall have the meanings specified in the Lease/Purchase Agreement.

## Attachment D

### SECTION 2. Assignment.

The Corporation hereby transfers, assigns and sets over to the Lender all of the Corporation's rights under the Site Lease and the Lease/Purchase Agreement (hereinafter, collectively, the "Assigned Property"), including, in particular:

(A) the right to receive and collect all of the Rental Payments from the District under the Lease/Purchase Agreement;

(B) the right to take all actions and give all consents under the Site Lease and the Lease/Purchase Agreement; and

(C) the right to exercise such rights and remedies conferred on the Corporation pursuant to the Site Lease and the Lease/Purchase Agreement as may be necessary or convenient (i) to enforce payment of the Rental Payments, or (ii) otherwise to protect the interests of the Lender (as assignee of the Corporation) in the event of default by the District under the Lease/Purchase Agreement.

### SECTION 3. Acceptance.

The Lender hereby accepts the foregoing assignment. The above assignment is intended to be an absolute and unconditional assignment to the Lender and is not intended as a loan by the Lender to the Corporation. Accordingly, in the event of bankruptcy of the Corporation, the Assigned Property shall not be part of the Corporation's estate. However, if the above assignment is deemed to be a loan by the Lender to the Corporation, then the Corporation shall be deemed to have granted to the Lender, and hereby grants to the Lender, a continuing first priority security interest in the Assigned Property and all proceeds thereof as collateral security for all obligations of the Corporation hereunder and all obligations of the District under the Lease/Purchase Agreement and this Assignment Agreement shall be deemed a security agreement with respect to such loan.

### SECTION 4. Representations.

The Corporation represents and warrants to the Lender that:

(A) Enforceability of Assignment Agreement. The Corporation has the power, authority, and legal right to execute, deliver and perform this Assignment Agreement and this Assignment Agreement is a valid, binding, and enforceable obligation of the Corporation, except as such enforceability may be limited by bankruptcy, insolvency or other laws affecting creditors' rights generally and by the application of equitable principles; and

(B) Marketable Title. Good and marketable title to the Assigned Property has been duly vested in the Lender free and clear of any liens, security interests, encumbrances or other claims other than the rights of the District under the Lease/Purchase Agreement, and the Corporation has not assigned or transferred any of the Assigned Property or any interest in the Assigned Property to any party other than the Lender.

## Attachment D

### SECTION 5. Covenants.

(A) Nonimpairment of Lease/Purchase Agreement. The Corporation agrees that it (1) shall not have any right to amend, modify, compromise, release, terminate or permit prepayment of the Lease/Purchase Agreement, and (2) shall not take any action that may impair the payment of Rental Payments or the validity or enforceability of the Lease/Purchase Agreement.

(B) Rental Payments. If the Corporation receives any Rental Payments, then the Corporation shall receive such payments in trust for the Lender and shall immediately deliver the same to the Lender in the form received, duly endorsed by the Corporation for deposit by the Lender.

(C) Further Assurances. The Corporation shall execute and deliver to the Lender such documents, in form and substance reasonably satisfactory to the Lender, and the Corporation shall take such other actions, as the Lender may reasonably request from time to time to evidence, perfect, maintain, and enforce the Lender's rights in the Assigned Property and/or to enforce or exercise the Lender's rights or remedies under the Lease/Purchase Agreement.

### SECTION 6. Further Assignment by Lender.

The Lender's right, title and interest in and to this Assignment Agreement, the Lease/Purchase Agreement and the Rental Payments, its security interest in and all proceeds of the Rental Payments may be assigned and reassigned in whole or in part to one or more assignees or subassignees by the Lender, without the necessity of obtaining the consent of the Corporation or the District.

### SECTION 7. Partial Invalidity.

If any one or more of the terms, provisions, covenants, or conditions of this Assignment Agreement shall to any extent be declared invalid, unenforceable, void or voidable for any reason whatsoever by a court of competent jurisdiction, the finding or order or decree of which becomes final, none of the remaining terms, provision, covenants and conditions of this Assignment Agreement shall be affected thereby, and each provision of this Assignment Agreement shall be valid and enforceable to the fullest extent permitted by law.

### SECTION 8. Applicable Law.

This Assignment Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of California.

### SECTION 9. Execution in Counterparts.

This Assignment Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and which together shall constitute but one and the same instrument.

*[SIGNATURE PAGE FOLLOWS]*

Attachment D

IN WITNESS WHEREOF, the parties hereto have executed and entered into this Assignment Agreement by their officers thereunto duly authorized as of the day and year first above written.

MORAGA-ORINDA FIRE PROTECTION  
DISTRICT PUBLIC FACILITIES FINANCING  
CORPORATION

By: \_\_\_\_\_  
Executive Director

[LENDER]

By: \_\_\_\_\_  
Authorized Officer

## Attachment D

[NEW NOTARY FORM TO BE COMPLETED AND INSERTED]

## Attachment D

[NEW NOTARY FORM TO BE COMPLETED AND INSERTED]

EXHIBIT A

PROPERTY DESCRIPTION

Station 42 and Station 44 and the real property immediately under said buildings and the improvements thereon, located at 555 Moraga Road, Moraga, CA 94556 and 295 Orchard Road, Orinda, CA 94563, respectively, on a portion of the real property of the District described as follows:

[TO COME]

APN/Parcel ID(s): \_\_\_\_\_

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