Moraga-Orinda Fire District
Board of Directors

REGULAR MEETING
February 7, 2018
6:00 p.m. CLOSED SESSION
7:00 p.m. OPEN SESSION
PLEASE NOTE NEW MEETING ADDRESS:
Sarge Littlehale Room
22 Orinda Way
Orinda, CA 94563

1. OPENING CEREMONIES
   1.1. Call the Meeting to Order
   1.2. Roll Call

2. PUBLIC COMMENT
   The public is invited to speak on any Closed Session item below. Comments should be limited to three minutes. Please state your name and address for the record.

3. CLOSED SESSION
   3.1. **Conference with Labor Negotiator**
   (Government Code Section 54957.6)
   Agency Designated Representative: Jeff Sloan
   Employee Organization: Local 1230, International Association of Firefighters IAFF
   3.2. **Conference with Labor Negotiator**
   (Government Code Section 54957.6)
   Agency Designated Representative: Jeff Sloan
   Employee Organization: Local 2700 United Clerical, Technical & Specialized Employees
   3.3. **Conference with Labor Negotiator**
   (Government Code Section 54957.6)
   Agency Designated Representative: Jeff Sloan
   Employee Organization: Moraga-Orinda Fire Chief Officers Association (MOFCOA)

4. RECONVENE THE MEETING
   4.1. Call the Meeting to Order
   4.2. Pledge of Allegiance

5. REPORT OF CLOSED SESSION ACTION

6. PUBLIC COMMENT
   The public is invited to speak on any matter not appearing on the agenda, and within the subject matter jurisdiction of the District. Comments should be limited to three minutes. Please state your name and address for the record.

7. CONSENT AGENDA
   7.1. **Meeting Minutes – January 17, 2018**
   Staff Recommendation: Approve and File
   7.2. **Quarterly Treasurer's Report**
   Staff Recommendation: Approve and File
   7.3. **Quarterly Ambulance Billing Report**
   Staff Recommendation: Approve and File
   7.4. **Budget Timeline**
   Staff Recommendation: Approve and File

8. REGULAR AGENDA
   8.1. **Amendment to Lease Agreement with St. Stephen's Episcopal Church**
   Staff will present information to the Board regarding an amendment to the lease agreement with St. Stephen's Episcopal Church to increase rent to $2,000 per month for use of the entire upper tier parking lot.
   Staff Recommendation: 1) Discuss; 2) Deliberate; 3) Approve Amendment to Lease Agreement with St. Stephen's Episcopal Church

8.2. **Construction Administration Authorization**
Staff will present information to the Board regarding a construction administration authorization.
Staff Recommendation: 1) Discuss; 2) Deliberate; 3) Authorize SKA Construction Administration Quote for $99,000 and Approve Prior Billing Payments for $36,487

8.3. **Stipend In-Lieu of Medical Benefits Program**
Staff will present an update to the Board regarding changes to the stipend in-lieu of medical benefits program.
Staff Recommendation: None – Information Only

8.4. **Approval of Side Letter of Agreement Between Moraga-Orinda Fire District and Moraga-Orinda Fire Chief Officers Association**
Staff will present information to the Board regarding a proposed Side Letter of Agreement Between Moraga-Orinda Fire District and Moraga-Orinda Fire Chief Officers Association to reduce the battalion chief examination education qualifications for the 2018 examination process only.
Staff Recommendation: 1) Discuss; 2) Deliberate; 3) Approve Side Letter of Agreement Between Moraga-Orinda Fire District and Moraga-Orinda Fire Chief Officers Association

9. COMMITTEE REPORTS
   - 9.1. **Finance Committee (Directors Anderson and Jorgens)**
   - 9.2. **Pension Review Ad Hoc Committee (Directors Barber and Jorgens)**
   - 9.3. **Board of Directors and Fire Chief Roles & Responsibilities and Rules of Procedures Update Ad Hoc Committee (Directors Famulener and Jorgens)**
   - 9.4. **Audit Ad Hoc Committee (Director Jex)**
   - 9.5. **Long Range Financial Plan Ad Hoc Committee (Directors Barber and Jex)**
   - 9.6. **Labor Negotiations Ad Hoc Committee (Directors Anderson and Jorgens)**

10. ANNOUNCEMENTS
   - 10.1. **Brief information only reports related to meetings attended by a Director at District expense** (Government Code Section 53232.3(d))
   - 10.2. **Questions and informational comments from Board members and Staff**
   - 10.3. **Communications Received**
   - 10.4. **Future Agenda Items**

11. ADJOURNMENT

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.

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 February 2, 2018, 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.

Grace Santos

Grace Santos, District Clerk

Moraga-Orinda Fire Protection District

BOARD OF DIRECTORS
REGULAR BOARD MEETING MINUTES
January 17, 2018

1. **Opening Ceremonies**
The Board of Directors convened in Open Session at 6:00 P.M. on January 17, 2018 at the Hacienda Mosaic Room, Moraga, California. President Barber called the meeting to order. Directors Anderson and Famulener were absent. Present were the following Directors and Staff:

President Barber	Dave Winnacker, Fire Chief	Jeff Sloan, Labor Negotiator
Director Jex	Gloriann Sasser, Admin Services Director	
Director Jorgens	Jonathan Holtzman, District Counsel	

2. **Public Comment**
There was no comment from the public.

3. **Closed Session**
At 6:00 P.M., the Board adjourned into Closed Session.

4. **Reconvene the Meeting**
President Barber reconvened the regular business meeting of the Moraga-Orinda Fire District Board of Directors at 7:09 P.M. Present were the following Directors and Staff:

President Barber	Dave Winnacker, Fire Chief	Jeff Sloan, Labor Negotiator
Director Jex	Gloriann Sasser, Admin Services Director	Kathy Leonard, Fire Marshal
Director Jorgens	Jonathan Holtzman, District Counsel	Grace Santos, District Clerk

5. **Report of Closed Session Action**
President Barber reported that the Board voted on Closed Session Item 3.4 – Liability Claim by Peter Nowicki against the Moraga Orinda Fire District for monetary loss and damages exceeding $146,934. This claim arose from a September 21, 2015 determination by the Contra Costa County Employees' Retirement Association that Mr. Nowicki had received overpayment of retirement benefits, which resulted in a retroactive reduction in retirement benefits and the imposition of a repayment obligation. Mr. Nowicki claims breach of employment contract and breach of the duty of good faith and fair dealing by the District, and promissory estoppel. Councilmember Jex moved to deny this claim based on the failure to timely submit a Government Tort Claim, and the failure to allege sufficient facts to support the claims of breach of employment contract, breach of the duty of good faith and fair dealing, and promissory estoppel. Councilmember Jorgens seconded the motion. The motion to deny the claim passed unanimously 3-0.

There was no reportable action taken on items 3.1 Conference with Labor Negotiator (Local 1230), 3.2 Conference with Labor Negotiator (Local 2700), and 3.3 Conference with Labor Negotiator (MOFCOA).

6. **Public Comment**
There was no comment from the public.

7. **Public Hearing**
7.1 Opportunity for public comments contesting weed abatement notification given by the Fire District
President Barber opened the public hearing and asked if there were property owners who had any objections to the costs of abatement. There were no comments from the public. President Barber closed the public hearing and confirmed the report for costs of abatement incurred by the Fire District in abating public nuisances on separate parcels of land within the Moraga-Orinda Fire District boundaries.

Director Jex asked when the money would be recovered, and if it is accrued as a claim. ASD Sasser stated that the cost of abatement is added to the property owner's tax roll, and that payment is usually received by the District in October of each year. She did not think that it has been included in accounts receivable in the past because it was always placed on the tax roll. If the amounts were larger, Director Jex suggested maintaining a record, for an accounting and control standpoint, so that the District can recover it.

Motion by Director Jorgens and seconded by Director Jex to adopt Resolution 18-04, Confirming and Adopting the Reported Costs Incurred by the Moraga-Orinda Fire District in Abating Public Nuisances on Certain Property within the District Pursuant to Health and Safety Code section 14912. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

7.2 Public Hearing to consider the proposed revision to the Schedule of Fees for District Services
President Barber opened the public hearing and asked if there were members of the public who wished to speak regarding the revision to the Schedule of Fees. There were no comments from the public. President Barber closed the public hearing.

Director Jorgens stated that sometimes it costs more to have a fee than it would to have no fee at all. The District should not be charging for a number of the items, especially to non-profits or for some organizations in the community. Has asked if staff has considered the cost of collecting the fees versus the cost of revenue, and if architects could do inspections or certify that plans have been designed properly for sprinkler systems and plan reviews. He asked if there were an alternate way that might be more economic for us but still get the job done.

FM Leonard stated that the District does not always charge everyone fees. The Town of Moraga is not charged for fireworks permits, and churches and non-profit fees are waived for certain services. When the fee study analysis was done, the entire organization was analyzed to find out the true cost of providing services. As a government agency, MOFD is not allowed to generate a profit, and it does so according to those guidelines. FM Leonard stated that the biggest revenue is from plan review and inspection fees. The purpose of plan review on a licensed architect submitted drawings are to insure that the local ordinances, fire code and application for that particular project meets the requirements of the District. We adopted an ordinance that is stricter than the fire code based on our fire history, climate and topography. Therefore, it is critically important to have plans double-checked by the District to make sure that they comply.

Director Jex asked if fees for compressed gas, cryogenics, flammable and combustible liquids were for an inspection due to the installation. FM Leonard stated that conducting inspections shows the District made an effort to ensure public safety through the installation and use of these particular applications.

Chief Winnacker stated that staff will provide the Board with an idea of how many errors per thousand or hundred are being identified during the plan check process, which will address concerns.

Director Jorgens asked if it should be combined in the budgeting process since it is a revenue-generating and cost-incurring part of the budget, and because it has also has staffing level requirements and affects the revenue.

FM Leonard stated that part of the fee schedule includes the California State Fire Marshal's mandated inspections, which include apartments, schools, dorms, assembly and institutions. The inspections and permits are required by the State Fire Marshal.

President Barber closed the public hearing.

Motion by Director Jorgens and seconded by Director Jex to adopt Resolution 18-05, A Resolution of the Moraga-Orinda Fire District Revising a Schedule of Fees for District Services. They directed staff to present a policy on a fee waiver for government and non-profit organizations. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

8. Consent Agenda
Items 8.1 Meeting Minutes and 8.4 Monthly Financial Report were pulled to discuss separately.

Motion by Director Barber and seconded by Director Jorgens to approve and file items 8.2 Monthly Incident Report, 8.3 Monthly Check/Voucher Register, and 8.5 CCCERA Investment Performance Review Report.

Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

District Clerk Santos noted that the Minutes of January 3, 2018 are incorrect by stating that Director Jex was present and attended the meeting. District Clerk Santos will correct the minutes to reflect that Director Jex was absent.

Motion by Director Barber and seconded by Director Jorgens to approve item 8.1 Meeting Minutes subject to the corrections. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

Director Jex commented on some significant differences on item 8.4 Monthly Financial Report that may have a significant impact on the District's plan. He asked if staff would include additional information or recommendations during the mid-year budget review. ASD Sasser stated that it is part the mid-year budget review. Narrative will also be included to explain significant variances, issues, and any budget adjustment recommendations.

Director Jorgens asked if staff would include an additional column in the report to include the current period budget number rather than the total budget next to it. ASD Sasser stated that information is included in the board packet.

Director Jorgens stated that many fire trails in his district have not been graded in years. He asked staff to consider conducting fire trail grading, to provide a schedule and include a map.

Motion by Director Jex and seconded by Director Jorgens to approve and file item 8.4 Monthly Financial Report. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

9. Regular Agenda

9.1 Resolution No. 18-01 Authorizing Investment of Monies in Local Agency Investment Fund

The District uses the State of California Local Agency Investment Fund (LAIF) for the investment of District funds. One of the requirements of participation in LAIF is for the Board to confirm the authority of District officers to order the deposit or withdrawal of funds in LAIF. Due to the new board officers and fire chief appointment, it is necessary to update the officers authorized to deposit or withdraw monies.

Motion by Director Jex and seconded by President Barber to adopt Resolution No. 18-01 Authorizing Investment of Monies in Local Agency Investment Fund. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

Director Jorgens suggested updating the members on the Public Facilities Financing Corporation. ASD Sasser stated it is written so that the Officers of the District are also the Board members of the Financing Corporation. She will review with District Counsel to see if any formal action needs to be taken.

9.2 Resolution No. 18-02 A Resolution of the Board of Directors of the Moraga-Orinda Fire Protection District Authorizing an Agreement That Designates Citibank, N.A. as a Provider of District Banking Services and the Fire Chief, Administrative Services Director and/or Fire Marshal to Execute District Checks, Drafts, Notes or Other Instruments for the Payment of Money

The District uses Citibank for banking services. Currently the Interim Fire Chief, Administrative Services Director and Fire Marshal are authorized signers on the Citibank accounts. Due to the appointment of a new fire chief, it is necessary to update authorized signers with Citibank. Staff recommends the Fire Chief, Administrative Services Director and Fire Marshal to be authorized signers.

Motion by Director Jorgens and seconded by President Barber to adopt Resolution No. 18-02 Authorizing an Agreement that Designates Citibank, N.A. as a Provider of District Banking Services and the Fire Chief, Administrative Services Director and/or Fire Marshal to Execute District Checks, Drafts, Notes or Other Instruments for the Payment of Money. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

9.3 Resolution No. 18-03 A Resolution of the Board of Directors of the Moraga-Orinda Fire Protection District Approving an Investment Policy for District Funds

The District's Investment Policy requires the Board to annually review the District's Investment Policy. The Policy has been reviewed by staff. No changes are recommended.

Director Jorgens stated that some of the District's funds are now being invested in slightly more aggressive investments. He asked if the money is being invested in treasuries that have a positive return and if it meets the District's investment policy. ASD Sasser that the District issued debt to construct Station 43 and due to the delay in construction, the money was in a money market account at Citibank earning 0.6% interest. She worked with the bank to open a certificate of deposit for twelve months that is at 1.2%. The state of California requires collateralization, and Citibank provided the proof that it was collateralized appropriately for the amount that was above FDIC insurance.

Motion by Director Jorgens and seconded by Director Jex to adopt 9.3 Resolution No. 18-03 A Resolution of the Board of Directors of the Moraga-Orinda Fire Protection District Approving an Investment Policy for District Funds. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

9.4 St. Stephens Lease Amendment

President Barber stated that this item would be deferred to the next Board meeting. He has a conflict on this matter and should take no part in the deliberations or the vote. By recusing himself, it results in the lack of a quorum.

9.5 Correction to Board Officers

Each year, the Board of Directors elects new officers, Finance Committee Members and District Liaisons. On December 20, 2017, the Board of Directors elected new officers and erroneously advanced one Director out of order. Director Jorgens should have been moved into the Secretary position and Director Anderson should have been moved to the Treasurer position.

Director Jorgens questioned the language of the motion and suggested making a motion to change the officers instead of making a correction. President Barber stated that it has been an MOFD tradition to follow a certain process. The Board may want to consider documenting the process and suggested looking at the issue at a future meeting.

Motion by President Barber and seconded by Director Jorgens to approve Director Craig Jorgens as Secretary and Director Steve Anderson as Treasurer. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

9.6 Update on Implementation of GovInvest Actuarial Consulting and Technology Services

In June 2017 the Board authorized an agreement with GovInvest for actuarial consulting and technology services. The services include actuarial software, actuarial valuations, accounting valuations and actuarial consulting. The software provides real-time information, instant actuarial and financial analysis and insights into how to pay down unfunded liabilities. The Board requested an update on the implementation status.

This project has three main components:

- Actuarial valuation - completed and presented to the Board in September 2017. This service was paid for in the amount of $1,482.
- Pension module – complete. The District has not paid for this module.
- OPEB module – all requested data was submitted by the District to GovInvest in 2017. The OPEB module requires more programming and takes longer to implement than the pension module. The OPEB module will be completed by GovInvest in March 2018. The District has not paid for this module.

Director Jorgens asked if the District is now able to run scenarios. ASD Sasser stated that they can now run scenarios for the pension side, but not yet for the OPEB side.

This item was for informational purposes only. No action was required.

9.7 Revise the Budget Development Policy

The District has a Board adopted Budget Development Policy (Policy). The purpose of the Policy is to provide a process for developing the Annual Operating Budget (Budget). At the December 20, 2017 Board meeting, the Board discussed changing the budget development process.

The current budget development process is as follows:

1. Proposed budget presented to the Finance Committee in May for public and Finance Committee direction.
2. Proposed budget presented to the Board in May for detailed review, public comment and Board direction.
3. Budget adopted by the Board in June prior to the beginning of the next fiscal year after deliberation and final changes.

The Board discussed the role of the Finance Committee and the role of the full Board in the budget development process. The Board discussed the value of being brought into the budget process earlier in the process.

Staff has updated the Policy based on the Board discussion to reflect the following:

1. Proposed budget presented to the Board in May at a public budget workshop for detailed review, public comment and Board direction.
2. The proposed budget is revised based on direction received at the budget workshop, then presented to the Board in May at a regular Board meeting for further detailed review, public comment and Board direction.
3. Budget adopted in June prior to the beginning of the next fiscal year after deliberation and final changes.

Motion by Director Jex and seconded by Director Jorgens to adopt the revised Budget Development Policy. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

9.8 Consider Establishment of a Labor Negotiations Ad Hoc Committee

The Board would like to consider establishment of a Labor Negotiations Ad Hoc Committee.

Motion by Director Jorgens and seconded by Director Jex to establish a Labor Negotiations Ad Hoc Committee and nominate Directors Jorgens and Anderson to be on the Committee. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

9.9 Increased Hiring Authorization Request

In July 2017, the Board approved hiring four additional firefighters in conjunction with accepting a SAFER grant. A hiring process was conducted and three recruits entered the Alameda County Fire Department academy on January 16th 2018. A planned fourth recruit withdrew from the process two weeks ago and replacement candidates are currently being screened to take his place. MOFD developed a hiring list in late 2017 with 19 candidates (12 of whom scored above 80%). Given the current fire department hiring trends and the competitive job market, this list will soon be obsolete. Due to its size and emphasis on paramedic skills during the probationary period, MOFD is generally unable to process more than six new employees at any given time. Further, from July 1st to December 31st 2017 MOFD averaged 3.67 overtime positions per day. Lastly, up to six members may retire this year resulting in impacts to overtime and staffing.

Vince Wells, President of Local 1230, stated that he appreciated the Fire Chief's efforts to maintain the staffing shortages, however they have not heard the Board's final position on whether or not they are in favor of supporting the concept of returning to the 19-member staffing, and to reopen the second ambulance. As the Board looks at hiring and staffing, that should be something that needs to be decided first. The 5-year plan stated it to be re-established on July 1, 2018, and Local 1230 wants to make sure it is part of the discussion. Mr. Wells suggested tabling the discussion prior to making a significant decision without the attendance of the full Board.

Chief Winnacker stated that there is nothing about this decision that would positively or negatively impact a staffing plan. They are simply seeking authorization to increase the hiring of members that are anticipated to be needed based on planned departures. This would not affect the size of the daily staffing.

Motion by Director Jex and seconded by Director Jorgens to increase the hiring of firefighters from 4 to 6. Said motion carried a unanimous 3-0 roll-call vote (Ayes: Barber, Jex and Jorgens; Absent: Anderson and Famulener).

9.10 Teeter Plan and County Treasury

Contra Costa County (County) utilizes the Teeter Plan for property tax apportionments. The Teeter Plan allows the County to allocate property taxes to local government jurisdictions at 100% of the billed amount rather than actual tax collections. The County apportions these levies to all taxing jurisdictions although 100% of the taxes have not been collected. In return for allocating 100% of the billed amount, the County collects all future delinquent tax payment along with penalties and interest.

In addition to the Teeter Plan, the County also allows local government agencies to voluntarily participate in the County Treasury. For agencies who participate in the County Treasury, the County allows agencies to draw on amounts that are on the tax roll, even if the County has not yet received the tax payment from taxpayers.

The District participates in the County Treasury. This provides cash flow to the District before property tax payments are paid by taxpayers. The District borrows from the County Treasury when required to meet cash obligations. The actual cost to utilize the County Treasury is nominal (less than $1,000 per year in fees).

There has been Board discussion regarding moving away from utilizing the County Treasury and becoming completely financially independent.

The District's pension obligation bond issuance requires Contra Costa County to transfer to the bond trustee on December 20th of each year, an amount equal to the debt service payment for the bonds in the next calendar year. This would reduce the cash payment received by the District every December through 2020 ($3.5M - $3.9M).

Since July 2014, the District used the County Treasury 16 times (negative balances shown in Attachment A.) During the current fiscal year, the District used the County Treasury one time to date.

The District's financial reserves have increased significantly over the last several years which provides additional options for the District. However, the District still needed to utilize the County Treasury in November 2017. Use of the County Treasury provides the District with cash flow security that we will not have if we leave the County Treasury. Staff recommends the District remain in the County Treasury, continue to monitor its use and report to the Board on this topic again in January 2019.

If the District decides to leave the County Treasury, the County will assist the District to transition to a settling agency and remove all funds from the County Treasury.

Director Jex stated that on December 2014/15 and 2015/16 there was substantial borrowing, and in 2017/18, there was a $9M swing. He asked what happened. ASD Sasser explained that in June 30, 2016, the District had $771K. In June 30, 2017, the District had $4M, which is what effectively carried us through this year. In November, the District went to -$108K because it had $4M to start. At the bottom of Attachment A, the cash payment is received in December but is recorded the following month due to the timing of when we get the County reports.

Director Jorgens suggested having a discussion at a future Board meeting about setting reasonable targets for the District's various funds. ASD Sasser explained that the District can invest through the County Treasury in LAIF, but we are just limited to LAIF. Director Jorgens stated that the District should have a goal to have more reserves and directed staff to revisit the minimum fund balance level.

9.11 Planned Contributions to the Pension Rate Stabilization Program

In 2017 the District began participating in the Public Agency Retirement Services pension rate stabilization program (PRSP). The PRSP is an irrevocable trust designed exclusively for California public agencies to prefund pension costs.

The money in the PRSP is invested in the Capital Appreciation Index Plus Fund. As of November 30, 2017 (most recent available), the one-year investment return of the fund is 15.07%.

To date, the District contributions to the PRSP have been approximately the same dollar amount as the contributions into the District's other post-employment benefits (OPEB) trust fund. Now that the District has implemented the GovInvest actuarial software, more information is available regarding the District's pension costs. For example, the District can now determine projected pension costs based on various discount rates and updated investment returns. The discount rate used by the Contra Costa County Employees' Retirement Association is 7%.

An update to the District's Long Range Financial Plan will be presented in February 2018. Staff requests the Board provide direction regarding the discount rates to be used for planned contributions to the PRSP. Multiple options could be calculated and discussed.

Director Jorgens stated that it would be reasonable for the District to use the same philosophy and the same targets for rates of return for pension obligations as it does the OPEB obligations. ASD Sasser stated that as part of the mid-year budget process, she would update the 15-year Long Range Financial Plan. One of the line items is how much money the District plans to put into the Pension Trust. Director Jorgens suggested using the matrix that GovInvest did for the District that showed what happened with different numbers of years and discount rates.

10. Committee Reports

10.1 Finance Committee (Directors Anderson and Jorgens)

Director Jorgens reported that the Committee had a discussion with ASD Sasser which included the structure of the budget approval process, having a Board discussion about the reserve policy and look at some benchmarking, the discount rate, and breaking out the unfunded pension liability line item from the basic pension cost.

10.2 Pension Review Ad Hoc Committee (Directors Barber and Jorgens)

The Committee has not met.

10.3 Board of Directors and Fire Chief Roles & Responsibilities and Rules of Procedures Update Ad Hoc Committee (Directors Famulener and Jorgens)

The Committee has not met.

10.4 Audit Ad Hoc Committee (Director Jex)

Director Jex reported that the Committee will not meet until March to prepare for the annual audit.

10.5 Long Range Financial Plan Ad Hoc Committee (Directors Barber and Jex)

President Barber reported that the Committee has not met.

11. Announcements

11.1 Brief information only reports related to meetings attended by a Director at District expense

Director Jorgens reported that he, Directors Anderson and Famulener attended the County Fire Boards and Commissioners Association meeting in December. The speaker was CAL FIRE Staff Chief David Shew.

11.2 Questions and informational comments from Board members and Staff

Chief Winnacker stated that there was an error in the response time listed on the item 8.4 Monthly Incident Report for the two vegetation fires. He is still looking into where the error occurred, which he believed lies somewhere within Tableau, the software the District uses to compile the run data.

11.3 Fire Chief Updates – January 2018

11.3.1 Thomas Fire Report

Captain Mike Lacy gave a PowerPoint presentation on the Tubbs Fire, which occurred on October 8, 2017 in the North Bay. He stated that the fire has a very real potential to occur in our district. The Board thanked Captain Lacy for his report.

11.4 Communications Received
There was nothing to report.

11.5 Future Agenda Items
There was nothing to report.

12. Adjournment
At 9:21 P.M., President Barber called for adjournment of the regular meeting.

Grace Santos
Secretary to the Board

For an audio recording of this and other Board meetings, please visit the MOFD District Board Meeting webpage
http://www.mofd.org/board/meetings

MORAGA-ORINDA FIRE DISTRICT
TREASURER'S QUARTERLY INVESTMENT REPORT
DECEMBER 31, 2017

Type of Investment	Financial Institution	Date of Maturity	Par Value/ Original	Market Value	Rate of Interest	Fiscal Year-to-Date Income
Cash	Contra Costa County	N/A	1,165,462	1,165,462	0.00%	0
Cash	Citibank	N/A	912,749	912,749	0.00%	0
Cash	Citibank	N/A	252,584	252,584	0.00%	0
Local Agency Investment Fund	Local Agency Investment Fund	N/A	5,585,365	5,574,717	1.20%	11,720
Money Market	Wells Fargo Government Money Market Fund	N/A	368,589	368,589	0.01%	671
U.S. Treasury Note	Wells Fargo	6/30/2018	3,007,796	2,965,160	1.38%	0
Money Market	Citibank	N/A	745,751	745,751	0.65%	3,809
Certificate of Deposit	Citibank	11/29/2018	2,000,000	2,000,000	1.20%	0
Money Market	US Bank	N/A	0	0	0.20%	222
Total			14,038,296	13,985,012		16,422

Average Weighted Yield 0.81%

Market values obtained from monthly statements issued by Citibank and Wells Fargo Bank

Sufficient funds exist to meet the Districts financial obligations for the next six months using the County of Contra Costa's "Teeter Plan". In 1949, the California Legislature enacted an alternative method for the distribution of secured property taxes to local agencies known as the "Teeter Plan". The "Teeter Plan" is a tax distribution procedure by which secured tax tolls are distributed to the District on the basis of the tax levy, rather than on the basis of actual tax collections. While the County bears the risk of loss on delinquent taxes that go unpaid, it benefits from the penalties associated with these delinquent taxes when they are paid. In turn, the "Teeter Plan" provides the District with stable cash flow and the elimination of collection risk.

The December 2017 investments are in accordance with the District adopted investment policy.

1.29.2018

Gloriann Sasser Date
Administrative Services Director

Wittman Enterprises LLC
Moraga-Orinda Fire District
Ambulance Billing-Fiscal Year 2017/2018-Revenue to Date
as of 12/31/17

	GROSS REVENUE(1)	MEDICARE WRITE OFFS (2)	MEDI-CAL WRITE OFFS (3)	RESIDENT WRITE OFFS (4)	OTHER CONTRACTUAL WRITE OFFS (5)	NET REVENUE (6)	CASH RECEIPTS (7)	REFUNDS (8)	NET RECEIPTS (9)	BAD DEBT WRITE OFFS (10)	ADJUSTMENTS (11)	NEW A/R BALANCE (12)
JULY '17	$ 190,216.25	$ 79,150.38	$ 10,944.99	$ 25,698.65	$ (1,249.82)	$ 75,672.05	$ 80,356.64	$ 88.52	$ 80,268.12	$ 1,863.00	$ 5.40	$ 576,208.69
AUGUST '17	$ 217,198.05	$ 85,709.12	$ 12,568.37	$ 9,768.16	$ -	$ 109,152.40	$ 69,325.12	$ 1,348.65	$ 67,976.47	$ 46,873.60	$ 5.72	$ 570,516.74
SEPTEMBER '17	$ 232,289.15	$ 111,052.26	$ 13,795.10	$ 10,334.02	$ 3,151.66	$ 93,956.11	$ 81,131.05	$ 228.74	$ 80,902.31		$ (277.69)	$ 583,292.85
OCTOBER '17	$ 254,235.25	$ 110,608.06	$ 18,500.74	$ 44,433.94	$ 765.08	$ 79,927.43	$ 63,165.11	$ 2,597.61	$ 60,567.50	$ 10,016.65	$ 7.66	$ 592,643.79
NOVEMBER '17	$ 225,144.60	$ 94,294.44	$ 18,948.73	$ 32,181.68		$ 79,719.75	$ 131,102.62	$ 150.00	$ 130,952.62		$ (3,063.00)	$ 538,347.92
DECEMBER '17	$ 269,323.95	$ 111,321.12	$ 24,094.47	$ 26,860.96	$ 805.09	$ 106,242.31	$ 101,959.22	$ 1,287.98	$ 100,671.24	$ (1,390.00)	$ 0.40	$ 545,309.39
JANUARY '18												
FEBRUARY '18												
MARCH '18												
APRIL '18												
MAY '18												
JUNE '18												
YEAR TO DATE TOTALS	$ 1,388,407.25	$ 592,135.38	$ 98,852.40	$ 149,277.41	$ 3,472.01	$ 544,670.05	$ 527,039.76	$ 5,701.50	$ 521,338.26	$ 57,363.25	$ (3,321.51)	
YTD PERCENTAGE OF REVENUE		42.65%	7.12%	10.75%	0.25%	39.23%	37.96%	0.41%	37.55%	4.13%	-0.24%	
YTD PERCENTAGE OF NET REVENUE									95.72%			

1. GROSS REVENUE – Charges billed within the month.
2. MEDICARE WRITE OFFS – Contractual write down that MOFD is obligated to take as a Medicare provider
3. MEDI-CAL WRITE OFFS - Contractual write down that MOFD is obligated to take as a Medi-Cal provider
4. RESIDENT WRITE OFFS – Write Downs that are taken according to MOFD's resident policy
5. OTHER CONTRACTRUAL WRITE OFFS – Contractual write downs that are taken for other federal or state agencies
6. NET REVENUE – Revenue after all contractual obligations are taken
7. CASH RECEIPTS – Payments that are received in month.
8. REFUNDS – Overpayments that are refunded.
9. NET RECEIPTS – Payments after refunds have been removed.
10. BAD DEBT – Accounts that have been sent to the collection agency.
11. ADJUSTMENTS – Any adjustment that has been made to a previously billed account, (for example, incorrect mileage).
12. NEW A/R BALANCE – Balance of all accounts in system at the end of the month and in general ledger account #1051-Receivables – Ambulance Billing.

Annual Operating Budget Timeline
Fiscal Year 2018-2019

February	
2/6/18	Fire Chief assigns Goals and Objectives to managers
2/21/18	Board adopts mid-year budget adjustments
2/27/18	Goals and Objectives due to Fire Chief
2/27/18	Management Budget Meeting – Operating, Capital and Personnel budget worksheets distributed
All Month	Budget parameters determined
March	
3/20/18	Operating, Capital and Personnel budget worksheets due to Finance
April	
4/10/18	Draft Budget to Fire Chief
4/16-20/18	Fire Chief meets with managers regarding budget requests
May	
5/2/18	Public Board Budget Workshop
5/16/18	Proposed Budget presented to Board
June	
6/20/18	Board adopts Annual Operating Budget

Moraga-Orinda Fire District

TO: Board of Directors

FROM: Dave Winnacker, Fire Chief

DATE: February 7, 2018

SUBJECT: Item 8.1 – St. Stephen's Lease Amendment

BACKGROUND

In April 2016, MOFD entered into a lease with St Stephen's Episcopal Church to house temporary Fire Station 43 in the upper tier of their parking lot. While the lease remains in force for the duration of the station construction, it also referenced an anticipated construction timeline of 12-24 months and limited MOFD use to the North West portions of the parking lot. As a result of delays in construction of the replacement fire station, MOFD will continue to occupy the space through 2019 and has used, and may continue to use, additional areas of the upper tier of the parking lot. In December 2017, St Stephens contacted MOFD expressing their interest in re-negotiating portions of the contract. The attached proposed amendment includes an increase in rent to $2,000 per month for use of the entire upper tier and states that the contract will be renegotiated if MOFD continues to occupy the space as of April 2019.

ATTACHMENT

1) Attachment A – St Stephens Lease Amendment

RECOMMENDATION

1) Discuss; 2) Deliberate; 3) Approve Amendment to Lease Agreement with St. Stephen's Episcopal Church

AMENDMENT TO LEASE AGREEMENT

1. This Amendment is made on **January 1, 2017** ("Effective Date") by St. Stephen's Episcopal Church ("Landlord") and the Moraga-Orinda Fire Protection District ("Tenant"), parties to the Lease Agreement effective April 6, 2016 concerning the Northwest Parking Lot located on the real property located at 66 St. Stephens Drive, Orinda, CA 94563 ("Lease Agreement").

2. The Lease Agreement is amended as follows:

   Recital A is amended to state:

   > "The Tenant desires to lease from Landlord a portion of the Property consisting of both the western and eastern portions of the Northwest Parking Lot, adjacent to the intersection of St. Stephens Drive and Las Vegas Road (the Premises"), as depicted in Exhibit A attached hereto and incorporated herein by this reference."

   Recital D is added to the Lease Agreement:

   > "D. In recognition of the fact that construction projects may be subject to unanticipated delays, the parties agree to renegotiate this Agreement if Tenant occupies the Northwest Parking Lot beyond April 2019."

   Section 2.2.1 is added to the Lease Agreement:

   > "2.2.1. In recognition of Tenant's use of both the eastern and western portions of the Northwest Parking Lot, the Parties agree that starting on **January 1, 2018** and until the expiration of the Lease Agreement, Tenant shall pay Landlord rent for the Premises, payable in installments of Two Thousand Dollars ($2,000.00) per month in accordance with the requirements of Sections 2.2 and 11.4.2 of the Lease Agreement."

3. Except as set forth in this Amendment, the Lease Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this Amendment and the Agreement, or any earlier amendment, the terms of this Amendment will prevail.

IN WITNESS WHEREOF, Landlord and Tenant agree to the amendments stated herein as of the Effective Date.

LANDLORD:
ST. STEPHEN'S EPISCOPAL CHURCH,
a California nonprofit public benefit corporation

By: ______________________________
St. Stephen's Episcopal Church
Parish Administrator

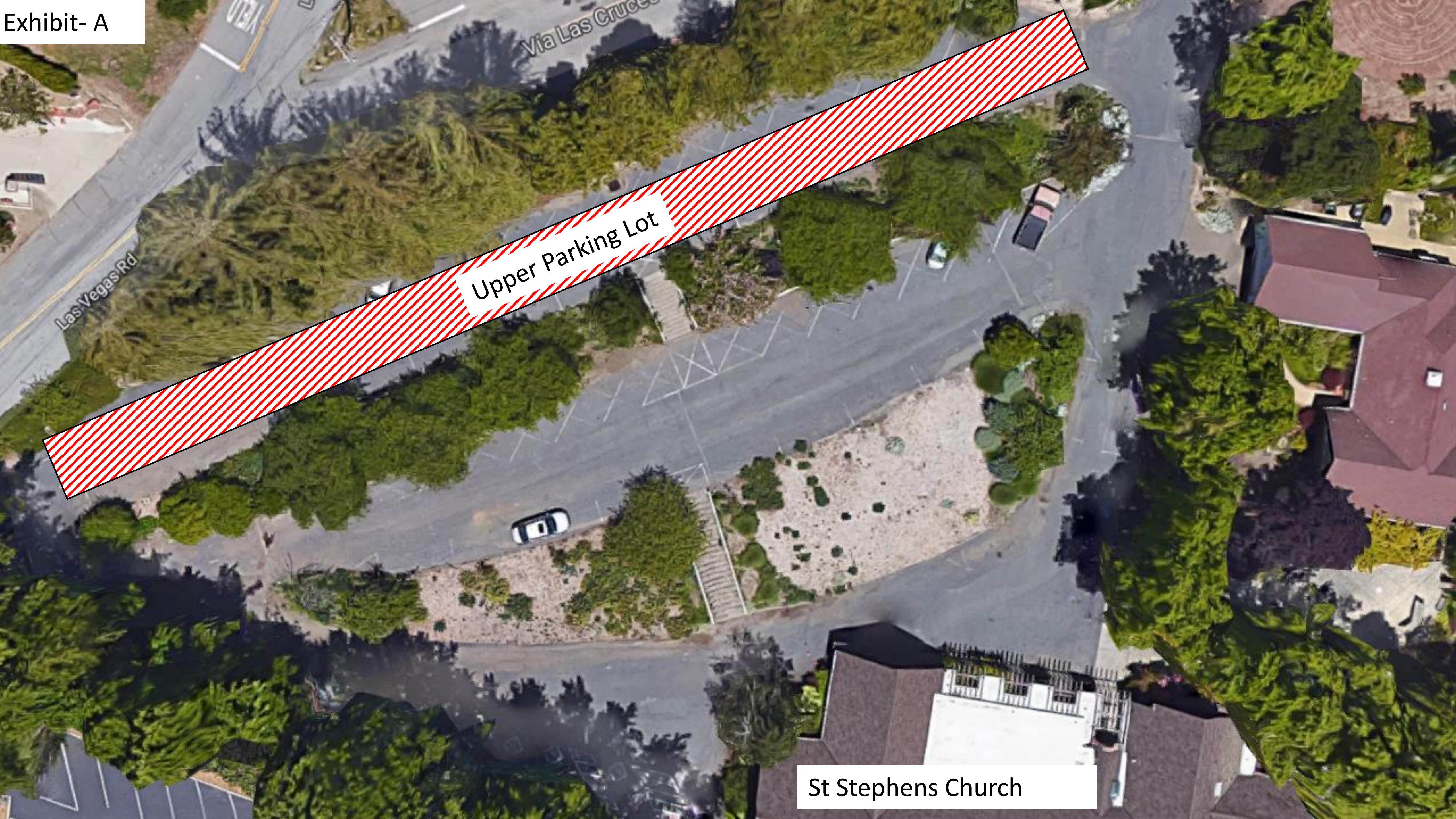
TENANT:
MORAGA-ORINDA FIRE PROTECTION DISTRICT,
a fire protection district

By: ______________________________
David Winnacker, Fire Chief

APPROVED AS TO FORM

By: ______________________________
Jonathan Holtzman
General Counsel

Exhibit- A


Via Las Cruces
Las Vegas Rd
Upper Parking Lot
St Stephens Church

Moraga-Orinda Fire District

TO: Board of Directors

FROM: Dave Winnacker, Fire Chief

DATE: February 7, 2018

SUBJECT: Item 8.2 – Construction Administration Authorization

BACKGROUND

MOFD retained Shaw Kawasaki Architects (SKA) to design the replacement facility for Station 43. During the period from November 17, 2015 to January 17, 2018 SKA completed and billed various changes to the design and construction administration functions. This work was billed but portions were not paid pending clarification of several questions posed by the board. After meeting with SKA, the outstanding amount was reduced by approximately $37,000 for previously billed work with inclusion of language clarifying that this payment will settle all outstanding SKA invoices.

During the period that FSG was anticipated to construct Fire Station 43, the board approved a quote from SKA for $79,000 for construction management. With various changes to the project, the need to update inputs from consultants, and the pending decision to award the contract to a new construction company, SKA's construction administration quote has been resubmitted for $99,000.

ATTACHMENT

1) Attachment A – MOFD Station 43 Re-Bid and CA for New Contractor

RECOMMENDATION

1) Discuss; 2) Deliberate; 3) Authorize SKA construction administration quote for $99,000

SHAH
KAWASAKI
ARCHITECTS

January 23, 2018

Chief David Winnacker
Moraga Orinda Fire District
1280 Moraga Way
Moraga, CA 94556

Re: MOFD Station 43 Re-Bid and CA for New Contractor

Dear Chief Winnacker:

Shah Kawasaki Architects Inc. (SKA) is pleased to submit this proposal for bid assistance and construction administration design services to Moraga Orinda Fire District (MOFD). The project consists of a new 5,100 square foot fire station located at 20 Via Las Cruces Dr. in Orinda, CA.

In 2011 SKA began the design for the project, completed construction documents in 2012 and most of the bidding by early 2013. The project was put on hold. The project was reactivated in 2015, permits renewed, re-bid and a General Contractor (PMC) selected. CA services commenced in late 2016 and the project was put on hold in June 2017 after completion of the submittal process. In the latter half of 2017, MOFD hired a new construction manager (Consolidated CM), considered retaining a new contractor (FSG), and ultimately decided to re-bid the project to retain a new Contractor. For SKA, this will mean re-doing bid and CA services previously completed.

Scope of Services: SKA proposes to provide architectural, structural, mechanical, electrical and landscape Bid and Construction Administration Support Services consisting of the following:

- Prepare a “conformed” or clean bidding set incorporating changes requested by MOFD and issued as addenda and bulletins over the last 18 months.
- Incorporate Consolidated CM constructability review comments, and/or discuss reasons for non-incorporation.
- Respond to written requests for information (RFI’s) during the bid and construction phases.
- Process submittals including shop drawings, product submittals and samples.
- Attend (1) meeting with MOFD and Consolidated CM to review constructability comments (completed 1/18/18).
- Attend (15) Owner-Architect-Contractor (OAC) site meetings including pre-bid, pre-construction and punch lists, and prepare observation reports / punch lists in conformance with the Essential Service Act.
- Attend (20) OAC teleconference meetings lasting no more than 1 hour each.
- Respond to periodic Construction Manager or MOFD questions via phone or e-mail
- Issue supplemental drawings or Bulletins if required for clarification.

Schedule: Services for the above scope of work will commence on January 18, 2018 and complete by May 31, 2019.

Compensation: We propose to provide the above services inclusive of normal expenses for a total fixed fee of ninety-nine thousand dollars ($99,000). Billing will be monthly based on a percentage of completion. 90% of submittals are assumed to be made electronically. We assume and will confirm that our consultants are willing to participate moving forward.

Shah Kawasaki Architect has agreed to remove all charges to MOFD for stream related permit services. As of January 17, 2018, MOFD's unpaid invoices for all other work totaled $36,487. Upon SKA's receipt of this outstanding amount, SKA will accept this as final payment for services performed between November 17, 2015 and January 17, 2018.

Amendment: If the above proposal meets your approval, your signature below will serve as your acceptance of this proposal as an amendment to our agreement dated November 17, 2015, and extension of that agreement to May 31, 2019. The terms of the agreement apply to this amendment.

Please return a copy of this proposal/amendment after your execution.

Sincerely,

Alan Kawasaki
Principal
Shah Kawasaki Architects

Approved by Chief David Winnacker Date

570 10th Street, Suite 201 OAKLAND, CA 94607 www.skarc.com TEL 510.663.6090 FAX 510.663.6093

Moraga-Orinda Fire District

TO: Board of Directors

FROM: David Winnacker, Fire Chief
Gloriann Sasser, Administrative Services Director

DATE: February 7, 2018

SUBJECT: Item 8.3 - Update Regarding Stipend In-Lieu of Medical Benefits Program

---

SUMMARY

In late 2016, the District's outside tax counsel determined that allowing employees to receive deferred compensation in-lieu of District health benefits conflicts with IRS rules and seriously endangers the tax-exempt status of health benefits provided to all employees. To avoid that significant risk, the District had to stop making in-lieu payments to deferred compensation. The District has been meeting with Local 1230 since late 2016 regarding this issue, but its attempts to resolve it have been unsuccessful.

BACKGROUND

Since 2010, the District has through Board Resolution No. 10-13 (**Attachment A**) offered a monthly stipend to employees who opt-out of the District's medical insurance because they have coverage through a spouse or other employment. The stipend was paid directly into participating employees' 457(b) deferred compensation accounts. This benefit is not part of any of the District's Memoranda of Understanding (MOU) with unions. In 2017, only 17 employees participated in the program (15 in the unit represented by Local 1230, and 2 in the unit represented by Local 2700.)

The issue was originally flagged by insurance brokers Keenan & Associates ("Keenan") in December 2015, after the District hired them to provide brokerage services and review the District's insurance offerings in order to improve the options available to employees. As part of its services, Keenan reviewed the District's Section 125 Cafeteria Plan and in-lieu program. In July 2016, it informed the District that a Section 125 Cafeteria Plan cannot include any benefit that defers the receipt of compensation. When a cafeteria plan violates this rule, it is deemed disqualified and the amounts elected as nontaxable benefits under the plan are treated as taxable gross income for the employee. Keenan recommended the District consult with legal counsel regarding the program.

Outside legal counsel reviewed the medical in-lieu benefit and on September 9, 2016 issued a memorandum (**Attachment B**) advising the District that allowing employees to choose to receive deferred compensation in-lieu of medical benefits creates significant income tax issues for both the District and its employees and should be changed immediately. Failure to correct the issue could lead to the value of all District health benefit contributions being deemed part of employees' taxable income, which they would have to report and pay income tax on.

The District notified Local 1230 about this issue soon after receiving the September 9, 2016 memorandum, and began meeting with Local 1230 on the issue December 20, 2016. Since that time, the District has been working with the Union in an attempt to identify a viable, mutually acceptable alternative to the established in-lieu program that would protect all employees from the potential tax liability of benefits being included as gross income. Several potential alternatives were explored as part of that process:

1. In December 2016, the District discussed with Local 1230 the option of eliminating the program as of the beginning of 2017 and making a one-time cash payment to each employee already enrolled in the program for 2017 that was equivalent to one-year of the in-lieu stipend, to compensate them for the loss of benefit. The employees would have then been able to come back onto the District's medical insurance during the next open enrollment in late 2017. This option was not accepted by Local 1230. The District instead chose to continue paying the stipend through the end of 2017 while discussions continued.

2. Paying monthly medical in-lieu stipends as cash instead of as deferred compensation. Local 1230 was informed in December 2016 that this alternative was not acceptable to the District because:

    a. If in-lieu payments are made as cash, they would have to be included when calculating participating employees' FLSA overtime rates, increasing the value of the benefit beyond what was contemplated when the program was initiated and creating inequity because employees in the same classification would have different overtime rates. It would also create significant administrative complexities.

    b. Under federal law, cash payments may only lawfully be provided as an option "in-lieu" of tax-exempt medical benefits if those payments are "incidental" to the overall cost of the plan. If cash in-lieu payments are more than "incidental," the health plan is deemed not to be a "Bona Fide" plan, and the benefits again lose their tax-exempt status for all employees. In 2017, the District's in-lieu payments equaled more than 15% of its total plan payments. Under past guidance from the Department of Labor, "incidental" has been defined as less than 20% of total plan distributions. Although that standard was rejected as a hard and fast rule in the recent *Flores v. City of San Gabriel* case, no clear replacement guidance was provided. *Flores v. City of San Gabriel* created significant legal exposure and many unanswered questions for public agencies that offer cash in-lieu payments. There is a significant danger that the District's in-lieu payments would be deemed non-incidental, which would have wide-ranging and undesirable tax and overtime impacts on District employees.

3. Paying monthly medical in-lieu stipends into a Retiree Health Reimbursement Arrangement (HRA) instead of into a 457(b) deferred compensation account. This option was determined to be not viable because HRAs, like deferred compensation contributions, cannot be funded through a Section 125 Cafeteria Plan.

4. Paying monthly medical in-lieu stipends into a "stand alone" HRA (e.g., an HRA which can be used for current medical expenses without concurrent enrollment in health insurance) instead of into a 457(b) deferred compensation account. In addition to the general inability to fund HRAs through a Section 125 Cafeteria Plan, this option is not viable because "stand alone" HRAs can no longer be offered by the District because of Affordable Care Act (ACA) requirements.

5. Making additional contributions to the Section 125 Flexible Spending Accounts that are equal in value to the medical in-lieu stipends previously paid as deferred compensation. IN discussions with Local 1230, the District explained that this option has two significant problems. First, the federal government caps the amount that can be contributed each year to such accounts (currently, at $2,650). Second, contributions to Section 125 Flexible Spending Accounts are primarily “use it or lose it” on an annual basis – only $500 can be carried over to the next year, and that carryover is counted against the maximum contribution for that year.

6. Paying monthly medical in-lieu stipends into a Health Savings Account (HSA) instead of into a 457(b) deferred compensation account. This alternative is not feasible because HSAs must be used in conjunction with a high deductible health plan. The District uses CalPERS for medical insurance, and CalPERS does not offer a high deductible health plan.

7. Paying monthly medical in-lieu stipends into the ICMA VantageCare Retirement Health Savings Program (RHS) instead of into a 457(b) deferred compensation account. The IMCA RHS is a unique product exclusive to public sector employers, which takes the form of an “integral part trust.” It was proposed as an alternative by Local 1230 in Spring 2017. Staff subsequently researched the option, including providing the ICMA RHS program documents to outside legal counsel for review. Based on that review, legal counsel determined that neither the ICMA RHS program nor any other similar RHS is a viable option because:

    a. The ICMA RHS program is not structured to accept medical in-lieu contributions, because it requires that any contribution of employee compensation must be mandatory. It does not allow employees to choose whether or not to make such contributions or to subsequently revise the contribution amount. Because District employees eligible to opt out of District health benefits can choose whether or not to do so, the program does not allow or provide for contributions triggered by that decision.

    b. While it is *possible* that an RHS program could be designed to accept medical in-lieu contributions, given the significant legal issues and risks involved, legal counsel advised that the District obtain a private letter ruling from the IRS before pursuing any such approach. Obtaining such a private letter ruling would take an unpredictable amount of time, and would cost $30-35,000. The District decided this option was not feasible.

8. Making participation in the opt-out mandatory for any employee with available alternative coverage (e.g., requiring that any employee with access to alternative coverage *must* opt out of District-provided benefits), in conjunction with the ICMA VantageCare RHS or any other vehicle. This alternative would theoretically address the issues that arise because opt-out is optional, but it would also expose the District to significant ACA penalties, be extremely challenging to implement, and potentially force currently participating members out of District sponsored health care plans. Accordingly, it is not a viable alternative.

On September 15, 2017, after discussions had been unsuccessful, the District sent a letter to Local 1230 providing formal notice of the District’s intent to terminate all contributions to deferred compensation in-lieu of medical contributions as of the end of 2017 (**Attachment C**.) In the letter, the District once again explained that the change was legally necessary to protect the tax-free status of the District’s cafeteria plan and keep District contributions to health premiums for all members non-taxable. The District also requested that Local 1230 inform their membership of the upcoming termination of the program as soon as possible, since open enrollment for 2018 medical insurance had already begun and the termination of in-lieu deferred compensation payments could influence member’s health plan elections. The District then met formally with Local 1230 twice, but made no further progress. At the second meeting, Local 1230 requested mediation (which is not required under District policy or state law) and asserted its intent to request factfinding over the issue if necessary. On November 29, 2017 the District informed Local 1230 that the meet and confer process was exhausted and that the parties were at an impasse. The Board subsequently denied Local 1230's request for mediation.

On December 20, 2017, the Board adopted Board Resolution No. 17-18 (**Attachment D**), modifying the stipend in-lieu of medical benefits program to provide that payments would stop being made into deferred compensation accounts as of January 1, 2018, and equivalent amounts would instead be placed in a separate account pending full satisfaction of negotiation obligations. The program was modified to prevent continuing risk to the tax-free status of the health benefits of all District employees, while at the same time preserving the status quo to the greatest extent possible pending completion of negotiations and impasse procedures, including any requested statutory fact-finding process.

"Factfinding" is the final step in the negotiations/impasse process. Local 1230 requested factfinding on December 29, 2017. On January 10, 2018, the District set aside and preserved $13,746 in a separate account, which is equal to the amount of the medical-in-lieu payments that would otherwise have been made for January 2018 (**Attachment E**.) This set aside will continue until such time as the factfinding process is complete.

The factfinding statute prescribes time lines for the factfinding process. The statute requires the first meeting to be completed within 10 days of the panel being chosen. A hearing occurred on January 31, 2018 consistent with that requirement. The statute also requires that factfinding be completed within 30 days, absent mutual agreement to the contrary. The District did not agree to extend this timeline. A decision from the factfinding panel is accordingly expected in February.

RECOMMENDATION

None – Information Only

ATTACHMENTS

Attachment A - Board Resolution No. 10-13
Attachment B - Chang Memorandum (9/9/2016)
Attachment C - Formal Notice of Intent to Terminate Payments (9/15/2017)
Attachment D - Board Resolution No. 17-18
Attachment E - Documentation of In-Lieu Set-Aside

ATTACHMENT A

RESOLUTION NO. 10-13

A RESOLUTION OF THE MORAGA-ORINDA FIRE DISTRICT APPROVING A STIPEND IN LIEU OF MEDICAL BENEFITS PROGRAM FOR EMPLOYEES OF THE MORAGA-ORINDA FIRE DISTRICT WHO QUALIFY FOR MEDICAL BENEFITS

WHEREAS, the District pays a portion of medical insurance to qualifying Employees and their Dependants; and

WHEREAS, the District has developed a program whereby employees can receive a 457 B Deferred Compensation incentive payment in lieu of medical insurance; and

WHEREAS, in order to participate in the program an employee must meet certain criteria; and

WHEREAS, if the employee fulfils the criteria said employee is entitled to a 457 B Deferred Compensation incentive payment in lieu of medical coverage and

WHEREAS, the amount of the 457 B Deferred Compensation incentive payment is based on half of the employer contribution for employee health benefits that the employee would qualify for based on number of dependents as identified in the District's Collective Bargaining Agreements and Individual Employee Contracts. Currently, MOFD contributes the following amounts to employee health benefits:

Employee only - $458.42
Employee plus one - $916.82
Employee plus two or more - $1,191.87

WHEREAS, this program is available to all employees of the District who qualify for medical benefits; and

NOW THEREFORE, BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF THE MORAGA-ORINDA FIRE DISTRICT does hereby approve the Moraga-Orinda Fire District Stipend in Lieu of Medical Benefits Program attached as Exhibit A.

PASSED, APPROVED and ADOPTED this 6th day of October, 2010 at a special meeting of the District Board of Directors held on October 6, 2010, at 1280 Moraga Way, Moraga, California 94556, on motion made by Director Weil, seconded by Director Olsen, and duly carried with the following roll call vote:

AYES:	Directors Olsen, Weil, and President Sperling
NOES:	None
ABSENT:	Directors Mancinelli and Wyro
ABSTAIN:	None

ATTACHMENT A

Dated: October 6, 2010

Frank Sperling, President
Board of Directors

ATTEST:

Christine Pokorny

Christine Pokorny, Secretary to the Board

APPROVED AS TO FORM:

Steven R. Meyers, District Counsel

APPROVED AS TO CONTENT:

Randall Bradley, Fire Chief

ATTACHMENT A

EXHIBIT "A"

MORAGA-ORINDA FIRE DISTRICT STIPEND IN LIEU OF MEDICAL BENEFITS PROGRAM

The Moraga-Orinda Fire Districts (MOFD) Stipend in Lieu of Medical Benefits Program allows eligible employees to receive a 457 B Deferred Compensation incentive payment for waiving District medical health benefits.

Eligibility
If an employee is covered under their spouse's/domestic partner's group health insurance plan, or through other employment, they may waive MOFD Medical Insurance Benefits. The employee must provide proof of medical health insurance that is comparable or better than the plans offered by the District. (The employee must also complete a Declaration of Health Coverage (HBD-12A) form which documents that the employee was given an opportunity to enroll, and has voluntarily declined the benefit.)

Current Employees: May enroll in the Program if they are currently covered under their spouse's/domestic partner's group health insurance plan, or through other employment.

New Employees: May enroll in the Program within thirty (30) days after becoming eligible for District health benefits.

Part Time Employees: Part time employees do not qualify for this program unless they qualify for health benefits under the Districts Health Benefit Program.

Mid-Year Enrollment/Discontinuance: There are certain qualifying events that would allow employees to opt in or opt out of the program during mid-year. Qualifying events include:

- Beginning/termination of employment
- Unpaid leave of absence
- Return from unpaid leave of absence
- Change from P/T to F/T or F/T to P/T employment
- Marriage/domestic partner
- Birth or adoption of child
- Divorce
- Ineligibility of dependent (age, marriage, loss of F/T student status)

If an employee incurs a qualifying event, they must notify the Benefits Coordinator within thirty (30) days after the qualifying event in order to participate or be removed from the program.

Retirees or other prior employees are not eligible to participate in this program. Employees are not eligible to participate in this program if they are on extended leave without pay to the extent their medical coverage is no longer being provided by the District.

457 Plans

Employees who choose to participate in this program must choose to place their incentive payment in one of the District's two sponsored plans; CalPers Supplemental Income 457 Plan or the Hartford 457 Plan. The amount of the incentive is based on half of the employer contribution for employee health benefits that the employee would qualify for based on number of dependents as identified in the District's Collective Bargaining Agreements and Individual Employee Contracts. Currently, MOFD contributes the following amounts to employee health benefits:

Employee only-$458.42
Employee plus one-$916.82
Employee plus two or more-$1,191.87

The appropriate amount will be placed in the employees account on a monthly basis and be reflected on their monthly pay stub. Employees who are currently participating in the District's 457 Deferred Compensation Plan should review their contribution rate to ensure they do not exceed the allowable annual contributions. Employees participating in the Health Benefits Waiver Program may only contribute the incentive into the District's 457 Deferred Compensation Plan.

Termination

Employees who choose to participate in the program will remain in the program until they opt out of the program during open enrollment (effective January 1, after open enrollment) or the employee experiences an approved mid-year qualifying event that would allow them to terminate.

Retirement

An employee who elects no health insurance coverage under the Moraga-Orinda Fire District Health Benefits Waiver Program shall not in any way impact an employee's eligibility for post-retirement medical benefits. An employee who elects participation in the program and subsequently retires will be eligible for coverage as an annuitant if the employee meets all applicable eligibility requirements of the District's medical benefits provider at the time the application is made. These eligibility requirements are set forth in the applicable MOUs and CALPERS Public Agency Health Benefits Procedure Manual.

ATTACHMENT B

CHANG RUTHENBERG & LONG PC
EMPLOYEE BENEFITS LAWYERS

SEETHEBENEFITS.COM

MEMORANDUM

Via E-mail

To: Gloriann Sasser

From: Jeffrey Chang and Kenneth Ruthenberg

Date: September 9, 2016

Re: Choice Between Health Coverage And Deferred Compensation

Introduction

You have asked us to advise the Moraga-Orinda Fire Protection District (District) with regard to the design and operation of its Internal Revenue Code (Code) section 125 plan (Plan) and its Medical Benefits Opt-out Program (Program). For the reasons discussed below, we believe that the Program creates income tax problems for the District and its employees and should be changed immediately.

Factual Background And Analysis

1. The Program was adopted by a resolution of the District's Board of Directors on October 6, 2010. Under the Program, an employee who is covered under his/her spouse's/domestic partner's group health insurance plan, or through other employment, may waive the District's medical insurance benefits, elect to participate in the Program, and choose to have the District deposit an amount roughly equal to one-half of the waived medical insurance premium into one of the two Code section 457(b) plans sponsored by the District (Deferred Compensation Plans). The employee may not receive this amount as additional cash compensation.

2. The medical insurance benefits that may be waived under the Program are included as a benefit under the District's Plan. Although neither of the Deferred Compensation Plans is mentioned in the Plan, the Program, by its terms, subjects any "mid-year" election changes to an employee's Program election to the same restrictions that would apply to any election under a cafeteria plan or Code section 125 plan. The Program acknowledges that a change in an election under the Program is subject to the cafeteria plan change rules.

620 Coolidge Dr., Ste. 100
Folsom, CA 95630
Ph. 916.357.5660

2033 Gateway Pl., Ste. 500
San Jose, CA 95110
Ph. 408.467.3860

10880 Wilshire Blvd., Ste. 1101
Los Angeles, CA 90024
Ph. 310.571.8896

The cafeteria plan statute and regulations clearly state that a cafeteria plan does not "include any plan which provides for deferred compensation." See Code section 125(d)(2)(A). If a plan that is intended to be a cafeteria plan violates this rule, all participants would be in constructive receipt – that is "taxable" – to the full extent of the maximum cash/salary reduction election under the plan. It is our view – one apparently shared by the folks at Keenan – that the Program operates to add a deferred compensation element to the District's Plan. As a result, the tax status and benefits of the Plan could be jeopardized. We recommend that the District take appropriate action to "disconnect" the Deferred Compensation Plans from the Plan.

3. Even if the medical insurance benefit were not part of a cafeteria plan, we believe that the choice under the Program between nontaxable health insurance benefits and employer-funded deferred compensation plan contributions creates another tax issue. Code section 61 provides that gross income includes all income from whatever source derived, including compensation for services. As a general rule, an assignment or similar transfer by a taxpayer of compensation for personal services to another individual or entity is an ineffectual method of relieving a taxpayer of income tax liability on the transfer regardless of the motivation behind the transfer. See, for example, Lucas v. Earl, 281 U.S. 111 (1930); Helvering v. Horst, 311 U.S. 112 (1940); and Helvering v. Eubank, 311 U.S. 122 (1940). As stated by the Supreme Court in Helvering v. Horst (at page 116), in which it held that a donor's gift of interest coupons detached from bonds and delivered to the donee in the year of maturity did not eliminate the donor's realization of interest income:

Underlying the reasoning in these cases is the thought that income is "realized" by the assignor because he, who owns or controls the source of the income, also controls the disposition of that which he could have received himself and diverts the payment from himself to others as the means of procuring the satisfaction of his wants. The taxpayer has equally enjoyed the fruits of his labor or investment and obtained the satisfaction of his desires whether he collects and uses the income to procure those satisfactions, or whether he disposes of his right to collect it as the means of procuring them.

Relying on this general principle, the IRS has issued a number of relevant rulings:

- In Private Letter Ruling 9104050, the IRS concluded that an annual choice given to employees to elect between existing employer-provided health plan coverage or to have equivalent contributions made by the employer to a pension plan would result in additional taxable income to those employees who elected the health coverage. According to the IRS, the employees electing the health coverage were merely assigning their rights to future income that would have been received had they elected the pension contributions.

- In Private Letter Ruling 9227035, the IRS ruled that giving employees a choice between future sick leave accruals (above a predetermined level) and having the value of such accruals set aside for tax-free medical expense reimbursement would constitute an anticipatory assignment of income and the cash value of any "converted" sick leave would be included in the electing employee's gross income.

- In Private Letter Ruling 9436051, the IRS ruled that giving employees a choice between continuing participation in one deferred compensation plan (presumably a governmental Code section 457(b) plan) and having the employee's account and future participation transferred to a new deferred compensation plan would cause the value of the employee's benefit under the old plan to be includible in the employee's gross income if the employee elected into the new plan. Again, the IRS cited the assignment of income doctrine in connection with the employee's choice to give up rights to future income from the old plan in exchange for future contributions by the employer to the new plan.

- In Private Letter Ruling 200302032, the IRS ruled that a program under which the **employer** would decide to convert its employees' unused sick leave to additional employer provided medical coverage or employer contributions to a Code section 401(a) retirement plan did **not** result in the inclusion of additional income to employees under the assignment of income doctrine (i.e., because the employee did not have any election of the form of benefits to be provided).

We can provide you with copies of the foregoing rulings in case you would like to peruse them for yourselves.

Note that although Private Letter Rulings may not be cited as precedent that is binding on the IRS, the persuasive reasoning contained in the determination may be considered by the courts in the absence of authority to the contrary and Private Letter Rulings constitute "authority" for the purpose of avoiding penalties on the understatement of taxes. Because of the close similarities among the first three Private Letter Rulings and the District's situation, we recommend that the District stop providing employees with the contemplated election, unless the District is willing to advise employees that they will be taxable on any election to receive the medical benefits in lieu of the deferred compensation contributions and that the District will, in accordance with applicable IRS guidance, withhold appropriate income and payroll taxes. Because this arrangement already exists, we recommend that the District consider its obligations to correct its prior wage reporting and withholding errors.

If the parties would like to discuss ways to "restructure" the Plan and the Program to avoid ongoing adverse tax consequences, please let us know. For example, the last ruling mentioned above suggests that a benefit of this sort might be possible if there is no employee choice given (i.e., the conversion is done by automatic formula or by the employer). Or the Plan could provide that the waiving employee receives additional cash compensation and then the employee can make a separate election to defer that compensation under one of the Deferred Compensation Plans so long as the deferral is done in accordance with Code section 457(b)'s requirements.

After you have had an opportunity to review this memorandum, please let us know if either you or the District has any further questions.

MO0047.014
22S5292.DOCX

ATTACHMENT C

555 12th Street, Suite 1500
Oakland, California 94607
tel (510) 808-2000
fax (510) 444-1108
www.meyersnave.com

Edward L. Kreisberg
Attorney at Law
eddie@meyersnave.com

meyers | nave

September 15, 2017

Via E-mail and U.S. Mail – vwells@iafflocal1230.org

Vince Wells
President
IAFF Local 1230
112 Blue Ridge Drive
Martinez, 94553

Re: Moraga-Orinda Fire District / IAFF Local 1230
Contributions In Lieu of Enrolling in District Provided Health Insurance

Dear Vince:

We write regarding the District's intent to terminate the contributions to deferred compensation in lieu of medical premium contributions effective the end of 2017. This change is legally necessary to protect the tax free status of the District's cafeteria plan and keep District contributions to health premiums non-taxable.

If you would like to meet and confer on this subject, please let us know as soon as possible. The District is available to meet on September 22nd at either 10:00 a.m. or 1 p.m., or on September 25th any time between 8:30 a.m. and 2 p.m.

The District's current opt out program was created by a 2010 Board Resolution, Resolution No. 10-13. Unfortunately, as has been discussed multiple times over the last 9 months, the District's cafeteria plan cannot include an employee option for District contributions to deferred compensation under applicable federal tax law. Further, the contributions create a problem under Internal Revenue Service Code section 61 since they give employees a choice between a non-taxable health insurance benefit contribution and an employer-funded deferred compensation contribution. If the District allowed these contributions to continue, it would put at risk the validity of the District's cafeteria plan and potentially require all District contributions under the cafeteria plan to be taxed.

As you know, despite these risks, the District has allowed these contributions to continue in 2017 so employees who had made certain open enrollment choices for 2017 would not be adversely affected. The City also has made clear to you that the District would not be able to continue to make opt out / in lieu contributions to deferred compensation in 2018 and going forward and by this letter essentially confirms those prior discussions. The parties have discussed potential alternative in lieu District contributions/arrangements, but each creates their own legal problems, and are not workable.

Finally, and while the District looks forward to your response and is prepared to meet on the dates indicated, the District also respectfully requests that you let your membership know as soon as possible of the District's intent to no longer provide in lieu contributions in 2018 since open enrollment has begun and this information may influence the health plan choices of some of your members.

Thanks.

Sincerely,

Eddie Kreisberg /im

Edward L. Kreisberg
Attorney at Law

ELK

c: Jerry Lee, Interim Fire Chief
Gloriann Sasser, Director of Administrative Services

2863820.1

ATTACHMENT D

RESOLUTION NO. 17-18

A RESOLUTION OF THE MORAGA-ORINDA FIRE PROTECTION DISTRICT MODIFYING A STIPEND IN LIEU OF MEDICAL BENEFITS PROGRAM FOR EMPLOYEES OF THE MORAGA-ORINDA FIRE DISTRICT WHO QUALIFY FOR MEDICAL BENEFITS

WHEREAS, the District pays a portion of the cost of medical insurance for qualifying Employees and their Dependents; and

WHEREAS, in 2010 the District developed a program whereby employees meeting certain criteria could elect to receive a 457 B Deferred Compensation incentive payment in lieu of medical insurance, which was subsequently approved by the Board by means of Board Resolution 10-13; and

WHEREAS, the amount of medical-in-lieu incentive payments under the program are equal to one half of the employer contribution for employee health benefits that the participating employee would otherwise qualify for based on number of dependents, as identified in the District's Collective Bargaining Agreements and Individual Employee Contracts; and

WHEREAS, the District has determined that it cannot lawfully continue to contribute medical-in-lieu incentive payments into 457 B Deferred Compensation accounts; and

WHEREAS, the District has determined it must therefore discontinue such payments in light of legal requirements and restrictions; and

WHEREAS, the District plan years for both medical benefits and deferred compensation are the same as the calendar year, and commence on each January 1; and

WHEREAS, medical in-lieu payments are generally within the scope of negotiations under the Meyers-Milias-Brown Act (California Government Code sections 3500 *et seq.*); and

WHEREAS, District employees who are currently eligible to participate in the program if they meet stated criteria include employees who are exclusively represented by International Association of Fire Fighters Local 1230 (Local 1230), United Clerical, Technical & Specialized Employees Local 2700 (Local 2700), and the Moraga-Orinda Fire Chief Officers Association (MOFCOA); and

WHEREAS, under the terms of Resolution 10-13 current employees may, absent a qualifying event, only elect to participate in the program during the open enrollment period with an effective date on January 1 of the following year; and

WHEREAS, Federal law requires the District to enforce Deferred Compensation contribution limits on a calendar year basis, and generally bars the District from modifying the terms of such Plans after the calendar year has commenced; and

WHEREAS, prior to the most recent open enrollment period the District provided notice to all impacted employee organizations of the need to discontinue medical in-lieu payments to Deferred Compensation accounts, and its intent to do so effective January 1, 2018 so as to coincide with the plan year for District health benefits and Deferred Compensation plans; and

WHEREAS, AFSCME Local 2700 and IAFF Local 1230 subsequently requested to meet and confer over the issue, and the parties then engaged in good faith negotiations; and

WHEREAS, the District has reached an impasse in its efforts to attain an appropriate resolution of this matter with IAFF Local 1230, but the statutory impasse process with IAFF Local 1230 is not yet complete; and

WHEREAS, the District has not determined its final course of action vis-à-vis the underlying negotiable issue; and

WHEREAS, the District wishes to preserve the status quo within legal bounds for employees in the IAFF Local 1230 bargaining unit, and for employees represented by all other similarly situated employee organizations, pending full satisfaction of its bargaining obligations with IAFF Local 1230 including completion of any requested statutory fact-finding process:

NOW THEREFORE, BE IT RESOLVED THAT THE BOARD OF DIRECTORS OF THE MORAGA-ORINDA FIRE PROTECTION DISTRICT does hereby declare Resolution No. 10-13 to be superseded effective January 1, 2018; and

BE IT FURTHER RESOLVED THAT to maintain the status quo in a lawful manner for employees in the IAFF Local 1230 bargaining unit, and for employees represented by all other similarly situated employee organizations, and to enable completion of any requested statutory fact-finding process in good faith, the District will for all employees participating in the program, on a monthly basis, set aside and preserve in a separate account monetary amounts equal to the amount of the medical-in-lieu payment currently being paid into 457 B Deferred Compensation accounts under the program, pending satisfaction of bargaining obligations including completion of any requested statutory fact-finding process; and

BE IT FURTHER RESOLVED THAT the District remains committed to good faith participation in any requested fact-finding process, and to the goal of attaining an appropriate, lawful agreement with all affected employee organizations with respect to the underlying negotiable issue.

PASSED, APPROVED and ADOPTED this 20th day of December, 2017 at a regular meeting of the District Board of Directors held on December 20, 2017, at 1280 Moraga Way, Moraga, California 94556, on motion made by Director Jorgens, seconded by Director Jex, and duly carried with the following roll call vote:

AYES:	**Directors Anderson, Barber, Famulener, Jex and Jorgens**
NOES:	**None**
ABSENT:	**None**
ABSTAIN:	**None**

ATTACHMENT D

Dated: December 20, 2017

K. Famulener

Kathleen Famulener, President
Board of Directors

ATTEST:

Grace Santos

Grace Santos, District Clerk

ATTACHMENT E

Moraga-Orinda Fire District
Normal Trial Balance - Trial Balance By Fund 2017-18
50 - General Fund
From 7/1/2017 Through 1/22/2018

Account Code	Account Title	Debit Balance	Credit Balance
1000	Citibank - Accounts Payable		1,921,375.20
1001	Citibank - Payroll	252,583.60	
1002	Contra Costa County Cash	1,157,490.41	
1007	Petty Cash	200.00	
1009	Section 125 - Flexible Benefits	336.16	
1010	LAIF Investments	4,405,761.67	
1050	Accounts Receivable	280,115.96	
1051	Receivables-Ambulance Billing	386,202.41	
1052	Allowance Doubtful A/R-Ambulance billing		44,186.40
1055	Receivables-Other	36,633.00	
1160	Advance on Taxes & Supplemental Taxes	10,862,912.25	
1410	Prepaid Retirement	1,797,924.36	
1501	Misc Reimburseables	22,941.08	
1503	Allowance Doubtful A/R		20,386.00
1610	Pension Rate Stabilization Trust Fund	300,000.00	
2010	Accrued Payables		2,147.30
2050	Accrued Payroll		400,708.48
2051	Accrued Payroll Taxes-Federal		191,624.45
2054	Accrued Retirement		181,658.77
2080	Section 125 Medical-Dental Plan		352.35
2082	Accrued Charities & Other Employee Ded		1,450.71
2860	Due to Other Funds		2,600,000.00
3680	Fund Balance Unassigned		4,891,770.84
3682	Nonspendable Fund Balance		81,945.20
3697	Fund Balance Restricted Pension		300,000.00
3698	Medical-In-Lieu Set Aside		13,746.00
4010	Property Tax-Current Secured		17,388,779.92
4011	Property Tax-Supplemental		127,806.22
4013	Property Tax-Unitary		229,987.79
4020	Property Tax-Curr Unsecured		575,625.13
4030	Prop Tax- Prior Secured	43,974.89	
4031	Prop Tax-Prior Supplement	25,560.62	
4035	Prop Tax Prior Unsecured		5,829.79
4181	Investment Earnings		2,921.05
4440	CA FF JAC Training Funds		12,419.26
4740	Permits		1,679.00
4741	Plan Review		174,027.37
4742	Inspection Fees		32,010.00
4744	Weed Abatement Charges		4,357.25
4745	CPR/First Aid Classes		715.00
4746	Reports/ Photocopies		240.00
4747	Other Charges for Service		3,288.00
4898	Ambulance Service Fees		438,427.74
4899	Ambulance Service Fee Reimbursements	62,075.16	
4900	Ambulance Collection Recovery Payments		1,549.67
4901	Ground Emergency Medical Transportation		42,230.39
4971	Other Revenue-Strike Team Recovery		673,424.06
4974	Other Revenue-Misc.		722.90
4975	Misc Rebates & Refunds		2,253.37
4999	Transfers In		4,476.30

Moraga-Orinda Fire District

TO: Board of Directors

FROM: Dave Winnacker, Fire Chief

DATE: February 7, 2018

SUBJECT: Item 8.4 – Approval of Side Letter of Agreement Between Moraga-Orinda Fire District and Moraga-Orinda Fire Chief Officers Association

BACKGROUND

In 2016 MOFD held a battalion chief's examination with (2) internal applicants. Both applicants failed to meet the minimum passing score for portions of the examination and a promotional list was not formed. While forecasting retirements and separations requires assumptions and is an imperfect science, there is a possibility of up to (2) battalion chief openings during the (24) month period that a promotional list will be in effect.

The Moraga-Orinda Fire Chief Officers Association (MOFCOA) Memorandum of Understanding directs that after July 2, 2014, an associates degree or higher is required to apply for and hold the position of battalion chief. It further states that battalion chiefs promoted prior to this date will be limited to Step 1 of the salary scale until they hold a degree. Staff recommends reverting to the pre July 2, 2014 educational requirements to increase the competiveness of the examination.

In order to increase the size of the participating population, the attached side letter is submitted for the board's consideration as a one-time measure. Staff has met and conferred with the MOFCOA on this topic without objection.

RECOMMENDATION

1) Discuss; 2) Deliberate; 3) Approve Side Letter of Agreement Between Moraga-Orinda Fire District and Moraga-Orinda Fire Chief Officers Association

ATTACHMENT

Attachment A – Side Letter of Agreement Between Moraga-Orinda Fire District and Moraga-Orinda Fire Chief Officers Association

Moraga-Orinda Fire District

Side Letter of Agreement Between Moraga-Orinda Fire District and Moraga-Orinda Fire Chief Officers Association (MOFCOA)

The Moraga-Orinda Fire District (District) and Moraga-Orinda Fire Chief Officers Association (MOFCOA) agree to amend Section IV A of their July 1, 2012 to June 30, 2018 MOU (the current MOU), *effective for the examination process to be held in 2018 only,* as set forth in this Side Letter below. This Side Letter shall not become effective unless and until signed by the parties indicated below, and approved by the District's Board of Directors. This letter serves to clarify language contained in the MOU.

Battalion Chief Examination Educational Qualifications

The education requirements related to an associates degree or higher to apply for and hold the position of Battalion Chief will be waived for the examination process to be held in 2018. In accordance with the language contained in Section IV. A. of the MOU, Battalion Chiefs promoted without a college degree will not be eligible for salary step increases beyond Step-1.

This side letter will sunset upon the closing of the promotional list formed from the 2018 Battalion Chief testing process and is not intended to be construed as past practice for the purpose of future examinations or contract negotiations. This side letter is not precedent setting and shall not be construed as a past practice. This side letter shall only apply to the 2018 Battalion Chief test.

For Moraga-Orinda Fire District

____
David Winnacker
Fire Chief
Dated: _________________

For MOFCOA

____
Jerry Lee
President
Dated: ____________________

Approved as to Form

____
Jonathan Holtzman
District Counsel