



San Bernardino County

Legislation Text

File #: 5181, Agenda Item #: 80

REPORT/RECOMMENDATION TO THE BOARD OF DIRECTORS OF SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT AND RECORD OF ACTION

December 7, 2021

FROM

**DAN MUNSEY, Fire Chief/Fire Warden, San Bernardino County Fire Protection District
TERRY W. THOMPSON, Director, Real Estate Services Department**

SUBJECT

Lease Agreement with Inland Valley Development Agency and Tax-Exempt Financing for a New Headquarters Facility for the San Bernardino County Fire Protection District in San Bernardino

RECOMMENDATION(S)

Acting as the governing body of the San Bernardino County Fire Protection District:

1. Conduct a public hearing regarding the issuance of lease revenue bonds by the California Enterprise Development Authority in an aggregate amount not to exceed \$26,000,000, for the purpose of financing the design, development, acquisition, construction, improvement, equipping, and furnishing of a Headquarters Facility, located in the City of San Bernardino, by SBD Corporate Center II, LLC for the benefit of the San Bernardino County Fire Protection District.
2. Adopt Resolution approving execution of an associate membership agreement to join the California Enterprise Development Authority as an associate member, authorizing the execution and delivery of certain agreements relating to the leasing of a new Headquarters Facility, and the issuance and sale of lease revenue bonds by the California Enterprise Development Authority to finance the cost of design, development, acquisition, construction, improvement, equipping and furnishing of such new Headquarters Facility, and approving and authorizing official actions related thereto.
3. Approve the Associate Membership Agreement with the California Enterprise Development Authority to join the Authority as an associate member.
4. Approve the Real Estate Services Department's use of an alternative procedure in lieu of a Formal Request for Proposals as allowed by County Policy 12-02 - Leasing Privately Owned Real Property for County Use, to procure a new 25-year Lease Agreement with the Inland Valley Development Agency.
5. Approve a 25-year Lease Agreement with the Inland Valley Development Agency, for the period beginning on the Lease Commencement Date and ending on the 25th anniversary of the lease commencement date, for a build-to-suit Headquarters Facility totaling approximately 79,834 square feet, located at 1111 East Mill Street, Building 2, in San Bernardino, under which the title to the Premises will transfer to the San Bernardino County Fire Protection District upon termination of the Lease Term.
6. Approve the Management Agreement for Real Property between the San Bernardino County Fire Protection District and FJ Management, LLC for the management of the Premises, and the Work Letter - Exhibit E to the Lease Agreement, entered into pursuant to the Lease Agreement.
7. Approve the Environmental Indemnity Agreement for the indemnification of the San Bernardino County Fire Protection District by the Inland Valley Development Agency for any environmental losses originating during the Agency's ownership of the Premises.

8. Authorize the Chief Executive Officer to execute all of the documents listed in Recommendation Nos. 3, 5, 6, and 7, a tax certificate, closing certificate and letter of representation as may be necessary for the execution and delivery of the Lease Agreement and the issuance of the lease revenue bonds, and any other documents required to complete these transactions, subject to County Counsel review.
 9. Certify that the Notice of Exemption issued by IVDA was reviewed, considered, and concurred with by the San Bernardino County Fire Protection District.
- (Presenter: Terry W. Thompson, Director, 387-5000)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Improve County Government Operations.

Operate in a Fiscally-Responsible and Business-Like Manner.

Ensure Development of a Well-Planned, Balanced, and Sustainable County.

Provide for the Safety, Health and Social Service Needs of County Residents.

Pursue County Goals and Objectives by Working with Other Agencies and Stakeholders.

FINANCIAL IMPACT

Approval of this item will not result in the use of additional Discretionary General Funding (Net County Cost). Annual lease payments are projected to be approximately \$1,900,000, which includes \$500,000 for the estimated cost of operating the facility (i.e., utilities, maintenance, janitorial etc.) pursuant to the Management Agreement.

The annual lease payment of \$1,900,000 also includes the impact of a one-time, \$8,500,000 partial prepayment of the lease payments that is allowed pursuant to the Lease Agreement. The San Bernardino County Fire Protection District (SBCFPD) has set aside \$8,500,000 in a reserve fund for this purpose. Pursuant to the Lease Agreement, this prepayment must be made within 90 days of the Lease Commencement Date. The rent, paid over the 25-year Lease Term, plus SBCFPD's \$8,500,000 prepayment is equivalent to approximately \$55,900,000. The Lease commences upon completion and acceptance of the facility after an approximately 22-month build period.

The annual lease payment is offset by a reduction in costs that results when current facilities are vacated (\$500,000), for a net increase in costs of \$1,400,000 annually, funded with SBCFPD revenue.

Upon termination of the Lease Term, the title to the Premises will be conveyed to SBCFPD, which will thereby own all the interest in and title to the property outright.

Because this project is being completed by a private developer for the benefit of the SBCFPD, applicable possessory interest taxes, if any, will be determined sometime after the recordation of the lease. Advice of attorneys with expertise in this area was obtained and their legal analysis suggests that the possessory interest tax should not apply in this case, where the project is benefitting a governmental user. However, if it is ultimately determined that possessory interest tax will be assessed on the property, it is estimated that the impact would be a net of approximately \$200,000 per year (\$16,667 per month). Even if possessory interest tax is assessed, the equivalent lease rate compares favorably to market rates. Please note that the possessory interest tax estimate found earlier in this paragraph is not reflected anywhere else in this agenda item.

BACKGROUND INFORMATION

The recommended actions will provide for a new 25-year Lease Agreement with the Inland Valley Development Agency (IVDA), for the period beginning on the Lease Commencement Date which is expected to begin after a 22-month construction period following approval of the Lease Agreement, and ending on the 25th anniversary of the Lease Commencement Date, for a build-to-suit Headquarters Facility totaling approximately 79,834 square feet, located at 1111 East Mill Street, Building 2, in the City of San Bernardino. Upon termination of the Lease Term, the title to the Premises, including all the land and improvements, will

transfer to SBCFPD.

This item also authorizes SBCFPD to become an associate member of the California Enterprise Development Authority (CEDA), and approves the issuance of lease revenue bonds (LRBs) by CEDA, in a not to exceed amount of \$26,000,000 to finance the renovation of the new Headquarters Facility.

SBCFPD currently occupies the County-owned facilities located at 157 West Fifth Street in the City of San Bernardino to perform many of its administrative functions. The condition of the current facility is deteriorating and insufficient for SBCFPD's administrative purposes. The Real Estate Services Department (RES D) has assisted SBCFPD in investigating proposed replacement sites for a number of years, including co-locating at the future Public Safety Campus on Lena Road as well as potential acquisitions of turnkey properties or new, ground-up developments. During this period, in late 2017, a Developer approached SBCFPD with an opportunity for a new headquarters facility under a standard lease concept. The Developer had just been approved by IVDA under a September 2017 Request for Qualifications for a joint venture project for the leasing of IVDA's property located at 1111 East Mill Street, Building 2. However, SBCFPD explained that they would prefer to own their headquarters facility. In late 2018, the Developer revised their offer concept as a capital lease, which would allow SBCFPD to acquire title to the property at the end of the lease term for a nominal fee. SBCFPD recruited RES D into the negotiations in order to investigate the viability of the proposal, to perform comparative analysis on alternatives, and to assist with the development of the necessary agreements if the concept was identified as the best option. SBCFPD also procured outside legal counsel, Orrick, Herrington, & Sutcliffe LLP, and is utilizing the County's municipal financial advisor, KNN Public Finance.

If the Lease Agreement is approved, IVDA, as Lessor, will assign its rights to the Developer's company, SBD Corporate Center II, LLC, and CEDA will subsequently issue the LRBs in an amount not to exceed \$26,000,000. The issuance will be placed with Pacific Western Bank with US National Bank as the trustee. On a drawdown basis, the LRB proceeds will be used by the Developer to finance the renovation of the premises to SBCFPD's specifications as the Lessee. Lease payments made by SBCFPD will be used to repay the LRBs issued by CEDA.

After construction is completed and the Premises is delivered to SBCFPD, SBCFPD will begin paying monthly lease payments with several components: 1) Debt service (principal and interest) of approximately \$85,489 per month that will be used to repay the LRBs issued by CEDA; 2) an income stream of \$30,000 per month to IVDA in consideration for the eventual transfer of the property; and 3) recurring operating expenses estimated to be approximately \$42,500 per month. The total estimated monthly rent of \$157,989 plus SBCFPD's \$8,500,000 contribution is equivalent to approximately \$55,896,700, in total, paid over the 25-year Lease Term. The debt service component of the lease payments will be determined based upon the final drawdown amount upon project completion.

RES D determined that the proposed capital lease concept compares favorably to alternatives. The premises, as delivered, will be considered a "Class A" office building. A facility at the Public Safety Campus using similar construction quality would likely result in an expense of more than \$70,000,000. A new acquisition and ground-up development would likely cost approximately \$82,000,000, including new infrastructure. The \$157,989 monthly rent equates to approximately \$1.98 per square foot. Although the premises will be without peer in its market, current market lease rates for the nearest comparable properties range from approximately \$2.45 per square foot to \$2.75 per square foot. Therefore, RES D recommends approval of the Lease Agreement and, due to the structure of these transactions including the bond issuance, approval of the Associate Membership Agreement, a Work Letter for the construction scope, the Assignment and Assumption Agreement, the Management Agreement, the Letter of Representations, and such other documents, agreements and certificates as may be necessary for the execution and delivery of the Lease Agreement and the issuance of the Bonds. The parties will also execute an Environmental Indemnity Agreement requiring IVDA to indemnify SBCFPD for any environmental losses originating during the Agency's ownership of the Premises. Due to the

complexity and timing of these transactions, this item requests authority be delegated to the San Bernardino County Chief Executive Officer to execute all the agreements and closing documents.

The 25-year Lease Agreement was reviewed pursuant to the California Environmental Quality Act (CEQA) and found to qualify for a Class 1 Categorical Exemption in accordance with Section 15301(a) and (d) of the CEQA Guidelines which provide examples including interior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances; and restoration or rehabilitation of deteriorated or damaged structures, facilities, or mechanical equipment to meet current standards of public health and safety, unless it is determined that the damage was substantial and resulted from an environmental hazard such as earthquake, landslide, or flood. The Lease Agreement pertains to an existing publicly-owned structure, and the proposed work to be undertaken consists primarily of an interior remodel. The lead agency (IVDA) on the project submitted a Notice of Exemption that was posted by the Clerk of the Board on October 7, 2021.

The Debt Advisory Committee reviewed this financing at its meeting on August 31, 2021, and recommended it be brought to the Board of Directors (Board) for approval.

Good Faith Estimates

SB 450 requires disclosure of good faith estimates of the 1) true interest cost of the bonds, 2) the finance charge of the bonds, 3) the amount of proceeds received for sale of the bonds, and 4) the total payment amount. It also requires that the good faith estimates be obtained from an underwriter, financial advisor, or private lender.

In compliance with SB 450, the District has obtained from the County's municipal financial advisor, KNN Public Finance, Good Faith Estimates in connection with the LRBs. The estimates are as follows:

True Interest Cost (a):	3.45%
Finance Charge (b):	\$516,172
Net Project Proceeds (c):	\$24,342,394
Total Payment Amount (d):	\$25,646,625*

*Assumes prepayment of \$8.5 million on the Lease Commencement Date.

Additional detail is included below regarding the Good Faith Estimates referenced in the table above.

- (a) The true interest cost of the bonds.
- (b) The finance charges of the bonds, meaning the sum of all fees and charges paid to third parties.
- (c) The amount of proceeds of the bonds received less the finance charges described above, and any reserves or capitalized interest paid or funded with proceeds of the bonds.
- (d) The sum total of all payments to pay debt service on the bonds plus the finance charges of the bonds described in subparagraph (b) not paid with the proceeds of the bonds.

PROCUREMENT

This Lease Agreement was procured in accordance with County Policy 12-02 - Leasing Privately Owned Real Property for County Use (Policy 12-02). Policy 12-02 allows an exception to the Formal Request for Proposals process for leases of real property owned by a federal agency, the State, a city, a county, a school district, special district, or other public entity. The Board or the County Administrative Office, pursuant to County Resolution No. 2000-248 shall, as required by law, approve all such leases.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Jolena Grider, Deputy County Counsel, 387-5455) on November 30, 2021; Fire Protection District (Grant Hubbell, Assistant Chief, 387-6067, and Katrina Turturro, Deputy Chief, 387-9605) on October 6, 2021; Purchasing (Bruce Cole, Supervising Buyer, 387-2148) on

File #: 5181, Agenda Item #: 80

October 8, 2021; Finance (Carl Lofton, Administrative Analyst, 387-5404, and Tom Forster, Administrative Analyst, 387-4635) on November 17, 2021; and County Finance and Administration (Diana Atkeson, Deputy Executive Officer, 387-4376) on November 17, 2021.

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