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MEMORANDUM

DATE: September 13, 2011
TO: City of Lemoore
Redevelopment Agency
FROM: Dale Bacigalupi
Jerry Behrens
Laurie Avedisian
RE: Statement of Indebtedness

CLIENT/MATTER:
1943-09

The annual Statement of Indebtedness (SOI) for redevelopment agencies is due October 1, 2011. This requirement is unchanged by the recent enactment of AB 1X 26 and AB 1X 27, and the Supreme Court stay on portions of AB 1X 26 and all of AB 1X 27. In preparing the SOI, please be particularly careful to include all debts of the agency. AB 1X 27 imposes harsh penalties for issuance of “new debt” which is defined as “debt that is displayed on a statement of indebtedness filed after a statement of indebtedness filed on October 1, 2011, that was not displayed on the statement of indebtedness filed on October 1, 2011.” If an agency issues new debts or incurs new obligations after November 1, 2011, it must increase the school pass-through payment amount to 80% of the total net school share. The amount of increase in pass-through payments to the schools bears no relation to the amount of new debt issued or obligations incurred. This required increase in pass-through payments to schools may be triggered by payments made by the redevelopment agency to the City to reimburse the City for the AB 1X 27 annual remittance (“ransom”) payments as well as by general fund transfers. To the extent possible, these payments should be included in the SOI to avoid later classification as new debt.

As mentioned above, AB 1X 27 (which authorizes the Continuation Ordinance and Remittance Agreement, and which imposes the penalty for issuance of new debts) has been stayed by the Supreme Court of California pending the court’s decision on the validity of the bill. However, it is possible that the Supreme Court will uphold the law, and will not change the date which triggers “new debt”. In that case, redevelopment agencies would not be able to reimburse cities for the AB 1X 27 payments without triggering increased pass-through payments to schools, unless the payments were included on the October 2011 SOI.

In order to best protect redevelopment agencies from the risk of having remittance payments or general fund transfers classified as “new debt” triggering increased pass-through payments to schools, cities and redevelopment agencies may wish to consider adopting a Cooperation Agreement (if one has not yet been approved) and a Continuation Ordinance (if one has not already been adopted) and a Remittance Agreement, all of which would be expressly contingent upon AB 1X 27 being upheld by the court. These documents should be adopted prior to October 1, 2011 so that the remittance payments may be included in the SOI. If your redevelopment agency does not have a meeting scheduled prior to October 1, 2011, it may be advisable to hold a special meeting to approve these documents. Note that no actual payments are due until January 15, 2012 and the Supreme Court has committed to decide the validity of AB 1X 26 and AB 1X 27 prior to that date. As with all ordinances, the Continuation Ordinance may later be rescinded, prior to any payments being made pursuant to the ordinance. As such, if there is any chance that a redevelopment agency will continue in existence, it is advisable to adopt a Continuation Ordinance and Remittance Agreement and include the remittance payments in the SOI.

Please contact Dale Bacigalupi, Jerry Behrens, or Laurie Avedisian at (559) 431-5600 to discuss further or ask questions.