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Via Email

kevinfaulconer@sandiego.gov

August 21, 2020

Honorable Kevin Faulconer
Mayor of the City of San Diego
City Administration Building
202 C Street, 11th Floor
San Diego, CA 92101

Re: Demand City of San Diego Stop Ash Street Building Waste Payments

Dear Mayor Faulconer:

We write to demand the City of San Diego stop the payments in the approximate amounts of Five Hundred Thirty-Four Thousand Seven Hundred Twenty-Six and 50/100 Dollars (\$534,726.50) per month under the 20-year lease-to-own agreement for the San Diego property known as the Ash Street Building.

On October 17, 2016, the San Diego City Council approved a 20-year lease-to-own agreement to enable San Diego employees to move into a high-rise building located at 101 West Ash Street (Ash Street Building) in downtown San Diego beginning in July 2017. Undisclosed defects in the Ash Street Building have kept City employees from occupying it. The City is left paying \$534,726.50 per month for an empty building--an amount that far exceeds the Ash Street Building's fair rental value. Under these facts, the 20-year lease constitutes a violation of the debt limits in Section 18 of Article XVI of the California State Constitution. (See Attached Courtesy Copy of the Complaint). Accordingly, the City must stop making the wasteful monthly payments of \$534,726.50.

This constitutional debt limit was created to avoid lease transactions like the lease agreement here in which the lease payments do **not** represent the fair rental value of Ash Street Building. The Constitutional limitation mandates fiscal responsibility in public borrowing in cases such as this one. The constitutional provision requires City officials to obtain approval by voters because the lease agreement encumbers public funds beyond the current fiscal year.

The law "is designed to afford the people who are required to pay the cost of providing . . . objects of public convenience and welfare an opportunity to express their approval or disapproval of a long-term indebtedness."¹ The California Supreme Court provided an early reading of the constitutional limit, stating:

¹ *City of Palm Springs v. Ringwald*, 52 Cal. 2d 620, 627 (1959).

[E]ach year's income and revenue must pay each year's indebtedness and shall be paid out of the income or revenue of any future year. The system previously prevailing in some of the municipalities of the State by which liabilities and indebtedness were incurred by them far in excess of their income and revenue for the year in which the same were contracted, thus creating a floating indebtedness which had to be paid out of the income and revenue of future years, and which, in turn, necessitated the carrying forward of other indebtedness, was a fruitful source of municipal extravagance It was to put a stop to all of that, that the constitutional provision in question was adopted.”²

Accordingly, the limitation is more aptly described as a balanced budget requirement or a pay-as-you-go mandate.³ This broad purpose reaches beyond traditional bond financing and includes any financial arrangement where the obligation to pay exceeds the local government's present annual revenue. Hence, the voter approval requirements set forth in Section 18 are not exclusive to traditional debt arrangements, but must be considered anytime a city receives property, equipment, or services in one year, the cost of which it agrees to pay over several subsequent years from revenues the city has not yet received. Thus, a city can purchase property or equipment on time if the funds for the purchase are appropriated and set-aside in the year the purchase agreement is signed, but cannot do so if the payments will be made from future revenues. A lease-purchase can be done in conformity with the Section 18 debt limit if, unlike here, the lease payments represent the fair rental value for use of the building.⁴

Thank you.

Very truly yours,

/s/ Michael J. Aguirre
Michael J. Aguirre, Esq.

encl.

cc:

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² *San Francisco Gas Co. v. Brickwedel*, 62 Cal. 641, 642 (1882).

³ See 67 Op. Cal. Att'y. Gen. 349, 351-52 (1984) (citing *San Francisco Gas Co.*, 62 Cal. at 642).

⁴ California Constitutional Debt Limits And Municipal Lease Financing, Robin Harris Richards, Watson & Gershon see <https://www.google.com/search?client=firefox-b-1-d&q=California+Constitutional+Debt+Limits+And+Municipal+Lease+Financing+Robin+Harris+Richards%2C+Watson+%26+Gershon>