

El Cerrito Municipal Services Corporation

AGENDA

SPECIAL MUNICIPAL SERVICES CORPORATION (MSC) MEETING APRIL 19, 2022 – 6:00 p.m.

Members:

Chairperson Gabe Quinto

Vice Chairperson Lisa Motoyama • Boardmember Janet Abelson
Boardmember Paul Fadelli • Boardmember Tessa Rudnick
Boardmember Karen Pinkos • Boardmember Alexandra Orologas

Join Via Zoom:

<https://us06web.zoom.us/j/86085826722?pwd=TUN6MVZzaUV3WVFocW1DYnlsQmE3QT09>

Meeting ID: 860 8582 6722 Password: 006403
or Dial in: 1-408-638-0968

The MSC may continue to meet by teleconference, consistent with the Brown Act as amended by AB 361 (2021). Under the amended rules, the City will not provide a physical location for members of the public to participate in the teleconference meeting.

Members of the public can watch or listen to MSC meeting as follows:

1. Cable T.V. Broadcast on KCRT Channel 28
2. Radio Broadcast on FM 88.1 Or 97.7
3. Livestream Online at www.el-cerrito.org/CouncilMeetingMaterials
4. Via Zoom using the meeting information listed above (*closed captions available*)

Each period for public comment will be announced. Public Comments may be submitted one of two ways:

- Via Zoom using the “[Raise Hand](#)” icon to request to speak. If joining by phone, dial *9 to "raise your hand", and when prompted by the host, *6 to unmute/mute.
- Via email to cityclerk@ci.el-cerrito.ca.us. Email must contain in the subject line **MSC Public Comments – Not on the Agenda** or **MSC Public Comments – agenda item #**.

To ensure the MSC receives your written comments prior to taking action, they must be received by **3:00 p.m. the day of the meeting**. All written comments received by this deadline will be provided to the members and posted online in advance of the meeting. Comments received after the deadline will be provided to the members and included with supplemental materials **after the meeting**. **No written comments will be read into the record.**

6:00 P.M. ROLL CALL – SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF A MOMENT OF SILENCE

2. TELECONFERENCE AND PUBLIC COMMENT INSTRUCTIONS

3. ADOPTION OF THE CONSENT CALENDAR

All items on the consent calendar shall be acted upon in one motion, unless a member of the MSC or staff request separate consideration.

A. Approval of Minutes for December 15, 2020

Action Proposed: Pass a motion to approve the meeting minutes from December 1, 2020.

Contact: Holly M. Charléty, City Clerk, City Management

4. POLICY MATTERS

A. Informational Item: Loan Agreement with City of El Cerrito

Action Proposed: Receive and file an informational item on the 2016 Loan Agreement between the Municipal Services Corporation and the City of El Cerrito and provide direction to staff regarding repayment of the loan.

Contact: Karen Pinkos, Executive Director, Municipal Services Corporation

B. Informational Item: Cannabis Operating Permit Community Benefit Funding

Action Proposed: Receive and file information regarding the City's Cannabis Operating Permit Community Benefit Funding.

Contact: Karen Pinkos, Executive Director, Municipal Services Corporation

5. ADJOURN SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

- Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City's website at www.el-cerrito.org prior to the meeting.
- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, 510-215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 510-215-4305, email cityclerk@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE MSC IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE MSC MEETING. ACTIONS CHALLENGING MSC DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The MSC believes that late night meetings deter public participation, can affect the MSC's decision-making ability, and can be a burden to staff. MSC Meetings shall be adjourned by 11:00 p.m., unless extended to a specific time determined by a majority of the members.

EL CERRITO MUNICIPAL SERVICES CORPORATION DRAFT MINUTES

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING DECEMBER 1, 2020 – 6:45 p.m.

Members:

Chairperson Gregory B. Lyman

Vice Chairperson Paul Fadelli · Boardmember Janet Abelson
Boardmember Rochelle Pardue-Okimoto · Boardmember Gabriel Quinto
Boardmember Karen Pinkos · Boardmember Alexandra Orologas

Join Via WebEx:

<https://elcerrito.webex.com/elcerrito/onstage/g.php?MTID=ebdec67bdd93c29f3aa92858c71171ea1>

Event Number: 146 921 1191

Event Password: Join1201

or

Dial In: 1-408-418-9388

Access Code: 146 921 1191

Pursuant to Executive Orders N-25-20 and N-29-20, Teleconference Restrictions of the Brown Act Have Been Suspended, as Well as the Requirement to Provide a Physical Location for Members of the Public to Participate in the Meeting.

This meeting will not be broadcast or livestreamed online. Members of the public can view the meeting via WebEx using the meeting information listed above. Public Comments may be submitted one of two ways, **and are limited to items on the special meeting agenda only:**

1. Via WebEx using the “[Raise Hand](#)” feature to request to speak. Each period of public comment will be announced.

****Please note** - If a member of the public can join via phone **only**, a request to speak may be submitted via email to cityclerk@ci.el-cerrito.ca.us. The request must contain in the subject line **Request to Speak – Agenda Item #** and must include a name and the full phone number that will be used to call in.

2. Via email to cityclerk@ci.el-cerrito.ca.us. Email must contain in the subject line **MSC public comments**.

To ensure that the Corporation receives your written comments prior to taking action, they must be received by **4:00 p.m. the day of the meeting**.

All written comments received by this deadline will be provided to the Boardmembers and posted online in advance of the meeting. Written comments received after the deadline will be provided to the Boardmembers and included with supplemental materials **after the meeting**. **No written comments will be read into the record.**

6:45 P.M. ROLL CALL - CONVENE SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

Mayor Lyman called the meeting to order at 6:52 p.m.

Present: Chairperson Lyman, Vice Chairperson Fadelli, Boardmember Abelson, Boardmember Orologas, Boardmember Pardue-Okimoto, Boardmember Pinkos, Boardmember Quinto **Absent:** None

1. ORAL COMMUNICATIONS FROM THE PUBLIC

Remarks are typically limited to 3 minutes per person and to items on the special meeting agenda only.

None

2. Approval of Minutes for 2/6/2018

Action Proposed: Pass a motion to approve the meeting minutes from February 6, 2018.

Contact: Holly M. Charl  y, City Clerk, City Management

Moved/Seconded: Boardmember Quinto/Boardmember Orologas **Action:** Minutes approved. **Ayes:** Chairperson Lyman, Vice Chairperson Fadelli, Boardmember Abelson, Boardmember Orologas, Boardmember Pardue-Okimoto, Boardmember Pinkos, Boardmember Quinto
Noes: None

3. ADJOURN SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

The special meeting adjourned at 6:55 p.m.

Gabe Quinto, Mayor

This is to certify that the foregoing is a true and correct copy of the minutes of the City Council meeting(s) of December 1, 2020 as approved by the El Cerrito City Council.

Holly M. Charl  y, MMC, City Clerk

El Cerrito
Municipal Services Corporation

AGENDA BILL

Agenda Item No. 4.A.

Date: April 19, 2022
To: El Cerrito Municipal Services Corporation
From: Karen Pinkos, Executive Director, Municipal Services Corporation
Subject: Informational Item: Loan Agreement with City of El Cerrito

ACTION PROPOSED

Receive and file an informational item on the 2016 Loan Agreement between the Municipal Services Corporation and the City of El Cerrito and provide direction to staff regarding repayment of the loan.

BACKGROUND/ANALYSIS

In November 2015, the City of El Cerrito entered into an Installment Payment Plan agreement ("Agreement") with the California Department of Finance in order to obtain a Finding of Completion related to the dissolution of the El Cerrito Redevelopment Agency. The Agreement required that the City make payments totaling \$1,981,989 to the taxing entities via the County Auditor-Controller. The Agreement allowed the El Cerrito Redevelopment Successor Agency to obtain a Finding of Completion and receive approval of its Long Range Property Management Plan, allowing it to proceed with disposition of former Redevelopment Agency (RDA) properties, and the City has since completed the payment plan in full.

In order to assist in making these payments, the City requested a loan in the amount of \$350,000 from the Municipal Services Corporation (MSC) to provide short-term cash flow assistance. This loan was executed in May 2016. The promissory note outlining the terms of the agreement required repayment by June 30, 2020; however, at that time and through FY 2021 the City did not have sufficient funds in its General Fund balance to repay the loan. The City now has a positive General Fund balance, and funding is available to repay the loan to the MSC.

The original agenda items that contain detailed information on the Installment Payment Plan for the City/Successor Agency and the Loan Agreement between the MSC and City of El Cerrito are outlined in Attachments 1 and 2.

The \$350,000 loaned to the City was from the MSC fund balance, which consisted of fees from the development of the Safeway property that are slated to be used for traffic-related mitigations that will be incorporated into the Del Norte Complete Streets project. This funding must be secured in the City's Capital Improvement Program (CIP) Fund in advance of awarding construction contracts for the Complete Streets project in Spring 2023.

The MSC Board is asked to discuss and consider options for the City's repayment of the loan as far as timing of repayment, as well as consideration of allowing the City to transfer the funding directly into the CIP Fund in order to forgive the loan. Following discussion and possible direction, staff will prepare appropriate documentation for the MSC to consider for approval at a future meeting.

FINANCIAL CONSIDERATIONS

The loan agreement requires the City to repay the MSC the amount of \$350,000, which is slated for use in the City's CIP Fund for the Del Norte Complete Streets project. The funding must be secured and available for the project by Spring 2023.

LEGAL CONSIDERATIONS

Upon direction from the Municipal Services Corporation Board, any necessary legal documentation will be prepared for the Board's consideration at a future meeting.

Reviewed by:



Karen Pinkos, Executive Director

Attachments:

1. 12-21-15 City Council Item - Installment Payment Plan Agreement
2. 5-17-16 MSC Item - Loan Agreement



AGENDA BILL

Agenda Item No. 7

Date: December 21, 2015

To: City Council of the City of El Cerrito
El Cerrito Redevelopment Successor Agency

From: Melanie Mintz, Community Development Director
Lisa Malek-Zadeh, Finance Director/City Treasurer

Subject: Approve Installment Payment Plan Agreement with the Department of Finance and Amend the FY2015-16 Budget to Increase Spending Authority

ACTIONS REQUESTED

Adopt two separate resolutions approving and authorizing the City Manager and Executive Director of the Successor Agency to execute the Installment Payment Plan Agreement with the California Department of Finance and amend the FY 2015-16 budget to increase the spending authority in the General Fund by \$675,000 to make the first payment of the installment plan.

BACKGROUND

The El Cerrito Redevelopment Agency ("Dissolved Redevelopment Agency") was dissolved effective February 1, 2012 in accordance with legislation dissolving all redevelopment agencies in the State of California. In accordance with the Dissolution Statutes (AB 1x26, AB 1484 and SB 107), the City of El Cerrito elected to act as the Successor Agency to the Dissolved Redevelopment Agency. The Dissolution Statutes provide that the Successor Agency is a separate entity from the City.

The Dissolution Statutes required that the Successor Agency prepare a Due Diligence Review of the Dissolved Redevelopment Agency's accounts and assets to determine the amount of tax increment available for distribution to the taxing entities. The Successor Agency Due Diligence Review for the Dissolved Redevelopment Agency's Other Funds and Accounts ("OFA DDR") determined that there were no funds available for distribution to the taxing entities because all of the dissolved Redevelopment Agency's funds had been transferred to the El Cerrito Municipal Services Corporation ("MSC"), an independent nonprofit corporation. The Oversight Board approved the OFA DDR finding that there were no funds available for distribution to the taxing entities.

Upon review of the OFA DDR, the California Department of Finance ("DOF") determined that the transfer of the funds to the MSC was an unallowable transfer and ordered \$1,981,989 returned to the Successor Agency for distribution to the County Auditor-Controller. The DOF's determination was based on its finding that the MSC is not a separate entity from the City of El Cerrito. The Successor Agency met and conferred with DOF on the OFA DDR determination but the DOF continued to find that the Successor Agency had available funds. The City, the Successor Agency and the

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MSC filed a petition with the Sacramento Superior Court challenging the DOF determination. The City, Successor Agency and the MSC were partially successful on the petition at the trial court, with the trial court finding that the DOF could not offset the amounts determined by DOF to be available by withholding the City's sales tax, but the trial court also found that the DOF determination on the OFA DDR was correct. The City, Successor Agency and the MSC have appealed the trial court decision and the appeal is currently pending.

In September of this year, the Legislature adopted SB 107 which further amended the Dissolution Statutes. SB 107 includes a provision that any Successor Agency that has not either (i) paid the full amount determined to be owed on the OFA DDR or (ii) entered into an Installment Payment Plan Agreement with the DOF providing for payment of the amounts determined to be owed over time by December 31, 2015 will not be eligible for a Finding of Completion from the DOF. The receipt of a Finding of Completion provides certain benefits to the Successor Agency, including the ability to spend unencumbered bond proceeds, the eligibility to obtain repayment of City/Agency loans that were nullified by the Dissolution Statute and the ability to obtain approval of a Long Range Property Management Plan (LRPMP) allowing for an orderly disposition of the Dissolved Redevelopment Agency's real property assets. The Agency's LRPMP has been reviewed and is in line to be approved by the DOF pending the Agency's receipt of a Finding of Completion.

Successor Agency and City staffs have been working with the DOF on the terms of an Installment Payment Plan agreement. The DOF has made clear that its goal is to obtain payment of the amounts it has determined are owed as quickly as possible. After several rounds of negotiations, DOF has proposed a payment schedule for the OFA DDR as follows.

FY 2015-16	\$675,000
FY 2016-17	\$871,000
FY 2017-18	<u>\$435,000</u>
Total	\$1,981,989

The payment dates in the schedule (Attachment 3, Exhibit A) are tied to the dates that funds are disbursed from the Redevelopment Property Tax Trust Fund ("RPTTF") pursuant to the Dissolution Statutes. The RPTTF is the fund into which the County Auditor-Controller is required to deposit what was formerly tax increment and from which the County Auditor-Controller disburses funds to the Successor Agency for payment of enforceable obligations. Any remaining funds are distributed to the taxing entities. Payment of the above amounts will require the City to use a portion of RPTTF distributions and the initial payment in FY 2015-16 will require that the City borrow \$350,000 from the MSC. A separate action at a future date by the MSC board will be needed to approve the loan agreement between the MSC and the City. The loan will be repaid to the MSC after the final payment is made per the Installment Payment Plan Agreement in FY18.

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SB 107 also provides that if a Successor Agency enters into an Installment Payment Plan Agreement and as a result of a final judicial determination the amount determined to be owed by the Successor Agency is reduced, any overpayment made by the Successor Agency or the City will be placed on a Recognized Obligation Payment Schedule for repayment. So if the City and the Successor Agency are successful on their appeal, which the City and the Successor Agency will continue to pursue, and the DOF's determination is reduced or overturned, the City will be able to recover any funds paid as a part of the proposed Installment Payment Plan.

FINANCIAL CONSIDERATION

Payments on the Installment Payment Plan Agreement will begin in the second half of FY 2015-16 with the final payment being made in FY 2017-18. Funding to make these payments will come from RPTTF distributions, a loan of \$350,000 from the MSC and one-time revenue of approximately \$198,000 representing the City's share from the sale of former Redevelopment Agency property in FY 2016-17. Staff has determined that the RPTTF distributions will be sufficient to cover the payments with an assumption that the current Successor Agency debt will be refinanced in FY 2016-17 that will result in higher RPTTF distributions. With the exception of FY 2016-17, the RPTTF will also provide additional revenue to the City over and above the \$165,000 annual allocation assumed in the current and future year budgets. Once the final payment is made in FY 2017-18 and the loan from the MSC of \$350,000 is repaid, revenue to the City will increase further.

In FY 2016-17, after the Installment Payment Plan Agreement payment is made, the remaining revenue to the City is projected to be \$121,000, about \$44,000 less than assumed. However, this gap may be mitigated by the potential land sales of the Dissolved Redevelopment Agency's properties which could result in additional distributions of RPTTF funds to the City. This may also be offset by structuring the debt payments on the Dissolved Redevelopment Agency's bonded indebtedness to be lower in FY 2016-17 and increase slightly in the following years.

Option 1. Assumes Bond Refunding			
Payment Years	Payment	City Share (after Payment)	Impact on Budget (Assumes budgeted \$165K)
FY 2015-16	\$675,000	\$304,533	\$139,553
FY 2016-17	\$871,326	(\$76,840)	(\$241,840)
FY 2017-18	<u>\$435,663</u>	\$391,974	\$226,974
	\$1,981,989		

In the event refinancing is not approved, with the exception of FY 2016-17, there is still sufficient RPTTF to make the DOF payments. There is also enough RPTTF to cover the assumed \$165,000 annual budget allocation, but additional revenue available to the City will be much less than with refinancing. In FY 2016-17, RPTTF will be about \$199,000 short of the required payment. This could be offset by the City's portion of the sale of

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In the event refinancing is not approved, with the exception of FY 2016-17, there is still sufficient RPTTF to make the DOF payments. There is also enough RPTTF to cover the assumed \$165,000 annual budget allocation, but additional revenue available to the City will be much less than with refinancing. In FY 2016-17, RPTTF will be about \$199,000 short of the required payment. This could be offset by the City's portion of the sale of property included in the current projections of \$198,000 in FY 2016-17, but there will be no funds to cover the annual \$165,000 budget allocation. This will improve in the out years and continue to grow as outstanding debt is retired, but much less than if refinancing is secured.

Option 2. No Bond Refunding			
Payment Years	Payment	City Share (after Payment)	Impact on Budget (Assumes budgeted \$165K)
FY 2015-16	\$675,000	\$304,553	\$139,553
FY 2016-17	\$871,326	(\$199,010)	(\$364,010)
FY 2017-18	<u>\$435,663</u>	\$347,713	\$182,713
	\$1,981,989		

LEGAL CONSIDERATION

This action is consistent with the Dissolution Statutes and has been reviewed by the Successor Agency's legal counsel.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution Authorizing the City Manager to execute an Installment Payment Plan Agreement with the California Department of Finance
2. Resolution Authorizing the Executive Director to execute an Installment Payment Plan Agreement with the California Department of Finance
3. Installment Payment Plan Agreement

RESOLUTION NO. 2015-XX

RESOLUTION OF THIS CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING AN INSTALLMENT PAYMENT PLAN AGREEMENT BY AND AMONG THE CITY OF EL CERRITO, THE SUCCESSOR AGENCY TO THE FORMER EL CERRITO REDEVELOPMENT AGENCY AND THE CALIFORNIA DEPARTMENT OF FINANCE RELATED TO THE PAYMENT OF CERTAIN FUNDS DETERMINED BY THE DEPARTMENT OF FINANCE TO BE AVAILABLE FOR DISTRIBUTION TO THE TAXING ENTITIES RESULTING FROM THE DISSOLUTION OF THE FORMER EL CERRITO REDEVELOPMENT AGENCY AND AMENDING THE 2015-16 FISCAL YEAR BUDGET TO INCREASE SPENDING AUTHORITY

WHEREAS, the City of El Cerrito ("City") established the El Cerrito Redevelopment Agency ("Former RDA") and adopted the El Cerrito Redevelopment Plan pursuant to Ordinance No. 77-17, adopted on November 28, 1977 and as amended over time; and

WHEREAS, the Former RDA was dissolved effective February 1, 2012 in accordance with State law (ABx1 26, Ab 1484 and SB 107, collectively referred to herein as "Dissolution Statutes"); and

WHEREAS, the City elected to serve as the Successor Agency to the Former RDA in accordance with the Dissolution Statutes; and

WHEREAS, in accordance with the Dissolution Statutes, the Successor Agency is a separate entity from the City; and

WHEREAS, in accordance with the Dissolution Statutes, the Successor Agency prepared an Other Funds and Accounts Due Diligence Review determining the Former RDA funds available for distribution to the taxing entities, which OFA DDR determined that the Former RDA funds available for distribution to the taxing entities was zero; and

WHEREAS, the Department of Finance after reviewing the OFA DDR, issued its determination that the funds available for distribution to the taxing entities was \$1,981,989, which determination became a final determination after a meet and confer conducted with the Successor Agency; and

WHEREAS, the City and the Successor Agency have filed a petition with the Sacramento Superior Court requesting a writ of mandate directing the Department of Finance to withdraw its final determination on the OFA DDR; and

WHEREAS, the City and the Successor Agency's petition was granted in part and denied in part and the denial of the City and the Successor Agency's petition is currently pending in the Court of Appeal; and

WHEREAS, the City and the Successor Agency have now determined that despite their continued contention that the Department of Finance's final determination on the OFA DDR is counter to the Dissolution Statutes and unconstitutional, that it is in the best interest of the City and the Successor Agency to enter into an Installment Payment Plan Agreement with the Department of Finance providing for payment of the amounts in dispute over time; and

WHEREAS, the Dissolution Statutes provide that if after entering into an Installment Payment Plan Agreement, there is a final judicial determination that alters or reduces the amount determined due, any excess amounts paid will be repaid to the City by placing such amounts on the next Recognized Obligations Payment Schedule; and

WHEREAS, the Installment Payment Plan Agreement will entitle the Successor Agency to receive a Finding of Completion which will provide certain benefits to the City and the Successor Agency; and

WHEREAS, in order to make the payments required in the Installment Payment Plan Agreement in fiscal year 2015-16 the City needs to amend its budget to increase the general fund spending authority by \$675,000.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EL CERRITO hereby approves the Installment Payment Plan Agreement with the Successor Agency and the California Department of Finance substantially in the form on file with the City Clerk subject only to such changes as are approved by the City Manager.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to execute the Installment Payment Plan Agreement and to take such actions as are necessary to implement the terms of the Installment Payment Plan Agreement including executing any other documents required to implement the Agreement.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to approve changes to the Installment Payment Plan Agreement as necessary.

BE IT FURTHER RESOLVED, that the City Council hereby amends the 2015-16 Budget to increase the general fund spending authority by \$675,000 in order to make the payments required in the Installment Payment Plan Agreement for fiscal year 2015-16.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

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Attachment 1

I CERTIFY that at the special meeting on December 21, 2015, the City Council of the City of El Cerrito acting as the El Cerrito Redevelopment Agency Successor Agency passed this resolution by the following vote:

Ayes:	Councilmembers:
Noes:	Councilmembers:
Absent:	Councilmembers:
Abstain:	Councilmembers:

IN WITNESS of this action, I sign this document on December __, 2015.

Cheryl Morse, City Clerk

Approved:

Greg Lyman, Mayor

SUCCESSOR AGENCY RESOLUTION NO.2015-XX

RESOLUTION OF THE SUCCESSOR AGENCY TO THE EL CERRITO REDEVELOPMENT AGENCY APPROVING AN INSTALLMENT PAYMENT PLAN AGREEMENT BY AND AMONG THE CITY OF EL CERRITO, THE SUCCESSOR AGENCY TO THE FORMER EL CERRITO REDEVELOPMENT AGENCY AND THE CALIFORNIA DEPARTMENT OF FINANCE RELATED TO THE PAYMENT OF CERTAIN FUNDS DETERMINED BY THE DEPARTMENT OF FINANCE TO BE AVAILABLE FOR DISTRIBUTION TO THE TAXING ENTITIES RESULTING FROM THE DISSOLUTION OF THE FORMER EL CERRITO REDEVELOPMENT AGENCY

WHEREAS, The City of El Cerrito ("City") established the El Cerrito Redevelopment Agency ("Former RDA") and adopted the El Cerrito Redevelopment Plan pursuant to Ordinance No. _____ 77-17, adopted on _____; November 28, 1977 and as amended over time; and

WHEREAS, the Former RDA was dissolved effective February 1, 2012 in accordance with State law (ABx1 26, AB 1484 and SB 107, collectively referred to herein as "Dissolution Statutes"); and

WHEREAS, the City elected to serve as the Successor Agency to the Former RDA in accordance with the Dissolution Statutes; and

WHEREAS, in accordance with the Dissolution Statutes, the Successor Agency is a separate entity from the City; and

WHEREAS, in accordance with the Dissolution Statutes, the Successor Agency prepared an Other Funds and Accounts Due Diligence Review determining the Former RDA funds available for distribution to the taxing entities, which OFA DDR determined that the Former RDA funds available for distribution to the taxing entities was zero; and

WHEREAS, the Department of Finance after reviewing the OFA DDR, issued its determination that the funds available for distribution to the taxing entities was \$1,981,989, which determination became a final determination after a meet and confer conducted with the Successor Agency; and

WHEREAS, the City and the Successor Agency have filed a petition with the Sacramento Superior Court requesting a writ of mandate directing the Department of Finance to withdraw its final determination on the OFA DDR; and

WHEREAS, the City and the Successor Agency's petition was granted in part and denied in part and the denial of the City and the Successor Agency's petition is currently pending in the Court of Appeal; and

WHEREAS, the City and the Successor Agency have now determined that despite their continued contention that the Department's final determination on the OFA DDR is counter to the Dissolution Statutes and unconstitutional, that it is in the best interest of the City and the Successor Agency to enter into an Installment Payment Plan Agreement with the Department of Finance providing for payment of the amounts in dispute over time; and

WHEREAS, the Dissolution Statutes provide that if after entering into an Installment Payment Plan Agreement, there is a final judicial determination that alters or reduces the amount determined due, any excess amounts paid will be repaid to the City by placing such amounts on the next Recognized Obligations Payment Schedule; and

WHEREAS, the Installment Payment Plan Agreement will entitle the Successor Agency to receive a Finding of Completion which will provide certain benefits to the City and the Successor Agency.

NOW THEREFORE, BE IT RESOLVED THAT THE GOVERNING BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CERRITO REDEVELOPMENT AGENCY hereby approves the Installment Payment Plan Agreement with the City of El Cerrito and the California Department of Finance substantially in the form on file with the City Clerk subject only to such changes as are approved by the City Manager, acting as the Executive Director of the Successor Agency.

BE IT FURTHER RESOLVED, that the City Council acting as the governing board of the Successor Agency hereby authorizes the City Manager acting as the Executive Director of the Successor Agency to execute the Installment Payment Plan Agreement and to take such actions as are necessary to implement the terms of the Installment Payment Plan Agreement including executing any other documents required to implement the Agreement.

BE IT FURTHER RESOLVED, that the City Council acting as the governing board of the Successor Agency hereby authorizes the City Manager acting as the Executive Director of the Successor Agency to approve changes to the Installment Payment Plan Agreement as necessary.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

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Attachment 2

I CERTIFY that at the special meeting on December 21, 2015, the City Council of the City of El Cerrito acting as the El Cerrito Redevelopment Agency Successor Agency passed this resolution by the following vote:

Ayes:	Councilmembers:
Noes:	Councilmembers:
Absent:	Councilmembers:
Abstain:	Councilmembers:

IN WITNESS of this action, I sign this document on December __, 2015.

Cheryl Morse, City Clerk

Approved:

Greg Lyman, Mayor

INSTALLMENT PAYMENT AGREEMENT

This Installment Payment Agreement is entered into by and between the Department of Finance (Department), the El Cerrito Successor Agency (Agency), and the City of El Cerrito (City).

RECITALS

- A. As determined according to Health and Safety Code (HSC) section 34179.5, the Agency has an outstanding Due Diligence Review amount due as set forth in Exhibit A;
- B. Pursuant to HSC sections 34179.6(h)(3), the Department has determined that full payment of the Due Diligence Review amount due is not currently feasible; and
- C. The City and Agency have requested the Department to approve an installment payment plan and issue a Finding of Completion as authorized by HSC 34179.7.

AGREEMENT

The parties hereby agree to the following installment payment plan:

- 1. The City agrees to pay the outstanding Due Diligence Review amount according to the schedule in Exhibit A.
- 2. The City agrees to remit all scheduled payments directly to the Auditor-Controller.
- 3. The Department shall issue a Finding of Completion within five (5) days of the effective date of this agreement.
- 4. This agreement may be executed by facsimile and in one or more counterparts, and the effective date shall be the date on which the last counterpart of this agreement is signed.

5. The parties agree to comply with all provisions of HSC section 34179.7 governing written installment payment plans, including, but not limited to, all provisions governing the failure to comply with this agreement.

Date: 12/16/15

California Department of Finance



Justyn Howard,
Program Budget Manager

Date: _____

City of El Cerrito

[name, title]

Date: _____

El Cerrito Successor Agency

[name, title]

**EXHIBIT A
INSTALLMENT PAYMENT PLAN
CITY OF EL CERRITO**

Due Diligence Review amount outstanding

Payment Schedule

<u>Date</u>	<u>Amount</u>
January 2, 2016	\$575,000
June 1, 2016	\$100,000
January 2, 2017	\$435,663
June 1, 2017	\$435,663
January 2, 2018	\$435,663
Total:	\$1,981,989

***El Cerrito
Municipal Services Corporation***

Agenda Report

Item No. 5(A)

Date: May 17, 2016
To: El Cerrito Municipal Services Corporation Board
From: Melanie Mintz, Community Development Director, City of El Cerrito
Subject: Loan Agreement with the City of El Cerrito

ACTION REQUESTED

Adopt a resolution authorizing a short-term loan to the City of El Cerrito.

BACKGROUND

In November 2015, the City of El Cerrito entered into an Installment Payment Plan agreement ("Agreement") with the Department of Finance in order to obtain a Finding of Completion related to the dissolution of the El Cerrito Redevelopment Agency. The Agreement requires that the City make payments totaling \$1,981,989 to the taxing entities via the County Auditor-Controller. The Agreement allowed the El Cerrito Redevelopment Successor Agency to obtain a Finding of Completion and receive approval of its Long Range Property Management Plan, allowing it to proceed with disposition of former Redevelopment Agency (RDA) properties. The \$1,981,989 represents funds determined by the Department of Finance to be available to the taxing entities resulting from the dissolution of the former RDA. As a result of making the installment payments required by the Agreement, and as discussed in the December 21st Agenda Bill regarding the Installment Payment Plan agreement, the City needs short-term cash flow assistance from the El Cerrito Municipal Services Corporation ("MSC"). The City has therefore requested a short-term loan from the MSC.

ANALYSIS

As a nonprofit public benefit corporation, the Corporation's specific charitable and public purposes include, among other things, to benefit and support the City and to lessen the burdens of local government, primarily the City. Providing short-term cash-flow assistance to the City is consistent with these purposes.

This assistance would take the form of a loan agreement and promissory note with the following terms:

- Loan Amount: \$350,000
- Interest Rate: Zero percent (0%) simple interest per annum
- Repayment: Full repayment by Fiscal Year 2020, or when sufficient funds are available after completion of the Installment Payment Plan

agreement, in either a single lump sum or installments of any amount that equal the amount of the loan. Should the City default on any loan terms and fail to cure within the applicable cure period, the Corporation may declare the loan due and payable in full. The City may prepay any portion of the loan at any time, without penalty or premium.

- Use of Proceeds: The City may use the loan proceeds solely and exclusively to pay for legitimate costs of governmental operation.
- Disbursement: Upon execution of the loan agreement and promissory note, the loan will be disbursed in a lump sum.

LEGAL CONSIDERATIONS

The actions being considered are consistent with California Corporations Law, the Corporation's public and charitable purposes, its Amended and Restated Bylaws, and the Board's previous actions.

FINANCIAL CONSIDERATIONS

The Corporation has sufficient cash reserves to loan the requested amount to the City in the short term.

Reviewed by:



Scott Hanin, Executive Director

Attachments:

1. Resolution with Exhibit 1 - Loan Agreement

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. 2016-01

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION APPROVING A LOAN AGREEMENT WITH THE CITY OF EL CERRITO

WHEREAS, the El Cerrito Municipal Service Corporation (the "Corporation") is a nonprofit public benefit corporation organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes; and

WHEREAS, the specific charitable and public purposes for which the Corporation is organized are, among other things, to benefit and support the City of El Cerrito (the "City"), in accordance with Section 509(a)(3) of the Internal Revenue Code of 1986, as amended, and to lessen the burdens of government of the City; and

WHEREAS, the City and the El Cerrito Redevelopment Successor Agency ("Successor Agency") entered into an Installment Payment Plan agreement with the Department of Finance so that the Successor Agency could obtain a Finding of Completion and obtain approval of the Long Range Property Management Plan and as a result of making payments in accordance with the Installment Payment Plan Agreement, the City presently needs short-term cash flow assistance and has therefore requested a short-term loan from the Corporation; and

WHEREAS, the Corporation currently has sufficient resources to fund the loan and the City anticipates sufficient revenues in the near-term to repay the loan on the terms requested; and

WHEREAS, providing short-term cash-flow assistance to the City in the form of a loan is consistent with the Corporation's charitable and public purposes; and

WHEREAS, the Corporation is willing to loan funds to the City under terms and conditions that are substantially in the form described in the attached Loan Agreement, which is Exhibit 1 to this Resolution.

NOW THEREFORE, BE IT RESOLVED, the Board finds that the above recitals are true and correct.

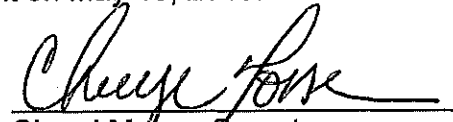
BE IT FURTHER RESOLVED, that the Board does hereby authorize the Executive Director to enter into a Loan Agreement with the City of El Cerrito substantially in the form of Exhibit 1 attached hereto.

BE IT FURTHER RESOLVED, that this Resolution shall become effective immediately upon its adoption.

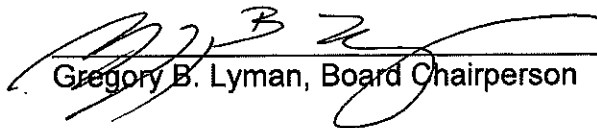
I CERTIFY that at a special meeting on May 17, 2016, the Board of Directors of the El Cerrito Municipal Services Corporation passed this resolution by the following vote:

AYES: Boardmembers Abelson, Friedman, Hanin, Pinkos, Quinto and
Chair Lyman
NOES: None
ABSTAIN: None
ABSENT: Boardmember Bridges

IN WITNESS of this action, I sign this document on May 19, 2016.


Cheryl Morse, Secretary

APPROVED:


Gregory B. Lyman, Board Chairperson

**EXHIBIT 1 TO
RESOLUTION 2016-XX**

**LOAN AGREEMENT BETWEEN
THE CITY OF EL CERRITO AND
THE EL CERRITO MUNICIPAL SERVICES CORPORATION**

THIS LOAN AGREEMENT (this “Agreement”) is entered into as of _____, 2016 (the “Effective date”), by and between the City of El Cerrito, a California municipal corporation (the “City”), and the El Cerrito Municipal Services Corporation, a nonprofit public benefit corporation (the “Corporation”). The City and the Corporation are hereinafter collectively referred to as the “Parties.”

RECITALS

A. The Corporation is a nonprofit public benefit corporation organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes. The specific charitable and public purposes for which the Corporation is organized are, among other things, to benefit and support the City of El Cerrito, in accordance with Section 509(a)(3) of the Internal Revenue Code of 1986, as amended, and to lessen the burdens of government of the City.

B. In November 2015, the City and Department of Finance entered into a Installment Payment Plan agreement related to the dissolution of the former El Cerrito Redevelopment Agency. Pursuant to the Installment Payment Plan agreement, the City agreed to pay funds to the taxing entities via the County Auditor-Controller determined by the Department of Finance to be available as a result of the dissolution of the former Redevelopment Agency, so that the Successor Agency could get a Finding of Completion and obtain approval of its Long Range Property Management Plan, allowing it to proceed with disposition of former RDA properties. As a result of making the installment payments in accordance with the agreement, the City is presently experiencing a need for short-term cash flow assistance. The City has therefore requested a short-term loan from the Corporation.

C. The Corporation believes that providing short-term cash-flow assistance to the City in the form of a loan is consistent with its corporate purposes and is willing to loan funds to the City pursuant to the terms and conditions described in this Agreement.

D. Concurrently herewith the City shall execute a promissory note (the “Note”) in the amount of the Loan. This Agreement and the Note are collectively hereinafter referred to as the “Loan Documents.”

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

**ARTICLE I
LOAN TERMS**

1.1. Loan and Note. Corporation agrees to loan to City, and City agrees to borrow from Corporation, subject to the provisions of Section 1.2.1, , the sum of up to Three hundred

fifty thousand dollars (\$350,000) upon the terms and conditions and for the purposes set forth in this Agreement (the "Loan"). The Loan shall be evidenced by the Note which shall be dated as of the Effective Date and executed by the City substantially in the form attached hereto as Exhibit A. Provided that City has complied with all conditions set forth in Section 2.3, the Loan Proceeds shall be disbursed in accordance with Section 2.2 hereof. The Parties agree that the Corporation shall disburse Loan Proceeds only for and to the extent necessary for the purposes set forth in Section 2.1.

1.2. Interest Rate; Right to Demand Payment Upon Default. The outstanding principal balance of the Note shall bear interest at the rate of zero percent (0%) simple interest per annum. Provided that the City is not in default under the Loan Documents, no periodic payments shall be due on the Loan. The Corporation shall have the right to declare the entire outstanding principal balance of the Loan together with accrued interest and all other sums due under the Loan Documents due and payable in full upon the occurrence of an Event of Default under the Loan Documents and the expiration of any applicable cure period.

1.3. None

1.4. Payment. The City shall fully repay the Loan on or before June 30, 2020, unless the Parties agree to a later date. At the City's discretion, it may repay the Loan in a single lump sum or in installments of any amount that equal the amount of the Loan.

1.5. Prepayment. The Loan or any portion of the outstanding principal balance due under the Loan Documents may be prepaid at any time and from time to time, without penalty or premium. Prepayments shall be applied first to accrued but unpaid interest and then to principal. In no event shall any amount due under the Loan Documents become subject to any rights of offset, deduction, or counterclaim on the part of the City.

ARTICLE II USE AND DISBURSEMENT OF LOAN PROCEEDS

2.1. Use of Proceeds. The City may use the proceeds of the Loan ("Loan Proceeds") solely and exclusively to pay for legitimate costs of governmental operation.

2.2. Disbursement of Proceeds. Upon satisfaction of the conditions set forth in Section 2.3, provided that the City has provided Corporation with such other documentation as Corporation may reasonably require, Corporation shall disburse Loan Proceeds to City in a lump sum.

2.3. Conditions Precedent to the Disbursement of Proceeds.

(a) Corporation's obligation to disburse the Loan Proceeds is conditioned upon the City's delivery to the Corporation of fully-executed and acknowledged copies of the

Note and this Agreement and such documentation as Corporation shall reasonably require regarding City's authority to execute and perform its obligations under the Loan Documents.

(b) No material adverse change as determined by the Corporation in its reasonable judgment shall have occurred in the financial or other condition of the City since the date of this Agreement.

ARTICLE III REPRESENTATIONS, WARRANTIES, AND COVENANTS

3.1. City's Representations, Warranties, and Covenants. The City represents and warrants to the Corporation as follows, and the City covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.1 not to be true, the City shall immediately give written notice of such fact or condition to the Corporation. The City acknowledges that the Corporation shall rely upon the City's representations made herein notwithstanding any investigation made by or on behalf of the Corporation.

(a) Legal Status; Authority. The City is California municipal corporation, duly organized and operating under the laws of the State of California. The City has the full right, power and authority to deliver and perform all obligations of the City under the Loan Documents. The City's execution, performance and delivery of the Loan Documents has been duly authorized by all requisite actions, and when executed and delivered will each constitute a valid and binding obligation of the City, enforceable in accordance with the respective terms thereof. The persons executing this Agreement on behalf of the City have been duly authorized to do so. This Agreement and the other Loan Documents constitute valid and binding obligations of the City, enforceable in accordance with their respective terms.

(b) No Conflict. The execution of the Loan Documents and the City's performance thereunder do not and will not result in a breach of or constitute a default under any agreement, contract, order, indenture or other instrument to which the City is a party or by which the City may be bound.

(c) No Litigation or Other Proceeding. There are no pending or, to the City knowledge, threatened actions or proceedings before any court or administrative body which may adversely affect the financial condition or operation of the City or the City's use of the Proceeds.

(d) No Bankruptcy. The City is not the subject of a bankruptcy or insolvency proceeding.

(e) Compliance with Laws. The City is in compliance in all material respects with all local, state, and federal laws, rules, regulations, orders, and decrees that are applicable to the Loan or to the City in relation thereto ("Applicable Law")

3.2. Corporation's Representations, Warranties, and Covenants. The Corporation represents and warrants to the City as follows, and the Corporation covenants that until the expiration or earlier termination of this Agreement, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 3.2 not to be true, the Corporation shall immediately give written notice of such fact or condition to the City. The Corporation acknowledges that the City shall rely upon the Corporation's representations made herein notwithstanding any investigation made by or on behalf of the City.

(a) Legal Status; Authority. The Corporation is a nonprofit public benefit corporation, duly organized and operating under the laws of the State of California and the United States. The Corporation has the full right, power and authority to deliver and perform all obligations of the Corporation under the Loan Documents. The Corporation's execution, performance and delivery of the Loan Documents has been duly authorized by all requisite actions, and when executed and delivered will each constitute a valid and binding obligation of the Corporation, enforceable in accordance with the respective terms thereof. The persons executing this Agreement on behalf of the Corporation have been duly authorized to do so. This Agreement and the other Loan Documents constitute valid and binding obligations of the Corporation, enforceable in accordance with their respective terms.

(b) No Conflict. The execution of the Loan Documents and the Corporation performance thereunder do not and will not result in a breach of or constitute a default under any agreement, contract, order, indenture or other instrument to which the Corporation is a party or by which the Corporation may be bound.

(c) No Litigation or Other Proceeding. There are no pending or, to the Corporation knowledge, threatened actions or proceedings before any court or administrative body which may adversely affect the financial condition or operation of the Corporation or the Corporation's ability to make the Loan.

(d) No Bankruptcy. The Corporation is not the subject of a bankruptcy or insolvency proceeding.

(e) Compliance with Laws. The Corporation is in compliance in all material respects with all local, state, and federal laws, rules, regulations, orders, and decrees that are applicable to the Loan or to the Corporation in relation thereto ("Applicable Law")

ARTICLE IV INDEMNIFICATION

4.1. Indemnification of Corporation by City. The City shall defend (with counsel reasonably acceptable to Corporation), hold harmless and indemnify the Corporation, its officers, employees and agents from and against all claims, liability, costs, expenses, loss or damages of any nature whatsoever, including reasonable attorneys' fees, arising out of or in any way connected with its failure to perform its covenants and obligations under this Agreement

and any of its operations or activities related thereto, excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified, or held harmless.

4.2. Indemnification of City by Corporation. The Corporation shall defend (with counsel reasonably acceptable to Corporation), hold harmless and indemnify the City, its officers, employees and agents from and against all claims, liability, costs, expenses, loss or damages of any nature whatsoever, including reasonable attorneys' fees, arising out of or in any way connected with its failure to perform its covenants and obligations under this Agreement and any of its operations or activities related thereto, excluding the willful misconduct or gross negligence of the person or entity seeking to be defended, indemnified, or held harmless.

ARTICLE V EVENTS OF DEFAULT AND REMEDIES

5.1. Events of Default. Each of the following events will constitute an Event of Default ("Event of Default") under this Agreement:

(a) Non-disbursal of Loan Proceeds. The Corporation's failure to disburse Loan Proceeds pursuant to this Agreement.

(b) Nonpayment. The City's failure to make payments pursuant to this Agreement.

(c) Failure to Perform. Either Party's failure, neglect or refusal to perform any promise, agreement, covenant or obligation contained in this Agreement, after any applicable cure periods.

5.2. Notice of Default. Whenever any Event of Default has occurred, other than a failure to pay any sums due, a Party shall give written notice of default to the other Party. If the default is not cured within thirty (30) calendar days after the Date of Default (defined herein), or any extension approved in writing by the Party providing notice, the Party not in default may enforce its rights and remedies under Section 5.3 below. Any default that has occurred will be deemed to commence on the date that written notice of default is effective pursuant to Section 6.1 of this Agreement (the "Date of Default"). In the event of a default in the payment of any payment when due, the City shall have ten (10) calendar days from the payment due date to cure such default, whether or not the Corporation gives written notice.

5.3. Remedies. Upon the occurrence of any Event of Default, a Party, in addition to any other remedies provided herein or by law, has the right, at its option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) In the event that the City fails to make a loan payment, the Corporation may accelerate and declare the balance of the Loan and interest accrued thereon immediately due and payable.

(b) Seek specific performance to enforce the terms of the Loan Documents.

(c) Pursue any and all other remedies available under law to enforce the terms of the Loan Documents and the Party's rights thereunder.

5.4. Remedies Cumulative. Each of the remedies provided herein is cumulative and not exclusive of, and shall not prejudice any other remedy provided in any other Loan Document. A Party may exercise from time to time any rights and remedies available to it under applicable law, in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any other instrument or notice, demand or legal process of any kind.

ARTICLE VI MISCELLANEOUS

6.1. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

(a) Personal delivery, in which case notice shall be deemed delivered upon receipt;

(b) Certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(c) Nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(d) Facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

City:

City of El Cerrito
Attn: Finance Director/City
Treasurer
10890 San Pablo Avenue
El Cerrito, CA 94530-2323

Corporation:

El Cerrito Municipal Services Corporation
Attn: Chief Financial Officer
10890 San Pablo Avenue
El Cerrito, CA 94530-2323

6.2. Counterparts. This Agreement may be executed in multiple counterparts each of which shall be an original and all of which taken together shall constitute one and the same instrument.

6.3. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

6.4. Legal Actions; Attorneys' Fees. In the event any legal action is commenced to interpret or to enforce the terms of this Agreement or to collect damages as a result of any breach thereof, the Party prevailing in any such action shall be entitled to recover against the other Party all reasonable attorneys' fees and costs incurred in such action.

6.5. Captions; Interpretation. The captions of the Sections and Articles of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. The language of this Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any Party. Time is of the essence in the performance of this Agreement.

6.6. Further Assurances. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and take such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

6.7. Parties Not Co-Venturers. Nothing in this Agreement is intended to or shall establish the Parties as partners, co-venturers, or principal and agent with one another.

6.8. Governing Law; Venue. This Agreement shall in all respects be construed and enforced in accordance with laws of the State of California without regard to principles of conflicts of laws. The Parties agree that any action to enforce or interpret this Agreement shall be litigated exclusively in courts having jurisdiction in Contra Costa County. The Parties irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

6.9. Waiver; Modification And Amendment. No failure or delay on the part of the a Party in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. No modification or waiver of any provision of this Agreement, nor any consent to any departure by a Party therefrom, shall in any event be effective unless the same shall be in writing, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on a Party in any case shall entitle the Party to any other or further notice or demand in similar or other circumstances. No amendment to

this Agreement shall be effective unless and until such amendment is in writing, properly approved in accordance with applicable procedures, and executed by the Parties.

6.10. Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, the Corporation's obligation to make the Loan is personal to the City, and shall not be assignable by the City by operation of law or otherwise absent the express written consent of the Corporation, and any such assignment by operation of law or otherwise shall be void.

6.11. No Third Party Beneficiaries. There shall be no third party beneficiaries to this Agreement.

6.12. Entire Agreement; Exhibits. This Agreement, together with the other Loan Documents, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any and all prior or contemporaneous oral or written agreements and negotiations between the Parties with respect thereto. Exhibit A attached hereto is incorporated herein by reference as though fully set forth herein.

6.13. Survival. All representations made by the Parties herein, all indemnity provisions and all other provisions that state that they shall survive the termination hereof shall survive the expiration or earlier termination of this Agreement. The representations of a Party made herein have been or will be relied upon by the other Party, notwithstanding any investigation made by the party or on its behalf.

6.14. Corporation Status. The City recognizes and agrees that the Corporation is not a commercial lending institution, but a public benefit nonprofit corporation acting pursuant to its corporate purpose. Any duties or obligations that a commercial lending institution might have to the City shall not apply to this transaction except as set forth herein and in the Loan Documents.

6.15. Action by the City. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, or consent by the City is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the City Manager or by any person who shall have been designated by the City Manager, without further approval by the City Council.

6.16. Non-Liability of City and City Officials, Employees, and Agents. No member, official, employee or agent of the City shall be personally liable to the Corporation or any successor in interest to any of the foregoing in the event of any default or breach by the City, or for any amount of money which may become due to the Corporation or the Corporation's successors in interest or for any obligation of City under this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the City and the Corporation have executed this Agreement as of the Effective Date.

City of El Cerrito

El Cerrito Municipal Services Corporation

Scott Hanin, City Manager

Scott Hanin, Executive Director

Attest:

Attest:

Cheryl Morse, City Clerk

Cheryl Morse, Secretary

Approved as to Form:

Approved as to Form:

Sky Woodruff, City Attorney

Karen Tiedemann, Counsel

2649495.1

EXHIBIT A
FORM OF PROMISSORY NOTE

PROMISSORY NOTE

\$350,000

El Cerrito, California
_____, 2016

A. FOR VALUE RECEIVED, the CITY OF EL CERRITO, a municipal corporation, operating and as authorized by applicable law of the State of California (“Maker”), promises to pay to the EL CERRITO MUNICIPAL SERVICES CORPORATION (“Holder”), the principal sum of THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000), or so much thereof as may be advanced by Holder pursuant to the loan agreement described below, together with interest on the outstanding principal balance, in accordance with the terms and conditions described herein.

This Promissory Note (“Note”) has been executed and delivered pursuant to the terms of a Loan Agreement dated _____, 2016 (the “Agreement”) between Maker and Holder which details the terms and conditions under which Holder agrees to lend to Maker, and Maker agrees to borrow, up to THREE HUNDRED FIFTY THOUSAND DOLLARS (\$350,000), (the “Loan”). The Agreement requires Holder to disburse the amount for the Loan in a lump sum. This Note reflects the disbursement under the Agreement. The rights and obligations of Maker under this Note shall be governed by the Agreement and by the terms set forth in this Note. Capitalized terms used, but not defined herein, shall have the same meaning as set forth in the Agreement.

B. Note Terms.

(1) Loan Term. The Maker shall repay any loan principal and accrued interest in an amount required to pay off the total outstanding loan principal, together with accrued interest thereon, on or before June 30, 2020 (the “Maturity Date”).

(2) Interest Rate. The unpaid principal balance of the Loan shall accrue interest at the rate of zero percent (0%) until all indebtedness and other amounts payable under this Agreement are paid in full.

(3) Payments. At the Maker’s discretion, it may repay the loan in a single lump sum or in installments of any amount that equal the amount of the loan.

(4) Place and Manner of Payment. Payments shall be made in lawful money of the United States to Holder at 10890 San Pablo Avenue, El Cerrito, CA 94530, or at such other place as Holder may from time to time designate in writing to Maker.

(5) Prepayment. Maker may prepay this Note, including any accrued interest, either in whole or in part, at any time prior to the Maturity Date without penalty or other charge.

C. If default occurs in the payment of this Note when due, and the default is not cured within thirty (30) days, the Holder may accelerate and declare the balance of the loan and interest accrued thereon immediately due and payable. In case of any default by the Maker, Holder shall have available all remedy options stated in Article 5 of the Agreement.

D. Maker agrees to pay the following costs, expenses and attorneys' fees paid or incurred by Holder, or adjudged by a court: (1) reasonable costs of collection, costs, expenses and attorneys' fees paid or incurred in connection with the collection or enforcement of this Note, whether or not suit is filed; and (2) costs of suit and such sums as the court may adjudge as attorneys' fees in an action to enforce payment of this Note or any part thereof.

E. This Note shall be governed by and construed in accordance with the laws of the State of California.

F. The terms of this Note shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of Maker and Holder.

G. Time is of the essence with respect to each and every provision hereof. If any provision hereof is found to be invalid or unenforceable by a court of competent jurisdiction, the invalidity thereof shall not affect the enforceability of the remaining provisions of this Note.

Executed in El Cerrito, California on _____, 2016

CITY OF ELCERRITO

By: Scott Hanin
Its: City Manager

El Cerrito
Municipal Services Corporation

AGENDA BILL

Agenda Item No. 4.B.

Date: April 19, 2022
To: El Cerrito Municipal Services Corporation
From: Karen Pinkos, Executive Director, Municipal Services Corporation
Subject: Informational Item: Cannabis Operating Permit Community Benefit Funding

ACTION PROPOSED

Receive and file information regarding the City's Cannabis Operating Permit Community Benefit Funding.

BACKGROUND/ANALYSIS

The City of El Cerrito has issued two operating permits for Cannabis Businesses. The first permit was issued in September 2018 to ECWC Partners, Inc. This business, known as NUG, is located at 11888 San Pablo Avenue and has been operating since August 2021. The second permit was issued in March 2021 to Authentic El Cerrito, LLC which will be located at 10770 San Pablo Avenue is currently in the permitting process, with an anticipated opening in the summer of 2022. The cannabis operating permits are attached as Attachments 1 and 2.

Cannabis businesses are subject to sales tax and state excise taxes. In addition, both permits require the Cannabis Business Operators to submit fees including 5% of their gross receipts to the City's General Fund and an additional contribution for the purposes of providing quality of life community benefits. The language for each permit that outlines the requirements for these quality of life contributions is as follows:

- ECWC Partners, Inc.: "The business shall contribute 1% of annual gross receipts to the City of El Cerrito. Payments shall be due quarterly each year. The City may make these funds available to co-sponsored groups, non-profits or other organizations to be used for specific purposes that support the City's goals and objectives towards the improvement of the quality of life."
- Authentic El Cerrito, LLC: "As part of its community benefits program the Operator shall donate at a minimum \$50,000 per year to the Municipal Services Corporation to be distributed to local non-profits or efforts directly towards combatting displacement and homelessness, drug addiction and other needs based on community priorities, as determined by the Board of the Municipal Services Corporation with input from the City Council."

While only one permit specifically designates that the funding be provided to the Municipal Services Corporation (MSC), staff believes that it is appropriate that all of the community contributions from both permits be housed in the MSC in order to provide clear separation from the City's funds, and because the MSC is better suited to provide direction as to the funding's use.

At this time, the amount of funding for quality of life community benefits from these two businesses is conservatively estimated at approximately \$90,000 per year; however the true amount is unknown as only one business is currently open and there is not sufficient data to confirm these projections. The City is slated to receive its first quarterly payment from NUG on April 15, 2022, which will include all fees dating back to its opening in August 2021. However, while it is premature to consider budgeting the funds without confirming the actual revenue, the Board may wish to consider a preliminary discussion on the timing and the possible uses of these quality of life community benefit contributions.

FINANCIAL CONSIDERATIONS

This section is not applicable to this agenda item.

LEGAL CONSIDERATIONS

This section is not applicable to this agenda item.

Reviewed by:

A handwritten signature in blue ink, appearing to read "Karen Pinkos".

Karen Pinkos, Executive Director

Attachments:

1. ECWC Operating Permit
2. Authentic Operating Permit



Date: September 19, 2018

To: Interested Parties

From: Scott Hanin, City Manager

Subject: Approval of an Operating Permit for ECWC Partners, Inc. for a cannabis storefront business operation located at 11886, 11888 and 11896 San Pablo Avenue

On, December 19, 2017, the El Cerrito City Council adopted Chapter 6.80: Commercial Cannabis of the El Cerrito Municipal Code, establishing standards and a permit process for cannabis businesses.

Subsequent to the adoption of the ordinance, the City established March 30, 2018 as the deadline for applications for Operating Permits for Cannabis Storefront Businesses.

Prior to the deadline, the City of El Cerrito received two applications for Operating Permits for cannabis storefront businesses. Both applications were for the same location, meaning the City could only approve one of the two applications as submitted.

On April 10, 2018, and April 18, 2018 the City Manager, the Police Chief, the City Attorney and the Senior Planner (the City review team) met and reviewed the applications submitted to the City for consideration.

On May 16, 2018, City staff sent a letter to the applicant, ECWC Partners, Inc., requesting additional information as part of the application process.

On May 24, 2018, the applicant revised the application in response to City staff's letter.

The City review team evaluated the submitted applications based upon (1) the process and criteria established by Chapter 6.80 of the El Cerrito Municipal Code, (2) the complete packets of information submitted by each of the applicants, and (3) each team member's demonstrated specific knowledge and expertise in their respective fields and the commercial cannabis business. The review team found that the application submitted by ECWC Partners, Inc. for the subject address noted above was superior in terms of clarity, specificity, site design and layout, and by inclusion of an excellent security plan and operations plan. Reasons for the selection of the subject application include, but are not limited to:

1. The strength of the applicant's financial and pro forma information.
2. A comprehensive security plan, including a secure sally port for loading and unloading of cannabis, cannabis products, and cash.
3. Community benefits including a contribution of 5% of gross receipts to the City's General Fund and an additional contribution of 1% of gross receipts to the City to be directed to sponsored

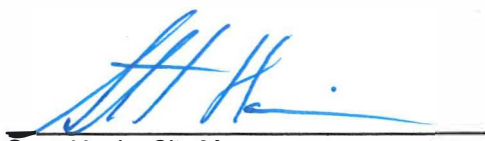
- groups, non-profits or other organizations to be used for specific purposes that support the City's goals and objectives towards the improvement of the quality of life.
4. An advance of funds to the City from the expected third year community benefit contribution to assist with upgrades to the surveillance camera system along the Ohlone Greenway.
 5. Plans that include an aesthetic update of the entire Bishop Center shopping center.

Pursuant to Chapter 6.80 of the El Cerrito Municipal Code, the City Manager provided notice by first class mail to all property owners of record, residents and businesses within a three-hundred-foot radius of the proposed cannabis business and any person or group that had specifically requested, in writing, notice regarding applications for cannabis businesses on June 12, 2018. The notice also included details regarding a public meeting for the proposed Operating Permit, which was held on June 26, 2018 at City Hall. Materials submitted by the applicant were made available to the public in advance of and at the public meeting. At the public meeting, members of the public had an opportunity to ask questions of the applicant and to raise any objections to the issuance of an Operating Permit to the applicant.

In deciding whether to issue this Operating Permit, I considered all application materials submitted, oral and written comments from the public, and all other information contained in the application record. The record supports a conclusion that the applicant has the capacity, capitalization, and history to operate the proposed Cannabis Storefront Business in compliance with the Municipal Code and California law and without diminishing the health, safety, and general welfare of the public. The applicant submitted sufficient evidence of its capitalization to finance necessary improvements to the retail space, administrative offices, shopping center, and initial operations based on anticipated purchases and staffing. The applicant's leadership team has demonstrated experience in the medical cannabis business and the cultivation, manufacturing, and testing of cannabis. During the application process, they displayed a thorough understanding of the applicable California laws and regulations and the requirements of Chapter 6.80 of the Municipal Code, as well as a desire to support and improve the El Cerrito Community.

Further, the operation of the proposed Cannabis Storefront Business will provide significant public benefits in the form of a contribution of 6% of the business' gross receipts to support important City services and activities of sponsored groups, non-profits or other organizations that support improvement of the quality of life in El Cerrito.

Based on the information noted above and all information contained in the application record, I hereby approve this Operating Permit for a Cannabis Storefront Business located at 11886, 11888 and 11896 San Pablo Avenue, subject to the Conditions of Approval in Attachment A and all requirements and standards contained in Chapter 6.80: Commercial Cannabis of the El Cerrito Municipal Code and applicable California law.



Scott Hanin, City Manager

Attachments:

- A. Conditions of Approval

Attachment A
Conditions of Approval for
Commercial Cannabis Business Operating Permit
Issued to ECWC Partners, Inc.
Located at 11886, 11888 and 11896 San Pablo Avenue:

1. This Operating Permit is only valid for a cannabis storefront business located at 11886, 11888 and 11896 San Pablo Avenue as shown on the site plan submitted on March 30, 2018. The Permit is limited to a 2,988 square-foot cannabis retail business and a 755 square-foot administrative office. This Permit is valid only at the specified location and is granted only to the business owners as specified in the application submitted on March 30, 2018, as supplemented by materials submitted on May 24, 2018. Any changes to the business ownership are subject to the requirements of Section 6.80.090 of the El Cerrito Municipal Code.
2. This Permit allows only a cannabis retail business and cannabis retail activities in conformance with Chapter 6.80 of the El Cerrito Municipal Code, these Conditions of Approval, applicable California law, and all approvals issued by the State of California for the business. The applicant shall obtain all required approvals from the State of California for the operation of the Cannabis Storefront Business prior to the initiation of operations of the business and shall provide copies of all required State of California approvals to the City Manager and Chief of Police.
3. The business shall be operated substantially in conformance with the application submitted on March 30, 2018, and subsequent amendments submitted on May 24, 2018. Changes to these conditions of approval may be approved by the City Manager if necessary to maintain the health, safety, and general welfare of the public.
4. Sales and storage of cannabis and storage of cash shall be limited to the retail business location and shall be prohibited within the administrative office. Access to the administrative office shall generally be restricted to employees of the business.
5. This Permit shall also allow delivery of cannabis by the cannabis storefront business and in compliance with Section 6.80.070.K of the El Cerrito Municipal Code. The applicant shall notify the City Manager and the Chief of Police a minimum of 30 days prior to offering delivery services. The applicant shall obtain all necessary approvals from the State of California prior to initiating cannabis delivery service within El Cerrito and shall provide copies of State of California approvals to the City Manager and Chief of Police with the required notice of delivery services. Once initiated, delivery services shall conform to the requirements of Chapter 6.80 of the Municipal Code, applicable California law, these Conditions of Approval, and all approvals from the State of California.
6. Prior to issuance of a building permit or operation of the business, the applicant shall submit an application to the City of El Cerrito for Design Review, based on the plans and elevations submitted on May 24, 2018. The Design Review application shall be consistent with the San Pablo Avenue Specific Plan and shall include design improvements to the entire shopping center (Bishop Center), as shown on the submitted materials.
7. The business shall be operated in compliance with the Security Plan submitted on March 30, 2018, as revised by the materials submitted on May 24, 2018. All mechanical and electronic components of the security system, including, but not limited to, cameras, motion sensors, alarms, panic buttons, metal detectors, and locks, shall be maintained in working order.
8. The applicant shall meet annually (or more frequently as determined to be necessary by the Chief of Police) with the El Cerrito Chief of Police, or designee, to review the Security Plan. The Chief of Police may require changes to the Security Plan sufficient to ensure public safety.

9. The business shall contribute 5% of the business' annual gross receipts to the City of El Cerrito general fund. Payments shall be due quarterly each year, except for the schedule stipulated in this condition of approval. The business shall advance to the City of El Cerrito the anticipated contribution for the third year of operation on the following schedule: \$60,000 due at issuance of this permit; \$50,000 due 6 months after the start of business operation; and \$50,000 due by June 30, 2019. In the event that the business ceases to operate prior to the completion of three years or if 5% of actual third-year gross receipts is less than the advanced amount, the City shall not be required to repay the advance.
10. The business shall contribute 1% of annual gross receipts to the City of El Cerrito. Payments shall be due quarterly each year. The City may make these funds available to co-sponsored groups, non-profits or other organizations to be used for specific purposes that support the City's goals and objectives towards the improvement of the quality of life.
11. The required contributions specified in Conditions #9 and #10 shall cease if the City of El Cerrito implements a tax, specifically applied to cannabis businesses, equal to or greater than 6% of gross receipts.
12. Hours of operation of the business shall be limited to between 8:00 a.m. and 9:00 p.m.
13. The business shall comply with all performance standards contained in Section 6.80.070 of the El Cerrito Municipal Code and applicable California law.
14. This permit shall expire three years from the date which the business is granted a Certificate of Occupancy or otherwise begins operation. The permit shall be subject to the procedures for renewal, nonrenewal, suspension, revocation, transfer, modification, and appeal set forth in Section 6.80.090 of the El Cerrito Municipal Code.
15. All current employees of the business shall submit to a background check prior to the business commencing sales to the public. Future employees of the business shall submit to a background check prior to the employee's start of employment at the business. All background checks shall be shared with the El Cerrito Police Department and shall be conducted to the satisfaction of the El Cerrito Chief of Police or designee. The business shall not employ persons who have been convicted of an offense that is substantially related to the qualifications, functions, or duties, of the cannabis business for which the application is made, to the satisfaction of the El Cerrito Chief of Police or designee. Prior marijuana or cannabis convictions shall not be an automatic bar to employment.
16. The business shall prevent the emission of particulate matter, air contaminants and odors which are detectable without instruments by a reasonable person outside the building where the business is located.
17. The business shall ensure that all customers waiting to enter the business are accommodated inside the building. Customers shall not be directed to queue or wait outside the building.
18. The business shall continue to provide medical cannabis sales and services as long as the State of California continues to issue distinct licenses for medical cannabis sales.
19. The business shall provide employees with an incentive of \$4.00 per day when an employee bikes, walks, buses, or uses other public transit or an electric bike or scooter to and from work.
20. The business shall provide a local-hire preference to El Cerrito residents.



Date: March 19, 2021

To: Brian Mitchell and Authentic El Cerrito LLC (Applicant)
Interested Parties

From: Karen Pinkos, City Manager

Subject: Approval of an Operating Permit for Authentic El Cerrito, LLC for a Cannabis Storefront Business operation located at 10764-10770 San Pablo Avenue

On, December 19, 2017, the El Cerrito City Council adopted Chapter 6.80: Commercial Cannabis of the El Cerrito Municipal Code, establishing standards and a permit process for cannabis businesses permitting up to two Cannabis Business storefronts subject to certain criteria and location limitations as prescribed in the Ordinance.

Pursuant to Chapter 6.80, the City Council adopted Resolution No. 2017-07, creating an application process which also included administrative regulations for the Regulatory Permit ("Administrative Regulations"). Pursuant to the Administrative Regulations, an Operating Permit must be issued by the City.

On September 19, 2018, the City of El Cerrito issued a single Operating Permit. On August 13, 2020 the City opened up the application period for a second Operating Permit pursuant to Chapter 6.80.

The City of El Cerrito received three applications for Operating Permits for cannabis storefront businesses. A review team consisting of the City Manager, Police Chief, City Attorney, Community Development Director, and Planning Manager convened to evaluate the applications.

The City review team evaluated the submitted applications based upon (1) the process and criteria established by Chapter 6.80 of the El Cerrito Municipal Code, (2) the complete packets of information submitted by each of the applicants, (3) each team member's demonstrated specific knowledge and expertise in their respective fields and the commercial cannabis business as determined by the application and subsequent interview, and (4) the site plan for the proposed project. The review team invited all three teams to an interview. Based upon the written materials and interview, the review team ranked the applications and found that the application submitted by Authentic El Cerrito, LLC for a Cannabis Storefront at 10764-10770 San Pablo Avenue was superior in terms of clarity; specificity; site selection, design and layout; security plan; track record across the State; and a comprehensive set of community benefits.

Pursuant to Chapter 6.80 of the El Cerrito Municipal Code, and the San Pablo Avenue Specific Plan, the City provided notice by first class mail to all property owners of record, residents and businesses within a three-hundred-foot radius of the proposed cannabis business and any person or group that

had specifically requested, in writing, notice regarding applications for cannabis businesses on February 22, 2021. The City also published the notice in the East Bay Times on February 22, 2021.

The City held a public meeting on March 9, 2021 via teleconference in order to provide an additional opportunity for public input. The City notified the subscribers of the City's Planning Calendar regarding this meeting and included information about the meeting in the Community Development email newsletter.

Four members of the public spoke at the March 9, 2021 public meeting and the City also received five comments via email prior to March 15, 2021. Some comments were supportive of granting the Operating Permit, and some comments raised concerns about the proposed cannabis business. The concerns raised mainly focused on two topics: concerns about the potential of the business to attract crime, and concerns about the compatibility of the business with surrounding land uses. In response to these comments, with respect to crime, City staff notes that the applicant was selected based on the strength of their security plan, and the security plan has been thoroughly reviewed by the Chief of Police. Further, the applicant is required to meet every 180 days with the Chief of Police to review the security plan. Finally, Chapter 6.80.070 also stipulates numerous Performance Standards specific to security. The Conditions of Approval authorize the Chief of Police to modify the security plan as necessary to ensure public safety. Regarding the compatibility of the business to adjacent land uses, City staff notes that the proposed location is consistent with the required buffers from sensitive land uses contained in Chapter 6.80 of the El Cerrito Municipal Code and is consistent with the land use regulations of the San Pablo Avenue Specific Plan.

In deciding whether to issue this Operating Permit, the City Manager considered all application materials submitted and all public comments that were provided. The record supports a conclusion that the applicant has the capacity, capitalization, and history to operate the proposed Cannabis Storefront Business in compliance with the Municipal Code and California law and without diminishing the health, safety, and general welfare of the public. During the application process, and through subsequent due diligence, the proposed operator displayed a thorough understanding of the applicable California laws and regulations and the requirements of Chapter 6.80 of the Municipal Code, as well as a desire to support and improve the El Cerrito Community.

The operation of the proposed Cannabis Storefront Business will provide significant public benefits in the form of a contribution of a tiered percentage of the business' gross receipts to support important City services and activities of sponsored groups, non-profits or other organizations that support improvement of the quality of life in El Cerrito as well as through their own internal workforce policies and programs.

Based on the information noted above and all information contained in the application record, I hereby approve this Operating Permit for a Cannabis Storefront Business located at 10764-10770 San Pablo Avenue, subject to the Conditions of Approval in Attachment A and all requirements and standards contained in Chapter 6.80: Commercial Cannabis of the El Cerrito Municipal Code and applicable California law.



Karen Pinkos, City Manager

Attachments:

1. Conditions of Approval

Attachment A
Conditions of Approval
Commercial Cannabis Business Operating Permit
Issued to Authentic El Cerrito, LLC
Located at 10764-10770 San Pablo Avenue:

1. This Operating Permit is only valid for a cannabis storefront business located at 10764-10770 San Pablo Avenue ("Property") as shown on the attached site plan (Exhibit 1). This Permit is valid only at the specified location and is granted only to the business owners as specified in the Cannabis Business Operating Permit- Retail Application ("Application") submitted by Authentic El Cerrito, LLC. This Operating Permit is issued to Authentic El Cerrito, LLC ("Operator"). Any changes to the business ownership of the Operator are subject to the requirements of Section 6.80.090 of the El Cerrito Municipal Code.
2. The operation of cannabis retail businesses is a highly regulated business activity which is subject to various state and local laws and regulations. Operator shall comply with applicable local and state laws governing its operations. Operator shall be responsible for obtaining all applicable City and State permits, approvals, and consents, even if the applicable state laws and regulations are altered following the Effective Date. In addition, Operator shall be responsible for continuously maintaining this Operating Permit and any permits or licenses required by the State. Operator acknowledges and understands that it has an obligation to renew its Operating Permit prior to expiration pursuant to the terms of Chapter 6.80.090 and to renew and State-issues permits or licenses. Operator understands and acknowledges that City may (a) deny or conditionally approve a renewal of this Operating Permit; (b) revoke this Operating Permit for the reasons stated in the Operating Permit and Chapter 6.80; (c) amend Chapter 6.80 or implement regulations in a manner that would impose stricter requirements on an existing or renewed Operating Permit; or (d) apply for an amended Chapter 6.80 or implementing regulations to an Operating Permit renewal application.
3. Operator acknowledges that the operation of a cannabis business is currently illegal under the Federal Controlled Substance Act. In the event that the United States federal government threatens City with a federal claim or sanctions for permitting a cannabis business or if the federal government threatens or takes action to withhold federal funding from City in any manner or amount for permitting said business, City may modify or terminate this Operating Permit at City's discretion to protect City from such claim or to protect the federal funding City receives without any liability to City. Operator acknowledges and specifically waives any rights, under any theory of law, to claim or recover damages from City, its Officials, Officers, employees or agents, including but not limited to damages for tenant improvements, investment capital, lost profits, lost revenue, loss due to interference with business perspective, emotional distress, breach of contract, loss of cannabis inventory, or other asserted damage related to the establishment of a commercial Cannabis business in El Cerrito.
4. If federal or state laws, regulations or policies enacted after the Operating Permit has been issued modify, prevent, or preclude compliance with one or more material provisions of the Operating Permit and elimination or modification of the provision(s) will not alter key provisions of the Operating Permit or City regulations, such provisions of the Operating Permit shall be modified or suspended as may be necessary to comply with such state or federal laws, regulations, or policies. If appropriate, any changes shall be confirmed in writing for clarification purposes. If the state or federal laws, regulations, or policies enacted or enforced render a substantial portion of the terms of this Operating Permit ineffective, illegal or otherwise contrary to said state or federal law, and modification or suspension conflicts with key provisions of the Operating Permit or City regulations, City revoke this Permit without any liability to Operator, and Operator acknowledges and specifically waives any right to recover any damages from City, its Officials, Officers, employees or agents, including but not limited to damages for tenant improvements, investment capital, lost profits, lost revenue, community benefit fees, loss due to interference with business perspective, emotional distress, breach of contract, loss of cannabis inventory, or other asserted damage related to the establishment of a cannabis business in El Cerrito.

5. This Operating Permit allows only a Cannabis Storefront Business and cannabis retail activities in conformance with Chapter 6.80 of the El Cerrito Municipal Code, these Conditions of Approval, applicable California law, and all approvals issued by the State of California for the business. The Operator shall obtain all required approvals from the State of California for the operation of the Cannabis Storefront Business prior to the initiation of operations of the business and shall provide copies of all required State of California approvals to the City Manager and Chief of Police.
6. The Cannabis Storefront Business and related retail activities shall be operated substantially in conformance with the Application. Changes to these Conditions of Approval may be approved by the City Manager if necessary, to maintain the health, safety, and general welfare of the public.
7. Sales and storage of cannabis and storage of cash shall be limited to the approved location of the Cannabis Storefront Business and shall be prohibited within the administrative office. Access to the administrative office shall generally be restricted to employees of the Operator.
8. This Operating Permit shall also allow delivery of cannabis by the Cannabis Storefront Business and in compliance with Section 6.80.070.K of the El Cerrito Municipal Code. Operator shall notify the City Manager and the Chief of Police a minimum of 30 days prior to offering delivery services. Operator shall obtain all necessary approvals from the State of California prior to initiating cannabis delivery service within El Cerrito and shall provide copies of State of California approvals to the City Manager and Chief of Police with the required notice of delivery services. Once initiated, delivery services shall conform to the requirements of Chapter 6.80 of the Municipal Code, applicable California law, these Conditions of Approval, and all approvals from the State of California.
9. Prior to issuance of a building permit or operation of the approved Cannabis Storefront Business, Operator shall submit an application to the City of El Cerrito for Design Review, based on the plans and elevations depicted in the Application. The Design Review application shall be reviewed pursuant to the design review procedures in the San Pablo Avenue Specific Plan.
10. The approved Cannabis Storefront Business shall be operated in compliance with the Security Plan submitted in the Application. All mechanical and electronic components of the security system, including, but not limited to, cameras, motion sensors, alarms, panic buttons, metal detectors, and locks, shall be maintained in working order.
11. Operator shall meet every 180 days (or more frequently as determined to be necessary by the Chief of Police) with the El Cerrito Chief of Police, or designee, to review and approve the Security Plan. The Chief of Police may require changes to the Security Plan sufficient to ensure public safety.
12. Operator shall provide the following Community Benefits:
 - A. Operator has offered and, after negotiations regarding the details, voluntarily agreed to make payments to the City in lieu of a prospective cannabis business tax which a future City Council or Citizen Initiative could schedule for public vote during the term of this Operating Permit. Consistent with the foregoing, Operator shall pay a Community Benefit fee. Operator's Community Benefit fee shall be based on the gross receipts of the approved Cannabis Storefront Business as follows:
 1. Five percent (5%) of annual gross receipt sales between \$1.00-\$4,999,999, four percent (4%) of annual gross receipt sales between \$5,000,000-\$9,999,999, and three percent (3%) of annual gross receipt sales greater than \$10,000,000. ("Community Benefits Fee"). Operator shall pay the Community Benefits Fee as long

as Operator, or a legal successor permitted under Chapter 6.80, operates the approved Cannabis Storefront Business on the Property, or at another location under terms consistent with Chapter 6.80. If this Operating Permit is revoked or suspended for any reason, Operator shall pay the Community Benefits Fee at the rates set forth in this Operating Permit using all sales through to the close of business. Operator's obligation to pay the Community Benefit Fee shall cease if the City of El Cerrito implements a tax, specifically applied to cannabis businesses, equal to or greater than the percentage of gross receipts paid by Operator as the Community Benefit Fee. If the rate of such a tax on cannabis businesses is less than the percentage of gross receipts paid by Operator as the Community Benefit Fee, Operator shall continue to pay the difference between the tax rate and the rate paid as the Community Benefit Fee. Thirty-thousand dollars (\$30,000) of the annual Community Benefit Fee shall be used expressly for administration of the Operating Permit. City may accept cash for payment of any and all taxes, fees, and assessments. However, should the City incur any cost from a financial institutions or armor car carrier service for the handling of cash payments the City may require payment by check, cashier's check, ACH or other approved method of payment otherwise the Operator maybe subject to fees for handling of cash payments.

2. Within 30 days of Effective Date of this Operating Permit, Operator shall pay \$100,000 to the City which will be credited to the first month of the Community Benefit Fee when due or any future months until the credit is exhausted.
3. Operator shall, no later than the last day of the month following the close of the calendar month, file with the Finance Department a statement of the Community Benefit Fee owed for that calendar month and the basis for calculating the Community Benefit Fee. The Finance Director may require that the statement be submitted on a form prescribed by the Finance Director. The fee for each month shall be due and payable on that same date as the statement for the calendar month is due. However, the Finance Director may, at his or her discretion, establish alternative reporting and payment periods as the Finance Director deems necessary to ensure collection of the Community Benefit Fee.
4. For the purposes of this Operating Permit, "gross receipts" means, whether designated as a sales price, royalty, rent, membership fee, ATM service fee, delivery fee, slotting fee, any other fee, vaping room service charge, commission, dividend, or other designation, the total amount (including all receipts, cash, credits, services and property of any kind or nature) received or payable for sales of goods, wares or merchandise, or for the performance of any act or service of any nature for which a charge is made or credit allowed (whether such service, act or employment is done as part of or in connection with the sale of goods, wares, merchandise or not), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service costs, interest paid or payable, losses or any other expense whatsoever. However, the following shall be excluded from Gross Receipts:
 - a. Cash discounts were allowed and taken on sales;
 - b. Any tax required by law to be included in or added to the purchase price and collected from the consumer or purchaser;
 - c. Such part of the sale price of any property returned by purchasers to the seller as refunded by the seller by way of cash or credit allowances or return of refundable deposits previously included in gross receipts;
 - d. Receipts derived from the occasional sale of used, obsolete or surplus trade fixtures, machinery or other equipment used by the taxpayer in the regular course of the taxpayer's business;

- e. Cash value of sales, trades or transactions between departments or units of the same business located in the City of El Cerrito or if authorized by the Finance Director in writing;
 - f. Whenever there are included within the gross receipts amounts which reflect sales for which credit is extended and such amount proved uncollectible in a subsequent year, those amounts may be excluded from the gross receipts in the year they prove to be uncollectible; provided, however, if the whole or portion of such amounts excluded as uncollectible are subsequently collected, they shall be included in the amount of gross receipts for the period when they are recovered;
 - g. Receipts of refundable deposits, except that such deposits when forfeited and taken into income of the business shall not be excluded when in excess of one dollar;
 - h. Amounts collected for others where the business is acting as an agent or trustee and to the extent that such amounts are paid to those for whom collected. These agents or trustees must provide the Finance Department with the names and the addresses of the others and the amounts paid to them. This exclusion shall not apply to any fees, percentages, or other payments retained by the agent or trustees; and
 - i. Retail sales of non-cannabis products, such as t-shirts, sweaters, hats, stickers, key chains, bags, books, posters, rolling papers, cannabis accessories such as pipes, pipe screens, vape pen batteries (without cannabis or industrial hemp) or other personal tangible property which the Finance Director has excluded in writing by issuing an administrative ruling shall not be subject to the cannabis business tax under this section. However, any business activities not subject to this section as a result of an administrative ruling shall be subject to the appropriate business tax provisions of Chapter 4.32 or any other Title or Chapter of this code as determined by the Finance Director.
5. Penalties and interest. If Operator fails or refuses to pay the Community Benefit Fee as stated in this Operating Permit, the following shall apply:
- a. A penalty equal to ten percent (10%) of the amount of the unpaid Community Benefit Fee, in addition to the unpaid amount of the Community Benefit Fee, plus interest on the unpaid amount of the Community Benefit Fee calculated from the due date at the rate of one percent (1.0%) per month.
 - b. If the Community Benefit Fee remains unpaid for a period exceeding one calendar month beyond the due date, an additional penalty equal to twenty-five percent (25%) of the unpaid amount of the Community Benefit Fee, plus interest at the rate of one percent (1.0%) per month on the unpaid amount and on the unpaid penalties.
 - c. Interest shall be applied at the rate of one percent (1.0%) per month on the first day of the month for the full month and will continue to accrue monthly on the unpaid Community Benefit Fee and penalty until the balance is paid in full.
 - d. If the Community Benefit Fee payment remains unpaid after 30 days' notice from the City, the City may revoke or suspend this permit.
 - e. Whenever a check or electronic payment is submitted in payment of a Community Benefit Fee and the payment is subsequently returned unpaid by the bank for any reasons, Operator shall be liable for the unpaid amount due plus any fees, penalties and interest as provided for in this Section, and any other amount allowed under state law.

B. In addition to the Community Benefits Fee, Operator shall provide the following benefits to the community:

1. Community Benefit #1: Workforce Development

The Operator shall provide a Workforce Development Program as described in Operator's application for this permit. This program shall be conducted for those employees working for Authentic-El Cerrito. These classes shall include but not limited to the following: Introduction to Business, Microsoft Excel, Creating PowerPoint Presentations, Public Speaking, Basic Accounting, Supply Chain Logistics, Leadership and Communications.

2. Community Benefit # 2: Collective Bargain Agreement

As part of a commitment to providing high quality jobs the Operator shall submit proof of a current collective bargaining agreement with a labor organization that represents cannabis workers in California that provides living wages, benefits, and worker's compensation for employees.

3. Community Benefit #3: Community Contributions

As part of its community benefits program the Operator shall donate at a minimum \$50,000 per year to the Municipal Services Corporation to be distributed to local non-profits or efforts directly towards combatting displacement and homelessness, drug addiction and other needs based on community priorities, as determined by the Board of the Municipal Services Corporation with input from the City Council. In the event that the Municipal Services Corporation ceases to operate during the term of this Operating Permit, the payment described in this paragraph shall be made to a different organization identified by the City Manager or directly to the City. In addition, to this the Operator will sponsor special editions sales whereby the proceeds of certain special edition products shall be donated to local causes such as homelessness, COVID-19 response fund and other causes approved by the City Manager or his/her designee prior to the beginning of the sale disbursing such funds.

4. Community Benefit #4: Local Hiring

As part of Operator's labor and employment practices, Operator will actively seek out and recruit local hires to staff the cannabis Storefront Business which will include, supervisory, managerial, and administrative positions. The Operator shall adhere to the El Cerrito Minimum Wage requirement pursuant to El Cerrito Municipal Code Chapter 6.95, in a collective bargaining agreement between the Operator and represented employees, or as proposed by the Operator in the Community Benefits section of their Application whichever is the greater.

5. Community Benefit #5: Career Development/Apprenticeship Program

Operator will offer a Career Development Program, as described in Operator's Application, to create opportunities for those often overlooked in the community. This program will identify individuals such as those with a non-violent cannabis conviction, veterans, those from the foster care system, or others who have simply experienced extreme financial hardship.

6. Community Benefit #6: Drug Abuse Education

The Operator will host regular educational seminars on cannabis products and related safety concerns. Seminars will be performed by a designated Authentic-El Cerrito staff member, or cannabis expert with an interactive presentation, followed by a Question

& Answer session, as described in Operator's Application. Presentations will be designed to cover proper and safe dosing, the dangers of driving under the influence, and how different consumption methods interact with the body differently.

7. Community Benefit #7: Volunteer Hours

The Operator will actively integrate into the community through a volunteer program, providing a minimum of 150 hours of employee volunteering each year. This will be conducted by the Operator's community partnerships and employees freely selecting any charity or non-profit in the City of El Cerrito where they would like to volunteer thus permitting them to stay socially engaged with what happens in their own neighborhood and assists them in developing the skills and experience to become leaders in the community.

13. Hours of operation of the business shall be limited to between 8:00 a.m. and 9:00 p.m.
14. The business shall comply with all performance standards contained in Section 6.80.070 of the El Cerrito Municipal Code and applicable California law.
15. This Operating Permit is subject to the following insurance requirements:
 - A. Operator shall maintain at all times commercial general liability providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than one million dollars per occurrence and comprehensive automobile liability (owns, non-owned, hired) providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury with limits of not less than one million dollars. The commercial general liability policy shall provide contractual liability, shall include a severability of interest or equivalent wording, shall specify that insurance coverage afforded to the city shall be primary, and shall name the city, its officers, and employees as additional insured. Additionally, insurance coverages and workers' compensation liability coverage as required by the State of California shall be maintained. In the event that the insurance requirements in chapter 6.80 are amended, Operator shall modify its insurance policies to comply with the new requirements and provide evidence of updated insurance to City.
 - B. If Operator purchases and maintains commercial property liability insurance with a Business Interruption insurance endorsement, Operator shall remit Community Benefit Fees in an amount Operator collects under the policy for any loss under the Business Interruption clause of the insurance policy.
16. All current employees of Operator shall submit to a background check prior to the commencing sales to the public pursuant to this Operating Permit. Future employees of the business shall submit to a background check prior to the employee's start of employment at the business. All background checks shall be shared with the El Cerrito Police Department and shall be conducted to the satisfaction of the El Cerrito Chief of Police or designee. Operator shall not employ persons who have been convicted of an offense that is substantially related to the qualifications, functions, or duties, of the cannabis business for which the application is made, to the satisfaction of the El Cerrito Chief of Police or designee. Prior marijuana or cannabis convictions shall not be an automatic bar to employment.
17. Operator shall prevent the emission of particulate matter, air contaminants and odors which are detectable without instruments by a reasonable person outside the building where the business is located.
18. Operator shall ensure that all customers waiting to enter the business are accommodated inside the building. Customers shall not be directed to queue or wait outside the building unless to comply with Public Health Orders.

19. Operator shall continue to provide medical cannabis sales and services as long as the State of California continues to issue distinct licenses for medical cannabis sales.
20. The Operating Permit shall expire three years from the date on which the Operator is granted a Certificate of Occupancy or otherwise begins operation. The permit shall be subject to the procedures for renewal, nonrenewal, suspension, revocation, transfer, modification, and appeal set forth in Section 6.80.090 of the El Cerrito Municipal Code.
21. As required in Chapter 6.80.060(K), any application to renew the Operating Permit shall be submitted no later than forty-five (45) days prior to the expiration date.
22. Operator shall submit a complete application for design review within 12 weeks of issuance of this Operating Permit and a complete application for building permits within 12 weeks of design review approval. Operator shall obtain a Certificate of Occupancy within twelve (12) months of approval of this Operating Permit or the City Manager may consider revocation, suspension, or amendment this Operating Permit.



SUPPLEMENTAL AGENDA MATERIALS PUBLIC COMMENT INDEX

SPECIAL MUNICIPAL SERVICES CORPORATION (MSC) MEETING April 19, 2022

The following Public Comments were **received by 3:00 p.m. 4/19/2022**, were provided directly to City Councilmembers in advance of the meeting, and were posted online as supplemental materials at www.el-cerrito.org/CouncilMeetingMaterials

Agenda Item 4B – Informational Item: Cannabis Operating Permit Community Benefit Funding

1. Helen Dickey
2. Sherry Drobner
3. Sarah Klauer

From: [Helen Dickey](#)
To: [City Clerk](#)
Subject: Revenue for community benefits from Cannabis Dispensaries
Date: Monday, April 18, 2022 6:40:06 PM

To the City Clerk:

It has come to my attention that a cannabis dispensary in El Cerrito wishes to share 1% of their revenue with the city for our community's benefit. I would like to urge the Council to make this money available for housing and the homeless.

Sincerely,

Helen Dickey

From: [Sherry Drobner](#)
To: [City Clerk](#)
Subject: Public Comment: 4 B Special Meeting
Date: Tuesday, April 19, 2022 1:08:12 PM

Dear City Council Members,

It is heartening to see that El Cerrito will be generating new revenues through a Community Benefits Tax from the two cannabis dispensaries. I think it makes sense to specify the need for homeless services and housing support in the language for both dispensaries. Housing is the number one challenge in this region and in this city. Our City does not contribute any money for support services for the homeless, as testified by the CORE representative in a previous Council meeting. Furthermore, statistics from the County indicate that our homeless population are not from other cities, but are local El Cerrito residents who have lost their housing. In addition to CORE, Safe Organized Spaces is working regionally with San Pablo and Richmond to support the unhoused. The use of the Community Benefits Tax to shoulder the burden of cost for outreach support services is a beginning. Homeless prevention is another area of concern and if a "just cause" policy is in place (as it is), local mediation and more tenant/landlord education services would be critical to keep residents in their housing.

I noted that another community member introduced the notion of contributing an institutional land tax (Shuumi) from this fund. If it is the case that General Fund money could not be used, I would agree that a percentage of this tax be used to honor our obligation as guests on this land.

Finally, I would like to urge our City Manager and City Council to partake in a more strenuous outreach and participatory approach for decision making on the budget. Several cities in the Bay Area now carve out a piece of the budget and allow residents to vote on priorities and allocate funding. I believe that this Community Benefits revenue could be a solid testing ground for such an exercise. Here is [the link to the City of Haywards People's Budget](#). I know that elected officials often wonder why the community is not more engaged, or lament that the diversity of the city is not necessarily reflected in the engagement. Providing opportunity where people can move beyond public comment and make decisions could alter and infuse greater participation.

Respectfully submitted,
Sherry Drobner

From: [Sarah Klauer](#)
To: [City Clerk](#)
Subject: Public Comment: 4 B Special Meeting
Date: Tuesday, April 19, 2022 2:01:27 PM

Dear El Cerrito City Council:

I was pleased to hear about the new Community Benefits Taxes from the two cannabis dispensaries, and want to advocate for the City to use this funding to support homeless services and provide housing support. Housing is the number one issue in the Bay Area, and El Cerrito is no exception. Currently, the City does not contribute any money for support services for the homeless even though we have unhoused community members. Using the Community Benefits Tax toward addressing housing insecurity and providing services for our city's homeless population could make a meaningful difference in starting to alleviate these issues in our community.

Additionally, another community member introduced the notion of contributing an institutional land tax (Shuumi) from this fund. If General Fund money cannot be used for Shuumi, I would advocate that a percentage of this tax be used to honor our obligation as guests on this land.

Thank you,
Sarah Klauer
El Cerrito Resident

Sarah Klauer
she/her/hers

