



AGENDA

SPECIAL CITY COUNCIL MEETING – CLOSED SESSION

Tuesday, November 15, 2016 – 6:30 p.m.

Hillside Conference Room

REGULAR CITY COUNCIL MEETING

Tuesday, November 15, 2016 – 7:00 p.m.

City Council Chambers

Meeting Location

El Cerrito City Hall

10890 San Pablo Avenue, El Cerrito

Greg Lyman – Mayor

Mayor Pro Tem Janet Abelson
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Gabriel Quinto

- 6:30 p.m. ROLL CALL**
CONVENE SPECIAL CITY COUNCIL MEETING – CLOSED SESSION
ORAL COMMUNICATIONS FROM THE PUBLIC (*Comments limited to two minutes and to items on the Special City Council Closed Session only.*)
ANNOUNCEMENT OF CLOSED SESSION
PUBLIC EMPLOYEE PERFORMANCE EVALUATION (*Pursuant to Government Code Section 5497*)
Title: City Attorney
RECESS INTO CLOSED SESSION
POSSIBLE REPORT OUT OF CLOSED SESSION
ADJOURN SPECIAL CITY COUNCIL CLOSED SESSION
- ROLL CALL**
- 7:00 p.m. CONVENE REGULAR CITY COUNCIL MEETING**
- 1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE** – *Mayor Pro Tem Abelson*
 - 2. COUNCIL / STAFF COMMUNICATIONS** (*Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.*)

3. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the City Council deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

4. PRESENTATION – None

5. ADOPTION OF THE CONSENT CALENDAR – Item No. 5(A) and 5(L)

CITY COUNCIL ITEMS

A. Approval of Minutes

Approve the November 1, 2016 Regular City Council meeting minutes.

B. Set Schedule for January City Council Meetings

Cancel the January 3, 2016 regular City Council meeting due to a lack of business.

C. Agreement with West Coast Arborists, Inc. for Tree Pruning, Removal and Maintenance Services

Adopt a resolution authorizing the City Manager to execute an agreement with West Coast Arborists, Inc. to provide tree pruning, removal, and maintenance services of City trees for a period of three years, with the option to annually extend the contract for three years thereafter, in an amount not to exceed \$115,300 for each of Fiscal Years 2016-17 and 2017-18 and thereafter contingent upon future City budgets and City Council approval of annual appropriations.

D. Grant of Access and Utility Easement to Eden Housing

Adopt a resolution granting El Cerrito Senior, L.P., an affiliate of Eden Housing, a perpetual non-exclusive access and utility easement and authorizing the City Manager to execute the Easement Deed and Maintenance Agreement ("Easement Agreement") for Sewer Line Improvements for the Hana Gardens Apartments to be located at 10860 San Pablo Avenue.

E. Participation in the California Uniform Public Construction Cost Accounting Act

Adopt a resolution confirming that the City has elected to become subject to the uniform public construction cost accounting procedures set forth in the California Uniform Public Construction Cost Accounting ("Act") and to the California Uniform Construction Cost Accounting Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directing that the City Clerk notify the State Controller forthwith of this election.

F. Amendment of Professional Services Agreement with TRB + Associates

Adopt a resolution authorizing the City Manager to amend the Professional Services Agreement between the City of El Cerrito and the TRB + Associates in an amount not to exceed \$75,000 bringing the total contract to an amount not to exceed \$100,000 and extending the term of the Agreement through June 30, 2017.

G. Service Agreement for NEOGOV

Adopt a resolution authorizing the City Manager to enter into an agreement with GovernmentJobs.com, Inc., doing business as NEOGOV, for human resources software services in an amount not to exceed \$37,363.33 for a term of twelve months with an annual renewal option.

H. Annual Review of Investment Policy

Adopt a resolution approving the City's Investment Policy.

I. Economic Development Committee Appointment

Approve an Economic Development Committee recommendation to appoint Bill Kuhlman to the Economic Development Committee, effective January 1, 2017.

J. Economic Development Committee Appointment

Approve an Economic Development Committee recommendation to appoint Ashley James to the Economic Development Committee, effective November 15, 2016.

K. Quarterly Investment Report

Receive and file the City's Quarterly Investment Report for the period ending September 30, 2016.

SUCCESSOR AGENCY TO THE FORMER REDEVELOPMENT AGENCY ITEMS

L. Approval of Revised First Amendment to the Disposition Development and Loan Agreement with Eden Housing, Inc., for City Housing Property Located at 10848 and 10860 San Pablo Avenue. Approval of an Agreement with Eden Housing Regarding California Department of Housing and Community Development (HCD) Affordable Housing and Sustainable Communities Grant and Approval of HCD Infill Infrastructure Grant

Staff requests that the City Council, acting as Housing Successor to the Former Redevelopment Agency adopt the following resolutions:

1. Authorizing the City Manager to execute a Revised First Amendment to the Disposition Development and Loan Agreement with Eden Housing, Inc. and making findings and approvals pursuant to the California Community Redevelopment Law in connection with redevelopment of 10848 and 10860 San Pablo Avenue in the City of El Cerrito Redevelopment project area;
2. Authorizing the Execution of a Standard Agreement with the State of California Housing and Community Development for an Infill Infrastructure Grant for the Hana Gardens Project; and
3. Authorizing the City Manager to execute an Affordable Housing and Sustainable Communities ("AHSC") Co-Applicant Agreement with Eden Housing related to the AHSC Grant and Loan received from the State of California Housing and Community Development Department for the Hana Gardens Project.

6. PUBLIC HEARINGS

Proposed Integrated Waste Management Fees and East Bay Sanitary Garbage & Green Waste Collection and Processing Rates – Effective January 1, 2017

Staff requests that the City Council take the following actions: 1) Conduct a public hearing and upon conclusion adopt a resolution setting Integrated Waste Management (IWM) Fees, effective January 1, 2017; and 2) Conduct a public hearing and upon conclusion adopt a resolution setting maximum allowable East Bay Sanitary (EBS) garbage and green waste collection and disposal and

processing rates, effective January 1, 2017.

7. POLICY MATTERS

A. Centennial Celebration Task Force Recommendations

Adopt a resolution making a mid-year budget adjustment and appropriating \$8,000 in Fiscal Year 2016/2017 and appropriate \$23,000 in Fiscal Year 2017/2018 to carry out the events and activities proposed by the Centennial Celebration Task Force to celebrate El Cerrito's 100 year history as an incorporated city.

B. Exclusive Negotiating Rights Agreement with Mona and Kanti Patel for 1718 Eastshore Boulevard

Adopt a resolution authorizing execution of an Exclusive Negotiating Rights Agreement with Mona and Kanti Patel for the disposition of 1718 Eastshore Boulevard.

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regularly scheduled City Council meeting is Tuesday, December 6, 2016 at 7:00 p.m. in the City Council Chambers, 10890 San Pablo Avenue, El Cerrito.

The City of El Cerrito serves, leads and supports our diverse community by providing exemplary and innovative services, public places and infrastructure, ensuring public safety and creating an economically and environmentally sustainable future.

- Council Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT- Channel 28 and AT&T Uverse Channel 99. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of the Council Meetings can be accessed from the City's website <http://www.el-cerrito.org/ind-ex.aspx?NID=114>. 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: 215-4305 Fax: 215-4379, email cmorse@ci.el-cerrito.ca.us
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.

EL CERRITO CITY COUNCIL

MINUTES

REGULAR CITY COUNCIL MEETING
Tuesday, November 1, 2016 – 7:00 p.m.
City Council Chambers

Meeting Location
El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Greg Lyman – Mayor

Mayor Pro Tem Janet Abelson
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Gabriel Quinto

ROLL CALL

Councilmember Abelson, Bridges, Friedman, Quinto and Mayor Lyman all present.

7:00 p.m. CONVENE REGULAR CITY COUNCIL MEETING

Mayor Lyman convened the regular City Council meeting at 7:02 p.m. and began the meeting with a moment of silence in memory of James Gilliland, Jr. who died on October 27, 2016 after being shot in front of his home. Mayor Lyman expressed communitywide heartache, anger and sorrow resulting from the tragic loss of Mr. Gilliland and offered the City Council's sympathy and prayers for Mr. Gilliland's wife Vicky, his family and friends. Mayor Lyman thanked the Police Department for their hard work. The Police Department is working with their partner agencies to develop leads in this case and is working closely with the Contra Costa Crime Lab to find those who are responsible for the shooting. Mayor Lyman urged anyone with information about the case to contact the Police Department and said the Department is doing the work needed to ensure that justice is served.

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

2. COUNCIL / STAFF COMMUNICATIONS

Paul Keith, Police Chief, advised community members, as they enter into the holiday season, to be vigilant as they leave shopping areas and pay attention to whether they are being followed. In the last week there were two instances in which residents were followed home from shopping districts and then robbed at or near their vehicles. Chief Keith advised calling 911 if anyone thinks they are being followed and to keep driving to the Police Station or another place that is filled with people. Chief Keith also reported that on October 27, he attended the Annual Chief Special Agents' Association Law Enforcement Awards ceremony in which El Cerrito Detective Bailey Thepkaysone was recognized for his investigative excellence and

contributions to the residents of El Cerrito and the El Cerrito Police Department. Chief Keith also noted that Mr. Gilliland was a fine member of the community and an outstanding citizen. It is a great loss to no longer have him as a member of the El Cerrito community.

Cheryl Morse, City Clerk, informed the El Cerrito Community and the City Council about the hours of operation for the Regional Early Voting Center and the official, secure Ballot Drop Off Box located at City Hall. Ms. Morse also invited voters to contact her regarding polling place locations on Election Day.

Mayor Pro Tem Abelson stated that she attended a display of new BART cars at the Del Norte Station and learned that the display had the largest viewing audience of any of the displays that took place at other stations despite the fact that it was stormy outside. The new cars have three sets of doors instead of two and also have bike racks and wheelchair seating in the middle of the car. Senior and disabled seating is marked with a different color from the other seats. The seats are vinyl rather than cloth and the floor is not carpeted. The number of cars received may depend on whether BART Measure RR passes.

Mayor Lyman highlighted the measures that the Council has supported in the November 8, 2016 election including Measure X/Contra Costa Transportation Authority Tax, Measure T/West Contra Costa Unified School District, Proposition 55 for Education, Proposition 67 in support of the single use plastic bag ban, Proposition 63 for Gun law reform, BART Measure RR and Measure B for a modern library.

3. ORAL COMMUNICATIONS FROM THE PUBLIC

Michael Coan, El Cerrito, stated that he voted No on El Cerrito Measure B/New Library.

Norman La Force, Former El Cerrito Mayor, urged everyone to vote yes on El Cerrito Measure B/New Library. Mr. La Force said the City has demonstrated its ability to do things right and use money wisely and within budget.

Al Miller, El Cerrito, urged all to vote yes on El Cerrito Measure B/New Library and noted that many measures on the ballot in Berkeley do not have design plans.

Marlene Keller, El Cerrito, spoke in support of El Cerrito Measure B/New Library and described the benefits of building a new community library.

Brenda Belden, El Cerrito, stated that she opposes the placement of a speed feedback sign in front of her house on Arlington Boulevard.

Rochelle Pardue-Okimoto, El Cerrito, stated that she is voting yes on El Cerrito Measure B/New Library and urged others to do so as well, primarily as a social justice issue.

Paul Fadelli, El Cerrito, quoted Issac Azimov, Sydney Sheldon, Ray Bradbury, and Andrew Carnegie in urging the community to vote yes on El Cerrito Measure B/New Library.

Howdy Goudey, El Cerrito, stated that he supports Measure B and reiterated his concerns regarding the impacts on residents displaced by the El Dorado Condo development.

Melanie Proctor, El Cerrito, expressed her deep condolences for the family of James

Gilliland and noted that it has shaken the community, including the legal community to its core. Ms. Proctor also questioned the use of redevelopment funds and stated that she opposes El Cerrito Measure B/New Library and also opposes construction of a library on school district land.

Jan Woo, El Cerrito, asked how the City will fund over 35 hours per week of library services once the new library is built and also questioned the use of redevelopment funds that were once allocated for the library.

Denise Sangster, El Cerrito, followed up on an item regarding the Arlington/Brewster safety project contract that was approved by the City Council on October 18, 2016, spoke against the placement of a speed feedback sign on Arlington and summarized resident discussions with Ms. Ortiz, Public Works Director.

Patricia Durham, El Cerrito, stated that a new library will be a positive statement in the community and that she is voting yes on a new library for El Cerrito.

David Green, El Cerrito, stated that his experience with the Building Department and the Police Department has been positive and that he is listened to by the City when he has a question. Mr. Green said both sides of the Measure B debate have presented their views and feelings and that this is healthy however he perceives people being talked down to regarding Measure B.

4. PRESENTATION – None

5. ADOPTION OF THE CONSENT CALENDAR – Item No. 5(A) and 5(B)

Moved, seconded (Friedman/Bridges) and carried unanimously to adopt Consent Calendar Item Nos. 5(A) and 5(B) in one motion as indicated below.

A. Approval of Minutes

Approve the October 18, 2016 Regular City Council meeting minutes.

Action: Approved minutes.

B. Environmental Quality Committee Appointment

Approve an Environmental Quality Committee recommendation to appoint Sean O'Conner to the Environmental Quality Committee, effective November 9, 2016.

Action: Approved recommendation and appointed Sean O'Conner to the Environmental Quality Committee effective November 9, 2016.

6. PUBLIC HEARINGS

Local Modification of the 2016 California Building Standards Code, Including Green Building Code, Building Code, Fire Code and related Construction Codes

First reading of the ordinance occurred on October 18, 2016 and approved by unanimous vote.

Conduct a public hearing and upon conclusion approve by title, waive any further reading and adopt an ordinance which adopts the 2016 California Green Code, Administrative, Building, Fire, Plumbing, Mechanical, Electrical, Energy, Residential, Existing Building Code and related Construction Codes as applicable to all construction within the City of El Cerrito, with local modifications as outlined in the ordinance. *Exempt from CEQA.*

Mayor Lyman opened the public hearing. No speakers

Actions: Moved, seconded (Friedman/Bridges) and carried unanimously to close the public hearing.

Moved, seconded (Abelson/Quinto) and carried unanimously to adopt Ordinance 2016-04.

7. POLICY MATTERS – None

8. COUNCIL ASSIGNMENTS/LIAISON REPORTS

Mayor and City Council communications regarding local and regional liaison assignments and committee reports.

Councilmember Quinto reported that he attended a League of California Cities Asian Pacific Islander Caucus (API) function on October 29 in Fremont with Mayor Pro Tem Abelson. They met with other API leaders as well as Silicon Valley and San Francisco business leaders.

9. ADJOURNED REGULAR CITY COUNCIL MEETING at 7:55 p.m. in memory of James Gilliland. Mayor Lyman, on behalf of the El Cerrito Community, offered deepest sympathy and condolences to Mr. Gilliland's family and friends knowing that words do not fully console those who are grieving at this most trying time and expressed hope for the El Cerrito community as it heals.



AGENDA BILL

Agenda Item No. 5(C)

Date: November 15, 2016
To: El Cerrito City Council
From: Stephen Prée, Environmental Programs Manager/City Arborist
Maria Sanders, Operations and Environmental Services Division
Manager Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Agreement with West Coast Arborists, Inc. for Tree Pruning, Removal and Maintenance Services

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an agreement with West Coast Arborists, Inc. to provide tree pruning, removal, and maintenance services of City trees for a period of three years, with the option to annually extend the contract for three years thereafter, in an amount not to exceed \$115,300 for each of Fiscal Years 2016-17 and 2017-18 and thereafter contingent upon future City budgets and City Council approval of annual appropriations.

BACKGROUND

The City uses contracted services to help maintain its urban forest -- approximately 10,300 trees on streets, in parks, and on other City properties. In the spring of 2013, each tree was inspected and assessed for maintenance needs by Davey Resources Group as part of a tree inventory funded by a grant from Cal Fire/US Forest Service. The assessment classified 684 of the trees as requiring priority pruning or removal work and 9,269 trees in need of routine pruning. Since that time, the City has serviced over 2,700 trees, including all of those on the initial priority maintenance list. However, due to deferred maintenance and the effects of the prolonged California drought since the inventory was completed, more trees have become diseased, have died, and have been identified as needing priority maintenance or removal.

While the City endeavors to regularly maintain as many of the trees in its urban forest as possible, available funding and the increase in the number of drought-stricken trees require staff to direct more of available tree maintenance funds towards trees with the most outstanding maintenance needs. By focusing on maintaining these high priority trees during the next two fiscal years, staff is working towards being able to transition to a predominantly proactive pruning strategy, known as "grid pruning," in the future.

Grid pruning maintains all trees in a designated geographic area of the City with rotation to another area the following year. It is a common municipal arboriculture practice that is effective and economical when trees receive regular maintenance pruning every three to five years. As previously reported to City Council on August 19, 2014 and January 19, 2016, this strategy would require at least 2,000 trees to be pruned annually.

On October 18, 2016, the City's Public Works Department released a Request for Proposals (RFP) for qualified arboriculture service companies to provide routine tree pruning, removal, and maintenance services, with a special emphasis on those City trees with the most outstanding maintenance needs. Examples of the work to be completed over the next two fiscal years include, but are not limited to, routine pruning of selected street trees on San Pablo Avenue and in other areas of the City, canopy reduction pruning of mature Chinese Elm trees and other failure-prone street trees, responding to the current backlog of service requests, removal of hazard trees, and responding to emergency tree failures. Additionally, the RFP required proposing contractors to specify a recordkeeping format that is compatible with the City's existing tree inventory and work order system. The RFP solicited pricing for these and other tree service tasks for varying sizes of trees.

The RFP was posted to the City's website on October 18, 2016 and published in the West County Times on October 21 and 24, 2016. A notice inviting proposals was also emailed directly to five arboriculture service companies. The RFP requested proposals for services for an initial agreement term for three years, with three possible annual extensions. The annual contract budget beyond June 30, 2018 is contingent upon future City budgets and is subject to City Council approval of annual appropriations. The contract also provides for an annual Consumer Price Index (CPI) increase in compensation.

Additional hazard tree pruning and removal services in City parks and natural areas have been identified and will be brought to Council as a separate contract recommendation early in 2017.

ANALYSIS

On October 31, 2016, the City received three proposals from qualified companies. The cost proposals are summarized below:

Name and Location of Bidder	Cost Proposal Weighted Average Cost per Service
West Coast Arborists Inc. 2200 E. Via Burton St. Anaheim, CA 92806	\$249
A Plus Tree, Inc. 1900 Bates Ave. Suite L Concord, CA 94520	\$255
The Professional Tree Care Co. 2828 Eighth Street Berkeley, CA 94710	\$528

Following receipt of proposals, a selection committee consisting of the Public Works Environmental Programs Manager/City Arborist and the Operations + Environmental Services Manager met to evaluate the proposals. Proposals were evaluated based on demonstrated experience in municipal tree maintenance, experience of key personnel, customer references, required licensing and certifications, and cost competitiveness. The cost proposals were evaluated using a weighted average based on the anticipated frequency of each tree service task to be completed under the contract.

The West Coast Arborists (WCA) proposal provided the most cost competitive proposal and demonstrated the best qualifications as described above. In addition, WCA demonstrated an ability to integrate the City's tree inventory database into their work order system, which can be used by both the contractor and City staff to assign and record work. Based on the results of this evaluation of proposals, staff recommends awarding the contract to WCA.

WCA is a California-based company that has been in business since 1972. WCA has maintained trees in the Bay Area cities of Alameda, Daly City, Dublin, Emeryville, Fremont, Menlo Park, Milpitas, Mountain View, Newark, Piedmont, Palo Alto, Pleasanton, Redwood City, and others. Through past contracts, WCA has successfully provided El Cerrito with tree pruning and removal services since 2011.

STRATEGIC PLAN CONSIDERATIONS

The project is consistent with the El Cerrito Strategic Plan goals:

Goal D – Develop and rehabilitate public facilities as common focal points by addressing ongoing and deferred maintenance of City Trees;

Goal E – Ensure the public's health and safety by minimizing City tree hazards; and

Goal F – Foster environmental sustainability citywide. A healthy urban forest provides multiple environmental benefits, including air quality improvements, carbon sequestration, storm water retention, wildlife habitat, and community aesthetics.

ENVIRONMENTAL CONSIDERATIONS

Pursuant to Section 15378(b)(2) of the California Environmental Quality Act (CEQA) Guidelines, work under the contract is not a project because it is a continuing maintenance activity.

FINANCIAL CONSIDERATIONS

Funding of \$115,300 for tree maintenance services is available in the Adopted Biennial Budget for FY 2016-17 and FY 2017-18 in an annual allocation of \$101,600 from the General Fund and an allocation of \$13,700 from the Landscape and Lighting Assessment District (LLAD) Fund for Landscape Maintenance Services.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed agreement and found that legal considerations have been addressed. Pursuant to requirements under the California

Labor Code section 1725.5, WCA is a registered with the State Department of Industrial Relations and qualified to bid on public works projects.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. Agreement

RESOLUTION NO. 2016 - XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH WEST COAST ARBORISTS, INC. TO PROVIDE TREE PRUNING, REMOVAL, AND MAINTENANCE SERVICES OF CITY TREES FOR A PERIOD OF THREE YEARS, WITH AN OPTION TO ANNUALLY EXTEND THE CONTRACT FOR THREE YEARS THEREAFTER, IN AN AMOUNT NOT TO EXCEED \$115,300 FOR EACH OF FISCAL YEARS 2016-17 AND 2017-18 AND THEREAFTER CONTINGENT UPON FUTURE CITY BUDGETS AND CITY COUNCIL APPROVAL OF ANNUAL APPROPRIATIONS

WHEREAS, the City of El Cerrito (City) is responsible for maintaining its trees in the public right-of-way, in parks and on City property; and

WHEREAS, on October 18, 2016, the City issued a Request for Proposals (RFP) from qualified contractors to provide routine tree pruning, removal, and maintenance services, with a special emphasis on those City trees with the most outstanding maintenance needs; and

WHEREAS, the RFP was posted to the City's website and a notice inviting proposals was published in the West County Times newspaper on October 21 and 24, 2016 and emailed directly to five tree service contractors; and

WHEREAS, the City received three proposals from qualified companies by the October 31, 2016 due date; and

WHEREAS, upon consideration of competitive pricing, performance of similar work in other cities, and the maintenance experience, licensing and certification of key personnel, the selection committee determined that the proposal received from West Coast Arborists, Inc (WCA) best fits the needs of the City; and

WHEREAS, the annual cost for WCA to provide tree pruning, removal and maintenance services in FY 2016-17 and FY 2017-18 is \$115,300; and

WHEREAS, funding of \$115,300 for tree maintenance services is available in the Adopted Biennial Budget for FY 2016-17 and FY 2017-18 in an annual allocation of \$101,600 from the General Fund and an allocation of \$13,700 from the Landscape and Lighting Assessment District (LLAD) Fund for Landscape Maintenance Services. The annual contract budget beyond June 30, 2018 is contingent upon future City budgets and is subject to City Council approval of annual appropriations.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of

Agenda Item No. 5(C)

Attachment 1

El Cerrito authorizes the City Manager to execute an agreement with WCA for tree pruning, removal and maintenance services of City trees for a period of three years, with an option to annually extend the contract for three years thereafter, in an amount not to exceed \$115,300 for each of Fiscal Years 2016/17 and 2017/18 and thereafter contingent upon future City budgets and City Council approval of annual appropriations.

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

I CERTIFY that at a regular meeting on November 15, 2016, the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November __, 2016.

Cheryl Morse, City Clerk

APPROVED:

Greg Lyman, Mayor

GENERAL SERVICES AGREEMENT BETWEEN
THE CITY OF EL CERRITO AND

This agreement for General Services ("Agreement") is entered into on _____ (the "Effective Date") between the CITY OF EL CERRITO, a municipal corporation, with offices located at 10890 San Pablo Avenue, El Cerrito, California ("City") and _____ ("Contractor") (together sometimes referred to as the "Parties").

Section 1. SERVICES. In accordance with the terms and conditions set forth in this Agreement, Contractor agrees to perform all services described in the Scope of Services, attached as Exhibit A, which is incorporated herein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, this Agreement shall prevail.

- 1.1 **Term of Services.** This Agreement shall begin on the Effective Date and shall end ____ () years from the date this Agreement was signed by City, unless the term of the Agreement is otherwise terminated or modified, as provided for herein. If the performance of the Scope of Services extends beyond the ____ () year term of this Agreement, then the term of this Agreement shall be extended solely for and until completion of the Scope of Services.
- 1.2 **Standard of Performance.** Contractor shall diligently perform all services required in connection with this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged in the geographical area in which Contractor practices its profession.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services in connection with this Agreement.
- 1.4 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Contractor. In the event of termination, Contractor shall be entitled to compensation for services satisfactorily completed as of the date of written notice of termination; City, however, may condition payment of such compensation upon Contractor delivering to City documents and records identified in Section 10.1 of this Agreement.

Section 2. COMPENSATION. City hereby agrees to pay Contractor for the Scope of Services, whether by fixed price, hourly rates subject to a fixed rate schedule, pursuant to the fee schedule attached as Exhibit B, which is incorporated herein. Total compensation for work performed under this Agreement, NOT TO EXCEED _____ (\$_____).

- 2.1 **Invoices.** Contractor shall submit invoices once a month, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Contractor shall have ninety (90) days after the completion of work to invoice City for all amounts due and outstanding under each governed by this Agreement. In the event, Contractor fails to

invoice City for all amounts due within such ninety (90) day period, Contractor shall waive its right to collect payment from City.

- 2.2 Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred.
- 2.3 Reimbursable Expenses. No expenses, costs, or liabilities of Contractor shall be reimbursable unless the obligation and manner of reimbursement is expressly set forth in the scope of services (Exhibit A) and in the fee schedule (Exhibit B).
- 2.4 Payment of Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

Section 3. CHANGES AND EXTRA SERVICES.

- 3.1 Provided that City gives reasonable advance notice to Contractor, City may propose in writing changes to Contractor's work within the Scope of Services described. If Contractor is of the opinion that any proposed change causes an increase or decrease in the cost, or a change in the schedule for performance, of the services, Contractor shall notify City in writing of that fact within five (5) days after receipt of written proposal for changes. Contractor may also initiate such notification, upon identifying a condition which may change the Scope of Services as agreed at the time of execution of this Agreement covering such Scope of Services. When and if City and Contractor reach agreement on any such proposed change and its effect on the cost and time for performance, they shall confirm such agreement in writing as an amendment to this Agreement. In the event the Parties cannot reach agreement as to the proposed change, at the City's sole discretion, Contractor shall perform such work and will be paid for labor, materials, equipment rental, etc., actually used to perform the work.
- 3.2 City shall not be liable for payment of any changes under Section 3.1, nor shall Contractor be obligated to perform any such changes, except upon such written amendment or supplement; provided that if, upon City's written request, Contractor begins work in accordance with a proposed change, City shall be liable to Contractor for the amounts due with respect to Contractor's work pursuant to such change, unless and until City notifies Contractor to stop work on such change.

Section 4. PROJECT SITE. Contractor shall perform the Services in such a manner as to cause a minimum of interference with City's operations and the operations of other contractors at each Project site and to protect all persons and property thereon from damage or injury. Upon completion of the Services at a Project site, Contractor shall leave such Project site clean and free of all tools, equipment, waste materials and rubbish. Each Project site may include all buildings, offices, and other locations where Services are to be performed, including any access roads. Contractor shall be solely responsible for the safe transportation and packing in proper containers and storage of any equipment required for performing the Services, whether owned, leased or rented. City will not be responsible for any such equipment which is lost, stolen or damaged or for any additional rental charges for such equipment. Equipment left or stored at a Project site, with or without permission, is at Contractor's sole risk. City may assume that anything left on the work site an unreasonable length of time after said work is completed has been abandoned. Any

transportation furnished by City shall be solely as an accommodation and City shall have no liability therefore. Contractor acknowledges and agrees that it shall assume the risk and is solely responsible for its use of any City owned equipment and property provided by City for the performance of Services. City shall have no liability to Contractor therefore. In addition, Contractor further acknowledges and agrees that it shall assume the risk and is solely responsible for its owned, non-owned and hired automobiles, trucks or other motorized vehicles as well as any equipment, tolls, or other property which is utilized by Contractor on each Project site.

Section 5. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Contractor, at its own cost and expense, shall procure the types and amounts of insurance listed below for the period covered by the Agreement.

- 5.1 **Workers' Compensation.** If Contractor employs any person, Contractor shall maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor with limits of not less than One Million Dollars (\$1,000,000.00) per accident.
- 5.2 **Commercial General and Automobile Liability Insurance.** Contractor shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting there from, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. The City shall be named as an additional insured and insurance shall provide primary coverage with respect to the City by written endorsement to the policy.
- 5.3 **General Liability/Umbrella Insurance.** The coverage amounts set forth above may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated.
- 5.4 **Professional Liability Insurance.** (Required for all Licensed Contractors performing design work) Contractor shall maintain professional liability insurance for licensed professionals performing work in connection with this Agreement in an amount not less than One Million Dollars (\$1,000,000.00) covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed Two Hundred Fifty-Thousand Dollars (\$250,000.00) per claim.
- 5.5 **All Policies Requirements.**
 - 5.5.1 **Verification of Coverage.** Prior to beginning any work under this Agreement, Contractor shall, at the sole option of the City, provide City with (1) certified Certification of Insurance that demonstrates compliance with all applicable insurance provisions contained herein; and (2) upon request by the City, complete certified copies of all policies and/or complete certified copies of all endorsements that demonstrate compliance with this Section 5.

5.5.2 Notice of Reduction in or Cancellation of Coverage. A certified endorsement must be attached to all insurance obtained in accordance with this Agreement stating that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

5.6 Waiver of Subrogation. Contractor agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of City for all work performed by Contractor, its employees, agents and subcontractors.

Section 6. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

6.1 Contractor shall to the fullest extent allowed by law, with respect to all services performed in connection with this Agreement, indemnify, defend and hold harmless the City and its officials, commissioners, officers, employees, agents and volunteers from and against any and all claims that arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of the Contractor. Contractor will bear all losses, costs, damages, expense and liability of every kind, nature and description that arise out of, pertain to, or relate to such Claims, whether directly or indirectly ("Liabilities"). Such obligations to defend, hold harmless and indemnify the City shall not apply to the extent that such Liabilities are caused by the sole negligence, active negligence, or willful misconduct of the City.

Section 7. STATUS OF CONTRACTOR. At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent.

Section 8. LEGAL REQUIREMENTS.

8.1 Governing Law. The laws of the State of California shall govern this Agreement.

8.2 Compliance with Applicable Laws. Contractor and any subcontractors shall comply with all laws applicable to the performance of the work in connection with this Agreement.

8.3 Licenses and Permits. Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

8.4 Nondiscrimination and Equal Opportunity. In compliance with federal, state and local laws, Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement.

8.5 Work Requiring Payment of Prevailing Wages. In accordance with California Labor Code Section 1771, not less than the general prevailing rate of per diem wages for work of a similar character in the locality in which the Work is to be performed, and not less than the general prevailing rate of per diem wages for holiday and overtime work fixed as provided in the California Labor Code must be paid to all workers engaged in performing the Work. In accordance with California Labor Code Section 1770 and following, the Director of Industrial Relations has determined the general prevailing wage per diem rates for the locality in which the Work is to be performed. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City Council has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract, from the Director of the Department of Industrial Relations. Copies of such prevailing rate of per diem wages can be found at the following website: <http://www.dir.ca.gov/DLSR/PWD/index.htm>. CONTRACTOR shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. CONTRACTOR shall comply with the provisions of Sections 1773.8, 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1776 which require Contractor and each subcontractor to (1) keep accurate payroll records, (2) certify and make such payroll records available for inspection as provided by Section 1776, and (3) inform the Agency of the location of the records. The Contractor is responsible for compliance with Section 1776. Throughout the performance of the Work the Contractor must comply with all provisions of the Contract Documents and all applicable laws and regulations that apply to wages earned in performance of the Work.

Contractor agrees, in accordance with Section 1771.1 of the California Labor Code, that contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to California Labor Code section 1725.5. Contractor agrees, in accordance with Section 1771.4 of the California Labor Code, this Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

Section 9. MODIFICATION.

9.1 Amendments. The Parties may amend this Agreement only by a writing signed by all the Parties.

- 9.2 Assignment. Contractor may not assign this Agreement or any interest therein without the prior written approval of the City.
- 9.3 Subcontracting. Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of the City. Where written approval is granted by the City, Contractor shall supervise all work subcontracted by Contractor in performing the Services; shall be responsible for all work performed by a subcontractor as if Contractor itself had performed such work; the subcontracting of any work to subcontractors shall not relieve Contractor from any of its obligations under this Agreement with respect to the Services; and Contractor is obligated to ensure that any and all subcontractors performing any Services shall be fully insured in all respects and to the same extent as set forth under Section 5, to City's satisfaction.
- 9.4 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.
- 9.5 Options upon Breach by Contractor. If Contractor materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:
- 9.5.1 Immediately terminate the Agreement;
 - 9.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Contractor in accordance with this Agreement;
 - 9.5.3 Retain a different Contractor to complete the Services not finished by Contractor;
or
 - 9.5.4 Charge Contractor the difference between the costs to complete the work at the time of breach and the amount that City would have paid Contractor in accordance with Section 2 if Contractor had completed the Work.

Section 10. KEEPING AND STATUS OF RECORDS.

- 10.1 Records Created as Part of Contractor's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains in accordance with this Agreement and that relate to the matters covered under the terms of this Agreement shall be the property of the City.
- 10.2 Contractor's Books and Records. Contractor shall maintain any and all records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 10.3 Confidential Information and Disclosure. During the term of this Agreement, either party (the "Disclosing Party") may disclose confidential, proprietary or trade secret

information (the "Information"), to the other party (the "Receiving Party"). The Receiving Party shall hold the Disclosing Party's Information in confidence and shall take all reasonable steps to prevent any unauthorized possession, use, copying, transfer or disclosure of such Information. Contractor understands that City is a public City and is subject to the laws that may compel it to disclose information about Contractor's business.

Section 11. WARRANTY.

- I. 11.1 In addition to any and all warranties provided or implied by law or public policy, Contractor warrants that all Services (including but not limited to all equipment and materials supplied in connection therewith) shall be free from defects in design and workmanship, and that Contractor shall perform all Services in accordance with all applicable engineering, construction and other codes and standards, and with the degree of high professional skill normally exercised by or expected from recognized professional firms engaged in the practice of supplying services of a nature similar to the Services in question. Contractor further warrants that, in addition to furnishing all tools, equipment and supplies customarily required for performance of work, Contractor shall furnish personnel with the training, experience and physical ability, as well as adequate supervision, required to perform the Services in accordance with the preceding standards and the other requirements of this Agreement. In addition to all other rights and remedies which City may have, City shall have the right to require, and Contractor shall be obligated at its own expense to perform, all further services which may be required to correct any deficiencies which result from Contractor's failure to perform any Services in accordance with the standards required by this Agreement. Moreover, if, during the term of this Agreement (or during the one (1) year period following the term hereof), any equipment, goods or other materials or Services used or provided by Contractor under this Agreement fail due to defects in material and/or workmanship or other breach of this Agreement, Contractor shall, upon any reasonable notice from City, replace or repair the same to City's satisfaction. Unless otherwise expressly permitted, all materials and supplies to be used by Contractor in the performance of the Services shall be new and best of kind.
- II. 11.2 Contractor hereby assigns to City all additional warranties, extended warranties, or benefits like warranties, such as insurance, provided by or reasonably obtainable from suppliers of equipment and material used in the Services.

Section 12. HEALTH AND SAFETY PROGRAMS. The Contractor shall establish, maintain, and enforce safe work practices, and implement an accident/incident prevention program intended to ensure safe and healthful operations under their direction. The program shall include all requisite components of such a program under Federal, State and local regulations and shall comply with all City site programs.

- 12.1 Contractor will be responsible for acquiring job hazard assessments as necessary to safely perform all duties of each Project and provide a copy to City upon request.
- 12.2 Contractor will be responsible for providing all employee health and safety training and personal protective equipment in accordance with potential hazards that may be encountered in performance of Project and provide copies of the certified training records

upon request by City. Contractor shall be responsible for proper maintenance and/or disposal of their personal protective equipment and material handling equipment.

- 12.3 Contractor is responsible for ensuring that its lower-tier subcontractors are aware of and will comply with the requirements set forth herein.
- 12.4 City, or their representatives, shall periodically monitor the safety performance of the Contractor working on the Project. All Contractors and their subcontractors shall be required to comply with the safety and health obligations as established in the Agreement. Non-compliance with safety, health, or fire requirements may result in cessation of work activities, until items in non-compliance are corrected. It is also expressly acknowledged, understood and agreed that no payment shall be due from City to Contractor under this Agreement at any time when, or for any Services performed when, Contractor is not in full compliance with this Section 10.
- 12.5 Contractor shall immediately report any injuries to the City site safety representative. Additionally, the Contractor shall investigate and submit to the City site safety representative copies of all written accident reports, and coordinate with City if further investigation is requested.
- 12.6 Contractor shall take all reasonable steps and precautions to protect the health of their employees and other site personnel with regard to their Scope of Services. Contractor shall conduct occupational health monitoring and/or sampling to determine levels of exposure of its employees to hazardous or toxic substances or environmental conditions. Copies of any sampling results will be forwarded to the City site safety representative upon request.
- 12.7 Contractor shall develop a plan to properly handle and dispose of all hazardous wastes they generate within the Scope of Services.
- 12.8 Contractor shall advise its employees and subcontractors that any employee, who jeopardizes his/her safety and health, or the safety and health of others, may be subject to actions including removal from Project.
- 12.9 Contractor shall, at the sole option of the City develop and provide to the City a Hazardous Material Spill Response Plan that includes provisions for spill containment and clean-up, emergency contact information including regulatory agencies and spill sampling and analysis procedures. Hazardous Materials to include diesel fuel used for trucks owned or leased by the Contractor.

Section 13. MISCELLANEOUS PROVISIONS.

- 13.1 Attorneys' Fees. If a Party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing Party shall be entitled to reasonable attorneys' fees in addition to any other relief to which

that Party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 13.2 **Venue.** In the event that either Party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 13.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect.
- 13.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 13.5 **Contract Administration.** This Agreement shall be administered by the City Manager or his designee, who shall act as the City's representative. All correspondence shall be directed to or through the representative.
- 13.6 **Notices.** Any written notice to Contractor shall be sent to:
- [CONTRACTOR'S NAME, ADDRESS]
- Any written notice to City shall be sent to:
- [NAME, TITLE]
City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530
- 13.7 **Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 13.8 **Integration; Incorporation.** This Agreement, including all the exhibits attached hereto, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral. All exhibits attached hereto are incorporated by reference herein.
- 13.9 **Alternative Dispute Resolution.** If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, City and Contractor agree to resolve the dispute in accordance with the following:

Each Party will designate a senior management or executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute by any means within their authority. If dispute remains unresolved

after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any third party in any alternative dispute resolution process.

The alternative dispute resolution process is a material condition to this Agreement and must be exhausted as an administrative remedy prior to either Party initiating legal action. This alternative dispute resolution process is not intended to nor shall be construed to change the time periods for filing a claim or action specified by Government Code § 900, et. seq.

13.10 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the date signed by the City.

CITY OF EL CERRITO

CONTRACTOR

Date: _____

Date: _____

Scott Hanin, City Manager

[NAME, TITLE]

Attest:

Cheryl Morse
City Clerk

Approved as to Form:

Sky Woodruff
City Attorney

EXHIBIT A

Technical Specifications

I. GENERAL REQUIREMENTS

A. Management Philosophy

The Contractor shall take a pro-active approach in correcting problems within the Contractors' span of responsibility and control. Other problems and suggestions for improvements, both short and long term, must be submitted promptly to the City for appropriate action.

B. Public Image and Etiquette

Contractor employees shall wear company uniforms, which consist of long pants and shirts with company name on the shirt. When needed, the Contractor's staff will utilize rain gear, rain boots, safety shoes, and other high visibility and protective equipment. All contracted employees while on the site shall exhibit a clean, neat professional appearance.

Contractor's equipment and vehicles shall also be professional in appearance, exhibit the company name and phone number, and be well maintained for safe operation. Any outdoor smoking is prohibited per City ordinance.

C. Hours of Operation

The Contractor shall conform operations to the hours between 7:00 AM and 5:00 PM, except during emergency services during the life of the contract. The Contractor shall conform his operations to the hours of 9:00 a.m. to 3:00 p.m. in medians and roadside strips. The use of power equipment or other work close to residential areas that results in noises shall *not be permitted before 8:00 AM*. Any exception shall only be authorized with prior approval of the City Representative.

D. Repairs and Corrective Actions

Contractor shall communicate to the City Representative any tree maintenance and non-tree maintenance related hazards encountered while on site. Work requests related to citizen requests or reported hazards to Contractor that require scheduling with the City's Representative will be prioritized dependent on each request after notification to the City. Immediate response may be necessary.

Any private property or City property damaged or altered in any way during the performance of the work under this contract shall be reported promptly to the City's representative, and shall be rectified in an approved manner back to its former condition, prior to damage, at the Contractor's expense within 72 hours.

Any hazardous conditions noted, or seen, by the Contractor that has occurred by any means other than during the performance of the Contractor's work, whether by vandalism or any other means, shall be promptly reported to the City's Representative. The Contractor is responsible for securing any immediate hazards with caution tape, safety cones, and/or barricades until a City Representative arrives to the location.

E. Safety

Contractor agrees to perform all work outlined in the Agreement in such a manner as to meet all accepted standards for safe practices during the maintenance operation and to safely maintain stored equipment, machines, and materials or other hazards consequential or related to the work; and agrees additionally to accept the sole responsibility for complying with all City, County, State or other legal requirements including, but not limited to, full compliance with the terms of the applicable O.S.H.A. , ANSI Z133 Safety Requirements and CAL E.P.A. Safety Orders at all times so as to protect all person, including contractor employees, agents of the City, vendors, members of the public or others from foreseeable injury, or damage to their property.

Contractor shall cooperate fully with City in the investigation of any accident, injury or death occurring on city property, including a complete written report thereof to the City Representative within twenty-four (24) hours following the occurrence.

F. Traffic

1. Maintaining Traffic: If traffic is to be detoured over a centerline, detour plans must be submitted and approved by the City prior to starting work. Police, Fire, and Community Development Departments shall be notified at least 24 hours in advance of any work which will interfere with the normal flow of vehicular or pedestrian traffic.

On San Pablo Avenue, a minimum of two (paved) traffic lanes, not less than 12 ft. wide per lane, in each direction shall remain open for use by public traffic at all times during the course of the work. When construction operations are not actively in progress, no lane or shoulder closure is permitted.

It shall be the Contractor's responsibility to post no parking areas as required to perform work. Barricades can be provided by the City for pickup and return to the City Corporation Yard by the contractor. Arrangements for signs and barricades can be made by verbal or written request to the City Representative five working days in advance of the need for signs and barricades.

Minor deviations from the requirements of this section concerning hours of work which do not significantly change the cost of the work may be permitted upon the written request of the Contractor if in the opinion of the City Representative public traffic will be better served and the work expedited. Such deviation shall not be adopted until the Manager has indicated his written approval.

Full compensation for conforming to the requirements of this Section shall be considered as included in the contract prices paid for the various items of work and no separate payment may be made thereof.

2. Traffic Controls for Lane Closure: If a lane closure is necessary in order to do the work, it shall be in accordance with the State of California Standard Specifications Section 12, "Construction Area Traffic Control Devices" and the provisions specified herein. The provisions in this Section will not relieve the Contractor from his responsibility to provide such measures as may be necessary to ensure public safety. Contractor at his own expense shall ensure proper signage, as approved by the City Representative, during lane closures.

If any component in the traffic control system is damaged, displaced or ceases to operate or function as specified, from any cause during the progress of the work, the contractor shall immediately repair said component to its original condition or replace said component and shall restore the component to its original location. Lane closures may be made for work periods only. At the end of each work period, all components of the traffic control system shall be removed from the traveled way, shoulder, sidewalk, pathway and parking lanes. If the Contractor so elects, said components may be stored at selected central locations approved by the City Representative within the limits of the City right-of-way.

Full compensation for conforming to the requirements of this Section shall be considered as included in the contract prices paid for the various items of work and no separate payment may be made thereof.

G. Adjacent Properties

Adjacent property and improvements shall be protected from damage and intrusion at all times during the execution of the work embraced herein. Any damage to adjacent properties shall be repaired or replaced by the Contractor at his expense and no payment will be allowed thereof. Work shall be carried out in a manner to avoid all conflicts with operations on adjacent properties and access to adjacent properties.

H. Differing Site Conditions

During the progress of the work, if latent physical conditions are encountered at the site differing materially from those indicated in the contract, or if unknown physical conditions of an unusual nature differing materially from those ordinarily encountered and generally recognized as inherent in the work provided for in the contract are encountered at the site, the party discovering such conditions shall promptly notify the City in writing of such specific differing conditions before they are disturbed and before the affected work is performed.

Upon notification, the City Representative will investigate the conditions, and if the City Representative determines that the conditions materially differ and cause an increase or decrease in the cost or time required for the performance of the work under the contract, an adjustment, excluding loss of anticipated profits, will be made and the contract modified in writing accordingly. The City Representative will notify the Contractor of his determination whether or not an adjustment of the contract is warranted. No contract adjustment which results in a benefit to the Contractor will be allowed unless the Contractor has requested such in writing. No contract adjustment will be allowed under provisions specified in this section for any effects on unchanged work.

I. City Noise Ordinance

The Contractor and any subcontractor shall at all times conform their operations with the requirement of the City Of El Cerrito's Noise Ordinance (ECMC, Chapter 19.21.050 Performance Standards).

J. Monthly Progress Reports

The Contractor shall provide monthly progress reports with the monthly invoices. These reports are to include the following information: Description of work performed, tree location (street address and side), tree species, dbh and tree condition.

K. Payment and Inspection

Payment will be made for work satisfactorily completed as called for in this contract. The City's Representative shall inspect and notify the Contractor of any unsatisfactory work. Unsatisfactory work shall be corrected within 24 hours. Contractor or Contractor's representative shall meet with a representative from the City at least once every 2 weeks of scheduled work during the life of this contract to inspect work performed.

Full compensation for conforming to the work of these specifications shall be considered as included in the contract unit prices, or the proposed hourly rates and material markup, and no further payment may be made thereof.

The contract unit prices and payments shall include full compensation for furnishing all labor, materials, tools, equipment, and incidentals, and for doing all the work involved in completing the work as specified herein, and as directed by the City.

Contractor shall invoice City on a monthly basis in a form approved by the City Representative. Invoicing shall include a detail of costs for work performed during the payment period, a summary of current invoice amounts, previous payments, and total payments to date. Contractor shall submit the Monthly Progress Report as part of the invoice submittal process.

L. Adjustment in Scope or Quantity of Work

The City reserves the right to increase or decrease quantities of work included by the Technical Specification or to delete entire proposal items from the proposal schedule, either before execution of the agreement or during the agreement term. If related services are desired by City which are not covered by the Technical Specifications or by the hourly rate schedule, the fee shall be negotiated and a written work order issued accordingly by the City. Contractor shall not be entitled to compensation for additional services unless a prior written work order has been executed describing the work and specifying the compensation thereof.

M. Hourly Rates for Work Not Included in Technical Specifications

During the agreement term, City may request Contractor to perform work not listed in the Technical Specifications. The Contractor offers the specified labor categories at the indicated hourly rate for these additional services. Hourly rates shall include all direct and indirect costs. For labor not listed below which is needed to perform additional work, the hourly rate shall be agreed upon between the City and Contractor before additional services are performed.

II. SPECIFIC REQUIREMENTS

Prior to beginning City tree pruning, removal, planting and maintenance work, the Contractor shall review with the City Arborist various methods, tools, and work scheduling to be used on the project. Daily tree pruning operations shall commence no earlier than 7:00 A.M. and shall be completed each day no later than 5:00 P.M.

Any structural weakness, decayed trunk or branches, split crotches or limbs and included bark discovered by the Contractor during the course of trimming shall be reported to the City's designated representative for determination of action, as soon as it is discovered. When working on a tree, the Contractor shall be responsible for the removal of all vines entwined in the tree or around its trunk, and for the removal of sucker growth from tree trunks.

Limbs one inch (1") in diameter or greater shall be removed with a series of three (compound) cuts. Make the first cut on the underside of the branch one foot (1') to two feet (2') from the branch junction. The undercut should be at least one-third ($\frac{1}{3}$) of the diameter. Make the second cut one-inch (1") to three inches (3") further from the branch junction than the first. Make the final cut just outside the branch collar in a manner that will stimulate rapid callus growth that will cover the wound.

Removal from a tree of branches three and one-half inches (3.5") or larger in diameter, unless dead, broken or cracked, require prior approval by the City Arborist and once cut, shall be lowered by proper ropes to the ground. Any damage caused by dropping limbs shall be repaired within three (3) days at the Contractor's expense and to the satisfaction of the City Arborist. All debris resulting from tree pruning operations shall be removed from the work site on a daily basis.

A work zone shall be established and maintained for each tree trimming or other operations. The Contractor shall use all appropriate methods used in the field of tree trimming and tree maintenance for establishing and maintaining such work zone. No person other than members of the Contractor's work crew may be allowed to enter such work zone. If any person enters such work zone, the Contractor shall immediately cease all work and operation of all equipment until the work zone is clear.

Contractor shall provide the highest quality of Tree Pruning, Removal and Maintenance services. The Contractor agrees to provide the highest quality commercially accepted methods, procedures and controls for tree pruning, removal and maintenance consistent with the International Society of Arboriculture Pruning Standards (BMPs) , ANSI A300 Standards and information in standard arboriculture industry references. This shall include the use of proper knowledge, skills, materials and equipment of a timely basis to maintain all areas in a clean, safe, healthy, and aesthetically acceptable manner during the entire term of this contract. The Contractor shall furnish tree services by qualified arborists, site managers and tree worker crews to provide tree pruning, removal and maintenance activities that comply with this Specification. It will be the responsibility of the Contractor to provide all equipment, materials, and labor as necessary to perform the work described in these documents in a safe, efficient and legal manner.

Full compensation for conforming to the requirements of this Specification shall be considered as included in the contract prices paid for the various items of work and no separate payment may be made thereof.

A. Tree Pruning

Tree pruning removal and maintenance services shall be performed according to the most current editions of the following benchmark standards:

1. American National Standards Institute (ANSI) A300 Pruning Standards
2. ANSI Z133.1 Safety Standards
3. ISA Best Management Practices: Tree Pruning

To ensure that pruning is appropriate for the species and tree/site conditions, it is important to have a clear understanding of the specific needs of the tree and the objectives for pruning. Pruning objectives include the following:

- Improve structural strength and reduce failure potential
- Provide clearance for pedestrians, vehicles, structures and low voltage utilities
- Improve safety and security for residents and visitors
- Repair structural damage from wind loading
- Improve aesthetic characteristics

- Reduce maintenance costs
- Prevent or mitigate a pest problem

Standard 1: All pruning cuts shall conform to ANSI A300 standards (Part 1: Pruning). Do not make flush cuts or leave branch stubs. Cuts shall be made outside the branch collar in a manner that promotes callous growth to cover wounds.

Standard 2: Not more than 25% of the crown shall be removed within an annual growing season. The percentage of foliage removed shall be adjusted according to age, health, and species considerations. Up to 33% crown removal may be accepted for *Ulmus parvifolia* or other special species after consultation with the City Arborist.

Standard 3: Pruning equipment shall be sharp, clean and sized appropriately for the pruning cut. Chainsaws shall not be used to remove branches 2" or less in diameter. Avoid the use of any pruning and climbing equipment that may cause damage to bark tissue. Spikes (climbing spurs) shall not be used for climbing trees unless the tree is being removed. Pruning tools shall be treated with a disinfectant (such as Lysol) when pruning trees infected with a pathogen that may be transmitted (on tools) from one tree to another of the same species, such as Pears (*Pyrus spp.*). Disinfectants should be used before and after pruning individual trees.

Standard 4: All persons engaged in tree pruning shall be familiar with each of the pruning types. Selection of the pruning type(s) shall be based on pruning objectives. Refer to publication ISA Best Management Practices Tree Pruning for descriptions of pruning types. Clearance pruning that does not comply with Standard 2 shall be conducted only by direct approval of the City Arborist.

Standard 5: Heading cuts shall not be used when pruning mature trees, except in very limited cases with approval from the City Arborist. Whenever possible, use reduction cuts to reduce height and branch removal cuts (thinning cuts) to reduce branch end weights. When reduction and branch removal cuts are not possible (such as when interior lateral branches are not present) and tree hazard potential is high, then heading cuts may be needed, but their use should be minimized.

Standard 6: Clearance pruning shall be defined as to provide the following distances:

- i. Roadway- not less than 14' from road surfaces
- ii. Sidewalk- not less than 7' from sidewalk surfaces
- iii. Building- not less than 8' from vertical building surfaces
- iv. Roofs and street lights- not less than 10' from building roof surfaces or street lamps.
- v. Utility and telecom drop lines- not less than 2' or sufficient clearance to prevent service interruption and vascular tree growth onto wires.

Standard 7: Wildlife Protection: Prior to the commencement of any work in the vicinity of any tree, each tree shall be visually surveyed, from all sides, for the sole purpose of detecting the presence of bird nests or wildlife of any type. If a nest is found and is determined to be active, there shall be no work of any type in the tree in which the nest is found without the written permission of the City's designated representative. At no time shall any nest or wildlife be removed from its location. In the event that wildlife is accidentally displaced, the Contractor shall notify the City representative for assistance.

Standard 8: Tree Planting

The size of trees planted in El Cerrito shall be 15 gallon unless otherwise specified by the City Arborist. All nursery stock shall be approved prior to planting and shall meet the California ReLeaf Guideline Specifications for Nursery Tree Quality:

(http://ufei.calpoly.edu/files/pubs/NurseryTreeSpecs10_13.pdf)

Tree Planting shall be performed in accordance with the ISA Best Management Practices Tree Planting, second edition.

B. Description of Work

The Contractor shall provide pricing to the City for the following work descriptions that will be used during the contract period by the City and the Contractor:

1. **Pruning for Structure:** Structural pruning is the removal of live branches and stems to influence the orientation, spacing, growth rate, strength of attachment and ultimate size of branches and stems. It is used on young and medium aged trees to help engineer a sustainable trunk and branch arrangement. It is used on large maturing trees to reduce certain defects and space main branches along one dominant trunk. This pruning type can be summed –up in the phrase: subordinate or remove codominant stems. This practice can limit the failure potential of included branch attachments. The maximum diameter of reduction cuts will be specified in consultation with the City Arborist prior to such work. Structural pruning is also the foundation for the following pruning types.
2. **Pruning to Raise:** Raising is the selective removal of branches to provide vertical clearance. Crown raising shortens or removes lower branches of a tree to provide clearance for buildings, signs, vehicles, pedestrians and views. Live crown remaining shall be no less than 66% when raising is completed; some structural pruning is considered by the City to be part of this pruning. Clearance objectives are specified above in Tree Pruning Standard 6.
3. **Pruning to Clean:** Crown Cleaning or cleaning out is the removal of dead, diseased, detached and broken branches ½" or larger. This type of pruning is done to reduce the risk of falling branches and to reduce the risk of decay spreading into the tree from dead or dying branches. Cleaning is the preferred pruning method for mature trees. Cleaning removes branches with cracks that may be prone to fail. Care must be used to avoid stripping live branches and foliage from the interior of the tree crown. This practice which is known as "lion tailing" is unacceptable. The location and diameter of branches to be removed may be specified in consultation with the City Arborist prior to this work.

4. Pruning to Reduce: Crown Reduction is the selective removal of branches and stems to decrease the height and/or spread of a tree. This is done to minimize risk of failure, to reduce height or spread, to clear vegetation from buildings, structures or utilities. Crown reduction shall be accomplished with reduction cuts to a viable lateral stem, not with heading cuts. While reducing the tree crown, tree workers must adhere to basic tree trimming practices involving limb/branch size relationships and pruning outside branch bark collar to avoid the onset of decay at cut sites.
5. Pruning to Restore: Crown Restoration is the selective removal of branches, sprouts and stubs from trees that have been previously topped, severely headed, lion tailed or otherwise damaged. One to three sprouts are selected for retention on trees with many sprouts originating at the tips of branches. Location and percentage of sprouts are specified.
6. Grid Pruning consists of pruning four (4) or more trees located in close proximity, at the same address or at nearby street addresses. The term is used to reflect an economy of scale when pruning trees in one location and shall be reflected with bid pricing reduced from the single tree pruning bid price.
7. Emergency Response consists of a two person crew, an aerial lift truck and chipper and follows the terms described in F. below. Hourly rate shall be based on one direction of travel time.

C. Tree and Stump Removal

Tree removal consists of the removal of the above ground portion of a hardwood tree or palm tree. Stump removal consists of the removal of the tree root crown and tree roots to a depth of 18" or until roots are no longer encountered and distances of at least 24" from the outer circumference of the tree stump or until roots are no longer encountered.

1. The Contractor shall comply with all general specifications standards described herein.
2. The price given by the Contractor for tree removals shall be inclusive of all staff, materials and equipment necessary to remove trees as described herein.
3. The City is responsible for marking trees for removal so that they are easily identified for Underground Service Alert (USA) and the Contractor. The Contractor shall be required to contact USA at least 2 working days prior to stump grinding.
4. The Contractor shall notify the City's designated representative in writing of any condition that prevents the removal of a tree and/or the removal of its root system. The Contractor shall take all responsibility for any damage that occurs once the process of removing a tree and/or associated root removal begins.

5. The Contractor shall comply with wildlife protection standards described herein whenever removing a tree: **A. Tree Pruning, Standard 7**, above
6. The Contractor shall not remove any tree without first confirming that the tree being considered is indeed the tree to be removed. Any confusion should be resolved by contacting the City Arborist for assistance. The errant removal of trees shall be penalized up to but limited to the cost of the replacement.
7. During a tree removal, the Contractor shall maintain control of the tree and its parts at all times, which shall include the selection and use of proper techniques and equipment. At no time shall branches, limbs or tree trunks be allowed to freefall and create damage of any type. The Contractor will be held liable for loss of control incidents and shall pay for all damages and associated costs.
8. Cranes and other rigging equipment shall be properly certified, with evidence of such available for inspection prior to use of said equipment in the City. Crane operators shall be certified by the National Commission for the Certification of Crane Operators (NCCCO) and shall display current certification prior to operating a crane in the City. The use of cranes and certified operators shall not result in additional charges to the City beyond the unit price for the work being performed (e.g., the price for tree removal).
9. While loading and handling debris, the Contractor shall maintain control at all times so as not to result in damage to the public rights of way or private property. In addition, the Contractor shall not drop logs or trunks as to create undue noise or shock impact related damages to public and/or private property.
10. The Contractor shall be responsible for the repair of any private property including any irrigation system components damaged during a tree removal or stump grinding. Repairs shall be made using components matching those that were damaged.

D. Public Noticing of Tree Pruning or Removal Operations

Contractor shall be required to notify residents and/or businesses of scheduled tree pruning operations at least forty-eight (48) hours prior to the work being performed. Resident and business notifications shall be made in the form of City approved door hangers. City approved "No Parking" signs shall be posted on individual trees scheduled for pruning twenty-four (24) hours prior to the work being performed. Nailing or stapling notices on trees is not permitted; contractor is responsible to remove all posting within 2 hours of work completion.

E. Clean up and Debris Disposal

Contractor shall clean all job sites when work is completed and/or daily, including the removal of leaves, twigs, etc. from the lawns, street gutters, sidewalks and parkways and

the sweeping or blowing of streets. Each day's scheduled work shall be completed and cleaned up and only under City approved emergency circumstances may any brush, leaves, debris or equipment be left on the street overnight. The City Arborist or his authorized representative shall be the sole judge as to the adequacy of the clean up.

Wood waste generated from tree removals shall be chipped into pure wood chips with an even uniform size. Diseased trees shall not be commingled with regular trees in the creation of wood chips. The disease-free chips shall be dumped and spread in specified locations in the City at the direction of the City's designated representative. It is the responsibility of the Contractor to appropriately dispose of diseased trees. Wood and branches not suitable for chipping may be dumped at the City Green Waste disposal site. All tree branches produced as a result of the Contractor's operations under this contract will be reduced, reused, recycled, and/or transformed.

F. Emergency Response

The Contractor *may* be required to provide emergency on call response for damaged trees as a result of storms or other reasons. Emergency calls may occur at any given time. The Contractor will be provided with locations and the work to be done at each location via telephone from a City authorized representative. Emergency work shall begin within two (2) hours of the initial telephone call. Contractor shall be required to provide a twenty-four (24) hour emergency phone number upon award of contract.

Contractor shall be required to provide all necessary traffic control during the course of emergency work. Should the work involve any high voltage power lines or any utility lines the Contractor shall be required to notify the responsible utility company. Work performed under the emergency provision of this contract shall include all labor, tools equipment, disposal fees and necessary materials.

G. Licensing, Certification and Labor

All firms submitting proposals must hold a valid State California C-27 and a C-61/D49 Contractor's License. Both licenses must be in good standing for the previous five (5) consecutive years without any official unresolved record of complaints registered or filed with the Board or California Department of Consumer Affairs.

All proposing contractors must comply with the *Prevailing Wage* terms as outlined in this RFP.

The Contractor shall be subject to the following minimum requirements, skills, abilities and knowledge:

- Demonstrated knowledge of industry standard tree care and related operations.
- Demonstration of a high level of stability and long term high quality performance of the Contractor.

- Current licenses for operation of equipment utilized by operating employee.
- Contractor shall have OSHA certification of aerial equipment to be used throughout the term of this project. Both of these provisions shall be provided with the submission of bid proposals.
- Ability to operate and maintain equipment in accordance with the manufacturer's recommendations.
- Mechanical ability to make required operator adjustments to the equipment being used.
- Knowledge of safety regulations as they relate to tree care and traffic control.
- American Red Cross Standard First Aid training (minimum of one member of each crew).
- At all times during contracted tree maintenance activities, the firm shall have work crews on site that have a foreperson who can effectively communicate with residents and receive and complete instructions given by City staff and proper authorities.
- Well organized communication systems and electronic reporting capabilities that demonstrate an ability to complete tasks efficiently and effectively and do not require constant supervision by the City. Demonstrate the ability to electronically track inventory, pruning, asset inventory, and removals and replacements.

H. Equipment

Included in the contract bid the Contractor shall provide a list of equipment and machinery to be used for this project, including make, year, serial number and license numbers and contractor shall provide current OSHA certification of aerial equipment to be used throughout the term of this project.

It will be the responsibility of the Contractor to provide all equipment and labor as necessary to perform the work described in these documents in a safe, efficient, aesthetically pleasing, and legal manner. The Contractor shall at all times furnish and maintain sufficient equipment as necessary to perform the work of this contract. Such equipment shall be subject to the inspection and approval of the City's Representative. If the contractor is unable to consistently provide the necessary equipment to perform the work, it may be considered a breach of this contract.

I. Record Keeping

The Contractor shall provide a record of work performed either in a format that is compatible and consistent with the City's tree inventory such as TreeKeeper7, Arbor Access or Excel. The Contractor will specify the format type in the proposal.

The record shall include the street address, street side, tree species, dbh, and a brief description of work performed. The record shall be kept current within 3 business days of work. Tree/site specific backup data containing these same fields in an Excel spreadsheet shall accompany the invoicing for the work period.

Option for price proposal: Record general tree health condition and a post- service photo.

J. Accident Investigation

Any duty-related incident which results in any personal or property injury shall be reported to the City's designated representative within one (1) hour by the Contractor. The Contractor shall cooperate fully with the City in the investigation of any incident, injury or death occurring on City property including a complete written report submitted by the Contractor to the City's designated representative, or assignee, within twenty-four (24) hours following the occurrence.

Should any structure or property be damaged during a permitted or contracted tree operation, the persons conducting the work shall immediately notify the property owners and the City's designated representative within one (1) hour. The Contractor shall make all arrangements for repairs to damaged property within forty-eight (48) hours, except utility lines, which shall be repaired the same working day. The Contractor shall be solely responsible for contacting all utilities, neighboring property owners, and contractors required to complete such repairs. Repairs on private property shall be made in accordance with the appropriate building code under permits issued by the City as applicable. Any damage caused by the Contractor shall be repaired or restored by the Contractor at the Contractor's expense to a condition similar or equal to that existing before such damage or injury, or the Contractor shall repair such damage in a manner acceptable to the City.

Special attention shall be made to existing irrigation systems, plant material, landscape features, lights and utility boxes in City parkways, parks and public landscape areas and in order to avoid damage. Any damage that occurs must be repaired on the same day that the damage occurs. The Contractor may self-perform such work on irrigation systems upon approval and acceptance of such work by the City's designated representative.

K. Inspections

The City's designated representative shall be furnished with every reasonable means for ascertaining full knowledge of the daily tree maintenance operations involving the workmanship, character of materials and equipment used and employed in the work. The Contractor may be required to provide the City's designated representative, with an advance written schedule of all daily tree maintenance operations and work locations.

Inspection of the work shall not relieve the Contractor of any obligations to complete the work as outlined in this RFP. Defective work shall be made good even if the defective work was not pointed out during the initial inspection and the work was accepted for payment. Any work found to be unacceptable by the City will be noted in writing to the Contractor. Upon receipt of notice of any deficiencies, the Contractor shall make a reasonable effort to correct the deficiencies within five (5) working days. If unacceptable conditions are not corrected within this time period the City shall have the right to deduct payment or have services performed by others at the Contractor's expense.

L. Withholding Payment

The City may withhold payment to such extent as may be necessary to protect the City from loss due to one or more of the following reasons:

- Defective, unsatisfactory or inadequate work not corrected.
- Claims filed or reasonable evidence indicating probable filing of claims.
- Failure of the Contractor to make proper payments to subcontractors or for materials or labor.
- A reasonable doubt that the awarded contract can be completed for the balance unpaid.
- Property damage that resulted from an incident.

EXHIBIT B

Attachment 4 - Cost Proposal

The proposal prices are to include and cover the furnishing of all labor, materials, equipment, fees, taxes, incidentals, and overhead necessary to perform the work described in the Technical Specifications section of this RFP (**Attachment 2**). The proposer affirms that in the event they are awarded a contractor they assure that all work will be performed in the specified manner and under the terms and conditions specified at the prices listed below:

Item Description	Cost per Service	Notes/ Assumptions
Record Tree Health, Post-service Photo	\$3.00	
Individual Tree Removal by DBH size		
<i>Small 6-14"</i>	\$275.00	
<i>Medium 14.1"-25"</i>	\$775.00	
<i>Large 26-36"</i>	\$1,900.00	
Stump Removal by stump diameter		
<i>Small 6-14"</i>	\$175.00	
<i>Medium 14.1"-25"</i>	\$275.00	
<i>Large 26-36"</i>	\$375.00	
Single Tree Pruning for Structure		
<i>Small 6-14" (dbh)</i>	\$178.00	
<i>Medium 14.1"-25"</i>	\$275.00	
<i>Large 26-36"</i>	\$375.00	
Single Tree Pruning to Raise		
<i>Small 6-14"</i>	\$125.00	
<i>Medium 14.1"-25"</i>	\$225.00	
<i>Large 26-36"</i>	\$325.00	
Single tree Pruning to Clean		
<i>Small 6-14"</i>	\$175.00	
<i>Medium 14.1"-25"</i>	\$275.00	
<i>Large 26-36"</i>	\$375.00	

Item description	Cost per Service	Notes/ Assumptions
Single Tree Pruning to Reduce		
<i>Small 6-14"(dbh)</i>	\$175.00	
<i>Medium 14.1"-25"</i>	\$275.00	
<i>Large 26-36"</i>	\$375.00	
Single Tree Pruning to Restore		
<i>Small 6-14"</i>	\$175.00	
<i>Medium 14.1"-25"</i>	\$275.00	

<i>Large 26-36"</i>	\$375.00	
Single Tree Pruning Grid Full		4 or more trees
<i>Small 6-14"</i>	\$125.00	
<i>Medium 14.1"-25"</i>	\$225.00	
<i>Large 26-36"</i>	\$325.00	
Single Tree Pruning Grid Raise		4 or more trees
<i>Small 6-14"</i>	\$99.00	
<i>Medium 14.1"-25"</i>	\$199.00	
<i>Large 26-36"</i>	\$299.00	
Single Tree Pruning Grid to Restore		4 or more trees
<i>Small 6-14"</i>	\$150.00	
<i>Medium 14.1"-25"</i>	\$250.00	
<i>Large 26-36"</i>	\$350.00	
Emergency Response		
<i>Hourly</i>	\$120.00	2-man crew: \$240.00
Root Pruning		
<i>Hourly</i>	\$90.00	2-man crew: \$180.00
Tree Grate Modification		
<i>Hourly</i>	\$90.00	2-man crew: \$180.00
Single Tree Planting 15 gallon		
<i>City provides tree + Reddy Stake</i>	\$225.00	
<i>Contractor provides tree and mulch (not Reddy Stake)</i>	\$325.00	

Mark-Up on Materials not included in Technical Specifications

Contractor will charge City the actual invoice of materials used for any additional work plus a fee of 15.00 percent (%).

Adjustments in Scope or Quantity of Work

The City reserves the right to increase or decrease quantities of work included by the Technical Specification or to delete entire proposal items from the proposal schedule, either before execution of the agreement or during the agreement term. If related services are desired by City which are not covered by the Technical Specifications or by the hourly rate schedule, the fee shall be negotiated and a written work order issued accordingly by the City. Contractor shall not be entitled to compensation for additional services unless a prior written work order has been executed describing the work and specifying the compensation thereof.

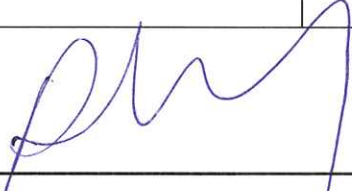
Hourly rates for labor to perform work not included in Technical Specifications

During the agreement term, City may request Contractor to perform work not listed in the Technical Specifications. The Contractor offers the specified labor categories at the indicated hourly rate for these additional services. Hourly rates shall include all direct and indirect costs. For labor not listed below which is needed to perform additional work, the hourly rate shall be agreed upon between the City and Contractor before additional services are performed.

Hourly rates for equipment to perform work not included in Technical Specifications

Hourly rates shall include all costs necessary to provide equipment in good working order, including cost of fuel, maintenance, direct and indirect cost, but excluding operating labor costs. For equipment not listed below which is needed to perform additional work, the hourly rate shall be agreed upon between the City and the Contractor before such additional equipment is used. Costs associated with the equipment listed below will not be incurred by the City if required in the performance of the work called out in the Technical Specification. It will only be paid for if specifically requested, required, and previously approved by the City.

Hourly Rates For Personnel or Equipment (add more rows as needed)			
	Equipment / Personnel	Regular Time	Over-Time
1	Crane	\$250.00	\$300.00
2	95' Aerial Tower/Boom	\$250.00	\$300.00
3	Rolloff/Loader	\$250.00	\$300.00
4			
5			

Contractor's Signature  Date 10/27/16

Print Name Patrick Mahoney Title President



AGENDA BILL

Agenda Item No. 5(D)

Date: November 15, 2016
To: El Cerrito City Council
From: Melissa Tigbao, Engineering Manager/Senior Engineer
Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Grant of Access and Utility Easement to Eden Housing

ACTION REQUESTED

Adopt a resolution granting El Cerrito Senior, L.P., an affiliate of Eden Housing, a perpetual non-exclusive access and utility easement and authorizing the City Manager to execute the Easement Deed and Maintenance Agreement ("Easement Agreement") for Sewer Line Improvements for the Hana Gardens Apartments to be located at 10860 San Pablo Avenue.

DISCUSSION

Eden Housing is preparing to begin construction of Hana Gardens, the 63-unit senior affordable housing project located adjacent to City Hall at the former Tradeway building. Eden Housing is scheduled to close financing and start construction before the end of 2016. Please refer to the related item on the City Council agenda for more information. Eden Housing needs to install a new private sanitary sewer line on Kearney Street to serve Hana Gardens.

The sanitary sewer line is essential to the operation of the housing project and the lender and investor do not want to take the risk that at some point Eden Housing might not have the access to or the ability to maintain the sewer line. Although the City would typically rely upon issuing an encroachment permit for this purpose, the housing project's lender and investor require an easement because an encroachment permit would be revocable by the City. The easement documents will guarantee access for the purpose of constructing, installing, repairing, testing, maintaining, and replacing the sanitary sewer line and related appurtenances. As part of the financing, the Easement Agreement must be executed prior to the start of construction.

The Developer will also be required to obtain an encroachment permit prior to undertaking any work in the area covered by the easement.

The Easement Agreement (Attachment 2) has been prepared by legal counsel of the Housing Successor to the former Redevelopment Agency and reviewed by City staff and Eden Housing representatives. Accompanying the Easement Agreement is the Legal Description and Plat Map identifying the ten-foot (10') Easement on Kearney Street just east of the subject property (Attachment 3).

STRATEGIC PLAN CONSIDERATIONS

Execution of the Easement Agreement is consistent with El Cerrito Strategic Plan Goal C – *Deepen a sense of place and community identity*. Specifically, approval of this action will support the “re-imagining and reinvesting in underutilized properties” strategy. This effort demonstrates the City’s aim to work collaboratively with private non-profit partners to develop this senior housing on San Pablo Avenue.

FINANCIAL CONSIDERATIONS

Execution of the Easement Agreement will have no fiscal impact on the City. All costs for installing, maintaining, repairing, and using the sanitary sewer line within the Easement are paid for by the Developer.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and Easement Agreement, and found that legal considerations have been addressed. The Easement Agreement, Legal Description and Plat Map will be recorded with the Contra Costa County Recorder if approved by City Council.

Reviewed by:


Scott Hanin
City Manager

Attachments:

1. Resolution
2. Easement Deed and Maintenance Agreement
3. Legal Description and Plat Map

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO GRANTING EL CERRITO SENIOR, L.P., AN AFFILIATE OF EDEN HOUSING, A PERPETUAL NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE EASEMENT DEED AND MAINTENANCE AGREEMENT

WHEREAS, Eden Housing is preparing to begin construction of Hana Gardens, the 63-unit senior affordable housing located adjacent to City Hall at the former Tradeway building; and

WHEREAS, Eden Housing needs to install a new private sanitary sewer line on Kearney Street to serve Hana Gardens and the easement documents will guarantee access for the purpose of constructing, installing, repairing, testing, maintaining, and replacing the sanitary sewer line and related appurtenances; and

WHEREAS, as part of the financing, the Easement Deed and Maintenance Agreement ("Easement Agreement") must be executed prior to the start of construction; and

WHEREAS, the Easement Agreement (Attachment 2 to the staff report and Exhibit A to this resolution) has been prepared by legal counsel of the Housing Successor to the former Redevelopment Agency and reviewed by City staff and Eden Housing representatives, and accompanying the Easement Agreement is the Legal Description and Plat Map identifying the ten-foot (10') Easement on Kearney Street just east of the subject property (Attachment 3 to the staff report and Exhibit B to this resolution).

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby grants to El Cerrito Senior, L.P., an affiliate of Eden Housing, a perpetual non-exclusive access and utility easement and authorizes the City Manager to execute the Easement Agreement attached hereto as Exhibit A.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

Recording Requested by and
When Recorded, Return to
The City of El Cerrito
10890 San Pablo Avenue
El Cerrito, CA 94530

Exempt from Fee for Recording
per Govt. Code Sec. 6103.
Exempt from Documentary Transfer Tax
per Rev. & Taxation Code Sec. 11911.
Easement Only – No Consideration

Signature of Declarant or Agent determining tax

APN:

EASEMENT DEED AND MAINTENANCE AGREEMENT

For good and adequate consideration, the receipt of which is duly acknowledged, the City of El Cerrito, a California municipal corporation, ("GRANTOR"), does hereby grant to El Cerrito Senior, L.P., a California limited partnership ("DEVELOPER"), collectively known as the "parties", subject to the terms and conditions set forth below, a perpetual non-exclusive access and utility easement (the "Easement") across, under, and through GRANTOR'S property to construct, reconstruct, install, inspect, maintain, replace, repair, remove, operate, and use facilities and undertake activities of the type hereinafter specified, upon the real property situated in the City of El Cerrito, County of Contra Costa, State of California described and shown on Exhibit A, attached hereto and incorporated herein by reference, and designated therein as "Easement Area".

See Exhibit A

I Said facilities located upon the Easement Area are described and subject to the terms and conditions as follows:

(a) A sanitary sewer line with necessary and proper valves and other appliances and fittings, and devices for controlling corrosion for use in connection with said pipelines (collectively referred to herein as the "Sewer Line Improvements"), as depicted in the Developer's construction plans dated _____ all to be located within the Easement Area which is a public street owned and maintained by the Grantor. Developer shall not interfere with the use of the Easement Area by Grantor as a public street except to the extent reasonably required to install and maintain the sewer line described above. The parties acknowledge that the Sewer Line Improvements are necessary for, and are the sole Sewer Line Improvements serving Developer's property described in Exhibit B (the "Benefitted Property"). It is the intent of the parties that the non-exclusive access and utility easement and all other rights, interests and obligations set forth herein shall continue for so long as the Sewer Line Improvements are needed for the Benefitted

Agenda Item No. 5(D)
Attachment 2

Property regardless of any changed use of the Benefitted Property. If the Easement is terminated or otherwise no longer needed, the parties shall cooperate to create and execute documents and instruments necessary to terminate the Easement for its intended purposes.

b) Developer shall have vehicular and pedestrian ingress and egress access to the Easement Area with vehicles, tools, implements and other materials for the purpose of constructing, installing, repairing, testing, maintaining, and replacing the Sewer Line Improvements, provided, however prior to undertaking any work in the Easement Area, Developer shall obtain from the Grantor an encroachment permit allowing Developer to undertake work within the public right of way, except in the event of an emergency, in which case the Developer may enter the Easement Area to make emergency repairs. In the event of an emergency, the Developer shall provide the City with written notice of the repairs and apply for an encroachment permit on the next business day.

(c) Developer shall be responsible for the maintenance of the Sewer Line Improvements located in the Easement Area and any other equipment and facilities installed by Developer within the Easement Area. Developer shall also be responsible for replacing or repairing any portion of the street within the Easement Area caused by Developer's use of the Easement Area to a condition as near as possible to the condition as existed prior to commencement of such work to the reasonable satisfaction of the City Engineer. In doing work within the Easement Area, Developer will conduct work in such a manner as will cause the least injury to the ground or surface around the work and will replace the earth removed and restore the area including surface of the ground to as near as possible to the condition as existed prior to commencement of such work to the reasonable satisfaction of the City Engineer. Developer's use of the Easement shall not unreasonably interfere with Grantor's and the general public's use of Grantor's property as a public right-of-way.

(d) Developer agrees to undertake all activities necessary to maintain the Developer's infrastructure within the Easement Area at its sole cost and expense.

II This Easement Deed and Maintenance Agreement is subject to the following terms and conditions:

(a) Developer shall indemnify Grantor against any claim of liability or any other claim or any loss or damage involving the exercise of the rights herein granted to Developer, the sewer line or the pipelines or utilities serving the Sewer Line Improvements or any other equipment or facilities installed by Developer in or around the Easement Area, or otherwise caused by any negligent act or omission of Developer or of its agents, employees or contractors, or which may arise out of or occur by the performance of work by Developer, its contractors and agents within the Easement Area or Grantor's property, provided, however, that this indemnity shall not extend to that portion of such loss or damage that shall have been caused by Grantor's sole active negligence or willful misconduct.

(b) Developer shall obtain and maintain during the term of this Easement Deed and Maintenance Agreement general liability insurance including public liability and property damage with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limits covering the Easement Area which names the Grantor, its council members, officers, employees and agents, as an additional insured on a primary and noncontributing basis.

Agenda Item No. 5(D)
Attachment 2

All insurance required by this Easement Deed and Maintenance Agreement shall contain a provision that coverage may not be canceled or materially changed in the scope or amount of coverage unless thirty (30) days advance written notice is given to the Grantor at its address as set forth below or such other address as the additional insured shall specify.

(c) Before beginning any construction in the Easement Area pursuant hereto, the Developer's construction contractor(s) shall agree in writing to indemnify and hold Grantor harmless to the same extent as provided herein, and at all times during the period of any construction activity in or around the Easement Area pursuant to this Easement Deed and Maintenance Agreement. The Developer and/or its construction contractor(s) shall keep in full force and effect, at their sole expense, liability insurance in such form and amount as is consistent with the Grantor's insurance requirements for the work being done. Grantor shall be named as an additional insured on each such insurance policy. Such insurance shall be primary to any insurance which may be carried by Grantor, and no insurance carried by Grantor shall be called upon to contribute to any loss covered by such policy(s). The Developer shall deliver a certificate of insurance to Grantor showing proof of required insurance before beginning any construction within the Easement Area.

(d) The Developer shall not cause or permit any "Hazardous Material", as hereinafter defined, to be brought upon, kept, or used in or about the Easement Area. If the Developer breaches the obligations stated herein or if contamination of the Easement Area by Hazardous Materials otherwise occurs for which the Developer is legally liable to Grantor for damage resulting therefrom, then the Developer shall indemnify, defend with counsel approved in writing by Grantor, and hold harmless Grantor, its elected or appointed officials, officers, agents, and employees from any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, diminution in value of all or any of the Easement Area or adjacent properties, sums paid in settlement of claims, attorney's fees, consultant fees, and expert witness fees) which arise during or after the Developer's use of the Easement Area as a result of such contamination. This indemnification includes, without limitation, costs incurred by Grantor in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, state, or local governmental entity or agency because of Hazardous Material being present in the soil or ground water under the Easement Area. The Developer shall promptly take all action, at its sole cost and expense, as is necessary to clean, remove, and restore the Easement Area to their condition prior to the introduction of such Hazardous Material by the Developer, provided the Developer shall first have obtained Grantor's written approval and the approval of any necessary governmental entities or agencies for any such remedial action.

(e) For purposes of this Easement Deed and Maintenance Agreement, the term "Hazardous Material" or "Hazardous Materials" shall mean any hazardous or toxic substance, material, product, byproduct, or waste which is or shall become regulated by any governmental entity, including, without limitation, Grantor acting in its governmental capacity, the State of California or the United States government.

(f) Grantor reserves the right to use the Easement Area for any and all purposes which will not interfere with the Developer's full enjoyment of the rights herein granted.

Agenda Item No. 5(D)
Attachment 2

(g) The Developer shall submit plans for all improvements to the Grantor's Public Works Department for approval and permits in accordance with Grantor's normal standards and requirements prior to undertaking improvements. Upon Grantor's request, the Developer shall provide Grantor with as-built drawings and a survey showing the location and depth of the Sewer Line Improvements installed in the Easement Area.

(h) The Developer shall bear and promptly pay, without the imposition of any lien or charge on or against all or any portion of Grantor's property, all costs and expenses of construction and maintenance of the improvements.

(i) This grant is subject to existing contracts, leases, licenses, easements, encumbrances, and claims which may affect the Easement Area, whether or not of record and other utility providers, and the use of the word "grant" herein shall not be construed as a covenant against the existence of any thereof.

(j) Any notice permitted or required herein shall be deemed received, if delivered when actually received, or if mailed on the third day after mailing by registered or certified mail, postage prepaid, to the party's address set forth below or to such other address designated in writing to the other party.

GRANTOR: City of El Cerrito
Attn: City Manager
10890 San Pablo Avenue
El Cerrito, CA 94530

Developer: El Cerrito Senior, L.P.
c/o Eden Housing, Inc.,
22645 Grant Street
Hayward, CA 94541-5031
Attn: President

With a copy to: Wells Fargo Affordable Housing
Community Development Corporation
MAC D1053-170
300 South College Street, 17th Floor
Charlotte, NC 28288-0170
Attn: Director of Tax Credit Asset Management

(k) In any action to compel performance of, or to recover for breach of, any agreement or condition herein, the prevailing party shall be entitled to recover reasonable attorney's fees in addition to the amount of judgment and costs.

(l) The provisions hereof shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto, and all covenants shall apply to and run with the land. Neither party shall have the right to assign or transfer this Easement Deed and Maintenance Agreement or any of its rights or obligations hereunder, separate from any transfer of title to the

Agenda Item No. 5(D)
Attachment 2

Benefitted Property or the City property, as applicable, without the express prior written consent of the other party, which may be withheld in its sole and absolute discretion.

(m) No alteration or variation of the terms of this Easement Deed and Maintenance Agreement shall be valid unless made in writing and signed by the parties, and no oral understanding or agreement not incorporated herein shall be binding on any of the parties. Any amendment or cancellation of this Easement Deed and Maintenance Agreement shall be recorded in the Official Records of the County of Contra Costa.

(n) This Easement Deed and Maintenance Agreement shall be effective upon the date it is executed by an authorized representative of each signing party and recorded in the Official Records of Contra Costa County.

(o) If any term, covenant, condition or provision of this Easement Deed and Maintenance Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall no way be affected, impaired or invalidated thereby.

(p) Each individual signing on behalf of a party to this Easement Deed and Maintenance Agreement state that he or she is the duly authorized representative of the signing party and that his or her signature on this Easement Deed and Maintenance Agreement has been duly authorized by, and creates the binding and enforceable obligation of the party on whose behalf the representatives is signing.

Dated: _____, 2016

Dated: _____, 2016

CITY OF EL CERRITO, a California
municipal corporation

EL CERRITO SENIOR, L.P., a California limited
partnership

By: _____
Scott Hanin, City Manager

By: El Cerrito Senior LLC, a California
limited liability company,
its General Partner

By: Eden Housing, Inc.,
a California nonprofit public benefit
corporation,
its Manager

By: _____

Agenda Item No. 5(D)
Attachment 2

Its: _____

Name: _____
Notary Public

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

p. 5(D)
ment 2

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify UNDER PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Name: _____
Notary Public

EXHIBIT A
EASEMENT AREA

EXHIBIT B
BENEFITTED PROPERTY

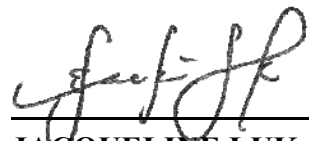
EXHIBIT "A"
(Sanitary Sewer Easement)

All that real property situated in the City of El Cerrito, County of Contra Costa, State of California, being a strip of land 10.00 feet in width over a portion of Kearney Street (60.00 foot wide), more particularly described as follows:

BEGINNING at a point on the Southwesterly line of said Kearney Street, distant thereon along said Southwesterly line North 29°01'18" West, 76.61 feet from the most Easterly corner of Lot 14 of Block 50 as shown on the Map entitled "Map of North Berkeley Terrace", filed November 2, 1908 in Block 1 of Maps, at Page 26, in the Office of the County Recorder of Contra Costa County; thence North 60°58'27" East, 23.00 feet; thence at a right angle, South 29°01'33" East, 407.37 feet; thence at a right angle, North 60°58'27" East, 10.00 feet to a line parallel with, distant 10.00 feet Northeasterly, measured at right angles from the course described above as "South 29°01'33" East, 407.37 feet"; thence along said parallel line, North 29°01'33" West, 417.37 feet to a line parallel with, distant 10.00 feet Northwesterly, measured at right angles from the course described above as "North 60°58'27" East, 23.00 feet"; thence along last said parallel line, South 60°58'27" West, 33.00 feet to said Southwesterly line of said Kearney Street; thence along last said line, South 29°01'18" East, 10.00 feet to the POINT OF BEGINNING.

CONTAINING 4,404 square feet, more or less.

This real property description has been prepared by me, or under my direction, in conformance with the Professional Land Surveyors Act.



JACQUELINE LUK, PLS 8934

DATE: October 18, 2016





AGENDA BILL

Agenda Item No. 5(E)

Date: November 15, 2016
To: El Cerrito City Council
From: Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Participation in the California Uniform Public Construction Cost Accounting Act

ACTION REQUESTED

Adopt a resolution confirming that the City has elected to become subject to the uniform public construction cost accounting procedures set forth in the California Uniform Public Construction Cost Accounting Act ("Act") and to the California Uniform Construction Cost Accounting Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directing that the City Clerk notify the State Controller forthwith of this election.

DISCUSSION

The Act was enacted in 1983 to help promote uniformity of the cost accounting standards and bidding procedures on public project work performed or contracted by public agencies in the State. The Act currently allows for public project work in the amount of \$45,000 or less to be performed by a public agency's own workforces, by negotiated contract, or by purchase order. Public projects in the amount of \$175,000 or less can use the informal bidding procedures set forth in the Act. Public projects at a cost of more than \$175,000 must use formal bidding procedures.

The Commission established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies for these purposes. Every five years, the Commission reviews the informal bid limits for inflation and other factors to determine whether adjustments should be made. If an adjustment is made, the State Controller notifies the affected public agencies. Any public agency can voluntarily elect to become a participating agency of the Act.

In October 2002, the City Council adopted Ordinance No. 2002-03, electing to become subject to the uniform public construction cost accounting procedures set forth in the Act. However, City staff recently discovered that the City was not listed on the State Controller's website as a participating agency subject to the Act. After contacting the State Controller's office to inquire about this discrepancy, City staff was informed that it must adopt a resolution to confirm it is a participating agency of the Act.

STRATEGIC PLAN CONSIDERATIONS

The requested action meets El Cerrito Strategic Plan Goal A – Deliver exemplary government services because the City benefits from increased flexibility in execution of

public works projects, streamlined administration, and improved timeliness of project completion.

FINANCIAL CONSIDERATIONS

There are no financial obligations associated with the requested action.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and found that legal considerations have been addressed.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ELECTING TO
BECOME SUBJECT TO UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING
PROCEDURES

WHEREAS, prior to the passage of Assembly Bill No. 1666, Chapter 1054, Statutes of 1983, which added Chapter 2, commencing with Section 22000, to Part 3 of Division 2 of the Public Contract Code, existing law did not provide a uniform cost accounting standard for construction work performed or contracted by local public agencies; and

WHEREAS, Public Contract Code Section 22000, *et seq.*, the Uniform Public Construction Cost Accounting Act ("Act"), establishes such a uniform cost accounting standard; and

WHEREAS, the Commission established under the Act has developed uniform public construction cost accounting procedures for implementation by local public agencies in the performance of or in the contracting for construction of public projects; and

WHEREAS, the City Council previously adopted Ordinance No. 2002-03, electing to become subject to the uniform public construction cost accounting procedures set forth in the Act; and

WHEREAS, the City recently discovered that it was not listed on the State Controller's website as an agency that had elected to become subject to the Act; and

WHEREAS, after contacting the State Controller's office to inquire about this discrepancy, the City was informed that it must adopt a resolution verifying its election to be subject to the Act.

NOW THEREFORE, the City Council of the City of El Cerrito, hereby confirms that it has elected to become subject to the uniform public construction cost accounting procedures set forth in the Act and to the Commission's policies and procedures manual and cost accounting review procedures, as they may each from time to time be amended, and directs that the City Clerk notify the State Controller forthwith of this election.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

Agenda Item No. 5(E)
Attachment 1

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 5(F)

Date: November 15, 2016
To: El Cerrito City Council
From: Mark Soltes, Building Official
Subject: Amendment of Professional Services Agreement with TRB + Associates

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to amend the Professional Services Agreement between the City of El Cerrito and TRB + Associates in an amount not to exceed \$75,000 bringing the total contract to an amount not to exceed \$100,000 and to extending the term of the Agreement through June 30, 2017.

BACKGROUND

On October 28, 2016 the City of El Cerrito entered into a Professional Services Agreement with TRB+ Associates for \$25,000 to provide temporary staffing assistance for the Building and Planning Division. This contract was necessitated by increased inspection demand, a recent vacancy in the Permit Tech III position, and a need to have additional plan review services available. Pursuant to Administrative Policy/Procedure IIIA, (Procurement including Professional Services Contracts) contracts up to \$25,000 may be authorized by the City Manager. The same Policy/Procedure stipulates that purchases made from a single vendor (either individually or collectively within one fiscal year) over \$25,000 require City Council approval.

ANALYSIS

Due to a recent resignation in the Building and Planning Division, the Community Development Department and the Human Resources Department have begun a recruitment process for a Permit Technician position. It is anticipated that the recruitment process will be completed by late March. It is anticipated that a successful candidate for the permit tech position would be available to join the city by early April.

In addition, the Building and Planning Division is experiencing an increase in construction projects being submitted to the city. This increase is noted in both building permits for existing structures, including kitchen and bathroom remodels, as well as mid-rise construction, including Hana Gardens. The extension of this Professional Services Agreement is necessary to ensure excellent customer service by providing a seamless continuation of temporary staff assignments, building inspections, and plan reviews for anticipated increased workload in the pipeline.

Finally, staff is also preparing to send out a request for proposals to set up an on-call stable of several qualified consultants to support the building staff with the increase in construction projects. These proposals will be brought to the City Council for review and consideration early next calendar year.

construction projects. These proposals will be brought to the City Council for review and consideration early next calendar year.

FINANCIAL CONSIDERATIONS

Funding for the \$75,000 amendment is available in the Fiscal Year 2016-17 Community Development Department's adopted budget through anticipated regular staff salary savings created by the recent vacancy as well as anticipated additional revenue generated by increased construction projects.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed action and there are no legal issues.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO AMEND THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF EL CERRITO AND TRB + ASSOCIATES IN AN AMOUNT NOT TO EXCEED \$75,000 AND TO EXTEND THE TERM OF THE AGREEMENT TO JUNE 30, 2017

WHEREAS, on October 21, 2016 the City of El Cerrito entered into a professional services agreement with TRB + Associates for \$25,000 to provide temporary staffing assistance, inspection, and plan review services to the Building and Planning Division; and

WHEREAS, the Planning and Building Division is experiencing an increase in construction work and additional assistance is needed to support existing staff so they can continue to provide excellent customer service; and

WHEREAS, this contract will be used to augment existing staff and will total not more than \$75,000; and

WHEREAS, funding for the \$75,000 amendment is available in part, in the Fiscal Year 2016-17 Community Development Department's adopted budget through anticipated regular staff salary savings created by the recent vacancy as well as anticipated additional revenue generated by increased construction projects.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby authorizes the City Manager to amend the professional services agreement with TRB + Associates in an amount not to exceed \$75,000 bringing the total contract to an amount not to exceed \$100,000 and to extend the term of the Agreement through June 30, 2017.

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 5(G)

Date: November 15, 2016
To: El Cerrito City Council
From: Kristen Cunningham, Senior Human Resources Analyst
Karen Pinkos, Assistant City Manager
Subject: Service Agreement for NEOGOV

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to enter into an agreement with GovernmentJobs.com, Inc., doing business as NEOGOV, for human resources software services in an amount not to exceed \$37,363.33 for a term of twelve months with an annual renewal option.

BACKGROUND

The City's Strategic Plan identifies "Deliver Exemplary Government Services" as a primary goal. The strategies outlined for this goal include recruiting and retaining a talented workforce, and maintaining an emphasis on providing excellent customer service.

Human Resources staff has been working to identify processes and programs within the Division for improvement and upgrades, particularly the recruitment and hiring process. The current process is largely paper-based and requires a great deal of staff effort and manual input into the City's Human Resources Information System (HRIS). Staff has researched several technology solutions for automation of the recruitment and hiring process including online applications, position requisition, applicant tracking, and ability to interface with the City's HRIS. After review, staff has determined that NEOGOV not only provides these desired services, but also offers two additional modules that would benefit the City with its onboarding process and performance evaluation process, at a bundled discount pricing. NEOGOV services not only benefits City staff by automating these internal processes, but also provides better customer service with respect to recruitment as it simplifies the application process for potential applicants and streamlines the hiring process.

ANALYSIS

After researching various software options, Human Resources staff considered three services for applicant tracking: NEOGOV, CalOpps, and the current HRIS system New World Systems. NEOGOV, however, has additional modules for paperless onboarding for new hires and performance evaluations, which the other two systems do not offer. Staff believes that procuring the full suite of services from NEOGOV will provide the best approach for streamlining Human Resources services, improve the hiring and orientation process for new employees, and provide a consistent performance evaluation process to benefit all City employees.

- Applicant Tracking: NEOGOV's Insight software automates the hiring and selection process, making for more efficient use of staff resources. Currently, Human Resources staff receives applications via email or US mail, manually inputs all documents received in individual electronic folders for each applicant,

and manually notifies each applicant of their status. NEOGOV provides an online job application and career portal, improving the entire hiring process for both staff and the applicant.

- Onboarding: the NEOGOV onboarding module enables a more productive new hire process by streamlining new hire paperwork, processes and training. Currently, Human Resources staff is tasked with preparing completely paper-based individual new hire packets that are provided to the new employee on their first day of employment requiring an hour-long session to review. With NEOGOV's onboarding module, new hires are able to access their individual portal prior to beginning work.
- Performance Evaluation: with this module, City management staff will be able to more effectively manage employee performance. NEOGOV's performance evaluation module includes automating year-end and probationary evaluations, measuring competencies and goals, developing succession plans, and automating the employee evaluation process.

NEOGOVS is a cloud-based system, therefore no hardware is necessary and requires little assistance from IT staff. NEOGOV also has an available interface with New World Systems, allowing complete integration with the City's HRIS software for all modules. NEOGOV additionally offers a subscription to GovernmentJobs.com, widening the City's ability to recruit new employees. NEOGOV is the preferred public sector software of many Bay Area agencies including several neighboring cities and Contra Costa County.

STRATEGIC PLAN CONSIDERATIONS

Implementing NEOGOV will help fulfill City of El Cerrito Strategic Plan Goal A: "Delivering Exemplary Public Services" and the objectives of "Recruit and retain a talented and effective workforce" and "Maintain emphasis on providing excellent customer service."

FINANCIAL CONSIDERATIONS

The costs associated with this proposal will be \$17,000 in implementation costs and \$24,330 for annual licensing costs. NEOGOV is offering a promotional pricing discount of 15% off of the annual licensing costs during the month of November. The City will also receive a one-time credit of \$3,996 due to a phased implementation of the three modules, bringing the total costs for FY 2016-17 to \$37,363.33. Funding is available in the current FY 2016-17 operating budget; no additional appropriation is necessary.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution
2. NEOGOV Services Agreement

RESOLUTION NO. 2016–XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE A SERVICE AGREEMENT WITH GOVERNMENTJOBS.COM, INC., DBA NEOGOV, FOR HUMAN RESOURCES SOFTWARE SERVICES IN AN AMOUNT NOT TO EXCEED \$37,363.33 FOR A TERM OF TWELVE MONTHS WITH AN ANNUAL RENEWAL OPTION

WHEREAS, the City's Strategic Plan has a goal of "Deliver Exemplary Government Services" with objectives of recruiting and retaining a talented workforce and maintaining an emphasis on providing excellent customer service; and

WHEREAS, City staff has reviewed various technology solutions to improve, automate, and streamline operations including recruitment, hiring, onboarding, and performance evaluations; and

WHEREAS, City staff has determined that NEOGOV provides the best software solution that offers these services in an integrated and cost-effective manner by offering three modules: Insight (Applicant Tracking), Onboard (Onboarding), and Perform (Performance Evaluations); and

WHEREAS, during the month of November NEOGOV is offering a promotional pricing discount of 15% off of the ongoing licensing costs with the purchase of all three modules for an annual cost of \$24,330, and will provide a credit for phased implementation over the fiscal year, bringing the total costs including one-time for FY 2016-17 to \$37,363.33; and

WHEREAS, funding is available in the current FY 2016-17 Adopted Budget.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby authorizes the City Manager to enter into a service agreement with GovernmentJobs.com, Inc. DBA NEOGOV for an amount not to exceed \$37,363.33, for a term of 12 months with an annual renewal option.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



Service Agreement

THIS ONLINE SERVICES AGREEMENT (this “Agreement”) is made and entered into this _____ day of _____, 2016, by and between **GovernmentJobs.com, Inc.**, a California corporation (d/b/a “NEOGOV”), and the **City of El Cerrito (CA)**, a public entity acting by and through its duly appointed representative (“Customer”).

1. Provision of Online Services.

(a) Customer hereby engages NEOGOV, and NEOGOV hereby agrees (subject to the terms and conditions set forth herein), to provide the services (the “Services”) more fully described in this Agreement and in Exhibit A (Order Form). Customer hereby acknowledges and agrees that NEOGOV’s provision and performance of the Services is dependent and conditioned upon Customer’s full performance of its duties, obligations and responsibilities hereunder.

(b) NEOGOV shall implement and maintain a Project Change process and associated Change Control Document (CCD) to manage and approve any changes to the Order Form and/or Order Details as herein described. The CCD will include the reason for the change, a complete description of work to be performed, an estimate of time to complete the task, associated costs, a completion date for the CCD Statement of Work and an impact analysis indicating ramifications or impacts to the overall project. No work within the CCD shall be performed by NEOGOV without Customer approval.

2. **Additional NEOGOV Responsibilities.** In connection with the performance of this Agreement, NEOGOV shall be responsible for the following:

(a) NEOGOV shall provide all required hosting and operations support for the applications provided through this agreement.

(b) NEOGOV shall follow those support, maintenance and other procedures and shall provide those support, maintenance and other services to Customer more fully described in this Agreement.

3. **Customer Responsibilities.** In connection with the performance of this Agreement and the provision of the Services, Customer shall be responsible for the following:

(a) Customer shall be responsible for ensuring that Customer’s use of the Services and the performance of Customer’s other obligations hereunder comply with all laws applicable to Customer.

(b) Customer shall be responsible, as between NEOGOV and Customer, for the accuracy and completeness of all records and databases provided by Customer in connection with this Agreement for use on NEOGOV’s system.

4. Ownership, Protection and Security.

(a) The parties agree that the NEOGOV marks and the Customer marks may both be displayed on and through NEOGOV’s system(s).

(b) Ownership of any graphics, text, data or other information or content materials and all records and databases supplied or furnished by Customer hereunder for incorporation into or delivery through the application(s) described in this agreement shall remain with Customer, and NEOGOV shall cease use of all such material upon termination of this Agreement. NEOGOV’s logos, including the “powered by” logo, will appear on the “employment opportunities”, “job description” and other NEOGOV hosted pages.

(c) Customer acknowledges and agrees that nothing in this Agreement or any other agreement grants Customer any licenses or other rights with respect to NEOGOV’s software system (source code or object code) other than the right to receive Services as expressly provided herein. NEOGOV shall retain all ownership in the intellectual property and all other proprietary rights and interests associated with NEOGOV’s software system and Services and all components thereof and associated documentation, except as expressly provided herein.

(d) NEOGOV grants to Customer a limited license during the term of this Agreement to use and reproduce NEOGOV’s trademarks and logos for purposes of including such trademarks and logos in advertising and publicity materials and links



solely as permitted hereunder. All uses of such trademarks and logos shall conform to Customer's standard guidelines and requirements for use of such trademarks and logos.

5. **NEOGOV Representations and Warranties.**

(a) *Service Performance Warranty.* NEOGOV warrants that it will perform the Services in a manner consistent with industry standards reasonably applicable to the performance thereof.

(b) *No Other Warranty.* EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 5, THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND CUSTOMER'S USE OF THE SERVICES IS AT ITS OWN RISK. NEOGOV DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. NEOGOV DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR COMPLETELY SECURE.

(c) *Disclaimer of Actions Caused by and/or Under the Control of Third Parties.* NEOGOV DOES NOT AND CANNOT CONTROL THE FLOW OF DATA TO OR FROM THE NEOGOV SYSTEM AND OTHER PORTIONS OF THE INTERNET. SUCH FLOW DEPENDS IN LARGE PART ON THE PERFORMANCE OF INTERNET SERVICES PROVIDED OR CONTROLLED BY THIRD PARTIES. AT TIMES, ACTIONS OR INACTIONS OF SUCH THIRD PARTIES CAN IMPAIR OR DISRUPT CUSTOMER'S CONNECTIONS TO THE INTERNET (OR PORTIONS THEREOF). ALTHOUGH NEOGOV WILL USE COMMERCIALY REASONABLE EFFORTS TO TAKE ALL ACTIONS IT DEEMS APPROPRIATE TO REMEDY AND AVOID SUCH EVENTS, NEOGOV CANNOT GUARANTEE THAT SUCH EVENTS WILL NOT OCCUR. ACCORDINGLY, NEOGOV DISCLAIMS ANY AND ALL LIABILITY RESULTING FROM OR RELATED TO SUCH EVENTS.

6. **Publicity.** Following execution of this Agreement, the parties hereto may issue a press release, the form and substance of which shall be mutually agreeable to the parties, announcing the relationship created by this Agreement. Except as expressly contemplated herein, neither party shall issue any additional press release which mentions the other party or the transactions contemplated by this Agreement without the prior consent of the other party, which consent shall not be unreasonably withheld.

7. **Nondisclosure.** Through exercise of each party's rights under this Agreement, each party may be exposed to the other party's technical, financial, business, marketing, planning, and other information and data, in written, oral, electronic, magnetic, photographic and/or other forms, including but not limited to (i) oral and written communications of one party with the officers and staff of the other party which are marked or identified as confidential or secret or similarly marked or identified and (ii) other communications which a reasonable person would recognize from the surrounding facts and circumstances to be confidential or secret ("Confidential Information") and trade secrets. In recognition of the other party's need to protect its legitimate business interests, each party hereby covenants and agrees that it shall regard and treat each item of information or data constituting a trade secret or Confidential Information of the other party as strictly confidential and wholly owned by such other party and that it will not, without the express prior written consent of the other party or except as required by law including the Public Records Act of the State of California, redistribute, market, publish, disclose or divulge to any other person, firm or entity, or use or modify for use, directly or indirectly in any way for any person or entity: (i) any of the other party's Confidential Information during the term of this Agreement and for a period of three (3) years after the termination of this Agreement or, if later, from the last date Services (including any warranty work) are performed by the disclosing party hereunder; and (ii) any of the other party's trade secrets at any time during which such information shall constitute a trade secret under applicable law.

8. **Liability Limitations.**

(a) If promptly notified in writing of any action brought against Customer based on a claim that NEOGOV's Services infringe a United States patent, copyright or trademark right of a third party (except to the extent such claim or infringement relates to any third party software incorporated into NEOGOV's applications), NEOGOV will defend such action at its expense and will pay any and all fees, costs or damages that may be finally awarded in such action or any settlement resulting from such action (provided that Customer shall permit NEOGOV to control the defense of such action and shall not make



any compromise, admission of liability or settlement or take any other action impairing the defense of such claim without NEOGOV's prior written approval).

(b) Customer acknowledges and agrees: (i) that NEOGOV has no proprietary, financial, or other interest in the goods or services that may be described in or offered through Customer's web site; and (ii) that except with respect to any material supplied by NEOGOV, Customer is solely responsible (as between NEOGOV and Customer) for the content, quality, performance, and all other aspects of the goods or services and the information or other content contained in or provided through Customer's web site.

(c) OTHER THAN THOSE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT, NEOGOV DOES NOT MAKE ANY WARRANTIES TO CUSTOMER OR ANY OTHER PERSON OR ENTITY, EITHER EXPRESS OR IMPLIED (INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER. NEOGOV SHALL NOT BE LIABLE TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY, UNDER ANY CIRCUMSTANCE OR DUE TO ANY EVENT WHATSOEVER, FOR CONSEQUENTIAL OR INDIRECT DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFIT, LOSS OF USE OR BUSINESS STOPPAGE.

(d) Under no circumstances shall NEOGOV's total liability to Customer or any other person, regardless of the nature of the claim or form of action (whether arising in contract, tort, strict liability or otherwise), exceed the aggregate amount of fees and revenue received by NEOGOV hereunder for the term(s) and restrictions provided in Exhibit A (Order Form); provided, however that the foregoing limitations set forth in this Section 8(d) shall not apply to actions brought under 8(a) above or to any injury to persons or damages to property arising out of NEOGOV's gross negligence or willful, gross misconduct.

9. **Term and Termination.**

(a) This Agreement shall commence as of the date hereof and remain in effect in accordance with the term(s) and restrictions in Exhibit A (Order Form), unless terminated by either party as set forth herein ("Initial Term").

(b) This Agreement may be renewed for additional terms ("Renewal Term") equal in duration to the Initial Term provided Customer notifies NEOGOV at least thirty (30) days prior to the end of the Initial Term or a Renewal Term.

(c) NEOGOV reserves the right to terminate this Agreement immediately if the Services provided hereunder become illegal or contrary to any applicable law, rule, regulation or public policy. Each party shall have the right to terminate this Agreement upon sixty (60) days prior written notice to the other party.

(d) Within sixty (60) days of last date of use (and provided within notification of termination of this Agreement), NEOGOV shall provide Customer with either read only access or a dedicated data file from the Insight system (flat file format). The dedicated data files will be comprised of Customer's standard data contained in NEOGOV's Insight system. The structure of the relational database will be specific to the Customer's data and will not be representative of the proprietary NEOGOV database.

10. **Payments.**

(a) *Initial Term.* See Exhibit A (Order Form).

(b) *Renewal Term(s).* For each Renewal Term, NEOGOV will continue to provide Customer with the Services, and will provide maintenance and support services as described herein, provided Customer issues a purchase order or modification to this Agreement and pays NEOGOV in advance the annual recurring charges then in effect. If there is an increase in annual maintenance and support charges, NEOGOV shall give Customer written notice of such increase at least thirty (30) days prior to the expiration of the applicable term.

(c) NEOGOV acknowledges that all invoices shall be delivered to the stated "Bill To" party on the Order Form Below. In the event that the "Bill To" party is unable to pay any invoice, Customer acknowledges that is shall be responsible for payment to NEOGOV or may terminate this agreement.



(d) Customer will pay all taxes, duties and levies imposed by all federal, state and local authorities (including, without limitation, export, sales, use, excise, and value-added taxes) based on the transactions or payments under this Agreement, except those taxes imposed or based on NEOGOV's net income, or those exempt by state law. Customer shall provide NEOGOV within ten (10) days of request of such exemption.

11. **Force Majeure**. NEOGOV shall not be liable for any damages, costs, expenses or other consequences incurred by Customer or by any other person or entity as a result of delay in or inability to deliver any Services due to circumstances or events beyond NEOGOV's reasonable control, including, without limitation: (i) acts of God; (ii) changes in or in the interpretation of any law, rule, regulation or ordinance; (iii) strikes, lockouts or other labor problems; (iv) transportation delays; (v) unavailability of supplies or materials; (vi) fire or explosion; (vii) riot, military action or usurped power; or (viii) actions or failures to act on the part of a governmental authority.

12. **Piggyback Clause**. It is understood and agreed by Customer and NEOGOV that any governmental entity may purchase the services specified herein in accordance with the prices, terms, and conditions of this agreement. It is also understood and agreed that each local entity will establish its own contract with NEOGOV, be invoiced therefrom and make its own payments to NEOGOV in accordance with the terms of the contract established between the new governmental entity and NEOGOV. It is also hereby mutually understood and agreed that Customer is not a legally bound party to any contractual agreement made between NEOGOV and any entity other than Customer.

13. **Miscellaneous**.

(a) Either party may not assign its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement may not be modified or amended (and no rights hereunder may be waived) except through a written instrument signed by the party to be bound. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall be governed by and construed in accordance with the laws of the State of California, without giving effect to conflict of law rules. Customer acknowledges and agrees that this Agreement is not intended to be and shall not be construed to be a franchise or business opportunity.

(b) Severability. If any provision of this Agreement is found void or unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. If any remedy provided is determined to have failed of its essential purpose, all limitations of liability and exclusions of damages set forth in the Limited Warranty shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officers as of the date set forth above.

Customer

Signature: _____

Print Name: _____

Title: _____

Date: _____

GovernmentJobs.com, Inc., a California corporation

Signature: _____

Print Name: _____

Title: _____



Date:

Order Form

Customer:

Bill To:

City of El Cerrito (CA)			
Quote Date:	10/4/16	Valid To:	11/30/16
Requested Service Date:	Phased implementation – Insight ~ 12/1/16, Onboard ~ 2/1/16, Perform ~ 4/1/16	Initial Term:	12 Months with annual renewal option

Order Summary

Annual Recurring Fees – Note: A 15% discount will apply off the ongoing annual licenses if all products (IN, ON, and PE) are purchased together by 11/30/16.

Line	Description ¹	Annual Recurring Cost
1.	Insight Enterprise Edition (IN)	
	IN License	\$7,800.00 \$6,630.00
2.	GovernmentJobs.com Job Posting Subscription (GJC)	
	GJC License	\$1,250.00 \$1,250.00
3.	Perform (PE)	
	PE License for up to 200 employees	\$11,000.00 \$9,350.00
4.	Onboard (ON)	
	ON License	\$6,000.00 \$5,100.00
5.	NEOGOV Integrations	
	Integration Maintenance – Insight New Hire Integration with HRIS/Financial System (Optional)	\$2,000.00 \$2,000.00
Sub Total of Annual Licenses with Multi-product Discount:		\$24,330.00
One-time license credit for phased implementation start dates: Insight ~ 12/1/16, Onboard ~ 2/1/16, Perform ~ 4/1/16		(\$3,966.67)

Order Form

Non-Recurring Fees

Line	Description ¹	Non-Recurring Fees
	NEOGOV Services	
6.	Insight (IN)	
	Setup and Implementation	\$2,500.00
	Training	\$2,500.00
	Perform (PE)	
	Setup and Implementation	\$2,500.00
	Training	\$2,500.00
	Onboard (ON)	
	Setup and Implementation	\$2,000.00
	Training	\$2,000.00
	Onboard form building as Professional Service ²	NA
	NEOGOV Integrations	
	Setup and Configuration - Insight New Hire Integration with HRIS/Financial System (Optional)	\$3,000.00
Sub Total:		\$17,000.00
Order Total:		\$37,363.33

¹More detailed descriptions of the services are contained in the order detail for each service, which are incorporated herein and made a part hereof by this reference.

Note: Items designated as Not Applicable (N/A, NA) on the Summary form are not included. Customers may request a quote for these services at their discretion through the term of this contract.

²NEOGOV ON includes I9 and W4 standard forms that are regularly updated by NEOGOV. Additional forms or form maintenance are available by NEOGOV Professional services at the following cost:

- Background forms \$295 per form
- Dynamic Form \$195 per form
- Updates to existing forms \$200 an hour

Additionally, during the term of any subscription license, the Customer will be provided:
Customer Support - Provided to the Customer both on-line and by telephone Monday – Friday, 6:00 AM – 6:00 PM PT (excluding NEOGOV holidays).

Product Upgrades to Licensed Software - Customer shall receive all product upgrades to purchased package. Product upgrades are automatic and available upon the next login following a product upgrade rollout.

Order Form

Order Detail

Note: Items designated as Not Applicable (N/A, NA) on the Summary form are not included. Customers may request a quote for these services at their discretion through the term of this contract.

1.0 Insight Enterprise (IN)

License Subscription to NEOGOV IN

The Customer's subscription to the Insight platform includes the following functionality:

Recruitment

- Online job application
- Online applications integration with current Customer website
- Online job announcements and descriptions
- Automatic online job interest cards
- Recruitment and examination planning

Selection

- Configurable supplemental questions
- Define unique scoring plans
- Test analysis and pass-point setting
- Score, rank, and refer applicants

Applicant Tracking

- Email and hardcopy notifications
- EEO Data collection and reports
- Track applicants by step/hurdle
- Schedule written, oral, and other exams
- Candidate Self-Service Portal for scheduling and application status

Reporting and Analysis

- 90+ standard system reports
- Ad Hoc reporting tool

HR Automation

- Create and route position requisitions for approval
- Certification/eligible lists

2.0 GovernmentJobs.com Job Posting Subscription

License Subscription to GJC

- Enables organizations to advertise their job postings created in Insight on the GovernmentJobs.com website.
- May add an unlimited number of postings

Note: jobs advertised on the promotional and transfer webpage's are not advertised on GovernmentJobs.com as these are typically for internal employees.

3.0 NEOGOV Perform (PE)

License Subscription to NEOGOV PE

The annual license for the NEOGOV Performance Evaluations Software includes the following:

- Configurable Performance Evaluations
- Goal Library
- Shareable Competency Content
- Development Plans
- Configurable Process Workflows
- Ability to build Content sections for re-use
- Configurable Rating Scales
- Ability to build Library of Writing Assistants
- 360 Reviews
- Configurable Email Notifications
- Automatic Evaluation Creation
- Ability to perform actions in bulk for Employees & Evaluations

4.0 NEOGOV Onboard (ON)

License Subscription to NEOGOV ON

- Electronic Employee File
- W4
- I9
- Configurable Workflow
- Task Manager
- Employee data upload
- Attachments
- Build your own Onboarding forms*

*NEOGOV ON includes I9 and W4 standard forms that are updated by NEOGOV. Additional forms or form maintenance is available by NEOGOV Professional services at the following cost:

- Background forms \$295 per form
- Dynamic Form \$195 per form
- Updates to existing forms \$200 an hour

5.0 NEOGOV Integrations

NEOGOV offers Standard Integrations as well as platform APIs for 3rd party system integration(s).

Standard Integrations include:

- Business Process Re-engineering
- Conduct project scope, review integration plan, discuss timeline, and set schedule for required meetings
- Annual Maintenance by NEOGOV to re-configure integrations

Note: NEOGOV APIs are to be configured directly by Customer staff using NEOGOV documentation. If required, Professional Services may be included by NEOGOV to help define and validate scope, business requirements, timelines, and associated costs (if applicable).

6.0 NEOGOV Services

Setup and Provisioning

The following activities are conducted as part of the NEOGOV implementation:

- Customer to review the project kick-off tutorial for information on the project timeline, deliverables, and establish project expectations.
- NEOGOV will establish the Customer's production environment.

Training

NEOGOV training is available online (web-based, pre-built, content) unless otherwise proposed as included in the Order Form. All customers have full access to the demo/training environment setup for Insight.

NEOGOV's pre-built, online training consists of a series of web courses as well as a series of hands-on exercises designed to introduce the standard features and functions and may be used as reference material by the staff following training to conduct day-to-day activities. The pre-built, online training includes exercises that are designed to be flexible enough to allow Customer led training sessions internally to introduce user-specific requirements and processes for staff to learn the system as closely as possible to the customer's actual recruitment processes after go-live.

Order Form Terms and Conditions:

- (1) The Customer hereby orders and GovernmentJobs.com, Inc. (d/b/a NEOGOV, Inc., hereafter “NEOGOV”) agrees to provide the services described in this Order Form. THE SERVICES ARE PROVIDED PURSUANT TO THE TERMS AND CONDITIONS OF THIS ORDER FORM AND THE SERVICE AGREEMENT BETWEEN NEOGOV AND THE CUSTOMER.
- (2) The Customer agrees that the payment schedule is as follows:

Provide all required software and Licenses

- One hundred percent (100%) of the annual license price (minus the phased implementation credit) is payable within thirty (30) days of execution of this Order Form and Service Agreement. (\$20,363.33)
- Annual license for future years is \$24,330.00.

Training

- One hundred percent (100%) of the non-recurring costs are to be paid to NEOGOV within thirty (30) days of the execution of this Order Form and Service Agreement. (\$10,000.00)

Setup & Implementation

- One hundred percent (100%) of the non-recurring costs are to be paid to NEOGOV within thirty (30) days of the execution of this Order Form and Service Agreement. (\$7,000.00)

- (3) Neither the Customer nor NEOGOV will be bound by this Order Form until it has been signed by authorized representatives of both parties.
- (4) Changes or alterations to this Order Form will not be accepted.

THERE ARE SIGNIFICANT ADDITIONAL TERMS AND CONDITIONS, WARRANTY DISCLAIMERS AND LIABILITY LIMITATIONS CONTAINED IN THE SERVICE AGREEMENT BETWEEN THE CUSTOMER AND NEOGOV.

DO NOT SIGN THIS ORDER FORM BEFORE YOU HAVE READ THE SERVICE AGREEMENT IN ITS ENTIRETY. YOUR SIGNATURE BELOW INDICATES THAT YOU HAVE READ THE SERVICE AGREEMENT AND AGREE TO BE BOUND BY ITS PROVISIONS.

<u>Customer</u>		<u>NEOGOV</u>	
Signature:	_____	Signature:	_____
Print Name:	_____	Print Name:	_____
Title:	_____	Title:	_____
Date:	_____	Date:	_____



AGENDA BILL

Agenda Item No. 5(H)

Date: November 15, 2016
To: El Cerrito City Council
From: Mark R. Rasiah, Finance Director/City Treasurer
Subject: Annual Review of Investment Policy

ACTION REQUESTED

Adopt a resolution approving the City's Investment Policy.

BACKGROUND

The investment policy serves as the foundation of a local agency's investment goals and priorities. If the investment policy is carefully researched, effectively drafted, and reviewed regularly to assure that it continues to meet the agency's goals/priorities for its portfolio, it can help protect the assets of the organization. The existence of an approved investment policy demonstrates that the governing body is performing its fiduciary responsibilities, thereby, inspiring trust and confidence among the public that it serves.

It has been the practice of city staff to bring the Investment Policy to the City Council for review and approval annually. Each year the policies are reviewed by city staff and the Financial Advisory Board (FAB). Any recommended changes to these policies are brought to the City Council for review and approval. The Investment Policy was reviewed and discussed by the FAB at their November 3, 2016 meeting; FAB passed a motion to approve the policy without any changes.

The policies were last reviewed by the City Council at its November 17, 2015 council meeting.

ANALYSIS

These policies are intended to provide financial direction to staff and greater assurance to the City Council on the processes and procedures taken to assure financial responsibility of the City. Continuing annual approval of these Financial Policies has been included in these drafts for the purpose of ongoing review and exposure of the policies to the City Council.

It is the policy of the City of El Cerrito ("City"), to invest public funds in a manner which provides for safety of principal while providing sufficient liquidity to cover the City's short and long term needs while generating the appropriate yield. All investment activity will conform to the California Government Code, Sections 53601 through 53659.

There is no fiscal impact of adopting these policies.

STRATEGIC PLAN CONSIDERATIONS

The purpose of the City's Investment Policy is to provide guidelines for prudent investment of the City's idle funds and maximum efficiency of the City's cash management system. The long term goal is to enhance the City's economic condition while protecting the funds at all times.

FINANCIAL CONSIDERATIONS

Continue to create the potential for increased interest income on investments as well as diversification of the City's investments to provide greater security.

LEGAL CONSIDERATIONS

Annual approval of the Investment Policy by the City Council is not required by California Government Code. However, the policy is being presented for approval following the FAB review in accordance with the City's policy and our intention to allow for transparency in activities pertaining to safeguarding the City's assets.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. City Resolution
Exhibit A – Investment Policy

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING THE COMPREHENSIVE INVESTMENT POLICY AND RESCINDING RESOLUTION NO. 2015-70

WHEREAS, the purpose of the Investment Policy is to provide guidelines for operational and strategic decision making related to investment matters; and

WHEREAS, the Investment Policy was last amended in November 2015 as a part of the annual review; and

WHEREAS, the Investment Policy has been reviewed by the Financial Advisory Board without any changes being made.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito, that it hereby approves the City of El Cerrito Investment Policy effective November 15, 2016 incorporated by reference and attached hereto as Exhibit A.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

City Of El Cerrito Investment Policy

Approved:
Resolution:

POLICY

It is the policy of the City of El Cerrito ("City"), to invest public funds in a manner which provides for safety of principal while providing sufficient liquidity to cover the City's short and long term needs while generating the appropriate yield. All investment activity will conform to the California Government Code, Sections 53601 through 53659.

In accordance with Section 53646 of the California Government Code, the Treasurer may annually render to the City Council a statement of investment policy and the policy will have been previously reviewed by the Financial Advisory Board.

1.0 SCOPE

This investment policy applies to all financial assets of the City as accounted for in the City of El Cerrito's Comprehensive Annual Financial Report. Policy statements included in this document focus on the City's pooled funds, but will also apply to all other funds under the Treasurer's control unless specifically exempted by statute or ordinance. This policy includes, but is not limited to the following funds:

- General Fund
- Enterprise Funds
- Capital Project Funds
- Debt Service Funds
- Special Revenue Funds
- Internal Service Funds
- Trust and Agency Funds
- Retirement Agency Funds
- Any new funds created by the City Council

This policy specifically exempts any City or bond proceeds in the possession of a trustee or fiscal agent. These bond proceeds shall be invested in accordance with the requirements and restrictions outlined in the bond documents. This policy does not apply to any lending program of the City.

2.0 PRUDENCE

All persons authorized to make investment decisions for the City of El Cerrito are trustees and therefore fiduciaries subject to the prudent person rule.

The standard of prudence to be used by City of El Cerrito fiduciaries is the "Prudent Investor" Standard found in the California Government Code Section 53600.3.

The fiduciaries are the City Manager, City Treasurer and City Council. Acting within the intent and scope of the Investment Policy and other written procedures, and exercising due diligence, shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported to the City Council in a timely manner and the fiduciaries take appropriate action to control adverse developments.

3.0 OBJECTIVE

The objective of the investment portfolio is to meet the City's short and long-term cash flow needs. To achieve this objective, the portfolio will be structured to provide, in priority order, safety of principal, liquidity and yield.

3.1 Safety: Safety of principal is the foremost objective of the City of El Cerrito in the investment of public funds. All investments of the City shall be undertaken in a manner that ensures the preservation of capital. Each investment transaction shall seek to ensure that capital losses are avoided, whether from issuer default, broker/dealer default, or erosion of market value. The City shall seek to preserve principal by mitigating the two types of risk: credit risk and market risk.

3.2 Credit Risk: Credit risk is the risk of loss due to failure of the issuer to repay an obligation and shall be mitigated by investing in only high quality credit investments and by diversifying the investment portfolio so that the failure of any one issuer would not unduly jeopardize the City's fiscal status.

3.3 Market Risk: Market risk is the risk of market value fluctuations due to overall changes in the general level of interest rates and shall be mitigated by structuring the portfolio so that securities mature at the same time major expenditures occur, eliminating the need to sell securities prior to their maturity. The taking of short positions, which is, selling securities the City does not own, is prohibited. It is explicitly recognized herein,

however, that in a diversified portfolio, occasional measured losses are inevitable and must be considered within the context of overall investment return.

3.4 Liquidity: The City's investment portfolio will be structured to provide sufficient liquidity to meet the operating requirements of the City of El Cerrito. The City of El Cerrito will attempt to match its investments with anticipated cash flow requirements whenever possible. The maximum maturity of any one security, unless otherwise restricted by the California Government Code, is limited to five years. The portfolio's weighted average maturity shall be limited to three years.

3.5 Yield: State law requires that the objective of return on investment be subordinate to the objectives of safety and liquidity. Employees should also seek the best return on investments while satisfying the concerns of safety and liquidity. Therefore, the Treasurer shall seek to achieve a return on the funds under City control throughout all economic cycles, taking into consideration the City of El Cerrito's investment risk constraints and cash flow requirements.

4.0 DELEGATION OF AUTHORITY

Pursuant to Section 53601 of the California Government Code, the City Council as the legislative body of the City of El Cerrito has primary responsibility for the investment of all funds in the City treasury. As authorized under Section 53607 of the California Government Code, the City Council hereby delegates its authority to invest or reinvest the funds of the City, and to sell or exchange securities so purchased, to the City Treasurer who shall assume full responsibility for all such transactions until such time as this delegation of authority may be revoked by the City Council. In the City Treasurer's absence the City Manager is authorized to perform any such transactions.

5.0 INVESTMENT PROCEDURES

The City Treasurer may establish written investment policy procedures for the operation of the investment program consistent with this policy. The procedures could include reference to safekeeping, wire transfer agreements, banking service contracts and collateral/depository agreements.

6.0 ETHICS AND CONFLICT OF INTEREST

Elected officials, officers and employees of the City who make investment decisions will refrain from

any activity that could conflict with the proper execution of the investment program or which could impair their ability to make impartial investment decisions. Employee actions will be in accordance with this policy, California Government Code Sections 1090 et seq, 87100 et seq., other applicable Government Code Sections or future Council actions.

7.0 AUTHORIZED FINANCIAL DEALERS AND INSTITUTIONS

The City of El Cerrito shall transact business only with commercial banks, savings and loans, credit unions, and investment securities broker/dealers. The broker/dealers must be primary dealers regularly reporting to the Federal Reserve Bank of New York or regional broker/dealers that qualify under the Securities and Exchange Commission Rule 15c3-1 (uniform net capital rule). Selection of financial institutions and broker/dealers authorized to do business with the City shall be at the discretion of the fiduciaries. The Treasurer will maintain a list of financial institutions authorized to provide investment services to the City.

All financial institutions and broker/dealers who desire to become qualified bidders for investment transactions must supply the Treasurer with audited financial statement from the three most recent years, at least three references from other California Local agencies, a completed Broker/dealer questionnaire and a statement certifying that the institution has reviewed the California Government Code Section 53600 et seq. and the City's Investment Policy. The certification will state that the financial institution or broker/dealer and all investments presented to the Treasurer will be in compliance with the applicable State Code and the City Investment Policy.

The Treasurer shall determine if the Financial Institutions are adequately capitalized, make markets in securities appropriate to the City's needs and are recommended by other local agency portfolio managers.

The Treasurer will conduct an annual review of the financial condition of all qualified institutions. Additionally, their current financial statements are required to be on file.

8.0 AUTHORIZED INVESTMENTS

The City is authorized by California Government Code Section 53600 et seq. to invest in the following types of securities:

United States Treasury Bills, Bonds, and Notes, or those for which the full faith and credit of the United States are pledged for the payment of principal and interest. There is no limitation as to the percentage of the portfolio that can be invested in this category. The maximum term shall be five years.

Obligations issued by United States Government Agencies such as, but not limited to the Federal Farm Credit Bank (FFCB), the Federal Home Loan Bank (FHLB), the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Student Loan Marketing Association (SLMA), the Government National Mortgage Association (GNMA) and the Tennessee Valley Authority (TVA). United States Government Agency securities with call features are also authorized. There is no limitation as to the percentage of the portfolio that can be invested in this category. The maximum term shall be five years.

Bills of exchange or time drafts drawn on and accepted by a commercial bank, otherwise known as Banker's Acceptances. Purchases in this category may not exceed 180 days to maturity nor exceed 30% of the cost value of the portfolio.

Commercial Paper of prime quality and ranked P1 by Moody's Investor Services, A1 by Standard and Poor's or F1 by Fitch Financial Services Inc., issued by a corporation organized and operating in the U.S. as a general corporation and having assets in excess of \$500 million and having an "A" or better rating on its long term debt as provided by Moody's, Standard and Poor's or Fitch. Purchases of eligible commercial paper may not exceed 270 days to maturity. Purchases of commercial paper may not exceed 10 percent of the cost value of the portfolio or represent more than 10 percent of the outstanding paper of an issuing corporation.

Total combined corporate debt (Commercial Paper and Medium Term Notes) may not exceed 20 percent of the cost value of the portfolio.

Negotiable Certificates of Deposit issued by a nationally or state-chartered bank or a state or federal savings institution or credit union. Securities eligible for purchase in this category shall be rated "A" or better by Moody's, Standard and Poor's or Fitch. Purchases of Negotiable Certificates of Deposit shall not exceed 30 percent of the cost value of the portfolio nor exceed a five-year term.

Medium Term Notes (MTNs) issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. MTNs eligible for investment in this category must be rated "A" or better by Moody's, Standard and Poor's or Fitch. Investments in this category will be limited to a five-year maximum maturity and may not exceed 10 percent of the cost value of the portfolio.

Total combined corporate debt (Commercial Paper and Medium Term Notes) may not exceed 20 percent of the cost value of the portfolio.

Shares of beneficial interest issued by diversified management companies that are Money Market Funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940. These funds must either have attained the highest rating/ranking by at least two of the three largest nationally recognized rating services. Investments in this category will not exceed 5 percent of the portfolio.

State Pool – Local Agency Investment Fund (LAIF). This fund was established by the State Treasurer for the benefit of Local agencies under California Government Code Section 16429.1. The City may invest in the LAIF up to the maximum amount permitted by State law. Purchase of investments will take into account the need for liquidity offered by LAIF for operational purposes, as well as the need for portfolio diversification.

Time Certificates of Deposit collateralized in accordance with the California Government Code Sections 53652 and 53653, may be purchased by the City from banks or savings and loan associations or credit unions. Purchases in this category will not exceed 5 years to maturity or 30 percent of the cost value of the portfolio. Purchases in a single institution will not exceed 10 percent of the cost value of the portfolio.

Derivative Securities are those securities that derive their value from another asset or index. Investments in derivative securities will be made using the Prudent Investor Rule and will be limited to federal agency callable issues. Purchases in this category will not exceed 10% of the cost value of the portfolio.

Prohibited Investments. Investments not described herein are ineligible investments. The City shall not

invest any funds in inverse floaters, range notes, or interest only strips that are derived from a pool of mortgages, in accordance with, California Government Code Section 53601.6. With the exception of callable agencies, any security that derives its value from another asset or index is prohibited. In addition, the City shall not invest any funds in any security that could result in zero interest accrual if held to maturity.

9.0 INVESTMENT POOLS/MUTUAL FUNDS

A thorough investigation of any pooled investments or money market mutual fund is required prior to investing City funds. A due diligence review will be performed on all money market mutual funds and pooled investment funds on a continued basis.

As outlined in section 7.0 of this policy, investments in mutual funds are restricted to money market mutual funds and must meet the experience and asset requirements as stated. The fiduciaries will continually monitor the funds to ensure the maintenance of those ratings/requirements.

Reports on the performance of the Pooled Money Investment Account/LAIF can be found on the California State Treasurer's web site as well as the Investment Board report, historical rates/costs and market valuations. These reports shall be reviewed by the Treasurer each month as part of the due diligence review.

10.0 COLLATERALIZATION

California Government Code, Sections 53652 et seq., specifies the types and levels of collateral for public funds on deposit above the FDIC insurance amounts. The collateral requirements apply to both active bank deposits (checking and savings accounts) and inactive bank deposits (non-negotiable certificates of deposit) and must be maintained for all the City's bank deposits

11.0 SAFEKEEPING AND CUSTODY

All securities held by the City of El Cerrito shall be held in safekeeping by a third party bank trust department acting as agent for the City under the terms of the custody agreement executed by the bank and the City, and shall be evidenced by safekeeping receipts. All securities will be received and delivered using standard delivery-versus-payment (DVP) procedures. Investments in the State Pool or money market mutual funds are undeliverable and are not subject to delivery or third party safekeeping.

12.0 DIVERSIFICATION

Except as provided in section 8.0, the City of El Cerrito will diversify its portfolio by investment type, issuer, maturity dates and broker/dealer. Limits for security types are set forth in Section 8.0 of this document.

13.0 INTERNAL CONTROLS

The City Treasurer will maintain a system of internal controls to ensure compliance with investment procedures of the City and Successor Agency of the City of El Cerrito and the California Government Code and these controls will be audited annually by the City's external audit firm.

14.0 REPORTING

The Council may request that the Treasurer render a report to the City Council. The report shall include the type of investment, issuer, maturity date, par and cost/book values of all securities, investments and monies held by the City of El Cerrito. It shall also include the rate of interest, the current market value as of the report date and the source of the valuation. The report shall state compliance of the portfolio with the Investment Policy as well as the California Government Code and it shall state the City's ability to meet its estimated expenditures for the next six months or provide an explanation as to why sufficient money is not available and what actions are being done to correct the deficiency.

15.0 INVESTMENT POLICY REVIEW AND ADOPTION

The City of El Cerrito's investment policy will continue to be reviewed and adopted by the City Council annually, even if not required by California Government Code 53646. Prior to the annual submission to the City Council the Investment Policy will be reviewed by the Financial Advisory Board and the Board's comments will be presented to the City Council for its consideration.

16.0 GLOSSARY

AGENCIES: Federal agency securities and/or Government sponsored enterprises.

BANKERS ACCEPTANCE (BA): A draft or bill or exchange accepted by a bank or trust company. The accepting institution, as well as the issuer, guarantees payment of the bill.

BROKER: A broker brings buyers and sellers together for a commission.

CERTIFICATE OF DEPOSIT (CD): A time deposit with a specific maturity evidenced by a certificate. Time certificates of deposit are collateralized in

accordance with the State code. Large-denomination CD's are typically negotiable and non-collateralized.

COLLATERAL: Securities, evidence of deposit or other property which a borrower pledges to secure repayment of a loan. Also refers to securities pledged by a bank to secure deposits of public monies.

DEALER: A dealer, as opposed to a broker, acts as a principal in all transactions, buying and selling for his own account.

DELIVERY-VERSUS-PAYMENT: There are two methods of delivery of securities: delivery versus payment and delivery versus receipt. Delivery versus payment is delivery of securities with an exchange of money for the securities. Delivery versus receipt is delivery of securities with an exchange of a signed receipt of the securities.

DERIVATIVES: (1) Financial instruments whose return profile is linked to or derived from, the movement of one or more underlying index or security, and may include a leveraging factor, or (2) financial contracts whose value is derived from an underlying index or security (interest rates, foreign exchange rates, equities or commodities).

DIVERSIFICATION: Dividing investment funds among a variety of securities offering independent returns.

FEDERAL CREDIT AGENCIES: Agencies of the Federal government set up to supply credit to various classes of institutions and individuals, e.g., S&L's, small business firms, students, farmers, farm cooperatives, and exporters.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC): A federal agency that insures bank deposits, currently up to \$250,000 per deposit.

FEDERAL HOME LOAN BANKS (FHLB): Government sponsored wholesale banks (currently 12 regional banks) which lend funds and provide correspondent banking services to member commercial banks, thrift institutions, credit unions and insurance companies. The mission of the FHLB is to liquefy the housing related assets of its members who must purchase stock in their district Bank.

FEDERAL NATIONAL MORTGAGE ASSOCIATION (FNMA): FNMA, like GNMA was chartered under the Federal National Mortgage Association Act in 1938. FNMA is a federal corporation working under the auspices of the Department of Housing and Urban Development (HUD). It is the largest single provider of residential mortgage funds in the United States. Fannie Mae, as the corporation is called, is a private stockholder-owned corporation. The corporation's purchases include a variety of adjustable mortgages and second loans, in addition to fixed-rate mortgages. FNMA's securities are also highly liquid and are widely accepted. FNMA assumes and guarantees that all security holders will receive timely payment of principal and interest.

FEDERAL RESERVE SYSTEM: The central bank of the United States created by Congress and consisting of a seven member Board of Governors in Washington, D.C., 12 regional banks and about 5,700 commercial banks that are members of the system.

FIDUCIARY: An individual in whom another has placed the utmost trust and confidence to manage and protect property or money. The relationship wherein one person has an obligation to act for other's benefit.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION (GNMA or Ginnie Mae): Securities influencing the volume of bank credit guaranteed by GNMA and issued by mortgage bankers, commercial banks, savings and loan associations, and other institutions. Security holder is protected by full faith and credit of the US Government. Ginnie Mae securities are backed by the mortgages, including FHA and VA mortgages. The term "pass-throughs" is often used to describe Ginnie Maes.

ISSUER: A legal entity that has the power to issue and distribute securities. Issuers include corporations, municipalities, foreign and domestic governments and their agencies, and investment trusts.

LIQUIDITY: A liquid asset is one that can be converted easily and rapidly into cash without a substantial loss of value. In the money market, a security is said to be liquid if the spread between bid and asked prices is narrow and reasonable size can be done at those quotes.

POOLED MONEY INVESTMENT FUND (LAIF): The aggregate of all funds from political subdivisions that are placed in the custody of the County or State Treasurer for investment and reinvestment. The State of California's pool is known as the Local Agency Investment Fund, or LAIF.

MARKET VALUE: The price at which a security is trading and could presumably be purchased or sold.

MATURITY: The date upon which the principal or stated value of an investment becomes due and payable.

MONEY MARKET: The market in which short-term debt instruments (bills, commercial paper, bankers' acceptances, etc.) are issued and traded.

PORTFOLIO: Collection of securities and investments held by an investor.

PRIMARY DEALER: A group of government securities dealers who submit daily reports of market activity and positions and monthly financial statements to the Federal Reserve Bank of New York and are subject to its informal oversight. Primary dealers include Securities and Exchange Commission (SEC) registered securities broker-dealers, banks and a few unregulated firms.

PRUDENT PERSON RULE: An investment standard. In some states, the law requires that a fiduciary, such as a trustee, may invest money only in a list of securities selected by the custody state. In other states, the trustee may invest in a security if it is one which would be bought by a prudent person of discretion and intelligence who is seeking a reasonable income and preservation of capital.

RATE OF RETURN: For fixed-rate securities, it is the coupon or contractual dividend rate divided by the purchase price which is also the current yield.

SAFEKEEPING: A service to customers rendered by banks for a fee whereby securities and valuables of all types and descriptions are held in the bank's vaults for protection.

SECURITIES & EXCHANGE COMMISSION: Agency created by Congress to protect investors in securities transactions by administering securities legislation.

SEC RULE 15c301: See Uniform Net Capital Rule.

TREASURY BILLS: A non-interest bearing discount security issued by the US Treasury to finance the national debt. Most bills are issued to mature in three months, six months, or one year.

TREASURY BONDS: Long-term coupon-bearing US Treasury securities issued as direct obligations of the US Government and having initial maturities of more than 10 years.

TREASURY NOTES: Medium-term coupon-bearing US Treasury securities issued as direct obligations of the US Government and having initial maturities from two to 10 years.

UNIFORM NET CAPITAL RULE: Securities and Exchange Commission requirement that member firms as well as non-member broker-dealers in securities maintain a maximum ratio of indebtedness to liquid capital of 15:1; also called *net capital rule* and *net capital ratio*. Indebtedness covers all money owed to a firm, including margin loans and commitments to purchase securities, one reason new public issues are spread among members of underwriting syndicates. Liquid capital includes cash and assets easily converted into cash.

YIELD: The rate of annual income return on an investment, expressed as a percentage: (a) Income Yield is obtained by dividing the current dollar income by the current market price for the security; (b) Net Yield or Yield to Maturity is the current income yield minus any premium above par or plus any discount from par in purchase price, with the adjustment spread over the period from the date of purchase to the date of maturity of the bond.



AGENDA BILL

Agenda Item No. 5(I)

Date: November 15, 2016
To: El Cerrito City Council
From: Katherine Ahlquist, Community Development Analyst
Subject: Economic Development Committee Appointment

ACTION REQUESTED

Approve an Economic Development Committee recommendation to appoint Bill Kuhlman to the Economic Development Committee, effective January 1, 2017.

BACKGROUND

An application to be appointed to the Economic Development Committee (EDC) was recently received from Bill Kuhlman, who has attended three meetings of the Economic Development Committee. During the regular Committee Meeting on August 27th, the Committee voted unanimously to recommend to the Council that Bill Kuhlman be appointed to the Economic Development Committee succeeding the completion of his second full term on the Planning Commission.

Bill is an El Cerrito resident and is currently the Vice President of Sales and Business Development at BIA Separations. Bill is presently serving on the Planning Commission and will have been part of the Commission for 2 full terms as of January 1, 2017. He played a large role in spearheading the first annual El Cerrito Restaurant Week in 2015 and continued to be an integral part of the El Cerrito Restaurant Week planning committee in 2016. He has demonstrated through his application and participation in EDC meetings that he is committed to economic prosperity and community in keeping with the mission of the Committee. With a Bachelor of Science Degree in Chemical Engineering and background of dedication to El Cerrito while serving on the Planning Commission, he has a unique set of skills and the enthusiasm required to support the activities of the Committee.

If the Council approves this recommendation, the number of Committee members will be 10. Resolution No. 2013-66 establishes the maximum committee size at 15.

Reviewed by:



Scott Hanin
City Manager

Attachment:

1. Application



**November 15, 2016
City Council Meeting**

**Item No. 5(I) and 5(J) Economic Development Committee
Appointments**

Attachment 1 Bill Kuhlman and Ashley James Applications

Are available for review in hardcopy format at the following
locations:

Office of the City Clerk
10940 San Pablo Avenue
El Cerrito
(510) 215-4305

and

The El Cerrito Library
El Cerrito
6510 Stockton Avenue



AGENDA BILL

Agenda Item No. 5(J)

Date: November 15, 2016
To: El Cerrito City Council
From: Katherine Ahlquist, Community Development Analyst
Subject: Economic Development Committee Appointment

ACTION REQUESTED

Approve an Economic Development Committee recommendation to appoint Ashley James to the Economic Development Committee, effective November 15, 2016.

BACKGROUND

An application to be appointed to the Economic Development Committee (EDC) was recently received from Ashley James, who has attended three meetings of the Economic Development Committee. During the regular Committee Meeting on October 26th, the Committee voted unanimously to recommend to the Council that Ashley James be appointed to the Economic Development Committee.

Ashley is an El Cerrito resident and is currently a Land Use Planner for Placeworks, Inc. in Berkeley. Her passion is to work on-the-ground to make El Cerrito a livable, safe place to walk, bike and enjoy the locally-owned businesses and small town atmosphere. She has demonstrated through her application and participation in EDC meetings that she is committed to economic prosperity and community in keeping with the mission of the Committee. Her education in economics, economic development and policy qualify her to understand and interpret the City's vision and goals for economic development. Her training as a facilitator qualifies her to work collaboratively with the Committee to develop potential programs and activities that will help implement those goals. As an urban planner, Ashley brings a significant professional skill set to the Committee, and as a resident, she offers the enthusiasm required to support the activities of the Committee.

If the Council approves this recommendation, the number of Committee members will be 9. Resolution 2013-66 establishes the maximum committee size at 15.

Reviewed by:

Scott Hanin
City Manager

Attachment:

1. Application



**November 15, 2016
City Council Meeting**

**Item No. 5(I) and 5(J) Economic Development Committee
Appointments**

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AGENDA BILL

Agenda Item No. 5(K)

Date: November 15, 2016
To: El Cerrito City Council
From: Mark R. Rasiah, Finance Director/City Treasurer
Subject: Cash & Investments Report for Quarter Ending September 30, 2016

ACTION REQUESTED

Receive and file the City's Quarterly Investment Report for the period ending September 30, 2016.

BACKGROUND

It is the policy of the City of El Cerrito ("City"), to invest public funds in a manner which provides for safety of principal while providing sufficient liquidity to cover the City's short and long term needs while generating the appropriate yield. All investment activity will conform to the California Government Code, Sections 53601 through 53659.

ANALYSIS

The Quarterly Investment Report for July 1, 2016 to September 30, 2016 shows that the City's investments had a par value of \$3,553,464.49 as of September 30, 2016. The City continues to have minimal investments that are not required for debt service reserves and to have limited, if any, interest earnings on restricted funds. Of the total amount invested, \$2,012,723 is invested in the pooled funds with the State Treasurer's Local Agency Investment Funds (LAIF) and \$1,540,741 is held in money market funds. Cash with Mechanics Bank was \$1,099,974. Total cash and investments were \$4,653,438. Of this amount, \$3,112,697 was available to meet operating expenses for the next six months.

STRATEGIC PLAN CONSIDERATIONS

The purpose of the City's Investment Policy is to provide guidelines for prudent investment of the City's idle funds and maximum efficiency of the City's cash management system. The long term goal is to enhance the City's economic condition while protecting the funds at all times.

FINANCIAL CONSIDERATIONS

During the quarter interest of approximately \$506.66 was earned and debt service payments for the Recycle Center, and the Swim Center were made totaling \$424,167.68.

LEGAL CONSIDERATIONS

The City's investments comply with the "Authorized Investments" section of the Investment Policy.

Reviewed by:



**Scott Hanin
City Manager**

Attachment:

1. Cash & Investment Report for the Quarter ending Sept 30, 2016.

City of El Cerrito
Quarterly Cash & Investment Report
For the Period Ending September 30, 2016

FUND	INVESTMENT TYPE	INVESTMENT	TRUSTEE/ BROKER	PAR VALUE	COST	INTEREST OR YIELD	MATURITY DATE	COST/ 100	*MARKET VALUE
Pooled Investments	Pooled Fund	LAIF	CA State Treasurer	\$2,012,722.98	\$2,012,722.98	0.56%	N/A	100.00	\$2,012,722.98
Solar Project Financing	Fidelity Institutional Fund	Prime Money Market	Deutsche Bank	\$10,196.38	\$10,196.38	0.01%	N/A	100.00	\$10,196.38
Swim Center Fund	Blackrock Institutional Money Market	Union Bank/Blackrock Liquidity	Union Bank of CA	\$185,412.72	\$185,412.72	0.01%	N/A	100.00	\$185,412.72
City Hall Debt Fund	Blackrock Institutional Money Market	Union Bank/Blackrock Liquidity	Union Bank of CA	\$603,852.21	\$603,852.21	0.01%	N/A	100.00	\$603,852.21
Street Improvement Fund	Blackrock Institutional Money Market	Union Bank/Blackrock Liquidity	Union Bank of CA	\$741,280.20	\$741,280.20	0.01%	N/A	100.00	\$741,280.20
				\$3,553,464.49	\$3,553,464.49				\$3,553,464.49
Cash with Bank (General Checking)	Mechanics Bank	N/A	N/A	\$1,099,973.57	\$1,099,973.57	N/A	N/A	N/A	\$1,099,973.57
Total Cash and Investments				\$4,653,438.06	\$4,653,438.06				\$4,653,438.06

I certify that this report is in compliance with the City of El Cerrito Investment Policy and the California Government Code Section 53646. The City has sufficient cash flow to meet the next six months of estimated expenditures as required by the Code. The balance of the pool's unrestricted investments in combination with anticipated operating cash inflows and the balance in the general checking account, will be used to meet the expenditure requirements for the next six months.



Mark Rasiah, Finance Director/City Treasurer



AGENDA BILL

Agenda Item No. 5(L)

Date: November 15, 2016
To: El Cerrito City Council
From: Melanie Mintz, Community Development Director
Subject: Approval of Revised First Amendment to the Disposition Development and Loan Agreement with Eden Housing Inc., for City Housing Property Located at 10848 and 10860 San Pablo Avenue. Approval of an agreement with Eden Housing Regarding HCD Affordable Housing and Sustainable Communities Grant and Approval of HCD Infill Infrastructure Grant.

ACTION REQUESTED

That the City Council, acting as Housing Successor to the former Redevelopment Agency adopt resolutions:

1. Authorizing the City Manager to execute a Revised First Amendment to the Disposition Development and Loan Agreement with Eden Housing, Inc. and making findings and approvals pursuant to the California Community Redevelopment Law in connection with redevelopment of 10848 and 10860 San Pablo Avenue in the City of El Cerrito Redevelopment project area;
2. Authorizing the Execution of a Standard Agreement with the State of California Housing and Community Development for an Infill Infrastructure Grant for the Hana Gardens Project; and
3. Authorizing the City Manager to execute an Affordable Housing and Sustainable Communities ("AHSC") Co-Applicant Agreement with Eden Housing related to the AHSC Grant and Loan received from the State of California Housing and Community Development Department for the Hana Gardens Project.

BACKGROUND

The former El Cerrito Redevelopment Agency (Agency) acquired the property at 10848 and 10860 San Pablo Avenue (Property) in May 2009, with a combination of Agency bond proceeds and Low and Moderate Income Housing Fund (LMIHF) monies, with the intention of redeveloping the site as affordable housing. Through an Agency Board study session held October 19, 2009, the Agency Board identified redevelopment objectives for the site that included helping to revitalize the Civic Center/Midtown area; provide affordable housing and help meet community housing needs.

Through a developer solicitation process, on October 18, 2010 the Agency Board selected Eden Housing, Inc. as Developer for the Property (Developer). On February 22, 2011 the Agency Board authorized the Executive Director to execute an Exclusive Negotiating Rights Agreement (ENRA) with the Developer for the purpose of negotiating

a Disposition and Development Agreement (DDA) for an affordable residential mixed use development (Project).

On March 7, 2011, the Agency Board adopted Resolution No. 606 authorizing the execution of a predevelopment loan agreement for \$350,000 from the Low and Moderate Income Housing Fund with Eden Housing Inc. for the Project (Predevelopment Loan).

In 2011, the State budget bill ABX 1 26 (the Dissolution Act) was enacted to dissolve redevelopment agencies. On January 17, 2012, the City Council adopted Resolution No. 2012-04 to retain the housing assets and functions previously performed by the Redevelopment Agency and becoming the housing successor to the El Cerrito Redevelopment Agency. Pursuant to the Dissolution Act, the Redevelopment Agency was dissolved as of February 1, 2012. Upon dissolution, all housing assets, including the Property, less the unencumbered housing balance, and obligations of the former Agency were transferred to the City as housing successor.

In December 2013, the Planning Commission adopted Resolution No. 2013-17 making findings, certifying a Final Environmental Impact Report (EIR), and adopting a Mitigation Monitoring and Reporting Program for the Project pursuant to the California Environmental Quality Act and adopted Resolution No. 2013-18 approving planning entitlements for the Project on December 18, 2013. On January 8, 2014, the Design Review Board adopted DRB Resolution No. 14-02 granting design approval for the Project.

On April 22, 2014, by Resolution No. 2014-10, the City authorized entering into a Disposition Development and Loan Agreement with Eden, Inc. for development of a 63-unit mixed-use senior affordable housing community, consisting of 62 one-bedroom units and one two-bedroom manager's unit and ground floor commercial space which was to include a medical clinic. Since that time, the Developer, has worked to secure all necessary project financing. The Developer has applied for and secured federal HOME and Community Development Block Grant (CDBG) gap funding from the Contra Costa County Department of Conservation and Development, Affordable Housing Program (AHP) funding from the Federal Home Loan Bank of San Francisco, and with the City as a co-applicant Infill Infrastructure funds from the State of California Department of Housing and Community Development (HCD) and Affordable Housing and Sustainable Communities (AHSC) funding, also referred to as "Cap and Trade" funds. The Contra Costa Housing Authority has also committed to providing 39 project based vouchers and 23 Rental Assistance Demonstration (RAD) vouchers as operating subsidy to the project. Eden has also received an allocation for tax exempt bonds from the California Debt Limit Allocation Committee and an allocation of 4% Low Income Housing Tax Credits. Wells Fargo Bank is providing a construction and permanent loan for the Project and Wells Fargo Affordable Housing Community Development Corporation is the equity investor purchasing the Low Income Housing Tax Credits. The allocation of tax exempt bonds requires that the project construction funding close and construction on the Project commence no later than Mid-January, 2017. Eden Housing is hoping to close by December 15, 2016.

In February 2016, the City approved a First Amendment to the DDLA (Resolution 2016-04). The First Amendment approved elimination of the requirement that the project include a medical clinic and physical changes to the Project that reduced the Project height but did not reduce the number of units in the Project. Additionally, the First Amendment to the DDLA amended the amount of the City's predevelopment loan to the Project. Prior to redevelopment dissolution the former Redevelopment Agency committed to provide a \$350,000 predevelopment loan to the project. \$100,000 of the predevelopment loan was disbursed to Eden, but the California Department of Finance determined that the remaining commitment of \$250,000 did not qualify as an enforceable obligation and refused to approve funding the remaining portion of the loan. In February 2016 the City Council approved an additional \$200,000 in loan funds to be funded from the Low and Moderate Income Housing Asset Fund, which consists of former redevelopment low income housing assets.

Although the First Amendment was approved by the City Council it was not executed by Eden or the City. In the course of negotiating the financing documents for the Project, the lenders, including HCD have requested additional changes to the DDLA. The Council is being asked to approve a revised First Amendment to the DDLA that incorporates the changes previously approved in February 2015 as well as the additional changes discussed below.

Eden Housing Inc. is assigning the DDLA to El Cerrito Senior L.P., a limited partnership the general partner of which is an affiliate of Eden Housing Inc. The assignment of the DDLA to the partnership is necessary to obtain the benefits of the low income housing tax credits.

SUMMARY OF PROPOSED ADDITIONAL MODIFICATIONS TO THE FIRST AMENDMENT TO THE DDLA

Predevelopment Loan Repayment Terms.

The Predevelopment Loan of \$300,000 is to be repaid from a portion of the residual receipts generated from the project after payment of all operating costs and debt service on loans that require current debt service payments. The City shares the residual receipts proportionately with the County of Contra Costa and HCD. The DDLA requires that the City's share of residual receipts would be determined based on the amount of the predevelopment loan and the value of the land contributed to the Property. By adding the value of the land to the City's share, the City's predevelopment loan would be repaid more quickly but the total amount repaid to the City would remain the \$300,000 plus interest. HCD requires that 50% of the residual receipts generated by the Project be distributed to the Developer and with the other 50% distributed among the lenders proportionately to their loan amounts. HCD does not recognize the City's land contribution as a portion of the loan and will not allow the land value to be taken into account for determining the City's share of residual receipts.

The City and the County will be entering into an Intercreditor Agreement which provides that the City and the County share equal priority with regards to their loans on their property. As a term of the Intercreditor Agreement, the Developer has agreed to use one-half of its 50% share of residual receipts to repay the City's and the County's loan.

For the portion of the repayment coming from the Developer's share of residual receipts the value of the land can be added to the City's loan amount to determine the City's share of the repayment. The distribution of residual receipts that will determine the repayment of the City predevelopment loan will be as follows in Table 1. The change in the repayment terms do not change the amount that will be repaid to the City but only the timing for the repayment.

. Table 1

Split of 50% of Residual Receipts	Percent	Amount
HCD	68.72%	\$5,271,696
County	27.37%	\$2,100,000
City	3.91%	\$300,000
2nd Split of ½ of Developer's Portion	Percent	Amount
HCD	0%	0
County	33.33	\$2,100,000
City	66.67	\$4,200,000

Developer Fee

The other change to the First Amendment to the DDLA is to revise the language in the DDLA that limited the amount of Developer Fee that Eden could receive to \$1,400,000. At the time that the DDLA was negotiated, the Tax Credit Allocation Committee limited the amount of Developer Fee that could be taken by a developer to \$1,400,000. Since the approval of the DDLA the TCAC regulations have been amended and now the cap on developer fee has increased. The First Amendment to the DDLA now limits the amount of Developer Fee that can be received by the Developer from operating funds prior to repayment of the City Predevelopment Loan to \$1,500,000. This provision is consistent with the County Loan requirements.

INFILL INFRASTRUCTURE GRANT APPROVAL

In December 2014, the City Council pursuant to Resolution No. 2014-76 authorized the submission of an application to the California Department of Housing and Community Development for an Infill Infrastructure Grant (IIG) as a co-applicant with Eden. Resolution No. 2014-76 authorized the submission of the application and the execution of all necessary documents for the IIG Grant but included a provision that the Grant could not exceed \$1,200,000. Eden and the City were successful in their application for

the IIG and received an award of a Grant in the amount of \$1,399,547. HCD requires that the City readopt its resolution authorizing the execution of the IIG documents to include the correct amount of the Grant. The attached resolution meets the requirements of HCD for purposes of completing the Grant. Although the City is a co-recipient of the Grant, the Grant funds will be disbursed to Eden and will be used to fund infrastructure improvements related to the Project.

AHSC CO-APPLICANT AGREEMENT.

In addition to the IIG Grant, the City Council in April 2015 pursuant to Resolution No. 2015-26 approved submission to HCD of an application for Affordable Housing and Sustainable Communities Funds (Cap and Trade Funds) as a co-applicant with Eden. The application was successful and Eden and the City were awarded both loan and grant funds. The total award from AHSC program is in the amount of \$5,657,872 and is divided between a loan in the amount of \$5,271,696 to be used for permanent financing of the Affordable Housing Project and a grant in the amount of \$386,176 of which \$363,496 is to be used by the City for improvements to the Ohlone Greenway and \$22,680 is to be used for the purchase of transit passes for the residents of the Project over a period of three years. Under the terms of the AHSC regulations both the City and Eden are jointly and severally liable for the entire AHSC award. Additionally, the completion of the Ohlone Greenway Improvements is a requirement for disbursement of the permanent loan for the Project. The AHSC Co-Applicant Agreement addresses the issues related to joint and several liability as well as concerns raised by Wells Fargo about the consequences if the City were for some reason not able to complete the Ohlone Greenway Improvements. The AHSC Co-Applicant Agreement provides for Eden to indemnify the City should Eden fail to comply with the terms of the AHSC agreements. The Agreement also provides for the City to indemnify Eden in the event that the City causes a default under the Agreements or fails to complete the improvements. Eden is also indemnifying the City for any defaults under the IIG since the IIG also contains joint and several liability for the City and Eden.

Finally, the AHSC Co-Applicant Agreement allows Eden in certain circumstances to complete the Ohlone Greenway Improvements if the City does not meet certain milestone dates for completion. Prior to stepping into the City's role with respect to the completion of the Ohlone Greenway Improvements, Eden and the City would meet and confer to determine the best way to achieve completion of the improvements. If Eden were to complete the improvements, Eden would be required to adhere to all of the City's contracting requirements for the improvements including the payment of prevailing wages and issuing the contract pursuant to a competitive bid process conducted in accordance with the requirements of the Public Contracts Code.

ENVIRONMENTAL CONSIDERATIONS

The Planning Commission adopted Resolution No. 2013-17 making findings, certifying a Final Environmental Impact Report (EIR), and adopting a Mitigation Monitoring and Reporting Program (MMRP) for the Project.

The City has complied with the requirements of the California Environmental Quality Act and the applicable state and local implementing guidelines (collectively "CEQA")

through the preparation and certification of the EIR and the MMRP. The Project as defined with the proposed modifications is consistent with the planning entitlements and the certified EIR for the project. There have been no changes to the project or the mitigations measures that would require the preparation of any supplemental environmental analysis pursuant to CEQA.

FINANCIAL CONSIDERATIONS

The additional changes to the First Amendment to the DDLA may result in the repayment of the City's predevelopment loan taking longer but the amount of the repayment does not change. The increase in the IIG Grant provided additional essential funding for the Project. Although the City is jointly and severally liable for IIG Grant, Eden is indemnifying the City for any defaults under the Grant Agreement.

The AHSC Funding will provide the City with funds to make improvements to the Ohlone Greenway. The total costs of the improvements to be funded are \$363,496 with the remainder of the costs being paid from Measure J funds that have been awarded to the City. The AHSC Co-Applicant Agreement provides protection to the City from defaults caused by Eden under the AHSC Agreements.

LEGAL CONSIDERATIONS

The legal counsel to the City as housing successor has reviewed this report and the attachments.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. Resolution Authorizing Execution of a First Amendment to Disposition Development and Loan Agreement with Eden Housing Inc.
2. Resolution approving Affordable Housing Sustainable Communities Co-Applicant Agreement
3. Resolution Approving Infill Infrastructure Grant

RESOLUTION NO. 2016-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AS HOUSING SUCCESSOR TO THE EL CERRITO REDEVELOPMENT AGENCY (THE "CITY") AUTHORIZING EXECUTION OF A REVISED FIRST AMENDMENT TO DISPOSITION DEVELOPMENT AND LOAN AGREEMENT WITH EL CERRITO SENIOR L.P. AND MAKING FINDINGS AND APPROVALS PURSUANT TO THE CALIFORNIA COMMUNITY REDEVELOPMENT LAW IN CONNECTION WITH REDEVELOPMENT OF THAT CERTAIN PROPERTY LOCATED AT 10848 AND 10860 SAN PABLO AVENUE IN THE CITY OF EL CERRITO REDEVELOPMENT PROJECT AREA

WHEREAS, the City Council (the "City Council") of the City of El Cerrito (the "City") has adopted the City of El Cerrito Redevelopment Plan, originally adopted by Ordinance No. 77-17, dated November 28, 1977, (the "Redevelopment Plan"). The Redevelopment Plan sets forth a plan for redevelopment of the City of El Cerrito Redevelopment Project Area (the "Project Area"); and

WHEREAS, the former El Cerrito Redevelopment Agency (the "Agency") and City of El Cerrito have encouraged redevelopment in specific portions of the El Cerrito Redevelopment Project Area in accordance with the goals and objectives of the City of El Cerrito Redevelopment Plan as amended; and

WHEREAS, , the Agency acquired 10848 and 10860 San Pablo Avenue (the "Property") for the purposes of increasing, improving and preserving the community's supply of low- and moderate-income housing and, in part, used Housing Fund monies to purchase the Property pursuant to California Health and Safety Code §33334.2; and

WHEREAS, the El Cerrito Redevelopment Agency and the Developer entered into the Predevelopment Loan Agreement (the "Predevelopment Loan Agreement") for the purposes of increasing, improving and preserving the community's supply of low- and moderate-income housing pursuant to California Health and Safety Code §33334.2 in which the Agency obligated Three Hundred Fifty-Thousand Dollars (\$350,000) of financial assistance to the Developer (the "Low and Moderate Income Housing Fund Financing") from the Agency's Low and Moderate Income Housing Fund to fund certain predevelopment activities related to the development of the Property with affordable housing, which loan is evidenced by a promissory note (the "Original Note"), and is secured by the Developer's assignment of all rights in and to certain plans specifications and other predevelopment documents (the "Assignment Agreement"). The City acquired the Predevelopment Loan Agreement from the El Cerrito Redevelopment Agency in accordance with Health and Safety Code Section 34176(e) as a Housing Asset, as defined in Section 34176(e). One Hundred Thousand Dollars (\$100,000) of the Low and Moderate Income Housing Fund Financing has been disbursed to the Developer. The outstanding balance of the loan obligation consisting of \$250,000 of the Loan has been rejected by the California Department of Finance as an enforceable obligation eligible for funding from the Redevelopment Property Tax Trust Fund; and

WHEREAS, the City adopted Resolution No. 2012-04 on January 17, 2012 electing to retain the housing assets and functions previously performed by the Agency in accordance with Section 34176 of the Redevelopment Law and becoming the housing successor to the El Cerrito Redevelopment Agency; and

WHEREAS, the Agency was dissolved effective February 1, 2012 pursuant to the State Budget bill ABX1 26 (the "Dissolution Act") and all housing assets, including the Property less the unencumbered housing balance, and obligations of the former Agency were transferred to the City as housing successor by operation of law; and

WHEREAS, the City and Eden Housing, Inc. entered into a Disposition Development and Loan Agreement (the "DDLA") pursuant to which the City agreed to sell the Property to the Developer and the Developer agreed to develop a mixed use development consisting of 63 residential units and ground floor commercial, including 62 units of affordable rental housing with resident services for seniors, commercial space and the renovation of the Contra Costa Florist structure (the "Project"); and would convert the Predevelopment Loan to a permanent loan; and

WHEREAS, in accordance with the terms of the DDLA, Eden Housing Inc. assigned the DDLA to El Cerrito Senior L.P., ("Developer") a limited partnership whose general partner is affiliated with Eden Housing Inc.; and

WHEREAS, the City pursuant to Resolution No. 2016-04 approved a First Amendment to the DDLA that provided additional funding in the amount of \$200,000 for the Project to replace the funds disallowed by the Department of Finance and approved physical changes to the Project; and

WHEREAS, prior to the execution of the First Amendment to the DDLA, the lenders to the Project requested additional changes to the DDLA to change the terms for repayment of the Predevelopment Loan and to revise provisions limiting the amount of Developer Fee to be paid to the Developer; and

WHEREAS, the City and the Developer now desire to further amend the DDLA to address the changes requested by the lenders; and

WHEREAS, at the time the City approved the DDLA the City prepared the summary called for in Health and Safety Code Section 33433 (the "Section 33433 Summary") setting out the costs and benefits of the DDLA to the City. The changes to the DDLA in the First Amendment to the DDLA do not significantly change the findings set forth in the Section 33433 Summary and the Section 33433 Summary meets the requirements of Health and Safety Code Section 33433 with respect to the First Amendment to the DDLAS; and

WHEREAS, in considering approval of the First Amendment to the DDLA the City has complied with the requirements of the California Environmental Quality Act and the applicable state and local implementing guidelines (collectively "CEQA") through the preparation and certification of the EIR and the Mitigation Monitoring and Reporting Program, copies of which are on file with the City Clerk; and

WHEREAS, by a staff report accompanying this Resolution and incorporated into this Resolution by this reference (the "Staff Report"), the City has been provided with additional information upon which the findings and actions set forth in this Resolution are based.

NOW THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City Council finds that the above recitals are accurate.

2. The City Council hereby finds, for the following reasons, and based on the provision of CEQA (with particular reference to 14 California Code of Regulations, Section 15162), that the EIR has served as the environmental documentation pursuant to CEQA for approval of this Resolution and the First Amendment to the DDLA. The City Council further specifically finds that there have not been any of the following occurrences since the approval of the EIR that would require a subsequent or supplemental environmental documents in connection with approval of this Resolution and the DDLA:

a. There have not been substantial changes in the project analyzed in the EIR which would require major revisions in the EIR and the Mitigation Monitoring Program;

b. There have not been substantial changes with respect to the circumstances under which the project analyzed in the EIR will be undertaken which would require major revisions in the EIR and the Mitigation Monitoring Program; and

c. There has not been the appearance of new information which was not known and could not have been known as of the date of approval of the EIR and the Mitigation Monitoring Program which is relevant to the approval of the EIR and the Mitigation Monitoring Program as it relates to the approval of this Resolution and the First Amendment to the DDLA.

3. The City Manager is hereby authorized and directed to file a Notice of Determination with respect to the approvals granted by the Resolution in accordance with the applicable provisions of CEQA.

4. The City Council hereby approves the Revised First Amendment to the DDLA (Exhibit A) and all ancillary documents; approves execution by the City Manager of the First Amendment to the DDLA and all ancillary documents in substantially the form on file with the City Clerk, with such changes as are approved by the City signatory (such approval to be conclusively evidenced by the execution of the First Amendment to the DDLA);

5. Nothing in this Resolution shall affect the City's policy discretion in granting or denying the Planning Approvals.

6. This Resolution shall take immediate effect upon its adoption.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

Agenda Item No. 5(L)
Attachment 1

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November 15, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

FIRST AMENDMENT TO
DISPOSITION DEVELOPMENT AND LOAN
AGREEMENT BETWEEN THE CITY OF EL CERRITO
AND
EL CERRITO SENIOR, L.P.

THIS FIRST AMENDMENT TO DISPOSITION, DEVELOPMENT AND LOAN AGREEMENT ("First Amendment") is entered into as of _____, 2016, by and between the CITY OF EL CERRITO, a municipal corporation ("City") and EL CERRITO SENIOR, L.P., a California limited partnership ("Developer"), with reference to the following facts, understandings and intentions of the parties.

RECITALS

A. The City and Eden Housing, Inc., a California nonprofit public benefit corporation ("Eden") as the Developer entered into that certain Disposition, Development and Loan Agreement for 10860 San Pablo Avenue dated April 23, 2014 (the "Agreement" or "DDLA") a memorandum of which has been or will be recorded concurrently herewith in the official records of Contra Costa County, whereby the City agreed to transfer to the Developer the Property and the Developer agreed to develop on the Property sixty-three units of affordable rental housing with resident services for senior citizens, approximately 2,300 square feet of commercial space, and related parking, landscaping and amenities (the "Development").

B. The City also agreed, pursuant to the Agreement, to provide the Developer with a loan of funds to pay costs associated with the Development, but the availability of a portion of the loan identified as the Post-DDLA Component of the Loan was dependent upon the approval of the California Department of Finance of inclusion of the Post-DDLA Component on a Recognized Obligations Payment Schedule submitted by the Successor Agency to the El Cerrito Redevelopment Agency. The Department of Finance has disapproved funding for the Post-DDLA Component of the Loan.

C. As contemplated in Section 7.4(d) of the DDLA, Eden has or concurrently herewith assigned all its rights and interests in and under the DDLA to El Cerrito Senior, L.P., as the Developer, under that Assignment and Assumption (Disposition, Development and Loan Agreement) by Eden, El Cerrito Senior, L.P. and the City, dated as of _____, 2016 and recorded concurrently herewith in the official records of Contra Costa County.

D. The City now desires to provide additional loan funds to the Developer in accordance with the terms of this First Amendment.

E. The Developer has submitted to the City in its regulatory capacity changes to the Development Plans for the Development.

F. As required by Sections 2.7 and 2.8 of the DDLA, the Developer has submitted to the City an updated Financing Proposal and the Financing Plan, including evidence of

Developer's other committed financing for the Development, which Financing Proposal and Financing Plan have been approved by the City. A copy of the Financing Proposal and Financing Plan approved by the City are attached hereto as Exhibit B.

G. City and the Developer desire to amend the Agreement to include the additional City loan funds and to make other changes resulting from changes to the Development, the Development financing, and requirements imposed by the financing sources.

NOW, THEREFORE, the City and the Developer agree as follows:

1. Medical Clinic. Sections 2.11 and 6.2(a) of the Agreement are hereby deleted in their entirety. Additionally, all references to the Medical Clinic in the Agreement are hereby deleted and Developer shall no longer be required to include within the Development a medical clinic.
2. Predevelopment Loan. Section 1.1(pp) of the Agreement is hereby amended in its entirety to read as follows:

"Predevelopment Loan" means the loan from the City to the Developer in the amount of \$300,000 more fully described in Section 4.1 below.

Section 4.1 of the Agreement is hereby amended in its entirety to read as follows:

Section 4.1. Amount of Loan.

(a) Predevelopment Loan. The Developer and the former El Cerrito Redevelopment Agency ("Former RDA") previously entered into that certain Predevelopment Loan Agreement dated May 17, 2011 whereby the Former RDA agreed to loan to the Developer Three Hundred Fifty Thousand Dollars (\$350,000) from the Former RDA's Low and Moderate Income Housing Fund which may only be used to pay for those predevelopment costs associated with the Development as set forth in Exhibit M to this Agreement. In accordance with Health and Safety Code Section 34176, the City elected to retain the housing assets of the Former RDA. As the successor to the Former RDA's housing assets and functions, the City received from the El Cerrito Successor Agency One Hundred Thousand Dollars (\$100,000) of the Predevelopment Loan and has disbursed that amount to the Developer. The remaining Two Hundred Fifty Thousand Dollars (\$250,000) of the Predevelopment Loan was to be disbursed to the Developer, contingent upon approval of the remaining loan funds on a Recognized Obligation Payment Schedule by the Department of Finance. The Department of Finance has disapproved the remaining \$250,000. The City is willing to loan to the Developer Two Hundred Thousand Dollars (\$200,000) from the City's Low and Moderate Income Housing Asset Fund ("Replacement Loan") to replace the \$250,000 portion of the original Predevelopment Loan that is no longer available. The Replacement Loan and the original \$100,000 disbursed to the Developer pursuant to the Predevelopment Document shall collectively be

referred to herein as the "Predevelopment Loan." The City has disbursed to the Developer \$100,000 of the Replacement Loan as of the date of this First Amendment.

The Agreement replaced and superseded the Predevelopment Documents upon the Effective Date of the Agreement but that certain Assignment Agreement entered into by Developer and the City assigning to the City certain contracts and plans continues to remain in full force and effect and continues to secure the Predevelopment Loan for so long as the Predevelopment Loan is outstanding.

The principal amount of the Predevelopment Loan shall be treated in two (2) separate components:

(b) the "Pre-DDLA Predevelopment Component," which is intended for use by the Developer to pay specified predevelopment costs as set forth in Exhibit M. As of the date of this Agreement, the City has disbursed the full amount of the Pre-DDLA Predevelopment Component in the amount of \$100,000.

(c) the "Post-DDLA Component," which is intended for use by the Developer to pay the additional predevelopment costs associated with the Development as set forth in Exhibit M. The Post-DDLA Component is in the amount of Two Hundred Thousand Dollars (\$200,000) and consists of the Replacement Loan.

3. Repayment of Predevelopment Loan. Section 4.3 of the Agreement is replaced in its entirety with the following:

The Developer shall repay the Predevelopment Loan in accordance with the terms of the City Note.

4. Predevelopment Loan Disbursement. The following sentence is added to the end of Section 4.6(b) of the Agreement:

Notwithstanding anything set forth above, no more than \$100,000 of the Post-DDLA Component shall be disbursed to the Developer prior to the later of (i) the Close of Escrow or (ii) June 1, 2016.

5. Developer Fee. Section 4.10 of the Agreement is replaced in its entirety with the following:

The maximum cumulative Developer Fee that may be paid to any entity or entities providing development services to the Development, whether paid up-front or on a deferred basis, is not to exceed the amount allowed by TCAC and as approved by the County. For the purposes of this Agreement "Developer Fee" has the meaning set forth in California Code of Regulations, Title 4, Section 10302(l). The total of Developer Fee paid, whether paid up-front or on a deferred basis, out of Annual

Operating Expenses, is not to exceed One Million Five Hundred Thousand Dollars (\$1,500,000).

It being understood that any remaining deferred Developer Fee in excess of the \$1,500,000 paid out of Annual Operating Expenses may be paid from Borrower's Shared Portion of Residual Receipts.

6. Completion of Improvements. Section 5.4 of the Agreement is replaced in its entirety with the following:

The Developer shall diligently prosecute to completion the construction of the Improvements (sufficient to obtain approval of occupancy of the Improvements from the City) within thirty (30) months following commencement of construction.

7. Exhibits. The following Exhibits are hereby added and/or replaced in their entirety with the Exhibits attached to this First Amendment:

Exhibit A:	Legal Description of the Property
Exhibit B:	Financing Proposal
Exhibit C:	City Regulatory Agreement
Exhibit D:	City Grant Deed
Exhibit E:	Development Schedule
Exhibit F:	Notice of Affordability Restrictions
Exhibit H:	Certificate of Completion
Exhibit I:	City Deed of Trust
Exhibit J:	City Note
Exhibit L:	Option Agreement
Exhibit M:	Predevelopment Costs to be funded by the Predevelopment Loan
Exhibit N:	Additional Investor Limited Partner Provisions

8. Defined Terms. All defined terms not otherwise defined herein shall have the meaning ascribed to such terms in the Agreement. The parties acknowledge that the Financing Proposal and Financing Plan attached hereto as Exhibit B, updates and supersedes the financing contemplated in 2014. Accordingly, any reference in the Agreement to the AHP Loan shall be disregarded, and any reference to the Tax Credit Reservation shall be read to mean the Tax Exempt Reservation Letter from TCAC dated July 20, 2016,
9. Effect of First Amendment. Unless otherwise specifically amended by this First Amendment all provisions of the Agreement shall remain in full force and effect. This First Amendment shall take effect as of the date first written above. In the event of conflict between this First Amendment and the Agreement, this First Amendment shall control.

IN WITNESS WHEREOF, the City and the Developer have executed this Agreement on or as of the date first above written.

DEVELOPER:

EL CERRITO SENIOR, L.P.,
a California limited partnership

By: EL CERRITO SENIOR LLC,
a California limited liability company,
its General Partner

By: EDEN HOUSING INC.,
a California nonprofit public benefit
corporation, its Manager

By: _____
Linda Mandolini, President

Date: _____

CITY:

CITY OF EL CERRITO,
a municipal corporation

By: _____
Scott Hanin, City Manager

RESOLUTION NO. 2016-XX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO (THE "CITY") AUTHORIZING EXECUTION OF AN AHSC CO-APPLICANT AGREEMENT WITH EDEN HOUSING INC. RELATED TO THE DEVELOPMENT OF THE PROPERTY LOCATED AT 10848 AND 10860 SAN PABLO AVENUE IN THE CITY OF EL CERRITO REDEVELOPMENT PROJECT AREA

WHEREAS the City and Eden Housing, Inc. entered into a Disposition Development and Loan Agreement (the "DDLA") pursuant to which the City agreed to sell that certain Property located at 10848 and 10860 San Pablo Avenue to Eden Housing Inc and Eden Housing Inc. agreed to develop a mixed use development consisting of 63 residential units and ground floor commercial, including 62 units of affordable rental housing with resident services for seniors, commercial space and the renovation of the Contra Costa Florist structure (the "Project"); and

WHEREAS the City, pursuant to Resolution No. 2015-26, authorized the submission of an application to the California Department of Housing and Community Development ("HCD") as a co-applicant with Eden Housing Inc. for Affordable Housing and Sustainable Communities ("AHSC") Funds to provide financing for the Project and to complete infrastructure improvements adjacent to the Project; and

WHEREAS, the City and Eden Housing Inc.'s application to HCD for AHSC funds was successful with an award of \$5, 657,872, a portion of which is to be used as permanent financing for the Project and portion of which is to be used for improvements to the Ohlone Greenway; and

WHEREAS, the City, pursuant to Resolution No. 2014-76, authorized the submission of an application to HCD, as a co-applicant with Eden Housing Inc., for Infill Infrastructure Grant ("IIG") Funds to support the Project; and

WHEREAS, the City and Eden Housing Inc.'s application to HCD for IIG Funds was successful with an award of \$1,399,547 to provide funding for infrastructure improvements necessary for the Project; and

WHEREAS, both the IIG and AHSC programs require that all applicants for the funding be jointly and severally liable for obligations under the funding agreements; and

WHEREAS, the completion of the Ohlone Greenway Improvements by the City is a condition to the disbursement of the AHSC Loan providing permanent funding to the Project; and

WHEREAS, in order to address the parties' joint and several liability and to ensure that the Ohlone Greenway Improvements are completed in a timely manner so that the AHSC Loan is disbursed upon completion of the construction of the Project, the City and Eden Housing Inc., are proposing to enter into the AHSC Co-Applicants Agreement substantially in the form on file with the City Clerk;

WHEREAS, by a staff report accompanying this Resolution and incorporated into this Resolution by this reference (the "Staff Report"), the City has been provided with additional information upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The City Council finds that the above recitals are accurate.

2. The City Council hereby approves the AHSC Co-Applicants Agreement and approves execution by the City Manager of the AHSC Co-Applicants Agreement in substantially the form on file with the City Clerk and all ancillary documents necessary to implement the agreement, with such changes as are approved by the City signatory (such approval to be conclusively evidenced by the execution of the AHSC Co-Applicants Agreement);

3. Nothing in this Resolution shall affect the City's policy discretion in granting or denying the Planning Approvals.

4. This Resolution shall take immediate effect upon its adoption.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

RESOLUTION NO. 2016-XX

A RESOLUION OF THE CITY COUNCIL OF THE CITY EL CERRITO AUTHORIZING THE EXECUTION OF A STANDARD AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT FOR FUNDING UNDER THE INFILL INFRASTRUCTURE GRANT PROGRAM FOR THE HANA GARDENS PROJECT AND ANY AMENDMENTS THERETO; AND ANY RELATED DOCUMENTS NECESSARY TO PARTICIPATE IN THE INFILL INFRASTRUCTURE GRANT PROGRAM

WHEREAS, the former El Cerrito Redevelopment Agency (the "Agency") and the City of El Cerrito ("City") have encouraged redevelopment in specific portions of the El Cerrito Redevelopment Project Area in accordance with the goals and objectives of the City of El Cerrito Redevelopment Plan as amended; and

WHEREAS, pursuant to City Council Resolution No. 2014-14, the City has entered into a Disposition Development and Loan Agreement (the "DDLA") with Eden Housing, Inc. (the "Developer");pursuant to which the City will sell 10848 and 10860 San Pablo Avenue (the "Property") to the Developer and the Developer will develop a mixed use development consisting of 63 residential units and ground floor commercial, including 62 units of affordable rental housing with resident services for seniors, and the renovation of the Contra Costa Florist structure (the "Project"); and

WHEREAS, the City pursuant to Resolution No. 2014-76 authorized the submission of an application to the State of California Department of Housing and Community Development ("HCD") as a co-applicant with the Developer for an Infill Infrastructure Grant ("IIG") to provide funds for infrastructure improvements related to the Project; and

WHEREAS, HCD awarded the City and the Developer IIG funds in the amount of \$1,399,547 to be disbursed to the Developer to fund infrastructure improvements for the Project; and

WHEREAS, the City now desires to authorize the execution of a Standard Agreement with HCD for the IIG funds and any other documents necessary to participate in the IIG Program.

NOW THEREFORE, BE IT RESOLVED by the City Council of .the City of El Cerrito as follows:

1. The City hereby agrees that the Infill Infrastructure Grant Program funds awarded to the City and the Developer in the amount of \$1,399,547 will be used for eligible activities in the manner presented in the application as approved by HCD and in accordance with program Guidelines. It also may execute any and all other instruments necessary or required by HCD for participation in the Infill Infrastructure Grant Program;
2. The City authorizes the City Manager to execute in the name of the City of El Cerrito the Standard Agreement, and all other documents required by HCD for participation in the Infill Infrastructure Grant Program, and any amendments thereto.

Agenda Item No. 5(L)
Attachment 3

BE IT'FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 6

Date: November 15, 2016
To: El Cerrito City Council
From: Maria Sanders, Operations + Environmental Services Manager
Yvetteh Ortiz, Public Works Director/City Engineer
Subject: Proposed Integrated Waste Management Fees and East Bay Sanitary
Garbage & Green Waste Collection and Processing Rates -- Effective
January 1, 2017

ACTION REQUESTED

Staff requests that Council take the following actions:

- 1) Conduct a public hearing and upon conclusion adopt a resolution setting Integrated Waste Management (IWM) Fees, effective January 1, 2017.
- 2) Conduct a public hearing and upon conclusion adopt a resolution setting maximum allowable East Bay Sanitary (EBS) garbage and green waste collection and disposal and processing rates, effective January 1, 2017.

BACKGROUND AND ANALYSIS

Integrated Waste Management Fee

In 1990, the City of El Cerrito established IWM Fees to cover integrated waste management services. These services include the City-run operations of the El Cerrito Recycling + Environmental Resource Center (RERC), curbside collection of recyclable materials, and other waste collection, reduction, recycling and environmental programs currently operated by the Department of Public Works, Operations + Environmental Services Division (OESD). The City's franchised waste hauler, East Bay Sanitary Company, collects IWM Fee revenues as a component of the monthly charges for solid waste collection, processing and disposal services via EBS's regular billing cycle. After collection, these revenues are transferred to the City of El Cerrito's IWM Fund.

As part of the City's Biennial Budget for Fiscal Years 2016-17 and 2017-18, the City Council approved a forecast for the IWM Fund that included increasing the IWM Fee revenues from \$2,125,160 in calendar year 2016 to \$2,216,805 in calendar year 2017, representing an increase of \$91,645. This increase in the revenue requirement is primarily needed to support the replacement of a forklift and two recycling trucks, all of which are at the end of their useful lives. Staff anticipates that the two recycling trucks will be financed through a lease-purchase agreement, subject to future City Council approval, as will two more recycling trucks in subsequent years. Other factors contributing to the increase include personnel costs, both normal annual increases and the addition of half an Environmental Analyst, and a drop in prices for recycled material. As discussed in last year's report, industry experts expect recycling markets to continue

to underperform into the foreseeable future due to low oil prices and a reduction in demand overseas for recycled material.

The proposed 2017 IWM Fees necessary to generate \$2,216,805 in IWM Fee revenues are included in Attachment 1.

East Bay Sanitary Garbage and Green Waste Collection Rates

In contrast to IWM Fees (which the City sets and EBS collects), EBS sets and charges the rates for garbage and green waste collection based upon maximum rates authorized by the Council, pursuant to City of El Cerrito Municipal Code Chapter 8.12.

In late 2012, the City and EBS completed a Rate and Operations Review that culminated in Council's adoption of a Fifth Amendment to the East Bay Sanitary Franchise Agreement (Resolution 2012-89, November 20, 2012). The Amendment provided for lower rates, greater services, and an extension of the Franchise Agreement through December 31, 2025. The review process resulted in the development of an annual adjustment to EBS's annual revenues via a Refuse Rate Index (RRI).

Additionally, the Fifth Amendment established a Revenue Balancing Account, which provides for adjustments in the revenue requirement to account for any difference between the projected rate revenues and the actual rate revenues received in prior calendar years. The Revenue Balancing Account ensures that any over- or under-collection of revenues is captured in future years' rates, meaning that EBS is fairly compensated when revenues are lower than required by the agreement. Conversely, when revenues are higher than required, any over-collection of revenues is used to offset future rate adjustments. EBS's rates were increased in 2015, but not in 2016 due to an over-collection in revenue in prior years. Thus, the annual RRI adjustment was offset by the balancing account.

EBS has calculated and proposed a 2017 RRI revenue adjustment of 1.55% from their 2016 revenue requirement, which results in a 2017 revenue requirement of \$4,376,321 for collection operations, an increase of \$66,798. However, because EBS did not raise their rates in 2016 and there was not a similar over-collection of revenues in 2015 and 2016, there was less of an effect of the EBS balancing account on the EBS rates this year. With the assistance of R3 Consulting Group, a consulting firm that specializes in solid waste management, City staff has reviewed the RRI adjustment figure and the proposed 2017 collection revenue requirement, including revenue from the balance account, for accuracy, consistency, and reasonableness.

The proposed 2017 EBS Collection rates necessary to meet the revenue requirement are included in Attachment 1.

East Bay Sanitary Post-Collection Rates: Processing and Disposal

The City Council also sets the maximum allowable Post-Collection Rates (Resolution 2013-64) to cover expenses for processing and disposal of waste. Effective January 1, 2014, the City Council approved a Post-Collection Agreement between the City and

Republic Services for processing and disposal services (Resolution 2013-54) through the services and facilities of the Golden Bear Transfer Station, Keller Canyon Landfill, West Contra Costa Sanitary Landfill, and West County Resource Recovery.

Per the methodology set forth in the terms of the Post-Collection Agreement, Republic Services has calculated and proposed a 2017 Blended Rate of \$96.49 per ton of garbage, green waste, construction and demolition debris and commercial dry waste delivered by EBS to Republic's facilities. This per ton rate also covers costs to provide Household Hazardous Waste (HHW) disposal services for El Cerrito residents both through the RERC and through the regional HHW Facility in Richmond. With the assistance of R3 Consulting Group, City staff has reviewed the proposed 2017 Blended Rate for accuracy, consistency, and reasonableness.

These disposal, processing, and HHW costs are paid by EBS to Republic Services and are included in the rates that EBS collects. As discussed above, due to an over-collection of revenue in prior years, EBS did not increase their rates and used the balancing account to absorb this increase in the Blended Per Ton Rate. Thus, the percentage change in rates reflects increases in the Per Ton Rate for both years.

The proposed 2017 EBS Post-Collection rates necessary to meet the revenue requirement are included in Attachment 1.

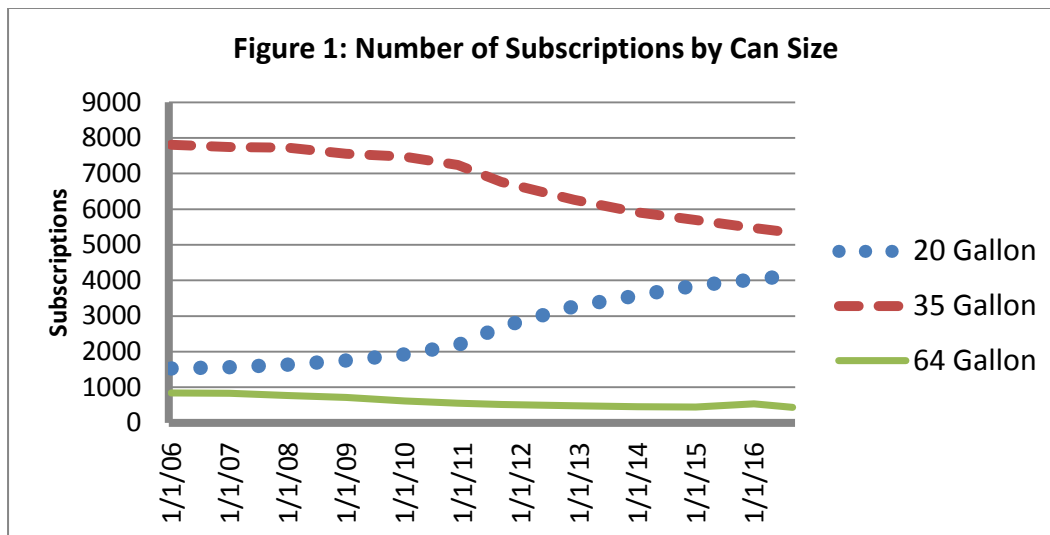
Overall Changes to the Rates

Overall, the solid waste bill for customers in all sectors will increase by 6.27% in 2017, with the above-mentioned revenue requirements contributing 4.44% to the overall increase, as shown in the Table 1.

Table 1: Breakdown of 2017 Revenue Requirements					
	2016	2017	\$ Change	% Change (Each)	% Change (Overall)
EBS Revenue Requirement	\$ 4,309,524	\$ 4,376,321	\$ 66,798	1.55%	0.91%
EBS Balancing Account	\$ (153,054)	\$ (47,256)	\$ 105,798	-69.12%	1.44%
IWM Collection & RERC	\$ 2,125,160	\$ 2,216,805	\$ 91,645	4.31%	1.25%
Disposal, Composting, HHW	\$ 1,076,588	\$ 1,138,693	\$ 62,105	5.77%	0.84%
Total Revenue Requirement	\$ 7,358,218	\$ 7,684,563	\$ 326,345		4.44%
Migration	<i>Overall increase in rates due to downsizing of accounts.</i>				1.83%
Total Rate Increase					6.27%

The remaining 1.83% is attributable to account holders continuing to downsize by sending less garbage to the landfill and migrating to smaller garbage can sizes. While this is a testament to the success of El Cerrito's solid waste reduction programs, this means that the fixed costs of providing these services need to be spread out over fewer

solid waste tons and over a greater number of customers who pay less for monthly service. Figure 1 below shows the steady increase in the number of 20-gallon subscriptions and the corresponding decrease in 35- and 65-gallon subscriptions.



The proposed IWM Fees and EBS Collection and Post-Collection Rates are included in Attachment 1 (2017 Garbage, Green Waste and Recycling Rates). Adoption of the combined Fees will result in total monthly cost increases of \$1.88 for 20-gallon customers (42% of cart subscriptions), \$2.45 for 35-gallon customers (54% of cart subscriptions), and \$4.83 for 64-gallon customers (4% of cart subscriptions). Bulk commercial collection rates will increase by a little over 7%.

The primary reason for the slightly larger percentage increase in commercial rates, as compared to residential rates, is that commercial accounts continue to have the greatest potential for diversion. To this end, the State of California has recently enacted several laws (AB341 and AB1826) requiring commercial account holders with a certain threshold of waste to subscribe to both recycling and organics diversion services. Both EBS and OESD staff provide extra technical services to assist commercial customers in complying with these mandates.

STRATEGIC PLAN CONSIDERATIONS

Adoption of the combined IWM Fees and EBS Rates help fulfill the following City of El Cerrito Strategic Plan goals and objectives:

- Goal A: Deliver Exemplary Government Services by maintaining an emphasis on providing excellent customer service.
- Goal F: Foster Environmental Sustainability Citywide (Implement the City's Climate Action Plan, including reducing the amount of waste generated in El Cerrito). Specifically, the proposed rates and fees will support continued reductions for El Cerrito waste sent to landfills.

ENVIRONMENTAL CONSIDERATIONS

The services being funded by the proposed 2017 IWM Fees and EBS Collection Rates and Post-Collection Rates will continue to enable El Cerrito to reduce its environmental impact via further decreases in the number of tons of solid waste sent to landfill. Specifically, the proposed rates and fees will enable the City and EBS to maintain and improve the range of diversion services for solid waste customers.

FINANCIAL CONSIDERATIONS

Adopting the combined IWM Fees and EBS Rates as proposed supports the revenue requirements of the entities that provide solid waste services in El Cerrito, while also mitigating the effects of continued migration to smaller can sizes.

LEGAL CONSIDERATIONS

The City Attorney has reviewed the proposed actions and found that legal considerations have been addressed. The Notice of Public Hearing for the IWM and EBS fees were publicly posted on November 4, 2016 and published in the November 5 and November 10, 2016 editions of the West County Times.

Reviewed by:



Scott Hanin
City Manager

Attachments:

1. 2017 Garbage, Green Waste and Recycling Rates
2. Resolution Fixing and Setting the IWM Fees
3. Resolution Establishing Maximum Allowable Rates for Collection of Garbage and Green Waste

The City of El Cerrito

EL CERRITO
ENVIRONMENT

2017 Solid Waste Collection, Processing and Disposal Rates

Residential Rates | Single Family Homes and Multi-family Dwellings up to 4 units

Residential Solid Waste Services include weekly collection of recycling (grey), green waste (green), garbage (blue); limited free on-call collection of larger quantities from your home; free access to the regional Household Hazardous Waste (HHW) Facility, and free access to most services at the El Cerrito Recycling + Environmental Resource Center. Additional recycling carts are available at no extra cost.

Weekly Collection of Recycling, Green Waste, and Garbage						
<i>Monthly Cost based on garbage container size</i>						
Container Size	Collection	Post-Collection	IWM Fee	2017 Total Monthly Cost	2016 Total Monthly Cost	\$ Change in Monthly Cost
20 Gallon Cart	\$ 18.88	\$ 4.00	\$ 11.40	\$ 34.28	\$ 32.40	\$ 1.88
35 Gallon Cart	\$ 25.97	\$ 7.00	\$ 12.47	\$ 45.44	\$ 43.00	\$ 2.45
64 Gallon Cart	\$ 52.78	\$ 14.00	\$ 24.45	\$ 91.23	\$ 86.40	\$ 4.83
Weekly Collection of Additional Green Waste Containers (one 64 gallon container serviced weekly included in above rates)						
<i>Monthly Cost based on size of additional green waste container(s)</i>						
Container Size	Collection	Post-Collection	IWM Fee	2017 Total Monthly Cost	2016 Total Monthly Cost	\$ Change in Monthly Cost
35 Gallon Cart	\$ 27.51	Included	\$ -	\$ 27.51	\$ 27.51	\$ -
64 Gallon Cart	\$ 53.20	Included	\$ -	\$ 53.20	\$ 53.20	\$ -

Integrated Waste Management (IWM) Fee: The IWM Fee covers curbside recycling collection for El Cerrito residents and businesses and supports the daily operations of the El Cerrito Recycling Center. The Fee is set and assessed on each trash container collected by East Bay Sanitary Company, based on trash container size.

Commercial Rates | Businesses and Multi-family Dwellings over 4 units

Commercial Solid Waste Services include collection of recycling (grey), green waste (green), garbage (blue) and most services at the El Cerrito Recycling + Environmental Resource Center. Additional recycling carts are available at no extra cost.

Once Weekly Collection of Garbage						
<i>Monthly Cost based on garbage container size</i>						
Container Size	Collection	Post-Collection	IWM Fee	2017 Total Monthly Cost	2016 Total Monthly Cost	\$ Change in Monthly Cost
20 Gallon Cart	\$ 18.88	\$ 4.00	\$ 11.40	\$ 34.28	\$ 32.40	\$ 1.88
35 Gallon Cart	\$ 25.97	\$ 7.00	\$ 12.47	\$ 45.44	\$ 43.00	\$ 2.45
64 Gallon Cart	\$ 52.78	\$ 14.00	\$ 24.45	\$ 91.23	\$ 86.40	\$ 4.83
One Cubic Yard	\$ 180.31	\$ 40.52	\$ 87.27	\$ 308.10	\$ 287.87	\$ 20.24
Two Cubic Yards	\$ 344.40	\$ 81.03	\$ 174.55	\$ 599.98	\$ 559.51	\$ 40.47
Multiple Weekly Collections of Garbage						
<i>Monthly Cost based on garbage container size and number of pickups per week</i>						
Container Size	Pickups per week					
	1	2	3	4	5	6
20 Gallon Cart	\$ 34.28	\$ 68.56	\$ 102.84	\$ 137.12	\$ 171.40	\$ 205.68
35 Gallon Cart	\$ 45.44	\$ 90.88	\$ 136.32	\$ 181.76	\$ 227.20	\$ 272.64
64 Gallon Cart	\$ 91.23	\$ 182.46	\$ 273.69	\$ 364.92	\$ 456.15	\$ 547.38
One Cubic Yard	\$ 308.10	\$ 584.09	\$ 860.08	\$ 1,136.07	\$ 1,412.06	\$ 1,688.05
Two Cubic Yards	\$ 599.98	\$ 1,151.96	\$ 1,703.94	\$ 2,255.92	\$ 2,807.90	\$ 3,359.88
Green Waste Collection						
<i>Monthly Cost based on green waste container size and number of pickups per week</i>						
Container Size	Pickups per week					
	1	2	3	4	5	
35 Gallon Cart	\$ 27.51	\$ 55.02	\$ 82.53	\$ 110.04	\$ 137.55	
64 Gallon Cart	\$ 53.20	\$ 106.40	\$ 159.60	\$ 212.80	\$ 266.00	
On-Call Bulk Collection (Debris Boxes and Compactors)						
<i>Rates listed are per pickup, and are not inclusive of all charges for these services. Please call East Bay Sanitary for complete rates and fees at 510-237-4321.</i>						
Container Type	Collection	Post-Collection	IWM Fee	Total		
Compacted Rates (per yard)	\$ 68.40	\$ 18.70	\$ 20.14	\$ 107.24		
Roll-off (Debris Box)	Market Rate (per load)	Market Rate (per ton)	\$75.00 (per load)	Varies - Call East Bay Sanitary at 510-237-4321 for price quote.		

Integrated Waste Management (IWM) Fee: The IWM Fee covers curbside recycling collection for El Cerrito residents and businesses and supports the daily operations of the El Cerrito Recycling Center. The Fee is set and assessed on each trash container collected by East Bay Sanitary Company, based on trash container size.

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO FIXING AND SETTING THE INTEGRATED WASTE MANAGEMENT FEES EFFECTIVE JANUARY 1, 2017

WHEREAS, the City of El Cerrito has established Integrated Waste Management Fees (IWM Fees) for Integrated Waste Management Services provided by the Department of Public Works, Operations + Environmental Services Division (OESD), including operation of the El Cerrito Recycling + Environmental Resource Center, curbside collection of recyclable materials, and other waste collection, reduction, recycling and environmental programs; and

WHEREAS, the City Council of the City of El Cerrito sets and charges the IWM Fees, and the Fees are collected by East Bay Sanitary Company as part of the garbage bills and transferred in whole to the City of El Cerrito's Integrated Waste Management fund; and

WHEREAS, the City has reviewed and considered financial information as a part of the regular budget process to determine whether increases to IWM Fee revenues are warranted and justified; and

WHEREAS, the City Council intends to adopt IWM Fees to be effective January 1, 2017, thus keeping the OESD's Integrated Waste Management functions as an on-going concern.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of El Cerrito that the rates for each IWM service shall be as follows, effective January 1, 2017:

Garbage Container Size	IWM Fee
20 Gallon Cart (per mo.)	\$ 11.40
35 Gallon Cart (per mo.)	12.47
64 Gallon Cart (per mo.)	24.45
One Cubic Yard (per mo.)	87.27
Two Cubic Yards (per mo.)	174.55
35 Gallon Green Waste (per mo.)	0.00
64 Gallon Green Waste (per mo.)	0.00
Compacted (per yard)	20.14
Roll-off (per load)	75.00

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

Agenda Item No. 6
Attachment 2

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

RESOLUTION NO. 2016-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ESTABLISHING
MAXIMUM ALLOWABLE RATES FOR THE COLLECTION OF GARBAGE AND GREEN
WASTE EFFECTIVE JANUARY 1, 2017**

WHEREAS, the City of El Cerrito and East Bay Sanitary Company ("the Company") have entered into that certain Franchise Agreement dated September 2, 1997 (as amended, the "Franchise Agreement"); and

WHEREAS, the Company has submitted a request for rate increases to be effective January 1, 2017, and that such increases were calculated pursuant to the methodology established in the Fifth Amendment to the Franchise Agreement, dated December 14, 2012; and

WHEREAS, the rate adjustments submitted to the City have been reviewed for accuracy, consistency with the adjustment methodology, and reasonableness.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that the maximum monthly rates that East Bay Sanitary Company may charge, effective January 1, 2017, are as follows:

Garbage Container Size	EBS Collection Rate (\$)	Post-Collection Rate (\$)
20 Gallon Cart	18.88	4.00
35 Gallon Cart	25.97	7.00
64 Gallon Cart	52.78	14.00
One Cubic Yard	180.31	40.52
Two Cubic Yards	344.40	81.03
35 Gallon Green Waste	27.51	0.00
64 Gallon Green Waste	53.20	0.00
Compacted Rates (per yard)	68.40	18.70
Roll-off (per ton)	NA – Market Rate	NA – Market Rate

BE IT FURTHER RESOLVED that this Resolution shall become effective immediately upon passage and adoption.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:
NOES: COUNCILMEMBERS:
ABSTAIN: COUNCILMEMBERS:
ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November xx, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



AGENDA BILL

Agenda Item No. 7(A)

Date: November 15, 2016
To: El Cerrito City Council
From: Suzanne Iarla, Assistant to the City Manager
Subject: Recommendations by the Centennial Celebration Task Force for
Centennial Celebration Events and Activities

ACTION REQUESTED

Adopt a resolution making a mid-year budget adjustment and appropriating \$8,000 in FY2016-2017 and appropriating \$23,000 in FY2017-2018 to carry out the events and activities proposed by the Centennial Celebration Task Force to celebrate El Cerrito's 100 year history as an incorporated city.

BACKGROUND

In the City's Strategic Plan (adopted in 2013 and updated in 2015), the City Council identified the objective to "Develop plans for the City's 100th year anniversary" as a strategy to help achieve the City's goal to "Deepen a sense of place and community identity."

In 2017, the City will celebrate its 100th anniversary as a city.

In order to gather, prioritize and articulate ideas on how best to mark and celebrate El Cerrito's proud history, the City Council established a Centennial Celebration Task Force in February 2016. The Task Force is comprised of members:

- Joan Carpenter
- Ruth Cazden
- Donna Houser, Vice-Chair
- Lisa Martinengo
- Patricia Shaw
- Joann Steck-Bayat, Chair
- Bruce Yow

The Task Force has met regularly since that time, researched celebrations held by other communities, and solicited local groups and organizations to get involved. The Centennial Celebration Council subcommittee comprised of Mayor Lyman and Mayor Pro-Tem Abelson has been kept informed of the progress of the Task Force.

ANALYSIS

The Centennial Celebration Planning Task Force recommendation includes four elements:

1. Host a community celebration on Friday September 15 through Sunday September 17 2017 to include:
 - a. A free community event on Friday at Cerrito Vista Park with entertainment such as music and/or a film
 - b. Parade and birthday luncheon on Saturday at Cerrito Vista Park
 - c. Ticketed Gala dinner on Sunday evening at Mira Vista Country Club
2. Encourage City departments and advisory bodies to incorporate a centennial theme or element into annual City events in 2017; promote events on website and city publications.
3. Encourage community groups and organizations to host centennial-related activities and events during 2017; promote events on website and city publications.
4. Install a time capsule inside City Hall

To carry out these activities, the Task Force is requesting an appropriation of \$31,000 as detailed in Attachment 1.

Celebration Weekend:

Although the City incorporated on August 23, 1917, the Task Force is recommending the large celebration to be held in mid-September to allow for participation by local schools.

The weekend would start with a free community event on Friday September 15 at Cerrito Vista Park hosted by the City with entertainment such as music and/or poetry and/or a film. This would be an admission-free event open to the whole community.

Estimated attendance at the Friday night event is 500 people. Estimated budget is \$4,000 (including rental of an entertainment stage, film projection equipment, and AV equipment that may also be used the next day.)

On Saturday morning, the City would host a parade starting at the Del Norte BART Station. The parade is envisioned to include:

- Community groups, schools, churches, etc.
- "Pioneers" (community members 80+ years of age who lived in area for 50+ years)
- Former Mayors
- City Council, City Commissions, Police & Fire Dept., Stege Sanitary District, East Bay Sanitary Company
- Individuals and families
- Possibly a Wells Fargo Stage coach and some classic cars

The parade would end at Cerrito Vista Park. Groups would be introduced by the event Emcee as they enter the park.

When the parade concludes, a light lunch and birthday cupcakes would be served. There will also be a chalk art activity and live musical entertainment.

Estimated attendance on Saturday is 1,000 people. Estimated budget is \$4,000 for food booth rental, light lunch and cupcakes for up to 1,000 people, and the band.

On Sunday, the City would host a gala dinner at Mira Vista Country Club. Tickets would be approximately \$50 per person plus no-host bar. The Country Club has generously offered their facility free of charge. There would be a presentation, introduction of VIPs and a band.

Estimated attendance at the gala is 250 people. Estimated budget is \$5,000 for the band, decorations, coffee, and programs.

Annual City Events with a Centennial Theme:

The City hosts many annual events, most of which could include a centennial theme or element for 2017. Annual events would still be carried out by the department responsible for that event, but the events would be promoted as part of the centennial celebration.

For example, the annual Martin Luther King Jr. Parade and Rally will include a special mention of the centennial during the rally, and will be an opportunity to distribute Centennial celebration information (such as a calendar of preliminary events).

Because these events would still be carried out by the various departments, there is no request for additional funds for these events.

Community-Hosted Activities and Events:

Many local groups and organizations responded to the Task Force's invitation to get involved. See attachment 2 for a list of events and activities proposed by groups such as the El Cerrito Historical Society, El Cerrito Trail Trekkers, Friends of the Cerrito Theater, Contra Costa Civic Theater, El Cerrito Branch of the NAACP, St. Peter CME Church, Unitarian Universalist Church of Berkeley, Sycamore congregational Church UCC, the El Cerrito Library, the El Cerrito Art Association, and the Shadi Holiday Display Committee.

The City would help to promote the centennial-related events. A few groups requested additional support such as the use of a City venue or a Community Use Day at Rialto Cinemas Cerrito.

Time Capsule:

The Task Force recommends the City install an above-ground time capsule - with items contributed by both the City and the community. The preferred location is in the vestibule at City Hall. One option being looked into would be to purchase a time capsule and build an elegant cabinet or casing around the receptacle that is aesthetically pleasing and might include an artistic element.

The City would hold a reception at City Hall on Wednesday, August 23, 2017 to “close” the time capsule.

The estimated budget for the time capsule is \$5,000.

Coordination and Publicity:

There are some additional specific expenses that have been identified by the Task Force:

- \$5,000 for advertising
- \$4,000 for promotional items including flyers, programs and the passport activity
- \$1,000 for webpage design and domain name for special centennial webpage
- \$1,000 to hire photographer for parade & gala events
- \$1,000 to re-print portraits of El Cerrito mayors (to use in parade and display at other events)
- \$1,000 for prizes for the year-long “passport” activity

The Task Force recommends using the centennial logo designed (pro bono by Scott Houser) for publicity related to the Centennial. The design is included on the budget summary sheet Attachment 1).

The Task Force intends to solicit sponsorship or donations from local businesses which may offset (reduce) some costs.

Staff Time:

The City Manager’s Office would continue to staff the Task Force and will be the lead coordinator for the Task Force-led events, with assistance from other involved departments. Staff time related to planning the events and activities would be absorbed within each Department’s budget.

There will be some additional costs for hourly staff (from Recreation Department, Maintenance Division, etc.) to attend/help carry out a number of events. These expenses can be addressed during the regular budget process for FY2017-2018. The Task Force also intends solicit volunteers to help with various tasks and events.

STRATEGIC PLAN CONSIDERATIONS

Celebrating the centennial helps to fulfill a specific strategy identified in the Strategic Plan towards achieving the goal to "Deepen a sense of place and community identity."

FINANCIAL CONSIDERATIONS

Attachment 1 details the request from the Task Force in order to carry out the proposed Centennial activities next year. Staff suggests the Council considers making a mid-year budget adjustment and appropriate \$8,000 in the current fiscal year 2016-2017 and appropriate \$23,000 in fiscal year 2017-2018 to carry out the centennial celebration events and activities proposed by the Task Force.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution
2. Budget request from the Task Force
3. DRAFT List of Centennial Events in 2017 (City and community-led events)

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO ACCEPTING THE RECOMMENDATIONS OF THE CENTENNIAL CELEBRATION PLANNING TASK FORCE; DIRECTING THE TASK FORCE TO CARRY OUT THEIR PROPOSAL; AND APPROPRIATING \$8,000 IN FISCAL YEAR 2016-2017 AND \$23,000 IN FISCAL YEAR 2017-2018 TO CARRY OUT EVENTS AND ACTIVITIES TO CELEBRATE EL CERRITO'S 100 YEAR HISTORY AS AN INCORPORATED CITY

WHEREAS, in February 2016, the City Council established an ad hoc advisory body, the Centennial Celebration Planning Task Force help to develop plans for celebrating the City's 100th year anniversary in 2017; and

WHEREAS, the Task Force has met regularly since that time, researched celebrations held by other communities, and solicited local groups and organizations to get involved; and

WHEREAS, the Task Force recommends that the City host a community celebration on Friday September 15 through Sunday September 17, 2017 to include a family-friendly event on Friday evening at Cerrito Vista Park, a parade and birthday luncheon on Saturday, and a gala dinner on Sunday evening at Mira Vista Country Club; and

WHEREAS, the Task Force recommends City departments and advisory bodies should try to incorporate a centennial theme or element into their events held in 2017; and

WHEREAS, the Task Force recommends the City invite community groups and organizations to host centennial-related activities and events during 2017 that would be promoted on the City's website and in City publications; and

WHEREAS, the Task Force Task Force is requesting an appropriation of \$31,000 to carry out these events and activities.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of El Cerrito that it hereby directs the Centennial Celebration Planning Task Force to carry out the proposed events and activities in order to celebrate El Cerrito's 100 year history as an incorporated city; and appropriates \$8,000 in Fiscal year 2016-2017 and \$23,000 in Fiscal year 2017-2018 towards these activities.

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor



**BREAKDOWN OF BUDGET REQUEST
FOR 2017 CENTENNIAL CELEBRATION EVENTS
PROPOSED BY THE TASK FORCE**

CELEBRATION WEEKEND (Sept 15-18, 2017)	
Friday night movie in the park (including stage & AV for Fri & Sat)	\$4,000
Mayoral portrait signs (for parade and to be displayed at other events)	\$1,000
Lunch and chalk art following Centennial parade	\$4,000
Gala dinner at the Mira Vista Country Club (ticketed event) (Cost include, band, wines, food, decorations)	\$5,000
Photographer at parade and Gala	\$1,000
TIME CAPSULE	
Time capsule at City Hall	\$5,000
PUBLICITY/PROMOTION	
Advertising and promotion, printing flyers, programs	\$6,000
Webpage (including domain name & header banner design)	\$1,000
Promotional items for giveaways	\$3,000
Prizes for Passport Activity winners	\$1,000
TOTAL REQUESTED in FY2016-2017 and FY2017-2018	\$31,000

Proposed City events and community events to celebrate El Cerrito's Centennial

City of El Cerrito Recreation Department

Get Active: 100 Days of Fitness (*Health Initiative*)

January 1- December 19

Various

•

City of El Cerrito with St. Peter Christian Methodist Episcopal Church, NAACP,
West Contra Costa County Unified School District

Dr. Martin Luther King Jr. Parade & Rally (*Community Event*)

January 16

Rally at ECHS: 540 Ashbury Ave.

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City of El Cerrito Recreation Department

Centennial Crab Feed (*Community Event*)

January 21

El Cerrito Community Center

▲

El Cerrito Historical Society with El Cerrito Trail Trekkers &
Friends of Five Creeks

Cerrito Creekside History and Natural History Stroll (*Walk*)

January 21

Creekside Park: 3499 Santa Clara Ave.

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El Cerrito Historical Society

El Cerrito: City of Sin to City of Homes (*Talk with David Weinstein*)

January 25

El Cerrito Community Center

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City of El Cerrito Recreation Department

Centennial Family Sweetheart Dance (*Family Event*)

February 4

El Cerrito Community Center

▲

El Cerrito Historical Society

El Cerrito: A Mid-Century Modern Mecca (*Talk with David Thorne & David Weinstein*)

February 8

Location to be announced

•

EC Library

The El Cerrito Library: Serving the Community for over 100 Years

(*Talk with Tom Panas*)

February 9

Library 6510 Stockton

•

Proposed City events and community events to celebrate El Cerrito's Centennial

El Cerrito Chamber of Commerce with El Cerrito Historical Society

Movers and Shakers: Business People Who Helped El Cerrito Prosper

(Talk/Presentation)

February 22

Veterans Memorial Hall: 6401 Stockton Ave.

•

El Cerrito Trail Trekkers

Motorcycle Hill Work Party and Historical Discussion

February 25

Blake St and Ganges Ave.

•

City of El Cerrito RERC

Recycling Center Tour

TBD

7501 Schmidt Lane

•

Stege Sanitary District

Open House *(Tour)*

TBD

7500 Schmidt Lane

•

Fred T Korematsu Middle School

Tour & Concert

March 15

7125 Donal St.

•

El Cerrito Historical Society

El Cerrito's Gambling Past *(Talk with Chris Treadway)*

March 18

Bayview Eagles Hall: 3223 Carlson Blvd.

•

El Cerrito Historical Society with El Cerrito Trail Trekkers

Architectural Walking Tour: The Flatlands *(Walk)*

March 18

Rodini House: 1715 Elm St.

•

Lunafest East Bay

Lunafest Film Festival *(Arts)*

March 18

ECHS: 540 Ashbury Ave.

▲

Proposed City events and community events to celebrate El Cerrito's Centennial

City of El Cerrito Recreation Department

Centennial Spring Egg Hunt (*Family Event*)

April 15

Arlington Park

•

El Cerrito Historical Society

El Cerrito High Athletics: A History of Victory (*Talk with Larry Quirico*)

April 19

El Cerrito Community Center

■

•

City of El Cerrito Recreation Department

Centennial Dynamo Golf Scramble (*sports*)

April 24

Mira Vista Country Club: 7901 Cutting Blvd

▲

El Cerrito Library

Library Tour (*Open House*)

April 29

6501 Stockton

•

County Supervisor Gioia

Contra Costa County and the City of El Cerrito Standing Together for Affordable Housing (*Open House*)

May 11

11780 San Pablo Ave Ste D

•

City of El Cerrito Police Department

Police Station Tour

May 20

10090 San Pablo Ave

•

City of El Cerrito Fire Department

Fire Station Open House (*Open House*)

May 20

Station #71 at 10900 San Pablo Ave Station #72 at 1520 Arlington Blvd

•

El Cerrito Trail Trekkers with Environmental Quality Committee, Friends of Five Creeks, ECHS Mt Bike Team, National Park Service

Annual Hillside Festival (*Community Event*)

May 21

Hillside Natural Area

•

Proposed City events and community events to celebrate El Cerrito's Centennial

Cameron School

Open House *(and Ice Cream Social)*

May 23

7140 Gladys Ave

•

City of El Cerrito Recreation Department

Centennial Community Water Safety Day *(sports)*

TBD - June

El Cerrito Community Center

▲

El Cerrito Historical Society with El Cerrito Trail Trekkers

When Gamblers Ran Our Town *(Walking Tour)*

June 3

Bayview Eagles Hall: 3223 Carlson Blvd.

•

City of El Cerrito Recreation Department

Centennial Pickleball Tournament *(Sports)*

June 10

ECHS: 540 Ashbury Ave.

El Cerrito Trail Trekkers

It's Our Fault *(Hike)*

June 17

8500 Madera Dr.

•

El Cerrito Historical Society

Victor Ramon Castro and His Family at the Castro Adobe

(with Joanne Rubio talk focused on the period 1839-1928)

June 22

Location TBD

■

•

City of El Cerrito Recreation Department

Centennial Fourth of July Festival

July 3 & 4

Cerrito Vista Park: 950 Pomona Ave

•

El Cerrito Historical Society with EQC

Where Recycling is a Pleasure: History of the El Cerrito Recycling Center

(Talk with Dave Weinstein)

July 19

El Cerrito Recycling Center

■

•

Proposed City events and community events to celebrate El Cerrito's Centennial

City of El Cerrito

Time Capsule Presentation and Placement *(Ceremony)*

August 23

City Hall

•

NAACP with St. Peter CME

African American Cultural Event *(Community Event)*

August 26

El Cerrito Community Center

■

•

El Cerrito Chamber of Commerce

Open House *(Open House)*

TBD - September

10296 San Pablo Ave

•

Friends of the Cerrito Theater

Cerrito Classics Centennial Celebration *(Talk with Joanne Taylor)*

September 2

Rialto Cinemas Cerrito: 10070 San Pablo Ave

■

▲

Contra Costa Civic Theater

Stage reading of the 1917 play, "Hamilton" *(Arts)*

September 9 & 10

950 Pomona Ave

▲

City of El Cerrito

Family Friday Night in the Park *(Arts)*

September 15

Cerrito Vista Park: 950 Pomona Ave

•

City of El Cerrito

Centennial Parade *(and lunch)*

September 16

Parade ends at Cerrito Vista Park

•

City of El Cerrito

Centennial Gala *(Community Event)*

September 17

Mira Vista Country Club: 7901 Cutting Blvd

▲

Proposed City events and community events to celebrate El Cerrito's Centennial

Sycamore Congregational Church UCC

Sycamore Service and Annual Bazaar (*Community Event*)

September 17

1111 Navellier St.

•

City of El Cerrito Arts and Culture Commission

Arts Month Celebration (*Arts*)

TBD - October

TBA

•

City of El Cerrito Recreation Department

Centennial Senior Resource Day

October 4

El Cerrito Community Center

•

El Cerrito Art Assoc.

Annual Art Show with special centennial theme

October 6 to 8

El Cerrito Community Center

•

El Cerrito Historical Society

Remembering Our Local Japanese Heritage (*Talk with Tom Panas*)

October 11

El Cerrito Community Center

■

•

El Cerrito Trail Trekkers with Environmental Quality Committee, El Cerrito Historical Society, Friends of Five Creeks

History of Hillside Natural Area (*Walk & Talk with David Weinstein, Mark Miner & Ralph Boniello*)

October 21

Hillside Natural Area

•

City of El Cerrito Recreation Department

Centennial Halloween Carnival & Haunted House (*Family Event*)

October 28

El Cerrito Community Center

▲

El Cerrito Historical Society with El Cerrito Trail Trekkers

Architectural Walking Tour: The Hills (*Walk and Talk with David Weinstein*)

November 4

Arlington Park

■

•

Proposed City events and community events to celebrate El Cerrito's Centennial

Shadi Holiday Display Committee

Sundar Shadi's Gifts (*Film*)

November 4

Rialto Cinemas Cerrito: 10070 San Pablo Ave ■



City of El Cerrito Recreation Department

Centennial Holiday Pancake Breakfast

December 9

El Cerrito Community Center



Unitarian Universalist Church of Berkeley

Sing-Along Messiah (*Sing Along*)

December 17

1 Lawson Rd Kensington



City of El Cerrito

Closing Centennial Program (*Community Event*)

December 19

City Hall



El Cerrito Historical Society

Sundar Shadi History Room Open House (*Open House*)

TBD

City Hall ■





AGENDA BILL

Agenda Item No. 7(B)

Date: November 15, 2016
To: El Cerrito City Council
From: Melanie Mintz, Director of Community Development
Subject: Exclusive Negotiating Rights Agreement With Mona and Kanti Patel for 1718 Eastshore Boulevard

ACTION REQUESTED

Adopt a resolution authorizing execution of an Exclusive Negotiating Rights Agreement with Mona and Kanti Patel for the disposition of 1718 Eastshore Boulevard.

BACKGROUND

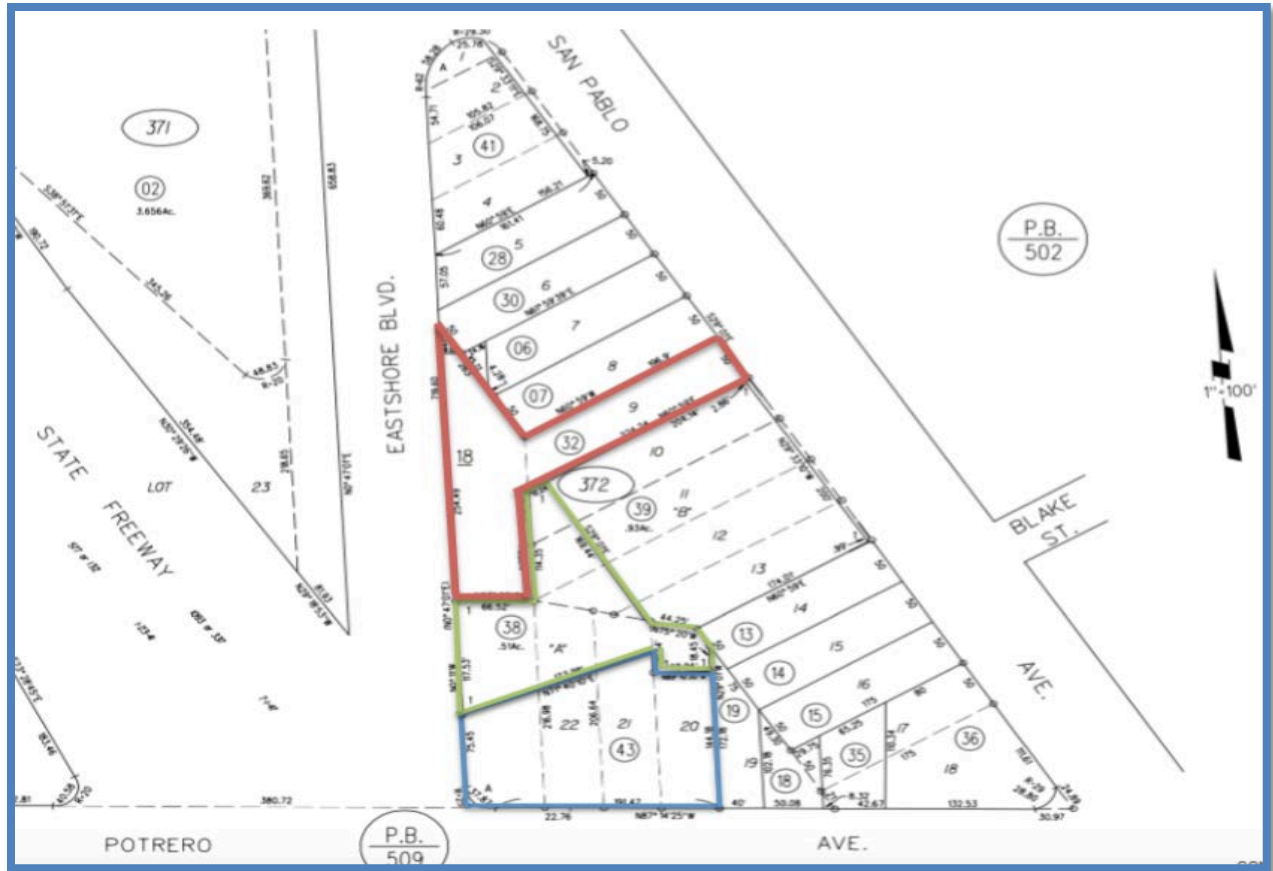
The former El Cerrito Redevelopment Agency owned the property located at 1718 Eastshore Boulevard (APN 513-372-032 – see Figure 1 parcel map, red lined parcel). The former Redevelopment Agency acquired the property in 1990 to assist in the redevelopment of the Del Norte area consistent with the goals and objectives of the El Cerrito Redevelopment Plan, which included the alleviation of blighting conditions and the stimulation of development. As a result of dissolution of the Redevelopment Agency, and in accordance with Health and Safety Code section 34191.5, the Successor Agency to the El Cerrito Redevelopment Agency prepared a Long Range Property Management Plan (LRPMP), which was approved by the Oversight Board to the Successor Agency and the State Department of Finance. The LRPMP designates the property to be transferred to the City for future development. Under the redevelopment dissolution laws, the City has the obligation to sell the property and distribute the sales proceeds to the various taxing entities that serve the City.

Mona and Kanti Patel (Proposed Developer) own the properties adjacent to the City parcel (see Figure 1 parcel map, green and blue parcels), and previously developed, and now operate, the Mira Vista hotel on one of the parcels (blue parcel #43). The proposed developer desires to expand its existing hotel operations by constructing a new hotel development on the Eastshore property, combined with the vacant property (green parcel #38), to be operated as a business hotel by a national hotel chain operator. Development of a hotel on the combined property would be consistent with the goals and objectives of the Redevelopment Plan and the San Pablo Avenue Specific Plan and would bring both an amenity and revenue to the City.

Completion of the new hotel development will assist in ameliorating blighting influences and serve as a catalyst for economic development in the former redevelopment project area, and will provide benefits to the multiple taxing entities in the form of increased property taxes. The purpose of the recommended Exclusive Negotiating Rights Agreement (ENRA) is to establish procedures and standards for the negotiation by the City and the Developer of a purchase and sale agreement (PSA) including achievement

of certain predevelopment tasks to determine the feasibility of the acquisitive development of the property.

Figure 1 – Parcel Map of Patel & City Parcels



ANALYSIS

Terms

The attached ENRA contains the following major provisions:

- The term of the agreement is 120 days
- Developer will make a good faith deposit of \$15,000 to the City to cover appraisal and consultant costs incurred to complete the negotiations
- City will appraise the fair market value of the city property to establish a gross sale value, at a cost not to exceed \$8,000
- Developer will prepare and submit preliminary concept plans for the development
- Developer will conduct an economic market/feasibility study to determine viability of a hotel

- Developer will prepare and submit a schedule of performance for obtaining entitlements, obtaining financing for the hotel, and a final operating agreement with the hotel brand
- Developer will obtain a letter of intent from a national business hotel company be the hotel brand (within 90 days)
- Developer will conduct physical inspections of the property conditions including soils studies
- After completion of the appraisal, developer will have 15 days to determine if the purchase price based on the appraisal is acceptable
- If the purchase price is not acceptable the ENRA may be terminated. If the purchase price is acceptable, City and Developer will negotiate the terms of the Purchase and Sale Agreement, which will be brought to the City Council for consideration

Owner Participation

The City is currently negotiating the sale of the nearby Mayfair parcel with a developer selected through a competitive request for proposals process. This process was utilized due to the favorable location and size of the Mayfair parcel. For the Eastshore parcel staff is recommending a different process, similar to what the prior redevelopment plan allowed, which encourages an owner of property in the project area to acquire and develop property in a non-competitive process. The reasons for this recommendation are: 1) the parcel size and shape make the parcel difficult to develop on its own; 2) the City parcel is more developable in combination with the Proposed Developer owned adjacent parcel; and 3) the Proposed Developer has previously developed and operates a successful hotel demonstrating experience with the proposed plans for the property.

Next Steps

If the City Council approves the ENRA, and the staff and the developer are able to agree on a sales price for the property, the next steps will include the following:

- Sales terms will be set forth in a Purchase and Sale Agreement (PSA) requiring City Council approval
- The City needs to enter into a Compensation Agreement with the taxing entities regarding the distribution of the net sales proceeds from the Property
- Upon approval of the Compensation Agreement escrow can close transferring ownership of the parcel to the Proposed Developer, and distribution of the sales proceeds to the taxing entities
- Developer will then start the entitlement process for City approval pursuant to the San Pablo Avenue Specific Plan
- It is worth noting that although due diligence regarding the feasibility of the project will be presented prior to entering into a PSA, the terms of the sale do not

obligate the developer to proceed. The national hotel brands require that the proposed developer holds title to the land prior to entering into an operating agreement.

STRATEGIC PLAN CONSIDERATIONS

The following goals and objectives of the Strategic Plan are addressed by this agreement:

Goal B: Achieve long-term financial sustainability

- *Maximize opportunities for existing and expanding businesses.*
- *Explore opportunities for public/private partnerships.*

Goal C: Deepen a sense of place and community identity

- *Develop a vision for underdeveloped and underutilized properties through advanced planning efforts that encourage investment and/or new development.*

In addition, the proposed agreement also implements the following policies from the Economic Development Action Plan:

Goal 3 D: Proceed with the disposition and development of former redevelopment assets

- *Negotiate purchase and sale agreements based on the development objectives of the San Pablo Avenue Specific Plan and Long Range Property Management Plan*

ENVIRONMENTAL CONSIDERATIONS

The negotiation for the sale of the parcel does not require environmental analysis under the California Environmental Quality Act (CEQA). CEQA analysis will be required at the point where the developer is seeking permit approvals for a specific development.

FINANCIAL CONSIDERATIONS

Costs to the City - There are no costs to the City for entering into the ENRA. The cost of the appraisals and consultant time (legal and economic) for analyzing the developer documents and drafting the PSA will be paid for from the developer deposit.

Revenues to the City – Revenues will consist of one time sales proceeds from sale of the property, on-going property taxes from the new development, and on-going Transit Occupancy Taxes (TOT) from the development of a hotel. The current market value of the parcel is unknown and will be determined by the appraisal. The City will receive 22% of the sales proceeds, with the remainder distributed amongst the other taxing entities. For a general reference point, sales proceeds using the current assessed value are set forth in Table I. Property tax and TOT revenues will depend on the size of the hotel development which will not be known until preliminary plans and the economic feasibility study are complete, but an estimate can be made. Table II illustrates what a

100-room hotel might produce for the on-going property tax revenues to all taxing entities, and Table III estimates on-going hotel tax (TOT) revenues to the City.

Table I –Sales Proceeds (One Time Revenues)

2015-16 Assessed Value	Other Taxing Entities Share @ 78%	City Share @ 22%
\$796,138*	\$620,998*	\$175,150*

**This is an estimate based upon current assessed value rather than the negotiated sales price.*

Table II – On-going Revenues – Property Taxes

Property Assessed Value*	Building Value**	Total Value	Property Tax @ 1%	Other Taxing Entities @ 78%	City Share @ 22%
\$796,000	\$20,000,000	\$20,796,000	\$208,000	\$162,000	\$46,000

** Utilizing current assessed value, not assessed value when reassessed*

*** 100 rooms @ \$200,000/room development cost (from developer)*

Table III – On-Going Revenues – Hotel Tax

# of Rooms	Occupancy Rate	Room Rate	Annual Revenues*	TOT Rate	City TOT Revenues
100	75%	\$160/ night	\$4,380,000	12%	\$525,000

rooms x room rate x 365 x occupancy rate. These assumptions are conservative estimates - to be confirmed by market study

Total on-going revenues to the City are estimated at approximately \$ 571,000 annually.

LEGAL CONSIDERATIONS

The resolution has been reviewed and approved by Counsel.

Reviewed by:


Scott Hanin
 City Manager

Attachments:

1. Resolution
2. Proposed Exclusive Negotiating Rights Agreement (ENRA)

RESOLUTION NO. 2016-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING EXECUTION OF AN EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT WITH MONA AND KANTI PATEL FOR THE DISPOSITION OF 1718 EASTSHORE BOULEVARD

WHEREAS, the former El Cerrito Redevelopment Agency ("Agency") acquired that certain property located at 1718 Eastshore Boulevard (APN 513-372-032) (the "Property") for the purposes of facilitating development of the Property consistent with the El Cerrito Redevelopment Plan; and

WHEREAS, the former Agency was dissolved in accordance with State law effective February 1, 2012; and

WHEREAS, the Successor Agency to the El Cerrito Redevelopment Agency ("Successor Agency"), in accordance with Health and Safety Code Section 34191.5 approved a long range property management plan ("LRPMP") dealing with the disposition of all of the former Agency owned property; and

WHEREAS, the LRPMP was approved by the Oversight Board to the Successor Agency and subsequently approved by the California Department of Finance; and

WHEREAS, the LRPMP calls for the Property to be transferred to the City for future development; and

WHEREAS, the adjacent property owner, Mona and Kanti Patel ("Developer") have expressed interest in acquiring the Property for purposes of constructing a business hotel on the Property and their adjacent property; and

WHEREAS, the disposition of the Property to the Developer for purposes of development of a business hotel would be consistent with the Redevelopment Plan and the purposes for which the former Redevelopment Agency acquired the Property and would also further the owner participation goals of the Redevelopment Plan; and

WHEREAS, the Developer has requested to enter into an Exclusive Negotiating Rights Agreement with the City to negotiate a Purchase and Sale Agreement ("PSA") for the development of the Property whereby the City would convey the Property on terms to be determined by the parties but not less than the fair market value of the property; and

WHEREAS, the City desires to enter into an Exclusive Negotiating Rights Agreement with the Developer, substantially in the form on file with the City Clerk, to seek to negotiate the terms of the PSA.

NOW THEREFORE, BE IT RESOLVED, that the City authorizes and directs the City Manager to execute the Exclusive Negotiating Rights Agreement with the Developer on behalf of the City, substantially in the form on file with the City Clerk, with such modifications as the City Manager determines appropriate to effectuate the purposes of this Resolution, such determination to be conclusively evidenced by the City Manager's execution of the Exclusive Negotiating Rights Agreement.

Agenda Item No. 7(B)

Attachment 1

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

I CERTIFY that at a regular meeting on November 15, 2016 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:
ABSTAIN:	COUNCILMEMBERS:
ABSENT:	COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on November XX, 2016.

Cheryl Morse, City Clerk

APPROVED:

Gregory B. Lyman, Mayor

**EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT
EASTSHORE BOULEVARD**

This Exclusive Negotiating Rights Agreement ("**Agreement**") is entered into as of this ____ day of _____, 2016 ("**Effective Date**"), by and between the City of El Cerrito, a municipal corporation ("**City**"), and Mona and Kanti Patel (collectively, "**Developer**"), on the basis of the following facts:

RECITALS

A. The former El Cerrito Redevelopment Agency ("**Dissolved Redevelopment Agency**") owned that certain property located at 1718 Eastshore Boulevard in El Cerrito, Contra Costa County, California (APN 513-372-032), as more fully described and mapped in the attached Exhibit A ("**Property**") prior to dissolution of the Dissolved Redevelopment Agency pursuant to California law.

B. The Dissolved Redevelopment Agency acquired the Property in order to assist in the redevelopment of the Property consistent with the goals and objective of the El Cerrito Redevelopment Plan (the "**Redevelopment Plan**"), which goals and objectives include the alleviation of blighting conditions and the stimulation of development in the Del Norte portion of the Redevelopment Project Area (the "**Project Area**").

C. The Successor Agency to the El Cerrito Redevelopment Agency ("**Successor Agency**") succeeded to the Dissolved Redevelopment Agency's rights in the Property.

D. In accordance with Health and Safety Code Section 34191.5 the Successor Agency prepared a Long Range Property Management Plan (the "**LRPMP**") which LRPMP was approved by the Oversight Board to the Successor Agency and the City's Department of Finance.

E. The LRPMP designates the Property to be transferred to the City for future development.

F. The Developer owns the properties adjacent to the Property on one of which the Developer operates a hotel. Developer desires to expand its existing hotel operations by constructing a new hotel development on the Property to be operated as a business hotel by a national hotel chain operator ("**Development**"). Development of a hotel on the Property would be consistent with the goals and objectives of the Redevelopment Plan and the San Pablo Specific Plan.

H. Completion of the Development will assist in ameliorating blighting influences in the Project Area, will serve as a catalyst for economic development in the Project Area, and will provide benefits to the taxing entities in the form of increased property taxes.

G. The purpose of this Agreement is to establish procedures and standards for the negotiation by the City and the Developer of a purchase and sale agreement (the "**PSA**") including achievement of certain predevelopment tasks to determine the feasibility of development of the Property consistent with the proposed Development. As more fully set forth

in Section 4.1, the parties acknowledge and agree that this Agreement in itself does not obligate either party to acquire or convey any property, does not grant the Developer the right to develop the Property, and does not obligate the parties to undertake any activities or costs, except for the preliminary analysis and negotiations contemplated by this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties mutually agree as follows:

ARTICLE I EXCLUSIVE NEGOTIATIONS RIGHT

Section 1.1. Good Faith Negotiations. During the Negotiating Period, the Parties shall use good faith efforts to negotiate a purchase price for the property in accordance with the procedure set forth in Article 2 and the terms of a PSA during the Negotiating Period.

Section 1.2. Negotiating Period. The negotiating period (the "**Negotiating Period**") under this Agreement shall be ninety (90) days, commencing on the Effective Date. The Developer may request to extend the Negotiating Period for up to ninety (90) days, if upon expiration of the initial Negotiating Period, Developer has met all of the requirements of Article 3 (or satisfaction of such requirements has been waived by City) or the extension is necessary in order to complete the appraisal for the Development, obtain entitlements necessary to execute the PSA, or as a result of delays unrelated to the Developer's performance of the requirements of Article 3. The City Manager shall approve the Developer's request for an extension for up to an additional ninety (90) days, provided the above conditions are met.

If the PSA has not been executed by the City and the Developer by the expiration of the Negotiating Period (as the Negotiating Period may be extended by operation of the preceding paragraph), then either party may terminate this Agreement upon ten (10) days' written notice to the other, and upon such termination, neither party shall have any further rights or obligations under this Agreement. If the PSA is executed by the City and the Developer then, upon such execution, this Agreement shall terminate, and all rights and obligations of the parties shall be as set forth in the executed PSA.

Section 1.3. Exclusive Negotiations. During the Negotiating Period (as such Negotiating Period may be extended by operation of Section 1.2), the City shall not negotiate with any person or entity, other than the Developer, regarding development of the Property, or solicit or entertain bids or proposals to do so.

Section 1.4. Good Faith Deposit. In consideration for this Agreement, the Developer will deposit with the City no later than five (5) days after the City Council approval of the execution of this Agreement, a cash deposit of Fifteen Thousand Dollars (\$15,000) ("**Good Faith Deposit**"). During the Negotiating Period, the City may (but shall not be required to) invest the Good Faith Deposit for purposes of earning interest thereon. The Good Faith Deposit is in addition to any fees the Developer may be required to pay the City of El Cerrito for processing of applications including the fees required for the preparation of CEQA documents.

The City may from time to time deduct funds from the Good Faith Deposit to pay the costs and consulting fees actually and reasonably incurred and documented by the City in connection with implementing this Agreement. The fees for the following services are anticipated to be paid through deductions from the Good Faith Deposit: appraisal of the Property by a certified appraiser or the preparation of a reuse appraisal of the Property by a real estate economist; pro forma review; and the negotiation and preparation of the proposed PSA by the City's attorneys. There shall be no deductions from the Good Faith Deposit for City staff time or overhead expenses. In the event that the Good Faith Deposit is insufficient to pay all of the costs and consulting fees actually and reasonably incurred by the City in connection with implementing this Agreement, the City shall be responsible for such costs from its own resources.

If this Agreement is terminated without execution of a PSA for any reason other than the Developer's breach of its obligations pursuant to this Agreement, then the Good Faith Deposit and any interest earned thereon shall be refunded promptly to the Developer, except that the City may retain the amount of costs and consulting fees actually and reasonably incurred and documented by the City in connection with implementing this Agreement.

If this Agreement is terminated by the City due to a breach of the Developer's obligations pursuant to this Agreement, the Good Faith Deposit and any interest earned thereon shall be retained by the City, as more fully provided in Section 3.7.

If performance of this Agreement results in execution of a PSA, the disposition of the Good Faith Deposit and any interest earned thereon shall be as set forth in the PSA.

Section 1.5. Identification of Developer Representatives. The Developer's representatives to negotiate the purchase price and the PSA with the City are _____. Communications from the City to the Developer under this Agreement shall be transmitted in accordance with the provisions of Section 3.2.

ARTICLE II PURCHASE PRICE

Section 2.1. Purchase Price Terms for Property. During the Negotiating Period the City and the Developer shall diligently take all actions necessary to agree upon the purchase price for the Property. The proposed purchase price for the Property shall be subject to confirmation and refinement pursuant to an appraisal to be obtained by the parties as set forth below. Within thirty (30) days after the Effective Date, the City and the Developer shall mutually select an appraiser and shall agree upon the appraisal instructions for such appraisal. The parties may agree to modify the appraisal instructions or engage a second appraiser, as necessary or appropriate, including based upon new information not previously available or substantial changes in circumstances. The cost of the appraisal shall be paid from the Good Faith Deposit, provided, however, the cost for the appraisal shall not exceed \$8,000. The Developer acknowledges that the City cannot sell the Property for less than either fair market value or fair reuse value.

The Developer shall have fifteen (15) days from receipt of the appraisal to determine whether to proceed with the negotiation of the PSA based on a purchase price for the Property as

determined in the appraisal. If the Developer does not provide the City with written notice within fifteen (15) days of receipt of the appraisal accepting the appraised value of the Property as the purchase price for the Property, this Agreement shall terminate, the City shall have no obligation to proceed with negotiation of a PSA and the Good Faith Deposit, minus any expenses incurred by the City prior to the termination date of this Agreement will be returned to the Developer. If the Developer delivers notice to the City within fifteen (15) days of receipt of the appraisal that the Developer accepts the appraised value of the Property as the purchase price, the Developer and the City shall proceed to negotiate the terms of the PSA.

ARTICLE III NEGOTIATION TASKS

Section 3.1. Overview. To facilitate negotiation of the PSA, the parties shall use reasonable good faith efforts to accomplish the tasks set forth in this Article 3 in a timeframe that will support negotiation and execution of a mutually acceptable PSA prior to the expiration of the Negotiating Period.

Section 3.2. Site and Conceptual Design Plans. The Developer shall, within sixty (60) days of the commencement of the Negotiating Period, submit to the City a project description, conceptual site plans, including schematic sections and elevations, for the proposed Development (the “**Plans**”). The City shall review and comment on the Plans within thirty days of receipt of the Plans. The City’s comments shall not constitute approval of the Development but rather shall serve to inform the Developer’s subsequent submissions to the City for permits and approvals for the Development.

Section 3.3. Feasibility Study. The Developer shall, within sixty (60) days of the commencement of the Negotiating Period, submit to the City a financial feasibility study for the Development showing projected development costs, sources of financing and a projected operating budget for the Development. The City shall review the financial feasibility study within fifteen (15) days of receipt and shall provide the Developer with comments. If the City determines, after reviewing the financial feasibility study submitted by the Developer that the Development is not financially feasible, the City may either terminate this Agreement or provide the Developer with the opportunity to provide a revised financial feasibility study.

Section 3.4. Schedule of Performance. Within sixty (60) days of the commencement of the Negotiating Period, the Developer shall provide the City with a proposed detailed schedule of performance for the Development which shall include, but not be limited to: the proposed or estimated dates for obtaining land use entitlements, including CEQA review, planning approvals and building permits, will serve letters from utility providers, and the date for satisfaction of all preconditions to conveyance of the Property, including obtaining financing for the Development and an agreement with a national hotel operator.

Section 3.5. Hotel Operator Letter of Intent. Within sixty (60) days of the commencement of the Negotiating Period, the Developer shall provide the City with a letter from a national business hotel operator expressing the operators intent to enter into an operating agreement with the Developer for the operation of a nationally recognized business hotel on the

Property. The receipt of a letter of intent in a form satisfactory to the City shall be a condition to the City entering into the PSA with the Developer.

Section 3.6. Due Diligence Regarding Physical Condition and Title. During the Negotiating Period, the Developer shall conduct any and all investigations it deems necessary to negotiate the terms to be contained in the PSA regarding the physical condition of the Property (including any environmental, soil/geotechnical analysis and engineering studies) and the title condition of the Property at the time of conveyance. The City acknowledges and agrees that the Developer may perform any invasive testing of the Property, provided that Developer submits a work plan for approval by the City at least five (5) business days prior to commencing such testing, which approval shall not be unreasonably withheld, conditioned or delayed. As part of the Developer's due diligence the Developer shall work with the Stege Sanitary District determine how sanitary sewer service will be provided to the Development.

Section 3.7. Reports. Unless otherwise waived by the receiving party, each party shall provide the other with copies of all reports, studies, analyses, correspondence and similar documents (but excluding detailed property appraisals and confidential or proprietary information) prepared or commissioned by each party with respect to this Agreement and the Development, promptly upon their completion.

While desiring to preserve its rights with respect to treatment of certain information on a confidential or proprietary basis, the Developer acknowledges that the City will need sufficient, detailed information about the proposed Development (including but not limited to the financial information described in Section 3.3) to make informed decisions about the content and approval of the PSA. The City will work with the Developer to maintain the confidentiality of proprietary information subject to the requirements that may be applicable to the City by the Public Records Act (Government Code Section 6250 et seq.). The Developer acknowledges that the City may share information provided by the Developer of a financial and potential proprietary nature with third party consultants and City Council members as part of the negotiation and decision making process. If this Agreement is terminated without the execution of the PSA, the City shall return to the Developer any information submitted by the Developer under this Agreement.

Section 3.8. Organizational Documents. During the Negotiating Period and prior to execution of the PSA, the Developer shall provide the City with such information and documentation as is necessary and appropriate to identify Developer's organizational structure and if the Developer intends to create a single purpose entity for the purpose of developing the Property, provide the City with the organizational documents for that entity.

Section 3.9. Costs of Land Use Entitlements, Building Permits & Preparation of the PSA. The Developer will be responsible for obtaining any land use entitlements including any required environmental review, utility will serve letters, and building permits, including paying any customary fees for such entitlements and permits, for approval of the Development, in addition to coordinating design review with City staff.

Section 3.10. Section 52201 Report. The City is obligated to comply with the requirements of Government Code Section 52201 with regards to the disposition of the Property. The City shall prepare the necessary documentation pursuant to Section 52201 of the California

Government Code to be submitted to the City Council in conjunction with the City's consideration of any PSA that is prepared under this Agreement.

Section 3.11. Progress Reports. From time to time as reasonably agreed upon by the parties, each party shall make written progress reports advising the other party on studies being made and matters being evaluated by the reporting party with respect to this Agreement and the Development.

Section 3.12. City Cooperation. The City agrees to: (a) gather and provide all available reports, studies, and documentation pertaining to the Property in the City's possession; (b) cooperate with Developer in processing all applications by Developer for any required City approvals within the City's standard processing time frames; and (c) respond promptly to requests for coordination, consultation, and scheduling additional meetings regarding the Project.

ARTICLE IV GENERAL PROVISIONS

Section 4.1. Limitation on Effect of Agreement. This Agreement shall not obligate either the City or the Developer to enter into the PSA. By execution of this Agreement, the City is not committing itself to or agreeing to undertake disposition of the Property. Execution of this Agreement by the City is merely an agreement to conduct a period of exclusive negotiations in accordance with the terms hereof, reserving for subsequent City Council approval the final discretion regarding the execution of any PSA and all proceedings and decisions in connection therewith. Any PSA resulting from negotiations pursuant to this Agreement shall become effective only if and after such PSA has been considered and approved by the City Council, following conduct of all legally required procedures, and executed by duly authorized representatives of the City and the Developer. Until and unless the PSA is signed by the Developer, approved by the City Council, and executed by the City, no agreement drafts, actions, deliverables or communications arising from the performance of this Agreement shall impose any legally binding obligation on either party to enter into or support entering into the PSA or be used as evidence of any oral or implied agreement by either party to enter into any other legally binding document.

Section 4.2. Notices. Formal notices, demands and communications between the City and the Developer shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested, or sent by express delivery or overnight courier service, to the office of the parties shown as follows, or such other address as the parties may designate in writing from time to time:

CITY: City of El Cerrito
 10890 San Pablo Avenue
 El Cerrito, CA 94530
 Attention: City Manager

DEVELOPER: Mona and Kanti Patel

Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered or the date on which delivery was refused.

Section 4.3. Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed against any portion of the Property with respect to this Agreement or any dispute or act arising from it.

Section 4.4. Right of Entry.

(a) The City shall grant the Developer the right to enter onto the Property, for purposes of conducting investigations to further the objectives of this Agreement. In connection with such entry and investigation, the Developer shall:

- (1) give the City reasonable advance notice (at least five (5) days for invasive testing and at least two (2) business days for all other purposes);
- (2) repair and restore any damage it may cause;
- (3) deliver to the City, within ten (10) days of receipt thereof, a complete copy of any investigation, test, report or study which the Developer conducts, or causes to be conducted, with respect to the Property via the method described in Section 4.2 (except confidential or proprietary information);
- (4) indemnify, defend and hold the City and its directors, officers, employees and agents harmless from any and all claims, liabilities, damages, losses, expenses, costs and fees (including attorneys' fees and costs) to the extent arising out of the Developer's entry upon the applicable parcel or the investigation(s) and test(s) which the Developer may conduct; provided, however, that this indemnity shall not apply to matters to the extent arising from the results of the Developer's investigations, tests and inspections (including the discovery of existing environmental conditions on the Property), or due to the negligence or willful misconduct of the City or its directors, officers, employees, or agents; and
- (5) prior to entry, cause the City to be named as an additional insured on a Commercial General Liability insurance with limits not less than Two Million Dollars (\$2,000,000) each occurrence combined single limit for Bodily Injury and Property Damage, including coverage for Contractual Liability, Personal Injury, Broadform Property Damage, Products and Completed Operations. The required insurance shall be provided under an occurrence form by an insurer authorized and licensed to provide such insurance in the State of California, and the Developer shall maintain such coverage for not less than two (2) years after the expiration of this Agreement.

Section 4.5. Costs and Expenses. Except for the deposit set forth in Section 1.4 above, each party shall be responsible for its own costs and expenses in connection with any activities

and negotiations undertaken in connection with this Agreement, and the performance of each party's obligations under this Agreement.

Section 4.6. No Commissions. Neither party shall be liable for any real estate commissions or brokerage fees that may arise from this Agreement or any PSA resulting from this Agreement. The parties represent and warrant that they have not engaged any brokers, agents or finders in connection with this transaction. The Developer shall defend and hold the City harmless from any claims by any broker, agent or finder retained by the Developer. The City shall defend and hold the Developer harmless from any claims by any broker, agent or finder retained by the City.

Section 4.7. Termination. Developer shall have the right to terminate this Agreement upon ten (10) days written notice to City if Developer, for any reason, elects not to move forward with the Development.

Section 4.8. Defaults and Remedies.

(a) Default. The following events shall constitute a default under this Agreement:

(1) failure of the Developer to submit to the City any of the documents required pursuant to Article 3, subject to Force Majeure.

(2) failure by either party to negotiate in good faith as provided in this Agreement.

In the event any of the above occurs, the non-defaulting party shall give written notice of a default to the defaulting party, specifying the nature of the default and the required action to cure the default. If a default remains uncured ten (10) days after receipt by the defaulting party of such notice (subject to Force Majeure), the non-defaulting party may exercise the remedies set forth in subsection (b).

(b) Remedies. In the event of an uncured default by a party, the non-defaulting party shall have, as its sole and exclusive remedy, the right to terminate this Agreement. Following such termination, neither party shall have any further right, remedy or obligation under this Agreement, except as set forth in Sections 4.3, 4.4 and 4.6.

Section 4.9. Force Majeure. For the purpose of this Agreement, neither Developer nor City (the "**Delayed Party**," as applicable) will be considered in breach of or default in any obligation or satisfaction of a condition to an obligation of the other party in the event of Force Majeure, and the time fixed for performance of any such obligation or satisfaction of conditions shall be extended by a period of time equal to the duration of the Force Majeure event, provided, the Delayed Party provides written notice to the other party of the Force Majeure event within seven (7) days of obtaining knowledge of such event and its election to invoke a Force Majeure delay. For purposes hereof, "**Force Majeure**" means events beyond the Delayed Party's reasonable control that prevent the action that is being delayed, including: acts of nature or of the public enemy; war; acts of the government; fires; floods; tidal waves; epidemics; quarantine

restrictions; freight embargoes; earthquakes; unusually severe weather; strikes or other substantial interruption of work because of labor disputes. Notwithstanding anything set forth herein, in no event shall any Force Majeure delay continue for longer than two hundred forty (240) days, after which either party may terminate this Agreement by providing written notice to the other party.

Section 4.10. Attorneys' Fees. The prevailing party in any action to enforce this Agreement shall be entitled to recover attorneys' fees and costs from the other party.

Section 4.11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 4.12. Entire Agreement. This Agreement constitutes the entire agreement of the parties regarding the subject matters of this Agreement.

Section 4.13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same agreement.

Section 4.14. Assignment. Neither party shall transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of the other party, which consent shall be granted or withheld in the other party's good faith discretion, and any such attempted transfer or assignment without the prior written consent of City shall be void.

Section 4.15. No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and the Developer and no other person shall have any right of action under or by reason of this Agreement.

Section 4.16. Actions By The City. Whenever this Agreement calls for or permits the approval, consent, authorization or waiver of the City, the approval, consent, authorization, or waiver of the City Manager shall constitute the approval, consent, authorization or waiver of the City without further action of the City Council.

IN WITNESS WHEREOF, this Agreement has been executed, in triplicate, by the parties on the date first above written.

DEVELOPER:

By: _____

Its: _____

By: _____

Its: _____

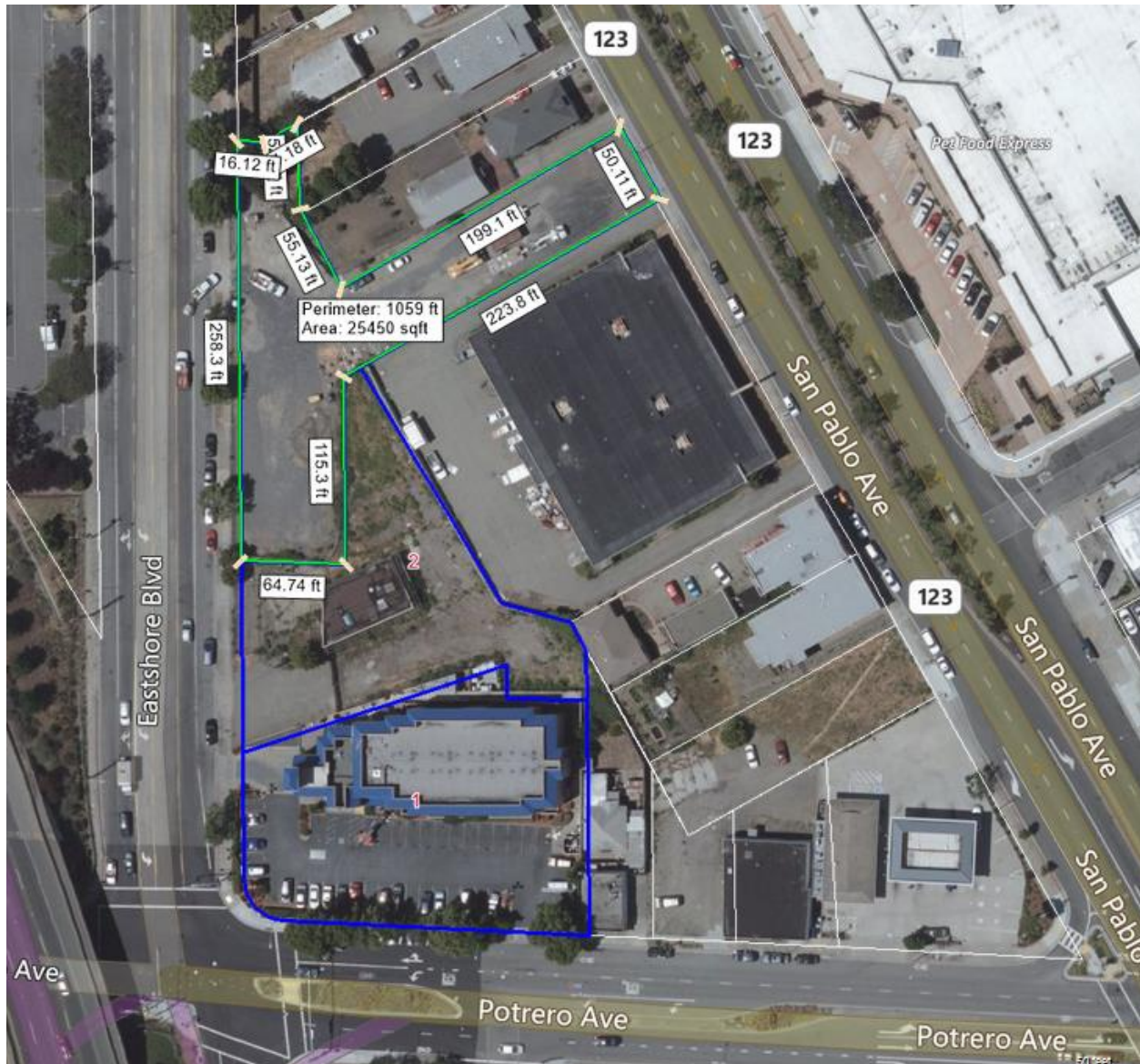
CITY:

City of El Cerrito, a California municipal
corporation

By: _____

Scott Hanin
City Manager

EXHIBIT A
PROPERTY LEGAL DESCRIPTION AND MAP



- Former Redevelopment Agency Owned Property (1718 Eastshore Boulevard)
- Proposed Developer Owned Properties

EXHIBIT A

PARCEL THREE:

Lot 9, in Block 18, as shown on the Amended Map of Alto Punta, filed April 22, 1905, in Book D of Maps, Page 90, Contra Costa County Records.

PARCEL FOUR:

Portion of Lot 23, in Block 18, as shown on the Amended Map of Alta Punta, filed April 22, 1905, in Book D of Maps, Page 90, Contra Costa County Records, described as follows:

Beginning on the East line of said Lot 23, distant thereon North 216.98 feet from the Southeast corner thereof, said point of beginning being at the Northeast corner of the Parcel of land described in the Deed from E. T. Grove, et ux, to Sam Sweetanos, et ux, dated September 8, 1937, recorded September 14, 1937, in Book 439 of Official Records, Page 493; thence from said point of beginning North along the East line of said Lot 23, 114.35 feet to the most Southerly corner of Lot 9 in said Block 18; thence South 60° 59' West along the extension Southwesterly of the Southeast line of said Lot 9, 30.13 feet to the West line of the Parcel of land described in the Deed from Earl Lee Kelly as Director of Public Works of the State of California, to Samuel Sweetanos, et ux, dated December 15, 1938, recorded January 7, 1939, in Book 487 of Official Records, Page 269; thence South 0° 12' East along said line to a point which bears North 87° 06' West, 26.11 feet from the point of beginning; thence South 87° 06' East, 26.11 feet to the point of beginning.

PARCEL FIVE:

Portion of Lot 23, in Block 18, as shown on the Amended Map of Alta Punta, filed April 22, 1905, in Book D of Maps, Page 90, Contra Costa County Records, described as follows:

Beginning at the most Southerly corner of said Lot 9; thence from said point of beginning North along the West line of said Lot 56.38 feet; thence North 29° 01' West continuing along said West line and the West line of Lot 8, 20.09 feet to the North line of the Parcel of land described in the Deed from State of California to Samuel Sweetanos, et ux, dated December 15, 1938, recorded January 7, 1939, in Book 487 of Official Records, Page 269; thence South 89° 50' West along said line 16.83 feet to the West line thereof; thence South 0° 10' East along said line 88.50 feet to the extension Southwesterly of the South line of said Lot 9; thence North 60° 59' East along said South line and the extension thereof 30.13 feet to the point of beginning.

PARCEL SIX:

Portion of Lot 23, in Block 18, as shown on the Amended Map of Alta Punta, filed April 22, 1905, in Book D of Maps, Page 90, Contra Costa County Records, described as follows:

Commencing at the most Easterly corner of that certain Tract of land described as Parcel Two in the Deed to the State of California, by West Richmond Nursery Company, dated November 4, 1940, recorded December 30, 1940, in Book 578 of Official Records, Page 160; thence along the Northeasterly line of said Parcel Two, North 29° 09' 25" West, 31.9 feet to a line parallel with and distant 87.50 feet, Easterly, at right angles, from the center line of the Department of Public Works survey for the State Highway through the City of El Cerrito, Road IV-CC-69-ECR., thence along said parallel line South 0° 20' 25" East, 27.96 feet to a point on the Southerly line of said Parcel Two, said point being 87.50 feet Easterly at right angles, from Engineer's Station 344 + 28.79 on the center line of said survey; thence along the Southerly line of said Parcel Two, North 89° 39' 35" East, 15.4 feet to the point of commencement.

Portion of Lots 7 and 23, in Block 18, as shown on the Amended Map of Alta Punta, filed April 22, 1905, in Book D of Maps, Page 90, Contra Costa County Records, described as follows:

Commencing at the intersection of the general Easterly line of that certain Parcel of land described in the relinquishment to the City of El Cerrito, recorded January 31, 1957, in Book 2924, Page 126, Official Records of Contra Costa County with the Northerly line of that Parcel of land described in Director's Deed No. 169-DD, recorded November 30, 1960, in Book 3749, Page 66, Official Records of said County; thence along said Easterly line North $0^{\circ} 47' 01''$ East, 254.49 feet to the general Southerly line of that Parcel of land described in Director's Deed No. 170-DD-1, recorded May 4, 1961, in Book 3860, Page 399, Official Records of said County; thence along said Southerly line South $89^{\circ} 23' 02''$ East, 18.08 feet and North $61^{\circ} 59' 39''$ East, 24.16 feet to the Easterly line of said Parcel No. 348 (448 OR 345); thence along last said line and along the Easterly line of said Parcels (578 OR 160 Parcel 2) and (487 OR 150) South $0^{\circ} 36' 58''$ West, 268.43 feet to said Northerly line of said Parcel (3749 OR 66); thence along last said line North $86^{\circ} 00' 02''$ West, 40.10 feet to the point of commencement.

APN: 513-372-032