



AGENDA

**SPECIAL JOINT CITY COUNCIL MEETING/REDEVELOPMENT AGENCY SUCCESSOR
AGENCY – CLOSED SESSION
Tuesday, October 7, 2014 – 6:15 p.m.
Hillside Conference Room**

**REGULAR CITY COUNCIL MEETING
Tuesday, October 7, 2014 – 7:00 p.m.
City Council Chambers**

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

Janet Abelson – Mayor

Mayor Pro Tem Rebecca Benassini
Councilmember Jan Bridges

Councilmember Mark Friedman
Councilmember Greg Lyman

ROLL CALL

6:15 p.m.

**CONVENE SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT AGENCY
SUCCESSOR AGENCY MEETING – CLOSED SESSION
ANNOUNCEMENT OF CLOSED SESSIONS**

1) Conference with Legal Counsel – Existing Litigation (*Pursuant to Government Code Section 54956.9(a)*) El Cerrito Redevelopment Agency Successor Agency v. Cohen, Sacramento County Superior Court, Case No. 34-2013-80001671

CITY COUNCIL ITEM

2) Conference with Labor Negotiators (*Pursuant to Government Code Section 64957.6*)

Agency Designated Representatives: Scott Hanin, City Manager, Karen Pinkos, Assistant City Manager – Acting Human Resources Manager, Glenn Berkheimer, Labor Negotiator

Employee Organizations: Service Employees International Union Local 1021
El Cerrito Public Safety Management

ORAL COMMUNICATIONS (*Comments are limited to three minutes per speaker and to items listed on this special agenda only.*)

RECESS INTO CLOSED SESSION

**ADJOURN SPECIAL JOINT CITY COUNCIL/REDEVELOPMENT AGENCY
SUCCESSOR AGENCY MEETING – 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 Rebecca Benassini*

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

A. El Cerrito Parks and Recreation Commission Workplan – *Presentation by Manish Doshi, Chair.*

Receive a presentation regarding the Parks and Recreation Commission's accomplishments, goals and workplan.

5. ADOPTION OF THE CONSENT CALENDAR – Item Nos. 5A through 5I

A. Ordinance Rezoning 1715 Elm Street to a Planned Development Zoning District – Application 6133

First Reading August 19, 2014. Vote: Ayes – Councilmembers Benassini, Bridges, Friedman and Mayor Abelson; Noes – Councilmember Lyman; Absent – None.

Waive second reading and adopt Ordinance No. 2014-03 approving the rezoning of 1715 Elm Street to a Planned Development Zoning District and amending the Zoning Map.

B. Ordinance Approving a Development Agreement for 1715 Elm Street

First Reading August 19, 2014. Vote: Ayes – Councilmembers Benassini, Bridges, Friedman and Mayor Abelson; Noes – Councilmember Lyman; Absent – None.

Waive second reading and adopt Ordinance No. 2014-04 approving a development agreement between the City of El Cerrito and the Edward and Loretta Biggs revocable trust for 1715 Elm Street – Application 6133.

C. Smoking Pollution Protection Ordinance

First Reading August 19, 2014. Vote: Ayes – Councilmembers Benassini, Bridges, Friedman, Lyman and Mayor Abelson; Noes – None; Absent – None.

Waive second reading and adopt Ordinance No. 2014-05 amending Title 8 of the El Cerrito Municipal Code to add Chapter 8.06 establishing the El Cerrito Smoking Pollution Protection Ordinance and regulating smoking within the City of El Cerrito.

D. Ordinance Rezoning Properties Located in the San Pablo Avenue Specific Plan Area

First Reading September 22, 2014. Vote: Ayes – Councilmembers Benassini, Bridges, Lyman and Mayor Abelson; Noes – None; Absent – Councilmember Friedman.

Waive second reading and adopt Ordinance No. 2014–06 amending the Zoning Map and rezoning properties located in the San Pablo Avenue Specific Plan Area.

E. Ordinance Incorporating the San Pablo Avenue Specific Plan Area into the Municipal Code

First Reading September 22, 2014. Vote: Ayes – Councilmembers Benassini, Bridges, Lyman and Mayor Abelson; Noes – None; Absent – Councilmember Friedman.

Waive second reading and adopt Ordinance No. 2014–07 amending Title 19 of the El Cerrito Municipal Code by adding Chapter 19.15 to incorporate the San Pablo Avenue Specific Plan Area and establish the San Pablo Avenue Special Plan District.

F. Freedom from Workplace Bullies Week Proclamation

Approve a proclamation declaring the week of October 19 – 25, 2014 as “Freedom from Workplace Bullies Week” in the City of El Cerrito and commending the California Healthy Workplace Advocates and the Workplace Bullying Institute, for raising awareness of the impacts of, and solutions for, workplace bullying in the United States; and encouraging all residents to recognize this special observance.

G. Parking Modifications on Fairmount Avenue between San Pablo Avenue and Carlson Boulevard

Adopt a resolution authorizing the Public Works Director / City Engineer to establish a “No Parking” restriction from 3:00 PM to 10:00 PM on Wednesdays for both sides of Fairmount Avenue between San Pablo Avenue and Carlson Boulevard. *Exempt from CEQA*

H. Amend Agreement with Emily Alter Analysts

Adopt a resolution authorizing the City Manager to execute an amendment to the professional services agreement between the City of El Cerrito and Emily Alter Analysts (Consultant) to provide project management and support services for special projects and programs in an amount not to exceed \$62,500 bringing the total contract to an amount not to exceed \$87,500 for Fiscal Year 2014-15.

I. Agreement with 4Leaf Inc.

Adopt a resolution authorizing the City Manager to execute an amendment to the professional services agreement between the City of El Cerrito and 4Leaf Inc. (Consultant) to provide support services to the Building Division in an amount not to exceed \$25,000 bringing the total contract to an amount not to exceed \$50,000 for Fiscal Year 2014-15.

6. PUBLIC HEARINGS – None

7. POLICY MATTERS

A. Memoranda of Understanding between the City of El Cerrito and the Public Safety Management Association

Staff requests that the City Council take the following actions:

1. Adopt a resolution approving approving Memoranda of Understanding between the City of El Cerrito and the Public Safety Management Association for the following bargaining units: A) Battalion Chiefs; B) Police Command Staff (Captain and Lieutenants); C) Fire Chief; and D) Police Chief .
2. Adopt a resolution modifying reporting and payment of employer paid member contributions for the Public Safety Management Association.

B. Memorandum of Understanding for Service Employees International Union (SEIU), Local 1021 and Amend Paying and Reporting the Value of Employer Paid Member Contributions for SEIU, Local 1021 Employees

1. Adopt a resolution adopting the Memorandum of Understanding between the City of El Cerrito and the Service Employees International Union (SEIU), Local 1021 effective through June 30, 2017.
2. Adopt a resolution amending the paying and reporting of the value of employer paid member contributions for SEIU, Local 1021.

8. COUNCIL LOCAL AND REGIONAL LIAISON ASSIGNMENT REPORTS

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

9. ADJOURN REGULAR CITY COUNCIL MEETING

The next regular City Council meeting is Tuesday, October 21, 2014 at 7:00 p.m. at City Hall, 10890 San Pablo Avenue, El Cerrito, California.

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.



PARK AND RECREATION COMMISSION 2014-15 WORK PLAN

**Parks
Make
Life
Better!**

Park and Recreation Commission

El Cerrito Municipal Code Section 2.04.240

There shall be a park and recreation commission. It shall have the powers and duties stated below, and such others as the council may decide:

- A. To act in an advisory capacity to the council and the city manager on all matters pertaining to public recreation, including parks, playgrounds, landscaping within the boundaries of parks, playgrounds and recreational facilities, child care, educational courses, and entertainment;
- B. To make recommendations regarding the annual budget, within its scope of concern, to the city manager and the council;
- C. To make recommendations to the council, annually, concerning fees for city sponsored programs;
- D. To assist in planning recreation programs for the residents of the city, to promote public interest therein, and to solicit the cooperation of other public and private agencies;
- E. To make recommendations to the council regarding present and future needs for park and recreation

2014-15 Work Plan Goals & Areas of Interest

1. Present and Future Needs of Park Facilities and Landscaping
 - A. Commissioners visit all sites (either individually and/or) as a group during a regularly scheduled Park and Recreation Meeting, emphasizing:
 - i. Huber Park
 - ii. Motorcycle Hill/Hillside Natural Area
 - iii. Community Demonstration Garden/Fairmont Park
 - iv. Urban Greening Sites
 - v. Creeks, trails, parks, and future/potential project sites
 - B. Document park conditions and form recommendations to the City Council

2014-15 Work Plan Goals & Areas of Interest

2. More Active Involvement in Facility, Park, Creek, and Trail Planning
 - A. Trail development policies
 - B. Receive future presentation on status of Ohlone Greenway Master Plan and future identified and potential improvements.
 - C. Pursue comprehensive signage program throughout City for parks, trails, and fields
 - D. Help develop Hillside Natural Area Master Plan

2014-15 Work Plan Goals & Areas of Interest

3. Special Event Support
 - A. Ohlone Greenway Fun Day
 - B. Explore new events such as a run, bike even, various sports races, etc.
 - i. Help establish volunteer group to organize events
 - C. Expand future Hillside Festival Events
 - D. Explore economic development and income building opportunities benefitting park and recreational facilities.

2014-15 Work Plan Goals & Areas of Interest

4. Recreation Department

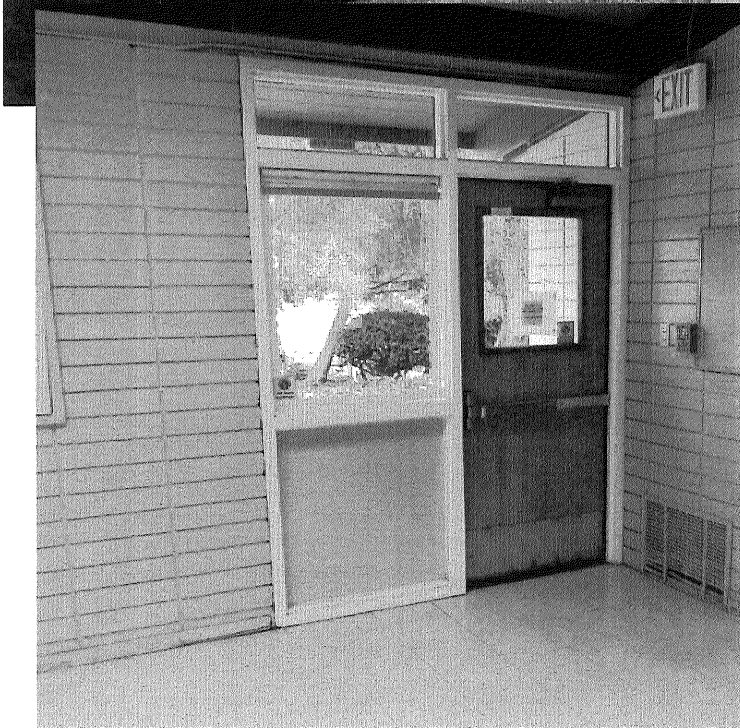
- A. Receive Division Updates by Supervisors
- B. Review budget updates semi-annually (two to 3 times per year)

5. Increase gathering of information/communication/feedback from community

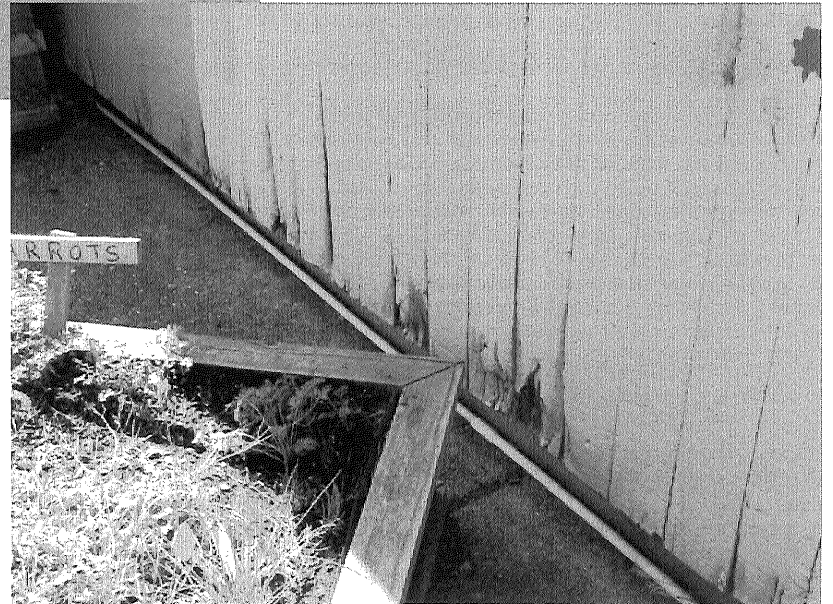
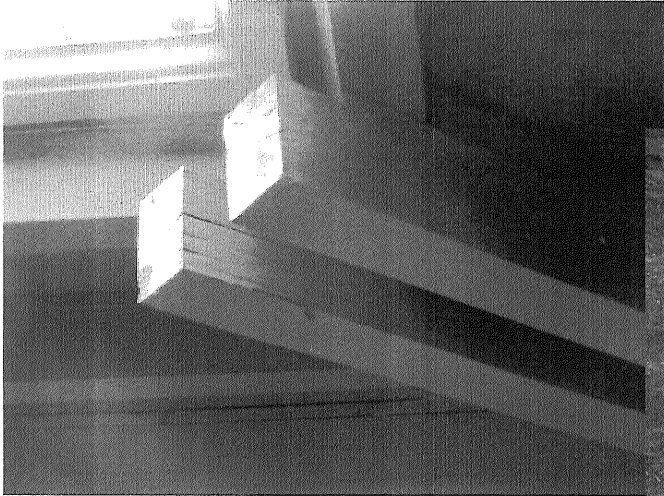
- A. Develop community survey
- B. Solicit feedback at community events
- C. Publicize Commission Meetings in e-newsletter, other venues

6. Receive Urban Greening Plan and modify work plan accordingly

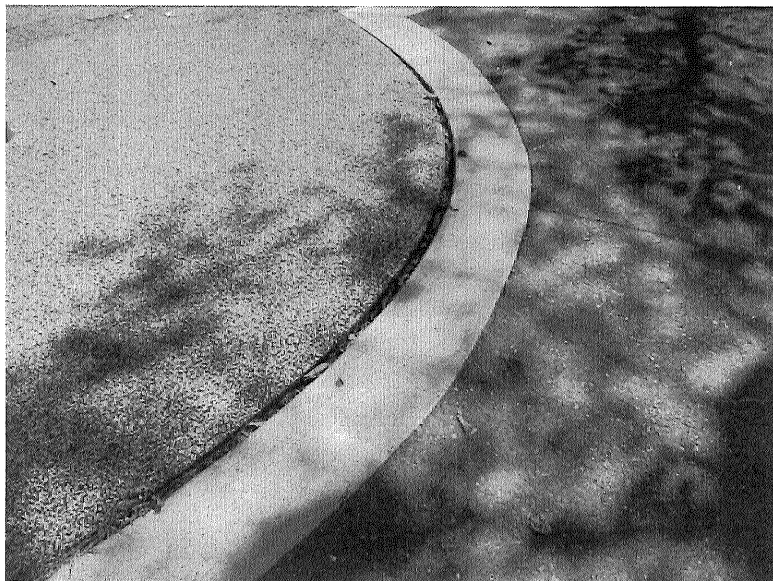
Facility and Park Age



Deferred Maintenance



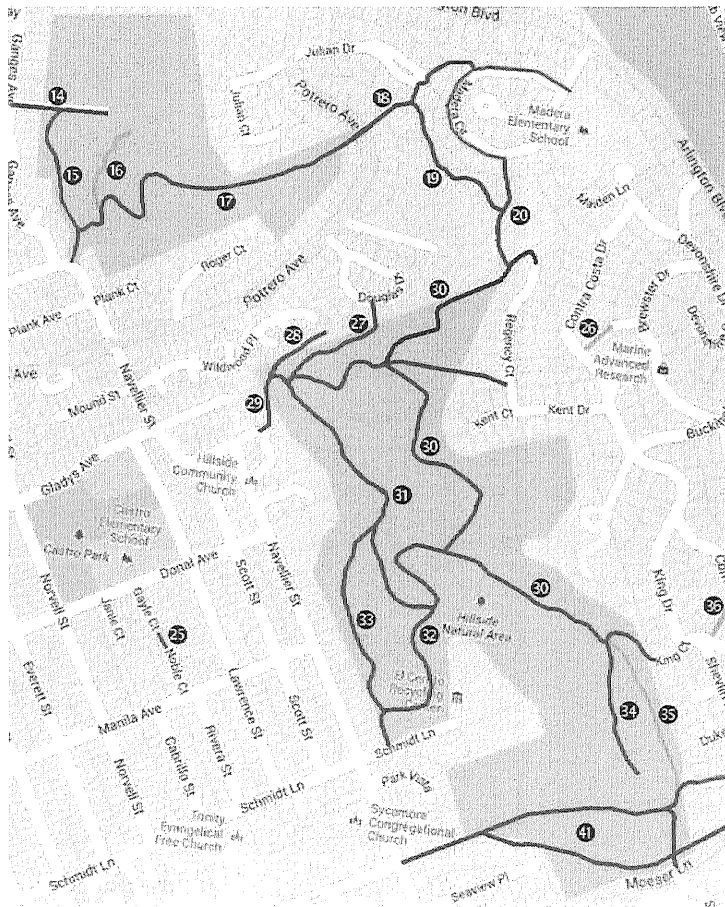
Accessibility



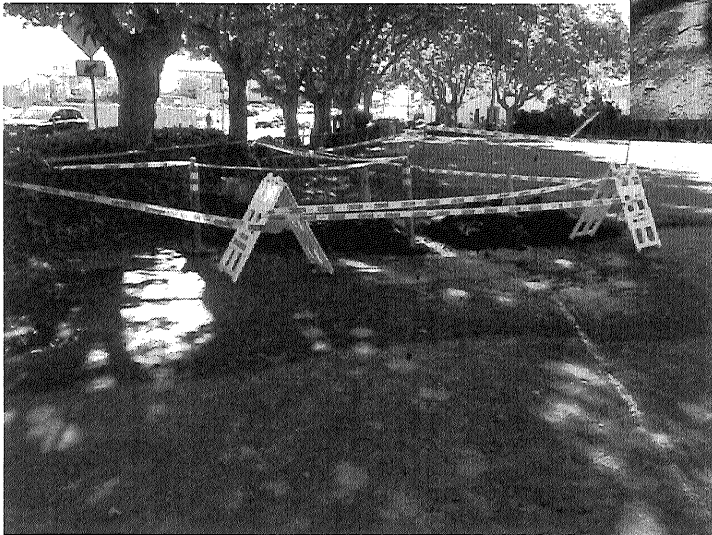
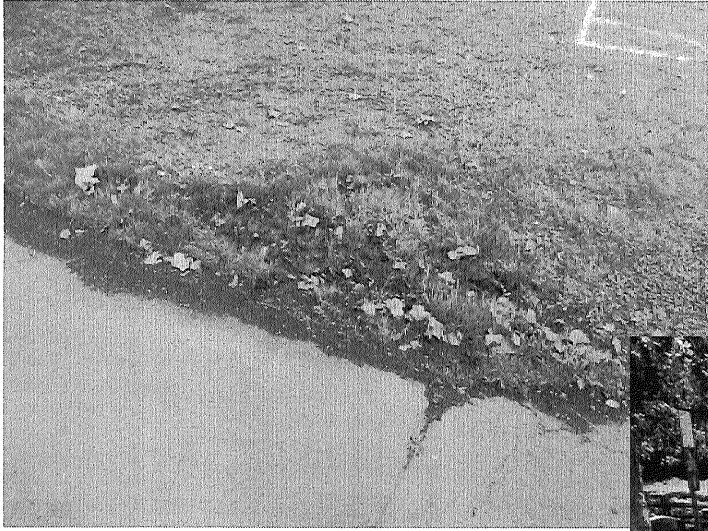
Park Equity



Hillside Natural Area



Athletic Fields & Landscaping



ORDINANCE 2014-03

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REZONING
1715 ELM STREET TO A PLANNED DEVELOPMENT ZONING DISTRICT –
APPLICATION 6133**

**THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS
FOLLOWS:**

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development project that includes the conversion and renovation of an existing historical single-family detached house on the Property into a community center, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing historic stone lined channel on 0.42 acre site. The project proposes a Planned Development District; a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. The proposed development and applications are collectively known as the “Project”; related approvals of the applications are collectively known as the “Project Approvals.”

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant has applied to change the zoning of the Property to a Planned Development District subject to certain terms, attached to this ordinance, and to amend the City’s Zoning Map accordingly.

D. The California Environmental Quality Act (CEQA), together with the state guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts identified are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on the Project, and adopted Resolution PC14-07 recommending that the City Council adopt the Planned Development Use Permit, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on the Project, including the proposed General Plan Amendment, Planned Development District and Development Agreement, and adopted PC Resolution 14-10 recommending that the City Council

deny the General Plan Amendment, Planned Development District and Development Agreement, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations.

I. A Staff Report, dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Planned Development rezoning for the City Council.

J. On August 19, 2014, the City Council received the additional information requested at the June 23 meeting and held a properly noticed public hearing on the Project, including the proposed Planned Development rezoning at which time all interested parties had the opportunity to be heard.

K. On August 19, 2014, the City Council adopted Resolution 2014-44 adopting an Initial Study and Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program for the Project.

L. The City Council considered the adopted Initial Study and Mitigated Negative Declaration and all above-referenced reports, recommendations, and testimony prior to taking action on the Project.

SECTION 2. FINDINGS

A. Pursuant to Sections 19.14.040.A and 19.40.040.D of the El Cerrito Municipal Code, the City Council finds as follows.

1. The proposed residential Project will be a transit oriented development located within 800 feet of a BART station (1,400 feet by foot). It will add fourteen new dwelling units while preserving an historic building and retaining an existing historic stone lined channel. The balance of all these core values on the site is considered to be in the public interest.
2. The project is consistent with the purposes of the district and conforms in all significant respects with the amended General Plan, as conditioned in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types. It also preserves an important historic resource and protects an existing historic stone lined channel by including it within its landscaped area. The project will implement the following General Plan goals and policies: Land Use 1.2: Multifamily Neighborhoods, Land Use, 1.3: Quality of Development, Land Use 1.5: Suitable Housing, Land Use 1.6: Variety of Housing Types, Land Use 5.1 BART Station Areas, Community Design 1.3: High-Quality Design, Community Design 1.9: Building Design, Community Design 4.2: Building Articulation,

Community Design

5.1: Design Review Process, Community Design 5.2 Planned Development. Community Design 3.5 Creek Preservation. Resources 1.9 Developments near Creeks, Resources 2.1: Historic Preservation, Resources 2.5: Public Awareness.

3. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic structure and retaining the existing historic stone lined channel. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the abutting properties or neighborhood.
4. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been approved for this project. All factors are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures. The Mitigation Monitoring Plan has been incorporated in the conditions of approval.
5. The proposed residential project will be a transit oriented development with good urban design. It will add fourteen new dwelling units to the neighborhood while preserving a historic structure and retaining the existing historic stone lined channel. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not be detrimental to the public interest, health, safety, convenience or welfare of the City.
6. The proposed amendment is a planned development district. It is consistent with applicable provisions of the zoning code including the purpose and intent of the Residential Mixed Use zone.
7. The Project will add fourteen new dwelling units to the neighborhood while preserving a historic structure and retaining the existing historic stone lined channel. The site is 0.42 acres in size with a relatively level grade. It has direct access onto Elm Street and will be served by existing utilities in the area. It will not unduly shade surrounding dwellings or create unacceptable traffic or parking impacts; and as conditioned it will not adversely affect the livability of the abutting properties or neighborhood.
8. This project is demonstratively superior to the development that could occur under the standards applicable to the underlying base district in that it represents a balance of many of El Cerrito's core values. It is a transit oriented development; thereby reducing Vehicle Miles Traveled with good urban design; successful historic preservation and preservation of an existing historic stone lined channel. Had the project been governed by the base district standards and strict interpretation of the creek protection ordinance, much of the open space would have been lost to surface parking spaces, the number of units would have to have been decreased due to the reduced building footprint, the building would two stories with a mansard roof, which would have greatly reduce the number of dwelling units.

9. The project is consistent with the purposes of the district and conforms in all significant respects with the General Plan, as conditioned, in that it consists of high density multifamily development that utilizes good urban design principles including reduced parking requirements, parking concealed under the new building, and a mix of unit types.
10. The Project is a transit oriented development, thereby reducing Vehicle Miles Traveled with good urban design, successful historic preservation and preservation of an existing historic stone lined channel. All of these goals are public benefits to the City of El Cerrito.

SECTION 3. ZONING MAP AMENDMENT

Pursuant to Chapter 19.14 of the City of El Cerrito Municipal Code the City of El Cerrito Zoning Map is amended to rezone the property described below to a Planned Development Zoning District:

0.42 acres at 1715 Elm Street ("Project site").

A map of the rezoning area is shown in Exhibit A. The allowable use of the Property is described in the Planned Development Use Permit for the Project.

11. Compliance with adopted Mitigation Measures. The Applicant/Developer shall comply with all adopted mitigation measures of the Initial Study and Mitigate Negative Declaration prepared for 1715 Elm Street.

12. Confirmation of ownership. The Applicant/Developer shall provide the City with a recorded copy of the deed vesting title to the Property in its name.

SECTION 4. NOTICING, POSTING AND PUBLICATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

SECTION 5. EFFECTIVE DATE

This ordinance shall not take effect until the Development Agreement for the Project takes effect and is recorded on the Property.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES:	Councilmembers Benassini, Bridges, Friedman and Mayor Abelson
NOES:	Councilmember Lyman
ABSTAIN:	None

ABSENT: None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on October 7, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSENT: Councilmembers

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October XX, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl More, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-03 of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ___ day of October 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ___ day of October, 2014.

Cheryl Morse, City Clerk

LCA
ARCHITECTS

CARL E. CAMPOS | DAVID BOGSTAD | PETER STACHOLE
245 YGNACIO VALLEY ROAD, WALNUT CREEK, CALIFORNIA 94596
(925) 944-1626 | (925) 944-1668 FAX | WWW.LCA-ARCHITECTS.COM

LCA ARCHITECTS
RESTRICTED ARCHITECTURAL DRAWINGS

THE INFORMATION, PLANS, DESIGNS, NOTES AND ARRANGEMENTS SHOWN ON THIS DRAWING ARE CONFIDENTIAL AND MAY NOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT THE EXPRESSED WRITTEN PERMISSION OF LCA ARCHITECTS. DRAWINGS NOTED AS PRELIMINARY, SCHEMATIC AND / OR CONCEPT CONTAIN INFORMATION THAT IS CONCEPTUAL AND SUBJECT TO VERIFICATION AND/OR CHANGE. THE ARCHITECT MAKES NO CLAIM FOR ACCURACY OF CONCEPTUAL INFORMATION OR OF INFORMATION SUPPLIED BY OTHERS.

A-2

SHEET OF



ORDINANCE NO. 2014-04

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF EL CERRITO AND THE EDWARD AND LORETTA BIGGS REVOCABLE TRUST FOR 1715 ELM STREET – APPLICATION 6133

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. RECITALS

A. The Applicant, the Edward and Loretta Biggs Revocable Trust, proposes a development project that includes the conversion and renovation of an existing historical single- family detached house on the Property into a community center type uses, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing historic stone lined channel on a 0.42 acre site. The project proposes a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. The proposed development and applications are collectively known as the “Project”; related approvals of the applications are collectively known as the “Project Approvals”.

B. The Project site is located at 1715 Elm Street in El Cerrito, California (the “Property”).

C. The Applicant and City desire to enter into a Development Agreement subject to certain terms, attached to this ordinance, and the vesting of the Project Approvals for ten years.

D. The California Environmental Quality Act (CEQA), together with the state guidelines and City environmental regulations, require that certain projects be reviewed for environmental impacts and that environmental documents be prepared.

E. An Initial Study and Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA) have been prepared for this Project. All potential impacts identified are reduced to a less than significant level pursuant to the California Environmental Quality Act with the implementation of mitigation measures.

F. On April 16, 2014, the Planning Commission held a properly noticed public hearing on the Project, and adopted Resolution 14-07 recommending that the City Council adopt the Planned Development Use Permit, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

G. On May 21, 2014, the Planning Commission held a properly noticed public hearing on the Project, including the proposed General Plan Amendment, Planned Development District and Development Agreement, and adopted Resolution 14-10 recommending that the City Council not adopt the General Plan Amendment, Planned Development District and Development Agreement, which Resolution is incorporated herein by reference and available for review at City Hall during normal business hours.

H. On June 2, 2014, the City Council held a duly noticed public hearing to consider the Project Approval, including the Development Agreement. The City Council closed the hearing and continued consideration of the Project Approvals to June 23. At the June 23 meeting, the City Council requested additional information and continued deliberations. On August 19, the City Council reopened the hearing and received the additional information, and all interested parties had the opportunity to be heard.

I. A staff report dated August 19, 2014 and incorporated herein by reference, described and analyzed the Project, including the Development Agreement, for the City Council.

J. The City Council used their independent judgment and considered the staff report, the Initial Study and Mitigated Negative Declaration, and all reports, recommendations and testimony referenced above and adopted Resolution No. 2014-44 adopting the Initial Study and Mitigated Negative Declaration prior to approving the Development Agreement.

K. The City Council has considered the recommendation of the Planning Commission on the Development Agreement, including the Planning Commission's reasons for its recommendation, the staff report, all comments received in writing, and all testimony received at the public hearing.

SECTION 2. FINDINGS AND DETERMINATIONS

On the basis of: (a) the foregoing Recitals which are incorporated herein, (b) the City of El Cerrito General Plan; (c) Initial Study and Mitigated Negative Declaration, (d) the staff report; (e) information in the entire record of proceedings for the Project, and on the basis of the specific conclusions set forth below, the City Council finds and determines that:

1. The Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan in that: (a) the General Plan land use designations, policies, programs and objectives are incorporated into the Development Agreement and not altered by the Development Agreement; and (b) the Project is consistent with the fiscal policies of the General Plan with respect to the provision of infrastructure and public services.

2. The Development Agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use districts in which the real property is located.

3. The Development Agreement is in conformity with public convenience, general welfare, and good land use policies in that the Project will implement land use guidelines set forth in the General Plan.

4. The Development Agreement will not be detrimental to the health, safety, and general welfare in that the Developer's proposed Project will proceed in accordance with all the programs and policies of the General Plan and Project Approvals.

5. The Development Agreement will not adversely affect the orderly

development of property or the preservation of property values in that the Project will be consistent with the General Plan and Project Approvals.

6. The Development Agreement complies with the requirements of §§ 65864 et seq. of the California Government Code and El Cerrito Municipal Code Chapter 19.14 and specifies the duration of the agreement, the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation of open space. The Development Agreement contains an indemnity and insurance clause requiring the developer to indemnify and hold the City harmless against claims arising out of the development process, including all legal fees and costs.

SECTION 3. APPROVAL

The City Council hereby approves the Development Agreement (Exhibit A to the Ordinance) and authorizes the City Manager to execute it.

SECTION 4. NOTICING, POSTING, PUBLICATION AND RECORDATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted. Within ten days after the Development Agreement is fully executed by all parties, the Development Services Manager shall submit the Agreement to the County Recorder for recordation.

SECTION 5. EFFECTIVE DATE

This ordinance shall take effect thirty days after the date of its adoption, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING ORDINANCE was introduced at a regular meeting of the City Council on August 19, 2014 and passed by the following vote:

AYES:	Councilmembers Benassini, Bridges, Friedman and Mayor Abelson
NOES:	Councilmember Lyman
ABSTAIN:	None
ABSENT:	None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on the October _____, 2014 and passed by the following vote:

AYES
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October XX, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl More, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the __ day of October 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, __
California, this day of October, 2014.

Cheryl Morse, City Clerk

RECORDING REQUESTED BY:

CITY OF EL CERRITO

When Recorded Mail To:

City Clerk
City of El Cerrito
10890 San Pablo Ave.
El Cerrito, CA 94530

*Exempt from Recorder's Fees
Pursuant to Government Code §§ 27383, 6103*

Space above this line for Recorder's use

DEVELOPMENT AGREEMENT

BETWEEN THE

CITY OF EL CERRITO

AND

**THE EDWARD AND LORETTA BIGGS REVOCABLE TRUST
DATED MARCH 22, 2011**

FOR 1715 ELM STREET

THIS DEVELOPMENT AGREEMENT ("**Agreement**" or "**Development Agreement**") is made and entered into in the City of El Cerrito on _____ 2014, by and between the City of El Cerrito, a municipal corporation ("**City**") and The Edward and Loretta Biggs Revocable Trust dated March 22, 2011 ("**Developer**") pursuant to the authority of §§ 65864 *et seq.* of the California Government Code and El Cerrito Municipal Code, Chapters 19.14 and 19.41. City and Developer are, from time-to-time, individually referred to in this Agreement as a "party," and collectively as "parties."

RECITALS

A. California Government Code §§ 65864 *et seq.* ("Development Agreement Law") and Chapter 19.41 of the El Cerrito Municipal Code ("**Chapter 19.41**") authorize the City to enter into a development agreement for the development of real property with any person having a legal or equitable interest in such property in order to establish certain development rights in such property. Chapter 19.14 of the El Cerrito Municipal Code ("**Chapter 19.14**") requires a development agreement for all projects for which Planned Development District zoning is approved.

B. Developer owns the real property located at 1715 El Street in the City (APN 502-112-038) and that is more particularly described in Exhibit A attached hereto and is incorporated herein by reference (the "**Property**").

C. The proposed development of the Property includes the relocation and conversion of an existing historical single-family detached house on the Property into a museum, art studio, office, or other community center type use, the construction of 14 new one- and two-bedroom dwelling units, and the preservation of an existing open space channel on the 0.42 acre site (the "**Project**").

D. Developer has applied for and City has approved or is processing, various land use approvals in connection with the Project, including, without limitation, a General Plan Amendment; Planned Development District zoning; a Planned Development Use Permit; Design Review; a subdivision map and condominium plan; and this Development Agreement. All such approvals, collectively, together with any approvals or permits now or hereafter issued with respect to the Project, are referred to as the "**Project Approvals**." None of the Project Approvals take effect until the Development Agreement takes effect.

E. City desires the timely, efficient, orderly and proper development of the Project.

F. The City Council has found that, among other things, this Development Agreement is consistent with its General Plan, as amended, and has been reviewed and evaluated in accordance with the Development Agreement Law and Chapters 19.14 and 19.41.

G. City and Developer have reached agreement and desire to express herein a Development Agreement that will facilitate development of the Project, subject to conditions set forth herein.

H. The El Cerrito Planning Commission approved a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Project on April 16, 2014 by the adoption of Planning Commission Resolution No. PC14-XX. The Mitigated Negative Declaration analyzed the environmental impacts of this Agreement. No significant unavoidable impacts were identified in the Mitigated Negative Declaration.

I. On _____, 2014, the City Council adopted Ordinance No. _____ approving this Development Agreement (the “**Approving Ordinance**”). The Approving Ordinance states that it will take effect on _____ (the “**Ordinance Effective Date**”).

NOW, THEREFORE, with reference to the foregoing recitals and in consideration of the mutual promises, obligations and covenants herein contained, City and Developer agree as follows:

AGREEMENT

1. Description of Property.

The Property that is the subject of this Agreement is described in Exhibit A attached hereto.

2. Interest of Developer.

The Developer owns the Property.

3. Relationship of City and Developer.

It is understood that this Agreement is a contract that has been negotiated and voluntarily entered into by the City and Developer and that the Developer is not an agent of the City. The City and Developer hereby renounce the existence of any form of joint venture or partnership between them, and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

4. Effective Date, Term, and Termination.

4.1. Effective Date. The effective date of this Agreement shall be the Ordinance Effective Date (“**Effective Date**”).

4.2. Term. The term of this Agreement shall commence on the Effective Date and extend five (5) years thereafter, unless said term is otherwise

terminated or modified pursuant to the provisions of this Agreement. As authorized by California Government Code Sections 65863.9 and 66452.6(a)(1), the terms of the Project Approvals shall be the longer of: (a) the term of this Agreement; or (b) the term normally given each approval under controlling law.

4.3. Termination.

4.3.1. Termination on Sale of Individual Lots. Notwithstanding the foregoing Section 4.2, the provisions of this Agreement shall terminate with respect to any individual lot and such lot shall be released from and shall no longer be subject to this Agreement (without the execution or recordation of any further document or the taking of any further action) upon the lot being finally subdivided and sold or leased to a member of the public or any other ultimate user. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of the Developer in and to any of the aforescribed lots) may submit to confirm the termination of this Agreement as to any such lot. For purposes of this Section 4.3.1, each reference to a "lot" shall be deemed to include an individual dwelling unit that is a standalone structure or constructed within a multi-unit building, whether leased as an apartment or single-family home or sold as a condominium or similar interest in the Property.

4.3.2. Termination Upon Completion of Project. Notwithstanding the foregoing Sections 4.2 and 4.3.1, upon completing construction of the Project and satisfying all terms and conditions of this Agreement and the Project Approvals, Developer may send City written notice terminating this Agreement. City shall cooperate with Developer, at no cost to City, in executing in recordable form any document that Developer (including any successor to the title of Developer in and to any portion of the Property) may submit to confirm the termination of this Agreement.

5. Use of the Property.

5.1. Right to Develop. Developer shall have the vested right to develop the Project on the Property in accordance with the terms and conditions of this Agreement, the Project Approvals (as and when issued), and any amendments to any of them as shall, from time to time, be approved pursuant to this Agreement. (Such amendments, once effective, shall become part of the law Developer is vested into without an additional amendment of this Agreement.) Notwithstanding the foregoing or anything to the contrary herein, any amendment to the General Plan not in effect on the Effective Date shall not become part of the law Developer is vested into under this Agreement unless an additional amendment of this Agreement is entered into between Developer and City in accordance with state and City laws.

5.2. Permitted Uses. The permitted uses of the Property, the density and intensity of use, the maximum height, bulk, and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the location and maintenance of on-site and off-site improvements, the location of public utilities, and other terms and conditions of development applicable to the Property, shall be those set forth in this Agreement, the Project Approvals and any amendments to this Agreement or the Project Approvals, subject to the provisions of Section 5.1.

5.3. Rules Regarding Permitted Uses. For the term of this Agreement, the City's ordinances, resolutions, rules, regulations and official policies governing the permitted uses of the Property and governing density and intensity of use of the Property and the maximum height, bulk and size of proposed buildings shall be those in force and effect on the Effective Date of this Agreement.

5.4. Rules Regarding Design and Construction. Unless otherwise expressly provided in Section 5 of this Agreement, the ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards and specifications applicable to the Project shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement. Ordinances, resolutions, rules, regulations and official policies governing design, improvement and construction standards, and specifications applicable to public improvements to be constructed by Developer shall be those in force and effect at the time of the applicable discretionary approval, whether the date of that approval is prior to or after the date of this Agreement.

5.5. Building and Other Codes Applicable. The Project shall be constructed in accordance with the provisions of the Building, Mechanical, Plumbing, Electrical, and Fire Codes and Title 24 of the California Code of Regulations, relating to Building Standards, in effect at the time of approval of the appropriate building, grading, encroachment or other construction permits for the Project.

5.6. Treatment of Existing House. The existing house that Developer plans to move and renovate within the Property as part of the Project (the "**House**"), shall be subject to the following terms and conditions.

5.6.1. Relocation and Restoration of House. Developer shall relocate the House to the location shown in the Project Approvals, which shall be part of the common area owned by the Homeowners Association for the Project ("**HOA**"). The House shall be placed on a new foundation. Plumbing and electrical systems shall be updated in compliance with applicable codes. A bathroom and exterior lift will be installed compliant with the Americans with Disabilities Act ("**ADA**"). Recognizing its historic

status, the exterior of the House shall be restored to applicable Department of Interior standards for restoration of historic structures; the ADA-compliant lift is allowed under the California Historic Building Code, which also applies to restoration of the House. Construction details and floor plan revisions shall be subject to the reasonable satisfaction of City's Development Services Manager.

5.6.2. Lease to City. Developer agrees to lease the House to City after the structure has been moved and renovated, and City agrees to accept and enter into a lease for the House, subject to the terms and conditions in Section 5.6. The lease shall be for a term of ninety-nine (99) years, at a total rent of One Dollar (\$1.00) payable in advance. Following expiration or earlier termination of the lease, the HOA shall be free to sell, lease or use the House as it sees fit, including residential use, subject to applicable regulations, including but not limited to obtaining an amendment to the City's General Plan to allow for the resulting density.

5.6.3. Use of House. The lease shall specify that City may only use the House for (a) a museum, (b) an art studio, or (c) offices or similar community center type use, as are conditionally permitted in the underlying RM Zoning District. "Community center type use" shall be consistent with the foregoing specific uses and shall comply with applicable provisions of the El Cerrito Municipal Code, including limits on outdoor noise levels for residential areas (Section 19.21.050.B.2.a). No use of the House by City or a subtenant shall draw crowds or produce noise disruptive to the residents of the residential component of the Project, except for approved special events. Any special events would require an Administrative Use Permit. The House may be used by the City or a subtenant only Monday through Saturday between 8:00 a.m. and 6:00 p.m., unless the HOA agrees to different hours for special events. The House may only be opened to the general public during the same hours as the Publicly Available Open Space, set forth in Section 5.8 below. City acknowledges that the allowed uses of the House are intended to be compatible with the neighborhood and avoid traffic, parking and noise concerns. For the avoidance of doubt, the parties agree that while the lease is in effect the House may not be used as a residence.

5.6.4. Maintenance of House. While the lease is in effect, City shall be solely responsible for maintenance of the House (but not surrounding grounds which shall be the responsibility of the HOA), and neither Developer nor the HOA shall have any obligation or liability for maintenance of the House.

5.6.5. Parking. Developer shall reserve one (1) parking space in the Project for the exclusive use of the House.

5.6.6. Sublease of House. City may sublease the House to a non-profit organization (“**NPO**”), which subtenant shall be subject to the terms and restrictions described in this Section 5.6 which City covenants to include in any such sublease and enforce on any such subtenant. The HOA shall be informed of each change in tenancy in order to monitor use of the reserved parking space and the party responsible for maintenance of the House.

5.7. HOA Maintenance Responsibilities. In addition to its other responsibilities, the HOA shall be responsible for maintaining (a) the open space channel traversing the Project and the abutting landscaping, walkway and related improvements, (b) the oval open space area south of the channel and in front of the House (the “**Publicly Accessible Open Space**”), and (c) the grounds surrounding the House; provided, City or its subtenant shall be responsible for cleaning up after their use of the grounds surrounding the House related to their use of the House, and for repairing any damage to the grounds caused by such use. The HOA responsibilities shall be specified in Covenants, Conditions and Restrictions (“**CC&Rs**”) for the Project, and City responsibilities shall be specified in the lease and any sublease for the House.

5.8. Public Use of Open Space. The Publicly Accessible Open Space, including the pathway within and partially abutting the south side of the open space channel from Elm Street to the front of the House as shown in the Project Approvals, shall be open to the public Monday through Saturday between 10:00 a.m. and 5:00 p.m., except as needed for maintenance purposes. The fence across the Elm Street frontage of the Project shall include an opening to provide access to the Publicly Accessible Open Space and the House, with a gate which the HOA may lock to enforce the hours of public use described in Section 5.6 and this Section. City’s lease of the House and the grant of public access to the Publicly Accessible Open Space shall not entitle City or any subtenant to use the Publicly Accessible Open Space for an organized event or use the Publicly Accessible Open Space as part of its use of the House, without the consent of the HOA in its sole discretion, and City shall be responsible for cleaning and repairing the Publicly Accessible Open Space after any such use whether or not approved by the HOA. Notwithstanding the foregoing, neither City nor a subtenant shall require HOA approval for use of the Public Accessible Open Space as part of either’s use of the House if the use is consistent with the intended passive recreational purposes of the Publicly Accessible Open Space.

5.9. State Historic Register. Developer shall support listing of the historic house on the state historic register.

6. Subsequently Enacted Rules and Regulations.

6.1. New Rules and Regulations. Consistent with Government Code section 65866, during the term of this Agreement, the City may apply new or

modified ordinances, resolutions, rules, regulations and official policies of the City, whether adopted by the City or through the referendum or initiative process ("**New City Laws**") to the Property, which were not in force and effect on the Effective Date of this Agreement and which are not in conflict with those applicable to the Property as set forth in this Agreement and are not in conflict with the Project Approvals. Without limiting the generality of the foregoing, or any other provision of this Agreement, a New City Law shall be deemed to conflict with this Agreement to the extent it limits or controls the timing of construction or occupancy of the Project.

6.2. Approval of Application. Nothing in this Agreement shall prevent the City from denying or conditionally approving any subsequent land use permit or authorization for the Project on the basis of such New City Laws except that such subsequent actions shall be subject to any conditions, terms, restrictions, and requirements expressly set forth herein.

7. Subsequently Enacted or Revised Fees, Assessments and Taxes.

Notwithstanding anything to the contrary contained herein, the Project shall be subject to subsequently enacted or revised fees, assessments and taxes adopted by the City after the Effective Date of this Agreement. Nothing in this Agreement creates a vested right for the Project in the amount or type of fees, assessments and taxes in effect on the Effective Date of this Agreement.

8. Amendment or Cancellation.

8.1. Modification Because of Conflict with State or Federal Laws. The Project and Property shall be subject to state and federal laws and regulations and this Agreement does not create any vested right in state and federal laws and regulations in effect on the Effective Date. In the event that state or federal laws or regulations enacted after the Effective Date of this Agreement prevent or preclude compliance with one or more provisions of this Agreement or require changes in plans, maps, or permits approved by the City, the parties shall meet and confer in good faith in a reasonable attempt to modify this Agreement to comply with such federal or state law or regulation. Any such amendment or suspension of the Agreement shall be subject to approval by the City Council in accordance with Chapter 8.56 of the Municipal Code.

8.2. Amendment by Mutual Consent. This Agreement may be amended in writing from time to time by mutual consent of the parties hereto and in accordance with the procedures of state law and Chapter 19.41.

8.3. Insubstantial Amendments. Notwithstanding the provisions of the preceding Paragraph 8.2, any amendments to this Agreement that do not relate to (a) the term of the Agreement as provided in Paragraph 4.2; (b) the permitted uses of the Property as provided in Paragraph 5.2; (c) the density or intensity of

use of the Project; (d) the maximum height or size of proposed buildings; or (e) monetary contributions by Developer as provided in this Agreement, shall not, except to the extent otherwise required by law, require notice or public hearing before either the Planning Commission or the City Council before the parties may execute an amendment hereto.

8.4. Cancellation By Mutual Consent. Except as otherwise permitted herein, this Agreement may be canceled in whole or in part only by the mutual consent of the parties or their successors in interest, in accordance with the provisions of Chapter 19.41.

9. Annual Review.

9.1. Review Date. The annual review date for this Agreement shall be between June 1 and July 1, 2015 and thereafter between each June 1 and July 1 during the Term.

9.2. Initiation of Review. Developer shall initiate annual review of this Agreement by submitting an annual application. Developer shall submit with such application a report to the City's Community Development Director describing the Developer's good faith substantial compliance with the terms of this Agreement during the preceding year and include supporting evidence. Such report shall include a statement that the report is submitted to the City pursuant to the requirements of Government Code Section 65865.1 and of this Agreement. The report shall comply with Section 19.41.050 of Chapter 19.41. The burden of proof by substantial evidence of compliance is upon the Developer.

9.3. Finding of Compliance. Within thirty (30) days after Developer submits its report hereunder, the City's Community Development Director shall review Developer's submission to ascertain whether Developer has demonstrated good faith substantial compliance with the material terms of this Agreement. If the Community Development Director finds and determines, in consultation with the City Manager and the City's Public Works Director, that Developer has in good faith substantially complied with the material terms of this Agreement, or does not determine otherwise within 30 days after delivery of Developer's report, then the annual review shall be concluded. If the Community Development Director initially determines that such report is inadequate in any respect, then he or she shall provide written notice to that effect to Developer, and Developer may supply such additional information or evidence as may be necessary to demonstrate good faith substantial compliance with the material terms of this Agreement. Following consultation with the City Manager and the City's Public Works Director, if the Community Development Director concludes that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then he or she shall so notify Developer within 30 days after delivery of the additional information and prepare a report to the

City Council with respect to the conclusions of the Community Development Director and the contentions of Developer with respect thereto.

9.4. City Council Hearing Regarding Non-Compliance. After submission of the staff report of the City's Community Development Director, the City Council shall conduct a noticed public hearing to consider the determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. At least ten (10) days prior to hearing, the Community Development Director shall provide to the City Council, Developer and to all interested persons requesting the same, copies of all staff reports and other information concerning Developer's good faith substantial compliance with the material terms of this Agreement and the conclusions and recommendations of the Community Development Director. At such hearing, Developer and any other interested person shall be entitled to submit evidence, orally or in writing, and address all the issues raised in the staff report on, or with respect or germane to, the issue of Developer's good faith substantial compliance with the material terms of this Agreement. If, after receipt of any written or oral response of Developer, and after considering all of the evidence at such public hearing, the City Council finds and determines, on the basis of substantial evidence, that Developer has not substantially complied in good faith with the material terms of this Agreement, then the City Council shall specify to Developer the respects in which Developer has failed to comply, and shall also specify a reasonable time for Developer to meet the terms of compliance, which time shall be not less than thirty (30) days after the date of the City Council's determination, and shall be reasonably related to the time necessary to adequately bring Developer's performance into good faith substantial compliance with the material terms of this Agreement.

If the areas of noncompliance specified by the City Council are not corrected within the time limits prescribed by the City Council hereunder, then the City Council may by subsequent noticed hearing extend the time for compliance for such period as the City Council may determine (with conditions, if the City Council deems appropriate), terminate, or modify this Agreement, or take such other actions as permitted under applicable law. Any notice to Developer of a determination of noncompliance by Developer hereunder, or of a failure by Developer to remedy the areas of noncompliance hereunder, shall specify in reasonable detail the grounds therefore and all facts demonstrating such noncompliance or failure, so that Developer may address the issues raised in the notice of noncompliance or failure on point-by-point basis in any hearing held by the City Council hereunder.

9.5. Meet and Confer Process. If either the City's Community Services Director or the City Council makes a determination that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement, then the City Manager and/or designated City Council representatives may initiate a meet and confer process with Developer pursuant

to which the Parties shall meet and confer to determine a resolution acceptable to both Parties of the bases upon which the Community Services Director or City Council has determined that Developer has not demonstrated good faith substantial compliance with the material terms of this Agreement. The results and recommendations of the meet and confer process shall be presented to the City Council for review and consideration at its next regularly scheduled public meeting, including consideration of such amendments to this Agreement as may be necessary or appropriate to effectuate the resolution through such meet and confer process, Developer shall be deemed to be in good faith substantial compliance with the material terms of this Agreement, only upon the City Council's acceptance of the results and recommendation of the meet and confer process.

9.6. Staff Reports. To the extent practical, the City shall deposit in the mail and fax or email to Developer a copy of all staff reports, and related exhibits concerning contract performance at least five (5) days prior to any annual review.

9.7. Costs. Costs reasonably incurred by the City in connection with the annual review shall be paid by Developer in accordance with the City's schedule of fees in effect at the time of review.

10. Default.

10.1. Other Remedies Available. Upon the occurrence of an event of default, the parties may pursue all other remedies at law or in equity that are not otherwise provided for in this Agreement or in the City's regulations governing development agreements, expressly including the remedy of specific performance of this Agreement.

10.2. Notice and Cure. Upon the occurrence of an event of default by either party, the nondefaulting party shall serve written notice of such default upon the defaulting party. If the default is not cured by the defaulting party within thirty (30) days after service of such notice of default, the nondefaulting party may then commence any legal or equitable action to enforce its rights under this Agreement; provided, however, that, if the default cannot be cured within such thirty (30) day period, the nondefaulting party shall refrain from any such legal or equitable action so long as the defaulting party begins to cure such default within such thirty (30) day period and diligently pursues such cure to completion. Failure to give notice shall not constitute a waiver of any default.

10.3. No Damages Against City. Notwithstanding anything to the contrary contained herein, in no event shall damages be awarded against the City upon an event of default or upon termination of this Agreement.

11. Estoppel Certificate.

Either party may, at any time, and from time to time, send written notice to the other party requesting such party to certify in writing that (a) this Agreement is in full force and effect and a binding obligation of the parties, (b) this Agreement has not been amended or modified either orally or in writing, or, if so amended, identifying the amendments, and (c) to the knowledge of the certifying party, the requesting party is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount of any such defaults. A party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof, or such longer period as may reasonably be agreed to by the parties. City Manager of the City shall be authorized to execute any certificate requested by Developer. Should the party receiving the request not execute and return such certificate within the applicable period, this shall not be deemed to be a default, provided that such party shall be deemed to have certified that the statements in clauses (a) through (c) of this Section are true, and any party may rely on such deemed certification.

12. Mortgagee Protection; Certain Rights of Cure.

12.1. Mortgagee Protection. This Agreement shall be superior and senior to any lien placed upon the Property, or any portion thereof after the date of recording this Agreement, including the lien for any deed of trust or mortgage ("**Mortgage**"). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish, or impair the lien of any Mortgage made in good faith and for value, but all the terms and conditions contained in this Agreement shall be binding upon and effective against any person or entity, including any deed of trust beneficiary or mortgagee ("**Mortgagee**") who acquires title to the Property, or any portion thereof, by foreclosure, trustee's sale, deed in lieu of foreclosure, or otherwise.

12.2. Mortgagee Not Obligated. Notwithstanding the provisions of Section 12.1 above, no Mortgagee shall have any obligation or duty under this Agreement, before or after foreclosure or a deed in lieu of foreclosure, to construct or complete the construction of improvements, or to guarantee such construction of improvements, or to guarantee such construction or completion, or to pay, perform or provide any fee, dedication, improvements or other exaction or imposition; provided, however, that the Mortgagee shall not be entitled to devote the Property to any uses or to construct any improvements thereon other than those uses or improvements provided for or authorized by the Project Approvals or by this Agreement without new approvals by the City as may be required for such other uses or improvements.

12.3. Notice of Default to Mortgagee and Extension of Right to Cure. If the City receives notice from a Mortgagee requesting a copy of any notice of default given Developer hereunder and specifying the address for service thereof, then the City shall deliver to such Mortgagee, concurrently with service

thereon to Developer, any notice given to Developer with respect to any claim by the City that Developer has committed an event of default. Each Mortgagee shall have the right during the same period available to Developer to cure or remedy, or to commence to cure or remedy, the event of default claimed set forth in the City's notice. The City, through its City Manager, may extend the thirty-day cure period provided in Paragraph 10.2 for not more than an additional sixty (60) days upon request of Developer or a Mortgagee.

13. Severability.

The unenforceability, invalidity, or illegality of any provision, covenant, condition, or term of this Agreement shall not render the other provisions unenforceable, invalid, or illegal.

14. Attorneys' Fees and Costs.

If the City or Developer initiates any action at law or in equity to enforce or interpret the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs in addition to any other relief to which it may otherwise be entitled. If any person or entity not a party to this Agreement initiates an action at law or in equity to challenge the validity of any provision of this Agreement or the Project Approvals, the parties shall cooperate in defending such action. Developer shall bear its own costs of defense as a real party in interest in any such action, and shall reimburse the City for all reasonable court costs and attorneys' fees expended by the City in defense of any such action or other proceeding.

15. Transfers and Assignments.

15.1. Right to Assign. Developer may wish to sell, transfer, or assign all or portions of its Property to another entity (each such other entity is referred to as a "Transferee"). In connection with any such sale, transfer, or assignment to a Transferee, Developer may sell, transfer, or assign to such Transferee any or all rights, interests, and obligations of Developer arising hereunder and that pertain to the portion of the Property being sold or transferred to such Transferee, provided, however, that no such transfer, sale, or assignment of Developer's rights, interests, and obligations hereunder shall occur without prior written notice to City and approval by the City Manager, which approval shall not be unreasonably withheld, conditioned or delayed.

15.2. Approval and Notice of Sale, Transfer or Assignment. The City Manager shall consider and decide on any transfer, sale, or assignment within ten (10) days after Developer's notice, provided all necessary documents, certifications, and other information are provided to the City Manager to enable the City Manager to determine whether the proposed Transferee can perform the Developer's obligations hereunder. Notice of any such approved sale, transfer,

or assignment (which includes a description of all rights, interests and obligations that have been transferred and those which have been retained by Developer) shall be recorded in the official records of Contra Costa County, in a form acceptable to the City Manager, concurrently with such sale, transfer, or assignment.

15.3. Release Upon Transfer. Upon the transfer, sale, or assignment of all of Developer's rights, interests, and obligations hereunder pursuant to Paragraph 15.1 of this Agreement, Developer shall be released from the obligations under this Agreement, with respect to the Property transferred, sold, or assigned, arising subsequent to the date of City Manager approval of such transfer, sale, or assignment; provided, however, that if any Transferee approved by the City Manager expressly assumes all of the rights, interests, and obligations of Developer under this Agreement, Developer shall be released with respect to all such rights, interests, and assumed obligations. In any event, the transferee, purchaser, or assignee shall be subject to all the provisions hereof and shall provide all necessary documents, certifications, and other necessary information prior to City Manager approval.

15.4. Developer's Right to Retain Specified Rights or Obligations. Notwithstanding Paragraphs 15.1 and 15.2 and Paragraph 16, Developer may withhold from a sale, transfer, or assignment of this Agreement certain rights, interests, and/or obligations, which Developer shall retain, provided that Developer specifies such rights, interests, and/or obligations in a written document to be appended to this Agreement and recorded with the Contra Costa County Recorder prior to the sale, transfer, or assignment of the Property. Developer's Transferee shall then have no interest or obligations for such rights, interests and obligations, and this Agreement shall remain applicable to Developer with respect to such retained rights, interests, and/or obligations.

16. Agreements Run With the Land.

All of the provisions, rights, terms, covenants, and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors and assigns, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions of this Agreement shall be enforceable as equitable servitudes and shall constitute covenants running with the land pursuant to applicable laws, including, but not limited to, Section 1468 of the Civil Code of the State of California. Each covenant to do, or refrain from doing, some act on the Property hereunder, or with respect to any owned property (a) is for the benefit of such properties and is a burden upon such properties, (b) runs with such properties, and (c) is binding upon each party and each successive owner during its ownership of such properties or any portion thereof, and shall be a benefit to and a burden upon

each party and its property hereunder and each other person succeeding to an interest in such properties.

17. Bankruptcy.

The obligations of this Agreement shall not be dischargeable in bankruptcy.

18. Indemnification.

Developer agrees to indemnify, defend and hold harmless the City, and its elected and appointed councils, boards, commissions, officers, agents, employees, and representatives from any and all claims, costs (including legal fees and costs) and liability for any personal injury or property damage which may arise directly or indirectly as a result of any actions or inactions by the Developer, or any actions or inactions of Developer's contractors, subcontractors, agents, or employees in connection with the construction, improvement, operation, or maintenance of the Project, provided that Developer shall have no indemnification obligation with respect to negligence or wrongful conduct of the City, its contractors, subcontractors, agents or employees or with respect to the maintenance, use or condition of any improvement after the time it has been dedicated to and accepted by the City or another public entity (except as provided in an improvement agreement or maintenance bond). If City is named as a party to any legal action, City shall cooperate with Developer, shall appear in such action and shall not unreasonably withhold approval of a settlement otherwise acceptable to Developer.

19. Insurance.

19.1. Public Liability and Property Damage Insurance. During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain in effect a policy of comprehensive general liability insurance with a per-occurrence combined single limit of not less than One Million Dollars (\$1,000,000.00) with a One Hundred Thousand Dollar (\$100,000) self-insurance retention per claim. The policy so maintained by Developer shall name the City as an additional insured and shall include either a severability of interest clause or cross-liability endorsement.

19.2. Workers Compensation Insurance. During the term of this Agreement, whenever Developer is conducting work on the Property pursuant to the Project Approvals, Developer shall maintain Worker's Compensation insurance for all persons employed by Developer for work at the Project site. Developer shall require each contractor and subcontractor similarly to provide Worker's Compensation insurance for its respective employees. Developer

agrees to indemnify the City for any damage resulting from Developer's failure to maintain any such insurance.

19.3. Evidence of Insurance. Prior to issuance of any permits for the Project, including grading permits, Developer shall furnish the City satisfactory evidence of the insurance required in Sections 19.1 and 19.2 and evidence that the carrier is required to give the City at least fifteen (15) days prior written notice of the cancellation or reduction in coverage of a policy. The insurance shall extend to the City, its elective and appointive boards, commissions, officers, agents, employees, and representatives and to Developer performing work on the Project.

20. Notices.

All notices required or provided for under this Agreement shall be in writing. Notices required to be given to the City shall be addressed as follows:

City Manager
City of El Cerrito
10890 San Pablo Ave.
El Cerrito, CA 94530
Fax: (510) 864-7025
Email: sch@ci.el-cerrito.ca.us

Notices required to be given to Developer shall be addressed as follows:

The Edward and Loretta Biggs Revocable Trust dated March 22, 2011
4271 Valley Lane
Fairfield, CA 94534
Fax: (707) 864-8150

A party may change its address by giving notice in writing to the other party. Thereafter, all notices shall be addressed and transmitted to the new address. Notices shall be deemed given and received upon personal delivery, or, if mailed, upon the expiration of 48 hours after being deposited in the United States Mail. Notices may also be given by overnight courier which shall be deemed given the following day, or by facsimile, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. The City will accept notice by email transmission, which shall be deemed given upon verification of receipt if received before 5:00 p.m. on a regular business day or else on the next business day. Developer may accept notice by email by providing notice and an email address to the City consistent with this section.

21. Agreement is Entire Understanding.

This Agreement constitutes the entire understanding and agreement of the parties concerning the subject matter of this Agreement.

22. Exhibits.

The following documents are referred to in this Agreement and are attached hereto and incorporated herein as though set forth in full:

Exhibit A Legal Description of Property

23. Counterparts.

This Agreement is executed in three (3) duplicate originals, each of which is deemed to be an original.

24. Recordation.

The City shall record a copy of this Agreement within ten (10) days following the Effective Date.

[Execution Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date and year first above written.

CITY OF EL CERRITO

DEVELOPER

The Edward and Loretta Biggs Revocable
Trust dated March 22, 2011

Scott Hanin, City Manager

By: _____

Its: Trustee

Attest:

Cheryl Morse, City Clerk

Approved as to Form:

Sky Woodruff, City Attorney

(NOTARIZATION ATTACHED)

Exhibit A

Legal Description of the Property

The land referred to is situated in the State of California, County of Contra Costa, City of El Cerrito, and is described as follows:

Lots 12, 13 and 14, in Block "B" as designated on the map entitled "Map of Schmidt Village, Contra Costa County, California", filed June 27, 1896, in Book C of Maps, Page 70, Contra Costa County Records.

EXCEPTING THEREFROM: The Northeast 7.00 feet thereof, as described in the Deed to City of El Cerrito, recorded February 9, 1965, in Book 4801 Official Records of Contra Costa County, Page 144.

(Being APN 502-112-038)

ORDINANCE NO. 2014-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO TO
REGULATE SMOKING WITHIN THE CITY OF EL CERRITO

SECTION 1. Findings.

WHEREAS, tobacco use causes death and disease and continues to be an urgent public health challenge, and

WHEREAS, secondhand smoke has been repeatedly identified as a health hazard, as evidenced by the following:

- The U.S. Surgeon General concluded that there is no risk-free level of exposure to secondhand smoke and separating smokers from nonsmokers, cleaning the air, and ventilating buildings cannot eliminate exposures of nonsmokers to secondhand smoke; and
- The California Air Resources Board placed secondhand smoke in the same category as the most toxic automotive and industrial air pollutants by categorizing it as a toxic air contaminant for which there is no safe level of exposure; and
- The California Environmental Protection Agency included secondhand smoke on the Proposition 65 list of chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm; and

WHEREAS, exposure to secondhand smoke causes death and disease, as evidenced by the following:

- Secondhand smoke is responsible for an estimated 50,000 deaths among nonsmokers each year in the United States; and
- Exposure to secondhand smoke increases the risk of coronary heart disease and stroke by about 20% to 30%, causes lower respiratory tract infections such as pneumonia and bronchitis in as many as 300,000 children in the United States under the age of 18 months each year, and exacerbates childhood asthma; and

WHEREAS, tobacco use and exposure to secondhand smoke impose great social and economic costs, including increased healthcare expenditures, medical costs, and lost productivity; and

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WHEREAS, exposure to secondhand smoke anywhere has negative health impacts, increases air pollution levels, and does occur at significant levels outdoors, and

WHEREAS, cigarette butts are a major and persistent source of litter, pose a health threat to young children, frequently end up in storm drains that flow into streams, rivers, creeks, San Francisco Bay, and ultimately the ocean; adversely impacts the health of both pets and wildlife, and can take up to several years to degrade; and

WHEREAS, cigarettes present a dangerous fire hazard in that every year, men, women and children are killed in home fires caused by cigarettes and other smoking materials; and improperly disposed of cigarettes can easily start fires in outdoor open spaces where there is a risk of wildfire; and

WHEREAS, electronic smoking devices often mimic conventional tobacco products in shape, size, and color, with the user exhaling a smoke-like vapor similar in appearance to the exhaled smoke from cigarettes and other conventional tobacco products; and

WHEREAS, existing studies on electronic smoking devices' vapor emissions and cartridge contents have found a number of dangerous substances, and conclude that exposure to vapor from electronic smoking devices may cause passive or secondhand vaping; and

WHEREAS, society is becoming less tolerant and less accepting of smoking, particularly in El Cerrito, where a majority of participants in surveys and community meetings indicated a need to regulate smoking within the City limits; and

WHEREAS, though widely perceived as a comprehensive smoke-free air law, the state smoke-free workplace law (California Labor Code section 6404.5) still has several exemptions and loopholes that permit smoking in a wide variety of workplaces, disproportionately impacts low-income and minority populations, and does not expressly prohibit the use of electronic smoking devices in enclosed workplaces; and

WHEREAS, California cities and counties have the legal authority to adopt local laws that make all indoor places of employment nonsmoking; and

WHEREAS, laws restricting smoking and the use of tobacco products have recognizable benefits to public health and medical costs, and

WHEREAS, state law prohibits smoking within 25 feet of playgrounds and tot lots

and expressly authorizes local communities to enact additional restrictions; and

WHEREAS, there is no Constitutional right to smoke; and

WHEREAS, this proposed Ordinance will preserve and enhance the environment within the City of El Cerrito and is exempt from the requirements of the California Environmental Quality Act ("CEQA"), as amended, pursuant to Section 15061(b)(3) or Section 15308 of the CEQA Guidelines.

NOW THEREFORE, the City Council of the City of El Cerrito does hereby ordain as follows:

SECTION 2. Amendment of Municipal Code. Title 8 of the El Cerrito Municipal Code is hereby amended to add a new Chapter 8.06 and shall read as follows:

8.06.010 - Title.

This Ordinance shall be known as the El Cerrito Smoking Pollution Protection Ordinance. The City of El Cerrito hereinafter shall be called "City." This Ordinance shall be applicable in the incorporated territory of the City.

8.06.020 - Definitions.

The following definitions apply to this Ordinance:

- A. "Business" shall mean any sole proprietorship, partnership, joint venture, corporation, association, or other entity formed for profit-making purposes or that has an employee, as defined in this section.
- B. "Commercial area" means those commercial districts described in chapter 19.07 of the El Cerrito Municipal Code or any property zoned as commercial.
- C. "Dining area" means any indoor or outdoor area, including streets and sidewalks, which is available to or customarily used by the general public or an employee, and which is designed, established, or regularly used for consuming food or drink.
- D. "Electronic smoking device" means an electronic and/or battery-operated device, the use of which may resemble smoking, which can be used to deliver an inhaled dose of nicotine or other substances. "Electronic smoking device" includes any such device, whether manufactured, distributed, marketed, or sold as an electronic cigarette, an electronic cigar, an electronic cigarillo, an electronic pipe, an electronic hookah, or any other product name or descriptor. "Electronic smoking device" does not include any product specifically

approved by the United States Food and Drug Administration for use in the mitigation, treatment, or prevention of disease.

- E. "Employee" means any person who is employed or retained as an independent contractor by any employer or nonprofit entity in consideration for direct or indirect monetary wages or profit, or any person who volunteers his or her services for an employer or nonprofit entity.
- F. "Employer" shall mean any person, partnership, corporation, municipal corporation, association, nonprofit or other entity who employs or retains the service of one or more employees, or supervises volunteers.
- G. "Enclosed area" means all space between a floor and ceiling where the space is closed in on all sides by solid walls or windows that extend from the floor to the ceiling. An enclosed area may have openings for ingress and egress, such as doorways or passageways. An enclosed area includes all spaces within that area, such as hallways and areas screened by partitions that do not extend to the ceiling or are not solid.
- H. "Landlord" means any person who owns property let for residential use, who lets residential property, or any person who manages such property, except that "landlord" does not include sublessors.
- I. "Multi-unit residence" means property containing two (2) or more units, including but not limited to apartments, condominiums, duplexes, senior citizen housing, nursing homes, hotels and motels; except the following specifically excluded types of housing:
 - 1. a single-family dwelling as defined in chapter 19.06;
 - 2. a single-family dwelling with a detached or attached in-law or second unit.
- J. "Multi-unit residence common area" shall mean any indoor or outdoor common area of a multi-unit residence accessible to and usable by residents of different units, including but not limited to halls and paths, lobbies, laundry rooms, common cooking areas, outdoor eating areas, play areas, shared patios, shared balconies, shared restrooms, elevators and stairwells, swimming pools, carports, garages, and parking areas.
- K. "Nonprofit entity" shall mean any entity that meets the requirements of California Corporations Code section 5003 as well as any corporation, unincorporated association or other entity created for charitable, religious, philanthropic, educational, political, social or similar purposes, the net

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proceeds of which are committed to the promotion of the objectives or purposes of the entity and not to private gain. A public agency is not a nonprofit entity within the meaning of this section.

- L. "Person" means any natural person, partnership, cooperative association, corporation, personal representative, receiver, trustee, assignee, or any other legal entity and including government agencies.
- M. "Place of employment" shall mean any area under the legal or de facto control of an employer, business or nonprofit entity that an employee or the general public may have cause to enter in the normal course of operations, but regardless of the hours of operation, including, for example, indoor and outdoor work areas, residential and commercial construction sites, vehicles used in employment or for business purposes, taxis, buses, employee lounges, conference and banquet rooms, bars, restaurants, bingo and gaming facilities, long-term health facilities, warehouses, and private residences that are used as childcare or healthcare facilities subject to licensing requirements.
- N. "Playground" shall mean any park or recreational area designed in part to be used by children that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located on public or private school grounds, or on City grounds.
- O. "Premises" means a piece of land and any improvements upon it such as is usually described in a deed, deed of trust or mortgage.
- P. "Public place" means any area or place, publicly or privately owned, which the public is invited or in which the public is permitted, that is open to the general public regardless of any fee or age requirement.
- Q. "Public sidewalk" means a paved pathway for pedestrians that is publicly owned or in the public right-of-way, including but not limited to within a commercial or residential area.
- R. "Reasonable distance" shall mean a distance that ensures that occupants of an area in which smoking is prohibited are not exposed to secondhand smoke created by smokers outside the area. This distance shall be a minimum of twenty-five (25') feet.

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- S. "Recreational Area" means any area, including streets and sidewalks, that is publicly owned, controlled or used by the City and open to the general public for recreational purposes, regardless of any fee or age requirement. The term "recreational area" includes but is not limited to parks, parklets, picnic areas, playgrounds, sports fields, open space, walking paths, gardens, hiking trails, bike paths, riding trails, swimming pools, and tennis courts.
- T. "Service area" means any publicly or privately owned area, including streets and sidewalks, that is designed to be used or is regularly used by one (1) or more persons to receive a service, wait to receive a service or to make a transaction, whether or not such service or transaction includes the exchange of money. The term "service area" includes but is not limited to areas including or adjacent to information kiosks, automatic teller machines (ATMs), ticket lines, bus stops or shelters, transit stops, mobile vendor lines or taxicab stands.
- U. "Smoke" means the gases, particles, or vapors released into the air as a result of the combustion, electrical ignition, or vaporization of a tobacco product, when the apparent or usual purpose of the combustion, electrical ignition, or vaporization is human inhalation of the tobacco product. "Smoke" includes but is not limited to tobacco smoke, electronic cigarette or electronic smoking device vapors, and marijuana smoke. "Smoke" excludes incense or similar products inhaled solely for olfactory purposes as long as those products do not contain tobacco or nicotine.
- V. "Smoking" means engaging in an act that generates smoke or vapor from a tobacco product, marijuana, or any other weed or plant. "Smoking" includes inhaling, exhaling, burning, possessing, holding, or carrying any lighted cigar, lighted cigarette, lighted pipe, lighted hookah pipe, operating electronic cigarette or electronic smoking device, or any other smoke inhalation device of any kind; "Smoking" includes smoking marijuana for medical purposes.
- W. "Tobacco product" means any of the following:
 - 1. Any substance containing tobacco leaf, including but not limited to cigarettes, cigars, pipe tobacco, hookah tobacco, snuff, chewing tobacco, dipping tobacco, bidis, blunts, clove cigarettes, or any other preparation of tobacco.
 - 2. Any product or formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter

will be introduced into the human body, including but not limited to electronic cigarettes or electronic smoking devices.

“Tobacco product” does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence.

- X. “Unenclosed area” means any area that is not an Enclosed Area.
- Y. “Unit” means a personal dwelling space consisting of essentially complete independent living facilities for one or more individuals, even where lacking cooking facilities or private plumbing facilities, and includes any associated exclusive-use enclosed area or unenclosed area, such as, for example, a private balcony, porch, deck, or patio. “Unit” includes but is not limited to an apartment; a condominium; a townhouse; a room in a long-term health care facility, assisted living facility, or hospital; a hotel or motel room; a room in a single room occupancy (“SRO”) facility; a room in a homeless shelter; a mobile home; a camper vehicle or tent; a single-family dwelling; and an in-law or second unit. “Unit” does not include a rented room in a single-family dwelling.

8.06.030 – City facilities.

- A. Smoking is prohibited in all buildings, vehicles, and other enclosed areas occupied by City employees, owned or leased by the City, or otherwise operated by the City.
- B. Smoking is prohibited in all outdoor areas owned or leased by the City, including parking lots, sidewalks, and the grounds of all buildings, facilities, or areas owned or leased by the City.

8.06.040 – Prohibition of Smoking in Enclosed Areas.

- A. In addition to prohibitions under State or Federal law, smoking is prohibited in the enclosed areas of the following places within the City of El Cerrito:
 - 1. Places of employment
 - 2. Public places
 - 3. Multi-unit residence common areas
 - 4. Units within all multi-unit residences
- B. Any places exempted by the California smokefree workplace law (Labor Code Section 6404.5(d)) are not exempt under this chapter. Smoking is prohibited by this chapter in all places exempted by that State law.

- C. The prohibitions set out in subsection A.3 and A.4 shall not be operative until October 1, 2015 or at the time of expiration of an existing lease of a unit within the multi-unit residence, whichever is sooner.

8.06.050 – Prohibition of Smoking in Unenclosed Areas.

- A. In addition to prohibitions under State or Federal law, smoking is prohibited in the unenclosed areas of the following places within the City of El Cerrito:
 - 1. Throughout all commercial areas
 - 2. Recreational areas
 - 3. Service areas
 - 4. Dining areas
 - 5. Places of employment
 - 6. Multi-unit residence common areas
 - 7. All public sidewalks throughout the City
 - 8. Public events, including but not limited to arts and crafts shows, auctions, civic and community events, fairs, farmers' markets, festivals, flea markets, food events, recreation events, rummage sales, second hand sales, street fairs, and swap meets, or any other event which may be attended by the general public.
- B. Nothing in this chapter prohibits any person, employer, or nonprofit entity with legal control over any property from prohibiting smoking on any part of such property, even if smoking is not otherwise prohibited in that area.
- C. The prohibition set out in subsection A.6 of this section shall not be operative until October 1, 2015.
- D. Smoking is prohibited within a reasonable distance of any enclosed or unenclosed area where smoking is prohibited by this chapter.

8.06.060 – Other Requirements and Prohibitions.

- A. Notwithstanding any other provision of this chapter, it shall be a violation of this chapter to use an electronic smoking device in any place within the City subject to the prohibition on smoking contained in this chapter and in California Labor Code section 6404.5, as that section may be amended from time to time.
- B. No person, employer, or nonprofit entity shall knowingly permit smoking or use of tobacco product in an area which is under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking is prohibited by law, unless otherwise required by state or federal law.

- C. No person, employer, or nonprofit entity shall knowingly or intentionally permit the presence or placement of ash receptacles, such as, for example, ash trays or ash cans, within an area under the legal or de facto control of that person, employer, or nonprofit entity and in which smoking or use of tobacco product is prohibited by law. Notwithstanding the foregoing, the presence of ash receptacles in violation of this subsection shall not be a defense to a charge of smoking or use of tobacco product in violation of any provision of this chapter.
- D. A person, employer, or nonprofit entity that has legal or de facto control of an area in which smoking is prohibited by this chapter shall post a clear, conspicuous and unambiguous “No Smoking” or “Smokefree” sign at each point of ingress to the area, and in at least one other conspicuous point within the area. The signs shall have letters of no less than one inch in height and shall include the international “No Smoking” symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it. Notwithstanding the above, for purposes of this section, the City Manager or his/her designee shall be responsible for the posting of a reasonable number of signs in recreational areas owned, leased in whole or in part by the City. Notwithstanding this provision, the absence of signs shall not be a defense to a charge of smoking or the use of tobacco products in violation of any other provision of this chapter.
- E. With respect to each multi-unit residence, the owner, in cases where the units may not be sold individually, or the person responsible for maintenance of the common area, in cases where the units may be sold individually, shall:
 - 1. Within thirty (30) days of the effective date of this section, notify the occupants and owners of units in writing by mail or delivery to the unit of the prohibitions imposed by this chapter.
 - 2. Post "No Smoking" or “Smokefree” signs, with letters of no less than one inch in height or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle crossed by a red bar) indicate that smoking is prohibited within units in the multi-unit residence and within the common area shall be clearly and conspicuously posted in multi-unit residence common areas and at entrances and exits. Such signs shall be maintained by the person or persons with legal control over the multi-unit residence common areas and entrances and exits. Signs must be posted in sufficient numbers and

locations in the multi-unit residence common areas and at entrances and exits to make areas where smoking is prohibited obvious to a reasonable person. Signs are not required at the individual entrance and exits of each multi-unit residence. The absence of signs shall not be a defense to a charge of violation of any provision of this chapter.

- F. Every lease or other agreement for the occupancy of a unit in a multi-unit residence entered into, amended, or renewed shall include:
1. A clause stating that smoking is prohibited in the unit
 2. A clause stating that it is a material breach of the lease or agreement to violate any law regulating smoking while on the premises, smoke in the unit, or smoke in any multi-unit residence common area in which smoking is prohibited
 3. A clause stating that all occupants of the multi-unit residence are express third-party beneficiaries of the above required clauses.
 4. A form prepared by an entity such as the California Apartment Association Form 34 meets the requirements for lease terms as outlined and is an option for use to comply with this section.
- G. A tenant who breaches the smoking regulations of a lease or knowingly allows another person to do so shall be liable to: the landlord, and any occupant of the multi-unit residence who is exposed to secondhand smoke as a result of that breach.
- H. This chapter shall not create additional liability for a landlord for a person's violation of this chapter provided that the landlord has fully complied with the required disclosure, sign posting, and other provisions of this chapter.
- I. No person, employer, or nonprofit entity shall intimidate, threaten any reprisal, or effect any reprisal, for the purpose of retaliating against another person who seeks to attain compliance with this chapter.
- J. Each instance of smoking in violation of this chapter shall constitute a separate violation. For violations other than for smoking, each day of a continuing violation of this chapter shall constitute a separate violation.

8.06.070 – Enforcement and Violation – Penalty.

- A. Any violation of this ordinance is punishable as specified in Chapters 1.08 or 1.14 of the El Cerrito Municipal Code or by any other applicable law.

- B. The City Manager or his or her designee has primary responsibility for enforcement of this Ordinance. Any peace officer or Code Enforcement Official also may enforce this chapter.
- C. The remedies provided by this chapter are cumulative and in addition to any other remedies available at law or in equity.
- D. Causing, permitting, aiding, abetting, or concealing a violation of any provision of this chapter shall also constitute a violation of this chapter.
- E. Any Person may act as a Private Enforcer, acting for the interests of itself, its members, or the general public may bring a civil action in any court of competent jurisdiction, including small claims court, to enforce this chapter against any Person who has violated this chapter two or more times. Upon proof of the violations, a court shall grant all appropriate relief, including: (1) awarding damages; and (2) issuing an injunction or a conditional judgment.

SECTION 3. Compliance with the California Environmental Quality Act.

Pursuant to Title 14 of the California Administrative Code, the City Council finds that this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) for the following reasons: (1) under Section 15061 (b)(3), it is not a project which has the potential for causing a significant effect on the environment; (2) under Section 15308, it is an authorized action by an agency with regulatory authority for the purpose of assuring the maintenance, restoration, enhancement, or protection of the environment.

SECTION 4. Severability.

If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid by a decision of any court of competent jurisdiction, that decision will not affect the validity of the remaining portions of the Ordinance. The City Council of the City of El Cerrito hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of this Ordinance would be subsequently declared invalid.

SECTION 5. No Conflict with Federal or State Law.

Nothing in this Ordinance is intended to create any requirement, power or duty that is in conflict with any federal or state law.

SECTION 6. Effective Date.

This ordinance shall take effect and be enforced January 1, 2015, and prior to the expiration of fifteen days from the passage thereof, the ordinance or a summary thereof shall be posted or published as may be required by law, and thereafter the same shall be in full force and effect.

THE FOREGOING Ordinance was introduced at a regular meeting of the City Council on August 19, 2014, and passed by the following vote:

AYES:	Councilmembers Benassini, Bridges, Friedman, Lyman and Mayor Abelson
NOES:	None
ABSTAIN:	None
ABSENT:	None

ADOPTED AND ORDERED published at a regular meeting of the City Council held on the October __, 2014 and passed by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October XX, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl More, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito, that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the __ day of October 2014; and that said ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this day of October __, 2014.

Cheryl Morse, City Clerk

ORDINANCE 2014-06

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO REZONING
PROPERTIES LOCATED IN THE SAN PABLO AVENUE SPECIFIC PLAN AREA**

SECTION 1. RECITALS

- A. On September 4, 2014, (Resolution PC 14-12, Exhibit 1) the Planning Commission considered the Environmental Impact Report (EIR) for the San Pablo Avenue Specific Plan (SPASP) project and recommended that the City Council certify the EIR; and
- B. On September 4, 2014, (Resolution PC 14-12) the Planning Commission considered the SPASP and recommended that the City Council adopt the SPASP; and
- C. On September 22, 2014, the City Council held a public hearing to consider the EIR and the SPASP, to public comment and testimony, and (Resolution No. 2014-50) certified the EIR under the California Environmental Quality Act; and
- D. On September 22, 2014, the City Council adopted a General Plan Amendment (Resolution No. 2014-51) to implement the SPASP; and
- E. In order to further implement the SPASP and to ensure consistency between the General Plan and the Zoning Map, corresponding amendments to the Zoning Map must be made.

SECTION 2. REZONE

SECTION 1. The zoning map of the City of El Cerrito is hereby amended such that certain real property currently zoned/described as: 174 acres of the Plan that exist within the City of El Cerrito's jurisdiction. The Plan area extends for approximately 2.5 miles from El Cerrito Plaza and El Cerrito's border with the City of Albany on the south to the Ohlone Greenway near the BART tracks and Baxter Creek on the north. At the south end of the Plan area, the project boundary extends east to include the El Cerrito Plaza BART Station and west along Central Avenue to I-80. Generally, the Plan area includes the San Pablo Avenue roadway and the parcels fronting on the avenue; and more particularly described in Exhibit B are rezoned to San Pablo Specific Plan.

SECTION 3. NOTICING, POSTING AND PUBLICATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

SECTION 4. EFFECTIVE DATE

This ordinance shall not take effect until thirty days after the second reading, November 6, 2014.

THE FOREGOING ORDINANCE was introduced at a special meeting of the City Council on September 22, 2014 and passed by the following vote:

AYES: Councilmembers Benassini, Bridges, Lyman and Mayor Abelson
NOES: None
ABSTAIN: None
ABSENT: Councilmember Friedman

ADOPTED AND ORDERED published at a regular meeting of the City Council held on the October 7, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October X, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the ___ day of October, 2014; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this ___th day of October, 2014.

Cheryl Morse, City Clerk

Exhibit A – List of properties within the Plan Area
Exhibit B – Specific Plan Zoning Map



**October 7, 2014
City Council Meeting**

**Agenda Item 5(D)
Ordinance 2014-06 – Exhibit A
List Of Property Owners That Received Public Notice
Of San Pablo Specific Avenue Plan Rezoning Action**

Hardcopies are available for review at:

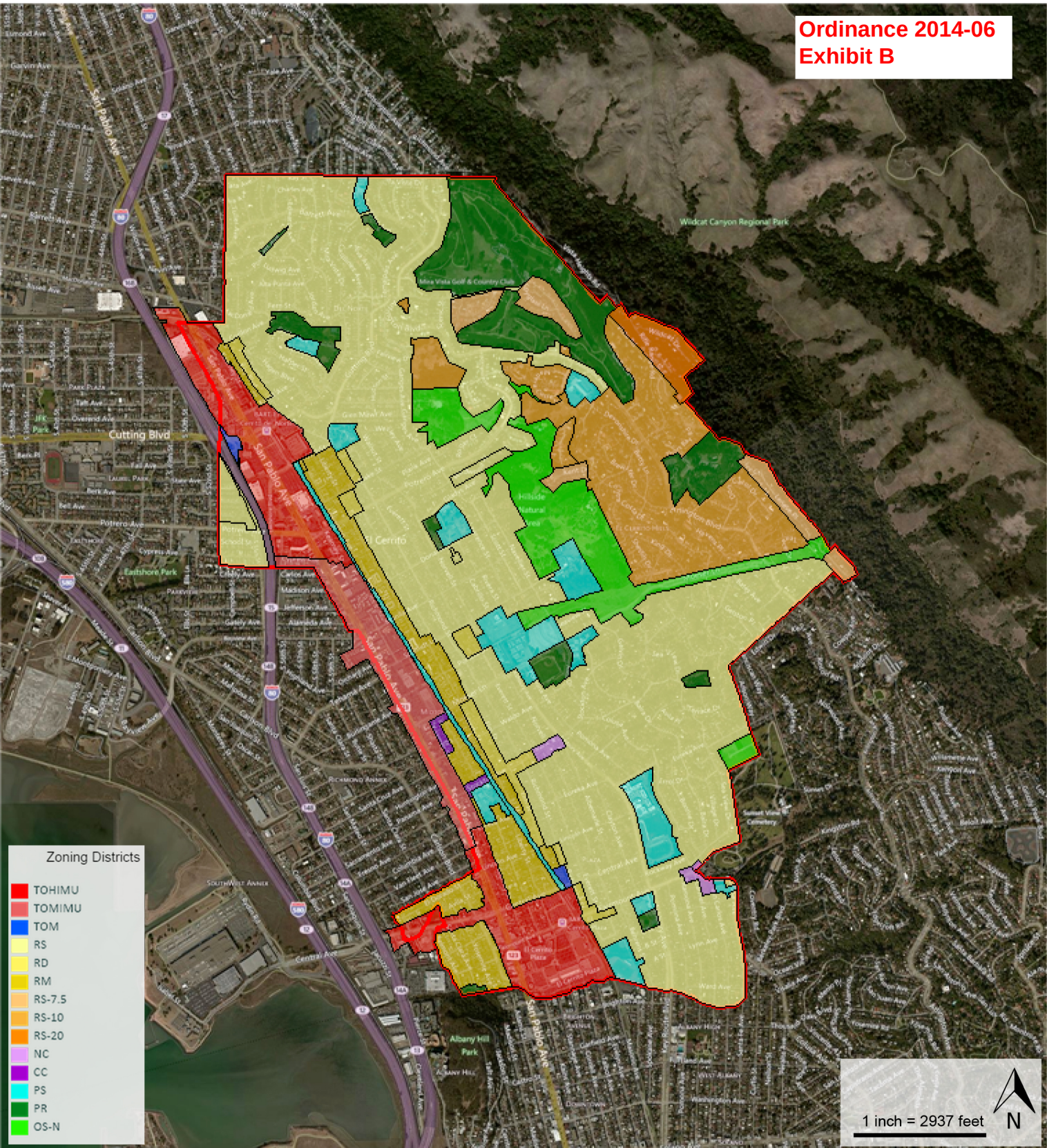
Office of the City Clerk
10890 San Pablo Avenue
El Cerrito, CA
(510) 215-4305

and

The El Cerrito Library
6510 Stockton Avenue
El Cerrito, CA

El Cerrito Zoning Map

Ordinance 2014-06
Exhibit B



ORDINANCE 2014-07

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AMENDING
TITLE 19 OF THE EL CERRITO MUNICIPAL CODE BY ADDING CHAPTER 19.15 TO
INCORPORATE THE SAN PABLO AVENUE SPECIFIC PLAN AREA

SECTION 1. RECITALS

- A. On September 4, 2014, (Resolution PC 14-12, Exhibit 1) the Planning Commission considered the Environmental Impact Report (EIR) for the San Pablo Avenue Specific Plan (SPASP) project and recommended that the City Council certify the EIR; and
- B. On September 4, 2014, (Resolution PC 14-2) the Planning Commission considered the SPASP and recommended that the City Council adopt the SPASP; and
- C. On September 22, 2014, the City Council held a public hearing to consider the EIR and the SPASP, to public comment and testimony, and (Resolution No. 2014-50) certified the EIR under the California Environmental Quality Act; and
- D. On September 22, 2014, the City Council adopted a General Plan Amendment (Resolution No. 2014-51) to implement the SPASP; and
- E. In order to further implement the SPASP and to ensure consistency between the General Plan and the Zoning Map, corresponding amendments to the Zoning Map must be made.

SECTION 2. MUNICIPAL CODE AMENDMENT

THE CITY COUNCIL OF THE CITY OF EL CERRITO DOES HEREBY
ORDAIN AS FOLLOWS:

El Cerrito Municipal Code Title 19, Zoning is hereby amended to add Chapter
19.15, to read as follows:

Part III – Special District Regulations

Chapter 19.15: San Pablo Avenue Special Plan District (SPASPD)

19.15.010 Purpose

The general purpose of the San Pablo Avenue Special Plan District is to recognize and designate the unique planning context of the San Pablo Avenue corridor and to prescribe planning and design principles for the plan area. In addition to furthering the general principles of the El Cerrito zoning ordinance, the specific purposes of the district include the following:

- A. To establish area-specific and context-sensitive development standards to produce an attractive, coherent and efficient built environment.

Agenda Item No. 5(E)

- B. To identify public improvements necessary to accommodate and support development in the plan area.
- C. To permit development in the plan area while ensuring adequate standards relating to public health, safety, welfare, comfort and convenience.

19.15.020 Applicability

The San Pablo Avenue Specific Plan was adopted by the City Council on September 22, 2014 by Resolution No. 2014-52. All notations, references, and other information shown in the SPASP are incorporated by reference and shall be deemed as much a part of this title as if the matter and information set forth in the plan were fully described in this chapter. All terms not otherwise defined in the San Pablo Avenue Specific Plan shall have the meaning set forth in the El Cerrito Municipal Code. In the event of a conflict between the terms, conditions, requirements, policies, or other provisions of the San Pablo Avenue Specific Plan and the El Cerrito Municipal Code, the San Pablo Avenue Specific Plan shall take precedence.

19.15.030 Permitted Uses

Land uses within the San Pablo Avenue Special Plan District shall be permitted as prescribed in the San Pablo Avenue Specific Plan.

19.15.040 Development Standards

Development standards within the San Pablo Avenue Special Plan District shall be those standards prescribed in the San Pablo Avenue Specific Plan.

SECTION 3. NOTICING, POSTING AND PUBLICATION

This ordinance is adopted pursuant to the procedures established by state law, and all required notices have been given, and the public hearing has been properly held and conducted.

SECTION 4. EFFECTIVE DATE

This ordinance shall not take effect until thirty days after the second reading, November 6, 2014.

THE FOREGOING ORDINANCE was introduced at a special meeting of the City Council on September 22, 2014 and passed by the following vote:

AYES:	Councilmember Benassini, Bridges, Lyman and Mayor Abelson
NOES:	None
ABSTAIN:	None
ABSENT:	Councilmember Friedman

ADOPTED AND ORDERED PUBLISHED at a regular meeting of the City Council held on the October 7, 2014 and passed by the following vote:

AYES: Councilmembers
NOES: Councilmembers
ABSTAIN: Councilmembers
ABSENT: Councilmembers

APPROVED:

Janet Abelson, Mayor

ATTEST:

Cheryl Morse, City Clerk

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October ____, 2014.

Cheryl Morse, City Clerk

ORDINANCE CERTIFICATION

I, Cheryl Morse, City Clerk of the City of El Cerrito, do hereby certify that this Ordinance is the true and correct original Ordinance No. 2014-XX of the City of El Cerrito; that said Ordinance was duly enacted and adopted by the City Council of the City of El Cerrito at a meeting of the City Council held on the __ day of October, 2014; and that said Ordinance has been published and/or posted in the manner required by law.

WITNESS my hand and the Official Seal of the City of El Cerrito, California, this __th day of October, 2014.

Cheryl Morse, City Clerk

EL CERRITO CITY COUNCIL PROCLAMATION
Freedom from Workplace Bullies Week, October 19-25, 2014

WHEREAS, the City of El Cerrito has an interest in promoting the social and economic well-being of its residents, employees and employers; and

WHEREAS, that well-being depends upon the existence of healthy and productive employees working in safe and abuse-free work environments; and

WHEREAS, research has documented the stress-related health consequences for individuals caused by exposure to abusive work environments; and

WHEREAS, abusive work environments are costly for employers, with consequences including reduced productivity, absenteeism, turnover, and injuries; and

WHEREAS, protection from abusive work environments should apply to every worker, and not be limited to legally protected class status based only on race, color, gender, national origin, age, or disability.

NOW, THEREFORE, the City Council of the City of El Cerrito hereby proclaims the week of October 19 – 25, 2014 as “FREEDOM FROM WORKPLACE BULLIES WEEK,” in the City of El Cerrito and commends the California Healthy Workplace Advocates and the Workplace Bullying Institute, for raising awareness of the impacts of, and solutions for, workplace bullying in the United States; and encourages all residents to recognize this special observance.

Dated: October 7, 2014

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 5(G)

Date: October 7, 2014

To: El Cerrito City Council

From: Melissa L. Tigbao, Engineering Manager / Senior Engineer
Yvetteh Ortiz, Public Works Director / City Engineer

Subject: Parking Modifications on Fairmount Ave between San Pablo Avenue and Carlson Boulevard

ACTION REQUESTED

Adopt a resolution authorizing the Public Works Director / City Engineer to establish a “No Parking” restriction from 3 PM to 10 PM on Wednesdays for both sides of Fairmount Avenue between San Pablo Avenue and Carlson Boulevard.

DISCUSSION

The Public Works Department is proposing establishment of a “No Parking” restriction in support of the Administrative Use Permit issued by the Planning Division for *Off the Grid*. The *Off the Grid* Administrative Use Permit was renewed on June 27, 2014 to run through July 30, 2015 for a public food market event every Wednesday from 5 PM to 9 PM. Per the Administrative Use Permit, the applicant is to start event set up at 3:30 PM and take down operations by 10 PM.

The current parking restriction on Fairmount Avenue between San Pablo Avenue and Carlson Boulevard is a one-hour time limit from 9 AM to 6 PM except Saturdays, Sundays, and Holidays. For the past year, this roadway segment has been temporarily signed for “No Parking” from 3 PM to 10 PM on Wednesdays using temporary signs on various types of barricades and delineators. The barricades showed to be a potential obstruction to the path of travel along the sidewalk, and the temporary signs faded after short use. The installation of permanent sign panels is a Condition of Approval to the permit and a notification regarding these conditions was sent to residents and businesses within a 300 foot radius of the event location.

The establishment of a “No Parking” restriction from 3 PM to 10 PM on Wednesdays for both sides of Fairmount Avenue between San Pablo Avenue and Carlson Boulevard will allow for closure of the street for not only *Off the Grid*, but other special events as well. It will also reduce maintenance of the temporary signs and ensure a clear path of travel. The establishment of a “No Parking” restriction requires City Council approval.

If the *Off the Grid* event ceases operation in this location and no other special events are anticipated as established, Public Works staff will return to City Council and request that the "No Parking" restriction be eliminated.

ENVIRONMENTAL CONSIDERATIONS

The installation of signs is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

STRATEGIC PLAN CONSIDERATIONS

Approval of the establishment of the proposed parking restriction would help fulfill the following City of El Cerrito Strategic Plan Goals:

Goal A: By working with Off the Grid to establish parking restrictions on Fairmount Avenue between San Pablo Avenue and Carlson Boulevard, the City is developing and strengthening the relationships with public and private partners, residents, businesses and community groups.

Goal C: By working with Off the Grid to establish parking restrictions on Fairmount Avenue between San Pablo Avenue and Carlson Boulevard, the City is promoting and supporting entertainment, recreational, and leisure activities for people of all ages and demographics.

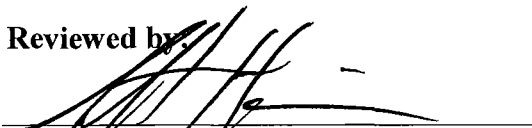
FINANCIAL CONSIDERATIONS

The cost for materials and installation will be paid for by the applicant, *Off the Grid*, per the Conditions of Approval of the Administrative Use Permit.

LEGAL CONSIDERATIONS

El Cerrito Municipal Code Section 11.40.230 requires that parking prohibitions during specific hours be approved by City Council Resolution.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Resolution for Establishment of Parking Restriction on Fairmount Avenue between San Pablo Avenue and Carlson Boulevard

RESOLUTION 2014-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE ESTABLISHMENT OF A “NO PARKING” RESTRICTION FROM 3 PM TO 10 PM ON WEDNESDAYS ON BOTH SIDES OF FAIRMOUNT AVENUE BETWEEN SAN PABLO AVENUE AND CARLSON BOULEVARD

WHEREAS, the Public Works Department is proposing establishment of a “No Parking” restriction from 3 PM to 10 PM on Wednesdays for both sides of Fairmount Avenue between San Pablo Avenue and Carlson Boulevard; and

WHEREAS, the Public Works Department is proposing such establishment in support of the Administrative Use Permit issued by the Planning Division for Off the Grid; and

WHEREAS, the current parking restriction on Fairmount Avenue between San Pablo Avenue and Carlson Boulevard is a one-hour time limit from 9 AM to 6 PM except Saturdays, Sundays and Holidays; and

WHEREAS, if the Off the Grid event ceases operation in this location and no other special events are anticipated during the times established by this resolution, Public Works staff will return to the City Council and request that the “No Parking” restriction be eliminated; and

WHEREAS, Section 11.40.230 of the El Cerrito Municipal Code requires that parking prohibitions during specific hours be approved by the City Council.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of El Cerrito hereby authorizes the Public Works Director / City Engineer to establish a “No Parking” restriction from 3 PM to 10 PM on Wednesdays for both sides of Fairmount Avenue between San Pablo Avenue and Carlson Boulevard.

BE IT FURTHER RESOLVED that the City Council of the City of El Cerrito finds that this action is not subject to the California Environmental Quality Act (“CEQA”) pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines because it has no potential for resulting in physical change to the environment, directly or indirectly.

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

I CERTIFY that at a regular meeting on October 7, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

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

Agenda Item No. 5(G)
Attachment 1

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October _____, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 5(H)

Date: October 7, 2014

To: El Cerrito City Council

From: Melanie Mintz, Interim Community Development Director
Yvetteh Ortiz, Public Works Director

Subject: Professional Services Agreement with Emily Alter Analysts

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an amendment to the Professional Services Agreement between the City of El Cerrito and Emily Alter Analysts (Consultant) to provide project management and support services for special projects and programs in an amount not to exceed \$62,500 bringing the total contract to an amount not to exceed \$87,500 for Fiscal Year 2014-2015.

DISCUSSION

The Community Development and Public Works departments are currently advancing a number of one-time special projects and planning efforts, including the *Citywide Urban Greening Plan*, *Citywide Active Transportation Plan*, the *Ohlone Greenway Station Access, Safety and Placemaking* capital improvement project, the *Safe Routes to Transit/San Pablo Avenue Complete Streets* technical study, the Metropolitan Transportation Commission *Del Norte Precise Plan* and STAR Certification. These efforts are primarily grant funded. With current vacancies in both departments, City staff is in need of consultant services to provide the focused attention these special projects need. Furthermore, the Community Development Department is holding a vacancy in Economic Development and is currently in need of assistance to at least minimally maintain our economic development service objectives, including serving as liaison to the Economic Development Committee and advancing development of the Economic Development Action Plan and associated activities.

The Consultant has provided outstanding service and value to the City and provides a unique versatility in delivery of work product, being able to manage projects that advance and blend the City's sustainable community development, economic development and multimodal transportation goals. Because she has assisted the City in the past, no learning curve is required. The Consultant has led the development of several successful grants, including the \$3,468,547 One Bay Area Grant (OBAG) for the upcoming *Ohlone Greenway Station Access, Safety and Placemaking* project; the \$100,000 *Safe Routes to Transit* grant; and the recently secured \$302,500 Metropolitan Transportation Commission (MTC) Priority Development Area Planning grant to develop a *Del Norte Precise Plan*. The Consultant has also been the primary project

manager on the grant funded Urban Greening Plan, Active Transportation Plan and the STAR Communities certification process.

Going forward, on an annual basis, the departments will continue to evaluate their needs and available budget, to determine how to continue to provide the services that advance the City's Strategic Plan utilizing permanent positions and consultant services as needed. Currently, due to the dissolution of the Redevelopment Agency, there is no permanent funding source for the vacant Economic Development position necessitating partially backfilling it through this contract. The consultant contract is funded by a combination of grants from the Municipal Services Corporation, Proposition 84, One Bay Area Grant (OBAG) and both departments' operating budgets for professional services.

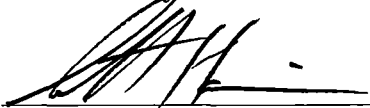
STRATEGIC PLAN

The proposed Consultant contract supports both the Community Development and Public Works departments to advance several Strategic Plan goals and strategies, including: ***Goal B:** Achieve long-term financial sustainability through pursuing opportunities for new funding, including outside grants; **Goal C:** Deepen a sense of place and community identity, by reimagining underdeveloped and underutilized properties through advanced planning efforts, developing an Economic Development Action Plan, encouraging the use of alternative modes to connect people and create a sense of community; and **Goal F:** Foster environmental sustainability citywide through setting policies and providing innovative programs that promote environmental sustainability.*

FINANCIAL CONSIDERATIONS

The original agreement was for an amount not to exceed \$25,000. This amendment for an additional \$62,500 would bring the total contract to an amount not to exceed \$87,500. Expense appropriations are available through the adopted Fiscal Year 2014-15 City budget in the Community Development, Public Works and Capital Improvement Program budgets. No additional budget appropriations are required.

Reviewed by:



Scott Hanin, City Manager

Attachment:

1. Resolution

RESOLUTION 2014-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH EMILY ALTER ANALYSTS IN AN AMOUNT NOT TO EXCEED \$62,500

WHEREAS, the City of El Cerrito has an existing contract with Emily Alter Analysts (Consultant) to provide project management and support services for special projects and programs to the Public Works and Community Development Departments; and

WHEREAS, the City of El Cerrito is advancing several one-time efforts to further Strategic Plan Goal B: Achieve long-term financial sustainability through pursuing opportunities for new funding, Goal C: Deepen a sense of place and community identity, Goal F: Foster environmental sustainability citywide; and

WHEREAS, both the Public Works and Community Development Departments are carrying vacant positions, including the Economic Development program manager, and;

WHEREAS, the Public Works and Community Development Departments are currently advancing a number of one-time special projects and planning efforts, including: the Citywide Urban Greening Plan, Citywide Active Transportation Plan, the Ohlone Greenway Station Access, Safety and Placemaking capital improvement project, the Safe Routes to Transit/San Pablo Avenue Complete Streets technical study, the Metropolitan Transportation Commission Del Norte Precise Plan and STAR Certification, and;

WHEREAS, funding was identified in the adopted Fiscal Year 2014-15 budget for professional services and no new appropriations are required.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that it hereby authorizes the City Manager to execute an amendment to the Professional Services Agreement between the City of El Cerrito and Emily Alter Analysts in an amount not to exceed \$62,500.

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

I CERTIFY that at a regular meeting on October 7, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES:	COUNCILMEMBERS:
NOES:	COUNCILMEMBERS:

Agenda Item No. 5(H)
Attachment 1

ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October _____, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 5(I)

Date: October 7, 2014

To: El Cerrito City Council

From: Melanie Mintz, Interim Community Development Director
Margaret Kavanaugh-Lynch, Development Services Manager

Subject: Professional Services Agreement with 4Leaf Inc.

ACTION REQUESTED

Adopt a resolution authorizing the City Manager to execute an amendment to the Professional Services Agreement between the City of El Cerrito and 4Leaf Inc. (Consultant) to provide support services to the Building Division in an amount not to exceed \$25,000 bringing the total contract to an amount not to exceed \$50,000 for fiscal year 2015.

DISCUSSION

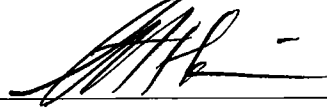
The Community Development Department's Building Division has utilized contract services to fill the role of Building Official for the past two fiscal years and recently filled the position, as of October 1, 2014. Between July 1, 2014 and October 1, 2014 the position continued to be filled by 4Leaf Inc. (Consultant). 4Leaf was selected after evaluating multiple options including other firms, other cities and the County. Additionally, the Building Division's adopted 2014-15 budget included funds for Part-Time assistance to fulfill building inspection services during times of increased activity. City staff has not been able to retain an on-call Part-Time regular employee, and has therefore utilized Consultant services to fulfill the on-call inspection services function.

The proposed \$25,000 contract amendment is to continue to utilize 4Leaf Inc. services to fulfill the on-call building inspection function. An existing \$25,000 agreement has provided for both Building Official and Inspection services for this fiscal year. The proposed amendment will allow the Division to continue to utilize the Consultant's services on an on-call basis. The new Building Official will evaluate the Division's needs and available budget and determine and recommend the appropriate staffing levels going forward.

FINANCIAL CONSIDERATIONS

The cost of the proposed amendment to the Professional Services Agreement will be offset by Part-Time Salary and Wage savings. No new budget appropriation is required.

Reviewed by:

A handwritten signature in black ink, appearing to read 'SH', is written over a horizontal line.

Scott Hanin, City Manager

Attachment:

1. Resolution

RESOLUTION 2014-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH 4LEAF INC. IN THE AMOUNT NOT TO EXCEED \$25,000

WHEREAS, the City of El Cerrito has an existing contract with 4Leaf Inc. (Consultant) to provide support services to the Building Division; and

WHEREAS, the City of El Cerrito adopted Fiscal Year 2014-15 budget included funds for part-time inspection services to be able to fulfill inspection needs during times of increased activity; and

WHEREAS, the Building Division has not yet retained an on-call part-time employee to fill the position; and

WHEREAS, the Consultant is qualified to fill the functions of the position.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that it hereby authorizes the City Manager to execute an amendment to the Professional Services Agreement between the City of El Cerrito and 4Leaf Inc. in an amount not to exceed \$25,000.

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

I CERTIFY that at a regular meeting on October 7, 2014 the City Council of the City of El Cerrito passed this Resolution by the following vote:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on _____, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor



AGENDA BILL

Agenda Item No. 7(A)

Date: October 7, 2014
To: El Cerrito City Council
From: Karen Pinkos, Assistant City Manager
Subject: Adoption of Memoranda of Understanding between the City of El Cerrito and the Public Safety Management Association

ACTIONS REQUESTED

1. Adopt a resolution approving Memoranda of Understanding between the City of El Cerrito and Public Safety Management Association for the following bargaining units:
 - a. Battalion Chiefs
 - b. Police Command Staff (Captain and Lieutenants)
 - c. Fire Chief
 - d. Police Chief
2. Adopt a resolution modifying reporting and payment of employer paid member contributions for the Public Safety Management Association.

BACKGROUND/ANALYSIS

The City's Public Safety Management Association (PSMA) represents four separate bargaining units: Battalion Chiefs (Fire Department), Police Management (Captain and Lieutenants), Fire Chief, and Police Chief. Memoranda of Understanding (MOU) for three of the four units had expired prior to this fiscal year, with the exception of the Police Chief. The City's management team and representatives of PSMA began meeting in June 2014 to discuss successor MOUs for the three expired units and modification of the Police Chief MOU, in light of the financial challenges and the balancing measures being considered for the City budget, both short- and long-term. The City's management team was also interested in pursuing consistency with respect to the City's other bargaining units that have negotiated concessions with the City during 2014, specifically with Firefighters Local 1230 and the El Cerrito Police Employees' Association (ECPEA). PSMA representatives understood clearly the City's financial position and desire for consistency, and a tentative agreement was accepted by the members of PSMA on September 19, 2014.

The successor MOUs essentially mirror the recent modifications made to the MOUs for Local 1230 and the ECPEA as far as wages, PERS contribution, and longevity pay for Police Department employees.

Agenda Item No. 7(A)

Battalion Chiefs and Police Management

The changes to the MOUs for these two bargaining units are consistent with the agreements reached with Local 1230 and the ECPEA with respect to wages and PERS contribution:

Year	Salary Increase Battalion Chief	Salary Increase Police Management	New PERS Contribution
2014	8.0%	8.0%	9.0%
2015	4.5%	4.5%	1.5%
2016	4.5%	4.0%	1.5%

The terms of the agreements for these two bargaining units are also meant to be consistent, with the Battalion Chiefs agreement effective through June 30, 2017 and the Police Management agreement effective through December 31, 2017.

Fire Chief and Police Chief

The Fire Chief and Police Chief agreements are consistent with the other public safety agreements with respect to PERS contributions. The modifications to salaries and benefits for both of the MOUs for these bargaining units are as follows:

Year	Salary Increase	New PERS Contribution
2014	5.0%	9.0%
2015	1.5%	1.5%
2016	1.5%	1.5%

The term of the agreement with the Fire Chief, as with the other Fire Department employees, will expire on June 30, 2017. As previously noted, the Police Chief had been within a valid contract with guaranteed salary adjustments. However, the Chief and PSMA agreed to modify the agreement to be consistent with the other PSMA MOUs, and the City agreed to adjust the Police Chief's vacation accrual to accurately reflect her total years of law enforcement service. Additionally, the MOU for Police Chief was modified to reflect that the agreement will expire on June 30, 2019.

In addition, City representatives agreed to modifications in longevity pay for employees in the Police Department, again to be consistent with the agreement with ECPEA. Modifications to longevity pay are as follows:

Longevity Pay—Police Management and Police Chief

Years of Service	Current	Proposed
5		3.0%
7	3.0%	
10		6.0%
15	5.0%	
20	7.0%	9.0%

Other significant changes to all MOUs include the following:

1. Modifications to vacation accrual similar to the Management and Confidential group are implemented, including a cap of two times the annual accrual rate, a separate vacation bank for any hours in excess of the cap as of January 1, 2015, and more flexibility for vacation cash-out for up to 16 days of vacation provided 16 days were taken the previous fiscal year.
2. Sick leave has been increased to 11 hours and 25 minutes per month.
3. Bereavement leave has been extended from three days to five days.

The City's management staff recognizes and appreciates the PSMA members for the amicable discussions that took place, and for their willingness to assist the City with its fiscal challenges both short- and long-term, particularly considering one of the bargaining units was within a valid contract and was not obligated to make modifications.

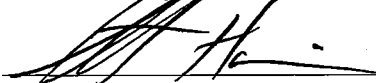
FINANCIAL CONSIDERATIONS

The agreements for the PSMA bargaining units are within the initial projections considered for FY 2014-15, therefore funding is available within the adopted budget.

LEGAL CONSIDERATIONS

The attached resolution modifying reporting and payment of employer paid member contributions for all of the bargaining units are required by PERS when amending the payment of employer paid member contributions (EPMC). These resolutions notify PERS that the City has eliminated the EPMC for the PSMA and increased the member contribution from 0% to 9%.

Reviewed by:



Scott Hanin, City Manager

Attachments:

1. Resolution adopting an MOU for the Public Safety Management Association bargaining units: Battalion Chief, Police Management, Fire Chief, and Police Chief.
2. Resolution modifying reporting and payment of employer paid member contributions for the Public Safety Management Association.
3. Memorandums of Understanding for Public Safety Management Association
 - a. Battalion Chief
 - b. Police Management
 - c. Fire Chief
 - d. Police Chief

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO TO
ADOPT MEMORANDA OF UNDERSTANDING WITH THE PUBLIC SAFETY
MANAGEMENT ASSOCIATION BARGAINING UNITS**

WHEREAS, it is in the City's best interest to recruit and retain high quality public safety management employees for the City; and

WHEREAS, an effective means for achieving this objective is to provide competitive salaries, benefits, and conditions of employment for said employees; and

WHEREAS, the City has recognized four bargaining units within the Public Safety Management Association as follows: Fire Battalion Chiefs, Police Management, Fire Chief, and Police Chief; and

WHEREAS, the City and the Public Safety Management Association have met and conferred in good faith; and

WHEREAS, the City of El Cerrito and the Public Safety Management Association representatives have reached agreement regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment as specified in the attached Memoranda of Understanding (Exhibits A through D).

NOW, THEREFORE, BE IT RESOLVED, that the El Cerrito City Council hereby adopts the attached Memoranda of Understanding for the Public Safety Management Association bargaining units: Fire Battalion Chiefs, Police Management, Fire Chief, and Police Chief; and directs the City Manager to execute the agreements.

I CERTIFY that at a regular meeting on October 7, 2014, the El Cerrito City Council passed this resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October XX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
MODIFYING REPORTING AND PAYMENT OF EMPLOYER PAID MEMBER
CONTRIBUTIONS FOR THE PUBLIC SAFETY MANAGEMENT ASSOCIATION
BARGAINING UNITS**

WHEREAS, the City Council, as the governing body of the City of El Cerrito, has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of El Cerrito has had written agreements with the Public Safety Management Association bargaining units that specifically provided for a portion of the normal member contributions to be paid by the employer; and

WHEREAS, the City's contribution for the Public Safety Management Association to the California Public Employees Retirement System (PERS) for the employer paid member contribution (EPMC) will end the first full pay period after October 7, 2014; and

WHEREAS, the City Council of City of El Cerrito has identified the following conditions:

1. This resolution shall apply to all members of the Public Safety Management Association bargaining units:
 - a. Battalion Chief
 - b. Police Management
 - c. Fire Chief
 - d. Police Chief
2. This benefit shall consist of the City paying zero (0%) of the normal member contributions as EPMC;
3. The Public Safety Management Association bargaining units will pay the entire member contribution of nine percent (9%) to PERS;
4. This resolution is effective the first full pay period after October 7, 2014.

NOW THEREFORE, BE IT RESOLVED, that the City Council does hereby modify reporting and payment of employer paid member contributions to PERS as set forth in the conditions above, effective the first full pay period after October 7, 2014.

I CERTIFY that at a regular meeting on October 7, 2014, the El Cerrito City Council passed this resolution by the following vote:

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

Agenda Item No. 7(A)
Attachment 2

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October XX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
THE EL CERRITO PUBLIC SAFETY MANAGEMENT GROUP
BATTALION CHIEF

JULY 1, 2014 THROUGH JUNE 30, 2017

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
PUBLIC SAFETY MANAGEMENT ASSOCIATION – BATTALION CHIEF**

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Section 3500 et seq). The parties to this Memorandum of Understanding are the City of El Cerrito, State of California, which hereinafter shall be referred to as “City,” and the El Cerrito Public Safety Management Association – Battalion Chief, which hereinafter shall be referred to as “Battalion Chief.” The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment for the employees represented by the Association – BC and have freely exchanged information, opinions and proposals and have endeavored to reach agreement on all matters relating to the employment, conditions and employee relations of such employees.

This Memorandum of Understanding shall be presented to the City Council as a joint recommendation of the undersigned for salary, fringe benefits and other working conditions for the period July 1, 2014 through June 30, 2017, and shall be in full force and effect at such date as herein prescribed, upon ratification by both the City Council and affected members of the Public Safety Management Association – ***Battalion Chief***.

City of El Cerrito

**Public Safety Management
Association - Battalion Chief**

Scott Hanin
City Manager

Lance Maples
Association Representative

Date: _____

Date: _____

Date: _____

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
PUBLIC SAFETY MANAGEMENT ASSOCIATION – BATTALION CHIEF**

This Agreement is entered into by and between the City of El Cerrito, hereinafter referred to as the “City,” and the El Cerrito Public Safety Management Association – Battalion Chief, hereinafter referred as the “Battalion Chief.” This Agreement establishes the salaries, benefits, and conditions of employment for the City’s public safety management employees – Battalion Chiefs as follows:

CHAPTER 1

MANAGEMENT EMPLOYEES

- 1.1 Management employees are, for purposes of this section, those actively involved in the following classification: Battalion Chief

CHAPTER 2

SALARIES AND BENEFITS

2.1 Salary

- Effective the first full pay after adoption by the City Council all Fire Battalion Chiefs shall receive a 8.0% salary increase.
 - Effective the first full pay period in July 2015 all Fire Battalion Chiefs shall receive a 4.5% salary increase.
 - Effective the first full pay period in July 2016 all Fire Battalion Chiefs shall receive a 4.5% salary increase.
- A. The following control point shall apply and serve as the midpoint of the approved monthly salary range:
- | | |
|----------------------|----------|
| Fire Battalion Chief | \$10,036 |
|----------------------|----------|
- B. A salary range of 25% above and below the control point shall be created, within which a Department Head or the City Manager may approve salary adjustments of up to 5% or 10% per calendar year, respectively.

- C. Effective July 2015, the City shall survey and establish a new control point for the Fire Battalion Chief classification.
- D. In order to preserve appropriate internal salary relationships and minimum salary compaction, the City Manager may from time to time adjust the salary range in order to reach a minimum of 15% base rate of pay separation between the control point for Fire Battalion Chief and top step Fire Captain/Paramedic. Further, the Fire Battalion Chief assigned to training receives an additional 10% added to salary for the assignment.
- E. Note: In addition to the base salary, the City previously contributed eight percent (8%) of salary toward a deferred compensation plan for management employees. All contributions ceased effective February 4, 2001.

2.2 Uniform Allowance

The uniform allowance for Fire Battalion Chiefs is \$725 per fiscal year. Uniform allowance shall be paid on the first payroll date in December, covering the fiscal year beginning the prior July. Such payment shall be by check, separate from the normal payroll check.

2.3 Auto Allowance

The City will supply an automobile to management employees who, in the opinion of the City Manager, require a City vehicle as an integral part of their work. Alternately, the City will provide a cash allowance of up to \$200 per month in lieu of use of a City automobile.

2.4 Pension Plan Benefits and Reimbursement

A. PERS PICKUP

- Effective the first full pay after adoption by the City Council all Fire Battalion Chiefs shall contribute a total of 9.0% to the Public Employees Retirement System.
- Effective the first full pay period in July 2015, all Fire Battalion Chiefs shall contribute an additional 1.5% to the Public Employees Retirement System for a total of 10.5%.
- Effective the first full pay period in July 2016, all Fire Battalion Chiefs shall contribute an additional 1.5% to the Public Employees Retirement System for a total of 12.0%.

B. Pension Plan Benefits

Effective as soon as possible, the City shall no longer contract with the Public Employees Retirement System for the benefit commonly known as EPMC.

- C. Effective June 30, 2001 the City's contract with PERS was amended to provide to employees the 3% at Age 50 Public Employees' Retirement

System plan. The City's 3% at age 50 retirement plan has the PERS single highest year option, and service credit for unused sick leave option.

2.5 Flexible Benefits Plan

The City has a Flexible Benefits Plan which is consistent with Section 125 of the Internal Revenue Code. The plan is known as "Citiflex." For the duration of this agreement, the plan provides the following:

- A. With the exception of the employee who chooses the "no medical plan" option, the City will contribute an amount equivalent to the Kaiser medical plan rate according to dependent status regardless of which medical plan is chosen. "According to dependent status" means that if an employee is single the employee shall receive the equivalent to the Kaiser single premium in employee's flexible spending account. If the employee and a dependent are enrolled in a City medical plan, the employee shall receive the equivalent to the Kaiser two-party premium in employee's flexible spending account. If the employee and more than one dependent are enrolled in a City medical plan, the employee shall receive the equivalent to the Kaiser family premium in employee's flexible spending account.
- B. The employee may select one of the following medical plans within their individual Flexible Benefits Plan:
 - HMO Kaiser (S)
 - Alternative HMO
 - PPO
- C. In the event that the employee selects a medical plan which exceeds the City's premium contribution, the employee is responsible to pay the difference through payroll deduction.
- D. In the event that the employee has alternate comprehensive group medical coverage through a spouse's medical plan or some other group medical plan, the employee may select a "no medical plan" option. (Proof of alternate coverage is required.) In this event, the City shall contribute the equivalent to the single Kaiser medical premium to their Flexible Benefit Plan and the employee may receive this amount in cash, in which case the amount is treated as taxable income, or the employee may reallocate it toward the purchase of other benefits in the Plan, or a combination of both.
- E. The employee may contribute salary up to the IRS limits on a pretax basis in order to purchase the following benefits:
 - Medical Premiums, Co-Payments, and Deductibles
 - Dental Premiums, Co-Payments, and Deductibles
 - Un-reimbursed Medical & Dental Expenses
 - Dependent Care

Rules governing the allocation and distribution of such funds shall conform to applicable sections of State and Federal tax codes and the City of El Cerrito's Flexible Benefits Plan.

- F. The health benefit programs recognize the participation of domestic partners of the eligible employee. Please refer to the City's Citiflex document for details.
- G. During the term of the contract, the City may establish a City-wide task force for the purpose of exploring alternate health plans, including PERS Health, for both active and retired employees. The City or Police Chief agrees to reopen negotiations for the sole purpose of implementing alternative medical coverage.

2.6 Dental Plan

The City will pay the full cost of employee plus dependent coverage effective July 1, 2002.

2.7 Retirement Health Plan

- A. Retirees, survivors of retirees and survivors of deceased employees, unless prohibited by the carrier, will be permitted to maintain the current level of health plan benefits available to employees. Retirees, survivors of retirees and survivors of deceased employees may maintain such health plan benefits at their discretion and with no cost to the City.
- B. Post Employment Health Plan Retiree Medical:
Effective July 2008 the City shall contribute \$300.00 per month for the member's Post employment Health Plan account.

2.8 Life Insurance

The City will provide a term life insurance policy for management employees. The principal sum shall be equal to the annual salary rounded to the nearest \$1,000 (up to a maximum of \$100,000).

2.9 Long-term Disability Insurance

The City shall provide employees with long-term disability insurance with coverage of two-thirds salary and a sixty-day elimination period. Like regular wages, this benefit is taxable.

2.10 Benefit Status

- A. The salary and benefits contained within this Memorandum of Understanding are granted only to employees who are in a current pay status. The City shall incur no cost, nor shall benefits accrue for retirees, survivors, or employees in

a non-pay status, unless the employee is granted medical leave of absence or military leave of absence.

- B. In the event an employee is in a non-pay status because of a disputed workers' compensation claim, benefits under this article shall be continued upon written agreement of the affected employee to repay to the City the amount of any premiums paid by the City during the non-pay status period if the employee's claim is denied by the Workers Compensation Appeals Board or withdrawn by the employee prior to a decision by the Board.

CHAPTER 3

HOLIDAYS

3.1 Holidays

The number of designated holidays for Fire Suppression personnel shall be thirteen (13). The following holidays are designated "holidays" and shall be the basis for benefits associated with this section:

New Year's Day	Columbus Day
Martin Luther King Jr. Day	Veteran's Day
Lincoln's Birthday	Thanksgiving Day
Washington's Birthday	Day after Thanksgiving
Memorial Day	Christmas Day
July 4th	Employee's Birthday
Labor Day	

For the Fire Battalion Chief assigned to training, the recognized municipal holidays are as follows:

New Year's Day	Labor Day
Dr. M. L. King Jr. Birthday (3 rd Monday in January)	Veteran's Day
Presidents' Day (3 rd Monday in February)	Thanksgiving
Memorial Day	Day after Thanksgiving
Independence Day (July 4)	½ Day Christmas Eve
	Christmas Day
	½ Day New Year's Eve

In the event that any of the recognized holidays for the Fire Battalion Chief who is assigned to training falls on a Sunday, the following Monday shall be considered a holiday for pay purposes. In the event that any of the aforementioned days fall on a Saturday, the preceding Friday shall be considered a holiday for pay purposes. (Department heads may make changes in the above schedule in accordance with the needs of their departments.) The afternoons of Christmas Eve and New Year's Eve, commencing at 12 noon, shall be considered holidays

for pay purposes. In the event Christmas Eve and New Year's Eve fall on a Sunday or a Monday, the preceding Friday afternoons shall be considered holidays for pay purposes. Some adjustments may be made if necessitated by an alternative work schedule.

In addition to the recognized municipal holidays, the Fire Battalion Chief assigned to training shall receive annually three floating holidays, subject to the same requirements for scheduling vacation. For a Battalion Chief newly assigned to training, the floating holidays are pro-rated quarterly based on date-of-assignment. Floating holidays must be taken during the fiscal year they are received and may not be carried over and accumulated.

Employees are allowed an additional holiday on their birthday or another day at the convenience of the City.

3.2 Eligibility

An employee on leave of absence without pay shall not receive any compensation for holidays occurring during such leave.

An employee returning to a pay status from a non-pay status shall be eligible for holiday compensation only if the employee was in a pay status on the workday preceding the holiday.

3.3 Compensation for Municipal Holidays

Fire Battalion Chiefs, who are shift personnel, shall receive compensation equal to one-half of shift salary (i.e., twelve hours at 24-hour rate) for paid holidays.

CHAPTER 4

SICK LEAVE, WORKERS' COMPENSATION, FAMILY SICK LEAVE, AND OTHER LEAVES

4.1 Accrual of Sick Leave

For each completed month of service, employees in shift positions shall accrue sick leave credit of twenty-four hours per month. Sick leave for employees with twenty or more years of service shall accrue sick leave credit of thirty-six hours per month. Sick leave accrual while an employee is assigned to a (40) hour workweek is at the rate of 11 hours and 25 minutes per calendar month worked, provided the employee has worked or been authorized leave with pay for at least ten working days in the month.

4.2 Sick Leave - Maximum Accrual

The maximum accumulation of sick leave is unlimited.

4.3 Activity During Sick Leave

No employee who is absent from work on sick leave shall engage in any work or other activity that would interfere with the employee's ability to return to work to perform regular duties.

4.4 Sick Leave Retirement Benefit

Upon retirement from City service, an employee shall be entitled to compensation for one-fourth of the accumulated sick leave on the books at the time of such retirement, with a maximum payment equivalent to 200 hours pay for the 40 hour per week employees and 10 shifts for the 56 hour per week employees, at the employee's option. Actual sick leave remaining on the books will be reported to PERS in accordance with PERS regulations governing the sick leave credit contract option. In no case will unearned sick leave be reported for the purpose of increasing the member's retirement as prohibited by PERS.

The date of disability retirement for employees may be established or determined to be effective prior to the expiration of sick leave benefits.

In reporting the number of days of accumulated sick leave to PERS, the City shall obtain clarification from and comply with PERS regulations.

4.5 On-the-Job Injury

Regular full-time sworn employees are eligible for benefits (salary continuance) for time off work due to on-the-job injuries as specified in Labor Code Section 4850.

4.6 Accrued Sick Leave As Life Insurance

The value of the employee's accrued sick leave shall be paid (based upon the current hourly rate) to the surviving spouse or designated beneficiary, upon the death of a represented employee.

4.7 Family Sick Leave

Under Labor Code Section 233, employees may utilize accrued sick leave to care for an ill or injured child, spouse or parent. The City has extended this provision to include domestic partners and their dependent children. There is no requirement that the illness or injury reach the level of seriousness provided for under the Family and Medical Leave Acts. However, if the illness or injury qualifies under the Family and Medical Leave Act, it also satisfies the "family sick leave" criteria. The maximum "family sick leave" allowed each calendar year that is subject to this provision is one half (1/2) of the employee's annual accrual of sick leave. Additional family sick leave may be taken subject to departmental regulations and approval of the Fire Chief and City Manager.

4.8 Bereavement Leave

Employees are entitled to time off with pay when there is a death or anticipated death in the immediate family. Bereavement leave shall not exceed two shifts (or five (5) consecutive days for 40-hour employees) when death is anticipated.

Bereavement leave after death shall not exceed that period of time between death and the day of the funeral, providing the funeral is held within five days following death. Bereavement leave is not chargeable to sick leave. Additional time may be granted and charged as sick leave when, in the opinion of the department head, unusual circumstances identify the need for additional time off.

Immediate family is defined as spouse, domestic partner, child, parent, parent-in-law, sister, brother, sister-in-law, brother-in-law, grandparent, spouse's grandparent, grandchild, son-in-law, daughter-in-law, or any other relative of the employee or employee's spouse residing in the same household, or who has resided with the employee in the same household for three or more years. In cases where death has occurred involving someone other than the immediate family, the department head shall make the decision as to qualification for bereavement leave.

4.9 Administrative Leave

Management employees shall receive administrative leave in recognition of extraordinary working hours and conditions. The City Manager will annually approve the number of leave days by individual employee based on the amount of overtime performed and the quality of work produced. The annual amount of time assigned shall not exceed eighty (80) hours. Unused administrative leave cannot be carried over from year to year or cashed out at year-end *or upon separation*.

4.10 Family and Medical Leave

Pursuant to State and Federal law, the City will provide family and medical care leave for eligible employees. The City Family Care and Medical Leave policy sets forth employees' rights and obligations with respect to such leave. Rights and obligations which may not be specifically set forth in the City's policy are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA") and the regulations of the California State Pregnancy Disability Act and the California Fair Employment and Housing Commission implementing the California Family Rights Act ("CFRA") (Government Code Section 12945.2). Unless otherwise provided by the City's policy or this Memorandum of Understanding, "Leave" under this article shall mean leave pursuant to the FMLA.

CHAPTER 5

VACATION

5.1 Eligibility

Employees shall be eligible to take a paid vacation at the end of the first year of continuous service, and annually thereafter, unless otherwise provided by the City Manager.

5.2 Scheduling

The scheduling of annual vacation leave and the amount to be taken at any one time shall be determined by the department *head* in accordance with departmental regulations and with regard for the needs of the City and the preference of the employee.

5.3 Vacation at Termination

Management employees leaving the municipal service with accrued vacation leave shall be paid the amount of accrued vacation to the date of termination. Payment for accrued vacation shall be at the employee's current rate of pay.

5.4 Effect of Extended Military Leave

A management employee who interrupts his/her City service because of extended military leave shall be compensated for accrued vacation at the time the leave becomes effective.

5.5 Sick Leave During Vacation

Vacation leave may be converted to sick leave subject to the review and approval of the department head and the City Manager if an employee is injured or sick during the vacation for a period in excess of 24 hours.

5.6 Vacation Cap and Implementation

A. Vacation Cap Effective January 1, 2015

Effective January 1, 2015, the vacation cap shall be two (2) times the employee's annual vacation accrual rate. Thereafter, at any time an employee reaches the maximum accrual, the employee will cease accruing vacation hours until such time as the balance falls below the cap. After January 1, 2015, no employee will be allowed to accrue vacation hours above the cap, unless an employee has a work-related injury and is on 4850.

B. Implementation

Effective January 1, 2015, any employee who has vacation hours in excess of two (2) times the annual accrual rate, the excess hours will be placed in a separate vacation bank.

5.7 Separate Vacation Bank

Effective January 1, 2015, any accrued vacation in excess of two (2) times the annual vacation accrual rate will be placed in a separate Vacation Bank for each affected employee. This will be a single, one time process. Employees shall be entitled to use or sell the hours in the Bank for vacation in the same manner as regular vacation hours. The hours shall be paid out at the employee's current rate of pay.

5.8 Vacation Cash-Out

Effective August 1, 2014, employees may annually cash-out up to 16 days (128 hours) of vacation provided that they have taken a minimum of 16 vacation days (or administrative leave for management employees) in the previous fiscal year and maintain a vacation balance of 40 hours at the time of vacation cash out. Employees may elect to cash-out a maximum of two (2) times annually and each cash-out request must be a minimum of 8 days (64 hours). Employees must reduce their separate vacation bank first when cashing out vacation. All requests must be in writing to the Human Resources Manager for initial review with final approval by the City Manager.

5.9 Accrual

Unless otherwise provided by the City Manager, vacation leave will be accrued from the first day of employment when a management employee is in a pay status and will be credited on a monthly basis. Municipal holidays shall not be counted during vacation. The vacation accrual schedule for shift Fire Battalion Chiefs is as follows:

**Vacation Benefit
Shift Battalion Chief**

<u>Service Yrs</u>	<u>Annual Shifts/Hours</u>
Accrue during 1 through 5 yrs	6 shifts/144 hours
6 through 15 yrs	9 shifts/216 hours
16 through 25 yrs	12 shifts/288 hours
26 through 30 yrs	13 shifts/312 hours

The vacation schedule for the training Fire Battalion Chief is on the next page.

**Vacation Benefit
Training Battalion Chief**

<u>Service</u>	Hrs. Earned/Year (40-hour week)
Accrue during 1st year	88
2	96
3	96
4	104
5	112
6	120
7	120
8	128
9	128
10	136
11	136
12	144
13	144
14	152
15	152
16	160
17	160
18	168
19	168
20	176
21	184
22	192
23	200
24	208
25	216
26	224
27	232
28	240
29	248
30	256
31	264
32	272
33	280
34	288

CHAPTER 6

WORK SCHEDULE/OVERTIME

6.1 Workweek

The workweek for Fire management employees is as required by the City.

The work schedule for Fire Battalion Chiefs assigned to emergency response operations shall consist of twenty-four hour duty shifts, not to exceed two hundred sixteen hours in a twenty-seven-day period.

Fire Battalion Chiefs who are not assigned to emergency response operations shall work a standard 40 hours per workweek.

6.2 Overtime Calculation for Shift Battalion Chiefs

The 24-hour shift rate is calculated by multiplying the base salary by twelve months and dividing by the yearly 56-hour rate of 2,912 hours (56 hours by 52 weeks). Overtime under the 24-hour shift rate shall be paid for all overtime assignments on emergency response operations greater than eight consecutive hours and for all non-on-call overtime.

CHAPTER 7

EDUCATION BENEFITS

7.1 Tuition Refund Plan

Management employees are eligible for educational cost reimbursement up to a maximum of \$1,000 per year for work-related studies at a recognized college, university or professional school. Course content should relate to one of the following:

- A. Knowledge or skills needed by an employee in his/her present job;
- B. Preparation for promotional opportunities or advancement in the same or different field within the City organization.
- C. The requirements of a program leading to a degree, at an approved institution, which enhances the employee's job knowledge or on-the-job skills.

Procedures for obtaining reimbursement and limitations regarding reimbursement may be found in the City of El Cerrito administrative procedure on educational expense reimbursement.

CHAPTER 8

MISCELLANEOUS POLICIES FOR FIRE BATTALION CHIEFS

8.1 Continuing Education

It is the policy of the City that management employees take part in some educational or training course each year, and the City Council will attempt to provide funds in each budget for such purpose.

8.2 Membership

It is the policy of the City to provide paid membership in approved professional associations for management employees. This policy shall include publications associated with membership and other educational materials as may be approved.

8.3 Conferences

It is the policy of the City that each management employee attend (as a member) a professional conference of his or her peers each year at City expense; however, travel outside the state of California may be discouraged due to budgetary restraints.

8.4 Benefit Relationship to Rank and File

If new or deleted material benefits and/or cost sharing mechanisms are agreed to with the Firefighters' Association, they would apply to the Fire Battalion Chief.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
THE EL CERRITO PUBLIC SAFETY MANAGEMENT GROUP
POLICE MANAGEMENT UNIT

JULY 1, 2014 THROUGH DECEMBER 31, 2017

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
PUBLIC SAFETY MANAGEMENT ASSOCIATION – POLICE MANAGEMENT UNIT**

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Section 3500 et seq). The parties to this Memorandum of Understanding are the City of El Cerrito, State of California, which hereinafter shall be referred to as "City," and the El Cerrito Public Safety Management Association – Police Management Unit, which hereinafter shall be referred to as "Police Management." The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment for the employees represented by the Association – PC and have freely exchanged information, opinions and proposals and have endeavored to reach agreement on all matters relating to the employment, conditions and employee relations of such employees.

This Memorandum of Understanding shall be presented to the City Council as a joint recommendation of the undersigned for salary, fringe benefits and other working conditions for the period July 1, 2014 through December 31, 2017, and shall be in full force and effect at such date as herein prescribed, upon ratification by both the City Council and affected members of the Public Safety Management Association – Police Management Unit.

City of El Cerrito

**Public Safety Management
Association - Police Management
Unit**

Scott Hanin
City Manager

Lance Maples
Association Representative

Date: _____

Date: _____

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
PUBLIC SAFETY MANAGEMENT ASSOCIATION – POLICE MANAGEMENT UNIT**

This Agreement is entered into by and between the City of El Cerrito, hereinafter referred to as the “City,” and the El Cerrito Public Safety Management Association – Police Management Unit, hereinafter referred to as the “Police Management.” This Agreement establishes the salaries, benefits, and conditions of employment for the City’s public safety management employees – Police Management Unit as follows:

CHAPTER 1

MANAGEMENT EMPLOYEES

- 1.1 Management employees are, for purposes of this section, those actively involved in the following classification: Police Captains and Police Lieutenants.

CHAPTER 2

SALARIES AND BENEFITS

2.1 Salary

- Effective the first full pay after adoption by the City Council all Police Captains and Police Lieutenants shall receive a 8.0% salary increase
 - Effective the first full pay period in July 2015 all Police Captains and Police Lieutenants shall receive a 4.5% salary increase.
 - Effective the first full pay period in July 2016 all Police Captains and Police Lieutenants shall receive a 4.0% salary increase.
- A. Effective July 2015, the City shall survey and establish a new control point for the Police Captains and Police Lieutenants classifications.
- B. A salary range of 25% above and below the control point shall be created, within which a Department Head or the City Manager may approve salary adjustments of up to 5% or 10% per calendar year, respectively.

- C. In order to preserve appropriate internal salary relationships and minimum salary compaction, the City Manager may from time to time adjust the salary range in order to reach a minimum of 15% base rate of pay separation between the control point for the Police Lieutenants and the Top Step Detective Sergeant.
- D. Note: In addition to the base salary, the City previously contributed eight percent (8%) of salary toward a deferred compensation plan for management employees. All contributions ceased effective February 4, 2001.

2.2 Longevity Bonus

Effective December 1, 2014, and each December 1 thereafter, the City shall make longevity bonus payments to those employed with the City as of the day of the payment as follows:

- A. For employees with 5 years of service with the City but less than 10 years, the annual longevity bonus payment shall be three percent (3%) of their annual base rate of pay.
- B. For employees with 10 years of service with the City but less than 20 years, the annual longevity bonus payment shall be six percent (6%) of their annual base rate of pay.
- C. For employees with 20 or more years of service with the City, the annual longevity bonus payment shall be nine percent (9%) of their annual base rate of pay.

Longevity bonus payments shall be paid by separate check on the first payroll date in December.

2.3 Uniform Allowance

The uniform allowance for Police Management Unit is \$850 per year. Uniform allowance shall be paid on the first payroll date in December, covering the calendar year beginning the prior January. Such payment shall be by check separate from the normal payroll check. Any employee, who leaves City employment during the calendar year, shall be paid by the City for pro-rated uniform allowance only for months worked in that calendar year.

2.4 Auto Allowance

The City will supply an automobile to management employees who, in the opinion of the City Manager, require a City vehicle as an integral part of their work. Alternately, the City will provide a cash allowance of up to \$325 per month in lieu of use of a City automobile.

2.5 Pension Plan Benefits and Reimbursement

A. PERS PICKUP

- Effective the first full pay after adoption by the City Council all Police Captains and Police Lieutenants shall contribute a total of 9.0% to the Public Employees Retirement System.
- Effective the first full pay period in July 2015, all Police Captains and Police Lieutenants shall contribute an additional 1.5% to the Public Employees Retirement System for a total of 10.5%.
- Effective the first full pay period in July 2016, all Police Captains and Police Lieutenants shall contribute an additional 1.5% to the Public Employees Retirement System for a total of 12.0%.

B. Pension Plan Benefits

Effective as soon as possible, the City shall no longer contract with the Public Employees Retirement System for the benefit commonly known as EPMC.

2.6 Flexible Benefits Plan

The City has a Flexible Benefits Plan which is consistent with Section 125 of the Internal Revenue Code. The plan is known as "Citiflex." For the duration of this agreement, the plan provides the following:

- A. With the exception of the employee who chooses the "no medical plan" option, the City will contribute an amount equivalent to the Kaiser medical plan rate according to dependent status regardless of which medical plan is chosen. "According to dependent status" means that if an employee is single the employee shall receive the equivalent to the Kaiser single premium in employee's flexible spending account. If the employee and a dependent are enrolled in a City medical plan, the employee shall receive the equivalent to the Kaiser two-party premium in employee's flexible spending account. If the employee and more than one dependent are enrolled in a City medical plan, the employee shall receive the equivalent to the Kaiser family premium in employee's flexible spending account.
- B. The employee may select one of the following medical plans within their individual Flexible Benefits Plan:
 - HMO Kaiser (S)
 - Alternative HMO
 - PPO
- C. In the event that the employee selects a medical plan which exceeds the City's premium contribution, the employee is responsible to pay the difference through payroll deduction.
- D. In the event that the employee has alternate comprehensive group medical coverage through a spouse's medical plan or some other group medical plan, the employee may select a "no medical plan" option. (Proof of alternate coverage is required.) In this event, the City shall contribute the equivalent to

the single Kaiser medical premium to their Flexible Benefit Plan and the employee may receive this amount in cash, in which case the amount is treated as taxable income, or the employee may reallocate it toward the purchase of other benefits in the Plan, or a combination of both.

E. The employee may contribute salary up to the IRS limits on a pretax basis in order to purchase the following benefits:

- Medical Premiums, Co-Payments, and Deductibles
- Dental Premiums, Co-Payments, and Deductibles
- Un-reimbursed Medical & Dental Expenses
- Dependent Care

Rules governing the allocation and distribution of such funds shall conform to applicable sections of State and Federal tax codes and the City of El Cerrito's Flexible Benefits Plan.

F. The health benefit programs recognize the participation of domestic partners of the eligible employee. Please refer to the City's Citiflex document for details.

G. During the term of the contract, the City may establish a City-wide task force for the purpose of exploring alternate health plans, including PERS Health, for both active and retired employees. The City or Police Chief agrees to reopen negotiations for the sole purpose of implementing alternative medical coverage.

2.7 Dental Plan

The City will pay the full cost of employee plus dependent coverage under the Delta Dental Plan.

2.8 Retirement Health Plan

Retirees, survivors of retirees and survivors of deceased employees, unless prohibited by the carrier, will be permitted to maintain the current level of health plan benefits available to employees. Retirees, survivors of retirees and survivors of deceased employees may maintain such health plan benefits at their discretion and with no cost to the City.

2.9 Life Insurance

The City will provide a term life insurance policy for management employees. The principal sum shall be equal to the annual salary rounded to the nearest \$1,000 (up to a maximum of \$100,000).

2.10 Long-term Disability Insurance

The City shall provide employees with long-term disability insurance with coverage of two-thirds salary and a sixty-day elimination period. Like regular

wages, this benefit is taxable.

2.11 Benefit Status

- A. The salary and benefits contained within this Memorandum of Understanding are granted only to employees who are in a current pay status. The City shall incur no cost, nor shall benefits accrue for retirees, survivors, or employees in a non-pay status, unless the employee is granted medical leave of absence or military leave of absence.
- B. In the event an employee is in a non-pay status because of a disputed workers' compensation claim, benefits under this article shall be continued upon written agreement of the affected employee to repay to the City the amount of any premiums paid by the City during the non-pay status period if the employee's claim is denied by the Workers Compensation Appeals Board or withdrawn by the employee prior to a decision by the Board.

CHAPTER 3

HOLIDAYS

3.1 Holidays

The following holidays are recognized as municipal holidays for pay purposes:

New Year's Day	Labor Day
Dr. M.L. King Jr. Birthday (3rd Monday in January)	Veteran's Day
President's Day (3rd Monday in February)	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day (July 4)	Christmas Eve Day
	Christmas Day
	½ Day New Year's Eve

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday for pay purposes. In the event that any of the aforementioned days fall on a Saturday, the preceding Friday shall be considered a holiday for pay purposes. (Department managers may make changes in the above schedule in accordance with the needs of their departments.) The afternoon of New Year's Eve, commencing at 12 noon, shall be considered a holiday for pay purposes. In the event New Year's Eve fall on a Sunday or a Monday, the preceding Friday afternoon shall be considered a holiday for pay purposes.

3.2 Birthday and Floating Holidays

In addition to the recognized municipal holidays, employees shall receive annually three floating holidays, subject to the same requirements for scheduling

vacation under Section 5.2 of this agreement. For new employees, the floating holidays are pro-rated quarterly based on date-of-hire. Floating holidays must be taken during the fiscal year they are received and may not be carried over and accumulated.

Employees are allowed an additional holiday on their birthday or another day at the convenience of the City.

3.3 Compensation for Municipal Holidays

- A. An employee on leave-of-absence without pay shall not receive any compensation for holidays occurring during such leave.
- B. Regular employees must be in a pay status on the workday preceding a holiday to be eligible to be compensated for the holiday.

CHAPTER 4

SICK LEAVE, WORKERS' COMPENSATION, FAMILY SICK LEAVE, AND OTHER LEAVES

4.1 Accrual of Sick Leave - Rate

Employees shall accrue sick leave at the rate of 11 hours and 25 minutes per calendar month worked, provided the employee has worked or been authorized leave with pay for at least ten working days in the month.

4.2 Sick Leave - Maximum Accrual

The maximum accumulation of sick leave is unlimited.

4.3 Activity During Sick Leave

No employee who is absent from work on sick leave shall engage in any work or other activity that would interfere with the employee's ability to return to work to perform regular duties.

4.4 Sick Leave Retirement Benefit

Upon retirement from City service, an employee shall be entitled to compensation for one-fourth of the accumulated sick leave on the books at the time of such retirement, with a maximum payment equivalent to 200 hours pay, at the employee's option. Actual sick leave remaining on the books will be reported to PERS in accordance with PERS regulations governing the sick leave credit contract option. In no case will unearned sick leave be reported for the purpose of increasing the member's retirement as prohibited by PERS.

The date of disability retirement for employees may be established or determined to be effective prior to the expiration of sick leave benefits.

4.5 On-the-Job Injury

Regular full-time sworn employees are eligible for benefits (salary continuance) for time off work due to on-the-job injuries as specified in Labor Code Section 4850.

4.6 Accrued Sick Leave As Life Insurance

Upon the death of a represented employee, the value of the employee's accrued sick leave, calculated at the employee's hourly rate, shall be paid to the employee's estate or designated beneficiary. Payment under this section is limited to 2,080 hours.

4.7 Family Sick Leave

Under Labor Code Section 233, employees may utilize accrued sick leave to care for an ill or injured child, spouse or parent. The City has extended this provision to include domestic partners and their dependent children. There is no requirement that the illness or injury reach the level of seriousness provided for under the Family and Medical Leave Acts. However, if the illness or injury qualifies under the Family and Medical Leave Act, it also satisfies the "family sick leave" criteria. The maximum "family sick leave" allowed each calendar year that is subject to this provision is one-half (1/2) of the employee's annual accrual of sick leave. Additional family sick leave may be taken subject to departmental regulations and approval of the Chief of Police and City Manager.

4.8 Bereavement Leave

Employees are entitled to time off with pay when there is a death or anticipated death in the immediate family. Bereavement leave shall not exceed five (5) consecutive days when death is anticipated. Bereavement leave after death shall not exceed that period of time between death and the day of the funeral, providing the funeral is held within five days following death. Additional time may be granted and charged as sick leave when, in the opinion of the department *head*, unusual circumstances identify the need for additional time off.

Immediate family is defined as spouse, domestic partner, child, parent, parent-in-law, sister, brother, sister-in-law, brother-in-law, grandparent, spouse's grandparent, grandchild, son-in-law, daughter-in-law, or any other relative of the employee or employee's spouse residing in the same household, or who has resided with the employee in the same household for three or more years. In cases where death has occurred involving someone other than the immediate family, the department *head* shall make the decision as to qualification for bereavement leave.

4.9 Administrative Leave

Management employees shall receive administrative leave in recognition of extraordinary working hours and conditions. The City Manager will annually approve the number of leave hours by individual employee based on the amount

of overtime performed and the quality of work produced. The annual amount of time assigned shall not exceed eight (80) hours. Unused administrative leave cannot be carried over from year to year or cashed out at year-end *or upon separation*.

4.10 Family and Medical Leave

Pursuant to State and Federal law, the City will provide family and medical care leave for eligible employees. The City Family Care and Medical Leave policy sets forth employees' rights and obligations with respect to such leave. Rights and obligations which may not be specifically set forth in the City's policy are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA") and the regulations of the California State Pregnancy Disability Act and the California Fair Employment and Housing Commission implementing the California Family Rights Act ("CFRA") (Government Code Section 12945.2). Unless otherwise provided by the City's policy or this Memorandum of Understanding, "Leave" under this article shall mean leave pursuant to the FMLA.

CHAPTER 5

VACATION

5.1 Eligibility

Employees shall be eligible to take a paid vacation at the end of the first year of continuous service, and annually thereafter, unless otherwise provided by the City Manager.

5.2 Scheduling

The scheduling of annual vacation leave and the amount to be taken at any one time shall be determined by the department *head* in accordance with departmental regulations and with regard for the needs of the City and the preference of the employee.

5.3 Vacation at Termination

Management employees leaving the municipal service with accrued vacation leave shall be paid the amount of accrued vacation to the date of termination. Payment for accrued vacation shall be at the employee's current rate of pay.

5.4 Effect of Extended Military Leave

A management employee who interrupts his/her City service because of extended military leave shall be compensated for accrued vacation at the time the leave becomes effective.

5.5 Sick Leave During Vacation

Vacation leave may be converted to sick leave subject to the review and

approval of the department *head* and the City Manager if an employee is injured or sick during the vacation for a period in excess of 24 hours.

5.7 Vacation Cap and Implementation

A. Vacation Cap Effective January 1, 2015

Effective January 1, 2015, the vacation cap shall be two (2) times the employee's annual vacation accrual rate. Thereafter, at any time an employee reaches the maximum accrual, the employee will cease accruing vacation hours until such time as the balance falls below the cap. After January 1, 2015, no employee will be allowed to accrue vacation hours above the cap, unless an employee has a worked related injury and is on 4850.

B. Implementation

Effective January 1, 2015, any employee who has vacation hours in excess of two (2) times the annual accrual rate, the excess hours will be placed in a separate vacation bank.

5.8 Separate Vacation Bank

Effective January 1, 2015, any accrued vacation in excess of two (2) times the annual vacation accrual rate will be placed in a separate Vacation Bank for each affected employee. This will be a single, one time process. Employees shall be entitled to use or sell the hours in the Bank for vacation in the same manner as regular vacation hours. The hours shall be paid out at the employee's current rate of pay.

5.9 Vacation Cash-Out

Effective August 1, 2014, employees may annually cash-out up to 16 days (128 hours) of vacation provided that they have taken a minimum of 16 vacation days (or administrative leave for management employees) in the previous fiscal year and maintain a vacation balance of 40 hours at the time of vacation cash out. Employees may elect to cash-out a maximum of two (2) times annually and each cash-out request must be a minimum of 8 days (64 hours). Employees must reduce their separate vacation bank first when cashing out vacation. All requests must be in writing to the Human Resources Manager for initial review with final approval by the City Manager.

5.10 Accrual

Unless otherwise provided by the City Manager, vacation leave will be accrued from the first day of employment when a management employee is in a pay status and will be credited on a monthly basis. Municipal holidays shall not be counted during vacation.

The schedule is on the next page.

Vacation Benefit

<u>Service</u>	Hrs. Earned/Year <u>(40-hour week)</u>
Accrue during 1st year	88
2	96
3	96
4	104
5	112
6	120
7	120
8	128
9	128
10	136
11	136
12	144
13	144
14	152
15	152
16	160
17	160
18	168
19	168
20	176
21	184
22	192
23	200
24	208
25	216
26	224
27	232
28	240
29	248
30	256
31	264
32	272
33	280
34	288

CHAPTER 6

WORK SCHEDULE

6.1 Workweek

The workweek for management employees is as required by the City. The normal workday is from 8: 00 a.m. to 5:00 p.m.

CHAPTER 7

EDUCATION BENEFITS

7.1 Tuition Refund Plan

Management employees are eligible for educational cost reimbursement up to a maximum of \$1,000 per year for work-related studies at a recognized college, university or professional school. Course content should relate to one of the following:

- A. Knowledge or skills needed by an employee in his/her present job;
- B. Preparation for promotional opportunities or advancement in the same or different field within the City organization.
- C. The requirements of a program leading to a degree, at an approved institution, which enhances the employee's job knowledge or on-the-job skills.

Procedures for obtaining reimbursement and limitations regarding reimbursement may be found in the City of El Cerrito administrative procedure on educational expense reimbursement.

7.2 Education Incentive Program

A monthly education incentive payment shall be paid to qualified personnel who, pursuant to this article: (1) complete fifty hours or three units of approved study or training during the prior fiscal year or (2) accumulate sixty semester units or the equivalent in quarter units of approved training or (3) attain an A.A. or A.S. degree of approved training or (4) obtain an intermediate POST certificate, provided that such personnel have attained permanent employment status. The education incentive for those who qualify for this benefit shall be \$210 per month.

An additional monthly education incentive payment shall be paid to qualified personnel who (1) obtain an advanced POST certificate and an A.S. or A.S. degree or (2) obtain an approved baccalaureate degree and possess a POST intermediate certificate or (3) possess a POST intermediate certificate and complete fifty hours or three semester units during the prior fiscal year as part of the employee's continuing progress toward a baccalaureate degree, the

employee having already accumulated sixty semester units or the equivalent in quarter units toward said baccalaureate degree. The education incentive for those who qualify under this provision is \$290 per month.

CHAPTER 8

MISCELLANEOUS POLICIES FOR POLICE MANAGEMENT UNIT

8.1 Continuing Education

It is the policy of the City that management employees take part in some educational or training course each year, and the City Council will attempt to provide funds in each budget for such purpose.

8.2 Membership

It is the policy of the City to provide paid membership in approved professional associations for management employees. This policy shall include publications associated with membership and other educational materials as may be approved.

8.3 Conferences

It is the policy of the City that each management employee attend (as a member) a professional conference of his or her peers each year at City expense; however, travel outside the state of California may be discouraged due to budgetary restraints.

8.4 Benefit Relationship to Rank and File

If new or deleted material benefits and/or cost sharing mechanisms are agreed to with the Police Employees' Association, they would apply to Police Management.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
THE EL CERRITO PUBLIC SAFETY MANAGEMENT GROUP
FIRE CHIEF

July 1, 2014 through June 30, 2017

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
PUBLIC SAFETY MANAGEMENT ASSOCIATION – FIRE CHIEF**

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Section 3500 et seq). The parties to this Memorandum of Understanding are the City of El Cerrito, State of California, which hereinafter shall be referred to as “City,” and the El Cerrito Public Safety Management Association – Fire Chief, which hereinafter shall be referred to as “Association – FChief.” The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment for the employee represented by the Association – FChief and have freely exchanged information, opinions and proposals and have endeavored to reach agreement on all matters relating to the employment, conditions and employee relations of such employee.

This Memorandum of Understanding shall be presented to the City Council as a joint recommendation of the undersigned for salary, fringe benefits and other working conditions for the period beginning July 1, 2014 and shall be in full force and effect at such date as herein prescribed, upon ratification by both the City Council and affected member of the Public Safety Management Association – Fire Chief. Unless sooner terminated, as provided in this Memorandum of Understanding, the terms and conditions of this agreement shall remain in force until adoption of a successor agreement. Any other term of this Memorandum of Understanding notwithstanding, either party may terminate this Memorandum of Understanding effective on or after June 30, 2017, with 30 days minimum written notice.

It is expressly understood and agreed to by the parties that this Memorandum of Understanding will automatically terminate and be of no further legal force or effect if Lance Maples ceases to be the Fire Chief for the City of El Cerrito.

City of El Cerrito

**Public Safety Management
Association - Fire Chief**

Scott Hanin
City Manager

Lance Maples
Fire Chief

Date: _____

Date: _____

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
PUBLIC SAFETY MANAGEMENT ASSOCIATION – FIRE CHIEF**

This Agreement is entered into by and between the City of El Cerrito, hereinafter referred to as the “City,” and the El Cerrito Public Safety Management Association – Fire Chief Lance Maples, hereinafter referred as the “Fire Chief.” This Agreement establishes the salaries, benefits, and conditions of employment for the City’s public safety management employee – Fire Chief Lance Maples as follows:

CHAPTER 1

MANAGEMENT EMPLOYEE

- 1.1 Subject to the provisions of this agreement, The Fire Chief is an at-will employee who serves at the discretion of the City Manager. Pursuant to Section 3.10.020 of the El Cerrito Municipal Code, the Fire Chief is not entitled to any of the rights or protections of the City’s civil service system. In the event that the Fire Chief is removed from his position as Fire Chief, he may, at his discretion, return to his prior position as Battalion Chief in the El Cerrito Fire Department, as permitted under El Cerrito Municipal Code § 3.10.090 and any related rules or regulations. Should the Fire Chief return to his prior position as Battalion Chief, he shall be credited with all service time with the City of El Cerrito and not suffer a loss of seniority and enjoy all benefits and compensation of a Battalion Chief. Reversionary rights will not apply in the case of termination based upon an independent finding of misconduct, made by the Civil Service Commission or a mutually agreed hearing officer.
- 1.2 Management employee is, for purposes of this section, the individual actively involved in the following classification: Fire Chief.

CHAPTER 2

SALARIES AND BENEFITS

- 2.1 Salary
- Effective the first full pay after adoption by the City Council the Fire Chief shall receive a 5.0% salary increase.
 - Effective the first full pay period in July 2015 the Fire Chief shall receive a 1.5% salary increase.

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- Effective the first full pay period in July 2016 the Fire Chief shall receive a 1.5% salary increase.
- A. Consistent with the Management Resolution, a salary range of 25% above and below the control point of \$13,144 shall be created within which the City Manager may approve salary adjustments of up to 10% per calendar year.
- B. Effective July 2015, the City shall survey and establish a new control point for the Fire Chief classification.
- C. For the term of this MOU, the following shall not apply: The methodology for the salary surveys and salary adjustments used under the Local 1230 Memorandum of Understanding will also be used under this Memorandum of Understanding, to the extent practical and appropriate. Should the methodology of salary surveys and adjustment subsequently change for the members of Local 1230, this Section shall be automatically adjusted to match those changes.

2.2 Uniform Allowance

The uniform allowance for the Fire Chief is \$725 per fiscal year. Uniform allowance shall be paid on the first payroll date in December, covering the fiscal year beginning the prior July. Such payment shall be by check, separate from the normal payroll check.

2.3 Auto Allowance

The City will supply an automobile to the Fire Chief who, in the opinion of the City Manager, requires a City vehicle as an integral part of their work. Alternately, the City will provide a cash allowance of up to \$350 per month in lieu of use of a City automobile.

2.4 Pension Plan Benefits and Reimbursement

A. PERS PICKUP

- Effective the first full pay after adoption by the City Council the Fire Chief shall contribute a total of 9.0% to the Public Employees Retirement System.
- Effective the first full pay period in July 2015, the Fire Chief shall contribute an additional 1.5% to the Public Employees Retirement System for a total of 10.5%.

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- Effective the first full pay period in July 2016, the Fire Chief shall contribute an additional 1.5% to the Public Employees Retirement System for a total of 12.0%.

B. Pension Plan Benefits

Effective as soon as possible, the City shall no longer contract with the Public Employees Retirement System for the benefit commonly known as EPMC.

- C. Effective June 30, 2001, the retirement plan for fire suppression personnel shall be the 3% @ Age 50 PERS Plan, including credit for unused sick leave at retirement pursuant to PERS Section 20862.8. Effective August 15, 1994, the City agreed to provide the PERS single highest year option to fire suppression personnel. Effective April 1, 1999, the City amended its contract to increase 1959 Survivor Benefits from Level 1 to Level IV.

2.5 Flexible Benefits Plan

The City has a Flexible Benefits Plan which is consistent with Section 125 of the Internal Revenue Code. The plan is known as "Citiflex." For the duration of this agreement, the plan provides the following:

- A. With the exception of the employee who chooses the "no medical plan" option, the City will contribute an amount equivalent to the Kaiser medical plan rate according to dependent status regardless of which medical plan is chosen. "According to dependent status" means that if an employee is single the employee shall receive the equivalent to the Kaiser single premium in employee's flexible spending account. If the employee and a dependent are enrolled in a City medical plan, the employee shall receive the equivalent to the Kaiser two-party premium in employee's flexible spending account. If the employee and more than one dependent are enrolled in a City medical plan, the employee shall receive the equivalent to the Kaiser family premium in employee's flexible spending account.
- B. The employee may select one of the following medical plans within their individual Flexible Benefits Plan:
- HMO Kaiser (S)
 - Alternative HMO
 - PPO
- C. In the event that the employee selects a medical plan which exceeds the City's premium contribution, the employee is responsible to pay the difference through payroll deduction.
- D. In the event that the employee has alternate comprehensive group medical coverage through a spouse's medical plan or some other group medical plan,

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the employee may select a “no medical plan” option. (Proof of alternate coverage is required.) In this event, the City shall contribute the equivalent to the single Kaiser medical premium to their Flexible Benefit Plan and the employee may receive this amount in cash, in which case the amount is treated as taxable income, or the employee may reallocate it toward the purchase of other benefits in the Plan, or a combination of both.

E. The employee may contribute salary up to the IRS limits on a pretax basis in order to purchase the following benefits:

- Medical Premiums, Co-Payments, and Deductibles
- Dental Premiums, Co-Payments, and Deductibles
- Un-reimbursed Medical & Dental Expenses
- Dependent Care

Rules governing the allocation and distribution of such funds shall conform to applicable sections of State and Federal tax codes and the City of El Cerrito's Flexible Benefits Plan.

F. The health benefit programs recognize the participation of domestic partners of the eligible employee. Please refer to the City's Citiflex document for details.

G. During the term of the contract, the City may establish a City-wide task force for the purpose of exploring alternate health plans, including PERS Health, for both active and retired employees. The City or Police Chief agrees to reopen negotiations for the sole purpose of implementing alternative medical coverage.

2.6 Dental Plan

Through the duration of this agreement the City will pay the full cost of employee plus dependent coverage under the Delta Dental Plan.

2.7 Retirement Health Plan

A. Retirees, survivors of retirees and survivors of deceased employees, unless prohibited by the carrier, will be permitted to maintain the current level of health plan benefits available to employees. Retirees, survivors of retirees and survivors of deceased employees may maintain such health plan benefits at their discretion and with no cost to the City.

B. Post Employment Health Plan Retiree Medical:
Effective July 2008 the City shall contribute \$300.00 per month for the member's Post employment Health Plan account.

2.8 Life Insurance

The City will provide a term life insurance policy for the Fire Chief. The principal sum shall be equal to the annual salary rounded to the nearest \$1,000 (up to a maximum of \$100,000).

2.9 Long-term Disability Insurance

The City shall provide the Fire Chief with long-term disability insurance with coverage of two-thirds salary up to the maximum set by the Municipal Pooling Authority and a sixty-day elimination period. Like regular wages, this benefit is taxable.

2.10 Benefit Status

- A. The salary and benefits contained within this Memorandum of Understanding are granted only to the Fire Chief if he is in a current pay status. The City shall incur no cost, nor shall benefits accrue for retirees, survivors, or employees in a non-pay status, unless the employee is granted medical leave of absence or military leave of absence.
- B. In the event the Fire Chief is in a non-pay status because of a disputed workers' compensation claim, benefits under this article shall be continued upon written agreement of the affected employee to repay to the City the amount of any premiums paid by the City during the non-pay status period if the employee's claim is denied by the Workers Compensation Appeals Board or withdrawn by the employee prior to a decision by the Board.

CHAPTER 3

HOLIDAYS

3.1 Holidays

The following holidays are recognized as municipal holidays for pay purposes:

New Year's Day	Labor Day
Dr. M.L. King Jr. Birthday (3rd Monday in January)	Veteran's Day
President's Day (3rd Monday in February)	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day (July 4)	Christmas Eve Day
	Christmas Day
	½ Day New Year's Eve

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday for pay purposes. In the event that any of the aforementioned days fall on a Saturday, the preceding Friday shall be

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considered a holiday for pay purposes. The afternoon of New Year's Eve, commencing at 12 noon, shall be considered a holiday for pay purposes. In the event New Year's Eve falls on a Sunday or a Monday, the preceding Friday afternoon shall be considered a holiday for pay purposes. The City Manager may make changes in the above schedule in accordance with the needs of the City.

3.2 Birthday and Floating Holidays

In addition to the recognized municipal holidays, the Fire Chief shall receive annually three (3) floating holidays, subject to the same requirements for scheduling vacation. Floating holidays must be taken during the fiscal year they are received and may not be carried over and accumulated.

The Fire Chief is allowed an additional holiday on the birthday or another day at the convenience of the City.

3.3 Compensation for Municipal Holidays

- A. If the Fire Chief is on leave-of-absence without pay, he shall not receive any compensation for holidays occurring during such leave.
- B. The Fire Chief must be in a pay status on the workday preceding a holiday to be eligible to be compensated for the holiday.

CHAPTER 4

**SICK LEAVE, WORKERS' COMPENSATION, FAMILY SICK LEAVE,
AND OTHER LEAVES**

4.1 Accrual of Sick Leave – Rate

Sick leave shall accrue at the rate of 11 hours and 25 minutes per calendar month worked, provided he has worked or been authorized leave with pay for at least ten working days in the month.

4.2 Sick Leave - Maximum Accrual

The maximum accumulation of sick leave is unlimited.

4.3 Activity During Sick Leave

No employee who is absent from work on sick leave shall engage in any work or other activity that would interfere with the employee's ability to return to work to perform regular duties.

4.4 Sick Leave Retirement Benefit

Upon retirement from City service, the Fire Chief shall be entitled to compensation

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for one-fourth of the accumulated sick leave on the books at the time of such retirement, with a maximum payment equivalent to 200 hours pay, at the employee's option. Actual sick leave remaining on the books will be reported to PERS in accordance with PERS regulations governing the sick leave credit contract option. In no case will unearned sick leave be reported for the purpose of increasing the member's retirement as prohibited by PERS.

The date of disability retirement for the employee may be established or determined to be effective prior to the expiration of sick leave benefits.

4.5 On-the-Job Injury

The Fire Chief is eligible for benefits (salary continuance) for time off work due to on-the-job injuries as specified in Labor Code Section 4850.

4.6 Unused Sick Leave Upon Death

The value of accrued sick leave shall be paid (based upon the current hourly rate) to the surviving spouse or designated beneficiary upon the death of the Fire Chief.

4.7 Family Sick Leave

Under Labor Code Section 233, employees may utilize accrued sick leave to care for an ill or injured child, spouse or parent. The City has extended this provision to include domestic partners and their dependent children. There is no requirement that the illness or injury reach the level of seriousness provided for under the Family and Medical Leave Acts. However, if the illness or injury qualifies under the Family and Medical Leave Act, it also satisfies the "family sick leave" criteria. The maximum "family sick leave" allowed each calendar year that is subject to this provision is one-half (1/2) of the employee's annual accrual of sick leave. Additional family sick leave may be taken subject to departmental regulations and approval of the City Manager.

4.8 Bereavement Leave

The Fire Chief is entitled to time off with pay when there is a death or anticipated death in the immediate family. Bereavement leave shall not exceed five (5) consecutive days when death is anticipated. Bereavement leave after death shall not exceed that period of time between death and the day of the funeral, providing the funeral is held within five days following death. Additional time may be granted and charged as sick leave when, in the opinion of the City Manager, unusual circumstances identify the need for additional time off.

Immediate family is defined as spouse, domestic partner, child, parent, parent-in-law, sister, brother, sister-in-law, brother-in-law, grandparent, spouse's grandparent, grandchild, son-in-law, daughter-in-law, or any other relative of the employee or employee's spouse residing in the same household, or who has resided with the employee in the same household for three or more years. In

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cases where death has occurred involving someone other than the immediate family, the City Manager shall make the decision as to qualification for bereavement leave.

4.9 Administrative Leave

The Fire Chief shall receive administrative leave in recognition of extraordinary working hours and conditions. The City Manager will annually approve the number of leave hours by the individual employee based on the amount of overtime performed and the quality of work produced. The annual amount of time assigned shall not exceed eighty (80) hours. Unused administrative leave cannot be carried over from year to year or cashed out at year-end or upon separation.

4.10 Family and Medical Leave

Pursuant to State and Federal law, the City will provide family and medical care leave for eligible employees. The City Family Care and Medical Leave policy sets forth employees' rights and obligations with respect to such leave. Rights and obligations which may not be specifically set forth in the City's policy are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA") and the regulations of the California State Pregnancy Disability Act and the California Fair Employment and Housing Commission implementing the California Family Rights Act ("CFRA") (Government Code Section 12945.2). Unless otherwise provided by the City's policy or this Memorandum of Understanding, "Leave" under this article shall mean leave pursuant to the FMLA.

CHAPTER 5

VACATION

5.1 Eligibility

The Fire Chief shall be eligible to take a paid vacation, unless otherwise provided by the City Manager.

5.2 Scheduling

The scheduling of annual vacation leave and the amount to be taken at any one time shall be determined by the Fire Chief, subject to City Manager, approval, in accordance with departmental regulations and with regard for the needs of the City and the preference of the employee.

5.3 Vacation at Termination

The Fire Chief, who leaves the municipal service with accrued vacation leave, shall be paid the amount of accrued vacation to the date of termination. Payment for accrued vacation shall be at the Fire Chief's current rate of pay.

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5.4 Effect of Extended Military Leave

A Fire Chief who interrupts his/her City service because of extended military leave shall be compensated for accrued vacation at the time the leave becomes effective.

5.5 Sick Leave During Vacation

Vacation leave may be converted to sick leave subject to the review and approval of the City Manager, if the Fire Chief is injured or sick during the vacation for a period in excess of 24 hours.

5.6 Vacation Cap and Implementation

A. Vacation Cap Effective January 1, 2015

Effective January 1, 2015, the vacation cap shall be two (2) times the employee's annual vacation accrual rate. Thereafter, at any time an employee reaches the maximum accrual, the employee will cease accruing vacation hours until such time as the balance falls below the cap. After January 1, 2015, no employee will be allowed to accrue vacation hours above the cap, unless an employee has a worked related injury and is on 4850.

B. Implementation

Effective January 1, 2015, any employee who has vacation hours in excess of two (2) times the annual accrual rate, the excess hours will be placed in a separate vacation bank.

5.7 Separate Vacation Bank

Effective January 1, 2015, any accrued vacation in excess of two (2) times the annual vacation accrual rate will be placed in a separate Vacation Bank for each affected employee. This will be a single, one time process. Employees shall be entitled to use or sell the hours in the Bank for vacation in the same manner as regular vacation hours. The hours shall be paid out at the employee's current rate of pay.

5.8 Vacation Cash-Out

Effective August 1, 2014, employees may annually cash-out up to 16 days (128 hours) of vacation provided that they have taken a minimum of 16 vacation days (or administrative leave for management employees) in the previous fiscal year and maintain a vacation balance of 40.0 hours at the time of vacation cash out. Employees may elect to cash-out a maximum of two (2) times annually and each cash-out request must be a minimum of 8 days (64 hours). Employees must reduce their separate vacation bank first when cashing out vacation. All requests must be in writing to the Human Resources Manager for initial review with final approval by the City Manager.

5.9 Accrual

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Unless otherwise provided by the City Manager, vacation leave will be accrued from the first day of employment when a Fire Chief is in a pay status and will be credited on a monthly basis. Municipal holidays shall not be counted during vacation. The schedule is on the next page.

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Vacation Benefit		
<u>Service</u>		<u>Hrs. Earned/Year</u> <u>(40-hour week)</u>
Accrue during 1st year		88
2		96
3		96
4		104
5		112
6		120
7		120
8		128
9		128
10		136
11		136
12		144
13		144
14		152
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16		160
17		160
18		168
19		168
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21		184
22		192
23		200
24		208
25		216
26		224
27		232
28		240
29		248
30		256
31		264
32		272
33		280
34		288

CHAPTER 6

WORK SCHEDULE

6.1 Workweek

The workweek for the Fire Chief is as required by the City. The normal workday is 8 hours per day. Alternate work schedules may require working different scheduled hours as determined per City operations.

CHAPTER 7

EDUCATION BENEFITS

7.1 Tuition Refund Plan

The Fire Chief is eligible for educational cost reimbursement up to a maximum of \$1,000 per year for work-related studies at a recognized college, university or professional school. Course content should relate to one of the following:

- A. Knowledge or skills needed by the employee in his/her present job;
- B. Preparation for promotional opportunities or advancement in the same or different field within the City organization.
- C. The requirements of a program leading to a degree, at an approved institution, which enhances the employee's job knowledge or on-the-job skills.

Procedures for obtaining reimbursement and limitations regarding reimbursement may be found in the City of El Cerrito administrative procedure on educational expense reimbursement.

CHAPTER 8

MISCELLANEOUS POLICIES FOR THE FIRE CHIEF

8.1 Continuing Education

It is the policy of the City that management employee, including the Fire Chief, take part in some educational or training course each year, and the City Council will attempt to provide funds in each budget for such purpose.

8.2 Membership

It is the policy of the City to provide paid membership in approved professional associations for management employees, including the Fire Chief. This policy

Agenda Item No. 7(A)

Attachment 3(c)

shall include publications associated with membership and other educational materials as may be approved.

8.3 Conferences

It is the policy of the City that each management employee, including the Fire Chief, attend (as a member) a professional conference of his or her peers each year at City expense; however, travel outside the state of California may be discouraged due to budgetary restraints.

8.4 Benefit Relationship to Rank and File

If new or deleted material benefits and/or cost sharing mechanisms are agreed to with the Firefighters' Association, they would apply to the Fire Chief.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
THE EL CERRITO
PUBLIC SAFETY MANAGEMENT ASSOCIATION
POLICE CHIEF

July 1, 2014- June 30, 2019

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
PUBLIC SAFETY MANAGEMENT ASSOCIATION – POLICE CHIEF**

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Section 3500 et seq). The parties to this Memorandum of Understanding are the City of El Cerrito, State of California, which hereinafter shall be referred to as "City," and the El Cerrito Public Safety Management Association – Police Chief, which hereinafter shall be referred to as "Police Chief." The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment for the employee represented by the Police Chief and have freely exchanged information, opinions and proposals and have endeavored to reach agreement on all matters relating to the employment, conditions and employee relations of such employee.

This Memorandum of Understanding shall be presented to the City Council as a joint recommendation of the undersigned for salary, fringe benefits and other working conditions beginning July 1, 2014 and shall be in full force and effect at such date as herein prescribed, upon ratification by both the City Council and affected member of the Public Safety Management Association – Police Chief. It is expressly understood and agreed to by the parties that this Memorandum of Understanding will automatically terminate and be of no further legal force or effect if Sylvia Moir ceases to be the Police Chief for the City of El Cerrito.

City of El Cerrito

**Public Safety Management
Association - Police Chief**

Scott Hanin
City Manager

Lance Maples
Association Representative

Date: _____

Date: _____

Sylvia Moir
Police Chief

Date: _____

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
PUBLIC SAFETY MANAGEMENT ASSOCIATION – POLICE CHIEF**

This Agreement is entered into by and between, the City of El Cerrito, hereinafter referred to as the “City,” and the El Cerrito Public Safety Management Association – Police Chief Sylvia Moir, hereinafter referred as the “Police Chief.” This Agreement establishes the salaries, benefits, and conditions of employment for the City’s public safety management employee – Police Chief Sylvia Moir as follows:

CHAPTER 1

MANAGEMENT EMPLOYEE

- 1.1 The Police Chief is an at-will employee who serves at the discretion of the City Manager. Pursuant to Section 3.10.020 of the El Cerrito Municipal Code, the Police Chief is not entitled to any of the rights or protections of the City’s civil service system. The Police Chief shall be entitled to those rights contained in the Public Safety Officers Procedural Bill of Rights Act, and specifically to those rights contained in Government Code Section 3304(c). However, such rights shall not be deemed to create a property interest in the job of Police Chief or to make the job of Police Chief other than an at-will position with the City.
- 1.2 Management employee is, for purposes of this section, the individual actively involved in the following classification: Police Chief.

CHAPTER 2

SALARIES AND BENEFITS

- 2.1 Salary
 - A. Control Point
 - Effective July 2015, the City shall survey and establish a new control point for the Police Chief classification.
 - Effective July 2017, the City shall survey and establish a new control point for the Police Chief classification.
 - B. Effective the first full pay after adoption by the City Council the Police Chief shall receive a 5.0% salary increase.
 - C. Effective the first full pay period in July 2015 the Police Chief shall receive a 1.5% salary increase.
 - D. Effective the first full pay period in July 2016 the Police Chief shall receive a 1.5% salary increase.

2.2 Longevity

A. Effective December 1, 2014, and each December 1 thereafter, the City shall make longevity bonus payments to those employed with the City as of the day of the payment as follows:

- For employees with 5 years of service with the City but less than 10 years, the annual longevity bonus payment shall be three percent (3%) of their annual base rate of pay.
- For employees with 10 years of service with the City but less than 20 years, the annual longevity bonus payment shall be six percent (6%) of their annual base rate of pay.
- For employees with 20 or more years of service with the City, the annual longevity bonus payment shall be nine percent (9%) of their annual base rate of pay.

B. Longevity bonus payments shall be paid by separate check on the first payroll date in December.

2.3 Uniform Allowance

The uniform allowance for the Police Chief is \$1,000 per year. Uniform allowance shall be paid on the first payroll date in December, covering the calendar year beginning the prior January. Such payment shall be by check separate from the normal payroll check. If the Police Chief leaves City employment during the calendar year, the uniform allowance shall be prorated and paid only for months worked in that calendar year.

2.4 Auto Allowance

The City will supply an automobile to the Police Chief who, in the opinion of the City Manager, requires a City vehicle as an integral part of their work. Alternately, the City will provide a cash allowance of up to \$325 per month in lieu of use of a City automobile.

2.5 Pension Plan Benefits and Reimbursement

A. PERS PICKUP

- Effective the first full pay after adoption by the City Council the Police Chief shall contribute a total of 9.0% to the Public Employees Retirement System.
- Effective the first full pay period in July 2015, the Police Chief shall contribute an additional 1.5% to the Public Employees Retirement System for a total of 10.5%.
- Effective the first full pay period in July 2016, the Police Chief shall contribute an additional 1.5% to the Public Employees Retirement System for a total of 12.0%.

B. Pension Plan Benefits

Effective as soon as possible, the City shall no longer contract with the Public Employees Retirement System for the benefit commonly known as EPMC.

Effective June 30, 2001 the City's contract with PERS was amended to provide to employee the 3% at Age 50 Public Employees' Retirement System plan with the PERS single highest year option, and service credit for unused sick leave options.

2.6 Flexible Benefits Plan

The City has a Flexible Benefits Plan which is consistent with Section 125 of the Internal Revenue Code. The plan is known as "Citiflex." For the duration of this agreement, the plan provides the following:

- A. With the exception of the employee who chooses the "no medical plan" option, the City will contribute an amount equivalent to the Kaiser medical plan rate according to dependent status regardless of which medical plan is chosen. "According to dependent status" means that if an employee is single the employee shall receive the equivalent to the Kaiser single premium in employee's flexible spending account. If the employee and a dependent are enrolled in a City medical plan, the employee shall receive the equivalent to the Kaiser two-party premium in employee's flexible spending account. If the employee and more than one dependent are enrolled in a City medical plan, the employee shall receive the equivalent to the Kaiser family premium in employee's flexible spending account.
- B. The employee may select one of the following medical plans within their individual Flexible Benefits Plan:
 - HMO Kaiser (S)
 - Alternative HMO
 - PPO
- C. In the event that the employee selects a medical plan which exceeds the City's premium contribution, the employee is responsible to pay the difference through payroll deduction.
- D. In the event that the employee has alternate comprehensive group medical coverage through a spouse's medical plan or some other group medical plan, the employee may select a "no medical plan" option. (Proof of alternate coverage is required.) In this event, the City shall contribute the equivalent to the single Kaiser medical premium to their Flexible Benefit Plan and the employee may receive this amount in cash, in which case the amount is treated as taxable income, or the employee may reallocate it toward the purchase of other benefits in the Plan, or a combination of both.
- E. The employee may contribute salary up to the IRS limits on a pretax basis in

order to purchase the following benefits:

- Medical Premiums, Co-Payments, and Deductibles
- Dental Premiums, Co-Payments, and Deductibles
- Un-reimbursed Medical & Dental Expenses
- Dependent Care

Rules governing the allocation and distribution of such funds shall conform to applicable sections of State and Federal tax codes and the City of El Cerrito's Flexible Benefits Plan.

F. The health benefit programs recognize the participation of domestic partners of the eligible employee. Please refer to the City's Citiflex document for details.

G. During the term of the contract, the City may establish a City-wide task force for the purpose of exploring alternate health plans, including PERS Health, for both active and retired employees. The City or Police Chief agrees to reopen negotiations for the sole purpose of implementing alternative medical coverage.

2.7 Dental Plan

The City will pay the full cost of employee plus dependent coverage under the Delta Dental Plan.

2.8 Retirement Health Plan

Retirees, survivors of retirees and survivors of deceased employees, unless prohibited by the carrier, will be permitted to maintain the current level of health plan benefits available to employees. Retirees, survivors of retirees and survivors of deceased employees may maintain such health plan benefits at their discretion and with no cost to the City.

2.9 Life Insurance

The City will provide a term life insurance policy for the Police Chief. The principal sum shall be equal to the annual salary rounded to the nearest \$1,000 (up to a maximum of \$100,000).

2.10 Long-term Disability Insurance

The City shall provide the Police Chief with long-term disability insurance with coverage of two-thirds salary and a sixty-day elimination period. Like regular wages, this benefit is taxable.

2.11 Benefit Status

A. The salary and benefits contained within this Memorandum of Understanding are granted only to the Police Chief if she is in a current pay status. The City shall incur no cost, nor shall benefits accrue for retirees, survivors, or if the

employee in a non-pay status, unless the employee is granted medical leave of absence or military leave of absence.

- B. In the event the Police Chief is in a non-pay status because of a disputed workers' compensation claim, benefits under this article shall be continued upon written agreement of the Police Chief to repay to the City the amount of any premiums paid by the City during the non-pay status period if the employee's claim is denied by the Workers Compensation Appeals Board or withdrawn by the employee prior to a decision by the Board.

CHAPTER 3

HOLIDAYS

3.1 Holidays

The following holidays are recognized as municipal holidays for pay purposes:

New Year's Day	Labor Day
Dr. M.L. King Jr. Birthday (3rd Monday in January)	Veteran's Day
President's Day (3rd Monday in February)	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day (July 4)	Christmas Eve Day
	Christmas Day
	½ Day New Year's Eve

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday for pay purposes. In the event that any of the aforementioned days fall on a Saturday, the preceding Friday shall be considered a holiday for pay purposes. The afternoon of New Year's Eve, commencing at 12 noon, shall be considered a holiday for pay purposes. In the event New Year's Eve fall on a Sunday or a Monday, the preceding Friday afternoon shall be considered a holiday for pay purposes. The City Manager may make changes in the above schedule in accordance with the needs of the City.

3.2 Birthday and Floating Holidays

In addition to the recognized municipal holidays, the Police Chief shall receive annually three floating holidays, subject to the same requirements for scheduling vacation. Floating holidays must be taken during the fiscal year they are received and may not be carried over and accumulated.

The Police Chief is allowed an additional holiday on the birthday or another day at the convenience of the City.

3.3 Compensation for Municipal Holidays

- A. If the Police Chief is on leave-of-absence without pay, he shall not receive any compensation for holidays occurring during such leave.
- B. The Police Chief must be in a pay status on the workday preceding a holiday to be eligible to be compensated for the holiday.

CHAPTER 4

SICK LEAVE, WORKERS' COMPENSATION, FAMILY SICK LEAVE, AND OTHER LEAVES

4.1 Accrual of Sick Leave – Rate

Sick leave shall accrue at the rate of eleven (11) hours and twenty-five (25) minutes per calendar month worked, providing the Police Chief has worked or been authorized leave with pay for at least ten working days in the month

4.2 Sick Leave - Maximum Accrual

The maximum accumulation of sick leave is unlimited.

4.3 Activity During Sick Leave

No employee who is absent from work on sick leave shall engage in any work or other activity that would interfere with the employee's ability to return to work to perform regular duties.

4.4 Sick Leave Retirement Benefit

Upon retirement from City service, the Police Chief shall be entitled to one-fourth of the accumulated sick leave on the books at the time of such retirement, with a maximum payment equivalent to 200 hours pay. The sick leave payout may be converted to the Retirement Health Savings Account to pay for qualified health premiums. Actual sick leave remaining on the books will be reported to PERS in accordance with PERS regulations governing the sick leave credit contract option. In no case will unearned sick leave be reported for the purpose of increasing the member's retirement as prohibited by PERS.

The date of disability retirement for the employee may be established or determined to be effective prior to the expiration of sick leave benefits.

4.5 On-the-Job Injury

The Police Chief is eligible for benefits (salary continuance) for time off work due to on-the-job injuries as specified in Labor Code Section 4850.

4.6 Accrued Sick Leave As Life Insurance

Upon the death of the represented employee, the value of the Police Chief's accrued sick leave, calculated at the Chief's hourly rate, shall be paid to the

employee's estate or designated beneficiary. Payment under this section is limited to 2,080 hours.

4.7 Family Sick Leave

Under Labor Code Section 233, employees may utilize accrued sick leave to care for an ill or injured child, spouse or parent. The City has extended this provision to include domestic partners and their dependent children. There is no requirement that the illness or injury reach the level of seriousness provided for under the Family and Medical Leave Acts. However, if the illness or injury qualifies under the Family and Medical Leave Act, it also satisfies the "family sick leave" criteria. The maximum "family sick leave" allowed each calendar year that is subject to this provision is one-half (1/2) of the employee's annual accrual of sick leave. Additional family sick leave may be taken subject to departmental regulations and approval of the City Manager.

4.8 Bereavement Leave

The Police Chief is entitled to time off with pay when there is a death or anticipated death in the immediate family. Bereavement leave shall not exceed five (5) consecutive days when death is anticipated. Bereavement leave after death shall not exceed that period of time between death and the day of the funeral, providing the funeral is held within five days following death. Additional time may be granted and charged as sick leave when, in the opinion of the City Manager, unusual circumstances identify the need for additional time off.

Immediate family is defined as spouse, domestic partner, child, parent, parent-in-law, sister, brother, sister-in-law, brother-in-law, grandparent, spouse's grandparent, grandchild, son-in-law, daughter-in-law, or any other relative of the employee or employee's spouse residing in the same household, or who has resided with the employee in the same household for three or more years. In cases where death has occurred involving someone other than the immediate family, the City Manager shall make the decision as to qualification for bereavement leave.

4.9 Administrative Leave

The Police Chief shall receive administrative leave in recognition of extraordinary working hours and conditions. The City Manager will annually approve the number of leave hours by the individual employee based on the amount of overtime performed and the quality of work produced. The annual amount of time assigned shall not exceed 10 days (80 hours). Unused administrative leave cannot be carried over from year to year or cashed out at year-end or upon separation.

4.10 Family and Medical Leave

Pursuant to State and Federal law, the City will provide family and medical care leave for eligible employees. The City Family Care and Medical Leave policy sets forth employees' rights and obligations with respect to such leave. Rights and obligations which may not be specifically set forth in the City's policy are set forth

in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA") and the regulations of the California State Pregnancy Disability Act and the California Fair Employment and Housing Commission implementing the California Family Rights Act ("CFRA") (Government Code Section 12945.2). Unless otherwise provided by the City's policy or this Memorandum of Understanding, "Leave" under this article shall mean leave pursuant to the FMLA.

CHAPTER 5

VACATION

5.1 Eligibility

The Police Chief shall be eligible to take a paid vacation of up to forty hours during the first year of continuous service, unless otherwise provided by the City Manager. The Police Chief shall begin employment with a vacation bank of 80 hours and an accrual rate of 11.33 hours per month (10 years).

5.2 Scheduling

The scheduling of annual vacation leave and the amount to be taken at any one time shall be determined by the Police Chief, subject to City Manager, approval, in accordance with departmental regulations and with regard for the needs of the City and the preference of the employee.

5.3 Vacation at Termination

The Police Chief, who leaves the municipal service with accrued vacation leave, shall be paid the amount of accrued vacation to the date of termination. Payment for accrued vacation shall be at the Police Chief's current rate of pay.

5.4 Effect of Extended Military Leave

A Police Chief who interrupts her City service because of extended military leave shall be compensated for accrued vacation at the time the leave becomes effective.

5.5 Sick Leave During Vacation

Vacation leave may be converted to sick leave subject to the review and approval of the City Manager, if the Police Chief is injured or sick during the vacation for a period in excess of 24 hours.

5.6 Vacation Cap and Implementation

A. Vacation Cap Effective January 1, 2015

Effective January 1, 2015, the vacation cap shall be two (2) times the employee's annual vacation accrual rate. Thereafter, at any time an employee reaches the maximum accrual, the employee will cease accruing vacation

hours until such time as the balance falls below the cap. After January 1, 2015, no employee will be allowed to accrue vacation hours above the cap, unless an employee has a worked related injury and is on 4850.

B. Implementation

Effective January 1, 2015, any employee who has vacation hours in excess of two (2) times the annual accrual rate, the excess hours will be placed in a separate vacation bank.

5.7 Separate Vacation Bank

Effective January 1, 2015, any accrued vacation in excess of two (2) times the annual vacation accrual rate will be placed in a separate Vacation Bank for each affected employee. This will be a single, one time process. Employees shall be entitled to use or sell the hours in the Bank for vacation in the same manner as regular vacation hours. The hours shall be paid out at the employee's current rate of pay.

5.8 Vacation Cash-Out

Effective August 1, 2014, employees may annually cash-out up to 16 days (128 hours) of vacation provided that they have taken a minimum of 16 vacation days (or administrative leave for management employees) in the previous fiscal year and maintain a vacation balance of 40.0 hours at the time of vacation cash out. Employees may elect to cash-out a maximum of two (2) times annually and each cash-out request must be a minimum of 8 days (64 hours). Employees must reduce their separate vacation bank first when cashing out vacation. All requests must be in writing to the Human Resources Manager for initial review with final approval by the City Manager.

5.9 Accrual

Effective the first full pay period after adoption by the City Council the Police Chief shall accrue vacation at 168 hours per year.

Effective the first full pay period in July 2015, the Police Chief shall accrue vacation at 216 hours per year.

Vacation Benefit

	<u>Service</u>	Hrs. Earned/Year <u>(40-hour week)</u>
Accrue during 1st year		88
	2	96
	3	96
	4	104
	5	112
	6	120
	7	120
	8	128
	9	128
*Beginning Accrual Rate	10	136
	11	136
	12	144
	13	144
	14	152
	15	152
	16	160
	17	160
	18	168
	19	168
	20	176
	21	184
	22	192
	23	200
	24	208
	25	216
	26	224
	27	232
	28	240
	29	248
	30	256
	31	264
	32	272
	33	280
	34	288

CHAPTER 6

WORK SCHEDULE

6.1 Workweek

The workweek for the Police Chief is as required by the City. The normal workday is from 8:00 a.m. to 5:00 p.m.

CHAPTER 7

EDUCATION BENEFITS

7.1 Tuition Refund Plan

The Police Chief is eligible for educational cost reimbursement up to a maximum of \$1,000 per year for work-related studies at a recognized college, university or professional school. Course content should relate to one of the following:

- A. Knowledge or skills needed by the employee in his/her present job;
- B. Preparation for promotional opportunities or advancement in the same or different field within the City organization.
- C. The requirements of a program leading to a degree, at an approved institution, which enhances the employee's job knowledge or on-the-job skills.

Procedures for obtaining reimbursement and limitations regarding reimbursement may be found in the City of El Cerrito administrative procedure on educational expense reimbursement.

7.2 Education Incentive Program

A \$290.00 monthly education incentive payment shall be paid to the Police Chief, in recognition of completion of the requirements to obtain a baccalaureate degree.

CHAPTER 8

MISCELLANEOUS POLICIES FOR THE POLICE CHIEF

8.1 Continuing Education

It is the policy of the City that management employee, including the Police Chief, take part in some educational or training course each year, and the City Council will attempt to provide funds in each budget for such purpose.

8.2 Membership

It is the policy of the City to provide paid membership in approved professional associations for management employees, including the Police Chief. This policy shall include publications associated with membership and other educational materials as may be approved.

8.3 Conferences

It is the policy of the City that each management employee, including the Police Chief, attend (as a member) a professional conference of his or her peers each year at City expense; however, travel outside the state of California may be discouraged due to budgetary restraints.

8.4 Benefit Relationship to Rank and File

If new or deleted material benefits and/or cost sharing mechanisms are agreed to with the Police Employees' Association, they would apply to the Police Chief.



AGENDA BILL

Agenda Item No. 7(B)

Date: October 7, 2014
To: El Cerrito City Council
From: Karen Pinkos, Assistant City Manager
Subject: Adopt a Memorandum of Understanding for Service Employees International Union (SEIU), Local 1021 and Amend Paying and Reporting the Value of Employer Paid Member Contributions for SEIU, Local 1021 Employees

ACTION REQUESTED

1. Adopt a resolution adopting the Memorandum of Understanding between the City of El Cerrito and the Service Employees International Union (SEIU), Local 1021 effective through June 30, 2017
2. Adopt a resolution amending the paying and reporting of the value of employer paid member contributions for SEIU, Local 1021

BACKGROUND/ANALYSIS

The City Council adopted a Memorandum of Understanding (MOU) between the City of El Cerrito and SEIU, Local 1021 effective July 1, 2012 to June 30, 2014. City representatives began negotiations with SEIU for a successor MOU beginning in April 2014, with consideration for the financial challenges and the balancing measures being considered for the City budget, both short- and long-term. A tentative agreement was reached between the City and the SEIU negotiations team on August 27, 2014. SEIU members voted to accept the tentative agreement between SEIU 1021 and the City of El Cerrito for a successor MOU on September 9, 2014.

The following is a summary of major changes to the MOU. These changes are in line with the authority provided to the City's management team by the City Council:

1. Employees will contribute the full total of 8.0% (5.0% increase) of the member contribution to the California Public Employees Retirement System (CalPERS) beginning the first full pay period following approval of this MOU.
2. Effective the first full pay period following approval of this MOU, all represented classes will receive a 4.0% wage increase; in 2015 a 3.0% wage increase; and in 2016 a 3.0% wage increase.
3. Modifications to vacation accrual similar to the Management and Confidential group are implemented, including a cap of two times the annual accrual rate, a separate vacation bank for any hours in excess of the cap as of January 1, 2015,

AGENDA BILL

Agenda Item No. 7(B)

and more flexibility for vacation cash-out for up to 90 hours of vacation provided 90 hours were taken the previous fiscal year.

4. Annual Floating Holidays will be restored from two days to three days beginning in FY 2015-16.
5. Bereavement leave has been extended from three days to five days.
6. Employees will receive a 25% discount off of the resident rate for Recreation services, including programs, camps and classes. The City has agreed to modify its Administrative Policy and Procedures so that this discount will be available to all City of El Cerrito employees.
7. The term of the agreement is three years, effective through June 30, 2017.

In addition to the attached Resolution to adopt the MOU implementing the changes, CalPERS requires the governing body of the City of El Cerrito to adopt a separate resolution amending the paying and reporting of the value of the employer paid member contributions and has provided specific wording that is included in the resolution presented with this report.

City staff appreciates the collegial atmosphere of the overall negotiations process, and is appreciative to the members of the SEIU team for their thoughtful input and participation.

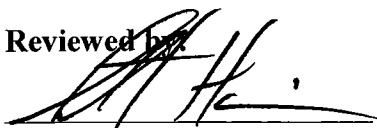
FINANCIAL CONSIDERATIONS

Staff anticipates that the wage provisions of the MOU will cost the City approximately \$79,000 across all funds, of which \$55,000 is General Fund, for FY 2014-15. The increase is largely related to the part-time miscellaneous employees that will receive the same wage increases as SEIU, but are not CalPERS members, so no pension offset exists. This funding is consistent with the adopted FY 2014-15 budget, therefore no budget amendments are needed.

LEGAL CONSIDERATIONS

The attached resolution modifying reporting and payment of employer paid member contributions for this bargaining unit is required by CalPERS when amending the payment of employer paid member contributions (EPMC). This resolution notifies CalPERS that the City has eliminated the EPMC for SEIU and increased the member contribution from 3% to 8%.

Reviewed by



Scott Hanin, City Manager

AGENDA BILL

Agenda Item No. 7(B)

Attachments:

1. Resolution Adopting the Memorandum of Understanding between the City of El Cerrito and the Service Employees International Union (SEIU), Local 1021
2. Memorandum of Understanding between the City of El Cerrito and the Service Employees International Union (SEIU), Local 1021
3. Resolution Amending the Payment and Reporting of EPMC for SEIU, Local 1021 Employees

RESOLUTION 2014-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
ADOPTING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF
EL CERRITO AND THE SERVICE EMPLOYEES INTERNATIONAL UNION
(SEIU), LOCAL 1021 EMPLOYEES

WHEREAS, the Meyers-Milias-Brown Act allows employee units within the City to represent themselves on matters within the scope of representation, including wages, hours and other terms and conditions of employment; and

WHEREAS, the Employer-Employee Relations Ordinance of the City of El Cerrito provides the methods and procedures for meeting and conferring in good faith; and

WHEREAS, the SEIU, Local 1021 is recognized as the majority bargaining unit for full-time and part-time represented general employees; and

WHEREAS, representatives of the City of El Cerrito and the SEIU, Local 1021, have met and conferred in good faith; and

WHEREAS, the City of El Cerrito and SEIU, Local 1021 representatives have reached agreement regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment.

NOW THEREFORE, BE IT RESOLVED, by the City Council of the City of El Cerrito that it hereby adopts the Memorandum of Understanding, herein incorporated by reference and attached hereto as Exhibit A, between the City of El Cerrito and SEIU, Local 1021 effective October 7, 2014 through June 30, 2017 and directs the City Manager to execute the agreement.

I CERTIFY that at a regular meeting on October 7, 2014, the El Cerrito City Council passed this resolution by the following vote:

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

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October XX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND
SERVICE EMPLOYEES INTERNATIONAL
UNION (SEIU) LOCAL 1021



July 1, 2014 to June 30, 2017

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF EL CERRITO
AND**

SERVICE EMPLOYEES INTERNATIONAL UNION (SEIU) LOCAL 1021

**ARTICLE I
Preamble**

This Agreement is entered into by and between the City of El Cerrito, hereinafter referred to as the "City," and Service Employees International Union (SEIU) Local 1021, hereinafter referred to as the "Union."

**ARTICLE II
Nondiscrimination and Affirmative Action**

This agreement applies equally to all members of the bargaining unit regardless of race, color, sex, age, creed, physical or mental impairment, political affiliation, national origin, religious affiliation, or sexual preference as provided by law.

The Union and the City will not discriminate in employment relations against any employee because of sex, sexual preference, gender, race, age, national origin, marital status, religion, disability or political affiliation. The City will comply with all State and Federal Laws and Regulations regarding discrimination. The Union and City further agree not to harass or retaliate against any employee on any of the prohibited bases specified above. The Union will support the City in achieving the goals of the City's Affirmative Action Plan. The Union and the City equally share the responsibility for upholding this provision of the agreement.

**ARTICLE III
Term and Scope of Agreement**

3.1 Duration of this Memorandum

The recommendations set forth in the Memorandum of Understanding are final. Except as otherwise provided herein, no changes or modifications shall be offered, urged or otherwise presented by the Union or the City for the duration of this agreement, provided, however, that nothing herein shall prevent the parties to this Memorandum of Understanding from meeting and conferring and making modifications herein by mutual consent. The term of this agreement shall be from July 1, 2014 to June 30, 2017.

3.2 Extension of Agreement

In the event that the City and Union fail to secure a successor agreement prior to the expiration date of this Memorandum of Understanding, the parties may agree mutually in writing to extend the term of this agreement for any period of time.

3.3 Maintenance of Benefits

All rights, privileges and terms and conditions of employment in full force and effect through the duration of the previous Memorandum of Understanding and not in conflict herewith shall become a part hereby and remain thereby until mutually modified by the parties hereto.

3.4 Procedure for Meet and Confer; Meet and Confer in Good Faith; Scope

The City, through its representatives, shall meet and confer in good faith with representatives of the Union regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment in accordance with the Meyers-Milias-Brown Act.

ARTICLE IV

The Union

4.1 Union Recognition

Pursuant to and in accordance with all applicable provisions of the California Government Code 3500 through 3510 as amended, the City hereby recognizes the Union as the sole and exclusive representative for the purpose of meeting and conferring with respect to rates of compensation, hours and other terms and conditions of employment for the term of the Memorandum for all of the job classifications listed. Such groups of employees shall hereinafter be known as "the Unit."

4.2 Union Membership

The following classifications will be considered "the Unit" as represented by the Union:

- Account Clerk
- Account Clerk Technician
- Accountant I
- Administrative Clerk
- Administrative Clerk Specialist
- Assistant Engineer
- Assistant Planner
- Associate Planner
- Building Inspector I
- Building Inspector II
- Building Permit Technician I
- Building Permit Technician II
- Building Permit Technician III
- Building Plan Checker I
- Building Plan Checker II
- Custodian
- Custodian II
- Custodian Leadworker
- Childcare Aide
- Childcare Teacher (licensed)

Childcare Teacher (no license)
Community Services Coordinator
Engineering Technician
Fork Lift Operator
Information Systems Technician
Maintenance Services Leadworker
Maintenance Worker
Maintenance Worker – Entry
Management Assistant
Nutrition Manager
Open-House Assistant
Preschool Director
Program Registrar
Recycling Maintenance Worker
Recycling Maintenance Worker – Entry
Recreation Registrar Assistant
Respite Program Aide
Senior Services Assistant
Waste Prevention Specialist

4.3 Definitions

A. Part-time Employees. Part-time Employees are defined as any employees who are regularly scheduled to work less 37.5 hours per week. These classifications shall be paid an hourly wage for hours worked.

Part-time employees shall receive benefits as specified in Article XIX of this Memorandum of Understanding.

B. Temporary/Seasonal Employees. Temporary/Seasonal Employees are not part of the bargaining unit represented by SEIU Local 1021.

If a temporary/seasonal employee works for the City for 365 consecutive days without a break in service they will be eligible to become part-time employees and will receive all the benefits associated with being a part-time employee.

C. Probationary Period. The probationary period for original and promotional appointments shall be twelve (12) months for full and part-time employees. The probationary period is regarded as part of the testing process and is utilized to evaluate closely the employee's work performance. An employee may be rejected without cause during this period. Upon satisfactory completion of the 12-month probationary period, the department manager shall recommend that eligible employees advance to regular permanent status.

4.4 Union Representatives

The Union may appoint a steward from each work area, as follows: recreation & childcare, senior services, integrated waste management, corporation yard, City Hall

and a steward from the custodian class series. In addition, an alternate steward in each division may be designated. The Union shall provide to the City a current list of stewards, regularly updated.

If an aggrieved employee desires the assistance of a steward as provided in the grievance procedure, the City shall afford said steward reasonable time off during working hours without loss of compensation or other benefits to investigate and take up such grievance. The grievant or the grievant's steward shall obtain specific approval of the division manager or, in the division manager's absence, another authorized City management official before the steward leaves his or her duties, work situation or assignment for the purpose of investigating and processing a grievance.

4.5 Union and Management Meeting

Stewards shall be allowed one hour a month without loss of compensation or other benefits for the express purpose of meeting together to conduct the business of the Union in relationship to its responsibilities for effective labor relations with the City. The Stewards will notify the City prior to the monthly meeting if they need to meet with City management representatives to discuss items of mutual concern. The City will schedule a meeting within one week of the Union's request.

4.6 Dues Deductions

The City shall deduct regular monthly Union membership dues bi-weekly for Union members who have signed an authorization card furnished by Local 1021 and approved by the City. Said deductions shall be forwarded promptly to the Union office. The employees' earnings must be regularly sufficient to cover the amount of the appropriate Union dues after other legal and required deductions are made. When a member in good standing with the Union is in a non-pay status for an entire pay period, no withholding will be made to cover that pay period from future earnings, nor will the member deposit the amount with the employer which would have been withheld if the member had been in a pay status during that period. In the case of an employee who is in a non-pay status during only part of a pay period and the salary is not sufficient to cover the full withholding, no deductions shall be made. In this connection, all other legal and required deductions have priority over Union dues. The Union shall indemnify, defend and hold harmless the City against any claims made against and any suit instituted against the City on account of said deductions. Dues deductions shall be made only for Service Employees International Union Local 1021 so long as Service Employees International Union Local 1021 is the sole and exclusive bargaining representative.

4.7 Revocation of Union Membership

It is understood that an employee may not revoke his or her authorization for regular monthly Union membership dues deductions except during a period no less than 60 days nor more than 90 days preceding the expiration date of this agreement.

It is understood further that, if an employee does not revoke his or her authorization for membership dues deductions during the time period specified above, said dues shall be

deducted from the employee's earnings for the remaining portion of the year without right of further revocation, except in the event of employee's death or termination from the City service, as long as Service Employees International Union Local 1021 is the sole and exclusive bargaining representative.

4.8 Union Security - Agency Shop

A. Positions subject to Agency Shop. The provisions contained herein shall apply to all employees subject to this Memorandum of Understanding.

B Union Dues Deduction. Except as provided otherwise in this Section, all bargaining unit members shall become and remain members of Local 1021 (hereinafter referred to as "Union") or shall pay to the Union a service fee in lieu thereof. The City shall deduct union dues bi-weekly from the salary or wages of bargaining unit member who has executed a written authorization for the deduction of union dues. For those bargaining unit members who have not executed a written authorization for the deduction of union dues, the City shall deduct a service fee bi-weekly from the salary of those bargaining unit members.

C. Service Fee. The Union understands and acknowledges that the mandatory payment of a service fee is subject to certain State and Federal constitutional requirements. The Union shall maintain a plan, which satisfies these constitutional requirements. The Union shall update and modify this plan as required by subsequent court decisions and legislative enactments. The plan will include the following elements:

1. Before a fee is deducted from a City employee's paycheck, each bargaining unit member shall be provided information showing the major categories of Union expenses, those expenses related to its duty as the exclusive recognized employee organization, the amount of the "fair share" service fee, the method by which the service fee was calculated and verification by an independent auditor on an annual basis.

2. The Union will use its best efforts to insure that a hearing to challenge the service fee filed by any bargaining unit member who is subject to the payment of that fee will be conducted within four months after the date the bargaining unit member notifies the Union of a challenge.

3. Bargaining unit member challenges to the service fee shall be heard by an impartial decision maker selected by an independent third party such as the State Conciliation Service or the American Arbitration Association.

4. During the pendency of a challenge, the City shall continue to deduct the service fee but will retain the fee and will not submit it to the Union. Upon final adjudication of the challenge, the City shall distribute the retained service fee in accordance with the decision by the impartial decision maker.

5. The City shall not be a party to any dispute between the bargaining unit member and the Union regarding the amount of the service fee, nor shall the City participate in the resolution of the fee amount before the independent third party. The City's sole role in any dispute concerning the amount of the service fee shall be to continue to deduct the service fee, retain the fee pending resolution of the dispute between the Union and the bargaining unit member, and distribute the fee in accordance with the decision of the impartial decision maker.

D. Religious Exemption

1. Any bargaining unit member of the City subject to this Agency Shop requirement, who is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting a public employee organization shall, upon presentation of verification of active membership in such religion, body or sect, be permitted to make a charitable contribution equal to the service fee in lieu of the payment of dues or a service fee to the Union. Pursuant to this provision, charitable contributions may be made to the American Cancer Society, the American Heart Association or Sickle Cell Anemia Research and Education, Inc. (SCARE).

2. The City shall submit to the Union declarations of religious exemption filed by bargaining unit members. The Union shall have fifteen (15) days from receipt of this information to challenge the claimed exemption. Such challenge shall be heard by an impartial decision maker selected by an independent third party such as the State Conciliation Service or the American Arbitration Association.

3. If the claim of religious exemption is challenged by the Union, the City shall commence deductions of the contribution from the bargaining unit member's salary. The City will retain the amounts deducted until final adjudication of the Union challenge.

4. The City shall not be a party to any challenge by the Union regarding the claim of religious exemption filed by the bargaining unit member, nor shall the City participate in the resolution of this issue before the independent third party. The City's sole role in any dispute concerning a challenge to a claim of religious exemption shall be to deduct the service fee, retain the fee pending resolution of the dispute between the Union and the bargaining unit member, and distribute the fee in accordance with the decision of the impartial decision maker.

E. Implementation for New Hires

1. Any new employee hired by the City who is subject to the Agency Shop requirement shall be provided with a notice advising that employee that the City has entered into an Agency shop requirement with the Union and the employee must either join the Union, pay a service fee to the Union, or execute a written declaration claiming a religious exemption from this requirement. Such notice

shall include a copy of the plan concerning the service fee prepared by the Union in conformance with Paragraph C above. The notice also shall include a form for the employee's signature authorizing a payroll deduction of union dues or a service fee or a charitable contribution equal to the service fee. Said employee shall have five (5) working days following the initial date of employment to fully execute the authorization form and return it to the Human Resources. If the authorization is not properly completed, or not returned to the Human Resources within five (5) days, the City shall commence and continue a payroll deduction of service fees from the salary or wages of such employee. The City shall commence the deduction of union dues, service fees or charitable contributions beginning with the employee's second biweekly pay period on the month following the employee's date of hire.

2. Payroll deductions for union dues, service fees and charitable contributions shall be done biweekly. Initiation fees shall be deducted in up to four equal installments once each month, from the second biweekly pay check.

3. The employee's earnings must be sufficient after legal and required deductions are made to cover the amount of the dues or service fee. When an employee is in a non-pay status for an entire pay period, no withholding shall be made to cover such pay period from future earnings. If the employee is on non-pay status for only part of the pay period, and the employee's salary is not sufficient to cover the full withholding, no deductions shall be made. For purposes of this paragraph, all legal and required deductions, including health care deductions, have priority over union dues and service fees.

4. The City shall provide notice to the Union of hiring a new bargaining unit employee subject to the agency shop provision within 30 days of hire.

F. Payroll deductions and Payments to the Union

1. The City shall not be required to modify the amounts deducted from employee paychecks for union dues or service fees more than once each calendar year. The Union shall provide the City with at least ninety (90) days notice of any change in the dues or service fee amount.

2. The City shall promptly pay over to the Union all sums deducted from employee paychecks for union dues or service fees except for such funds retained by the City pending the resolution of challenges to the service fee. The City shall periodically provide the Union a list of all city employees subject to this Agency Shop requirement who are making charitable contributions pursuant to Paragraph D above.

G. Programming Costs. The Union shall reimburse the City for all reasonable expenses incurred by the City in implementing changes to the amount of the union dues or service fees deducted by the City.

H. Hold Harmless. The Union shall indemnify and hold the City and its officers, agents and employees harmless from any and all claims, suits, or any other action arising from the Agency Shop provisions contained herein. In no event shall the City be required to pay from its own funds Union dues, service fees or charitable contributions which the employee was obligated to pay but failed to pay, regardless of the reasons. In the event of a claim, demand, suit or other action against the City, the Union agrees that the City may retain the legal counsel of the City's choice and that the Union shall pay all reasonable attorney fees, costs and expenses incurred by the City in the City's defense of the claim, demand suit or action.

4.9 Bulletin Boards

The Union has purchased and installed bulletin boards at the following work areas:

- Recycling Center
- Corporation Yard
- City Hall
- Community Center
- Senior Center

The location of bulletin boards is subject to space limitations and placement at a non-public location approved by the Manager in charge of the location. The Union may use these bulletin boards under the following conditions:

1. All material must be dated and must identify the organization that published it.
2. The Union will do posting. Material shall be removed after the material is no longer relevant to the time or date of issue. Material shall be removed by Union personnel whenever practical.
3. The City, with notice to the Union, has the right to move and to determine where bulletin boards shall be placed.
4. Material, which the City considers objectionable, shall be brought to the attention of the Union representative. Material that is offensive, unprofessional, disrespectful or inappropriate to the mission or values of the City shall be removed from the bulletin board immediately. This requirement shall not infringe in any way upon the Union's rights to organize or to conduct legitimate Union business.

4.10 Benefits Included in Memorandum of Understanding

All benefits resultant from the meet and confer process are included in this Memorandum of Understanding.

4.11 Procedure for Meet and Confer

The Union negotiation team may include a representative from recreation and child care, senior services, integrated waste management, corporation yard, city hall, and a

representative from the custodian class series. Team members are entitled to a reasonable amount of paid work time to prepare for and participate in meet and confer sessions. They must be responsible to notify their supervisors in advance of meetings so that coverage may be arranged, if necessary.

Both the City and Union shall notify each other in writing in advance as to the members of their respective negotiation teams.

ARTICLE V Management

5.1 Management Rights

The City management retains all traditional rights and responsibilities for the operation of the City, as defined in existing federal, state and El Cerrito Municipal Code laws.

5.2 Beneficial Practices

The City agrees that as a result of signing this agreement, rules and regulations or practices affecting employees beneficially will not be changed unless consistent with applicable public law.

ARTICLE VI Union/Management Advisory Team (UMAT)

6.1 Formation

The parties agree to form a Union/Management Advisory Team (UMAT) to meet and develop policies and procedures concerning departmental matters, which may be referred to the team by the City or the Union.

6.2 Composition and Meeting Schedule

The work of the UMAT is to be carried out on a continuing schedule. Meetings will occur as agreed between the parties.

The team will be composed of a steward from each work location:

- Recreation & Childcare
- Senior Services
- Integrated waste management
- Corporation Yard
- City Hall
- A representative from the Custodian class series

Division managers and/or their delegates, if assigned, will represent management. The Department managers, the Employee Services Manager and Union Field Representatives also may attend as resources to the team.

Division representatives also may meet as a UMAT to discuss matters that are limited to

that division; UMAT meetings need not be department-wide. Representation shall be by mutual agreement of the parties.

6.3 Utilization

The UMAT is not a decision-making body and its recommendations are not binding, nor does the UMAT replace other existing processes such as the grievance procedure or meet and confer.

A. The UMAT may advise management in matters of departmental operations and management.

B. The UMAT may develop processes to ensure involvement and participation of appropriate departmental personnel.

C. The UMAT may be utilized to coordinate and refine agreements reached by both the City and the Union during the meet and confer process.

D. The UMAT may review grievances if specifically requested by the Department Manager or Union representatives.

6.4 Reporting

Only issues that are mutually agreed to shall be reported out of the UMAT.

ARTICLE VII

Benefits Plan

7.1 Flexible Benefits Plan

A. The City has a Flexible Benefits Plan. With the exception of those employees who choose the "no medical plan" option (See C), the City will contribute an amount equivalent to the lesser cost (Kaiser HMO) medical plan rate, according to dependent status, regardless of which medical plan is chosen. "According to dependent status" means that if an employee is single he or she shall receive the equivalent to the single premium in his or her flexible spending account. If an employee and a dependent are enrolled in a City medical plan, the employee shall receive the two-party premium in his or her flexible spending account. If an employee and more than one dependent are enrolled in a City medical plan, the employee shall receive the family premium in his or her flexible spending account.

B. Employees may select one of the following medical plans within their Flexible Benefits Plans:

- Kaiser (S)
- Alternative HMO
- PPO

Those employees selecting an option whose premium exceeds the City's contribution are responsible for the difference.

C. In the event that an employee has alternate comprehensive group medical coverage through a spouse's medical plan or some other group medical plan, the employee may select a "no medical plan" option. (Proof of alternate coverage is required.) In this event, the City shall provide the employee only City contribution which may be received in cash, in which case the amount is treated as taxable income, or the employee may reallocate it toward the purchase of other benefits in the Plan, or a combination of both.

D. Employees may contribute salary of up to the maximum allowed by law on a pre-tax basis in order to purchase the following benefits:

- Medical premiums, co-payments, and deductibles
- Dental premiums, co-payments, and deductibles
- Unreimbursed medical and dental expenses
- Dependent care
- Voluntary Group Life Insurance (aggregate to \$50,000 coverage)

Rules governing the allocation and distribution of such funds shall conform to applicable sections of State and Federal tax codes and the City of El Cerrito's Flexible Benefits Plan.

The employee may salary-contribute to the purchase of benefits on a pre-tax basis if appropriate and consistent with the provisions of the City's "Citiflex" Plan and IRS regulations. The employee may elect to purchase a variety of taxable and tax-exempt benefits with the City's contribution, if any, to the Flexible Benefits Plan.

E. Health plans will become effective the first of the month following the date of hire.

F. The health benefit programs recognize the participation of domestic partners of eligible employees. Please refer to the City's Citiflex document for details.

G. The bargaining unit represented by SEIU shall pay the same office visit and prescription co-pays, up to a maximum of \$15.00 for an office visit co-pay, as the safety personnel bargaining units.

7.2 Dental Plan

The City will contribute an amount equal to 100% of the cost of the employee and dependent coverage under the Delta Dental Plan.

The City reserves the right to select alternate carriers so long as benefit coverage is comparable as determined by the City and no additional cost is required by the employee. Employee participation in the dental plan is mandatory unless and until the carrier agrees to waive its requirement for a one-time employee option to be "in" or "out" of the dental plan.

7.3 Retirement Health Plan

Retirees, survivors of retirees and survivors of deceased employees, if permitted by the carrier, will be permitted to maintain the current level of health plan benefits available to employees. Retirees, survivors of retirees and survivors of deceased employees may maintain such health plan benefits at their discretion and with no cost to the City.

7.4 Retirement Plan

Represented full-time, permanent part-time and other part-time employees who work at least 1,000 hours in a fiscal year are entitled to those benefits of the Public Employees Retirement System (PERS) for local miscellaneous members under the 2.7% @ 55 retirement formula and integrated with Social Security. The City also shall provide the PERS single highest year option and the service credit for unused sick leave option per Government Code 20965.

7.5 David Hunter Memorial Scholarship Fund

The City agrees to contribute \$5 per year, paid in January of each calendar year, to the David Hunter Memorial Scholarship Fund on behalf of each full-time and permanent part-time represented employee.

7.6 Life Insurance

The City will provide a term life insurance policy with the principal sum equivalent to the employee's annual salary rounded to the nearest \$1,000. Figures will be updated monthly to reflect salary adjustments provided elsewhere in this Memorandum. The Union agrees that the City has full authority to choose carriers or administrators of this plan.

For permanent (3/4) part-time employees, the City will provide a term life insurance policy with the principal sum equivalent to \$18,000.

7.7 Long-Term Disability Insurance

The City shall provide employees with long-term disability insurance with coverage of two-thirds salary up (The maximum benefit of \$6,700 per month) and a thirty-day elimination period. Like regular wages, this benefit is taxable.

7.8 Auto Use and Reimbursement

Employees required to use their own automobiles for City business shall be reimbursed at the Internal Revenue Service allowable rate or a monthly allotment as contained in the City's budget and by department policy. City employees may be allowed to use City vehicles, if available, for City business.

7.9 Benefit Status

A. The salary and benefits provisions contained within this Memorandum of Understanding are granted only to employees who are in a current pay status. The City shall incur no cost nor shall benefits accrue for retirees, survivors or employees in a non-pay status. Family Care and Medical Leave and Military Leave, however, shall be granted in accordance with the applicable provisions of State and Federal law.

B. In the event an employee is in a non-pay status because of a disputed workers' compensation claim, benefits under this article shall be continued upon written agreement of the affected employee to repay to the City the amount of any premiums paid by the City during the non-pay status period if the employee's claim is denied by the Workers' Compensation Appeals Board or withdrawn by the employee prior to a decision by the Board.

ARTICLE VIII Holidays

8.1 Holidays

The following holidays are recognized as municipal holidays for pay purposes for all full-time and permanent part-time represented employees:

New Year's Day	Labor Day
Dr. M.L. King Jr. Birthday (3rd Monday in January)	Veterans' Day
President's Day (3rd Monday in February)	Thanksgiving Day
Memorial Day	Day after Thanksgiving
July 4th	Christmas Eve Day
	Christmas Day
	½ Day New Year's Eve

In the event that any of the aforementioned days falls on a Sunday, the following Monday shall be considered a holiday for pay purposes. In the event that any of the aforementioned days falls on a Saturday, the preceding Friday shall be considered a holiday for pay purposes. (Department managers may make changes in the above schedule in accordance with the needs of their department.)

The afternoon of New Year's Eve, commencing at 12:00 noon, shall be considered a holiday for pay purposes. In the event that New Year's Eve fall on a Sunday or a Monday, the preceding Friday afternoon shall be considered a holiday for pay purposes.

For employees on an alternative workweek schedule, if a holiday falls on a normal workday, full-time employees will be granted 7 ½ hours or the normal pro-rated portion for those who are benefited regular part-time employees. The employees may apply vacation or other discretionary hours in order to receive their normal hours for the workweek. If a holiday, a day named in the Memorandum of Understanding, falls on the Friday that City Hall is closed, the employee will be allowed to work equivalently fewer hours in the affected workweek(s) or be given the equivalent number of floating holiday hours at the discretion of the department manager. In no event should this result in fewer hours to serve the public.

8.2 Floating Holidays and Birthday

Effective July 2015, in addition to the recognized municipal holidays listed in Section 8.1, eligible represented employees shall receive annually three (3) floating holidays and a birthday holiday.

Accrual shall be prorated quarterly. For new employees, floating holidays shall be prorated quarterly based upon date of hire. Scheduling shall be determined by the Department Manager with regard for the needs of the City and preferences of the employee. Floating holidays must be taken during the fiscal year they are received and may not be carried over and accumulated.

8.3 Eligibility/Compensation for Municipal Holidays

A. An employee on leave-of-absence without pay shall not receive any compensation for holidays occurring during such leave.

B. Full-time employees must be in a pay status on the workday preceding the holiday to be eligible to be compensated for the holiday. An exception is made for permanent part-time employees on irregular work schedules.

C. Full-time and permanent part-time benefited employees will receive overtime pay for holiday work as described in Article XIV of this Memorandum, except as provided in D below.

D. Recycling workers (Entry through Leadworker) have agreed to a Monday holiday work schedule, similar to that found in private waste collection companies, to meet the needs of El Cerrito residents. The applicable Monday holidays are Martin Luther King, Jr.'s Birthday, President's Day, Memorial Day, and Labor Day. On these holidays, 2 drivers will be assigned to work on a rotational basis. The City will request that EBCC provide a helper for each driver, but cannot guarantee that helpers will be available. The assigned drivers are responsible for ensuring that the residential collection routes are completed on these holidays. If for any reason, a driver is unable to appear and work the holiday, the driver is responsible for obtaining his/her replacement and will leave a voice mail for the Manager to that effect. If the assigned driver has contacted all other drivers and is unable to find a replacement, the driver will immediately contact the Integrated Waste Services Manager on the Manager's cell phone. In exchange the City agrees to provide the drivers who work the holiday with a minimum guarantee of 7 ½ hours. If both routes are completed before the 7 ½ hours have elapsed, the drivers are allowed to leave work and will still be compensated for 7 ½ hours. The drivers working the holiday will have a choice of receiving minimum of 7 ½ hours at time and ½, plus a floating holiday or regular holiday pay at straight time for the 7 ½ hours (for a total of double time and ½). Recycling Workers not assigned to work the holiday will be compensated according to current holiday practice.

8.4 Prorated Holidays - Permanent Part-Time Employees

Permanent part-time employees shall receive 3/4 (75%) of the regular and floating holiday time and accrue the holidays proportionately.

8.5 Holiday Work for Part-Time Employees

Part-time employees may be required to work holidays. If work is required and performed, they will earn overtime rates.

ARTICLE IX

Sick Leave

9.1 Accrual Rate

Regular and probationary employees shall be eligible to accrue sick leave. Permanent part-time employees shall be eligible to accrue sick leave in the same proportion as their scheduled work hours per week relate to the standard work week.

A. Full-time employees shall accrue sick leave at the rate of 8 hours and 45 minutes per calendar month worked, providing the employee has worked or been authorized leave with pay for at least ten working days in the month.

B. Full-time employees with 20 or more years of service shall accrue sick leave at the rate of 11 hours and 25 minutes per calendar month worked, providing the employee has worked or been authorized leave with pay for at least ten working days in the month.

C. Eligible part-time employees shall accrue sick leave after 12 months of continuous service, prorated according to hours actually worked.

9.2 Maximum Accrual

The accrual of sick leave is unlimited.

9.3 Use

Sick leave shall be requested only for cases of actual personal sickness or disability or medical or dental treatment, except as noted in 9.8, 19.7 and 11.2.

Pay for approved sick leave shall be authorized until the employee's accumulated total of hours or shifts has been exhausted, at which time the employee shall receive no further pay for sick leave.

An employee shall have accumulated sick leave reduced by an amount equal to the number of hours of sick leave for which payment has been received.

9.4 Sick Leave Shall Not Be Used for Personal Business

Accumulated compensatory time, vacation or leave without pay must be used for all personal business conducted during the normal work hours, unless otherwise authorized by the City Manager or designee.

9.5 Notification of Supervisor

The employee requesting sick leave shall notify his or her supervisor or department manager prior to the time set for reporting to work. Sick leave with pay shall not be

allowed unless the employee has met and complied with the provisions of the regulations, and the department manager and City Manager have approved such payment.

Childcare employees must inform their site coordinators or supervisors of illness at least one hour before their normal work schedule, and preferably the night before if the employee knows he or she will be ill the next day. If the site coordinator is not available, the employee must contact the Youth and Child Care Program Supervisor or the Recreation Director as outlined in staff policies and procedures.

All other employees must inform their supervisors of illness at least one hour before their normal work schedule in the manner prescribed by the Department Head.

9.6 Physician Statement

A. An employee who has been absent from work due to an illness for two (2) or more consecutive workdays the department manager or City Manager may require an employee to submit a written statement from the attending physician or dentist or from a physician or dentist retained by the City stating that the employee is or was unable to perform his or her duties. Where leave abuse or excess is suspected, the employee may be required to furnish a written statement from the attending physician or dentist or other agreed upon form of verification following any absence from work, when the employee has been given prior notice of excessive use of sick leave or the City can show cause to dispute the validity of the sick leave claim.

B. Prior to resumption of duties, the department manager or City Manager may require a written statement from the attending physician or dentist or from a City-retained physician or dentist to the effect that the employee may resume the full duties of his or her position.

9.7 Activity During Sick Leave

No employee who is absent from work on sick leave shall engage in any work or other activity which would interfere with that employee's ability to return to work and perform regular duties.

9.8 Family Sick Leave

Under Labor Code Section 233, employees may utilize accrued sick leave to care for an ill or injured child, spouse, or parent. The City has extended this provision to include domestic partners and their children. There is no requirement that the illness or injury reach the level of seriousness provided for under the Family and Medical Leave Acts (See City Administrative Policy and Procedure on Family and Medical Leave). However, if the illness or injury qualifies under the Family and Medical Leave Act, it also satisfies the "family sick leave" criteria. The maximum "family sick leave" allowed each calendar year that is subject to this provision is one-half (1/2) of the employee's annual accrual of sick leave. In cases where illness or injury has occurred involving someone other than the immediate family, as specified above, the department head shall make the decision as to the qualification for sick leave.

9.9 Accrued Sick Leave as Life Insurance

Upon the death of a represented employee, the value of the employee's accrued sick leave, calculated at the employee's hourly rate, shall be paid to the employee's estate or designated beneficiary.

9.10 Retirement Benefit

Upon retirement from City service, an employee shall be entitled to compensation for one-fourth of the accumulated sick leave on the books at the time of such retirement, with a maximum payment equivalent to thirty (30) days sick leave pay.

This retirement sick leave pay off provision shall not apply to employees who elect the PERS service credit for unused sick leave option.

9.11 Depletion of Sick Leave Benefits - Medical Leave

In the event of continued illness after expiration of sick leave, absences may be charged to accrued compensatory time, if the employee so desires. The City may require the use of other discretionary accrued leave time in accordance with the administrative policy on Family and Medical Leave.

Upon depletion of accumulated sick leave, an employee may be granted a medical leave-of-absence without pay, subject to the provisions of the City's "Personnel Rules and Regulations" and Family Care and Medical Leave Policy.

If further medical leave is granted, the employee must notify the City of his or her health status every 30 days. If further leave is not granted, the employee's service with the City shall be considered terminated.

9.12 Catastrophic Leave

The City will provide catastrophic Leave in accordance with the City of El Cerrito's Administrative Policy/Procedure No. IIA13 titled Donation of Leave Time for Catastrophic Illness or Injury.

9.13 Accrual Statements - Sick and Vacation Leaves

The City will provide on each paycheck a statement of accumulated sick leave and vacation accrual.

ARTICLE X

Vacation

10.1 Eligibility

Full-time and permanent part-time employees shall be eligible to take a paid vacation at current pay rate at the end of the first year of continuous service and annually thereafter.

10.2 Accrual Rate

Vacation accrual for represented employees shall be as follows:

Service	Vacation Benefit Days	Hours (37.5-hour week)	Number of 8.3-hour Shifts
After 1 yr.	11	82.50	9.90
2	12	90.00	10.80
3	12	90.00	10.80
4	13	97.50	11.70
5	15	112.50	13.50
6	16	120.00	14.40
7	16	120.00	14.40
8	17	127.50	15.30
9	17	127.50	15.30
10	18	135.00	16.20
11	18	135.00	16.20
12	19	142.50	17.10
13	19	142.50	17.10
14	20	150.00	18.00
15	20	150.00	18.00
16	21	157.50	18.90
17	21	157.50	18.90
18	22	165.00	19.80
19	22	165.00	19.80
20	23	172.50	20.70
21	23	172.50	20.70
22	24	180.00	21.60
23	24	180.00	21.60
24	25	187.50	22.50
25	25	187.50	22.50
26	26	195.00	23.40
27	26	195.00	23.40
28	27	202.50	24.30
29	27	202.50	24.30
30	28	210.00	25.20
31	28	210.00	25.20
32	29	217.50	26.10
33	29	217.50	26.10
34	30	225.00	27.00
35	30	225.00	27.00
36	31	232.50	27.90
37	31	232.50	27.90
38	32	240.00	28.80
39	32	240.00	28.80
40	33	247.50	29.70

10.3 Basis for Accrual

Vacation leave will be accrued from the first day of employment when a regular employee is in a pay status and will be credited on a bi-weekly basis. Municipal holidays shall not be counted during vacation.

10.4 Scheduling

The scheduling of annual vacation leave and the amount to be taken at any one time shall be determined by the department manager and the employee's supervisor in accordance with departmental regulations and with regard for the preference of the employee and the needs of the City.

10.5 Vacation Cap and Implementation

A. Vacation Cap Effective January 1, 2015

Effective January 1, 2015, the vacation cap shall be two (2) times the employee's annual vacation accrual rate. Thereafter, at any time an employee reaches the maximum accrual, the employee will cease accruing vacation hours until such time as the balance falls below the cap. After January 1, 2015, no employee will be allowed to accrue vacation hours above the cap.

B. Implementation (one time event only)

Effective January 1, 2015, any employee who has vacation hours in excess of two (2) times the annual accrual rate, the excess hours will be placed in a separate vacation bank.

C. Separate Vacation Bank

Effective January 1, 2015, any accrued vacation in excess of two (2) times the annual vacation accrual rate will be placed in a separate Vacation Bank for each affected employee. This will be a single, one time process. Employees shall be entitled to use or sell the hours in the Bank for vacation in the same manner as regular vacation hours. The hours shall be paid out at the employee's current rate of pay.

D. Vacation Cash-Out

Effective August 1, 2014, employees may annually cash-out up to 12 days (90 hours) of vacation provided that they have taken a minimum of 12 vacation days (90 hours) in the previous twelve month period and maintain a vacation balance of 20 hours at the time of vacation cash out. Employees may elect to cash-out a maximum of two (2) times annually and each cash-out request must be a minimum of 6 days (45 hours). Employees must reduce their separate vacation bank first when cashing out vacation. All requests must be in writing to the Human Resources Manager for initial review with final approval by the City Manager.

10.6 Vacation at Termination

Employees leaving the municipal service with accrued vacation leave shall be paid the amount of accrued vacation to the date of termination. Payment for accrued vacation

shall be at the employee's current rate of pay.

10.7 Effect of Extended Military Leave

An employee who interrupts his or her service because of extended military leave shall be compensated for accrued vacation at the time the military leave becomes effective.

10.8 Sick Leave During Vacation

Vacation leave may be converted to sick leave, subject to the review and approval of the department manager and the City Manager, if an employee is injured or sick during his or her vacation for a period in excess of 24 hours.

10.9 Permanent Part-Time and Regular Part-Time Accrual

Permanent part-time and regular part-time employees will earn prorated vacation leave benefits based upon the number of hours worked and applying that percentage to the rate listed on the above vacation schedule.

10.10 Service Credit for Vacation

Childcare coordinators and teachers covered by this agreement shall be credited with six (6) months of continuous service for every previous year of part-time work with the City. (This applies only to the employees who filled the positions of Child Care Site Coordinator and Child Care Teacher on July 1, 1989.)

ARTICLE XI **Other Absence**

11.1 Bereavement Leave

Employees are entitled to time off with pay when there is a death or anticipated death in the immediate family. Bereavement leave shall not exceed five (5) consecutive days when death is anticipated. Bereavement leave after death shall not exceed that period of time between death and the day of the funeral, providing the funeral is held within five days following death. Additional time may be granted and charged as sick leave when, in the opinion of the department manager, unusual circumstances identify the need for additional time off.

Immediate family is defined as spouse, domestic partner, child, parent, parent-in-law, sister, brother, sister-in-law, brother-in-law, grandparent, spouse's grandparent, grandchild, son-in-law, daughter-in-law, or any other relative of the employee or employee's spouse residing in the same household, or who has resided with the employee in the same household for three or more years. In cases where death has occurred involving someone other than the immediate family, the department manager shall make the decision as to qualification for bereavement leave.

11.2 Family and Medical Leave

Pursuant to State and Federal law, the City will provide family and medical care leave for eligible employees. The City Family Care and Medical Leave policy sets forth unit members' rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth in the City's policy are set forth in the Department of

Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA") and the regulations of the California State Pregnancy Disability Act and the California Fair Employment and Housing Commission implementing the California Family Rights Act ("CFRA") (Government Code Section 12945.2). Unless otherwise provided by the City's policy or this Memorandum of Understanding, "Leave" under this article shall mean leave pursuant to the FMLA.

11.3 On-the-Job Injury

When an employee is off work as the result of a valid on-the-job injury, the City shall continue to pay the employee in the amount of his or her monthly rate at the time of injury for up to 90 calendar days.

11.4 Workers' Compensation - Disability Payments

An employee receiving disability payments under the Workers Compensation Laws may use accumulated sick leave and vacation leave in order to maintain his or her regular income. Under these circumstances, the employee shall be paid the difference between his or her full salary and the disability payments received. Such sick leave and vacation leave shall be drawn in proportion to the salary payments required to provide the employee with regular income.

ARTICLE XII

Work Schedule

12.1 Workweek

A. The normal workweek for represented employees is 37.5 hours. The workweek begins at 0001 hours (12:01 a.m.) on Sunday and ends at 2400 hours (12 p.m.) on Saturday unless declared otherwise. For those on the alternate schedule of a 9 day 75 hour per pay period, the workweek begins and concludes at the middle of the workday on Friday.

B. The normal workday for represented employees is 7.5 hours per day. Those on alternative work schedules may work different scheduled hours as determined per City operation.

C. Maintenance employees (Maintenance Services Leadworker, Maintenance Worker and Maintenance Worker - Entry) shall work a schedule of 75 hours over nine days every two weeks, with alternate Fridays off for individual employees while ensuring a minimum scheduled staffing of two persons on duty every Friday. The normal work hours shall be between 7:00 a.m. and 5:00 p.m.

D. Recycling employees shall work a 7.5 hour work day and a five (5) day work week. The start time for employees assigned to the route trucks shall be at 4:00 a.m. The driver assignment to route trucks shall be by bid. The most senior eligible employee shall bid first. The employee(s) not receiving a route shall have their primary duties as those associated with the recycling yard. Additionally, they will provide back up to route drivers in the route driver's absence. All employees receiving route driving

assignments shall also be responsible to provide recycling yard coverage when needed.

E. Childcare Coordinators shall work a 37.5-hour workweek as scheduled by the City. Their normal workweek shall be Monday through Friday with a schedule of hours determined by the City.

Childcare Teachers' normal workweek shall be Monday through Friday. Their hours shall vary between 20 to 40 hours per week depending on the needs of the City.

F. All other represented employees shall work schedules as required by the City.

G. The alternative work schedule (9 day/75 hour per pay period) for City Administrative Offices and (4 day/37.5 hour workweek) for the Recreation Department went into effect September 9, 2001. These are options available for implementation in the recycling operation and other City functions.

As a result of the alternative work schedule program, city services will be available to the public during hours that offices were previously closed. For example, new public hours may incorporate earlier morning hours, lunch periods that are currently closed and/or later evening hours. Thus, the intent of the program is to expand public services. At the same time the alternative work schedule program will address the employees' desire for one or more days away from the work site each pay period without reducing the total number of work hours.

The actual work schedules for employees vary depending upon operational and individual requirements. However, all full-time employees will continue to be assigned 37 ½ hours in a workweek. Regular part-time employees will continue to work the same number of hours in a workweek as currently assigned.

The alternative work schedule program will be monitored closely and may be discontinued at any time by the City with fair notice to the Union, if the City determines that operational and/or public needs are not being met.

ARTICLE XIII Compensation

13.1 Salaries for Represented Classifications

- Effective the first full pay period after adoption of this agreement by the City Council, the City will increase the salary or wage ranges for all represented classifications by 4.0%.
- Effective the first full pay period in July 2015, the City will increase the salary or wages ranges for all represented classifications by 3.0%.
- Effective the first full pay period in July 2016, the City will increase the salary or wages ranges for all represented classifications by 3.0%.

13.2 Median Total Compensation Survey

When the City conducts its total compensation survey in preparation for negotiations for a successor MOU, the City will add 4.5% to the top step salary in the survey document for every City of El Cerrito classification in recognition of the implementation of the 2.7% @ 55 enhanced retirement formula.

13.3 Eligibility for Merit Increase Upon Appointment

Employees will be eligible for consideration of a merit increase after completing six (6) month of continuous service if originally appointed at the first step of the salary range. Employees will be eligible for consideration of a merit increase after completing the probationary period if initial appointment was at a step that was higher than the first step of the salary range.

13.4 Eligibility for Promotion - Maintenance Worker - Entry to Maintenance Worker

All Maintenance Workers - Entry who have successfully completed their top step shall be considered for promotion to Maintenance Worker, to the step that will provide a minimum 5% increase.

13.5 Merit Increases and Appointment Above First Step

The department manager may increase an employee's salary on the basis of merit within the range for that classification with the approval of the city manager or designee. An employee may be appointed above step A with the approval of the City Manager.

13.6 Employer-Paid Employee Contribution to Pension

Effective the first full pay period after adoption of this agreement by the City Council the employee will contribute a total of 8.0% to the Public Employees Retirement System.

13.7 Longevity Bonus

Each December the City shall make longevity bonus payments to employees with 15 or more years of service with the City. The amount of the longevity bonus will be \$1,000 per year. Employees who work half-time or more are eligible for the longevity bonus payment, with the amount of the bonus being prorated based on the annual number of hours worked.

13.8 Bilingual/Notary Pay Differential

The City shall pay a \$50 per month bilingual/notary pay differential to employees in positions designated for bilingual/notary pay by Human Resources based upon the operational needs of the City. Individuals eligible to receive bilingual pay may be required to pass an examination establishing their bilingual skill. The examination shall focus on the employee's ability to speak and comprehend the designated language. . Individuals eligible to receive notary pay must be a commissioned Notary Public by the California Secretary State.

13.9 Standby Duty

Employees occupying the classification of Maintenance Worker Entry, Maintenance

Worker, or Maintenance Services Lead Worker may be assigned to standby duty in order to respond to calls outside of regularly-scheduled hours. Employees assigned to stand-by duty shall receive two hours pay at their regular straight-time rate of pay or, at the employee's option, two hours of compensatory time off at the regular straight-time rate, for each standby assignment.

The City shall assign stand-by only duty to employees who reside within 20 miles of the City.

13.10 Responsibilities

Employees assigned to standby duty shall be provided and shall carry a city-issued phone or pager at all times when on stand-by duty. The employee shall not travel an unreasonable distance from the City and shall not be under the influence of alcohol or any other substance that would impair his/her ability to respond to a call. The employee shall be provided a City vehicle for the duration of the said assignment, subject to administrative policy provisions regarding use of City vehicles.

ARTICLE XIV

Overtime

14.1 Overtime Policy - Definition

It is the policy of the City that overtime work is to be kept at a minimum consistent with the protection of the lives and property of El Cerrito citizens and the efficient operation of the departments and activities of the City. Overtime must be authorized by both the supervisor and department manager and is subject to such other rules and procedures as the City Manager may prescribe.

Overtime shall be defined as time worked beyond the hours worked in a normal workweek, as defined elsewhere in this Memorandum. Hours worked are defined as all time during which an employee is necessarily required to be on the employer's premises, on duty or at a prescribed work place. Sick leave, vacation, holidays and other paid leave are considered to be part of the normal workweek and are included for purposes of calculating overtime compensation. Lunches and unpaid leave shall not be included as time worked. Overtime shall commence at the time an employee reaches the place where he or she is directed to report and shall continue until the employee is released or the work is completed, whichever is earlier. Refer to Article 8.3 for additional information and to Article 19 for over-time provision for part-time employees.

14.2 Minimum Call-Out Compensation

Employees who are called out to perform unscheduled work shall be compensated for a minimum of 2.5 hours at a rate of time and one-half.

14.3 Non-On-Call Overtime

Non-on-call overtime, or that overtime which represents a simple extension of the

normal workday, is not subject to any minimum period for pay purposes. Compensation will be based on the nearest one-half hour; increments of time less or more than one-half hour will be rounded off.

14.4 Overtime Compensation

A. For hours worked in excess of the normal workweek, but not in excess of forty hours in a workweek, one of the following shall occur at the discretion of the department manager and in consultation with the employee:

1. Employee shall accrue compensatory time off on a time-and-one-half basis (this will not count toward the FLSA compensatory time ceiling of 240 hours but will count toward the City's 40-hour compensatory time cap - see Section 14.5);
or
2. Overtime shall be paid at time-and-one-half the regular hourly rate of pay.

B. For hours worked in excess of forty in any workweek, one of the following shall occur at the discretion of the employee:

1. Employee shall accrue compensatory time off on a time-and-one-half basis (this will count toward the FLSA compensatory time ceiling of 240 hours as well as the City's 40-hour compensatory time cap - see Section 14.5);
or
2. Overtime shall be paid at time-and-one-half the regular hourly rate of pay.

14.5 Maximum Accumulation of Compensatory Time

Employees may not accrue more than 40.0 hours of compensatory time off without permission of the department manager. Time off for compensatory time must be approved by the department manager or designee.

14.6 Meal Allowance

A meal allowance of ten dollars shall be allowed employees for every four hours worked continuous to the normal work shift. For scheduled overtime, the employee shall be entitled to one meal allowance per eight-hour shift. A meal allowance of ten dollars shall be allowed childcare coordinators and teachers for every four hours of emergency duty worked continuous to the normal work shift.

14.7 Overtime Assignment

Scheduled and emergency overtime shall be assigned by the department manager or designee on a rotational, seniority basis without regard to the workweek under which any employee currently is working.

14.8 Unscheduled Overtime for Childcare Workers

Childcare workers shall receive a minimum of one-half (1/2) hour straight pay when required to remain on the job because a parent is late to pick up his or her child or

children, for any period of time less than one-half hour. If the parent is later than one-half hour, the employee will be paid for another full half-hour at straight time, and so on in half hour increments.

14.9 Each employee who resigns or is terminated from the City shall be paid for all compensatory time that has been earned prior to resignation or termination.

ARTICLE XV Working In Higher Classification

15.1 Out of Class Assignment Pay

An employee shall be entitled to receive five percent additional pay when working temporarily in a higher classification. Prior to an employee performing duties of a higher classification the department head must assign an employee in writing to perform the duties of the higher classification. A maintenance or childcare employee must work in the higher classification a minimum of one full working day to become eligible; all other represented employees must work in the higher classification a minimum of three full working days to become eligible. The department head shall approve all higher classification pay.

Once an employee meets the above stipulated eligibility periods the employee compensation shall begin the first day of the assignment.

If an employee is temporarily working in a higher classification for a period exceeding twelve consecutive months, the City and the Union shall meet regarding the status of the employee assigned to work in a higher classification.

ARTICLE XVI Special Provisions -- Childcare Services

16.1 Staff to Child Ratio

The City will meet the California State Licensing requirement for staff to child ratio for all childcare facilities.

16.2 Educational Attainment for Childcare Aides

Childcare Aides who become certified by State Licensing as a teacher will be eligible to be moved to step E of the Aide scale. Aides who begin employment with State Certification as a Teacher will be eligible for step E. Childcare Aides who are at step E when they become licensed as Childcare Teachers will be eligible for a 5% above-classification hourly rate.

16.3 Developmentally Disabled Children - Childcare Services

The City will provide special training on paid work time to all childcare workers who may handle physically and developmentally disabled children. Special certification programs for staff will be reviewed and considered. Higher classification or premium pay for qualified staff working with disabled children will be considered. Staff will be

informed of each child's special needs and paid time will be provided for employee review of medical or other records of disabled children in the program. Parent meetings involving affected staff will be arranged as needed.

ARTICLE XVII Education Benefits

17.1 Tuition Refund Plan

When an employee enrolls in approved courses on employee's own time, the City will pay for books required on the course syllabus and for required school fees, such as tuition and registration fees, up to a maximum of \$500 per year for part-time employees and \$1,000 for full-time employees. Mileage and optional fees shall not be refundable. Department manager verification of available budgeted funds and approval shall be obtained by the employee before registering for any course in order to be eligible for refund of required fees. Courses taken at any college, university, high school or business or technical school, or courses given by a recognized correspondence school, shall be approved when they are:

- Related to the employee's present position in the City.
- Related to the employee's potential development with the City.
- Part of a program leading to a degree relating to the employee's present position or potential for development.
- Required to obtain a high school diploma.

Any full-time or part-time employee who receives City-paid benefits may apply for such refund of required fees, pursuant to the rules and procedures established by the City Manager.

17.2 Federal and State Assistance

In the event an employee receives assistance under federal or state government legislation or other student aid programs for education charges for any approved course, only the difference between such assistance and the education charges an employee actually incurs may be refunded under this plan.

17.3 Failure to Complete Course or Termination of Employment

If an employee receives an advance refund for books and/or tuition and required fees and should that employee then fail to complete the course(s) satisfactorily, or should he or she terminate employment with the City before completing the course(s), the employee shall be required to return to the City such refunded tuition and required fees.

ARTICLE XVIII

Miscellaneous

18.1 Clothing - Childcare Workers

The City shall provide required clothing which identifies childcare workers as City employees, at no cost to the employee. Each worker will receive two t-shirts and two sweatshirts annually.

18.2 Protective Clothing

City employees shall be furnished the appropriate protective clothing for foul weather, for spraying weed spray, insecticide or substances, which have toxic effects on the skin, as determined by Management.

18.3 Safety Footwear/Specialty Work Glove Allowance

The City shall conform with applicable safety regulations provided by State law to insure reasonable safe working conditions for all employees. The Union agrees to encourage employees covered by this contract to report promptly any unsafe working conditions and equipment, and to wear at the direction of their supervisor, any and all safety clothing and/or equipment that the City either provides to the employee or for which the City reimburses the employee after purchase.

Each employee in the maintenance unit (see Article 4.2) or in any other position designated by management, who is required to wear safety footwear or specialty gloves, shall be reimbursed, upon purchase of such items, in an amount not to exceed \$200. Such reimbursement shall occur no more than once within any twelve consecutive month period. Eligible employees will receive reimbursement only after submittal of receipts or other appropriate verification of purchase. Safety footwear shall be defined as any supervisor approved footwear with a protective top. Employees must arrive to work in the safety footwear and continue to wear them throughout the day.

The City will provide, at its expense, regular work gloves to appropriate maintenance employees.

18.4 Assignment of Maintenance Employees to Work on Interchangeable Crews

In the event that staffing requirements for a given job exceed the crew's capability, employees may be assigned to work in the other crew. Supervisors shall ask for volunteers to perform such work. In the absence of any volunteers, supervisors shall make appropriate assignments.

18.5 Contracting Out

The City agrees to meet and confer prior to taking action on contracting out services in the event said contracting would result in a reduction in force or otherwise would affect existing wages or terms and conditions of employment of members of this unit.

18.6 Personnel Policies

Procedures governing the rights and obligations of General Employees are found in the

18.7 Administrative Procedures

The City of El Cerrito administrative procedures manual addresses a variety of City-wide issues and advises employees how to proceed in these matters.

18.8 Transfer

A transfer is a change from one position to another with approximately the same (equal or lower) maximum salary which involves the performance of similar duties and which requires substantially the same basic qualifications. The City Manager shall have the power to order a transfer. Seniority shall apply to transfers; that is, a mandatory transfer shall first affect the least senior employee in a classification and last affect the most senior. Employees may request transfers and the City will make transfers and assignments based on seniority and qualifications. Seniority will be given consideration in voluntary transfers; however, the appointing authority shall have the latitude to appoint or reject, giving consideration to previous work performance.

18.9 Meal Periods and Rest Periods

Employees shall be assigned to a one-half hour or one hour unpaid meal period each day within a two-hour period at the midpoint of each shift, and a 15 minute paid rest period during the first half of the work shift. In the event an employee does not receive a meal period or rest period and has gotten permission from his or her supervisor to miss a meal period or rest period, the employee shall be compensated at the overtime rate for said meal period or rest period, or shall be permitted equivalent straight time off the same day.

18.10 TB Tests and Flu Shots

The City shall pay the cost of TB tests and flu shots for represented employees. The City shall provide Hepatitis (B) shots to all legally mandated represented employees. .

18.11 Childcare Discount and Preferential Position on Waiting List

The City will provide represented employees with resident rate discounts on childcare and other recreation programs. Represented employees will receive preferential positions on waiting lists.

18.12 Adult Lap Swim Fee Waiver

To encourage physical fitness among employees, all represented employees shall receive free entrance to adult lap swimming.

18.13 Safety Committee Representation

The Union will provide one to two representatives on the City-wide Safety Committee. The representatives will be selected by the Union and the City will be notified of the selections.

18.14 Grooming

It is the Union's and the City's desire that all employees of the City of El Cerrito present a professional image to the community they serve. In this regard, all items of personal

clothing/hygiene shall be maintained to such reasonable standards as may be established by the appropriate supervisor. At a minimum, items of personal clothing shall be kept clean and free of rips, tears, holes or other conditions that would detract from presenting the required professional image.

18.15 Nepotism

The City of El Cerrito is committed to fostering a professional work environment. Employees shall not be allowed to work in a position that would result in an employee directly supervising an immediate family member.

18.16 Promotions

Promotions within the bargaining unit represented by SEIU Local 1021 shall be done in accordance with the City of El Cerrito's Personnel Rules and Regulation 7.2 Promotion.

18.17 Employee Discounts - Effective prior to July 2015, the City will revise the Administrative Policy/Procedure regarding Employees and Recreation Services to reflect a City of El Cerrito employee rate for program services provided by the Recreation Department at the 75% of the resident rate.

ARTICLE XIX

Part-Time Employees

19.1 Definition - Permanent Part-Time

Employees may work less than full-time but will receive benefits based on 75% of a full-time employee's benefits, except for medical and dental insurance, which the City shall provide the same as for full-time employees. Positions in these classifications shall be filled through a competitive selection process. Qualified candidates will be placed on an eligibility list for appointment to vacancies. Employees must complete a one-year probationary period. Previous time in service may be credited toward the probationary period with approval of the department manager and City Manager, and may count as service credit toward vacation leave accrual.

19.2 Compensation

Compensation for part-time employees is covered by Section 13.1 of this Memorandum.

19.3 Merit Increases

Part-time employees are eligible for merit increases annually (until they reach top step) if they obtain satisfactory performance evaluations from their supervisors, approval by the department manager and a recommendation for a salary increase.

19.4 Retirement

Effective the first full pay period after adoption of this agreement by the City Council employees covered by the Public Employees Retirement System (PERS) will contribute a total of 8.0%.

19.5 Flexible Benefits

Permanent part-time employees shall receive a contribution for flexible benefits as

described in Article VII of this Memorandum. This includes medical coverage cost at the applicable rate and the cost of dental coverage.

19.6 Life Insurance

The City will provide a term life insurance policy as described in Section 7.6 of this Memorandum.

19.7 Sick Leave and Family Sick Leave

Permanent part-time employees shall receive 6.5 hours sick leave per calendar month.

Employees may use one-half (1/2) of their annual accrual of sick leave per calendar year for "family sick" purposes as defined in Section 9.8.

19.8 Vacation Leave

Part-time employees shall earn vacation leave at 75% of the rate listed in Article X of this Memorandum. These employees shall be credited with six (6) months of continuous service for every previous year of part-time year-round work with the city.

19.9 Overtime

All part-time childcare workers are provided overtime in accordance with Section 14.8

19.10 Appeal Procedures – Part-time Employees

Part-time employees who have continuous employment for a minimum of 12 months shall have the right to appeal disciplinary actions to the City Manager. The employee first must appeal to the appropriate supervisor through the chain of command in the department. If the matter is not resolved to the satisfaction of the employee, it may be appealed to the City Manager or a designee. Part-time employees with less than 12 months service are considered to have no appeal rights.

19.11 Miscellaneous

Other provisions of this Memorandum will apply to part-time employees where practicable and within the limitations of City policies and regulations.

ARTICLE XX

Termination of Employment/Layoff Procedures

20.1 Resignation

An employee wishing to leave the service of the City in good standing by resignation shall file with the appointing authority a written resignation stating the effective date and reasons for leaving at least two weeks prior to leaving, unless such time limit is waived by the department manager. Failure to do so may be cause for denying future employment with the City.

20.2 Resignation Reappointment

A regular employee who has resigned from the City service in good standing may be considered, upon written request, for reappointment to a position in the same or similar

class within one year of such resignation. Reappointment may be made without benefit of additional examination and may take precedence over eligible lists. Appointment otherwise shall be made in the manner as for original employment.

A reappointed employee shall be considered a new employee and shall have no vested interest in nor entitlement to any benefits accrued during any previous employment with the city, except those benefits expressly provided by the Public Employees Retirement System.

20.3 Layoff

Employees may be separated from employment for an indefinite period of time due to lack of work, lack of funds or abolition of position(s). Such action is designated as a layoff and shall entitle the laid off employee to be placed on a reemployment list for his or her position classification. Layoff shall be governed by seniority in classification; that is, an employee being laid off shall be that employee with the lowest seniority in the classification involved. Re-employment from layoffs shall be in the reverse order from which the layoffs occurred.

Any position may be abolished by the City Council. Should such an abolished position be reinstated or any position involving substantially the same duties be created within two years, the laid-off employee shall be entitled to reemployment.

If there is a class of positions of a lower rank and in the same promotional line as the class of positions from which the layoff is made, the City Manager shall demote the employee scheduled for layoff to a position in such lower ranking class. The employee with the lowest seniority occupying such lower ranking class may in turn be laid off. Questions concerning the promotional line for a particular job class will be reviewed and a final decision made by the Employee Services Manager.

If two or more employees in the same classification from which layoff is to be made have the same seniority date, such employees may be laid off on the basis of the last performance evaluation rating in that class, providing that evaluation is no more than twelve (12) months old.

At the direction of the City Manager, an employee subject to layoff may be transferred to an existing vacant position within the City if that position is at substantially the same level as the position from which the employee is being laid off. The employee's salary would be adjusted to the new classification, and the salary step would be the same as in the former classification.

20.4 Layoff - Exempt Personnel

Exempt personnel who were promoted from a nonexempt classification shall have the right to revert to the nonexempt classification held prior to promotion.

20.5 Layoff Procedure

In the event of layoff, departmental seniority shall be first controlling, in inverse order.

Thereafter, an employee may revert to any position or classification previously held by utilization of City service seniority. There shall be no barrier to reverting to a position previously held in another department under this section of the provisions.

If an employee has held no previous position with the City, the employee shall utilize City service seniority and demote to any position or classification within the employee's department for which he or she is qualified. The final decision as to whether an employee is qualified will be made by the employee services manager.

No employee holding a permanent appointment in the class from which layoff is to be made shall be laid off unless all provisional, probationary, part-time or intermittent employees in that class have first been terminated.

Employees with permanent status and employees with probationary status who are laid off shall be placed on appropriate reemployment lists in the order of total cumulative time in City service. Such reemployment lists resultant from layoff shall take precedence over any other reemployment or reinstatement lists and shall be in effect for a period of two years from date of layoff.

20.6 Layoff Notice

Regular employees scheduled for layoff shall be notified in writing by the department manager with the approval of the City Manager at least thirty (30) days prior to the date of layoff.

20.7 Layoff - Sick Leave Benefits

In the event of a layoff, represented employees may elect to receive compensation for one-fourth of the accumulated sick leave on the books at the date of layoff, with a maximum payment equivalent to twenty-five days sick leave pay. Such payment shall result in a loss of all accumulated sick leave for employees reinstated after layoff.

20.8 Layoff Reinstatement

Regular employees who have been laid off shall be entitled to reinstatement to positions in the same classification when such positions are to be refilled during the period of their eligibility on the layoff list. Any employee so reinstated shall retain all benefits accrued in prior service with the City.

ARTICLE XXI **Grievance Procedure**

21.1 Definitions

A. Grievance: A grievance may be filed regarding an alleged violation, misinterpretation or misapplication of a specific written provision of Title 3 (Personnel) of the El Cerrito Municipal Code, City personnel rules and regulations, or any written agreement or understanding between the city and an employee organization.

Complaints concerning disciplinary actions are processed through the disciplinary appeals procedures described in Chapter 13 of the City's Personnel Rules and Regulations. An employee may not utilize both the grievance and disciplinary appeals procedure for a single action or event. The appropriate procedure should be employed.

B. Grievant: A grievant is an employee or group of employees adversely affected by acts or omissions of the employer.

Step 1 - Informal Discussion. An employee who has a problem should try first to settle it through informal discussion with his or her immediate supervisor. The employee or employee's representative must bring the complaint to the supervisor within ten (10) business days of the occurrence, or such time as the employee could have reasonably been aware of the occurrence. Failure to bring the matter to the supervisor's attention within ten (10) business days will be deemed a waiver by the employee of his or her right to submit a grievance.

The supervisor must respond to the employee (or representative) within ten (10) business days from the date the complaint was submitted.

If an action of the immediate supervisor is being grieved and it is inappropriate for that supervisor to hear the grievance, it may be brought to the appropriate supervisor at the next level.

Step 2 - Department Head Review. Within ten (10) business days or thirty (30) calendar days after the employee(s) could have reasonably been aware of the occurrence, whichever occurs earlier, the employee(s) or the Union may submit a written grievance to the department head. If the grievance is not filed within the time frames above the grievance shall be considered invalid. The written grievance will contain the following:

- a. Name of the employee(s) impacted
- b. A clear statement of the nature of the grievance
- c. The specific MOU Section, written agreement between the City and SEIU, City Personnel Rule or Regulation or Title 3 of the City Municipal Code allegedly violated, misinterpreted or misapplied.
- d. The specific act or omission which gave rise to this alleged violation, misinterpretation or misapplication.
- e. The date or dates on which the violation, misinterpretation or misapplication occurred.
- f.. What documents, witnesses or other evidence support the employee's position.

- g.. The date the informal discussion was held on. Who submitted the response and the date of the response (if any).
- h.. The remedy requested.
- i. The signature of the employee(s) or Union representative, if the Union is filing the grievance.

A copy of the grievance will be filed with the personnel officer. The department head may confer with the employee and must respond in writing to the employee within fifteen (15) calendar days of receipt of the grievance, unless the employee filing the grievance agrees to extend this response period.

If the employee(s) or the Union does not receive a response to the grievance in the stipulate time frame, the employee(s) or Union has the right to advance the grievance to Human Resource Manager or his/her designee.

Step 3 - Human Resource Manager Review. If the grievance is not resolved to the satisfaction of the employee the grievance and the department head's response to the grievance shall be submitted by the employee to the Human Resource Manager for review within ten (10) business days.

The Human Resources Manager or his/her designee may meet with any or all of the parties involved in the grievance and request any additional information or documentation required to render a fair and impartial decision. The Human Resources Manager's decision shall be communicated to the grievant and the department head within fifteen (15) business days of meeting with the employee(s)/Union or the receipt of the grievance and the department head's response.

Step 4 - Acceptance of Human Resources Manager Decision or Appeal to Civil Service Commission. The grievant may accept the Human Resources Manager's decision or appeal it through the personnel officer to the Civil Service Commission within ten (10) business days of its issuance.

Step 5 - Civil Service Commission Hearing. In hearing a grievance, the Civil Service Commission will receive and investigate the evidence and will make written findings and a written decision. Hearings of the commission will be informal in nature and, so long as due process is observed, the judicial rules of evidence need not be applied. The Civil Service Commission may be advised by the city attorney or other counsel provided by the city. The chairman of the commission will have full authority at all times to maintain orderly procedure. Civil Service Commission hearings will be public unless appellant is otherwise entitled under law to a private hearing and makes a written request for a private hearing.

Step 6 - City Council Decision. The City Council will review the findings and decision of the Civil Service Commission within thirty (30) calendar days of issuance. The City Council will make the final decision regarding the grievance. The decision of the City Council will be final and binding on all parties. The City Council need not hear additional evidence. If, however, the City Council decides to reject or modify the decision of the Civil Service Commission, it will review the entire record of testimony and related evidence. The City Council also may seek whatever additional information it may need to reach a fair decision.

21.2 General Provisions

- a. Time limits may be extended by mutual consent. The party initially requesting an extension must confirm the extension in writing.
- b. An aggrieved employee may be represented by any person or organization of his choice at any stage of these proceedings. This representative is entitled to be present at all meetings and hearings at which the employee is entitled to be present.
- c. Failure on the part of the city or grievant to appear in any case before the Civil Service Commission, without good cause, will result in forfeiture of the case and responsibility for payment of all direct costs incurred in providing for the hearing.
- d. Notice of time and place set for hearing(s) will be mailed or otherwise promptly furnished to the appellant and his or her designated representative. Such notice shall be addressed to the appellant at his or her last known post office address and sent by registered mail at least five (5) calendar days prior to the hearing.

ARTICLE XXII

Disciplinary Guidelines and Appeal Procedure

The City's "Disciplinary Guidelines and Appeal Procedure," as contained in Chapter 13 of the "Personnel Rules and Regulations," is incorporated by reference to be a part of this Agreement.

Appeal procedures for part-time employees are specified in Section 19.10.

ARTICLE XXIII

Separability

23.1 Separability

Should any section, clause or provision of this Memorandum of Understanding be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such section, clause or provision shall not invalidate the remaining portions thereof, and such remaining portions shall remain in full force and effect for the duration of this

Memorandum of Understanding.

Upon such invalidation, the parties agree immediately to meet and confer on substitute provisions for such parts or provisions rendered or declared illegal or an unfair labor practice.

Approved and Accepted

For the City of El Cerrito

Date:

For SEIU Local 1021

Date:

RESOLUTION 2014-XX

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EL CERRITO
MODIFYING REPORTING AND PAYMENT OF EMPLOYER PAID MEMBER
CONTRIBUTIONS FOR THE SERVICE EMPLOYEES INTERNATIONAL UNION
(SEIU), LOCAL 1021 BARGAINING UNIT**

WHEREAS, the City Council, as the governing body of the City of El Cerrito, has the authority to implement Government Code Section 20691; and

WHEREAS, the City Council of the City of El Cerrito has had a written agreement with the Service Employees International Union (SEIU), Local 1021 bargaining unit that specifically provided for a portion of the normal member contributions to be paid by the employer; and

WHEREAS, the City's contribution for Service Employees International Union (SEIU), Local 1021 to the California Public Employees Retirement System (PERS) for the employer paid member contribution (EPMC) will end the first full pay period after October 7, 2014; and

WHEREAS, the City Council of City of El Cerrito has identified the following conditions:

1. This resolution shall apply to all members of the Service Employees International Union (SEIU), Local 1021 bargaining unit;
2. This benefit shall consist of the City paying zero (0%) of the normal member contributions as EPMC;
3. The Service Employees International Union (SEIU), Local 1021 bargaining unit will pay the entire member contribution of eight percent (8%) to PERS;
4. This resolution is effective the first full pay period after October 7, 2014.

NOW THEREFORE, BE IT RESOLVED, that the City Council does hereby modify reporting and payment of employer paid member contributions to PERS as set forth in the conditions above, effective the first full pay period after October 7, 2014.

I CERTIFY that at a regular meeting on October 7, 2014, the El Cerrito City Council passed this resolution by the following vote:

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

Agenda Item No. 7(B)
Attachment 3

IN WITNESS of this action, I sign this document and affix the corporate seal of the City of El Cerrito on October XX, 2014.

Cheryl Morse, City Clerk

APPROVED:

Janet Abelson, Mayor