



AGENDA

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

Tuesday, June 19, 2012

Immediately Following the Adjournment of the 7:00 p.m. Concurrent City Council/Public Financing Authority Meeting

City Council Chambers

Meeting Location

El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Bill Jones – Chairperson

Vice Chairperson Greg Lyman
Boardmember Rebecca Benassini
Boardmember Scott Hanin

Boardmember Janet Abelson
Boardmember Ann Cheng
Boardmember Karen Pinkos

ROLL CALL

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

1. BOARD / STAFF COMMUNICATIONS *(Reports of Closed Session and informational reports on matters of general interest which are announced by the Municipal Services Corporation Board Members and Staff.)*

2. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the Board Secretary. Remarks are limited to 3 minutes per person. Please 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 Municipal Services Corporation Board 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.

3. PRESENTATIONS – None

4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4A and 4B

Consent Calendar items are considered to be routine by the Municipal Services Corporation

Board and will be enacted by one motion unless a request for removal for discussion or explanation is received prior to the time the Board votes on the motion to adopt.

A. Minutes for Approval

Approve the: May 1, 2012 Special Municipal Services Corporation meeting minutes.

B. Fiscal Year 2012–13 Legal Services and Consulting Services Contracts

Adopt a resolution authorizing the Executive Director to enter into legal services contracts for Fiscal Year 2012–13 with the law firms of Goldfarb & Lipman and Meyers Nave, and a consulting services contract for Fiscal Year 2012–13 with the City of El Cerrito.

5. POLICY MATTERS – None

6. ADJOURN SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

- Municipal Services Corporation Board Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT- Channel 28. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of these meetings can be accessed from the City's website: <http://www.el-cerrito.org/gov/>. 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 seven 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
- The Board believes that late night meetings deter public participation, can affect the Board's decision-making ability, and can be a burden to staff. Board meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Board.

EL CERRITO MUNICIPAL SERVICES CORPORATION

MINUTES

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

Tuesday, May 1, 2012

Immediately Following the Adjournment of the 7:00 p.m. Regular City Council Meeting

City Council Chambers

Meeting Location

El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Bill Jones – Chairperson

Vice Chairperson Greg Lyman
Boardmember Rebecca Benassini
Boardmember Scott Hanin

Boardmember Janet Abelson
Boardmember Ann Cheng
Boardmember Karen Pinkos

ROLL CALL

Present: Directors Abelson, Benassini, Hanin, Lyman, Pinkos and Chair Jones

Absent: Director Cheng

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

Chairperson Jones convened the Special Municipal Services Corporation meeting at 8:39 p.m.

- 1. BOARD / STAFF COMMUNICATIONS** – No reports
- 2. ORAL COMMUNICATIONS FROM THE PUBLIC** – No speakers.
- 3. PRESENTATIONS** – None
- 4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4A**

Moved, seconded (Benassini/Pinkos; Ayes – Directors Abelson, Benassini, Hanin, Lyman, Pinkos and Chairperson Jones; Noes – None; Absent – Director Cheng) to approve Consent Calendar Item No. 4A as indicated below.

A. Minutes for Approval

Approve the: March 6, 2012 Special Municipal Services Corporation meeting minutes.

Action: Approved minutes.

5. POLICY MATTERS

Approval of the Proposed Revitalization Grant Program, an Amendment to Fiscal Year 2011–12 Budget, and the Proposed Fiscal Year 2012–13 Budget

Adopt two resolutions approving: (1) the proposed Revitalization Grant Program and an amendment to the FY 2011-12 Budget; and (2) the Corporation's Proposed FY 2012-13 Budget.

Presenter: Lori Treviño, Economic Development Manager.

Actions: Moved, seconded (Benassini/Abelson; Ayes – Directors Abelson, Benassini, Hanin, Lyman, Pinkos and Chairperson Jones; Noes – None; Absent – Director Cheng) to adopt Municipal Services Corporation Resolution No. 2012–12 adopting a Revitalization Grant Program and an amendment to the FY 2011-12 Budget.

Moved, seconded (Lyman/Abelson; Ayes – Directors Abelson, Benassini, Hanin, Lyman, Pinkos and Chairperson Jones; Noes – None; Absent – Director Cheng) and carried to adopt Resolution No. 2012–08 adopting the Municipal Services Corporation's Proposed FY2012-13 Budget.

6. ADJOURNED SPECIAL MUNICIPAL SERVICES CORPORATION MEETING
at 9:09 p.m.

**El Cerrito
Municipal Services Corporation**

**Agenda Report
Item No.4(B)**

Date: June 19, 2012
To: El Cerrito Municipal Services Corporation Board
From: Lori Treviño, Economic Development Manager, City of El Cerrito
Subject: Fiscal Year 2012-13 Legal Services and Consulting Services Contracts

ACTION REQUESTED

Adopt a resolution authorizing the Executive Director to enter into legal services contracts for Fiscal Year 2012-13 with the law firms of Goldfarb & Lipman and Meyers Nave, and a consulting services contract for FY 2012-13 with the City of El Cerrito.

LEGAL SERVICES

Since the re-initiation of the Corporation's activities in February 2011 and the City's partial assignment of the Cooperation Agreement in March 2011 for certain economic development services including redevelopment activities, the law firms of Meyers Nave and Goldfarb & Lipman have been providing legal services to the Corporation on an as-needed basis. Legal work for FY2012-13 is anticipated to be significant enough to warrant a formal contract with both firms. The adopted budget for FY2012-13 provides appropriations for \$75,000 for each firm.

Goldfarb & Lipman's involvement in the former El Cerrito Redevelopment Agency provide the firm with the necessary depth of knowledge about the Corporation's obligations under the Cooperation Agreement. Both Goldfarb & Lipman and Meyers Nave have relevant expertise related to California nonprofit, public benefit corporations.

CONSULTING SERVICES

On February 6, 2012, the Corporation entered into an agreement with the City of El Cerrito for staffing and administrative services for FY2011-12 in the amount of \$653,000. The City provided an invoice to the Corporation for initial set-up expenses and then a monthly invoice for the last five months of the fiscal year, for staffing and related expenses.

On May 1, 2012, the Board adopted a budget for FY2012-13, based on the Corporation's anticipated revenues and expenses for projects and programs, and from operation and maintenance of the Corporation's real property. Expense appropriations included \$757,000 for renewal of the contract with the City. The adopted budget also included pre-funding the contract, given the uncertainty of the Corporation's funding sources during the fiscal year. Under the renewed contract, the City would bill the Corporation on a regular basis during the fiscal year for an amount not to exceed \$63,084 per month, charging the invoices against the balance of the pre-funded amount.

PROPOSED CONTRACTS

Authority is being sought for the following contracts, substantially in the forms attached.

- Goldfarb & Lipman - \$75,000
- Meyers Nave - \$75,000
- City of El Cerrito - \$757,000

LEGAL CONSIDERATIONS

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

Reviewed by:



Scott Hanin, Executive Director

Attachments:

1. Resolution
2. Form of contract with Goldfarb & Lipman
3. Meyers Nave Engagement of Legal Services Letter
4. Form of contract with the City of El Cerrito

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. 2012-XX

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO CONTRACTS WITH GOLDFARB & LIPMAN FOR LEGAL SERVICES IN AN AMOUNT NOT TO EXCEED \$75,000, WITH MEYERS NAVE FOR LEGAL SERVICES IN AN AMOUNT NOT TO EXCEED \$75,000, AND THE CITY OF EL CERRITO FOR STAFFING AND ADMINISTRATIVE SERVICES IN AN AMOUNT NOT TO EXCEED \$757,000

WHEREAS, the Municipal Services Corporation is a nonprofit public benefit corporation organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes; and

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

WHEREAS, prior to its dissolution under AB1x26, the Agency committed to funding implementation of redevelopment and economic development projects and programs by the Corporation on the Agency's behalf, pursuant to the Amended and Restated Public Improvements and Cooperation Agreement for the City of El Cerrito Redevelopment Project Area between the City of El Cerrito and the El Cerrito Redevelopment Agency ("Cooperation Agreement"), which the City subsequently assigned in part to the Corporation, with the Agency's consent; and

WHEREAS, since the re-initiation of the Corporation's activities in February 2011 and the City's partial assignment of the Cooperation Agreement, the Corporation has utilized the legal services of the law firms of Meyers Nave and Goldfarb & Lipman on an as-needed basis; and

WHEREAS, legal services required for FY2012-13 are anticipated to be significant enough to warrant a formal contract with both firms; and

WHEREAS, Goldfarb & Lipman's involvement in the former Agency provide the firm with the necessary depth of knowledge about the Corporation's obligations under the Cooperation Agreement; and

WHEREAS, both Goldfarb & Lipman and Meyers Nave have relevant expertise related to California nonprofit, public benefit corporations; and

WHEREAS, the Board wishes to authorize contracts with both firms for legal services; and

WHEREAS, the Corporation requires consulting and administrative services in order to fulfill its obligations under the Cooperation Agreement, as well as its independent projects and programs, and

WHEREAS, the Board wishes to authorize a contract for consulting services for its program and project implementation, and for administration of the Corporation; and

WHEREAS, the City has demonstrated its capability to provide such services under a contract for FY2011-12; and

WHEREAS, the Board adopted its FY2012-13 budget on May 1, 2012, which represented the anticipated revenues and proposed expenditures for the Corporation and provides sufficient funding for the three contracts; and

WHEREAS, pending receipt of revenues pledged to fund the Corporation's implementation of the Cooperation Agreement, the Corporation pre-funded its contract with the City for FY2012-13; and

WHEREAS, pursuant to the Corporation's Amended and Restated Bylaws, all contracts entered into on behalf of this Corporation where the contract exceeds Twenty Five Thousand Dollars must be authorized by the Board.

NOW THEREFORE, BE IT RESOLVED, that the Board of Directors of the El Cerrito Municipal Services Corporation finds that the above recitals are true and correct.

BE IT FURTHER RESOLVED, that the Board does hereby authorize the Executive Director to enter into contracts with Goldfarb & Lipman for legal services in an amount not to exceed \$75,000 and with Meyers Nave for legal services in an amount not to exceed \$75,000, and with the City of El Cerrito for staffing and administrative services, in an amount not to exceed \$757,000.

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

I CERTIFY that at a regular meeting on June 19, 2012, the Board of Directors of the El Cerrito Municipal Services Corporation passed this Resolution by the following vote:

AYES:	BOARD MEMBERS:
NOES:	BOARD MEMBERS:
ABSENT:	BOARD MEMBERS:

IN WITNESS of this action, I sign this document on June ___, 2012.

Cheryl Morse, Secretary

APPROVED:

William C. Jones III, Board Chairperson

**CONSULTING SERVICES AGREEMENT BETWEEN
THE EL CERRITO MUNICIPAL SERVICES CORPORATION
AND GOLDFARB & LIPMAN LLP**

THIS AGREEMENT for consulting services is made by and between the El Cerrito Municipal Services Corporation ("Corporation") and Goldfarb & Lipman LLP ("Consultant") (together referred to as the "Parties") as of July 1, 2012 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to Corporation the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on July 1, 2012, the date of completion specified in Exhibit A, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the Corporation's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that Corporation, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from Corporation of such desire of Corporation, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy Consultant's obligations hereunder.
- 1.5 **reserved**

Section 2. COMPENSATION. Corporation hereby agrees to pay Consultant a sum not to exceed \$75,000, notwithstanding any contrary indications that may be contained in Consultant's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant's proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. Corporation shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from Corporation to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to Corporation in the manner specified herein. Except as

specifically authorized by Corporation in writing, Consultant shall not bill Corporation for duplicate services performed by more than one person.

Consultant and Corporation acknowledge and agree that compensation paid by Corporation to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. Corporation therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, and the balance available under the Agreement;
- At Corporation's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The Consultant's signature;

2.2 Monthly Payment. Corporation shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Corporation shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

2.3 Final Payment. Corporation shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to Corporation of a final invoice, if all services required have been satisfactorily performed.

2.4 Total Payment. Corporation shall pay for the services to be rendered by Consultant pursuant to this Agreement. Corporation shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. Corporation shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement,

unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.
- 2.6 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.
- 2.7 **Payment upon Termination.** In the event that the Corporation or Consultant terminates this Agreement pursuant to Section 8, the Corporation shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.
- 2.8 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. Corporation shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

Corporation shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with Corporation employees and reviewing records and the information in possession of the Corporation. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of Corporation. In no event shall Corporation be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to Corporation of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the Corporation. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to Corporation. Verification of the required insurance shall be submitted and made

part of this Agreement prior to execution. Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the Corporation and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.

- b. Corporation, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Consultant; or automobiles owned, leased, hired, or borrowed by the Consultant
- c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the Corporation, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Corporation, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the Corporation.

4.3 Professional Liability Insurance.

4.3.1 General requirements. Consultant, at its own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than \$1,000,000 covering the licensed professionals' errors and omissions. Any deductible or self-insured retention shall not exceed \$150,000 per claim.

4.3.2 Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of five years after completion of work under this Agreement.
- d. A copy of the claim reporting requirements must be submitted to the Corporation for review prior to the commencement of any work under this Agreement.

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish Corporation with complete copies of all policies delivered to Consultant by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the Corporation does not receive the required insurance documents prior to the Consultant beginning work, it shall not waive the Consultant's obligation to provide them. The Corporation reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Deductibles and Self-Insured Retentions. Consultant shall disclose to and obtain the written approval of Corporation for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the Corporation, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Corporation, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the Corporation guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Wasting Policies. No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

4.4.5 Waiver of Subrogation. Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 Remedies. In addition to any other remedies Corporation may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, Corporation may, at its sole option exercise any of the following remedies, which are alternatives to other remedies Corporation may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend with counsel acceptable to Corporation, and hold harmless Corporation and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Consultant's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of Corporation.

The Consultant's obligation to defend and indemnify shall not be excused because of the Consultant's inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the Corporation, unless this time has been extended by the Corporation. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the Corporation, may be retained by the Corporation until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

Section 6. STATUS OF CONSULTANT.

- 6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of Corporation. Corporation shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise Corporation shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other Corporation, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by Corporation.
- 6.2 Consultant Not an Agent.** Except as Corporation may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of Corporation in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind Corporation to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from a governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which Corporation is bound by the terms of such fiscal assistance program.
- 7.4 Licenses and Permits.** Consultant represents and warrants to Corporation that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to Corporation that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from the City of El Cerrito.
- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any

employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator of this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** Corporation may cancel this Agreement at any time and without cause upon written notification to Consultant.

Consultant may cancel this Agreement upon 60 days' written notice to Corporation and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; Corporation, however, may condition payment of such compensation upon Consultant delivering to Corporation any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the Corporation in connection with this Agreement.

- 8.2 Extension.** Corporation may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if Corporation grants such an extension, Corporation shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, Corporation shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 Assignment and Subcontracting.** Corporation and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to Corporation for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written

approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between Corporation and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, Corporation's remedies shall included, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

8.6.3 Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

8.6.4 Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that Corporation would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 Records Created as Part of Consultant's Performance. All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the Corporation. Consultant hereby agrees to deliver those documents to the Corporation upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the Corporation and are not necessarily suitable for any future or other use. Corporation and Consultant agree that, until final approval by Corporation, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

9.2 Consultant's Books and Records. Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged

to the Corporation under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the Corporation. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of Corporation or as part of any audit of the Corporation, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of Corporation or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any Corporation official in the work performed pursuant to this Agreement. No officer or employee of Corporation shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the Corporation. If Consultant was an employee, agent, appointee, or official of the Corporation in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the Corporation for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

- 10.9 Contract Administration.** This Agreement shall be administered by Lori Trevino, Economic Development Manager ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

- 10.10 Notices.** Any written notice to Consultant shall be sent to:

Goldfarb & Lipman
1300 Clay Street, 11th Floor
Oakland, CA 94612
Attn: Karen Tiedemann

Any written notice to Corporation shall be sent to:

Scott Hanin, Executive Director
El Cerrito Municipal Services Corporation
10890 San Pablo Avenue
El Cerrito, CA 94530

- 10.11 Reserved**

10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B represents the entire and integrated agreement between Corporation and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services

Exhibit B Payment Schedule and Reimbursable Expenses

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

[SIGNATURES ON FOLLOWING PAGE]

The Parties have executed this Agreement as of the Effective Date.

EL CERRITO MUNICIPAL SERVICES CORPORATION

CONSULTANT

Scott Hanin, Executive Director

Karen Tiedemann, Partner
Goldfarb & Lipman LLP

Attest:

Cheryl Morse, Corporation Secretary

Approved as to Form:

Sky Woodruff, Corporation Attorney

1011032_1.DOC

EXHIBIT A

SCOPE OF SERVICES

Legal counsel for the Corporation's 1) implementation of the Partially Assigned Public Improvements and Cooperation Agreement for the City of El Cerrito Redevelopment Project Area, 2) economic development projects and programs, and 3) general corporate matters.

EXHIBIT B

COMPENSATION SCHEDULE

ATTORNEYS AND RATE SCHEDULE

M David Kroot	260
John T. Nagle	260
Polly V. Marshall	260
Lynn Hutchins	260
Karen M. Tiedemann	260
Thomas H. Webber	260
John T. Haygood	260
Dianne A. Jackson McLean	260
Michelle D. Brewer	260
Jennifer K. Bell	260
Robert C. Mills	260
James T. Diamond, Jr.	260
Isabel L. Brown	255
Heather Gould	250
Margaret F. Jung	250
Juliet E. Cox	250
Barbara Kautz	245
William F. DiCamillo	245
Erica Williams Orcharton	220
Amy DeVaudreuil	210
Luis A. Rodriguez	185
Rafael Yaquian-Illescas	165
Xochitl Marquez	165
Josh Mukhopadhyay	165
Senior Law Clerks	135
Law Clerks	125
Project Coordinators	125

In addition to our fees for legal services, we also charge for messenger, reproduction, facsimile, and other costs and expenses incurred on your behalf.

555 12th Street, Suite 1500
Oakland, California 94607
tel (510) 808-2000
fax (510) 444-1108
www.meyersnave.com

Sky Woodruff
Attorney at Law
swoodruff@meyersnave.com

June 11, 2012

Scott Hanin
Executive Director
El Cerrito Municipal Services Corporation
10940 San Pablo Avenue
El Cerrito, CA 94530-2392

Re: Engagement of Legal Services

Dear Mr. Hanin:

Thank you for retaining Meyers, Nave, Riback, Silver & Wilson ("Meyers Nave") to perform legal services in connection with El Cerrito Municipal Services Corporation ("MSC") of which you are Executive Director. We appreciate the opportunity to serve as your lawyers and look forward to working with you.

This letter sets forth our agreement concerning the legal services we will provide and our fee arrangements for those services. Please read this entire agreement before signing and returning it to us.

1. Scope of Engagement. We will provide the legal services reasonably required to represent and advise you in connection with the operations of the MSC, including but not limited to compliance with applicable conflicts of interest, open meetings, and public records laws; implementation of and compliance with agreements with public agencies in furtherance of the MSC's purposes; litigation; real estate transactions; and finance. Our work is limited to such services. We will also provide legal services for additional matters that you request of us, provided we agree to perform that additional work. A letter confirming such additional work shall bring such work within the scope of this agreement.

2. Fees and Personnel. As compensation for our services, our fees will be based on our current standard billing rate for the personnel performing services under this agreement at the time such services are rendered. Our standard billing rates for attorneys and paralegals are attached as Attachment 1. Total fees for the period from July 1, 2012 through June 30, 2013 are not to exceed \$75,000.

I will be the principal in charge of representing your interests. My hourly rate is \$260 per hour. If other attorneys and/or paralegals are assigned to work on your matter, the then current hourly rates of those individuals will be utilized. This agreement retains the legal services of our law firm and not of a particular attorney. Hourly rates are subject to reasonable change, usually at the beginning of each year.

3. Disbursements and Expenses. In addition to hourly fees, we may incur out-of-pocket expenses related to your representation. Our Statement of Fee and Billing Information, which sets forth the details of our disbursement and expense policy, is attached as Attachment 2.

4. Billing and Payment Responsibilities. We will send monthly statements which are due within 30 days of receipt. If you have any questions about an invoice, please promptly telephone or write me so that we may discuss these matters. Our Statement of Fee and Billing Information sets forth the details of our fee and billing policy.

5. Termination of Services. You may terminate our services at any time by written notice. After receiving such notice, we will cease providing services. We will cooperate with you in the orderly transfer of all related files and records to your new counsel.

We may terminate our services at any time with your consent or for good cause. Good cause exists if (a) any statement is not paid within 60 days of its date; (b) you fail to meet any other obligation under this agreement and continue in that failure for 15 days after we send written notice to you; (c) you have misrepresented or failed to disclose material facts to us, refused to cooperate with us, refused to follow our advice on a material matter, or otherwise made our representation unreasonably difficult; or (d) any other circumstance exists in which ethical rules of the legal profession mandate or permit termination, including situations where a conflict of interest arises. If we terminate our services, you agree to execute a substitution of attorneys promptly and otherwise cooperate in effecting that termination.

Termination of our services, whether by you or by us, will not relieve the obligation to pay for services rendered and costs incurred before our services formally ceased.

6. Insurance. During the term of this engagement, this law firm shall take out and maintain general liability and property damage insurance in amounts not less than \$1,000,000; professional errors and omissions insurance, in amounts not less than \$2,000,000 per occurrence; and \$4,000,000 aggregate, which insurance may not be canceled or reduced in required limits of liability unless at least ten days advance written notice be given to you.

7. No Guarantee of Outcome. Any comments made by us about the potential outcome of this matter are expressions of opinion only and are not guarantees or promises about any outcome or results.

8. Dispute Resolution. In the event you become dissatisfied with any aspect of our relationship, we encourage you to bring such concerns to our attention immediately. If we are unable to resolve any dispute, either arising out of or in connection with this Agreement or relating to the services performed by our firm or any of its attorneys, to our mutual satisfaction, our firm will first comply with any mandatory dispute resolution procedures that may apply to any such dispute.

If we are unable to resolve any dispute, and after mandatory dispute resolution procedures have been waived or exhausted, the parties shall submit such dispute to final and binding arbitration in Alameda County, California before the American Arbitration Association, pursuant to its then prevailing rules, unless the parties agree in writing to a different arbitration method or forum.

By signing this agreement, you acknowledge and agree that you have read and understand this arbitration provision. You understand that by agreeing to arbitration we each give up the right to present our claims or defenses for trial by a judge or jury, and we also give up the right to an appeal. The initial resort to the courts by either party shall not be considered a waiver of that party's right to compel binding arbitration under this provision. This agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

9. Entire Agreement; Full Understanding; Modifications in Writing. This letter contains our entire agreement about our representation. Any modifications or additions to this letter agreement must be made in writing.

10. Joint Representation. Our firm maintains of counsel agreements with certain legal specialists. Because these individuals are deemed independent contractors under the applicable provisions of the tax laws and not employees of our firm, it is necessary that you consent to dual representation by our firm and the specialist in the event the matter which you have engaged us to handle requires the use of that specialist. This arrangement has no effect whatsoever on the cost of your legal services, rather it is an ethical requirement that we disclose this fact and that you consent. You are consenting by signing this letter.

11. Conflicts. Our firm represents many public agencies in California, Nevada and Arizona. Since 1986, we have represented over seven hundred public clients, including numerous cities, redevelopment agencies, special districts, counties and other public entities, and we are accepting new engagements all the time. It is virtually inevitable that we will work on projects from other clients having different governmental or political objectives, beliefs or views from El Cerrito Municipal Services Corporation.

In view of the fact that El Cerrito Municipal Services Corporation is a Public Entity, this letter confirms that the services which we are rendering to you are limited in scope and for the benefit of El Cerrito Municipal Services Corporation only. Meyers Nave performs a

Scott Hanin
Re: Engagement of Legal Services
June 11, 2012
Page 4

variety of professional services for its clients and it is possible that we will represent public agency clients which are adverse to you on other matters. To avoid potential problems, you agree that you expressly waive any actual or potential conflicts that might arise from such representation, that you will not attempt to disqualify Meyers Nave on such matters, and that our firm is free to represent its clients on such matters.

By signing this letter and returning it to us, you acknowledge that we have discussed these matters and you confirm that El Cerrito Municipal Services Corporation does not object to our representation of clients on matters where their legal, governmental or political objectives and/or positions may be different from or adverse to those of El Cerrito Municipal Services Corporation, and that El Cerrito Municipal Services Corporation waives any conflict of interests with respect to our representation of such clients with differing legal, governmental or political interests. You further confirm that El Cerrito Municipal Services Corporation will not assert any conflict of interest concerning such representation or attempt to disqualify this firm from representing such clients notwithstanding such adversity. While you would certainly be free to terminate our relationship, you agree that this firm nonetheless would be free to represent such clients even on those matters which you consider adverse, and that you waive any conflict of interest in connection therewith.

Needless to say, these acknowledgments do not permit our firm to represent another client in opposing the specific project for which you engage us without your specific written consent.

You may wish, and we encourage you, to consult legal counsel regarding the effect of this conflict waiver.

We would request that you review this letter carefully and, if it is consistent with your understanding of our respective responsibilities, please so indicate by returning a signed copy of this letter to me at your earliest convenience. Enclosed is an additional copy of this letter which you should retain for your records. Again, we thank you for allowing us the opportunity to serve as your lawyers.

Very truly yours,

Sky Woodruff

SW:vfd
Enclosures
c: Conflicts Department
Billing Department
1897053.1

Scott Hanin
Re: Engagement of Legal Services
June 11, 2012
Page 5

These terms are accepted and agreed to as of the date of this letter.

El Cerrito Municipal Services
Corporation

By: _____
Scott Hanin
Executive Director

ATTACHMENT 1

**MEYERS, NAVE, RIBACK, SILVER & WILSON
RATE SHEETS**

GENERAL COUNSEL SERVICES

Principal	\$200 - \$300
Of Counsel	\$200 - \$300
Associate	\$200 - \$300
Paralegal	\$110

SPECIAL LEGAL SERVICES

Principal	\$200 - \$375
Of Counsel	\$200 - \$375
Associate	\$200 - \$375
Paralegal	\$110

Our rates adjust annually each calendar year by the greater of 3% or the relevant local CPI increase over the prior 12 month period, rounded to the nearest \$5.

ATTACHMENT 2

MEYERS, NAVE, RIBACK, SILVER & WILSON STATEMENT OF FEE AND BILLING INFORMATION

The following is a general description of our fee and billing policies. These general policies may be modified by the specific engagement letter or agreement to which this summary is attached.

Professional Fees. Our fees for professional services are based on the fair value of the services rendered. To help us determine the value of our services, our attorneys and paralegals maintain time records for each client and matter. Our attorneys and paralegals are assigned hourly rates which are based on years of experience, specialization, training and level of professional attainment. We adjust our rates periodically (usually at the beginning of each year) to take into account inflation and the increased experience of our professional personnel.

To keep professional fees at a minimum, legal work that does not require more experienced attorneys will be performed, where feasible, by attorneys with lower billing rates. Of course, the quality of the work is paramount, and we do not sacrifice quality to economy.

Before undertaking a particular assignment, we will, if requested, provide you with a fee estimate to the extent possible. Estimates are not possible for some matters, however, and cannot be relied on in many others because the scope of our work will not be clear at the outset. When a fee estimate is given, it is only an estimate; it is not a maximum or minimum fee quotation. The actual fee may be more or less than the quoted estimate.

Billing And Payment Procedures. Unless other arrangements are made at the time of the engagement, invoices will be sent monthly. Invoices for outside services exceeding \$100 may be billed separately. Occasionally, however, we may defer billing for a given month or months if the accrued fees and costs do not warrant current billing or if other circumstances would make it appropriate to defer billing.

Our invoices contain a brief narrative description of the work performed; if requested, the initials of the attorney who performed the work will appear on the statement. The invoice will include a line item reflecting in-house administrative costs. The firm's in-house administrative costs include, but are not limited to, duplicating, facsimile charges, telephone charges, E-mail, postage, mileage and other administrative expenses. We have determined that the most effective method of accounting for these administrative costs is to charge a flat 8% of the professional fees incurred.

The firm will be reimbursed for all outside services incurred in the course of providing legal services to our client(s). Outside services will include, but are not limited to, all third-party expenses, delivery charges, travel expenses, outside research services, filing fees, expert witness and expert consultant fees. To defray the firm's costs for administering these services, there will be an additional cost advance charge of 2% for all outside services of \$100 or more.

If you have any questions regarding an invoice, the Finance Director or Chief Operating Officer is available to answer your questions. For any unresolved matters, the Bar Association has an arbitration mechanism that can be used to resolve such matters.

Late Payments. Statements for services are payable upon presentation and, in all events, within thirty (30) days after receipt. Occasionally a client has difficulty in making timely payments. To avoid burdening those clients who pay their statements promptly with the added costs we incur as a result of late payments, a late charge will be assessed on statements not paid within thirty (30) days. The maximum monthly late payment charge will be 1.5% per month. In the unlikely event we are required to institute legal proceedings to collect fees and costs, the prevailing party will be entitled to reasonable attorneys' fees and other costs of collection.

1897087.1

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

THIS AGREEMENT for consulting services is made by and between the El Cerrito Municipal Services Corporation (the "MSC") and the City of El Cerrito (the "City") (together referred to as the "Parties") as of July 1, 2012 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, the City shall provide to the MSC the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on June 30, 2013, the date of completion specified in Exhibit A, and the City shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to the City to complete the services required by this Agreement shall not affect the MSC's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** The City shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which the City is engaged.
- 1.3 **Assignment of Personnel.** The City shall assign only competent personnel to perform services pursuant to this Agreement.
- 1.4 **Time.** The City shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to satisfy the City's obligations hereunder.
- 1.5 **Public Works Requirements.** Should any the services described in Exhibit A include or be amended to include "work performed during the design and preconstruction phases of construction including, but not limited to, inspection and land surveying work," the services constitute a public works within the definition of Section 1720(a)(1) of the California Labor Code. As a result, the City is required to comply with the provisions of the Labor Code applicable to public works. The City shall waive, indemnify, hold harmless, and defend the MSC concerning any liability arising out of Labor Code Section 1720 *et seq.*

Section 2. COMPENSATION. The MSC hereby agrees to pay the City a sum not to exceed \$757,000 under this Agreement and has pre-funded that amount, which the City is holding as a deposit. The City shall submit all invoices to the MSC for services rendered, in the manner specified herein. Except as specifically authorized by the MSC in writing, the City shall not bill the MSC for duplicate services performed by more than one person. The City and MSC shall apply the pre-funded deposit amount towards payment of the City's invoices pay the City for services rendered pursuant to this Agreement at the time

and in the manner set forth herein. The payments specified below shall be the only payments from the MSC to the City for services rendered pursuant to this Agreement..

The City and the MSC acknowledge and agree that compensation paid by the MSC to the City under this Agreement is based upon the City's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of the City, and previously completed cost allocation studies. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which the City and its employees, agents, and subcontractors may be eligible. The MSC therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. The City shall submit regular invoices, based on the cost for services performed prior to the invoice date. Invoices shall contain the following information:

- The beginning and ending dates of the billing period;
- The total number of hours and brief summary of work performed under the Agreement by the City and each employee, agent, and subcontractor of the City performing services hereunder;
- A billing summary containing the original contract amount, the amount of prior billings, the total due the period, and the balance available under the Agreement.

2.2 Monthly Payment. The MSC shall approve monthly payments, based on invoices received, for services satisfactorily performed. The MSC shall have 30 days from the receipt of an invoice that complies with all of the requirements above to approve payment to the City.

2.3 Total Payment. The MSC shall pay for the services to be rendered by the City pursuant to this Agreement. The MSC shall not pay any additional sum for any expense or cost whatsoever incurred by the City in rendering services pursuant to this Agreement. The MSC shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall the City submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.4 Payment of Taxes. The City is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.5 Payment upon Termination. In the event that the MSC or the City terminates this Agreement pursuant to Section 8, the MSC shall compensate the City for all outstanding costs incurred for work satisfactorily completed as of the date of written notice of termination. The City shall maintain adequate records to verify costs incurred to that date and subsequent to the Initial Invoice.

- 2.6 Authorization to Perform Services.** The City is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, the City shall, at its sole cost and expense, provide facilities and equipment that may be necessary for the City and its agents, representatives, employees, and subcontractors to perform the services required by this Agreement.

Section 4. INSURANCE REQUIREMENTS. At all times when performing work under this Agreement, the City shall maintain adequate insurance or a plan of self-insurance. MSC acknowledges that the City is a member of and receives risk coverage through Municipal Pooling Authority as described below, and that the coverage is sufficient. The MSC, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the City; or automobiles owned, leased, hired, or borrowed by the City.

Section 5. INDEMNIFICATION AND CITY'S RESPONSIBILITIES.

The City shall indemnify, defend, and hold the MSC, its officers, agents, and employees, harmless against all claims, demands, damages, losses, costs, expenses, including without limitation, attorneys' fees and costs of litigation, or liabilities made against them which arise out of, or in connection with, the work done pursuant to this Agreement; provided, however, that this indemnity shall not extend to any claim arising solely from the MSC's negligence or the MSC's negligent failure to perform its obligations under this Agreement.

Section 6. STATUS OF CITY.

6.1 Independent Contractor. At all times during the term of this Agreement, the City shall be an independent contractor and shall not be an employee of the MSC. The MSC shall have the right to control the City only insofar as the results of the City's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise the MSC shall not have the right to control the means by which the City accomplishes services rendered pursuant to this Agreement.

6.2 The City Not an Agent. Except as the MSC may specify in writing, the City shall have no authority, express or implied, to act on behalf of the MSC in any capacity whatsoever as an agent. The City shall have no authority, express or implied, pursuant to this Agreement to bind the MSC to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

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

7.2 Compliance with Applicable Laws. The City and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

- 7.3 Licenses and Permits.** The City represents and warrants to the MSC that the City and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. the City represents and warrants to the MSC that the City and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, the City and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.4 Nondiscrimination and Equal Opportunity.** the City shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by the City under this Agreement. The City shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of the City thereby.

The City shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

- 8.1 Termination.** The MSC may cancel this Agreement at any time and without cause upon written notification to the City.

The City may cancel this Agreement upon 90 days' written notice to the MSC and shall include in such notice the reasons for cancellation.

In the event of termination, the City shall be entitled to compensation for services performed to the effective date of termination; the MSC, however, may condition payment of such compensation upon the City delivering to the MSC any or all documents, photographs, computer software, video and audio tapes, and other materials provided to the City or prepared by or for the City or the MSC in connection with this Agreement.

- 8.2 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.3 Assignment and Subcontracting.** The MSC and the City recognize and agree that this Agreement contemplates personal performance by the City's employees, agents, representatives, and subcontractors and is based upon a determination of their personal competence, experience, and knowledge. The City may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. The City shall not subcontract any portion of the performance contemplated and provided for herein, without prior written approval of the Contract Administrator.

- 8.4 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between the MSC and the City shall survive the termination of this Agreement.
- 8.5 **Options upon Breach by the City.** If the City materially breaches any of the terms of this Agreement, the MSC's remedies shall included, but not be limited to, the following:
- 8.5.1 Immediately terminate the Agreement;
 - 8.5.2 Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by the City pursuant to this Agreement;
 - 8.5.3 Retain a different consultant to complete the work described in Exhibit A not finished by the City; or
 - 8.5.4 Charge the City the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that the MSC would have paid the City pursuant to Section 2 if the City had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

- 9.1 **Records Created as Part of the City's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that the City prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the MSC. The City hereby agrees to deliver those documents to the MSC upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the MSC and are not necessarily suitable for any future or other use. The MSC and the City agree that, until final approval by the MSC, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.
- 9.2 **The City's Books and Records.** the City shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the MSC under this Agreement for a minimum of three years, or for any longer period required by law, from the date of final payment to the City to this Agreement.

Section 10. MISCELLANEOUS PROVISIONS.

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to

reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Contra Costa or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** The City shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Contract Administration.** This Agreement shall be administered by a Contract Administrator to be identified by the Corporation. All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.8 Notices.** Any written notice to the City shall be sent to:
 Attn: Contract Administrator
 El Cerrito Municipal Services Corporation
 10890 San Pablo Avenue
 El Cerrito, CA 94530
- Any written notice to the MSC shall be sent to:
 Attn: City Manager
 City of El Cerrito
 10890 San Pablo Avenue
 El Cerrito, CA 94530
- 10.9 Integration.** This Agreement, including the scope of work and budget attached hereto and incorporated herein as Exhibit A represents the entire and integrated agreement between the MSC and the City and supersedes all prior negotiations, representations, or agreements, either written or oral.

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

The Parties have executed this Agreement as of the Effective Date.

EL CERRITO MUNICIPAL SERVICES CORP.

CITY OF EL CERRITO

William C. Jones III
Corporation Board Chairperson

Scott Hanin
City Manager

Attest:

Cheryl Morse
Corporation Secretary

Approved as to Form:

Karen Tiedemann
Corporation Legal Counsel

Sky Woodruff
City Attorney

EXHIBIT A
SCOPE OF WORK AND BUDGET

The City shall provide staffing services in support of the MSC's projects and programs, including:

- Predevelopment activities on Corporation-owned properties to implement the City's San Pablo Avenue Specific Plan, focusing in particular on the Del Norte area
- The previously funded Commercial Rehabilitation Loan Program with priority given to the southern end of San Pablo Avenue around the Cerrito Theater and El Cerrito Plaza Shopping Center
- Continuation of the graffiti abatement program, entrepreneur training program, and marketing efforts
- Collaboration with key property owners on San Pablo Avenue on potential development, redevelopment or other improvements to their properties
- Coordination with Pleasantown Motion Picture Company to complete tenant improvements to the Cerrito Theater as provided in the Cerrito Theater Lease Agreement
- Development of new and improved website content

The City shall handle all of the Corporation's administrative functions, as it resumes its activities, and serve as its fiscal agent.

The budget for providing these services is \$757,000.