



AGENDA

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

Monday, February 6, 2012

Immediately Following the Adjournment of the 7:30 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

CONVENE 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 & City 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 Nos. 4A through 4D

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: October 17, 2011 Special Municipal Services Corporation meeting Minutes.

B. Election of Officers and Establishment of a Bank Account and Signature Authority

Adopt a resolution electing and appointing Officers of the Corporation and adopt a separate resolution authorizing establishment of a bank account and signature authority for the Corporation.

C. Approval of a Grant to the City for Emergency Radio Equipment

Adopt a resolution awarding a \$273,000 grant to the City of El Cerrito Fire Department for the purchase of radio equipment associated with the East Bay Regional Communication System.

D. Staffing Services Contract

Adopt a resolution authorizing the Executive Director to enter into a contract with the City of El Cerrito for staffing and administrative services.

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

Monday, October 17, 2011

Immediately Following the Adjournment of the 7:30 p.m. Concurrent City Council/Redevelopment Agency Meeting

City Council Chambers

Meeting Location

El Cerrito City Hall
10890 San Pablo Avenue, El Cerrito

Ann Cheng – Chairperson

Vice Chairperson Bill Jones
Boardmember Rebecca Benassini
Boardmember Scott Hanin

Boardmember Janet Abelson
Boardmember Greg Lyman
Boardmember Karen Pinkos

ROLL CALL

Present: Directors Abelson, Benassini, Hanin, Lyman and Vice Chair Jones.

Absent: Chair Cheng and Director Pinkos.

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

Vice Chair Jones convened the Special Municipal Services Corporation meeting at 9:14 p.m.

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

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

Minutes for Approval

Approve the: October 3, 2011 Special Municipal Services Corporation meeting minutes.

Action: Approved minutes.

5. PUBLIC HEARINGS – None

6. POLICY MATTERS

A. Amendment of the Tri-Party Agreement with Safeway, Inc.

(Held over from the October 3, 2011 special meeting).

Adopt a Municipal Services Corporation resolution approving the amendment of the Tri-Party Agreement between the El Cerrito Redevelopment Agency, Safeway, Inc., and Target Corporation, subsequently assigned to the El Cerrito Municipal Services Corporation, and thereby its partial assignment to Property Development Centers. The amendment is regarding those provisions of the Tri-Party Agreement related to the property located at the corner of Hill Street and San Pablo Avenue.

Presenter: Lori Treviño, Redevelopment Manager.

Action: Moved, seconded (Benassini/Abelson; Ayes – Abelson, Benassini, Hanin and Vice-Chair Jones; Noes – None; Absent – Chair Cheng and Director Pinkos) and carried to adopt Municipal Services Corporation Resolution No. 2011–10.

B. Adoption of Conflict of Interest Policy

Adopt a resolution of the El Cerrito Municipal Services Corporation adopting a Conflict of Interest Policy.

Presenter: Lori Treviño, Redevelopment Manager.

Action: Moved, seconded (Benassini/Lyman; Ayes – Abelson, Benassini, Hanin, Lyman, Pinkos and Vice-Chair Jones; Noes – None; Absent – Chair Cheng and Director Pinkos) and carried to adopt Municipal Services Corporation Resolution No. 2011–11.

7. ADJOURNED SPECIAL MUNICIPAL SERVICES CORPORATION MEETING at 9:21 p.m.

**El Cerrito
Municipal Services Corporation**

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

Date: February 6, 2012
To: El Cerrito Municipal Services Corporation Board
From: Lori Treviño, Redevelopment Manager
Mary Dodge, Chief Financial Officer
Subject: Election of Officers, Establishment of a Bank Account and Signature Authority

ACTION REQUESTED

- 1) Adopt a Resolution, electing and appointing Officers of the Corporation.
- 2) Adopt a Resolution authorizing establishment of a bank account and signature authority for the Corporation.

ELECTION OF OFFICERS

According to the Municipal Services Corporation's Amended and Restated Bylaws, the officers of the Corporation shall be a chairperson, a vice chairperson, a secretary, and a chief financial officer. The Corporation requires an executive director to manage its day-to-day affairs, which may be appointed by the Board. The officers of the Corporation shall be those individuals holding the following positions with the City of El Cerrito:

1. Chairperson – Mayor
2. Vice Chairperson – Mayor Pro Tempore
3. Secretary – City Clerk
4. Chief Financial Officer – Administrative Services Director
5. Executive Director – City Manager

Attachment 1 to this report is a resolution electing and appointing the Corporation's officers for the current year.

BANKING AUTHORITY

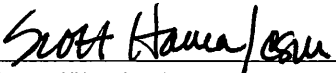
As the Corporation formalizes its activities in keeping with its charitable purposes, establishing banking accounts and defining the necessary signature authorities for financial transactions would be beneficial and prudent. Under the Corporation's bylaws, both of these actions require the Board's authorization. In keeping with best practices, the individuals having those authorities would be the Executive Director and Chief Financial Officer (CFO). The CFO is recommending establishing banking functions with Mechanics Bank, a local bank with investments in the community, which has demonstrated its capabilities through its relationship with the City of El Cerrito.

Attachment 2 to this report is a resolution authorizing establishment of banking accounts with Mechanics Bank and the necessary signature authorities.

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 electing and appointing Officers of the Corporation
2. Resolution authorizing establishment of a bank account and signature authority

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION ELECTING AND APPOINTING THE OFFICERS OF THE CORPORATION

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 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, the Corporation's bylaws provide for the election of the Officers of the Corporation from those individuals designated as qualified to stand for election, and appointment of additional Officers of the Corporation as may be required; and

WHEREAS, the Board has determined the Corporation requires an executive director to manage its day-to-day affairs; and

WHEREAS, the Board desires to elect and appoint the Officers of the Corporation.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The Board of Directors finds that the above recitals are true and correct.
2. The Board of Directors hereby elects and appoints the Officers of the Corporation as follows:

Chairperson	William C. Jones III, Mayor, City of El Cerrito
Vice Chairperson	Greg Lyman, Mayor Pro Tempore, City of El Cerrito
Executive Director	Scott Hanin, City Manager, City of El Cerrito
Secretary	Cheryl Morse, City Clerk, City of El Cerrito
Chief Financial Officer	Mary Dodge, City Treasurer, City of El Cerrito

3. This Resolution shall become effective immediately upon its adoption.

I CERTIFY that at a regular meeting on February 6, 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 February __, 2012.

APPROVED:

Cheryl Morse, Secretary

William C. Jones III, Board Chairperson

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION AUTHORIZING ESTABLISHMENT OF A BANK ACCOUNT AND SIGNATURE AUTHORITY FOR THE CORPORATION

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

WHEREAS, the specific charitable and public purposes for which the Corporation is organized are to benefit and support the City of El Cerrito (the "City") and the 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, establishing a bank account for deposit, withdrawal and investment of the Corporation's funds is in the Corporation's best interest and in keeping with its charitable purposes; and

WHEREAS, pursuant to the Corporation's Amended and Restated Bylaws, every check, draft, promissory note, money order, or other evidence of indebtedness of the Corporation shall be signed by such individuals as are authorized by the Board.

NOW THEREFORE, BE IT RESOLVED, as follows:

1. The Board finds that the above recitals are true and correct.
2. The Board does hereby authorize the deposit and withdrawal of the Corporation's monies in an account at Mechanics Bank.
3. The Executive Director Scott Hanin and Chief Financial Officer Mary Dodge, or their successors in office, shall be authorized to order the deposit or withdrawal of monies in the Mechanics Bank account, as well as to execute any check, draft, promissory note, money order, or other evidence of indebtedness of the Corporation.
4. This Resolution shall become effective immediately upon its adoption.

I CERTIFY that at a regular meeting on February 6, 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 February ___, 2012.

Cheryl Morse, Secretary

APPROVED:

William C. Jones III, Board Chairperson

***El Cerrito
Municipal Services Corporation***

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

Date: February 6, 2012
To: El Cerrito Municipal Services Corporation Board
From: Lori Trevino, Redevelopment Manager
Subject: Grant Award for Emergency Radio Equipment

ACTION REQUESTED

Adopt a resolution awarding a \$273,000 grant to the City of El Cerrito Fire Department for purchase of radio equipment associated with the East Bay Regional Communication System.

BACKGROUND

Fire Chief Lance Maples of the City of El Cerrito Fire Department has requested a grant from the Corporation for the purchase of radio equipment to be used by the City's Fire, Police, Public Works and Recreation Departments. The request is included as Attachment 2 to this report.

The City has an agreement with the East Bay Regional Communication System (EBRCS) Joint Power Authority (JPA), which has the goal of constructing a regional interoperable radio system in Alameda and Contra Costa Counties. The JPA, the Police and Fire Departments, and the vendor Motorola have identified grants and other funding for the radio system. Participating with EBRCS has enabled El Cerrito to save money and share the costs of installing, programming and maintaining the system. The City Fire Department also took the lead on pursuing funding for the fire departments and districts in Contra Costa County and was able to secure a Regional Assistance to Firefighter Grant from the Federal Emergency Management Agency for \$2,662,400, to be matched with \$665,600 from the fire departments and districts.

To take advantage of this investment in the regional system, the City still needs its own equipment and is looking for a source of gap funding. The cost of radios, installation and accessories to meet the needs of the City's Police, Recreation and Public Works Departments is approximately \$451,000. The Fire Department's radios will cost about \$475,000, but since eighty percent of which will be funded by the FEMA grant, the Fire Department's share is \$95,000. Therefore, the City's total cost will be \$546,000.

The City is able to fund \$273,000 through its vehicle and equipment replacement fund and is requesting a matching grant for that same amount from the El Cerrito Municipal Services Corporation. It would reduce the burden on the City of having to finance the remaining \$273,000 with General Fund money or an equipment lease.

ANALYSIS

The Corporation's charitable and public purpose is to benefit and support the City of El Cerrito and the El Cerrito Redevelopment Agency, and to lessen the burdens of government of the City and the Agency. More specifically, the purposes are combating blight; contributing to physical improvements, providing and expanding economic opportunities, assisting activities and programs that will lessen neighborhood tensions, and combating community deterioration. Assisting the City with its radio purchase addresses these purposes in various ways. The Police, Fire, Public Works and Recreation Departments all have a role in projects, programs and services that improve and maintain physical, economic, social, and safety conditions in the community.

Given the Fire Department's tremendous effort on behalf of other agencies in the region and other departments within the City, the remaining funding gap for El Cerrito's equipment purchase is small. A grant from the Corporation to match the City's investment would be of benefit to the El Cerrito community and in keeping with the Corporation's charitable purpose.

FINANCIAL CONSIDERATIONS

The Corporation has sufficient reserves to award \$273,000 to the City and no additional appropriations are needed at this time.

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 awarding a \$273,000 grant to the City of El Cerrito Fire Department for purchase of radio equipment
2. Letter Request from City of El Cerrito Fire Chief Lance Maples

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. XXX

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION AWARDED A \$273,000 GRANT TO THE CITY OF EL CERRITO FIRE DEPARTMENT FOR PURCHASE OF RADIO EQUIPMENT

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

WHEREAS, the specific charitable and public purposes for which the Corporation is organized are to benefit and support the City of El Cerrito (the "City") and the 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 by (1) utilizing private and public funding sources to combat community blight and deterioration in the City and contribute to the physical improvement of the City; (2) providing and expanding economic opportunities for low and moderate income households in the City; (3) encouraging and stimulating economic development within the City by assisting the Agency to eliminate blight within the Agency's project areas; and (4) implementing and assisting the Agency in redevelopment activities and programs that will lessen neighborhood tensions, and combat community deterioration; and

WHEREAS, the City's Police, Fire, Public Works and Recreation Departments will be purchasing \$926,000 in radio equipment, leveraging participation in East Bay Regional Communication System Joint Power Authority, which is constructing a regional interoperable radio system for Alameda and Contra Costa Counties; and

WHEREAS, the City Fire Department secured over \$2.6 million in grant funds from the Federal Emergency Management Agency to benefit fire fighting agencies in Contra Costa County, \$380,000 of which will go towards paying for the City Fire Department's equipment purchase; and

WHEREAS, the City's remaining cost for radio equipment is \$546,000, for which it has identified \$273,000 in its equipment replacement fund; and

WHEREAS, the City has requested a grant from the Corporation to match its \$273,000 investment, and

WHEREAS, a grant by the Corporation for purchase of radio equipment would reduce the burden on the City of financing the remaining \$273,000 with its General Fund money, as well as leverage the City's participation in the regional system and the Fire Department's tremendous success in securing other grant funds for the City and other agencies in the region; and

WHEREAS, contributing towards the City's purchase of radio equipment would fall within the Corporation's charitable and public purposes.

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

BE IT FURTHER RESOLVED, that the Board does hereby award the City of El Cerrito \$273,000 for the purchase of radio equipment for the Fire, Police, Public Works and Recreation Departments.

Agenda Item No. 4(C)
Attachment 1

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

I CERTIFY that at a regular meeting on February 6, 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 February ___, 2012.

Cheryl Morse, Secretary

APPROVED:

William C. Jones III, Board Chairperson



January 6, 2012

Lori Trevino
El Cerrito Municipal Services Corporation
10890 San Pablo Avenue
El Cerrito, CA 94530

RE: Grant Request for Radio Purchase for Public Safety

Dear Ms. Trevino:

I am writing to request consideration by the Board of Directors of the El Cerrito Municipal Services Corporation of a grant to the City of El Cerrito Fire Department for purchase of radio equipment.

The City has an agreement with the East Bay Regional Communication System (EBRCS) Joint Power Authority (JPA). The goal of the JPA is to construct a state of the art, regional interoperable radio system, to replace a patchwork of unlike systems in Alameda and Contra Costa Counties. The Counties are nearing attainment of that goal. Alameda County initiated a procurement process on behalf of the JPA and selected the EBRCS radio system designed by Motorola. With the completion of the Alameda County and Contra Costa County cells, the system will be available for use to all stakeholders which includes of 36 member agencies consisting of both counties, 29 cities, 4 special districts, and the University of California.

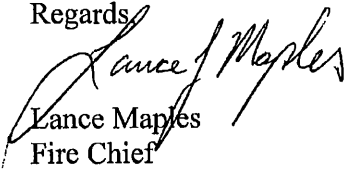
The EBRCS JPA, Motorola, Police and Fire Departments have been examining financing for the radio system which incorporates a combination of grants and bonds. Alameda and Contra Costa Counties are taking advantage of existing funding sources such as grants and American Recovery and Reinvestment Act bonds to fund the remaining infrastructure for the radio system. However, even without EBRCS and these grant and bond funds, El Cerrito needs to purchase radios. Participating with EBRCS has enabled El Cerrito to save money by taking advantage of the competitive bid process. Members of the EBRCS are bearing various costs of installing, programming and maintaining the system. The City of El Cerrito will own the equipment it purchases outright.

Today, I was notified that an application for a Regional Assistance to Firefighter Grant from the Federal Emergency Management Agency to fund radio equipment was successful. The El Cerrito Fire Department submitted the application on behalf of all the Fire Departments and Fire Districts in Contra Costa County. The total award is \$3,328,000. The Federal share is 80% or \$2,662,400 of the approved amount and the 20% match or \$665,600 will be shared by all the Fire Departments and Fire Districts in Contra Costa County. Therefore, the El Cerrito Fire Department will only need to fund 20% of its purchase.

The Police, Recreation and Public Works Departments are also participating in the radio purchase. Between the three departments, the total cost of radios, installation and accessories is approximately \$451,000. The Police Department will receive 95 radios with accessories for \$355,000. Public Works accounts for 23 radios, which comes to \$81,000. The Recreation Department accounts for 4 radios and 1 base station at a cost of \$15,000. The Fire Department will be purchasing 84 units at a total cost of approximately \$475,000, 80% of which will be funded by the FEMA grant. The Fire Department's share of the cost is \$95,000.

The total cost to the City for the radio purchase will be \$546,000. The City is able to fund \$273,000 through its vehicle and equipment replacement fund. I am requesting a matching grant for that same amount from the El Cerrito Municipal Services Corporation. It would reduce the burden on the City of having to finance the remaining \$273,000 with General Fund money, and be a tremendous benefit to the El Cerrito community in terms of public safety. I appreciate the Board's consideration and hope that the Corporation will be part of the City's effort to improve public safety for the community in a cost effective manner.

Regards


Lance Maples
Fire Chief

**El Cerrito
Municipal Services Corporation**

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

Date: February 6, 2012
To: El Cerrito Municipal Services Corporation Board
From: Lori Treviño, Redevelopment Manager
Subject: Staffing services contract

ACTION REQUESTED

Adopt a resolution authorizing the Executive Director to enter into a contract with the City of El Cerrito for staffing and administrative services.

BACKGROUND

On February 22, 2011, the City of El Cerrito ("City") and the El Cerrito Redevelopment Agency ("Agency") entered into the Amended and Restated Public Improvements and Cooperation Agreement for the City of El Cerrito Redevelopment Project Area ("Cooperation Agreement"). The Cooperation Agreement's purpose is implementation of projects and programs that meet the goals and objectives in the 1993 Amended and Restated City of El Cerrito Redevelopment Plan for revitalization of the Project Area, and further outlined in the Agency's 2002-2012 Five-Year Implementation Plan.

On March 7, 2011, the Corporation entered into an assignment agreement with the City, with the consent of the Agency, accepting the City's rights and responsibilities under portions of the Cooperation Agreement. Through the Assigned Cooperation Agreement, the Corporation is responsible for implementing the economic development and redevelopment projects and programs described in the Cooperation Agreement's Improvement Plan and Program (the "Plan").

The Cooperation and Assigned Cooperation Agreements require the Agency to fund the Corporation with all of the: 1) Agency funds held and not previously budgeted, appropriated, or restricted for use on affordable housing; 2) Net proceeds of Agency indebtedness designated for payment under the Agreement; 3) Future tax increment revenue pursuant to the Redevelopment Plan; and 4) Lease revenue proceeds, interest payment, reserve funds, loan repayments and other sources of funds available to the Agency or its successor after making necessary payments on obligations of the Agency that existed at the time the Agreement was executed. The obligation of the Agency to pay the Corporation the available funds for implementation of the Plan is considered Agency indebtedness and a pledge of tax increment from the Project Area to repay indebtedness, as defined in the State Constitution, the Redevelopment Law, and the City's Redevelopment Plan. The payment procedure is that the Agency is to pay the Corporation the available funds described above within ten days of demand by the Corporation for its anticipated incurrence of costs for implementing the Plan. Upon assignment of the Cooperation Agreement in March, the Agency advanced the Corporation all available funds.

On May 2, 2011, the Board adopted a budget for FY2011/12, which is Attachment 2 to this report. It was based on the Corporation's anticipated revenues and expenses for implementation of the Plan it had elected to undertake, as well as revenue and expenses from operation and maintenance of the Corporation's real property.

Having been advanced Agency funds in March, the Corporation started the current fiscal year with sufficient funds available to undertake its activities until additional funding became available for the Agency. Based on the Corporation's FY2011/12 Budget, a demand for funds was submitted to the Agency. Funds became available to the Agency in December 2011 and were disbursed to the Corporation in January 2012.

CONSULTING CONTRACT

Using the available resources, the Corporation has engaged consultants as needed for projects and programs during the fiscal year, but now requires a more formalized staffing contract. According to the bylaws, contracts exceeding \$25,000 must be authorized by the Board. Authority is being sought for a contract with the City of El Cerrito for staffing and administrative services, in an amount not to exceed \$653,000, substantially in the form of Attachment 3. The budget covered by the contract is as follows:

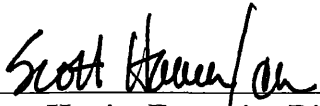
Initial set-up and administrative costs	\$498,000
Program and project staffing	\$130,000
<u>Incidentals and reimbursable expenses (19% of staffing)</u>	<u>\$25,000</u>
Total	\$653,000

The City would invoice the Corporation upon execution of the contract for initial set-up expenses of \$498,000 incurred during the current fiscal year. For the last five months of the fiscal year, the City would provide a monthly invoice for staffing and related expenses for an amount not to exceed \$31,000 per month. The Corporation's appropriations for FY2011/12 are sufficient to cover the cost of this contract and no budget amendment is needed at this time.

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 2012-03, authorizing the Executive Director to enter into contract with the City of El Cerrito for staffing and administrative services in an amount not to exceed \$653,000
2. Corporation's FY2011/12 Adopted Budget, including Exhibit A, Improvement Plan and Program
3. Form of contract with the City of El Cerrito

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A CONTRACT WITH THE CITY OF EL CERRITO FOR STAFFING AND ADMINISTRATIVE SERVICES

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

WHEREAS, the specific charitable and public purposes for which the Corporation is organized are to benefit and support the City of El Cerrito (the "City") and the 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, the Agency has 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, the Board adopted its FY2011/12 budget on May 2, 2011, which represented the anticipated revenues and proposed expenditures for the Corporation; and

WHEREAS, following receipt of tax increment revenues pledged to fund the Corporation's implementation of the Cooperation Agreement, the Agency disbursed the pledged funds to the Corporation for the current fiscal year; 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, 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; and

NOW THEREFORE, BE IT RESOLVED by the the Board of the Municipal Services Corporation that it hereby finds that the above recitals are true and correct.

BE IT FURTHER RESOLVED, that the Board does hereby authorize the Executive Director to enter into a contract with the City of El Cerrito for staffing and administrative services, in an amount not to exceed \$653,000 for the remainder of FY2011/12.

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

* * * * *

Agenda Item No. 4(D)

Attachment 1

I CERTIFY that at a regular meeting on February 6, 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 February __, 2012.

Cheryl Morse, Secretary

APPROVED:

William C. Jones III, Board Chairperson

EL CERRITO MUNICIPAL SERVICES CORPORATION

FISCAL YEAR 2011-12 ADOPTED BUDGET

FOR THE FISCAL YEAR ENDING JUNE 30, 2012

Adopted May 2, 2011

Board of Directors

Ann Cheng, Chairperson
William C. Jones III, Vice Chairperson
Janet Abelson, City Board Member
Rebecca Benassini, Board Member
Scott Hanin, Executive Director
Greg Lyman, Board Member
Karen Pinkos, Board Member

Officers

Mary Dodge, Chief Financial Officer
Cheryl Morse, Secretary

The El Cerrito Municipal Services Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes.

The general purpose of this Corporation is to have and exercise all rights and powers conferred on nonprofit corporations under the laws of California, provided that this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary purposes of this Corporation.

FISCAL YEAR 2011-12 BUDGET

EL CERRITO MUNICIPAL SERVICES CORPORATION

To serve its purpose of benefiting and supporting the City of El Cerrito and the El Cerrito Redevelopment Agency and lessening the burden of government, the mission of the El Cerrito Municipal Services Corporation is to pursue projects and programs that create, support, and retain a strong and diverse economic base; provide housing and employment opportunities; increase sales and property tax revenue; and provide desired goods and services to the community throughout the City and the Redevelopment Project Area.

INTRODUCTION

This document presents the Fiscal Year 2011-12 Budget for the El Cerrito Municipal Services Corporation ("Corporation"). The Corporation is responsible for economic development and redevelopment projects and programs on behalf of the City of El Cerrito ("City") and the El Cerrito Redevelopment Agency ("Agency"). In particular, the Corporation's activities implement the Agency's goals and objectives within the City of El Cerrito Redevelopment Project Area ("Project Area") as described in the Agency's Redevelopment Plan ("Redevelopment Plan") and Five-Year Implementation Plan.

The Corporation is a California nonprofit public benefit corporation. Per the Articles of Incorporation of the Corporation, the specific charitable and public purposes for which the Corporation is organized are to benefit and support the City and 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 by: (1) utilizing private and public funding sources to combat community blight and deterioration in the City and contribute to the physical improvement of the City; (2) providing and expanding economic opportunities for low and moderate income households in the City; (3) encouraging and stimulating economic development within the City by assisting the Agency to eliminate blight within the Agency's project areas; and (4) implementing and assisting the Agency in redevelopment activities and programs that will lessen neighborhood tensions, and combat community deterioration.

Recent efforts to eliminate redevelopment agencies in California have created uncertainty for the Agency's ability to use redevelopment tools in pursuit of its goals and objectives. The Agency has undertaken various efforts to protect its revenues, assets, projects and programs. These included the adoption of a Public Improvements and Cooperation Agreement for the City of El Cerrito Redevelopment Project Area ("Cooperation Agreement") between the City and the Agency for completion of the Agency's projects and programs. Subsequently, the City partially assigned its rights and responsibilities under the Cooperation Agreement, as they related to non affordable housing projects and programs, to the Corporation. The Agency also conveyed all real property held for non affordable housing projects to the Corporation for redevelopment purposes.

PROJECTS AND PROGRAMS

Fiscal Year 2010-11 was the first year in which the Corporation operated under the Cooperation Agreement and carried out projects and programs on behalf of the Agency. The Agency provided initial funding to the Corporation of \$1.35 million to assume Agency projects and programs as of March, 2011. Of particular note, in FY2010-11, the Corporation allocated \$100,000 to establish a Commercial Rehabilitation Loan Program for businesses within the City of El Cerrito Redevelopment Project Area, any remainder of which will carry over into FY2011-12 for continued funding of the program. Such funds are therefore reflected in appropriations for FY2011-12. Previously approved funding that will also carry forward into FY2011-12 also includes \$141,000 remaining for tenant improvements for the Cerrito Theater.

In the near term, the Agency's goal is concentrating resources and efforts to encourage private investment on key catalyst sites along the San Pablo Avenue commercial corridor. While the revenues available to the Corporation to carry out Agency projects are a constraint, the focus of the Corporation's projects and programs in the current fiscal year will be to:

- Continue development and implementation of the Del Norte Transit Oriented Development Strategy, focusing on development opportunities on Corporation-owned properties
- Continue the Master Developer Solicitation process for the Moeser Lane Shopping Center on behalf of the Agency, in order to facilitate revitalization of the center
- Implement the 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
- Continue to work with key property owners on San Pablo Avenue on potential development, redevelopment or other improvements to their properties

- Collaborate with City Planning staff on completion and adoption of the City's San Pablo Avenue Specific Plan, in particular as it relates determining the feasibility of development standards under consideration, producing clear and consistent development and design standards with the City of Richmond, and facilitating economic development opportunities and transit oriented development projects
- Initiate predevelopment activities on Corporation-owned properties to implement the City's San Pablo Avenue Specific Plan
- Collaborate with City Planning, Environmental Services, and Engineering staff on parking standards and programs, in particular how they relate to transit oriented development feasibility, revitalization, and sustainability efforts
- Coordinate with Pleasantown Motion Picture Company on completion of tenant improvements to the Cerrito Theater as provided in the Cerrito Theater Lease Agreement
- Continue to develop and implement business marketing programs, including updating brochures and website content to support local businesses
- Continue implementation of the City's business attraction and retention programs to provide shopping and dining opportunities for residents and visitors, and to bolster economic development efforts and City revenues

BUDGET OVERVIEW

Through the Cooperation Agreement, the Corporation will undertake activities related to facilitating private investment, attracting and retaining businesses, and implementing related public improvement projects. The complete list of projects and programs (excluding the affordable housing program) that the Corporation has agreed to undertake on behalf of the Agency over the life of the Redevelopment Plan is contained in the Cooperation Agreement and is included in this budget document as Appendix A. The Agency has agreed to provide the Corporation with the funds necessary for such activities and projects from the Agency's available resources, including tax increment funds allocated to the Agency.

The Corporation shall use the Agency Funds for the completion of the projects. Among other activities, the Corporation may use the Agency funds to pay costs of land acquisition, relocation, demolition, site preparation and remediation, design, and construction of the projects, and reasonable staff, consultant and other administrative costs in connection therewith. The Corporation pays the City, as the Corporation's fiscal agent, for handling all of its administrative functions through an administrative services contract.

The FY2011-12 Corporation budget consists primarily of two components: programs and projects; and the Corporation's administrative budget and City services administrative cost. The budget has funding sources derived from tax increment, developer proceeds, lease income, interest income and other income. For a discussion of tax increment revenue projections, please refer to the Redevelopment Agency section of the City's

FY2011-12 Budget. The Corporation budget consists of a revenue budget of \$1,180,340 and an expense budget of \$1,129,340 for FY2011-12.

The Corporation's revenues and expenses for FY2011-12 are as follows:

El Cerrito Municipal Services Corporation Fiscal Year 2011-12 Budget Revenue & Expenditures	
	<u>FY 2012</u>
Revenue	
Payments from El Cerrito Redevelopment Agency	\$ 1,129,340
Interest, Lease, Note, Other Revenue	\$ 51,000
Developer Proceeds/Advances	
Total Revenue	<u>\$ 1,180,340</u>
Expenditures	
Redevelopment Projects & Programs	\$ 467,000
Economic Development Program	\$ 70,000
City/RDA Services/Administration	\$ 592,340
Total Expenditures	<u>\$ 1,129,340</u>

APPENDIX A

Exhibit A to the Cooperation Agreement: List of Projects and Schedule of Performance and Payment

Map of City of El Cerrito Redevelopment Project Area

Exhibit A

**El Cerrito Redevelopment Project Area
List of Projects and Schedule of Performance and Payment
Assigned to the El Cerrito Municipal Services Corporation
*Cost Estimates in Millions***

Projects and Programs	Project Costs	Soft Costs	Admin Costs	Total Cost	Timeframe for Performance (FY ending)	Timeframe for Payment
Facilitation of Private Investment*						
Specific Plan Completion and Implementation	0.00	0.50	0.08	0.58	2012-2021	2012-2026
Del Norte Transit-Oriented Development						
Transit/Public Infrastructure	13.00	4.00	1.10	18.10	2012-2021	2012-2026
Knott Triangle	0.87	0.13	0.13	1.13	2012-2016	2012-2016
Mayfair Block	0.10	0.10	0.13	0.33	2012-2016	2012-2016
BART Parking Lots	0.44	0.07	0.07	0.57	2012-2016	2012-2016
Hill Street Parcel	0.10	0.10	0.13	0.33	2012-2016	2012-2016
Eastshore Triangle	1.31	0.20	0.20	1.70	2012-2016	2012-2016
North Gateway	0.44	0.07	0.07	0.57	2014-2018	2014-2018
Mitsubishi Block	0.65	0.10	0.10	0.85	2012-2016	2012-2016
Wall Street North	0.22	0.03	0.03	0.28	2017-2021	2017-2021
Wall Street South	0.22	0.03	0.03	0.28	2017-2021	2017-2021
South Blake	0.33	0.05	0.05	0.42	2017-2021	2017-2021
South Potrero	0.44	0.07	0.07	0.57	2017-2021	2017-2021
Madison Blocks	0.74	0.11	0.11	0.96	2017-2021	2017-2021
San Pablo/Alameda Midtown Site	0.44	0.07	0.07	0.57	2012-2016	2012-2016
Civic Center Parcel	0.10	0.10	0.10	0.30	2012-2016	2012-2016
DMV Block	0.87	0.13	0.13	1.13	2017-2021	2017-2021
Marshall's Center	0.87	0.13	0.13	1.13	2017-2021	2017-2021
Moeser Lane Shopping Center	0.44	0.07	0.07	0.57	2012-2014	2012-2014
Bank of America Block	0.44	0.07	0.07	0.57	2017-2021	2017-2021
South Stockton	0.44	0.07	0.07	0.57	2017-2021	2017-2021
South Eureka	0.22	0.03	0.03	0.28	2014-2018	2014-2018
Avila Site	0.26	0.04	0.04	0.34	2012-2016	2012-2016
Theater Block	0.87	0.13	0.13	1.13	2012-2016	2012-2016
Plaza BART Lots	0.87	0.13	0.13	1.13	2017-2021	2017-2021
Fairmount Auto Lots	0.44	0.07	0.07	0.57	2014-2018	2014-2018
Plaza Connection Fairmount/San Pablo	0.65	0.10	0.10	0.85	2014-2018	2014-2018
South Gateway	0.44	0.07	0.07	0.57	2017-2021	2017-2021
Cerrito Theater Property	1.00	0.15	0.15	1.30	2012-2021	2012-2026
Subtotal	27.17	6.38	3.54	37.09		

Soft costs are those costs associated with the actual design and construction of a project, including: preparation of engineering/architectural plan and specifications, design development and review, coordination of bidding processes, construction inspections, construction management and those other costs necessary to implement the design and construction of a public improvement.

Administrative Costs are those costs for services associated with the development of a public improvement or program, including: the purchase of land; negotiation and development of agreements; public outreach processes; approval and permitting processes; financial, legal and other specialized consulting services; financial compliance and other governmental reporting, including financial administrative oversight; the administration of housing projects including monitoring of affordable housing agreements and prevailing wage requirements, resale restrictions, or other covenants associated with affordable housing projects; the drafting of funding availability notices and development of affordable housing agreement documents; and additional indirect City costs associated with the administrative support needed to carry out these public improvements and programs.

* May include land acquisition and/or assembly, site preparation, disposition and development of Agency properties, project specific infrastructure, Specific Plan implementation)

Exhibit A

**EI Cerrito Redevelopment Project Area
List of Projects and Schedule of Performance and Payment
Assigned to the EI Cerrito Municipal Services Corporation
*Cost Estimates in Millions***

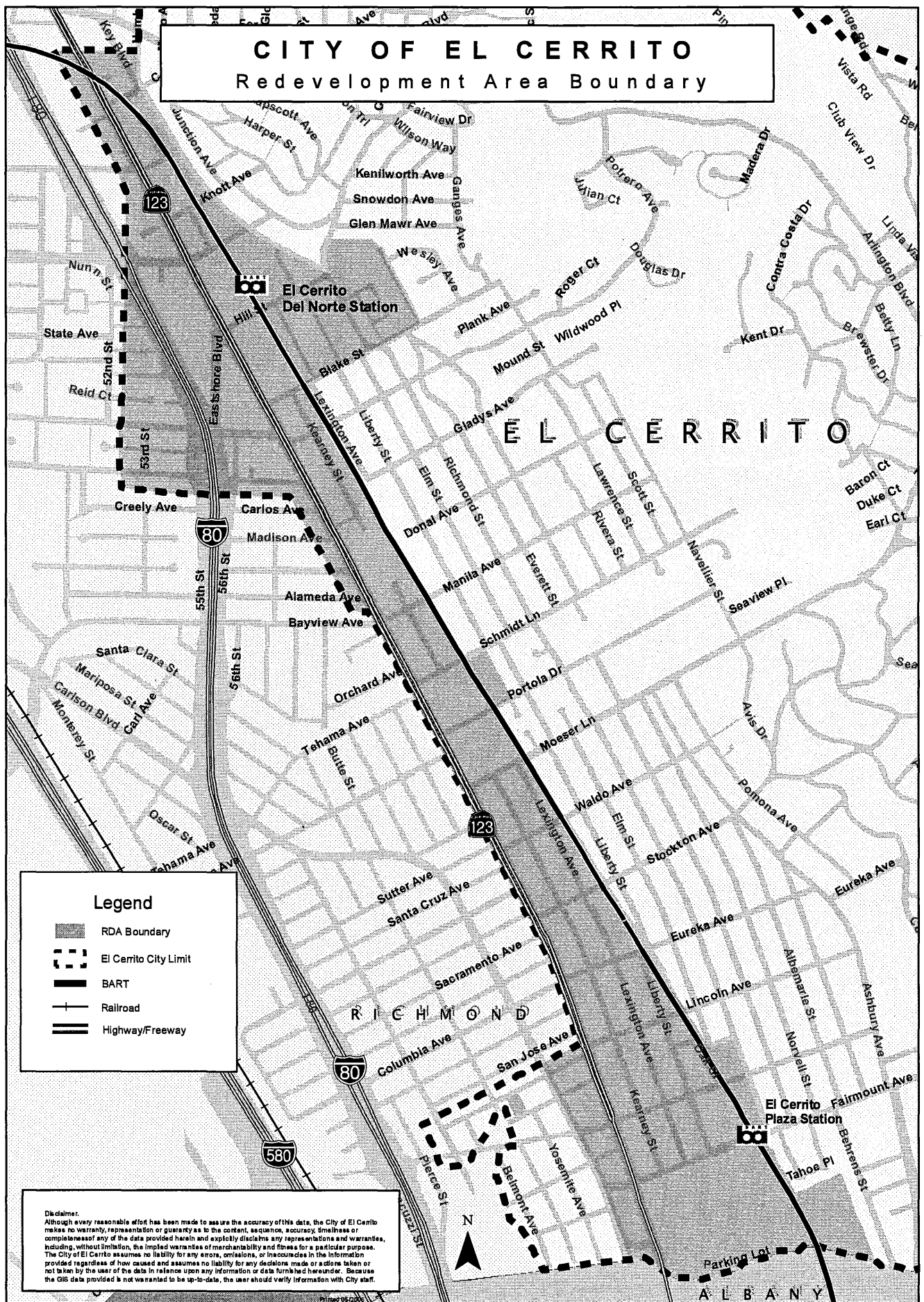
Projects and Programs	Project Costs	Soft Costs	Admin Costs	Total Cost	Timeframe for Performance (FY ending)	Timeframe for Payment
Business Recruitment and Retention						
Business Attraction, Retention and Expansion	0.72	0.00	0.34	1.06	2012-2021	2012-2026
Community Promotion and Events	0.20	0.00	0.10	0.30	2012-2021	2012-2026
Commercial Building Rehabilitation Assistance	1.20	0.00	0.57	1.77	2012-2021	2012-2026
Graffiti Abatement	0.40	0.00	0.19	0.59	2012-2021	2012-2026
Subtotal	2.52	0.00	1.20	3.72		
Public Improvements						
San Pablo Avenue transit & public infrastructure	1.00	0.20	0.00	1.20	2012-2021	2012-2026
Upper Fairmount streetscape improvements	0.17	0.00	0.00	0.17	2012	2012
Creekside Park Lighting	0.20	0.00	0.00	0.20	2012	2012
Fairmount/Ashbury Intersection Improvements	0.70	0.10	0.00	0.80	2012	2012
Central/Liberty Streetscape Enhancements	1.10	0.20	0.00	1.30	2012	2013
Central/San Mateo Intersection (I-80)	1.30	0.20	0.10	1.60	2014-2016	2014-2016
Potrero/I-80 Intersection Improvements	0.85	0.10	0.04	0.99	2012	2013
Ohlone Greenway Urban Greening (Plaza & Safeway)	1.20	0.20	0.00	1.40	2014	2015
Ohlone Greenway Crossing Safety Projects	0.50	0.06	0.00	0.56	2012	2013
Ohlone Greenway Master Plan Implementation	3.40	0.30	0.10	3.80	2012-2020	2012-2020
New Public Safety Building	18.80	5.00	1.20	25.00	2012-2021	2012-2026
New Senior Center	7.50	2.00	0.50	10.00	2012-2021	2012-2026
County-owned Facility (New Library)	13.80	3.80	0.80	18.40	2012-2021	2012-2026
Subtotal	50.52	12.16	2.74	65.42		
TOTAL				106.23		

Soft costs are those costs associated with the actual design and construction of a project, including: preparation of engineering/architectural plan and specifications, design development and review, coordination of bidding processes, construction inspections, construction management and those other costs necessary to implement the design and construction of a public improvement.

Administrative Costs are those costs for services associated with the development of a public improvement or program, including: the purchase of land; negotiation and development of agreements; public outreach processes; approval and permitting processes; financial, legal and other specialized consulting services; financial compliance and other governmental reporting, including financial administrative oversight; the administration of housing projects including monitoring of affordable housing agreements and prevailing wage requirements, resale restrictions, or other covenants associated with affordable housing projects; the drafting of funding availability notices and development of affordable housing agreement documents; and additional indirect City costs associated with the administrative support needed to carry out these public improvements and programs.

CITY OF EL CERRITO

Redevelopment Area Boundary



**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 February ___, 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, 2012, 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 \$653,000 under this Agreement. The MSC shall 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 shall submit all invoices to the MSC 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 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 an initial invoice (the "Initial Invoice") for set-up and administrative costs borne by the City in an amount of \$498,000. Subsequently, the City shall submit monthly invoices for an amount not to exceed \$31,000, 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 make 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 pay 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:

1. Continued development and implementation of the Del Norte Transit Oriented Development Strategy, focusing on development opportunities on Corporation-owned properties
2. Implementation the 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
3. Continued work with key property owners on San Pablo Avenue on potential development, redevelopment or other improvements to their properties
4. Collaboration with City Planning staff on completion and adoption of the City's San Pablo Avenue Specific Plan, in particular as it relates determining the feasibility of development standards under consideration, producing clear and consistent development and design standards with the City of Richmond, and facilitating economic development opportunities and transit oriented development projects
5. Initiation of predevelopment activities on Corporation-owned properties to implement the City's San Pablo Avenue Specific Plan
6. Collaboration with City Planning, Environmental Services, and Engineering staff on parking standards and programs, in particular how they relate to transit oriented development feasibility, revitalization, and sustainability efforts
7. Coordination with Pleasantown Motion Picture Company on completion of tenant improvements to the Cerrito Theater as provided in the Cerrito Theater Lease Agreement
8. Continued development and implementation of business marketing programs, including updating brochures and website content to support local businesses
9. Continued implementation of the City's business attraction and retention programs to provide shopping and dining opportunities for residents and visitors, and to bolster economic development efforts and City revenues

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 as follows:

Initial set-up and administrative costs	\$498,000
Program and project staffing	\$130,000
Incidentals and reimbursable expenses (19% of staffing)	\$25,000
Total	\$653,000