

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

AGENDA

**Tuesday, May 17, 2016 – 6:30 p.m.
City Council Chambers**

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

Greg Lyman – Chairperson

Vice Chairperson Janet Abelson
Boardmember Mark Friedman
Boardmember Scott Hanin

Boardmember Jan Bridges
Boardmember Gabriel Quinto
Boardmember Karen Pinkos

ROLL CALL

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

- 1. BOARD / STAFF COMMUNICATIONS**
- 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 and are limited to items listed on this special Municipal Services Corporation meeting agenda only.

- 3. PRESENTATIONS – None**
- 4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4**

Approve the October 7, 2014 Special Municipal Services Corporation Closed Session minutes.

- 5. POLICY MATTERS**

- A. Loan Agreement with the City of El Cerrito**

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

- B. Approval of the El Cerrito Municipal Services Corporation of Conveyance of Certain Redevelopment Agency Properties to the City of El Cerrito**

Staff requests that the El Cerrito Municipal Services Corporation adopt a Resolution approving the conveyance of certain former Redevelopment Agency properties to the City of El Cerrito in accordance with the Successor Agency to the El Cerrito Redevelopment Agency Long Range Property Management Plan.

ADJOURN SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

This meeting will not be televised. 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).

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING – CLOSED SESSION

MINUTES

**Tuesday, October 7, 2014 – 6:00 p.m.
Hillside Conference Room**

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

Janet Abelson – Chairperson

Vice Chairperson Rebecca Benassini
Boardmember Mark Friedman
Boardmember Scott Hanin

Boardmember Jan Bridges
Boardmember Greg Lyman
Boardmember Karen Pinkos

ROLL CALL

Directors Benassini, Bridges, Friedman, Hanin, Lyman, Pinkos and Chair Abelson all present.

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING – CLOSED SESSION

Chairperson convened the Special Municipal Services Corporation meeting – Closed Session at 6:03 p.m.

ANNOUNCEMENT OF CLOSED SESSION

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

ORAL COMMUNICATIONS FROM THE PUBLIC – *No speakers.*

RECESSED INTO CLOSED SESSION at 6:04 p.m.

ADJOURNED SPECIAL MUNICIPAL SERVICES CORPORATION MEETING – CLOSED SESSION at 6:15 p.m.

Chairperson Abelson announced during the regular City Council meeting that followed the closed session that the Municipal Services Corporation Board provided direction to staff.

***El Cerrito
Municipal Services Corporation***

**Agenda Report
Item No. 5(A)**

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

ACTION REQUESTED

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

BACKGROUND

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

ANALYSIS

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

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

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

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

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

LEGAL CONSIDERATIONS

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

FINANCIAL CONSIDERATIONS

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

Reviewed by:



Scott Hanin, Executive Director

Attachments:

1. Resolution with Exhibit 1 - Loan Agreement

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. 2016-XX

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

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

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

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

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

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

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

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

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

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

Agenda Item No. 5(A)
Attachment 1

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

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

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

Cheryl Morse, Secretary

APPROVED:

Gregory B. Lyman, Board Chairperson

**EXHIBIT 1 TO
RESOLUTION 2016-XX**

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

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

RECITALS

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

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

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

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

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

**ARTICLE I
LOAN TERMS**

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

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

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

1.3. None

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

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

ARTICLE II USE AND DISBURSEMENT OF LOAN PROCEEDS

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

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

2.3. Conditions Precedent to the Disbursement of Proceeds.

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

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

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

ARTICLE III REPRESENTATIONS, WARRANTIES, AND COVENANTS

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE IV INDEMNIFICATION

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

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

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

ARTICLE V EVENTS OF DEFAULT AND REMEDIES

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

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

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

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

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

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

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

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

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

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

ARTICLE VI MISCELLANEOUS

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

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

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

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

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

City:

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

Corporation:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SIGNATURES ON FOLLOWING PAGE

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

City of El Cerrito

El Cerrito Municipal Services Corporation

Scott Hanin, City Manager

Scott Hanin, Executive Director

Attest:

Attest:

Cheryl Morse, City Clerk

Cheryl Morse, Secretary

Approved as to Form:

Approved as to Form:

Sky Woodruff, City Attorney

Karen Tiedemann, Counsel

2649495.1

EXHIBIT A
FORM OF PROMISSORY NOTE

PROMISSORY NOTE

\$350,000

El Cerrito, California
_____, 2016

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

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

B. Note Terms.

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

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

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

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

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

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

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

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

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

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

Executed in El Cerrito, California on _____, 2016

CITY OF EL CERRITO

By: Scott Hanin
Its: City Manager



AGENDA BILL

Agenda Item No. 5(B)

Date: May 17, 2016

To: Board of Directors, El Cerrito Municipal Services Corporation

From: Melanie Mintz, Community Development Director

Subject: Approval of the El Cerrito Municipal Services Corporation of Conveyance of Certain Redevelopment Agency Properties to the City of El Cerrito

ACTION REQUESTED

That the El Cerrito Municipal Services Corporation adopt a resolution approving the conveyance of certain former Redevelopment Agency properties to the City of El Cerrito in accordance with the Successor Agency to the El Cerrito Redevelopment Agency Long Range Property Management Plan.

BACKGROUND

Prior to the dissolution of the El Cerrito Redevelopment Agency, the Redevelopment Agency entered into conveyance agreements with the El Cerrito Municipal Services Corporation (MSC) whereby the former Redevelopment Agency agreed to convey to the MSC properties owned by the former Redevelopment Agency and the MSC agreed to accept the properties and to use the properties in a manner consistent with the Redevelopment Plan. (Resolutions 2011-03 and Redevelopment Resolution 612.) The properties conveyed to the MSC were the Mayfair Block properties (11600 and 11690 San Pablo Avenue and 1925 Kearney), the Eastshore Block Properties (1133-041 San Pablo Avenue, 6111 Potrero, and 1718 Eastshore), the Civic Center Property (10930-10940 San Pablo Avenue) and the Cerrito Theater property (10066-72 San Pablo Avenue). Subsequent to the dissolution of the Redevelopment Agency, the State Controller's Office and the California Department of Finance ordered the reversal of the transfer of the properties to the MSC, claiming that the transfers violated the Redevelopment Dissolution Laws. The City, the MSC and the Successor Agency to the former Redevelopment Agency dispute the State's determination regarding the validity of the transfers of the property and currently have pending an appeal with the California Court of Appeal on this matter.

In an effort to move forward with the potential development of the former Redevelopment Agency properties, the Successor Agency in December 2015 prepared and the Department of Finance approved a Long Range Property Management Plan (LRPMP) related to the former Redevelopment Agency properties (SA Resolution 2015-03). The LRPMP called for the Mayfair Block and the Eastshore Block to be transferred to the City for future development. The LRPMP called for the Civic Center Property to be transferred to the City as a government purpose property. The LRPMP called for the Cerrito Theater to

be sold with the sales proceeds to be distributed to the taxing entities and allowed for the City to acquire the property pursuant to a compensation agreement with the taxing entities.

The City is proceeding with an RFQ/RFP for the Mayfair Block with the goal of selecting a developer for the Mayfair Block early this summer. (It is anticipated that staff will recommend a preferred developer to enter into an Exclusive Negotiating Rights Agreement with the City to City Council in approximately July.) The City also expects to proceed with the sale of the Eastshore Block soon. In order to proceed with the disposition of the Mayfair Block and the Eastshore Block in accordance with the LRPMP, the properties need to transfer from the MSC to the City. Additionally, the Civic Center property should transfer to the City as a government purpose property.

The MSC is proposing to transfer the Mayfair Block, the Eastshore Block and the Civic Center Property to the City at this time. Transfer of the Cerrito Theater will occur at a later date. Once transferred to the City, the City can proceed with the selection of developers for the Mayfair Block and the Eastshore Block. Upon sale of both the Mayfair Block and the Eastshore Block, the sales proceeds will be distributed to the taxing entities in accordance with the requirements of the LRPMP. The City will retain the Civic Center property for continued use as storage, parking and operations support for police and fire equipment.

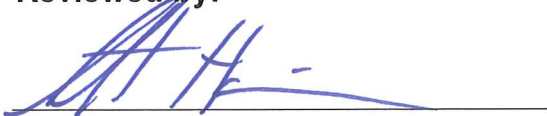
FINANCIAL CONSIDERATIONS

The transfer of the properties to the City will relieve the MSC of the continued obligation to pay property taxes for the former Redevelopment Agency properties. Transfer of the Mayfair Block and the Eastshore Block will be the first step toward sale and development of these properties. Development of these properties consistent with the San Pablo Avenue Specific Plan is expected to generate future property taxes to the City as well as other taxing entities as well as place underutilized properties into viable use.

LEGAL CONSIDERATION

These actions are consistent with the Long Range Property Management Plan the Dissolution Law and have been reviewed by the Successor Agency Counsel.

Reviewed by:



Scott Hanin
Executive Director

Attachment:

1. Municipal Services Corporation Resolution

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. 2016-XX

A RESOLUTION OF THE EL CERRITO CITY MUNICIPAL SERVICES CORPORATION BOARD OF DIRECTORS AUTHORIZING THE CONVEYANCE OF CERTAIN FORMER EL CERRITO REDEVELOPMENT AGENCY PROPERTIES PURSUANT TO THE SUCCESSOR AGENCY TO THE EL CERRITO REDEVELOPMENT AGENCY LONG RANGE PROPERTY MANAGEMENT PLAN TO THE CITY OF EL CERRITO

WHEREAS, prior to the dissolution of the El Cerrito Redevelopment Agency (the "Dissolved RDA"), the Dissolved RDA owned certain properties (the "Properties") located within the City of El Cerrito Redevelopment Project Area (the "Project Area") and more particularly described on Exhibit A attached hereto and incorporated herein; and

WHEREAS, prior to dissolution of the Dissolved RDA, the Dissolved RDA transferred the Properties to the El Cerrito Municipal Services Corporation ("MSC") pursuant to certain conveyance agreements requiring that the MSC use the Properties in a manner consistent with the Redevelopment Plan for the Project Area; and

WHEREAS, upon dissolution of the Dissolved RDA in accordance with California Law, the Successor Agency to the El Cerrito Redevelopment Agency (the "Successor Agency") succeeded to all the rights and obligations of the Dissolved RDA; and

WHEREAS, the Successor Agency has been ordered by the California State Controller's Office and the California Department of Finance to reverse the transfers of the Properties to the MSC; and

WHEREAS, the City, the MSC and the Successor Agency continue to dispute the Controller's and the Department of Finance's orders and the validity of those orders is the subject of a pending appeal with the California Court of Appeal; and

WHEREAS, notwithstanding the ongoing dispute over the validity of the transfers of the Properties to the MSC, the Successor Agency, in accordance with Health and Safety Code Section 34191.5 prepared and the Department of Finance approved a Long Range Property Management Plan including the Properties which calls for the Properties to be transferred to the City for future development and government purposes; and

WHEREAS, the MSC has determined that conveyance of the Properties to the City in accordance with the Long Range Property Management Plan is consistent with the Redevelopment Plan and the purposes for which the MSC obtained the Properties and is in the best interest of the MSC; and

WHEREAS, pursuant to Section 15061(b)(3) of the CEQA Guidelines, CEQA review of the conveyance of the Properties is not required because it can be seen with

Agenda Item No. 5(B)
Attachment 1

certainty that conveyance of the Properties will not alter the existing use of the Properties and that prior to any development of the Properties compliance with CEQA will be required.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Board finds that the above recitals are accurate.
2. The Board hereby approved conveyance of the Properties to the City of El Cerrito and authorizes the Executive Director to execute any and all documents necessary to carry out this purpose including grant deeds and all ancillary documents.
3. This Resolution shall take immediate effect upon its adoption.

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

AYES:	Board Member:
NOES:	Board Members:
ABSENT:	Board Members:
ABSTAINS:	Board Members

IN WITNESS of this action, I sign this document and affix the corporate seal of the El Cerrito Municipal Services Corporation on May ____, 2016.

Cheryl Morse, Corporation Clerk

APPROVED:

Gregory B. Lyman, Chair

EXHIBIT A
PROPERTIES

Future Development Properties:

1. Mayfair Block :
 - a. 1925 Kearny St.;
 - 11690 San Pablo Avenue;
 - 11600 San Pablo Avenue
2. Eastshore Block
 - a. 11335-41 San Pablo Ave.
 - b. 6111 Potrero
 - c. 1718 Eastshore

Government Purpose Property:

3. Civic Center
 - a. 10930/10940 San Pablo Ave.