



## AGENDA

**SPECIAL CITY COUNCIL MEETING**  
**Monday, December 21, 2015 – 7:00 p.m.**  
**City Council Chambers**

### **Meeting Location**

El Cerrito City Hall  
10890 San Pablo Avenue, El Cerrito

Greg Lyman – Mayor

Mayor Pro Tem Janet Abelson  
Councilmember Jan Bridges

Councilmember Mark Friedman  
Councilmember Gabriel Quinto

### **ROLL CALL**

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

**1. PLEDGE OF ALLEGIANCE TO THE FLAG OR OBSERVATION OF MOMENT OF SILENCE** – Councilmember Bridges.

**2. COUNCIL / STAFF COMMUNICATIONS** (*Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the City Council & City Staff.*)

**3. ORAL COMMUNICATIONS FROM THE PUBLIC**

*All persons wishing to speak should sign up with the City Clerk. Remarks are typically limited to 3 minutes per person. The Mayor may reduce the time limit per speaker depending upon the number of speakers. Kindly state your name and city of residence for the record. Comments are limited to items listed on this special agenda only.*

**4. PRESENTATIONS** - None

**5. ADOPTION OF THE CONSENT CALENDAR** - None

**6. PUBLIC HEARINGS** - None

**7. POLICY MATTERS**

JOINT CITY COUNCIL / SUCCESSOR AGENCY TO THE FORMER EL CERRITO REDEVELOPMENT AGENCY ITEM

**Approve Installment Payment Plan Agreement with the Department of Finance and Amend the Fiscal Year 2015-16 Budget**

Adopt two separate resolutions approving and authorizing the City Manager and Executive Director of the Successor Agency to execute the Installment Payment Plan Agreement with

the California Department of Finance and amend the FY 2015-16 budget to increase the spending authority in the General Fund by \$675,000 to make the first payment of the installment plan.

**8. COUNCIL ASSIGNMENTS/LIAISON REPORTS**

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

**9. ADJOURN REGULAR CITY COUNCIL MEETING**

The next City Council meeting is Tuesday, January 5, 2016.

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

- 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).
- ***The Deadline for agenda items and communications*** is eight days prior to the next meeting by 12 noon, City Clerk's Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215-4305 Fax: 215-4379, email [cmorse@ci.el-cerrito.ca.us](mailto:cmorse@ci.el-cerrito.ca.us)
- IF YOU CHALLENGE A DECISION OF THE CITY COUNCIL IN COURT, YOU MAY BE LIMITED TO RAISING ONLY THOSE ISSUES YOU OR SOMEONE ELSE RAISED AT THE COUNCIL MEETING. ACTIONS CHALLENGING CITY COUNCIL DECISIONS SHALL BE SUBJECT TO THE TIME LIMITATIONS CONTAINED IN CODE OF CIVIL PROCEDURE SECTION 1094.6.
- The City Council believes that late night meetings deter public participation, can affect the Council's decision-making ability, and can be a burden to staff. City Council Meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Council.



## AGENDA BILL

### Agenda Item No. 7

Date: December 21, 2015

To: City Council of the City of El Cerrito  
El Cerrito Redevelopment Successor Agency

From: Melanie Mintz, Community Development Director  
Lisa Malek-Zadeh, Finance Director/City Treasurer

Subject: Approve Installment Payment Plan Agreement with the Department of Finance and Amend the FY2015-16 Budget to Increase Spending Authority

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#### **ACTIONS REQUESTED**

Adopt two separate resolutions approving and authorizing the City Manager and Executive Director of the Successor Agency to execute the Installment Payment Plan Agreement with the California Department of Finance and amend the FY 2015-16 budget to increase the spending authority in the General Fund by \$675,000 to make the first payment of the installment plan.

#### **BACKGROUND**

The El Cerrito Redevelopment Agency ("Dissolved Redevelopment Agency") was dissolved effective February 1, 2012 in accordance with legislation dissolving all redevelopment agencies in the State of California. In accordance with the Dissolution Statutes (AB 1x26, AB 1484 and SB 107), the City of El Cerrito elected to act as the Successor Agency to the Dissolved Redevelopment Agency. The Dissolution Statutes provide that the Successor Agency is a separate entity from the City.

The Dissolution Statutes required that the Successor Agency prepare a Due Diligence Review of the Dissolved Redevelopment Agency's accounts and assets to determine the amount of tax increment available for distribution to the taxing entities. The Successor Agency Due Diligence Review for the Dissolved Redevelopment Agency's Other Funds and Accounts ("OFA DDR") determined that there were no funds available for distribution to the taxing entities because all of the dissolved Redevelopment Agency's funds had been transferred to the El Cerrito Municipal Services Corporation ("MSC"), an independent nonprofit corporation. The Oversight Board approved the OFA DDR finding that there were no funds available for distribution to the taxing entities.

Upon review of the OFA DDR, the California Department of Finance ("DOF") determined that the transfer of the funds to the MSC was an unallowable transfer and ordered \$1,981,989 returned to the Successor Agency for distribution to the County Auditor-Controller. The DOF's determination was based on its finding that the MSC is not a separate entity from the City of El Cerrito. The Successor Agency met and conferred with DOF on the OFA DDR determination but the DOF continued to find that the Successor Agency had available funds. The City, the Successor Agency and the

## Agenda Item No. 7

MSC filed a petition with the Sacramento Superior Court challenging the DOF determination. The City, Successor Agency and the MSC were partially successful on the petition at the trial court, with the trial court finding that the DOF could not offset the amounts determined by DOF to be available by withholding the City's sales tax, but the trial court also found that the DOF determination on the OFA DDR was correct. The City, Successor Agency and the MSC have appealed the trial court decision and the appeal is currently pending.

In September of this year, the Legislature adopted SB 107 which further amended the Dissolution Statutes. SB 107 includes a provision that any Successor Agency that has not either (i) paid the full amount determined to be owed on the OFA DDR or (ii) entered into an Installment Payment Plan Agreement with the DOF providing for payment of the amounts determined to be owed over time by December 31, 2015 will not be eligible for a Finding of Completion from the DOF. The receipt of a Finding of Completion provides certain benefits to the Successor Agency, including the ability to spend unencumbered bond proceeds, the eligibility to obtain repayment of City/Agency loans that were nullified by the Dissolution Statute and the ability to obtain approval of a Long Range Property Management Plan (LRPMP) allowing for an orderly disposition of the Dissolved Redevelopment Agency's real property assets. The Agency's LRPMP has been reviewed and is in line to be approved by the DOF pending the Agency's receipt of a Finding of Completion.

Successor Agency and City staffs have been working with the DOF on the terms of an Installment Payment Plan agreement. The DOF has made clear that its goal is to obtain payment of the amounts it has determined are owed as quickly as possible. After several rounds of negotiations, DOF has proposed a payment schedule for the OFA DDR as follows.

FY 2015-16	\$675,000
FY 2016-17	\$871,000
FY 2017-18	<u>\$435,000</u>
<b>Total</b>	<b>\$1,981,989</b>

The payment dates in the schedule (Attachment 3, Exhibit A) are tied to the dates that funds are disbursed from the Redevelopment Property Tax Trust Fund ("RPTTF") pursuant to the Dissolution Statutes. The RPTTF is the fund into which the County Auditor-Controller is required to deposit what was formerly tax increment and from which the County Auditor-Controller disburses funds to the Successor Agency for payment of enforceable obligations. Any remaining funds are distributed to the taxing entities. Payment of the above amounts will require the City to use a portion of RPTTF distributions and the initial payment in FY 2015-16 will require that the City borrow \$350,000 from the MSC. A separate action at a future date by the MSC board will be needed to approve the loan agreement between the MSC and the City. The loan will be repaid to the MSC after the final payment is made per the Installment Payment Plan Agreement in FY18.

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SB 107 also provides that if a Successor Agency enters into an Installment Payment Plan Agreement and as a result of a final judicial determination the amount determined to be owed by the Successor Agency is reduced, any overpayment made by the Successor Agency or the City will be placed on a Recognized Obligation Payment Schedule for repayment. So if the City and the Successor Agency are successful on their appeal, which the City and the Successor Agency will continue to pursue, and the DOF's determination is reduced or overturned, the City will be able to recover any funds paid as a part of the proposed Installment Payment Plan.

### FINANCIAL CONSIDERATION

Payments on the Installment Payment Plan Agreement will begin in the second half of FY 2015-16 with the final payment being made in FY 2017-18. Funding to make these payments will come from RPTTF distributions, a loan of \$350,000 from the MSC and one-time revenue of approximately \$198,000 representing the City's share from the sale of former Redevelopment Agency property in FY 2016-17. Staff has determined that the RPTTF distributions will be sufficient to cover the payments with an assumption that the current Successor Agency debt will be refinanced in FY 2016-17 that will result in higher RPTTF distributions. With the exception of FY 2016-17, the RPTTF will also provide additional revenue to the City over and above the \$165,000 annual allocation assumed in the current and future year budgets. Once the final payment is made in FY 2017-18 and the loan from the MSC of \$350,000 is repaid, revenue to the City will increase further.

In FY 2016-17, after the Installment Payment Plan Agreement payment is made, the remaining revenue to the City is projected to be \$121,000, about \$44,000 less than assumed. However, this gap may be mitigated by the potential land sales of the Dissolved Redevelopment Agency's properties which could result in additional distributions of RPTTF funds to the City. This may also be offset by structuring the debt payments on the Dissolved Redevelopment Agency's bonded indebtedness to be lower in FY 2016-17 and increase slightly in the following years.

<b>Option 1. Assumes Bond Refunding</b>			
<b>Payment Years</b>	<b>Payment</b>	<b>City Share (after Payment)</b>	<b>Impact on Budget (Assumes budgeted \$165K)</b>
FY 2015-16	\$675,000	\$304,533	\$139,553
FY 2016-17	\$871,326	(\$76,840)	(\$241,840)
FY 2017-18	<u>\$435,663</u>	\$391,974	\$226,974
	\$1,981,989		

In the event refinancing is not approved, with the exception of FY 2016-17, there is still sufficient RPTTF to make the DOF payments. There is also enough RPTTF to cover the assumed \$165,000 annual budget allocation, but additional revenue available to the City will be much less than with refinancing. In FY 2016-17, RPTTF will be about \$199,000 short of the required payment. This could be offset by the City's portion of the sale of

## Agenda Item No. 7

In the event refinancing is not approved, with the exception of FY 2016-17, there is still sufficient RPTTF to make the DOF payments. There is also enough RPTTF to cover the assumed \$165,000 annual budget allocation, but additional revenue available to the City will be much less than with refinancing. In FY 2016-17, RPTTF will be about \$199,000 short of the required payment. This could be offset by the City's portion of the sale of property included in the current projections of \$198,000 in FY 2016-17, but there will be no funds to cover the annual \$165,000 budget allocation. This will improve in the out years and continue to grow as outstanding debt is retired, but much less than if refinancing is secured.

<b>Option 2. No Bond Refunding</b>			
<b>Payment Years</b>	<b>Payment</b>	<b>City Share (after Payment)</b>	<b>Impact on Budget (Assumes budgeted \$165K)</b>
FY 2015-16	\$675,000	\$304,553	\$139,553
FY 2016-17	\$871,326	(\$199,010)	(\$364,010)
FY 2017-18	<u>\$435,663</u>	\$347,713	\$182,713
	\$1,981,989		

### LEGAL CONSIDERATION

This action is consistent with the Dissolution Statutes and has been reviewed by the Successor Agency's legal counsel.

Reviewed by:



**Scott Hanin**  
**City Manager**

Attachments:

1. Resolution Authorizing the City Manager to execute an Installment Payment Plan Agreement with the California Department of Finance
2. Resolution Authorizing the Executive Director to execute an Installment Payment Plan Agreement with the California Department of Finance
3. Installment Payment Plan Agreement

RESOLUTION NO. 2015-XX

RESOLUTION OF THIS CITY COUNCIL OF THE CITY OF EL CERRITO APPROVING AN INSTALLMENT PAYMENT PLAN AGREEMENT BY AND AMONG THE CITY OF EL CERRITO, THE SUCCESSOR AGENCY TO THE FORMER EL CERRITO REDEVELOPMENT AGENCY AND THE CALIFORNIA DEPARTMENT OF FINANCE RELATED TO THE PAYMENT OF CERTAIN FUNDS DETERMINED BY THE DEPARTMENT OF FINANCE TO BE AVAILABLE FOR DISTRIBUTION TO THE TAXING ENTITIES RESULTING FROM THE DISSOLUTION OF THE FORMER EL CERRITO REDEVELOPMENT AGENCY AND AMENDING THE 2015-16 FISCAL YEAR BUDGET TO INCREASE SPENDING AUTHORITY

WHEREAS, the City of El Cerrito ("City") established the El Cerrito Redevelopment Agency ("Former RDA") and adopted the El Cerrito Redevelopment Plan pursuant to Ordinance No. 77-17, adopted on November 28, 1977 and as amended over time; and

WHEREAS, the Former RDA was dissolved effective February 1, 2012 in accordance with State law (ABx1 26, Ab 1484 and SB 107, collectively referred to herein as "Dissolution Statutes"); and

WHEREAS, the City elected to serve as the Successor Agency to the Former RDA in accordance with the Dissolution Statutes; and

WHEREAS, in accordance with the Dissolution Statutes, the Successor Agency is a separate entity from the City; and

WHEREAS, in accordance with the Dissolution Statutes, the Successor Agency prepared an Other Funds and Accounts Due Diligence Review determining the Former RDA funds available for distribution to the taxing entities, which OFA DDR determined that the Former RDA funds available for distribution to the taxing entities was zero; and

WHEREAS, the Department of Finance after reviewing the OFA DDR, issued its determination that the funds available for distribution to the taxing entities was \$1,981,989, which determination became a final determination after a meet and confer conducted with the Successor Agency; and

WHEREAS, the City and the Successor Agency have filed a petition with the Sacramento Superior Court requesting a writ of mandate directing the Department of Finance to withdraw its final determination on the OFA DDR; and

**Agenda Item No. 7**  
**Attachment 1**

WHEREAS, the City and the Successor Agency's petition was granted in part and denied in part and the denial of the City and the Successor Agency's petition is currently pending in the Court of Appeal; and

WHEREAS, the City and the Successor Agency have now determined that despite their continued contention that the Department of Finance's final determination on the OFA DDR is counter to the Dissolution Statutes and unconstitutional, that it is in the best interest of the City and the Successor Agency to enter into an Installment Payment Plan Agreement with the Department of Finance providing for payment of the amounts in dispute over time; and

WHEREAS, the Dissolution Statutes provide that if after entering into an Installment Payment Plan Agreement, there is a final judicial determination that alters or reduces the amount determined due, any excess amounts paid will be repaid to the City by placing such amounts on the next Recognized Obligations Payment Schedule; and

WHEREAS, the Installment Payment Plan Agreement will entitle the Successor Agency to receive a Finding of Completion which will provide certain benefits to the City and the Successor Agency; and

WHEREAS, in order to make the payments required in the Installment Payment Plan Agreement in fiscal year 2015-16 the City needs to amend its budget to increase the general fund spending authority by \$675,000.

NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF EL CERRITO hereby approves the Installment Payment Plan Agreement with the Successor Agency and the California Department of Finance substantially in the form on file with the City Clerk subject only to such changes as are approved by the City Manager.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to execute the Installment Payment Plan Agreement and to take such actions as are necessary to implement the terms of the Installment Payment Plan Agreement including executing any other documents required to implement the Agreement.

BE IT FURTHER RESOLVED, that the City Council hereby authorizes the City Manager to approve changes to the Installment Payment Plan Agreement as necessary.

BE IT FURTHER RESOLVED, that the City Council hereby amends the 2015-16 Budget to increase the general fund spending authority by \$675,000 in order to make the payments required in the Installment Payment Plan Agreement for fiscal year 2015-16.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.



**Agenda Item No. 7**  
**Attachment 1**

I CERTIFY that at the special meeting on December 21, 2015, the City Council of the City of El Cerrito acting as the El Cerrito Redevelopment Agency Successor Agency passed this resolution by the following vote:

Ayes: Councilmembers:  
Noes: Councilmembers:  
Absent: Councilmembers:  
Abstain: Councilmembers:

IN WITNESS of this action, I sign this document on December \_\_, 2015.

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Cheryl Morse, City Clerk

Approved:

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Greg Lyman, Mayor

SUCCESSOR AGENCY RESOLUTION NO.2015-XX

RESOLUTION OF THE SUCCESSOR AGENCY TO THE EL CERRITO REDEVELOPMENT AGENCY APPROVING AN INSTALLMENT PAYMENT PLAN AGREEMENT BY AND AMONG THE CITY OF EL CERRITO, THE SUCCESSOR AGENCY TO THE FORMER EL CERRITO REDEVELOPMENT AGENCY AND THE CALIFORNIA DEPARTMENT OF FINANCE RELATED TO THE PAYMENT OF CERTAIN FUNDS DETERMINED BY THE DEPARTMENT OF FINANCE TO BE AVAILABLE FOR DISTRIBUTION TO THE TAXING ENTITIES RESULTING FROM THE DISSOLUTION OF THE FORMER EL CERRITO REDEVELOPMENT AGENCY

WHEREAS, The City of El Cerrito ("City") established the El Cerrito Redevelopment Agency ("Former RDA") and adopted the El Cerrito Redevelopment Plan pursuant to Ordinance No. \_\_\_\_\_ 77-17, adopted on \_\_\_\_\_; November 28, 1977 and as amended over time; and

WHEREAS, the Former RDA was dissolved effective February 1, 2012 in accordance with State law (ABx1 26, AB 1484 and SB 107, collectively referred to herein as "Dissolution Statutes"); and

WHEREAS, the City elected to serve as the Successor Agency to the Former RDA in accordance with the Dissolution Statutes; and

WHEREAS, in accordance with the Dissolution Statutes, the Successor Agency is a separate entity from the City; and

WHEREAS, in accordance with the Dissolution Statutes, the Successor Agency prepared an Other Funds and Accounts Due Diligence Review determining the Former RDA funds available for distribution to the taxing entities, which OFA DDR determined that the Former RDA funds available for distribution to the taxing entities was zero; and

WHEREAS, the Department of Finance after reviewing the OFA DDR, issued its determination that the funds available for distribution to the taxing entities was \$1,981,989, which determination became a final determination after a meet and confer conducted with the Successor Agency; and

WHEREAS, the City and the Successor Agency have filed a petition with the Sacramento Superior Court requesting a writ of mandate directing the Department of Finance to withdraw its final determination on the OFA DDR; and

**Agenda Item No. 7**  
**Attachment 2**

WHEREAS, the City and the Successor Agency's petition was granted in part and denied in part and the denial of the City and the Successor Agency's petition is currently pending in the Court of Appeal; and

WHEREAS, the City and the Successor Agency have now determined that despite their continued contention that the Department's final determination on the OFA DDR is counter to the Dissolution Statutes and unconstitutional, that it is in the best interest of the City and the Successor Agency to enter into an Installment Payment Plan Agreement with the Department of Finance providing for payment of the amounts in dispute over time; and

WHEREAS, the Dissolution Statutes provide that if after entering into an Installment Payment Plan Agreement, there is a final judicial determination that alters or reduces the amount determined due, any excess amounts paid will be repaid to the City by placing such amounts on the next Recognized Obligations Payment Schedule; and

WHEREAS, the Installment Payment Plan Agreement will entitle the Successor Agency to receive a Finding of Completion which will provide certain benefits to the City and the Successor Agency.

NOW THEREFORE, BE IT RESOLVED THAT THE GOVERNING BOARD OF THE SUCCESSOR AGENCY OF THE FORMER EL CERRITO REDEVELOPMENT AGENCY hereby approves the Installment Payment Plan Agreement with the City of El Cerrito and the California Department of Finance substantially in the form on file with the City Clerk subject only to such changes as are approved by the City Manager, acting as the Executive Director of the Successor Agency.

BE IT FURTHER RESOLVED, that the City Council acting as the governing board of the Successor Agency hereby authorizes the City Manager acting as the Executive Director of the Successor Agency to execute the Installment Payment Plan Agreement and to take such actions as are necessary to implement the terms of the Installment Payment Plan Agreement including executing any other documents required to implement the Agreement.

BE IT FURTHER RESOLVED, that the City Council acting as the governing board of the Successor Agency hereby authorizes the City Manager acting as the Executive Director of the Successor Agency to approve changes to the Installment Payment Plan Agreement as necessary.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

**Agenda Item No. 7**  
**Attachment 2**

I CERTIFY that at the special meeting on December 21, 2015, the City Council of the City of El Cerrito acting as the El Cerrito Redevelopment Agency Successor Agency passed this resolution by the following vote:

Ayes: Councilmembers:  
Noes: Councilmembers:  
Absent: Councilmembers:  
Abstain: Councilmembers:

IN WITNESS of this action, I sign this document on December \_\_, 2015.

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Cheryl Morse, City Clerk

Approved:

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Greg Lyman, Mayor

## **INSTALLMENT PAYMENT AGREEMENT**

This Installment Payment Agreement is entered into by and between the Department of Finance (Department), the El Cerrito Successor Agency (Agency), and the City of El Cerrito (City).

### **RECITALS**

- A. As determined according to Health and Safety Code (HSC) section 34179.5, the Agency has an outstanding Due Diligence Review amount due as set forth in Exhibit A;
- B. Pursuant to HSC sections 34179.6(h)(3), the Department has determined that full payment of the Due Diligence Review amount due is not currently feasible; and
- C. The City and Agency have requested the Department to approve an installment payment plan and issue a Finding of Completion as authorized by HSC 34179.7.

### **AGREEMENT**

**The parties hereby agree to the following installment payment plan:**

1. The City agrees to pay the outstanding Due Diligence Review amount according to the schedule in Exhibit A.
2. The City agrees to remit all scheduled payments directly to the Auditor-Controller.
3. The Department shall issue a Finding of Completion within five (5) days of the effective date of this agreement.
4. This agreement may be executed by facsimile and in one or more counterparts, and the effective date shall be the date on which the last counterpart of this agreement is signed.

5. The parties agree to comply with all provisions of HSC section 34179.7 governing written installment payment plans, including, but not limited to, all provisions governing the failure to comply with this agreement.

Date: 12/16/15

California Department of Finance

  
\_\_\_\_\_  
Justyn Howard,  
Program Budget Manager

Date: \_\_\_\_\_

City of El Cerrito

\_\_\_\_\_  
[name, title]

Date: \_\_\_\_\_

El Cerrito Successor Agency

\_\_\_\_\_  
[name, title]

**EXHIBIT A  
INSTALLMENT PAYMENT PLAN  
CITY OF EL CERRITO**

Due Diligence Review amount outstanding

Payment Schedule

<u>Date</u>	<u>Amount</u>
January 2, 2016	\$575,000
June 1, 2016	\$100,000
January 2, 2017	\$435,663
June 1, 2017	\$435,663
January 2, 2018	\$435,663
Total:	\$1,981,989