

# SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

## AGENDA

Tuesday, August 20, 2013

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

### Meeting Location

El Cerrito City Hall  
10890 San Pablo Avenue, El Cerrito

Greg Lyman – Chairperson

Vice Chairperson Janet Abelson  
Boardmember Rebecca Benassini  
Boardmember Scott Hanin

Boardmember Jan Bridges  
Boardmember Mark Friedman  
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
  - A. Approval of Minutes

Approve the June 18, 2013 special meeting minutes.

- B. Loan Agreement with the City of El Cerrito

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

5. POLICY MATTERS – *None.*

### ADJOURN SPECIAL MUNICIPAL SERVICES CORPORATION 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).

# EL CERRITO MUNICIPAL SERVICES CORPORATION

## MINUTES

Tuesday, June 18, 2013

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

### Meeting Location

El Cerrito City Hall  
10890 San Pablo Avenue, El Cerrito

Greg Lyman – Chairperson

Vice Chairperson Janet Abelson  
Boardmember Rebecca Benassini  
Boardmember Scott Hanin

Boardmember Jan Bridges  
Boardmember Mark Friedman  
Boardmember Karen Pinkos

### ROLL CALL

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

### CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

Chairperson Lyman convened the Special Municipal Services Corporation meeting at 7:53 p.m.

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

#### Approval of Minutes

Approve the April 2, 2013 special meeting minutes.

**Action:** Moved, seconded (Abelson/Benassini) and carried unanimously to approve the minutes.

### 5. POLICY MATTER

#### Proposed Fiscal Year 2013-14 Operating Budget

Consideration and possible adoption of a Municipal Services Corporation resolution approving the Corporation's Fiscal Year 2013-14 Annual Budget.

**Presenter:** Lori Treviño, Economic Development Manager.

**Action:** Moved, seconded (Friedman/Bridges) and carried unanimously to adopt Municipal Services Corporation Resolution No. 2013–05.

**ADJOURNED SPECIAL MUNICIPAL SERVICES CORPORATION MEETING** at 8:05 p.m.

***El Cerrito  
Municipal Services Corporation***

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

**Date:** August 20, 2013  
**To:** El Cerrito Municipal Services Corporation Board  
**From:** Lori Treviño, Finance Manager/Special Projects, City of El Cerrito  
**Subject:** Loan Agreement with the City of El Cerrito

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**ACTION REQUESTED**

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

**BACKGROUND**

As a result of the State of California's disbursement schedule for various tax and other revenues to the City of El Cerrito ("City"), the City is presently experiencing a short-term cash shortage to fund operations. The City has initiated the process of issuing Tax Anticipation Notes to cover the current cash-flow needs, but anticipates needing an additional source of temporary funding until it can complete that process. The City has therefore requested a short-term loan from the Corporation.

**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 government of 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: \$575,000
- Interest Rate: Zero percent (0%) simple interest per annum
- Repayment: Full repayment by June 30, 2014, 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 2013-XX with Exhibit A - Loan Agreement

MUNICIPAL SERVICES CORPORATION RESOLUTION NO. 2013-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 Services Corporation (the "Corporation") is a nonprofit public benefit corporation organized under the California Nonprofit Public Benefit Corporation Law for charitable purposes.

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, as a result of the State of California's disbursement schedule for various tax and other revenues to the City, 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 A 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 A attached hereto.

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

I CERTIFY that at a regular meeting on August 20, 2013, the Board of Directors of the El Cerrito Municipal Services Corporation passed this Resolution by the following vote:

**Agenda Item No. 4(B)**  
**Attachment 1**

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

IN WITNESS of this action, I sign this document on August \_\_, 2013.

\_\_\_\_\_  
Cheryl Morse, Secretary

APPROVED:

\_\_\_\_\_  
Gregory B. Lyman, Board Chairperson

**EXHIBIT A TO  
RESOLUTION 2013-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 August \_\_, 2013 (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. As a result of the schedule for disbursement by the State of California of various tax and other revenues to the City, the City is presently experiencing a need for short-term cash flow assistance to fund operations. The City has initiated the process of issuing Tax Anticipation Notes to cover the current cash-flow needs, but anticipates needing some additional source of temporary funding until it can complete that process. 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, repay to City, the sum of up to Five hundred seventy five thousand dollars (\$575,000) 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. Loan Forgiveness.** Notwithstanding the foregoing, provided that no default on the part of the City has arisen under the Loan Documents and remained uncured beyond any applicable cure period, the Corporation may forgive the full original principal balance of the Loan.

**1.4. Payment.** The City shall fully repay the Loan on or before June 30, 2014, 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

2124092.1

**EXHIBIT A**  
**FORM OF PROMISSORY NOTE**

## PROMISSORY NOTE

\$575,000

El Cerrito, California

August \_\_, 2013

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 FIVE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$575,000), 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 August \_\_, 2013 (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 FIVE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$575,000), (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, 2014 (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. Interest will be calculated on the basis of a year of 365 days and charged for the actual number of days that principal is outstanding.

(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 August \_\_\_, 2013

CITY OF EL CERRITO

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By: Scott Hanin  
Its: City Manager