AGENDA

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

Monday, October 17, 2011
Immediately Following the Adjournment of the 7:30 p.m. Concurrent City Council/Redevelopment Agency Meeting

City Council Chambers

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

Ann Cheng – Chairperson

Roll Call

CONVENE MUNICIPAL SERVICES CORPORATION MEETING

1. BOARD / STAFF COMMUNICATIONS (Reports of Closed Session, commission appointments and informational reports on matters of general interest which are announced by the Municipal Services Corporation & City Staff)

2. ORAL COMMUNICATIONS FROM THE PUBLIC

All persons wishing to speak should sign up with the Board Secretary. Remarks are limited to 3 minutes per person. Please state your name and city of residence for the record. Comments regarding non-agenda, presentation and consent calendar items will be heard first. Comments related to items appearing on the Public Hearing or Policy Matter portions of the Agenda are taken up at the time the Municipal Services Corporation Board deliberates each action item. Individuals wishing to comment on any closed session scheduled after the regular meeting may do so during this public comment period or after formal announcement of the closed session.

3. PRESENTATIONS – None

4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4

Consent Calendar items are considered to be routine by the Municipal Services Corporation
Board and will be enacted by one motion unless a request for removal for discussion or explanation is received prior to the time the Board votes on the motion to adopt.

Minutes for Approval

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

5. PUBLIC HEARINGS – None

6. POLICY MATTERS
   A. Amendment of the Tri-Party Agreement with Safeway, Inc.
      (Held over from the October 3, 2011 special meeting).

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

B. Adoption of Conflict of Interest Policy

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

7. ADJOURN SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

- Municipal Services Corporation Board Meetings can be heard live on FM Radio, KECG – 88.1 and 97.7 FM and viewed live on Cable TV - KCRT- Channel 28. The meetings are rebroadcast on Channel 28 the following Thursday and Monday at 12 noon, except on holidays. Live and On-Demand Webcast of these meetings can be accessed from the City’s website: http://www.el-cerrito.org/gov/. Copies of the agenda bills and other written documentation relating to items of business referred to on the agenda are on file and available for public inspection in the Office of the City Clerk, at the El Cerrito Library and posted on the City’s website at www.el-cerrito.org prior to the meeting.

- In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk, (510) 215-4305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. (28 CFR 35.102-35.104 ADA Title I).

- The Deadline for agenda items and communications is seven days prior to the next meeting by 12 noon, City Clerk’s Office, 10890 San Pablo Avenue, El Cerrito, CA. Tel: 215–4305 Fax: 215–4379, email cmorse@ci.el-cerrito.ca.us

- The Board believes that late night meetings deter public participation, can affect the Board’s decision-making ability, and can be a burden to staff. Board meetings shall be adjourned by 10:30 p.m., unless extended to a specific time determined by a majority of the Board.
EL CERRITO MUNICIPAL SERVICES CORPORATION

MINUTES

SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING

Monday, October 3, 2011
Immediately Following the Adjournment of the 7:30 p.m. Concurrent City Council/Redevelopment Agency Meeting

City Council Chambers

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

Ann Cheng – Chairperson

Vice Chairperson Bill Jones
Boardmember Rebecca Benassini
Boardmember Scott Hanin

Boardmember Janet Abelson
Boardmember Greg Lyman
Boardmember Karen Pinkos

ROLL CALL
Board Members Abelson, Benassini, Hanin, Jones, Lyman, Pinkos and Chairperson Cheng present.

CONVENE SPECIAL MUNICIPAL SERVICES CORPORATION MEETING
Chairperson Cheng convened the Special Municipal Services Corporation meeting at 10:46 p.m.

1. BOARD / STAFF COMMUNICATIONS – No announcements or reports.

2. ORAL COMMUNICATIONS FROM THE PUBLIC – No comments.

3. PRESENTATIONS – None

4. ADOPTION OF THE CONSENT CALENDAR – Item No. 4
Moved, seconded (Abelson/Jones) and carried unanimously to approve Consent Calendar Item No. 4 as indicated below.

Minutes for Approval
Approve the: A) August 15, 2011 Special Municipal Services Corporation meeting minutes; and B) September 19, 2011 Special Municipal Services Corporation meeting Minutes.

Action: Approved minutes.
5. PUBLIC HEARINGS – None

6. POLICY MATTERS
   
   Amendment to the Tri-Party Agreement with Safeway, Inc.
   
   Adopt a resolution approving the amendment of the Tri-Party Agreement between the El Cerrito Redevelopment Agency, Safeway, Inc., and Target Corporation, subsequently assigned to the El Cerrito Municipal Services Corporation, and thereby its partial assignment to Property Development Centers. The property is located at the corner of Hill Street and San Pablo Avenue.
   
   Action: Moved, seconded (Lyman/Benassini) and carried unanimously to hold over to the October 17, 2011 meeting.

7. ADJOURNED SPECIAL MUNICIPAL SERVICES CORPORATION MEETING at 10:48 p.m.
Date: October 17, 2011
To: El Cerrito Municipal Services Corporation Board
From: Lori Treviño, Redevelopment Manager
Subject: Amendment of the Tri-Party Agreement with Safeway Inc.

**ACTION REQUESTED**

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

**BACKGROUND**

In October 2009, the El Cerrito Redevelopment Agency entered into a Tri-Party Agreement ("TPA") with Safeway Inc. and Target Corporation for the transfer of the Target property to Safeway. As part of that agreement and in consideration for the Agency releasing its option to acquire the property, Safeway agreed to transfer to the Agency a parcel consisting of approximately 39,000 square feet at the corner of the property fronting on Hill Street and San Pablo Avenue.

In June 2011, Safeway was prepared to convey the Hill Street Parcel (the "HSP") to the Agency pursuant to the terms of the TPA. At that time, due to uncertainty regarding possible elimination of redevelopment agencies, the Agency assigned to the Corporation its rights and obligations under the TPA related to the HSP conveyance (the "Assignment Agreement"). In consideration, the Corporation agreed to develop the HSP in keeping with the Agency's Redevelopment Plan and to pay to the Agency any funds received by the Corporation related to development of the Property. That conveyance has not been completed and, therefore, currently Safeway retains title to the HSP and the Corporation retains interest in the TPA.

On June 29, 2011, the State enacted ABx1 26 and ABx1 27, legislation that would dissolve redevelopment agencies and then provides the Voluntary Alternative Redevelopment Program (the "VARP"), which agencies could opt into by making payments to the State. The California Redevelopment Association and League of California Cities sued the State for the legislation’s violation of Proposition 22, which prohibited the State from taking local tax revenues for State use. The California Supreme Court accepted jurisdiction for the litigation and issued a stay on all provisions of the legislation, with the exception of those provisions that suspended redevelopment agency activities, until ruling on the case, expected in January 2012.
Agenda Item No. 6(A)

In light of uncertainty regarding the Corporation ability to develop the HSP and the Agency’s ability to fund a $1.85 million payment in Fiscal Year 2011-12 for participation in the VARP, the Corporation and Safeway are now considering amending the TPA (the “Amendment”).

**ANALYSIS**

The Amendment includes several significant changes. The Corporation would assign its interest in the TPA to Property Development Centers (“PDC”), a wholly owned subsidiary of Safeway that develops shopping centers. Instead of Safeway conveying the HSP to the Corporation, PDC would make a $1.85 million cash payment to the Corporation. The Amendment also addresses implementation agreements between Safeway and PDC to which the Corporation is not a party.

Additionally, the Corporation would assume responsibility for the cost of widening Hill Street, a traffic mitigation required for the Safeway Project, paid for in part by a $350,000 cash payment from Safeway. The Amendment includes making the City of El Cerrito a third-party beneficiary to this provision, so that the City may rely on the Amendment for enforcement of that mitigation. The MSC would also indemnify Safeway and PDC against challenges should the City later find that the mitigation is not required or find that a substitute measure mitigates the traffic impacts the Hill Street widening was intended to address. It does not waive the City’s right to impose mitigation measures on future development of the HSP.

The Corporation, Safeway and PDC would all acknowledge that the City will use the Greenway Contribution previously paid by Safeway for 1) improvements to the portion of the Ohlone Greenway between Hill and Blake Streets; 2) the pedestrian path situated on Safeway’s property; and 3) pedestrian improvements between the Safeway property and the BART station across Hill Street. The Amendment addresses the parties’ shared interest in maintaining the previously planned level of improvements to the Greenway. However, it also acknowledges that the City may use a portion of the Greenway Contribution towards widening Hill Street, should the funds not be necessary to complete improvements to the Greenway consistent with the Greenway Master Plan.

Note that nothing in the Amendment affects the City’s ability to condition future development of the HSP. The City is considering a separate letter agreement acknowledging the Amendment and agreeing to certain provisions requested by Safeway and PDC.

Finally, the Amendment provides that PDC will make its payments to the MSC no later than January 5, 2012. At that time, the MSC is to cause the Agency to execute a termination of the Disposition and Development Agreement between Safeway (as successor to Target Corporation) and the Agency, and the MSC will no longer be considered a party to the Agreement.

In keeping with Corporation’s obligation to the Agency under the Assignment Agreement, the Amendment will enable the MSC to make more certain development of the HSP in a way that is cohesive with the surrounding area. The Amendment would also provide assurance that the development of the HSP would not be clouded by the legislation or the current litigation.
FINANCIAL CONSIDERATIONS
Under the terms of the Assignment Agreement with the Agency, the Corporation is required to pay any amounts it receives related to development of HSP to the Agency as consideration for that assignment. The amounts paid by Safeway under the Amendment would be considered payments received related to development and would be paid to the Agency upon receipt. The Agency in turn could use these funds to make the payment required under the Agency Transfer Payment Agreement, whereby the Agency agreed to pay to the City funds equal to the amount required to be paid by the City for the opt-in payment, should the VARP be found constitutional.

Without the cash payment that would result from amending the TPA and the subsequent payment by the Corporation of proceeds received to the Agency, the Agency would not have sufficient funds to reimburse the City for the full amount of the opt-in payment. The City would need to dip into resources that would seriously curtail all city services, not just redevelopment activities.

LEGAL CONSIDERATIONS
The amendment to the TPA was prepared by the Corporation’s Legal Counsel.

Reviewed by:

Scott Hanin, Executive Director

Attachments:

1. Resolution
2. Proposed Amendment to the Tri-Party Agreement
RESOLUTION NO. 2011-XX

A RESOLUTION OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION BOARD APPROVING THE AMENDMENT OF THE TRI-PARTY AGREEMENT WITH SAFEWAY INC. AND PROPERTY DEVELOPMENT CENTERS RELATED TO THE PROPERTY LOCATED AT THE CORNER OF HILL STREET AND SAN PABLO AVENUE

WHEREAS, the El Cerrito Redevelopment Agency (the “Agency”) entered into a Tri-Party Agreement (the “TPA”) dated October 5, 2009 with Safeway, Inc. and Target Corporation that gave the Agency the right to acquire certain property located at the corner of Hill Street and San Pablo Avenue (the “Hill Street Parcel”) from Safeway, Inc.; and

WHEREAS, Target has fulfilled its obligations under the TPA and no longer has any interest in the Hill Street Parcel; and

WHEREAS, on June 20, 2011, the Agency and the El Cerrito Municipal Services Corporation (the “Corporation”) entered into an Assignment and Assumption Agreement (the “Assignment”) whereby the Corporation assumed the right to acquire title to the Hill Street Parcel, and the obligation to cause its development consistent with the Agency’s Five-Year Implementation Plan and pay the value received by the Corporation for the property to the Agency; and

WHEREAS, the Corporation’s ability to cause development of the Hill Street Parcel is uncertain in the current economic and legal environment; and

WHEREAS, Property Development Centers (“PDC”), a wholly owned subsidiary of Safeway, Inc. desires to acquire title to the Hill Street Parcel and the Corporation desires to assign to PDC its right to take title to the Hill Street Parcel in consideration for a cash payment; and

WHEREAS, the Third Amendment to the Tri-Party Agreement (the “Amendment”), Exhibit A to this Resolution, provides for such assignment and payment; and

WHEREAS, pursuant to Section 16004(b)(2)(A) of the Guidelines for the implementation of the California Environmental Quality Act (“CEQA”), the Amendment is exempt from the requirements of CEQA because the future use of the Hill Street Parcel is conditioned upon CEQA compliance, and the City retains full discretion in approving, denying, or conditioning any land use entitlement, or any other planning approval, necessary for the development of the Hill Street Parcel.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE MUNICIPAL SERVICES CORPORATION AS FOLLOWS:

1. The Board finds that the above recitals are accurate.
2. The Board hereby approves and authorizes the Executive Director to execute the Third Amendment to the Tri-Party Agreement substantially in the form attached hereto and to take all actions and execute all documents necessary to implement the Third Amendment to the Tri-Party Agreement.

3. This Resolution shall take immediate effect upon its adoption.

I CERTIFY that at a special meeting on October 17, 2011, the Board of Directors of the El Cerrito Municipal Services Corporation passed this Resolution by the following vote:

AYES: DIRECTORS:

NOES: DIRECTORS:

ABSENT: DIRECTORS:

ABSTAIN: DIRECTORS:

Cheryl Morse, Corporate Secretary

APPROVED:

Ann Cheng, Chairperson
THIRD AMENDMENT TO TRI-PARTY AGREEMENT

This Third Amendment to Tri-Party Agreement (“Third Amendment”) is entered into as of __________, 2011, by and between the El Cerrito Municipal Services Corporation, a California nonprofit public benefit corporation (“MSC”), and Safeway Inc., a Delaware corporation (“Safeway”), and Property Development Centers LLC, a Delaware limited liability company (“PDC”). Safeway and PDC are sometimes collectively referred to herein as the “Company.”

This Third Amendment is entered into with reference to the following facts.

RECITALS

A. Safeway, the El Cerrito Redevelopment Agency, a public body, corporate and politic (“Agency”) and Target Corporation, a Minnesota corporation (“Target”), entered into that certain Tri Party Agreement dated October 5, 2009, that certain First Amendment to Tri-Party Agreement dated April 29, 2010, and that certain Second Amendment to Tri-Party Agreement dated September 22, 2010 (collectively, the “Original Agreement”). The Original Agreement relates to certain property located at 11450 San Pablo Avenue, El Cerrito, California, as more particularly described in Exhibit A attached hereto and incorporated herein (“Property”).

B. Target has conveyed the Property to Safeway and no longer has any interest in the Property. This Third Amendment does not affect any rights or obligations of Target under the Original Agreement.

C. Under the terms of the Original Agreement, Safeway was to convey to the Agency a certain portion of the Property designated as the “Hill Street Parcel” for no cost as partial consideration for the Agency releasing any rights the Agency had pursuant to the Agency Option to Purchase. The Hill Street Parcel is more particularly described in Exhibit B attached hereto and incorporated herein.

D. The Agency assigned it interest in the Original Agreement to the MSC pursuant to that certain Assignment and Assumption Agreement dated June 21, 2011 including the right to acquire the Hill Street Parcel.

E. The MSC and the Company are entering into this Third Amendment for the purpose of effectuating the MSC’s desire to assign its right to take title to the Hill Street Parcel to PDC and PDC’s desire to acquire title to the Hill Street Parcel.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the MSC and the Company enter into this Third Amendment as set forth below.

1. Definitions. Unless otherwise defined herein, capitalized terms as used herein shall have the same meanings as given thereto in the Original Agreement and all terms defined in this Third Amendment shall have the same meanings when incorporated into the provisions of the Original Agreement. The Original Agreement, as amended by this Third Amendment is hereinafter collectively referred to as the “Agreement.”
2. Assignment and Assumption.

(a) Subject to the payment and receipt of the Assignment Fee, the MSC hereby assigns to PDC its right to require the conveyance by Safeway to the MSC of the Hill Street Parcel pursuant to the Agreement, and PDC hereby accepts such assignment. The “Assignment Fee” shall be equal to One Million Eight Hundred Fifty Thousand Dollars ($1,850,000).

(b) PDC shall pay the Assignment Fee to the MSC no later than January 5, 2012. Payment of the Assignment Fee shall be made in accordance with the wire transfer instructions attached hereto as Exhibit C. Upon receipt of the Assignment Fee, the MSC shall be deemed to have released all of its rights and interests in and to the Hill Street Parcel and Safeway shall own the Hill Street Parcel free and clear of any such rights or interests.

3. Development of Hill Street Parcel. PDC hereby acknowledges and agrees that Safeway has the continuing right under the Agreement (i) to require that the Hill Street Parcel be self-parked as contemplated under Section 2(d) of the Original Agreement, (ii) to install sign panels on any monument or pylon sign installed on the Hill Street Parcel as contemplated under Section 2(f) of the Original Agreement, and (iii) to approve the HSP Site Plan as contemplated under Section 2(h) of the Original Agreement as contemplated by Section. Further, as the future developer of the Hill Street Parcel, PDC shall be required to reimburse Safeway for twenty-five percent (25%) of the Four Hundred Eighty-Seven Thousand Dollars ($487,000) Greenway Contribution paid by Safeway to the City of El Cerrito as set forth in Section 1(d) of the Original Agreement.

4. Required Transportation Mitigation.

(a) The MSC hereby agrees to assume responsibility for all costs and future actions associated with the implementation of Mitigation Measure TRANS-1b of the El Cerrito Safeway Mitigation Monitoring Reporting Program approved by the El Cerrito Planning Commission on November 17, 2010, subject to PDC agreeing to pay to the MSC, in addition to and at the same time as the Assignment Fee, a portion of the costs associated with the mitigation implementation in the amount of Three Hundred Fifty Thousand Dollars ($350,000). By separate letter agreement, the City acknowledges that payment of this fee shall constitute full and complete satisfaction of Safeway’s and PDC’s fiscal obligations in connection with Mitigation Measure TRANS-1b or any substitute mitigation measure, provided however nothing herein waives the City’s right to impose mitigation measures unique to the development proposed on the Hill Street Parcel and not identified in the El Cerrito Safeway Mitigated Negative Declaration.

The parties acknowledge that Mitigation Measure TRANS-1b includes widening Hill Street approaching San Pablo Avenue to add a third lane north of the center line, i.e., opposite the Hill Street Parcel, and the current plans for implementing Mitigation Measure TRANS-1b do not include widening Hill Street on some or all of the Hill Street Parcel. Based on studies prepared regarding the implementation of Mitigation Measure TRANS-1b, the most economically and logistically feasible method of implementing the Mitigation Measure and the current plans for the implementation of Mitigation Measure TRANS-1b involve the widening of Hill Street to the north. If the plans for the implementation of Mitigation Measure TRANS-1b change, the MSC
agrees that PDC shall have the right to review and comment on any changed plans. In the event the PDC objects to the changed plans, the MSC and PDC, and the City pursuant to the letter agreement, shall meet and confer and the MSC agrees to reasonably consider all such objections and comments from PDC regarding the changed plans.

Notwithstanding Section 6(h) of the Agreement, the City shall be a third party beneficiary of the MSC’s assumption of Safeway’s obligations with respect to Mitigation Measure TRANS-1b. Subject to the provisions of (b) below, below, Safeway and PDC hereby agree that neither shall have any claims against the City or the MSC if the City determines at a later date that the improvements required to be installed as part of Mitigation Measure TRANS-1b are not required to mitigate traffic impacts or the City determines that different mitigation measures would be adequate to mitigate any impacts associated with the El Cerrito Safeway Project.

(b) Notwithstanding anything to the contrary in this Third Amendment, the MSC agrees to indemnify and hold harmless Safeway and PDC from any lawsuit or other action resulting from any of the following: i) the MSC’s failure to implement Mitigation Measure TRANS-1b as and when required by the MMRP; ii) the City’s determination at a later date that the improvements required to be installed as part of Mitigation Measure TRANS-1b are not required to mitigate traffic impacts; or iii) the City’s determination that different mitigation measures would be adequate to mitigate any impacts associated with the El Cerrito Safeway Project.

5. Future Entitlements and CEQA Review With Respect to the Hill Street Parcel. Safeway and PDC understand and agree that any future use and development of the Hill Street Parcel shall be consistent with the Redevelopment Plan and the City General Plan then in effect; that no particular use or development proposal for the Hill Street Parcel has been identified as of the execution of this Agreement; and that any future use and development of the Hill Street Parcel shall be subject to an independent City land use entitlement process and an independent CEQA evaluation at such time as a specific use and development program for the Hill Street Parcel has been defined to enable such independent City land use entitlement process and CEQA evaluation. Safeway and PDC further acknowledge that nothing herein shall affect or limit the City’s discretion in approving, disapproving or conditioning any permits or approvals necessary for the development of the Hill Street Parcel.

6. Greenway Contribution. The MSC acknowledges and agrees that the Greenway Contribution shall be used by the City to improve the Ohlone Greenway (but only that portion of the Ohlone Greenway situated between Hill Street and Blake Street) consistent with the Greenway Master Plan, as well as the pedestrian path that will be situated on the Property (“Ohlone Greenway Improvements”); provided, however, the City need only construct and install the Ohlone Greenway Improvements to the extent that the San Francisco Bay Area Rapid Transit District (“BART”) does not itself undertake such work or pay for the same pursuant to that certain Consent to Temporary Construction Easement dated January 20, 2010 between BART and Safeway or any successor agreement thereto. Pursuant to the letter agreement with the City, the City has agreed to continue to involve Safeway in the design of the Ohlone Greenway Improvements, particularly as it relates to the pedestrian path on the Property, to ensure its consistency with the Greenway Master Plan and the Conceptual Plan that was attached.
to the Original Agreement as Exhibit X and attached hereto as Exhibit D. Safeway, PDC and the MSC acknowledge and agree that the City may use a portion of the Greenway Contribution to augment MSC funds for the implementation of Mitigation Measure TRANS-1b, as well as pedestrian improvements to provide a cohesive connection from the Ohlone Greenway and the Property across Hill Street to the El Cerrito del Norte BART Station, provided, such funds are not necessary to complete the Ohlone Greenway Improvements in a manner consistent with the Greenway Master Plan and the Conceptual Plan.

7. **Termination of DDA.** The MSC agrees to cause the Agency to execute and deliver to Safeway a memorandum of termination of the DDA within two (2) business days after the receipt by the MSC of the Assignment Fee, which memorandum shall be in the form attached hereto as Exhibit E.

8. **The Safeway Obligation.** Provided that Safeway and PDC shall have agreed upon the substance of a Declaration of Easements with Covenants and Restrictions Affecting Land or similar document ("ECR"), Safeway shall convey to PDC insurable fee simple title to the Hill Street Parcel. The ECR shall be recorded at the same time that the deed conveying the Hill Street Parcel to PDC is recorded.

9. **Termination of the Agreement.**

   (a) The MSC and the Company acknowledge and agree that upon the fulfillment of the obligations set forth in Sections 2, 4, 5, and 7 of this Third Amendment, the MSC shall have no further rights or obligations under the Agreement and the MSC shall no longer be considered a party to the Agreement.

   (b) Upon the conveyance of the Hill Street Parcel to PDC, the Agreement shall be deemed to have terminated and all of the provisions of this Agreement shall be of no further force and effect, except that the provisions of Sections 4 and 5 of this Third Amendment shall survive such termination.

10. **Miscellaneous.**

   **10.1. Full Force and Effect; Inconsistencies.** Except as amended hereby, the terms and provisions of the Original Agreement are unmodified and in full force and effect. In the event of any inconsistencies between the terms of the Original Agreement and the terms of this Third Amendment, the terms of this Third Amendment shall control.

   **10.2. Email Delivery.** Executed counterparts of this Third Amendment may be delivered by email. Email delivery will have the same effect as delivery of original executed documents. The parties will subsequently exchange original documents with original signatures. A facsimile or .PDF signature shall be deemed an original signature.

   **10.3. Due Execution.** Each of the individuals who have executed this Third Amendment represents and warrants that he or she is duly authorized to execute this Amendment on behalf of the MSC, Safeway and PDC, as the case may be; that all corporate, partnership, trust, municipal or
other action necessary for such party to execute and perform the terms of this Third Amendment has been duly taken by such party; and that no other signature and/or authorization is necessary for such party to enter into and perform the terms of this Third Amendment.

10.4. **Counterparts.** This Third Amendment may be executed in counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

**SIGNATURES ON FOLLOWING PAGE**
IN WITNESS THEREOF, the parties have executed this Third Amendment as of the date first above written.

MSC

EL CERRITO MUNICIPAL SERVICES CORPORATION, a California nonprofit public benefit corporation

Name: __________________________
Title: __________________________
Date: _________________, 2011

SAFEWAY

SAFEWAY INC., a Delaware corporation

Name: __________________________
Title: __________________________
Date: __________________________,

Form Approved: __________

PROPERTY DEVELOPMENT CENTERS LLC, a Delaware limited liability company

By: SAFEWAY INC., a Delaware corporation,
Its Sole and Managing Member

By: __________________________
Title: __________________________

By: __________________________
Title: __________________________

Date: _________________, 2011

Form Approved: _____
EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

REAL PROPERTY IN THE CITY OF EL CERRITO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCELS ONE AND TWO, AS SHOWN ON THAT CERTAIN PARCEL MAP MS 451-10, FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTRY OF CONTRA COSTA, STATE OF CALIFORNIA ON JULY 1, 2011, BOOK 206 OF PARCEL MAPS, PAGES 26 AND 27.
EXHIBIT B

LEGAL DESCRIPTION OF HILL STREET PARCEL

REAL PROPERTY IN THE CITY OF EL CERRITO, COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL TWO, AS SHOWN ON THAT CERTAIN PARCEL MAP MS 451-10, FILED FOR RECORD IN THE OFFICE OF THE RECORDER OF THE COUNTRY OF CONTRA COSTA, STATE OF CALIFORNIA ON JULY 1, 2011, BOOK 206 OF PARCEL MAPS, PAGES 26 AND 27.
EXHIBIT C

AGENCY WIRE TRANSFER INSTRUCTIONS

(Must be on Agency letterhead)
EXHIBIT E

TERMINATION OF DDA

THIS TERMINATION OF DISPOSITION AND DEVELOPMENT AGREEMENT ("Termination") is entered into as of this __ day of ____________, 20__, by and between SAFEWAY INC., a Delaware corporation ("Safeway"), and The El Cerrito Redevelopment Agency, a public body, corporate and politic ("Agency").

A. Safeway’s predecessor-in-interest and the Agency entered into a Disposition and Development Agreement dated November 16, 1990 ("DDA"), setting forth the terms and provisions applicable to the acquisition and development of the property described in Exhibit A attached hereto ("Property").

B. Safeway and the Agency desire to confirm the termination of the rights and obligations set forth in the DDA.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, Safeway and the Agency confirm that the DDA has terminated and is of no further force and effect.

This Termination may be executed in counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

AGENCY

EL CERRITO REDEVELOPMENT AGENCY, a public body, corporate and politic

SAFEWAY

SAFEWAY INC., a Delaware corporation

Name: ____________________________
Title: ____________________________
Date: ________________, 20__

Name: ____________________________
Title: ____________________________
Date: ________________, 20__

Form Approved: __________

ALL SIGNATURES TO BE NOTARIZED
ACKNOWLEDGMENTS

STATE OF CALIFORNIA  )
COUNTY OF ALAMEDA  ) ss.

On ____________, 20__, before me, ____________________, Notary Public, personally appeared ___________________ and ___________________, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons or the entity upon behalf of which the persons acted, executed the instrument.

I hereby certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature________________________ (Seal)

STATE OF CALIFORNIA  )
COUNTY OF CONTRA COSTA  ) ss.

On ____________, 20__, before me, ____________________, Notary Public, personally appeared ___________________, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person or the entity upon behalf of which the person acted, executed the instrument.

I hereby certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature________________________ (Seal)
Date: October 17, 2011

To: El Cerrito Municipal Services Corporation Board

From: Lori Treviño, Redevelopment Manager

Subject: Adoption of Conflict of Interest Policy

ACTION REQUESTED
Adopt the attached Resolution of the El Cerrito Municipal Services Corporation adopting its Conflict of Interest Policy.

BACKGROUND
The Corporation is applying to the Internal Revenue Service (the “IRS”) for tax exempt status. The IRS encourages applicants to adopt its model conflict of interest policy for tax-exempt charitable organizations (the “IRS Policy”) and, as part of the application, specifically asks whether or not the applicant has done so.

ANALYSIS
The IRS Policy is designed to ensure that the activities and transactions engaged in by directors, principal officers, key management staff persons, or members of a committee with governing-board-delegated powers, primarily benefit the tax-exempt charitable organization.

Applicants that do not adopt the IRS Policy often must then address additional inquiries from the IRS and provide additional information to document that there are adequate safeguards in place to prevent directors, or others, from obtaining any substantial benefit from transactions with the organization. For the Corporation, applicable provisions of the California Corporations Code and the California Government Code already place more stringent requirements on the decision-making process of the Corporation than the IRS Policy. Additionally, the City’s conflict of interest policy amended in July includes the Corporation and would generally provide more stringent conflict requirements. Nevertheless, to avoid any unnecessary delay in obtaining the Corporation’s determination as a tax-exempt charity from the IRS, it is prudent for the Corporation to adopt the IRS Policy.

LEGAL CONSIDERATIONS
The proposed resolution, including the Conflict of Interest Policy, incorporated by reference and attached as Exhibit A, was drafted and is recommended by Corporate Counsel.

Attachments
1. Resolution of the Board of Directors of the El Cerrito Municipal Services Corporation to adopt a Conflict of Interest Policy
2. Conflict of Interest Policy
RESOLUTION OF THE BOARD OF DIRECTORS OF THE EL CERRITO MUNICIPAL SERVICES CORPORATION ADOPTING A CONFLICT OF INTEREST POLICY

WHEREAS, the Board of Directors (the “Board”) of the El Cerrito Municipal Services Corporation, a California nonprofit public benefit corporation (the “Corporation”), has determined that it is in the best interest of the Corporation to apply to the Internal Revenue Service (the “IRS”) for recognition as a tax-exempt charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (a “Charitable Organization”); and

WHEREAS, the IRS has published a model of conflict of interest policy to set forth the process by which a Charitable Organization should implement decisions regarding transactions or arrangements between the Charitable Organization and members of the Charitable Organization’s board of directors and other individuals (the “IRS Policy”); and

WHEREAS, under provisions of California law, including, but not limited to, certain provisions of the California Corporations Code and the California Government Code, the Board is subject to more stringent duties and obligations than the requirements set forth in the IRS Policy; and

WHEREAS, to demonstrate the Board’s commitment to engage only in activities and transactions for the primary benefit of, and that are in the best interests of, the Corporation, the Board desires to adopt the conflict of interest policy attached to this resolution as Exhibit A (the “Conflict of Interest Policy”), which is hereby incorporated into this resolution by this reference. The Conflict of Interest Policy is consistent with the IRS Policy; and

WHEREAS, to the extent there is any conflict between the Conflict of Interest Policy and the requirements of any applicable City of El Cerrito, state or federal law or regulation now or hereafter enacted, it is the intent and desire of the Board that the Corporation comply with the most stringent requirement regarding matters set forth in the Conflict of Interest Policy.

NOW THEREFORE, BE IT RESOLVED, AS FOLLOWS:

1. The Board of Directors finds that the above recitals are true and correct.

2. The Board of Directors hereby adopts the Conflict of Interest Policy attached hereto as Exhibit A.

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

I CERTIFY that at a regular meeting on October 17, 2011, 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 October __, 2011.

Cheryl Morse, Corporate Secretary

APPROVED:

Ann Cheng, Board Chairperson
CONFLICT OF INTEREST POLICY
(El Cerrito Municipal Services Corporation)

ARTICLE I
PURPOSE

The purpose of the conflict of interest policy (the "Policy") is to protect the interests of El Cerrito Municipal Services Corporation, a California nonprofit public benefit corporation (the "Organization") when the Organization is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or director of the Organization or might result in a possible excess benefit transaction. The Policy is intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit and charitable organizations, including, but not limited to California Corporations Code Section 5227, California Government Code 1090, California Government Code 8 1000, or any applicable rule or regulation of the City of El Cerrito, all as may be enacted, or amended from time to time (collectively, the "Applicable Laws"). To the extent this Policy conflicts with all or any Applicable Laws, the Organization shall comply with the more stringent requirement in favor of the Organization. This Policy is intended to supplement, but not replace, the requirements set forth in the Organization’s bylaws.

ARTICLE II
DEFINITIONS

1. Interested Person.

Any director, principal officer, key management staff person, or member of a committee with governing board delegated powers, who has a direct or indirect financial interest, as defined below, is an Interested Person.

2. Financial Interest.

A person has a financial interest if the person has, directly or indirectly, through business, investment, or family:

a. An ownership or investment interest in any entity with which the Organization has a transaction or arrangement,

b. A compensation arrangement with the Organization or with any entity or individual with which the Organization has a transaction or arrangement, or

c. A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Organization is negotiating a transaction or arrangement. Compensation includes direct and indirect remuneration as well as
gifts or favors that are not insubstantial. A financial interest is not necessarily a conflict of interest. Under Article III, Section 2, a person who has a financial interest may have a conflict of interest only if the appropriate governing board or committee decides that a conflict of interest exists.

ARTICLE III
PROCEDURES

1. Duty to Disclose

In connection with any actual or possible conflict of interest, an Interested Person must disclose the existence of the financial interest and be given the opportunity to disclose all material facts to the directors and members of committees with governing board delegated powers considering the proposed transaction or arrangement.

2. Determining Whether a Conflict of Interest Exists

After disclosure of the financial interest and all material facts, and after any discussion with the Interested Person, the Interested Person shall leave the governing board or committee meeting while the determination of a conflict of interest is discussed and voted upon. The remaining board or committee members shall decide if a conflict of interest exists.

3. Procedures for Addressing the Conflict of Interest

a. An Interested Person may make a presentation at the governing board or committee meeting, but after the presentation, the Interested Person shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the possible conflict of interest.

b. The chairperson of the governing board or committee shall, if appropriate, appoint a disinterested person or committee to investigate alternative to the proposed transaction or arrangement.

c. After exercising due diligence, the governing board or committee shall determine whether the Organization can obtain with reasonable efforts a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.

d. If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a conflict of interest, the governing board or committee shall determine by a majority vote of the disinterested directors whether the transaction or arrangement is in the Organization’s best interest, for its own benefit, and whether
it is fair and reasonable. In conformity with the above determination, the governing board or committee shall make its decision as to whether to enter into the transaction or arrangement.

4. Violations of the Conflicts of Interest Policy

   a. If the governing board or committee has reasonable cause to believe a member has failed to disclose actual or possible conflicts of interest, it shall inform the member of the basis for such belief and afford the member an opportunity to explain the alleged failure to disclose.

   b. If, after hearing the member’s response and after making further investigation as warranted by the circumstances, the governing board or committee determines the member has failed to disclose an actual or possible conflict of interest, it shall take appropriate disciplinary and corrective action.

ARTICLE IV

RECORDS OF PROCEEDINGS

1. Records of Proceedings

   The minutes of the governing board and all committees with board delegated powers shall contain:

   a. The names of the persons who disclosed or otherwise were found to have a financial interest in connection with an actual or possible conflict of interest, the nature of the financial interest, any action taken to determine whether a conflict of interest was present, and the governing board’s or committee’s decision as to whether a conflict of interest in fact existed.

   b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternative to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

ARTICLE V

COMPENSATION

a. A voting member of the governing board or key management staff persons who receive compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that person’s compensation.

b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization for services is precluded from voting on matters pertaining to that member’s compensation.

c. A voting member of the governing board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Organization, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

ARTICLE VI
ANNUAL STATEMENTS

1. Keeping the Organization’s Annual Statements.

Each director, principal officer and member of a committee with governing board delegated powers shall annually sign a statement which affirms such person:

   a. Has received a copy of the Organization’s Conflicts of Interest Policy,

   b. Has read and understands the Policy,

   c. Has agreed to comply with the Policy, and

   d. Understands the Organization is charitable, and in order to maintain its federal tax exemption, it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

ARTICLE VII
PERIODIC REVIEWS

1. Periodic Reviews of the Organization.

To ensure the Organization operates in a manner consistent with charitable purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

   a. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm’s length bargaining, and
b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Organization's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further charitable purposes and do not result in inurement, impermissible private benefit or in an excess benefit transaction.

**ARTICLE VIII**

**USE OF OUTSIDE EXPERTS**

1. The Organization's Policy on Use of Outside Experts.

When conducting the periodic reviews as provided for in Article VII, the Organization may, but need not, use outside advisors. If outside experts are used, their use shall not relieve the governing board of its responsibility for ensuring periodic reviews are conducted.

**ARTICLE IX**

**CALIFORNIA CORPORATIONS CODE REQUIREMENTS**

If circumstances so require, the Organization shall annually furnish to all directors the written statement described in Section 6322 of the California Corporations Code (the "6322 Statement").

The 6322 Statement shall list covered transactions ("Covered Transactions") in which the Organization, its parent, or any subsidiary was a party and in which any director, key management staff person, or officer of the Organization, its parent, or any subsidiary had a direct or indirect financial interest as defined above in Article II. A mere common directorship is not a direct or indirect financial interest. For the purpose of this Article IX, Covered Transactions required to be reported are any transaction during the previous fiscal year (i) involving more than Fifty Thousand Dollars ($50,000), or (ii) which was one of a number of transactions in which the same Interested Person had a direct or indirect financial interest, and which in the aggregate involved more than Fifty Thousand Dollars ($50,000). The 6322 Statement shall contain the following information:

a. A brief description of the Covered Transaction.

b. The names of the Interested Person or Interested Persons.

c. A brief description of the Interested Person's or Interested Persons' relationship to the Organization.

d. A brief description of the nature of the Interested Person's or Interested Persons' interest in the Covered Transaction, and where practicable, the amount of such interest. In the
case of a Covered Transaction with a partnership in which such an Interested Person is a partner, only the interest of the partnership need be stated.

e. A brief description of the amount and circumstances of any indemnifications or advances aggregating more than Ten Thousand Dollars ($10,000) paid during the fiscal year to any current or former officer or director of the Organization.