

#### 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 Tem Bill Jones Boardmember Rebecca Benassini Boardmember Scott Hanin

Boardmember Janet Abelson Boardmember Greg Lyman Boardmember Karen Pinkos

#### ROLL CALL

#### CONVENE MUNICIPAL SERVICES CORPORATION MEETING

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.)

#### ORAL COMMUNICATIONS FROM THE PUBLIC 2.

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.

- **PRESENTATIONS** None 3.
- ADOPTION OF THE CONSENT CALENDAR Item No. 4 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: A) August 15, 2011 Special Municipal Services Corporation meeting minutes; and B) September 19, 2011 Special Municipal Services Corporation meeting 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.

#### 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: <a href="http://www.el-cerrito.org/gov/">http://www.el-cerrito.org/gov/</a>. 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 <a href="http://www.el-cerrito.org">www.el-cerrito.org</a> 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 <a href="mailto:cmorse@ci.el-cerrito.ca.us">cmorse@ci.el-cerrito.ca.us</a>
- 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, August 15, 2011 – 6:30 p.m. Hillside Conference Room

#### **Meeting Location**

El Cerrito City Hall 10890 San Pablo Avenue, El Cerrito

Ann Cheng – Chair

Board Member Bill Jones, Vice-Chair Board Member Rebecca Benassini Board Member Scott Hanin Board Member Janet Abelson Board Member Greg Lyman Board Member Karen Pinkos

#### ROLL CALL

Directors Abelson, Benassini, Hanin, Jones, Lyman, Pinkos and Chair Cheng all present.

#### 6:30 p.m.

#### SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

Chairperson Cheng convened the Special Municipal Services Corporation meeting at 6:32 p.m.

**ORAL COMMUNICATIONS FROM THE PUBLIC** – No comments.

#### ADOPTION OF CONSENT CALENDAR

#### **Approval of Minutes**

Approve the June 20, 2011 Municipal Services Corporation meeting minutes.

**Action:** Moved, seconded (Abelson/Lyman) and carried unanimously to approve the June 20, 2011 Municipal Services Corporation minutes.

#### ANNOUNCEMENT OF CLOSED SESSION

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS** (Pursuant to Government Code Section 54956.8)

**Properties:** 

1066-72 San Pablo Avenue, El Cerrito, APN 504-152-030

11690 San Pablo Avenue, El Cerrito, APN 502-062-028 11600 San Pablo Avenue, El Cerrito, APN 502-062-029

1925 Kearney Street, El Cerrito, APN 502-062-003

10940 San Pablo Avenue, El Cerrito, APN 502-411-023 10930 San Pablo Avenue, El Cerrito, APN 502-411-029

11335-41 San Pablo Avenue, El Cerrito, APN 513-372-015

6111 Potrero Avenue, El Cerrito, APN 513-372-018

1718 Eastshore Blvd., El Cerrito, APN 513-372-032

Corner of Hill Street and San Pablo Avenue, Unnumbered Parcel (Parcel 2 of Parcel Map MS 451-10 recorded on July 2, 2011 in the records of the Contra Costa County Clerk/Recorder's Office)

Agency Negotiator: Lori Treviño, Redevelopment Agency Manager

Hilde Myall, Senior Project Manager

Dwayne Dalman, Senior Project Manager

Karen Tiedemann, Special Counsel

Negotiating Parties: Various potential buyers

Under Negotiation: Price and Terms

**RECESSED INTO CLOSED SESSION** at 6:34 p.m.

#### POSSIBLE REPORT OUT OF CLOSED SESSION

The Municipal Services Corporation Board gave direction to the Corporation's negotiators. **ADJOURNED SPECIAL MUNICIPAL SERVICES CORPORATION MEETING** at 7:36 p.m.

# EL CERRITO MUNICIPAL SERVICES CORPORATION

### **MINUTES**

### SPECIAL EL CERRITO MUNICIPAL SERVICES CORPORATION MEETING Monday, September 19, 2011 – 7:00 p.m. Hillside Conference Room

### **Meeting Location**

El Cerrito City Hall 10890 San Pablo Avenue, El Cerrito

Ann Cheng – Chair

Board Member Bill Jones, Vice-Chair Board Member Rebecca Benassini Board Member Scott Hanin

Board Member Janet Abelson Board Member Greg Lyman Board Member Karen Pinkos

#### **ROLL CALL**

Present:

Board Members Abelson, Benassini, Hanin, Jones, Lyman and Chairperson

Cheng all present.

Absent:

Board Member Pinkos.

#### 7:00 p.m.

#### SPECIAL MUNICIPAL SERVICES CORPORATION MEETING

Chairperson Cheng convened the Special Municipal Services Corporation meeting at 7:05 p.m.

**ORAL COMMUNICATIONS FROM THE PUBLIC** – No comments.

ANNOUNCEMENT OF CLOSED SESSION

CONFERENCE WITH REAL PROPERTY NEGOTIATORS (Pursuant to Government Code Section 54956.8)

**Properties:** 

Corner of Hill Street and San Pablo Avenue, Unnumbered Parcel (Parcel 2 of

Parcel Map MS 451-10 recorded on July 2, 2011 in the records of the Contra

Costa County Clerk/Recorder's Office)

Agency Negotiator: Lori Treviño, Redevelopment Agency Manager

Hilde Myall, Senior Project Manager Karen Tiedemann, Special Counsel

Negotiating Parties: Various potential buyers

**Under Negotiation:** Price and Terms

**RECESSED INTO CLOSED SESSION** at 7:07 p.m.

### POSSIBLE REPORT OUT OF CLOSED SESSION

Chair Cheng reported that the Municipal Services Corporation Board provided direction staff.

**ADJOURNED SPECIAL MUNICIPAL SERVICES CORPORATION MEETING** at 7:38 p.m.

### **AGENDA BILL**



Agenda Item No. 6

Date:

October 3, 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 property is 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 (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. 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.

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 (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.

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.

#### **ANALYSIS**

The proposed 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. Additionally, the Corporation would assume responsibility for the cost of widening Hill Street paid for in part by a \$350,000 cash payment from Safeway. 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. They also acknowledge 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.

The amendment will make more certain development of the HSP in a way that is cohesive with the surrounding area. Under the terms of the Assignment Agreement between the Agency and the Corporation, the Corporation is required to pay any amounts it receives related to development of HSP to the Agency as consideration for the 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.

The amendment would provide assurance that the development of the HSP would not be clouded by the legislation or the current litigation. It would also provide a source of funds for the opt-in payment should the legislation be found constitutional.

#### FINANCIAL CONSIDERATIONS

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 "Agreement"), 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 Agreement 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 3, 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, Corporation Clerk
APPR	OVED:		
Ann C	heng, Chair		

#### 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 <u>Exhibit B</u> 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 within ten (10) business days after the date that the last of the required signatures is made to this Third Amendment. Payment of the Assignment Fee shall be made in accordance with the wire transfer instructions attached hereto as <a href="Exhibit C">Exhibit C</a>. 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.
- Responsibility for Required Transportation Mitigation. The MSC hereby agrees to 4. assume responsibility for costs associated with implementation of Mitigation Measure TRANS-1b of the El Cerrito Safeway Mitigation Monitoring Reporting Program dated November 17 2010, subject to PDC agreeing to pay to the MSC, in addition to the Assignment Fee, a portion of the costs associated with the mitigation implementation in the amount of Three Hundred Fifty Thousand Dollars (\$350,000). 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 and shall be entitled to look to the MSC for implementation of such mitigation measure. 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. 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.

- Contribution shall be used to improve that portion of the Ohlone Greenway situated between Hill Street and Blake Street and to construct that portion of the pedestrian path that will be situated on the Property, but only 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. Notwithstanding the foregoing, the MSC, Safeway and PDC acknowledge and agree that the City may use a portion of the Greenway Contribution to fund 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 improvements to the Ohlone Greenway consistent with the Greenway Master Plan.
- **6. 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 D.
- 7. 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.

#### 8. 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 and 4 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.

#### 9. Miscellaneous.

3.1 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.

- **3.2 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.
- 3.3 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.
- **3.4 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	SAFEWAY
EL CERRITO MUNICIPAL SERVICES CORPORATION, a California nonprofit public benefit corporation	SAFEWAY INC., a Delaware corporation
Name:	Name:Title:
Title:	Name:
	Date:, 2011  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:
	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 D

### **TERMINATION OF DDA**

"THIS TERMINATION OF DISPOSITION A ("Termination") is entered into as of this day of SAFEWAY INC., a Delaware corporation ("Safew Agency, a public body, corporate and politic ("Agency	of, 20, by and between ay"), and The El Cerrito Redevelopment
A. Safeway's predecessor-in-interest and Development Agreement dated November 16, 199 provisions applicable to the acquisition and development attached hereto (" <b>Property</b> ").	
B. Safeway and the Agency desire to obligations set forth in the DDA.	confirm the termination of the rights and
NOW, THEREFORE, in consideration of the f consideration, Safeway and the Agency confirm that t force and effect.	<u> </u>
This Termination may be executed in counterp an original, but all of which, together, shall constitute or	·
MSC	SAFEWAY
EL CERRITO MUNICIPAL SERVICES CORPORATION, a California nonprofit public benefit corporation	SAFEWAY INC., a Delaware corporation
Name:	Name: Title:
Title:	Name:
Date:, 20	Title:
	Date:, 20

ALL SIGNATURES TO BE NOTARIZED

Form Approved: \_\_\_\_

### **ACKNOWLEDGMENTS**

STATE OF CALIFORNIA )
)ss. COUNTY OF ALAMEDA )
On, 20, before me,, Notary Public, personall 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 ) )ss. COUNTY OF CONTRA COSTA )
On
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)