



AGENDA

EL CERRITO MUNICIPAL SERVICES CORPORATION

Monday, June 20, 2011

Immediately Following the Adjournment of the 7:30 p.m. Concurrent Meeting of the El Cerrito City Council/Redevelopment Agency/Public Financing Authority and Employee Pension Board

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 Janet Abelson
Boardmember Greg Lyman

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 Nos. 4A and 4B

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.

A. Minutes for Approval

Approve the May 2, 2011 Municipal Services Corporation meeting minutes.

B. Assign the Tri-Party Agreement with Safeway, Inc. and Target Corporation to the El Cerrito Municipal Services Corporation

Adopt a resolution accepting the assignment by the El Cerrito Redevelopment Agency of all of its rights and obligations with respect to the acquisition of the property identified as the Hill Street Parcel as provided in that certain Tri-Party Agreement between the Agency, Safeway, Inc., and Target Corporation dated October 5, 2009.

5. PUBLIC HEARINGS – None

6. POLICY MATTERS – None

7. ADJOURN 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

EL CERRITO MUNICIPAL SERVICES CORPORATION

Monday, May 2, 2011 – 8:45 p.m. or Immediately Following the Adjournment of the Meeting of the City Council of El Cerrito, Whichever is Later

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

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

CONVENE MUNICIPAL SERVICES CORPORATION MEETING

Chairperson Cheng convened the Municipal Services Corporation meeting at 9:27 p.m.

1. **BOARD / STAFF COMMUNICATIONS** – No reports.
2. **ORAL COMMUNICATIONS FROM THE PUBLIC**

Al Miller, El Cerrito, recalled his service on the Committee of the Whole, summarized the history of the Redevelopment Agency in El Cerrito, including a history of skepticism and mistrust when the city redeveloped its only bowling alley into the Target. Mr. Miller urged the Board to communicate with the El Cerrito Community about the transition and functions of the Municipal Services Corporation and expressed appreciation for the visibility and transparency in which the City operates today.

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

Moved, seconded (Abelson/Jones) and carried unanimously to approve Consent Calendar Item No. 4A as indicated below.

A. Minutes for Approval

Approve the following meeting minutes: 1) March 21, 2011 Concurrent City Council/Redevelopment Agency and Municipal Services Corporation; and 2) April 4, 2011 Concurrent City Council/Municipal Services Corporation.

Action: Approved minutes.

5. PUBLIC HEARINGS – None

6. POLICY MATTERS

Amendment of Municipal Services Corporation Articles of Incorporation and Bylaws, Application for Tax-Exempt Status, Election of Officers and Adoption of Fiscal Year 2011-12 Annual Budget

1. Adopt a resolution of the Municipal Services Corporation authorizing the amending and restating of the Corporation's Articles of Incorporation, the amending and restating of the Corporation's Bylaws and the filing of federal and state income tax exemption applications.
2. Adopt a resolution appointing officers of the Corporation's Board of Directors.
3. Adopt a resolution approving the Corporation's Fiscal Year 2011-12 budget.

Presenter: Lori Trevino, Redevelopment Manager.

Action: Moved, seconded (Lyman/Benassini) and carried unanimously to adopt Municipal Services Corporation Resolution No. 2011-05 authorizing the amending and restating of the Corporation's Articles of Incorporation, the amending and restating of the Corporation's Bylaws and the filing of federal and state income tax exemption applications as revised to: 1) eliminate the phrase "and appointing officers of the corporation" in the title of the resolution and eliminate the references to "policy" in paragraph 5 of the enacting clause of the resolution; and 2) approve revisions to Sections 4.11 (Notice) and 6.2 (Contracts) of the First Amended and Restated Bylaws.

Moved, seconded (Benassini/Abelson) and carried unanimously to adopt Municipal Services Corporation Resolution No. 2011-06 electing officers of the Corporation's Board of Directors.

Moved, seconded (Abelson/Pinkos) and carried unanimously to adopt Municipal Services Corporation Resolution No. 2011-07 approving the Corporation's Fiscal Year 2011-12 budget.

7. ADJOURNED MUNICIPAL SERVICES CORPORATION MEETING at 9:59 p.m.



AGENDA BILL

Agenda Item No. 5(B)

Date: June 20, 2011
To: El Cerrito Municipal Services Corporation Board
From: Lori Treviño, Redevelopment Manager
Subject: Assign the Tri-Party Agreement with Safeway Inc. and Target Corporation to the El Cerrito Municipal Services Corporation

ACTION REQUESTED

Adopt a resolution accepting the assignment by the El Cerrito Redevelopment Agency of all of its rights and obligations with respect to the acquisition of the property identified as the Hill Street Parcel as provided in that certain Tri-Party Agreement between the Agency, Safeway, Inc., and Target Corporation dated October 5, 2009.

BACKGROUND

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. Safeway is prepared to convey the Hill Street Parcel (HSP) to the Agency pursuant to the terms of the TPA. However, due to continued uncertainty regarding possible elimination of redevelopment agencies, the Agency is proposing to assign to the Corporation its rights and obligations under the TPA related to the HSP conveyance.

ANALYSIS

Accepting the assignment will allow for transfer of the HSP from Safeway directly to the Corporation. The MSC would be obligated to use the property in a manner consistent with the Agency's Redevelopment Plan. Additionally, pursuant to the terms of the TPA, the HSP is subject to a right of first refusal for the benefit of Safeway that would allow Safeway the first right to negotiate to acquire the property once the Corporation determines the desired uses for the property. Acquisition of the HSP by the Corporation will ensure that the future uses of the property are consistent with the City and the Agency's economic development goals and objectives.

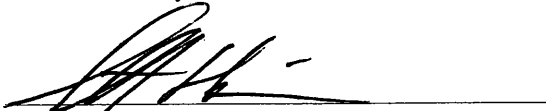
FINANCIAL CONSIDERATIONS

The intent of the assignment is to retain local control of the HSP for future use in accordance with the intent of the Redevelopment Plan and the TPA. The financial impact on the Corporation is in securing the value of the assets.

LEGAL CONSIDERATIONS

This report and the accompanying resolution were prepared by Corporation's Legal Counsel.

Reviewed by:



Scott Hanin, Executive Director

Attachments:

1. Resolution accepting the assignment by the El Cerrito Redevelopment of all of its rights and obligations with respect to the acquisition of the property identified as the Hill Street Parcel as provided in that certain Tri-Party Agreement between the Agency, Safeway, Inc., and Target Corporation dated October 5, 2009

RESOLUTION NO. 2011-XX

A RESOLUTION OF THE EL CERRITO MUNICIPAL SERVICES BOARD ACCEPTING AN ASSIGNMENT FROM THE EL CERRITO REDEVELOPMENT AGENCY OF ALL OF THE AGENCY'S RIGHTS AND OBLIGATIONS UNDER THAT CERTAIN TRI-PARTY AGREEMENT TO ACQUIRE PROPERTY LOCATED AT THE CORNER OF HILL STREET AND SAN PABLO AVENUE

WHEREAS, the City Council (the "City Council") of the City of El Cerrito (the "City") has adopted the City of El Cerrito Redevelopment Plan (as amended, the "Redevelopment Plan"). The Redevelopment Plan sets forth a plan for redevelopment of the City of El Cerrito Redevelopment Project Area (the "Project Area"); and

WHEREAS, the El Cerrito Redevelopment Agency (the "Agency") is responsible for administering the Redevelopment Plan to cause redevelopment of the Project Area; and

WHEREAS, the Agency entered into a Tri-Party Agreement dated October 5, 2009 with Safeway, Inc. and Target Corporation which gave the Agency 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, the Agency desires to assign its rights and obligations under the Tri-Party Agreement with regards to the Hill Street Parcel to the El Cerrito Municipal Services Corporation; and

WHEREAS, the El Cerrito Municipal Services Corporation (the "MSC") desires to accept assignment of all of the Agency's rights and obligations under the Tri-Party Agreement with regards to the Hill Street Parcel, and

WHEREAS, pursuant to Section 15004(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; and

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Board finds that the above recitals are accurate.
2. The Board hereby accepts assignment of all of the El Cerrito Redevelopment Agency's rights and obligations to acquire the Hill Street Parcel pursuant to the Tri Party Agreement and authorizes the Executive Director to execute any and all documents necessary to effectuate the assignment.

Agenda Item No. 5(B)
Attachment 1

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

I CERTIFY that at a regular meeting on June 20, 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:
ABSTAINS:	DIRECTORS

Cheryl Morse, Corporation Clerk

APPROVED:

Ann Cheng, Chair

ASSIGNMENT AND ASSUMPTION AGREEMENT
(Hill Street Parcel)

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is entered into as of _____, 2011 (the "Effective Date"), by and between the El Cerrito Redevelopment Agency, a public body corporate and politic (the "Assignor" or the "Agency"), and the El Cerrito Municipal Services Corporation, a California nonprofit public benefit corporation (the "Assignee" or the "MSC"), and with reference to the following facts:

RECITALS

A. The Agency entered into that certain Tri-Party Agreement dated October 5, 2009 with Safeway, Inc., and Target Corporation, which provides the Agency with certain rights to acquire property located at the corner of Hill Street and San Pablo Avenue ("Hill Street Parcel") from Safeway.

B. The Agency desires to assign to the MSC, and the MSC desires to assume from Agency, all of the Agency's rights and obligation under the Tri-Party Agreement to acquire the Hill Street Parcel under the terms and conditions set forth below.

C. The MSC desires to accept the assignment of the Agency's rights and obligations under the Tri-Party Agreement to acquire the Hill Street Parcel.

D. Safeway has consented to the Assignment.

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency and the MSC (collectively, the "Parties") mutually agree as follows:

1. Assignment by Agency. As of the Effective Date, the Agency hereby assigns transfers and delegates to the MSC, all of Agency's right, title, and interest in and obligations under the Tri-Party Agreement related to the acquisition of the Hill Street Parcel. Agency shall remain responsible for all other obligations under the Tri-Party Agreement.

2. Future Development. The Agency is assigning its rights to acquire the Hill Street Parcel to the MSC in consideration for the MSC's agreement to cause the development of the Hill Street Parcel in a manner consistent with the El Cerrito Redevelopment Plan and the Agency's Five Year Implementation Plan. The Agreement evidences the obligation of the MSC to pay to the Agency the value received by the MSC for the Hill Street Parcel from a developer selected by the MSC to develop the Hill Street Parcel in a manner consistent with the Redevelopment Plan and the Five Year Implementation Plan ("Third Party Developer"). This amount received by the MSC will be the greater of the fair market value of the Hill Street Parcel, or the fair reuse value of the Hill Street Parcel (as of the date of the conveyance by the MSC to the Third Party Developer either as a fee conveyance or as a ground lease conveyance) based on

Agenda Item No. 5(B)
Attachment 1
Exhibit A

the use of the Hill Street Parcel in a manner consistent with the Redevelopment Plan and the Five Year Implementation Plan, and with the covenants and conditions and development costs imposed by the MSC on the Third Party Developer in connection with the development of the Hill Street Parcel (the "Parcel Consideration"). Such amount, if any, will be paid by the MSC to the Agency upon the MSC receiving such consideration from the Third Party Developer. The Agency acknowledges that the Parcel Consideration for the Hill Street Parcel may be as little as One Dollar (\$1.00) depending on the specific limitations imposed by the MSC on the Third Party Developer, and the other covenants and conditions and development costs imposed by the MSC on the Third Party Developer in connection with the development of the Hill Street Parcel.

3. Acceptance of Assignment. As of the Effective Date, the MSC hereby accepts the above assignment and hereby assumes, agrees and undertakes to perform all of the obligations, covenants and agreements of Agency pursuant to the Tri-Party Agreement related to the Hill Street Parcel.

4. Representations. Agency hereby represents and warrants that it has not previously assigned, pledged, hypothecated or otherwise transferred its rights to acquire the Hill Street Parcel pursuant to the Tri-Party Agreement.

5. Governing Law. This Assignment shall be governed by the laws of the State of California.

6. Headings. Section headings contained in this Assignment are inserted as a matter of convenience and for ease of reference only and shall be disregarded for all other purposes, including the construction or enforcement of this Assignment or any of its provisions.

7. Severability. If any term, provision, covenant or condition of this Assignment 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 have been materially altered or abridged by such invalidation, voiding or unenforceability.

8. Legal Actions. In the event any legal action is commenced to interpret or to enforce the terms of this Assignment, or otherwise arising out of this Assignment, the party prevailing in any such action shall be entitled to recover against the party not prevailing all reasonable attorneys' fees, expenses, and costs incurred in such action.

9. Counterparts. This Assignment may be executed in counterparts by the Parties hereto, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have executed this Assignment as of the Effective Date.

Agenda Item No. 5(B)
Attachment 1
Exhibit A

ASSIGNOR:

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

By: _____

Name: _____

Its: _____

ASSIGNEE:

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

By: _____

Name: _____

Its: _____