



**Contra
Costa
County**

To: Board of Supervisors
From: David Twa, County Administrator
Date: April 16, 2019

Subject: PARTIAL RELEASE OF COMPENSATION AGREEMENT FOR FUTURE DEVELOPMENT
PROPERTIES - CITY OF EL CERRITO

RECOMMENDATION(S):

1. APPROVE and AUTHORIZE the County Administrator, or designee, to execute a Partial Release of Notice of Compensation Agreement Related to Real Property with the City of El Cerrito for the distribution of net unrestricted proceeds to be received by the City from the disposition of properties formerly owned by the El Cerrito Redevelopment Agency.
 2. Acting as the Governing Board of the Contra Costa County Flood Control and Water Conservation District, APPROVE and AUTHORIZE the County Administrator, or designee, to execute a Partial Release of Notice of Compensation Agreement Related to Real Property with the City of El Cerrito for the distribution of net unrestricted proceeds to be received by the City from the disposition of properties formerly owned by the El Cerrito Redevelopment Agency.
 3. Acting as the Governing Board of the Contra Costa County Water Agency, APPROVE and AUTHORIZE the County Administrator, or designee, to execute a Partial Release of Notice of Compensation Agreement Related to Real Property with the City of El Cerrito for the distribution of net unrestricted proceeds to be received by the City from the disposition of properties formerly owned by the El Cerrito Redevelopment Agency.
-

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY
ADMINISTRATOR

☐ RECOMMENDATION OF BOARD
COMMITTEE

Action of Board On: **04/16/2019** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Diane Burgis, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: April 16, 2019

David Twa, County Administrator and Clerk of the Board of Supervisors

By: Stephanie Mello, Deputy

Contact: Timothy Ewell,
(925)335-1036

cc:

FISCAL IMPACT:

Approximately \$169,722 in one-time dissolution revenue to the County, the County Library, the Flood Control and Water Conservation District and the Contra Costa Water Agency. This is derived from estimated net proceeds to the City from the sale of the properties, which will be remitted to the County Auditor Controller for distribution to the Affected Taxing Entities (ATEs). This figure will likely change and is based on illustrative Applicable Shares of the Taxing Entities included in Exhibit C to the Compensation Agreement between the County and the City using property tax shares as of January 1, 2017 as a reference.

BACKGROUND:

As part of the 2011 Budget Act, and in order to protect funding for core public services at the local level, the Legislature approved the dissolution of the state's 400 plus Redevelopment Agencies (RDAs). After a period of litigation, RDAs were officially dissolved as of February 1, 2012. As a result of the elimination of the RDAs, property tax revenues are now being used to pay required payments on existing bonds, other obligations, and pass-through payments to local governments. The remaining property tax revenues that exceed the enforceable obligations are now being allocated to cities, counties, special districts, and school and community college districts, thereby providing critical resources to preserve core public services.

To help facilitate the wind-down process at the local level, successor agencies were established to manage redevelopment projects currently underway, make payments on enforceable obligations, and dispose of redevelopment assets and properties. Each Successor Agency has an Oversight Board that supervises its work. The Oversight Board is comprised of representatives of the local agencies that serve the redevelopment project area: the city, county, special districts, and K-14 educational agencies. Oversight Board members have a fiduciary responsibility to holders of enforceable obligations, as well as to the local agencies that would benefit from property tax distributions from the former redevelopment project area.

FINDING OF COMPLETION

Pursuant to Health and Safety Code (HSC) Section 34179.7, the California Department of Finance (DOF) was authorized to issue a finding of completion to a Successor Agency, once the following conditions had been met and verified by December 31, 2015:

- The Successor Agency had paid the full amount as determined during the Due Diligence Reviews and the County Auditor-Controller has reported those payments to DOF, and
- The Successor Agency had paid the full amount as determined during the July True-Up process, or
- The Successor Agency had paid the full amount upon a final judicial determination of the amounts due and confirmation that those amounts have been paid by the

County Auditor-Controller, or

- The Successor Agency had entered into a written installment payment plan with DOF for the payments owed from above.

Upon receiving the finding of completion, a Successor Agency is allowed to do the following:

- Place loan agreements between the former redevelopment agency and sponsoring entity on the Recognized Obligation Payment Schedule (ROPS), as an enforceable obligation, provided the oversight board makes a finding that the loan was for legitimate redevelopment purposes per HSC Section 34191.4 (b) (1) Loan repayments will be governed by criteria in HSC section 34191.4 9 (a) (2).
- Utilize proceeds derived from bonds issued prior to Jan. 1, 2011 in a manner consistent with the original bond covenants per HSC Section 34191.4 (c)
- However, if on a payment plan, and a Successor Agency fails to fully make one or more payments agreed to in the written installment plan, the benefits above may be revoked.

LONG RANGE PROPERTY MANAGEMENT PLAN

Pursuant to Health and Safety Code section 34191.5, within six months after receiving a Finding of Completion from DOF, a Successor Agency is required to submit for approval to it's Oversight Board and DOF a Long-Range Property Management Plan (LRPMP) that addresses the disposition and use of the real properties of the former redevelopment agency. If DOF had not approved a plan by January 1, 2016, then the Successor Agency was to have disposed of their property pursuant to 34177 (e).

COMPENSATION AGREEMENTS

Some LRPMPs prepared by successor agencies include a provision providing that certain real property of the former redevelopment agency would be retained and used for future development purposes pursuant to HSC 34179.5(c)(5)(C). As part of that, LRPMPs submitted by successor agencies have contemplated the use of “compensation agreements” between an individual successor agency and affected taxing entities (ATEs), the terms of which are not subject to approval by DOF, pursuant to HSC 34180(f)(1).

Specifically, HSC 34180(f)(1) states that:

"If a city, county, or city and county wishes to retain any properties or other assets for future redevelopment activities, funded from its own funds and under its own auspices, it must reach a compensation agreement with the other taxing entities to provide payments to them in proportion to their shares of the base property tax, as determined pursuant to Section 34188, for the value of the property retained."

On March 28, 2017 the Board of Supervisors referred the issue of establishing a policy for the review of compensation agreements submitted by cities related to redevelopment

dissolution to the Finance Committee for evaluation. The Finance Committee met on April 24, 2017 to discuss the issue and has forwarded a policy recommendation to the full Board of review and approval. Subsequently, the Board approved the attached policy framework and direct the County Administrator to commence negotiating with cities that request compensation agreements with the County on May 2, 2017.

CITY OF EL CERRITO

Following the Board's approval of the compensation agreement policy terms, the County began negotiating terms and conditions of a compensation agreement with the City of El Cerrito for four (4) future development properties that were formerly owned by the El Cerrito Redevelopment Agency. In September 2018, the Board entered into a Compensation Agreement with the City of El Cerrito that included some minor deviations from the Board's previously approved policy framework:

1. Rather than defer payment of the "gross market value" of properties, the County would agree to deferral of "net unrestricted proceeds", as defined in the agreement, to account for the City's customary costs of selling the properties. This includes transactional costs such as real estate brokerage fees, legal fees, etc.
2. Rather than requiring payment of the highest "gross market value" over the five-year period, the City would be responsible for remitting the "net unrestricted proceeds" based on the market value of the properties at the time of sale during the five year period.
3. Rather than requiring a new Grant Deed to be recorded against each future development property limiting the use of the property solely to those uses outlined in the City's Long Range Property Management Plan (LRPMP), as approved by the California Department of Finance, the parties will record a "Notice of Compensation Agreement Related to Real Property" identifying the major terms of the compensation agreement to protect the County's interest in future disposition proceeds from each property.
4. Finally, the compensation agreement calls for the remittance of payment to the County for any properties not part of a Developer Disposition Agreement (DDA) after 60 months (five years), following the effective date of the agreement, in an amount equal to the fair market value as of the 2011 property tax lien date. The payment is to be remitted no later than 66 months (5.5 years) following the effective date of the compensation agreement to allow the City sufficient time to identify eligible funds to remit payment to the County.

Each of the exceptions above was been made to balance the financial and policy interests of both the County and the City. Ultimately, the compensation agreement allows the City to move forward in marketing the properties to future developments consistent with the City's General Plan and guarantees the County's financial interest in the properties as provided for in the redevelopment dissolution statutes.

PARTIAL SALE OF EASTSHORE AND MAYFAIR PROPERTIES

The City has notified the County that certain properties subject to the compensation agreement discussed above have been sold or are pending sale and has requested that a Partial Release of Notice of Compensation Agreement Related to Real Property (the "Release") be recorded to remove liens from those properties. Section 5(a) of the Compensation Agreement provides that the City must sell the properties for fair market value, consistent with State statute. Fair market value for properties can be evidenced in two ways according to the compensation agreement: 1) by an appraisal of the property; or 2) the proposed sale price of the property in an arm's length transaction put out to the market.

The City has provided the County with an appraisal for each property for which the Release is being requested and the County has verified that those fair market value estimates are the sales prices included on Settlement Statements provided by the escrow companies to the City.

Since the fair market value estimates by a third party appraiser are the sales prices for each property, the City has fulfilled its responsibility under the Compensation Agreement. For this reason, we are recommending that the Partial Release of Notice of Compensation Agreement Related to Real Property be executed, in substantially the same form as the version attached, and be remitted to the City for recordation with the County Clerk-Recorder.

CONSEQUENCE OF NEGATIVE ACTION:

The County, including certain entities governed by the Board of Supervisors, will not have authority to execute the Partial Release of Notice of Compensation Agreement Related to Real Property being requested by the City of El Cerrito.

ATTACHMENTS

Partial Release of Notice of Compensation Agreement Related to Real Property