

ACTION ITEM

SUBJECT: Loan Agreement – Promissory Note El Cerrito

EXECUTIVE SUMMARY

The Municipal Pooling Authority (MPA) Board previously approved the City of El Cerrito access to their reserves in the General Liability program for an amount of up to \$500,000. The Board directed staff to develop a promissory note that included a twelve-month loan period and an interest charge of LAIF +1% and bring back to the Executive Committee (EC) for review and approval.

RECOMMENDED ACTION

Staff recommends the Executive Committee approve the promissory note for the City of El Cerrito.

BACKGROUND

MPA Board Council, Kellie Murphy, Staff, comments from the Board, and input requested from the EC by Linda Cox were all considered in developing the attached promissory note.

The City of El Cerrito has not had the opportunity to review the attached document. Upon EC approval Staff will provide it to the City. If changes are requested, there may be a need for an additional EC meeting.

FISCAL IMPACT

Bickmore Actuary Services previously indicated the amount being loaned and the lending period will have no impact on reserves in the General Liability Program

EXHIBIT

1. Loan Agreement-Promissory Note El Cerrito

CORE VALUE

Responsive: *It is the Pool's goal to be responsive to the needs of the Members of the Pool and to be conscientious, collaborative, and competent in the services provided to its Members.*

LOAN AGREEMENT AND PROMISSORY NOTE

This Loan Agreement and Promissory Note (“Agreement”) is made and entered into by and between the Municipal Pooling Authority (“MPA”), a California Joint Powers Authority, and the City of El Cerrito (“the City”), a California municipal corporation. MPA and the City are collectively referred to herein as “the Parties.” This Agreement is deemed effective as of October 1, 2020 (“the Effective Date”)

RECITALS

WHEREAS, the City is a member of MPA and participates in MPA’s Liability Program;

WHEREAS MPA is a member of the Employment Risk Management Authority (“ERMA”) and the City is a covered party under the ERMA Memorandum of Coverage (“MOC”).

WHEREAS, the City submitted a claim to ERMA that was initially denied by ERMA, after which ERMA agreed that coverage would be provided for the claim with the City and ERMA each paying 50% of the applicable \$1 million retained limit under the ERMA MOC;

WHEREAS, the City does not currently have funds available to pay the balance of its \$500,000 share of the retained limit under the ERMA MOC.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the Parties hereby agree as follows:

SECTION 1: LOAN AGREEMENT

(A) MPA agrees to loan to the City the principal amount of \$_____ from the General Liability Program Fund, subject to the terms and conditions herein.

(B) The term of the loan shall be one year from the Effective Date.

SECTION 2: PROMISSORY NOTE & REPAYMENT TERMS

(A) For value received, the City promises and agrees to repay to MPA the sum of \$_____ together with interest thereon at an annual rate of 1.784 (Local Agency Investment Fund (LAIF) + 1% as of September 23, 2020) on or before _____, 2021, one year from the Effective Date.

(B) The City may, but is not required to, make periodic payments during the term of the loan with the final interest payment to be calculated as of the final payment date and due, along with the final payment, on the final payment date, which must be on or before _____, 2021.

(C) All principal and interest payments made under this Agreement shall be returned to the General Liability Program Fund.

(D) Payments made under this Agreement shall be made by sending a check payable to “Municipal Pooling Authority” and addressed as follows:

Municipal Pooling Authority
P.O. Box 67
Walnut Creek, CA 94597
ATTN: Frank Williamson, Finance Manager

If MPA gives written notice to the City that a different address or addressee shall be used for making payments under this Agreement, the City shall use the new address or addressee so given.

(E) There shall be imposed a penalty of LAIF + 2% not to exceed 3% (LAIF rate determined at the time the balance is due) total penalty if the full amount of the loan is not paid on or before _____ 2021, which penalty shall be computed upon the amount of the outstanding principal and accrued interest, subject to Section 2(G) below.

(F) In the event the City ceases to become a member of MPA, or ceases to participate in MPA’s Liability Program for any reason, the principal amount of the loan, together with all accrued interest, shall be due and payable within 20 days of the date the City ceases to be a member or ceases to participate.

(G) The City may request an extension of the deadline for the final payment under this Agreement, provided such request is made in writing addressed as follows and is received by the addressee on or before August 1, 2021:

Municipal Pooling Authority
P.O. Box 67
Walnut Creek, CA 94597
ATTN: Linda Cox, CAO

MPA may, but is not required to, grant such request for extension, and may impose additional terms and conditions in granting the request. All extensions, and the terms and conditions thereof, shall be memorialized in a writing signed by the Parties and attached as an addendum hereto.

SECTION 3: LIABILITY & INDEMNIFICATION

(A) The Parties acknowledge and agree that this Agreement is an agreement between public entities designed to implement the disbursement of public funds from one entity to the other as stated in California Government Code Section 895 and, as such, is not subject to the joint and several liability provisions of California Government Code Sections 895, *et seq.*

(B) The City agrees to defend, indemnify, protect, and hold MPA and its officers, officials, agents, employees, representatives, and members harmless from any and all liability, including any claims, actions, suits, proceedings, loss, expenses, and all claims for injury or damages to any person or entity, arising out of or related to this Agreement or any negligent or intentional acts or omissions of the City or any of its officers, officials, agents, employees, or representatives in connection therewith. The Parties agree that there shall be no coverage under any MPA Memorandum of Coverage for any claims or losses arising out of or related to this Agreement or any breach of this Agreement.

SECTION 4: GENERAL PROVISIONS

(A) The Parties acknowledge and agree that this Agreement sets forth the entire agreement between the Parties with regard to the subject matter hereof. The Parties further acknowledge and agree that all prior agreements, representations, and warranties, express or implied, oral or written, with respect to the subject matter hereof, are superseded by this Agreement.

(B) This Agreement may be modified only upon the written and signed agreement of the Parties.

(C) In the event any provision of this Agreement is deemed to be void, invalid, or unenforceable, that provision shall be severed from the remainder of this Agreement so as not to affect the validity and enforceability of the remainder of this Agreement. All remaining provisions of this Agreement shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope and breadth permitted by law.

(D) Each Party has reviewed and revised, or has had the opportunity to revise, this Agreement. Accordingly, any rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

(E) In the event an action is brought to enforce this Agreement, the prevailing party shall be entitled to recovery of attorneys' fees and costs.

(F) This Agreement may be executed in counterparts to avoid delay in execution. A copy of a signature, an electronic signature, or a signature transmitted by facsimile or electronically shall be deemed an original signature.

(G) This Agreement shall be interpreted under, and governed by, the laws of the state of California. The Parties agree that any action related to this Agreement shall be filed in Contra Costa County Superior Court.

IN WITNESS WHEREOF, this Agreement is executed by MPA by and through its Chief Administrative Officer and by the City by and through its _____.

DATED: _____, 2020

Linda Cox
Chief Administrative Officer,
on behalf of MPA

DATED: _____, 2020

on behalf of the City

DRAFT 10-6-2020