



**AGENDA  
CITY OF EL CENTRO  
Financing Authority  
JUNE 30, 2020**

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**City Hall**

**Special Meeting**

**12:00 PM**

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**CITY HALL  
COUNCIL CHAMBERS  
1275 MAIN STREET  
EL CENTRO, CA 92243**

***Financing Authority Members may be reached at (760) 336-8989***

<b>Chairperson:</b>	<b>Efrain Silva</b>	<b>Executive Director: Marcela Piedra</b>
<b>Vice Chairperson:</b>	<b>Jason Jackson</b>	<b>City Attorney: Elizabeth Martyn Evans</b>
<b>Agency Members:</b>	<b>Cheryl Viegas-Walker</b>	<b>Secretary: Norma Wyles</b>
	<b>Edgard Garcia</b>	
	<b>Tomás Oliva</b>	

This is a Public Meeting. If there is an item on the Agenda on which you wish to be heard, you are asked to complete a blue speaker slip and submit it to the Secretary prior to the start of the meeting. **Persons wishing to address the Financing Authority are not required to identify themselves (Government Code §54953.3); however, this information assists the Chairperson by ensuring that all persons wishing to address the Agency are recognized and also assists the Secretary in preparing the Financing Authority meeting minutes.** When the item is announced and your name is called, please step to the podium and state your name for the record. Unless the Chairperson extends the time, there is a three (3) minute time limit for each public presentation. If you wish to address the Financing Authority, concerning any other matter not appearing on the agenda, you may do so during the public comment portion of the agenda.

**12:00 P.M. Open Session**

**ALL TIMES ARE APPROXIMATE AND MAY VARY**

**CALL TO ORDER:**

**ROLL CALL BY CITY CLERK**

**PLEDGE OF ALLEGIANCE**

**INVOCATION**

**CONSENT AGENDA**

*Consent agenda items are approved by one motion. Council members or members of the public may pull consent items to be considered separately at a time determined by the Mayor.*

**1. Discussion and necessary action regarding the ECRMC Waiver and Forbearance Agreement**

Approve the Waiver (Forbearance Agreement) with Preston-Hollow Capital LLC, El Centro Regional Medical Center (ECRMC), El Centro Financing Authority, and MUFG Union Bank, N.A. (the bond Trustee).

**PUBLIC COMMENTS**

*Any person wishing to address the City Council on any matter on this agenda is asked to complete a "Speaker Slip" and submit to the City Clerk prior to the start of the meeting. Unless the Mayor extends the time, there is a three minute limit for each public comment. No comments on non-agenda items will be heard at this Special Meeting.*

**ADJOURNMENT**



**SCHEDULED  
ACTION ITEM (ID # 3760)**

**Discussion and necessary action regarding the ECRMC  
Waiver and Forbearance Agreement**

**CITY MANAGER'S RECOMMENDATION:**

Approve the Waiver (Forbearance Agreement) with Preston-Hollow Capital LLC, El Centro Regional Medical Center (ECRMC), El Centro Financing Authority, and MUFG Union Bank, N.A. (the bond Trustee).

**FISCAL IMPACT:**

None

**STRATEGIC PLANNING PROGRAM 2013-2018 RELATION:**

N/A

**DUE DILIGENCE CHECK FOR CONTRACTORS/CONSULTANTS: DID THE  
DEPARTMENT VERIFY CURRENT EL CENTRO BUSINESS LICENSE,  
CONTRACTORS LICENSE, REFERENCE CHECKS, INSURANCE, ETC:**

N/A

**BACKGROUND:**

In 2017, ECRMC refinanced an issue of \$125 million in revenue refunding bonds ECRMC currently makes bond payments at no time has ECRMC failed to make any bond payment when due.

**DISCUSSION:**

The bonds contain financial covenants, including the covenant ECRMC will maintain a financial resource that meet the defined debt service coverage ratio (called the Deposit Account Control Agreement or "DACA.")

During certain periods in the last three year, ECRMC has not met these coverage ratio and MUFG Bank and Preston-Hollow Capital LLC has provided waivers and have agreed to forbear from exercising their rights with respect to the identified debt service coverage ratio-related defaults, if ECRMC agrees to certain provisions regarding third-party payments, as set forth in the Waiver. The waiver and forbearance lasts through June 30, 2021.

**CONCLUSION:**

Approve the Waiver with the El Centro Regional Medical Center, El Centro Financing Authority, Preston-Hollow Capital Inc. and MUFG Union Bank, N.A. (the bond Trustee).

**ATTACHMENTS:**

- A20-0127 ECRMC DACA Waiver (PDF)

## WAIVER

THIS WAIVER (this “**Waiver**”), dated as of June 30, 2020, is entered into and executed by and among the City of El Centro, a municipal corporation duly organized and existing under and by virtue of the laws of the State of California (the “**City**”), El Centro Regional Medical Center, a municipal hospital, separate agency and enterprise operation of the City duly organized and existing under and by virtue of the laws of the State of California (the “**Medical Center**”), the El Centro Financing Authority, a public entity duly organized and existing as a joint exercise of powers authority under and by virtue of the laws of the State of California (the “**Authority**” and, together with the City and the Medical Center, the “**El Centro Parties**”), MUFG Union Bank, N.A., as trustee under the Trust Agreement (as defined below) (the “**Trustee**”), and Preston Hollow Capital, LLC, the sole Beneficial Owner as defined by the Trust Agreement (the “**Beneficial Owner**”).

### WITNESSETH:

WHEREAS, pursuant to the Trust Agreement, dated as of April 1, 2018 (the “**Trust Agreement**”), by and between the Authority and the Trustee, the Authority issued a \$125,000,000 El Centro Financing Authority Hospital Revenue Refunding Bond (El Cento Regional Medical Center Project) Series 2018 registered in the nominee name of the Depository and beneficially owned by the Beneficial Owner (the “**Bonds**”);

WHEREAS, pursuant to Section 4.03 of the Installment Purchase Agreement, dated as of April 1, 2018 (the “**IPA**” and, together with the Trust Agreement, the “**Bond Agreements**”), by and among the City, the Medical Center and the Authority, the Medical Center is required to execute and deliver a Deposit Account Control Agreement no later than June 30, 2018 (the “**DACA-Related Covenants**”);

WHEREAS, pursuant to Section 8.01(c) of the IPA, the failure of the Medical Center to observe or perform certain covenants, conditions, agreements or provisions in the IPA, including the DACA-Related Covenants, may result in a Purchase Agreement Default under the IPA under certain circumstances (none of which have occurred as of the date hereof);

WHEREAS, pursuant to Section 7.01(d) of the Trust Agreement, a Purchase Agreement Default under the IPA shall be considered an Event of Default under the Trust Agreement;

WHEREAS, the Trustee and the Beneficial Owner have certain rights which may accrue to them upon the occurrence of a Purchase Agreement Default under the IPA or an Event of Default under the Trust Agreement;

WHEREAS, the Medical Center reasonably believed that it would not be able to satisfy the DACA-Related Covenants by June 30, 2018, and therefore the parties entered into a Forbearance Agreement dated as of June 30, 2018 (the “**First Prior Forbearance Agreement**”), pursuant to which (1) the Beneficial Owner and the Trustee agreed to forbear from exercising their rights and remedies under the Bond Agreements for a forbearance period to end on the earlier of June 30, 2019, or the date on which the Medical Center failed to perform any term of the First Prior Forbearance Agreement; and (2) the Medical Center agreed to take steps to comply with the DACA-Related Covenants;

WHEREAS, subsequent to the execution of the First Forbearance Agreement, the Medical Center advised the Beneficial Owner and Trustee that it reasonably believed it would not be able to satisfy the DACA-Related Covenants by June 30, 2019, and therefore the parties agreed to and did enter into a second Forbearance Agreement dated as of June 30, 2019 (the “**Second Prior Forbearance Agreement**”), pursuant to which (1) the Beneficial Owner and the Trustee agreed to forbear from exercising their rights and remedies under the Bond Agreements for a forbearance period to end on the earlier of June 30, 2020, or the date on which the Medical Center failed to perform any term of the Second Prior Forbearance Agreement; and (2) the Medical Center agreed to take steps to comply with the DACA-Related Covenants;

WHEREAS, the Medical Center has advised the Beneficial Owner and Trustee it reasonably believes that it will not be able to satisfy the DACA-Related Covenants of the Prior Forbearance Agreement by June 30, 2020;

WHEREAS, the failure by the Medical Center to satisfy the DACA-Related Covenants by June 30, 2020, may result in a Purchase Agreement Default and/or an Event of Default under the Trust Agreement (the “**Specified Default**”); and

WHEREAS, the El Centro Parties have requested that the Trustee and the Beneficial Owner waive the exercise of their rights and remedies arising as a result of the occurrence of the Specified Default until June 30, 2021, in order to allow the Medical Center additional time to satisfy the DACA-Related Covenants, and the Trustee and the Beneficial Owner are willing to grant such waiver subject to the terms and conditions of this Waiver.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the agreements herein contained, the parties hereby agree as follows:

## PART I DEFINITIONS

SUBPART 1.1 Certain Definitions. Unless otherwise defined herein or the context otherwise requires, terms used in this Agreement, including its preamble and recitals, have the meanings ascribed thereto in the Bond Agreements.

## PART II AFFIRMATION AND CONSENT

SUBPART 2.1 Affirmation and Consent. Each of the El Centro Parties restates, ratifies and reaffirms each and every term and condition set forth in the Bond Agreements, effective as of the date hereof, after giving effect to this Waiver.

## PART III WAIVER; COVENANTS

### SUBPART 3.1 Waiver.

(a) Subject to compliance by the El Centro Parties with the terms and conditions of this Waiver, the Beneficial Owner and the Trustee, at the direction of

the Beneficial Owner which is hereby given, agree to waive the exercise of their rights and remedies under the Bond Agreements arising from the Specified Defaults during the period (the “**Waiver Period**”) commencing on the date hereof and ending on the earlier to occur of (i) June 30, 2021, and (ii) the date on which any Termination Event (as defined below) occurs (the “**Termination Date**”). Notwithstanding the foregoing, the waiver granted by the Trustee and the Beneficial Owner pursuant hereto shall not constitute and shall not be deemed to constitute a waiver of any other Purchase Agreement Default or other Event of Default under the Trust Agreement. On and after the Termination Date, the Trustee’s and the Beneficial Owner’s waiver hereunder shall terminate automatically without further act or action by the Trustee or the Beneficial Owner.

(b) The term “**Termination Event**” shall mean the occurrence of any of the following: (i) the Medical Center shall fail to perform, observe, or comply timely with any covenant, agreement, or term contained in this Waiver or (ii) any Purchase Agreement Default or Event of Default under the Trust Agreement, other than the Specified Default, or a default under this Waiver.

SUBPART 3.2 Covenants of the Medical Center. In order to induce the Trustee and the Beneficial Owner to enter into this Waiver, the Medical Center hereby covenants and agrees that at all times during the Waiver Period, unless the Trustee and the Beneficial Owner otherwise consent in writing, the Medical Center will perform, observe, and comply with each of the following covenants:

(a) DACA-Related Matters. The Medical Center shall use its commercially reasonable efforts to take all actions necessary to ensure compliance with the DACA-Related Covenants before June 30, 2021. Following reasonable consultation and discussion with the Beneficial Owner, such actions of the Medical Center shall include, to the extent necessary, (i) engaging a qualified banking institution to provide banking and cash management services to the Medical Center and to facilitate the implementation of a DACA as required under the DACA-Related Covenants, the selection of which banking institution shall be subject to the approval and consent of the Beneficial Owner, such approval and consent not to be unreasonably withheld, conditioned, or delayed; (ii) establishing one or more new collection accounts for the purpose of receiving Gross Revenues; (iii) notifying all of the Medical Center’s Third Party Payors of new payment instructions for such collection accounts; and otherwise taking all actions necessary to ensure compliance with the DACA-Related Covenants before June 30, 2021. For purposes of this Waiver, the following terms shall have the meanings set forth below:

- (i) “**Client Bill Payor**” means any pathologist, oncologist, or other medical or healthcare service provider through whom diagnostic services provided by the El Centro Parties are billed.
- (ii) “**Government Payor**” means any governmental entity, authority, instrumentality, or subdivision, or intermediary thereof, responsible for payment of diagnostic, healthcare, or medical services under Medicare, Medicaid, TRICARE, CHAMPVA, or any other

governmental program or other private commercial insurance managed care and employee assistance program.

(iii) “**Third Party Payor**” means any Government Payor, Client Bill Payor, insurance company, health maintenance organization, professional provider organization or similar public or private entity that is obligated to make payments for medical services provided by the El Centro Parties.

(b) Further Assurances. Promptly upon the request of the Trustee or the Beneficial Owner, the Medical Center shall take any and all actions of any kind or nature whatsoever, and execute and deliver additional documents, that relate to this Waiver and the transactions contemplated herein.

#### PART IV MISCELLANEOUS

SUBPART 4.1 Cross-References. References in this Waiver to any Part or Subpart are, unless otherwise specified, to such Part or Subpart of this Waiver.

SUBPART 4.2 Instrument Pursuant to Bond Agreements. This Waiver is executed in connection with the Bond Agreements and shall (unless otherwise expressly indicated therein) be construed, administered and applied in accordance with the terms and provisions of the Bond Agreements.

SUBPART 4.3 Representations and Warranties of the El Centro Parties. Each El Centro Party hereby represents and warrants that (a) it has the requisite power and authority to execute, deliver and perform this Waiver, (b) it is duly authorized to, and has been authorized by all necessary action, to execute, deliver and perform this Waiver, and (c) after giving effect to this Waiver, no Purchase Agreement Default exists under the IPA and no Event of Default exists under the Trust Agreement, in each case, on and as of the date hereof.

SUBPART 4.4 Counterparts. This Waiver may be executed by the parties hereto in several counterparts, each of which shall be deemed to be an original and all of which shall constitute together but one and the same agreement. Delivery of executed counterparts of this Waiver by telecopy or other electronic transmission shall be effective as an original and shall constitute a representation that an original will be delivered.

SUBPART 4.5 Full Force and Effect; Limited Amendment. Except as expressly amended or waived hereby, all of the representations, warranties, terms, covenants, conditions and other provisions of the Bond Agreements shall remain unchanged and shall continue to be, and shall remain, in full force and effect in accordance with their respective terms. The waiver set forth herein shall be limited precisely as provided for herein to the provisions expressly provided herein and shall not be deemed to be an amendment to, waiver of, consent to, or modification of, any other term or provision of the Bond Agreements or of any transaction or further or future action on the part of any El Centro Party which would require the consent of the Trustee or the Beneficial Owner under the Bond Agreements.

SUBPART 4.6 Acknowledgement. Each of the El Centro Parties hereby acknowledges its respective obligations under the Bond Agreements, which shall continue in full force and effect following the date of this Waiver in accordance with their terms.

SUBPART 4.7 Governing Law and Waiver of Jury Trial. The provisions of Section 10.03 and 10.04 of the IPA are hereby incorporated by reference, *mutatis mutandis*, as if originally made a part hereof.

SUBPART 4.8 Successors and Assigns. This Waiver shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

Each of the parties hereto has caused a counterpart of this Waiver to be duly executed and delivered as of the date first above written.

**City of El Centro**

By: \_\_\_\_\_  
Name: Marcela Piedra  
Title: City Manager

**El Centro Regional Medical Center**

By: \_\_\_\_\_  
Name: Adolphe Edward  
Title: Chief Executive Officer

**El Centro Financing Authority**

By: \_\_\_\_\_  
Name: Marcela Piedra  
Title: Executive Director

**MUFG Union Bank, N.A. , as Trustee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Preston Hollow Capital, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Managing Director

Attachment: A20-0127 ECRMC DACA Waiver (3760 : DACA Forbearance Agreement Renewal)