



AGENDA
CITY OF EL CENTRO
FINANCING AUTHORITY
JUNE 18, 2019

City Hall	Regular Meeting	6:00 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

Chairperson:	Edgard Garcia	Executive Director: Marcela Piedra
Vice Chairperson:	Efrain Silva	City Attorney: Elizabeth Martyn Evans
Agency Members:	Jason Jackson	Secretary: L. Diane Caldwell
	Cheryl Viegas-Walker	
	Tomás Oliva	

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.

6:00 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. Approval of Financing Authority Minutes for regular meeting of July 17, 2018.
2. Approval of Forbearance Agreement between the City of El Centro and Preston Hollow, LLC.

PUBLIC COMMENTS

*The City Council welcomes your input. At this time, members of the public may address the City Council on any matter not listed on the posted agenda. Pursuant to the Brown Act, no action will be taken on any issue brought forth under Public Comments. We ask that you please complete a "Speaker Slip" and submit it to the City Clerk prior to the start of the meeting. Although you are not required to identify yourself (Gov't Code §54953.3); this information on the "Speaker Slip" assists the Mayor that all persons wishing to address the Council are recognized and also assists the City Clerk in preparing the City Council meeting minutes. Unless the Mayor extends the time, there is a three (3) minute time limit for each public presentation. * Any information provided on the "Speaker Slip" is voluntary and will be public record.*

ADJOURNMENT



Financing Authority

SCHEDULED ACTION ITEM (ID # 3299)

Meeting: 06/18/19 06:00 PM
Department: City Clerk's Office
Category: Minutes
Prepared By: Diane Caldwell
Department Head: Diane Caldwell
DOC ID: 3299

1

Approval of Financing Authority Minutes for regular meeting of July 17, 2018

CITY MANAGER'S RECOMMENDATION:

Approval of Financing Authority Minutes for regular meeting of July 17, 2018.

ATTACHMENTS:

- FA 2018 7-17 (DOC)

Book 1
Page FA-20

**REGULAR MEETING
FINANCING AUTHORITY
CITY OF EL CENTRO, CALIFORNIA
TUESDAY, JULY 17, 2018 6:00 P.M.**

The Financing Authority of the City of El Centro met in regular session on July 17, 2018 at 8:12 p.m.

PRESENT: Cardenas, Jackson, Viegas-Walker
Secretary Caldwell, Executive Director Piedra, Attorney Martyn Evans;

ABSENT: Garcia, Silva

CONSENT AGENDA

1. Moved by Jackson, second by Cardenas, approval of the Financing Authority Minutes for regular meeting of April 3, 2018.

AYES: Cardenas, Jackson, Viegas-Walker
NOES: None
ABSENT: Garcia, Silva
ABSTAINED: None

2. Moved by Cardenas, second by Jackson, approval of Forbearance Agreement between the City of El Centro, Financing Authority, El Centro Regional Medical Center, MUFG Union Bank, N.A. and Preston Hollow, LLC.

AYES: Cardenas, Jackson, Viegas-Walker
NOES: None
ABSENT: Garcia, Silva
ABSTAINED: None

PUBLIC COMMENTS

None

ADJOURNMENT

Being no further business, the meeting was adjourned at 8:13 p.m.

L. Diane Caldwell, Secretary

APPROVED BY

Cheryl Viegas-Walker, Chairperson

Attachment: FA 2018 7-17 (3299 : Financing Authority Minutes)



**SCHEDULED
ACTION ITEM (ID # 3300)**

Approval of Forbearance Agreement between the City of El Centro and Preston Hollow, LLC.

CITY MANAGER'S RECOMMENDATION:

Approval of Forbearance Agreement between the City of El Centro and Preston Hollow, LLC

FISCAL IMPACT:

N/A

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:

El Centro Regional Medical Center (ECRMC) obtained \$125 million bond financing in April 2018. The bonds are held by Preston Hollow, LLC. The bond documents state that all gross revenues of ECRMC will be subject to a DACA (Deposit Account Control Agreement) between ECRMC, its depository bank, and the Trustee, and that the DACA will be in place by June 30, 2018. However, it has not been possible for ECRMC to open a DACA with its current bank, Wells Fargo, without losing the opportunity to collect interest earned through daily sweeps of its operating account.

DISCUSSION:

Currently, all of ECRMC's payor (government and private) direct receivables into the same ECRMC bank account (the "Operating Account.") In order to implement a DACA, Wells Fargo requires that the funds initially be deposited by payor into different ECRMC accounts, depending on whether the source of funds is the government or private payor. The DACA cannot apply to the account where the government payor receivables are initially received. However, the DACA can be applied to a different account into which all the receivables (government and private) are swept on a daily or other regular basis.

Federal anti-pledge regulations prohibit Medicare and Medicaid receivables from being pledged on a standard DACA. Wells Fargo takes the position that, unless the initial receipt of payor funds are directed to new accounts, it is unlawful for them to execute a DACA on the Operating Account. Therefore, it will take approximately one year for ECRMC to notify all of its payor to direct funds to a different account, and for that switch to become effective. Once that is done, and the requisite new bank accounts are

established, Wells Fargo will enter into a DACA.

Preston Hollow has agreed to waive the DACA requirement for one year, until June 30, 2019 as documented in the Forbearance Agreement approved by the City Council on July 17, 2018. Preston Hollow and ECRMC now have agreed to an extension of that agreement for an additional one-year period on the same terms and conditions. Dr. Edward has signed the Extension of the Forbearance Agreement, as existing resolutions provide sufficient authority for him to sign it without a Board vote.

CONCLUSION:

Approval of Forbearance Agreement between the City of El Centro and Preston Hollow, LLC.

ATTACHMENTS:

- Forbearance Agreement (PDF)

FORBEARANCE AGREEMENT

THIS FORBEARANCE AGREEMENT (this “**Agreement**”), dated as of June 30, 2019, is 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**”).

W I T N E S S E T H:

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 “**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 Prior Forbearance Agreement; and (2) the Medical Center agreed to take steps to comply with the DACA-Related Covenants;

WHEREAS, the Medical Center reasonably believes that it will not be able to satisfy the DACA-Related Covenants of the Prior Forbearance Agreement by June 30, 2019;

WHEREAS, the failure by the Medical Center to satisfy the DACA-Related Covenants by June 30, 2019 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 forbear until June 30, 2020 from exercising their rights and remedies arising as a result of the occurrence of the Specified Default 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 forbearance subject to the terms and conditions of this Agreement.

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 Agreement.

PART III FORBEARANCE; COVENANTS

SUBPART 3.1 Forbearance.

(a) Subject to compliance by the El Centro Parties with the terms and conditions of this Agreement, the Beneficial Owner and the Trustee, at the direction of the Beneficial Owner which is hereby given, agree to forbear from exercising their rights and remedies under the Bond Agreements arising from the Specified Defaults during the period (the “**Forbearance Period**”) commencing on the date hereof and ending on the earlier to occur of (i) June 30, 2020, and (ii) the date on which any Termination Event (as defined below) occurs (the “**Termination Date**”). Notwithstanding the foregoing, the forbearance 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 agreement hereunder to forbear 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 Agreement or (ii) any Purchase Agreement Default or Event of Default under the Trust Agreement, other than the Specified Default, or a default under this Agreement.

SUBPART 3.2 Covenants of the Medical Center. In order to induce the Trustee and the Beneficial Owner to enter into this Agreement, the Medical Center hereby covenants and agrees that at all times during the Forbearance 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, 2020. 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, 2020. For purposes of this Agreement, 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 Agreement and the transactions contemplated herein.

PART IV
MISCELLANEOUS

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

SUBPART 4.2 Instrument Pursuant to Bond Agreements. This Agreement 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 Agreement, (b) it is duly authorized to, and has been authorized by all necessary action, to execute, deliver and perform this Agreement, and (c) after giving effect to this Agreement, 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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 Agreement 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: Timothy P. Miller
Title: Vice President

Preston Hollow Capital, LLC

By: _____
Name: Clifford Weiner
Title: Managing Director

Attachment: Forbearance Agreement (3300 : DACA Forbearance Agreement)