

HAYWARD SUCCESSOR AGENCY OVERSIGHT BOARD

RESOLUTION NO. 2015-\_\_

A RESOLUTION OF THE OVERSIGHT BOARD OF THE HAYWARD SUCCESSOR AGENCY RATIFYING OVERSIGHT BOARD'S APPROVAL OF THE RE-ENTRY AGREEMENT PURSUANT TO HEALTH AND SAFETY CODE SECTIONS 34178(a) and 34180(h), CLARIFYING THE OUTSTANDING BALANCE UNDER THE RE-ENTRY AGREEMENT AND DIRECTING THE CITY MANAGER TO TAKE ALL ACTIONS NECESSARY TO EFFECTUATE REQUIREMENTS ASSOCIATED WITH THIS RESOLUTION

WHEREAS, on September 23, 1975, the City of Hayward (the "City") and the Redevelopment Agency of the City of Hayward (the "Dissolved RDA"), entered into that certain repayment agreement, as amended from time to time (the "Repayment Agreement"). Under the Repayment Agreement the City loaned City funds to the Dissolved RDA (the "City Loan") to facilitate implementation of the legitimate redevelopment program for the Downtown Hayward Redevelopment Project Area; and

WHEREAS, in early 2011, the Dissolved RDA made various payments to the City in the amount of \$2,220,000 (the "Repayment Amount"), in accordance with the terms of the Repayment Agreement; and

On February 1, 2012, pursuant to ABx1 26 (as amended by AB 1484, the "Dissolution Statutes") the Dissolved RDA, along with all redevelopment agencies in the State of California, was dissolved, and all assets and obligations of the Dissolved RDA were transferred by operation of law to the separate legal entity known as the Hayward Successor Agency (the "Successor Agency"); and

WHEREAS, as allowed under the Redevelopment Law, through the adoption of Oversight Board Resolution No. 2012-05, on May 01, 2012, the Oversight Board approved the re-entry of the Repayment Agreement, and accordingly the Successor Agency and the City reentered into the Repayment Agreement pursuant to Health and Safety Code Sections 34178(a) and 34180(h) (the "Re-entry Agreement"). At the time the Re-entry Agreement was approved and executed the outstanding obligation was estimated to be \$7,789,843 (excluding the Repayment Amount which had been credited toward the initial outstanding obligation); and

WHEREAS, the Successor Agency hired an accountant, approved by the Auditor-Controller, to prepare the Other Funds and Accounts ("Non-Housing Fund") Due Diligence Review, which was prepared and approved pursuant to the requirements of Health and Safety Code Section 34179.5 and 34179.6 (the "Non-Housing Fund DDR"). The Non-Housing Fund DDR did not require the return of the Repayment Amount; and

WHEREAS, the Successor Agency submitted the Non-Housing Fund DDR to the Department of Finance (the "Department"), for the Department's review of the Non-Housing Fund DDR. By letter dated August 8, 2013 (the "Notification Letter") the Department asserted

its authority to adjust the DDR distribution payment pursuant to Health and Safety Code Section 34179.6(d) and required the Successor Agency to, remit the entire \$2,220,000 Repayment Amount for distribution to other taxing entities; and

WHEREAS, as a result of the Department's adjustment of the required distribution payments under the Non-Housing Fund DDR and the City's return of the entire \$2,220,000 of the Repayment Amount to the Successor Agency, the outstanding obligation under the Re-Entry Agreement is required to be increased by the Repayment Amount; and

WHEREAS, two separate recently published appellate decisions have upheld the validity and enforceability of re-entered agreements that were approved by a successor agency's oversight board and authorized between February 1, 2012 and June 27, 2012; and

WHEREAS, consistent with the appellate decisions, in correspondence issued by the Department on May 14, 2015 (the "Re-Entry Agreement Correspondence"), the Department announced that the Department would no longer seek to challenge re-entered agreements, if such agreements were approved by a successor agency's oversight board between February 1, 2012 and June 27, 2012; and

WHEREAS, the Successor Agency's Oversight Board approval of re-entry into the Re-Entry Agreement, on May 21, 2012 by adoption of Resolution 2012-05, was within the precise time frame referred to in the Re-Entry Agreement Correspondence; and

WHEREAS, pursuant to Oversight Board Resolution 2012-05 and in accordance with Health and Safety Code Sections 34178(a) and 34180(h) and the appellate court decisions, the amounts owed under the Re-Entry Agreement are due and payable and constitute an enforceable obligation of the Successor Agency; and

WHEREAS, because the repayment of obligations due under the Re-Entry Agreement are authorized under Health and Safety Code Sections 34178(a) and 34180(h), the Re-Entry Agreement is not subject to the repayment schedule and other restrictions imposed under Health and Safety Code Section 34191.4(b)(2); and

WHEREAS, the purpose of this Resolution is simply to clarify that because the Repayment Amount was returned by the City to the Successor Agency, the total outstanding obligation due under the Re-Entry Agreement is approximately \$10,180,526 (the "Outstanding Obligation"); and

WHEREAS, subject to the clarification contained in this Resolution, Oversight Board Resolution 2012-05 and the Re-Entry Agreement remain unmodified and continue in full force and effect; and

WHEREAS, the Successor Agency must prepare "Recognized Obligation Payment Schedules" ("ROPS") that enumerate the enforceable obligations and expenses of the Successor Agency for each successive six-month fiscal period until the wind down and disposition of assets of the Dissolved RDA has been completed; and

WHEREAS, the Successor Agency staff has prepared a ROPS for the six-month fiscal period commencing on January 1, 2016 and continuing through June 30, 2016 ("ROPS 15-16B") which lists the Re-Entry Agreement, identifies the Outstanding Obligation and request repayment during the ROPS 15-16B period in an amount allowed under the terms of the Re-Entry Agreement; and

WHEREAS, the public interest is served by confirming the validity of the Re-Entry Agreement and providing a mechanism for the City's general fund to be reimbursed for the monies loaned to the Dissolved RDA. The public has benefited from the improved services, redeveloped facilities, and other redevelopment activities performed by the Dissolved RDA that would not otherwise have occurred without the loan from the City. No public benefit is obtained in denying the City reimbursement for the funds contributed to these projects and thereby limiting City services in the future due to diminished funds; and

WHEREAS, the accompanying staff report, Repayment Agreement, the Re-Entry Agreement, Oversight Board Resolution 2012-05, the Re-Entry Agreement Correspondence and appellate decisions (collectively, the "Supporting Documents") provide supporting information upon which the actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED that the Oversight Board to the Successor Agency for the Redevelopment Agency of the City of Hayward hereby finds, resolves and determines, that the foregoing recitals are true and correct, and, together with the Supporting Documents and the information provided by the Successor Agency staff and the public, form the basis for the approvals, findings, resolutions, and determinations set forth below.

BE IT FURTHER RESOLVED that the Oversight Board hereby reaffirms Oversight Board Resolution 12-05 and its previous determination that the Re-Entry Agreement constitutes an "enforceable obligation" and "recognized obligation" for all purposes of the Dissolution Statutes and as such should be included as an obligation of the Successor Agency under the Successor Agency's ROPSs until such time as the entire Outstanding Obligation has been repaid.

BE IT FURTHER RESOLVED that nothing in this Resolution shall abrogate, waive, impair or in any other manner affect Oversight Board Resolution 12-05 and the Re-Entry Agreement, other than clarifying the Outstanding Obligation under the Re-Entry Agreement.

BE IT FURTHER RESOLVED that the Oversight Board hereby finds and declares that confirming the validity of the Re-Entry Agreement and providing a mechanism for the City's general fund to be reimbursed for the monies loaned to the Dissolved RDA which were used for redevelopment purposes serves the public interest and no public benefit is obtained in denying the City reimbursement for the funds contributed to these projects and thereby limiting City services in the future due to diminished funds.

BE IT FURTHER RESOLVED that the Oversight Board hereby authorizes and directs the City Manager, acting on behalf of the Successor Agency, to execute the documents and

instruments as are appropriate, in consultation with the City Attorney, acting in the capacity of counsel to the Successor Agency, to effectuate and implement the terms of this Resolution;

BE IT FURTHER RESOLVED that this Resolution shall take effect at the time and in the manner prescribed in Health and Safety Code Section 34179(h).

HAYWARD, CALIFORNIA, September 23, 2015

ADOPTED BY THE FOLLOWING VOTE:

AYES: BOARD MEMBERS:

NOES: BOARD MEMBERS:

ABSTAIN: BOARD MEMBERS:

ABSENT: BOARD MEMBERS:

ATTEST: \_\_\_\_\_  
Chair of the Oversight Board