

# **CITY OF HAYWARD**

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
[www.Hayward-CA.gov](http://www.Hayward-CA.gov)



CITY OF  
**HAYWARD**  
HEART OF THE BAY

## **Agenda**

**Tuesday, December 3, 2019**

**7:00 PM**

**Council Chambers**

**City Council**

**CITY COUNCIL MEETING****CALL TO ORDER Pledge of Allegiance: Council Member Lamnin****ROLL CALL****CLOSED SESSION ANNOUNCEMENT****PUBLIC COMMENTS**

*The Public Comment section provides an opportunity to address the City Council on items not listed on the agenda or Information Items. The Council welcomes your comments and requests that speakers present their remarks in a respectful manner, within established time limits, and focus on issues which directly affect the City or are within the jurisdiction of the City. As the Council is prohibited by State law from discussing items not listed on the agenda, your item will be taken under consideration and may be referred to staff.*

**ACTION ITEMS**

*The Council will permit comment as each item is called for the Consent Calendar, Public Hearings, and Legislative Business. In the case of the Consent Calendar, a specific item will need to be pulled by a Council Member in order for the Council to discuss the item or to permit public comment on the item. Please notify the City Clerk any time before the Consent Calendar is voted on by Council if you wish to speak on a Consent Item.*

**CONSENT**

1. [MIN 19-145](#) Minutes of the Special Joint Meeting of the City Council/  
Hayward Housing Authority Board/Hayward Redevelopment  
Successor Agency Board/Hayward Public Financing Authority  
Board on November 19, 2019

**Attachments:** [Attachment I Draft Minutes of 11/19/2019](#)

2. [CONS 19-779](#) Adoption of Ordinance Establishing a Fire Prevention Code for  
the City Of Hayward; Adopting the California Fire Code, 2019  
Edition, Prescribing Regulations Governing Conditions  
Hazardous to Life And Property From Fire or Explosion;  
Providing for the Issuance of Permits and Collection of Fees;  
Providing for Penalties for Violation, and Repealing Ordinance  
No. 16-23, As Amended, and All Other Ordinances and Parts of  
Ordinances in Conflict Therewith

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Summary of Ordinance](#)

3.     [CONS 19-780](#)     Adoption of Ordinance Establishing a Building Code for the City of Hayward; Regulating the Construction, Alteration, Repair, And Maintenance of Structures; Providing for the Issuance of Permits and Collection of Fees; Repealing Chapter 9 Article 1, and all Amendments Thereto

**Attachments:**     [Attachment I Staff Report](#)  
                          [Attachment II Summary of Ordinance](#)

4.     [CONS 19-762](#)     Adopt Resolutions Authorizing the City Manager to Execute an Agreement with Silverado Contractors, Inc. in an Amount Not-to-Exceed \$3,901,150, for the Deconstruction of the City Center Building and Appropriate Funds

**Attachments:**     [Attachment I Staff Report](#)  
                          [Attachment II Resolution Awarding Contract](#)  
                          [Attachment III Resolution Appropriating Funds](#)  
                          [Attachment IV Bid Results](#)  
                          [Attachment V Demo CEQA Study](#)

5.     [CONS 19-623](#)     Transmittal of the Annual Mitigation Fee Act Report (AB1600)

**Attachments:**     [Attachment I Staff Report](#)  
                          [Attachment II Resolution](#)  
                          [Attachment III FY 19 AB 1600 Connection Fees](#)

6.     [CONS 19-759](#)     Adopt a Resolution Authorizing the City Manager to Execute Three Agreements Related to the Bay Area Water Supply and Conservation Agency Pilot Water Transfer

**Attachments:**     [Attachment I Staff Report](#)  
                          [Attachment II Resolution](#)  
                          [Attachment III BAWSCA Pilot Water Transfer Map](#)

7.     [CONS 19-754](#)     Adopt a Resolution Authorizing the City Manager to Purchase the Tax-Delinquent Real Property Located at 1032 Central Boulevard and Enter Into a Purchase and Sale Agreement with the County of Alameda

**Attachments:**     [Attachment I Staff Report](#)  
                          [Attachment II Resolution](#)  
                          [Attachment III Purchase and Sale Agreement](#)  
                          [Attachment IV Site Map](#)

8.        [CONS 19-761](#)      Adopt Resolutions Authorizing the City Manager to Execute a Professional Services Agreement with Black & Veatch Corporation to Prepare a Water System Risk and Resilience Assessment and Emergency Response Plan and Appropriate \$228,000

**Attachments:**    [Attachment I Staff Report](#)  
[Attachment II Resolution Awarding Contract](#)  
[Attachment III Appropriation Resolution](#)

9.        [CONS 19-763](#)      Adopt a Resolution Authorizing for the City Manager to Execute a Professional Services Agreement (PSA) with Pavement Engineering Inc., (PEI) for the Preliminary Cost Impact Estimate and the Preparation of the Plans, Specifications, and Final Estimates for the Old Highlands Homeowners Association (OHHA) Pavement Rehabilitation Project in an Amount Not-to-Exceed \$205,000

**Attachments:**    [Attachment I Staff Report](#)  
[Attachment II Resolution](#)

10.       [CONS 19-772](#)      Adopt a Resolution Authorizing the City Manager to Enter into an Exclusive Negotiating Rights Agreement with Trumark Properties, LLC, for the Proposed Development of Parcel Group 5: Bunker Hill

**Attachments:**    [Attachment I Staff Report](#)  
[Attachment II Resolution](#)

11.       [CONS 19-789](#)      Adopt a Resolution Approving the Memorandum of Understanding between the City of Hayward and the Hayward Police Management Unit (HPMU) for the period of July 1, 2019 through June 30, 2023

**Attachments:**    [Attachment I Staff Report](#)  
[Attachment II Resolution](#)

## WORK SESSION

*Work Session items are non-action items. Although the Council may discuss or direct staff to follow up on these items, no formal action will be taken. Any formal action will be placed on the agenda at a subsequent meeting in the action sections of the agenda.*

12. [WS 19-062](#) East Bay Dischargers Authority - Discussion of Amended and Restated Joint Exercise of Powers Agreement (Report from Public Works Director Ameri)

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Map of Effluent Disposal System](#)  
[Attachment III Amended JPA](#)  
[Attachment IV Term Extension](#)

#### **PUBLIC HEARING**

13. [PH 19-096](#) Adopt an Ordinance Approving an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (CalPERS) for Local Safety - Police Employees and Authorize the City Manager to Execute the Contract (Report from Assistant City Manager Hurtado)

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Ordinance](#)  
[Attachment III Adopted Resolution](#)  
[Attachment III-a Sample Amendment](#)  
[Attachment IV Summary of Ordinance CalPERS](#)

#### **LEGISLATIVE BUSINESS**

14. [LB 19-053](#) Election of Mayor Pro Tempore for 2020 (Report from City Clerk Lens)

**Attachments:** [Attachment I Staff Report](#)  
[Attachment II Resolution](#)  
[Attachment III List of Mayor Pro Tempore](#)

#### **CITY MANAGER'S COMMENTS**

An oral report from the City Manager on upcoming activities, events, or other items of general interest to Council and the Public.

#### **COUNCIL REPORTS AND ANNOUNCEMENTS**

Council Members can provide oral reports on attendance at intergovernmental agency meetings, conferences, seminars, or other Council events to comply with AB 1234 requirements (reimbursable expenses for official activities).

#### **COUNCIL REFERRALS**

Council Members may bring forward a Council Referral Memorandum (Memo) on any topic to be considered by the entire Council. The intent of this Council Referrals section of the agenda is to provide an orderly means through which an individual Council Member can raise an issue for discussion and possible direction by the Council to the appropriate Council Appointed Officers for action by the applicable City staff.

**ADJOURNMENT****NEXT MEETING, December 17, 2019, 7:00 PM****PUBLIC COMMENT RULES**

*Any member of the public desiring to address the Council shall limit her/his address to three (3) minutes unless less or further time has been granted by the Presiding Officer or in accordance with the section under Public Hearings. The Presiding Officer has the discretion to shorten or lengthen the maximum time members may speak. Speakers will be asked for their name before speaking and are expected to honor the allotted time. Speaker Cards are available from the City Clerk at the meeting.*

**PLEASE TAKE NOTICE**

*That if you file a lawsuit challenging any final decision on any public hearing or legislative business item listed in this agenda, the issues in the lawsuit may be limited to the issues that were raised at the City's public hearing or presented in writing to the City Clerk at or before the public hearing.*

**PLEASE TAKE FURTHER NOTICE**

*That the City Council adopted Resolution No. 87-181 C.S., which imposes the 90-day deadline set forth in Code of Civil Procedure section 1094.6 for filing of any lawsuit challenging final action on an agenda item which is subject to Code of Civil Procedure section 1094.5.*

*\*\*\*Materials related to an item on the agenda submitted to the Council after distribution of the agenda packet are available for public inspection in the City Clerk's Office, City Hall, 777 B Street, 4th Floor, Hayward, during normal business hours. An online version of this agenda and staff reports are available on the City's website. Written comments submitted to the Council in connection with agenda items will be posted on the City's website. All Council Meetings are broadcast simultaneously on the website and on Cable Channel 15, KHRT. \*\*\**

*Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400 or TDD (510) 247-3340.*

*Assistance will be provided to those requiring language assistance. To ensure that interpreters are available at the meeting, interested persons must request the accommodation at least 48 hours in advance of the meeting by contacting the City Clerk at (510) 583-4400.*



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**File #:** MIN 19-145

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Minutes of the Special Joint Meeting of the City Council/ Hayward Housing Authority Board/Hayward Redevelopment Successor Agency Board/Hayward Public Financing Authority Board on November 19, 2019

**RECOMMENDATION**

That the City Council approves the minutes of the Special Joint Meeting of the City Council/ Hayward Housing Authority Board/Hayward Redevelopment Successor Agency Board/Hayward Public Financing Authority Board on November 19, 2019.

**SUMMARY**

The City Council held a special meeting on November 19, 2019.

**ATTACHMENTS**

Attachment I Draft Minutes of 11/19/2019





**SPECIAL JOINT MEETING OF THE CITY COUNCIL/ HAYWARD HOUSING  
AUTHORITY BOARD/HAYWARD REDEVELOPMENT SUCCESSOR AGENCY  
BOARD/HAYWARD PUBLIC FINANCING AUTHORITY BOARD**  
Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, November 19, 2019, 7:00 p.m.

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The Special Joint Meeting of the City Council/ Hayward Housing Authority Board/Hayward Redevelopment Successor Agency Board/Hayward Public Financing Authority Board was called to order by Mayor/Chair Halliday at 7:00 p.m., followed by the Pledge of Allegiance led by Mayor/Chair Halliday.

**ROLL CALL**

Present: COUNCIL/HHAB/HRSAB/HPFAB MEMBERS Zermeño, Márquez, Mendall, Lamnin,  
Wahab, Salinas  
MAYOR/CHAIR Halliday  
Absent: None

**CLOSED SESSION ANNOUNCEMENT**

The City Council convened in closed session at 5:30 p.m., regarding two items: 1) conference with legal counsel pursuant to Government Code 54956.9 regarding Matthew McCrea v. City of Hayward, Workers' Compensation Appeals Board Case No. ADJ11379218, ADJ11379222; and 2) conference with legal counsel pursuant to Government Code 54956.9(d)(1) regarding City of Hayward v. California State University Trustees, Alameda County Superior Court, No. RG 18895213. Mayor Halliday announced the City Council unanimously approved, with Council Member Márquez absent, to add one anticipated litigation case to the closed session agenda because the item came to the attention of the City after the posting of the agenda, and the Council took no reportable action. It was noted that the City Attorney was not present for discussion of the added item. City Attorney Lawson reported there was no reportable action related to Items 1 and 2.

**PUBLIC COMMENTS**

Council Member Lamnin noted November 2019 was designated as Sikh Awareness and Appreciation Month and the Sikh Spirit Alliance celebrated their diversity event in Hayward and awarded the City with a Celebrating Diversity Award for its continued partnership. City Manager McAdoo accepted the award on behalf of the City.

Mayor Halliday shared there was an event last week at the library for a future memorial that will be placed in the Heritage Plaza. She noted the memorial will commemorate an event from 1942 that occurred on Watkins Street where Japanese Americans were ordered to evacuate the City and interned in camps.

Council Member Wahab highlighted the opening of the Hayward Navigation Center on November 18, 2019, praised the hard work of City staff and thanked the City Council for supporting the project.

Mr. Charlie Peters, Clean Air Performance Professionals representative, spoke about the smog check emissions program, transportation and mobility challenge, and submitted related documents.

Mr. Kim Huggett, Hayward Chamber of Commerce President, announced four events: the grand opening of Prevost; the event for emerging biomedical companies; Hayward's Businessperson, Education, Police Officer and Firefighter of the Year; and the Light Up the Season holiday celebration.

Mr. Jim Drake, Hayward resident, complimented Solid Waste Program Manager Krump for helping with Waste Management garbage related issues.

Mr. Victor Aralleno, Hayward resident, shared there was stabbing on a South Hayward BART train, and he was concerned about public safety on the train and in the station.

## **PRESENTATION**

Ms. Samantha Caygill, Regional Public Affairs Manager for the East Bay Division of the League of California Cities, presented Council Member Lamnin with a certificate and pin for her achievement on the Mayors and Council Members Torch Program - Level III Leadership in Action, and for her many contributions to the League of California Cities.

Consent Items 3, 4 and 6 were removed from the Consent Calendar for discussion or separate vote.

## **CONSENT**

1. Minutes of the Special City Council Meeting on October 29, 2019 **MIN 19-140**  
It was moved by Council Member Márquez, seconded by Council Member Lamnin, and carried unanimously, to approve the minutes of the Special City Council meeting on October 29, 2019.
2. Minutes of the City Council Meeting on November 5, 2019 **MIN 19-141**  
It was moved by Council Member Márquez, seconded by Council Member Lamnin, and carried unanimously, to approve the minutes of the City Council meeting on November 5, 2019.
3. Adopt a Resolution Approving Plans and Specifications and Call for Bids for the Hayward High-Speed Fiber Optic Network Installation Project **CONS 19-732**

Staff report submitted by Deputy City Manager Ott and Public Works Director Ameri, dated November 19, 2019, was filed.

In response to Council Member Wahab, City Manager McAdoo noted that the Hayward High-Speed Fiber Optic Network Installation Project would be subject to the City's community workforce agreement.



**SPECIAL JOINT MEETING OF THE CITY COUNCIL/ HAYWARD HOUSING  
AUTHORITY BOARD/HAYWARD REDEVELOPMENT SUCCESSOR AGENCY  
BOARD/HAYWARD PUBLIC FINANCING AUTHORITY BOARD  
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It was moved by Council Member Márquez, seconded by Council Member Mendall, and carried unanimously, to approve the following:

Resolution 19-214, "Resolution Approving Plans and Specifications for the Hayward High-Speed Fiber Optic Network Installation Project Phase 1, Project No. 07275, and Call for Bids"

4. Adopt a Resolution Approving Plans and Specifications and Call for Bids After Approval from Federal Aviation Administration (FAA) and the Division of State Architect (DSA) for the Fire Station 6 and Fire Training Center Project **CONS 19-733**

Staff report submitted by Public Works Director Ameri and Fire Chief Contreras, dated November 19, 2019, was filed.

In response to Council Member Wahab, Public Works Director Ameri noted there were provisions in place for late fees should the contract go over the specified project timeline and for completion of the project.

It was moved by Council Member Márquez, seconded by Council Member Lamnin, and carried unanimously, to approve the following:

Resolution 19-215, "Resolution Approving Plans and Specifications for the Fire Station 6 and Fire Training Center Project, Project Nos. 07481 and 07482 and Call for Bids"

5. Adopt a Resolution Authorizing the City Manager to Accept and Appropriate \$16,700 from the State of California Department of Alcoholic Beverage Control for Operations to Prevent Sales of Alcohol to Minors **CONS 19-738**

Staff report submitted by Police Chief Chaplin, dated November 19, 2019, was filed.

It was moved by Council Member Márquez, seconded by Council Member Lamnin, and carried unanimously, to approve the following:

Resolution 19-209, "Authorization for the City Manager to Accept and Appropriate \$16,700 from the State of California Department of Alcoholic Beverage Control"

6. Adoption of FY 2020 Statement of Investment Policy and Delegation of Authority **CONS 19-741**

Staff report submitted by Deputy Finance Director Gonzales and Finance Director Claussen, dated November 19, 2019, was filed.

It was moved by Council/HHAB/HRSAB/HPFAB Member Lamnin, seconded by Council/HHAB/HRSAB/HPFAB Member Zermeño, and carried with the following vote, to approve the following:

AYES: COUNCIL/HHAB/HRSAB/HPFAB MEMBERS Zermeño, Márquez, Mendall, Lamnin, Salinas  
MAYOR/CHAIR Halliday  
NOES: COUNCIL/HHAB/HRSAB/HPFAB MEMBER Wahab  
ABSENT: NONE  
ABSTAIN: NONE

Resolution 19-216, “Resolution Reaffirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance”

Resolution HHA 19-02, “Resolution Reaffirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance”

Resolution HRSA 19-02, “Resolution of the City Council of the City of Hayward, Acting as the Governing Board for the Redevelopment Successor Agency of the City of Hayward Reaffirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance”

Resolution HPFA 19-01, “Resolution Affirming the Statement of Investment Policy and Renewing the Delegation of Authority to Make Investments to the Director of Finance”

7. Adopt a Resolution Establishing the City Contribution for Active and Retiree Medical Premiums Set by the California Public Employee Retirement System (CalPERS) for Calendar Year 2020 Pursuant to California Government Code Section 22892 of the Public Employees’ Medical and Hospital Care Act **CONS 19-746**

Staff report submitted by Assistant City Manager Hurtado, dated November 19, 2019, was filed.

It was moved by Council Member Márquez, seconded by Council Member Lamnin, and carried unanimously, to approve the following:



**SPECIAL JOINT MEETING OF THE CITY COUNCIL/ HAYWARD HOUSING  
AUTHORITY BOARD/HAYWARD REDEVELOPMENT SUCCESSOR AGENCY  
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Resolution 19-210, "Resolution Agreeing to Meet the Minimum Employer Contribution toward Medical Cost as Set by California Public Employees Retirement System One Hundred Thirty-Nine Dollars (\$139) per Month for Calendar Year 2020"

8. Adopt a Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Iteris, Inc. to Procure an Automated Traffic Signal Performance Measures (ATSPM) System in an Amount Not-To-Exceed \$328,250 and Appropriate \$328,250 **CONS 19-748**

Staff report submitted by Public Works Director Ameri, dated November 19, 2019, was filed.

It was moved by Council Member Márquez, seconded by Council Member Lamnin, and carried unanimously, to approve the following:

Resolution 19-211, "Resolution Authorizing the City Manager to Execute a Professional Services Agreement with Iteris, Inc., for the Automated Traffic Signal Performance Measures (ATSPM) System"

Resolution 19-212, "Resolution Appropriating Funds from the Street System Improvements Fund (Fund 450) for the Automated Traffic Signal Performance Measures (ATSPM) System, Idea Grant Project No. 05292"

9. Adopt a Resolution Authorizing the Submittal of Senate Bill 2 Planning Grant to Accelerate Housing Production and to Receive Program Funds **CONS 19-756**

Staff report submitted by Development Services Director Simpson, dated November 19, 2019, was filed.

It was moved by Council Member Márquez, seconded by Council Member Lamnin, and carried unanimously, to approve the following:

Resolution 19-213, "Resolution Authorizing Application for, and Receipt of, Senate Bill 2 Planning Grants Program Funds"

10. Measure C (2014 City's Sales and Use Tax) Annual Report **CONS 19-770**

Staff report submitted by Finance Director Claussen and Deputy Finance Director Gonzales, dated November 19, 2019, was filed.

It was moved by Council Member Márquez, seconded by Council Member Lamnin, and carried unanimously, to receive the City's Measure C Annual Report.

## **PUBLIC HEARING**

11. Route 238 Corridor Land Development - Parcel Group 6 Carlos Bee Quarry Project: Adopt a Resolution Certifying an Addendum to the 2014 General Plan Environmental Impact Report, Approval of Master Development Plan, and Authorization for the City Manager to Issue a Request for Proposals for the Disposition and Development of the Parcel Group (Report from City Manager McAdoo) **PH 19-088**

Staff report submitted by Deputy City Clerk Ott, dated November 19, 2019, was filed.

City Manager McAdoo announced the report and introduced Deputy City Manager Ott who provided a synopsis of the report noting the addition of an attachment – Attachment VIII from the City's California Environmental Quality Act consultant, LSA, to confirm that the addendum to the Hayward General Plan Environmental Impact Report adequately addresses any biological impacts and mitigations to the creek and riparian habitat from the trail development.

Discussion ensued among Council Members and City staff regarding: Geological Hazard Abatement District analysis; on-site affordable housing units, mixed of unit size and affordable by design and Affordable Housing Ordinance requirements; student housing; sending plans to the Alameda County Mosquito Abatement District; community workforce agreement for the proposed development; Purchase and Sale Agreement and Disposition Development Agreement with Caltrans; unit zoning density; Friends of San Lorenzo Creek recommendations for a 20-foot creek setback; 1.5-acre neighborhood park and language in the Request for Proposal; priority to individuals who live, work, and attend schools in Hayward; and a goal to be public transit-oriented development.

Mayor Halliday opened the public hearing at 8:21 p.m.

Mr. Alan Fishman, retired teacher, urged the Council to require developers to include watershed and habitat restoration into every development project.

Mr. Bruce King, Friends of San Lorenzo Creek representative, urged the Council to establish a creek setback, with no development in the setback, and with restoration to create a creek buffer and a riparian and wildlife corridor.

The following speakers spoke on behalf of their members and asked the Council to require a community workforce agreement for the development of Parcel Group 6, to pay standard wages and to give construction workers who live in Hayward the opportunity to work in their community.



**SPECIAL JOINT MEETING OF THE CITY COUNCIL/ HAYWARD HOUSING  
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Mr. Alexander Alvarez, Hayward resident and Sheet Metal Local Union apprentice  
Mr. Antonio Munoz, Hayward resident and Carpenter's Union field representative  
Mr. Jeff Dixon, Building and Construction Trades Council representative  
Mr. Fernando Estrada, Hayward Laborers Local 304 Business Manager

Professor Sherman Lewis shared information about the geotechnical evaluation, provided information about the price points and economic reductions below the 110% housing requirements, supported the development including stormwater/drainage, and favored incorporating the Bayview Village Concept into the development of the site.

Mr. Don Osborne, Hayward resident, suggested an e-scooter charging station to alleviate parking and traffic congestion on the streets traveling to the university.

Mayor Halliday closed the public hearing at 8:40 p.m.

Council Member Wahab offered a motion per staff's recommendation with the three additional requirements: include a community workforce agreement to be negotiated with the Alameda County Building and Construction Trades Council for the development of Parcel Group 6, include on-site affordable housing requirement consistent with the City's Affordable Housing Ordinance, and provide a 20-foot creek setback to minimize impact to wildlife and the riparian corridor.

Council Member Márquez seconded the motion.

Council Member Zermeño suggested a goal of having different size condominiums with less bedrooms and supported the community workforce agreement requirement.

Council Member Lamnin offered two friendly amendments: 1) include a goal to encourage diversity in housing types; and 2) set the affordable housing units to 10% of the total units for for-sale units and 10% (up from 7%) of the total units for rental units.

Council Member Wahab accepted the friendly amendments.

Council Member Márquez accepted the first friendly amendment but not the second. She favored adding the City Manager McAdoo's suggestion that proposals would be looked upon favorably if they exceed the City's affordable housing requirements.

Council Member Wahab was fine with the modified friendly amendment.

Mayor Halliday disclosed she lives within 1,000 feet of the proposed area, but that the project does not directly affect her financially and decided to participate on the item. She

noted she would be supporting the motion and the inclusion of the community workforce agreement.

Council Member Salinas expressed support for the motion and the inclusion of the community workforce agreement requirement.

It was moved by Council Member Wahab, seconded by Council Member Márquez, and carried unanimously, to approve the resolutions with the following additions: that the proposal include a community workforce agreement requirement to be negotiated with the Alameda County Building and Construction Trades Council; have on-site affordable housing requirement consistent with the City's Affordable Housing Ordinance; that the project provide a 20-foot creek setback to minimize impact to wildlife and riparian corridor; have a goal to encourage diversity in housing types; and include language encouraging applicants to exceed the City's Affordable Housing Ordinance requirements:

Resolution 19-217, "Resolution Adopting and Certifying an Addendum to the Previously Certified 2014 Hayward General Plan Environmental Impact Report and Mitigation Monitoring and Reporting Program Pertaining to the Route 238 Corridor Lands Development Parcel Group 6: Carlos Bee Quarry"

Resolution 19-218, "Resolution Approving Master Development Plan and Authorizing the City Manager to Issue a Request for Proposals for the Sale of Route 238 Corridor Lands Parcel Group 6: Carlos Bee Quarry"

Mayor Halliday called for a recess at approximately 9:00 p.m., and reconvened the City Council meeting at 9:07 p.m.

## **LEGISLATIVE BUSINESS**

### **12. Adopt a Resolution Establishing a Business Closure Day in Observance of Cesar Chavez's Birthday (Report from Assistant City Manager Hurtado) **LB 19-051****

Staff report submitted by Assistant City Manager Hurtado, dated November 19, 2019, was filed.

Assistant City Manager Hurtado provided a synopsis of the staff report.

Council Member Márquez expressed disappointment that non-sworn bargaining groups were not interested in exchanging a recognized holiday for the observance of Cesar Chavez's birthday.

Council Member Lamnin asked for consideration to have the libraries open on Cesar Chavez's day.





**SPECIAL JOINT MEETING OF THE CITY COUNCIL/ HAYWARD HOUSING  
AUTHORITY BOARD/HAYWARD REDEVELOPMENT SUCCESSOR AGENCY  
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Council Member Salinas suggested designating a Cesar Chavez Teach-in on the Monday before or the day of Cesar Chavez's birthday during the lunch hour in lieu of a business closure.

Mayor Halliday opened the public hearing at 9:17 p.m.

Mr. Carl Gorringer expressed concern for parents who work and might not know where to take their kids when schools and libraries are closed.

Mayor Halliday closed the public hearing at 9:19 p.m.

Council Member Márquez offered a motion per staff's recommendation and thanked Council Member Salinas and Council Member Zermeño for partnering with her in submitting the April referral.

Council Member Salinas seconded the motion and withdrew his idea of having a Cesar Chavez Teach-in in lieu of a business closure.

Council Member Márquez noted that La Alianza de Hayward has been instrumental in honoring Cesar Chavez's life and noted the City and La Alianza could partner in commemorating Cesar Chavez during the business closure.

Council Member Márquez asked staff to get back to Council regarding Council Member Lamnin's question about consideration for the libraries to stay open during the business closure.

Mayor Halliday expressed disappointment that non-sworn bargaining groups were not interested in exchanging a recognized holiday for the observance of Cesar Chavez's birthday and thought that instituting a business closure was a disservice to the community. She preferred the City declare the Saturday closest to the birthday as Cesar Chavez Day in Hayward and work with La Alianza de Hayward to organize a program at the library to commemorate Cesar Chavez's legacy.

Council Member Wahab expressed she would not support the motion because a business closure was a disservice to the community. Council Member Wahab offered a friendly amendment to the motion for the City to stay open and dedicate the lunch hour at noon to have a brown bag seminar or conversation about Cesar Chavez's legacy.

Council Member Márquez did not accept the friendly amendment.

Council Member Mendall expressed he favored the idea of a teach-in at the library to honor the life of Cesar Chavez given the bargaining units were not willing to swap a holiday.

Council Member Zermeño was also disappointed that employees could not agree to a holiday swap and offered a friendly amendment to the motion by declaring the Saturday closest to Cesar Chavez’s birthday as Cesar Chavez Day and have La Alianza de Hayward organize the celebration.

Council Member Márquez did not accept the friendly amendment.

It was moved by Council Member Márquez, seconded by Council Member Salinas, and carried with the following vote, to approve the resolution:

AYES: COUNCIL MEMBERS Zermeño, Márquez, Mendall, Lamnin, Salinas  
NOES: COUNCIL MEMBER Wahab  
MAYOR Halliday  
ABSENT: None  
ABSENTAIN: None

Resolution 19-219, “Resolution Establishing a Business Closure in Observance of Cesar Chavez Day”

13. Introduction of an Ordinance Adopting the California Code of Regulations 2019 Edition of Title 24, Including the 2019 Building, Fire, Plumbing, Mechanical, Electrical, Energy and Green Building Codes; and Related Amendments, Into the Hayward Municipal Code (Report from Development Services Director Simpson and Fire Chief Contreras) **LB 19-048**

Staff report submitted by Development Services Director Simpson and Fire Chief Contreras, dated November 19, 2019, was filed.

Development Services Director Simpson announced the report and introduced Chief Building Official Nordahl who provided a synopsis of the report. Deputy Fire Chief Vollmer was available to respond to questions related to the Fire Code.

There being no public comments, Mayor Halliday opened and closed the public hearing at 9:37 p.m.

Council Member Mendall offered a motion per staff’s recommendation with two minor additions to the Fire Prevention Code of the City of Hayward as follows: add the language, “Chapter 3, Article 14 – Fire Prevention Code of the City of Hayward” to the end of Section 1; and add the subheading, “Section 4901 – General” under Chapter 9 – Wildland-Urban Interface Fire.

Council Member Zermeño seconded the motion.



**SPECIAL JOINT MEETING OF THE CITY COUNCIL/ HAYWARD HOUSING  
AUTHORITY BOARD/HAYWARD REDEVELOPMENT SUCCESSOR AGENCY  
BOARD/HAYWARD PUBLIC FINANCING AUTHORITY BOARD  
Council Chambers  
777 B Street, Hayward, CA 94541  
Tuesday, November 19, 2019, 7:00 p.m.**

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It was moved by Council Member Mendall, seconded by Council Member Zermeño, and carried unanimously, to approve the resolutions and introduce the ordinances with two minor additions to the Fire Prevention Code of the City of Hayward as follows: add the language, "Chapter 3, Article 14 – Fire Prevention Code of the City of Hayward" at the end of Section 1; and add the subheading, "Section 4901 – General" under Chapter 9 – Wildland-Urban Interface Fire:

Resolution 19-220, "Resolution Finding and Determining the Need for Changes or Modifications to the 2019 California Building Code"

Resolution 19-221, "Resolution Finding and Determining the Need for Changes or Modification to the California Fire Code, 2019 Edition"

Introduction of Ordinance 19-\_, "An Ordinance Establishing a Building Code for the City of Hayward; Regulating the Construction, Alteration, Repair, and Maintenance of Structures; Providing for the Issuance of Permits and Collection of Fees; Repealing Chapter 9 Article 1, and all Amendments thereto"

Introduction of Ordinance 19-\_, "An Ordinance Establishing a Fire Prevention Code for the City of Hayward; Adopting the California Fire Code, 2019 Edition, Prescribing Regulations Governing Conditions Hazardous to Life and Property from Fire or Explosion; Providing for the Issuance of Permits and Collection of Fees; Providing for Penalties for Violation, and Repealing Ordinance No. 16-23, as Amended, and all other Ordinances and Parts of Ordinances in Conflict therewith"

### **CITY MANAGER'S COMMENTS**

City Manager McAdoo announced thee items: 1) the Housing Navigation Center at Whitesell Street and Depot Road opened on November 18, 2019, and referrals should be done through the 2-1-1 system and private donations could be done via the City's website; 2) City Hall will close non-emergency services during the week of Thanksgiving and Hayward libraries would follow a modified schedule; and 3) the City was recognized by the United States Environmental Protection Agency, among the top 30 public/private entities, for on-site generation of renewable energy, and praised City staff.

## **COUNCIL REPORTS AND ANNOUNCEMENTS**

Council Member Lamnin spoke on three items: 1) thanked City staff for the work done with opening the Housing Navigation Center and noted contributions toward the Hayward Navigation Center could also be done through BACS via “tinyURL.com/haywardnavigation”; 2) urged everyone to support agencies collecting toys during the Thanksgiving holiday for families in need; and 3) reported she attended a CalPERS meeting and testified before the Board about the continuing rising of pension and healthcare costs.

Council Member Zermeño announced the Keep Hayward Clean and Green Task Force was leading a clean-up/beautification event on November 23, 2019 at Tennyson Park.

Council Member Márquez encouraged the public to sign up for AC Transit, BART, and Nixle alerts; and shared that BART General Manager Robert Powers released a statement about increasing the presence of BART Police personnel throughout the system related to an incident.

Mayor Halliday reported she attended an appreciation service at Glad Tidings Church for former Police Chief Cheryl Boykins and Pastor Chuck Horner in honor of their service to the community. Mayor Halliday added the City Council would not hold a Council meeting on November 26, 2019, due to the Thanksgiving holiday and the City’s business closure.

## **COUNCIL REFERRALS**

There were none.

## **ADJOURNMENT**

Mayor/Chair Halliday adjourned the meeting at 9:53 p.m., in memory of Kaiser Permanente Chief Executive Officer Bernard Tyson.

## **APPROVED**

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Barbara Halliday  
Mayor, City of Hayward  
Chair, Hayward Housing Authority Board  
Chair, Hayward Redevelopment Successor Agency Board  
Chair, Hayward Public Financing Authority Board

## **ATTEST:**

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Miriam Lens  
City Clerk, City of Hayward  
Secretary, Hayward Housing Authority Board  
Secretary, Hayward Redevelopment Successor Agency Board  
Secretary, Hayward Public Financing Authority Board



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-779

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Adoption of Ordinance Establishing a Fire Prevention Code for the City Of Hayward; Adopting the California Fire Code, 2019 Edition, Prescribing Regulations Governing Conditions Hazardous to Life And Property From Fire or Explosion; Providing for the Issuance of Permits and Collection of Fees; Providing for Penalties for Violation, and Repealing Ordinance No. 16-23, As Amended, and All Other Ordinances and Parts of Ordinances in Conflict Therewith

**RECOMMENDATION**

That the Council adopts the Ordinance introduced on November 19, 2019.

**SUMMARY**

This item entails adoption of the California Fire Code with some modifications and amendment of Chapter 3, Article 14 of the Hayward Municipal Code related to the Fire Prevention Code.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Summary of Published Ordinance



**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT:** Adoption of Ordinance Establishing a Fire Prevention Code for the City Of Hayward; Adopting the California Fire Code, 2019 Edition, Prescribing Regulations Governing Conditions Hazardous to Life And Property From Fire or Explosion; Providing for the Issuance of Permits and Collection of Fees; Providing for Penalties for Violation, and Repealing Ordinance No. 16-23, As Amended, and All Other Ordinances and Parts of Ordinances in Conflict Therewith

#### RECOMMENDATION

That the Council adopts the Ordinance introduced on November 19, 2019.

#### SUMMARY

This item entails adoption of the California Fire Code with some modifications and amendment of Chapter 3, Article 14 of the Hayward Municipal Code related to the Fire Prevention Code.

#### BACKGROUND

The Ordinance was introduced by Council Member Mendall at the November 19, 2019, special meeting of the City Council with the following vote:

**AYES:** COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Lamnin, Wahab, Salinas  
MAYOR Halliday

**NOES:** None

**ABSENT:** None

**ABSTAIN:** None

The adoption of the Ordinance included additional language, shown in red text, to two sections as follows.

- Section 1. Effective January 1, 2020, Ordinance No. 16-23 and all amendment thereto, is hereby repealed and in substitution thereof a new fire code for the City of Hayward is hereby enacted as Chapter 3, Article 14 – Fire Prevention Code of the City of Hayward to read as follows:
- CHAPTER 49 – WILDLAND-URBAN INTERFACE FIRE AREA  
SECTION 4901 – GENERAL

#### STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

#### FISCAL IMPACT

There is no fiscal impact associated with this report.

#### PUBLIC CONTACT

The summary of the Ordinance was published in the Hayward Daily Review on Friday, November 29, 2019. Adoption at this time is therefore appropriate.

#### NEXT STEPS

The Hayward Municipal Code and other related documents will be updated accordingly.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



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Kelly McAdoo, City Manager

PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE  
BY THE CITY COUNCIL OF THE CITY OF HAYWARD

AN ORDINANCE ESTABLISHING A FIRE PREVENTION CODE FOR THE CITY OF HAYWARD; ADOPTING THE CALIFORNIA FIRE CODE, 2019 EDITION, PRESCRIBING REGULATIONS GOVERNING CONDITIONS HAZARDOUS TO LIFE AND PROPERTY FROM FIRE OR EXPLOSION; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES; PROVIDING FOR PENALTIES FOR VIOLATION, AND REPEALING ORDINANCE NO. 16-23, AS AMENDED, AND ALL OTHER ORDINANCES AND PARTS OF ORDINANCES IN CONFLICT THEREWITH

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Effective January 1, 2020, this Ordinance, and all amendments thereto, is hereby repealed and in substitution thereof a new fire code for the City of Hayward is hereby enacted as Chapter 3, Article 14.

CHAPTER 3, ARTICLE 14 – FIRE PREVENTION CODE OF THE CITY OF HAYWARD

Section 1. Fire Prevention Code of the City of Hayward, Adoption of California Fire Code

Section 2. Establishment and Duties of the Fire Prevention Office

Section 3. Definitions

Section 4. Amendments Made in the California Fire Code

CHAPTER 1 –SCOPE AND ADMINISTRATION. DIVISION II ADMINISTRATION

Section 104 – General Authority and Responsibilities

104.10.1 Assistance from Other Agency

Section 106 – Fees

106.2.1 Permit Fees

Section 108 - Board of Appeals

108.1 Board of Appeals Established

CHAPTER 2 – DEFINITIONS

Section 202 - General Definitions. High-Rise Building

CHAPTER 5 - FIRE SERVICE FEATURES

Section 503 - Fire Apparatus Access Roads

503.6.1 Key Switches

Section 505 – Premises Identification

505.1 Address Identification

Section 507 - Fire Protection Water Supplies

507.5 Fire Hydrant Systems

507.5.1 Where Required



CHAPTER – 9 FIRE PROTECTION SYSTEMS

Section 903 - Automatic Sprinkler Systems

903.2 Where Required

903.2.21 Existing Buildings

903.2.21.1 Existing Buildings in Hayward Downtown Core Area

903.2.22 Hillside Design and Wildland-Urban Interface

903.2.8.2 Group R-2, Multi-Family Residential, R-2.1, R-4

903.3 Installation Requirements

903.3.1.1 NFPA 13 Sprinkler Systems

903.3.1.2 NFPA 13r Sprinkler System

903.3.1.2.1 Balconies and Decks

903.3.1.3 NFPA 13d Sprinkler System

903.3.1.3.1 Modified NFPA 13d Sprinkler Systems

903.3.5 Water Supply

903.3.5.3 Fire Service Connections

903.3.5.3.1 Fire Service for NFPA 13 Sprinkler Systems

903.3.5.3.2 One- and Two- Family Residential Buildings

903.3.5.4 Water Flow Test Data

903.3.5.4.1 Safety Margin

903.3.10 Post Indicator Valves

903.3.10.1 Control Indicator Valves

903.3.10.2 Other Type Post Indicator Valves

903.4.1 Monitoring

903.4.2 - Alarms

903.4.2.1 Commercial or Industrial Buildings

903.4.2.2 One- and Two- and Multi-Family Residential Buildings

Section 904 – Alternative Automatic Fire-Extinguishing Systems

904.3.5 Monitoring

CHAPTER 49 – WILDLAND-URBAN INTERFACE FIRE AREA

Section 4901 - General

4901.3 Where Required

Section 4902 – Definitions

Section 4905.2.1

Section 4906 General

4906.1 - City of Hayward Hillside Design and Urban/Wildland Interface  
Guidelines

CHAPTER 50 – HAZARDOUS MATERIALS - GENERAL PROVISIONS

Section 5001 – General

5001.5.3 Hazardous Materials Business Plans (HMBP)

Section 5003 - General Requirements

5003.1.5 - Prohibited Location

Section 5004.2.2 – Secondary Containment for Hazardous Materials Liquids and  
Solids

CHAPTER 57 – FLAMMABLE AND COMBUSTIBLE LIQUIDS

Section 5701 - General

5701.4 Permits

5701.4.1 Plans

Section 5703 - General Requirements

5703.1.4 - Prohibited Location

Section 5704 - Storage

5704.1.1 Applicability

Section 5706 – Special Projects

5706.2.8 Dispensing from Tank Vehicles

Appendix B. Fire-Flow Requirements for Buildings

Section B105 - Fire-Flow Requirements for Buildings

B105.1 One- and Two-Family Dwellings

B105.2 Buildings Other Than One- and Two-Family Dwellings, Group R-3  
and R-4 Buildings

Appendix C. Fire Hydrant Locations and Distribution

Table C102.1 Number and Distribution of Fire Hydrants

Appendix D. Fire Apparatus Access Roads

Section D103 Minimum Specifications

D103.2 Grade

D103.3 Turning Radius

Section 5. Appeals

Section 6. Fees

Section 7. Penalties

Section 8. Repeal of Conflicting Ordinances

Section 9. Validity

Section 10. Date of Effect

Section 2. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 19<sup>th</sup> of November 2019, by Council Member Mendall.

This ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 3<sup>rd</sup>, 2019, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance, including the Resolution, are available for examination by the public in the Office of the City Clerk.

Dated: November 29, 2019  
Miriam Lens, City Clerk  
City of Hayward



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-780

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Adoption of Ordinance Establishing a Building Code for the City of Hayward; Regulating the Construction, Alteration, Repair, And Maintenance of Structures; Providing for the Issuance of Permits and Collection of Fees; Repealing Chapter 9 Article 1, and all Amendments Thereto

**RECOMMENDATION**

That the Council adopts the Ordinance introduced on November 19, 2019.

**SUMMARY**

This item entails adoption of the California Building Code with some amendments and codification of the Building Code to become part of Chapter 9, Article 1 of the Hayward Municipal Code.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Summary of Ordinance



DATE: December 3, 2019

TO: Mayor and City Council

FROM: City Clerk

SUBJECT: Adoption of Ordinance Establishing a Building Code for the City of Hayward; Regulating the Construction, Alteration, Repair, And Maintenance of Structures; Providing for the Issuance of Permits and Collection of Fees; Repealing Chapter 9 Article 1, and all Amendments Thereto

#### RECOMMENDATION

That the Council adopts the Ordinance introduced on November 19, 2019.

#### SUMMARY

This item entails adoption of the California Building Code with some amendments and codification of the Building Code to become part of Chapter 9, Article 1 of the Hayward Municipal Code.

#### BACKGROUND

The Ordinance was introduced by Council Member Mendall at the November 19, 2019, special meeting of the City Council with the following vote:

AYES: COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Lamnin, Wahab, Salinas  
MAYOR Halliday

NOES: None

ABSENT: None

ABSTAIN: None

#### STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

#### FISCAL IMPACT

There is no fiscal impact associated with this report.

## PUBLIC CONTACT

The summary of the Ordinance was published in the Hayward Daily Review on Friday, November 29, 2019. Adoption at this time is therefore appropriate.

## NEXT STEPS

The Hayward Municipal Code and other related documents will be updated accordingly.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:

A handwritten signature in black ink, appearing to read 'K McAadoo', is written over a horizontal line.

Kelly McAadoo, City Manager

PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE  
BY THE CITY COUNCIL OF THE CITY OF HAYWARD

AN ORDINANCE ESTABLISHING A BUILDING CODE FOR THE CITY OF HAYWARD; REGULATING THE CONSTRUCTION, ALTERATION, REPAIR, AND MAINTENANCE OF STRUCTURES; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES; REPEALING CHAPTER 9 ARTICLE 1, AND ALL AMENDMENTS THERETO

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. In accordance with state law, effective January 1, 2020, Chapter 9 Article 1 and all amendments thereto, is hereby repealed and in substitution thereof a new Building Code for the City of Hayward is hereby enacted.

BUILDING CODE OF THE CITY OF HAYWARD  
CHAPTER 9 ARTICLE 1

Section 1.00 2019 California Building Codes, Adoption by Reference

Section 2.00 Summary of Local Amendments

Section 3.00 Local Amendments to the Code by Chapter

California Building Code

Chapter 1: Scope and Administration Local Amendments

101.1 Title

101.2.1 Appendices

103.1 Creation of enforcement agency

105.1.1 Annual permit

105.1.2 Annual permit records

105.3.1.1 Expedited Residential Solar Permitting

105.3.1.2 Expedited Electric Vehicle Charging Station Permitting

105.3.2 Time limitation of application

105.5.1 Completion permits

105.5.2 Fees for completion permits

109.2 Schedule of permit fees

109.4.1 Investigation fees for work without a permit

109.6 Refunds

111.3 Temporary occupancy

California Building Code

Chapter 4: Special Detailed Requirements Based on Use and Occupancy  
Local Amendments

California Building Code  
Chapter 9: Fire Protection Systems Local Amendments

California Building Code  
Chapter 17: Structural Tests and Special Inspections Local Amendments  
1705.3 Concrete construction

California Building Code  
Chapter 19: Concrete Local Amendments  
1905.1.7 ACI 318, section 14.1.4

California Building Code  
Appendix O: Emergency Housing

California Residential Code  
Chapter 6: Wall Constriction Local Amendments  
Table R602.10.3(3)  
Table R602.10.3(3)g  
R602.10.4.3.1 Limits on methods GB and PCP

California Residential Code  
Appendix X: Emergency Housing as Amended

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 19<sup>th</sup> day of November 2019, by Council Member Mendall.

This ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 3<sup>rd</sup>, 2019, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance, including the Resolution, are available for examination by the public in the Office of the City Clerk.

Dated: November 29, 2019  
Miriam Lens, City Clerk  
City of Hayward





# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-762

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT**

Adopt Resolutions Authorizing the City Manager to Execute an Agreement with Silverado Contractors, Inc. in an Amount Not-to-Exceed \$3,901,150, for the Deconstruction of the City Center Building and Appropriate Funds

**RECOMMENDATION**

That Council adopts the attached resolutions authorizing the City Manager to negotiate and execute a contract with Silverado Contractors, Inc., for the deconstruction of the City Center Building in an amount not-to-exceed \$3,901,150, and authorize the expenditure of up to \$4,401,150 for the total project, including contingencies (Attachment II) and appropriating funds for the project (Attachment III).

**SUMMARY**

Staff recommends that Council authorize the City Manager to negotiate and execute a contract with Silverado Contractor, Inc., for the deconstruction of the City Center Building. Based on the materials sampling and testing conducted, hazardous materials abatement is required for the building prior to deconstruction. On November 5, 2019, five (5) proposals were received for the Project. Staff recommends award of contract to the most qualified contractor, Silverado Contractors, Inc., in the amount not-to-exceed \$3,901,150.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution Awarding Contract
Attachment III	Resolution Appropriating Funds
Attachment IV	Bid Results
Attachment V	Demo CEQA Study



DATE: December 3, 2019

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Adopt Resolutions Authorizing the City Manager to Execute an Agreement with Silverado Contractors, Inc. in an Amount Not-to-Exceed \$3,901,150, for the Deconstruction of the City Center Building and Appropriate Funds

#### RECOMMENDATION

That Council adopts the attached resolutions authorizing the City Manager to negotiate and execute a contract with Silverado Contractors, Inc., for the deconstruction of the City Center Building in an amount not-to-exceed \$3,901,150, and authorize the expenditure of up to \$4,401,150 for the total project, including contingencies (Attachment II) and appropriating funds for the project (Attachment III).

#### SUMMARY

Staff recommends that Council authorize the City Manager to negotiate and execute a contract with Silverado Contractor, Inc., for the deconstruction of the City Center Building. Based on the materials sampling and testing conducted, hazardous materials abatement is required for the building prior to deconstruction. On November 5, 2019, five (5) proposals were received for the Project. Staff recommends award of contract to the most qualified contractor, Silverado Contractors, Inc., in an amount not-to-exceed \$3,901,150.

#### BACKGROUND

The City Center Building, the former home of Hayward's City Hall located at 22300 Foothill Boulevard, has been vacant for close to thirty years and is situated in between two other City-owned parcels near downtown Hayward. The City recently reacquired the property from the previous owner to preserve it for future redevelopment to help revitalize the downtown.

In July 2019, structural engineering consultant, West Coast Code Consultants (WC3) was hired to perform a structural assessment of the building. WC3's report declared the building to be "dangerous" as defined in Section 302 of the Uniform Code for the Abatement of Dangerous Buildings. The building is structurally deficient and will require significant seismic retrofits and upgrades to bring the building up to current standards. Various methods of seismic retrofits cost from \$5.4 million to \$9.7 million without accounting for architectural, mechanical, plumbing, electrical, fire suppression, fire alarms, and Americans with Disabilities Act (ADA) accessibility costs.

Due to the age of the building, environmental consultant Monte Deignan & Associates was retained to perform inspection, sampling, and testing of the building materials. The report concluded that the building contained some asbestos and polychlorinated biphenyls (PCBs). Asbestos containing materials include elevator doors and fire rated doors, vinyl sheet flooring, wall and ceiling joint compounds, and HVAC insulations. PCBs were found in the perimeter window rubber gaskets and caulking from Floors 3 to 11. Any abatement of hazardous material must be performed by hazardous material abatement contractors in accordance with regulations and requirements of the Division of Occupational Safety and Health of the Department of Industrial Relations.

## DISCUSSION

Given the age and condition of the building and presence of hazardous materials, the best course of action is to deconstruct the building. After the completion of the deconstruction work, the contractor will backfill the project site, repair any damaged adjacent hardscape, hydroseed all disturbed areas, and install permanent security fencing around the project work limits.

On September 25, 2019, staff released a Request for Proposals (RFP) soliciting responses from highly qualified contractors with experience in deconstruction of high-rise buildings. On November 5, 2019, the City received a total of five (5) proposals. Staff reviewed and ranked the proposals in accordance with established criteria. The cost proposals varied from \$3,487,145 to \$5,224,000. Ferma Corporation, of Newark, submitted the lowest proposal in the amount of \$3,487,145, which is 27% below the Engineer's Estimate of \$4,800,000. Silverado Contractors, Inc., of Oakland, submitted the second lowest cost proposal in the amount of \$3,546,500, which is 26% below the Engineer's Estimate. After careful review and consideration, factoring in experience, project understanding, and overall project cost, Silverado Inc. was determined to have submitted the most complete proposal and is the most qualified contractor for this project. All documents and licenses are in order. Staff recommends award of the contract to Silverado Contractors, Inc., in the amount of \$3,901,150, which consists of Silverado's proposed project cost plus 10% contingency (\$354,650) to pay for potential change orders. Further, staff recommends that Council authorize the Director of Public Works to expend up to \$4,401,150, inclusive of contract costs, administrative costs, and permit and inspection/testing costs, for this project.

## ECONOMIC IMPACT

The future development of the City Center parcel is likely to have a positive long-term economic impact.

## FISCAL IMPACT

The project costs for the abatement and deconstruction of the City Center Building are as follows:

Contract	\$3,546,500
Contingency (ACO)	\$ 354,650
Administration	\$ 150,000
Permit Fees, Inspection & Testing	<u>\$ 350,000</u>
Total	\$4,401,150

There are insufficient funds in the project budget to cover the cost of abatement and deconstruction of the City Center Building. A transfer and appropriation of \$4,401,150 from the General Fund (Fund 100) to the Capital Fund (Fund 405) is required to complete this phase of the project. City staff recommends that Council consider any subsequent sale proceeds of the assembled City Center properties be used to reimburse the General Fund for these costs, if such a future action is approved by the City Council.

## STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work, and play for all. This agenda item supports the following goals and objectives:

Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.

Objective 1: Increase neighborhood safety and cohesion.

Objective 2: Foster a sense of place and support neighborhood pride.

## SUSTAINABILITY FEATURES

The action taken for this agenda report will facilitate the future development of the assembled City Center properties. Furthermore, this project requires the contractor to recycle all construction and demolition debris as a result of the project. The method of deconstruction will be to pick apart the building in pieces, and not by implosion which is the typical method of deconstructing high-rise buildings. This method is chosen to minimize adverse impacts on nearby residents and businesses.

## ENVIRONMENTAL REVIEW

Consistent with the California Environmental Quality Act (CEQA), a consistency checklist (Attachment V) was prepared by Placeworks, which determined that the proposed deconstruction of the City Center building is exempt from the preparation of a new

environmental document under CEQA Guidelines Section 15168(c) because: (1) the proposed project would not result in new or substantially more significant environmental effects than what was analyzed in the previously Certified EIR for the Downtown Specific Plan; (2) it is within the geographic area analyzed for environmental impacts in the Certified EIR prepared for the Downtown Specific Plan pursuant to Section 15168(c) (2); and incorporates all feasible mitigation measures identified in the Certified EIR pursuant to Section 15168(c) (3).

#### PUBLIC CONTACT

City staff has been in direct communication with residents within the vicinity of the project area, and area residents are awaiting the City's action to deconstruct the vacant building.

#### NEXT STEPS

Begin Work

January 6, 2020

Complete Work

September 22, 2020

The schedule includes asbestos and PCBs abatement work and deconstruction.

Prepared by: Kathy Garcia, Deputy Director of Public Works

Recommended by: Alex Ameri, Director of Public Works

Approved by:



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Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CONTRACT WITH SILVERADO CONTRACTORS, INC., FOR THE CITY CENTER BUILDING DECONSTRUCTION PROJECT, PROJECT NO. 06911

WHEREAS, on June 4, 2019, the City Council approved the acquisition of the property (City Center Building) located at 22300 Foothill Boulevard; and

WHEREAS, in September 2019, the Public Works Engineering Division requested proposals for the deconstruction of the City Center Building; and

WHEREAS, the City of Hayward intends to award a contract to Silverado Contractors, Inc, for the City Center Building Deconstruction Project; and

WHEREAS, the project is funded in the Capital Fund (Fund 405), which is adopted annually by the City Council; and

WHEREAS, the project was examined in light of the previously certified Environmental Impact Report (EIR) for the Hayward Downtown Specific Plan, State Clearinghouse No. 2018022054; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines an Initial Study and Consistency Checklist was prepared for the project, the contents of which are adopted by the City Council and hereby incorporated by reference.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, pursuant to Section 15162 and 15168 of the CEQA Guidelines and the Initial Study and Consistency Checklist prepared for the project, finds that the proposed project would not result in new or substantially more significant environmental effects than what was analyzed in the previously Certified EIR for the Downtown Specific Plan, that no new environmental document is required for this project, and that the project is within the scope of the previously certified EIR for the Hayward Downtown Specific Plan.

BE IT FURTHER RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized to negotiate and execute a contract with Silverado Contractors, Inc, for the City Center Building Deconstruction Project, in an amount not-to-exceed \$3,901,150, in a form to be approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Council of the City of Hayward authorizes a total expenditure of up to \$4,401,150 for the project by the Public Works Director.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES:            COUNCIL MEMBERS:

MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member \_\_\_\_\_

RESOLUTION AMENDING THE FISCAL YEAR 2020 BUDGET RESOLUTION RELATED TO AN APPROPRIATION OF FUNDS FROM THE GENERAL FUND (FUND 101) TO THE CAPITAL FUND (FUND 405) IN THE AMOUNT OF \$4,401,150 FOR THE CITY CENTER BUILDING DECONSTRUCTION PROJECT, PROJECT NO. 06911

WHEREAS, on June 4, 2019, the City Council approved the acquisition of the property (City Center Building) located at 22300 Foothill Boulevard; and

WHEREAS, in September 2019, the Public Works Engineering Division requested proposals for the deconstruction of the City Center Building; and

WHEREAS, the City of Hayward intends to award a contract to Silverado Contractors, Inc, for the City Center Building Deconstruction Project; and

WHEREAS, the project is funded in the Capital Fund (Fund 405), which is adopted annually by the City Council; and

WHEREAS, there are insufficient funds in the Capital Fund to cover the full costs related to the abatement and deconstruction of the City Center Building.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward, hereby authorizes the amendment to resolution 19-103, the budget resolution for the City of Hayward Budget for Fiscal Year 2020, related to the appropriation of \$4,401,150 from the General Fund (Fund 100) to the Capital Fund (Fund 405) for project design, construction, construction contingency, construction administration, permit fees, inspection, and testing for the City Center Building Deconstruction Project, Project No. 06911.



IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

PROJECT TITLE: City Center Building Deconstruction  
 PROJECT NO.: 06911  
 BIDS OPENED: 11/5/2019  
 NUMBER OF BIDS RECEIVED: 5

Alex Ameri, Director of Public Works Date

BID SUMMARY				ENGINEER'S ESTIMATE		NorthStar Contracting Group, Inc		Ferma Corporation		Silverado Contractors, Inc		CVE Contracting Group, Inc		Silicon Valley Demolition, Inc		
						2616 Barrington Ct Hayward, CA 94541		6639 Smith Ave, Newark, CA 94560		2855 Mandela Parkway, Oakland, CA 94608		4263 N Selland Ave Fresno, CA 93722		155 East Main Ave, #110 Morgan Hill, CA 95037		
ITEM		DESCRIPTION		QTY.	UNIT	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	UNIT PRICE	TOTAL	
1	Hazardous Materials Abatement - ASBESTOS (Lump Sum)		1	LS	\$800,000.00	\$ 800,000.00	880,000.00	\$ 880,000.00	657,830.00	\$ 657,830.00	660,450.00	\$ 660,450.00	420,000.00	\$ 420,000.00	845,040.00	845,040.00
2	Hazardous Materials Abatement - PCB (Lump Sum)		1	LS	\$200,000.00	\$ 200,000.00	250,000.00	\$ 250,000.00	578,785.00	\$ 578,785.00	322,350.00	\$ 322,350.00	180,000.00	\$ 180,000.00	475,335.00	475,335.00
3	Building and Site Demolition (Lump Sum)		1	LS	\$3,700,000.00	\$ 3,700,000.00	3,000,000.00	\$ 3,000,000.00	2,117,570.00	\$ 2,117,570.00	2,386,000.00	\$ 2,386,000.00	3,853,900.00	\$ 3,853,900.00	3,781,235.00	3,781,235.00
4	Final Grading (Lump Sum)		1	LS	\$80,000.00	\$ 80,000.00	55,000.00	\$ 55,000.00	95,820.00	\$ 95,820.00	145,000.00	\$ 145,000.00	200,000.00	\$ 200,000.00	94,757.00	94,757.00
5	Fences and Gates (Lump Sum)		1	LS	\$20,000.00	\$ 20,000.00	60,900.00	\$ 60,900.00	37,140.00	\$ 37,140.00	32,700.00	\$ 32,700.00	41,600.00	\$ 41,600.00	27,633.00	27,633.00
				<b>GRAND TOTAL:</b>		<b>\$4,800,000.00</b>		<b>\$4,245,900.00</b>		<b>\$3,487,145.00</b>		<b>\$3,546,500.00</b>		<b>\$4,695,500.00</b>		<b>\$5,224,000.00</b>

# Former City Hall Building Demolition Project Initial Study and Consistency Checklist

City of Hayward

*Prepared for:*

**City of Hayward**

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September 4, 2019



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### Appendices

Appendix A: Air Quality, Demolition Health Risk, and Greenhouse Gas Emissions Technical Memorandum  
Appendix B: Noise and Vibration Technical Memorandum

### SOURCES

In addition to the technical appendices, all documents cited in this report and used in its preparation are hereby incorporated by reference into this report. Copies of documents referenced herein are available for review at the City of Hayward, 777 B Street, Hayward, CA 94541.

# 1. Introduction

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## 1.1 BACKGROUND, PURPOSE, AND SCOPE

This document is a Consistency Checklist that provides an examination of the environmental effects the proposed Former City Hall Building Demolition Project (herein referred to as the “proposed project”), in the City of Hayward, could potentially have on the environment. This document has been prepared in accordance with relevant sections of the California Environmental Quality Act (CEQA) and the State CEQA Guidelines. Article 11 (Types of EIRs) of the CEQA Guidelines includes a description of a Program Environmental Impact Report (EIR) in Section 15168 (Program EIRs), and how later activities within the scope of the program EIR can be determined not to have a significant effect on the environment and, as a result, are exempt from the preparation of a new environmental document.

Specifically, Section 15168(c) states that later activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared. Pursuant to CEQA Guidelines Section 15168(c)(2), if it is determined that no subsequent EIR would be required in accordance with CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations), the City can approve the proposed project as being within the scope of the program EIR, and no new environmental document would be required. Section 15168(c)(2) also states that the scope of the program EIR is a factual question that the City determines based on substantial evidence in the record.

This document has been prepared to serve as the basis for compliance with CEQA as it pertains to the proposed project. Pursuant to Section 15168(c)(2), this Consistency Checklist demonstrates that the proposed project is within the scope of the Hayward Downtown Specific Plan EIR, State Clearinghouse No. 2018022054, certified on April 30, 2019, (herein referred to as the “Certified EIR.”)

The Certified EIR assessed the potential environmental impacts resulting from implementation of the *Hayward Downtown Specific Plan*, which collectively established new land use, development, and urban design regulations for the Downtown Area throughout the year 2040. This Consistency Checklist provides information for City of Hayward decision-makers regarding a finding that the proposed project is exempt from additional environmental review and that no new environmental document would be required.

This Consistency Checklist determines that the proposed project is exempt from the preparation of a new environmental document under CEQA Guidelines Section 15168(c) because: 1) it is within the geographic area analyzed for environmental impacts in the Certified EIR pursuant to Section 15168(c)(2) and incorporates all feasible mitigation measures identified in the Certified EIR pursuant to Section

## 1. Introduction

15168(c)(3). This document determines that the proposed project would not result in new or substantially more significant environmental effects than what was analyzed in the Certified EIR.

### 1.2 ENVIRONMENTAL PROCEDURES

Pursuant to CEQA Section 21166 (Subsequent or Supplemental Impact Report; Conditions) and CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations), when an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR or negative declaration shall be prepared for the project unless the lead agency determines that one or more of the following conditions are met:

- Substantial project changes are proposed that will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- Substantial changes would occur with respect to the circumstances under which the project is undertaken that require major revisions to the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- New information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified or the negative declaration was adopted shows any of the following:
  - a) The project will have one or more significant effects not discussed in the previous EIR or negative declaration.
  - b) Significant effects previously examined will be substantially more severe than identified in the previous EIR.
  - c) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponent declines to adopt the mitigation measures or alternatives.
  - d) Mitigation measures or alternatives that are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponent declines to adopt the mitigation measures or alternatives.



## 1. Introduction

Where none of the conditions specified in CEQA Guidelines Section 15162<sup>1</sup> are present, the lead agency must determine whether to prepare an additional environmental review document or whether no further CEQA documentation is required (CEQA Guidelines Section 15162[b]).

In accordance with the CEQA Guidelines, the City has determined that no new environmental document is required for the proposed project. As previously stated, the purpose of this document is to review the proposed project and examine whether, as a result of any changes or new information, a subsequent EIR may be required. This examination includes an analysis of the provisions of CEQA Section 21166 (Subsequent or Supplemental Impact Report; Conditions) and CEQA Guidelines Section 15162 (Subsequent EIRs and Negative Declarations) and their applicability to the proposed project. This document relies on the environmental analysis in Section 3, Environmental Checklist, of this document, which addresses CEQA Guidelines Appendix G, Environmental Checklist, topics section by section pursuant to Section 15168(c)(4). The environmental checklist includes findings as to the physical environmental impact of the proposed project in comparison with the findings of the Certified EIR.

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<sup>1</sup> See also Section 15163 of the State CEQA Guidelines, which applies the requirements of Section 15162 to supplemental EIRs.

## 1. Introduction

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## 2. Project Description

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### 2.1 REGIONAL LOCATION

The City of Hayward is located in western Alameda County, approximately 20 miles southeast of San Francisco, 15 miles south of Oakland, and 25 miles north of San Jose. As the sixth largest city in the San Francisco Bay Area, Hayward encompasses approximately 64 square miles, of which approximately 45 square miles are land and approximately 18 square miles are covered by waters of the San Francisco Bay. Regional access is provided by Interstate 880 (I-880); Interstate 580 (I-580) State Routes (SR) 92, 238, and 185; and two BART lines that traverse through the city.

### 2.2 PROJECT SITE

#### 2.2.1 Location

The Former City Hall Building (project site) is in a highly urbanized and developed area in downtown Hayward, which is in the northern part of the city. The project site is located between Foothill Boulevard and City Center Drive. The project site is assigned Assessor Parcel Number 415-250-112-00 and the street address is 22300 Foothill Boulevard. The project site is bounded by a vacant lot to the north, City Center Drive and a residential development to the east, a vacant parking structure to the south, and the Plaza Center office and shopping strip mall to the west. Surrounding land uses include multi-family residential to the north, east, and south, and retail and office to the west. Vehicular access to the site is provided by City Center Drive. Figure 2-1 is an aerial photograph of the project site and surrounding land uses.

#### 2.2.2 Existing Site Conditions

As shown on Figure 2-2, only a portion of the project site would be disturbed as part of the proposed building demolition project. The estimated area of disturbance is approximately 0.6 acres of the 1.4-acre site. This portion of the project site is currently developed with a vacant, 11-story office building and associated paved surfaces that were constructed between 1966 and 1969. The building operated as the former City Hall building between 1969 to 1998, when it was closed to the public due to structural integrity damage caused by the 1989 Loma Prieta earthquake. Since 1998 the interior walls, pipes, and heating system have been removed, and some windows have been boarded up. The building is currently surrounded by a chain-link fence. The building has remained vacant for about 21 years.



Source: Google Earth, 2019. PlaceWorks, 2019.

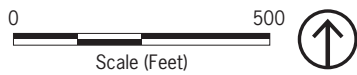
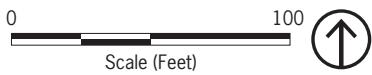


Figure 2-1  
Aerial Photograph of Project Site Location



Source: Google Earth, 2019. PlaceWorks, 2019.




 Area of Disturbance

Figure 2-2  
Area of Disturbance

## 2. Project Description

Due to the existing condition of the building (e.g., missing and broken windows and doors, and missing grates on the roof) there is the potential for birds to nest inside the building and trees on the site. A preliminary bat and bird survey was conducted by Environmental Collaborative on July 19, 2019. The only sign of wildlife activity observed during the inspection of the building was of non-native rats and pigeons (*Columba livia*). The only nesting observed inside the building was by non-native pigeons. No bats or signs of bats (e.g., bat guano, dead bats, or characteristic landing and perching areas) were observed anywhere in the building. The perimeter of the building includes typical urban landscaping (shrubs and small trees) and some mature trees.

Because the existing building on the project site was constructed in 1966 it has the potential to be considered a historic building;<sup>2</sup> however, it is not currently listed on the National Register of Historic Places or the list of California Historical resources.<sup>3</sup> The existing building is not associated with a significant cultural event, persons in California's past, and does not have any distinctive historical characteristics, and as such does not have any qualifying historical value.<sup>4</sup> Also due to the age of the building, it may contain asbestos-containing materials or "ACMs," lead-based paints or "LBPs," and polychlorinated biphenyls or "PCBs."

### 2.2.3 Land Use and Zoning Designations

The project site has a General Plan land use designation of Central City - Retail and Office Commercial (CC-ROC) and Zoning designation of Urban Center (UC).

## 2.3 BACKGROUND

On April 30, 2019, the City of Hayward adopted the *Hayward Downtown Specific Plan* to guide the City in its planning efforts to create a vibrant, transit-supportive, diverse Downtown, particularly the area surrounding the Hayward Bay Area Rapid Transit (BART) station. The *Hayward Downtown Specific Plan* was the result of a community-based vision for the Downtown area of the City, to achieve the community's vision by clearly defining land uses, delineating an inclusive multimodal circulation system, integrating public open space, and establishing new regulations that better secure Downtown Hayward as a "destination" for visitors, residents, and investment. The *Hayward Downtown Specific Plan* serves as a blueprint for future change and improvements in the Downtown and adjoining areas. The Certified EIR contains an assessment of the potential environmental impacts resulting from implementing the

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<sup>2</sup> The 45-year age limit is established by the State Office of Historic Preservation (OHP) for buildings that may be of historical value (Public Resources Code section 5024.1.)

<sup>3</sup> California Office of Historic Preservation. 2019. California Historical Resources. Accessed August 2, 2019 at <http://ohp.parks.ca.gov/ListedResources/?view=county&criteria=43>.

<sup>4</sup> *Existing Conditions and Opportunities Analysis* prepared for the Specific Plan Area. *City of Hayward Historic Context Statement Update* (page 76) updated by Garavaglia Architecture, Inc. October 2015.

## 2. Project Description

*Hayward Downtown Specific Plan* and includes mitigation measures to be applied during the demolition and construction phases for sites in the Downtown area.

### 2.4 PROPOSED PROJECT

The project site is adjacent to other land owned by the City, and its acquisition has provided the City with a unique opportunity to preserve it for future redevelopment to help revitalize the downtown. As such, the City is proposing to demolish the Former City Hall Building in order to remove a vacant, blighted and seismically substandard building to improve the safety and appearance of the project site and the surrounding area.

Hayward Municipal Code Chapter 9, Building Regulations, Article 3, Building Abatement, outlines several findings required to determine if a structure is unsafe to occupy, as well as provisions to demolish such a structure. The Hayward Building Official has made such a determination, that the City Center Building, although not an immediate public safety threat, is indeed an unsafe, substandard, and dangerous building as outlined in the provisions of Hayward Municipal Code Section 9-3.302, Unsafe, Substandard, and Dangerous Buildings.

The proposed project would occur in three phases over a nine-month period, subject to regulatory approval, and is anticipated to be completed by summer 2020. The proposed phases include preparing the site for demolition, demolishing the building, and securing the site as a safe space until such time that a future development project is proposed for the site. Table 2-1 shows the phase and the approximate length of time to complete each phase.

**TABLE 2-1 ESTIMATED DEMOLITION PHASING AND EQUIPMENT**

Phase	Start Month	Duration	Equipment	
			Type	Number of Days
Pre-demolition Activities	November 2019	8 weeks	Material Trucks	20
			High-Reach Demolition Excavator	85
			Concrete/Industrial Saw	85
Building Demolition	January 2020	24 weeks	Tractors/Loaders/Backhoes	85
			Rubber-Tired Dozer	85
			Material Trucks	85
			Tractors/Loaders/Backhoes	22
Post-demolition Activities	August 2020	4 weeks	Grader	22
			Material Trucks	22

Source: City of Hayward, PlaceWorks. August 2019.

The following describes the three phases for the removal of the hazardous building.

## 2. Project Description

### 2.4.1 Pre-Demolition Activities

#### 2.4.1.1 HAZARDOUS MATERIALS ABATEMENT

Due to the age of the building, it may contain asbestos-containing materials or “ACMs” and lead-based paints or “LBPs,” which have been regulated in construction since the early 1970’s. In addition, the building may contain polychlorinated biphenyls or “PCBs,” which were prohibited by the US Environmental Protection Agency starting in 1979. A Hazardous Material Pre-Demolition Survey that would be compliant with the National Emission Standards for Hazardous Air Pollutants would be prepared by a consultant that is certified by the California Division of Occupational Safety and Health. The demolition survey would collect and test for ACMs, LBPs, and PCBs. Prior to the demolition of the building the abatement of any such identified hazardous materials would be performed.

#### 2.4.1.2 BIOLOGICAL RESOURCES

Due to the existing condition of the building (e.g., missing and broken windows and doors and missing grates on the roof level) there is the potential for roosting bats and nesting birds inside the building. Additionally, there are roosting and nesting opportunities in the trees on the site. Nests of native birds in active use are protected under Federal and State law. Maternity roosts of native bats are considered a sensitive resource by California Department of Fish and Wildlife and some species are further recognized as Species of Special Concern. Nesting bird season typically occurs between early March (1<sup>st</sup>) through late August (31<sup>st</sup>) and once a nest is occupied it would have to be avoided until any young have fledged. The constraints that nests in active use pose to the proposed building demolition would be avoided initiating the demolition before the bird nesting season begins. However, there is no defined bat roosting season as there is with nesting birds. As shown in Table 2-1, the proposed project would begin before March 1<sup>st</sup>.

Pursuant to the recommendations made by the qualified biologist, Jim Martin, as part of the preliminary bat and bird survey conducted on July 19, 2019, the following would be included as contract specifications for the demolition contractor hired by the City:

*Within 14 days prior to demolition, the City would secure the services of a qualified biologist to survey the building and trees on the project site to confirm no native birds or roosting bats have gained access to the building or trees on the site. If no birds or bats are identified, then the demolition may proceed. If nesting birds or roosting bats are identified, demolition would be postponed until the confirmation by the qualified biologist that they have been evacuated. The evacuation of the birds and bats would be done under the supervision of the qualified biologist prior to building demolition. Once the qualified biologist has confirmed the evacuation, then the demolition may proceed.*

Additional information regarding nesting birds and roosting bats is provided in Section 3.4, Biological Resources, of this document.



## 2. Project Description

### 2.4.1.3 SAFETY FEATURES

Currently the project site and surrounding area is accessible for pedestrian/bicycle movement crossing from City Center Drive to Foothill Boulevard, and vice versa. As part of the proposed project, this access would be closed, and pedestrian/bicycle traffic would be redirected to go around the site during the demolition process. The project site would be secured with a 6-foot fence during the pre-demolition and demolition activities.

### 2.4.2 Building Demolition Activities

The proposed project would demolish the existing 150,000-square-foot building and 27,500 square feet of paved surfaces immediately adjacent to the building, generating about 13,408 tons of debris from the building and 255 tons of debris from the paved surfaces. Three ornamental pear trees (less than 8-inches in diameter at breast height) and small shrubs would be removed and replaced with three 36-inch box trees elsewhere in the city given there are no plans for the site at this time.

The demolition would involve the use of a high-reach demolition excavator and would not involve any wrecking balls or explosives. The high-reach demolition excavator has a long arm, which prunes rather than blasts the existing building. High-reach demolition excavators have several different attachments to break down the building and once larger pieces are on the ground other equipment would be used to break down into smaller pieces to be hauled off site. Other equipment that will likely be used for demolition and site preparation would include a combination of concrete/industrial saws, rubber-tired bulldozers, graders, tractors, loaders, and backhoes.

The proposed project would require the selected demolition contractor(s) to use equipment fitted with Tier 4 engine emissions standards for off-road diesel-powered equipment for all equipment of 50 horsepower or more to minimize hazardous air quality emissions during the demolition phase (see Section 3.3, Air Quality, of this document for further discussion on this topic).<sup>5</sup>

Demolition debris would be off hauled for disposal at the Altamont Landfill located at 10840 Altamont Pass Road in Livermore, which is approximately 30 miles from the project site. This would be done in accordance with the Hayward Municipal Code Chapter 5, Sanitation and Health, Article 10, Construction and Demolition Debris Waste Reduction and Recycling Requirements.<sup>6</sup> Trucks carrying debris would follow the haul route that would exit the site via City Center Drive to Foothill Boulevard and then proceed on Interstate 580 to the landfill.

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<sup>5</sup> United States Environmental Protection Agency, Code of Federal Regulations, Part 1039—Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines.

<sup>6</sup> City of Hayward Municipal Code, Chapter 5, Sanitation and Health, Article 10, Construction and Demolition Debris Waste Reduction and Recycling Requirements.

## 2. Project Description

Project demolition could generate temporary jobs, with approximately 7 workers during demolition and 3 workers during the pre-and post-demolition activities. All demolition staging would occur on the project site. Per Hayward Municipal Code Section 4-1.03.4, demolition activities are limited to the hours of 10:00 a.m. and 6:00 p.m. on Sundays and holidays, and 7:00 a.m. and 7:00 p.m. on other days.

### 2.4.3 Post-Demolition Activities

Following the demolition of the building up to 1,540 cubic yards of fill would be required to achieve a 2:1 slope from the site to the adjacent Plaza Center office and shopping strip mall. Assuming soil is hauled to the site in trucks with a capacity of 10 cubic yards, it is estimated that 154 trucks would travel to and from the site during this phase. The site would remain in a permeable condition and would be hydroseeded for erosion control to secure the soil and prevent stormwater runoff. The standard 6-foot chain-link fence used for the demolition phase would be maintained around the perimeter of the disturbed portion of the site. The pedestrian/bicycle access would be restored for free flow across the site similar to the existing conditions.

Because there is no pending proposal for the project site and the building is being removed for safety reasons, the site would remain in this condition, similar to the vacant lot to the north, until a potential future project is proposed and approved for construction. Any future development proposed for the project site would undergo separate environmental review, as required.

### 2.4.4 Project Approval

The proposed project would require a Demolition Permit, as well as a Tree Removal Permit, from the City of Hayward.

## 3. Environmental Analysis

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The purpose of the Consistency Checklist is to determine whether the proposed project is within the scope of the Certified EIR, and whether the proposed demolition activities could result in new or substantially more severe significant environmental impacts than those identified in the Certified EIR.

As determined in the discussion in the following environmental analysis, the proposed project will not cause any new or substantially more severe significant environmental impacts than those previously identified in the Certified EIR, and no new mitigation measures would be required. On the basis of substantial evidence in the light of the whole record, the City has determined that no further CEQA documentation beyond this Consistency Checklist is required for approval of the proposed project because the proposed project meets the requirements of CEQA Guidelines Section 15168(c).

### 3.1 AESTHETICS

#### 3.1.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Have a substantial adverse effect on a scenic vista?					X
b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway?					X

### 3. Environmental Analysis

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
c) In non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?					X
d) Create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?					X

**Discussion:**

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant aesthetic impacts in the City of Hayward and no mitigation measures were identified. The project site is in an urbanized area and there are no scenic vistas, publicly accessible views of scenic resources, or designated State Scenic Highways on or near the project site.

As described in Section 2, Project Description, the proposed project is a short-term demolition project that would result in removing a hazardous and blighted building in a state of disrepair that is a public nuisance. As identified in Section 2.4.2, Building Demolition, above, no new development is proposed that would have the potential to cause a long-term effect on a scenic vista or conflict with the Hayward General Plan or Zoning Ordinance. Any sources of light glare would be temporary and therefore would not create a new source of substantial light or glare that would adversely affect day or nighttime views in the area. The removal of the building would occur over a nine-month period and would improve the appearance of the project site and the surrounding area. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to aesthetics.

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## 3.2 AGRICULTURE AND FORESTRY RESOURCES

### 3.2.1 Impacts Associated with the Proposed Project

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?					X
b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?					X
c) Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g))?					X
d) Result in the loss of forest land or conversion of forest land to non-forest use?					X
e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest land to non-forest use?					X

#### Discussion:

The Certified EIR concluded that the implementation of the Hayward Downtown Specific Plan would have no impact on agricultural and forestry resources. The project site has a General Plan land use designation of Central City - Retail and Office Commercial (CC-ROC) and a Zoning designation of Urban Center (UC),

### 3. Environmental Analysis

and no agricultural or forestry resources exist on the project site.<sup>7</sup> Accordingly, the proposed project would have no impact on agriculture and forestry resources.

### 3.3 AIR QUALITY

#### 3.3.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Conflict with or obstruct implementation of the applicable air quality plan?				X	
b) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?				X	
c) Expose sensitive receptors to substantial pollutant concentrations?				X	
d) Result in other emissions such as those leading to odors adversely affecting a substantial number of people?					X

#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would have significant and unavoidable impacts due to construction (demolition) criteria air pollutant emissions when considered at a program level (i.e., project-level details are unknown). Mitigation Measure AQ-2.1a from the Certified EIR would require adherence to the current Bay Area Air Quality Management District (BAAQMD) basic control measures for reducing fugitive dust and reduce fugitive emissions to less-than-significant levels and Mitigation Measure AQ-2.1b would reduce nitrogen oxide (NO<sub>x</sub>) and particulate matter (PM) emissions. Construction-related (or demolition-related in the case of the proposed project) health risk impacts (i.e., increased cancer risk, hazard index and annual fine particulate matter or PM<sub>2.5</sub>

<sup>7</sup> Hayward Downtown Specific Plan and Associated Zoning Code Update Draft EIR, State Clearinghouse No. 2018022054, Environmental Evaluation, page 4-1.

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concentration) were also found to be significant and unavoidable at the program-level. Mitigation Measure AQ-4.1a from the Certified EIR requires that applicants for construction projects within 1,000 feet of residential and other sensitive land use projects in the city of Hayward, as measured from the property line of the project to the property line of the source/edge of the nearest travel lane, to submit a project-specific health risk assessment (HRA). As stated in the Certified EIR, the identification of these program-level impacts does not preclude the finding of less-than-significant impacts for subsequent projects that comply with BAAQMD screening criteria or meet applicable thresholds of significance. The following provides an analysis of the project-specific impacts of the proposed demolition project.

Projected-related air pollutant emissions are calculated using the California Emissions Estimator Model (CalEEMod), Version 2016.3.2.25. Details of the modeling are in Appendix A of this Consistency Checklist. Pursuant to Mitigation Measure AQ-2.1b of the Certified EIR, the modeling accounted for United States Environmental Protection Agency's Tier 4 emission standards for off-road diesel-powered demolition equipment with more than 50 horsepower.<sup>8</sup> The modeling also included fugitive dust measures such as replacing ground cover, applying water twice daily, limiting vehicle traffic speeds on unpaved roads to 15 miles per hour, and street sweeping daily, consistent with Mitigation Measure AQ-2.1a of the Certified EIR. The demolition health risk modeling was performed using the AERMOD atmospheric dispersion model to assess the impact of emitted compounds on sensitive receptors near the project.

Potential demolition air quality impacts are determined by comparing the average daily criteria air pollutants emissions generated by the proposed project's demolition activities to the BAAQMD significance thresholds in Table 3-1. Average daily emissions are based on the total demolition emissions divided by the total number of anticipated demolition days. As shown in Table 3-1, criteria air pollutant emissions from demolition equipment exhaust would not exceed the BAAQMD average daily pounds per day thresholds and impacts from project-related demolition activities to the regional air quality would be less than significant at the project level.

The nearest sensitive receptors to the project site include the residents at the Creekwood Apartments approximately 70 feet to the east of the project across City Center Drive. The results of the demolition HRA are summarized in Table 3-2. As shown in Table 3-2, the project would not expose off-site sensitive receptors to substantial concentrations of air pollutant emissions during demolition and impacts would be less than significant at the project level.

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<sup>8</sup> United States Environmental Protection Agency, Code of Federal Regulations, Part 1039—Control of Emissions from New and In-Use Nonroad Compression-Ignition Engines.

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**TABLE 3-1 DEMOLITION-RELATED CRITERIA AIR POLLUTANT EMISSIONS ESTIMATES**

Year	Criteria Air Pollutants (pounds per day) <sup>a</sup>					
	ROG	NO <sub>x</sub>	Fugitive PM <sub>10</sub>	Exhaust PM <sub>10</sub>	Fugitive PM <sub>2.5</sub>	Exhaust PM <sub>2.5</sub>
<b>Average Daily Emissions<sup>d</sup></b>	1	15	3	<1	<1	<1
BAAQMD Average Daily Project-Level Threshold	54	54	BMPs <sup>c</sup>	82	BMPs <sup>c</sup>	54
<b>Exceeds Average Daily Threshold</b>	<b>No</b>	<b>No</b>	<b>NA</b>	<b>No</b>	<b>NA</b>	<b>No</b>

Notes: BMP = Best Management Practices; NA = not applicable; Reactive Organic Gases = ROG; Nitrogen Oxides = NO<sub>x</sub>; Coarse Inhalable Particulate Matter = PM<sub>10</sub>; Fine Inhalable Particulate Matter = PM<sub>2.5</sub>

<sup>a</sup> Demolition phasing and equipment mix are based on the preliminary information provided by the City. Where specific information regarding project-related demolition activities was not available, assumptions were based on CalEEMod defaults, which are based on surveys conducted by South Coast Air Quality Management District of demolition equipment and phasing for comparable projects.

<sup>b</sup> Includes implementation of Tier 4 emissions standards off-road diesel-powered demolition equipment with more than 50 horsepower, as required by Mitigation Measure AQ-2.1b in the Certified EIR.

<sup>c</sup> Includes implementation of best management practices for fugitive dust control required by BAAQMD as mitigation, including watering disturbed areas a minimum of two times per day, reducing speed limit to 15 miles per hour on unpaved surfaces, and street sweeping.

<sup>d</sup> Average daily emissions are based on the total demolition emissions divided by the total number of active demolition days. The total number of demolition days is estimated to be 129.

Source: California Emissions Estimator Model (CalEEMod), Version 2016.3.2.25; PlaceWorks, 2019.

**TABLE 3-2 DEMOLITION RISK SUMMARY**

Receptor	Cancer Risk (per million)	Chronic Hazards	PM <sub>2.5</sub> (µg/m <sup>3</sup> )
Maximum Exposed Receptor – Off-site Residences	0.52	0.002	0.012
BAAQMD Threshold	10	1.0	0.30
<b>Exceeds Threshold?</b>	<b>No</b>	<b>No</b>	<b>No</b>

Notes: Risk calculations include implementation of Tier 4 emissions standards for off-road diesel-powered demolition equipment with more than 50 horsepower, as required by Mitigation Measure AQ-2.1b as prescribed in the Certified EIR.

Cancer risk calculated using 2015 Office of Environmental Health Hazard Assessment HRA guidance.

The Certified EIR found that implementation of the *Hayward Downtown Specific Plan* would not conflict with the *2017 Clean Air Plan, Spare the Air, Cool the Climate*. As described in Section 2, Project Description, the proposed project is a short-term demolition project that would result in removing a hazardous building that is a public nuisance. There would be no operational criteria air pollutant emissions associated with the proposed project. In addition, as discussed above, demolition and site preparation emissions would not exceed the BAAQMD significance thresholds. Therefore, the proposed project would not conflict with or obstruct implementation of the applicable air quality plan.

The Certified EIR found that during construction/demolition activities of future developments in the Specific Plan Area, construction/demolition equipment exhaust would temporarily generate odors. Any demolition-related odor emissions would be temporary and intermittent. Additionally, noxious odors



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would be confined to the immediate vicinity of the demolition equipment. By the time such emissions reach any sensitive receptor sites, they would be diluted to well below any level of air quality concern for odors. The same would be true of the proposed project and impacts would be less than significant.

In summary, with implementation of mitigation measures prescribed in the Certified EIR and listed below, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to air quality.

**Mitigation Measure AQ-2.1a:** As part of the City's development approval process, the City shall require applicants for future development projects to comply with the current Bay Area Air Quality Management District's basic control measures for fugitive dust control, including:

- Water all active construction areas at least twice daily, or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.
- Pave, apply water twice daily or as often as necessary to control dust, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.
- Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).
- Sweep daily (with water sweepers using reclaimed water if possible) or as often as needed all paved access roads, parking areas and staging areas at the construction site to control dust.
- Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the project site, or as often as needed, to keep streets free of visible soil material.
- Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.
- Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).
- Limit vehicle traffic speeds on unpaved roads to 15 miles per hour.
- Replant vegetation in disturbed areas as quickly as possible.

**Mitigation Measure AQ-2.1b:** Applicants for new development projects within the Specific Plan Area shall require the construction contractor to use equipment that meets the United States Environmental Protection Agency (USEPA) Tier 4 emissions standards for off-road diesel-powered construction equipment with more than 50 horsepower, unless it can be demonstrated to the City of Hayward that such equipment is not available. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 4 diesel emissions control strategy for a similarly sized engine, as defined by the California Air Resources Board's regulations.

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- Prior to construction, the project engineer shall ensure that all demolition and grading plans clearly show the requirement for USEPA Tier 4 or higher emissions standards for construction equipment over 50 horsepower.
- During construction, the construction contractor shall maintain a list of all operating equipment in use on the construction site for verification by the City of Hayward.
- The construction equipment list shall state the makes, models, and numbers of construction equipment onsite.
- Equipment shall be properly serviced and maintained in accordance with the manufacturer’s recommendations.
- Construction contractors shall also ensure that all nonessential idling of construction equipment is restricted to five minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9.

**Mitigation Measure AQ-4.1a:** This mitigation measure requires the preparation of a Health Risk Assessment because the project site is within 1,000 feet of residential land uses. The Health Risk Assessment has been prepared and is included in Appendix A of this Consistency Checklist.

## 3.4 BIOLOGICAL RESOURCES

### 3.4.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?				X	

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Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?					X
c) Have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?					X
d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?					X
e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?					X
f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State habitat conservation plan?					X

**Discussion:**

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant biological impacts in the City of Hayward and no mitigation measures were identified. The project site is in an urbanized area that does not contain any riparian habitat or protected water resources. The perimeter of the building includes typical urban landscaping (shrubs and small trees) and some mature trees. The project site is not located within any Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or State Habitat Conservation Plan.

As identified in the Certified EIR, there are several known occurrences of special-status species in the project vicinity, including the pallid bat and the western bumble bee. The Certified EIR identified that the

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pallid bat, designated as a Species of Special Concern by the California Department of Fish and Wildlife, is known to forage and roost in buildings and other such structures. Additionally, the Certified EIR recognized that nests of native birds in active use are protected under the Federal Migratory Bird Treaty Act and State Fish and Game Code.

Because the building proposed for demolition has been vacant for approximately 21 years and is missing window/door/vent coverings, the City determined that there could potentially be active bird nests and roosting bats in the building. Subsequently, and as previously described in Section 2, Project Description, the City contracted with Environmental Collaborative, to complete a survey of the building for bats and nesting birds, which was conducted on July 19, 2019. The survey concluded that the only observed presence of wildlife activity was of non-native rats and pigeons (*Columba livia*). The only nesting evidence found in the building were from non-native pigeons. No signs of any bat presence and limited roosting habitat opportunities were observed in the building.<sup>9</sup>

While no evidence of native birds or bats were observed during the building assessment, as described in Section 2, Project Description, the proposed project includes contract specifications that would be implemented as part of the proposed project to ensure the protection of nesting birds and roosting bats, as needed. The constraints that nests in active use pose to building demolition can be avoided by initiating the demolition prior to bird nesting season (March 1<sup>st</sup> to August 31<sup>st</sup>). The proposed project would be initiated in November 2019 and continue through August 2020, and would therefore, be an active site during the bird nesting season. Because the building would be partially demolished and be an active site, the likelihood that birds would nest on the site during nesting season is considered to be low.

Given that most of the interior of the building is now gutted and open, bat roosting habitat is largely absent in the structure. Future occupation of the structure before demolition is highly unlikely given the marginal habitat quality and fact that bats haven't been utilizing the structure with the numerous missing windows and other access points, which is the current and condition of the building for multiple years.

In summary, due to the location, existing conditions of the building, the timing of the proposed project, and implementation of the proposed project's contract specifications, which require a pre-demolition bird and bat survey to ensure there would be no impacts to bats and birds, the proposed project would not result in a new impact or substantial increase in magnitude of the existing impacts as they relate to biological resources.

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<sup>9</sup> Environmental Collaborative, August 13, 2019, Bat and Bird Nesting Survey Former City Center Building Demolition Project, August 13, 2019.

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## 3.5 CULTURAL AND TRIBAL CULTURAL RESOURCES

### 3.5.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Cause a substantial adverse change in the significance of a historical resource pursuant to § 15064.5?					X
b) Cause a substantial adverse change in the significance of an archaeological resource pursuant to § 15064.5?					X
c) Disturb any human remains, including those interred outside of formal cemeteries?					X
d) Cause a substantial adverse change in the significance of a Tribal Cultural Resource, defined in Public Resources Code Section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American Tribe, and that is: <ul style="list-style-type: none"> <li>• Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code Section 5020.1(k), or</li> <li>• A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resource Code Section 5024.1. In applying the criteria set forth in subdivision (c) of the Public Resource Code Section 5024.1 for the purposes of this paragraph, the lead agency shall consider the significance to a California Native American tribe.</li> </ul>					X

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#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant cultural or tribal cultural impacts in the City of Hayward and no mitigation measures were identified. The project site is in an urban area that has been previously disturbed and developed. There are no known cultural resources on the project site.

As described in Section 2, Project Description, the proposed project is a short-term demolition project that would result in removing the existing building on a disturbed and developed site. As described in Section 2.4.2, Building Demolition, above, no excavation activities are proposed as part of the demolition process. As stated in Section 2.4.3, Post-Demolition Activities, following the demolition, soil would be imported and graded on the site to achieve a 2:1 slope from the site to the adjacent Plaza Center office and shopping strip mall. Therefore, no discovery or unearthing of any unknown archaeological resources, human remains, or tribal cultural resources in undisturbed areas would occur as part of the proposed project.

With respect to historic buildings, as previously described in Section 2.2.2, Existing Site Conditions, because the existing building on the project site was constructed in 1966 it has the potential to be considered a historic building.<sup>10</sup> However, it is not currently listed in the City's list of historic buildings and it is also not on the National Register of Historic Places or the list of California Historical resources.<sup>11, 12</sup> The existing building is not associated with a significant cultural event, persons in California's past, and does not have any distinctive historical characteristics, and as such does not have any qualifying historical value.<sup>13</sup> Accordingly, the building is not eligible for listing as a historical resource pursuant to Section 15064.5 of the CEQA Guidelines.

For these reasons, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to cultural and tribal cultural resources.

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<sup>10</sup> The 45-year age limit is established by the State Office of Historic Preservation (OHP) for buildings that may be of historical value (Public Resources Code section 5024.1.)

<sup>11</sup> Hayward Downtown Specific Plan and Associated Zoning Code Update Draft EIR, State Clearinghouse No. 2018022054, Environmental Evaluation, page 4.4-9.

<sup>12</sup> California Office of Historic Preservation. 2019. California Historical Resources. Accessed August 2, 2019 at <http://ohp.parks.ca.gov/ListedResources/?view=county&criteria=43>.

<sup>13</sup> *Existing Conditions and Opportunities Analysis* prepared for the Specific Plan Area. *City of Hayward Historic Context Statement Update* (page 76) updated by Garavaglia Architecture, Inc. October 2015.

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## 3.6 ENERGY

### 3.6.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of resources, during project construction or operation?					X
b) Conflict with or obstruct a state or local plan for renewable energy or energy efficiency?					X

#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant energy impacts in the City of Hayward and no mitigation measures were identified.<sup>14</sup>

As described in Section 2.4.2, Building Demolition, above, the proposed project would require the use of demolition equipment that would create a new demand for energy over the nine-month project timeline. Because the proposed project is the short-term removal of a vacant, blighted and seismically substandard building to improve the safety of the project site and the surrounding area, it would not be considered a wasteful, inefficient, or unnecessary consumption of resources. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of existing impacts as they relate to energy.

<sup>14</sup> Note that this Consistency Checklist follows the December 2018 CEQA Guidelines Update, which added a stand-alone environmental checklist section for the evaluation of energy impacts. Energy impacts assessed in the Certified EIR can be found in Chapter 4.14, Utilities and Service Systems.

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## 3.7 GEOLOGY AND SOILS

### 3.7.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:					X
i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map, issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.					X
ii) Strong seismic ground shaking?					X
iii) Seismic-related ground failure, including liquefaction?					X
iv) Landslides?					X
b) Result in substantial soil erosion or the loss of topsoil?					X
c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?					X
d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property?					X



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Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water?					X
f) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?					X

**Discussion:**

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant impacts related to geology and soils in the City of Hayward and no mitigation measures were identified. The project site is in an urbanized area located approximately 0.3 miles from the edge of the Hayward Fault Line’s Fault Zone.

As described in Section 2, Project Description, the proposed project is a short-term demolition project that would result in removing a hazardous building in a state of disrepair that has been deemed to be a seismically substandard building. The building has remained vacant for approximately 21 years since the integrity of the building was damaged in the 1989 Loma Prieta earthquake.

As identified in Section 2.4.2, Building Demolition, above, the proposed demolition is a short-term project occurring over an nine-month timeline and therefore, would not directly or indirectly result in the risk of loss, injury, or death involving rupture of a known earthquake fault, strong seismic ground shaking, liquefaction, or landslides. As stated in Section 2.4.3, Post-Demolition Activities, following the demolition, soil would be imported and graded on the site to achieve a 2:1 slope from the site to the adjacent Plaza Center office and shopping strip mall. The site would remain in a permeable condition and would be hydroseeded for erosion control to secure the soil and prevent stormwater runoff. Therefore, the proposed project would not result in substantial soil erosion or loss of topsoil and would not cause or worsen impacts related to soil instability, expansive soils, or alternate wastewater disposal systems. Similar to the discussion in Section 3.5, Cultural and Tribal Cultural Resources, no excavation activities are proposed as part of the demolition process and there would be no potential to unearth any unknown paleontological resources or unique geologic feature. Accordingly, the proposed project would not result in a new impact or a substantial increase in the magnitude of the existing impacts as they relate to geology and soils.

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## 3.8 GREENHOUSE GAS EMISSIONS

### 3.8.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?				X	
b) Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?				X	

#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would have significant and unavoidable impacts due to GHG emissions emitted during demolition phases of at the program level due to the lack of project specific details. However, as stated in the Certified EIR, this does not preclude the finding of less-than-significant impacts for subsequent projects that comply with BAAQMD screening criteria or meet applicable thresholds of significance. Furthermore, the Certified EIR stated that application of community risk reduction strategies and best management practices such as restricting non-essential idling of off-road demolition equipment to 2 minutes and use of electric-powered demolition equipment would contribute to reducing demolition related GHG emissions to the extent feasible. In addition, existing requirements for the diversion of demolition debris would also contribute in further minimizing demolition related GHG emissions.

Project-related GHG emissions are calculated using the CalEEMod Model and are shown in Table 3-3. As shown in the table, the proposed project would generate GHG emissions from demolition activities and would not generate any operational emissions. While the BAAQMD does not have a quantified threshold for demolition related GHG emissions, the emissions from demolition activities are estimated to be 252 metric tons of carbon dioxide equivalent (MTCO<sub>2</sub>e) emissions, which would not exceed the BAAQMD operational threshold of 1,100 MTCO<sub>2</sub>e per year. Therefore, the proposed project's cumulative contribution to GHG emissions is less than significant at the project level.

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**TABLE 3-3 PROJECT GHG EMISSIONS**

Category	GHG Emissions (MTCO <sub>2</sub> e/Year)
	Project Emissions
Demolition Emissions	252
<b>BAAQMD Emissions Threshold (MTCO<sub>2</sub>e)</b>	<b>1,100</b>
<b>Exceeds BAAQMD Thresholds?</b>	<b>No</b>

Notes: MTCO<sub>2</sub>e = metric tons of carbon dioxide equivalent  
Source: California Emissions Estimator Model (CalEEMod), Version 2016.3.25.

Overall, the *Hayward Downtown Specific Plan* was found not to conflict with *Plan Bay Area*, which is the Bay Area’s Regional Transportation Plan and Sustainable Communities Strategies to reduce GHG emissions. The proposed demolition project would only generate GHG emissions for a short period and would not conflict with the Plan Bay Area. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to GHG emissions.

## 3.9 HAZARDS AND HAZARDOUS MATERIALS

### 3.9.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?					X
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?					X
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school?					X

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Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?					X
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project result in a safety hazard or excessive noise for people residing or working in the project area?					X
f) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?					X
g) Expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires?					X

#### Discussion:

The Certified EIR found that implementation of the *Hayward Downtown Specific Plan* would not have any significant hazards or hazardous materials impacts in the City of Hayward and no mitigation measures were identified. The project site is in an urbanized area in close proximity to existing commercial, office, and residential land uses. The closest school is a day care (Skeyci Children Programs Day Care) located in the apartment complex across City Center Drive to the project site, approximately 0.05 miles (280 feet) to the east. There are no elementary, middle, or high schools, or other educational institutions located within 0.25 miles of the project site. As stated in the Certified EIR, the project is not on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.<sup>15</sup> Furthermore, the project site is not within an airport land use plan. Accordingly, no impacts with respect to these standards would result from the demolition of the building.

<sup>15</sup> Hayward Downtown Specific Plan and Associated Zoning Code Update Draft EIR, State Clearinghouse No. 2018022054, Environmental Evaluation, pages 4.7-12 and 4.7-13.

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The *Hayward Comprehensive Emergency Management Plan* addresses the Hayward Fire Department's responsibilities in emergencies associated with natural disaster, human-caused incidents, and technological incidents, including earthquakes and their seismic-related results (e.g., liquefaction). The City of Hayward has adopted the Association of Bay Area Government's Multi-Jurisdictional Local Hazard Mitigation Plan ("Taming Natural Disasters") as the City's Local Hazard Mitigation Plan. The project site is within the Wildland Urban Interface as identified by the Hayward Fire Department.<sup>16</sup> The proposed project would remove a hazardous building to improve the safety of the site and the surrounding community, and as such would not obstruct the implementation of the applicable emergency response plans or exacerbate any potential risk of wildfire-related hazards.

As described in Section 2, Project Description, the proposed project is a short-term demolition project that would result in removing a hazardous building to improve the safety of the site and the surrounding area. Demolition activities would involve the use of hazardous materials, such as petroleum-based fuels for demolition equipment, which would be transported to the site periodically by vehicle and would be present temporarily during the eight-month project duration. These potentially hazardous materials would not be of a type or occur in sufficient quantities on-site to pose a significant hazard to public health and safety or the environment, and their use during demolition would be short-term.

Because the building was constructed between 1966 and 1969, there may be a presence of asbestos-containing materials or "ACMs" and lead-based paints or "LBPs," which have been regulated in construction since the early 1970's. In addition, the building may contain polychlorinated biphenyls or "PCBs," which were prohibited by the US Environmental Protection Agency starting in 1979. Subsequently, the City has acquired the services of Kellco Services Incorporated to conduct a pre-demolition survey by a California Division of Occupational Safety and Health (Cal OSHA) Certified asbestos consultant to determine whether there is a presence of ACMs, LBPs, or PCBs in the existing structure and prepare an abatement plan. In the case that ACMs, LBPs, or PCBs are identified in the building, the hazard abatement plan would include required measures to prevent potential air contaminants from being released during demolition activities. All removal of hazardous materials would comply with Cal OSHA standards, and would be removed by contractors licensed to remove and handle these materials in accordance with existing Federal, State, and local regulations. Compliance with applicable laws and regulations governing the use, storage, and transportation of hazardous materials would ensure that all potentially hazardous materials are used and handled in an appropriate manner and would minimize the potential for safety impacts to occur. Additionally, as discussed in Section 3.3, Air Quality, the proposed project would not expose off-site sensitive receptors, including the day care facility, to substantial concentrations of air pollutant emissions during demolition. Accordingly, the proposed project would not

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<sup>16</sup> Hayward Downtown Specific Plan and Associated Zoning Code Update Draft EIR, State Clearinghouse No. 2018022054, Environmental Evaluation, page 4.7-17.

### 3. Environmental Analysis

result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to hazards and hazardous materials.

## 3.10 HYDROLOGY AND WATER QUALITY

### 3.10.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or ground water quality?					X
b) Substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin?					X
c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner, which would:					X
i) Result in substantial erosion or siltation on- or off-site;					X
ii) Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site;					X
iii) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or					X
iv) Impede or redirect flood flows?					X

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Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
d) In flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation?					X
e) Conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan?					X

**Discussion:**

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant hydrology or water quality impacts in the City of Hayward and no mitigation measures were identified. The project site is in an urbanized area of Downtown Hayward that is surrounded by developed and disturbed areas. There are no water resources on-site; however, the project site is located approximately 0.1 miles to the west of Coyote Creek and 0.1 miles to the north of San Lorenzo Creek. Residential and office development are located between the project site and each creek. The project site is not located within any flood hazard, tsunami, or seiche zone.

As described in Section 2, Project Description, the proposed project is a short-term demolition project that would result in the removal of a hazardous building and paved surfaces that are immediately surrounding the building. The proposed project would increase the pervious surface on the site thereby reducing stormwater runoff and increasing groundwater recharge opportunities. Post-demolition activities would include hydroseeding to prevent potential erosion or polluted runoff from the project site. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to hydrology and water quality.

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## 3.11 LAND USE AND PLANNING

### 3.11.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Physically divide an established community?					X
b) Cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect?					X

#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant land use or planning impacts in the City of Hayward and no mitigation measures were identified. The project site is in an urbanized area surrounded by residential development to the north and east, residential and office development to the south, and commercial development to the west.

As described in Section 2, Project Description, the proposed project is a short-term demolition project that would result in removing a hazardous, blighted, and seismically substandard building to improve the safety and appearance of the project site and the surrounding area. As described in Section 2.4, Project Description, the demolition of the site is consistent with Hayward Municipal Code Chapter 9, Building Regulations, Article 3, Building Abatement, and Section 9-3.302, Unsafe, Substandard, and Dangerous Buildings. The proposed project would not physically divide an established community and would not conflict with any land use plan, policy, or regulation in the City of Hayward that was adopted for the purpose of avoiding or mitigating an environmental effect. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to land use and planning.



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## 3.12 MINERAL RESOURCES

### 3.12.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Result in the loss of availability of a known mineral resource that would be a value to the region and the residents of the state?					X
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?					X

#### Discussion:

The Certified EIR concluded that the *Hayward Downtown Specific Plan* would have no impact on mineral resources. The project site has a General Plan land use designation of Central City - Retail and Office Commercial (CC-ROC) and a Zoning designation of Urban Center (UC), and no mineral resources exist on the project site.<sup>17</sup> Accordingly, the proposed project would have no impact on mineral resources.

<sup>17</sup> Hayward Downtown Specific Plan and Associated Zoning Code Update Draft EIR, State Clearinghouse No. 2018022054, Environmental Evaluation, page 4-1.

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#### 3.13 NOISE

##### 3.13.1 Impacts Associated with the Proposed Project

Would the proposed project result in:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Would the project result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?				X	
b) Would the project result in generation of excessive groundborne vibration or groundborne noise levels?				X	
c) For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?					X

#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would have significant and unavoidable impacts due to construction (or demolition) noise because the project-specific details are unknown. However, the Certified EIR also states that the identification of this program-level impact does not preclude the finding of less-than-significant impacts for subsequent projects analyzed at the project level. Mitigation Measure NOISE-1 from the Certified EIR is required for construction (or demolition) projects in the Specific Plan Area.

As discussed in the Certified EIR, the Specific Plan Area is not located within an airport land use plan area or within the vicinity of a private airstrip. Therefore, no impacts with respect to this criterion would occur.

The project site is in an urbanized area surrounded by residential development to the north and east, residential and office development to the south, and commercial development to the west. The nearest

### 3. Environmental Analysis

sensitive receptors to the project site include the residents at the Creekwood Apartments approximately 70 feet to the east of the project across City Center Drive.

As described in Section 2.4, Project Description, the proposed project would include a high-reach demolition excavator, concrete saws, dozer, grader, loader, and tractor. Construction vehicles, such as worker vans and haul trucks used to transport equipment and haul off demolition debris would also be required. The details of noise modeling for noise generated from these sources is included in Appendix B of this Consistency Checklist and is summarized below.

The expected construction equipment mix was estimated and categorized by construction activity using the Federal Highway Administration (FHWA) Roadway Construction Noise Model (RCNM). The associated, aggregate sound levels are summarized in Table 3-4.

**TABLE 3-4 PROJECT RELATED DEMOLITION NOISE, dBA LEQ**

Equipment	Nearest Sensitive Receptors			
	Residential Uses at 230 feet <sup>a</sup>	Hayward Japanese Gardens at 560 feet <sup>a</sup>	Hayward Area Historical Museum at 740 feet <sup>a</sup>	Skeyci Children Programs Day Care at 280 feet <sup>a</sup>
Pre- and Demolition Period	73	65	63	71
Post-Demolition Period	70	62	59	68

Notes:

<sup>a</sup> As measured from the acoustical center of the construction site.

Source: PlaceWorks, 2019.

As shown in Table 3-4, the loudest phase of the proposed project would be demolition with projected noise levels at the nearest residences of up to 73 dBA  $L_{eq}$ , which would not exceed the City of Hayward standard of 86 dBA at the nearest residences. Other sensitive uses include the nearby day care (Skeyci Children Programs Day Care), the Hayward Japanese Gardens/De Anza Park, and the Hayward Area Historical Society Museum. However, all of these receptors are further away than the nearest residences and estimated noise levels would also be below 86 dBA at the respective property lines. Construction worker trips to and from the site as well as trips from hauling demolition debris off-site and importing soil fill may create momentary noise levels of up to 85 dBA  $L_{max}$  at 50 feet. However, these occurrences would be generally infrequent and short-lived. Therefore, construction noise impacts would be less than significant at the project-level.

The Certified EIR found vibration impacts to be less than significant. Table 3-5 summarizes vibration levels for typical demolition equipment at the nearest sensitive receptors. Typical construction equipment produces vibration levels of up to 0.089 in/sec peak particle velocity (PPV) at a distance of 25 feet. The nearest structures to proposed demolition activities that would be subject to vibration are residential

### 3. Environmental Analysis

homes to the east. The residences would have a vibration damage threshold of 0.2 in/sec PPV based on Federal Transit Administration (FTA) recommended criteria. The project site is approximately 85 feet from the closest residential structures. At this distance, vibration levels would attenuate to less than the respective 0.2 in/sec PPV (residential), as shown in Table 3-5. Therefore, demolition vibration impacts would be less than significant at the project level.

**TABLE 3-5 VIBRATION LEVELS FOR TYPICAL DEMOLITION EQUIPMENT**

Equipment	PPV (in/sec) at 25 feet (FTA reference distance)	PPV (in/sec) at 85 feet (Residences on City Center Drive)
Large Bulldozer	0.089	0.014
Loaded Trucks	0.079	0.012
Small Bulldozer	0.003	<0.001

Notes: PPV = peak particle velocity

Source: Federal Transit Administration, 2018. Transit Noise and Vibration Impact Assessment Manual. PlaceWorks, 2019.

In summary, with implementation of mitigation measures prescribed in the Certified EIR and listed below, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to noise and vibration.

**Mitigation Measure NOISE-1:** Prior to issuance of demolition, grading and/or building permits, the project applicant shall incorporate the following practices into the construction contract agreement to be implemented by the construction contractor during the entire construction phase:

- Construction activity is limited to the daytime hours between 10:00 a.m. and 6:00 p.m. on Sundays and holidays, and 7:00 a.m. and 7:00 p.m. on other days.
- During the entire active construction period, equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.
- Require the contractor to use impact tools (e.g., jack hammers and hoe rams) that are hydraulically or electrically powered wherever possible. Where the use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used along with external noise jackets on the tools.
- Stationary equipment such as generators, air compressors shall be located as far as feasible from nearby noise-sensitive uses.
- Stockpiling shall be located as far as feasible from nearby noise-sensitive receptors.
- Construction traffic shall be limited—to the extent feasible—to haul routes approved by the City.
- At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, that includes permitted construction

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days and hours, as well as the telephone numbers of the City’s and contractor’s authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor’s representative receives a complaint, he/she shall investigate, take appropriate corrective action, and report the action to the City.

- Signs shall be posted at the job site entrance(s), within the on-site construction zones, and along queuing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment shall be turned off if not in use for more than 5 minutes.
- During the entire active construction period and to the extent feasible, the use of noise-producing signals, including horns, whistles, alarms, and bells, shall be for safety warning purposes only. The construction manager shall use smart back-up alarms, which automatically adjust the alarm level based on the background noise level, or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and laws.
- Erect temporary noise barriers, where feasible, when construction noise is predicted to exceed the City noise standards and when the anticipated construction duration is greater than is typical (e.g., two years or greater).

## 3.14 POPULATION AND HOUSING

### 3.14.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Induce substantial unplanned population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?					X
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?					X

#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant population and housing impacts in the City of Hayward and no mitigation measures were

### 3. Environmental Analysis

identified. As described in Section 2, Project Description, the proposed project is a short-term demolition project that would result in removing a hazardous, blighted, and seismically substandard building to improve the safety and appearance of the project site and the surrounding area. As identified in Section 2.4.2, Building Demolition, above, no development is proposed after demolition activities have been completed. Because there is no pending proposal for the project site and the building is being removed for safety reasons, the site would remain a vacant lot until a potential future project is proposed and approved for construction. Any future development proposed for the project site would undergo separate environmental review, as required. The site is completely surrounded by development and clearing the site would not induce any unplanned growth beyond what is already been accounted for in the Certified EIR. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to population and housing.

### 3.15 PUBLIC SERVICES

#### 3.15.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:					
v) Fire protection?					<b>X</b>
vi) Police protection?					<b>X</b>
vii) Schools?					<b>X</b>
viii) Parks?					<b>X</b>
ix) Other public facilities?					<b>X</b>

### 3. Environmental Analysis

**Discussion:**

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant public services impacts in the City of Hayward and no mitigation measures were identified. The project site is in an urbanized area that is served by the Hayward Police and Fire Departments.

The primary purpose of a public services impact analysis is to examine the impacts associated with physical improvements to public service facilities required to maintain acceptable service ratios, response times or other performance objectives. The proposed project would have a significant environmental impact if it would exceed the ability of public service providers to adequately serve residents, thereby requiring construction of new facilities or modification of existing facilities. Increased demand is typically driven by increases in population. However, in this case, because the vacant building has been deemed a public nuisance, its removal is intended to improve the safety of the site and the surrounding area, thereby reducing demand on the police and fire departments in Hayward. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to public services.

### 3.16 RECREATION

#### 3.16.1 Impacts Associated with the Proposed Project

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Would the project increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?					X
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?					X

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#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant recreation impacts in the City of Hayward and no mitigation measures were identified. The proposed removal of the hazardous building would place no new demand on the public recreation facilities that serve the project area. No impact would occur. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to recreation.

### 3.17 TRANSPORTATION

#### 3.17.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Conflict with a program plan, ordinance or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities?					X
b) Would the project conflict with or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)?					X
c) Substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?					X
d) Result in inadequate emergency access?					X

#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would have significant and unavoidable impacts due to the operation of new projects in the Specific Plan Area. The proposed project would only involve temporary trip generation from construction workers and the haul of construction equipment and hazardous materials and demolition debris. As identified in Section 2.4.3, Post-Demolition Activities, the project site would be left vacant, and would therefore not increase hazards due to a geometric design feature. The proposed project would not result in inadequate emergency



### 3. Environmental Analysis

access on- or off-site. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to transportation.

#### 3.18 UTILITIES AND SERVICE SYSTEMS

##### 3.18.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Require or result in the relocation or construction of new or expanded water, or wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects?					X
b) Have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry and multiple dry years?					X
c) Result in a determination by the waste water treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?					X
d) Generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals?					X
e) Comply with federal, state, and local management and reduction statutes and regulations related to solid waste?					X

#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant utilities and service system impacts except for impacts to water supply which were found to

### 3. Environmental Analysis

be significant and unavoidable at the program-level and during multiple dry years. The Certified EIR included Mitigation Measure UTIL-1, which stated that prior to approving future applications for development in the Specific Plan Area, the City shall require future project applicants to prepare and submit a written statement to the satisfaction of the City of Hayward Development Services Department that clearly demonstrates how the project complies with the water conservation and water efficiency ordinances adopted by the City, including the Indoor Water Efficiency Ordinance (Municipal Code Chapter 10, Article 23), the CALGreen building code requirements (Municipal Code Chapter 10, Article 22 and Article 23), and the Bay-Friendly Water Efficient Landscape and Landscaping Ordinances (Municipal Code Chapter 10, Article 12 and 20) and any other water conservation strategies that would be implemented by the project applicant.

The project site is in an urbanized area in Downtown Hayward that has existing connections to the city's water supply and wastewater treatment facilities. As discussed in Section 3.3, Air Quality, the Certified EIR identified Mitigation Measure AQ-2.1a which requires watering of all active construction (or demolition) sites twice daily to control dust emissions. Limited demand would also be required for water use in the post-demolition period to ensure the hydroseed for erosion control is established. The proposed project would not generate a long-term or permanent demand for water such that the current supply would not be sufficient and Mitigation Measure UTIL-1 is not applicable. The post-demolition activities would reduce stormwater runoff and therefore demand on the wastewater treatment facilities. As discussed in Section 2.4.2, Demolition Activities, demolition debris would be off hauled for disposal at the Altamont Landfill, which was determined to have adequate capacity for the buildout of the Specific Plan Area, including the proposed demolition of the Former City Hall Building and paved surfaces, in the Certified EIR. Accordingly, the proposed project would not result in a new impact or a substantial increase in magnitude of the existing impacts as they relate to utilities and service systems.

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## 3.19 WILDFIRE

### 3.19.1 Impacts Associated with the Proposed Project

Would the proposed project:

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) If located in or near state responsibility areas or lands classified as very high fire hazard severity zones, would the project:					X
i) Substantially impair an adopted emergency response plan or emergency evacuation plan?					X
ii) Due to slope, prevailing winds, and other factors, exacerbate wildfire risks, and thereby expose project occupants to, pollutant concentrations from a wildfire or the uncontrolled spread of a wildfire?					X
iii) Require the installation or maintenance of associated infrastructure (such as roads, fuel breaks, emergency water sources, power lines, or other utilities) that may exacerbate fire risk or that may result in temporary or ongoing impacts to the environment?					X
iv) Expose people or structures to significant risks, including downslope or downstream flooding or landslides, as a result of runoff, post-fire slope instability, or drainage changes?					X

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#### Discussion:

The Certified EIR concluded that implementation of the *Hayward Downtown Specific Plan* would not have any significant wildfire impacts in the City of Hayward and no mitigation measures were identified.<sup>18</sup> The project site is located in an urbanized area and surrounded by built-out sites. There are no designated State Responsibility Areas or land classified as very high fire hazard severity zones on or near the project site.<sup>19</sup> The project site is however located within the Wildland Urban Interface as identified by the Hayward Fire Department.<sup>20</sup> As previously stated in Section 3.9, Hazards and Hazardous Materials, the proposed project would remove a hazardous building to improve the safety of the site and the surrounding community, and as such would not obstruct the implementation of the applicable emergency response plans or exacerbate any potential risk of wildfire-related hazards.

### 3.20 MANDATORY FINDINGS OF SIGNIFICANCE

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
a) Does the project have the potential to substantially degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, substantially reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory?					X

<sup>18</sup> This Consistency Checklist follows the December 2018 CEQA Guidelines Update, which added a separate section to evaluate wildfire impacts. Wildfire impacts assessed in the Certified EIR can be found in Chapter 4.7, Hazards and Hazardous Materials.

<sup>19</sup> California Department of Forestry and Fire Protection, Fire Resource and Assessment Program, <https://egis.fire.ca.gov/FHSZ/>, accessed August 20, 2019.

<sup>20</sup> Hayward Downtown Specific Plan and Associated Zoning Code Update Draft EIR, State Clearinghouse No. 2018022054, Environmental Evaluation, page 4.7-17.

### 3. Environmental Analysis

Environmental Issues	Substantial Change in Project Requiring Major EIR/MND Revisions	Substantial Change in Circumstances Requiring Major EIR/MND Revisions	New Information Showing New or Increased Significant Effects	Less Than Significant Impacts/No Changes or New Information Requiring Preparation of an EIR/MND	No Impact
b) Does the project have impacts that are individually limited, but cumulatively considerable? (“Cumulatively considerable” means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.)					X
c) Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?					X

**Discussion:**

Based on the preceding discussion and the Certified EIR, it has been determined that the proposed project is consistent with the analysis of the Certified EIR and would not degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

According to CEQA Guidelines Section 15355, “Cumulative impacts refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.” “Cumulatively considerable” means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects. The potential cumulative impacts of the proposed project have been considered for each environmental topic evaluated above in the context of the evaluation of the Certified EIR. Given the relatively short-term nature of the proposed project’s construction schedule, the fact that it is within an urbanized area, and the removal of the building was considered as part of the implementation of the Hayward Downtown Specific Plan, the proposed project would not have any cumulatively considerable impacts that are different or more significant than those as disclosed in the Certified EIR.

### 3. Environmental Analysis

The proposed project would not have environmental effects that would cause substantial adverse effects on human beings, either directly or indirectly, as analyzed in the Certified EIR.

## 4. List of Preparers

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### **City of Hayward**

Jennifer Ott, Deputy City Manager

Sara Buizer, Planning Manager

John Stefanski, Management Analyst II

Kathy Garcia, Deputy Director of Public Works

Sammy Lo, Civil Engineer

Joseph Brick, Assistant City Attorney

### **PlaceWorks**

Terri McCracken, Associate Principal

Torina Wilson, Project Planner

Nicole Vermillion, Associate Principal, Air Quality and Greenhouse Gas Emissions

Josh Carman, Senior Associate, Noise, Vibration & Acoustics

John Vang, Senior Associate, Engineer

Steve Bush, Senior Associate, Engineer

Fernando Sotelo, P.E., Senior Associate, Traffic Engineer

Izzy Garcia, Project Planner, Noise and Vibration

Kristie Nguyen, Project Scientist

### **Environmental Collaborative**

James Martin, Principal Biologist

#### 4. List of Preparers

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# ***Mitigation Monitoring or Reporting Program***

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This Mitigation Monitoring or Reporting Program (MMRP) has been prepared for the proposed Former City Hall Building Demolition Project, herein referred to as the “proposed project.” The purpose of the MMRP is to ensure the implementation of mitigation measures identified as part of the Hayward Downtown Specific Plan EIR, State Clearinghouse No. 2018022054, certified on April 30, 2019. The MMRP includes the following information:

- The full text of the mitigation measures;
- The party responsible for implementing the mitigation measures;
- The timing for implementation of the mitigation measure;
- The agency responsible for monitoring the implementation; and
- The monitoring action and frequency.
- The status and date completed.

## Mitigation Monitoring or Reporting Program

**TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measures	Responsible Party	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Status/Date Completed
<b>AIR QUALITY</b>						
<p><b>Mitigation Measure AQ-2.1a:</b> As part of the City’s development approval process, the City shall require applicants for future development projects to comply with the current Bay Area Air Quality Management District’s basic control measures for fugitive dust control, including:</p> <ul style="list-style-type: none"> <li>▪ Water all active construction areas at least twice daily, or as often as needed to control dust emissions. Watering should be sufficient to prevent airborne dust from leaving the site. Increased watering frequency may be necessary whenever wind speeds exceed 15 miles per hour. Reclaimed water should be used whenever possible.</li> <li>▪ Pave, apply water twice daily or as often as necessary to control dust, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites.</li> <li>▪ Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least 2 feet of freeboard (i.e., the minimum required space between the top of the load and the top of the trailer).</li> <li>▪ Sweep daily (with water sweepers using reclaimed water if possible) or as often as needed all paved access roads, parking areas and staging areas at the construction site to control dust.</li> <li>▪ Sweep public streets daily (with water sweepers using reclaimed water if possible) in the vicinity of the project site, or as often as needed, to keep streets free of visible soil material.</li> <li>▪ Hydroseed or apply non-toxic soil stabilizers to inactive construction areas.</li> <li>▪ Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.).</li> <li>▪ Limit vehicle traffic speeds on unpaved roads to 15</li> </ul>	City of Hayward	Prior to and during Construction	City of Hayward Department of Public Works	Plan Review and Approval	During scheduled construction site inspections	

## Mitigation Monitoring or Reporting Program

**TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measures	Responsible Party	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Status/Date Completed
<p>miles per hour.</p> <ul style="list-style-type: none"> <li>Replant vegetation in disturbed areas as quickly as possible.</li> </ul>						
<p><b>Mitigation Measure AQ-2.1b:</b> Applicants for new development projects within the Specific Plan Area shall require the construction contractor to use equipment that meets the United States Environmental Protection Agency (USEPA) Tier 4 emissions standards for off-road diesel-powered construction equipment with more than 50 horsepower, unless it can be demonstrated to the City of Hayward that such equipment is not available. Any emissions control device used by the contractor shall achieve emissions reductions that are no less than what could be achieved by a Level 4 diesel emissions control strategy for a similarly sized engine, as defined by the California Air Resources Board’s regulations.</p> <ul style="list-style-type: none"> <li>Prior to construction, the project engineer shall ensure that all demolition and grading plans clearly show the requirement for USEPA Tier 4 or higher emissions standards for construction equipment over 50 horsepower.</li> <li>During construction, the construction contractor shall maintain a list of all operating equipment in use on the construction site for verification by the City of Hayward.</li> <li>The construction equipment list shall state the makes, models, and numbers of construction equipment onsite.</li> <li>Equipment shall be properly serviced and maintained in accordance with the manufacturer’s recommendations.</li> <li>Construction contractors shall also ensure that all nonessential idling of construction equipment is restricted to five minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9</li> </ul>	City of Hayward	Prior to and during Construction	City of Hayward Department of Public Works	Plan Review and Approval	During scheduled construction site inspections	

## Mitigation Monitoring or Reporting Program

**TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measures	Responsible Party	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Status/Date Completed
<p><b>Mitigation Measure AQ-4.1a:</b> Applicants for construction within 1,000 feet of residential and other sensitive land use projects (e.g., hospitals, nursing homes, day care centers) in the City of Hayward, as measured from the property line of the project to the property line of the source/edge of the nearest travel lane, shall submit a health risk assessment (HRA) to the City of Hayward prior to future discretionary project approval. The HRA shall be prepared in accordance with policies and procedures of the Office of Environmental Health Hazard Assessment (OEHHA) and the Bay Area Air Quality Management District. The latest OEHHA guidelines shall be used for the analysis, including age sensitivity factors, breathing rates, and body weights appropriate for children ages 0 to 16 years. If the HRA shows that the incremental cancer risk exceeds ten in one million (10E-06), PM<sub>2.5</sub> concentrations exceed 0.3 µg/m<sup>3</sup>, or the appropriate noncancer hazard index exceeds 1.0, the applicant will be required to identify and demonstrate that mitigation measures are capable of reducing potential cancer and non-cancer risks to an acceptable level (i.e., below ten in one million or a hazard index of 1.0), including appropriate enforcement mechanisms. Measures to reduce risk may include, but are not limited to (See Table 7.9 of the Hayward 2040 General Plan Draft EIR for further details. This table has been included in Appendix C of the Draft for the Specific Plan):</p> <ul style="list-style-type: none"> <li>▪ During construction, use of construction equipment fitted with Level 3 Diesel Particulate Filters (DPF) for all equipment of 50 horsepower or more.</li> <li>▪ Equipment shall be properly serviced and maintained in accordance with manufacturer recommendations.</li> <li>▪ The construction contractor shall ensure that all non-essential idling of construction equipment is restricted to five minutes or less in compliance with Section 2449 of the California Code of Regulations, Title 13, Article 4.8, Chapter 9.</li> </ul>	City of Hayward	Prior to future project approval	City of Hayward Department of Public Works	HRA Review and Approval	Once	Completed as part of the Initial Study and Consistency Checklist dated September 4, 2019. See Appendix A of the Initial Study and Consistency Checklist.

## Mitigation Monitoring or Reporting Program

**TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measures	Responsible Party	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Status/Date Completed
<ul style="list-style-type: none"> <li>▪ Measures identified in the HRA shall be included in the environmental document and/or incorporated into the site development plan as a component of the proposed Specific Plan. Prior to issuance of any construction permit, the construction contractor shall ensure that all construction plans submitted to the City of Hayward Planning Division and/or Building Division clearly show incorporation of all applicable mitigation measures.</li> </ul>						
<b>NOISE</b>						
<p><b>Mitigation Measure NOISE-1:</b> Prior to issuance of demolition, grading and/or building permits, the project applicant shall incorporate the following practices into the construction contract agreement to be implemented by the construction contractor during the entire construction phase:</p> <ul style="list-style-type: none"> <li>▪ Construction activity is limited to the daytime hours between 10:00 a.m. and 6:00 p.m. on Sundays and holidays, and 7:00 a.m. and 7:00 p.m. on other days.</li> <li>▪ During the entire active construction period, equipment and trucks used for project construction shall utilize the best available noise control techniques (e.g., improved mufflers, equipment re-design, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds), wherever feasible.</li> <li>▪ Require the contractor to use impact tools (e.g., jack hammers and hoe rams) that are hydraulically or electrically powered wherever possible. Where the use of pneumatic tools is unavoidable, an exhaust muffler on the compressed air exhaust shall be used along with external noise jackets on the tools.</li> <li>▪ Stationary equipment such as generators, air compressors shall be located as far as feasible from nearby noise-sensitive uses.</li> <li>▪ Stockpiling shall be located as far as feasible from</li> </ul>	City of Hayward	<p>Prior to issuance of building permits</p> <p>Prior to Construction</p> <p>During Construction</p>	City of Hayward Department of Public Works	<p>Plan Review and Approval</p>	<p>During review of building permits</p> <p>During scheduled construction site inspections</p>	

## Mitigation Monitoring or Reporting Program

**TABLE 1 MITIGATION MONITORING AND REPORTING PROGRAM**

Mitigation Measures	Responsible Party	Implementation Timing	Agency Responsible for Monitoring	Monitoring Action	Monitoring Frequency	Status/Date Completed
<p>nearby noise-sensitive receptors.</p> <ul style="list-style-type: none"> <li>▪ Construction traffic shall be limited—to the extent feasible—to haul routes approved by the City.</li> <li>▪ At least 10 days prior to the start of construction activities, a sign shall be posted at the entrance(s) to the job site, clearly visible to the public, that includes permitted construction days and hours, as well as the telephone numbers of the City’s and contractor’s authorized representatives that are assigned to respond in the event of a noise or vibration complaint. If the authorized contractor’s representative receives a complaint, he/she shall investigate, take appropriate corrective action, and report the action to the City.</li> <li>▪ Signs shall be posted at the job site entrance(s), within the on-site construction zones, and along queueing lanes (if any) to reinforce the prohibition of unnecessary engine idling. All other equipment shall be turned off if not in use for more than 5 minutes.</li> <li>▪ During the entire active construction period and to the extent feasible, the use of noise-producing signals, including horns, whistles, alarms, and bells, shall be for safety warning purposes only. The construction manager shall use smart back-up alarms, which automatically adjust the alarm level based on the background noise level, or switch off back-up alarms and replace with human spotters in compliance with all safety requirements and laws.</li> <li>▪ Erect temporary noise barriers, where feasible, when construction noise is predicted to exceed the City noise standards and when the anticipated construction duration is greater than is typical (e.g., two years or greater).</li> </ul>						



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-623

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** Director of Finance

**SUBJECT**

Transmittal of the Annual Mitigation Fee Act Report (AB1600)

**RECOMMENDATION**

That Council adopts the annual Mitigation Fee Act (AB 1600) report prepared to satisfy Government Code Subsection 66006(b)(1).

**SUMMARY**

The AB 1600 (Cortese) portion of the Mitigation Fee Act applies to fees charged in connection with the approval of development projects to defray the cost of public facilities. AB 1600 was enacted by the State Legislature in 1987, and applies to developer fees established, increased, or imposed on or after January 1, 1989. This legislation requires an annual report on the status of all eligible fees pursuant to the Mitigation Act to satisfy Government Code Subsection 66006(b)(1) requirements. This staff reports includes four primary requirements that the City must satisfy in order to comply with the Mitigation Fee Act, and the City's response for each requirement for the prior fiscal year.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	AB1600 Connection Fees



DATE: December 3, 2019  
TO: Mayor and City Council  
FROM: Director of Finance  
SUBJECT: Transmittal of the Annual Mitigation Fee Act Report (AB 1600)

#### RECOMMENDATION

That Council adopts the annual Mitigation Fee Act (AB 1600) report prepared to satisfy Government Code Subsection 66006(b)(1).

#### SUMMARY

The AB 1600 (Cortese) portion of the Mitigation Fee Act applies to fees charged in connection with the approval of development projects to defray the cost of public facilities. AB 1600 was enacted by the State Legislature in 1987, and applies to developer fees established, increased, or imposed on or after January 1, 1989. This legislation requires an annual report on the status of all eligible fees pursuant to the Mitigation Act to satisfy Government Code Subsection 66006(b)(1) requirements. This staff reports includes four primary requirements that the City must satisfy in order to comply with the Mitigation Fee Act, and the City's response for each requirement for the prior fiscal year.

#### BACKGROUND

It is common for local agencies to charge fees on new development to fund construction of capital facilities that will serve the development. The AB 1600 (Cortese) portion of the Mitigation Fee Act applies to fees charged in connection with the approval of development projects to defray the cost of public facilities. AB 1600 was enacted by the State Legislature in 1987, and applies to developer fees established, increased, or imposed on or after January 1, 1989. This legislation also requires an annual report on the status of all eligible fees pursuant to the Mitigation Act.

#### DISCUSSION

Below are the four primary requirements that the City must satisfy in order to comply with the Mitigation Fee Act, and the City's response for each requirement for the prior fiscal year.

1. **Requirement:** Make certain determinations regarding the purpose and use of a fee and establish a "nexus" or connection between a development project (or class of projects) and the public improvement being financed with the fee.



Response: For all projects requiring development fees subject to AB 1600, the City complies with this requirement by establishing a connection between the development and public improvements to be financed. This is accomplished through the established fee structure, which calculates the amount of public improvements required to be financed based on the type of development.

2. Requirement: Segregate fee revenue from the General Fund in order to avoid co-mingling of capital facilities fees and general funds.

Response: AB 1600 development fees are held in special deposit accounts outside of the General Fund and are therefore not co-mingled with other fees or funds.

3. Requirement: The City must make findings each fiscal year describing the continuing need for the money for all fees that have been in the possession of the City for five years or more, and for which the dollars have not been spent or committed to a project.

Response: Water and sewer connection fees are both nonrefundable. The fees collected are used to finance the acquisition, construction, and improvement of public water and sewer facilities needed as a result of this new development. The City's annual Capital Improvement Program (CIP) appropriates these funds to specific water and sewer improvement projects. A copy of the FY2020 CIP can be found here: <https://www.hayward-ca.gov/your-government/documents/capital-improvement-program>

4. Requirement: Refund any fees, including accumulated interest, for developer deposits in which the findings noted above cannot be made.

Response: No refunds are required at this time.

The City has satisfied the Mitigation Fee Act requirements for FY 2019.

#### ECONOMIC IMPACT

Compliance with AB 1600 allows the City to hold development deposits for future improvements to the community to offset the impacts of these new developments.

#### FISCAL IMPACT

There is no fiscal impact associated with this report. Attachment III provides a summary of the applicable fees pursuant to the Mitigation Act for FY 2019.

This report is prepared annually in compliance with Assembly Bill 1600.

#### PUBLIC CONTACT

A public notice was published in The Daily Review on November 22, 2019, announcing the date, time, location, and subject matter of this report.

Prepared by: Marichu Maramba, Accounting Manager  
Carol Lee, Management Analyst

Recommended by: Dustin Claussen, Director of Finance

Approved by:

A handwritten signature in black ink, appearing to read "Kelly McAdoo". The signature is fluid and cursive, with a large initial "K" and a long horizontal stroke extending to the right.

---

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-\_\_\_\_\_

Introduced by \_\_\_\_\_

**RESOLUTION ACCEPTING THE REPORT AND ADOPTING FINDINGS  
RELATED TO FEES COLLECTED FOR THE DEVELOPMENT PROJECTS  
SUBJECT TO THE REQUIREMENTS OF THE MITIGATION FEE ACT**

WHEREAS, Government Code section 66006, part of the Mitigation Fee Act, which is sometimes referred to as Assembly Bill 1600, requires the City to make findings each fiscal year describing the continuing need to retain fees collected from developers, but which remain unexpended and/or uncommitted after a period of five years; and

WHEREAS, The funds maintained for such period of time must be refunded if the requisite findings cannot be made; and

WHEREAS, The City has unexpended fees that it needs to retain for future expenditures.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby accepts the report of the Director of Finance dated December 3, 2019, and adopts the findings contained therein, copy of which is attached hereto as Attachment III.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**City of Hayward**  
**Annual Report on Development Impact Fees, Per Government Code 66000**  
**AB 1600 Statement**

**Sewer System Connection Charges and Fees**

Municipal Code, Chapter 11, Article 3, Section 11-3.255 authorizes the City to assess connection fees to any customer (new or existing) who installs new or additional fixtures, processes, or equipment, or otherwise causes an increase in wastewater discharge into the City sewer. Residential users shall be assessed for each unit. Commercial, Industrial, Institutional and Other Users will be calculated in accordance with the number of gallons of daily capacity required to serve the customers and the pounds per year of carbonaceous biochemical oxygen demand and suspended solids.  
<https://www.hayward-ca.gov/sites/default/files/documents/adopted-fy-2019-master-fee-schedule.pdf>

**Beginning Balance, 7/1/2018** \$ 23,148,369

**REVENUES**

Fees	270,000
Bond proceeds	16,290,317
Interest income	456,368
Miscellaneous	2,171,625
<b>Total revenues</b>	<b>19,188,310</b>

**EXPENDITURES**

**Percent Financed with Fees**

Recycled Water Treatment and Distribution Facilities (07507)	19,024,711	100
Headworks Hydraulic Eval and Imp (07534)	15,000	100
WPCF Digester Sludge Mixing Tank (07566)	1,424	100
WPCF Final Clarifier No 1 & 2 Equipment Coating (07703)	929,638	100
Co-Generation System Maintenance Contract (07679)	242,093	100
Project Predesign Services (07523)	315	100
Recycled Water Facility Treatment (07710)	610,177	100
GIS Conversion/Migration (Sewer System Share) (07514)	4,900	100
Solar Power Design/Construction Phase II (07530)	112,548	100
Sludge Screening (07567)	192,586	100
New Operations Building (07568)	130,000	100
WPCF Sluice Gate Repair/Replace/Act	273,721	100
WPCF Final Clarifier No 1 Structure (07704)	351,935	100
WPCF Tertiary Treated Near Shore (07708)	103,269	100
Sewer Main Install 880/WILLIMET (07717)	575	100
Transfer out	1,747,314	
<b>Total Expenditures</b>	<b>23,740,206</b>	
Excess of revenues over/(under) expenditures	(4,551,896)	
<b>Ending balance, 6/30/19</b>	<b>\$ 18,596,473</b>	

Note:

Transfer out in the amount of \$1,747,314.00 was for debt service payments.

**City of Hayward**  
**Annual Report on Development Impact Fees, Per Government Code 66000**  
**AB 1600 Statement**  
**Water System Facilities Fees**

Municipal Code, Chapter 11, Article 2, Section 11-2.54 authorizes the City to impose a Water System Facilities Fee upon every applicant for a new water services. The facilities fee will be based on the water meter size.

<https://www.hayward-ca.gov/sites/default/files/documents/adopted-fy-2019-master-fee-schedule.pdf>

**Beginning Balance, 7/1/2018** \$ 35,617,715

**REVENUES**

Fees	5,295,344	
Interest income	926,344	
Miscellaneous	1,428,578	
<b>Total revenues</b>	<b>7,650,266</b>	

**EXPENDITURES**

		<b>Percent Financed with Fees</b>
Mission Aqueduct Seismic Improvement (07122)	-	0
New 8" Pipeline-BART Access Road near Maintenance Yard (07180)	17	0
New .75 MG Tank - Garin reservoir (07183)	1,811,854	0
Weather Based Irrigation Controllers (07017)	19,157	100
Radio Telemetry & Transducer Replacement (07119)	92,311	100
GIS Data Development & Conversion (07177)	4,900	100
Groundwater Management Plan (07021)	12,148	100
Green Hayward Pays Pilot (07058)	13,522	0
Chlorine Booster Station (07102)	126,971	100
Hesperian Water Field Improvements (07015)	68,124	100
Groundwater Sustainability Plan Imp (07191)	127,660	100
Transfer out	1,150,814	
<b>Total Expenditures</b>	<b>3,427,478</b>	

Excess of revenues over/(under) expenditures 4,222,788

**Ending balance, 6/30/19** \$ 39,840,503

Notes:

Transfer out in the amount of \$500,000 was for Cast Iron Pipeline Replacement.

Transfer out in the amount of \$265,000 was for Capital project.

Transfer out in the amount of \$385,814 was for debt service payments.



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-759

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT**

Adopt a Resolution Authorizing the City Manager to Execute Three Agreements Related to the Bay Area Water Supply and Conservation Agency Pilot Water Transfer

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) authorizing the City Manager to execute three agreements related to the Bay Area Water Supply and Conservation Agency (BAWSCA) Pilot Water Transfer: 1) BAWSCA-Hayward Pilot Water Transfer Agreement; 2) Regional Intertie Side Agreement between City of Hayward, East Bay Municipal Utility District (EBMUD), and San Francisco Public Utilities Commission (SFPUC); and 3) Hayward-SFPUC Pilot Water Transfer Agreement.

**SUMMARY**

The Bay Area Water Supply & Conservation Agency (BAWSCA) has proposed a one-time pilot water transfer under which BAWSCA would purchase up to 1,000 acre-feet of water from the Amador Water Agency (AWA) for delivery and use within the BAWSCA service area. Under the proposed project, the transfer water would be conveyed through the EBMUD water system and delivered to the City of Hayward (City), a BAWSCA member agency, through the Regional Intertie, which connects the EBMUD water system to the SFPUC Regional Water System through Hayward. During the pilot water transfer, the City would switch its water supply and receive water from EBMUD, instead of SFPUC, which requires the City to modify water system operations and pump water in the reverse direction for delivery to customers. Transfer water that is not used by the City would be pumped into the SFPUC Regional Water System.

Consistent with the requirements of the City's existing Regional Intertie agreements, the pilot water transfer is scheduled to occur during a planned critical maintenance shutdown of the SFPUC Hetch Hetchy system in January 2020. Existing agreements and approvals limit the allowable uses of the Regional Intertie to emergencies or planned critical maintenance work on EBMUD, SFPUC or City facilities. Over the past year, staff has worked closely with BAWSCA and other parties to prepare seven agreements under which the proposed water transfer could be implemented, of which the City would be a party to three.

The Council Sustainability Committee (CSC) received an update on the proposed pilot water transfer, impacts to the City, and key agreement terms and provisions at its October 30, 2019 meeting. Committee members provided staff with comments and direction, which are summarized in the Discussion section of this report and have been incorporated into the final negotiated agreements. Based on the input received from the CSC, staff is recommending Council authorize the City Manager to execute the three agreements related to the City's participation in the BAWSCA pilot water transfer.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	BAWSCA Pilot Water Transfer Map





DATE: December 3, 2019

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Adopt a Resolution Authorizing the City Manager to Execute Three Agreements Related to the Bay Area Water Supply and Conservation Agency Pilot Water Transfer

### RECOMMENDATION

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### SUMMARY

The Bay Area Water Supply & Conservation Agency (BAWSCA) has proposed a one-time pilot water transfer under which BAWSCA would purchase up to 1,000 acre-feet of water from the Amador Water Agency (AWA) for delivery and use within the BAWSCA service area. Under the proposed project, the transfer water would be conveyed through the EBMUD water system and delivered to the City of Hayward (City), a BAWSCA member agency, through the Regional Intertie, which connects the EBMUD water system to the SFPUC Regional Water System through Hayward. During the pilot water transfer, the City would switch its water supply and receive water from EBMUD, instead of SFPUC, which requires the City to modify water system operations and pump water in the reverse direction for delivery to customers. Transfer water that is not used by the City would be pumped into the SFPUC Regional Water System.

Consistent with the requirements of the City's existing Regional Intertie agreements, the pilot water transfer is scheduled to occur during a planned critical maintenance shutdown of the SFPUC Hetch Hetchy system in January 2020. Existing agreements and approvals limit the allowable uses of the Regional Intertie to emergencies or planned critical maintenance work on EBMUD, SFPUC or City facilities. Over the past year, staff has worked closely with BAWSCA and other parties to prepare seven agreements under which the proposed water transfer could be implemented, of which the City would be a party to three.

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30, 2019 meeting. Committee members provided staff with comments and direction, which are summarized in the Discussion section of this report and have been incorporated into the final negotiated agreements. Based on the input received from the CSC, staff is recommending Council authorize the City Manager to execute the three agreements related to the City's participation in the BAWSCA pilot water transfer.

## BACKGROUND

The purpose of the pilot water transfer is to (1) identify technical, financial, and institutional issues associated with a potential water transfer and (2) test the ability to implement a water transfer by securing approvals needed to deliver transfer water for a limited duration during emergencies and planned critical maintenance work. The pilot water transfer is not a commitment to future transfers. Hayward has been working cooperatively with BAWSCA, EBMUD, and SFPUC on this effort.

BAWSCA initially planned to purchase Sacramento Valley water that could be delivered to BAWSCA's service area by EBMUD using the Freeport Regional Water facilities, which included an intake located on the Sacramento River, pumping plants, pipelines, and the federally owned Folsom South Canal. As EBMUD is not planning to activate Freeport in the foreseeable future, BAWSCA has negotiated with the Amador Water Agency (AWA) to obtain a limited supply of Mokelumne River water in order to implement the pilot water transfer. The Mokelumne River is EBMUD's primary water supply source and transfer of Mokelumne River water would not require use of the Freeport Regional Water Project.

The transfer water would be conveyed through the EBMUD water system and the Regional Intertie for delivery and use by the City, a BAWSCA member agency, in lieu of supplies from SFPUC. The Regional Intertie is a collection of facilities that are jointly owned by EBMUD and SFPUC, located in and operated by the City. The First Amended Joint Exercise of Powers Agreement between City and County of San Francisco Public Utilities Commission, East Bay Municipal Utility District, and City of Hayward for Long-term Operation and Maintenance of the Emergency/Maintenance Water System Intertie Project dated July 10, 2007 ("Regional Intertie Operating Agreement") allows for the use of the Regional Intertie only during emergencies and planned critical maintenance work. The Regional Intertie was last operated in 2009-10 when the parties performed a full test of the facilities shortly after the project was constructed. For the proposed pilot water transfer, the parties would allow a one-time use of the Regional Intertie to implement the BAWSCA pilot water transfer, subject to mutually agreeable terms and conditions. Attachment II shows the path of the pilot water transfer and the facilities involved. As shown on the figure, operation of the Regional Intertie to deliver transfer water outside of the City requires using City-owned assets and infrastructure.

Under normal conditions, the City receives water from the SFPUC Regional Water System (RWS) at two turnouts in the southern part of the City, and the water is delivered largely by gravity to customers. The terms of the City's 1962 Water Sales Contract with SFPUC expressly state that Hayward shall not receive water from any other water supplier or delivery points, other than the two turnouts off of SFPUC's RWS. The City's water system is

designed and operated to take full advantage of receiving water from SFPUC's RWS, with approximately 85 percent of the City receiving water by gravity from the RWS, and only minimal pumping needed to distribute water to higher elevations in the hillside. Further, Hayward customers, including sensitive water users, are used to, paying for, and depend on a water supply that is of high quality in terms of taste, odor, and mineral content.

During the pilot, with SFPUC's agreement, the City's water system would be reoperated to receive water through the Regional Intertie in the northern part of the City, relying entirely on a single pump station to deliver water to the entire City. Based on hydraulic computer modeling conducted by the City, the change in operations would affect water pressures throughout the City's service area and require continuous monitoring of operations by Hayward staff throughout the pilot water transfer. The diverted SFPUC water supplies that would normally be delivered to Hayward would be conveyed to other BAWSCA customers.

### Previous Council and Committee Input

Staff first briefed Council on the concept of a proposed pilot water transfer on September 17, 2013. During this meeting, Council acknowledged the potential risks of receiving water from EBMUD through the Regional Intertie and acceptance of these risks during an emergency or planned critical maintenance work, when the alternative could be a disruption in the normal supply of water to the City. However, Council expressed concerns with the water quality and operational impacts of switching sources to implement the pilot water transfer. Staff directed staff to proceed with discussions with BAWSCA and other agencies regarding the pilot water transfer, as long as risks to the City could be mitigated.

In April 2017, the City and BAWSCA entered into a cooperative agreement as the framework for cooperating and negotiating agreements to implement the pilot water transfer. The CSC was updated on this project on January 8, 2018. The Committee generally expressed support for the pilot water transfer if it could be developed within the context of existing Intertie agreements. The Committee was not supportive of any efforts to expand the allowable uses of the Regional Intertie. Concerns were also expressed regarding potential water quality and operational impacts to the City. Staff was directed to ensure that these concerns are addressed, and that the City is adequately compensated for its role. Hayward is the sole BAWSCA agency that would need to modify operations to implement the pilot water transfer.

Based on direction from the CSC, staff prioritized the following principles during negotiations:

- The pilot water transfer would be scheduled to occur during a planned critical maintenance shutdown of SFPUC's Hetch Hetchy system when the City would otherwise be receiving local SFPUC water supplies, and differences in water quality to Hayward customers would be minimized

- City customers would bear none of the costs for the operation of the Regional Intertie
- City would retain complete operational control, including the ability to discontinue the pilot transfer to protect the health and safety of customers and the water distribution system
- The pilot water transfer would be a one-time occurrence and would in no way commit the City to future water transfers
- The City's participation in the pilot water transfer would in no way affect the City's rights under its 1962 Water Sales Contract with SFPUC

## DISCUSSION

### Key Aspects of the Proposed Transfer

Under the currently proposed plan, the pilot water transfer would convey about 1,000 acre-feet of water from AWA to EBMUD, of which 800 acre-feet, or 260 million gallons, would be delivered to the City. EBMUD would assess a 20 percent system loss through its raw water and treated water systems. The duration of the transfer would be about 17 days, with an average of 15 million gallons per day (MGD) delivered to Hayward. The City's water demands are typically low at this time of year, and the 15 MGD is expected to be sufficient. While the majority of transfer water would be used in the City, a small amount of surplus water would be pumped into the SFPUC Regional Water System.

The pilot is scheduled for mid-to-late January 2020 to coincide with SFPUC's temporary use of local water sources while the Hetch Hetchy conveyance system is shut down for critical maintenance. For the past several years, SFPUC has asked EBMUD and the City to ready the Regional Intertie during planned outages of the Hetch Hetchy system. During these maintenance activities, SFPUC relies entirely on local water supplies and treatment plants and would request activation of the Intertie only in the event that SFPUC is unable to meet customer demands. Implementation of the pilot transfer would allow the parties to exercise the Regional Intertie, which helps ensure staff are properly trained and prepared to operate the facilities during an emergency event.

### Reoperation of the Hayward Water System

The Hayward Water System normally receives water at the south end of Hayward. All of the base zone tanks, which serve the majority of customers, are filled by gravity, and the system has been engineered to ensure adequate water pressure based on gravity-fed distribution. As noted above, implementation of the pilot water transfer would require operation of the Hayward Water System such that water is delivered at the Regional Intertie, near the Hayward Executive Airport, with reliance on mechanical pumping to convey water to all customers, including a state university campus and a community college with a combined student body of over 25,000.

Risks to the City include changes to water pressure that could result in excessive water leaks and water loss, pipe breaks, or lower water pressure at certain locations. Staff would continually monitor water flow and water pressures, and take appropriate actions, where possible to minimize the potential for damage. To mitigate some of this risk, BAWSCA would be required to purchase a limited term insurance policy to cover potential damage up to \$10 million.

During the pilot water transfer, the City would receive a blend of EBMUD's local and Mokelumne water sources. The transfer water will meet all federal and state drinking water quality standards, but customers may detect a difference in the characteristics of the water. EBMUD would provide regular water quality updates and staff would perform separate water quality sampling, if needed. Staff maintains a list of sensitive customers and notifies them of any changes in water quality. The City also can alert the general population through the City's website and other outlets, if necessary.

Prior to the pilot water transfer, staff would take steps to prepare the water system. Key activities include flushing the water transmission lines to clear out debris and adjusting the Supervisory Control and Data Acquisition (SCADA) system, which monitors and adjusts water distribution throughout the system. Sufficient staff and resources would be assigned before and during the pilot transfer to minimize the potential for system damage and water quality issues.

#### Cost Reimbursement

BAWSCA would reimburse the City a lump sum of \$60,000 towards the costs of preparing the system, including bi-directional flushing and SCADA programming, and for shutting down the Regional Intertie at the conclusion of the transfer. The City would also be reimbursed \$160 per acre-foot of water delivered towards the City's cost of operating the Regional Intertie, energy costs, and water quality monitoring. For this one-time transfer, the City would not charge BAWSCA for the use of the City's water transmission mains and the Hesperian Pump Station, required to pump transfer water into the SFPUC RWS.

BAWSCA has estimated the total costs for implementing the pilot transfer to be approximately \$1.2 million. In addition to the operating costs, water needs to be purchased from AWA and EBMUD compensated for conveying the water through its system. BAWSCA has proposed funding the pilot water transfer from the SFPUC Balancing Account. The primary purpose of the Balancing Account is to help smooth out wholesale rate adjustments. This fund is made up of excess revenues paid by all wholesale customers, including Hayward, to SFPUC over time for water purchases. This particular use of the Balancing Account would not have an appreciable impact on wholesale rates, or therefore the City's water rates. However, it is important to note that Hayward would be paying a portion of the implementation costs through the use of the Balancing Account. Also, given the short duration of the pilot, it was agreed that Hayward would pay the same wholesale rate for transfer water as other BAWSCA agencies pay for SFPUC water, while receiving a different water supply and through a system other than SFPUC's RWS.

## Pilot Water Transfer Agreements

A substantial amount of City staff time has been devoted to developing the necessary agreements among the various parties to implement the pilot water transfer. A total of seven draft agreements have been prepared, of which Hayward would be a party to three. The following are descriptions and key provisions of these three agreements:

1. **BAWSCA-Hayward Pilot Water Transfer Agreement:** This agreement specifies the terms and conditions for Hayward's role in implementing the one-time pilot water transfer, including cost reimbursement. Key provisions include:
  - Agreement between the parties that the pilot water transfer is a one-time exploratory project and in no way obligates the City to future water transfers
  - Ability for the City to suspend or cancel the pilot water transfer for any reason
  - Cost reimbursement of \$60,000 towards start-up and shutdown activities, and \$160 per acre foot of water delivered
  - Requirement for BAWSCA to purchase insurance to cover potential damage to the Hayward Water System up to \$10 million for the duration of the pilot transfer and for two weeks following the City's switch back to SFPUC supplies
  
2. **Regional Intertie Side Agreement:** This three-party agreement between the City, EBMUD, and SFPUC defines the terms for BAWSCA's one-time use of the Regional Intertie, under an exception to the limitations of the Regional Intertie Operating Agreement. Key provisions include:
  - Confirmation that use of the Regional Intertie for emergency purposes will take precedence over the pilot water transfer
  - Ability for any of the three parties to suspend or cancel the transfer
  - Water transferred to the City to meet all standards for drinking water without further treatment of any kind, including residual disinfection and fluoride throughout the Hayward service area
  
3. **Hayward-SFPUC Pilot Water Transfer Agreement:** This letter agreement stipulates that per the terms of the City's 1962 Water Sales Contract with SFPUC, the SFPUC would allow Hayward to receive delivery of water from EBMUD for a one-time transfer and that the City's participation in the pilot water transfer in no way affects the City's Water Sales Contract with SFPUC.

Four other separate agreements among other participating agencies have been developed, namely:

- BAWSCA-AWA Water Purchase Agreement for the purchase of water

- BAWSCA-EBMUD Wheeling Agreement for the wheeling of water through EBMUD's facilities to the Regional Intertie
- BAWSCA-SFPUC Agreement for the conveyance of transfer water through the San Francisco Regional System
- AWA-EBMUD Agreement related to Mokelumne water rights matters

Staff is requesting that Council authorize the City Manager to execute the three agreements to which the City would be a party.

### California Environmental Quality Act (CEQA) Compliance

Use of the Intertie during planned critical maintenance of the SFPUC RWS was reviewed in the SFPUC-Hayward-EBMUD Water System Emergency Intertie Project – Initial Study, Mitigated Negative Declaration, and Mitigation Monitoring and Reporting Program, dated February 2003. While the transfer has been timed to occur during the Hetch-Hetchy maintenance shutdown, it could be argued that the pilot water transfer would not ordinarily fall within the definition of the “planned critical work” envisioned by the Regional Intertie Operating Agreement because the planned work would not be “difficult to perform without an alternative water source.” Still, exercise of the Regional Intertie in this manner is within the scope and operational parameters of the original MND and is not expected to produce any new significant impacts on the environment not already evaluated in the original MND.

BAWSCA is the lead agency for the proposed transfer and has determined that the pilot water transfer is exempt from the California Environmental Quality Act (CEQA) under Guidelines sections 15301(b) and 15061. The pilot water transfer is a one-time program of limited duration. It would utilize existing agency facilities and is not anticipated to result in any expansion of use of the Intertie as discussed above. Following its approval of the project agreements, BAWSCA will be filing Notices of Exemption (NOE) in all affected counties. Since BAWSCA is the lead agency, Hayward is not legally required to file a NOE for this project.

### Council Sustainability Committee Comments

On October 30, 2019, the CSC received an update on this project. Committee members expressed continued support for the pilot water transfer as long as Hayward's interests are protected, and the City is compensated for its role. The Committee reiterated its position that the pilot water transfer is a one-time effort being implemented within the context and pursuant to the limitations of the existing Regional Intertie Operating Agreement and would not be a precedent for future transfers outside of those limitations. Committee members commented that use of the Regional Intertie should continue to be limited to emergency events and planned critical maintenance, stating that they would not support expanded use of the Intertie to bring supplemental water supplies into the BAWSCA service area during other times. The CSC further directed staff to properly notify customers of changes in water quality.

## ECONOMIC IMPACT

There would be no impact on Hayward ratepayers related to Hayward's work to prepare the water system or operate the Regional Intertie during the pilot water transfer.

## FISCAL IMPACT

BAWSCA's estimated cost to implement the pilot water transfer, including reimbursement to Hayward and costs to purchase and wheel transfer water, is estimated at \$1.2 million. BAWSCA proposes to fund the pilot water transfer via a transfer from the SFPUC Balancing Account, which allows for funds to be used for water supply projects administered by BAWSCA. Additional Hayward costs related to the pilot water transfer have been limited to staff and legal time needed to develop plans and agreements. All operational costs directly related to Hayward's efforts to implement the water transfer would be reimbursed by BAWSCA from funds to which the City has already contributed, with no impact on the Water Enterprise Fund. There would be no impact on Hayward's General Fund.

## STRATEGIC INITIATIVES

This agenda item does not directly relate to one of Council's Strategic Initiatives.

## SUSTAINABILITY FEATURES

The Regional Intertie is intended to increase water supply reliability during emergencies or planned critical maintenance work of EBMUD, SFPUC, and Hayward facilities. Implementation of the pilot water transfer would allow the parties to exercise the Regional Intertie, which helps ensure staff are properly trained and prepared to operate the facilities during an emergency event.

## PUBLIC CONTACT

The transfer water would meet all federal and state drinking water quality standards, but customers may detect a difference in the characteristics of the water. Consistent with CSC direction, staff would directly notify select sensitive customers, of which the City maintains a list, to alert them of any changes in water quality throughout the transfer. Staff would also communicate information to the general population through the City's website and other outlets, if necessary.

## NEXT STEPS

If Council concurs with staff's recommendation, staff would proceed with executing the three agreements to which Hayward is a party. If all necessary approvals are obtained and all seven agreements are executed, the pilot water transfer is scheduled to be implemented in mid-January 2020.



Prepared by: Jan Lee, Assistant Director of Public Works - Utilities

Recommended by: Alex Ameri, Director of Public Works

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

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Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AGREEMENTS RELATED TO THE BAY AREA WATER SUPPLY AND CONSERVATION AGENCY PILOT WATER TRANSFER

WHEREAS, the Bay Area Water Supply & Conservation Agency (BAWSCA) is a public agency created under a special act of the California Legislature and formed by its member agencies to provide regional water supply planning, resource development, and conservation program services for the benefit of its 26 member agencies; and

WHEREAS, Hayward is a member agency of BAWSCA; and

WHEREAS, Hayward receives wholesale water supplies from the San Francisco Public Utility Commission (SFPUC) Regional Water System under the terms of two agreements: 1) the 1962 Water Sales Contract between Hayward and the City and County of San Francisco; and 2) the 2009 Water Supply Agreement between BAWSCA member agencies and the City and County of San Francisco; and

WHEREAS, the Regional Intertie is jointly owned by East Bay Municipal Utility District (EBMUD) and SFPUC, and connects the EBMUD and SFPUC regional water systems through Hayward using Hayward-owned infrastructure; and

WHEREAS, the First Amended Joint Exercise of Powers Agreement between City and County of San Francisco Public Utilities Commission, East Bay Municipal Utility District, and City of Hayward for Long-term Operation and Maintenance of the Emergency/Maintenance Water System Intertie Project dated July 10, 2007 (“Regional Intertie Operating Agreement”), provides for the use of the Hayward Intertie only during emergencies or planned critical maintenance work, and under no other circumstances; and

WHEREAS, SFPUC has planned shutdowns of the Hetch Hetchy supply system for planned critical maintenance during the winter of 2019-2020, which will require the entire San Francisco Regional Water System to be served by local water supplies; and

WHEREAS, BAWSCA has proposed a one-time Pilot Water Transfer, in which Hayward would operate the Regional Intertie during the SFPUC's planned 2019-2020 Hetch Hetchy shutdown, and modify operation of the Hayward Water System in order to accept transferred water deliveries from an alternative source arranged by BAWSCA in lieu of Hayward's SFPUC supply in order to (1) identify technical, financial and institutional issues associated with a potential water transfer and (2) test the ability to implement a

water transfer by securing approvals needed to deliver transfer water for a limited duration during planned critical maintenance work; and

WHEREAS, under these limited circumstances the Pilot Water Transfer offers an opportunity to exercise the Regional Intertie in support of staff training and emergency preparedness; and

WHEREAS, the parties participating in the Pilot Water Transfer have developed agreements necessary to implement the BAWSCA pilot water transfer, of which Hayward is a party to three of the agreements, specifically: the BAWSCA-Hayward Pilot Water Transfer Agreement; the Regional Intertie Side Agreement between SFPUC, EBMUD, and Hayward; and the Hayward-SFPUC Pilot Water Transfer Agreement (“Agreements”); and

WHEREAS, the terms of these Agreements, including pricing and reimbursement, shall not be a precedent to future agreements between the parties, including but not limited to any future water transfers, and shall not bind the parties to any future program of water transfers; and

WHEREAS, BAWSCA has determined as the lead agency for the project under the California Environmental Quality Act (CEQA) that the project is exempt pursuant to CEQA Guidelines sections 15301(b) and 15061, and has issued a Notice of Exemption detailing these findings; and

WHEREAS, water delivered to Hayward during the pilot water transfer shall meet all federal and state standards for drinking water without the need for further treatment of any kind; and

WHEREAS, the agreements provide for Hayward to be reimbursed for costs to operate the Regional Intertie during the Pilot Water Transfer; and

WHEREAS, the Pilot Water Transfer will result in negligible or no expansion of use of Hayward’s existing facilities; and

WHEREAS, based on the forgoing, Hayward is satisfied its approval of the Agreements will not have a significant effect on the environment, and the Pilot Water Transfer therefore is exempt from the California Environmental Quality Act under Guidelines sections 15301(b) and 15061.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the City Manager to execute three agreements related to the BAWSCA Pilot Water Transfer, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

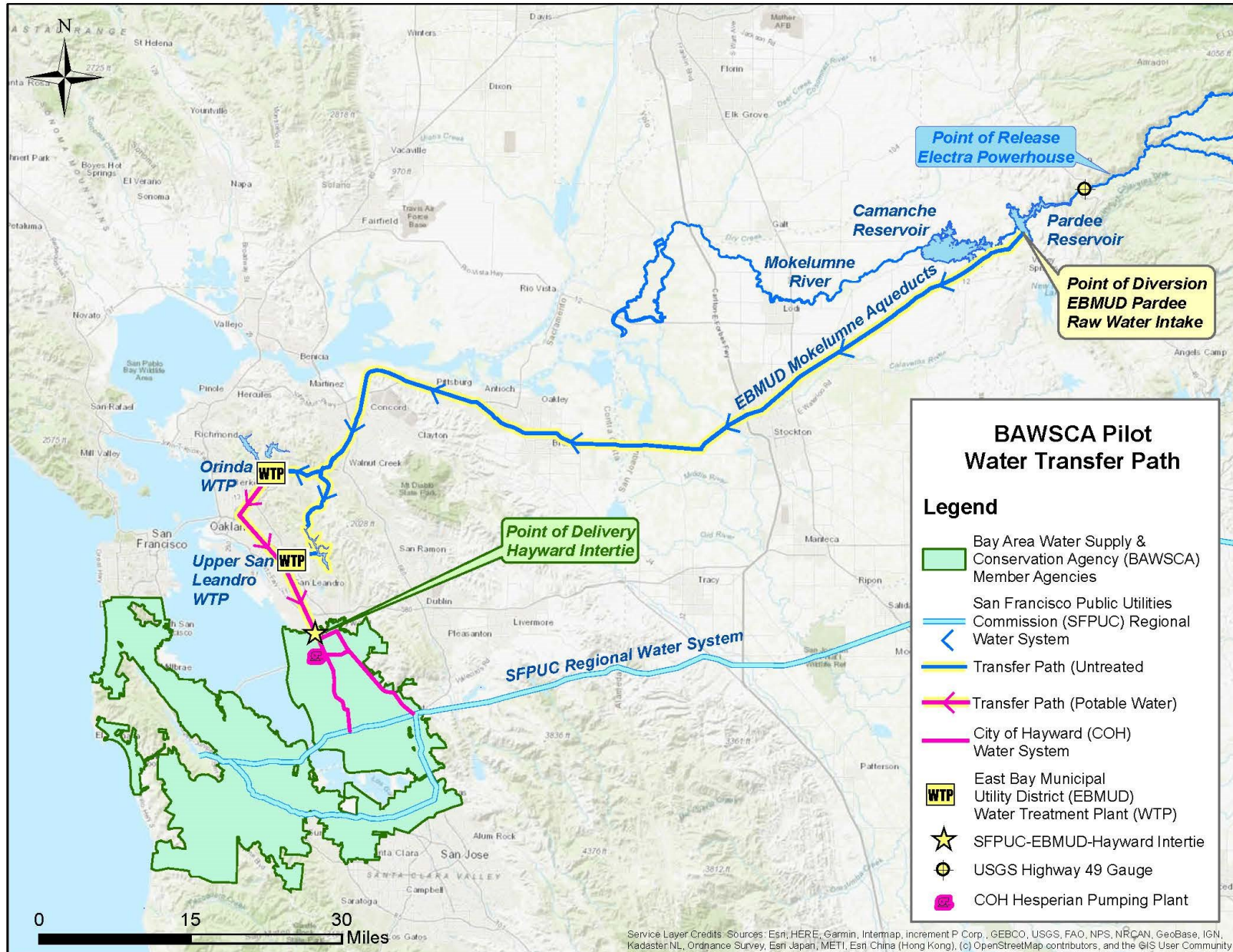
ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward





# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-754

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** Deputy City Manager

**SUBJECT**

Adopt a Resolution Authorizing the City Manager to Purchase the Tax Delinquent Real Property Located at 1032 Central Boulevard and Enter Into a Purchase and Sale Agreement with the County of Alameda

**RECOMMENDATION**

That Council adopts a resolution (Attachment II) authorizing the City Manager to object to public sale and enter into an agreement with the County of Alameda to purchase fee interest in tax-delinquent real property located at 1032 Central Boulevard (APN 445-270-7-1) from Alameda County Tax Collector's Office consistent with the previous action taken by the City Council on February 19, 2019.

**SUMMARY**

The purpose of this item is to re-affirm authorization for the City Manager to object to the public sale and enter into a purchase agreement to purchase the property located at 1032 Central Boulevard. The site is part of the tax-delinquent real property sale that Alameda County conducts on a yearly basis. The subject site is adjacent to the land that is part of the Route 238 Parcel Group 5 acquired from Cal Trans and will be incorporated into the disposition and development of this parcel once acquired by the City.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	Purchase and Sale Agreement
Attachment IV	Site Map



DATE: December 3, 2019

TO: Mayor and City Council

FROM: Deputy City Manager

SUBJECT: Adopt a Resolution Authorizing the City Manager to Purchase the Tax-Delinquent Real Property located at 1032 Central Boulevard and Enter Into a Purchase and Sale Agreement with the County of Alameda

#### RECOMMENDATION

That Council adopts a resolution (Attachment II) authorizing the City Manager to object to public sale and enter into an agreement with the County of Alameda to purchase fee interest in tax-delinquent real property located at 1032 Central Boulevard (APN 445-270-7-1) from Alameda County Tax Collector's Office consistent with the previous action taken by the City Council on February 19, 2019.

#### SUMMARY

The purpose of this item is to re-affirm authorization for the City Manager to object to the public sale and enter into a purchase agreement to purchase the property located at 1032 Central Boulevard. The site is part of the tax-delinquent real property sale that Alameda County conducts on a yearly basis. The subject site is adjacent to the land that is part of the Route 238 Parcel Group 5 acquired from Cal Trans and will be incorporated into the disposition and development of this parcel once acquired by the City.

#### BACKGROUND

In 2013, the City of Hayward performed an abatement on the property located at 1032 Central Boulevard. This abatement included the removal of the existing single-family residential building that had been subject to two previous fires. The structure had been deemed unsafe and was a nuisance to the surrounding neighborhood. The site has remained vacant since that time.

In January 2019, the County of Alameda released the list of properties that were subject to sale due to delinquent back taxes of five or more years. Staff evaluated the list of properties to determine if any of the nine properties had any value to the City of Hayward. The property located at 1032 Central Boulevard was part of that list. This property is located adjacent to Parcel Group 5 of the 238 land deals, also known as the Bunker Hill neighborhood.

The Council previously approved a resolution authorizing the City Manager to move forward with the purchase of the property on February 19, 2019. The Alameda County Tax Collector's Office has now delivered a Purchase and Sale Agreement for the sale of the property and is requesting an updated resolution reaffirming the City's desire to move forward with the purchase.

## DISCUSSION

The property at 1032 Central Boulevard is located where Spring Drive intersects with Central Boulevard. The site is 0.24 acres (10,454 sq. ft.) and is zoned Residential Natural Preserve, which allows for large lot single-family residential. The site is in the Alquist Priolo Fault Zone and may have fault traces on the property. The property is located adjacent to the future development that will be part of the Parcel Group 5 development and will be incorporated into the disposition and development process already underway. Depending on future geotechnical studies on the site, the parcel can be used either for a new single-family residential unit or as part of the open space for the future development.

In January 2019, the City of Hayward received notice from the County of Alameda Tax Collector that nine parcels located in or around the City of Hayward were approved by the Board of Supervisors to be sold as part of the Delinquent Tax Property Sale that took place March 15, 2019. As one of the taxing agencies in Alameda County, the City is given first right of refusal to purchase any of the listed properties. On February 3, 2019, the City submitted an objection to the sale of the property located at 1032 Central Boulevard. This property was then removed from the list of properties that were for public auction.

In order to move forward with the purchase of the property, the City of Hayward must submit an approved Resolution authorizing the purchase of the property and enter into an agreement to purchase the property with Alameda County. The purchase price of the property will be the minimum bid amount of \$37,027. The property owner did not remedy their back taxes by close of business on March 15, 2019, therefore the City of Hayward and Alameda County will proceed with the purchase and sale of the subject site.

Upon approval of the attached resolution, staff will negotiate and enter into a purchase agreement with Alameda County. The previous property owner did not remedy back property taxes prior to March 15, 2019, so the site will be scheduled for a hearing by the Board of Supervisors to approve the purchase and Sale Agreement between Alameda County and the City in the coming months.

## ECONOMIC IMPACT

The proposed purchase of the site at 1032 Central Boulevard could have a positive economic impact for the City of Hayward. If acquired, the site will be incorporated as part of the future Parcel Group 5 residential development, thus making the project area larger. The overall



economic impact will depend on whether the site can be used for a single-family residential unit or for open space. That determination would be made after further geotechnical studies are completed to determine fault-line traces. Overall, the acquisition would have a positive impact on the existing residential neighborhood in that it will remove a nuisance property and ensure new development on the site that is part of a cohesive plan.

#### FISCAL IMPACT

The proposed acquisition would be funded through the use of land proceeds, in the General Fund, that the City received from the sale of the land that was part of Parcel Group 1. The purchase price will be \$37,027. Additional dollars for closing costs, legal fees, and recording fees will also be allocated from those funds. On February 19, 2019, the City Council allocated \$47,000 for the purchase of the site at 1032 Central Boulevard. Staff is requesting an additional \$10,000 for a total of \$57,000 to ensure all closing costs are covered for the purchase of the site.

#### STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities Initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following goal and objectives:

- Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods.
- Objective 1: Increase neighborhood safety and cohesion – The purchase of the property would remove a nuisance property and incorporate the site as part of the larger future development proposed on Parcel Group 5 to create a more cohesive neighborhood.
- Objective 2: Foster a sense of place and support neighborhood pride – The property located at 1032 Central Boulevard has a long history as a nuisance property and was subject to past City abatement to remove a dangerous structure on the site. The potential purchase of the property will allow for the inclusion of this site as part the future development on Parcel Group 5.

#### PUBLIC CONTACT

No public notice is required with this action.

#### NEXT STEPS

If approved, the City Manager will negotiate an agreement, in a form approved by the City Attorney, with Alameda County for the purchase of the property at 1032 Central Boulevard

and incorporate this parcel into the disposition and development process already underway for Parcel Group 5.

Prepared by: Catherine Ralston, Economic Development Specialist

Recommended by: Jennifer Ott, Deputy City Manager

Approved by:

A handwritten signature in black ink, appearing to read "K. McAdoo". The signature is fluid and cursive, with a long horizontal stroke at the end.

---

Kelly McAdoo, City Manager

HAWYARD CITY COUNCIL

RESOLUTION 19-\_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD AUTHORIZING THE CITY MANAGER TO OBJECT TO PUBLIC SALE AND AUTHORIZING THE CITY MANAGER TO ENTER INTO AN AGREEMENT TO PURCHASE FEE INTEREST IN TAX-DELINQUENT REAL PROPERTY LOCATED AT 1032 CENTRAL BOULEVARD (APN 445-270-7-1) FROM THE ALAMEDA COUNTY TAX COLLECTOR'S OFFICE

WHEREAS, the County of Alameda Tax Collector released a list of properties subject to sale for delinquent taxes and scheduled for sale at public auction in March 2019; and

WHEREAS, acquisition will meet the City Council's Strategic Initiative of Complete Communities by controlling a historically nuisance property; and

WHEREAS, the subject property is located adjacent to the future development of Parcel Group 5 also controlled by the City; and

WHEREAS, this acquisition is exempt under CEQA guidelines; and

WHEREAS, pursuant to State Revenue and Taxation Code Section 3695, the City may file with the County Tax Collector and Board of Supervisors a written objection to the sale of the property that is needed for a public use, along with an application to purchase the property for no less than the minimum bid price; and

WHEREAS, the property may be acquired for approximately \$37,027 plus an additional \$20,000 for staff time and closing costs; and

WHEREAS, funds are available as part of the 238 land proceeds as part of the General Fund to meet these costs;

NOW, THEREFOR BE IT RESOLVED, that the City Council of the City of Hayward hereby authorizes the City Manager to object to the public sale of the tax-defaulted property, to enter into an agreement to purchase fee interest in this property;

BE IT FURTHER RESOLVED, that to the extent any of the above described actions have been taken previously, there are hereby ratified and reaffirmed by the City Council; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized and directed, on behalf of the City and in its name, to execute and deliver such documents and to do such acts as may be deemed necessary or appropriate to accomplish the intentions of this resolution.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_.

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

**AGREEMENT TO PURCHASE TAX-DEFAULTED PROPERTY**

This Agreement is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Board of Supervisors of the County of Alameda, State of California (“COUNTY”), and the City of Hayward, a taxing agency that is also a revenue district (“PURCHASER”). This agreement is made in accordance with California law pursuant to the provisions of Division 1, Part 6, Chapter 8, of the California Revenue and Taxation Code:

**RECITALS**

- A. The real property situated within COUNTY, and described in Exhibit “B” of this Agreement, is tax defaulted and is subject to the power of sale by the Tax Collector of COUNTY for the nonpayment of taxes, under Division 1, Part 6 of the Revenue and Taxation Code.
- B. Pursuant to the provisions of Division 1, Part 6, Chapter 8 of the Revenue and Taxation code including sections 3695 and 3695.4 PURCHASER objects to a public tax sale of the real property described in Exhibit “B” of this Agreement, on the ground that such property is needed or may be needed for the following public use:
  - 1. Public purpose including but not limited to economic development, elimination of blight, and development of public infrastructure.

**AGREEMENT**

In consideration of the mutual promises herein set forth, the parties mutually agree as follows:

1. Payment for Notice: As provided by section 3800 of the Revenue and Taxation Code, PURCHASER shall pay the cost of giving notice of this Agreement and the cost of publication or posting the Notice of Agreement.
  
2. Purchase and Evidence of Title: Within fourteen (14) days from the effective date of this Agreement, PURCHASER also agrees to pay \$37,027 plus costs, as specified in Exhibit "B" for the property described in Exhibit "B" plus additional costs. Payment shall be in cash, certified funds, or wire transfer payable to the Alameda County Tax Collector. Upon receipt of said sums by the Alameda County Tax Collector, the Tax Collector shall execute and record tax deeds and deed restrictions conveying title to said property to the PURCHASER. After recordation, the tax deeds and deed restrictions will be returned to the PURCHASER by the Alameda County Clerk Recorder's Office.
  
3. No Representation: COUNTY makes no representation concerning the condition of title to the subject property. COUNTY does not warrant title to the property or make any representations concerning the title. Additionally, COUNTY makes no representation concerning the physical condition of the subject property and PURCHASER acknowledges that it is not relying upon any statements or representations of the COUNTY concerning the subject property and is purchasing the subject property in its "as is" condition.

4. Other Expenses: PURCHASER shall pay the other expenses in addition to the purchase price of said property on Exhibit "B" including but not limited to the cost of proceeding to obtain a clear title to the property, and the expenses incurred in the payment, compromise or other method of removal of any liens or adverse claims against the property.
  
5. Real Property Taxes, Fiscal Year 2017-2018 and 2018-2019: The purchase price does not include property taxes for fiscal year 2017-2018 through 2018-2019. The PURCHASER shall be responsible for payment in full of the fiscal year 2017-2018 through 2018-2019 property taxes and interest for the property included in Exhibit "B" in addition to the purchase price. In addition, PURCHASER shall be responsible for payment in full of any subsequent property taxes and interest due at the time the sale is finalized, which will not be included as part of the purchase price.
  
6. Treated as a Single Transaction: The COUNTY shall sell the parcel listed in Exhibit "B" as a single transaction to PURCHASER in consideration of the receipt of payments described above.
  
7. Redemption: If the parcel listed in Exhibit "B" is redeemed prior to the effective date of this Agreement, this Agreement shall be null and void.

8. Void/Incomplete Purchase: This Agreement shall become null and void and the right of redemption restored upon PURCHASER'S failure to comply with the terms and conditions of this Agreement prior to the tax deed recordation. This includes failure to complete the purchase of the property listed in Exhibit "B". In the event of a void/incomplete purchase, the PURCHASER will be required to reimburse the Alameda County Tax Collector for the costs for providing notice, publication, and actual costs incurred for preparing and conducting the Chapter 8 Agreement Sale to the extent these expenses have been incurred.
  
9. Indemnity: PURCHASER shall indemnify the COUNTY from and against any and all liability, loss, costs, damages, fees of attorneys, and other expenses which COUNTY may sustain or incur by reason of a challenge to the validity of the tax default sale of the property described in Exhibit "B", except for challenges based on the sole negligence of the County. Pursuant to section 3809 of the Revenue and Taxation Code, a proceeding based on alleged invalidity or irregularity of any proceeding instituted can only be commenced within one year after the date of execution of the Tax Collector's tax deed.
  
10. Environmental Condition of Property: The parcels acquired pursuant to this Agreement may contain hazardous wastes, toxic substances, or other substances regulated by federal, state, and local agencies. COUNTY in no way whatsoever assumes any responsibility, implied or otherwise, and makes no representations that the parcels are in compliance with federal, state or local



laws governing such substances. COUNTY in no way assumes any responsibility, implied or otherwise, for any costs or liability of any kind imposed upon or voluntarily assumed by PURCHASER or any other owner to remediate, clean up, or otherwise bring into compliance according to federal, state, or local environmental laws for any parcel purchased.

11. CERCLA: COUNTY and PURCHASER agree that under 42 U.S.C. section 9601(20)(D), the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") expressly excludes local and state governments from clean up liability for properties they acquire as a result of tax delinquencies. Notwithstanding this provision, PURCHASER shall defend, indemnify, and hold harmless COUNTY and or COUNTY's officers, directors, agents, employees, or volunteers liable for costs or other charges related to the remediation, clean up, or other work necessary to bring any parcel purchased under this Agreement into compliance with federal, state, or local environmental laws.

12. Code Compliance: PURCHASER shall maintain any existing structures and ensure compliance with all applicable county and city code provisions (e.g., substandard housing, building and zoning). PURCHASER is pursuing grant funds for renovation and will maintain building in accordance with all applicable county and city code provisions (e.g., substandard housing, building and zoning) once improvements are complete. PURCHASER shall remediate any outstanding code violations and correct and repair any dangerous unsightly, or

blighted condition which reduces the aesthetic and property values in the neighborhood, is offensive to the senses, or is detrimental to the health, safety, and welfare of the public within a reasonable time and upon completion of improvements. PURCHASER shall also remove overgrown, diseased, dead or decayed trees, weeds, or other vegetation, exterior trash, debris, junk, rubbish, graffiti, and abandoned and/or inoperable vehicles within a reasonable time and upon completion of improvements. PURCHASER shall also ensure the property and all building entry points including doorways, windows or other openings are closed, maintained or secured to prevent entry to persons or animals. The property shall be fenced if appropriate.

13. Breach: In the event PURCHASER is in default, the COUNTY shall give written notice of default to PURCHASER, specifying the default complained of and may take action to correct the default. PURCHASER must commence to cure, correct, or remedy the default within five (5) days of receipt of notice of default and must fully cure, correct, or remedy the default within thirty (30) days of receipt of notice of default.

In the event of transfer of the property as a result of inability to fully cure default, PURCHASER shall relinquish any claim to the property without compensation or refund. PURCHASER shall pay any and all costs required to cure a default including the transfer of the property.

In addition to any other rights or remedies, COUNTY may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purpose of the Purchase Agreement.

14. Approval by State Controller: Revenue and Taxation Code Section 3795 requires this Agreement to be submitted to and approved by the California State Controller before it becomes final. The Agreement is not in effect until the State Controller authorization is received.

The undersigned hereby agree to the Terms and Conditions of this Agreement and are duly authorized to sign for said agencies.

**CITY OF HAYWARD**

ATTEST:

BY:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**COUNTY OF ALAMEDA**

ATTEST:

BY:

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signature: \_\_\_\_\_  
Name: Richard Valle  
Title: President, Board of Supervisors

This agreement was submitted to me before final execution by the Board of Supervisors and I have compared the same with the records of Alameda County relating to the real property described herein.

\_\_\_\_\_  
Henry C. Levy, Alameda County Treasurer-Tax Collector

Pursuant to the provisions of Revenue and Taxation Code section 3795, the Controller approves the foregoing agreement this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BETTY T. YEE, CALIFORNIA STATE CONTROLLER

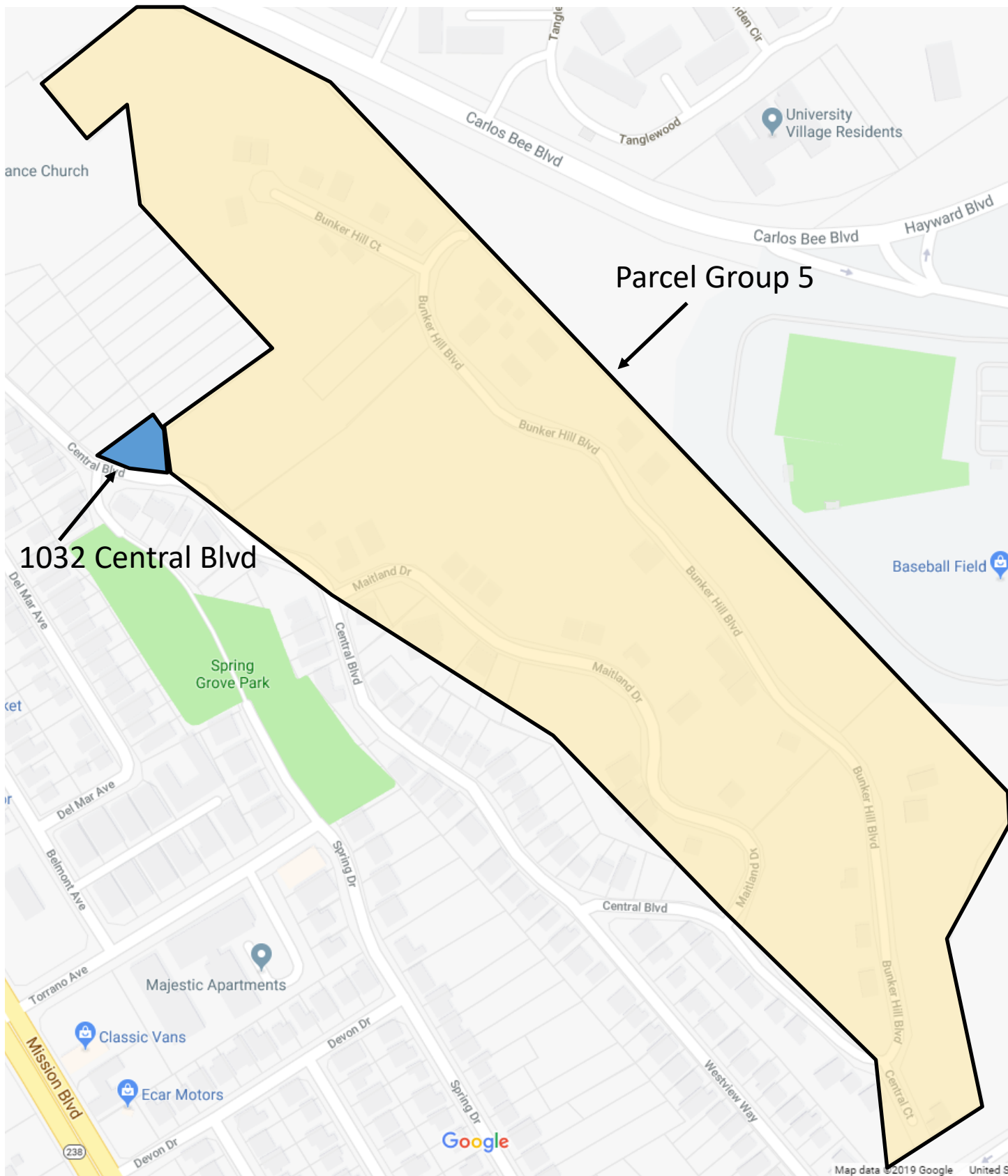
By \_\_\_\_\_

Approved as to form  
DONNA ZIEGLER, County Counsel

By \_\_\_\_\_  
Farand C. Kan, Deputy County Counsel

## EXHIBIT "B"

<u>Description</u>	<u>First Year Delinquent</u>	<u>Default Number</u>	<u>Purchase Price</u>	<u>Purpose for Acquisition</u>
445-270-7-1	2011-2012	738458	\$37,027.00	Economic Development Elimination of Blight  Development of Public  Infrastructure





# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-761

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT**

Adopt Resolutions Authorizing the City Manager to Execute a Professional Services Agreement with Black & Veatch Corporation to Prepare a Water System Risk and Resilience Assessment and Emergency Response Plan and Appropriate \$228,000

**RECOMMENDATION**

That Council adopts the attached resolutions authorizing the City Manager to execute a professional service agreement (PSA) with Black & Veatch Corporation to prepare a Water System Risk and Resilience Assessment and Emergency Response Plan, in an amount not-to-exceed \$198,000 (Attachment II) and appropriating \$228,000 in the Water System Replacement Fund (Attachment III) for the Risk and Resilience Assessment and Emergency Response Plan.

**SUMMARY**

Section 2013 of America's Water Infrastructure Act of 2018 (AWIA) requires community water systems, including Hayward, to complete a Risk and Resilience Assessment (RRA) by March 31, 2020 and develop an Emergency Response Plan (ERP) by September 30, 2020. The RRA will evaluate vulnerabilities, threats, and consequences from potential hazards, including natural hazards (e.g., earthquakes) and malevolent acts, and the ERP will provide strategies and plans to address the identified risks and respond to emergency events. The City does not have the resources and technical expertise to perform this work in-house. Therefore, staff is recommending that Council approve a PSA with Black & Veatch Corporation, in an amount not-to-exceed \$198,000, for preparation of the RRA and ERP. Staff also recommends that the work be funded from the Water System Replacement Fund and that \$228,000 be appropriated from the fund balance for this project.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution Awarding Contract
Attachment III	Appropriation Resolution



DATE: December 3, 2019

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Adopt Resolutions Authorizing the City Manager to Execute a Professional Services Agreement with Black & Veatch Corporation to Prepare a Water System Risk and Resilience Assessment and Emergency Response Plan and Appropriate \$228,000

## RECOMMENDATION

That Council adopts the attached resolutions authorizing the City Manager to execute a professional service agreement (PSA) with Black & Veatch Corporation to prepare a Water System Risk and Resilience Assessment and Emergency Response Plan, in an amount not-to-exceed \$198,000 (Attachment II) and appropriating \$228,000 in the Water System Replacement Fund (Attachment III) for the Risk and Resilience Assessment and Emergency Response Plan.

## SUMMARY

Section 2013 of America's Water Infrastructure Act of 2018 (AWIA) requires community water systems, including Hayward, to complete a Risk and Resilience Assessment (RRA) by March 31, 2020 and develop an Emergency Response Plan (ERP) by September 30, 2020. The RRA will evaluate vulnerabilities, threats, and consequences from potential hazards, including natural hazards (e.g., earthquakes) and malevolent acts, and the ERP will provide strategies and plans to address the identified risks and respond to emergency events. The City does not have the resources and technical expertise to perform this work in-house. Therefore, staff is recommending that Council approve a PSA with Black & Veatch Corporation, in an amount not-to-exceed \$198,000, for preparation of the RRA and ERP. Staff also recommends that the work be funded from the Water System Replacement Fund and that \$228,000 be appropriated from the fund balance for this project.

## BACKGROUND

Section 2013 of AWIA requires community water systems that serve more than 3,300 people complete a RRA and develop an ERP. The purpose of this law is to ensure that water systems are adequately prepared for and can respond to malevolent acts or natural hazards. As a public water system serving the City's residential and business community, approximately 160,000 customers in total, the City is subject to the requirements of the AWIA.



The RRA and ERP will build on the City's existing Water System Vulnerability Assessment and Emergency Response Plan, which were developed in 2003 in response to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The City's Water System ERP was last updated in 2005. The RRA and ERP update will be developed in accordance with AWIA requirements and will incorporate new City facilities and emergency planning efforts that have been implemented over the past fifteen years. The work required to comply with AWIA requirements is highly specialized and the City does not have the staff resources and technical knowledge to prepare an effective and compliant RRA and ERP in-house. To ensure that the City meets all applicable requirements and deadlines, staff recommends use of consultant services.

## DISCUSSION

### Development of the RRA and ERP

Working in cooperation with local emergency planning entities, the RRA will evaluate the vulnerabilities, threats, and consequences from potential hazards, including natural hazards (e.g., earthquakes) and malevolent acts. The assessment will include an evaluation of:

- The resiliency of the City's water facility infrastructure (including pipes, water sources, storage and distribution facilities, electronic, computer and other automated systems, and fences or other physical security barriers);
- Practices and procedures for monitoring system performance;
- Financial and billing systems; and
- Operation and maintenance of the system.

Following completion of the RRA, the ERP will be developed to identify and document:

- Strategies and resources to improve resiliency, including physical security and cybersecurity;
- Plans and procedures for responding to a natural hazard or malevolent act that threatens safe drinking water;
- Actions and equipment to lessen the impact of natural hazards and malevolent acts; and
- Strategies to detect natural hazards or malevolent acts.

The AWIA has established a timeline for completing this work, with certification of the RRA completion due to the United States Environmental Protection Agency on March 31, 2020 and the ERP by September 30, 2020. The RRA and ERP must be reviewed every five years thereafter, and if necessary, updated.

### Consultant Selection

Staff issued a request for proposals on October 28, 2019, to four qualified consulting firms to obtain professional services for preparation of the RRA and ERP. The scope of work includes all activities necessary to comply with the requirements of the AWIA, including obtaining all the essential information about City facilities and systems, assessing potential risks, preparing the RRA, and updating the City's existing ERP.

The City received a total of 3 proposals from Black & Veatch Corporation, Brown and Caldwell, and Carollo Engineers. The proposals were evaluated and ranked by a team of staff members based on qualifications, experience, proposed work plan, and the reasonableness of the labor hours and rates. Based on this objective evaluation, staff recommends Black & Veatch Corporation.

Black & Veatch has proposed a knowledgeable and experienced project team, with hands-on risk assessment experience with a geographically diverse range of agencies, including Placer County Water Agency, Kansas City Water Services, and the City of Irving in Texas. The firm demonstrated knowledge of the AWIA requirements and has prepared a work plan and detailed schedule to meet the City's requirements and timeline, including sufficient time for City staff review. The number of labor hours and hourly rates are reasonable for the scope of work.

Given the scope of work, staff has negotiated a not-to-exceed amount of \$183,000 for the basic services and \$15,000 for additional services that the City may authorize if needed, for a total not-to-exceed contract amount of \$198,000. Staff has reviewed the costs for similar work performed for other agencies and believes that the negotiated contract amount is reasonable.

## ECONOMIC IMPACT

The City provides drinking water to a population of over 160,000 people. Completion of the RRA and ERP update will help improve the resiliency of the City's water system and reduce risks to the City's drinking water supply from natural hazards or malevolent acts. This project will also increase the City's emergency preparedness by ensuring that the Hayward Water System ERP is updated and coordinated with overall City and other local emergency planning efforts.

The total cost for preparation of the RRA and ERP is estimated at \$228,000. This includes \$198,000 for consultant services and \$30,000 for staff time. Due to the potential for capital projects to be recommended as part of the RRA and ERP and because existing ratepayers will benefit from the work through increased water system reliability, staff recommends that the work be funded from the Water System Replacement Fund, which is funded mainly through transfers from the Water System Operating Fund. Preparation of the RRA and ERP can be completed without the need for an additional transfer from the Water System Operating Fund and will not have an appreciable impact on customer water rates.

## FISCAL IMPACT

When the current Capital Improvement Program (CIP) was adopted, staff had not yet identified the scope of work for RRA and ERP. After further reviewing the AWIA requirements, staff determined that it is appropriate to fund this work in the Water System Replacement Fund. Staff is therefore requesting that a project be established in the CIP and a total of \$228,000 be appropriated from the fund balance. This amount includes the cost of

the consultant services and staff time. There would be no impact on the City's General Fund.

### STRATEGIC INITIATIVES

This agenda item does not directly relate to one of Council's Strategic Initiatives.

### SUSTAINABILITY FEATURES

Compliance with AWIA requirements will result in an assessment of the resiliency of the City's water system and an updated ERP, which helps ensure that the City is adequately prepared for and can respond to malevolent acts or natural hazards.

### PUBLIC CONTACT

No public contact is anticipated in preparing the RRA and ERP.

### NEXT STEPS

If Council approves staff's recommendation, staff will take the steps necessary to execute a PSA with Black & Veatch Corporation and prepare the RRA and ERP in compliance with all mandated requirements and submittal deadlines. The following schedule has been developed for this project:

Milestone	Date
Notice to Proceed	December 10, 2019
Review of Draft RRA	March 13, 2020
Completion of RRA	March 31, 2020
Review of Draft ERP	September 1, 2020
Completion of ERP	September 30, 2020

Prepared by: Jan Lee, Assistant Director of Public Works - Utilities

Recommended by: Alex Ameri, Director of Public Works

Approved by:



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Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH BLACK & VEATCH CORPORATION TO PREPARE A WATER SYSTEM RISK AND RESILIENCE ASSESSMENT AND EMERGENCY RESPONSE PLAN, IN AN AMOUNT NOT TO EXCEED \$198,000

WHEREAS, Section 2013 of America's Water Infrastructure Act (AWIA) of 2018 requires community water systems that serve more than 3,300 people to prepare a Risk and Resilience Assessment and Emergency Response Plan; and

WHEREAS, the City of Hayward owns and operates the Hayward Water System and delivers drinking water to approximately 160,000 people, and is therefore subject to the requirements of the AWIA; and

WHEREAS, the City issued a request for proposals to four qualified firms for professional services to prepare a Risk and Resilience Assessment and Emergency Response Plan that meets the mandated AWIA requirements and deadlines; and

WHEREAS, the City received 3 proposals and after objectively evaluating proposals, has determined that Black & Veatch Corporation possesses the necessary experience and technical skills to perform the work; and

WHEREAS, the City and Black & Veatch Corporation have negotiated a not-to-exceed amount of \$198,000 for preparation of a Risk and Resilience Assessment and Emergency Response Plan for the Hayward Water System.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the City Manager to execute a professional services agreement with Black & Veatch Corporation for preparation of a Water System Risk and Resilience Assessment and Emergency Response Plan, in an amount not to exceed \$198,000, in a form to be approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING APPROPRIATION OF \$228,000 FROM THE WATER SYSTEM REPLACEMENT FUND TO PREPARE A WATER SYSTEM RISK AND RESILIENCE ASSESSMENT AND EMERGENCY RESPONSE PLAN

WHEREAS, Section 2013 of America’s Water Infrastructure Act (AWIA) of 2018 requires community water systems that serve more than 3,300 people to prepare a Risk and Resiliency Assessment and Emergency Response Plan; and

WHEREAS, the City of Hayward owns and operates the Hayward Water System and delivers drinking water approximately 160,000 people and is therefore subject to the requirements of the AWIA; and

WHEREAS, funding is not currently allocated to this project.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes the appropriation of \$228,000 from the Water System Replacement Fund to prepare a Water System Risk and Resiliency Assessment and Emergency Response Plan.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-763

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT**

Adopt a Resolution Authorizing the City Manager to Execute a Professional Services Agreement (PSA) with Pavement Engineering Inc., (PEI) for the Preliminary Cost Impact Estimate and the Preparation of the Plans, Specifications, and Final Estimates for the Old Highlands Homeowners Association (OHHA) Pavement Rehabilitation Project in an Amount Not-to-Exceed \$205,000

**RECOMMENDATION**

That Council adopts a Resolution (Attachments II) authorizing the City Manager to execute a Professional Services Agreement (PSA) with Pavement Engineering, Inc., (PEI) to provide a preliminary cost impact estimate and to prepare the plans, specifications, and final estimates for the Old Highlands Homeowners Association (OHHA) Pavement Rehabilitation Project in an amount Not-to-Exceed \$205,000.

**SUMMARY**

Staff recommends that Council authorize the City Manager to execute a Professional Services Agreement (PSA) with Pavement Engineering Inc., for the not-to-exceed amount of \$205,000 to provide the preliminary cost impact estimate for the Old Highland Homeowners Association (OHHA) Pavement Rehabilitation Project and to prepare the final plans, specifications, and estimates for construction documents should the property owners of OHHA vote to proceed with the project.

The Council Infrastructure Committee discussed this item and directed staff to work with the OHHA Board of Directors to develop a plan for improving the roads after the OHHA property owners approved a funding mechanism to pay for one-half of the required improvements, and dedicated all private roadway segments to the City for public right-of-way.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution



DATE: December 3, 2019

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: Adopt a Resolution Authorizing the City Manager to Execute a Professional Services Agreement (PSA) with Pavement Engineering Inc., (PEI) for the Preliminary Cost Impact Estimate and the Preparation of the Plans, Specifications, and Final Estimates for the Old Highlands Homeowners Association (OHHA) Pavement Rehabilitation Project in an Amount Not-to-Exceed \$205,000

#### RECOMMENDATION

That Council adopts a Resolution (Attachment II) authorizing the City Manager to execute a Professional Services Agreement (PSA) with Pavement Engineering, Inc., (PEI) to provide a preliminary cost impact estimate and to prepare the plans, specifications, and final estimates for the Old Highlands Homeowners Association (OHHA) Pavement Rehabilitation Project in an amount Not-to-Exceed \$205,000.

#### SUMMARY

Staff recommends that Council authorize the City Manager to execute a Professional Services Agreement (PSA) with Pavement Engineering Inc., for the not-to-exceed amount of \$205,000 to provide the preliminary cost impact estimate for the Old Highland Homeowners Association (OHHA) Pavement Rehabilitation Project and to prepare the final plans, specifications, and estimates for construction documents should the property owners of OHHA vote to proceed with the project.

The Council Infrastructure Committee discussed this item and directed staff to work with the OHHA Board of Directors to develop a plan for improving the roads after the OHHA property owners approved a funding mechanism to pay for one-half of the required improvements, and dedicated all private roadway segments to the City for public right-of-way.

#### BACKGROUND

The area known as Old Highlands Homeowners Association (OHHA) in the Hayward Hills just east of the California State University East Bay campus, was annexed to the City in 1963. Upon annexation, property owners are typically required to upgrade all facilities to City standards, including City streets, sanitary sewers, water lines and so on. In 1967, sewer and water improvements were made through an assessment district that was approved by property owners. However, the streets in the area, which were in poor condition even then,



were not brought up to City standards upon annexation. In 1972, a second assessment district for street improvements was halted by a property owner lawsuit claiming that the cost of improvements was too high. Additionally, some streets in that area still remain as private streets. As the area has developed, at least sixteen parcels have Deferred Street Improvement Agreements (DIA) recorded against them requiring certain street improvements to be constructed by the owners when directed by the City.

Since 1972, there have been numerous discussions between the City and OHHA regarding the street improvements. In 2010, the OHHA board proposed an assessment district to reconstruct and improve the streets. At the time, the City offered a \$2 million capital funding allocation to help reduce each property owner's annual assessment over the thirty-year term of the proposed bonds. The property owners have maintained that they did not want standard curb and gutters, sidewalks or roadway widths, and the City agreed to a more rural type of street cross-section. However, the proposed assessment district was rejected by property owners of OHHA.

Since rejection of the proposed 2010 assessment district, any significant street repair efforts in the OHHA area have remained on hold, with the exception of emergency repairs by the City estimated at \$270,000 over the past nine years. The roads do not qualify for preventive maintenance as they are in very poor condition and require more extensive rehabilitation or reconstruction in order to realize a longer lasting improvement.

Pavement Conditions Index (PCI) is a measure of the condition of a paved street. A PCI of 70 and above is good or better. The City's current average PCI is 70. Of approximately 655 lane miles of streets within the City, there are approximately 213 lane miles with a PCI of 65 or less that require major rehabilitation or reconstruction. The 6.12 lane miles of OHHA streets have a PCI of considerably less than 65. OHHA streets make up 0.93% of the overall City street system, and 2.75% of the streets that require rehabilitation or reconstruction.

## DISCUSSION

The Council Infrastructure Committee directed staff to work with the OHHA Board of Directors to develop a plan for improving the roads after the OHHA property owners approved a funding mechanism to pay for one-half of the required improvements, and dedication of all private roadway segments to the City for public right-of-way.

Staff met with the OHHA Board of Directors and agreed on tentative terms that were presented to property owners at a neighborhood meeting on January 18, 2018. These terms included that the City would fund 50% of the cost to repair the streets with a stipulation that the OHHA property owners would reimburse the City the other 50% over a period of twenty (20) years. The property owners in attendance approved of the terms. The terms are summarized as follows:

## OHHA Tentative Terms

Staff has outlined agreement terms with the OHHA Board for maintenance of all public roads within the OHHA boundary. Agreement terms for roadway maintenance consist of the following main points:

- The roadways require full depth reconstruction. This reconstruction effort includes design, legal and financial consultants, City inspection, survey and administration staff costs and is estimated to cost \$5 million to \$6 million.
- City will provide the initial funding for improvements from the Capital Improvement Program over a period of five to six years. The City will improve one or two streets each year. The OHHA Board will set construction priorities. They have selected Cotati and Tribune as the streets to be reconstructed during the first year of this program.
- OHHA property owners will reimburse the City for 50% of the cost incurred to reconstruct each road within the OHHA neighborhood.
- OHHA property owners will approve a financing mechanism that guarantees this reimbursement over a 20-year period. There are approximately 296 parcels within the OHHA boundary. Staff anticipates that the maximum annual assessment for each parcel will not exceed \$600. The preliminary cost estimate will provide a basis for calculating the per parcel assessment levels contained in the Engineer's Report as required by Prop. 218.
- The roadway improvements are intended to include pavement reconstruction only. Very minor improvements to eliminate roadway water ponding may also be included.
- The roadway improvements will not include curb and gutter, rolled curbs, storm drain inlets, street lighting, or sidewalks.
- The roadway improvements will follow the existing roadway footprint. The intent is to construct a 20-foot wide one-way street and a 24-foot wide two-way street pavement, unless existing obstructions prevent this from being implemented. In the case of obstructions, the roadway will be narrowed.
- The City will only improve roadways that are 100% public right-of-way. The City's surveyor will identify street sections that are currently private property. The City's surveyor will create a plat/legal description for these roadway segments. Property owners will cause these roadway segments to be dedicated to the City as public right-of-way.
- Upon OHHA property owners approval of a financing mechanism, all existing deferred street improvement agreements will be voided.
- The City will not begin any work, except development of an Engineer's Report for the proposed financing mechanism, until financing is approved by the OHHA property owners. The Engineer's Report will include a rough estimate of anticipated costs only with appropriate contingencies.
- The OHHA Board is responsible for all communications necessary to convince property owners to approve the financing mechanism and to dedicate private street areas for public right-of-way.

- When construction is complete, the City will perform future maintenance of the newly constructed pavement with available City funds as is possible as part of the City Pavement Rehabilitation Program.

A straw poll of property owners was conducted by OHHA and the property owners appear to have the necessary votes to approve creation of an assessment district and imposition of a special assessment to fund the project but require an accurate preliminary cost estimate prior to a formal vote of OHHA property owners. Staff can now proceed to hire a consultant to develop the preliminary cost estimates for the project necessary in order to produce the Engineer's Report. The Engineer's Report will incorporate recommendations for the necessary street improvements and develop a benefit formula to spread the assessments amongst the property owners.

The City surveyor has identified all private street segments included in the project and has prepared the plat and legal descriptions necessary for the property owners to dedicate those street segments as public right-of-way. The City surveyor has determined that there are sixteen remaining private street segments, where originally there were thought to be a much higher number.

The next step is for a preliminary cost estimate to be generated. This estimate will be used to estimate the cost for each property owner for the entire length of the project. The work will be performed in two phases. The first phase will be the development of the preliminary cost estimate for the entire project needed for the Engineer's Report. The second phase will be the preparation of the final plan, specifications, and estimates needed to obtain construction bids.

PEI prepared a deflection analysis for the OHHA Pavement Rehabilitation Project in 2017, which will be utilized in the preparation of the preliminary estimate and in the preparation of the final plans, specification and estimate. PEI is also very familiar with all streets in the OHHA project area.

Once the preliminary cost estimate is established, an Engineer's Report will be prepared, after which there will be a formal District Vote of the property owners in the OHHA. If the formal vote passes, PEI will prepare the final construction plans, specifications, and estimates to obtain construction bids. Additionally, the City Council will proceed with creation of the assessment district and imposition of the special assessment in compliance with Prop. 218. The OHHA Board will select the street priority for the phased construction. The entire project is anticipated to be completed over 5 – 6 years in which the selected streets will be included in the City's annual Pavement Maintenance and Rehabilitation Project.

#### ECONOMIC IMPACT

Staff anticipates that the maximum assessment imposed on the property owners within OHHA will not exceed \$600 per year for twenty (20) years for the street improvements. It is

anticipated that the property values in OHHA will increase due to improvement of the condition of the streets.

## FISCAL IMPACT

The annual Pavement Maintenance and Rehabilitation project is funded via Gas Tax, Measure BB, Measure B and State Road Repair and Accountability Act (SB1) funds. The estimated cost for this phase of the project is \$205,000.

## STRATEGIC INITIATIVES

This project supports the Complete Streets Strategic Initiative. The purpose of the Complete Streets Initiative is to build and maintain streets that are safe, comfortable, and convenient for travel for everyone, regardless of age or ability; including motorists, pedestrians, bicyclists, and public transportation riders. This project supports the following goal and objectives:

Goal 1: Prioritize safety for all modes of travel.

Objective 1: Reduce the number of fatal and non-fatal traffic accidents in the City through engineering evaluation of major intersection and corridors.

Although the street repairs in OHHA is not a Complete Streets project because the property owners have maintained that they did not want standard curb and gutters, sidewalks or roadway widths, and the City agreed to a more rural type of street cross-section, the improvements will increase safety for drivers, bicyclists, and pedestrians as a result of improved road conditions.

## SUSTAINABILITY FEATURES

Cold-In-Place Recycling (CIR) pavement treatment will likely be utilized on this project. CIR involves removing the top layer of asphalt, mixing the removed aggregates with a recycling agent and other additives on-site, replacing this pavement material onto the same roadway, then applying a Hot Mix Asphalt overlay resulting in the minimization of waste. This is a more sustainable paving method, which greatly reduces trucking base material to and from the project site.

## PUBLIC CONTACT

Staff has had numerous discussions with OHHA board members and property owners over the years. Most recently, staff attended the January 2018 OHHA neighborhood meeting, heard their concerns, and provided feedback.

**NEXT STEPS**

- The engineering consultant will complete the preliminary cost estimate.
- These reviews will be coordinated with the OHHA board to confirm the scope and confirm the benefit formula and annual assessment.
- There will be a District Formal Vote.
- If the vote passes: The City Council will proceed with creation of a benefit assessment district and impose the special assessment in compliance with Prop. 218; consultant will prepare the final plans, specifications and estimate; and the City will bid and award the selected streets in OHHA for the first year of pavement treatment as part of the City's annual pavement rehab project.
- The selected street priority will be set by the OHHA board.
- The entire OHHA Pavement Project is anticipated to be completed over 5-6 years.

Prepared by: Kathy Garcia, Deputy Director of Public Works

Recommended by: Alex Ameri, Director of Public Works

Approved by:



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Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-\_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES AGREEMENT (PSA) WITH PAVEMENT ENGINEERING INC., (PEI) FOR THE PRELIMINARY COST IMPACT ESTIMATE AND THE PREPARATION OF THE PLANS, SPECIFICATIONS AND FINAL ESTIMATES FOR THE OLD HIGHLANDS HOMEOWNERS ASSOCIATION (OHHA) PAVEMENT REHABILITATION PROJECT, NOT TO EXCEED \$205,000

WHEREAS, the area known as Old Highlands Homeowners Association (OHHA) was annexed to the City of Hayward in 1963; and

WHEREAS, the streets in the OHHA were not brought up to City Standards upon annexation; and

WHEREAS, some streets within the OHHA still remain as private streets; and

WHEREAS, there have been numerous discussions between the City and OHHA to form an assessment district to reconstruct and improve the streets; and

WHEREAS, the City and the OHHA Board of Directors agreed upon tentative terms for a plan to improve the streets in OHHA; and

WHEREAS, in order to develop a benefit formula for the creation of a funding mechanism for the plan to improve the streets in OHHA, an accurate preliminary cost impact estimate is necessary; and

WHEREAS, once a preliminary cost impact estimate is generated, an Engineer's Report can be prepared; and

WHEREAS, once an Engineer's Report is prepared and recommends a funding mechanism, a formal District Vote by the property owners in the OHHA will occur to determine if the terms for a plan to improve the streets in OHHA is approved; and

WHEREAS, the City Council will create an assessment district and impose a special assessment to finance the OHHA street improvements; and

WHEREAS, Pavement Engineering Inc. performed a Pavement Deflection Analysis for the OHHA streets in 2017; and

WHEREAS, Pavement Engineering Inc. has submitted a proposal for the preparation of a preliminary cost impact estimate and for final plans, specifications and estimates for construction bids should a formal District Vote pass.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is hereby authorized and directed to negotiate and execute a Professional Services Agreement (PSA) with Pavement Engineering Inc., (PEI) for the Preliminary Cost Impact Estimate and the Preparation of the Plans, Specifications and Final Estimates for the Old Highlands Homeowners Association (OHHA) Pavement Rehabilitation Project, not to exceed \$205,000, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
                  City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-772

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** City Manager

**SUBJECT**

Adopt a Resolution Authorizing the City Manager to Enter into an Exclusive Negotiating Rights Agreement with Trumark Properties, LLC, for the Proposed Development of Parcel Group 5: Bunker Hill

**RECOMMENDATION**

That the Council adopts a resolution (Attachment II) authorizing the City Manager to enter into an Exclusive Negotiating Rights Agreement (ENRA) with Trumark Properties, LLC to develop a site plan, zoning ordinance amendment, and negotiate a Disposition and Development Agreement (DDA) for 74 units on the former Route 238 Parcel Group 5: Bunker Hill.

**SUMMARY**

The City of Hayward entered into a Purchase and Sale Agreement with the California Department of Transportation (Caltrans) in January 2016 to manage the disposition and development of former right of way for the now defunct Route 238 Bypass. This land is divided into 10 parcel groups and must be disposed of by 2022. This report covers Parcel Group 5: Bunker Hill.

Over the last year, the City has been working with the community to develop a vision and plan for the reintegration of Parcel Groups 5, 6, 8, and 9 back into the City. The remaining Parcel Groups 3, 4, and 7 are under exclusive negotiation agreements with developers with plans being vetted with the community by the developers through the City's standard planning process.

The purpose of this item is to authorize the City Manager to enter into an ENRA with Trumark Properties, LLC to assure them that the City of Hayward will negotiate exclusively and in good faith with them on the disposition and development of the City-owned Parcel Group 5, while Trumark obtains approval of a site plan, zoning ordinance amendment, other planning entitlements, and negotiates a DDA for acquisition and development of Parcel Group 5 with the City.



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**File #:** CONS 19-772

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**ATTACHMENTS**

Attachment I      Staff Report  
Attachment II      Resolution



DATE: December 3, 2019

TO: Mayor and City Council

FROM: City Manager

SUBJECT: Adopt a Resolution Authorizing the City Manager to Enter into an Exclusive Negotiating Rights Agreement with Trumark Properties, LLC, for the Proposed Development of Parcel Group 5: Bunker Hill

#### RECOMMENDATION

That the Council adopts a resolution (Attachment II) authorizing the City Manager to enter into an Exclusive Negotiating Rights Agreement (ENRA) with Trumark Properties, LLC to develop a site plan, zoning ordinance amendment, and negotiate a Disposition and Development Agreement (DDA) for 74 units on the former Route 238 Parcel Group 5: Bunker Hill.

#### SUMMARY

The City of Hayward entered into a Purchase and Sale Agreement with the California Department of Transportation (Caltrans) in January 2016 to manage the disposition and development of former right of way for the now defunct Route 238 Bypass. This land is divided into 10 parcel groups and must be disposed of by 2022. This report covers Parcel Group 5: Bunker Hill.

Over the last year, the City has been working with the community to develop a vision and plan for the reintegration of Parcel Groups 5, 6, 8, and 9 back into the City. The remaining Parcel Groups 3, 4, and 7 are under exclusive negotiation agreements with developers with plans being vetted with the community by the developers through the City's standard planning process.

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## BACKGROUND

### Route 238 Corridor Lands Development

In the mid-1960s, the California State Department of Transportation (Caltrans) purchased more than 400 parcels of property for the construction of a 14-mile Route 238 Corridor Bypass Freeway to run through the City of Hayward and parts of unincorporated Alameda County. In 1971, a lawsuit, filed in federal court on behalf of residents to be displaced by the freeway construction, blocked the project. Caltrans subsequently abandoned the freeway plan. In 1982, state legislation was passed to allow Hayward and other local jurisdictions—working through the Alameda County Transportation Authority—to develop alternative strategies for relieving traffic congestion in Central Alameda County. The legislation called for these Local Alternative Transportation Improvement Program (LATIP) projects to be funded from proceeds from the sale of properties that had been accumulated by Caltrans for the Route 238 Bypass Freeway.

In 2009, then Governor Arnold Schwarzenegger directed Caltrans to sell all property not needed for existing LATIP projects. Following this, Caltrans began to individually auction off these properties with the sole purpose of disposing of the land, without any larger land use or community considerations. To ensure the productive development of this land in a manner that maximizes land value while balancing the desires of the surrounding neighborhood and larger community, the City entered into a Purchase and Sale Agreement (PSA) with Caltrans to manage the disposition and development of these properties. The PSA divides the properties into 10 parcel groups, which must be disposed of by 2022. Table 1 below provides the current status of these parcel groups:

Parcel Group	Status	Entity	Est. Disposition Timeline	Estimated Unit Counts	Affordable Unit Count
1 & 10	Sold/Under Construction	William Lyon Homes (SOHAY)	August 2018	472 (approved)	48 (approved)
2	Under Negotiation	The True Life Companies (Mirza)	Winter 2019	189 (approved)	20 (approved)
3	Under Negotiation	Eden Housing and The Pacific Companies	Winter 2020	150	150
4	Under Negotiation	Eden Housing and The Pacific Companies	2021	3	0
5	Under Negotiation	City of Hayward	Fall 2020	74	8
6	Master Development Planning	City of Hayward	Winter 2021	1,000	70-100
7	Under Negotiation	One Subaru of Hayward	Winter 2019/20	0	0
8	Master Development Planning	City of Hayward	TBD	0	0
9	Master Development Planning	City of Hayward	Winter 2020	0	0
<b>TOTAL</b>				<b>1,888</b>	<b>326<sup>1</sup></b>

<sup>1</sup> Staff estimates 17% of total Route 238 Corridor Lands Development residential units will be affordable.

On July 17, 2019, the City Council approved a resolution certifying an addendum to the 2014 General Plan Environmental Impact report, approved the MDP, and approved a resolution authorizing the City Manager to issue a RFP for the disposition and development of Parcel Group 5. There were two responses to the RFP issued by the City, including Brookfield Homes and Trumark. After thorough interdepartmental review by staff, Trumark, a highly qualified residential developer, is being recommended as the preferred developer for further negotiation with the City for development of Parcel Group 5.

## DISCUSSION

### Parcel Group 5: Bunker Hill

Parcel Group 5 encompasses Maitland Drive, Bunker Hill Blvd., Bunker Hill Court, and a portion of Central Blvd. The roughly 37-acre Parcel Group 5 is bounded by the Westview Drive neighborhood to the west, CSUEB and Carlos Bee Blvd. to the north, and Harder Road to the south. The area is sloped and was previously developed with 32 single family homes, 24 of which were occupied by residential tenants. These units are now vacated and will be demolished in winter 2020.

### Caltrans Purchase and Sale Agreement

All the parcel groups have been acquired pursuant to the Caltrans PSA. The City's obligation to make the payment of the purchase price for the properties does not occur until the City has resold the parcels to developers. The PSA sets forth an agreed upon methodology to determine the sales price for each parcel group based on the appraised value and approved unit count. Under the PSA, the purchase price for Parcel Group 5 was established at the higher of a baseline value of \$7.5 million or \$150,000 per unit built (minimum of 50 units). This is the amount the City must pay Caltrans when the parcel group is sold.

### Zoning and Development Policies

The current zoning for the site is Residential Natural Preserve (RNP) and includes the Special District 7 (SD-7) overlay for the Hayward Foothill Trail. This zoning provides for 20,000 square foot minimum lot sizes and a 30% maximum lot coverage ratio. As part of the MDP and RFP approved by the City Council on July 17, 2019, staff recommended that the City entertain a rezone of Parcel Group 5 by Trumark to allow for a denser lot configuration that achieves the following:

- 5,000 sf. to 20,000 sf. lot sizes with a 10,000 square foot average lot size consistent with the General Plan;
- 30% to 40% maximum lot coverage ratio; and
- 60' to 100' maximum lot frontage.

The zoning change for Parcel Group 5 is intended to balance the neighborhood's desire for a low-density development consistent with the character of the existing neighborhood with the larger community-wide calls to develop more housing in response to the current housing crisis. Any new development will be required to comply with SD-7.

### Developer Background and Experience

The Trumark development group is a highly qualified, locally owned and operated, private developer with 30-years' experience entitling and developing award winning communities throughout California. The company creates traditional suburban residences and transit-oriented developments. Trumark is a qualified, established real estate developer and homebuilder in the California marketplace with many local and national awards. Its mission is to build projects in highly desirable geographic areas while ensuring each development is economically viable and socially responsible and enriches the environment and surrounding areas with beautiful contemporary architecture. Of the two developer responses, Trumark's proposal was the most complete and thorough and offered the higher purchase price to the City.

### Summary of Proposal

Consistent with the approved MDP, Trumark plans to construct 74 low density, single-family detached homes and at least 8 deed restricted affordable ADUs within the 37-acre site, designed to integrate into the hillside, maximize views, preserve open space, and create community. This project is still at a concept level, and no specific site plans have been prepared as the ability to acquire the property is the first step in the process of development of the site.

Additionally, the ENRA is only the first step in the land disposition process. Trumark will need to prepare site development feasibility studies, and process the City's standard land use entitlements. The ENRA simply gives Trumark reassurance that the City will not negotiate with another entity while they are expending funds during the due diligence period and negotiating a DDA with the City for acquisition of the parcel. Listed below is a summary of key elements of the ENRA:

### Key Elements of the ENRA

- Developer: Trumark Homes, a California Corporation
- Term: 12-months with two (2) three month administrative extensions by the City Manager, if Trumark demonstrates compliance with the performance responsibilities outlined in the ENRA, and additional good faith negotiation deposits.
- Minimum Purchase Price: \$20,000,000, inclusive of \$11,100,000 payment to Caltrans, and a net of \$8,900,000 to the City for public benefits.

- Deposits: Non-refundable Good Faith Negotiating Deposit of \$10,000 due at ENRA execution. Applicable to the purchase price if DDA adopted, retained by City if project terminated. Additional deposit required for each term extension approved by City Manager.
- City Reimbursement: \$40,000 reimbursement deposit due at execution of ENRA and Reimbursement Agreement to pay for related City costs incurred during exclusive negotiations. Fund to be replenished by developer upon demand by City and accounting of expenditures to date. This does not include any fees or deposits related to the City's standard regulatory entitlement process.
- Project Description: Maximum 74 single-family homes with 8 deed restricted accessory dwelling units (ADUs), consistent with the approved MDP and General Plan.
- Anticipated Entitlements: Site Plan Review, Tentative Map, Final Map, and Zoning Amendment to Planned Development (PD) to allow for an average of 10,000 sq. ft. lots (range: 5,000-20,000 sq. ft.), range of lot frontage of 60-100 linear feet, and no more than 40% lot coverage consistent with MDP, CEQA Addendum, and General Plan. No other zoning amendments allowed.
- Close of Escrow: Close of Escrow to take place following Final Map approval.
- Affordable Housing: 8 deed-restricted ADUs plus a payment of 50% of the affordable housing in-lieu fee on 90% of total units.
- Foothill Trail: Developer to comply with requirements of SD-7 zoning overlay to construct a segment of the Hayward Foothill Trail. Final trail alignment to be approved by the Hayward Area Recreation and Park District and the City of Hayward. Maintenance of trail to be funded through Homeowners Association (HOA) or other financing mechanism.
- GHAD: Establish a Geological Hazard Abatement District to manage and maintain sensitive hillside conditions, including the trail, paid for by HOA or other financing mechanism.
- Green Development: Developer to submit a statement of sustainability measures that will be incorporated into the design and operation of the project as part of the project description.
- TDM Plan: Developer to develop a Transportation Demand Management (TDM) program for the new development.
- Local Resident Priority: Developer to propose a Hayward Resident Priority Preference Plan for the leasing and sale of housing units in the development pursuant to state and federal fair housing laws.

- Community Outreach: Developer to undertake ongoing community outreach efforts during ENRA Period per a community outreach plan submitted to the City. City to assist in defining appropriate community outreach methods.

### ECONOMIC IMPACT

No property taxes are currently being paid on this parcel group. Resale of the parcel group may partially return them to the tax rolls, provide an opportunity for new residential development needed to address the goals of the Housing Element, and provide a dedication of open space.

The sale of the parcel group will be made pursuant to SB 470, which allows cities to sell public land for private development if the sale creates economic opportunity. Economic opportunity includes the creation and retention of jobs, increasing property tax revenues to all taxing entities, creation of affordable housing, implementation of a sustainable communities' strategy, and implementation of a transit related project. The disposition agreement for the project will need to include one or more of these elements as an obligation and/or outcome of the development.

### FISCAL IMPACT

This is the initial phase of potential property disposition and development. There are no anticipated fiscal impacts with the ENRA/DDA negotiations as the developer deposit will pay for outside legal and consulting costs. The estimated amount of new tax revenue that will be generated if the Trumark development proposal is approved will be estimated at the conclusion of the negotiating period when the number of housing units has been identified. The land sale proceeds are projected in Table 1.

TABLE 1: LAND SALE PROCEEDS

Parcel Group	Proposed Purchase Price	Caltrans Price	Net Proceeds to City
#5	\$20,000,000	\$11,100,000*	\$8,900,000

\* Estimated based on proposed development of 74 units @ \$150,000

These estimates do not include affordable housing fees paid to the City by the project, which are projected to be an additional \$2.1 million that can be used for affordable housing development elsewhere in the City. The total estimated direct financial benefit to the City is \$11 million in land sale proceeds and affordable housing fees.

## STRATEGIC INITIATIVES

This agenda item supports the Complete Communities Strategic Initiative. The purpose of the Complete Communities initiative is to create and support structures, services, and amenities to provide inclusive and equitable access with the goal of becoming a thriving and promising place to live, work and play for all. This item supports the following goals:

- Goal 1: Improve quality of life for residents, business owners, and community members in all Hayward neighborhoods, and
- Goal 2: Provide a mix of housing stock for all Hayward residents and community members, including the expansion of affordable housing opportunities and resources.

## SUSTAINABILITY FEATURES

The RFP required information on sustainable development features including incorporating green building standards into design and operation of the project. If Trumark is selected for negotiations, this element will be included as part of the plans required by the terms of the ENRA.

## ENVIRONMENTAL REVIEW

The Addendum to the GP EIR was certified by the City Council on July 17, 2019 pursuant to CEQA Guidelines Section 15164 which states: “The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” The analysis contained in the Addendum confirmed that the proposed development for Parcel Group 5 consistent with the MDP and RFP is within the scope of the GP EIR and will have no new or more severe significant effects and no new mitigation measures are required. Therefore, no subsequent or supplemental EIR or further CEQA review is required prior to approval of the proposed project, as described in the Addendum.

## PUBLIC CONTACT

No public notice is required with this action. As Trumark prepares the site plan and zoning ordinance amendment, community outreach will be conducted by Trumark and the City throughout the entitlement process. In fact, Trumark has already held multiple meetings with members of the neighborhood to introduce themselves and answer any preliminary questions about their qualifications and approach to development. In addition, there will be standard hearings before the Planning Commission and City Council as the City considers the necessary planning approvals for the proposed project should it move forward to those phases.



## NEXT STEPS

### Subsequent Actions and Estimated Timing

The following Table 2 is a summary of the proposed project schedule, which includes information from the Trumark proposal. These dates will be subject to discussion with the developer and may change during negotiations of a DDA.

TABLE 2: PROPOSED DEVELOPMENT SCHEDULE

ITEM	ESTIMATED TIMING
Council Approves Exclusive Right to Negotiating Agreement	December 3, 2019
Entitlement and Planning Submittal	First Quarter 2020
City Approvals Complete	Fall/Winter 2020
Execution of Disposition & Development Agreement	Fall/Winter 2020
Community Outreach and Communication	Ongoing

Prepared by: Monica Davis, Community Services Manager

Recommended by: Jennifer Ott, Deputy City Manager

Approved by:



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Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-\_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAYWARD  
AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN  
EXCLUSIVE NEGOTIATING RIGHTS AGREEMENT BETWEEN THE CITY OF  
HAYWARD AND TRUMARK PROPERTIES, LLC FOR A PROPOSED  
DEVELOPMENT LOCATED ON PARCEL GROUP 5: BUNKER HILL

WHEREAS, the State Department of Transportation (Caltrans) purchased over 400 parcels of property in the City of Hayward for the planned construction of the 238 Bypass Freeway project, which was stopped because of a lawsuit filed by La Raza Unida of Southern Alameda County; and

WHEREAS, the City and Caltrans negotiated a Purchase and Sale Agreement for the City to acquire a portion of the properties from Caltrans, that was approved by the City Council and the California Transportation Commission (CTC) in January 2016; and

WHEREAS, the Purchase and Sale Agreement with Caltrans allows the City to buy and dispose of ten different parcel groups for a six-year period that expires in January 2022; and

WHEREAS, on July 17, 2019, the City Council approved a resolution certifying an addendum to the 2014 General Plan Environmental Impact report, approved the Master Development Plan ("MDP"), and approved a resolution authorizing the City Manager to issue a Request for Proposals ("RFP") for the disposition and development of Parcel Group 5 consistent with the MDP; and

WHEREAS, the Addendum to the GP EIR was certified by the City Council on July 17, 2019 pursuant to CEQA Guidelines Section 15164, which confirmed that the proposed development for Parcel Group 5 consistent with the MDP and is within the scope of the GP EIR; will have no new or more severe significant effects and no new mitigation measures are required, and, therefore, no subsequent or supplemental EIR or further CEQA review is required prior to approval of the proposed project, as described in the Addendum; and

WHEREAS, there were two responses to the RFP issued by the City, including Brookfield Homes and Trumark, and after thorough interdepartmental review by staff, Trumark, a highly qualified residential developer, was recommended as the preferred developer for further negotiation with the City for development of Parcel Group 5; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Hayward hereby authorizes and directs the City Manager to negotiate and execute an Exclusive Negotiating Rights Agreement (ENRA) with Trumark Properties, LLC consistent with the terms generally outlined in the accompanying staff report, in a form approved by the City Attorney.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:  
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** CONS 19-789

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT**

Adopt a Resolution Approving the Memorandum of Understanding between the City of Hayward and the Hayward Police Management Unit (HPMU) for the period of July 1, 2019 through June 30, 2023

**RECOMMENDATION**

That the City Council adopts a Resolution (Attachment II) approving the Memorandum of Understanding (MOU) between the City of Hayward and the Hayward Police Management Unit (HPMU) for the period of July 1, 2019 through June 30, 2023 and authorizing the City Manager to execute the MOU.

**SUMMARY**

The Memorandum of Understanding (MOU) with HPMU expired on July 1, 2019. The proposed Resolution (Attachment II) will allow the City Manager to execute an agreement with HPMU for the term of July 1, 2019 through June 30, 2023. The new agreement will grant salary and benefit adjustments; however, employees will also continue to contribute fifteen percent (15%) toward their Public Employees' Retirement System (PERS) costs and a one percent (1%) contribution towards Other Post-Employment Benefits (OPEB) costs. The new contract also includes administrative and legal language updates. If approved, the proposed MOU will result in a General Fund savings of approximately \$1,300 over the life of the contract.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution



DATE: December 3, 2019

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adopt a Resolution Approving the Memorandum of Understanding between the City of Hayward and the Hayward Police Management Unit (HPMU) for the period of July 1, 2019 through June 30, 2023

#### RECOMMENDATION

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#### BACKGROUND AND DISCUSSION

The City continues to operate with a structural budget deficit. Cost drivers, such as increased pension and healthcare costs, continue to challenge cities across the region, making it challenging for cities to adequately fund ongoing operations and services and provide employees with a sustainable retirement and quality healthcare benefit options.

Over the last several years, the City has effectively identified and implemented revenue generating options to ensure fiscal sustainability. Employees have recognized the City's fiscal challenges and have partnered with the City by reducing expenses related to salaries and benefits. Employee contributions to date have included forgoing salary increases and sharing the cost of benefits including retirement and health insurance.

The City entered negotiations with HPMU on May 29, 2019. Like other bargaining units, HPMU members have partnered with the City and helped to reduce personnel expenses through contributions toward the cost of retirement benefits and waiving and delaying salary increases. In their previous contract, HPMU agreed to pay six percent (6%) of the employer's share in addition to the nine percent (9%) employee share for a total of fifteen percent (15%) towards pension costs. Members also previously agreed to contribute one percent (1%) toward Other Post-Employment Benefits (OPEB). In addition to the continued cost sharing, HPMU waived salary increases for FY 2020 and agreed to reduce the City's maximum contribution towards medical insurance, consistent with the Hayward Police Officers Association (HPOA), to achieve additional savings. Other changes to the MOU include an increase in life insurance, a minor enhancement to the retirement plan, and restructuring of the educational and longevity incentives, consistent with HPOA. The proposed agreement was ratified by the HPMU membership on October 1, 2019.

In August 2019, staff conducted a total compensation survey, which included the following cities: Alameda, Berkeley, Daly City, Fremont, Palo Alto, Richmond, San Leandro, San Mateo, Santa Clara and Vallejo. The survey data reflected HPMU is approximately eight percent (8%) below the average total compensation for Police Captains of the top four (4) agencies. Additionally, surrounding cities have received and are scheduled to receive increases in the next two or three years that would further create external inequity. Consequently, it was important to address external equity throughout the course of these negotiations. To that end, the proposed MOU includes modest salary adjustments and other incentives to improve the compensation package the City offers our Police Captains while still creating a General Fund savings of approximately \$1,300 over the life of the contract. Key provisions of the amended agreement are summarized in Table 1 below:

Table 1: Key Proposed Changes – HPMU MOU

MOU Term	Proposed Language	Effective Date
Salary Adjustments	FY20 - 0% FY21 - 3% FY22 - 3% FY23 - 5% max (based on survey)	July 1, 2020 July 1, 2021 July 1, 2022 July 1, 2023
CalPERS Option 21548 Death Benefit	Provides an optional benefit for beneficiaries to receive retirement payment based on the years of service an employee had at the time of his/her death in the line of duty	January 6, 2020
Medical	City will contribute 100% of plan premiums, up to Kaiser or Blue Shield, whichever is higher	July 1, 2019
Life Insurance	City shall provide a policy equal to two times annual gross salary.	July 1, 2019
Vacation	Employees may exceed the maximum accrual cap during the calendar year but cannot carry hours in excess of the cap into a subsequent calendar year.	July 1, 2019

## FISCAL IMPACT

The total proposed changes result in an estimated net savings of approximately \$1,300 in comparison to projections in the General Fund budget model for the same 4-year period (FY 2020-FY 2023).

## STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

## NEXT STEPS

If adopted, the City Manager will execute the agreement and staff will finalize the agreement and implement the above changes.

Prepared by: Vanessa Lopez, Senior Human Resources Analyst

Recommended by: Maria A. Hurtado, Assistant City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', is written over a horizontal line.

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION NO. 19-\_\_\_\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING  
BETWEEN THE CITY OF HAYWARD AND THE HAYWARD POLICE  
MANAGEMENT UNIT

WHEREAS, the current Memorandum of Understanding between the City of Hayward and the Hayward Police Management Unit (HPMU) expired on July 1, 2019; and

WHEREAS, the City and HPMU entered negotiations for a successor memorandum of understanding in May of 2019; and

WHEREAS, the City of Hayward has experienced some positive economic improvement but costs related to employee salaries and benefits, primarily retirement and healthcare continue to increase substantially; and

WHEREAS, HPMU recognizes the City's fiscal challenges and will continue to contribute toward the cost of California Public Employees' Retirement System retirement and pay up to fifteen percent (15%) of which six percent (6%) is a cost share of the employer's contribution rate; and

WHEREAS, the City and HPMU have reached a tentative agreement for a successor memorandum of understanding that provides salary adjustments of three percent (3%) annually in fiscal years 2021 and 2022, forgoing any salary adjustment in fiscal year 2020, along with other adjustments, and language changes; and

WHEREAS, the membership of HPMU ratified the tentative agreement on October 1, 2019; and

WHEREAS, the proposed changes will save the City's general fund approximately \$1,300 more than projected in the City's budget model for the contract period of FY 2020 through FY 2023.

NOW, THEREFORE, BE IT RESOLVED THAT THE City Council hereby approves the memorandum of understanding between it and HPMU for the period of July 1, 2019 through June 30, 2023 and authorizes staff to execute said agreement, a copy of which will be on file in the Office of the City Clerk.



IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** WS 19-062

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** Director of Public Works

**SUBJECT**

East Bay Dischargers Authority - Discussion of Amended and Restated Joint Exercise of Powers Agreement

**RECOMMENDATION**

That Council reviews and provides feedback on the Amended and Restated Joint Exercise of Powers Agreement for the East Bay Dischargers Authority.

**SUMMARY**

The East Bay Dischargers Authority (EBDA) was formed in 1974, by a Joint Exercise of Powers Agreement (JPA) entered into by the City of Hayward, City of San Leandro, Oro Loma Sanitary District, Castro Valley Sanitary District, and Union Sanitary District. The purpose of EBDA is to provide for the safe and efficient discharge of wastewater produced by its member agencies into San Francisco Bay.

The current JPA expires on January 1, 2020. The member agencies have negotiated an Amended and Restated (or "new") JPA that would supersede the current agreement if approved by the governing bodies of all five member agencies. The new JPA is a twenty-year agreement that would take effect on July 1, 2020 to be coincident with the beginning of a fiscal year. Significant changes in the new agreement include: revised capacity rights for certain member agencies, which changes the allocation of fixed annual costs and capital costs among the member agencies; changes to the voting structure to require a majority of Commissioners and a majority of agency capacity weighted votes to approve most actions; and transfer of certain risks and liabilities for certain EBDA facilities to member agencies.

Staff is bringing the Amended and Restated JPA to Council to obtain Council's comments. After receiving and addressing Council's comments, staff will bring this item back for Council's consideration on December 17, along with a recommendation to approve a six-month extension of the current JPA since the new JPA would not take effect until July 1, 2020.

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**File #:** WS 19-062

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**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Map of Effluent Disposal System
Attachment III	Amended JPA
Attachment IV	Term Extension



DATE: December 3, 2019

TO: Mayor and City Council

FROM: Director of Public Works

SUBJECT: East Bay Dischargers Authority – Discussion of Amended and Restated Joint Exercise of Powers Agreement

#### RECOMMENDATION

That Council reviews and provides feedback on the Amended and Restated Joint Exercise of Powers Agreement for the East Bay Dischargers Authority.

#### SUMMARY

The East Bay Dischargers Authority (EBDA) was formed in 1974, by a Joint Exercise of Powers Agreement (JPA) entered into by the City of Hayward, City of San Leandro, Oro Loma Sanitary District, Castro Valley Sanitary District, and Union Sanitary District. The purpose of EBDA is to provide for the safe and efficient discharge of wastewater produced by its member agencies into San Francisco Bay. The current JPA expires on January 1, 2020.

The member agencies have negotiated an Amended and Restated (or “new”) JPA that would supersede the current agreement if approved by the governing bodies of all five member agencies. The new JPA is a twenty-year agreement that would take effect on July 1, 2020 to be coincident with the beginning of a fiscal year. Significant changes in the new agreement include: revised capacity rights for certain member agencies, which changes the allocation of fixed annual costs and capital costs among the member agencies; changes to the voting structure to require a majority of Commissioners and a majority of agency capacity weighted votes to approve most actions; and transfer of certain risks and liabilities for certain EBDA facilities to member agencies.

Staff is bringing the Amended and Restated JPA to Council to obtain Council’s comments. After receiving and addressing Council’s comments, staff will bring this item back for Council’s consideration on December 17, along with a recommendation to approve a six-month extension of the current JPA since the new JPA would not take effect until July 1, 2020.

## BACKGROUND

The East Bay Dischargers Authority (EBDA) was formed in 1974, by a Joint Exercise of Powers Agreement (JPA) entered into by the City of Hayward, City of San Leandro, Oro Loma Sanitary District, Castro Valley Sanitary District, and Union Sanitary District. The purpose of EBDA is to provide for the efficient disposal of wastewater produced by its member agencies. EBDA owns and operates four effluent pump stations, a dichlorination facility, pipelines, and a deep-water outfall system that allows for the discharge of treated wastewater from member agency service areas into the San Francisco Bay (see Attachment II). The JPA was last amended in 2007 and is effective through January 1, 2020.

EBDA's costs are apportioned to member agencies based on each agency's fixed capacity in the system, the agency's variable flow, and a variety of other factors. Under the current JPA, member agencies share in all costs, based on set allocations, regardless of whether or not an agency uses a certain part of the system.

For the past few years, EBDA's members have engaged in discussions related to the renewal of the JPA in anticipation of the 2020 expiration, with certain agencies seeking changes to their allocated portion of flow capacity and right to discharge to EBDA's facilities (capacity rights), and changes to the allocation of infrastructure cost and risk among the member agencies.

On May 16, 2019, the EBDA Commissioners, which include Council Member Mendall as the current representative for the City of Hayward, adopted a Term Sheet as the framework for negotiating the new JPA. The proposed terms include revised capacity rights for each member agency, which changes each member agency's share of fixed annual costs and capital costs that are allocated based on an agency's proportionate share of capacity rights. The proposed terms would also shift the liability for certain EBDA facilities to member agencies.

## DISCUSSION

Since May 2019, the EBDA Commissioners and respective agency staff have been negotiating language for the new JPA based on the concepts in the agreed upon term sheet. On October 29, 2019, the EBDA Commission adopted the EBDA Amended and Restated JPA (Attachment II) that would provide for the continued discharge of effluent from the member agencies for another twenty years. If approved by the governing body of each member agency, the Amended and Restated JPA would take effect on July 1, 2020 and would supersede the previous agreement and all amendments.

A summary of the key terms for the Amended and Restated JPA is provided below:

- **Term:** The term of the new JPA would be twenty years, with no unilateral opt out or ability for member agencies to adjust capacity rights downward during the term of the agreement. While reducing capacity rights reduces a member agency's costs, most of that cost savings would be re-distributed to other members. The new JPA

would provide for member agencies to increase capacity rights during the term of the agreement, if the increased capacity is available in the EBDA system and subject to other specified terms and conditions.

If approved, the new JPA would take effect on July 1, 2020, to be coincident with the start of the fiscal year and extend through June 30, 2040.

- **Capacity Rights:** Capacity rights are based on maximum flow rate capacities and are used to allocate fixed annual costs and capital costs. The new JPA includes provisions for assessing fees for agencies that exceed their capacity right. As summarized in the table below, the new JPA includes revised maximum flow rate capacities for most of the member agencies. The City is proposing to reduce its maximum flow rate capacity from 35.0 million gallons per day (MGD) under the current JPA to 15.0 MGD under the new JPA.

Member Agency	Maximum Flow Rate Capacity, MGD (Current JPA)	Maximum Flow Rate Capacity, MGD (New JPA)
San Leandro	22.3	14.0
Oro Loma/Castro Valley	69.2	30.0
Hayward	35.0	15.0
Union Sanitary District	42.9	42.9

The revised maximum flow rate capacity of 15.0 MGD was determined based on staff's analysis of flow data and cost information and the desire to avoid paying for unused flow capacity in the EBDA system. The City plans to utilize City-owned storage ponds to manage peak wet weather flows and stay below its new capacity right of 15.0 MGD. Based on operational experience and growth projections, the City may need to increase its maximum flow rate capacity in the future. As discussed previously, the new JPA provides for member agencies to increase their capacity right during the term of the new agreement, if needed.

- **Governance:** The new JPA makes changes to the governance structure. The current JPA requires unanimous approval for most actions, including adoption of budget, which effectively allows a single agency to prevent an action from passing. In addition, the current governance structure gives equal weight to each agency's vote, regardless of cost or risk allocation. The new JPA would require approval from both a majority of the agencies (three) and a majority of weighted votes that would be calculated based on each agency's share of capacity rights to approve most actions. Certain decisions (e.g. amendments to the JPA) would require unanimous approval of the Commission.
- **Cost Allocation:** Except for the City of San Leandro, the formula for allocating fixed and variable annual costs and capital costs for pump stations would remain the

same as the current JPA. Fixed annual costs are allocated based on capacity rights selected by each agency and variable annual costs are based on total annual flow. In the new JPA, San Leandro would be fully responsible for annual and capital replacement costs associated with the pump station and pipeline that solely serves San Leandro in exchange for only sharing in annual costs for the facilities that are used by all five member agencies. San Leandro will not share in the cost of facilities that the city does not use.

Capital costs for pipelines would be shared by all agencies, excluding San Leandro, up to a cumulative total of \$325,000 during the term of the new JPA. Based on past experience, this amount should be sufficient for the term of the new JPA. If and when this maximum threshold has been reached, capital replacement costs for pipelines would be shared by the agencies using the pipeline segment based on capacity rights. The City of Hayward's overall costs are anticipated to remain basically the same under the new JPA once costs are allocated using the revised capacity rights for member agencies.

- **Infrastructure Risk and Liability.** The new JPA shifts most of the risk and liability for pipelines to the member agencies based on which agencies use specific pipeline segments. For example, the City of Hayward and Union Sanitary District would have shared liability for the pipeline from Hayward to Oro Loma Sanitary District (see Attachment II). EBDA would still retain ownership of the pipelines and be responsible for performing emergency repairs to the pipeline system in the event of a failure of the pipeline system. However, the member agencies using the specific pipeline segment would be responsible for any permanent repairs, environmental, or third-party liability costs that exceed a cumulative total of \$1.25 million over the term of the new JPA. Pipeline failure costs below the \$1.25 million threshold would be shared by all member agencies, excluding San Leandro. Under the new JPA, Hayward's overall risk exposure for pipeline failure is anticipated to decrease since Union Sanitary District would have the primary responsibility for the segment between Union Sanitary District and Hayward (see Attachment II), which is the longest pipeline segment in the EBDA system.

Except for the City of San Leandro, EBDA would retain ownership and liability for the pump stations throughout the term of the new JPA, but the terms of the new JPA shift ownership of the Hayward and Union Sanitary District pump stations to the respective agencies at the end of the twenty-year term. San Leandro would assume ownership and liability of the pump station serving San Leandro at the start of the new JPA.

- **Termination.** The new JPA includes a process for beginning negotiations for renewing the JPA at Year 15 for member agencies desiring to continue using the system beyond Year 20. If the agencies cannot reach agreement, the Amended and Restated JPA would terminate at the end of the twenty years. As discussed above, the City of Hayward would take ownership of the Hayward pump station when the

new JPA terminates. Other facilities would be disposed of and assets would be liquidated, and retirement obligations allocated based on 2020 capacity rights.

### Six-month Extension of Current JPA

As previously discussed, the current JPA expires on January 1, 2020. The member agencies have negotiated an Amended and Restated JPA that would supersede the current agreement and take effect until July 1, 2020 to be coincident with the start of the fiscal year. Therefore, the member agencies have agreed on a Fourth Amendment to the current JPA (Attachment IV) to extend the current JPA by six months in order to allow for this fiscal year alignment and prevent a lapse in the agreement. Council will be asked to consider approving the six-month extension of the current JPA at the same time Council considers approval of the Amended and Restated JPA.

### STRATEGIC INITIATIVES

This agenda item does not directly relate to one of Council's Strategic Initiatives.

### ECONOMIC IMPACT

Approval of the Amended and Restated JPA is not expected to impact Hayward's sewer rates.

### FISCAL IMPACT

The City currently pays approximately \$1 million annually to EBDA, which accounts for approximately 5 percent of the Wastewater Enterprise's budget. For a typical account, this is less than \$2 per month. The City's costs are anticipated to remain basically the same under the new JPA. No fiscal impacts to the City Wastewater Enterprise Fund are anticipated as a result of approving the Amended and Restated JPA. There are no General Fund impacts.

### SUSTAINABILITY FEATURES

The Amended and Restated JPA provides for the safe and efficient discharge of wastewater produced by its member agencies into San Francisco Bay. The new JPA includes language supporting the development and use of recycled water as a more sustainable alternative to disposal of effluent through EBDA facilities.

### PUBLIC CONTACT

In 2014, the EBDA Commission formed an Ad Hoc Committee that met monthly to discuss issues related to the new JPA. Both the monthly EBDA Commission and Ad Hoc Committee meetings are publicly noticed. In addition, the EBDA Commission held four workshops in 2019 that focused on the new JPA and provided opportunities for public comment.



## NEXT STEPS

Council is scheduled to consider approval of the six-month extension of the current JPA and adoption of the Amended and Restated JPA on December 17, 2019. If the governing bodies of all EBDA member agencies approve the Amended and Restated JPA, it would take effect on July 1, 2020 and would supersede the previous agreement and all amendments.

Prepared by: Jan Lee, Assistant Director of Public Works - Utilities

Recommended by: Alex Ameri, Director of Public Works

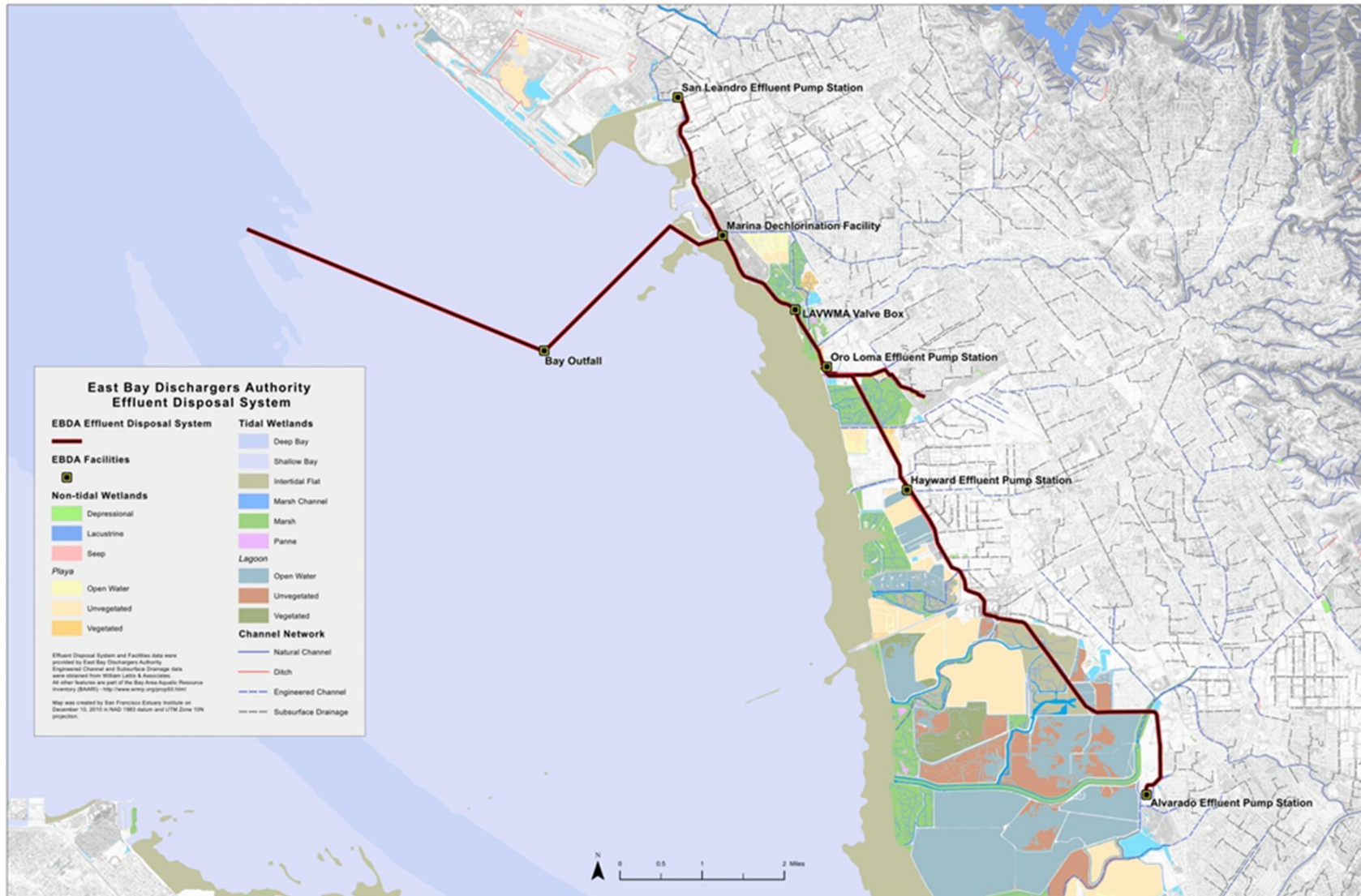
Approved by:

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---

Kelly McAdoo, City Manager

East Bay Dischargers Authority Effluent Disposal System



EAST BAY DISCHARGERS AUTHORITY  
AMENDED AND RESTATED

JOINT EXERCISE OF POWERS AGREEMENT

Supersedes

Joint Powers Agreement	February 15, 1974
First Amended JPA	January 3, 1978
Supplement No. 1	October 5, 1981
Supplement No. 2	February 15, 1983
Supplement No. 3	April 26, 1983
Supplement No. 4	April 26, 1983
Second Amended JPA	February 11, 1986
Third Amended JPA	February 15, 2007
Fourth Amended JPA	_____

EAST BAY DISCHARGERS AUTHORITY  
2651 Grant Avenue  
San Lorenzo, California 94580  
(510) 278-5910

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## LIST OF SCHEDULES

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- SCHEDULE B: Allocation of Operation and Maintenance Costs
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EAST BAY DISCHARGERS AUTHORITY

AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT

THIS AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT, dated for convenience as of July 1, 2020, is made and entered into by and between the CITY OF HAYWARD, a municipal corporation, hereinafter referred to as "Hayward"; CITY OF SAN LEANDRO, a municipal corporation, hereinafter referred to as "San Leandro"; ORO LOMA SANITARY DISTRICT, a public corporation, hereinafter referred to as "Oro Loma"; CASTRO VALLEY SANITARY DISTRICT, a public corporation, hereinafter referred to as "Castro Valley"; and UNION SANITARY DISTRICT, a public corporation, hereinafter referred to as "Union"; each duly organized and existing in the County of Alameda under the constitution and laws of the State of California, and amends and restates that Fourth Amended Joint Exercise of Powers Agreement dated \_\_\_\_\_, duly entered into by said Agencies, as follows:

WITNESSETH:

WHEREAS, each of the Agencies hereto has power to plan for, acquire, construct, maintain, manage, operate, and control facilities for the collection, transmission, treatment, reclamation, sale and disposal of wastewater; and the Agencies propose by this Agreement to exercise said powers jointly for the purpose of providing for the more efficient disposal of the wastewater produced in each Agency, all to the economic and financial advantage of each Agency and otherwise for the benefit of each Agency; and each of the Agencies is willing to plan with the other Agencies for joint wastewater facilities which will protect all of the Agencies;

WHEREAS, the Agencies first entered into a Joint Exercise of Powers Agreement on February 15, 1974; amended such Agreement on January 3, 1978; supplemented such Agreement on October 5, 1981, February 15, 1983, and twice on April 26, 1983; and amended such Joint Exercise of Powers Agreement on February 11, 1986, February 15, 2007 and [            ], 2019;

WHEREAS, the Agencies desire that this Amended and Restated Joint Exercise of Powers Agreement supersede and supplant all previous iterations of this Agreement as set forth above;



WHEREAS, Union and the East Bay Dischargers Authority (“Authority”) entered into a Memorandum of Understanding, dated December 13, 2010 addressing the Hayward Marsh and related capacity issues (“Hayward Marsh MOU”), specific provisions of which are relevant to this Agreement and substantively addressed herein; and

WHEREAS, although the Livermore-Amador Valley Water Management Agency (“LAVWMA”) is not a party to this Agreement, on the date this Amended and Restated Joint Exercise of Powers Agreement was approved by its member Agencies, there was a separate agreement between the Authority and LAVWMA, in particular the Master Agreement, dated April 26, 2007, as that agreement may have been amended or extended, which established certain standards as to the scope and conditions under which LAVWMA may export wastewater to and through Authority Facilities, including but not limited to the rights of the Authority to interrupt the discharge of wastewater from LAVWMA through the Authority Facilities, subject to certain rights of individual Agencies under the Master Agreement. By entering into this Amended and Restated Joint Exercise of Powers Agreement, no Agency with individual rights under the Master Agreement intends to waive, and each such Agency intends to preserve fully, its rights under the Master Agreement and under any separate agreement with LAVWMA; and

WHEREAS, on the date this Amended and Restated Joint Exercise of Powers Agreement was approved by its member Agencies, there were separate agreements between Castro Valley and LAVWMA (and others), in particular, and without limitation: Agreement Between the County of Alameda and the Castro Valley, dated July 25, 1999; Agreement [Right of Entry] Between Castro Valley and LAVWMA, dated June 21, 2000; Agreement [Improvements with Castro Valley Sanitary District] Between Castro Valley and LAVWMA, dated June 21, 2000; Settlement Agreement Between Castro Valley and LAVWMA, dated June 21, 2000; and Encroachment Agreement for Castro Valley Reach of LAVWMA’s Export Pipeline Facilities Project, dated July 25, 2000; as well as other separate agreements between Castro Valley and LAVWMA (collectively, “the Castro Valley-LAVWMA Agreements”) and between Castro Valley and others not party to the Amended and Restated Joint Powers Agreement (“the Third Party Agreements”). By entering into this Amended and Restated Joint Exercise of Powers Agreement, Castro Valley does not intend to waive, and expressly preserves fully, its rights under the Castro Valley-LAVWMA Agreements and/or the Third Party Agreements.

NOW THEREFORE, Hayward, San Leandro, Oro Loma, Castro Valley, and Union, for and in consideration of the mutual promises and agreements herein contained, do agree as follows:

Section 1. Definitions

Unless the context otherwise requires, the terms defined in this Section will, for all purposes of this Agreement, have the meanings herein specified.

Agency and Agencies

The term "Agency" means either Hayward, San Leandro, Oro Loma, Castro Valley, or Union. The term "Agencies" will mean two or more of these entities.

Agreement

The term "Agreement" means this Amended and Restated Joint Exercise of Powers Agreement.

Auditor

The term "Auditor" means that individual designated by the Commission to assure proper expenditure and accountability of funds and who is responsible for auditing and reporting of the accounts and records of the Authority.

Authority

The term "Authority" means the joint powers agency, known as the East Bay Dischargers Authority, which was created by the Joint Exercise of Powers Agreement dated February 15, 1974.

Capital Cost

The term "Capital Cost" means the cost of projects, involving construction, reconstruction, erection, alteration, renovation, painting, waterproofing, improvement, demolition or major repair work on the Facilities.

Commission

The term "Commission" means the East Bay Dischargers Authority Commission, being the governing body of the Authority.

### Facilities

The term "Facilities" or "Authority Facilities" means those facilities owned and operated by the Authority, as more specifically identified in Schedule A, attached hereto and incorporated by this reference.

### Failure

The term "Failure" means a state in which the Transport System is no longer able to convey flows reliably without spilling.

### Fiscal Year

The term "Fiscal Year" means the period commencing on July 1 to and including the following June 30.

### General Manager

The term "General Manager" means the person designated by the Commission to administer the construction and operation of the Authority or his or her duly authorized representative.

### Income from Operations

The term "Income from Operations" means all income from Authority operations, including, without limitation, income from the sale of recycled water or other substances arising out of the operation of the Facilities, interest income, income from lease of capacity rights, income from connection fees, income from sale of services and income from sale of assets.

### Maximum Flow Rate Capacity

The term "Maximum Flow Rate Capacity" means each Agency's capacity and right to discharge to the Authority Facilities based on a 3-hour average, as set forth in Schedule F.

### Operation and Maintenance Costs

The term "Operation and Maintenance Costs" means all costs directly associated with the operation, maintenance and routine repair of the Facilities, including labor, materials, supplies, power, chemicals, utilities, professional or contractual services, research and monitoring, tools and equipment, other necessary expenses to keep the Facilities in proper operating condition and maintain their useful life, and general administrative expenses attributable to such activities.

“Operation and Maintenance Costs” does not include “Capital Costs” or “Planning and Special Studies Costs.”

#### Planning and Special Studies Costs

The term "Planning and Special Studies Costs" means those costs associated with advanced planning, facilities planning, feasibility studies, research and development, environmental evaluations and studies as related to the overall Facilities or of general interest or benefit to all Agencies. Such costs will include, but not be limited to, reclamation/reuse studies and that portion of Bay water monitoring and research not directly related to pre-discharge or post-discharge monitoring of the Bay Outfall; and allocated general administrative expenses attributable to such activities. The term “Planning and Special Studies Costs” does not include costs associated with fines, studies or other requirements imposed by regulatory agencies, or other liabilities arising out of the Transport System.

#### Policies and Procedures

The term "Policies and Procedures" means all those certain rules and regulations adopted by the Commission from time to time for carrying out all the business of the Authority. Nothing in Policies and Procedures may contradict the terms of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Policies and Procedures, this Agreement will control.

#### Transport System

The term "Transport System" means the pipelines and related structures, excluding any pump stations, used to transport effluent from the Union Effluent Pump Station to the Marina Dechlorination Facility, as shown in Schedule G.

#### Treasurer

The term "Treasurer" means that individual designated by the Commission to have custody of, and control disbursements of, all funds of the Authority.

### Section 2. Authority and Purpose

This Agreement is made under the authority of and pursuant to the Joint Exercise of Powers Act, Chapter 5 of Division 7 of Title 1 of the California Government Code (commencing with Section 6500 et seq.) (the “Act”), relative to the joint exercise of powers common to all Agencies

and as otherwise granted by the Act. The purpose of the Agreement is to provide for the more efficient disposal (discharge to San Francisco Bay as well as reclamation or reuse of wastewater) of the wastewater produced in each Agency's jurisdiction, all to the economic and financial advantage of each Agency and otherwise for the benefit of each Agency.

Section 3. Term

This Amended and Restated Agreement will become effective on July 1, 2020 and will continue in full force and effect until June 30, 2040, unless sooner terminated by mutual agreement as set forth in Section 20.

Section 4. Creation of Authority

The Authority will exercise the powers as hereinafter set forth. The Authority is a public entity separate from the Agencies. No debt, liability, or obligation of the Authority will constitute a debt, liability, or obligation of any Agency, except as expressly provided for herein.

Section 5. Powers

(a) General Powers

The Authority will exercise, in the manner herein provided, the powers which are common to each Agency, or as otherwise permitted under the Act, and all incidental, implied, expressed, or necessary powers to accomplish the purposes of this Agreement. The Authority will have power to plan for, acquire, construct, manage, maintain, operate, and control facilities for the collection, transmission, treatment, reclamation, sale and disposal of wastewater and to enter into contracts to provide services to other governmental or non-governmental entities within or outside its boundaries.

(b) Specific Powers

The Authority is hereby authorized, in its own name, to perform all acts necessary for the exercise of said powers, as allowed by law, including but not limited to any or all of the following:

- (a) to make and enter into contracts;
- (b) to employ agents and employees;

- (c) to apply for and accept grants, advances and contributions;
- (d) to make plans and conduct studies;
- (e) to acquire, construct, manage, maintain, or operate, any building, works, or improvements;
- (f) to acquire, hold or dispose of property;
- (g) to sue and be sued in its own name;
- (h) to incur debts, liabilities, or obligations, subject to limitations herein set forth;
- (i) to issue indebtedness;
- (j) to establish rates, tolls, fees, rentals, or other charges in connection with the Facilities and services provided by the Authority;
- (k) to develop and adopt Policies and Procedures for the conduct of business of the Authority;
- (l) to plan for, acquire land or rights of way for, construct, operate, or maintain facilities owned by an Agency when necessary to meet joint discharge requirements, subject to the provisions of Section 16 hereof; and
- (m) to enter into joint exercise of powers agreements pursuant to the Act.

For the purposes of California Government Code Section 6509, the powers of the Authority will be exercised subject to the restrictions upon the manner of exercising such powers as are imposed on the City of Hayward, a charter city.

Section 6. Boundaries

The boundary of the Authority will be the consolidated boundaries of all Agencies, as may be amended from time to time.

Section 7. Organization

(a) East Bay Dischargers Authority Commission

The Authority will be governed by a five-member Commission, which will exercise all powers and authority on behalf of the Authority.

(b) Members

The Commission will consist of five members, one from each Agency (“member” or “commissioner”). Each Agency will appoint one person to act as its representative as a member of the Commission and one person as an alternate member to serve in the absence of the Agency's member. Each member and alternate will hold office from the first meeting of the Commission after their appointment by the Agency which they represent until their successor is selected. Each member and alternate will serve at the pleasure of the Agency which they represent and may be removed at any time, with or without cause, in the sole discretion of the Agency's governing body.

Each member and alternate must be a member of the governing body of the Agency which they represent. Each Agency will be empowered to vote through its designated member or alternate, but only the member or the alternate may vote on a given action.

(c) Voting

Approval by: (a) three or more commissioners; and (b) greater than fifty percent of the weighted votes based on Maximum Flow Rate Capacity is required to adopt any action, except as set forth in subsections (2) and (3) below.

(1) Commissioner and Weighted Voting Calculations

Every action will be subject to two vote calculations. The first is a calculation of the commissioners' votes, and each commissioner is allocated one vote. The second is a calculation of weighted votes based on the Maximum Flow Rate Capacity, and the commissioners will be allocated votes as set forth in Schedule E.

In the event that one or more Agencies' Maximum Flow Rate Capacity is increased pursuant to Section 11(d), the General Manager will recalculate the percentages set forth in Schedule E and such revisions will be automatically incorporated in this Agreement.

(2) Actions Requiring Unanimous Approval

Notwithstanding the foregoing, the following actions require unanimous approval of the entire membership of the Commission:

1. Amendment of this Agreement;
2. Termination during the Term;
3. Approval of modifications to, or extension of, the Master Agreement between the Livermore-Amador Valley Water Management Agency ("LAVWMA") and the Authority, dated April 26, 2007;
4. Approval of any agreement that would result in the utilization of the Facilities to dispose of brine pursuant to Section 23(b)(1);
5. Changes to the ownership of Authority Facilities; and
6. Approval of the Authority Policies and Procedures regarding purchasing and brine.

(3) Other Actions

For the purpose of Commission actions related to effluent violations addressed in Section 16(b), the unanimous vote requirement will not include the violating Agency(ies) and the commissioner from the violating Agency(ies) will not be permitted a vote.

(d) Principal Office

The principal office of the Authority will be located within the boundaries of the Authority and will be established by the Commission. The Commission is hereby granted full power and authority to change said principal office from one location to another, provided at least fifteen days' notice is given to each Agency, the Regional Water Quality Control Board and to such agencies or offices as required by law.

(e) Officers

The Authority will have the following officers: Chair, Vice-Chair, General Manager, Treasurer, and Auditor (the positions of Treasurer and Auditor may be held by a single individual). The members of the Commission will select from the Commission a Chair and Vice-Chair who will hold office for a period of one year, commencing July 1 of each and every Fiscal Year; provided, however, that in the event that an Agency removes from the Commission a member serving as an officer or an officer resigns his or her position, the Commission will select



a member of the Commission to fill that vacant office for the remainder of that Fiscal Year. The positions of General Manager, Treasurer, and Auditor may be filled by any qualified person, except with regard to the Treasurer and Auditor as provided in Section 6(g)(1).

(f) General Manager

The Commission will employ or contract for the services of a General Manager. The General Manager may be a staff member of one of the Agencies.

(1) Duties

The Commission will prescribe the duties, compensation, and terms and conditions of employment of the General Manager. At a minimum, the General Manager will coordinate the business and operations of the Authority, attend Commission meetings, prepare, distribute and maintain minutes of Commission meetings and official actions of the Authority, and carry out other duties as may be assigned by the Commission. The General Manager will make monthly reports to the Commission and the Treasurer, if the General Manager is not also serving as the Treasurer, of all expenditures for the preceding month. The General Manager serves at the pleasure of the Commission.

(2) Delegated Authority

The General Manager will have the full power and authority to employ and discharge employees of the Authority; prescribe the duties of employees; and fix and alter the compensation of employees, within the Commission adopted budget and Compensation Plan. Once the Commission adopts a budget, the General Manager also has delegated authority to take actions consistent with the approved budget and Policies and Procedures, pursuant to Section 8(e).

(g) Treasurer and Auditor

(1) Appointment

The Commission may at any time appoint one or more qualified persons to either or both of the positions of Treasurer or Auditor as provided in the Act, Section 6505.6. In the event such appointment is not made, the treasurer and auditor of Alameda County, respectively, are designated the Treasurer and Auditor of the Authority with the powers, duties, and responsibilities specified in the Act, including, without limitation, Sections 6505 and 6505.5 thereof. Current

Agency staff members or elected officials are not eligible to serve as Treasurer or Auditor of the Authority.

(2) Accountability

There will be strict accountability of all Authority funds and report of all receipts and disbursements and compliance with the Act.

(h) Bonding Persons having Access to Property

As provided in Section 6505.1 of the Act, the Treasurer and General Manager are hereby designated as the persons who have charge of, handle, and have access to the property of the Authority. The Commission may require such persons to file an official bond in an amount to be fixed by the Commission. If required, cost of said bond will be paid by the Authority.

(i) Officers, Employees and Agents; Compatible Offices; Compensation

Except as provided herein, any officer, employee, or agent of the Authority may also be an officer, employee, or agent of any Agency, provided that the Commission or General Manager determines that the two positions are compatible.

All privileges and immunities from liability, all exemptions from laws, ordinances and rules, and all pension, relief, disability, worker's compensation, and other benefits which apply to the activities of officers, agents, or employees of an Agency when performing their respective functions will apply to them to the same degree and extent while engaged in the performance of any of the functions and other duties under this Agreement.

None of the officers, agents, or employees directly employed by the Authority will be deemed, by reason of their employment by the Authority, to be employed by any Agency or to be subject to any of the requirements of any Agency. Charges for the services of the General Manager and other administrative or operating personnel supplied by any Agency will be jointly agreed upon with the Agency or Agencies furnishing the services.

(j) Rules of the Commission

The Commission will adopt, and from time to time amend, the Rules of the Commission as necessary or convenient in the determination of the Commission to achieve or facilitate the purposes hereof.

Section 8. Meetings; Budget and Contributions

(a) Regular Meetings

The Commission will hold at least one regular meeting each year. The date upon which, and the hour and place at which each such regular meeting will be held, will be fixed by resolution of the Commission.

(b) Special Meetings

Special meetings of the Commission may be called in accordance with the provisions of Section 54956 of the California Government Code.

(c) Notice And Conduct of Meetings

All meetings of the Commission will be held subject to the provisions of the Ralph M. Brown Act, Section 54950 et seq. of the California Government Code, and other applicable laws of the State of California.

(d) Quorum

A majority of the members (or, in the absence of a member, that member's alternate) of the Commission will constitute a quorum.

(e) Budget; Contributions; Delegation of Authority

(1) Budget

The Commission will adopt an annual or biennial budget for the ensuing Fiscal Year(s) prior to July 1. The budget will include sufficient detail to constitute a fiscal control guideline, specify cash flow requirements from each Agency, grant reimbursements, and cash receipts and expenditures to be made for Operation and Maintenance Costs, Planning and Special Studies Costs, and Capital Costs for the Facilities, and other necessary and appropriate expenditures.

(2) Contributions; Delegation of Authority

Approval of the budget by the Commission will constitute authority for the General Manager to bill the Agencies for their contributions, expend funds after appropriate award of contract and for the purposes outlined in the approved budget, and receive grant funds.

Additionally, the Authority may bill the Agencies for any Capital Costs approved by the Commission.

Section 9. Elections

For the purpose of holding any election within the Authority's boundaries, the Commission may call and hold an election to submit propositions to the electors of the Authority in the same manner as the board of supervisors of a county may call and hold county elections, and the electors of the Authority will have the right to petition for referendum on any ordinance enacted by the Commission in the same manner as the electors of a county, except that all computations referred to in those sections and the officers of the county mentioned in those sections will be construed to refer to comparable computations and officers of the Authority. For the purposes of any such election or referendum petition, the electors residing within the boundaries of the Authority who would be qualified to vote for candidates for Governor at any general election will be the electors of the Authority.

Section 10. Ownership of Authority Facilities; Responsibility for Failure of the Transport System

(a) Ownership of Authority Facilities.

The Authority will own and hold title to the Authority Facilities, as specifically outlined in Schedule A. Each Agency will own an undivided portion of the Authority Facilities proportional to each Agency's Maximum Flow Rate Capacity as set forth in the Fixed Operation and Maintenance Costs allocation in Schedule B. Except as set forth below, the Authority will be responsible for all costs and expenses related to the operation, maintenance, and repair of Authority Facilities.

(b) Transfer of Ownership of the Pump Stations.

At the end of the Term, or upon earlier termination pursuant to Section 20, the Oro Loma Effluent Pump Station will become the joint property of all Agencies, except San Leandro, in proportion to each Agency's Maximum Flow Rate Capacity at the time of termination; the Hayward Effluent Pump Station will become the sole property of Hayward; and the Union Effluent Pump Station will become the sole property of Union, unless transferred sooner as set

forth in this subsection 10(b). Upon termination or expiration of the Agreement, the Authority Facilities (excluding the pump stations) will be disposed of as set forth in Section 20.

In the event Union relocates the Union Effluent Pump Station from its location as of the effective date of this Agreement, ownership of the pump station will transfer to Union at that time. Union and the Authority agree to execute any and all documents necessary to effectuate such transfer. At such time, the General Manager will update Schedule A and the revised Schedule A will be automatically incorporated in this Agreement. Operation and Maintenance costs of the Union Effluent Pump Station will continue to be allocated as outlined in Schedule B for the duration of the Term, irrespective of ownership.

(c) Responsibility for Failure of the Transport System.

(1) State or Federal Reimbursement.

In the event of Failure of the Transport System, the Authority will be the applicant for the purposes of any state or federal reimbursement, if applicable.

(2) Determination of Failure.

The General Manager is responsible for determining whether a Failure has occurred, in accordance with applicable Policies and Procedures. In the event of such determination, the Authority will provide written notice of the Failure to the Agency(ies) using the relevant segment of the Transport System affected by the Failure within 24 hours of the determination. The General Manager's determination may be appealed to the Commission in accordance with applicable Policies and Procedures.

(3) Temporary and Emergency Repair.

In the event of Failure, the Authority will be responsible for performing any required temporary and emergency repair reasonably necessary to prevent further harm to the Transport System, to other Authority Facilities, or to third parties or the environment, and to promptly restore the function of that portion of the Transport System that failed.

(4) Permanent Repair.

In the event of Failure of the Transport System, the Agencies currently using the relevant segment of the Transport System affected by the Failure may determine whether or not to: (a) undertake a permanent (20-years or more) repair to the Transport System in order to

restore or maintain the functionality of the Transport System, or (b) permanently abandon the relevant segment and, if needed, which Agency should manage the project. Such decision must be unanimous among the Agencies using the relevant segment of the Transport System, and must be evidenced by written notification from such Agencies' general managers or city managers. If the Authority does not receive such correspondence within 90 days of the notice from the Authority regarding the initial Failure, the Authority will repair the Transport System. At the request of one or more of the Agencies using the relevant segment of the Transport System, the Authority may extend the 90 day period. If the Agency(ies) currently using the relevant segment of the Transport System determines not to undertake a permanent repair, the failed segment of the Transport System must be permanently isolated, and the abandonment of the segment may not render other parts of the Transport System inoperable.

Any decision not to repair a segment of the Transport System will not impact an Agency's Maximum Flow Rate Capacity rights and obligations, as set forth in Section 11.

(5) Allocation of Costs of Repairing Failure of the Transport System or Abandoning a Segment of the Transport System.

The costs associated with all Failure(s) of the Transport System, including costs related to any repairs, whether such repairs are performed by the Agencies or the Authority and whether such repairs are temporary emergency repairs or permanent repairs, or abandonment of one or more segments of the Transport System, as well as costs associated with environmental liability or third party claims arising from such Failure(s), will be allocated as set forth herein. The first One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) in aggregate costs for all Failures will be allocated based on the table set forth in Schedule H. All costs over One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) will be allocated based on the table set forth in Schedule G.

Depending on the extent of the Failure, it is likely that the Authority will not have sufficient funds in its reserve to pay for the repairs or abandonment and will require funds from the financially responsible Agencies, based on the allocations set forth above, in advance of performing any repair or abandonment. The Authority need not exhaust its reserve before requiring advance payment as described in this subsection.

(6) Failures Arising from the Acts Authority Employees or Third-Party Contractors.

The Authority may engage its own staff, or the staff of an Agency or a third-party contractor, to perform construction and maintenance projects on the Transport System. If in the implementation or performance of such project there is a Failure caused by the negligent, reckless, or willfully wrongful acts of those Authority-engaged personnel, any costs to address the Failure, including costs associated with environmental and third party claims, will be reimbursed by such party's insurance or as agreed to in the required indemnification provisions described in this subsection 10(c)(6). The Authority will maintain insurance to cover its potential liabilities under this subsection as may be approved by the Commission and will require any Agency or third-party contractor performing work on the Authority's behalf to indemnify the Authority, in a form to be approved by the Commission, against all losses that may arise out of the performance of the work. The Authority will require that any Agency or third-party contractor performing such work on behalf of the Authority maintain insurance in such types and amounts as the Authority may from time to time establish and naming the Authority and the Agencies as additional insureds. The Authority will adopt Policies and Procedures to implement these requirements. Any costs not covered by such insurance or indemnity provisions will be borne by the Authority and will be allocated according to Schedule H.

Section 11. Capacity Rights

(a) Capacity Rights; Volume

Each Agency has acquired, subject to the terms and conditions of the Agreement, the capacity and right to discharge to the Authority Facilities at that Agency's Maximum Flow Rate Capacity. All effluent which is discharged to the Hayward Marsh by Union pursuant to the Hayward Marsh MOU, will not be counted toward Union's Maximum Flow Rate Capacity.

With the exception of Union Effluent Pump Station, all pump stations will be designed and maintained to manage the capacities set forth in Schedule F with any single pump out of service. Per the Hayward Marsh MOU, the Union Effluent Pump Station may be designed and maintained to manage Union's capacity set forth in Schedule F, plus the flow that Union is approved to discharge to the Hayward Marsh, with any single pump out of service.

(b) Temporary Capacity Exceedance

Should any Agency exceed its Maximum Flow Rate Capacity it will make best efforts to reduce its flows to within its allocated capacity. Capacity exceedance fees will be calculated as follows:

(1) First Exceedance:

No charge for an Agency that exceeds its Maximum Flow Rate Capacity, based on a 3-hour average, the first time in a Fiscal Year. An Agency's first exceedance will not exceed twenty-four hours, and after such 24 hour period, any continuing exceedance will be considered a second exceedance.

(2) Subsequent Exceedances:

Any Agency that exceeds its Maximum Flow Rate Capacity, based on a 3-hour average, for the second and each subsequent exceedance in a Fiscal Year, will be charged \$0.005/gallon of exceeded flow. The Authority will calculate an exceedance based on the formula set forth in Schedule D.

Notwithstanding the foregoing, any discharge by Union to the Hayward Marsh pursuant to the Hayward Marsh MOU, will be subtracted from Union's total flow for the purposes of determining whether Union has exceeded its Maximum Flow Rate Capacity. All capacity exceedance fees will be applied to, and reduce the total of, the fixed operating costs due from the non-exceeding Agencies' fixed operating costs for that or the following Fiscal Year.

Any costs related to an unpermitted discharge or other violation due to the exceedance of one or more Agencies will be allocated as set forth in Section 16(a).

(c) Temporary Capacity Exceedance at the Request of the Authority.

Notwithstanding the foregoing, the Authority may request that one or more Agencies temporarily exceed their Maximum Flow Rate Capacity in order to preserve the Agency(ies)' capacity in storage, in accordance with approved Policies and Procedures. Agencies complying with an Authority request to exceed their Maximum Flow Rate Capacity will not be charged capacity exceedance fees, nor will any such exceedance count as an Agency's first exceedance under Section 11(b) above. In no event will any Agency be required to comply with any Authority request to temporarily exceed its Maximum Flow Rate Capacity. Authority requests to



temporarily exceed an Agency's Maximum Flow Rate Capacity will not be a basis for permanently increasing an Agency's Maximum Flow Rate Capacity without following the process set forth in Section 11(d). Any Authority request to exceed an Agency's Maximum Flow Rate Capacity will not be to the detriment of, or harm, any Agency.

(d) Increase of Maximum Flow Rate Capacity and Notice Procedures

(1) Notice of Intent to Increase Maximum Flow Rate Capacity.

If an Agency desires to increase its Maximum Flow Rate Capacity, it must notify the Authority on or before January 1 in order for the increase to take effect on July 1 of the following Fiscal Year. An Agency may not increase its Maximum Flow Rate Capacity more than once in a Fiscal Year. In the event no Agency provides such notice in any given year, there will be no change in any Maximum Flow Rate Capacity.

(2) Opportunity for Agencies to Respond to a Notice of Intent to Increase Maximum Flow Rate Capacity.

Upon notification by the Authority that an Agency desires to increase its Maximum Flow Rate Capacity as set forth in subsection 11(d)(1), all other Agencies will have ninety (90) days to notify the Authority of an Agency's desire to increase its Maximum Flow Rate Capacity at the same time. Once the ninety (90) day period is complete, the Authority will notify all Agencies of the revised Maximum Flow Rate Capacity of each Agency.

(3) Allocation of Costs Associated with Modifications to Accommodate an Increase.

Any Agency seeking to increase its Maximum Flow Rate Capacity will bear the full cost and expense of any engineering and modifications to Facilities that may be required to accommodate such additional flows. If more than one Agency seeks to increase its Maximum Flow Rate Capacity, the Agencies increasing their Maximum Flow Rate Capacities will each bear (A) the full cost and expense of any engineering and modifications to Facilities that may be required to accommodate only that Agency's additional flows; and (B) the proportionate cost and expense of any engineering and modifications to Facilities that are required to accommodate more than one Agency's additional flows, based on the proportionate increase in Maximum Flow Rate Capacities. The General Manager, in consultation with the general managers and city

managers, or designee, from each of the Agencies, will make the preliminary determination of the need for any modifications. In the event an Agency(ies) disagrees with the General Manager's determination, the Authority will engage a professional engineer to evaluate the need for engineering and modifications. If the Agency(ies) seeking Maximum Flow Rate Capacity increase disagrees with the General Manager's determination, the cost of engaging a professional engineer will be borne solely by that Agency(ies). If a non-increasing Agency(ies) disagrees with the General Manager's determination, the cost of engaging a professional engineer will be divided equally between the Agency(ies) seeking the increase and the non-increasing Agency(ies) that disagrees with the General Manager's determination. Further disputes related to the need for modifications will be resolved pursuant to the dispute resolution procedures set forth in Section 19.

(e) No Reductions in Maximum Flow Rate Capacity During the Term.

No Agency may reduce its Maximum Flow Rate Capacity during the Term. Once an Agency has taken action set forth in subsection 11(d) to increase its Maximum Flow Rate Capacity, it may not thereafter reduce its revised Maximum Flow Rate Capacity during the Term.

Section 12. Allocation of Operation and Maintenance Costs, Capital Costs, and Planning and Special Studies Costs.

(a) Allocation of Operation and Maintenance Costs.

Operation and Maintenance Costs will be allocated to each Agency as set forth in Schedule B.

Meters will be used to measure the discharge of effluent from the treatment facilities of Union, Hayward, the combined facilities of Oro Loma and Castro Valley, and San Leandro for the purposes of determining flow under Schedule B and for other purposes, including but not limited to, regulatory reporting.

(b) Allocation of Capital Costs.

(1) Capital Costs related to the pump stations which exceed a total cost of \$10,000 per project, plus allocated general administrative expenses attributable to such Capital

Cost activities, will be allocated based on Maximum Flow Rate Capacity as set forth in Schedule H, which excludes San Leandro.

(2) Capital Costs related to the Transport System which exceed a total cost of \$35,000 per project, plus allocated general administrative expenses attributable to those Capital Cost activities, will be allocated: (i) based on Maximum Flow Rate Capacity as set forth in Schedule H, which excludes San Leandro, until a total of three hundred and twenty-five thousand dollars (\$325,000) has been expended for projects not approved as of July 1, 2020, and thereafter (ii) based on each Agency's use of the segment of pipeline as set forth in Schedule G; provided, however, that any unexpended portion of the \$325,000 limit will be adjusted annually to reflect any increase in the cost of construction of similar projects as established by the Engineering News-Record 20-City Building Cost Index using July 1, 2020 as the baseline. Notwithstanding the above, costs associated with Failures will be allocated as set forth in Section 10.

(3) Capital Costs related to the Bay Outfall, the Operations Center, and the Marina Dechlorination Facility which exceed a total cost of \$10,000 per project, plus allocated general administrative expenses attributable to such Capital Cost activities will be allocated based on Maximum Flow Rate Capacity for all Agencies, as set forth in the Fixed Operation and Maintenance Costs allocation in Schedule B.

(c) Allocation of Planning and Special Studies Costs.

Planning and Special Studies Costs will be allocated to each Agency as set forth in Schedule C.

(d) Capital Costs Allocated as Operation and Maintenance Costs.

Except as otherwise provided herein, Capital Costs for Facilities other than Union Effluent Pump Station that total less than \$10,000 per project (for non-Transport System projects) or less than \$35,000 (for Transport System projects) will be allocated in the same fashion as Operation and Maintenance Costs under Section 12(a) of this Agreement. The Authority may not divide work into small projects for the purpose of allocating project costs as Operation and Maintenance Costs, rather than as Capital Costs.

(e) Management of Capital Costs for the Union Effluent Pump Station.

In fiscal years from 2020/21 through 2029/30, the Authority will pay Union a total of Four Million, Two-Hundred Thousand dollars (\$4,200,000), divided in ten equal and annual installments, as a credit toward their annual budget contribution for Operation and Maintenance Costs, for all Capital Costs associated with the Union Effluent Pump Station during the Term of the Agreement. These Capital Costs will be allocated based on Maximum Flow Rate Capacity, excluding San Leandro, as set forth in Schedule H. Union will undertake control and responsibility of all Capital Costs for the Union Effluent Pump Station, in consultation with the Authority. Any Capital Costs for the Union Effluent Pump Station in excess of the amount set forth above will be borne by Union.

(f) Renewal and Replacement Fund.

The Authority has established a Renewal and Replacement Fund to provide funding for the Capital Costs of rehabilitation and replacement of Authority Facilities. Each Agency will fund the Renewal and Replacement Fund in such amounts as may be determined by the Commission, taking into account the foregoing Capital Cost allocations.

(g) Authority Cost Allocation Summary

For convenience of reference, Schedule I includes a summary of the above listed costs and the respective allocation and schedule.

Section 13. Payment of Operation and Maintenance and Capital Costs

Not later than March 1st of each year, the Authority will provide each Agency with an estimate of its allocated share of the projected Operation and Maintenance Costs and Capital Costs for the forthcoming Fiscal Year. Each Agency hereby agrees to include in each annual budget approved by the governing body of such Agency amounts estimated to be sufficient to pay all such charges and to pay to the Authority within thirty days of receipt of a statement of the Agency's allocated share of the actual Operation and Maintenance Costs and Capital Costs for the billing period. The billing period will be determined by the Commission. The Authority is hereby authorized to take any or all legal actions necessary and permitted by law to enforce the collection of such charges or any other compliance with this Agreement, including, but not limited to, actions or proceedings in mandamus to require each Agency to include the amounts

estimated to be necessary in each such estimated annual budget, or to collect such charges from the taxpayers, landowners, or users of any of the Facilities.

Section 14. Records and Accounts

The Authority will cause to be kept accurate and correct books of account, showing in detail the costs and expenses of any construction and the maintenance, operation and administration of the Facilities and all financial transactions of the Agencies relating to the Facilities, which books of account will correctly show any receipts and also any costs, expenses, or charges to be paid by all or any of the Agencies hereunder, and also records of the effluent flow from each of the Agencies. Time records and books of account will be open to inspection at all times by any representative of any of the Agencies, or by any accountant or other person authorized by any Agency to inspect said books of account.

Section 15. Income from Operations

Income arising out of the operation of the Facilities, including the sale of recycled water, will be retained as part of the fund balance in the fund in which it is earned. Any interest earned on the fund balance will also be retained in the fund. The fund balance may be used as an operating reserve or, upon approval of the Commission, to fund additional study, design or construction, or upon approval by the Commission may be refunded to the Agencies on the basis of the Fixed Operation and Maintenance Costs allocation in accordance with Schedule B.

Income from the lease of capacity rights, sale of services or assets, or connection fees will be deposited in the Renewal and Replacement Fund.

Section 16. Failure to Meet Discharge Requirements

(a) Capacity Exceedance.

If the Authority experiences an unpermitted discharge or other violation due to high flows caused by one or more Agencies' exceedance of the Maximum Flow Rate Capacity as detailed in Section 11(b), any fines or other sanctions or costs imposed on the Authority will be allocated to the exceeding Agency(ies) based on an instantaneous (defined as a 5-minute) exceedance. The General Manager will be responsible for determining which Agency(ies)

caused the unpermitted discharge or violation and the General Manager's determination is subject to appeal to the Commission in accordance with applicable Policies and Procedures.

(b) Effluent Violation.

The Authority will cause the combined effluent of all Agencies, as well as the receiving water of the combined discharge, to be monitored to determine whether or not federal and/or state discharge requirements are being met. In addition, the Authority will cause the effluent of each Agency to be monitored. If the combined effluent of all Agencies at the point of ultimate discharge into the receiving water fails to meet discharge requirements, the Agency or Agencies responsible for the violations will be solely responsible for any fines levied or criminal sanctions imposed. Upon notification of such violation, the Agency or Agencies must take prompt, corrective action as necessary to meet said discharge requirements.

If any Agency fails to take such action, the Authority, by unanimous vote of the Commission (excluding those members of the Commission who are representatives of the Agency or Agencies who are in violation of the discharge requirements), may elect to do either one or both of the following:

- (1) Undertake the operation of existing facilities or construction and operation of additional treatment facilities as necessary to meet said discharge requirements at the cost and expense of the violating Agency(ies).
- (2) Impose a prohibition on additional connections to the collection system of the Agency(ies) in violation.

In the event that one or more Agencies are obligated to provide additional levels of treatment to meet waste discharge requirements for the combined effluent, all Agencies requiring the additional levels of treatment will participate in the costs of such treatment based on their proportionate contribution of waste characteristics to be treated and the costs of providing such treatment. Nothing in this Section will preclude one or more Agencies from providing additional levels of treatment to ensure compliance with waste discharge requirements for the combined effluent.

(c) Indemnification.

To the extent permitted by law, the Agency(ies) that fail to meet discharge requirements will indemnify, keep and save harmless the Authority and the other non-violating Agencies and

their respective directors, officers, agents, and employees against any and all liability, demands, loss, damage, settlement expenses, suits, claims, or actions (including, without limitation, attorney fees, expert witness fees, investigation costs, all legal costs and fees) arising from the violation. In the event two or more Agencies are responsible for a violation as above provided, the Agencies responsible for the violation will be jointly and severally responsible to the Authority and to the other non-violating Agencies. The Agency(ies) responsible for the violation further agrees to defend any and all such suits, claims, or actions, with counsel acceptable to the Authority in its reasonable discretion, and pay all charges of attorneys and all other costs and expenses of defenses as they are incurred. If any judgment is rendered, or settlement reached against the Authority or the other non-violating Agencies, or any of the individuals enumerated above in any such action, the responsible Agency(ies), will at its expense, satisfy and discharge the same. This indemnification will survive the termination or expiration of this Agreement.

Section 17. Future Projects

It is understood that it may be in the interest of the Agencies for the Authority to acquire and construct additional Authority Facilities. This Agreement is subject to modification in the event all Agencies desire to do so.

Section 18. Contributions, Payments and Advances, Use of Personnel, Equipment or Property; Exchange of Services

It is hereby agreed that:

- (a) Contributions from an Agency's treasury may be made for the purpose set forth in this Agreement.
- (b) Payments of public funds of an Agency may be made to defray the cost of such purpose.
- (c) Each of the Agencies may make advances of public funds, to be repaid as set forth in this Agreement.
- (d) Subject to approval of the General Manager, personnel, equipment, or property may be used in lieu of other contributions or advances.

- (e) The Agencies may exchange services without payment of any consideration other than such services; or an Agency may agree to provide all or any portion of such services to another Agency.
- (f) The Commission may provide for the repayment or return to an Agency of all or any part of any contributions, payments, or advances made by that Agency.

Section 19. Dispute Resolution

In the event of any dispute, the parties will promptly meet and confer, first at a staff level and then elevated to a meeting of Commissioners, in a good faith attempt to resolve the dispute. In connection with such negotiations, the party asserting the dispute must provide the other with a written description of the nature of the dispute, along with reasonable supporting documentation. If a dispute cannot be resolved by the parties independently, they may agree to submit such dispute to non-binding mediation by a mutually agreed-upon neutral third party with offices in the San Francisco Bay Area. The cost of mediation will be shared equally. In the alternative, a party may choose to resolve questions or disputes arising under this Agreement through arbitration or judicial determination.

Section 20. Termination; Expiration; Disposition of Assets

The Agencies agree to the following procedures for the disposition of the Authority's assets and obligations. Unless terminated sooner pursuant to this Section 20, this Agreement will expire at the end of the current Term. In the event of such expiration or earlier termination, the Agencies will dispose of the Authority's assets and obligations as set out below and authorized by law. In the alternative, at the end of the Term, the Agencies may choose to waive this provision and select a different method for disposition of assets and obligations, provided such agreement is in writing and adopted in accordance with the Amendments procedures in Section 21. No Agency may withdraw from the Authority prior to the end of the Term.



(a) Termination during the Term.

The Agencies may terminate the Agreement prior to the end of the Term by agreement of all the Agencies in writing, such agreement being authorized by the governing body of each of the Agencies.

(b) Disposition of Assets and Obligations Upon Termination or Expiration of the Agreement.

(i) Disposition of Certain Authority Facilities

As set forth in Section 10(b), certain Authority Facilities (pump stations), will transition ownership at the end of the Term, or any earlier termination.

(ii) Disposition of Remaining Authority Facilities

In the event that all Agencies do not reach an agreement to extend the term of the Agreement or to renew, revise, replace or terminate the Agreement pursuant to subsection (c) below, the Authority will dispose of the remaining Authority Facilities not already disposed of pursuant to subsection (b)(i) and Section 10(b). The cost of such disposal will be borne by the Authority prior to the disposition of all remaining assets as set forth in subsection (b)(iii).

(iii) Disposition of All Remaining Assets

After the discharge of all enforceable liabilities, the remaining Authority assets will be liquidated and will be divided among the then parties to this Agreement based on each Agency's Maximum Flow Rate Capacity as of July 1, 2020.

(iv) Disposition of Retirement Obligations

In terminating this Agreement, the Agencies agree to apportion the Authority's retirement obligations among all Agencies based on each Agency's Maximum Flow Rate Capacity as of July 1, 2020. All Agencies will comply with all legal requirements related to the Authority's pension liabilities and obligations as specified in the Act and the Public Employees Retirement Law (California Government Code Section 20000 *et seq.*).

(c) Negotiations to Extend the Term of the Agreement

Five years before the end of the Term, the Agencies will enter into good faith negotiations to determine whether it is appropriate to renew, extend, revise, replace or terminate the Agreement. Such negotiations may include matters such as the process by which Agencies may leave the Authority prior to and following any renewal, extension, revision or replacement of the Agreement and the related disposition of assets and obligations, the ownership of Facilities, and whether Agencies will be permitted to reduce their Maximum Flow Rate Capacities. In the event all Agencies are unable to reach agreement prior to the end of the Term, the Agreement will terminate.

(d) Disposition of Obligations Imposed After Termination or Expiration of the Agreement.

The Agencies acknowledge that it is possible obligations arising out of or related to the Agreement may remain following termination of, or be imposed on the Authority after termination of, the Agreement, for which events giving rise to such obligations arose during the Term of the Agreement. Such obligations may include the decommissioning or disposal of Facilities, if ordered by a regulatory agency or other entity. In the event such post-termination or post-expiration obligations remain or are imposed, the costs related to such obligations will be apportioned to all Agencies based on each Agency's Maximum Flow Rate Capacity as of July 1, 2020.

(e) Survival of Obligations

The Agencies' obligation to fund post-termination or post-expiration obligations referenced in subsections (b)(iv) and (d), above, will survive termination or expiration of this Agreement.

(f) Post-Termination Notices

Upon termination of this Agreement, the Authority will designate a contact name and address for any post-termination or post-expiration notices.

Section 21. Amendments

This Agreement may be amended only by an agreement approved and executed in writing by the governing bodies of all of the Agencies. In the event another governmental entity adopts a law or regulation, which materially impacts the manner in which the Authority functions, it is anticipated that amendment or termination of this Agreement will be required.

Section 22. Authority Use of Agencies' Emergency Outfalls and Flow Equalization Storage

During the Term, all Agencies will continue to permit the Authority to utilize Agency owned and operated outfalls for emergency relief as detailed in approved Policies and Procedures. In no event will Union be required to comply with any Authority request to temporarily utilize its outfall. Further, the Authority may request that one or more Agencies utilize Agency owned and operated flow equalization storage facilities in order to manage wet weather flows or facilitate maintenance activities, in accordance with approved Policies and Procedures. In no event will any Agency be required to comply with any Authority request to temporarily utilize its flow equalization storage.

Section 23. Brine Disposal and the Development and Use of Recycled Water

(a) Development and Use of Recycled Water.

The Authority and the Agencies support the development and use of recycled water. The volume of flow that an Agency recycles that does not utilize any Authority Facilities will not be included in the effluent flow reported by the Agency for the purposes of calculating O&M Variable Costs. To the extent that recycled water is conveyed or pumped using Authority Facilities, it will be included in the Agency's reported effluent flow. Water recycling by the Authority and by any Agency will be conducted in accordance with the Authority's Water Recycling Policy, as it may be updated from time to time.

(b) Disposal of Brine.

The Authority and the Agencies acknowledge that use of the Authority's Bay Outfall may provide an environmentally beneficial and cost-effective method of disposing of brine. The Agencies desire that both volume and pollutant loading capacity in the Facilities be available for disposal of brine generated from an Agency's production of recycled water.

(1) Non-Agency Generated Brine

Any project or activity that results in utilization of the Facilities to dispose of brine generated outside the Authority's boundaries or from source water not already treated by an Agency will be conducted in accordance with the Authority's Brine Policy, as it may be updated from time to time, and any other relevant Policies and Procedures. The Brine Policy will include a provision that the Commission unanimously approve any agreement that results in utilization of the Facilities for disposal of such brine, including any agreement to which the Authority may not be a party. Such approval will not be unreasonably withheld. The purpose of such approval is, among other things, to ensure that acceptance of brine from non-Agency sources does not limit an Agency's right to a share of capacity, both volume and pollutant loading, in the Authority Facilities to develop recycled water projects and dispose of brine. Such agreements may also provide for the Authority to receive appropriate revenue from disposal of brine, assurances that the discharge will not lead to effluent violations, and appropriate indemnification against liability resulting from such disposal.

(2) Agency-generated Brine that is not Treated Through an Agency's Full Secondary Treatment Process

Utilization of the Facilities to discharge brine that is generated by an Agency that is not treated through an Agency's full secondary treatment process will be conducted in accordance with the Authority's Brine Policy, as it may be updated from time to time, and any other relevant Policies and Procedures. The Brine Policy will provide a framework that encourages development of recycled water while addressing the possible impacts of Agency brine discharges on other Agencies, the Facilities, and the Authority's regulatory compliance. The requirement for Commission approval in subsection 23(b)(1) does not apply to brine generated by an Agency.

(3) Agency-generated Brine Treated through an Agency's Full Secondary Treatment Process

Brine generated by an Agency that is treated through an Agency's full secondary treatment process will not be subject to approval by the Authority. The requirement for Commission approval in subsection 23(b)(1) does not apply to wastewater treated by an Agency.

Section 24. Notices

Except for the notices required by Sections 10(c)(2) and 10(c)(4), any notices which any Agency or the Authority may give to another Agency or the Authority in connection with this Agreement will be given in writing and will be sent by (i) personal delivery, (ii) United States registered or certified mail, return receipt requested, postage prepaid, addressed as set forth below, or (iii) Federal Express or other equivalent overnight delivery system, addressed to the party for whom intended, and addressed to the Agency at its address given below or to the Authority at its principal office, as the case may be, or to such other address as any Agency or the Authority may designate from time to time by written notice given as provided in this paragraph. Service of notice pursuant to this paragraph will be deemed complete on the day of actual delivery.

Section 25. Successors: Assignment

This Agreement will be binding upon and will inure to the benefit of the successors of the Agencies. In the event of the consolidation of some, but less than all, of the Agencies, the consolidated Agency will retain all of the rights and responsibilities of the former individual Agencies which consolidated.

No Agency may assign any right or obligation hereunder without the consent of the others.

Section 26. Severability

Should any part, term, or provision of this Agreement be decided by a final judgment of a court to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions will not be affected thereby.

Section 27. Section Headings

All section headings contained herein are for convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.

Section 28. Incorporation of Schedules

Schedules A through I, referred to herein, are incorporated in and made part of this Agreement.

Section 29. Governing Law

This Agreement will be governed by, and construed and enforced in accordance with, the laws of the State of California, without giving effect to conflict of law provisions.

Section 30. Jurisdiction

Any lawsuits between the parties arising out of this Agreement will be brought and concluded in the State of California, which will have exclusive jurisdiction over such lawsuits. With respect the venue, the parties agree that this Agreement is made in and will be performed in Alameda County, unless otherwise agreed to by the parties to the dispute or pursuant to California Code of Civil Procedure Section 394.

Section 31. Joint Drafting

All Agencies participated in the drafting of this Agreement and the Agreement will not be construed against any Agency as the drafter.

Section 32. References to Laws

All references in this Agreement to laws and regulations will be understood to include such laws and regulations as they may be subsequently amended or recodified, unless otherwise specifically provided. In addition, references to specific governmental agencies will be understood to include agencies that succeed to or assume the functions they are currently performing.

Section 33. Counterparts

Execution of this Agreement may be accomplished by execution of separate counterparts by each signatory. The separate executed counterparts, taken together, shall constitute a single agreement.

Section 34. No Escalation of Dollar Amounts

The Agencies agree that all dollar figures in the Agreement are fixed for the term of the Agreement, unless specifically designated as being subject to adjustment for inflation.

Section 35. Third Party Beneficiaries

This Agreement will not create any right or interest in any non-party or in any member of the public as a third party beneficiary.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and attested by their respective officers, duly authorized to so act, on the dates set forth.

**SIGNATURE BLOCKS ON FOLLOWING PAGES**

UNION SANITARY DISTRICT  
A Public Corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)  
Attest:

\_\_\_\_\_  
Secretary

CITY OF HAYWARD  
A Municipal Corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)  
Attest:

\_\_\_\_\_  
City Clerk

CITY OF SAN LEANDRO  
A Municipal Corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)  
Attest:

\_\_\_\_\_  
City Clerk

ORO LOMA SANITARY DISTRICT  
A Public Corporation

By: \_\_\_\_\_



(SEAL)  
Attest:

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary

CASTRO VALLEY SANITARY DISTRICT  
A Public Corporation

By: \_\_\_\_\_

(SEAL)  
Attest:

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary

SCHEDULE A  
AUTHORITY FACILITIES

A. Upon its formation in 1974, the Authority was responsible for overseeing construction of the “Phase I Project,” which was funded by a Clean Water Grant. The Phase I Project included construction of facilities to be owned by the Authority, as well as facilities to be owned by the Agencies. As such, the original Joint Powers Agreement defined Joint and Sole Use Facilities to delineate those Joint facilities to be owned and operated by the Authority and Sole Use Facilities to be owned and operated by the Agencies. In this Amended and Restated Agreement, those facilities owned and operated by the Agencies are deemed no longer relevant to the Agreement, and therefore those Sole Use Facilities have been removed from this Schedule. Those facilities owned and operated by the Authority have been renamed Authority Facilities or Facilities and are enumerated below.

B. Authority Facilities or Facilities are:

1. Control System
2. Operations Center
3. Bay Outfall
4. Marina Dechlorination Facility (MDF)
5. Oro Loma Dechlorination Facility
6. Oro Loma Effluent Pump Station (OLEPS)
7. Marina to Oro Loma Force Main
8. Oro Loma to Hayward Force Main
9. Hayward Effluent Pump Station (HEPS)
10. Hayward to Union Force Main
11. Union Effluent Pump Station (UEPS)
12. Skywest Irrigation Project
14. Other such additional facilities as determined by the Commission to be Authority Facilities

SCHEDULE B

ALLOCATION OF OPERATION AND MAINTENANCE COSTS

Operation and Maintenance Costs for Authority Facilities will be divided into, and allocated based on, the following categories:

1. Fixed Costs include all Operation and Maintenance Costs not defined below as "Variable Costs." The total Fixed Costs, less any amounts received by the Authority to offset Fixed Costs, will be apportioned to the Agencies based on their current Maximum Flow Rate Capacity (as shown in Schedule F) normalized out of 100 as follows:

San Leandro	13.74%
Oro Loma	19.44%
Castro Valley	10.30%
Hayward	14.72%
Union	42.10%

In the event one or more Agencies adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be adjusted to reflect the same.

Notwithstanding the foregoing, San Leandro will not share in any fixed Operation and Maintenance Costs for the Oro Loma Effluent Pump Station, Hayward Effluent Pump Station, or Union Effluent Pump Station, nor will it share in Operation and Maintenance Costs for the Transport System.

2. Variable Costs will be deemed to be costs of energy used for pumping, chemical costs used in operation of the Facilities, and maintenance, and repair charges incurred in the operation and maintenance of the system. Variable Costs will be allocated to the Agencies based on total effluent flow for a one year period as set forth in Policies and Procedures. Union's total effluent flow for the purposes of the calculation of Variable Costs will include any flow discharged to the Hayward Marsh pursuant to the Hayward Marsh MOU.

The volume of flow that an Agency recycles that does not utilize any Authority Facilities will not be included in the effluent flow reported by the Agency for the purposes of calculating Variable Costs. To the extent that recycled water is conveyed or pumped using Authority Facilities, it will be included in the Agency's reported effluent flow for the purposes of calculating Variable Costs.

Notwithstanding the foregoing, San Leandro will not share in any variable Operation and Maintenance Costs for the Oro Loma Effluent Pump Station, Hayward Effluent Pump Station, or Union Effluent Pump Station, nor will it share in Operation and Maintenance Costs for the Transport System.

SCHEDULE C  
DISTRIBUTION OF PLANNING  
AND SPECIAL STUDIES COSTS

Distribution of Planning and Special Studies Costs for the Facilities will be in proportion of Average Dry Weather Design Flows as set forth in the Final Supplement to the Project Report dated August, 1976, and will be as follows:

San Leandro	13%
Oro Loma	18%
Castro Valley	6%
Hayward	30%
Union	33%

Planning and Special Studies Costs for other than Authority Facilities and at the request of and solely benefiting one or more Agencies will be borne exclusively by the Agency or Agencies requesting such studies, including an allocation of general administrative expenses to be agreed upon by the Agency (or Agencies) and Authority when said service is requested.

Other Costs Charged to the Authority: The Authority incurs additional costs related to the operation of the Facilities (e.g. NPDES fees, Regional Monitoring Program fees, watershed permit fees). These costs will be allocated among the Agencies as set forth in Policies and Procedures.

SCHEDULE D

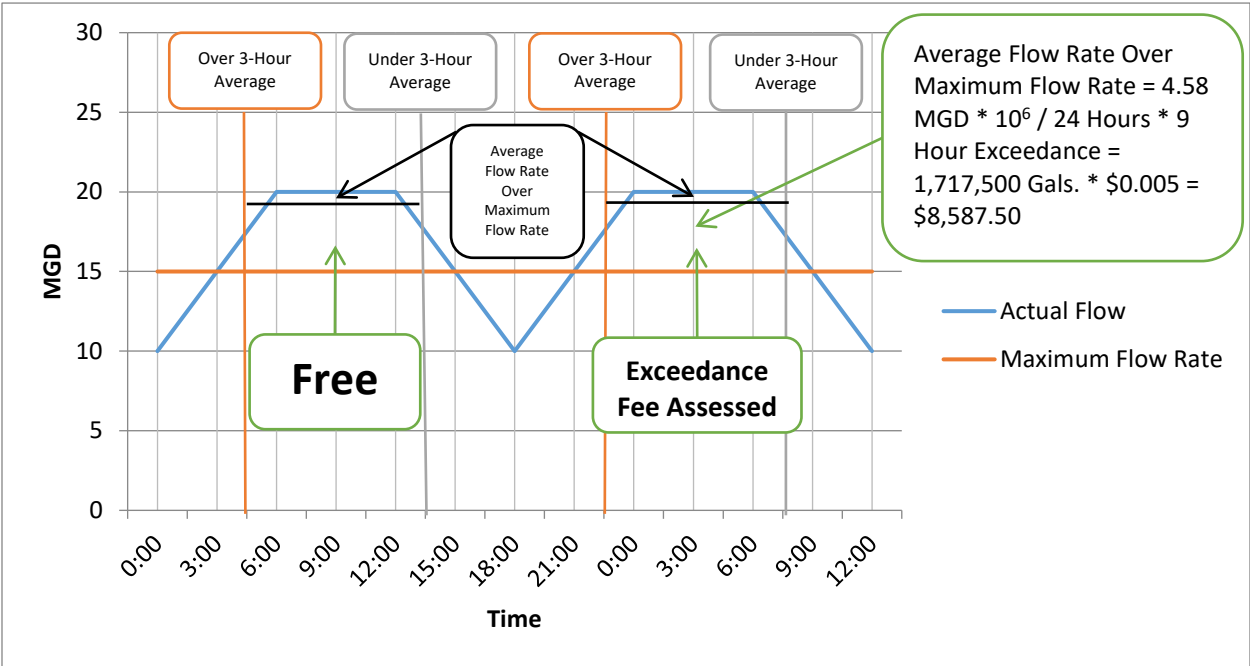
MAXIMUM FLOW RATE CAPACITY EXCEEDANCE CALCULATION

Fees associated with temporary exceedance of an agency's Maximum Flow Rate Capacity will be assessed according to the following formula:

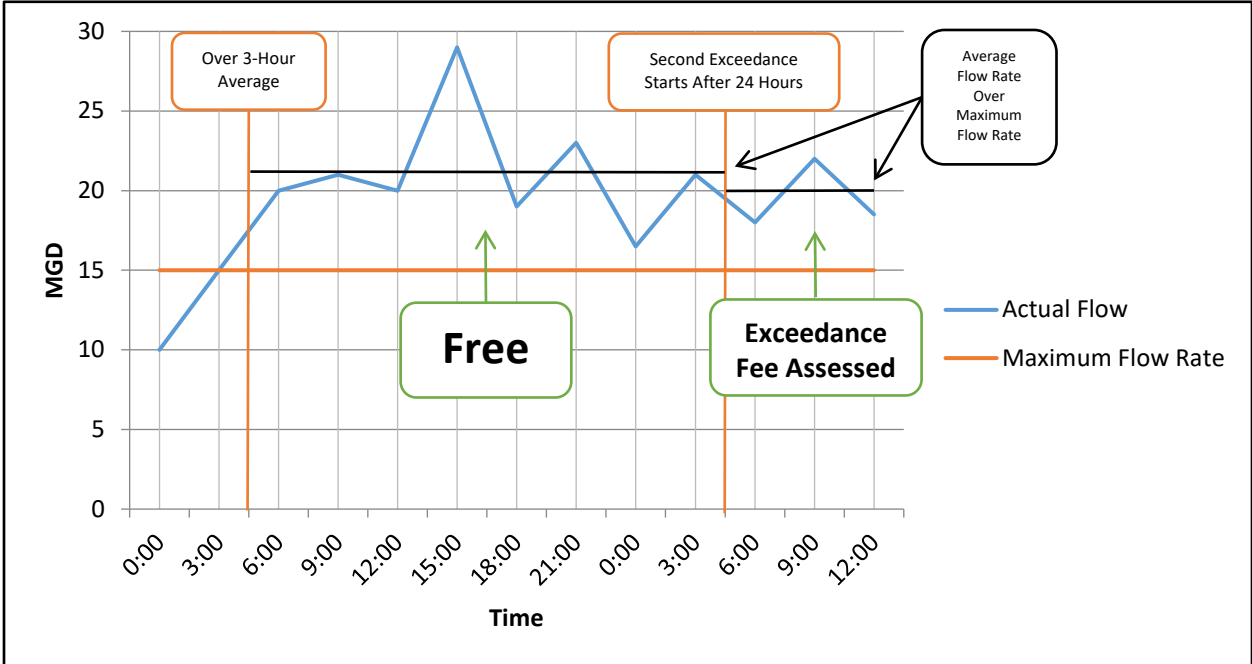
$$\text{Fee} = (\text{Average actual flow rate for the period of exceedance in MGD} - \text{Maximum Flow Rate Capacity in MGD}) * 10^6 \text{ gal} \div 24 \text{ hrs} * \text{hrs of exceedance} * \$0.005/\text{gallon}$$

Fees will be assessed when a 3-hour rolling average exceeds the Maximum Flow Rate Capacity. No fees will be assessed for the first exceedance in a given Fiscal Year. The first exceedance will end when an Agency's 3-hour average first drops back below its Maximum Flow Rate Capacity. If the Agency's 3-hour average stays above its Maximum Flow Rate Capacity, the first exceedance will end after 24 hours. The start of a new 24-hour period will be considered the start of a new exceedance. Notwithstanding the foregoing, any discharge by Union to the Hayward Marsh pursuant to the Hayward Marsh MOU, will be subtracted from Union's flow for the purposes of assessing a capacity exceedance fee.

EXAMPLE 1



# EXAMPLE 2





SCHEDULE E  
WEIGHTED VOTING

<u>Agency</u>	<u>Votes</u>
Union	42.10
Oro Loma	19.14
Castro Valley	10.30
Hayward	14.72
<u>San Leandro</u>	<u>13.74</u>
Total =	100

In the event one or more Agencies adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be recalculated based on the following formula:

$$\text{Agency Votes} = \text{Agency Maximum Flow Rate Capacity} \div \text{Total Maximum Flow Rate Capacity}$$

After such recalculation, a revised Schedule E will be automatically incorporated in this Agreement.

SCHEDULE F  
MAXIMUM FLOW RATE CAPACITY

San Leandro	14.0 million gallons per day
Oro Loma/Castro Valley	30.0 million gallons per day*
Hayward	15.0 million gallons per day
Union	42.9 million gallons per day**

\*For the purposes of individual Agency cost and vote allocations, 65% of this capacity is allocated to Oro Loma and 35% is allocated to Castro Valley.

\*\*Any effluent discharged to the Hayward Marsh by Union pursuant to the Hayward Marsh MOU, will be subtracted from Union's total flow when determining whether Union has exceeded its Maximum Flow Rate Capacity.

In the event one or more Agencies adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be adjusted to reflect the same.

For purposes of maintaining a historical record, prior capacities are noted below. This historical record will be updated as the above table is updated.

Maximum Flow Rate Capacity for the Period February 15, 1974 – June 30, 2020:

San Leandro	22.3 million gallons per day
Oro Loma/Castro Valley	69.2 million gallons per day
Hayward	35.0 million gallons per day
Union	42.9 million gallons per day

SCHEDULE G  
TRANSPORT SYSTEM AGENCY SEGMENT ALLOCATION

Segment	Agency	Allocation
OLEPS to MDF	Union	49%
	Hayward	17%
	Oro Loma	23%
	Castro Valley	11%
HEPS to OLEPS	Union	74%
	Hayward	26%
UEPS to HEPS	Union	100%

In the event an Agency adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be recalculated based on the following formula:

Agency Segment Allocation = Agency Maximum Flow Rate Capacity ÷ Total Maximum Flow Rate Capacity for that segment

The following Transport System diagram is provided for reference in delineating the segments outlined in the above table:



SCHEDULE H

MAXIMUM FLOW RATE CAPACITY NORMALIZED OUT OF 100 -- EXCLUDING SAN LEANDRO

Union	48.8%
Oro Loma	22.2%
Castro Valley	11.9%
Hayward	17.1%

In the event an Agency adjusts its Maximum Flow Rate Capacity as set forth in Section 11, this schedule will be recalculated based on the following formula:

Agency Allocation = Agency Maximum Flow Rate Capacity ÷ (Total Maximum Flow Rate Capacity – San Leandro Maximum Flow Rate Capacity).

**SCHEDULE I**  
**AUTHORITY COST ALLOCATION SUMMARY**

<b>Budget Element</b>	<b>Cost Allocation Basis</b>	<b>Associated Schedule</b>
O&M Variable Cost (energy, chemicals, labor)	Total annual flow	Schedule B
O&M Fixed Cost (other O&M)	Maximum Flow Rate Capacity	Schedule B (Note table is the same as Schedule E)
Capital Cost: Transport System (projects > \$35,000*)		
- First \$325,000** cumulative	Maximum Flow Rate Capacity, excluding San Leandro	Schedule H
- Once \$325,000** has been exceeded	Segment Use	Schedule G
Capital Cost: Pump Stations (projects >\$10,000*)	Maximum Flow Rate Capacity, excluding San Leandro	Schedule H
Capital Cost: Bay Outfall, Operations Center, and MDF (projects >\$10,000*)	Maximum Flow Rate Capacity	Schedule B
Special Studies	Average Dry Weather Design Flows per 1976 Project Report or other as determined on a case by case basis	Schedule C

\* Projects under listed threshold will be allocated as O&M costs.

\*\*As escalated pursuant to the Engineering News-Record 20-City Building Cost Index.

**EAST BAY DISCHARGERS AUTHORITY**  
**FOURTH AMENDMENT TO**  
**THE JOINT EXERCISE OF POWERS AGREEMENT**

This FOURTH AMENDMENT TO THE JOINT EXERCISE OF POWERS AGREEMENT ("Amendment") is entered into effective as of January 1, 2020 ("Effective Date") by the CITY OF HAYWARD, a municipal corporation; CITY OF SAN LEANDRO, a municipal corporation; ORO LOMA SANITARY DISTRICT, a public corporation; CASTRO VALLEY SANITARY DISTRICT, a public corporation; and UNION SANITARY DISTRICT, a public corporation ("Agencies"); each duly existing and organized in the County of Alameda under the Constitution and laws of the State of California.

WHEREAS, the Agencies first entered into a Joint Exercise of Powers Agreement on February 15, 1974; amended such Agreement on January 3, 1978; supplemented such Agreement on October 5, 1981, February 15, 1983, and twice on April 26, 1983; and further amended the Joint Exercise of Powers Agreement on February 11, 1986, and February 15, 2007; and

WHEREAS, the Agencies have negotiated an Amended and Restated Joint Exercise of Powers Agreement which, if executed, will take effect on July 1, 2020; and

WHEREAS, to allow for uninterrupted service, the Agencies desire to extend the term of the February 15, 2007 Amended Joint Exercise of Powers Agreement through June 30, 2020.

NOW, THEREFORE, the Third Amended Joint Exercise of Power Agreement, dated February 15, 2007, is amended as follows:

1. **Section 3 "Term"** is deleted in its entirety and replaced with the following:

"This Fourth Amended Agreement shall become effective upon execution by all Agencies and, provided all Agencies have approved this amendment on or before January 1, 2020, the effective date will be January 1, 2020. It will continue in force and effect until June 30, 2020, unless sooner terminated by mutual agreement."

2. Except as expressly modified by this Fourth Amendment, all terms and conditions in the Third Amended Joint Exercise of Powers Agreement dated February 15, 2007 shall remain in full force and effect.

3. Execution of this Fourth Amendment may be accomplished by execution of separate counterparts by each signatory. The separate executed counterparts, taken together, shall constitute a single agreement.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the Effective Date.

UNION SANITARY DISTRICT  
A Public Corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)  
Attest:

\_\_\_\_\_  
Secretary

CITY OF HAYWARD  
A Municipal Corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)  
Attest:

\_\_\_\_\_  
City Clerk

CITY OF SAN LEANDRO  
A Municipal Corporation

By: \_\_\_\_\_

Date: \_\_\_\_\_

(SEAL)  
Attest:

\_\_\_\_\_  
City Clerk

ORO LOMA SANITARY DISTRICT  
A Public Corporation



By: \_\_\_\_\_

(SEAL)  
Attest:

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary

CASTRO VALLEY SANITARY DISTRICT  
A Public Corporation

By: \_\_\_\_\_

(SEAL)  
Attest:

Date: \_\_\_\_\_

\_\_\_\_\_  
Secretary



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** PH 19-096

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** Assistant City Manager

**SUBJECT**

Adopt an Ordinance Approving an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (CalPERS) for Local Safety - Police Employees and Authorize the City Manager to Execute the Contract

**RECOMMENDATION**

That Council adopts an Ordinance (Attachment II) to approve an amendment to the City of Hayward's contract with CalPERS and authorizes the City Manager to execute the contract.

**SUMMARY**

The City contracts with CalPERS for employee retirement benefits. The proposed contract amendment with CalPERS was negotiated with the Hayward Police Officers Association (HPOA) in 2018 and added the Pre-Retirement Option 2W Death Benefit for Local Safety - Police Employees in accordance with California Government Code Section 21548. Local - Safety Police Employees include those in the HPOA and the Hayward Police Management Unit (HPMU). The additional pre-retirement death benefit is a monthly allowance to an eligible surviving spouse or eligible registered domestic partner and is calculated using the applicable retirement formula, and number of service years an officer had at the time of his or her death in the line of duty.

To implement any changes to the retirement program, it is necessary to amend the City's existing contract with CalPERS. Resolution 19-208 (Attachment III) was passed on November 5, 2019 and authorizes Council's intention to approve the proposed contract amendment with CalPERS. This proposed Ordinance now provides final authorization to approve the amendment of the Safety-Police contract to add the Pre-Retirement Option 2W Death Benefit and authorizes staff to execute the contract amendment effective January 6, 2020.

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**File #:** PH 19-096

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**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Ordinance
Attachment III	Adopted Resolution
Attachment III-a	Sample Amendment
Attachment IV	Summary of Ordinance CalPERS



DATE: December 3, 2019

TO: Mayor and City Council

FROM: Assistant City Manager

SUBJECT: Adopt an Ordinance Approving an Amendment to the City of Hayward Contract with the California Public Employees Retirement System (CalPERS) for Local Safety - Police Employees and Authorize the City Manager to Execute the Contract

#### RECOMMENDATION

That Council adopts an Ordinance (Attachment II) to approve an amendment to the City of Hayward's contract with CalPERS and authorizes the City Manager to execute the contract.

#### SUMMARY

The City contracts with CalPERS for employee retirement benefits. The proposed contract amendment with CalPERS was negotiated with the Hayward Police Officers Association (HPOA) in 2018 and added the Pre-Retirement Option 2W Death Benefit for Local Safety - Police Employees in accordance with California Government Code Section 21548. Local - Safety Police Employees include those in the HPOA and the Hayward Police Management Unit (HPMU). The additional pre-retirement death benefit is a monthly allowance to an eligible surviving spouse or eligible registered domestic partner and is calculated using the applicable retirement formula, and number of service years an officer had at the time of his or her death in the line of duty.

To implement any changes to the retirement program, it is necessary to amend the City's existing contract with CalPERS. Resolution 19-208 (Attachment III) was passed on November 5, 2019 and authorizes Council's intention to approve the proposed contract amendment with CalPERS. This proposed Ordinance now provides final authorization to approve the amendment of the Safety-Police contract to add the Pre-Retirement Option 2W Death Benefit and authorizes staff to execute the contract amendment effective January 6, 2020.

#### BACKGROUND AND DISCUSSION

On July 17, 2018, City Council adopted Resolution 18-163 approving the extension and amendment of the Memorandum of Understanding (MOU) between the City of Hayward and HPOA for the period of July 1, 2018 to June 30, 2024. One of the terms in the amended MOU added an enhanced Pre-Retirement Option 2W Benefit for Safety Police Employees in HPOA.

Prior to negotiation of this Pre-Retirement Option 2W Death Benefit, the existing CalPERS contract included only two options. The first was a Special Death Benefit for eligible beneficiaries limited to 50% of the employee's final compensation which may be increased to 75%, depending on the cause of death. This benefit is payable to an eligible surviving spouse or eligible registered domestic partner until death, or to unmarried children until age 22. The second option is the Basic Death Benefit, which is paid if no one is eligible for either of the monthly allowances in the first option, or if the eligible beneficiary chooses instead to receive the Basic Death Benefit. The Basic Death Benefit is either a lump-sum payment of a refund of the employee's contributions, or up to six months of pay (one month's salary rate for each year of current service, up to six months).

Under the terms of the successor MOU agreement, the addition of the Pre-Retirement Option 2W Death Benefit provides officers' eligible beneficiaries with a monthly allowance equivalent to the amount the employee would have received had he or she retired under a service retirement and elected Option 2W. Option 2W is one of the alternatives employees may elect upon retirement that reduces their highest payable benefit, also referred to as the Unmodified Allowance, but provides a lifetime of monthly benefits to their designated beneficiary. The additional option is advantageous for both employees and their eligible beneficiaries in that it grants a greater benefit in case of a job-related death. Rather than a limited monthly allowance of 50-75% of final compensation, the Pre-Retirement Option 2W Death Benefit provides a monthly allowance comparable to what an employee would receive under a service retirement.

The contract amendment for Local Safety – Police Employees includes members in both HPOA and HPMU and as a result of the contract amendment, HPMU members will also benefit from the additional pre-retirement option.

#### FISCAL IMPACT

The cost of amending the CalPERS contract to add the Pre-Retirement Option 2W Death Benefit is an increase of 0.081% to the Employer's Normal Cost Rate, which is currently approximately \$143,533 annually. The cost was considered and recognized when negotiating the extension and amendment of the MOU between the City of Hayward and HPOA (July 1, 2018 through June 30, 2024).

#### STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

#### NEXT STEPS

If approved, the Ordinance will take effect on January 2, 2020. The contract amendment will be effective January 6, 2020.

Prepared by: Vanessa Lopez, Senior Human Resources Analyst

Recommended by: Maria A. Hurtado, Assistant City Manager

Approved by:

A handwritten signature in black ink, appearing to read 'K. McAdoo', written in a cursive style.

---

Kelly McAdoo, City Manager

ORDINANCE NO. 19-\_\_\_\_\_

AN ORDINANCE AUTHORIZING THE AMENDMENT OF THE CONTRACT BETWEEN THE CITY OF HAYWARD AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Provisions.

1. That an amendment between the City Council of the City of Hayward and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.
2. The City Manager of the City of Hayward is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City of Hayward.

Section 2. Severance. Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_, 2019, by Council Member \_\_\_\_\_.

ADOPTED at a regular meeting of the City Council of the City of Hayward, held the \_\_\_\_ day of \_\_\_\_, 2019, by the following votes of members of said City Council.

AYES: COUNCIL MEMBERS:

MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

APPROVED: \_\_\_\_\_  
Mayor of the City of Hayward

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward



HAYWARD CITY COUNCIL

RESOLUTION NO. 19-208

Introduced by Council Member Wahab

RESOLUTION AUTHORIZING INTENTION TO APPROVE AN AMENDMENT TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION, CALIFORNIA PUBLIC EMPLOYEES RETIREMENT SYSTEM, AND THE CITY OF HAYWARD

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change: To provide Section 21548 (Pre-Retirement Option 2W Death Benefit) for Local Safety-Police Members.

NOW, THEREFORE, BE IT RESOLVED that the governing body of the above agency does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

IN COUNCIL, HAYWARD, CALIFORNIA November 5, 2019

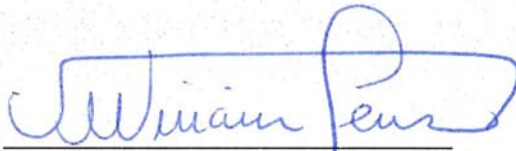
ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS: Zermeño, Márquez, Mendall, Lamnin, Wahab, Salinas  
MAYOR: Halliday

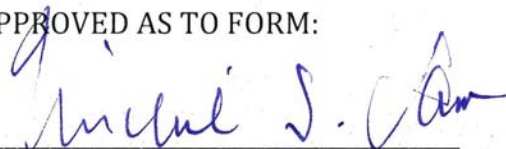
NOES: COUNCIL MEMBERS: None

ABSTAIN: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

ATTEST:   
City Clerk of the City of Hayward

APPROVED AS TO FORM:

  
City Attorney of the City of Hayward

**EXHIBIT**

California  
Public Employees' Retirement System

**AMENDMENT TO CONTRACT**

Between the  
Board of Administration  
California Public Employees' Retirement System  
and the  
City Council  
City of Hayward



The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective October 1, 1950, and witnessed August 7, 1950, and as amended effective January 16, 1952, January 1, 1956, April 1, 1959, January 1, 1960, November 1, 1962, April 1, 1965, December 1, 1969, July 1, 1973, July 16, 1973, June 1, 1978, April 23, 1979, January 12, 1981, March 9, 1981, July 11, 1986, October 10, 1988, June 21, 1991, June 19, 1992, March 8, 1996, January 1, 2001, April 1, 2001, July 1, 2001, August 26, 2002, May 23, 2008, July 4, 2011, February 24, 2014, July 27, 2015, June 27, 2016, February 20, 2017, June 26, 2017, December 11, 2017 and April 1, 2019 which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 16 are hereby stricken from said contract as executed effective April 1, 2019, and hereby replaced by the following paragraphs numbered 1 through 16 inclusive:
1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members, age 62 for new local miscellaneous members, age 50 for classic local safety members and age 57 for new local safety members.

2. Public Agency shall participate in the Public Employees' Retirement System from and after October 1, 1950 making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
  - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
  - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.
  - (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
  - a. Local Fire Fighters (herein referred to as local safety members);
  - b. Local Police Officers (herein referred to as local safety members);
  - c. Employees other than local safety members (herein referred to as local miscellaneous members).

5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
  - a. **PERSONS EMPLOYED AFTER JANUARY 16, 1952 AS CROSSING GUARDS; AND**
  - b. **PERSONS EMPLOYED AFTER JANUARY 30, 1959 AS PART-TIME LIFEGUARDS AND PART-TIME LIBRARY AIDES.**
6. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment before and not on or after August 26, 2002 shall be determined in accordance with Section 21354 of said Retirement Law, subject to the reduction provided therein for service on and after January 5, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2% at age 55 Full and Modified).
7. The percentage of final compensation to be provided for each year of credited prior and current service for classic local miscellaneous members in employment on or after August 26, 2002 shall be determined in accordance with Section 21354.4 of said Retirement Law, subject to the reduction provided therein for service on and after January 1, 1956, the effective date of Social Security coverage, and prior to December 30, 1980, termination of Social Security, for members whose service has been included in Federal Social Security (2.5% at age 55 Full and Modified).
8. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
9. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local safety member shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
11. Public Agency elected and elects to be subject to the following optional provisions:
  - a. Section 21573 (Third Level of 1959 Survivor Benefits) for local safety members only.

- b. Sections 21624 and 21626 (Post-Retirement Survivor Allowance) for local safety members only.
- c. Section 20042 (One-Year Final Compensation) for classic members only.
- d. Section 21635 (Post-Retirement Survivor Allowance to Continue After Remarriage) for local safety members only.
- e. Section 21024 (Military Service Credit as Public Service).
- f. Section 21027 (Military Service Credit for Retired Persons).
- g. Section 21551 (Continuation of Pre-Retirement Death Benefits After Remarriage of Survivor).
- h. Section 21022 (Public Service Credit for Periods of Lay-Off) for local miscellaneous members only.
- i. Section 21574 (Fourth Level of 1959 Survivor Benefits) for local miscellaneous members only.
- j. Section 20903 (Two Years Additional Service Credit).
- k. Section 20965 (Credit for Unused Sick Leave) for local fire members only.
- l. Section 21547.7 (Alternate Death Benefit for Local Fire Members Credited with 20 or More Years of Service).
- m. Section 20516 (Employees Sharing Cost of Additional Benefits):

Section 21362.2 (3% @ 50) effective January 1, 2001 and Section 20042 (One-Year Final Compensation) effective January 12, 1981 for classic local fire members. The employee cost sharing contribution is not to exceed 15.607%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2020, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.986%.

Section 21362.2 (3% @ 50) effective July 1, 2001 and Section 20042 (One-Year Final Compensation) effective April 23, 1979 for classic local police members. The employee cost sharing contribution is not to exceed 13.882%. The maximum employee cost sharing contribution is the normal cost plus the increase in the accrued liability due to the benefit improvement amortized over 20 years. In no event shall the employee cost sharing contribution attributable to the unfunded liability remain in effect beyond June 30 preceding the 20th anniversary of the effective date of the additional benefits. Therefore, after June 30, 2021, in any given contribution year, the maximum employee cost sharing contribution cannot exceed 5.505%.

n. Section 20516 (Employees Sharing Additional Cost):

From and after February 24, 2014, 3.75% for new local fire members.

From and after July 27, 2015, 2.25% for new local police members.

From and after February 20, 2017, 5.25% for new local fire members in the International Association of Firefighters Local 1909.

From and after February 20, 2017, 3% for new local police members in the Hayward Police Officers' Association.

From and after June 26, 2017, 3% for local miscellaneous members in the Hayward Association of Management Employees Group, International Federation of Professional and Technical Engineers Local 21, Unrepresented Group, Management, Human Resources, and City Attorneys and City Managers Group.

From June 26, 2017 and until December 12, 2017, 3% for local miscellaneous members in the Unrepresented Executive Group and Council Appointed Employees Group.

From and after December 12, 2017, 5% for local miscellaneous members in the Unrepresented Executive Group and Council Appointed Employees Group.

From and after April 1, 2019, 4.5% for local miscellaneous members in the Service Employees International Union Local 1021, Clerical and Related Unit and the Service Employees International Union Local 1021, Maintenance and Operations Unit.





- 15. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
- 16. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BOARD OF ADMINISTRATION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL  
CITY OF KAYWARD

BY \_\_\_\_\_  
ARNITA PAIGE, CHIEF  
PENSION CONTRACTS AND REFUNDING  
PROGRAMS DIVISION  
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY \_\_\_\_\_  
PRESIDING OFFICER

\_\_\_\_\_  
Witness Date

Attest:

\_\_\_\_\_  
Clerk

PLEASE DO NOT SIGN "EXHIBIT ONLY"

PUBLIC NOTICE OF AN INTRODUCTION OF AN ORDINANCE  
BY THE CITY COUNCIL OF THE CITY OF HAYWARD

AN ORDINANCE AUTHORIZING THE AMENDMENT OF THE CONTRACT BETWEEN THE CITY OF HAYWARD AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Provisions.

1. That an amendment between the City Council of the City of Hayward and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.
2. The City Manager of the City of Hayward is hereby authorized, empowered, and directed to execute said amendment for and on behalf of the City of Hayward.

Section 2. Severance. Should any part of this ordinance be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. Effective Date. In accordance with the provisions of Section 620 of the City Charter, this ordinance shall become effective 30 days from and after the date of its adoption.

INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the 5<sup>th</sup> day of November 2019, by Council Member Wahab.

This ordinance will be considered for adoption at the regular meeting of the Hayward City Council, to be held on December 3<sup>rd</sup>, 2019, at 7:00 p.m., in the Council Chambers, 777 B Street, Hayward, California. The full text of this Ordinance, including the Resolution and Exhibit, are available for examination by the public in the Office of the City Clerk.

Dated: November 29, 2019  
Miriam Lens, City Clerk  
City of Hayward



# CITY OF HAYWARD

Hayward City Hall  
777 B Street  
Hayward, CA 94541  
www.Hayward-CA.gov

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**File #:** LB 19-053

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**DATE:** December 3, 2019

**TO:** Mayor and City Council

**FROM:** City Clerk

**SUBJECT**

Election of Mayor Pro Tempore for 2020

**RECOMMENDATION**

That the Council elects the Mayor Pro Tempore for 2020.

**SUMMARY**

It is the Hayward City Council's policy to elect the Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability. The current term is based on the calendar year.

**ATTACHMENTS**

Attachment I	Staff Report
Attachment II	Resolution
Attachment III	List of Mayor Pro Tempore



DATE: December 3, 2019  
TO: Mayor and City Council  
FROM: City Clerk  
SUBJECT: Election of Mayor Pro Tempore for 2020

#### RECOMMENDATION

That the Council elects the Mayor Pro Tempore for 2020.

#### SUMMARY

It is the Hayward City Council's policy to elect the Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability. The current term is based on the calendar year.

#### BACKGROUND

Below is the pertinent excerpt from the Council Members Handbook<sup>1</sup> regarding the Mayor Pro Tempore. Attachment III is the list of members who have previously served as Mayor Pro Tempore. Based on the guidelines listed below, Council Member Salinas would be the next eligible Council Member to serve as Mayor Pro Tempore should the Council choose to continue the traditional selection process.

#### **MAYOR PRO TEMPORE**

In even number years, the Council shall elect the Mayor Pro Tempore following the installation of those newly elected Council Members. In odd years, the Council shall elect the Mayor Pro Tempore at the end of the calendar year.

The Mayor Pro Tempore shall serve at the pleasure of the Council for the term of one year and shall be elected and removed by the affirmative votes of at least five (5) members of Council.

The Council shall elect a Council Member with the most seniority as a Council Member and who has not previously served as Mayor Pro Tempore. In the event two Council Members begin service in the same year, the Council Member with the

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<sup>1</sup> Council Members Handbook <https://www.hayward-ca.gov/sites/default/files/documents/Council-Member-Handbook-2019.pdf>

highest number of votes will serve as Mayor Pro Tempore. (See City Council Minutes, 4/28/92)

Prior to being elected as Mayor Pro Tempore, a Council Member shall have served at least two years on the Council. The term of the Mayor Pro Tempore shall be based on the calendar year January 1<sup>st</sup> to December 31<sup>st</sup>. (Resolution 98-120 and Council Minutes, 6/26/01)

The Mayor Pro Tempore shall perform the duties of the Mayor during the Mayor's absence or disability. (Sec. 605, City Charter)

#### STRATEGIC INITIATIVES

This agenda item is a routine operational item and does not relate to one of the Council's Strategic Initiatives.

#### FISCAL IMPACT

There is no fiscal impact associated with this report.

#### PUBLIC CONTACT

This item does not require public outreach.

#### NEXT STEPS

Any related documents will be updated accordingly.

Prepared and Recommended by: Miriam Lens, City Clerk

Approved by:



---

Kelly McAdoo, City Manager

HAYWARD CITY COUNCIL

RESOLUTION No. 19-\_\_

Introduced by Council Member \_\_\_\_\_

RESOLUTION AUTHORIZING THE ELECTION OF MAYOR PRO  
TEMPORE OF THE CITY OF HAYWARD FOR 2020

WHEREAS, the City Council conducted an election to select the Mayor Pro Tempore on December 11, 2018; and

WHEREAS, the City Council elected Council Member Zermeño to serve as Mayor Pro Tempore of the City of Hayward from January 1, 2019 through December 30, 2019; and

WHEREAS, the City Council conducted an election to select the Mayor Pro Tempore for 2020 on December 3, 2019.

NOW, BE IT RESOLVED by the City Council of the City of Hayward that it hereby elects Council Member \_\_\_\_\_ as Mayor Pro Tempore of the City of Hayward from January 1, 2020 through December 30, 2020.

IN COUNCIL, HAYWARD, CALIFORNIA \_\_\_\_\_, 2019.

ADOPTED BY THE FOLLOWING VOTE:

AYES:           COUNCIL MEMBERS:  
                  MAYOR:

NOES:           COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ATTEST: \_\_\_\_\_  
          City Clerk of the City of Hayward

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney of the City of Hayward

## MAYOR PRO TEMPORE

COUNCIL MEMBER	RESOLUTION	DATE
William Ward	92-100	04/28/92
Nicholas Randall	93-084	04/20/93
Doris Rodriquez	94-069	04/19/94
Joseph Hilson	95-71	04/18/95
Ron Hulteen	96-067	04/02/96
Olden Henson	97-063	05/13/97
Matt Jimenez	98-122	06/30/98
William Ward	99-112	06/22/99
Joseph Hilson	00-043	Term 4/04/00 thru 6/30/01
Kevin Dowling	01-101, adopted 6/26/01	Term 7/1/01 thru 6/30/02
Doris Rodriquez	02-093, adopted 6/25/02	Term 7/1/02 thru 6/30/03
Olden Henson	03-117, adopted 7-15-03	Term 7/1/03 thru 6/30/04
Matt Jimenez	04-106, adopted 6-22-04	Term 7/1/04 thru 6/30/05
Matt Jimenez	05-089, adopted 6-28-05	Term 7/1/05 thru 6/30/06
Barbara Halliday	06-091, adopted 7-11-06	Term 7/1/06 thru 6/30/07
Bill Quirk	07-105, adopted 7/10/07	Term 7/1/07 thru 06/30/08
Kevin Dowling	08-109, adopted 7/8/08	Term 7/1/08 thru 06/30/09



## MAYOR PRO TEMPORE

COUNCIL MEMBER	RESOLUTION	DATE
Olden Henson	09-104, adopted 6/30/09	Term 7/1/09 thru 6/30/10
Francisco Zermeño	10-119, adopted 7/13/10	Term 7/1/10 thru 6/30/11
Barbara Halliday	11-106, adopted 6/28/11	Term 7/1/11 thru 6/30/12
Marvin Peixoto	12-124, adopted 7/10/12	Term 7/1/12 thru 6/30/13
Mark Salinas	13-108, adopted 6/25/13	Term 7/1/13 thru 6/30/14
Greg Jones	14-113, adopted 7/8/14	Term 7/1/14 thru 6/30/15
Al Mendall	15-140, adopted 7/14/15	Term 7/1/16 thru 6/30/16
Sara Lamnin	16-135, adopted 7/12/16	Term 7/1/16 thru 6/30/17
Elisa Márquez	17-105, adopted 6/27/17	Term 7/1/17 thru 12/30/18
Francisco Zermeño	18-249, adopted 12/11/19	Term 1/1/19 thru 12/31/19